

**IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON FRIDAY, THE 19TH
DAY OF MAY, 2023 BEFORE HER LADYSHIP ROSEMARY BAAH TOSU (MRS)-
HIGH COURT JUDGE SITTING AS AN ADDITIONAL CIRCUIT COURT
JUDGE**

SUIT NO: D21/367/2023

THE REPUBLIC

VS

CEPHAS BORTEY

.....
JUDGMENT
.....

Accused is charged with Robbery contrary to section 149 of the Criminal Offences Act, 1960, Act 29.

THE PROSECUTION'S CASE

According to Prosecution, the complainant is a driver who resides at Nungua whilst the Accused is a welder who also resides at Nungua.

On the 3rd January, 2023, at about 10:30 pm, complainant and his mate loaded passengers from Accra Post Office to Nungua. On reaching Teshie Mobil., complainant's bus developed a fault and he had no option than to provide his other passengers with another bus to Nungua.

According to Prosecution, Accused and three other persons who were also in the bus attacked the complainant and his mate and took cash the sum of GH¢1,050, which was their sales for the week. Accused and accomplices then sat in a waiting taxi and bolted. A few days later, on the 19th of January 2023, at about 8: 30 pm, Complainant's mate noticed Accused in their bus again when they were plying from Accra to Nungua and he informed the complainant who drove immediately to Osu Police Station. Accused was arrested

At the close of the case of the Prosecution, the Court was satisfied that a prima facie case had been made out against Accused and he was called upon to open his defence.

THE DEFENCE

Accused person's defence is a total denial of the charges. He testified that he does not know the Prosecution witnesses except through this criminal trial and has never been involved in any such robbery.

ANALYSIS OF EVIDENCE LED AND THE LAW

In the case of *Commissioner of Police vs Antwi (1961) GLR 408*, it was held that

'The fundamental principles underlying the rule of law are that the burden of proof remains throughout on the prosecution and the evidential burden shifts to the Accused only if at the end of the case for the prosecution an explanation of circumstances peculiarly within the knowledge of the Accused is called for. The Accused is not required to prove anything, if he can merely raise a reasonable doubt as to his guilt, he must be acquitted'.

The finding of this Court that a prima facie case had been made out against Accused meant that the burden has shifted to him.

Section 10(1) of the Evidence Act, NRCD 323 provides on the burden of persuasion as follows

'for the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court'.

(2) The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establishes the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.'

Even though the burden on Accused is only to raise a reasonable doubt in his favour, Accused also stands the risk of non-persuasion and or non-production of evidence after a prima facie case has been made out against him.

In the case of *Ali Yusuf Issah (No. 2) vrs The Republic (No.2) (2003-2004), SCGLR 174*. The following statement was made by Akuffo JSC (as she then was)

'Taken together, the burden of producing evidence and the burden of persuasion are the components of the burden of proof. Thus although an accused person is not required to prove his innocence during the course of the trial, he may run the risk of non-production of evidence and/ or non- persuasion to the required degree of belief, particularly when he is called upon to mount a defence.'

For the Prosecution to succeed on the charge of Robbery, they must prove that

1. That the person stole a thing
2. That for the purpose of stealing, the person used force or caused harm to another person
3. And the harm was caused with the intention of preventing or overcoming the resistance of the other person (victim).

Both PW1 and PW2 testified that Accused was part of a group of about four passengers who insisted on being given their lorry fares back and eventually beat them up and robbed them of their sales being an amount of GHS1050.

Cross examination by Accused of PW2 at the record dated 27th March, 2023

Q. I put it to you that I did not demand money from you?

A. Accused is one of them, I identified him very well.

Q. I put it to you that I have no knowledge of this matter?

A. You together with others insisted that we give you the money and beat me and my driver up.

Q. I put it to you that I did not take any money from you?

A. You were one of the persons who took the money forcefully. The taxi was red but I did not notice the registration number.

Accused insists that he was not the one in the vehicle on that day raising issues of his identification by Prosecution witnesses. However, looking at the testimony of PW1 and PW2 I do not have any fears that Accused was properly identified.

PW1 testified how Accused surprisingly questioned him whilst getting ready at the station. PW1 and PW2 cannot be said not to be able to identify someone whom they sat in a vehicle with from Accra all the way to Nungua. The fact that Accused was left alone with other accomplices when the vehicle developed a fault means he had more contact with prosecution witnesses so was easily identifiable.

I also have no doubt in my mind that Prosecution witnesses are not persuaded by malice in any way in identifying the Accused. I find that Accused has been properly identified.

Accused has been unable to create any doubts in the mind of the Court that he stole the said amount of GH¢1,050 from the Prosecution witnesses.

The Prosecution must prove next that for the purpose of stealing, the Accused used force or caused harm to another person

PW1 and PW 2's testimonies are as follows paragraph 5 of PW1's witness statement

4. Accused person who was having a cock in his hand at the moment placed same on the ground. Accused and his accomplices attacked me and my mate at that night hour and subjected us to severe beatings and forcibly collected from me and my mate cash the sum of GH¢1,0500 been(sic) sales for the week

PW2 testified at 5 of his witness statement as follows

5 . The Accused and his accomplices became offended when I refused to give them their monies and in the process attacked me and my master and subjected us to severe beatings. The accused and his accomplice forcibly collected all the monies we had on us amounting to GH¢1,050 sat in a waiting taxi cab and bolted with same to Nungua.

The testimony of severe beatings of the two Prosecution witnesses was clearly for the purpose of stealing all the money they had from their days work. Obviously, PW1 and PW2 would not have given out these monies if Accused and his accomplices asked them to do so politely.

Under cross-examination by the Court PW1 observed the following.

By Court: Can you describe exactly what happened?

Answer: They were the last four remaining that we were looking for a vehicle for them. One of them slapped my mate asking for the money, the other three others came on me and beat me up so I did not fight or struggle with them because I realized they had some weapons on them so I allowed them to take the money

I find the second element proved beyond reasonable doubt.

Finally, Prosecution must prove that the harm was caused with the intention of preventing or overcoming the resistance of the other person.

I find that the evidence of the two prosecution witnesses confirm this fact. The only way Accused and his accomplices could have taken the said monies was to assault and cause them harm to overcome their resistance.

Accused was given the opportunity to enter a defence, however, he failed to produce any evidence to persuade his Court about his non-involvement in the said affair. He also failed to raise any doubts in the mind of the Court. Accused insisted in his defence that he had no knowledge of the matter.

Under cross-examination Accused claimed he was not even in town on the day of the incident, but significantly he failed to lead any evidence as to where he was or even bring witnesses to testify about his whereabouts.

Q. I put it to you that that you were present and rightly identified

A. I was not even in town on the 4th of January, 2023

I find that the Prosecution has proved beyond a reasonable doubt that Accused robbed the Prosecution witnesses of their sales of GH¢1,050. Accused is accordingly convicted.

Upon hearing the Accused person in mitigation, I sentence Accused to ten (10) years in prison custody in hard labour.

H/L ROSEMARY BAAH TOSU (MRS)
HIGH COURT JUDGE SITTING AS AN
ADDITIONAL CIRCUIT COURT JUDGE

REPRESENTATION

Accused present

Complainant absent

Chief Inspector Lawer for Inspector Wilhemina Kwafo for Republic