

IN THE CIRCUIT COURT, 28TH FEBRUARY ROAD, ACCRA SITTING ON TUESDAY
THE 31ST DAY OF OCTOBER 2023 BEFORE HER HONOUR ELLEN OFEI-AYEH(MRS)
CIRCUIT COURT JUDGE.

CASE NUMBER: D21/297/2022

THE REPUBLIC

V

FAROUK IBRAHIM

ACCUSED PERSON IS PRESENT

C/INSP MOSES MENSAH SOAGEDE FOR THE REPUBLIC

LORD DELVIN ESSANDOH(ESQ.) FOR THE ACCUSED PERSON

JUDGMENT

The prosecution has presented to the court that on the 20th day of December 2021 at about 3:00am the complainants were returning from a party and when they got to Ola-Balm, Bubuasia, accused person who was on a Red Royal motorbike attacked them with a pistol and collected iphone 11 valued GHC3000.00 belonging to 1st complainant and Infinix 5 also valued at GHC806.00 belonging to the second complainant and bolted. Prosecution has presented that on 10/3/2022 with, information gathered was that the accused was

arrested by the Dansoman Police in a case of assault and causing unlawful damage. Accused was rearrested after being identified by the complainants.

Consequently, the accused person was charged two counts of robbery contrary to section 149 of Act 29, 1960 in respect of both complainants for which he pleaded Not Guilty

On count one the particulars of offence are;

'For that you on the 20th day of December 2022 at Ala – Balm / Bubuashie –Accra in the Greater Accra Circuit and within the jurisdiction of this court, robbed one Ruth Armah of iphone 11 valued GHC 3000.00.'

On Count two the particulars of offence are as follows;

'For that you on the 20th day of December 2022 at Ala – Balm / Bubuashie–Accra in the Greater Accra Circuit and within the jurisdiction of this court, robbed one Emerald Tetteh of Infinix 5 mobile phone valued GHC806.00

On 14th August 2023, the defence counsel filed thought-provoking addresses, and provided an analysis on PROJECT innocence, amongst others in support of their defence. In a criminal case, the prosecution bears the burden of proof to establish the guilt of the accused person beyond reasonable doubt by virtue of sections 11(2) and 13(1) of the Evidence Act, 1975 (NRCD 323) and also as was stated in the case of Bruce-Konuah v. The Republic [1967] GLR 611 – 617.

It is trite learning that the accused person is under no obligation to mount a defence throughout the trial to prove his innocence until the court calls upon him/her to open the defence to raise reasonable doubt as regards his/her innocence. See Mallam Ali Yusif v The Republic (2003-2004) SCGLR 174 SC on the burden of persuasion and the evidential burden. Therefore, all the accused person need do is to raise reasonable doubt in his defence, and this is the standard of proof required in Criminal Trials. However, the court

is minded by the decision in Ali Yusif Issah (no 2) v The Republic, which relied on the decision in Miller v Minister of Pensions (1947) 1AER 372, where Lord Denning held that, *'proof beyond reasonable doubt doesn't mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful positions to deflect the course of justice. If the evidence is so strong to leave only a remote possibility, in his favour which can be dismissed with the phrase, 'it is possible' but not the least probable the case is proved beyond reasonable doubt. But nothing short of that shall suffice.'*

The Criminal Offences Act, Act 29 as amended by Act 646, provides in section 149 as follows;

Whoever commits robbery is guilty of an offence and shall be liable upon conviction on trial summarily or on indictment, to a term of imprisonment for a term not less than ten years, and where the offence is committed by the use of an offensive weapon or offensive missile, the offender shall upon conviction be liable to imprisonment for a term not less than fifteen years.

The definition of Robbery is provided for under section 150 of Act 29 as follows;

A person who steals a thing commits robbery;

- a) If in, and for the purpose of stealing the thing, that person uses force or causes harm to any person, or
- b) If that person uses a threat or criminal assault or harm to any other person, with intent to prevent or overcome the resistance of the other person to the stealing of the thing.

In Frimpong alias Iboman v The Republic (Supra), these ingredients have been explained as follows;

1. *That the appellant stole something from the victim of the robbery of which he is not the owner*

2. *That in stealing the thing, the appellant used force, harm or threat of any criminal assault on the victims.*
3. *That the intention of doing so was to prevent or overcome the resistance*
4. *That this fear of the violence must either be of personal violence to the person robbed or to any member of his household or family in a restrictive sense*
5. *The thing stolen must be in the presence of the person threatened.*

Prosecution called three witnesses;

PW1, D/C/Inspector Francis Bikorang testified relying on an amended witness statement that the matter was reported on 21/12/21. Accused person was arrested on 10/3/2022. Sadly the prosecution gave futuristic dates in the particulars of both counts of offences. In the dictum of H/L Amadu Tanko JSC, '*...it must be made clear that the Respondent has not been charged under the facts but under the charge sheet which includes the particulars of offence. Thus, although the particulars of the case as narrated by the prosecution may sound illuminating for the accused, it does not absolve the prosecution of its obligation to sufficiently and reasonably set out the particulars of the offence in the charge sheet.*'

This dictum was made against the backdrop of the determination of Article 19(2)(d) of the Constitution, 1992 in the case of Republic v Ernest Thompson and 4 Others suit number J3/05/2020 delivered on 17/3/2021 SC. The inconsistency of the dates was not challenged at the time the plea was taken or anytime during the trial. In the words of S.A Brobbey Justice (Rtd) at page 65 of his book; Trial courts and Tribunals of Ghana 2nd Edition 2001; it is sufficient for the charge to contain particulars necessary to give reasonable information as to the nature of the charge he faces. From the facts, and as no challenge was raised when the plea was taken, it is my humble view that the defence knew the nature of the charge the accused person had been charged under.

PW1 tendered the following into evidence; statement of Ruth Armah-Exhibit A, Statement of Emerald Tetteh as Exhibit B, Cautioned statement of Farouk Ibrahim-Exhibit C, motion ex parte for disclosure of information and Order of court – Exhibits D and D1 respectively, MTN Call details- Exhibit E, Charge statement –Exhibit F, and a photograph of a Red Royal motor bike as Exhibit G.

Under cross examination, PW1 insisted that that 1st complainant described the accused person as a popular ‘vulcanizer’ at Bubuashie, mentioned his name, and led police to his arrest, because she knew him. Meanwhile this statement is inconsistent with his evidence in chief that accused had been arrested and detained in Dansoman police station regarding another case and police proceeded there where he was identified and released to the Kaneshi police for investigation of the alleged charges. PW1 did admit that no identification parade was held in respect of the identification of the accused person by the second complainant because the 1st complainant knew him. He also insisted that 3am at the crime scene is not a busy area and the area is well lit and he knows that as a fact, because the police patrols the area at least two nights per week.

PW2, Ruth Armah, the 1st complainant, testified that she knows the accused person who is popularly known as ‘borge’ and he is a ‘vulcanizer’ at Bubuashie and is the person who robbed them of their phones on the 20th December 2021 he showed up on a red Royal motor bike, and showed them a gun which was tied to his waist. She added that when they saw the gun they were terrified so they handed over their phones to him when he demanded for it and again as he demanded, they opened their bags for him to inspect it, and thereafter he sped with their phones. She tendered the receipt of purchase of the phone as Exhibit ‘H’.

The undisputed facts are that by use of a threat of a gun on the alleged robbers waist, the 1st complainant handed over her phone. It is not also in dispute that the subject matter

of the offence was the 1st complainant's iPhone 11 mobile phone and 2nd complainants Infinix 5s mobile phone. Section 149 of Act 29 as amended by Act 646 the amendment to Act 29, provides the explanation of what constitutes as an offensive weapon or missile.

What has been disputed and challenged is the identity of the alleged robber, and it has been submitted that the accused person is not the robber who robbed complainants.

PW2 was challenged extensively regarding the identity of the person who robbed her, and the visibility of the area at 3:00 in the morning. PW2 testified and also responded under cross examination that she knew the accused person prior to the robbery as a vulcanizer, and when she knew him, he was carrying out vulcanizing services at Bubuashie Quatres, as she herself lives at Bubuashie and does all her rounds in the area. She further insisted that the area where the robbery occurred was lit up and she could identify the accused person even though he was wearing a cap. Because she knew him, when he demanded for her phone, she simply gave it out to him. Under cross examination, PW2 insisted that she also identified the unlicensed Red Royal Motor bike, and described the features of the accused person to the investigator, despite informing him that she knew him prior to the incident.

Notably the 2nd complainant, a material witness, was not called upon to testify and without reasons. Exhibit 'B', therefore constitutes as hearsay and no reference or reliance shall be given to it, save for the fact that a statement was obtained.

In his defence, the accused person denied the charges and stated that he had travelled out of Accra and was at Kpasa in the Volta Region when the incident occurred.

DW1; Nafa Ibrahim testified that, in the later part of 2021 the accused person's phone fell out of his pocket and got spoilt and he did not replace the lost SIM card after that. He also testified that the latter part of 2021 the accused person visited his late father at Kpasa and he was away for over two months. He added that he owns an unregistered Red Royal

Motorcycle at Avenor and was never a subject of criminal activity, and is kept home at night. He tendered the following into evidence Invoice for the purchase by Ibrahim Naffar, which is hearsay.

.In the case of Razak & Yemoah v the Republic (2012) 2 SCGLR 750, relying on Phipson on Evidence 10th edition p.170 it is stated that, *when a party's identity with an ascertained person is in issue, it may be proved or disproved not only by direct testimony, or opinion evidence but presumptuously by similarity or dissimilarity of personal characteristics eg. age, height, size, hair complexion, voice, handwriting, manner, dress, distinctive marks, faculties or peculiarities including blood group as well as of residence, occupation family relationship, education, travel, religion, knowledge of particular people, places or facts and other details of personal history, see Adu Boahene v The Republic 1972 1 GLR 70 at 74. Thus, it is fair and reasonable to say that to say that the modes of identifying the perpetrators of a crime vary and holding identification parade, may be one of the acceptable modes. Another may be proof of personal characteristics or peculiarities like height of the person given by oral evidence by prosecution witness on oath in court...'*

In Criminal Law in Ghana (supra) at page 137, it discusses the issue of identity and states that, *'if upon the commission of a crime and without any planned confrontation between the suspect and a prosecution witness, the latter by a mere chance meets the former and spontaneously points at him as the person whom he saw commit the crime then, unless there is some positive evidence to show that the witness is unreliable, the spontaneity with which he pointed out the suspect may afford sufficient evidence of the identity of the suspect but it is improper for the police without having an identification parade to deliberately confront an accused person with a prosecution witness. ...'* See pages 137-138 of Criminal Law in Ghana (supra)

In Adu Boahene v The Republic 1972 1 GLR referred to by the defence counsel in his submissions in discussing the identity of the accused, I disagree with counsel's

submissions, as I find that Exhibit E and PW1's testimony affords certainty to the identity of the alleged robber. When challenged with the MTN call records, which shows that the accused person was in Accra, the accused person responded that his phone had been stolen then. He admits however that his occupation is a vulcanizer.

A detailed study of exhibit 'E, reveals that SIM number 233552357828 has been admitted by the accused person to be his SIM number.

Considering the testimony of PW2 I find no reason to discredit her, or find her incredible. Of all occupations/professions, could she have known that her attacker was a vulcanizer? In her statement given to police on 21st December 2021 she described her attacker as Farouk, a vulcanizer. The accused person admitted that he was a vulcanizer, but denied that he was at Bubuashie. Rather he testified that he was a vulcanizer with shops at Anyaa and Awoshie. How would complainant have known which name and profession her attacker, out of several probabilities on 21st December 2021?

The accused person and DW1 do not deny each having had a Royal motor bike. Accused person has submitted that this model of motor bike always comes in Red and he has tendered documentation of a Red motorcycle he owned in 2020 to show the popularity of its red colour, but then, he had sold it. This fact regarding the popularity of the red colour, was not disputed by the Republic. PW1 and 2 described the Royal Motor bike as Red. I find it is probable that all royal motor bikes are red.

The mobile phone, with SIM number 233552357828 provided in Exhibit E, has not been disputed as belonging to the accused person. Exhibit D1, is the Order for disclosure granted only in respect of MTN number 233552357828, and not in respect of the second phone number. His defence that he was not in Accra has been corroborated by DW2. But can DW2 say for certain where the accused person was, on 21st December 2021, and

describe any means he used to communicate while him while in Kpassa or during the period the SIM card went missing?

I have conducted a detailed reading of Exhibit E since the prosecution chose to leave that for me to do and I observe that the contents of Exhibit E also reveals the name of the accused person which number was registered by an NHIS card indicating that on the 20th December 2021 at 15: 15: 36 being 15th call made, the accused person was at a call location; North Kaneshie. The next was an SMS on 23rd December 2021 at 16:20:43, 16:20:53 and a call location at 16:20:58 at Anyaa. All the remaining calls that day;20/12/21 till 23rd December were from Anyaa location. Co-incidentally, the accused person has stated that he has a vulcanizing shop at Anyaa The accused person denies he was in Accra and added that he did not replace the lost SIM card. Does that mean the SIM card went missing? When exactly was this? Was a complaint lodged with MTN to block the lost SIM card? I find as a fact based on the evidence led by PW1 and Exhibits 'A' and 'E' that the accused person was in Accra on the 21st December 2023. I also find by virtue of the evidence led that the identity of the accused person is certain.

In raising reasonable doubt, his explanation that the phone got spoilt is probable but regarding the SIM card going missing, it in my view that it is a mere afterthought. Why wasn't it reported for MTN to block the SIM card which was obviously being used till 15/1/2022 as per Exhibit E?

When it comes to the defence of an accused the court is guided by the three pronged approach laid down by the Supreme Court in the case of Lutterodt v Commissioner of Police [1963] 2 GLR where the court noted as follows;

"Where the determination of a case depends on facts and the courts forms the opinion that a prima facie case has been established, the court should proceed to examine the case for the defence in three stages: Firstly it should consider whether the explanation

of the defence is acceptable, if it is, that provides complete answer, and the court should acquit the defendant. If the court does not consider the explanation to be true or if the Court finds itself unable to accept the explanation then it should proceed to consider whether the explanation is nonetheless reasonably probable. If the Court should find the defence to be reasonable probable then the accused should be acquitted, And lastly quite apart from the defendant's explanation or the defence taken by itself, the court should consider the defence such as it is together with the whole case i.e prosecution and defence together, and be satisfied of the guilt of the defendant beyond reasonable doubt before it should convict, if not, it should acquit.

This has been further reiterated in several case law such as Faisal Akilu v The Republic JELR 68825 (SC), The Republic v Eugene Baffoe Bonnie JELR 80375 (HC) to name a few.

I find the prosecution has proved the identity of the accused person and I find the accused person guilty of the offence of robbery by use of threat of harm Having satisfied myself, I find him guilty and convict him on both counts.

SENTENCING-

After conducting a pre-sentencing hearing, I am guided by the decision in Kwashie v The Republic 1971 1 GLR in determining the length of a sentence the court held that the judge should consider the intrinsic seriousness of the offence, the degree of revulsion felt by law abiding citizens of the society of that particular crime, I have also given due regard to Ghana Sentencing Guidelines and the accused is a first offender without any previous criminal record. Per the evidence led, a shot gun was proved to have been used to successfully rob the complainant, resulting in grievous bodily harm to the complainant. The offence of robbery is one, a menace that is rampant within Accra and the country as a whole.

The minimum sentence for Robbery with the use of an offensive weapon, is contained in section 149 of the Criminal Offences Act as amended by Act 646 is fifteen years imprisonment.

Counsel for the accused person submits that the accused person is presently 30 years, is a father to a young child, and has a frail father. It is not in dispute that the accused person is a first offender. I have noted the time spent in lawful custody, and the fact that it took a trial to ascertain guilt. I balance these factors and sentence the accused person as follows;

Count 1 -15years IHL

Count 2 – 15years IHL

The sentences are concurrent and take effect today.

.....sgd.....

HH Ellen Ofei-Ayeh(Mrs.)