

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON TUESDAY
THE 14TH DAY OF AUGUST, 2023 BEFORE HER HONOUR ENID MARFUL-
SAU, CIRCUIT COURT JUDGE**

CASE NO. D1/55/2023

THE REPUBLIC

VRS.

1. ATTA PRINCE

2. ABASS AT LARGE

ACCUSED: PRESENT

PROSECUTION: C/INSP AWUAH ANSAH PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

The Accused is charged with one count of Conspiracy to commit crime to wit Robbery contrary to section 23(1) and one count of Robbery contrary to section 149 of the Criminal and other Offences Act, 1960 (Act 29).

The facts as presented by Prosecution are that on 29th October, 2022 at about 2:00am the complainant who is a commercial driver was returning home when he was stopped by the Accused persons. The Accused persons engaged the services of the complainant and on reaching the Pokuase District Court area A2 pulled a knife on him and demanded the ignition to the car which is a Toyota Vitz with Registration No. GR 7451-19. According to Prosecution, the Accused persons sped off with the vehicle. Prosecution says that complainant lodged a complainant at the Amasaman Divisional CID and a police wireless message was sent to all stations. Prosecution says that on 24th January, 2023 Police had information that the taxi had been arrested at the Suame Police Station, Kumasi involved in a stealing case. According to Prosecution, the police proceeded there and saw the taxi impounded with A1 in custody. A1 was brought to Accra with the vehicle and based upon these facts he was charged and arraigned before this court.

Prosecution called two witnesses in support of its case. PW1 was Godwin Amuzu and PW2 was D/PW/C/Insp. Faustina Kumah. PW1 testified that he was driving a taxi which is a Toyota Vitz with registration No. GS7451-19

on a work and pay basis. He stated that on 29th October, 2022 at about 12:00am on reaching the Pokuase footbridge two young men including the Accused stopped him and asked him to send them to the Ga Rural Bank area. He stated that on reaching there, one of the Accused persons gave him GH¢20.00 and he removed GH¢5 to give him change. According to him, all of a sudden, the accused got down from the car and opened the front side and the one who was sitting in front turned off the ignition. He testified that the one who got up from behind pulled a knife and said if he does not get down from the car, he will stab him to death, so he quickly got down from the car and took to his heels shouting for help but did not get any and the Accused took the car away. He stated that he went to the Amasaman Police to report and on 24th January, 2023 the police had information that the taxi had been arrested at Suame Police Station in Kumasi, so the police proceeded there and saw the taxi impounded with A1 in police custody. He testified that A1 was brought to Accra with the recovered taxi for investigation.

PW2 testified that on 29th October, 2022, she was on duty as the investigator at the Amasaman Divisional CID when a case of Robbery was reported to her for investigation. She testified that she obtained Statement from the complainant. According to her, on 24th January, 2023, the police had information that the taxi had been intercepted by the Suame Police in the Ashanti Region so on 26th January, 2023, she proceeded to the Suame Police Station and found the Accused in Police custody and the taxi impounded. She stated that the Accused and the vehicle were brought to Amasaman. She testified that she obtained caution statement from the Accused and after investigations she received instructions to charge the Accused. She tendered the following which were admitted and marked as follows:

- Exhibits A & A1: Charge Sheet & Brief Facts
- Exhibit B: Statement of PW1
- Exhibit C: Statement of Prince Seth Ofori
- Exhibit D: Investigative Caution Statement of A1
- Exhibit D1: Charge Caution Statement of A1
- Exhibit E: Police Wireless Message
- Exhibit F: Request for Assistance
- Exhibit G: DVLA Form C
- Exhibit H: GRA Customs Declaration
- Exhibit J: Staff ID Card
- Exhibit K: Insurance Document

- Exhibit L: Receipt
- Exhibit M: Receipt
- Exhibit N: Letter
- Exhibit P: Photograph of Taxi

Prosecution closed its case, and the Accused was called upon to open his defence. He testified that he is a driver and knows nothing about the case. According to him the car was given to him by someone to work with but he cannot tell whether the vehicle was robbed or not.

In narrating the events of 29th October, 2022, PW1 in his evidence in chief stated that one of the accused gave him money and all of a sudden, he got down from the car and the one sitting at the front used the ignition key to turn off the engine. He stated that the one who got up from his back pulled a knife. It was not until PW1 was cross examined that he indicated that it was A1 who was seated behind him. There is no evidence of an identification of A1 until A1 cross examined PW1. According to PW1 A1 was not wearing a mask and he was sitting behind him, so he looked at his face well through the mirror. There is no other evidence of identification before this court.

It is apparent that A1 was arrested because he was found with the taxi, the subject matter of this case in his possession. Since PW1 claims to have seen A1, Prosecution was duty bound to lead substantial evidence on identification. This is especially so when the Accused has denied the charges levelled against him. See **TETTEH SAMADZI (NO. 36781 GC/2) VRS THE REPUBLIC CRIMINAL APPEAL NO. J3/1/2016 6TH APRIL, 2017**. The issue of identification is a question of fact to be determined by the court. Hence in a criminal trial the prosecution is obliged to lead evidence to identify the accused as the person who committed the crime for which he is charged.

In the case of **HANSON v. THE REPUBLIC [1978] GLR 477** Archer, J.A. citing with approval the decision of Lord Widgery C.J. in *R. v. Turnbull* [1976] 3 W.L.R. 445 stated as follows:

"First, whenever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition he should instruct them as to the reason for

the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided this is done in clear terms the judge need not use any particular form of words.

Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance ? . . .

Recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.

All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger."

Also, in the Supreme Court case of **IGNATIUS HOWE V. THE REPUBLIC CRIMINAL APPEAL No J3/3/2013 dated 22ND MAY 2014** it was held as follows:

"... But where the identifying witness saw the accused only for the first time for a brief period at the commission of the offence then the failure to hold an identification parade or to prove his personal characteristics would detract from the weight to be attached to the evidence of identification."

There is no evidence before this court that during investigations an identification parade was held where PW1 identified A1. Indeed, there is no indication whatsoever that PW1 identified A1 after he was brought from Suame Police Station to Amasaman Police Station. The quality of the

evidence of PW1's identification of A1 is thus poor and cannot safely be relied upon by this court.

In this case, the Accused set up his defence of alibi right from his arrest and maintained it through out the trial. He stated in his investigative cautioned statement that he came to Accra somewhere in 2017 to work as a taxi driver and went to live in Nsawam. Along the line, he got an accident and returned to his family in Kumasi until in 2022 a friend of his named Abass brought the vehicle, the subject matter of this case to him to work with which he accepted. The essence of this narration is also found in the answers provided by Accused during cross examination by Prosecution; that he was in Kumasi on the day of the alleged robbery. Though uncertain about the truth of the version of the Accused, his version of the facts is reasonably probable. In the case of **R V WUNUAH [1957] 3 WALR 303** it was held as follows:

"It would appear to this court that there is a tendency growing on the part of trial courts in this country to confine considerations in cases where the explanation of an accused person is in issue, to whether or not the explanation is true and not to consider the alternative narrower issue whether the explanation of the prisoner might reasonably be true. This tendency in our view is dangerous and we must seriously deprecate it."

In **DARKO v. THE REPUBLIC [1968] GLR 203** it was held as follows:

"The principle that an accused person should be acquitted if his defence was believed or if it was reasonably probable did not call for uniformity of expression by judges or the use of any particular form of words. The crucial question relevant to the point in any ordinary criminal trial would turn upon whether the judge or tribunal of fact upon consideration of the whole evidence found that the case of the prosecution had been proved beyond reasonable doubt. Where a court convicted only because it took the view that the accused person's defence was not to be believed this would be equivalent to shifting the burden of proof on to the defence. For it would in effect amount to saying that he was entitled to be acquitted only if he proved his defence to the satisfaction of the court. By implication the court would then have relieved the prosecution of its duty to prove its case beyond reasonable doubt which it was not entitled to do. A court could not therefore stop short at saying that it was convicting the accused

because it did not believe its story. It must go further and show whether his story did not create a reasonable doubt either.”

In view of the authorities set out herein, it is clear that the position of the law is that if the explanation given by the Accused is not accepted by the court, nevertheless if it might reasonably probable, a doubts as to guilt arises, and in that event prosecution fails to discharge the onus imposed on it under the law, and the Accused is entitled to the benefit of such doubt. In the circumstance, A1 is acquitted on counts 1 and 2.

**H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN**