

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON TUESDAY
THE 12TH DAY OF DECEMBER, 2023 BEFORE HER HONOUR ENID
MARFUL-SAU, CIRCUIT COURT JUDGE**

CASE NO. D7/160/2023

THE REPUBLIC

VRS.

CHARLES ONOWU

ACCUSED PERSON PRESENT

PROSECUTION: C/INSP SALIFU NASHIRU PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

The Accused person is charged with one Robbery contrary to section 149 of the Criminal Offences Act 1960 (Act 29).

The facts as presented by Prosecution are that on 2nd August, 2023 at about 7:30pm, the complainant Cynthia Nkansah was returning from work and upon reaching a section of the road at Peace Village, near her house, the Accused person was holding a stick and emerged from a nearby bush and snatched her bag and run into the bush. Prosecution says that complainant raised an alarm and neighbours came to the scene. According to Prosecution, after describing the Accused, the Accused was arrested by the neighbours when he was emerging from a nearby bush a few meters away from the scene. Prosecution says that when the Accused was questioned, he claimed that he went into the bush to ease himself, but no faeces were seen when taken to the bush. Rather, the handbag of complainant was found containing her Ghana card and purse. According to Prosecution, the neighbours arrested the Accused and sent him to the Nsakina Police Station and a complaint lodged. A further visit was paid to the scene of crime by the Police and Accused but according to Prosecution no faeces were seen. Prosecution says that a pair of black jeans trousers found in the room of the Accused was identified by complainant as the attire the Accused was wearing at the time of the incident. According to Prosecution, on 3rd August, 2023, the police visited the crime scene again and complainant's phone was

recovered with a knife wrapped in a hoodie in an uncompleted building near the scene. Based upon these facts the Accused was arraigned before this court.

Prosecution called three witnesses in support of its case. PW1 was complainant, PW2 was the investigator D/Sgt Eric Aboagye Asare and PW3 was Edwin Kwasi Soglo.

PW1 testified that on 2/08/2023 at about 7:30pm she was returning from work when she heard someone walking behind her so she doubled her steps but the person ran closer to her so she turned to see who it was only to see the Accused person who was wearing a jacket and holding a stick in an attempt to hit her so she handed over her bag to him and he bolted. According to her, the bag contained her Techno mobile phone, cash of about GH¢2,00, umbrella, keys and other personal documents. According to her, she started shouting for help and some people came to assist her search for the Accused. She testified that suddenly, the Accused came from the other direction with the jacket removed but in a T-Shirt. She stated that when the Accused was questioned, he said he went into the bush to defecate and denied taking the bag so he was left to go. She testified that later her bag was found in the bush without the money and phone. According to her, one of the neighbours suggested that they should bring the Accused to show where he claims to have defecated and so he was taken through the bush, but nothing was found. She stated that the Accused was sent to the Police Station with the assistance of her neighbours. She testified that her statement was taken, and the Accused was sent back to the bush to comb the area but nothing was found and the Accused was taken to his room and the trousers he was wearing earlier was found so the police took the trousers and the Accused was detained. She stated that the following day, she together with the Accused and Police went back to the area to search and a jacket in some iron rods in someone's building under construction was found with her phone and knife hidden in it.

PW2 testified that on 2/08/2023, at about 7:30pm he was on duty at the Nsakina Police Station Charge Office when the Accused was arrested and brought to the Station by complainants together with complainant's handbag. According to him, a complaint was formally lodged by complainant, and he took a Statement from her. He testified that on the same day at about 10:45pm the police together with the complainants and Accused visited the scene of crime at Peace Village. He stated that a search was conducted in the bush and no faeces were seen. He testified that the

search was extended to the room of the Accused a few meters away in the presence of the landlord of the Accused and complainant identified a pair of black jeans trousers as the attire the Accused was wearing at the time of the incident. He stated that on 3/08/2023, the police and Accused and complainant revisited the scene and an uncompleted building near to the scene was searched. There, they found a hoodie folded with a kitchen knife Tecno mobile phone and photographs were taken. He tendered the following Exhibits:

- Exhibit A & A1: Charge Sheet and Brief Facts
- Exhibit B: Statement of Cynthia Nkansah
- Exhibit C: Statement of Edwin Kwasi Soglo
- Exhibit D: Investigative Cautioned Statement of Accused
- Exhibit D1: Charge Cautioned Statement of Accused
- Exhibit E Series: Photographs

PW3 testified that on 12th August, 2023 at about 7:30pm, he was having fellowship with some of his church members at his house at Nsakina when he heard someone shouting for help so he asked his members to help him. According to him, when they went to the scene, they met the complainant who said someone had taken her bag and run into the bush, but he found no one. He stated that suddenly a neighbour shouted that someone was coming out of the bush, so he run and held the Accused person from the 3rd plot from where the complainant indicated he had entered. He stated that he questioned the Accused and he stated that he went to defecate, and some people testified that they knew the Accused, so they let him go. According to him, the house is surrounded by bushes so as no one confirmed seeing anyone come from the bush aside the Accused, he was convinced that the person is still in the bush, so he urged the people to continue to search at least for the key. He testified that in the course, he found a bag with some content spread on the ground at the direction where the Accused was seen. He testified that considering where the Accused was seen and where the bag was found, he asked the Accused to come and show where he actually defecated but the Accused came in a different clothing and could not show where he did so he was taken to the Police Station to lodge a complaint.

The Accused person testified on oath on 16th November, 2023. He testified that he knows complainant as she lives close to his house. According to him, on the day in question, it was raining the whole day so at 7:30pm he went to Peace Village Park to get himself banana. He says that he had

running stomach so he went to a bush before his house to ease himself and so when he was done and coming out of the bush, some men asked him to stop for verification because a certain lady had been robbed. According to him, PW1 was asked to identify him and she stated that the person who attacked her was wearing a sweater jacket and black trousers and the person's face was covered. He testified that on the said date, he had on black trousers and a cream-coloured Polo top so he was asked to go. According to him, he went and bought the banana and upon returning he met the people on the same road, and he spent some time with them but they were speaking twi which he does not understand so he went to his house. According to him, after some hours while taking his bath, one of the guys knocked on his door and said they want to ask him something so after taking his bath he went outside to meet them. He stated that the complainant and the people asked him to show them where he eased himself, but the place is bushy and it was late so because of the crowd, he told the people that he eased himself in a rubber and threw it in the bush so they could do the search the next morning. He testified that PW3 stated that he would not allow him to sleep in the house because he could go back there and ease himself so he informed them to go to the Nsakina Police Station to make a report so that they could be his witness and escort him to the place.

He testified that when they went to the police station, the police took him and PW1 back to the place he eased himself but it was bushy and late, so they took him to his house for a search. He stated that PW1 identified a trouser as what the person who robbed her was wearing so the police searched and found only GH¢10.00 which was change from the banana he purchased. He testified that he was sent back to the station with the black trousers, and he was detained. According to him they again went back to the bush to search in the morning and when they got to the area, there were a group of boys gathered where he eased himself and they called police that they found the phone jacket and kitchen knife there. He stated that the police took him there and picked the phone and jacket and he pleaded with the police to let him lead him to where he eased himself since it was now morning but they refused and sent him back to the Police Station. He says that he was forced to put on the jacket and when he did, it did not fit him as it was not his size and does not belong to him. He testified that the Police insisted that it was his so they took him to write his statement and when he was writing it, he was beaten up and asked to accept what he did not know.

In criminal trials, the burden of proof is on prosecution. The standard of proof is proof beyond reasonable doubt. Section 11(2) of the **EVIDENCE ACT 1975 (NRCD 323)** provides as follows:

"In a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of a fact beyond a reasonable doubt."

"Beyond reasonable doubt" was explained by Lord Denning in the case of **MILLER V PENSIONS (1972) 2 ALL ER 372** as follows:

"Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is strong against a man as to leave a remote possibility in his favour which can be dismissed with the sentence of course it is possible but not the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice".

It has been held that 'proof beyond reasonable doubt' actually means "proof of the essential ingredients of the offence charged and not mathematical proof."

See:

-TETTEH V THE REPUBLIC [2001-2002] SCGLR 854

-DEXTER JOHNSON V THE REPUBLIC [2011] 2 SCGLR 601

-FRIMPONG A.K.A IBOMAN V REPUBLIC [2012] 1 SCGLR 297

As already indicated, the Accused is charged with one count of Robbery. Section 150 of Act 29 defines Robbery 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 other 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 things."

It is not in dispute from the evidence on record that the handbag of PW1 was robbed. PW1 was forthright in stating that when she turned to see who

was following her she saw the Accused person wearing a jacket and holding a stick in an attempt to hit her so she handed her bag over to him and he bolted. Her evidence is that by the time the Accused came out of the bush he was in a T-Shirt and when questioned he informed PW1 and others present that he went to the bush to defecate so they let him go. The following ensued during cross examination of PW1 by the Accused:

Q: The morning we went back to search for toilet and some boys gathered in the building and they did not allow the search again is that the case

A: That is not the case. We searched for the faeces that night but we couldn't find it, the next morning we went there and found the phone in the jacket you were wearing with a knife.

Q: I put it to you that the jacket found is not mine

A: It is yours. That is what you were wearing the night before the day

Q: I put it to you that I was wearing a Polo top and black jeans on my way to buy banana

A: It is your jacket, that is what you regularly put on, so everyone knows its yours. It was a white jacket you turned the jacket inside out.”

PW1 testified that she knew Accused prior to the robbery and Accused also admitted that he knew PW1. In the case of **ADU BOAHENE v. THE REPUBLIC [1972] 1 GLR 70** it was held as follows:

“The holding of an identification parade and proof of personal characteristics are pointless where the identifying witness has known the accused for some time prior to the commission of the crime and has led the police to the house of the accused, as in the instant case.”

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:

“The court pointed out that where the identifying witness had known the accused for some time prior to the commission of the crime and had led the police to the house then it would be pointless to hold an identification parade. 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.”

I find therefore that PW1 did identify the Accused and subsequently went with those who came to assist her to the residence of the Accused accordingly there was no need to conduct an identification parade.

The Accused has however denied any involvement with the said crime and has denied any hand in the robbery. During cross examination of Accused by Prosecution the following ensued:

“Q: In what type of apartment

A: In a rented apartment

Q: In the house you live do you have a toilet and bathroom in the house

A: Yes, we have toilet but it is not nice

...

Q: I put it to you that complainant’s bag was found through the direction you came from in the bush

A: The place I eased myself is the street that leads to my house. The place they picked the bag is the back of the street. There is a fence wall demarcation so they can’t use the same road.”

I find it quite curious how it is that Accused person has a toilet facility in his house and by his own evidence under cross examination he indicates that he eased himself on a road that leads to his house when he could have indeed gone to his house to ease himself. Assuming even that the house of the Accused was far from where he eased himself, I do not consider the Accused person to be a truthful witness. In his evidence, he indicated that it was a rainy day and he decided to step out in the evening to buy banana but he had running stomach on the way so went to the bush to ease himself. His further testimony before the court is that after he eased himself and emerged from the bush, he was stopped and questioned about the robbery after which they let him go and he went to buy the banana. He also indicated that upon his return from buying the banana, the people were still standing on the road speaking twi but he could not understand them, so he went home. This therefore means that the Accused person upon coming out of his house allegedly went to ease himself first before going to purchase the banana. The following however ensued during cross examination of the Accused by Prosecution:

“Q: I put it to you that as a gentleman like you, you could not leave the toilet in your house to go to the bush to ease yourself

A: I was at Peace Village Park when I had running stomach, I was not at house [sic]”

This is clearly at variance with the evidence in chief of the Accused. If Accused was at Peace Village Park, where he claims to have bought the banana when he had the running stomach, then it cannot be true that he first went to the bush upon leaving home and having running stomach and going first to the bush. Again, the Accused alleged in his Investigative Cautioned Statement, Exhibit D, that he eased himself in a rubber and threw it away, under oath he stated that he simply went into the bush to defecate and there was no mention of a rubber. In another breath he stated that he mentioned to the people that he eased himself in a rubber because of the crowd that evening. Indeed, if it had been the case that the Accused had eased himself in a rubber and thrown same away into the bush, then there was no point on his insistence on a search in the bush because that would have simply been an exercise in futility. On the other hand, though the Accused claims he simply defecated in the bush and wanted to show where he did, no such spot was found. What was found was the handbag of PW1 at one part of the bush and the phone of PW1 wrapped in a sweater at another part of the bush.

In **MUNKAILA v THE REPUBLIC [1995-96] 1 GLR 367; SC** it was held as follows:

“When an accused person took refuge in telling lies before a trial court, the only inference of his behaviour was that he had a guilty mind and wanted to cover up...”

I find the story of the accused under oath as an afterthought. The apparent inconsistencies, contradictions and ambiguities in the evidence of the Accused destroy his credibility and make him an untruthful witness. I accept the evidence of Prosecutions’ witnesses who I find credible especially PW1 that the person who robbed her of her bag was the accused on the said day. I therefore find as a fact that the offence of robbery has been committed by the accused person by use of threat with a stick with intent to prevent resistance from PW1.

I fail to find the explanation of the Accused acceptable neither do I find his ambiguous, contradictory explanation reasonably probable. See **LUTTERODT v. COMMISSIONER OF POLICE [1963] 2 GLR 429; SC**. Upon considering the entirety of the evidence before me, I find the accused person guilty, and he is hereby convicted.

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