

IN THE CIRCUIT COURT "A", TEMA, HELD ON WEDNESDAY, THE 9TH DAY
OF AUGUST, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,
CIRCUIT COURT JUDGE

SUIT NO: D21/35/20

THE REPUBLIC

VRS:

1. NAS KOFI BOADU

2. NEVIJE HENRY

3. ABDUL FATAO HALIDU

1ST ACCUSED PERSON

ABSENT

2ND AND 3RD ACCUSED PERSONS

PRESENT

ASP GEORGE DOE FOR PROSECUTION PRESENT

PRINCE KWEKU HODO, ESQ FOR ACCUSED PERSONS (REPRESENTATION
WITHDRAWN)

JUDGMENT

FACTS:

The three accused persons were charged and arraigned before this court on 13th August, 2020, on three counts of Abetment of Crime namely, robbery contrary to **sections 20(1) and 149** of the Criminal Offences Act, 1960(Act 29).

The brief facts presented by the prosecution are that the complainants, Collins Akowuah Kanbi and Hayford Acheampong are small scale miners and residents of Asankragua. The third complainant Kofi Aboagye is an excavator operator and lives

at Obuasi whereas the first accused Nas Boadu alias Figo is a forklift operator and a resident of Golf City. The Second accused Nevije Henry is a Nigerian and a labourer residing at Bethlehem, a suburb of Ashaiman whilst the third accused person, Abdul Fatao Halidu alias Escoba is a scrap dealer and lives at Golf City. The prosecution alleges that the first accused person and Kofi Aboagye were friends and had worked at a mining site at Obuasi for five years. The prosecution states that about two and a half months prior to the alleged incident, the first accused person called Kofi Aboagye on phone and told him that his friend's brother who lives in the United States of America had imported an excavator which he and his friend, one Mr. Addo were offering for rent and asked him to find customers for him. Pursuant to that discussion, the first accused person sent a picture of an excavator to Kofi Aboagye through social media to substantiate his claim.

The said Kofi Aboagye who was then working for the first and second complainants at their mining site at Asankragua, informed them about the information he had had from the first accused person. The first and second complainants became interested because their operations depend solely on the use of an excavator. They therefore asked Kofi Aboagye to negotiate with the first accused person. Kofi Aboagye then contacted the first accused person who told him that the excavator was being offered for rent at a cost of GH¢ 3,500.00 per day. The first accused person also told Kofi Aboagye that the low bed truck which would convey the excavator to the site would also cost them GH¢ 10,000.00. The complainants after being briefed by Kofi Aboagye, agreed to hire the excavator for their mining work.

The prosecution further alleges that the first accused person after winning the trust of the complainants, invited the second accused person to his house and told him about the fraudulent excavator hiring deal he had had with the complainants who

would be bringing a huge sum of money to meet him and asked for the help of the second accused person to rob the complainants on their arrival. The second accused person then recommended the third accused person to the first accused person and led the first accused person to the house of the third accused person where the deal was explained to the third accused person. The third accused person who also became interested in the first accused person's diabolic agenda and assured them he could contract armed robbers from Tulaku to execute the plan.

The prosecution states that on 19th June, 2020, at about 7:00pm, the complainants set off to Tema to meet the first accused person as arranged. On 20th June, 2020, at about 5:00am, they called the first accused person and told him that they were on their way from Accra Circle to Ashaiman. After receiving this information, the first accused person and the second accused person quickly rushed to the third accused person's house and told him to contact his people at Tulaku to prepare for the assignment which the third accused person obliged. When the complainants arrived at Ashaiman, they called the first accused person to inform him and he directed them to take a taxi and wait for him at Tema County Golf Club junction, an isolated place located between Tema Steel Works junction and Kpone Barrier. The complainants who were total strangers in Tema and were not conversant with the area complied with the directives and were waiting for the first accused person to come and pick them to where the alleged excavator was.

On their arrival at Tema County Golf Club junction at 8:30am, they called the first accused person again, but he told them that his car had broken down on the way and was coming on motorbike. The first accused person then led the two armed men now at large on a motorbike and showed them where the complainants were waiting. Few minutes after the complainants spoke to the first accused person on

phone, the two men arrived at the place on a motorbike and at gun point, ordered them to lie on the ground and surrender their bags. In the process, the suspects robbed the first complainant of his bag containing his Ghanaian passport, driver's license, NHIS card, Community Mining ID card, ATM card, one mobile phone and cash the sum of GH¢ 60,000.00. The suspects took Hayford Acheampong's bag containing his Ghanaian passport, driver's license, ATM card NHIS card, one mobile phone and cash, the sum of GH¢ 400.00. The suspects also collected Kofi Aboagye's phone and then sped off on their motorbike. After the robbery, the complainants tried to reach the first accused person on his phone on several occasions, but he refused to answer the calls and later switched off his phone.

Subsequently, the case was reported at Golf City Police station and on 21st July, 2020, the police located the house of the first accused person and got him arrested at Golf City. Upon intelligence, the second accused person was also arrested at Bethlehem and during interrogations, the second accused person mentioned the third accused person as one of his accomplices and led the police to arrest him. According to the prosecution, during the third accused person's arrest, a search was conducted in his room and the first complainant's Tecno mobile phone was found. The third accused person also mentioned one Demon and one other person at Tulaku as those he contracted to carry out the robbery. The second and third accused persons confessed that after the robbery, the three of them had about GH¢16,500.00 which they shared among themselves, while the two suspects now at large took the rest of the money. The prosecution further states that investigations disclosed that the first accused person does not rent any excavator as he made the complainants to believe, neither did he own any excavator. The first accused person also could not lead the Police to one Mr. Addo he mentioned as his partner in the alleged excavator renting business. After investigations, accused persons were charged with the offences and arraigned before this honourable court.

THE PLEA

The three accused persons pleaded not guilty to their respective charges after the charges had been in English and explained in Twi respectively. The accused persons having pleaded not guilty to the charges put the entire facts of the prosecution in issue and thereafter the prosecution assumed the burden to prove the guilt of the accused persons beyond reasonable doubt.

BURDEN OF PROOF

It is trite learning that in criminal cases, the burden is on the prosecution to prove the guilt of the accused person beyond reasonable doubt. See **Sections 11, 13, and 15** of the Evidence Act, 1975, (N.R.C.D. 323). In the case of **Banousin v. The Republic** [2015-2016] 2 SCGLR 1232 at page 1241, the Supreme Court held that:

“The burden the prosecution has to prove is the accused person’s guilt, and this is beyond reasonable doubt. This is the highest burden the law can impose; and it is in contra distinction to the burden a plaintiff has in a civil case, which is proof on a preponderance of probability of the evidence. What “beyond reasonable doubt” means is that, the prosecution must overcome all reasonable inferences favouring the innocence of the accused. Discharging this burden is a serious business and should not be taken lightly. The doubts that must be resolved in favour of the accused must be based on the evidence; in other words, the prosecution should not be called upon to disprove all imaginary explanations that established the innocence of the accused person.”

Thus, the burden is on the prosecution to prove the essential ingredients of the charge of abetment of robbery against the accused persons beyond reasonable doubt. When the accused persons are called to open their defence, all that is required of them is to raise a reasonable doubt in the case of the prosecution. The standard of

proof for the defence of the accused person is on a preponderance of probabilities only. See the case of **Osae v. The Republic** [1980] GLR, 446

ANALYSIS

In the instant case, the accused persons are jointly charged with three counts of Abetment of crime, namely, robbery, contrary to **section 20(1)** and 149 of Act 29.

Section 20(1) provides as follows;

“ A person who, directly or indirectly, instigates, commands, counsels, procures, solicits, or in any other manner purposely aids, facilitates, encourages, or promotes, whether by a personal act or presence or otherwise, and a person who does an act for the purposes of aiding, facilitating, encouraging, or promoting the commission of a criminal offence by any other person, whether known or unknown, certain, or uncertain, commits the criminal offence of abetting that criminal offence, and of abetting the other person in respect of that criminal offence.”

In the case of **Commissioner of Police v Sarpey and Nyamekye** [1961] GLR (Pt 11) 756 at 758, SC, Sarkodee-Addo JSC (as he then was), delivering the judgment of the Supreme Court, said:

“In order to convict a person of aiding and abetting it is incumbent on the prosecution to prove that the accused did any one of the acts mentioned in subsection (1) of section 20 [of Act 29]. Under subsection (2) a person who abets a crime shall be guilty if the crime is actually committed (a) in pursuance of abetment, that is to say, before the commission and in the presence or absence of the abettor and (b) during the continuance of the abetment, that is to say, the abetment must be contemporaneous in place, time and circumstance with the commission of the offence. In our view, an act constituting an abetment in law must precede

or it must be done at the very time when the offence is committed." See also **Effah v. The Republic** [1999-2000] 2 G.L.R., 722, holding 1.

The substantive offence, which the accused persons are alleged to have abetted, is robbery. **Section 149 (1)** of Act 29 as amended by the Criminal Code (Amendment) Act 2003 (Act 646) provides that:

"Whoever commits robbery is guilty of an offence and shall be liable upon conviction and trial summarily or on indictment, to imprisonment for a term of not less than ten (10) 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 of not less than fifteen (15) years".

Section 150 of Act 29 defines robbery as follows:

"A person who steals anything 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 thing'.*

It is trite learning that the mere presence of a person during the commission of a crime will not make him an abettor. To succeed, the prosecution must prove that the accused persons did any of the acts specified in **section 20(1)** of Act 29 to abet those at large to rob the complainants in this case. From the particulars of the offences charged against the accused persons on the three counts, they are alleged to have aided and abetted two suspects now at large to overcome their resistance and robbed Collins Akowuah Kanbi, Hayford Acheampong and Kofi Aboagye of their belongings at gun point.

To prove their case, the prosecution called three witnesses, the first prosecution witness, Complainant Collins Akowuah Kanbi, the second prosecution witness, the investigator

D/Inspr. Gideon Ayikpoe, the third prosecution witness, Complainant Daniel Aboagye. The prosecution also tendered in evidence the following documentary evidence; **Exhibit "A"**- Tecno Keypad phone of PW1 allegedly retrieved from the third accused person, **Exhibit "B"**-Itemized Bill from MTN Service providers, **Exhibit "C"**-Motion relied for application for itemed bill, **Exhibit "D"**- Photograph of the excavator machine, **Exhibit "E"**- Caution statement of the first accused person, **Exhibit "F"**-Caution statement of second accused person, **Exhibit "G"** - Caution statement of the third accused person, **Exhibit "H"**-Charge Statement of the first accused person, **Exhibit "J"**- Charge statement of the second accused person, **Exhibit "K"**- Charge statement of the third accused person.

The first prosecution witness, Collins Akowuah, testified that he is a small-scale miner working at Asankragua with the two other complainants, Hayford Acheampong and Daniel Kofi Aboagye. According to his testimony, about two weeks prior to the alleged robbery, Daniel Kofi Aboagye (PW3) informed him and Hayford Acheampong that the first accused person alias Figo whom he had worked with some years back, called him on phone and told him that his friend's brother had imported an excavator into the country which they were renting and that PW3 should assist him find customers. The first accused person then sent a photograph of the excavator to PW3 which he showed to them. They expressed interest in hiring the excavator and therefore instructed PW3 to negotiate with the first accused person on their behalf.

The first prosecution witness continued to testify that after negotiation, PW3 informed them that the excavator was being offered for hire at a daily rate of GH¢3,500 and the low bed truck which would cart the excavator to the site would also cost GH¢10,000.00. They then asked PW3 to inform the first accused person that they were interested in hiring the excavator for ten (10) days and they agreed to

meet the accused person in Tema on 20th June, 2020 to conclude the transaction. Further to this, on 19th June, 2020, at about 7:00pm, they set off from Asankragua and got to Ashaiman at 7:00am. When they arrived at Ashaiman, PW3 called the first accused person who directed them to take a car and meet him at Tema Golf Junction. They got to the place around 8:am and waited for the first accused person but he was not coming. When Hayford Acheampong also called the first accused person to find out where he had gotten to, he told him that his car had broken down and was coming to meet them with a motorbike.

The first prosecution witness further testified that at about 8:30am, whilst still waiting for the first accused person under a tree near the road side, two men arrived on a motorbike, armed with a pistol, ordered them to lie down and surrender their bags and phones. In the process, the suspects succeeded in robbing him of his bag containing his Ghanaian passport, driver's license, NHIS card, Community Mining ID card, ATM card, one Tecno mobile phone and an amount of GH¢60,000.00. The suspects also took Hayford Acheampong's bag containing his Ghanaian passport, driver's license, ATM and NHIS cards, one mobile phone and cash, the sum of GH¢400.00. PW3 was also robbed of his phone and after that they sped off on their motorbikes. After the robbery, PW3 used Hayford Acheampong's phone that the robbers did not snatch to call the first accused person severally but he failed to answer the calls and later switched off his phone. They reported the matter to the police and on 21st July, 2020, they assisted the police to arrest the first accused person. Upon his arrest, the first accused person could not show where the alleged excavator was and also could not lead the police to where the alleged partner that he was doing the excavator business with lived.

The third prosecution witness, Daniel Kofi Aboagye also testified and corroborated the testimony of PW1 that he lives at Obuase and he is an excavator operator working at Asankragua with PW1 and Hayford Acheampong and got to know the three accused persons through this case. According to him, prior to this case, the first accused person had been his friend, they had worked together as excavator operators for over five years and he was aware he lived in Tema but they had not met in a long time. According to him, the first accused person called him with mobile phone number 0245583200 on his phone number 0247556565 and told him that his friend's brother had imported an excavator and same is being rented out so he should discuss with his boss, PW1 if he was interested in hiring the said excavator since he had earlier informed the first accused person that he was doing small scale mining with PW1. The first accused person then sent him a photograph of the excavator on WhatsApp to confirm his assertion with the same phone number that he used to call him which has been the first accused person's phone number since he got to know him.

PW3 testified that when he showed the photograph to PW1, he became interested in hiring same for work and asked him to negotiate the rent charges with the first accused person. He then contacted the first accused person on phone, who told him that they were renting the excavator out at a rate of GH¢3,500 per day and the low bed truck which would cart the excavator to the site would also cost GH¢10,000.00. The first accused person also added that they only hire the excavator out from ten days and above. He then told PW1 and Hayford Acheampong about the outcome of the negotiations, they decided to hire the excavator for ten days totaling GH¢45,000.00 which PW1 made the money available. They also decided to take extra money along for road expenses and also to pay for more days if the excavator was in a perfect condition, so they added GH¢15,000 to the money to make it GH¢60,000.

After the negotiations, they decided to travel to Tema to meet the first accused person on 20th June, 2020 to pay for the excavator and take same away with the low bed truck and he informed the first accused person accordingly. The first accused person later demanded that they deposit the money into his account, but he refused because they had not then seen the excavator to know if it was in a perfect condition. On 19th June, 2020, at about 7:00pm, they set off from Asankragua with the money in PW1's bag and when they got to Accra Circle, the first accused person called him to find out where they had reached and then directed them to come to Ashaiman. They got to Ashaiman at about 7:00am and the first accused person called him to further direct them to take a car and meet him at Tema Golf Junction. Because they were all strangers and did not know the area well, they picked a taxi and alighted at the place as instructed by first accused person.

PW3 further testified that they got to the place at 8:00am and his phone went off due to low battery power stemming from the consistent communication between himself and the first accused person so Hayford Acheampong used his mobile phone with contact number 024650767 to call the first accused person and told him that they had arrived at the place and the first accused person told him that he was coming with his car to meet them at the Tema Golf Junction where the taxi driver alighted them. They waited for a while but the first accused person was not coming so PW1 asked Hayford Acheampong to call the first accused person again to find out where he had reached. After the call Hayford informed them that the first accused person said his car had broken down on the way so he was coming with a motorbike.

The third prosecution witness testified further that at about 8:30am, while still waiting for the first accused person under a tree near the road for him to come and take them to where the excavator was, two men arrived on the same motorbike,

armed with a pistol and ordered them to lie down and surrender their bags and phones. They lied down as ordered and whilst they were on the ground for fear of being killed by the armed men should they resist their orders, the two men forcibly collected all their belongings including his Huawei Mobile Phone, PW1's bag containing GH¢60,000 together with his phones and Hayford Acheampong's bag and phones with the exception of Hayford Acheampong's phone which he used to call the first accused person when they arrived at Tema Golf City Junction. The suspects sped off. After the robbery, Hayford Acheampong used his small phone which was not taken by the robbers to call the first accused person several times but he refused to pick the calls and later switched off his phone. They later reported the case at Golf City Police Station and led the investigator to the scene of the alleged crime. On 21st July, 2020, they came back to Golf City and assisted Police to get the first accused person arrested. However, the first accused person could not show where the alleged excavator was. He could not also show his alleged partner who he was doing the excavator renting business with.

The second prosecution witness, D/Insp. Gideon Ayikpoe on his part testified that he is stationed at Golf City Police Station and on 20th June, 2020, the instant case was referred to him for investigation. During investigations, he interviewed the complainants and took their statements and visited the scene of the alleged crime with the complainants. On 21st July, 2020, at about 11:00am, he got the first accused person arrested in his house at Golf City with the assistance of the complainants who identified the first accused person to him. He asked the first accused person to lead him to where he asked the complainants to wait for him and he led him to the same place that the complainants led him to and he realized that from the first accused person's house to where the complainants were robbed is a walking distance. On the same day, he obtained investigation caution statement from the first accused person at Kpone Police Station. According to him, the first accused person told him that he

was into the hiring of excavator machines with one Mr. Addo. He then asked the first accused person to lead him to where the excavator was parked. He led him together with the complainants to where Tema Steel Works Junction but could not show them where the alleged excavator was parked. He further led them to a tipper truck station at Dawhyenya and showed the same place as where they operate the business from. However, all the tipper truck drivers at the station disputed the first accused person's claim and told him that no excavator has operated from the station since its inception and they also could not identify the first accused person as one of their workers. The first accused person could not point to any of the drivers at the station as his co-worker. When he asked him to take him to the house of the said Mr. Addo, his alleged partner in the excavator business, the accused person stated that he lived at Teshie but he did not know his house. Photograph of the excavator machine allegedly sent to the complainants was admitted and marked as exhibit "D".

Additionally, PW2 testified that not convinced by the answers given by the first accused person, he charged him with the instant offences. During investigations, he obtained a court order for disclosure of information directed at MTN to furnish prosecution with the itemized bill of MTN contact number, 0247556565 belonging to Daniel Kofi Aboagye which he consistently used to communicate with the first accused person on his contact number and 0245583200. On receipt of the itemized bill from MTN, he noticed that prior to the date of the incident, the first accused person and Kofi Aboagye communicated many times on first accused person's phone number and that of Kofi Aboagye. Again, on the date of the alleged robbery, they both communicated a lot on the same phone number. Also, on the date of the robbery the second complainant Hayford Acheampong also used his phone number 0246560767 to communicate with the first accused person many times on A1's MTN phone number until their last call on the same date at 09:06am within Kpone

Katamanso District. The itemized bill and the motion paper and the supporting affidavit for the itemized bill were admitted and marked as **Exhibits "B" and "C"** respectively.

Furthermore, during further investigations he found out that the first accused person contracted the second accused person and another person to rob the complainants of their belongings and through the help of the informants, he arrested the second accused person. Upon interrogation, the second accused person told him that one Kofi contracted him in the middle of June 2020 one morning about 10:am to look for people who would assist him to rob some people who were coming from Obuasi near Kumasi with a huge sum of money to hire excavator. He also contacted the third accused person who lives in the house of the first accused person and he also agreed to help. The third accused person then contracted some other young men from Tulaku to help execute the robbery on the complainants.

According to PW2, the second accused person further told him that a few days after he told the third accused person to help execute their planned robbery, the first accused person called him on phone one morning about 10am and told him to meet him at Frenchman Junction Golf City because those people to be robbed were on their way coming and he obliged. Whilst standing there with the first accused person, the third accused person came there with two other men on one motorbike who were actually going to carry out the robbery on the people coming from Kumasi. The second accused person further told him that whilst the five of them were standing at Frenchman Junction, the first accused person received a phone call and after that call, he told the rest of them that the Obuasi people have arrived at Tema Country Golf Club Junction so he was going to show him the men the third accused person brought from Tulaku where the people were standing and he went

with them on the motorbike the third accused person and the two men brought to Frenchman Junction whilst he and the third accused person kept standing at the Frenchman Junction but later he left to his house. He then took the investigation caution statement of the 2nd accused person admitted and marked as **Exhibit "F"**.

Thereafter, he asked the second accused person to take him to the house of the third accused person and he led him to a house close to the first accused person's house at Golf City, took him to a room in that house and pointed out to him the third accused person whom he arrested. During the arrest, he saw one Tecno keypad phone and a Samsung flip phone in the room the third accused person was arrested and the third accused person claimed ownership of the flip phone and said he had the Tecno Keypad phone as part of his share of the items that those two Tulaku young men robbed from the Obuasi people on the contract that the first accused person brought. He took possession of the phones and brought them with the third accused person to his office.

Upon interrogation, the third accused person confirmed everything that the second accused person had told him which led to the arrest of the third accused person. When he asked the third accused person to lead him to those two Tulaku young men he contracted to rob the Obuasi people of their belongings, he told him that he did not know them very well nor their whereabouts because it was a young boy who procured them for him and mentioned the name Demon as one of the people he contracted to carry out the robbery but he could not locate the house of the boy who procured the said Demon and the other for him. He thereafter took investigation caution statement from the third accused person admitted and marked as **Exhibit "G."**

Thereafter, he took the second and third accused persons to the District Headquarters at Kpone where the first accused person was on detention and paraded them before the Crime Officer and in his presence, the second and third accused persons identified the first accused person to them as the one who contracted them to look for those two young men to carry out the robbery on the complainants who were coming to hire the excavator machine from the first accused person. Immediately, the first accused person confessed that he was the one who contracted the second accused person and the third accused person to also contract those two men from Tulaku to rob the complainants. After the confession, the crime officer asked him to take the confession statement of the first accused person but he refused to give that confession statement in writing. He tendered in evidence the investigation caution statement of the first accused person as **Exhibit E**. He invited the complainants to his office where he showed them the phones, he took from the room of the third accused person and PW1 identified the Tecno Keypad phone as one of his phones which the robbers took from him and that he had the picture of his wife and daughter on the phone. He showed the photos of his wife and daughter on the phone retrieved from the third accused person to him. The Tecno Keypad phone was admitted and marked as **Exhibit "A"**. After investigations, he charged the accused persons with the offences. He tendered in evidence the charge statements of the first, second and third accused persons admitted and marked as **Exhibits "H", "J", and "K"** respectively.

EVALUATION OF THE EVIDENCE LED AGAINST THE THREE ACCUSED PERSONS

From the evidence led by the prosecution, the witnesses are not claiming that the three accused persons committed the alleged robbery. It is the contention of the prosecution witnesses that the first accused person lured PW1, PW3 and one Hayford Acheampong to Tema on the pretext of hiring an excavator to them and

contracted the second and third accused persons to look for people to rob them of their monies and their belongings. The prosecution's evidence hinges on alleged confession statements given by the accused persons implicating each other and circumstantial evidence.

On the issue of the alleged confession made by the accused persons, it is trite learning that a confession made by an accused person as to the commission of a crime is sufficient to secure conviction. See the case of **State v. Otchere** [1963] 2 GLR 463. In the instant case, the prosecution tendered in evidence the investigation caution statement of the three accused persons admitted and marked as **Exhibits E, F, G** and the charge statements admitted and marked as **Exhibits H, J, K** tendered without objection by Counsel who was representing the accused persons at the time. In the case of **State v. Okyere**, *supra*, the court held in its holding 4 that:

"Where Counsel for an accused person is instructed that a confession has been obtained which violates the fundamental requirements of admissibility, it is the duty of Counsel to object to the confession going in evidence and thereby invite an adjudication by the court on the issue of admissibility. If he fails to object to its reception, he may nevertheless cross-examine prosecution witnesses in respect of the confession statement or lead evidence to establish circumstances which violate the fundamental requirements and if he succeeds in establishing such circumstances, the evidential burden or weight of the confessions although admitted in evidence will be negligible."

During cross-examination, counsel for the accused persons in an attempt to reduce the probative value of the statements questioned the certification made by the independent witnesses on the language in which they purported to have read and explained the statements to the accused persons to which the investigator testified

that if that was the case then there was an error and Counsel also failed to object to the tendering of the statements for voire dire to be conducted.

The first accused person in his caution statement admitted and marked as **Exhibit "E"** relied on his charge statement admitted and marked as **Exhibit "H"**, denied abetting the criminal offence of robbery and as such, that the statements, not being a confession statement or putting together not amounting to a confession, there was no need to comply with **section 120** of the Evidence Act, (1975) NRCD 323.

The first accused person in his investigation caution statement admitted the discussions and negotiations between himself and PW3 regarding the renting of the excavator when he called PW3 to inform him that he was assisting one Edwin to sell for him with one Mr. Addo. According to him, prior to this case, he had known PW3 for over ten years. He also stated that when PW3 expressed concerns about carrying a huge sum of money with them, he proposed to give them a bank account to deposit the money in it but he did not hear from them until the next day when they called him on phone that they had reached Circle around 5am. He told him that he had gone to Dzorwulu to get a low bed truck but he could not get it so he returned. He also admitted asking the complainants to take a car to Ashaiman and then to Golf City Junction to wait for him but he stated that on his way, the car he was driving in with his friend called Abbey broke down at Ashaiman Kaketo and all this while, PW3 kept calling him and he told him that his car had broken down and he was coming with a motorbike. When he got to Golf City Junction at about 12:00pm, he realized that the complainants were not there waiting for him. When he reached for his phone to call them, he realized his phone was missing from his pocket and he could not procure a new sim card. As such he did not hear from them again until PW3 and the police came to arrest him. In cross-examining PW1 and PW3, the first

accused person again denied the offence and maintained that it was rather the third prosecution witness who conspired with the robbers to stage the robbery to deny the person who sent him to buy the caterpillar. The second accused person absconded at the close of the case for prosecution and failed to appear in court to open his defence to be subjected to cross-examination by the prosecution.

The second accused person on his part in his investigation caution statement gave a confession statement implicating the first and third accused persons. In his statement given in the English language in the presence of an independent witness, the second accused person states that the first accused person informed him that the complainants were coming from Obuasi to rent the excavator and that he had asked them to put the money in a bank account but they refused and that he should help him plan how to take the money from them when they arrive at Golf City. He took him to the place where the people should be directed. After the discussions, he also contacted one Escoba i.e., the third accused person who is his friend to help him execute the plan. The third accused person arranged for the people to execute the plan. After the robbery, the first accused person met him at Tulaku and he gave about GH¢20,000 to the third accused person and his friend and also gave him GH¢500 out of the money as his share. When he got to know that the money was about GH¢40,000 he was not pleased. He used part of the money to buy a mobile phone and spent the rest. However, in his evidence on oath before the court, the second accused person vehemently denied his complicity in the crime charged and denied knowing the first and third accused persons.

The third accused person also in his investigation caution statement, **Exhibit "G"** confessed to the commission of the crime and recounted how the first and second accused persons sought his help to perpetrate the robbery attack on the prosecution

witnesses and he arranged for two guys to rob the complainants around 9:00am and after 25 minutes, the guys returned with a bag and three mobile phones and they handed it over to the first accused person who shared the money. The guys took GH¢25,000 and they had GH¢15,000 out of which the first accused person gave GH¢400 to a small boy who helped them to get the robbers from Tulaku. When they returned home, the first accused person gave him GH¢4,600 as his share and he and the second accused person went back to Tulaku to the guys because they cheated them for which they gave them GH¢1,100 in addition to their money and he gave GH¢1,000 to second accused person. The independent witness stated the language in which it was read and explained but only that he did not state the language in the certification. In their respective charge statements, the accused persons relied on their respective statements given to the police.

The accused persons before the court denied confessing to the alleged crime. The third accused person in his defence before the court stated that his investigation caution statement was not voluntarily taken and that the marks from the beating from the investigator at the time the statement was taken was still on his thighs which he showed to the court but there was no evidence of marks on his body which the court observed. Again, at the time the statement was being tendered that the accused persons were legally represented, no objection was raised for *voire dire* to be conducted to determine admissibility. The certification on the caution statements of the second and third accused persons by the independent witness shows that the statements were read over and explained to them before they appended their signatures.

The second and third accused persons at the trial did not repeat their statements implicating each other and the first accused person on oath. In the case of **Bonsu**

alias Benjilo v. The Republic [1999-2000] 1 GLR 199, the Supreme Court held in its holding 2 that:

“An unsworn statement by an accused person unless repeated by him on oath at the trial and he had been cross-examined on it, would be admissible evidence against only the maker and not a co-accused. Since in the instant case, the first accused had been unavailable for trial, his prejudicial unsworn caution statement incriminating the appellant and which he had made in the absence of the appellant, had been wrongly admitted in evidence by the trial tribunal. Accordingly, it should not have been used against the appellant.”

The statements are therefore binding on each of the accused person who made it and not the co-accused persons.

The confessions of the two accused persons apart and the statements of the first accused person denying the offence, the prosecution also relies on circumstantial evidence in linking the accused persons to the crime charged. The position of the law on circumstantial evidence has been made abundantly clear by the Superior courts. In the case of **Logan v. The Republic** [2007-2008] 1 SCGLR 76 at page 90, the Supreme Court per Aninakwah JSC, delivering the judgment of the Court stated that:

“For circumstantial evidence to support a conviction, it must be inconsistent with innocence of the accused person. It must lead irresistibly to the conclusion not only that the crime charged had been committed, but it was in fact committed by the persons charged in order to arrive at a definite conclusion. Conviction based on circumstantial evidence that has no facts supporting it, as in the instant case, is therefore wrong”

In the instant case, the prosecution’s evidence is that it is based on the statement given by the second accused person that led to the arrest of the third accused person who confirmed the role each accused person played in abetting the criminal offence of the robbery and how the proceeds were shared after the robbery.

Additionally, the accused persons denied knowing each other but the itemized bill from Scancom Company Ltd, MTN shows that the first accused person was in constant communication with the third prosecution witness before and on the day the incident took place. From the itemized bill admitted and marked as **Exhibit "B"**, the accused person's phone number **0245583200** was in constant communication with PW3 Daniel Aboagye on his phone number **0247556565** and Hayford Acheampong's phone number **0246560767**. The itemized bill shows that from the 15th of June, 2020, the first accused person was in communication with the third prosecution witness which confirms the assertion made by the prosecution witnesses. Also, on 17th June, 2020, there was communication between the first accused person and PW3 on the same phone numbers. Also, on the 20th of June, 2020, at 8:23:53 there was communication between the phone number that according to prosecution belongs to Hayford Acheampong and that of the first accused person and on the same date at 9:06:11. The assertion of the first accused person in his Investigation caution statement **Exhibit "E"** that he could not meet the complainants at the spot he directed them to since the car broke down and after taking a motorbike, he realised he had misplaced his phone and could not obtain a new sim to contact them strains credulity since he failed to open his defence to call the said Abbey he was travelling with when the car broke down or the said Mr. Addo that he was doing the excavator hiring business with. It is difficult to believe the claim of the first accused person that he could not contact the witnesses due to the fact that his phone was missing since they came to Tema because of him and he made no effort to trace the people that were carrying huge sums of money when he could not find them. The testimony of the investigator also shows that when the first accused person took him to the station where he allegedly operates his excavator business from, no one knew the first accused person.

The second accused person in his evidence in-chief also denied knowing the other accused persons. When asked whether he gave his phone number to the police during investigations, he answered in the affirmative but denied that his phone number is 0508052792, and when asked to mention his phone number, he stated that his phone number is 05080...but since he has been in custody for long, he has forgotten the other numbers and that it is a Vodafone number. The said Vodafone number communicated with the first accused person after the first accused person had communicated with PW3 and also on 17th June, 2023. According to the second prosecution witness, it was as a result of the vital information given to the police by the second accused person that led to the arrest of the third accused person and when they were both detained at the police station, they both identified the first accused person as the one who contracted them to procure the robbers for the operation.

The third accused person also in his defence stated that he was arrested and abused without knowing the reason for his arrest. According to him, he was compelled to give a statement at the police station and he denied the offence. The third accused person admitted under cross-examination that his phone number is 02436495203 and denied that prior to the case, he knew the first and the second accused persons. However, the itemized bill shows that the phone number the third accused person admitted to be his phone number called the first accused person on 20th June, 2020 at 07:51:58 and at 8:16:25 after the complainants had called the first accused person and made him aware that they had arrived. Furthermore, during the arrest of the third accused person, one of the phones taken by the robbers from the complainants was found with the third accused person which the first prosecution witness identified to be his phone.

On the totality of the evidence led by the prosecution and the defence put up by the accused persons, I find that the accused persons abetted the suspects at large in committing the criminal offence of robbery on the three complainants. The evidence shows the role each of the three accused persons played in abetting the criminal offence. The first accused person instigated the robbery when he lured the complainants under the pretext of hiring excavator machine to them and sought the assistance of the second accused person who introduced the third accused person to procure the robbers for the first accused person. Based on the role played by each of the accused persons, the suspects at large succeeded in overcoming the resistance of the three complainants with the use of a pistol which is an offensive weapon and dishonestly appropriated their belongings with the use of force. Accordingly, the prosecution proved their case beyond reasonable doubt.

I therefore pronounce each of the three accused persons guilty of the offences and convict them accordingly on the three counts of abetment of crime namely, robbery contrary to **sections 20(1)** and 149 of Act 29.

SENTENCING

In sentencing each of the three convicts, the court takes into consideration their respective roles played in the commission of the offence, plea in mitigation put forth by the second and third convicts. The court considers the fact that the first convict who masterminded the robbery and has been convicted in absentia deserves a harsher punishment from the rest of the convicts. The court further take into consideration the fact that the money and the other items with the exception of one phone have not been retrieved. Also, in sentencing the second convict, the court takes into consideration the fact that since their arraignment before the court and

were admitted to bail on 17th December 2020, he was not able to meet his bail condition and has been in custody since that time. Also, the third convict's bail was revoked by the court on 17th May, 2023 consequently, in accordance with **Article 14(6)** of the 1992 Constitution, the respective time spent by the second and third convicts in custody is considered in imposing the sentence. The court also considers that the offence of abetment of robbery with the use of offensive weapon which the convicts have been convicted of is punishable the same way as the substantive offence.

I therefore sentence the convicts as follows;

First Convict

Count 1: The first Convict is sentenced to serve a term of imprisonment of Twenty-Two (22) years in hard labour.

Count 2: The first Convict is sentenced to serve a term of imprisonment of Twenty-Two (22) years in hard labour.

Count 3: The first Convict is sentenced to serve to a term of imprisonment of Twenty-Two (22) years in hard labour.

The sentences shall run concurrently.

Ancillary Orders

A bench warrant shall be issued together with the warrant of commitment of sentence of the first convict. Upon arrest, the arresting officer shall endorse the date of arrest at the back of the warrant and the sentence of imprisonment shall commence from the date of the arrest of the convict.

The Second Convict

Count 1: The second Convict is sentenced to serve a term of imprisonment of Sixteen (16) years in hard labour.

Count 2: The second Convict is sentenced to serve a term of imprisonment of Sixteen (16) years in hard labour.

Count 3: The second Convict is sentenced to serve a term of imprisonment of Sixteen (16) years in hard labour.

The sentences shall run concurrently.

The third accused person

Count 1: The third Convict is sentenced to serve a term of imprisonment of Eighteen (18) years in hard labour.

Count 2: The third Convict is sentenced to serve a term of imprisonment of Eighteen (18) years in hard labour.

Count 3: The third Convict is sentenced to serve a term of imprisonment of Eighteen (18) years in hard labour.

The sentences shall run concurrently.

**H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)**