

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON WEDNESDAY, THE 31<sup>ST</sup>  
DAY OF JANUARY, 2024, BEFORE HER HONOUR AGNES OPOKU-  
BARNIEH, CIRCUIT COURT JUDGE**

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**SUIT NO: D21/30/22**

**THE REPUBLIC**

**VRS:**

**MUSAH ADAMS @ADAMU**

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**ACCUSED PERSON**

**PRESENT**

**INSP. EMMANUEL ASANTE FOR PROSECUTION**

**PRESENT**

**NO LEGAL REPRESENTATION**

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**JUDGMENT**

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**FACTS:**

The accused person was charged and arraigned before this Court on 30<sup>th</sup> May 2022 on a charge of Robbery Contrary to **Section 149** of the Criminal Offences Act, 1960 (Act 29).

The brief facts presented by the prosecution are that on 24<sup>th</sup> November 2020 at about 4:00 am, the Tema Community One Police Patrol Team received a distress call that a group of armed men had besieged the Action Chapel Christ Cathedral near the Tema Motorway interchange and were in the robbing the church. The team proceeded to the scene but the said armed men upon seeing the patrol team bolted with the following items robbed from the church; an Acer laptop valued at Thirty-Thousand Ghana Cedis (GH¢3,000.00), one HP laptop computer valued at Thirty-Thousand Ghana Cedis (GH¢3,000.00), one Samsung Tablet valued One Thousand Ghana Cedis (GH¢1,000.00), one Lenovo Tablet valued Eight Hundred Ghana Cedis (GH¢800.00, a laptop bag valued One Hundred and Fifty Ghana Cedis (GH¢150.00), two television sets valued Three Thousand Ghana Cedis (GH¢3,000), all belonging to the Church.

The prosecution further alleges that the accused person and his accomplices on seeing the police, abandoned the items allegedly robbed and three mobile phones at a section of the road and escaped. The team however managed to arrest one Roland Azumah and one Mubarak Zakari who were part of the alleged robbery at a short distance. Again, among the three mobile phones abandoned was a Samsung mobile phone belonging to the accused person. The two suspects who were arrested led the patrol team to the kiosk of the accused but he was not met inside the kiosk. The patrol team then left a message with his neighbours for the accused person to report at the Police Station but he failed to do so. Subsequently, an administrator of the church and a victim of the alleged robbery identified the items retrieved from the secondary crime scene as the property of the church.

On 5<sup>th</sup> May 2021, the accused person was arrested from his hide out upon intelligence. The accused person upon his arrest identified the Samsung mobile phone retrieved by the Police to be his property. The Police also retrieved a Yamaha motorbike belonging to the accused person was also retrieved some few distance from the secondary scene. Based on that, the accused person was charged with the offence and arraigned before this court.

### **THE PLEA**

The self-represented accused person pleaded not guilty to the charge after it had been read and explained to him in the Twi Language. The prosecution therefore assumed the onerous burden to prove the guilt of the accused person beyond reasonable doubt.

### **BURDEN OF PROOF**

It is trite learning that in criminal cases, the prosecution bears the burden to prove the guilt of the accused person beyond reasonable doubt. See **Sections 11(2), 13(1) and 15** of the Evidence Act, 1975, (NRC 323). In the case of **Gligah & Attiso v. The Republic** [2010] SCGLR 870, the Supreme Court held in its holding 1 that:

*“Under article 19 (2) (c) of the 1992 constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved. In other words, whenever an accused person was arraigned before any court in any criminal trial, it was the duty of the prosecution to prove the essential ingredients of the offence charged against the accused person beyond reasonable doubt. The burden of proof was therefore on the prosecution and it was only after a prima facie case had been established by the prosecution that the accused person would be called upon to give his side of the story.”*

The burden on the accused person, when called upon to enter his defence, is to raise a reasonable doubt in the case of the prosecution. The standard of proof for the defence, is proof on a balance of probabilities only. In the case of **Osae v. The Republic** [1980] GLR, 446, the court held in its holding 2 that:

*“although it was settled law that where the law cast the onus of proof on the accused, the burden on him was lighter than on the prosecutor, and the standard of proof required was the balance of probability, if at any time of the trial, the accused voluntarily assumed the onus of proving his defence or some facts as happened in this case, the standard he had to discharge was on a balance of probabilities.”*

## **ANALYSIS**

Here, the accused person is charged with robbery contrary to **section 149** of Act 29. **Section 149** of Act 29, provides as follows;

*“Whoever commits robbery is guilty of an offence and shall be liable, upon conviction on trial summarily or on indictment, to imprisonment for a term of 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 of not less than fifteen years.*

**Section 150** of Act 29 further defines robbery in the following terms;

*“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 thing.”*

In the case of **Behome v. The Republic** [1979] GLR 112, the court held that *“one is only guilty of robbery if in stealing a thing he used any force or caused any harm or used any threat of criminal assault with intent thereby to prevent or overcome the resistance of his victims, to the stealing of the thing.”*

The essential ingredients of the offence that the prosecution must establish to secure conviction as stated by the Supreme Court in the case of **Frimpong alias Iboman v. The Republic** [2012] 1 SCGLR 297 at 312, per Dotse JSC are as follows;

- i. That the accused person stole something from the victim of the robbery of which he is not the owner.
- ii. That in stealing the thing, the accused person used force, harm or threat of any criminal assault on the victim.
- iii. That the intention of doing so was to prevent or overcome the resistance of the victim.
- iv. That this fear of violence must either be of personal violence to the person robbed or to any member of his household or family in the restrictive sense
- v. The thing stolen must be in the presence of the person threatened.

To prove that the accused person was part of the people who allegedly robbed the Action Chapel Church, Philip Quayson, the first prosecution witness testified that he was a security guard at the Action Chapel premises located at the Motorway

roundabout. He testified that on the 23<sup>rd</sup> November 2020, whilst he was on night duty, at about 2:00 am, he saw a group of people walking on the street, heading towards Aflao road. By then, the main gate at his duty post was locked so he came forward from where he was standing to see who the people were but because of the darkness, he could not see their faces. He then left and stood in an uncompleted church building which was within the premises performing his duties. Again, he testified that on that day, he was on duty with a colleague by the name of Obed Takyi but the said colleague was sleeping on a wooden structure by then. Whilst he was going around in the uncompleted church building, he saw five men heading towards his direction. One of them was wearing a face mask and another one had also covered his mouth and nose with a handkerchief. Two of the suspects wielded AK 47 assault rifle and a pump action gun whilst the remaining three were also holding pinch bars and a screwdriver.

The first prosecution witness testified further that the two suspects holding the AK47 and pump action gun pointed it at him and asked him if he was performing the night duty and he said no but rather mentioned his colleague's name for fear of being killed. They then forced him to lead them to where his colleague was sleeping which he did. When they got there, they tied their hands with a cable of a charger of a mobile phone and asked them to lead them to their pastor's office which was upstairs of the storey building and they did. When they got there, the robbers forced and broke the door to the hall before gaining ingress into the hall. Whilst there, one of the robbers forced open the pastor's desk (drawer) and removed items from it. They also removed a television set from the hall and office of the pastor and another television from the children's hall. The robbers again tied their legs, hit the back of their necks and abandoned them at the pastor's office. They later heard the accused persons breaking some of the doors downstairs before leaving the premises. The issue was later reported to the police and he was invited to give his statement.

The first prosecution witness under cross-examination by the accused person testified that when some of the robbers were allegedly arrested by the police, he was not invited

to the police station to identify them because during the attack, some of them were masked and due to fear, he could not look into the faces of the robbers and that he told the police that he could not identify any of them but the alleged stolen items were found on the people arrested.

The second prosecution witness Insp. Roland Drah, stationed at the Lube Oil Police Post, Tema testified that he was detailed to perform night patrol duties from 22<sup>nd</sup> November 2020 to 29<sup>th</sup> November 2020. Whilst on duty and as i/c Challey Papa I on 24<sup>th</sup> November 2020 at about 2:50 am, his team had a distress call from the Regional Control Room, Tema and the caller gave the team an MTN mobile number 0548164940 to assist him. When the caller was contacted, he gave his name to the patrol team as Emmanuel Kwesi Arhin, a private security guard at a Tanker Yard opposite Barry Williams property located at the Motorway roundabout.

The said caller informed the police that he saw a group of young men carrying electrical appliances on the railway line at the Motorway roundabout heading towards Tema direction. On receipt of the information, they rushed to the Motorway roundabout and located the caller and a victim who gave his name as Roger Dodor, a private security guard at Barry Williams property adjacent to Action Chapel who was attacked and assaulted by a group of armed men who were wielding an AK 47 rifle, a pump action gun and other implements. During the attack, they took away Roger Dodor's laptop computer, mobile phone, tablet, and black motorbike. The Police Patrol team together with the caller quickly rushed to the Heavy Industrial Area, Tema close to a slum called Ayigbe town.

The second prosecution witness further testified that immediately after the Patrol team got to Ayigbe Town, they saw a group of young men on the railway line approaching. The Police laid ambush and when the armed men got closer, the police opened fire but the weapon did not fire and the robbers bolted. However, with the help of the residents of Ayigbe town, one of the robbers was arrested and he gave his name as Mubarak

Zakari. A search was conducted at the scene where the armed robbers were met, and they discovered the following items; one big unregistered yellow Yamaha motorbike, one HP and Acer Laptop computer, five mobile phones including two tablets and one laptop charger and a small black bag. Whilst at the scene, the second suspect Roland Azuma was seen at the scene making unnecessary calls which police believed him to be an accomplice. He was also arrested and the two suspects were sent to the Community One Police Station together with the exhibits.

The second prosecution witness testified under cross-examination that when the accused person was arrested, at the Crime Officer's office where the items retrieved from the scene and abandoned were displayed, he denied that the Samsung mobile phone belonged to him. However, when the phone was charged and turned on and the picture of the accused person appeared on it, he identified the phone to be his mobile phone and claimed ownership of the motorbike recovered from the scene.

Under further cross-examination by the accused person, the following exchanges took place;

*Q: I believe when your men laid ambush on the railway line, the robbers who did the operation that night were the people you saw on the railway line. Is that not the case?*

*A: My Lord, the directions given to us as to where they robbed, the robbers said they were on the railway line heading towards Tema.*

*Q: I suggest to you that the railway line is not used by robbers alone.*

*A: My Lord, at the time of the incident and the description given to the police a group of armed robbers were heading towards Ayigbe Town.*

*Q: I am putting it to you that among the robbers were Roland Azumah and Mubarak and the exhibits which you brought to court.*

*A: My Lord, I arrested them with those exhibits and what I said earlier was that I got to know them at the Regional Crime Office so the mobile phone was picked where we met the armed robbers.*

*Q: So Roland and Mubarak did they tell you that the motorbike belongs to any of their people?*

*A: My Lord, I did not ask them because I am not the investigator.*

The third prosecution witness, No. 41073 D/SGT. Derick Debrah the investigator stationed at the Regional CID/Tema also testified that on 24<sup>th</sup> November 2020, a case of robbery was reported against the accused person and his accomplices and the case was subsequently referred to an investigator at Community One Police station for investigation. The accused person and his accomplices abandoned the stolen items on a section of the road, including a Samsung mobile phone of the accused person, upon seeing the police. As part of the investigations, the written statements from the complainants and the victims were obtained. On 10<sup>th</sup> May 2021, the Police personnel at the Regional Criminal Investigations Division (RCID) Tema had information about the hideout of the accused person leading to his arrest.

Subsequently, the case was transferred from the Community One Police Station to the RCID Tema and subsequently referred to him for investigations. During investigations, the accused person identified the Samsung mobile phone among the items that were retrieved from the secondary crime scene as his property. On 11<sup>th</sup> May 2021, an investigation caution statement was obtained from the accused person which was admitted and marked **Exhibit “A”**. Thereafter, on 15<sup>th</sup> May 2021, he charged the accused person herein with the instant offence of robbery and obtained a charge statement from him admitted and marked as **Exhibit “B”**. He also tendered in evidence photographs of the items found at the secondary scene of crime admitted and marked as **Exhibit “C”** series.

Under cross-examination of the third prosecution witness, the following exchanges took place;

*Q: You stated that this case was referred to you from the Community 1 Police station for an investigation. Who are the accused persons involved in this case?*

*A: My Lord, he was the main suspect.*

*Q: According to the arresting officer the accused persons involved in this case are Mubarak Zachariah and Roland Azumah.*

*A: My Lord that is not true. However, this accused person standing trial now, Adam Musah aka Adamu was the main suspect the police were looking for because, at the secondary scene, his Samsung mobile phone which he identified at the time of his arrest had his pictures and the pictures of Nashiru was retrieved among the things left at the secondary crime scene and same identified by the victims.*

*Q: Do you remember you took my motorbike at the secondary crime scene where I parked and you disconnected the wires and broke the steer and started the motorbike without my consent.?*

*A: My Lord, as I indicated the Samsung mobile phone belonging to the accused person was taken among the things left at the secondary scene whilst the motorbike he is talking about was taken close to his kiosk at Ayigbe town. Therefore, the motorbike and the phone were not in the same place at the same time.*

*Q: I am putting it to you that you are just throwing dust into the eyes of the court. According to the arresting officer, the motorbike and the mobile phone were picked up at Ayigbe town.*

*A: My Lord, I am being honest with the court because his Samsung mobile was retrieved among the items robbed from the victim which same was retrieved. It was later that the motorbike was retrieved even though all retrievals were on the same stretch towards Ayigbe town.*

*Q: I am putting it to you that you are not being truthful to the court because the mobile phone was in the boot of my motorbike which was parked in front of my house and you broke the boot and took the phone from the boot of my motorbike.*

*A: My Lord, that is not true.*

The testimony of the third prosecution witness under cross-examination is contradictory to the testimony of the second prosecution witness regarding where the

motorbike and the phone were retrieved. The second prosecution witness testified as follows under cross-examination regarding the motorbike;

*Q: The day you claim you had a distress call, did the security man tell you the armed robbers came with a motorbike?*

*A: My Lord, the second person said he was robbed of his laptop, tablet and motorbike.*

*Q: Did any of the security men identify the motorbike as his?*

*A: That particular one, no.*

*Q: Where exactly did you pick the motorbike?*

*A: At the scene of the crime, on the railway line where I met the suspected robbers.*

*Q: Can you tell the court the distance between where you found the motorbike and where you met the suspected robbers?*

*A: My Lord, it will be about 10 to 20 meters away.*

*Q: I am putting it to you that where you picked the motorbike is in front of my house.*

*A: It was not there. It was on the railway line. I do not know if someone stays there.*

*Q: The motorbike you took, was the steer locked before you picked it?*

*A: The steer was locked.*

*Q: I am putting it to you that no armed robber will be riding a motorbike and as you pursue him will have time to get down, and lock the steer before he runs.*

*A: My Lord, for that I cannot answer. The group we met at the scene had so many ways of doing things and where the motorbike was, it was not found at his house but on the railway line.*

*Q: The armed robber you arrested in the gutter, did he mention my name?*

*A: No, My Lord. Because I am not the investigator.*

The accused person in his investigation caution statement, admitted and marked as **Exhibit "A"**, stated that he did not know anything about the allegation and dared the police to produce evidence to show his complicity in the crime charged. He further stated that the Samsung mobile phone that he identified at the crime officer's office

was for him and that he bought it for Six Hundred Ghana Cedis (GHC600) at Circle, Accra. He further stated that the phone was among other items displayed in the office but he was able to identify his mobile phone among the lot. He further stated that the police picked up the phone and motorbike together at his house in Ayigbe Town and that he had placed the phone in the boot of the motorbike. According to his statement to the police, he woke up around 6:00 am and detected that police had come to pick up his motorbike. The following day, he sent his brother Masuwudu to go to the police station for the bike but his brother was told that police picked up the motorbike with robbed items and that they were conducting investigations. At the time, he had been involved in an accident and that was why he could not go for the motorbike immediately. He stated further that the accident, was Malaria and that he went through herbal treatment without attending the hospital. The accused person repeated this statement in his charge statement admitted and marked it as **Exhibit “B.”**

The accused person in his defence vehemently denied the offence and testified that on the day of the alleged incident, he was in his house in Ayigbe town. At the time, he had sustained a gunshot wound on his stomach and his hand. He parked his motorbike at the usual place where he parked it and the Police came for it and sent it to the police station. When he woke up in the morning, he realised that his motorbike was not at the place he parked it. When he inquired from his neighbours about it, they told him that the police had come for it. According to him, because he had sustained injuries, he was unable to trace the motorbike to the police station so he called his brother Massawudu to go to the police station to ascertain the reason for the actions of the Police. Later, his brother informed him that the police had alleged that the motorbike was found at the secondary crime scene and that armed robbers committed a crime and abandoned the motorbike and other items. The said brother further told him that the police informed him that they were still investigating the case and that after investigation, the motorbike would be released to him. Anytime his brother visited the police station, they kept tossing him and giving him excuses. Due to his injuries, he was admitted for two weeks

at the hospital and could not go to the Police Station on the proposed date for the motorbike.

Additionally, the accused person testified that on 5<sup>th</sup> May 2021, he was arrested by the police at Tema Community 1, where he transacts his business. After his arrest, his picture was posted on Instagram for anyone who has a case against him to visit the Police Station but no one showed up at the Police Station to lodge a complaint against him. On 8<sup>th</sup> May 2021, he was arraigned before Circuit Court 'B', Tema but he was subsequently, discharged from Court 'B' for want of prosecution. He was re-arrested and arraigned before this Honourable Court and when he enquired from the investigator the reason for his re-arrest, he was informed that he was under the orders of his superior. According to him, after his arrest, he was not sent to any crime scene as the place where the robbery allegedly took place and no identification parade was conducted for the alleged victims to identify him as one of the robbers and the prosecution witnesses who testified in this case could not identify him as one of the robbers and since the alleged eye witness could not identify him as one of the robbers, he knows nothing about the allegation against him.

The accused person under cross-examination by the prosecution, the following exchanges took place;

*Q: I am also putting it to you that you and your accomplices upon realising that the patrol team was pursuing you abandoned the robbed items and 3 mobile phones on a section of the road and escaped.*

*A: That is not true.*

*Q: I am putting it to you that among the items retrieved from the secondary scene of crime where you and your accomplices abandoned the robbed items were a Samsung mobile phone and an unregistered Yamaha motorbike.*

- A: *My Lord, I left my phone in the boot of the motorbike before the police took my motorbike at the crime scene.*
- Q: *You will agree with me that when you were arrested by the police, you were paraded before the crime officer.*
- A: *That is true. I was paraded before the crime officer.*
- Q: *You will also agree with me that at the crime officer's office, a Samsung mobile phone was shown to you to identify if it was for you.*
- A: *Yes, My Lord. I was shown the Samsung phone. I identified it as mine which was in the boot of my motorbike.*
- Q: *I am putting it to you that, you denied ownership of the said Samsung phone when it was first shown to you.*
- A: *Yes, My Lord. The phone was off and the screen of the phone had a scratch and my phone's screen was not cracked at the time I left it in my boot. So I told them to charge the phone and switch it on to enable me identify whether it was mine or not.*
- Q: *I am putting it to you that your assertion that you told the police to switch on the phone for you to identify it, is not true.*
- A: *My Lord, what I just told the court is the truth.*
- Q: *I am putting it to you that on 3 consecutive times you denied ownership of the said Samsung phone until the phone was switched on and your photograph popped up as the screen saver before you admitted that the phone was for you.*
- A: *That is not true because when the phone was shown to me the screen was cracked and that was not the state of my phone that is why I told them to switch it on for me to identify it.*

*Q: I am putting it to you that the Samsung phone you eventually claimed ownership of was retrieved from the secondary scene of crime together with the robbed items.*

*A: My Lord, I do not know about that because I was asleep when the police took my motorbike away.*

*Q: I am also putting it to you that the Samsung mobile phone you identified as yours got cracked as a result of you hastily abandoning your motorbike to escape arrest. That was when the phone fell and cracked without your notice.*

*A: That is not correct.*

*Q: You also indicated that your phone got missing. Is that correct?*

*A: Yes My Lord. I told my brother whom I sent to the police station that my phone was in the boot of the motorbike before the police took it away.*

*Q: I am putting it to you that you never reported your missing Samsung mobile phone at any of the police stations.*

*A: I sent my brother to the police station because I was told the police took my motorbike in addition to my phone.*

In support of his defence the accused person defence called one Perpetual Nyarko whom he described as his wife. She testified that she previously lived at Community 8 near Cocobod, in Ayigbe town. The accused person parked his motorbike along the railway line and at that time he was not well and they were asleep when the police came for the motorbike. When she woke up in the morning to sweep the compound, she noticed that the motorbike was not parked at the compound. She questioned some of their neighbours about the whereabouts of the motorbike and they told her that the police had come for it at dawn. She went back to the room to inform the accused person about it and he came out to confirm what she had told him from the neighbours. The

accused person told her that because of his condition, he could not follow up on the motorbike at the police station. He then called one of his brothers by name Massawudu to inform him about what had happened and pleaded with him to trace the motorbike on his behalf and he agreed. Later, Massawudu called to inform them that some armed robbers had been arrested at Ayigbe town and promised to assist the accused person in recovering the motorbike.

Under cross-examination by the prosecution, DW1 testified that she was only cohabiting with the accused person and not his wife and that at the time the motorbike was taken, the accused person had been injured in his stomach. According to her, she was at Mankessim when she was called that the accused person whilst taking care of cattle in the neighbourhood with other people was attacked and got injured in the process. It took a long time for the accused person to heal and she came from Mankessim when she heard of the condition of the accused person. The defence witness denied the involvement of the accused person in the crime charged.

From the evidence led by the prosecution, the challenge of the defence to the case is on the identity of the person who allegedly robbed the church and the issue of circumstantial evidence of the mobile phone and the motorbike of the accused person allegedly found at the secondary crime scene.

On the issue of identity, in criminal trials, apart from establishing that a crime has been committed, the prosecution must prove that the crime was committed by no other person than the person charged before the court. Identification refers to the facts and circumstances by which a victim links a suspect to a crime charged. Thus, the prosecution cannot succeed on mere conjecture and suspicions but must lead cogent and admissible evidence from which the court could infer that the accused person was

part of the people who committed the robbery. In the case of **Razak v. The Republic** Criminal Appeal No. J3/6/2011 dated 25<sup>th</sup> April, 2012, the Supreme Court held that;

*“In every criminal trial, it is not only necessary for the prosecution to prove the commission of the crime, but also to lead evidence to identify the accused as the person(s) who committed it. That was of a very crucial importance for a proven case of mistaken identity is a good ground for reversing a conviction for a crime on appeal. Thus, where the ground of appeal bothers on mistaken identity, a trial or appellate court ought to carefully examine the evidence on it. A judge is to guide himself by considering factors such as the period of time over which the witness saw or observed the accused (appellants in this appeal), the conditions in which the observation was made, whether or not the area or vicinity was lit to make observation possible, the distance between the witnesses and the appellants, or whether or not the description by the prosecution witnesses agreed with that of the appellant(s). On this see the guidelines by Lord Widgery CJ in R v. Turnbull [1977] QB 224”*

The Court further stated that;

*“Thus, it is fair and reasonable to say that the modes of identifying the perpetrators of a crime vary and holding identification parade may be one of the acceptable modes.”*

In the instant case, the first prosecution witness candidly testified that the place was dark and due to fear of being killed, he could not identify the people who allegedly committed the robbery. The first prosecution witness further testified that when some people were arrested in connection with the case, no identification parade was conducted for him to appear at the police station to identify the people. The investigator also, when challenged by the accused person whether he took him to the crime scene when he was arrested or fingerprints taken off the doors allegedly broken into by the robbers, the investigator confirmed that no fingerprints were taken and analysed by experts linking the accused person to the scene of the crime.

Additionally, the second prosecution witness also mentioned one Emmanuel Kwesi Arhin, a private security guard at Tanker Yard opposite Barry Williams property at the motorway roundabout who allegedly informed him that he saw a group of men carrying electrical appliances on the railway line heading towards Tema but the said man was not called as a witness. They also located the caller and the victim of the robbery who gave his name as Roger Dodor, a private security guard at Barry Williams property adjacent to Action Chapel who alleged that the robbers attacked him and took his laptop computer, mobile phone, tablet and his black motorbike away but again, this person's whereabouts is not known and also not a prosecution witness. The second prosecution witness again testified that with the help of residents at Ayigbe town, one of the robbers was arrested and gave his name as Mubarak Zakari and another person called Roland Azuma was also arrested but there is no evidence of the investigations conducted in respect of these two people, the statements they gave to the police implicating the accused person in the crime charged.

The prosecution also relies on circumstantial evidence to link the accused person to the crime charged since they claim to have found the mobile phone and the motorbike of the accused person at the secondary scene of the crime. 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 the 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”*

The accused person fiercely resisted the contention of the prosecution that his motorbike and mobile phone were found at a crime scene. Whereas the second

prosecution witness who was part of the Patrol Team on the night of the alleged robbery claims that both the motorbike and the mobile phone of the accused person were part of the items robbed from Action Chapel church on the day of the robbery and abandoned by the robbers, the third prosecution witness, the investigator also contends that the mobile phone was found at the alleged secondary crime scene and the motorbike was found in front of the house of the accused person at Ayigbe town. The evidence of prosecution also shows that at the time the motorbike was taken, the motorbike had been packed and locked and they had to break the steer to be able to move the motorbike that was parked in front of the house of the accused person to the police station.

The accused person has consistently maintained that the phone was in the boot of the motorbike taken by the police and he sent his brother to follow up on the items at the police station but he was informed that the police were conducting investigations and would release same once investigations were concluded. The second prosecution witness under cross-examination by the accused person admitted that the motorbike he claims was discovered at a secondary crime scene was not in any way connected to the alleged robbery.

Also, although the prosecution claims that one Roger Dodor, a private security guard at Barry Williams claims that he was allegedly robbed and among the items robbed from him was a black motorbike, there is no indication that the said black motorbike is the motorbike of the accused person since from the photographs tendered in evidence, the motorbike of the accused person is not black but yellow. It is also not clear on the evidence where the alleged crime scene was since the first prosecution witness claims to be a security guard at the Action Chapel but at the same time, the second prosecution witness claims that Roger Dodor who was not called as a witness in the case was the victim of the alleged robbery for which reason the accused person has been hauled before this court.

The prosecution also failed to lead evidence on the two suspects, Mubarak Zakari and Roland Azuma that the police arrested in connection with this case. Also, from the evidence led by the accused person, the accused person was nursing a gunshot wound in his stomach at the time of the robbery the reason he could not follow up on his motorbike but the prosecution failed to connect the gunshot wound to the accused person to the instant case since the second prosecution witness maintained that when the patrol team got to the Ayigbe Town, and saw a group of young men on the railway line approaching, the police laid ambush and when the armed men got closer, the police opened fire but the weapon did not fire and the robbers bolted away but Mubarak Zakari was unable to escape and he was arrested. This testimony of the second prosecution witness corroborates the testimony of the accused person and proves that his gunshot wound was not connected to this case.

The importance of thorough investigations into criminal cases cannot be gainsaid. It is not enough for the police to arraign an accused person before the court on charge because he has been on their radar for a long time. There is the need to connect the dots through proper investigations to ensure that whatever the accused person might have done, it was in furtherance of the case for which he has been arraigned before the court. The evidence led by the prosecution in this case is no more than suspicion that the accused person might have taken part in the alleged robbery. On that basis, this court will abide by the caution to judges in the case of the **State v. Brobbey & Nipa** [1962] 2 GLR 101 at page 103, where the court held that:

*“In a case where the evidence is purely circumstantial and establishes nothing more than suspicion, the judge must draw attention to the necessity of some piece of evidence that is more than mere suspicion and which would lead to one conclusion and one conclusion only, that is, to the guilt of the prisoner. One cannot put a multiple of suspicions together and make proof of it...”*

In the case at bar, there is no evidence implicating the accused person in the charge against him. The court cannot put a multitude of suspicions together to constitute proof. Aside from claiming that the mobile phone of the accused person was found at a place considered a secondary crime scene, in-depth investigations should have unravelled the link between the phone and the instant case. In the case **Republic v. Kwabena Amaning @ Tagor, [28/11/2007] Suit No. ACR.4/2007 Dotse J.A.** (as he then was) sitting as an Additional High Court Judge laid down the steps to follow in determining that there has been proof beyond reasonable doubt in the following terms;

*a. Consider the prosecution's case as is stated by their witnesses. This must be matched with the offences with which the accused has been charged. There certainly are key essential ingredients in each offence. If the prosecution's case supports the essential ingredients of the offence charged, then you go to stage two.*

*b. This is the consideration of the accused persons story and explanation. This should also be linked to the prosecution's case vis-à-vis the charges that the accused person is facing. If the court disbelieves the story or case of the accused person, the court should nonetheless go a step further to;*

*c. Consider the fact that even though the accused person's story is disbelieved, it could however be reasonably probable.*

In the present case, having regard to the porous evidence, the failure of the prosecution to explain the whereabouts of the two people arrested on the night of the robbery, failure to lead evidence on where the actual crime scene was, whether Action Chapel or Barry Williams company, who the victim of the robbery was as between the first prosecution witness, Phillip Quayson, Emmanuel Kwasi Arhin a private security guard at Tanker Yard who allegedly placed the distress call to the police and Roger Dodor who is a private security guard at Barry Williams, the police failed to connect the motorbike and the mobile phone to the instant case which makes the account of the accused person that the phone was in the boot of his motorbike taken from his house,

even if disbelieved to be reasonably probable. It is also trite that it is better for ninety-nine criminals to be set free than to convict one innocent person.

On the totality of the evidence led by the prosecution and the defence put up by the accused person, I hold that the prosecution failed to prove their case beyond reasonable doubt that the accused person was part of the people who allegedly robbed the church on the day of the alleged incident. I therefore pronounce the accused person not guilty of the charge and I accordingly acquit and discharge him on a charge of robbery contrary to **Section 149** of Act 29.

### **RESTITUTION ORDER**

In accordance with **Section 145** of the Criminal (Procedure) and Other Offences Act, 1960 (Act 30), the Samsung mobile phone and the Yamaha motorbike belonging to the accused person should be released to the accused person.

**SGD.**

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