IN THE CIRCUIT COURT OF GHANA HELD AT CAPE COAST CENTRAL REGION ON TUESDAY 6TH DAY OF DECEMBER, 2022 BEFORE H/H DORINDA SMITH ARTHUR (MRS.), CIRCUIT COURT JUDGE.

SUIT NO. 284/2021

THE REPUBLIC

VRS

JONATHAN AMPONSAH MENSAH

JUDGMENT

The Accused person was arraigned before this Court on July 21, 2021 for the offences of Forgery of other documents and Stealing Contrary to Sections 159 and 124 of Act 29,1690.

The accused person pleaded not guilty to the charges preferred against him for which reason the prosecution assumed the burden of proof and must prove the charges against the accused person beyond reasonable doubt in accordance with **Section 11(2) of the Evidence Act 1975 NRCD 323** which states that;

"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 will find the existence of the facts beyond reasonable doubt."
Further, **Section 13(1) of NRCD 323** provides that the standard of proof is nothing less than proof beyond reasonable doubt no matter the offence charged.

See the case of **Ampabeng Vrs Republic [1977] 2 GLR 171 CA**

The prosecution in order to discharge the burden placed upon them called three witnesses and tendered in evidence eleven exhibits.

THE PROSECUTION CASE

A summary of prosecution witnesses' evidence are that: PW1, Dr. Richard Asiedu, is the CEO of Rich FM at Assin Fosu. He employed accused initially as an assistant headmaster in his school and later in 2015 to manage the FM station. Accused was the only one responsible for executing all payments to the National Communications Authority including other statutory payments to Ghana Revenue Authority, Social Security and National Insurance Trust and Value Added Tax per their standard operating procedures. Accused was also paying monthly salaries of the staff including himself. According to PW1, accused began leading extravagant lifestyle by buying flashy cars and putting up a building at Assin Fosu so he questioned him of his source of wealth. He said the FM was not making any profits as they were continuously running at a loss so he nearly closed down the facility but his friends advised him otherwise. PW1 began to monitor the dealings of accused at the FM station and he realized that within the space of three months, accused had bought for himself a Toyota Camry and Kia Sportage private cars so he confronted him. He added that accused

responded that his in-law abroad has a fleet of cars so he goes for some for use whenever the need arises and that he has also disposed off of his old car. He continued that in March 2021, accused brought to him a purported NCA invoice and said that the FM had breached the NCA rules by operating beyond the assigned spectrum and as a result a penalty charge of Ghc 25000 has been attracted. Accused added that an officer from NCA would be calling him and accused told PW1 to tell the officer that they used the link for three continuous years when he is asked how long they have used the link for. The alleged officer called and PW1 said exactly as suggested by accused. Two days later he received an NCA invoice charging them Ghc 21000 for the three years so he issued cheques to the accused to pay for all the huge charges at NCA zonal office in Takoradi. According to PW1, the accused connived with the so called Prophet friend and he came to inform PW1 of a revelation he had had about PW1 that he should expect a penalty of Thirty Five Thousand Ghana cedis from NCA within four weeks and that such is a machination by some persons to collapse his FM station business. He continued that the Prophet mentioned specifically Hon. Fiifi Baako, MCE for Assin Foso as the one behind the intended closure of the FM station because PW1 is a staunch member of the opposing National Democratic Congress (NDC). Sensing fraud in the revelation, PW1 went to accused and demanded for all payment receipts from NCA operation and charges but accused gave different excuses unitl his wife intervened and accused brought two invoices through one of the account officers. He said accused lied that NCA officers will be visiting the FM office and will come along with the receipts. The NCA officers visited but did not bring any receipts so upon further demands, the accused brought two additional receipts. He added same to the earlier two and took them to NCA office in Takoradi to verify their authenticity. He went to Takoradi on 09/07/21 and presented the receipts but the officers at post; the Manager, Accountant, and Technician declared the receipts fake as well as the invoices after they had

strenuously examined them and cross checked them with their records. The faked documents were forwarded to Accra as the signature of the Director General had been forged on the documents. PW1 was made to understand that the FM was in arrears for 2019 annual mandate renewal fee of Six Thousand and Forty Five Ghana Cedis but that money was given to accused on the 9th and 15th August 2019 to go and settle that at Takoradi and he personally gave accused Five Hundred Ghana Cedis to cater for fuel and their travelling allowances. He continued that, the accused presented an NCA invoice in 2020 for the annual statutory fee of Six Thousand Five Hundred and Forty Five Ghana Cedis and he released money to accused to make payment but at the NCA office it was also revealed that no such charge was allocated to the FM to settle because they were not done with the processing of his application for renewal of operation's license. He stated that in 2020, the accused again lured him to release to him Forty Five Thousand Ghana Cedis as a five year authorization fee for the FM station reported submitted by NCA but there was no such charge and corresponding payment records at the NCA office and the five year authorization process was ongoing not ready as accused had informed him. He was informed by the NCA officers that no money will be paid by FM until the approval for the license was granted. So PW1 became well aware that accused had swindled him through fake invoices and payment receipts which in all amounted to One Hundred, Four Thousand and Ninety Ghana Cedis (Ghc 104,090) so he reported the matter to the police.

PW2 is an accountant clerk working for PW1 at St. Andrews Senior High School, Assin Foso. She shares the same office with accused so she sued to see accused with PW1 in the office. She has been banking all monies collected from the students as fees and other charges and that the school operates three banks at Assin Foso. She said on 10/11/2020, she was in the office when PW1 issued to her a cheque of Five Thousand Four Hundred

and Fifty Ghana Cedis to cash same from Fidelity bank and she did and brought same to him.

PW3 is the police detective Inspector who investigated into the case. He tendered in evidence the investigation caution and charge statements of accused and added that accused partly admitted liability and surrendered Twenty Thousand Ghana Cedis. He tendered in evidence one fake NCA invoice, two fake NCA payment receipts, one original NCA invoice, one fake NCA official brown paper envelop, letter submitted to NCA headquarters, Accra to authenticate the reported fake invoice and receipts, the response letter on the fake exhibits, and cash exhibit. It is noted that in the course of the trial, accused paid Forty Six Thousand Ghana Cedis to prosecution for PW1.

THE DEFENCE

Accused testified and stated that he has been responsible for the general operations of the FM station and he assists in marketing. He said sometime in 2021, PW1 called him to his office and showed him an invoice from NCA and after some discussion on the invoice, they decided to make payment when the stipulated time was due. So PW1 issued a cash cheque to him as he usually does and he went with the FM station driver to Takoradi. He said when they reached NCA office, he presented the invoice to the accountant called Stephen for authentication and the accountant said the payment was in respect of a fine for breach of spectrum so that would not be paid in bank. According to accused, the accountant requested for the cash and issued receipt for the amount paid. So upon return to the office he showed the receipt to PW1 and kept same in the NCA file in our office. He said at another time in May 2021, another invoice came from NCA in respect of breach of link transmission. They both were surprised at the invoice but after discussions PW1 agreed to make payment on the due date. PW1 issued a cash cheque to him for withdrawal and for payment to NCA at Takoradi

EVALUATION OF EVIDENCE, FINDINGS OF FACT AND APPLICATION OF LAW

Section 125 of Act 29/60 and it defines stealing as:

"A person steals who dishonestly appropriates a thing of which that person is not the owner".

In the case of **The State vs. W. M. Q. Halm and Aryeh Kumi Crime App Nos. 118/67 and 113/67, 7 August, 1969; (1969) CC155**, the court per Akufo Addo, C. J., Ollenu, Apaloo, Amissah JJ.A and Archer J stated the three essential ingredients to proof in a charge of stealing under our criminal law as:

"i) That the person charged must not be the owner of the thing allegedly stolen;
ii) That he must have appropriated the thing
iii) That the appropriation must have been dishonest".

See also **Criminal Law of Ghana, P. K. Twumasi, page 20 paragraph 2**

Here, prosecution is to lead evidence to prove beyond reasonable doubt that accused is not the owner of the 50mm and 120mm aluminium cables and that it was accused person who stole the cables belonging to the company.

For the purposes of understanding what appropriation means, the court refers to **Section 122(6) of Act 29/60** which defines appropriation as:

"Appropriation of a thing in any other case means any moving, taking, obtaining, carrying away, or dealing with a thing, with the intent that a person may be deprived of the benefit of the ownership of that thing or of the benefit of the right or interest in the thing, or in its value or proceeds or part of that thing."

Here, there must be moving, taking, obtaining, carrying away but with the intention of depriving someone who owns or has an interest in the thing.

PW1 testified that accused persons took her hand bag from her and carried it away. She initially attempted to return to her car but she was prevented and they chased her around her car before they took the car and she fell down. She shouted for help but it was raining and when help came the accused persons with their accomplices had already bolted away in the taxi cab.
I therefore find that accused person appropriated the Techno smart mobile phone from PW1 dishonestly and that he stole the items from PW1 with force.

In the case of **BEHOME V. THE REPUBLIC (1979) GLR 112** it was held that one was guilty of robbery if there is evidence that in stealing, he used force or caused any harm to the person with intent to prevent or overcome resistance of that or any other person in the stealing of the thing.

And in Black's Law Dictionary, 8th Edition, Robbery is defined as;

> ***"The illegal taking of a property from the person of another or in the person's presence by violence or intimidation - aggravated larceny..."***

Then in "Criminal Law" by Rollin M. Perkins & Ronald N. Boyce (3rd ed 1982) Robbery is defined as:

> ***"Robbery is larceny from a person by violence or intimidation. It is a felony both at common law and under modern statutes. Under some of the new penal codes robbery does not require the actual taking of property. If force or intimidation is used in the attempt to commit theft this is sufficient."***

Here, PW1 testified that accused persons used a sharp object to cut her right arm where she started bleeding profusely. Prosecution tendered in evidence the medical expenses, photographs of the wound and corroborative evidence from PW2 that PW1 was rushed to the hospital because of the wound and she was admitted and treated. When she was discharged, she went to the police station and she was able to identify the accused persons as among those who attacked her.

The evidence of PW1 and PW2 were coherent and without any contradictions and the court accepts their evidence as credible. In the like manner the evidence of PW3 is accepted as credible as accused persons were not able to discredit his evidence through cross examination.

In the instant case, the accused persons successfully subjected PW1 to a terrible harm by attacking PW1 with a sharp object and cutting her right arm. Accused persons forcibly took her hand bag from her and bolted with it which completed the act of robbery.

It is enough if the victim is threatened with criminal harm or assault with the intent of putting fear of such assault in the victim. See **R VRS MENUAH AND DADE (1957) 2 W.A.L.R. 348.** In the instant case, PW1 was attached with a sharp object and harm was inflicted on her right arm causing her to bleed profusely.

Therefore, the court can safely infer that accused persons used force to steal from PW1 and harmed her cutting her arm deeply for her to bleed profusely making her loose consciousness. Prosecution tendered in evidence photographs of PW1's arm which show how PW1 was harmed through the sharp object used to attack her.

The pictures corroborate PW1's evidence that she was attacked and subjected to harm by the accused persons.

In **BAHOME VRS THE REPUBLIC** supra at holding 5 thereof the court stated in dictum that:

> ***"Under section 150 of Act 29, A. would only be guilty of robbery if in stealing a thing he used any force or caused harm or used any threat of assault to B with intent thereby to prevent or overcome the resistance of B. or C. to the stealing of the thing.--------- And the thing stolen must be from the person of the one threatened or in his presence, if the property was under his immediate and personal care and protection."***

It is not in dispute that until the attack, the hand bag was under the immediate possession and control of PWI the victim. So in order for the accused persons to have control and possession they had to apply force on PW1 for her to relinquish her control and possession to them.

It is noted that accused persons were not able to discredit the evidence of prosecution but prosecution was able to prove all the elements of robbery against the accused persons and thus the evidence of prosecution is accepted wholly as credible.

From the prosecution evidence the accused person used a sharp object to attack PW1's arm causing he so much harm.

Section 149(3) of Act 29 gives the meaning of offensive weapon as any article adapted for use to cause injury to the person. Here, a cutlass is an article that can cause injury or damage. PW1 indicated that accused person used a sharp object and from the pictures tendered in evidence, she had deep cut on her right arm. The pictures show bleeding from the wounds. I therefore find that accused person caused damage to PW1 through an offensive weapon.

With that I move to the charge of conspiracy to commit robbery.

Conspiracy is defined under ***Section 23 (i) of the Criminal Offences Act, 1960.*** It states as follows:

> ***"If two or more persons agree or act together with a common purpose for or in committing or abetting a crime, whether with or without any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet that crime as the case may be".***

The Prosecution was thus expected to establish the following ingredients:

1. **That there must be two or more persons.**
2. **That the persons must either agree or act together.**
3. **That they held a common purpose and;**
4. **That the common purpose must be either to commit or abet a crime.**

To satisfy the ingredients, the Prosecution led evidence through the PW1, PW2 and PW3 whose testimony established that A1 and A2 with other persons who are on the run in common purpose acted together and attacked PW1 then bolted away with her hand bag forcibly. That A1 was the one driving the taxi cab and A2 is among the men who used a sharp object to cut the right arm of PW1.

In the case of **FRANCIS YIRENKYI V. THE REPUBLIC [2017-2018] 1 SCGLR 433**, the Supreme Court held that conviction could be obtained by the establishment of any of the three ingredients under Section 23(1) of Act 29 and reiterated as follows:

> "However, under the new formulation, the offence of conspiracy could be established by only one ingredient namely the agreement to act to commit a substantive crime, to commit or abet that crime. The effect therefore was that the person must not only agree or act, but must agree to act together for common purposes."

On the ingredient that the persons must act together, PW1 in her testimony showed how APs together with their accomplices came up to her and attacked her and took away her hand bag making her fall then a sharp object used to cut her right arm.

Therefore, prosecution could successfully prove the charge of conspiracy to commit robbery beyond reasonable doubt against APs.

Having so held, I turn to the last charge which is causing unlawful harm.

Section 69 of Act 29, Criminal offences 1960 provides that: "a *person who intentionally and unlawfully causes harm to any other person commits a second degree felony.*

In order to ground a conviction, the prosecution would have to lead sufficient evidence beyond reasonable doubt that the accused person;

- Intentionally caused harm to PW1.
- That the act was unlawful

What then is harm?

Harm is defined under the interpretation **Section of Act 29, 1960 Section 1** to be;

"harm" means any bodily hurt, disease, or disorder, whether permanent or temporary."

Here, prosecution is to prove beyond reasonable doubt that whatever happened to PW1 was harm which can be any bodily hurt, disease, disorder whether permanent or temporary

Here, a burden is cast upon the prosecution to prove each and every one of the above two ingredients beyond a reasonable doubt that the accused persons with intent to harm PW1 attacked her, snatched her bag making her to fall down, and then using a sharp object to cut her right arm.

The photographs, medical record, receipts and laboratory results all corroborate the evidence that PW1 was harmed. The extend of harm can even be ascertained by just looking at the photographs.

I hereby find as a fact that PW1 was touched by accused persons without her consent and caused bodily harmed to her making her bleed profusely.

Further, prosecution is to prove that the harm caused to PW1 was done intentionally by accused persons.

The provisions relating to intent is given under **Section 11 of Act 29/1960. Subsection (1)** provides that**:**

(***1) If a person does an act for the purpose of thereby causing or contributing to cause an event, he intends to cause that event, within the meaning of this Code, although either in fact or in his belief, or both in fact and also in his belief, the act is unlikely to cause or to contribute to cause the event.***

Also, the learned author **P.K. Twumasi in his book Criminal Law in Ghana p77 stated that:**

> "The general principle of our law is that intention, like many other states of mind, is incapable of direct proof; it is always inferred from proven facts. This is a principle of English common law which has been accepted as an important principle of our criminal law."

Here, intention can only be inferred from the proven facts where prosecution has to prove that the accused person's actions caused harm to PW1 whether she believed or not that their actions would cause such harm.

It is noted that accused person harmed PW1 because they wanted her to release to them her handbag. Here, the intentions of accused persons are so clear as the unlawful harm occurred because of accused persons intention to rob PW1.

Was the harm reasonably foreseeable by the accused person?

Any reasonable man can come to but one conclusion that if a sharp object is used to cut the arm of another, that person will be hurt or harmed. Especially so where she was attacked by accused persons and their accomplices and made to fall down. This presupposes that accused persons knew that their actions can cause harm to PW1 to enable them rob her successfully.

I therefore find as a fact that accused persons reasonably foresaw the harm they caused to PW1.

The next issue is whether or not the act was unlawful. This indicates the availability of defences of justification such as self-defence and consent of the complainant of that harm.

Section 76 of Act 29 Criminal offences Act 1960 defines unlawful harm as:

"Harm is unlawful which is intentionally or negligently caused without any of the justifications mentioned in Chapter one of this part."

At this stage, the evidence of defence is determined by the court to see whether it satisfies any of the justifications mentioned in the Act or whether the evidence adduced by accused persons and the witness raise a reasonable doubt in prosecution's case.

Under the Evidence Act supra what is generally called the burden of proof has two elements. They are the burden of persuasion and the burden of producing evidence. Here, the two are not the same. The burden of persuasion as provided in Section 10 of the Act involves the establishment of a requisite degree of belief concerning a fact in the mind of the court; or that the party raises a reasonable doubt concerning the existence or non-existence of a fact, or that the party establishes the existence or non-existence of a fact. This burden is on both the prosecution and the defence.

Accused person testified that

In **TSATSU TSIKTA V. THE REPUBLIC [2003-2005] 1 GLR 296**, the court held that "the standard of proof of the prosecution must be attained at the close of its case in order to warrant an accused person to be called upon to make a defence was not proof

beyond reasonable doubt because that was the ultimate burden that the prosecution assume in the entire case.

This burden of introducing evidence was shifted to the accused person when he was called to open his defence or to raise a reasonable doubt and this is emphatically covered under **Section 17 of the Evidence Act NRCD 323**.

See also **COMMISSIONER OF POLICE VRS ANTWI (1961) GLR 408.**

Moreover in the case of **ALI YUSIF ISSA (NO.2) VRS THE REPUBLIC [2003-2004] SCGLR 174** where it was held that; "…even though an accused person was not required to prove his innocence during the course of the trial he might risk of non-production of evidence and or non-persuasion to the required degree of belief particularly when he was called upon to open his defence."

In **LUTERRODT V COMMISSIONER OF POLICE [1963] 2 GLR 429**, the court held that "where the determination of a case depends upon facts and the court forms the opinion that a prima facie case has been made, the court shall proceed to examine the case for the defence in three stages:

1. If the explanation of the defence is acceptable, then the accused should be acquitted.

2. If the court should find itself unable to accept, or if it should consider the explanation to be not true, it should then proceed to consider whether the explanation is nevertheless reasonably probable, it is should find it to be, the court should acquit the defendant and

3. Finally quite apart from the defendant's explanation or the defence taken by itself, the court should consider the defence such as it is together with the whole case i.e prosecution and defence together, and be satisfied of the guilt of the defendant beyond reasonable doubt before it should convict, if not it should acquit."

Here, accused person testified that he was given money by his father to buy provision for school and upon his return he met one Godfred at the station who told him he was selling the phone for Ghc250 and he paid Ghc150 instead. Under cross examination of the accused he answered among others the following questions:

Q. In you evidence in chief you said your father gave you money to buy provisions for school meanwhile you first mentioned that you completed school in 2019.

A. I went to railway school to write remedial because my results was not good.

Q. But you did not attend school at railway. Is that not so.

A. Yes, I only went to write exams.

Q. I put it to you that you are not a student and that you have not been to school since 2019.

A. Yes.

With this line of questioning, the prosecution was able to collapse the evidence of accused person that he was a student and that he got money from his father for his school provision. The accused further failed to call any witness or his father to testify on his behalf to corroborate that he was given money to buy provisions.

The accused further testified that he purchased the phone at Ghc 150 with the remainder of the money given to him to buy his provisions for school. Meanwhile in his caution statement, he stated that he bought the phone at Ghc 120 but made a down payment of Ghc 50 and promised to pay the balance from profits gained from selling coconut.

It is noted that accused had earlier given his age as seventeen years where he was sent to a juvenile court. It was at the juvenile court that it was revealed that he was not a juvenile as he is above eighteen years of age. Under cross examination, accused admitted that he lied to police regarding his age and confirmed that he is nineteen years old.

Furthermore, accused person is seen as not been credible as his testimony was discredited by prosecution. He had earlier stated in his evidence in chief that Godfred is his friend but later he denied that he is his friend. His entire evidence was so discredited that it was difficult and painful listening to him.

Also, the answers he gave contradicted his own caution statement even though his caution and charge statements were unsworn evidence.

In **STATE V OTHER (1963) 2GLR 463,** it was held that a witness whose evidence on oath is contradictory of a previous statement made by him whether sown or unsworn, is not worthy of credit."

Also in the case of **BUOR V THE STATE (1965) GLR 1,SC** it was held that if a witness has previously said or written something contrary to what he testifies at the trial his evidence should not be given much weight.

The court therefore does not put much weight on the evidence of accused person and find his evidence not credible because of all the inconsistencies and contradictions.

Hence, accused person was not able to raise a doubt in prosecution's case and could not also discredit the evidence of prosecution.

Facially, accused looks like a juvenile as a result the court takes interest in this and will want to address that issue in this judgement. Section 1 of the Juvenile Justice Act, 2003, Act 653 states as follows:

"for purposes of the Act, a juvenile is a person under eighteen years who is in conflict with the law". Here, any person above the age of eighteen years is an adult and is capable to stand trial and be convicted and sentenced as any adult in conflict of the law. Prosecution tendered in evidence a letter from the former school of the accused person and the date of birth in the said exhibit from the school register is given as July 1, 2002. Under cross examination, accused person was asked the following question:

Q. Can you mention your date of birth to this court?

A. It is May 21, 2002.

However, in his caution statement, accused stated that his date of birth is July 1, 2002. One thing that runs through all the three dates given above is the year 2002. The court therefore is finds as a fact that the accused person was born in the year 2002 hence he is nineteen years old and capable to stand trial.

I have considered accused person's caution statement, charge statement and testimony and find that accused person failed to discharge the burden of persuasion placed on him and he was not able to raise a reasonable doubt as to his guilt as required of him under **Section 13(2) and 14 of NRCD 323** supra.

DISPOSITION/HOLDING

I therefore find as a fact that accused person did rob PW1 of her techno smart mobile phone with an offensive weapon ie the machete.

The Accused Person is thus found guilty of the offence of Robbery **Contrary to Section 149 of Act 29, 1960** and I hereby convict him.

PRESENTENCING HEARING

I have considered that accused person is not known for similar offences. However, I have taken into consideration the gravity of his offence and the permanent damage he has caused to PW1 with the machete on her face. I have also noted the prevailing wave of robberies in the Region and the court wants the accused person to learn from his offensive conduct and to return from his incarceration reformed to contribute meaningfully to the community, the society and the nation at large.

Accused person is thereby sentenced for count 2, twenty (20) years IHL and for count one accused person is acquitted and discharged.

H/H DORINDA SMITH ARTHUR (MRS.)

CIRCUIT COURT JUDGE

ACCUSED PERSON PRESENT.

PROSECUTOR: C/INSP GILBERT ANYONYO PRESENT.