

BEFORE HER HONOUR GLORIA N.B. LARYEA SITTING AS CIRCUIT COURT  
JUDGE AT THE CIRCUIT COURT, MANKESSIM ON THE 17<sup>TH</sup> DAY OF  
OCTOBER, 2022.

Suit No.: B1/ 76/2022

THE REPUBLIC

Vrs.

1. SUMAILA ALI ... 1<sup>ST</sup> ACCUSED PERSON

2. EMMANUEL ARTHUR

Alias KOJO ARTHUR ... 2<sup>ND</sup> ACCUSED PERSON

3. ISAAC ANTWI

Alias KWESI AWOTWE ... 3<sup>RD</sup> ACCUSED PERSON

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JUDGMENT

The three accused persons were charged with the following offences namely conspiracy to commit robbery, contrary to sections 23 (1) and 149 of the Criminal and Other Offences Act, 1960 (Act 29) and robbery contrary to section 149 of Act 29.

Particulars of the offences are that the three accused persons conspired and robbed the complainant of an amount of GHC 650.00 while wielding a cutlass. It should be appreciated that on their first arraignment before this Honourable Court, the 1<sup>st</sup> accused maintained his innocence while the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons pleaded guilty without hesitation to both charges. The 2<sup>nd</sup> and 3<sup>rd</sup> accused persons were accordingly convicted and sentenced. At the delivery of this judgment, it is expected that the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons are serving their custodial sentences in prison. In order that justice

must not only be done but must be manifestly and undoubtedly be seen to be done, the Court embarked upon a full trial to afford the prosecution the opportunity to rebut the presumption of innocence in favour of the 1<sup>st</sup> accused person who had pleaded not guilty to the charges. Article 19 (2) ( c ) of the Constitution of the Republic of Ghana, 1992 provides that a person charged with a criminal offence shall be presumed innocent until he is proved or has pleaded guilty; see **the Republic v. Francis Ike Uyanwune [2013] 58 GMJ 162 at 177.**

In much sympathy with the situation at hand, the Court undertook to approach the trial in a manner to avoid any prejudice against the 1<sup>st</sup> accused. For it was easy for prejudice to arise against an accused person whose fellow co-accused persons had admitted their guilt while he stood alone on a pedestal of innocence.

The facts leading to the arrest of the accused persons are briefly stated as follows; the 1<sup>st</sup> accused is a tricycle rider while the 2<sup>nd</sup> accused is his mate. The 3<sup>rd</sup> accused is a friend to the 1<sup>st</sup> and 2<sup>nd</sup> accused person. The complainant is a scrap dealer. At 5:00pm on the day in question, the complainant boarded the tricycle of the 1<sup>st</sup> accused. The 1<sup>st</sup> accused informed the complainant of the presence of scrap metal in the bush. The 1<sup>st</sup> accused had planned with the 2<sup>nd</sup> and 3<sup>rd</sup> accused to rob the complainant in the said bush. The 2<sup>nd</sup> and 3<sup>rd</sup> accused persons were therefore lying in ambush in the bush when the 1<sup>st</sup> accused led the complainant into the bush. The 2<sup>nd</sup> accused had covered half of his face and was holding a cutlass while the 3<sup>rd</sup> accused wielded a wooden board. The 2<sup>nd</sup> and 3<sup>rd</sup> accused threatened to chop off the hand of the complainant if he did not hand over his cash sum of GHC 650.00 to them. The complainant took to his heels. The 2<sup>nd</sup> and 3<sup>rd</sup> accused chased him and robbed him of the said amount. The complainant managed to unveil and identify the 2<sup>nd</sup> accused. The complainant informed the nearby town of Waakrom of his ordeal. The three accused persons were later seen riding together in the

tricycle of the 1<sup>st</sup> accused. They were arrested and the following items were retrieved from the bush;

1. an amount of GHC 520.00;
2. Two MTN sim cards;
3. A black cap;
4. a hand glove; and
5. a wooden board.

The definition of conspiracy in our law is contained in section 23 of Act 29 and it is:

*"(1) where 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 commits a conspiracy to commit or abet the criminal offence."*

Section 150 provides with regard to robbery as follows:

*"150. 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 the intent to prevent or overcome the resistance of the other person to the stealing of the thing."*

The burden which lay upon the prosecution was to establish against the 1<sup>st</sup> accused not only the conspiracy to rob the complainant but also the direct participation of the 1<sup>st</sup> accused in the robbery. In other words, the prosecution would be entitled to a conviction if they proved that the 1<sup>st</sup> accused agreed and acted together with the 2<sup>nd</sup> and

3<sup>rd</sup> accused persons in using force to steal an amount of GHC 650.00 from the complainant: See the case of **Logan & Laverick v. the Republic [2007-2008] 1 SCGLR 76 at page 83.**

In this case the evidence led by prosecution in support of the aforementioned charges was provided by two prosecution witnesses. PW1 the complainant told the Court that he was a customer of the 1<sup>st</sup> accused in the trade of metal scraps. On that fateful day, at about 11:00am he bought GHC5.00 worth of scraps from the 1<sup>st</sup> accused. On that same day at about 5:00pm, the 1<sup>st</sup> accused met him and informed him of the presence of scrap metal in the bush. The 1<sup>st</sup> accused led him to the bush ostensibly to show him the scrap metals. When they got to an abandoned site in the bush, the 2<sup>nd</sup> accused wearing a mask and waving a cutlass and the 3<sup>rd</sup> accused holding a piece of wooden board appeared from the bush. He run out of fear. The 2<sup>nd</sup> and 3<sup>rd</sup> accused caught up with him. The 2<sup>nd</sup> accused held his arms behind him and pushed him to the ground while the 3<sup>rd</sup> accused took the amount of GHC 650.00 from his pocket. The 1<sup>st</sup> accused looked on unconcerned. After the robbery all the three accused persons fled the scene and boarded the tricycle of the 1<sup>st</sup> accused. PW1 recapped how he run to the town and the accused persons were captured on board the tricycle of the 1<sup>st</sup> accused.

The evidence of PW2 (the investigator) was that the 1<sup>st</sup> accused took PW1 into the bush and left him there to be robbed by the 2<sup>nd</sup> and 3<sup>rd</sup> accused. After the 2<sup>nd</sup> and 3<sup>rd</sup> accused had robbed PW1, they reunited with the 1<sup>st</sup> accused at Waakrom Junction.

The testimony of the 1<sup>st</sup> accused in his defence was that indeed PW1 bought scrap metal from him that morning and they had arranged to go into the bush around 4:00 pm to inspect more scrap metal. According to the 1<sup>st</sup> accused, he informed the 2<sup>nd</sup> accused his mate of the intended visit to the bush. The 1<sup>st</sup> accused said that day he had a job to convey charcoal for a certain woman. He picked up PW1 into the bush and showed him

the scrap. The 1<sup>st</sup> accused testified that he left the PW1 in the bush to attend to some other business. He went to buy fuel and convey the charcoal. The 3<sup>rd</sup> accused called him and asked the 1<sup>st</sup> accused of his whereabouts. Later, he met up with the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons and picked them up in his tricycle.

The 1<sup>st</sup> accused told the court that he only got to know about the theft when his sister called to inform him that PW1 was in their house looking for the 2<sup>nd</sup> accused whom he saw in their house in the morning. The 1<sup>st</sup> accused recalled that he immediately inquired from the 2<sup>nd</sup> and 3<sup>rd</sup> accused who confessed to the crime. However, at the police station he was later made a co-conspirator to the robbery though the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons had confirmed his non – involvement in the whole deed. The 1<sup>st</sup> accused called his sister as his sole witness and closed his case.

It is necessary in this trial to consider whether or not the 1<sup>st</sup> accused was conspirator in the robbery of PW1.

Upon consideration of the whole evidence, I think this is a case in which the prosecution must fail. The prosecution sought to establish its case by painting a picture of the 1<sup>st</sup> accused planning with the 2<sup>nd</sup> and 3<sup>rd</sup> accused to lure PW1 into their trap in the bush and subsequently robbing PW1 together. My full appreciation of the facts based upon the evidence is that indeed the 1<sup>st</sup> accused drove PW1 into the bush where the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons confessed to robbing PW1. It is now necessary to review the law of conspiracy before analysing the evidence so far adduced. In order to find out whether or not there is a common design, the court must look out for the overt acts that would unmistakably speak to a grand design to rob PW1 being executed by all three accused persons.

I have considered rather carefully the case of the prosecution and there appears to be a total lack of these overt acts that point to the 1<sup>st</sup> accused involvement in the plan of the

2<sup>nd</sup> and 3<sup>rd</sup> accused to rob PW1. The main and perhaps the only act of the 1<sup>st</sup> accused relied upon by the prosecution is that he drove PW1 into the bush. The Court found that he did so only in pursuance of their arrangement to inspect some more scrap in the bush. Besides the 1<sup>st</sup> accused is a commercial tricycle driver and his transports people in the normal course of his work.

PW1 conceded that apart from driving him into the bush the 1<sup>st</sup> accused did nothing while the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons robbed him. While the evidence shows that the 2<sup>nd</sup> and 3<sup>rd</sup> accused were fully geared up and armed for the operation, the 1<sup>st</sup> accused wielded no weapons nor did he attempt to hide his face. Even his lack of costume evinced his disassociation from the well-prepared 2<sup>nd</sup> and 3<sup>rd</sup> accused persons.

I also am constrained to observe that PW1 had a few challenges in expressing himself in Court in his special dialect of Zabrama. PW1 was wavering in his evidence concerning the exact role the 1<sup>st</sup> accused played in his robbery. At first PW1 said the 1<sup>st</sup> accused left him when the 2<sup>nd</sup> and 3<sup>rd</sup> accused showed up in the bush. Then he said the 1<sup>st</sup> accused stood there for a while and watched on unconcerned while he was being robbed. Later, PW1 said they all took off together and left in the tricycle of the 1<sup>st</sup> accused. Having heard PW1, it is unsure what actually happened that day. What is certain is that the 1<sup>st</sup> accused played no role in his robbery. Even if he stood there, which the Court doubts, it would not found a charge of conspiracy against the 1<sup>st</sup> accused. His mere presence at the scene of crime is insufficient; see **Hodgson v. The Republic [2009] SCGLR 642**. I therefore hold, even if it was the case that the 1<sup>st</sup> accused was at the crime scene. His mere presence does not make him a conspirator.

This brings the Court to the several liberties the prosecution took in presenting its case before the Court. The prosecution was unable to produce the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons the so-called co-conspirators of the 1<sup>st</sup> accused to testify of their criminal plan to

rob PW1. Admittedly, the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons are in prison. However, these convicts could have been procured by a warrant of Court to appear in Court and testify against the 1<sup>st</sup> accused. After all, if it is the case of the prosecution that the 1<sup>st</sup> accused conspired with these two convicts, are they not the best witnesses to testify to this fact. Admittedly, the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons by being in prison at the time of the trial were not easily available as ordinary witnesses but that did not make them unreachable. They were material witnesses to the case of the prosecution and the best endeavours should have been employed to get them in court. I call to the fore the case of the **Republic v. T O Asare [1968] GLR 93** where the Court held that the inconvenience and expenditure involved in calling a witness even from overseas are no excuse where a material witness has to be called to testify. I make a similar remark in this case.

I further find that having failed to produce the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons, the prosecution should have at least tendered in the investigation caution and charge statements of the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons in which they named the 1<sup>st</sup> accused as a co-conspirator. This total bereft of evidence on the part of the prosecution can only mean that they have no such evidence implicating the 1<sup>st</sup> accused in the offence. It is absolutely clear that the prosecution intended to rely only on the confession of the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons and the fact that they were apprehended after the act in the tricycle of the 1<sup>st</sup> accused. I must say at once that the confessions of the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons do not bind the 1<sup>st</sup> accused and I have accordingly disregarded same in the evidence against the 1<sup>st</sup> accused.

While the prosecution was struggling to make out its case by calling relevant witnesses, the 1<sup>st</sup> accused called his sister as a witness. Her testimony was instrumental in persuading the Court of the innocence of the 1<sup>st</sup> accused. She confirmed that when PW1 came to their house later that day looking for the 1<sup>st</sup> accused, he did not accuse him of robbing him. PW1 was rather looking for the 2<sup>nd</sup> accused whom he saw in their house in

the morning of that day. It must also be remembered that when the 1<sup>st</sup> accused maintained his innocence in the presence of the 2<sup>nd</sup> and 3<sup>rd</sup> accused, they did not raise the slightest protest of a partner in crime who had betrayed them. I am persuaded to believe that indeed even at the police station the 2<sup>nd</sup> and 3<sup>rd</sup> accused admitted that the 1<sup>st</sup> accused was not part of their plans. This is the testimony according to the accused.

As said before, the burden is upon the shoulders of the prosecution to prove the guilt of the 1<sup>st</sup> accused beyond all reasonable doubt. They failed woefully to discharge this burden.

After being left in a cloud of doubt by the prosecution, the Court is unable to accept the charges laid against the 1<sup>st</sup> accused person. For these reasons, I find the 1<sup>st</sup> accused not guilty of conspiracy to rob and robbery. He is accordingly acquitted and discharged on both Count 1 and 2.

In passing it must be said that the prosecution did not render a good account of themselves. The whole case was based upon the feeble legs of the 1<sup>st</sup> accused being a known associate of two persons who had admitted to a robbery. Even in the absence of no concrete evidence against 1<sup>st</sup> accused, the prosecution was determined to arraign him before this Court when the only offence the 1<sup>st</sup> accused was guilty of was keeping with bad company. The Court is inclined to think that the prejudices of the police against the 1<sup>st</sup> accused were far advanced to his detriment. This was a situation in which the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons were known associates of the 1<sup>st</sup> accused therefore in the eyes of the police he must have been entangled in the offence. In conclusion I would like to discourage the police from persecuting in circumstance such as the present case.

Accused acquitted and discharged.



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**HH GLORIA N.B. LARYEA**  
**CIRCUIT COURT JUDGE**