

IN THE CIRCUIT COURT HELD AT CAPE COAST ON WEDNESDAY THE  
23<sup>RD</sup> DAY OF NOVEMBER, 2022 BEFORE HER HONOUR VERONIQUE  
PRABA TETTEH (MRS.), CIRCUIT JUDGE

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Suit No. 71/2023

THE REPUBLIC  
VRS  
EBENEZER APPIAH

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**JUDGMENT:**

I will commence this judgment with an authority on the degree of proof the prosecution generally has in criminal cases. The Supreme Court in the case of *Banousin v Republic* (J3/2/2014) [2014] GHASC 10 (18 March 2014) explained that

What, “beyond a reasonable doubt” means is that, the prosecution must overcome all reasonable inferences favouring 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.”

**See also *Frimpong alias Iboman v Republic* [2012] 1 SCGLR 297**

The charge against the accused person is for robbery committed on the 20<sup>th</sup> of October 2022 at about 1:30 am at Nyinasin near Effutu. The accused is alleged to have robbed Stephen Ankomah a taxi driver of his Daewoo Matiz taxi cab with registration number GS 5942-19 valued at GHC35000.

Robbery is defined under section 150 of the Criminal Offences Act, 1960, Act 30.

**Definition of robbery**

150. A person who steals a thing is guilty of robbery, if in and for the purpose of stealing the thing he uses any force or causes any harm to any person, or if he uses any threat of criminal assault or harm to any person, with intent thereby to prevent or overcome the resistance of that or of any other person to the stealing of the thing.

This meaning has been given usage in several cases including Behome v The Republic [1979] GLR 112

“The prosecution must, of course, initially prove all the ingredients of stealing and thereafter prove the accompanying act or acts of aggravation which will turn it into robbery.”

In fact Osei Hwere referred to robbery as an ‘aggravated species of stealing’ which I find to be an apt description. Thus the prosecution in this case has to establish the following essential elements beyond reasonable doubt to succeed in their charge of robbery.

1. That the accused stole something from the victim of the robbery of which he is not the owner.
2. That in stealing the thing, the appellant **used force, harm or threat of any criminal assault on the victims.**
3. That the intention of doing so **was to prevent or overcome the resistance.**
4. 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 a restrictive sense.**
5. The thing stolen must be in the presence of the person threatened.

This is as per Justice Dotse in the case of Fuseini Vrs Republic (J3/02/2016) [2018]

In my opinion the fact that the accused appropriated the taxi is not in dispute. The accused admits to taking the complainants taxi and driving it all the way to some location at Elmina. Even if he had moved the vehicle by a few metres, the movement of same without the consent of its owner makes it stealing and I find as such.

Having established the unlawful appropriation of the taxi prosecution must establish that in stealing the thing, the accused **used force, harm or threat of any criminal assault on the victim.**

The main question which remains unanswered is at what point the robbery took place and the kind of aggravation that escalated the stealing to robbery. This refers to actions taken before the alleged robbery and after the force or threat had been applied. Both the accused and the complainant give different versions of the events that occurred before accused took away the vehicle. The

evidence of the second witness of prosecution is only relevant on the point that the accused refused to stop the car at the barrier and drove through it. That is not a charge that has been laid against accused and it does not help with the issue of the threat of harm with the knife prosecution claims accused used to overpower the complainant to steal the car.

The evidence of the complainant is that

“on reaching Nyinasini cemetery the accused suddenly held the steering wheel in an attempt to turn the taxi cab into the bush but I was able to use my leg to control the steering wheel. Accused started struggling with me in the car whilst the car was in motion. In the course of the struggle accused was able to lock the central lock and removed his mobile phone. I also took my mobile phone from him. Accused removed the ignition key whilst the car was still in motion. Accused pulled out two knives to stab me. I became frightened and opened the car and accused used his left leg to kick me from the taxi cab. I managed to pull out a cutlass from my taxi cab and used same to defend myself.

Accused struggled with me for about 3 minutes while I was shouting for help. This happened between 1:30 and 2:00 am. In the course of the struggle two identified persons emerged from nowhere holding sticks and metals and attacked me with implements. Accused took advantage of my beatings and moved the taxi cab towards Cape Coast.

So at the point of the accused moving the car, the complainant claims both he and accused were outside the vehicle. He the complainant was being attacked by two strangers and the accused then took over the car. It has not been suggested by prosecution that those two unidentified people were accomplices of the accused person. It means then that the two people were unrelated to either parties in this matter and their motivation for the attack on the complainant was not explained to the court. It is important to note that there appears there was never any communication between these so called strangers and the accused person at the time complainant claims he was being attacked.

Complainant's evidence on his attack by these people is that he was beaten with implements by these two people wielding sticks yet no medical report of any such injury has been shown to this court.

Accused denies that he attempted to stab the complainant or that he took the ignition key of the car. He claims he took the car to seek medical help after the

attack on him by the complainant. His version of what the events that occurred and led to his taking the car is as follows:

“He parked by the roadside, came towards me and asked to get out of the car. When he got down he did not close the door but his hand was still on the car door. So I demanded my phone from him. His attention was drawn to the phone and he asked me for the phone. When I stretched my hand to give him the phone he slashed my hand.

When he slashed me with the cutlass, I stayed in the car. He started to shout ‘thief’ ‘thief’. I remained in the car for about 40 minutes and he refused to move the vehicle to take me to the hospital. While sitting in the vehicle I started to lose consciousness, I became frightened because complainant was also not coming to the car. I noticed that the car keys were in the ignition I started the vehicle and I moved to look for medical help.”

These accounts differ greatly in that accused denies taking the ignition key and the only commonality in both narrations is that the complainant was not in the car at the exact moment the accused moved it. The complainant claims he was being beaten by two strangers and he was fighting them while the accused claims the complainant was outside the car and refused to move it so he could be attended to medically for the injury to his hand. Another point is the seizure of the phone by complainant and the retrieval of same by the accused. It is clear that at some point in the night, both parties had each other’s phone in the others possession. It is also necessary to add that the incident commenced sometime after 11:45 when the accused is said to have hired the taxi’s services.

It is true that the actions of the accused person that night were suspicious and this was borne out by his answers during cross examination. While his statement under oath was not significantly different from the statement provided to police, there were some facts that were left out of his evidence. Any such inconsistencies or omissions in the accused’ evidence in any case is not sufficient proof of commission of the crime since they do not in material, amount to an admission of the charge against him.

The threat for which reason the robbery charge is laid is because accused is said to have used a knife to threaten the complainant but I do not find sufficient evidence of this fact. This is not only because the said knife was not produced in court. Rather it is not clear how that happened and also what happened to the so called knives when accused took it out. Complainant stated the following

“Accused pulled out two knives to stab me. I became frightened and opened the car and accused used his left leg to kick me from the taxi cab. I managed to pull out a cutlass from my taxi cab and used same to defend myself.”

In this narration of the complainant, it is only the last bit about him pulling a cutlass to defend himself that is corroborated by the evidence tendered. It is certainly clear that the complainant was not stabbed or in any way injured by the alleged knives. So how was he threatened with the knives? It is clear from the picture of the interior of the vehicle that there are spots of blood possibly from the attack on the accused.

As to the knife itself not much evidence is given as to how the complainant over powered the accused and what happened to the knives after accused is said to have pulled it out. It bears mentioning that accused was not accused of disposing of the knife. So then what happened to the knives and what kind of knives were they at all. These questions are important because they are the very factors that aggravate the stealing to the offence of robbery.

Another interesting aspect of this case is that even though there is evidence that there was disagreement over the payment of the fare owed to the complainant and over the seizure of accused's phone by the complainant at no point in all their struggle was the mention of the demand by accused person to hand over the car. There is no reported language of the accused directed at the complainant to hand over his car to accused. At no point during the car ride did the accused demand the complainant to hand over his car to him. This is in the view of the fact that the accused and complainant were in the vehicle from 11:45 pm to about 2:00 am. At no point has prosecution suggested that the accused demanded for the car. Rather it appears complainant's request to be paid led to a fight between the parties where the complainant slashed the hand of the accused with a cutlass.

Robbery of taxi cabs are not uncommon in Ghana and in fact there are several Supreme Court decisions dealing with appellants seeking to overturn robbery convictions. In the case of Faisal Mohammed Akilu vrs The Republic Criminal Appeal NO. J3/ 8/ 2013 5<sup>TH</sup> July, 2017 the accused persons who attempted the robbery numbered three (3) and were unequivocally in their orders directed at the taxi driver to hand over his vehicle with the threat of shooting him with a gun if he failed to do so. In the High Court case of Republic v Akadro and another which has facts similar to the instant case the court stated the following

*Above all I am of the humble view that the story told by the Accused persons as to how the car got crashed into the wall was more probable than what the Prosecution said. In deed any serious car snatcher will not be fighting over fares any way. This is because he knew he will not be paying any fare after all. Secondly, considering the rounds the P.W. 1 told the court he made before seeing the snatched car, accused who lived in Madina and at about 10.30 p.m. when most roads are clear, would have left Madina area without any trace.*

I find myself with similar unanswered questions at the close of the case which have not been sufficiently answered. For instance why would a car snatcher head back into town where the probability of him being spotted by one of the colleagues of the complainant is high. This same robber as police told this court was able to convince the complainant who was suspicious of him to drive him to accused's wife in Abura to collect the fare even after complainant had called a police friend to report accused. Not only that accused pretended or was indeed asleep in his car at some point. The fight over the phone as well as the fare itself and the amount of time spent with the complainant that is about 2 hours are facts which raise reasonable doubt. Again accused's version of how he was arrested was uncontested due to the absence of the persons who apprehended him; which was that he had stopped and attempted to seek medical help and while trying to move the car when it was rammed by the taxi.

As has been relied on countless times, the case of *Amarthey v The State* [1964] GLR 256 proves invaluable in a case such as this where it is the word of the accused person as opposed to the victim/ complainant or prosecution witnesses.

*"where a question boils down to oath against oath, especially in a criminal case, the trial judge should first consider the version of the prosecution, applying to it all the tests and principles governing credibility of witnesses; when satisfied that the prosecution's witnesses are worthy of belief, consideration should then be given to the credibility of the accused's story, and if the accused's case is disbelieved, the judge should consider whether, short of believing it, the accused's story is reasonably probable".*

I find there to be inconsistencies regarding the prosecution's version of the even that led to accused driving away the car. I am not satisfied that sufficient evidence has been led to establish that accused threatened or attempted to stab the complainant in an effort to steal the car. I find instead that accused was attacked with the cutlass and that the parties did struggle over their phones and the fare. In conclusion a charge of stealing has been made against the

accused person in respect of him moving the car to Elmina. He is thus convicted on the lesser offence of stealing and sentenced to spend five (5) years in prison custody.

(sgd)

**H/H VERONIQUE PRABA TETTEH (MRS)**

**(CIRCUIT JUDGE)**