

IN THE CIRCUIT COURT HELD AT YENDI ON WEDNESDAY 23RD NOVEMBER 2022, BEFORE HIS HONOUR ANTHONY ADUKU-AIDOO ESQ, CIRCUIT COURT JUDGE.

COURT CASE No. CT/11/2021

REPUBLIC

VRS

ALHASSAN MOHAMMED

J U D G E M E N T

Introduction

The accused person was charged with one count of robbery, contrary to *section 149 of the Criminal and Other Offences Act, Act 29, 1960 (as amended)*. The accused person pleaded not guilty to the charge and the case proceeded to trial. This is the judgement of this trial court.

Facts of case

The facts of the case as presented by prosecution to this court are that the complainant, Nbobiche Akwesi, in this case is a business man residing at Bekambombe a suburb of Tatale, while the accused person Alhassan Mohammed is a Fulani herdsman residing at Zabzugu. On 29th September 2020 at about 9.00pm, complainant was in his house when the accused person and his two accomplices who are now at large came to him under the pretext of exchanging Thirty Thousand Ghana cedis (GH¢30,000.00) into CFA currency. As one of the accomplices of the accused was attempting to bring out the money from a bag he was carrying, another accomplice of the accused brought out a single barrel gun from the long coat he was wearing and pointed same on the complainant. Complainant gathered courage and pounced on the robber with the gun. Through the struggle between the complainant and the accomplices of the accused, the single barrel gun went off and caused damage to the water drum of the complainant. The wife of the complainant Akwasi Nigna also engaged another

accomplice of the accused. During the struggle, one of the accomplices took the Tecno phone of the complainant. Accused person who was then outside the house switched off the street light providing light to the house. Sensing danger, the accused person and his accomplices took to their heels with the Tecno phone of the complainant and abandoned their single barrel gun and Haojue motor bike with registration number M-18-UE-3341 and chassis number LC6PCJK28H0075790 behind. During investigations, Police went to DVLA to trace the owner of the abandoned motor bike. It however, came to light that the said number plate was fake. The original number plate was for a TV3 motor with chassis number M0625AF4641221551. On 15th November, 2020, the accused was arrested upon a tip off. The accused led the police to the house of his accomplice Ali Gani at Lanja, but he was not there. After police investigations, the accused was charged with the stated offence while the police make efforts to arrest the other accomplices.

Burden of Proof

Section 11(2) of the Evidence Act, NRCD 323, 1975, and as posited in the Supreme Court case of Fuseini v. Rep. (J4/32/2014) [2018] GHASC 28 (09 May, 2018), that the prosecution bears the burden of proving the guilt of the accused beyond reasonable doubt. And in accordance with the current practice directive, after the prosecution has done full disclosure and served the witness statements on the accused, it called four witnesses in its bid to prove the guilt of the accused to discharge its burden of proof.

The Prosecution's Case

PW1, Nbobiche Akwasi, the complainant, was the first witness the prosecution called. His testimony was that on 29th September 2020 at about 9.00pm, the accused person, Alhassan Mohammed, came to his house and knocked at his door. The accused was wearing a face mask, according to the witness. The accused told the witness that he wanted to exchange Thirty Thousand Ghana Cedis (GH¢30,000.00) into CFA. The witness demanded the money from the accused and as he attempted to remove the money from a bag he was carrying, his accomplice who was wearing a long coat,

suddenly, entered the house and pulled out a single barrel gun from his coat and pointed it at him. The witness gathered courage and pounced on the accomplice of the accused. A struggle ensued and the gun went off. The wife of the witness, who was then in the room came to her husband's aid. The light in front of the house was switched off. The witness overpowered the accomplice and collected the gun from him. Upon hearing the wife of the witness shouting for help the alleged robbers took to their heels into a nearby bush, leaving behind their Haojue 125-B motor bike with registration number M-18-UE-3341 which was parked outside the witness' house. The witness later called the stolen phone and one of the robbers answered and told him that "they have attempted me twice and failed, but they are assuring me that I should wait for the third time". He subsequently made a report to the police with the gun he collected from them. With that the witness ended his testimony.

PW2, Akwasi Nigna, the wife of PW1, is the next witness to be called by the prosecution. Her testimony was that on the said day, 29th September 2020 at about 6.00pm, two unknown men that she could identify came to their house looking for PW1. She informed them that PW1 was gone to the market and had not yet returned so they left. They returned after some time, after PW1 had returned from the market under the guise of wanting to exchange some CFA currency into Ghana cedis. One of them was standing by the door while talking to PW1 while the other was standing by a wall close to the entrance. PW2 was in the room with PW1. According to the witness, she heard the sound of a gunshot, suddenly. When she rushed out of the room she saw her husband, PW1 struggling with one of the unknown men. And immediately the other man saw the witness he chased after her and she started shouting for help. Before her neighbours could arrive, the men had escaped taking along her Tecno phone valued at Seventy Five Ghana cedis only (GH¢75.00). With that the witness ended his testimony.

PW3, Nbobiche Tinijo, a brother to the complainant was the next witness to be called. He was not at the scene of crime. But the significant testimony he gave in support of

the prosecution's case was that when he was informed that the men had taken away a phone belonging to PW2 he called the said phone taken away by the alleged robbers. According to the witness, one of the alleged robbers answered the call and told him that they would come back for their gun and kill PW1. He further testified that one of the robbers started calling with his personal number which was registered on "WhatsApp" and when the number was checked the picture of the accused person herein was shown as the profile picture for the contact. Consequently, that led to the arrest of the accused person herein. With that PW3 ended his testimony to this court.

The last witness to be called by prosecution was PW4, D/Insp Samuel Nyavor, the investigator of the case. His testimony was a corroboration of other testimonies already before this court in respect of this case. He further tendered the statutory statements as exhibits that were collected during the investigations by the police. Unfortunately, the investigating officer did not add any evidence of any probative value to build up the case for the prosecution. It was limited to the usual mundane presentation of statements that came to the possession of the police and not any evidence that the officer himself has unearthed to add up to solidify the case for prosecution. With that the prosecution closed its case.

Whether or not the prosecution has established a prima facie case

At the end of the case of the Prosecution, in accordance with section 174 of the Criminal Procedure Act, Act 30, (1960), it is incumbent on this court to find out whether, upon the evidence adduced by the prosecution against the accused, a prima facie case has been established to warrant the accused to proffer an answer.

On record, at the close of the case of the prosecution, it appeared like the accused person has been identified as one of the alleged robbers on the day in question who attacked the complainant. A prima facie case has been adequately made against him. The accused, was therefore offered the opportunity to state his side of the case in defence.

The case for the Accused

In entering his defence, the accused gave evidence himself and called two other witnesses in support of his defence. The evidence of the accused was that, he is herdsman and has known the complainant in the market for some time. According to the accused person, he did not know that such an incident had happen and the next day after the incident he met the complainant in market and they exchanged greetings without the complainant telling him anything. However, the accused person later heard about the alleged robbery on the complainant. Some two months after the incident the complainant came to the accused person to ask for the contact of one Gani which the accused person readily gave it to him. Later the complainant led some military personnel to come and arrest him for which offence he did not know and taken to the police station.

At the police station the accused was asked about the said Gani and he told the police where he could be found and later led the police to his house at Langer on the Bimbila road but he was not there. The accused was then sent to the Yendi Police station and later transferred to the Tamale Prisons on remand, where he had been since. He insisted that he was not there at the scene of crime nor was he part of the said alleged robbery. That was the testimony of the accused person.

The accused called DW1, Seidu Braima, a herdsman, in support of his defence. DW1's testimony was that the accused person is the son of his elder brother. He heard that some alleged robbery had gone on in which the robbers were demanding a ransom and later the said persons ran away. Some two months later DW1 was in the market with the accused person selling animals when the complainant came to the accused person to request to see through his phonebook on his phone for a contact he needed, which the accused person readily complied. After that the complainant came back with some military persons to arrest the accused person and took him away to the police station. And that was all that he knew in respect of this case.

DW2, Ibrahim Abubakar, a herdsman, was the second and the last witness the accused person called in support of his defence. His testimony was that they were in the market with the accused person when they came to arrest him. The witness did not know why the accused person was arrested and he was taken to Yendi. According to the witness, he does not know what led to the arrest of the accused person. With that he ended his testimony. And so did the accused person end his case in his defence.

The guilt of the Accused

The accused is charged with one count of robbery, contrary to **section 149 of the Criminal and other Offences Act, Act 29, 1960, as amended**. To this charge he pleaded not guilty, hence this trial.

Section 150 of the Criminal and Other Offences Act, Act 29, 1960, as amended, explains the offence of robbery thus:

“Section 150—Definition of Robbery.

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 or criminal assault or harm to any person, with intent thereby to prevent or overcome the resistance of that or of other person to the stealing of the thing.”

From the above definition of robbery, for prosecution to ground a conviction of the accused person, it has to prove beyond reasonable doubt that the accused person herein has stolen or appropriated a thing from another person and in doing so, he used force, caused harm or threatened the other person, all with the intention to overcome the resistance from that other person from whom the thing is unlawfully being appropriated.

The first hurdle that the prosecution has to clear in all criminal prosecutions is to satisfy the trial court that the person who stands accused before the court is the one

who purportedly committed the charged offence. In the case of *Razak & Yamoah v. the Republic* [2012] 2 SCGLR 750 the Supreme Court posited thus:

“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.”

In the instant case prosecution sought to identify the accused person through the testimonies of PW1, PW2 and PW3. This court intends to spend a bit of time to examine the evidence on record in this regard.

In his evidence-in-chief, PW1 testified in paragraphs 4 and 5 that the accused person herein, came to his house and knocked at his door on the day in question with a face mask on. It appears to this court that the accused person was identified by PW1 as one of the two unknown men who entered the house of the complainant purporting to exchange for CFA currency. But in cross-examination of PW1 by the accused person the following ensued in part.

Q. Was I the one who brought the money to be exchanged into CFA?

A. I know you. You were three (3) persons in number. You together with two other accomplices. The two persons came to me and you were at their back. You were the one who put off the street light in the area.

Q. Did you see me put off the street light.

A. When we were struggling it was my wife who saw you put off the light.

Further to that, PW2, the wife of PW1 in her evidence-in-chief testified that she saw the accused person putting off the street lighting outside the house. My concern is how the witness could manage to clearly identify the accused person as the one putting off the light in the street outside their house, while she herself, according to her testimony, was being chased around in their house, by one of the said unknown men and was shouting for help.

Again, PW3 testified that he identified the accused person's picture on the WhatsApp contact of one of the alleged robbers. Unfortunately, this court was not provided with that evidence beyond the witness just saying so. If there was anything of probative value in that statement, the investigator, PW4, would have presented same for this court's consideration. But more importantly, it appears to this court from that assertion by PW3, that the witness knows who the alleged robbers were and so ought to have provided more evidence in that regard for the consideration of this court.

Thus, on the identity of the accused person, PW1 said he was wearing a mask as he entered his house. He however, changed his assertion and came along with what his wife PW2 was saying. It therefore appears to this court that, even the two witnesses, who were at the scene of the crime, are either identifying two different persons or they are uncertain about the identity of the alleged offender. As a result, this court indeed, has a reasonable doubt as to the identity of the accused person who allegedly committed the crime.

However, granted that the accused person's identity is not in doubt, I would like to take a look at the particulars of the charge against him in this trial. For the sake of emphasis and clarity I would like to reproduce same here.:

"PARTICULARS OF OFFENCE

ALHASSAN MOHAMMED, AGE 39 YRS, HERDSMAN: For that you on 29th day of September, 2020 at about 9:00pm at Bekambombo a suburb of Tatale in the Northern Region and within the jurisdiction of this court, did steal the Tecno mobile phone of Nbobiche Akwasi valued Seventy-Five Ghana cedis (GH¢75.00) and for the purpose of stealing the phone, used threat of death with intent to prevent or overcome the resistance of Nbobiche Akwasi to the stealing of the Tecno mobile phone."

From the above particulars, the accused person herein is charged for stealing a Tecno mobile phone and for the purpose of doing so he used a threat of death. However, a

Careful reading of all the evidence on record before this court in this matter, does not reveal any indication that he had stolen any mobile phone and for that purpose any threat was used by him. At best the evidence against him by PW2 and to some extent PW1 is to the effect that he had put out a street light in the complainant's neighbourhood. This is not or does not suggest the stealing of a mobile phone as he is currently being charged.

Section 11, (1) and (2) of the Evidence Act, NRCD 323, 1975, reads:

“Section 11—Burden of Producing Evidence Defined.

(1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.

(2) 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 could find the existence of the fact beyond a reasonable doubt.”

Particularly from Section 11 (2) above, prosecution bears the burden of producing sufficient evidence to prove the identity of the accused and to prove that he has indeed committed the offence preferred against him. In the case Razak & Yemoah v. the Republic (supra) the Supreme Court sums up what is expected of the prosecution in the following passage in that case:

“This being a criminal trial, the onus was heavily on the prosecution to prove beyond reasonable doubts that on the day stated in the charge sheet, the appellants used force or threat of harm to any person or the complainants for the purpose of stealing their properties, that there was the intention to prevent or overcome the resistance of the complainant and lastly, and more importantly, that it was the accused who committed the offence of robbery on the prosecution witnesses, the complainants at the trial.” Emphasis is mine

From my analysis so far, prosecution has failed to prove beyond reasonable doubt that the accused person herein stole the Tecno phone and in so doing he used any force or threat to secure the phone from its owner.

Conclusion

Consequently, I find that prosecution has woefully failed to prove the guilt of the accused person herein, beyond reasonable doubt as required by law. In accordance with section 177 of the Criminal Procedure Act, Act 30, 1960, the accused person is hereby acquitted and discharged.

(SGD)

H/H ANTHONY ADUKU-AIDOO ESQ.

(CIRCUIT COURT JUDGE)