

IN THE CIRCUIT COURT '10 OF GHANA, ACCRA, HELD THIS
THURSDAY THE 27TH DAY OF OCTOBER, 2022 BEFORE HER HONOUR
EVELYN E. ASAMOAH (MRS)

CASE _____ NO.
D6/53/2022

THE REPUBLIC

VRS

1. EMMANUEL BADASU

2. BORTEY @ LARGE

CHIEF INSPR BENSON BENNEH FOR THE REPUBLIC
MR SAMUEL TSATSU TAMAKLOE FOR ACCUSED

JUDGMENT

• It is the case of the prosecution that, on 22nd September 2021, the accused persons robbed the complainant of his money, Huawei and Samsung A11 mobile phones- all valued at GHC 4,500 and a Toyota Corolla Saloon car with registration number GR 9150-17.

The accused persons were charged with the offence of conspiracy to commit a crime to wit robbery contrary to sections 23(1) and 149 of the Criminal and Other Offences Act, 1960 -Act 29. They were also charged with the offence of robbery contrary to section 149 of Act 29. The second accused person is at large. The first accused pleaded not guilty.

Section 11 (2) of the Evidence Act 1975, NRCD 323 states: "In a criminal action, the burden of producing evidence, when it is on the prosecution as to a fact which is

essential to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt."

In the case of Kweku Quaye Alias Togbe v. The Republic Criminal Appeal No. J3/08/2020 dated 28th July 2021, Prof. Mensa-Bonsu (Mrs.), JSC outlined the elements of the offence of robbery as follows:

"The offence of robbery is defined under section 150 of the Criminal Offences Act, 1960 (Act 29) thus: 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 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 Behome v. The Republic [1979] GLR 112, it was 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."

In its turn, the offence of stealing, which lies at the core of the offence of robbery, is defined in section 125 of Act 29 as "A person steals who dishonestly appropriates a thing of which that person is not the owner."

Therefore, the elements of the offence of robbery are:

- 1. The accused dishonestly appropriated a thing not owned by him or her, and in the care or custody of the victim;*
- 2. The accused used force or harm or threat of force on the victim or on the person of another;*

3. The force or threat of force or harm was intended to prevent or overcome any resistance to the stealing.

When these elements of the offence of robbery have been proved by the evidence, a prima facie case would have been made against the accused. It would then require the accused person to lead evidence to create reasonable doubt as to his guilt."

- The facts are as follows: On 22nd November 2019 at about 1:30 am, the complainant reported to the Sakumona Police that he was attacked whilst in his room by two men, wielding a machete and a mallet, who broke into the room damaging the main wooden door and succeeded robbing him of an amount of GHC 2,995, two mobile phones- Samsung Galaxy A11, Huawei and his official vehicle Toyota Corolla with registration number GR 9150-17, grey in color. The complainant after lodging the complaint mentioned that there was a tracker fixed in the stolen car and he was immediately made to contact his company for the car to be tracked. The police patrol team was furnished with the location of the car and together with the complainant and the witness, the car was tracked to Osu near the old America Embassy at about 2:02 am, where A1 was spotted with the car and he was arrested. The car was found without the number plates. The 'PHARMANOVA' company logo which was embossed on both front doors of the car completely defaced with file and paints by A1. The car was towed to Sakumono Police station for investigations. A1 denied the offences in his statements.

- The complainant contended that he was in his room on the day of the incident when two men entered his room with a machete and a big hammer. That one was slim and short in black jeans and the other was tough and tall. The robbers

took his GHC 95 and his car keys. His co-tenant entered the room when he heard an unusual noise. That his co-tenant was grabbed by one of the robbers and sent to his room. He was asked to sleep on the floor. Later they sped off with his official vehicle. That the robbers took his phones and laptops as well as GHC 2595. He called his boss and they tracked the car. They found the car at Osu. That the accused persons had removed the number plates and scrapped off the company's logo stickers embossed on the front doors of the car. The accused was seen with some screwdrivers working on the car.

The second prosecution witness, PW1's neighbour, testified that on 22nd September 2021 at about 1:00 am, he heard an unusual noise from PW1's room so he went out to check what was happening. Immediately he entered PW1's room, he was grabbed in the kitchen by the accused who requested that he takes him to his room and kept asking for money. His wife and children run and hid in the washroom when they heard them talking and approaching the kitchen door. that the accused was holding a cutlass and a hammer and hit his back with one of the objects. That he told the accused he had no money. The accused saw his techno spark 5 phone valued at GHC 700 and picked it up. He was then warned by the accused not to come out again or else he will shoot him. He heard a car move out of the house and when he came out, he realized it was PW1's car. he quickly drove PW1 and Richard to the Sakumono police station to report the incident. He added that he was later called by the police when the accused was arrested. When he got there the accused was undressed then he described what he was wearing which was a stripped pullover, jeans, and a hat. The accused attire was shown to him and it matched the description.

- The investigator stated that the accused was seen re-spraying the vehicle after defacing the company's stickers. That at the charge office, the accused was searched an amount of GHC 95.00 was found on him and it was identified by the complainant as having been stolen from his room.

- The accused person was called upon to open his defence after the court ruled that a prima facie case had been established.

The accused in his defence testified as follows: That he lives at Osu but farms in the Akuapem mountains. That he also sells drinks. A friend of his by name Ishmael, an auto mechanic sent someone by name Bortei to bring the car to him to take same to his old workshop for spraying. That the car was brought to him around 2:40 am. He noted that there was no number plate on the car. They were standing by the car when the police came to arrest him. That Bortei was not around at that time. He had gone out, purposely to bring the electrician. He asked the police officers to wait but they refused and brought him to the police station. that an amount of GH114 was in his pocket when a search was conducted on him. He indicated that he was not part of those who robbed the complainant.

- In this case, the accused was found in possession of the vehicle, a few hours after the incident. He was seen defacing the vehicle. Prosecution witnesses described the accused and indicated that he was at the scene of the crime. They described the clothes he wore, which they found at the police station. PW2 stated that the accused wore a striped pullover, jeans, and a hat and these were found at the police station.

PW2 on the day of the incident, when he went to his neighbor's room to check what was happening, the accused held him in the kitchen and took him back to his room. According to him, during cross-examination, he was able to identify the accused because he switched the light on and was facing the accused who then asked him for money.

- The facts reveal that PW1 and PW2 were with the accused for a considerable length of time and with the aid of the light, they were able to identify/ describe the accused person.

In the case of **Ignatius Howe V. The Republic Supreme Court Criminal Appeal Number J3/3/2013**, -dated 22nd May 2014 Justice Akamba JSC stated:

“The issue of identification is one of fact to be determined by the court. Hence in a criminal trial, the prosecution is obliged to lead evidence to identify the accused as the person who committed the crime for which he/she is charged. Identification may take several forms. It may be proved or disproved not only by direct testimony, or opinion evidence, but presumptively by similarity or dissimilarity of personal characteristics such as age, height, size, hair, complexion, voice, handwriting, manner, dress, distinctive marks, faculties or peculiarities including blood group, as well as of residence, occupation, family relationship, education, travel, religion, knowledge of particular people, places, or facts, and other details of personal history including identities of mental qualities, habits and disposition. (See Phipson on Evidence 10th edition, p. 170, para 1381) ...”

Phipson on Evidence, 15th Edition, paragraph 14-03, page 308 the authors stated:

“It is often important to establish the identity of a person who a witness testifies that he saw on a relevant occasion ... Thus, the reliability of visual

identification evidence will be greater if, for instance the witness saw the person on the relevant occasion in good light, from close up for considerable length of time, and the reliability will be less, if for instance, he was drunk when he witnessed the incident, he had not seen the person he knew for a long time or felt under pressure when asked to point someone out on a subsequent occasion..."

- The first accused person's caution statement – Exhibit C was tendered in evidence. He denied the charges. He alleged that on 22nd September 2021 at about 2: 30 am, one Bortey brought the vehicle and that it had developed an electrical fault so he should work on it. That Bortey gave him the ignition key of the vehicle. He started painting the sides of the car which had been embossed with the stickers. He added that Bortey told him that the car “was a Togo car and that he wants me to change the color to enable him to dispose of it off.”

He failed to lead the police to the said Bortey and Ishmael who allegedly brought the car to him.

- A1 admitted that he was working on the vehicle when the police team arrived, defacing the endorsement on the vehicle to conceal its identity. According to the investigator, the accused person led them to a spraying shop near the police hospital morgue where he allegedly got the paints, which he used to deface the embossment on the vehicle. However, all the apprentice and their masters denied knowing the accused.

The facts reveal that the accused person on the day of the incident at midnight entered the complainant's room with his accomplices, holding cutlasses, matchets, and other implements, and robbed the complainant of his phones,

laptop, official vehicles, and other items. The tracking devices installed in the vehicle assisted the police to locate the vehicle and arrest the accused who was seen defacing the vehicle in the night. The prosecution proved its case beyond reasonable doubt. The accused is hereby convicted of the offences stated on the charge sheet.

Taking into account the plea in mitigation of the first accused person, he is hereby sentenced as follows:

Count 1 – 15 years imprisonment in hard labour.

Count 2 – 15 years imprisonment in hard labour.

Sentence to run concurrently.

(SGD)

**H/H EVELYN E. ASAMOAH (MRS.)
CIRCUIT COURT JUDGE**