

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON
WEDNESDAY THE 9TH DAY OF NOVEMBER, 2022 BEFORE HER
HONOUR ENID MARFUL-SAU, CIRCUIT COURT JUDGE

CASE NO. D1/06/2023

THE REPUBLIC

VRS.

1.ALHASSAN IDDRISU
2.AND ONE OTHER (AT LARGE)

ACCUSED: A1 PRESENT

PROSECUTION: ASP. HANSON ARMAH PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

The Accused Person is charged with one count of Conspiracy to wit Robbery, one count of Robbery contrary to sections 23(1) and 149 of the Criminal Offences Act, 1960 (Act 29).

The facts as presented by Prosecution are that on 12th August, 2022 complainant and her granddaughter stood by the roadside at Ablekuma New Town waiting for a commercial vehicle to Accra. According to Prosecution, whilst waiting, an unregistered motor bike passed and suddenly turned advancing towards them. Prosecution says that A1 who was the pillion jumped towards them and pulled a machete concealed in his trousers and snatched complainant's handbag and sped off with his accomplice at large. Prosecution says that the complainant and granddaughter reported the case to the police and proceeded to Ablekuma curve where A1 works and informed his colleagues by giving a description of the Accused. According to Prosecution, the Accused was handed over to the Anyaa Police Station and based upon these facts he was arraigned before this court.

Prosecution called 3 witnesses in support of its case. PW1 was the complainant Patricia Serwaa, PW2 was Sara Korang Kinto and PW3 was D/C/Inspr. Kingsley Obiri Yeboah.

PW1 testified that she is a second-hand clothes dealer and on 12th August, 2022 at about 5:30am she was going to Kantamanto when she went out to stand in front of her house. She stated that the Accused was on a motor bike with another person and saw her standing there. She testified that they suddenly turned their motor towards her and on reaching where she was, they attacked her with a cutlass and snatched her bag containing GH¢2,000.00. She stated that she knows the Accused so she did not talk and the Accused went away, so at about 8:30am she went to search for the Accused at Ablekuma curve but did not find him. She added that she was told that the Accused had robbed some people at dawn so they volunteered to arrest the Accused for her. She testified that the Accused was later arrested at Omanjour and handed over to the Police. She tendered her Statement to Police as Exhibit A.

PW2 testified that she is seventeen years old and that on the day in question at about 5:00am she together with PW1 went to the roadside in search of a vehicle to Accra. She stated that while there, the Accused was sitting at the back of a motor bike being ridden by his accomplice and upon seeing them, they turned their motor bike in their direction. She testified that when they reached where they were standing, they attacked her and PW1 and ordered PW1 to surrender her handbag. She stated that PW1 handed over her bag and started crying so she informed her not to cry because she knows the Accused person. She testified that she reported to the police and her Statement was tendered as Exhibit B.

PW3 tendered the following which were admitted and marked:

- Exhibit C & C1: Charge Sheet and Brief Facts
- Exhibit D: Investigative Cautioned Statement of Accused
- Exhibit D1: Charge Cautioned Statement of Accused

On 13th October, 2022, this court found that a prima facie case has been made against the Accused and called upon him to open his defence to the Charges. The Accused testified on oath. His rather brief evidence was that he knew nothing about the charges levelled against him.

I shall first deal with count 2 which is a charge of Robbery. Section 150 of Act 29 which is titled 'Definition of Robbery' states as follows:

"A person who steals a thing commits robbery

(a) If in, and for the purpose of stealing the thing, that person uses force or caused harm to any other person, or

(b) If that person uses 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."

There is direct evidence from both PW1 and PW2 that it was Accused together with another person who were on the motor bike who stopped to attack them and take the bag of PW1. PW1 and PW2 both state that they knew Accused prior to the commission of the offence. The Accused person also admits that he knows both PW1 and PW2. During cross examination, the case the Accused put across was that his identity was mistaken.

In the Unreported Supreme Court case of **IGNATIUS HOWE V THE REPUBLIC CRIMINAL APPEAL No J3/3/2013 dated 22ND MAY 2014** it was held as follows:

“The court pointed out that where the identifying witness had known the accused for some time prior to the commission of the crime and had led the police to the house then it would be pointless to hold an identification parade. But where the identifying witness saw the accused only for the first time for a brief period at the commission of the offence then the failure to hold an identification parade or to prove his personal characteristics would detract from the weight to be attached to the evidence of identification.”

In this case, not only did PW1 and PW2 know the Accused but they knew where the station he worked at was and they proceeded there to look for the Accused. There, they met his absence. In fact, during cross examination the Accused admits that on the said day he did not go to work but fails to indicate his whereabouts and denies the charges levelled. Having denied the offence, this court must determine whether this explanation of Accused is reasonably true. See **MAHAMADU LAGOS v. COMMISSIONER OF POLICE [1961] 1 GLR 181.**

Having regard to the fact that Prosecution’s witnesses knew the Accused prior to the commission of the offense, I do not consider that the case put across by accused that it was a case of mistaken identity is acceptable or reasonably probable. There is sufficient evidence before this court that the Accused stole the handbag of PW1 with the use of force by means of an offensive weapon.

Count One is a Charge of Conspiracy to commit crime to wit Robbery contrary to section 23(1). Section 23(1) defines conspiracy as follows:

“Where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence, whether with or without a

previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence."

For this charge to succeed, the prosecution must prove that the persons agreed to act together with the common purpose to commit the offence. In the case of the **STATE V. YAO BOAHENE [1963] 2 GLR 554** it was held by Sowah J as follows:

"Conspiracy consists not merely in the intention of two or more persons, but also in the agreement of two or more to do an unlawful act or to do a lawful act by an unlawful means. To constitute an indictable conspiracy there must be an agreement between the conspirators to do some common thing. Whether they had met each other or not, does not matter in the slightest degree so long as they are working for the same common object. They need not know whether a conspiracy was already in existence. The test is whether or not there was a community of design or a common purpose. In order to find out whether or not there is a common design the court must not only look at what the accused persons say in court or elsewhere, but also at what the overt acts are, that is to say, any act of conspiracy, conferring or consulting with, advising, persuading, counselling, commanding or inciting words can be an overt act."

It was held further in the **STATE V. YAO BOAHENE** (supra) that:

'Where it is found that there is a conspiracy, each conspirator becomes the agent of the other conspirators, and any overt act committed by any one of the other conspirators is sufficient on general principles of agency to make it the act of all the conspirators.'

Based on the evidence, I consider that there was a conspiracy between A1 and the driver of the motor bike. It is a fact that both persons were found at the scene of the crime and attacked PW1 and PW2, managed to snatch PW1's bag and rode away. A1 together with the other person worked together with the common object of snatching the handbag from PW1 with the use of a cutlass to overcome resistance. This common purpose is glaring from the direct evidence before this court. In sum, there is clear and affirmative evidence of conspiracy between the two persons as well as evidence of the completed offence.

Weighing the denial of the Accused against the evidence of prosecution's witnesses, who I find to be credible witnesses, the evidence of Prosecution is preferred. Short of believing the Accused, I am unable to find from the evidence before me that he has put up a defence which may be acceptable or reasonably probable.

In sum, there is clear and affirmative evidence of conspiracy between the two persons as well as evidence of the completed offence. I find no other evidence on record to exonerate A1 from the Offences as Charged. I hereby find the Accused Person guilty on Counts 1 and 2. He is hereby convicted.

H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN