CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON WEDNESDAY, 18TH OCTOBER, 2022

SUIT NO. D18/21/22

THE REPUBLIC

VRS

DELA SAVIOUR

JUDGMENT

Mr. Dela Saviour, a 27 year old man has been arraigned before this court on a charge of robbery, contrary to ***Section 149 of the Criminal Offences Act, 1960 (Act 29)***. The particulars of the offence are that on the 1st day of March, 2022 behind the community nine cemetery fence wall, opposite CFAO Engineering Company, Tema and within the jurisdiction of this court, with force and to overcome the resistance of Rose Offei, you threatened her with a short machete and forcibly snatched her handbag containing an android Samsung mobile phone with MTN Sim card number 0599479500 placed in it and valued at one thousand, two hundred Ghana cedis (Ghs 1,200), a small two sim Samsung mobile phone having an MTN and Airtel Tigo Sim card in it also valued at one hundred and twenty Ghana cedis (Ghs 120), cash the sum of thirty six Ghana cedis (Ghs 36), Ecowas Identity Card, Voter's I.D Card, Prudential Bank ATM card, COVID 19 Vaccination card, hospital cards and other documents.

The accused person pleaded not guilty. By so doing, he invoked the Constitutional guarantee in ***Article 19 of the 1992 Constitution***. By his plea of not guilty, he stood shielded by the law as per ***Article 19 (2) (c) of the 1992 Constitution***, he is presumed innocent until proven guilty. According to the case of ***Davis v. U.S. 160 U.S 469(1895)***

"Upon that plea the accused may stand, shielded by the presumption of his innocence, until it appears that he is guilty; and his guilt cannot in the very nature of things be regarded as proved, if the jury entertain a reasonable doubt from the evidence".

The presumption of innocence guaranteed under the 1992 Constitution, is not cast in historic concrete like King Arthur's sword. That guarantee is that he is presumed innocent until prosecution has been able to lead evidence to establish his guilt beyond reasonable doubt.

That being so, prosecution may lead credible and positive evidence to upset that presumption. A court thus commences a criminal trial where an accused has pleaded not guilty on the rebuttable presumption that the accused person is innocent until proven guilty. The onus lies on prosecution to lead evidence to establish a prima facie case against the accused persons by the close of their case.

CASE OF PROSECUTION

Prosecution called three witnesses in proof of its case; the complainant, a witness and the investigator. According to PW1, around 9:00pm on the 1st day of March, 2022, she was walking through the community 9 cemetery road when the accused person came from behind and ordered her to hand over her black handbag. He told her that if she resists, he would slash her with a short machete in his hand. The accused then snatched the bag, jumped the cemetery wall and fled.

She said the bag contained her Ecowas Identity Card, Voter's I.D Card, Prudential Bank ATM card, COVID 19 vaccination card, an android Samsung mobile phone, a two sim Samsung mobile phone and other documents.

That before the accused person jumped over the fence wall, she began to scream thief, thief and a man emerged from a nearby mechanic shop to assist her but the accused person was long gone. The next morning, she returned to the scene and sought the help of the mechanic to look for her bag as she had all her identity cards in same. Upon enquiry from the mechanic as to whether she could make out the culprit, she answered yes.

That whilst searching around the cemetery area for her bag, she saw the accused person sleeping under a tree. She alerted the mechanic who asked that she reports to the police for accused person to be arrested as he may be armed. That she did so and three officers accompanied her to the cemetery and arrested the accused. The police searched the accused person and found her Herbalife receipt bearing her name. They also found an MTN Sim card which belongs to her and her small two SIM Samsung Mobile phone. The police placed the SIM card in another phone and dialed her number and it rang.

PW2's evidence is that at about 9:00pm on the 1st day of March, 2022, he saw the accused person coming from his opposite direction. That the accused person stopped upon realizing that he (PW2) knew him. That he did not confront the accused person because he saw an object like a knife in his pocket.

That about ten minutes later, he heard shouts of ''thief, thief'' coming from a woman. He rushed out and saw the accused person jump over the cemetery wall. That the complainant narrated to him how she had been attacked by a man with a short

machete. Upon the description given, he knew it was the accused person because he had earlier on seen him.

He then testified as to how PW1 had returned the next morning to seek his help in looking for her cards and the events that led to the arrest of the accused person.

PW3 testified as the investigator. His evidence is that upon arresting the accused person at the cemetery, he conducted a spot search on him. He found a SIM card, a herbalife receipt bearing the name of PW1, cash of one hundred Ghana cedis (Ghs 100) and a two sim Samsung mobile phone. That the accused person claimed the receipts belonged to him but when same was opened, it bore the name of PW1. Accused person said he found the said herbalife receipts on the floor whilst attending to nature's call and he used one to clean himself and kept the other one.

The MTN sim card was placed in a phone to determine whether the number is the complainant's. When the number was dialed, the number which appeared was that of the complainant i.e 0599479500. The accused also informed police that he bought the small Samsung mobile phone for twenty Ghana cedis (Ghs 20) on the 1st day of March, 2022 at Ashaiman. He tendered in evidence the investigation caution and charge statement of the accused person as EXHIBIT A and A1 respectively, photograph of a two sim Samsung mobile phone as EXHIBIT B series, MTN Sim card supposedly retrieved from the accused as EXHIBIT C and a copy of a herbalife receipt as EXHIBIT D

Prosecution closed its case after this.

CONSIDERATION BY COURT

The offence of robbery is provided for in ***Section 149 of the Criminal Offences Act, 1960 (Act 29).*** It is however defined by ***section 150*** of the same Act to be

A person who steals a thing commits robbery

a) If in and for the purpose of stealing the thing, the 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 intent to prevent or overcome resistance of the other person to the stealing of the thing.
c) The thing stolen must be in the presence of the person threatened.

In the case ***of Behome v. The Republic [1979] GLR 112***, the court 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 the intent thereby to prevent or overcome the resistance of his victims to the stealing of the thing''.

Thus prosecution, in the circumstances of this case, in order to establish a prima facie case on the charge must prove that;

1. The accused person stole the bag of the complainant
2. That in stealing the said bag, he threatened criminal assault on the complainant
3. That his intention of using the threat was to prevent or overcome complainant's resistance to the stealing of her bag
4. That this fear of violence was personal to the complainant

Accused person in cross examining PW1, had focused primarily on how PW1 had identified him. It is a legal known that prosecution must establish the identity of an accused person if they are to succeed on a charge. In identify an accused person,

prosecution may according to the case of ***Ibrahim Razak v The Republic [2012] 50 GMJ 139 SC @ 154-155***, "*It may also be proved or disproved not only by direct testimony, or opinion evidence, but presumptively by similarity or dissimilarity of personal characteristics; e.g. 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. Thus it is fair and reasonable to say that the modes of identifying the perpetrators of a crime vary and holding an identification parade may be one of the acceptable modes. Another may be by proof of personal characteristics or peculiarities like the height of the person given by the oral evidence by prosecution witnesses on oath in court.*"

At page 11 of the record of proceedings, accused person had asked PW1,

Q: And what shows that I threatened you with a machete?

A: That is my usual route. On the very day, I turned around when you spoke and ordered me and I saw that you were holding a small machete. I looked at you very well and so I could identify you.

Then at page 12 of the record of proceedings, still under cross examination, PW1 had answered;

Q*: Can you tell the court how you identified me?*

A: I am a very observant person and so I took a careful look at you. When I saw you laying down under the tree, I was able to point you out to the mechanic as the person who robbed me.

Q: Was I the only one with a beard that you could identify at the cemetery?

A: It is your face, your hair and your clothing that I used to identify you.

Q: What attire was I wearing when I was arrested?

A: You were in a check check shirt of a dirty colour.

Q: I put it to you that I was wearing a t-shirt.

A: That is not so.

I am satisfied by PW1's unwavering evidence that she indeed saw the accused on the day of the incident and she had been able to identify him as the culprit when she saw him lying down asleep the next morning. Her evidence of the accused person was not based on only one feature of the accused person but on the totality of his face, hair and shirt. As she indicated, she is a very observant person. This is not a situation where the accused was arrested and PW1 made to identify him. It is a situation where she herself pointed him out as her attacker even when she found him asleep and accused person was then arrested.

As was held in **Ameshinu v. The Republic [2010] 34 MLRG 207**, "where the identity is in issue there can be no better proof of his identity than the evidence of a witness who swears to have seen the accused committing the offence charged". PW1 who perceived the offence at the receiving end as the victim has positively identified the accused as the one who committed the offence.

On the elements of the offence, I believe the evidence of prosecution witnesses that the accused person threatened PW1 and in so doing, snatched her bag which contains the mentioned items. The incident happened at about 9:00pm and accused person was seen, identified and arrested the next morning around 7:30 am. The time difference is so short that any reasonable man would arrive at a conclusion that it was the accused person who committed the offence.

Prosecution also led cogent evidence as to the items that were retrieved from the accused person which included a Samsung mobile phone which PW1 positively identified as belonging to her, an MTN Sim card and a herbalife receipt which had the name of PW1. EXHIBIT D is a herbalife receipt in the name of PW1 which indicates that on the 25th day of March, 2020, she purchased some products.

The cumulative effect of PW1 positively identifying the accused as the one who had threatened her and upon that threat, taken away her handbag and some of the items in the said handbag and belonging to PW1 being found on the accused person less than twelve hours after the incident leads to a conclusion that prima facie, the accused person committed the offence.

At the close of prosecution's case, I found that they had established all the elements of the offence, the evidence had not been so discredited under cross examination, the evidence is such that a court can safely convict on it and the evidence lends itself to only one construction; the prima facie guilt of the accused person. He was thus called upon to open his case.

When an accused person is called upon to open his defence, he does not bear a duty to prove his innocence. His only duty if at all at this stage, is to raise a reasonable doubt in the mind of the court concerning the prima facie case established against him by the prosecution. If he is able to raise a reasonable doubt in the mind of the court, he must be acquitted and discharged. See ***Bruce-Konuah v. The Republic [1967] GLR 611*** and ***Section 11(2) and (3) of NRCD 323***.

Denning J (as he then was) in the celebrated case of ***Miller v. Minister of Pensions [1947] 1 All ER 372 at 373*** held that "The constitutional presumption of innocence of an accused person is

that an accused is presumed to be innocent unless he pleads guilty or convicted by a court. The presumption is rebutted when the prosecution establishes a prima facie case against the accused person and the accused shall be called upon to raise a reasonable doubt as to his guilt." See also the dictum of Dennis Adjei JA in the Court of Appeal case of ***Philip Assibit Akpeena v. The Republic (2020) 163 G.M.J 32***

In arriving at whether an accused has raised a reasonable doubt in the mind of the court, the court may either believe the explanation given by the accused or find that although it disbelieves the explanation, it is reasonably probable. Thirdly, the court must consider the whole evidence on record and see if it raises any defence in favour of the accused. In any of these instances, the court must acquit and discharge the accused. If quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict. See the case of ***Lutterodt v. C.O.P [1963] 2 GLR 429***.

In his defence, accused person said "I was at my shop when the police came to arrest me that a woman said I have snatched her bag and taken her phone. I told them that is not true. I have not taken anything from anybody and that is where I reside and work so I cannot commit that crime and still stay there. On that day, upon my arrest by the police, they searched my pocket and found One hundred Ghana cedis (GH¢100, 00). They subjected me to beatings and said I should confess to the crime. They later took me to the police station and locked me up. Later at the police station, they brought me out of the cell and showed me a phone and a book that they belong to first prosecution witness (PW1) and that same was found on me. At the time of my arrest, none of these things were found on me''.

In his investigation caution statement which was tendered in as EXHIBIT A, accused person said on the 2nd day of March, he was attending to nature's call at the cemetery near the rubbish dump when he saw two papers on the floor which he picked up. He used one to clean himself and decided to keep the other one for future use. He said he also bought the phone found on him three days ago at Ashaiman for twenty Ghana cedis (Ghs 20). He indicated that the SIM card might be part of items he bought as scrap and he does not know how it got into his pocket.

Accused person had sought to deny his statement in this court. His claim is that the police wrote the statement and also that the items were brought to him whilst he was in cells. At page 29 of the record of proceedings, he had said;

"When I said it is not true and that I have no knowledge of the items, they subjected me to severe beatings and hit my head with a stick. They later took me to the cells and locked me up. I was later served with an investigation caution statement at the cells and so I asked a cell mate to read and explain to me. Upon the explanation, I told my cell mates that I have no knowledge of what is contained therein as at the time of my arrest, I was subjected to beatings and I could not speak and so the contents were what the police wrote''.

Although the accused person says that he was beaten and the police wrote whatever they wanted as his investigation caution statement, the accused person himself in cross examining PW3, put across a different story. At page 24 of the record of proceedings, the accused person had asked;

Q: *Do you have any video evidence to show that you searched my pocket and found the phone?*

A: No my Lord. There is no such evidence.

Q: I put it to you that you told me to say that I bought the phone at Ashaiman and if I say so, I would be let off.

A: That is not true my Lord.

Q: I put it to you that you did not find any papers on me as well. You rather produced them and asked me to agree to it.

The accused was oscillating between the investigation caution statement having been written for him without his knowledge of same and the police inducing him with the promise of being let off, to make a statement as to how he acquired the phone.

Again, the accused person had in cross examining PW2 at pages 17 and 18 of the record of proceedings, put forth a case that PW2 owed him money and did not wish to pay and so had aided PW1 to trump up these charges against him. That PW2 was out to give false evidence against him.

Q: Is it the case that it is because you owe me and I have been attempting to recover that amount from you for some time that you have conspired with first prosecution witness (PW1) to frame me up so that I cannot recover that money? For a long while, today is when I am seeing you.

A: That is not true. I do not owe you and neither have I conspired with first prosecution witness (PW1) to frame you up.

Q: I put it to you that I sold you a car battery, alternator and other scraps all to the sum of one hundred and fifty Ghana cedis (GH¢150.00) and you said I should give you time to pay.

A: My Lord, that is not so.

Q: And when you were not paying me the money, I warned you that I would report you to your master and that is why you have conspired with first prosecution witness (PW1) to lodge this offence against me.

A: My Lord, there is no truth in it.

Q: I suggest to you that you owe me that is why you are in court to bear false witness.

A: There is no truth in that.

Accused person had never put forth this issue of conspiracy between PW1 and PW2 when he was cross examining PW1. It appears that the accused person was making up the stories as the case progressed. I did not believe the accused person and found that this was a mere afterthought. He appeared to be making things up as the trial went along.

On one hand, it was because PW2 owed him and did not wish to pay him such that he had conspired with PW1 to level these charges against him and on another hand, it is the investigator who had brought the items and asked him to make certain statements. On the other hand, the investigator simply wrote a statement and is attributing same to him the accused. It appears that the accused person was grasping at every available straw of untruth to save his own life.

I accept the principle in the case of ***Munkaila v. The Republic [1995-96] 1 GLR 367, in which AIKINS JSC*** reading the judgment of the court held that "when an accused person took refuge in telling lies before a trial court, the only inference of his behaviour was that he had a guilty mind and wanted to cover up''.

As I do not believe the accused person, I must proceed to find out whether his defence is reasonably probable and if that fails, I must proceed to find out if it raises any defence

in his favour. It is not just one item that prosecution found on the accused person, they found three items belonging to PW1 on him some hours after the commission of the offence. It is not reasonably probable that all these items were brought by and shown to the accused person by the investigator; PW3 and out of sheer coincidence, all the items also belonged to one person; PW1.

Again, the herbalife receipt found on the accused person is of little or no worth at all (as it is simply a 2020 receipt indicating that some products were purchased) for it to be surmised that accused person either bought it or obtained it as part of things collected as scrap. It would also be too coincidental to hold that of all the papers he could find when attending to nature's call at the cemetery, it was that of PW1 which was stolen by the use of threat, the previous night. On these grounds, I find that the accused persons story is not reasonably probable.

I have finally combed through the evidence to find out if it raises any defence in favour of the accused person. There is none.

At the close of accused person's case, I find that he has failed to raise a reasonable doubt in my mind. See the Supreme Court decision of A***maning v. The Republic (J3 5 of 2018) [2020] GHASC 47 delivered on 28 July, 202***0. Accordingly, the prima facie case which prosecution established at the close of their case hereby crystallizes into proof beyond reasonable doubt. At the close of the trial, I hereby find that prosecution has established the guilt of the accused person beyond reasonable doubt and he is hereby convicted of the offence of robbery.

PRE SENTENCING HEARING

According to prosecution, the convict is not known. That save for the Samsung phone, the amount of thirty six Ghana cedis (Ghs 36) and the bag itself, all the other items have been recovered from the convict. That the small phone is in good condition.

In mitigation, convict says that he pleads with the court to forgive him. That he works to take care of his mother and his father died when he was ten years old. That because of this issue, he is sick. He has ulcer and a terrible headache. That he pleads with the court because his mother fell sick due to his incarceration. That he wants the court to treat him as a child and have mercy on him. That the Court should have mercy on him as PW1 herself says he is not a thief. Also that he is currently 28 years old.

In arriving at an appropriate sentence, I have considered the time spent in cells throughout the trial by the convict. He was not able to meet the terms of his bail and so has remained in custody from March, 2022 till date.

I have also considered the fact that convict is a first time offender and at the age of 28 years, he is young person as well. Ordinarily, any punishment meted out to him must be aimed at reformation rather than deterrence. However, the minimum punishment for the offence of robbery with the use of a weapon is term of fifteen (15) years imprisonment. The severity of the prescribed punishment shows the abhorrence that right thinking members of society have towards the offence. It further shows that as a nation, at all times, a sentence for robbery must serve as a deterrence to both the convict and the society.

Again, convict has not shown any remorse in this trial and has taken prosecution through a full trial. A custodial sentence must be one that serves as deterrence to him

and to others. Accordingly, he is hereby sentenced to a sixteen (16) year term of imprisonment in hard labour.

He is also to enter into a self recognizance bond to be of good behavior and keep the peace for a period of three years after his release from custody. In default, he would serve a six (6) month term of imprisonment. The recovered items are to be handed over to the complainant.

(SGD)

H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)

DSP JACOB ASAMANI FOR THE REPUBLIC PRESENT