

IN THE CIRCUIT COURT HELD AT BIBIANI ON MONDAY THE 21ST DAY OF NOVEMBER, 2022 BEFORE H/H JOSHUA CALEB ABAIDOO ESQ, THE CIRCUIT COURT JUDGE

CASE NO. BN/CT/21/22

THE REPUBLIC

VRS

1.LARRY MOHAMMED (A1)

1ST ACCUSED

2.KOMBATE EMMANUEL (A2)

2ND ACCUSED

ACCUSED PERSON

PRESENT

D/C/INSP. GEORGE ASANTE NOYE FOR THE PROSECUTION.

JUDGMENT

The accused persons were charged with one count of the offence of **Conspiracy to commit the offence of Robbery** contrary to section 23(1) and section 149 of the Criminal Offences Act 1960, Act 29 (i.e. count 1), one count of the offence of Robbery contrary to section 149 of the Criminal Offences Act 1960, Act 29 (i.e. count 2) and one count of Possession of Arms and Ammunition without authority contrary to section 11(e) of the Arms and Ammunition Act 1972 NRCD 9 (i.e. count 3).

The accused persons pleaded “not guilty” to the charges made against him.

The prosecution then assumed the burden to prove the charges levelled against the accused person beyond reasonable doubt in accordance with Section 13 (1) of the Evidence Act, 1975 NRCD 323.

Under section 11(2) of Evidence Act, 1975 NRCD 323, in criminal cases the burden of proof is on the prosecution throughout. The prosecution is required to produce

sufficient evidence on a fact essential to establish the guilt of the accused, so that on all the evidence a reasonable mind could find the existence of that fact beyond reasonable doubt.

The evidence in chief of the prosecution witnesses are as stated in the witness statements of PW1 AICOII Robert Napor Konde, PW2 Nkrumah Thomas who is the complainant and victim of the alleged robbery and PW3 D/Sgt Maxwell Ngorson, a detective at the Juaboso Police Station who tendered in evidence the following exhibits;

1. Exhibit A:- Investigation Caution Statement of A1.
2. “ B:- Investigation Caution Statement of A2.
3. “ C:- Charge Caution Statement of A1.
4. “ D:- Charge Caution Statement of A2
5. “ E:- Photograph of unregistered Boxer motorbike belonging to PW2.
5. “ F:- Photograph of the bag and the locally manufactured gun and 3 catridges.
6. “ G:- Customs Documents on the Boxer motorbike.

In dealing with count one on Conspiracy section 23(1) of the Criminal Offences Act, (1960) Act 29 states that;

“(i) 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 previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence.”

For the prosecution to obtain a conviction evidence will have to be led to prove that the accused persons acted together with a common purpose for or in committing or abetting the criminal offence.

Also in the case of, *The REPUBLIC v. MAIKANKAN AND OTHERS* [1972] 2 GLR 502-514 the court, per ABOAGYE J. as he then was held:

“For a charge of conspiracy to succeed under section 23 (1) of the Criminal Code, 1960 (Act 29), there must be evidence that the accused persons agreed or acted together with a common purpose to commit the offence.”

In the case of *Commissioner of Police v. Afari and Addo* [1962] 1 GLR 483 SC the Supreme Court noted that

“it is rare in conspiracy cases for there to be direct evidence of the agreement which is the gist of the crime. This usually has to be proved by evidence of subsequent acts done in concert and so indicating a previous agreement.”

For the offence of Robbery contrary to section 149 of the Criminal Offences Act 1960, Act 29 as amended by Act 646 of 2003 the prosecution is required to prove that the accused person stole a thing and in the process of so doing used force or caused harm or the threat of use of force or harm to any person and whether or not the accused person used an offensive weapon or missile in the process with intent to overcome or overpower any resistance to the stealing.

The evidence led revealed that the investigation caution statements of the accused persons admit the offences. The type of motor bike in Exhibit E i.e. Boxer BM 150 motorbike is consistent with the one which is described on the customs clearance document exhibit G. Cross examination of PW1 by A1 Larry Mohammed indicated that he does not dispute that the gun and the AAA cartridges were found in his room. It came out that A1 was found lying on the bag containing the gun and the cartridges which to my mind suggests that he was hiding them because a bag containing a gun and its ammunition is not a mattress or pillow to be slept on.

During the evidence in chief of A1 Larry Mohammed he told the court that he lives at Kyensekokor close to Jato which is a suburb of Bonsu Nkwanta and that he is a rice farmer. He said that the owner of the motorbike (i.e. PW2 Nkrumah Thomas) is his friend and that he with his roommate A2 Kombate Emmanuel went to PW2 to beg for (or borrow) the motorbike from PW2 to use to harvest his rice. A1 and A2 were unable to complete harvesting the rice on the same day so on the next day he (A1) asked A2 to return the motorbike to PW2. On his way to return the motorbike to PW2 A2 was arrested by immigration officers who brought A2 to A1's house because A2 had told them that it was A1 who gave the motorbike to him. A2 never mentioned the gun in his evidence in chief. The evidence of A2 was not different from that of A1 except that he gave his name as Kofi Manupon and that A1 is his cousin. The court discharged the accused persons on count 3 because the prosecution did not lead any evidence at all to prove whether or not the accused persons had a permit or authorisation to possess the firearm and ammunition.

From the evidence of PW2 Nkrumah Thomas A1 and A2 hired his services and he charged them a fee of GHC 30 for the trip. On the way A1 asked him to stop the bike because his sandal had fallen off. He stopped and A1 went for his sandal and while returning A1 pulled the gun and pointed it at PW2 and asked him to hand over the bike.

Now the stolen item has been adequately identified. There is no dispute that A1 and A2 live together. PW2 reported the robbery of his motor bike on 6/09/21 to the Customs and Immigration Officers at the border post. On 7/09/21 A2 was arrested by immigration officers at the border post riding the motorbike toward Cote d'Ivoire. A2 tried to escape the arrest but when the attempt failed he led the arresting officers to A1 as his accomplice. A gun and ammunition were found with A1 and the motorbike is identified by PW2 as his motorbike which was robbed from him the previous day by the two assailants.

During cross examination of PW2 by A1 on 30/03/22 PW2 denied ever knowing A1 until the day of the robbery when A1 and A2 hired his services. During the cross examination of A1 by prosecution on 20/09/22 he was asked where PW2 lives and A1's answer was that PW2 lives at Jato which is close to Bonsu-Nkwanta. However, PW2 in his evidence in chief said that he lives at Dadieso which is nowhere near Bonsu-Nkwanta. Google maps shows that the distance between the Bonsu-Nkwanta and Dadieso is about 41 km. During further cross examination of A1 on 4/10/22 the following transpired;

Q: You further stated that Kombate Emmanuel (A2) was going to give the motorbike to Nkrumah Thomas at his place of abode.

A: That is correct.

Q: That means you know where Nkrumah Thomas lives.

A: Yes

Q: Then I am telling you that you are not a witness of truth.

A: I am telling the truth.

Q: Tell the court where Kombate was arrested'

A: He was arrested at Jato

Q: Is that where Thomas Nkrumah lives?

A: No. That is not where he lives

As A1 does not know where PW2 lives it cannot be true that he sent A2 to return the motorbike to PW2. It also cannot be true that A1 and A2 are friends of PW2. A1 also denied during cross examination by prosecution that the gun and the ammunition were found in his room even though he admitted them in his caution statement and the physical exhibits were produced in open court. A1 and A2 having led virtually the same evidence in chief have no credibility per the decision in the case of **The State v. Otchere [1963] 2 GLR 463-531**. These pieces of evidence put together point to one and only one conclusion that A1 and A2 agreed and acted together to steal the motorbike by threat of use of force with an offensive weapon from PW2 and they in deed robbed PW2 of his motorbike.

I find that the prosecution has led sufficient evidence to prove all the ingredients of count 1 the offence of Conspiracy to commit crime to wit Robbery contrary to section 23(1) and section 149 of the Criminal Offences Act 1960, Act 29 and count 2 the offence of Robbery contrary to section 149 of the Criminal Offences Act 1960, Act 29 beyond reasonable doubt against A1 and A2.

A1 and A2 are each found guilty as charged on count 1 and count 2. A1 and A2 are convicted accordingly.

SENTENCING

A1 is sentenced as follows;

Count 1: 132 months in prison with hard labour

Count 2: 132 months in prison with hard labour

Both sentences are to run concurrently.

A2 is sentenced as follows;

Count 1: 132 months in prison with hard labour

Count 2: 132 months in prison with hard labour

Both sentences are to run concurrently.

In coming to this decision the court took into consideration the high rate of (armed) robbery within its jurisdiction, the fact that the offensive weapon (gun) was used to threaten the victim but was not used to cause harm to him, the fact that the accused persons are first time offenders, the period in which the accused persons have remained in Police custody and the plea in mitigation by A2 and A1.

R/O

The recovered motor bike is to be given back to its owner.

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H/H JOSHUA C. ABAIDOO
(CIRCUIT COURT JUDGE)