

IN THE CIRCUIT COURT HELD AT KPANDO ON WEDNESDAY THE 29TH
DAY OF MARCH 2023, BEFORE HIS HONOUR FRANCIS ASONG OBUAJO
ESQ., THE CIRCUIT COURT JUDGE.

NO. CC. 50/2022

THE REPUBLIC

VRS

1. ALJUMAH JALO
2. ZAKARIAH AMADU
3. USMAN MOHAMMED
4. BADU SEIDU

ACCUSED PERSONS A1, A2, A3, AND A4 PRESENT.

PROSECUTOR D/INSPT. HENRY DOKU PRESENT.

TOGBE AYIM ESQ ABSENT FOR ACCUSED PERSONS

JUDGMENT.

Accused persons herein were arraigned before this court on the 17/01/2022 charged with two counts of conspiracy to commit crime to wit robbery contrary to sections 23(1) and section 149 of the criminal offences Act 1960 (Act 29) and robbery contrary to section 149 of Act 29/60 as amended. Accused persons pleaded not guilty to the charges. The summary of the facts as presented by the

persecution are that on the 9/01/22 at about 1.45 am Nkonya Police informed Kpando Police of a robbery incident engaging between Kpando Agbenorxoe-Nkanyo highway. Upon the information Kpando Police proceeded to the area but the robbers had fled and nobody was met at the crime scene. Few hours later, Kwaku Addo a driver in charge of Marcopollo bus with registration No. GT6553-8 reported to Worawora police that on same day at about 3:30 am he and the occupants of the bus were attacked and robbed at gun point of their mobile phones monies totalling GH21,750.00 and other valuables at a station of Kpando Agbenorxoe-Nkonya highway. And that the robbers shot the driver on the forehead and three others sustained gunshot injuries. On their foreheads. The injured were all treated and discharged at Worawora Government Hospital.

On the 14/1/2022 intelligence led to the arrest of the accused persons in their hideout at Gbefi-Hoeme. A search conducted on them led to the recovery of 16 assorted mobile phones, one SB short gun, six live cartridges one cutter, screw driver 4,000. CFA and GH¢65.00 A1 and A2 mentioned one Sulley and Borajo as their accomplices but were on the ran during investigation. Accused persons told the police that they had earlier on that night attacked and robbed three other vehicles before that of the Kweku Addo's vehicle. On the 17/1/2022 two of the robbery victims reported at the Divisional headquarters and identified one Iphone 6plus, one Tecno T34 and one Infinix smart phone as theirs. A1 denied taking part in the robbery even though he was aware of the plan and execution of it. A2, to A4 admitted the offence and told the police A1 took part of the robbery.

By pleading not guilty to the offences charged by all the accused persons, the prosecution then assumes the onus of leading credible but admissible evidence at the trial to prove all the ingredients of the offences charged beyond reasonable doubt to establish the guilt of the accused persons as required under sections

11(2) and 13(1) of the Evidence Act, 1975 (NRCD 323) It was held in GLIGAH AND ATISO VRS. THE REP. (2010) SCGLR 870 Per DOTSEY JSC that:

“article 19 (2) of the 1992 constitution provides that everyone charged with criminal offence is presumed innocent until the contrary is proved. So whenever an accused person is arraigned before any court in a criminal trial, it is the duty of the prosecution to prove the essential ingredient, of the offence beyond reasonable doubt. Accused, on the other hand, bears no duty to prove his innocence. His only duty is to raise reasonable doubt on the evidence of the prosecution”.

See: DOMENA VRS COMMISSIONER OF POLICE (1964) GLR 563 at 568.

From the provisions of the law as stated which have been further expressed in the decided case as referred, it is a matter of law that the prosecution has the evidential burden to lead evidence that are credible to establish essential ingredients of the offenses charged beyond reasonable doubt to secure the conviction of the accused person

In adducing credible evidence against the accused persons, the persons, the prosecution called seven (7) witnesses including the investigator.

The evidence of PW1, a 34 years old Kwaku Addo who was in charge of Marcopolo VIP Bus with Registration No. GT 6555-18 as a driver from Accra to Salaga on the 9/01/22 was that, he left Agbogbloshie at about 7:30 pm to 8.00 pm on 8/01/22 and on reaching a section of Kpando-Agbenorxoe motor road, he saw one of the VIP buses was parked at the edge of the road with two cargo cars. So he parked too with the aim of checking if there was a problem. Soon after stopping a young man with covered face with mask wielding a gun (single barrel) ordered him to open his door as he hesitated the man shot the car glass which frightened him and he opened the door. The man entered the bus and

ordered all the passengers out as his colleagues were standing outside searching and robbing the passengers of their monies and phones. PW1 added that the bullet from the gun shot tipped his forehead made him to black out and was bleeding profusely. He did not see what happened till they were rushed to Worawora Government Hospital.

Victor Hoya gave evidence as PW2 that he was the driver in charge of Benz bus with Registration No. GT 667-F returning from Accra to Kwamekrom with his wife Vivian Bebi and Anage Hoya his conductor on 9 /1/2022. At about 1.30 am on reaching Kpando Agbenoxoe-Nkonya, they were signed by six armed men, one was holding a gun others were wielding knives. He was robbed of his Tecno Pop 4 phone and GH¢260.00 and were asked to sleep on the ground. Few minutes later some other VIP bus came and were also robbed of their belongings. The robbery lasted for about 20 minutes, the robbers fled into the bush and they also left for Kwamekrom.

PW3 Hoya Vivian a 37 years old business woman of Kowamekrom said on 9/1/2022 she was returning from a funeral at Adidome and was on-board the husband's (PW2) car with registration No. GT 667-F towards Kwamedrom. On reaching a section of Kpando Agbenorxoe-Nkonya highway at about 1.30 am they were signed by from armed robbers who were wielding a shot gun and Knife. PW3 added that her Itel phone and ¢280.00 were robbed of her and they were asked to sleep on the ground. PW2 was ordered to remove the logs on the road before the arrival of the VIP bus.

Kakiba Abena a 32 year old yam trader from Dambai to Accra gave evidence as PW4. She said she was one of the passengers on board VIP bus from Agboghloshie-Accra to the northern Region on the 9/1/22 at about 10.00 pm. On reaching Kpando Agbenoxoe – Nkonya highway while she was sleeping, then

the bus driver made sudden stop, then she heard a gunshot fired into bus. Then one of the five men who covered their mouth entered the bus with a gun and asked them to surrender their belongings to him one after the other and they did. In the process, a motor rider who was coming and on seeing what was happening quickly made a turn around and sped off. The around robbers fled into the bush. PW4 said they took GH¢1,500.00 from her and can identify four of the robbers when seen. During cross examination PW4 was able to identify all the four accused persons as those who robbed them of their belongings in the attack. PW2 as the one who pointed a gun at her head to bring her money. And identified A3 as the one who was firing the gun around when the bus stopped.

Adam Raman, a 21 years of Salaga gave evidence as PW5 that he on the 8/1/22 at VIP station at Agbogbloshi and sat by Momeen. On 9/1/22 on reading Agbenoxoe-Nkonya highway, he saw one of the VIP buses parked in the middle of the road. He then saw about six young men emerging from the bush all in pullover and they asked them to surrender their belongings to them. PW5 added that one of the robbers who entered the bus pulled a knife and wanted to stab him and he quickly handed over his iPhone 6 plus and GH¢250.00. He can identify the one who collected his money and mobile phone when seen. Under cross examination from A1, PW5 identified him (A) as the one who collected his mobile phone and money from him at the crime scene on the 17/8/22

Sofa Wolilu, an 18 year old native Yayili near Salaga gave evidence as PW6 that on the 8/1/22 he boarded the VIP bus from Accra to Salaga with three of his colleague. At about 1:00 am on 9/1/22, a group of armed robbers numbering about ten fired into the bus forcing the driver to stop. Two of the robbers came into the bus ordering them to bring their moneys and Mobile phones. After collecting the money, they asked them to go and lie on the ground. PW6 said further that they took GH¢2,000.00 from him. After that they saw a motor rider

coming from the back and the robbers ran into the bush leaving them at the road side. And that he can identify the one who collected the money from him when seen. During cross examination on the 17/8/22 PW6 pointed A4 as the one who collected money from during the robbery.

D/Sgt. Amin Ibrahim of Kpando district Police gave evidence as PW7 that this case was referred to him for investigation with an extract of occurrence from Worawora Police District and statement of victims Emmanuel Kwaku Addo, Banaba Biyam, Fuseina Allasan and Adam Mutawakil. He said at about 11:10 am on the 9/1/2022 ASP Godwin Alormenu the Divisional crime officer led him and two other investigators to the crime scene between Kpando Agbenoxoe and Nkonya Asakyiri highway in Oti region and a Samsung mobile phone was retrieved belonging to A2. On the 14/1/22 at about 8.30 am intelligence led to the arrest of A1 age 36, A2 age 24, A3 age 37 and A4 in their hideout at Kpando – Gbefi Hoeme. A search conducted revealed 5B short gun, give live cartridges 16 assorted mobile phones. Screw driver, cutter and 400. CFA and GH¢65.00 caution statements were taken from them on the 15/1/2022. Accused persons were charged for court with their charged statements taken. PW7 stated further that on 31/1/22 identification parade was conducted at Kpando police station and all four accused persons lined up with other suspects were identified by the victims. PW4 was able to identify all the accused persons while other witnesses identified same of the accused person.

PW7 tendered the Samsung mobile phone found at the crime scene belonging to A2 into evidence as Exhibit A without objection.

Police extract from Worawora police station tendered into evidence as Exhibit B.

Caution statement of A1, A3 and A4 admitted into evidence as Exhibit C,C1 and C2 in that order.

Further caution statement taken from A3 tendered in evidence as Exhibit C1A and further caution statement of A4 admitted into evidence as Exhibit C2A.

Caution statement of A2 rejected at the hearing.

Charged statements of A1, A2, A3 and A4 admitted into evidence as Exhibits D, D1, D2 and D3 in that order without objection.

Endorsed Police medical form of PW1 admitted into evidence as Exhibit E.

Five photographs of the identification parade admitted into evidence as Exhibits F general parade Exhibit F1 (PW6) identify F2 (PW6 identified A4) F3 (PW4 identified all accused persons) and F4 (PW5 identified A2).

4,000. OFA recovered from A3's pocket tendered in evidence as Exhibit G and the GH¢65.00 from A1 as G1.

Locally made short gun, six live cartridges a knife/cutter. Screw driver and Voters identity card with the name Abukari Amadu from A4's room admitted into evidence as Exhibits H4, for the short gun, HB (for the 6 cartridges). HC for the cutter) and HD for the Voter's card, Truncheon and locally made pistol recovered from a black smith admitted as Exhibit H1.

Itel A16 identified by PW2 with PW3 phot as screen saver and Iphone 6plus which was recovered from A1 that PW5 claims ownership tendered in evidence as Exhibit J and J1 Itel W5005 (identified by victim Adam Kawusah) Tecno T528 for Salia Alhassan, Iphone 5 for Issah Alhassan, Tecno T484 belonging to PW6 tendered in evidence as Exhibits J2, J3, J4 and J5 in that order

Other mobile phones found with the accused persons that were not identified are:- (i) Itel 5606 black colour,

(ii) Tecno A1 Ash colour

- (iii) Itel W60004 Black colour
- (iv) Itel 5625 Black and orange
- (v) Itel 5806 colour Black
- (vi) Seko phone
- (vii) Samsung Galaxy Tab

(Viii) Itel P32 admitted into evidence as Exhibits K, K1, K2, K3 K4, K5 K6 and K7 in that Order.

Tecno Pop 4L recovered from A1 with photo images of the 4 accused persons at an eatery on 12th and 13th February 2022 as Exhibit K8 series.

Infinix Smart phone with a screen saver of A2 and a photograph of A4 in a Zenda as Exhibit K9 and K9A.

Under cross examination A1 admitted that Exhibit K8 belongs to him on the 1/9/22 A1 also put it to PW7 that he paid GH¢300.00 to PW7 for them not to be imprisoned in this case upon their arrest.

A2 told the court Exhibit K9 while PW7 mentioned that A2 claimed ownership of Exhibit A and that A2 confessed to the crime before his district Commander. PW7 denied being paid GH¢1,000.00 by A2 brother of A2.

During cross examination from A3, PW7 insist that Exhibit J3 belongs to victim Salia and same not for A3 as he wanted the Court to believe. PW7 told the court in another question that A3 had known A2 before their arrest and that A3 was in a photo that was taken with the mobile phone he is claiming ownership of (Exhibit K8).

A4 claims ownership of Exhibit K2 K3 K4 and K5 as his personal phones. PW7 denied demanding money from a4 or his relatives.

PW7 maintained that all the guns in evidence were recovered from A4's room upon a search at Dom Kofi. In another question, A4 said the photograph that shows A2 and the rest of them were taken in 2020. Persecution closes her case.

DEFENCE OF THE ACCUSED PERSONS

A1 Aljumah Jalo gave evidence under oath that he is a cattle herdsman who lives at Adofe. He said he knows A2 and A4. A1 stated that in January 2022 he was on his way to attend the outdoor ceremony of a baby at Golokwati upon invitation. He then passed by at Gbafi to greet A2 and a4 in their house. While he was there the police came to arrest them to the police station that they were those who took part in the robbery at Agbenoxoe as their mobile phone were found there after the police had subjected them to beatings. A1 further stated that he did not know anything about the robbery at Agbenoxoe as he had just underwent surgery not even three months then and the stitches yet to be removed. A1 was not cross examined by the other accused persons when given the opportunity to do so. A1 admitted he freely gave his caution statement (Exhibit C) to the police upon arrest. A1 also admitted he know A3 who was in a photograph that was captured by A1's mobile phone Exhibit K8.

A2, ZAKARIAH AMADU gave evidence on oath that he is a farmer staying at Gbafi Hoeme and knows other accused person. He added that he was at home on the 14/1/22 and A4 came there to charge his mobile phone and A1 also came there while A2 was sitting under a mango tree and A1 said he was coming from a naming ceremony at Golokwati and decided to pass by to greet. He was going to receive a phone call in the room when he heard a knock at the gate and the investigator came in to handcuff him and A3 who was asleep and added to A1

and A4 who had been handcuffed too. They were taken to the police station at Kpando and was told they took part in the robbery case that took place at Agbenoxeoe but he told the investigator that he did not know anything about the robbery. Even though he was beaten severely by PW7 to confess to the robbery he refused. Later, PW7 came with cameramen and told him to confess to the robbery that it was A1, A3 and A4 who called him for the robbery and he confessed after he had thumb printed the statement PW7 brought to him. A1 and other accused persons did not cross examine A2. Under cross examination from the prosecution on 21/2/22 A2 admitted he had met A3 at Golokwati five (5) days prior to their arrest on the 14/1/22.

A3, USMAN MOHAMMED gave evidence under oath that he is a herdsman from the Republic of Togo and knows other accused person.

A3 stated that he came from Togo and at Golokwati he ran out of transportation money and met A2 there for financial help. A2 told him to come and do farming work to raise money before continuing his journey. While A2 was trying to get a farmer whom he will work for, on the 4th day of staying with A2 that the Police came to arrest him while he was asking and arrested A2 too and did not tell him what he did. When he was brought out of the room that he was A1 and another handcuffed by the police car. At the police station he was beaten by the police and they brought a Fulani lady who told him that he was arrested as one of those who robbed the buses at a section of Agbenoxe but he was not one of those who did so. A3 stated further that he was severely beaten to confess to the robbery but he told them he knows nothing about the robbery. At a pint when he was beaten, he did not know what he was saying to the police but he sustained injuries to his ribs. Adding that he knows nothing about the said robbery. A1, A2 and A4 did not cross examine A3 when asked to do so. During cross examination from the prosecutor, A3 admitted he gave caution statement to the

police on his own free will and that PW4 identified him as one on those who robbed her on the night but nothing incrimination was found on him upon his arrest.

Badu Seidu (A4) gave evidence under oath that he is a herdsman living at Dorm Kofe-Gbefi and that he knows A1 and A2 A4 stated that he took his cattle for grazing at about 5:00 am on the 14/1/22. At 8.00 am he called his master for financial help and he promised to send him money by 12:00 pm. So he called his younger brother to bring the phones of his two wives, Samsung tablet together with my voters ID. Card for him to go and charge the phones. The phones were brought and he left the cattle under the care of his younger brother and left to charge the mobile phones at A2's home in town. He met A2 A1 and A3 under a mango tree resting and then A2 and a3 went into the room as he was with A1 outside. Not long before the police came there to arrest them to the Divisional Headquarters at Kpando. The police then beat them and about 7:00 pm, the CID. Called him to his office to ask whether he was one of those who robbed the buses at Agbenoxoe read and he denied. The investigation further beat him to the point of fainting before regaining consciousness the investigator brought a Fulani lady who explain the reason for his arrest to him and he denied involvement. The investigator later brought the caution statement to him and he thumb printed even though he did not know what was written down on the document as an illiterate. The next morning he was further beaten by the investigator as he denied the robbery case but was made to thumb print another document. A4 further stated that the investigator later told him on the 4th day of their arrest that his boss said he should write things about him A4 so he can be jailed but if A4 could pay GH¢4,000.00 he will let him (4) go. So he later made his relative to pay GH¢2,000.00 to the investigator but after receiving the said money he was still brought to court and the investigator testified against him. A1 to A3 did not

cross examine A4 when asked to do so. During cross examination from the prosecution A4 now admitted meeting with A3 for 3rd time before their arrest on the 14/1/22 A4 denied that Exhibit J series were recovered from him after his arrest.

A4DW1 Ishatu Idriss testified that the mobile phone battery went low and she gave it to A4 to go and charge it in town and he was arrested by the police and nothing more. A4 DW1 denied that he police came to their home after the arrest of the accused persons in search of anything under cross examination. She stated in another answer that she gave a Small black Tecon phone to A4 to charge for her on the day of their arrest.

AJARAH ISSAH gave evidence as A4DW2 she knows accused person as as brothers but A4 is the husband. She said A4 went to town to charge his mobile phone and was arrested. And that she only got to know of the arrest in the evening when A4 was not returning home and she went looking for him. It was then someone told her he had been arrested by the police. Under cross examination from the prosecution, she said there are two rooms at their village. A4 DW2 denied that a taxi car and another vehicle came to their village after the arrest of A4.

THE LAW AND ANALYSIS

Section 23(1) of the criminal offences Act 1960, (Act 29) defines conspiracy as:

“where two or more persons agree to act together with a common purpose for or in committing or abetting criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence”

The present position of the law on conspiracy requires proof of previous agreement in order to secure conviction.

It was held in REGINA VRS. ZONYRA AND ORS (1959) GLR 26-34 CA that; it was wrong to ground a charge of conspiracy only upon the fact that two or more persons were engaged together in committing an offense, there must be evidence that they concerted together.

In the case of GYAPONG VRS THE REPUBLIC [2015] 84 GMJ, 142 CA per Korbieh JA. It was held inter alia, *“that the new formulation of the law on conspiracy in section 23(1) of the criminal offence Act required the prosecution to prove agreement to act together for an unlawful purpose....”*

From the authorities as stated, the essential elements to be established by the prosecution beyond reasonable doubt under the law are:

- (1) That two or more persons had an agreement (directly or inferred)
- (2) That the agreement was to engage in unlawful act together
- (3) That the purpose (intent) of the acting together was to commit a crime.

The evidence of PW7 at the trial who tendered the various caution statements of the accused in evidence was that the accused person planned to robbery attacks prior to the incident Exhibit C, A1's caution statement that was not discredited in any form or manner, A1 said he went to meet with A4, A2, Sulley and Umar and Osman at Dom Kofe on the 6/1/22 for the purpose (contention) of the robbery. A3 in Exhibit C1 taken on the 14/1/22 which was also not discredited said it was A1 who invited him from Togo Basari to Kpando taken to A4 at Dom Kofe where he met A2 and others for an operation. In Exhibit C2A further statement of A4 stated that it was A2 who planned the robbery and called him to join them. These pieces of evidence from the prosecution shows one thing that accused persons herein actually met and agreed to act together for the

commission of an unlawful act. Even though the accused person denied the price of evidence in their defence of this case, same is seen as an afterthought.

That is so because A1 under cross examination from the prosecutor 21/12/22 admitted that it escaped him that he had met A3 earlier than the day of their arrest and captured in Exhibit K8A2 all the accused persons were at an eatery prior to their arrest on the 14/1/22. A4 who claimed he saw A3 for the first time on the day of their arrest at A2's home admitted under cross examination on the 13/1/2023 that he had met A3 before their arrest on the 3rd day. With those pieces of evidence at the trial, point to the fact that accused persons had not at different places prior to the robbery incident and prior to their arrest on the 14/1/22.

I hereby accept the evidence of the prosecutor that accused persons herein had prior engagement and the intention for their meeting was to engage in this unlawful act. I am therefore convinced that accused persons conspired to engage in a robbery on Kpando Agbenoxoe – Nkonya highway and I find them guilty as charged and convict them.

Section 149 of Act 29/60 as amended by Act 646 provides:

“Whoever commits robbery is guilty of an offence and shall be liable upon conviction on a trial summarily or on indictment to imprisonment for a term of not less than ten years, and where the offence is committed by the use of an offensive weapon or offensive missile, the offence shall upon conviction be liable to imprisonment for a term not less than fifteen years”

Section 150 of Act 29/60 states that:

“A person who steals a thing commits robbery;

- (a) If, in and for the purpose of stealing the thing, that person uses 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 the intent to prevent or overcome the resistance of the other person to the stealing of the thing”

It was held in BEHOME VRS. THE REPUBLIC [1979] GLR 112 that:

“One is only guilty of robbery if in the stealing of 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”.

The ingredients of robbery were identified in the case of KWAKU FRIMPONG a.k.a. IBOMAN VRS. THE REPUBLIC CA NO. J3/5/2010 18TH JANUARY 2012 as;

- i) That the appellant stole something from the victim of the robbery of which he is not the owner,
- ii) That in stealing the thing, the appellant used force, harm or threat of any criminal assault on the victim.
- iii) That the intention of doing so was to prevent or overcome the resistance,
- iv) The fear of violence must either be of personal to the person robbed or to any member of his household or family in the restrictive sense.
- v) The thing stolen must be in the presence of the person threatened

The evidence of the prosecution witnesses this PW1 to PW6 is to the fact that the various vehicle they were travelling with on the night of 9/1/2022 came under attack by same armed men between Kpando Agbenoxoe and Nkonya highway. Evidence at the hearing shows that the Benz bus with registration No. GT 667-F was the first to be attacked. PW2 in charge of that vehicle as a driver with his wife PW3 said at about 1:30 am that night they were signalled by six armed men to stop. While PW2’s Tecno phone Pop and GH¢260.00 taken from him, PW3’s Itel mobile phone and GH¢280.00 taken from her by the armed men. They were later made to lie on the floor. PW3 added that PW2 was made to remove the logs

the robbers used to block the road at the time VIP buses also arrived there and were also robbed.

On her part PW4 said she was asleep in the VIP bus at the time on the said section of the road and then the bus stopped suddenly and then she heard a gunshot into the bus and one of the armed men entered the bus and ordered the passengers to surrender their belongings to them. And she was robbed of GH¢1,500.00 PW6 on his part said at about 1:00 am on the VIP bus from Accra to Salaga at a section of the road between Agbenoxoe and Nkonya highway armed men about ten of them fired a gun into their VIP bus forcing the bus to stop. Two of the armed men came into the bus and robbed them of their belonging and he was robbed of GH¢2,000.00

PW5 testified that he was in a VIP bus from Accra to Salaga on the said night, and when their bus got to that section of the Agbenoxoe road to Nkonya he saw one of the VIP buses parked at the middle of the road and about six armed men emerging from the bush and came to order them to surrender their belongings. He handed Iphone 6 and GH¢250.00 to one of the armed men who came into the bus as he wanted to stop him (PW5) with a knife.

It is my finding of fact that these pieces of evidence from these witness were not contested by the accused person and same not discredited at the hearing. It is my finding therefore that armed men of about six in number of the 9/1/22 between 1;00 am to 2:00 am blocked the Agbenoxoe-Nkonya highway and forced at least three buses to stop at gun point and robbed the passengers of their belongings which were mostly mobile phones and monies. In fact, PW1 who was the driver of VIP bus with No. GT 6555-18 actually sustained injuries to his forehead from the gun shot from the robbers per Exhibit E. The police extract from Worawora Exhibit B lend credence to my finding of a fact that the said

attacks on Vehicles actually took place at the said section of Agbenoxoe-Nkonya highway that night.

Another finding of fact at the hearing by the PW4, PW5 and PW6 has to do with the identity of their attackers. PW4 identified all the four accused persons as those who robbed them of their belongings in the said VIP bus she was in. She identified A2 as the one who pointed the gun at her head to being her money and identified A3 as the one who was firing gun shots around when the bus stopped.

PW5 identified A2 as the one who collected his mobile phone and money from him at the scene of crime that night. PW6 on his part identified A4 as the one who collected money from him during the attack on their bus the evidence of the investigator PW7 per Exhibit 'F3' was that PW4 was able to identify all the four accused persons as those who robbed them on the said night at section of the road in an identification parade conducted by the Kpando divisional command. It is my candid view that these evidence were incontrovertible and therefore find that accused persons were those who blocked the Kpando Agbenoxoe Nkonya highways on the night of 8th to 9th January 2022. And robbed the passengers therein at the gun point.

On the caution statements and charged sheets tendered in evidence by PW7, In Exhibit C the caution statement of A1 on the 14/1/22 that A4 called him on 7/1/22 to tell him about the arrangement and that on the 9/1/22 at about 6:00 am A4 called him to say they are back from the operation at Kpando Agbenoxoe Nkonya Asakyire and he went there at Dom Kofe and A4 gave him one Iphone 6 plus and those from Kumasi left. Exhibit C1 A3's caution statement taken on the 14/1/22; that it was A1 who invited him down to Kpando from Togo for this operation. Met A1at the Zongo Traffic light and he took him to Dom Kofe where

he met A2 and A4 and other two persons. On the 8/1/22 they left for that section of the road and about 12.30 am they started the operation and robbed three different cars and he got mobile phones and GH2,000.00 as his share. A4 per Exhibit C2 taken on the 14/1/22 that it was A1 and A5 (at large) who came to tell him about the plan to go and do robbery. Even though he wanted not to take part, he joined them on the night as A5 brought a gun. The first car that was robbed was used to block the road and they robbed passengers of other buses at Kpando Agbonoxoe road. He said they had GH¢500.00 and five mobile phones and he had GH¢600.00 as his share. A4's further statement made per exhibit C2A on 14/1/22 said the short gun found in his room and the cartridges are his. He said he was part of those who robbed the cars on the said night with A1, A2 and A3 and others at large.

From these caution statements that came from the accused persons, each one of them here has been clearly identified and the role they played in the robbery attacks on Agbonoxoe Nkonya highway and how the booty was shared. Accused persons apart from A2, did not object to these statements and admitted same as voluntarily given to the investigator. Even though A2's caution was rejected and same does not form part of his analysis, the caution statement of the rest three accused persons clearly identified A2 as an active member in the planning and going to block the road on the night and robbed the Vehicles involved. These Exhibits were not discredited during cross examination. I hereby find as a fact that these accused persons took part in the blocking of Kpando Agbonoxoe Nkonya road and with the force of harm and violence to avoid any resistance of any kind, collected the belongings of the passengers and particular PW1 to PW6 that gave evidence at the trial.

Considering the defence put up by the accused persons at the trial. All of the four accused persons denied knowledge of this robbery let alone taking part in

same. A1 said he was on his way to attend outdoor ceremony of a baby at Golokwati and he passed by A2 and A4 to greet them that morning before they were arrested. A2 just like A3 and A4 denied knowledge and taking part in this robbery that took place on the 9/1/22 at a section of Agbenoxoe-Nkonya highway. There the denial of the accused persons in their involvement in this attack on the affected persons in those buses runs contrary to their caution statements as in evidence this Exhibits C, C1, C1A, C2 and C2A.

In the case of BUOR VRS. THE STATE [1965] GLR I, it was held that where a witness has previously said or written something contrary to what he testifies to in court, his evidence should not be given much weight. On the strength of this principle as stated in the decided case I attach no much weight to their evidence. That is particularly so as A1, A3 and A4 gave contrary evidence as to how long they had known a3 prior to the robbery attack. I will go ahead to reject the evidence of the accused persons at the trial that they had no knowledge or took part in this robbery attacks.

Assuming without admitting that I attach much weight to the evidence of the accused persons at the trial that they were not involved in this robbery. And that they gave their various caution statements under duress and go ahead to reject all the caution statements in evidence, the question then is, has the prosecution adduced any credible evidence at the trial against the accused persons over the robbery charge.

The answer is in the affirmative taking into consideration the evidence of PW1 to PW6 that I have conclude that same points to the fact that this robbery incident took place at that section of the road on the said date. The fact that PW4 identified A2 as the one who pointed the gun at her head and A3 was firing gun around the crime scene and saw A1 and A4 too among the robbers. PW5 identified A1

as the one who pulled a knife at him and collected his iPhone 6 and GH¢250.00 from him. PW6 identified A4 as the one who collected GH¢2,000.00 from him on the day. Their further evidence was that the armed men who attacked them were wearing mask that covered only their mouth. So they, witnesses, herein could easily and had clearly identified their attackers and the exact ordeal they went through in their hands. These evidence at the trial by the prosecution are materially sufficient to establish the offence of robbery against the accused persons without more in my candid opinion.

On the principle of law stated in BUOR VRS THE STATE (supra), I reject the evidence of the accused persons in defence of the case as same could not weigh much. I will and hereby accept the evidence of the prosecution at the trial as sufficient and has established all the requisite ingredients of the offence of robbery beyond reasonable doubt. It was held in MILLER VRS MINISTER OF PENSIONS [1947] 1 ARE 372 at 373 that:

“proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful positions to delete the course of justice. If the evidence is strong against a man as to allow only a remote possibility in his favour which can be dismissed with a phrase, it is possible but not least probable, the case is proved beyond reasonable doubt but nothing short of that will suffice”

It is my conclusion therefore that the prosecutor has adduced credible evidence at the hearing over the offence charged beyond reasonable doubt to secure the conviction of the accused persons. I hereby found them guilty as charged and convict them.

BY COURT: Do accused persons have anything to say before sentence is passed. All the accused persons took turn to plead with the court for mercy.

BY COURT: In sentencing the accused persons in this case over the

offences charged, I have taken their plea on mitigation into consideration. The fact that they have been in custody over one year two months now since the date they were arraigned before this court on the 17/1/2022. I have also taken into consideration many incidents of highway robbery attacks on vehicles on our roads mostly at nights and rob passengers of their valuables injuring victims in the process which must stop. This type of attacks must stop to allow passengers to travel both day and night safely from one point to the other in the country. Each accused person is hereby sentenced to thirty (30) years in prison with hard labour on both counts which shall run concurrently to serve as a deterrent.

FINAL ORDER

The Exhibits mobile phones as admitted into evidence from the victims be released to them by the Registrar in collaboration with the prosecutor within 30 days from today. The short gun and locally made pistol recovered from the accused persons that were in evidence be given to the police Divisional command for their use.

SGD

FRANCIS ASONG OBUAJO

CIRCUIT COURT JUDGE.

29/3/2023

