

IN THE CIRCUIT COURT HELD AT BIBIANI ON TUESDAY THE 13TH DAY OF
MAY, 2023 BEFORE HIS HONOUR JOSHUA C ABAIDOO ESQR, CIRCUIT COURT
JUDGE

SUIT NO. BN/CT/49/22

THE REPUBLIC

VRS

1. REUBEN ABIAW @ AYILE BAAKOPE 1ST ACCUSED PERSON

2. ISAAC ARHIN **2ND** **"**

3. KWABENA BRENTU 3RD “

ACCUSED PERSONS PRESENT D/C/INSPECTOR FRED
AMOH FOR THE PROSECUTION.

JUDGMENT

The accused persons were charged with one count of the offence of Conspiracy to commit crime to wit Robbery contrary to section 23(1) and section 149, one count of the offence of Preparation to commit crime to wit Robbery contrary to section 19 and section 149, one count of the offence of Possessing Instrument intended or adapted for unlawful entry contrary to section 154 of the Criminal Offences Act, 1960 Act 29 and one count of the offence of Possessing Firearm and Ammunition without Lawful Authority contrary to section 11(1) of the Arms and Ammunition Act 1972 NRCD 9.

The brief facts of the case are that 1st accused person (A1) Reuben Abiaaw @Ayile Baako an Okada rider, 2nd accused person (A2) Isaac Arhin, Small scale miner and 3rd accused person (A3) Kwabena Brentu a farmer were arrested by the Enchi Police Command on 18th February, 2022 upon intelligence that they were planning to attack miners, gold buyers and businessmen at Kwawu and its environs. The arrest was

preceded by Police surveillance which revealed that A1 as part of the plan invited his friend A2 from Ayanfuri in the Central Region to join them. The accused persons were arrested in the room of A1 where they were fortifying themselves in preparation for the robbery operation. 2 pump action guns, 18 live AAA cartridges, 1 sharpened machete, 1 knife, 1 Cleaver, 1 calabash, 1 empty perfume bottle, one slaughtered chicken, 1 broken egg and GHS 8.00 cash were found displayed on the floor in the room. A1 and A2 admitted the offences in their respective investigation Caution Statement.

At the trial all the accused person pleaded “not guilty” to the charge made against them.

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

Reasonable doubt was explained by Denning J (as he then was), in **Miller v. Minister of Pensions [1947] 2 All ER 372 @ 373** as "...it need not reach certainty, but it must carry a high degree of probability, proof beyond reasonable doubt does not mean proof beyond a shadow of doubt.

Under section 11(2) of 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. In the case of the accused except in cases where a statute throws the burden upon him, he is not obliged to prove anything. All that the law requires of him is to raise a reasonable doubt as to his guilt on the fact in issue.

The Prosecution called four witnesses PW1 No. 44919 G/Sgt James Amoadek, PW2 Insp. Ernest Mintah and PW3 G/L/Cpl. Prince Tandoh, and PW4 No. 45883 D/Cpl Lawrence Yeboah all of the Enchi District Police Command whose evidences in chief are as contained in their respective witness statements. PW4 tendered the following 12 exhibits in evidence as part of his evidence;

1. Exhibit A:- The written statement of PW2
2. Exhibit B:- The written statement of PW1
3. Exhibit C:- The written statement of PW3
4. Exhibit D:- Investigation Caution statement of A1.
5. Exhibit E:- Investigation Caution statement of A2.
6. Exhibit F:- Investigation Caution statement of A3
7. Exhibit G:- Further Investigation Caution statement of A1
8. Exhibit H:- Further Investigation Caution statement of A2
9. Exhibit J:- Charge Caution statement of A1
10. Exhibit K:- Charge Caution statement of A2
11. Exhibit L:- Charge Caution statement of A3
12. Exhibit M :- Photographs of exhibits namely: 2 pump action guns, 18 live AAA cartridges, 1 sharpened machete, 1 knife, 1 Cleaver, 1 calabash, 1 empty perfume bottle, one slaughtered chicken, 1 broken egg and GHS 8.00 cash

A1 Reuben Abiaw who lives at Enchi Kwawu in his evidence in chief told the court that A2 who lives at Ayanfuri and A3 who lives at Enchi Kwawu are his friends and that A2 informed him of his need for a galamsey job. A1 linked A2 up with one Efo, blacksmith who lives at Enchi Kwawu. Efo invited A2 to come over to Kwawu from Ayanfuri to lodge with A1 while he gets A2 the Galamsey work. On the day of their arrest Efo called A2 to get ready to be taken to the galamsey site and he came to leave a sack

containing some items on the verandah or porch of A1's apartment. A1 and A3 were inside A1's room while A2 was talking to Efo outside. The Police suddenly came in led by one man by name "school boy" who alleged that A1 had planned to take his gold away from him. The police searched A1's room but did not find anything. On their way out they found the sack on the verandah and poured out its contents which A1 saw to be 2 guns and a machete. They also took a kitchen knife from the verandah and asked A1 about the contents of the sack. He answered that they were brought there by one Efo. When he was asked about the whereabouts of Efo A1 answered that Efo was earlier on the verandah. That is when he was arrested.

A2 Isaac Arhin told the court that it was one Efo who brought a sack containing some items which he claimed belong to one "School boy". Efo later brought a polythene bag also containing items which also allegedly belonged to "school boy" and left. It was after this that the Police came to find the contents of the sack and polythene bag and effected the arrest. They informed the police that the items were brought there by Efo but the Police failed to arrest Efo even though they saw Efo at the Enchi District Court and pointed him out to the Police.

A3 in his evidence told the court that he lives at Boinso near Enchi and that he lives in the same town with A1 but he does not know A2. He went to A1's house to pay him for a motor bike ride to Omanpeh. It was when he was in the room with A1 while A2 was outside that he asked A1 who A2 was and what his mission was at Kwawu. A1 told him that A2 had come from Ayanfuri to do galamsey work with "schoolboy and Efo". While in the room he saw A2 talking to someone so he asked and A1 answered that A2 was talking to the person that A2 was going to work with. The Police later came in led by the man called "school boy" who accused A1 of organizing a squad to rob him. The Police then forcibly entered and searched the room but did not find anything. They

found the sack on the verandah and emptied it and found the 2 guns and other items but he did not check the number of cartridges.

ANALYSIS OF THE EVIDENCE

In the investigation caution statement Exhibit D of A1 he stated that the 3 accused persons were in A1's room on 18th February, 2022 with Efo who brought the guns, cartridges and the other items including the foul. He slaughtered the foul and performed some rituals in preparation for the supposed mining work. While performing the rituals he asked the 3 accused persons to wait for him and shortly after he left the room the police came in.

The investigation caution statement of A2 largely corroborated that of A1 except that he questioned Efo about where he got the weapons from and Efo said those weapons belong to "school boy" and also confirmed that Efo displayed all the items on the floor as the three of them sat and watched him. Shortly after Efo had left, the Police team came in.

A3 in his investigation caution statement confirmed that Efo brought a polythene bag and a sack to the verandah or corridor of A1's room but denied knowledge of the contents. He claimed that he went into the room of A1 to watch TV and when he came back outside Efo had left and the pump action guns and other items were displayed on the floor. The police came in when he was just about to question A1 and A2 about the items displayed on the floor.

The further investigation caution statements of A1 and A2 i.e. Exhibit G and Exhibit H, in which both of them confessed that they planned to carry out robbery operations in

the kwawu area are instructive in the determination of this case. Both A1 and A2 confessed that it was for this purpose of robbery that A2 travelled from Ayanfuri to Kwawu. According to A2 he accepted the invitation to join A1 because he had joined A1 in a similar robbery operation at Samreboi near Asankragua. In pursuance of that mission A1 had given a pump action gun to Efo for repair toward the operation and another one was to be hired. A1 and A2 however, stated that A3 did not have any knowledge of what they were planning and preparing to do.

The confessions of A1 and A2 in exhibits G and H are in sharp contrast with their earlier investigation caution statements exhibits D and E as well as their evidences in court. While in their evidences in court they said that the police did not find anything in the room and that it was when they were on their way out that they found the sack and emptied its contents they admitted in their investigation caution statements that the 2 pump action guns and the rest of the items found were displayed on the floor. This is corroborated by the investigation caution statement of A3. This also confirms the facts of the case as put forward by the prosecution that the guns and other items were found displayed on the floor.

In the case of **the State v. Otchere [1963] 2 GLR 463-531** it was held that;

“a witness whose evidence on oath is contradictory of a previous statement made by him whether sworn or unsworn, is not worthy of credit.”

A1 and A2 are therefore not worthy of any credit. A3 has however, been consistent about his innocence throughout.

APPLICATION

On count 1 on the offence of Conspiracy to commit crime to wit Robbery contrary to section 23(1) and section 149 of Act 29 the gist of the offence is the agreement to Act together with a common purpose for or in committing or abetting a criminal offence. It is very clear from the confessions that A1 and A2 agreed to act together for the purpose of committing the criminal offence of robbery in Kwawu and its surrounding areas. Same cannot be said about A3 as both A1 and A2 stated that A3 did not know about their plans.

A1 and A2 are therefore each convicted on count 1

On the count 2: Preparation to commit crime to wit Robbery contrary to section 19 and section 149 of Act 29, A2 travelled from Ayanfuri in the Central Region to Kwawu in the Western North Region for the purpose of engaging in robbery operations with A1, they acquired and/or secured weapons and ammunition and other implements for the purpose and had met together for rituals in the house of A1 in preparation for the operation. The targets and the locations were yet to be decided.

Section 19 of Act 29 states that;

“A person who prepares or supplies, or has in his possession, custody, or control, or in the possession, custody or control of any other person on behalf of that person, any instrument, materials, or means, with the intent that the instruments, materials or means, may be used by that person or by any other person, in committing a criminal offence by which life is likely to be endangered, or a forgery, or a felony, commits a criminal offence and is liable to punishment in like manner as if that person had attempted to commit that criminal offence”

It is clear from the evidence before the court that A1 and A2 were preparing to commit the offence of robbery. As they both say that A3 had no knowledge of their plans same cannot be said about A3.

A1 and A2 are each convicted on count 2

Section 18(2) of Act 29 states that;

“A person who attempts to commit a criminal offence, commits a criminal offence, and except as otherwise provided in this Act, is liable to be convicted and punished as if the criminal offence has been completed”.

A1 and A2 are therefore to be punished as if the offence of robbery had been committed.

On count 3 i.e. Possessing Firearm and ammunition without Lawful Authority contrary to section 11(1) of the Arms and Ammunition Act 1972, NRCD 9 states that;

Section 11 of NRCD 9 states as follows;

Possession of arms or ammunition without authority

Where any firearms, arms of war, munitions of war or ammunition are, without the proper authority,

(a) found in the possession of a person,

(b) kept in a place other than a public warehouse, or

(c) unlawfully kept in a private warehouse,

that person or the occupier of that place, or the owner of the place or any other person keeping them, commits an offence unless that person, occupier, or owner can prove that they were deposited there without the knowledge or consent of that person, occupier or owner.

There is no dispute that the arms and ammunition were found in the house of A1. If indeed Efo brought any gun(s) to the accused persons A1 and A2 then it can be inferred from the evidence that Efo brought one gun which had been sent to him for repair by A1. The ownership of the other gun or who brought it to the scene was not determined by the investigation.

Now the statute under which the accused persons have been charged is one of strict liability. This is a typical statute which presumes the guilt of the accused person and places the burden of proof of innocence on the accused person. Nowhere in the evidence adduced has it been shown that the accused persons i.e. A1 and A2 had any legal authority to possess those weapons and ammunition. As A3 did not have any knowledge about the plans of A1 and A2 legal possession of the arms and ammunition as well as the other implements cannot be imputed to him.

A1 and A2 are each therefore convicted on count 3.

On count 4: Possessing Instrument intended or adapted for unlawful entry contrary to section 154 of Act 29 it is clear that the guns with ammunition, 1 sharpened machete, 1 knife, and 1 Cleaver are adaptable for unlawful entry especially given the circumstances under which they were found with the accused persons. There is no question about that. A1 and A2 were in legal possession of these instruments adaptable for unlawful entry in preparation to commit the offence of robbery. Same cannot be said of A3.

A1 and A2 are each convicted on count 4.

A3 seems to have been at the wrong place at the wrong time. He is therefore acquitted and discharged on all 4 counts

SENTENCING

The accused persons A1 and A2 are each sentenced as follows;

Count 1: Ten (10) years in prison with hard labour.

Count 2: Ten (10) years in prison with hard labour.

Count 3: GHS 500 or in default 3 years in prison with hard Labour.

Count 4: 300 Penalty Units or in default 30 months in prison with hard labour.

All sentences are to run concurrently

In coming to this decision the court took into consideration the prevalence of the offence of robbery within its jurisdiction, the fact that A1 and A2 are first time offenders with no previous proven conviction, their pleas in mitigation and the period that they have spent in lawful custody during the pendency of this trial.

It is hoped that these sentence will serve as a warning and a deterrence to like-minded people, in the community.

The recovered arms and ammunition, the machete, cleaver and knife are confiscated to the state. The other items are to be disposed of by incineration

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