

IN THE CIRCUIT COURT HELD AT BOLGATANGA IN THE UPPER EAST REGION OF GHANA ON FRIDAY THE 27TH DAY OF JANUARY, 2023 BEFORE HIS LORDSHIP JUSTICE ALEXANDER GRAHAM HIGH COURT JUDGE SITTING AS ADDITIONAL CIRCUIT COURT JUDGE

CRIMINAL SUIT NO. UE/BG/CT/B1/06/2022

THE REPUBLIC

VERSUS

- 1. AKALEK @ MANDELA**
- 2. BATAME DAVID**
- 3. KOLOG ISAAC**
- 4. ESSEN AT LARGE**
- 5. AKWASI AT LARGE**
- 6. GUCCI AT LARGE.**

J U D G M E N T

A1, A2, A3 were charged with the following offences.

COUNT ONE:

STATEMENT OF OFFENCE

CONSPIRACY TO COMMIT ROBBERY: Contrary to Sections 23(1) and 149 of the Criminal and other Offences Act, 1960 (Act 29) as amended by Act 646 of 2003.

PARTICULARS OF OFFENCE

- 1) AKALEK @ MANDELA, GALAMSEY OPERATOR, 32YRS., 2) BATAME DAVID, GALAMSEY OPERATOR, 22YRS., 3) KOLOG ISAAC, GALAMSEY OPERATOR, 19YRS., 4) ESSIEN AT LARGE, 5) AKWASI AT LARGE AND 6)

GUCCI AT LARGE: For that you on the 28th day of October, 2020 at about 10:00pm at Obuasi Mining Site, Gbane in the Upper East Region and within the jurisdiction of this Court, you did agree to act together for the purpose of using threat of Criminal assault and force to steal.

COUNT TWO:

STATEMENT OF OFFENCE

ROBBERY: Contrary to Section 149 of the Criminal and other Offences act, 1960 (Act 29) as amended by Act 646 of 2003.

PARTICULARS OF OFFENCES

1) AKALEK @ MANDELA, GALAMSEY OPERATOR, 32YRS., 2) ESSIEN AT LARGE, 3) AKWASI AT LARGE AND 4) GUCCI AT LARGE: For that you on the 28th day of October, 2020 at about 10:00pm at Obuasi Mining Site, Gbane in the Upper East Region and within the jurisdiction of this Court, you did Steal Fifty Pounds of Gold valued GHC110,000.00 and cash of GHC10,000.00 belonging to Isaac Mensah and for the purpose of Stealing Steal Fifty Pounds of Gold and the GHC10,000.00, you used Criminal Assault by using AK 47 Assault Rifle against Isaac Mensah with intent to prevent and overcome the resistance of Isaac Mensah to sealing of the steal Fifty Pounds of Gold and GHC10,000.00.

COUNT THREE:

STATEMENT OF OFFENCE

POSSESSION OF AMMUNITION WITHOUT AUTHORITY: Contrary to Sections 11(a) & 26 of the Arms and Ammunition Act of Ghana, 1972 (N.R.C.D. 9).

PARTICULARS OF OFFENCE

AKALEK @ MANDELA, GALAMSEY OPERATOR 32YRS.: For that you on the 28th day of July, 2021 at about 3:15am at Obuasi Mining Site, Gbane in the Upper East Region and within the jurisdiction of this Court, you possessed Seven (7) BB Cartridge Ammunitions without Authority.

A1 and A2 pleaded 'NOT GUILTY' to the offences aforementioned.

According to the facts as presented by the prosecution, the complainant in this case is Isaac Mensah, a Small-Scale Miner and a businessman who is into the buying and selling of Gold and also a resident of Obuasi Mining Site within the Gbane Mining enclave. Accused persons; A1, A2 and A3 are all Galamsey Operators and all three are resident of Obuasi Mining Site. Sometime in October 2020, A1, A2 and A3 were part of a six-member gang who met and hatched a plan to rob complainant and his wife who mostly buy gold from galamsey operators and kept same in their house. The plan was masterminded by A4 who is from Bawku and A5 from Sheaga, both at large with A4 promising to provide the gang with AK 47 assault Rifles for the operation. A4 further invited another friend of his, A6 from Bawku to assist them execute the robbery. On 28/10/2020, the gang planted A2 and A3 as spies on complainant's house and they both reported back to the rest of the gang that complainant and his wife were home. This information provided led the gang including A1 to invade complainant's household with weapons including two AK 47 assault rifles and subsequently robbing them of Fifty (50) pounds of Gold valued GHC110,000.00 and cash the sum of GHC10,000.00, all amounting to GHC120,000.00. On 02/11/2020, complainant lodged a report at the RCID, Bolgatanga where frantic effort led to the arrest of A1 at Gbane and a search conducted in his room exposed seven (7) BB Cartridges. A1 told police that he has accomplices in the robbery namely A2, A3, A4, A5 and A6. A1 led the team to the house of A2 and pointed at him to police as part of the gang and A2 was also arrested. A1 and A2 then led police to A3 in separate hideouts also at Obuasi Mining Site and A3 was also

arrested. A1, A2 and A3 were all brought to the RCID, Bolgatanga and interrogated during which they all admitted and confessed having robbed complainant on 28/10/2020 in his house, A1, A2 and A3 mentioned A4, A5 and A6 who are at large as their accomplices. A1, A2 and A3 further disclosed to have received amounts of GHC10,000.00, GHC9,000.00 and GHC1,000.00 respectively as their shares of proceeds from the sale of complainant's gold. After investigations, A1, A2 and A3 were charged with the offences stated on the charge sheet.

In order to prove its case, the prosecution relied on the evidence of four prosecution witnesses who are:

PW1-----ISAAC MENSAH

PW2----- KHALIQ MENSAH.

PW3----- DETECTIVE CORPORAL MUSTAPHA KAMAL MOHAMMED

PW4----- NO. 54140 DETECTIVE CONSTABLE LINUS ABBEY.

A1 testified and called one witness

DW1----- KPENDOLIBA ABENA

A2 failed to call a witness.

PW1 in his evidence-in-chief narrated the robbery incident by stating that on Wednesday 28/10/2020, at about 10:45pm, he heard a knock on his door which was a usual occurrence amongst his clients who normally come to his house and keep their items after work and return the next day for them to transact business.

He came and opened the door only to realize that there were three armed men wielding AK47 assault rifles.

His initial thought on seeing the three-armed men was that it was his police friend who had come to visit him together with his colleagues.

The armed men instructed him to take them inside the house as they have been sent to him.

Two of the armed men followed him into his room whilst the third armed man remained outside.

The armed men asked him to invite his wife into the room which he did. The armed men told them that they were aware PW1 was keeping gold in his house so he should hand it over to them or else they would kill PW1 and his wife.

The armed men further indicated that someone had informed them that they had gold in their house so they should come and collect same but they did not disclose the person to them.

PW1 told them that he had only returned from a journey and didn't have any gold on him but the armed men insisted and one of the armed men followed him to his safe where he kept his gold and forced him to open the safe.

The armed men took an unspecified amount of money and gold from his safe and a refined quantity of gold he had given to his daughter to keep as well with all amounting to about GHC120,000.00.

Afterwards, the armed men moved his wife and he together with their two children into one of the rooms and locked from outside. Shortly afterwards, he heard the sound of a motorbike behind his house and they quickly rushed out of the house and fled.

PW1 stated in his evidence-in-chief that he can identify two of the robbers when seen.

It is the evidence of PW2 that his father came knocking on his door at about 10:30pm when he was deeply asleep. He came out of his room and realized that there was no light and the entire compound was dark.

PW2 went to the compound and saw two armed men wielding AK47 rifles following his father on the compound. One of the armed men hit him with the weapon at his back and asked him to bring their safe key.

At this point his Mother was also out on the compound with one of the armed men pointing his weapon at her while the other armed man marched his Father into PW2's room where the safe was kept.

He got really scared and terrified at the sight of a gun being pointed at him and his father.

His father asked him to bring the key and when he brought it, the armed man instructed him to open the safe and he did. He was commanded to pack all the money and gold in the safe into a rubber bag and hand it over to him and he obeyed without the least hesitation.

The quantity of gold they collected from the safe was valued GH¢50,000.00 together with physical cash of about GH¢10,000.00.

Afterwards, they brought his father and him into the main compound where his mother was being held captive and they demanded for more gold.

They informed them that they were aware they had refined gold in the house and if they refused to give it to them, they would kill them.

This prompted his father to lead one of them to his younger sister, Dorcas' room who was asleep and also keeping some refined gold for his father.

His father woke his younger sister up and asked her to bring out the refined gold he gave her to keep. The armed man snatched the refined gold from her after which he brought his sister into the compound and asked her to lie beside him.

PW2 stated the value of the refined gold as GH¢60,000.00.

They were moved into one room and locked up from outside.

His father called a friend of his after the armed robbers had left who came and opened them

According to PW2, the armed robbers spoke Twi language throughout the period of the attack and there was clarity in their Twi.

He also observed that one of the two robbers who came inside the house was short whilst the other one was quite built in physique but in his attempt to watch his face, he slapped him.

PW3 in his evidence-in chief stated that on 28/07/2021, he was part of the Regional Surveillance Team that acted upon intelligence and arrested Suspects Akalek @ Mandela, Batame David and Kolog Isaac for their involvement in the robbery of complainant Isaac Mensah.

According to PW3, the three suspects were arrested at separate hideouts within the Obuasi section of the Gbane Mining site.

A1 was first arrested and a search was conducted in his room where seven (7) BB cartridges were retrieved.

The team was led by A1 to the houses of A2 and A3 where they were subsequently arrested.

A Search was conducted in the places of abode of A2 and A3 and nothing incriminating was found.

PW4 is the investigator in this case. According to PW4, on 2/11/2020, a case of robbery which occurred on 28/10/2020 at the Gbane Mining site was reported at the RCID, Bolgatanga by PW1.

According to PW4, on 3/11/2020, a team of Detectives of which he was part visited the crime scene, interviewed relevant witnesses and subsequently obtained statements from them.

He observed at the scene that complainant had installed CCTV cameras in the house so he was asked to furnish police with the footage to assist investigation.

Stringent intelligence gathering was instituted which provided leads to the whereabouts of the accused persons and it culminated in the arrest of A1, A2 and A3 at separate houses within the Obuasi section of Gbane mining site on 28/07/2021.

The team went to A1's house and he attempted to escape by ripping part of his roofing sheet and sustained a deep cut in the process but he was eventually arrested.

A search conducted in A1's room in the presence of his girlfriend, Gifty revealed Seven (7) BB Cartridges and a bayonet and photographs were taken for evidential purposes.

The team then proceeded to a house in the same vicinity where A2 was found seeking refuge and he was arrested.

A1 and A2 upon their arrest led the team to arrest A3 also at Obuasi near the Gbani mining site.

A1, A2 and A3 were brought to the RCID/Bolga where they were interrogated in the presence of the Regional Crime Officer Supt. /Mr. Reuben Dugah where they all confessed and admitted their involvement in the robbery of complainant on 28/10/2020.

He took investigation caution statement from A1, A2 and A3 in the presence of an independent witness and they confessed to the crime.

According to PW4, his Investigations disclosed that sometime in October 2020, A1, A2 and A3 were part of a six-member gang who met and hatched the plan to rob complainant and his wife who mostly bought gold from galamsey operators and kept same in their house.

This grand scheme was mooted and masterminded by one Essien (A4) from Bawku and Akwasi (A5) from Sheaga who are both at large.

The aforementioned two invited another friend of theirs called Gucci (A6) also from Bawku and at large as well for the operation.

A4 provided the gang with two AK47 rifles and ammunition for the operation.

A2 and A3 were planted as spies for the gang on complainant's house and the feedback from the two provided the impetus for the rest of the gang including A1 to invade complainant's household with the AK 47 rifles.

They threatened the complainant and his household with the guns and thereby succeeded in taking away from them fifty pounds of gold and physical cash GHC10,000.00 all amounting to about GHC120,000.00.

Investigation further disclosed that A1, A2 and A3 received amounts of GHC10,000.00, GHC9,000.00 and GHC1,000.00 respectively as their share from the sale of complainant's gold.

PW4 tendered in evidence the following exhibits:

The investigation caution statement of A1--- Exhibit "A".

The investigation caution statement of A2--- Exhibit "B".

The charge caution statement of A1--- Exhibit "C".

The charge statement of A2--- Exhibit "D".

The transcript of video recording--- exhibit "E".

A1 in his evidence-in-chief stated that he was arrested in his house and that the ammunition found in his room belongs to his brother. His brother died and after the funeral, the police came to arrest him and found the bullets in a sandal in his room. He did not know the bullets were in the sandals. The police didn't see Gold or cash on him. He did not commit the robbery and do not know the other Accused persons.

DW1 of A1 testified that A1 was her husband and that A1 was not a robber.

A2 testified that on the 28th July, 2021, he was at the galamsey site at Talensi District, Tongo and at about 3:15am, and whiles he was asleep, he heard a knock on his door. When he came out, he saw policemen in front of his door. They told him he was needed at the Bolga Police Headquarters. He went with them to the Bolga Police Headquarters. When they got there, he was asked by the policemen to show them where his motorbike was. He told them it was with A3. They went and took the motorbike and arrested him as well. The crime officer asked him whether he knew the other accused persons and he denied knowing them.

EVALUATION OF EVIDENCE

The issues for determination are:

1. whether or not A1 and A2 agreed and acted together with a common purpose to commit robbery?
2. Whether or not A1 and A2 stole Fifty Pounds of Gold valued GHC110,000.00 and cash of GHC10,000.00 belonging to PW1?
3. Whether or not A1 and A2 in stealing Fifty Pounds of Gold valued GHC110,000.00 and cash of GHC10,000.00, used force, harm or threat of any criminal assault on PW1?

4. Whether or not the intention of A1 and A2 in doing so was to prevent or overcome the resistance by PW1?
5. Whether or not A1 had in his possession Seven (7) BB Cartridge Ammunitions without Authority?

Olennu JSC in **OTENG V. THE STATE [1966] GLR 355** stated in the following terms: -

“... the citizen too is entitled to protection against the State and that our law is that a person accused of a crime is presumed to be innocent until his guilt is proved beyond reasonable doubt as distinct from fanciful doubt.” **SEE SECTIONS 11(2), 13(1) AND 22 OF THE EVIDENCE ACT 1975, (NRC D 323).**

The definition of conspiracy as stated in section 23 (1) of the criminal offences Act of 1960, Act 29 states 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.”

In this wise the court is referred to the case of **C. O. P. VRS AFARI and ADDO [1962]1 GLR 483.** Reference is also made to the cases of **AZAMATSI and others VRS. THE REPUBLIC [1974]1 GLR 228 and STATE VRS BOAHENE [1963] 2 GLR 554.**

In a conspiracy, where there is evidence of overt acts, each conspirator acts as an agent of the others in the execution of their common criminal objective.

Section 149 of the Criminal Offences Act (substituted by criminal code (Amendment) Act, 2003 (Act 646) states as follows:

“A person who commits robbery commits a first-degree felony”

Section 150 of the criminal offences Act of 1960 states that: “A person who steals a thing commits robbery. (a) if, in and for the purpose of stealing the thing, that 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 person, with intent to prevent or overcome the resistance of the other person to the stealing of the thing.” The case of **BEHOME VRS THE REPUBLIC [1979]1 GLR 112 refers.**

Section 11 of the said Act states that:

(1) Any person who—

(a) contravenes any provision of this Decree or any condition or restriction imposed in respect of any permit granted to him; shall be guilty of an offence and liable on summary conviction to a fine not exceeding ₦5 million or to imprisonment not exceeding five years or to both. [As amended by the Arms and Ammunition (Amendment) Act, 1996 (Act 519), s.2]

On the identification of A1 by PW1, PW1 stated during cross examination that A1 was carrying an AK 47 gun and that police did not conduct an identification parade and A1 came in the same way as he is standing before the Court.

The entire evidence- in-chief of PW1 did not pinpoint to A1 and A2 as the robbers. PW1 used the phrase “the armed men” through-out the evidence- in-chief and finally stated that he can identify two of the robbers when seen.

During cross-examination of PW1 by counsel for A1, PW1 refuted an assertion that the whole incident happened in the dark.

PW1 was insistent that two of the armed men followed him into his house while the third person remained outside and he could identify the two-armed robbers to the police because he had a solar lamp.

PW1 stated that although, A1 used his hand to tear the solar lamp, A1 put on a torch light when PW1 opened the safe.

PW2 stated during cross examination that he couldn't tell whether A1 was part of the robbers because the robbers slapped him and he bowed his head till they left.

During cross-examination of PW3 by counsel for A1, PW3 revealed that although the offence took place on 28/10/2020 and a case was reported by PW1, A1 was arrested a year later because police acted upon intelligence to effect the arrest of A1.

PW3 explained that investigations and intelligence gathering can take some time and that A1 was arrested in his house in Gbane Mining Site.

According to PW3, PW1 reported a case of robbery but did not state who robbed him and did their investigations and caused the arrest of Accused persons without identification by PW1.

It is the case of PW3 that 7 BB cartridges were found in the room from A1 but nothing incriminating was found in the rooms of A2 and A3.

According to PW3, when A1 was arrested, police asked him about the where about of A4 and A1 started confessing to police in Twi that "Police if you commit an offence and the police arrest you, you have to say the truth".

On the part of A2, PW3 stated during cross examination that A2 played a role by spying in the robbery that is why he was arrested and that Accused persons narrated to the police the role that each of them played.

I have seen the cautioned statements of A1 and A2 exhibits "A" and "B" respectively. After a mini trial, the caution statement of A1 was admitted in evidence. A1 and A2 stated as follows:

STATEMENT OF BATAMME DAVID.

Suspect Batamme David stated in Twi language and same recorded down in English language in the presence of Esther Akakuzia, an independent witness at Bolga as follows; I know the complainant in this case and his wife at Obuasi mining site. I know the complainant to be buying and selling gold. I know suspects Akalek @ Mandela and

Isaac Kolog. I also know suspects Essien and Akwasi who are both at large. It is true I was involved in this robbery incident. What happened was that, about three days before the robbery, Essien asked me and suspect Isaac Kolog to go and spy the residence of the complainant to see whether the complainant's wife was at home. We went and saw complainant's wife cooking in the house. She sells drinks so the place was accessible to us. We returned and informed Essien that the complainant's wife was at home. He then asked us to go. On the day of the robbery, 28/10/2020 around 3:00pm, Essien asked me and Isaac Kolog to go and spy the complainant's residence again. We went and saw the wife of the complainant at home again. On both occasions, we did not see the complainant himself at home. We informed Essien about the presence of the complainant's wife at home. Essien told us that they were going to rob the complainant's wife that day in the night. Essien mentioned suspect Akalek @ Mandela, Akwasi, Gucci and one of his friend from Bawku as those who would assist him in the robbery. Essien also told us that he was free with the police officers on duty at the Shanxi Mining post so he was going to get some guns from the police officers for the robbery. Even though Essien informed us that they would be going for the robbery, he did not tell us when they were going on the day of the robbery. The following day, I brought my motorbike for servicing at Bolga and I had a call from Essien. He asked me to come to Black star Hotel at Bolga. I went and met him. He told me that they went for the robbery and had gold and cash of GHC6,500.00. He also said they sold the gold for GHC40,000.00 making a total proceed of GHC46,500.00. Essien gave me GHC9,000.00 as my share and gave me GHC1,000.00 to be given to suspect Isaac Kolog as his share. I also went and gave Isaac's share to him. Essien told me that (he had GHC10,000.00 as his share and that) he was going to give GHC10,000.00 to the police officers who gave him the guns.

I Accused Akalek @ Mandela make the following statement out of my own free will in the presence of Esther Akakuzia of Obuasi House, Pobaga an independent witness. I have been told that I need not to say anything unless I wish to do so but whatever I say will be taken down in writing and may be given in evidence at Court. I have also been reminded of my legal right to consult a Counsel of my own choice.

Accused Akalek stated in Twi language in the presence of Esther Akakuzia of Obuasi House, Pobaga an independent witness and same recorded down in English language as follows; I wish to state that it is true that I had Ammunition in my possession without lawful authority. Those Ammunitions belonged to my late brother Jacob who committed suicide after which his weapon was retrieved by the Tongo District Police station. I found the ammunitions in my late brother's room and due to my ignorance, I refused to hand them over to the police or dispose them off but rather I kept them without any intention of using them. With regards to the robbery, I wish to (add) confess and admit that indeed myself and three others thus Akwasi, Essien and Essien's friend from Bawku went to complainant's house and robbed him of his gold and money on 28/10/2020. Myself and Akwasi wielded no weapon whiles Essien and his friend each wielded an AK47 rifle which Essien secured from some (the) police(s) officers on duty at the Shaanxi police post. When we entered the house, Essien told the complainant and his wife that we are aware they sell gold so they should give ours to us. They went inside and brought the gold and Essien's friend took it from complainant and gave it to me to keep. After robbing them we left their premises on foot. We also took an amount of GHC6,500.00 from the complainant in addition to the gold. The following day we brought the gold to the Bolga market where they refine gold and sold it for an amount of GHC40,000.00. I had GHC10,000.00 as my share of the booty, David Batamme had GHC9,000.00, Isaac Kolog had GHC1,000.00 and Essien told us he would give the police officers who gave him the rifles GHC10,000.00 and he and his friend and

Akwasi shared the rest. It was Essien who told us that they had proceeds of GHC40,000.00 from the sale of the gold. I wish to further state that after Essien was dismissed from the Shaanxi Mining Company, he was also staying at Obuasi section through which we created a rapport with him. On the day of the incident around 3:00pm, Essien called me on phone and told me that he would go and collect rifles from the police around 8:00pm so that we can go and rob complainant and his wife. When the time was due, he called me and I went and met him in his house where he called the other guys and they came and we all went for the robbery operation.

ADMISSIBILITY OF THE CAUTIONED STATEMENTS

Akamba JSC, in the case of EKOW RUSSELL VS. THE REPUBLIC [2017-2020] SCGLR 469 defines a confession statement as follows:

“A confession is an acknowledgment in express words, by the accused in a criminal charge, of the truth of the main fact charged or of some essential part of it. By its nature, such statement if voluntarily given by an accused person himself, offers the most reliable piece of evidence upon which to convict the accused. It is for this reason that safeguards have been put in place to ensure that what is given as a confession is voluntary and of the accused person’s own free will without any fear, intimidation, coercion, promises or favours.”

A1 and A2’s cautioned statements dated 28th July, 2021, which turned out to be confession statements are governed by Section 120 of the Evidence Act, 1975 (NRCD 323). Applying Akamba’s dictum (supra) and the Evidence Act to the facts of this case, the basic point of the admissibility of a confession statement is the question of voluntariness. As confession statements, therefore, the cautioned statements are not admissible unless they were made voluntarily and in the presence of an independent

witness. These requirements shall not be belabored except that it is important to stress on the requirement of voluntariness.

In determining what a 'voluntary statement' is, Taylor J IN REPUBLIC V KOKOMBA [1979] GLR 270-284 opined as follows:

“In my view, in ordinary parlance, ‘voluntary statement’ means a statement offered by a person on his own, freely, willingly, intentionally, knowingly and without any interference from any person or circumstance. If a person of unsound mind makes a statement, it is not voluntary, due to the interference induced by insanity; if short of insanity, a person makes a statement not because he wishes to make it but because of circumstances however induced, it will not be voluntary because of the interfering circumstances. If a statement is induced by threats and violence, it cannot be said to have been made without interference from any person and so it is not voluntary. If a statement is induced by promises, then it is not offered by the person of his own and it is accordingly not voluntary”.

The burden lies on the prosecution to prove that the confession statement made was voluntary. In other words, the prosecution must prove that there was no inducement by threat or duress, or promise held out to the accused by a person in authority. It is noteworthy that even though A1 challenged the voluntary nature of his cautioned statements of 21/07/2021, a mini trial conducted by this court upheld the prosecution's case that the A1's statement was voluntarily given and witnessed by one Akakuzia Esther, an independent witness as required by and under section 120 of NRCD 323.

The position of the law regarding a conviction based solely on the evidence of a confession by an accused person was stated by the Supreme Court in a Practice Note in the case of STATE V AHOLO [1961] GLR 626 where Van Lare JSC citing with approval

the cases of R. V. OMOKARO (1941) 7 W.A.C.A. 146, which also cites the case of R. V. WALTER SYKES (1913) 8 CR. APP. R. 233 directed as follows:

“A conviction can quite properly be based entirely on the evidence of a confession by a prisoner, and such evidence is sufficient as long as the trial judge, as in this case, enquired most carefully into the circumstances in which the alleged confession was made and was satisfied of its genuineness.”

See also the subsequent Supreme Court decision in the case of STATE V. OTCHERE & ORS [1963] 2 GLR 463 where the Court per Korsah CJ emphatically stated that a confession made by an accused person in respect of a crime for which he is being tried is admissible against him provided it is shown by the prosecution that it was made voluntarily and that the accused was not induced to make it by any promise or favour, or menaces, or undue terror. The Court then concluded that a confession made by an accused person of the commission of a crime is sufficient to sustain a conviction without any independent proof of the offence having been committed by the accused.

I am clear in my mind that the criminal jurisprudence of this court leans towards the conviction of an accused person based on a voluntary confession to the commission of the crime charged. However, I am aware that in the peculiar facts of some cases where the only evidence available to convict was the confession statement, the courts decried the unreliability and indeed set aside a conviction solely on the confession without some other corroborative evidence that the crime was committed and by the accused persons. Those cases form the exception rather than the rule. For example, in confession in murder and manslaughter cases, the courts have held that where the statement does not establish the corpus delicti, **ie the concrete and essential facts which, taken together will prove that the crime has been committed**, it would require some additional evidence in the form of corroborative evidence to demonstrate that the

matters admitted did occur. Where the confession establishes the corpus delicti, the confession is sufficient to sustain a conviction. This was the position taken by the court in the Otchere case (supra) at holding 8 where the Court said:

“The principle regarding a confession of murder (or manslaughter) is that where the confession is direct and positive, that is, where the confession establishes the corpus delicti, the confession is sufficient to sustain a conviction. But where the confession falls short of establishing the corpus delicti then further corroborating evidence is required to prove the corpus delicti.

See also the High Court case of the STATE V. OWUSU & ANOR [1967] GLR 114 where Baidoo J held that:

“An extra-judicial confession by an accused that a crime had been committed by him did not necessarily absolve the prosecution of its duty to establish that a crime had actually been committed by the accused. It was desirable to have, outside the confession, some evidence, be it slight, of circumstances which made it probable that the confession was true.

From the evidence adduced in the instant case, there was sufficient corroboration from PW1 which confirmed that the confession of each accused was true.”

What, then constitutes corroboration in cases where the confession falls short of establishing the corpus delicti? Section 7(1) of NRCD 323 defines corroboration to consist of evidence from which a reasonable inference can be drawn which confirms in some material particular the evidence to be corroborated and connects the relevant person with the crime, claim or defence. In essence, the corroborating evidence strengthens the initial evidence, which standing alone is insufficient to determine the commission of a crime. Retired Supreme Court judge and legal text writer Stephen Alan

Brobbey writes in **ESSENTIALS OF THE GHANA LAW OF EVIDENCE, First Ed. 2014** at page 85 that this definition connotes three concepts; firstly, for the evidence to amount to corroboration, it must have some connection or relationship with the previous evidence. Secondly, that connection should amount to affirmation or denial of some relevant part of the previous evidence. Thirdly, the connection and affirmation should directly be referable or attributable to the person or fact in so far as the crime, claim or defence is concerned. If these three concepts exist, the court may conclude that the second evidence confirms, supports, or “corroborates” the first evidence.

“Happily, in the instant matter, there is sufficient corroborative evidence to support the matter stated in A1 and A2’s confession statement”.

Indeed, having made this observation, that there was sufficient corroborative evidence to support the confession statement even if the argument were to hold that the confession statement in this case was insufficient to sustain a conviction.

WHAT WAS THE SUFFICIENT CORROBORATING EVIDENCE?

During cross-examination of PW1 by counsel for A1, PW1 stated as follows:

Q. Who is the other person who entered the house with Essien?

Ans. Akalek (A1).

Q. What about A2?

Ans. The matter is with the police.

Q. I suggest to you that you could not pinpoint to identify A1 by any phone light?

Ans. I saw A1’s face by the use of phone light.

Q. You did not know A1 before the incident?

Ans. I knew him.

Q. How many Accused persons did you identify to the police?

Ans. A1 and A4 at large.

Q. Do you know that since you settled in Obuasi area since 1995, you knew A1 to be living within the same area?

Ans. Yes.

Q. I suggest to you that A1 was not one of the robbers, it was an afterthought?

Ans. A1 was part of the robbers.

These pieces of evidence suggest that PW1 knew A1 before the robbery incident.

Counsel for A1 put up a case that, PW1 did not state in his evidence-in Chief that it was with a phone light PW1 used to identify A1 but A1 did not deny that.

Although counsel for A1 revealed that A1 does not understand Twi, PW1 disagreed with him.

On the part of A2, PW2 stated as follows during cross examination.

Q. Those who came to rob, was I among them?

Ans. I did not see you.

However, in the evidence of PW4, it was A1 and A2 upon their arrest led the team to arrest A3 at Obuasi near the Gbani mining site who pleaded guilty simpliciter and was convicted.

I have seen exhibit 'E' a transcript from University of Education, Winneba, College of Languages Education, Ajumako on English translation of transcribed interrogations.

It is worthy to note that A1 and A2 were videoed during interrogation by police while confessing to the offences aforementioned transcribed in exhibit 'E' from a pen drive.

On the issue of possession of ammunition in the custody of A1, A1 put up a defence that the seven BB cartridges belonged to his late brother.

This is difficult to believe. A principle of law states that evidence against a deceased person must be scrutinized with utmost suspicion.

From the record of proceedings, this court makes the following findings of fact.

That 1 and A2 agreed and acted together with a common purpose to commit robbery.

That A1 stole Fifty Pounds of Gold valued GHC110,000.00 and cash of GHC10,000.00 belonging to PW1.

That A1 in stealing the fifty Pounds of Gold valued GHC110,000.00 and cash of GHC10,000.00, used force, harm or threat of criminal assault on PW1.

That the intention of A1 and A2 in doing so was to prevent or overcome the resistance by PW1.

That A1 had in his possession Seven (7) BB Cartridge Ammunitions without Authority.

It is a hackneyed rule in criminal proceedings that the duty on the prosecution is to prove the allegations against the accused persons beyond all reasonable doubt. The prosecution has a duty to produce sufficient evidence and prove the essential ingredients of the offence with which the accused has been charged with that degree of persuasion such as to convince the court to make a determination in its favour. It is clear from the testimony of the witnesses called and the evidence on the record that the prosecution has led that relevant evidence and satisfied the standard of proof that is required of it in a criminal case.

A1 and A2 could not cast doubt on the evidence of prosecution.

A1 and A2 are convicted accordingly.

The reasons for the conviction are the confession statements of A1 and A2 which was direct and positive and other corroborative evidence on record.

“In my Judgment, the prosecution also led evidence that sufficiently corroborated the matters stated by the accused persons in the confession statements”.

The principles upon which sentences are imposed have been stated in the case of KWASHIE V THE REPUBLIC [1971] 1 GLR 488at 493 where it was stated that:

“In determining the length of sentence, the factors which the trial Judge is entitled to consider are:

- i.* The intrinsic seriousness of the offence.**
- ii.* The degree of revulsion felt by law abiding citizens of the society for the particular crime.**
- iii.* The premeditation with which the criminal plan was executed.**
- iv.* The prevalence of the crime within the particular locality where the offence took place, or in the country generally.**
- v.* The sudden increase in the incidents of the particular crime.**
- vi.* Mitigating or aggravating circumstances such as extreme youth, good character and the violent manner in which the offence was committed.”**

Coming closely on the heels of the KWASHIE V THE REPUBLIC [supra], is the case of THE REPUBLIC V ADU-BOAHEN, [1972] GLR 70-78 where the court stated that:

“Where the court finds an offence to be grave, it must not only impose a punitive sentence, but also a deterrent or exemplary one so as to indicate the disapproval of society of that offence. Once the court decides to impose a deterrent sentence the good record of the accused is irrelevant.”

I find the A1 and A2, from all indications, quite unrepentant. A complete perusal of the evidence on record demonstrates their resolve to deny their actions by and through any means. Using all the factors and principles enunciated in the above cases, it is my opinion that this Court will be justified in imposing a higher sentence for the offence of conspiracy to rob and robbery.

I have considered the youthfulness of A1 and A2.

I have also taken into consideration the period A1 and A2 have spent in lawful custody as constitutionally mandated to do under article 14 (6) of the Constitution 1992. **BOSSO V REPUBLIC [2009] SCGLR 420**

I have had serious reflections on all the circumstances of this case and weighed all the mitigating circumstances. I see the need to impose a deterrent sentence in robbery cases currently on the rise.

In sum I have to impose a sentence of thirty years imprisonment I.H.L on A1 in respect of each count 1 and 2. Sentences to run concurrently.

A2 is sentenced of thirty years imprisonment I.H.L on count 1

A1 is sentenced to two years imprisonment in respect of count 3.

CHIEF INSPECTOR OSMAN NDEGO FOR PROSECUTION

RICHARD ADAZABRAH FOR A1.

**HIS LORDSHIP JUSTICE ALEXANDER GRAHAM
HIGH COURT JUDGE SITTING AS ADDITIONAL
CIRCUIT COURT JUDGE.**

