

IN THE CIRCUIT COURT HELD AT TARKWA IN THE WESTERN
REGION ON THURSDAY THE 20TH DAY OF JULY, 2023 BEFORE HER
HONOUR HATHIA AMA MANU, ESQ., CIRCUIT COURT JUDGE

COURT CASE NO. B1/10/23

THE REPUBLIC

VRS.

BISMARK ABUGRI @ ROCKY

JUDGMENT

Accused – Present.

C/Insp. Joseph Larthey led by Supt. Juliana Essel Dadzie for Prosecution.

The accused person stands charged for attempted robbery, threat of death and possession of fire arm without authority.

Section 18(1) and 149 of the Criminal Offences Act 1969, Act 29 states as follows:

Section 18(1) – A person who attempts to commit a criminal offence shall not be acquitted on the grounds that, the criminal offences could not be committed according to the intent.

- (a) by reason of the imperfection or other condition of the means or
- (b) by reason of the circumstance under which they are used or
- (c) by reason or the circumstances affecting the person against whom or the thing in respect of which the criminal offence is intended to be committed, or
- (d) by reason of the absence of that person or thing.

Section 149 states that a person who commits robbery commits a first degree felony.

Section 75 of Act 29 provides that, “A person who threatens any other person with death, with intent to put that person in fear of death, commits a second degree felony”.

The accused was charged under NRCD in respect of the local manufactured gun found on him.

Prosecution is expected to prove all charges levelled against the accused beyond all reasonable doubt. An attempt at robbery bears the same ingredients as the offence of robbery itself as it is the intention and actions of the accused which prosecution is seeking to establish as being of a criminal nature.

Prosecution called the complainant as a witness in this case. According to PW2 who was prosecution’s crucial witness, the accused engaged his service fromtobut upon reaching the destination, he asked him to go farther for an extra amount of According to this witness, he became uncomfortable and told the accused he should alight as he would no longer proceed. Upon turning, the witness claims the accused had pointed a gun at him. The witness asserts that he hit the accused then opened the accused’s door and after struggling with the accused and beating him placed him at the front side of his car and took him to the police station. According to the witness during his struggle with the accused he saw a knife hidden in accused trousers’ waistline and he took it. That while in traffic around sag area the accused person tried to escape from the car and after being aided to apprehend him. The citizens around the area after apprehending the accused subjected him to severe beatings.

The investigative officer recounted that when accused was brought to the police station, he had been beaten so badly that accused had to be sent to the hospital. When

the accused was discharged he was brought to the police station for investigations to be conducted.

According to the investigative officer the accused claimed he purchased the locally manufactured gun from some scrap dealers and although he did not know their names he said he could identify the person. The officer gave evidence on oath that when sent to the scrap area he could not identify the person and the name he mentioned had no one responding by same. Again the investigative officer admits going to the scene of the crime but stated that same was isolated and as workers had closed at the time of the incident, there was no eye witness to the happenings of that day. The investigative officer tendered into evidence pictures of the pistol and the knife the accused had on him upon attacking the complainant. As part of his investigative work, PW1 took a statement from Baba Seidu. The said Baba Seidu was present when accused was lynched. He gave a statement to the police which was tendered into evidence by the investigative officer although the court expunged his unsigned witness statement which was filed as part of disclosures. In his statement he indicated that he was buying food when he saw people heading to the Takoradi lorry station. He stated that the complainant was trying to stop people from lynching the accused and so he helped him rescue accused who was then brought to the police. He mentioned that it was late so he could not identify the accused person's attackers.

In the case of *Quaye Vrs. The Republic* (J3/08/2020) [2021] GHASC 28 (28th July, 2021) and *Fuseini Vrs. The Republic* (J32 of 2016) [2018] GHASC 35 (6th July, 2018) the Supreme Court emphasized and restated the standard of proof against an accused is proof beyond reasonable doubt.

Section 11 (2) of the Evidence Act, Act 1975 (NRCD 323) provides that, "In a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt requires the prosecution to produce sufficient evidence so

that on all the evidence a reasonable mind could find the existence of a fact beyond a reasonable doubt”.

See the case of *Miller Vrs. Pension (1972) and All ER 372*.

“It is important to note that satisfy the burden as stated implies proof of the essential ingredients of the offence charged and not mathematical proof” as professed in the cases of:

Tetteh Vrs. The Republic [2001 – 2002] SCGLR 854.

Frimpong a.k.a. Iboman Vrs. Republic [2012] 1SCGLR.

Although cross-examined, none of the evidence of prosecution’s witnesses caused the court to doubt their credibility. Even as the accused asked very intelligent questions especially on when the incident was reported and recorded in the diary of action, the court cannot overlook the thorough work done by the investigative officer. The investigator covers all areas in his investigations and left no stone unturned as he even tried to find the scrap dealer who may have sold the locally manufactured gun to the accused.

When the accused was asked to present a defence to the charges levelled against him, the accused was very economical with the fact of what happened that day. According to the accused he picked complainant’s car from Damang to Junction. The he gave PW2 (Complainant driver) GH¢10.00 and asked for change but he refused. That PW2 tried to take him out of the car and as people asked what was happening, he told them he was trying to steal from him. He claims the knife tendered into court as an exhibit actually belonged to PW2 as a car key. That PW2 tried to hurt him with the knife on his shoulder but it missed and hit his head.

The accused gave evidence on oath that he was sent to the hospital per the directive of the station officer and upon discharge, he claims to have shown the investigator his brother but he was not around. According to this accused the investigator sought to take his money and get him to admit guilt when he comes to court but he did not and because of that he got remanded.

I will like to set the record straight the court serves as an independent body administering justice and also serving as the conscience of the law to ensure that crime does not go unpunished and the innocent does not get punished. Justice is not for sale and it is smacks of lack of common sense for one to be advised to pay and then plead guilty especially for the kind of charges levelled against the accused. The investigative officer is cautioned to be careful of his dealings with accused persons in other that the court and my extension is not dragged into any inappropriate situation.

The accused person is his own defence left out the happenings at the quarry. Although he question PW1 and PW2 extensively on happenings around the quarry site, he even put it to PW1 that:

“Q. When the driver sent us to the crime scene which is closer to the Mines did you inquire if any robbery occurred?”

A. No my Lord because he admitted.”

From his own line of questions where he alleges the incident happened is questionable.

Again, in his defence he claims that “it was PW2 who made others beat him due to the change he asked for. This is a clear afterthought that is total unreasonable, why would people lynch you just because you have asked for change. Again, during cross-examination of the accused, it was established that an officer was stationed by him while he was recovering therefore upon discharge accused would have been sent straight to the police station and not taken to a scrap dealers zone to find his brother. That claim does not hold water and it makes more sense that the investigator took

accused person to the scrap dealers' zone to find the one who sold the local pistol to him.

The accused also claimed he was beaten and the statement taken from him was without his co-operation. As there are other evidence both direct and circumstantial on record for the court's analysis, same was admitted for what it was worth but nothing shows the statement was given under duress as same was executed in the presence of an independent witness.

The accused was expected to enter a defence based on reason from which the court could question prosecution's case and find is guilt as inconclusive. As it stands, his defence is purely speculations.

At the end of the trial, I find that the accused has not created any doubt in the mind of the court as to him guilt. Accused claimed that he was on his way to get a compressor machined when the incident occurred. If that was so then nothing should have stopped accused calling the one he was going to see either in court or to the investigative officer. Again the accused having asked to be sent further than his initial place implies he had intended to deprive the complainant of his car, his earnings of the day of much worst.

When the meaning of *Section 11 (2) of Act 29*, "A person who does an act voluntarily, believing that it will probably cause or contribute to cause an event, intends to cause that event".

In *Republic Vrs. Darko [1971] 2GLR 227*, the accused person attempted to shoot and kill another but the gun failed to fire. It was held that the act was an attempted murder.

In this case the accused engaged the complainant and took him to an area which was secluded and pointed a gun at him with an intention to cause harm while trying to

steal from the complainant. As the attempt is viewed as though the act itself was done, the accused is hereby convicted of attempted robbery.

On the charge of threat of death, the accused pointed the gun (pistol) at the complainant. I find that anyone with a pistol pointed at them will be put in a state of fear and the reasonable conclusion would be that the person intends to kill you. I find the accused guilty of having put the complainant in fear of his life.

The third and final charge is premised on the local pistol and knife found on the accused, which said equipment were not registered. I find the accused on this court as well and I hereby direct that the knife and local pistol are to be destroyed in the court premises at 3:00pm and a destruction certificate placed on the docket.

Accused person, before I sentence you is there something you would like to tell the court by way of mitigation?

(SGD) H/H. HATHIA AMA MANU, ESQ.

(CIRCUIT COURT JUDGE)