

IN THE CIRCUIT COURT "1" TAKORADI, WESTERN REGION ON THURSDAY,
2ND FEBRUARY, 2023 BEFORE HIS HONOUR MICHAEL K. AMPADU, CIRCUIT
COURT JUDGE

SUIT NO. C3/108/22

THE REPUBLIC

VS.

JAMES KYEREBOA @ SIMPLE

JUDGEMENT

Accused: Present.

Accused is not represented.

Prosecution: Inspector Robert Yawson.

Accused was charged on two Counts of Causing Harm contrary to Section 69 of the Criminal Offences Act, Act 29 of 1960 and Robbery contrary to section 69 of Act 29/60 as amended by Act 646 of 2003. The accused person pleaded not guilty to both counts. The facts of the matter are that;

The Complainant is a housewife whiles the accused person is a coconut seller and both are residents of Kojokrom. On 13/01/2022 about 8:30pm, the complainant closed from church and alighted from a trotro at New Apostolic Church junction a suburb of Arhinkofi-Kojokrom. Whiles she was walking from the said junction to her house, she got to a section on the hill and heard footsteps behind her, so decided to allow the fellow

pass by standing aside. The said person, whom she clearly identified as the accused person crossed and faced her. That he suddenly charged on her and used a heavy stick to hit her multiple times and injured her left hand. The accused person collected her handbag and bolted with it and its contents leaving the complainant in bruises amidst shouting for help. The black handbag contains: a bible, torchlight, hand gel, notebook, 1 Itel A36 mobile phone valued GH¢350.00 and cash of GH¢20.00. On 18/01/2022 the accused person was arrested at Kojokrom after identification by the complainant. After further investigations, the accused person was charged with the offences and put before this honorable Court.

Four (4) witnesses were called by the Prosecution in their attempt to establish their case against the accused person and they were Leticia Godonoo, the complainant (PW1), Yaw Agyei (PW2), Andrew Bronya Mensah (PW3) and No. 47273 Detective Corporal Anthony Nti (PW4). The accused testified by himself and did not call any witness.

The evidence of the PW1 which was almost the same as her initial statement to the police, Exhibit 'A' is that on the 13/01/22 about 8:30pm, she was returning from church and on her way to the house, she heard some footsteps behind and she turned to look at the person and saw the accused person who she knew very well at the neighborhood.

According to her, after sensing the urgency in his footsteps, she quickly tried to step aside to allow him pass but the accused person charged on her with a big stick he had in his hand and he hit her several times and finally snatched her handbag containing a bible, torchlight, hand gel, Itel A36 mobile phone valued Three Hundred and Fifty Ghana Cedis (GH¢350.00) and cash of Twenty Ghana Cedis (GH¢20.00). She told the Court that when she shouted for help, the accused bolted with the handbag and its contents into the nearby bush leaving her in a pool of blood. That her neighbors came to her aid and informed her

children about what happened to her. She alleged that she reported the case to the Kojokrom Police the following day, 14/01/22 at about 8:00am and a Medical Form was issued to her to attend hospital for treatment.

She said since she knew the accused person, and could easily identify him any day, she described him to the Police and they apprehended him after which she was invited to the Police Station to identify him.

The PW2 whose evidence in chief was also almost the same as his initial statement to the Police was that he is a Radio Broadcaster who resides at Arhinkofi, a suburb of Kojokrom. He said on Thursday, 13/01/22 about 8:40pm, he heard the voice of a female screaming; “my bag has been snatched, I know you” about a hundred meters from his residence and that when he heard this scream, he hesitated for about three minutes and then came out to check what was happening. According to him, while standing by the septic tank in his house, he saw an old woman who he knew as the mother of a neighbor called Mawutor and when he went closer to the victim, he saw blood on her left hand and she informed him that her handbag had been snatched and that as the woman was narrating the incident to him, he heard another woman shouting that the thief had entered the bush around the carpentry along the main road so he joined some young man who had gathered at the scene and they mounted a search for the person who attacked the Complainant and robbed her of her handbag for about thirty minutes but there was no sign or trace of him.

PW2 said she heard the complainant repeatedly saying that she knows the person who attacked her and with those pronouncements from the Complainant, they abandoned the search with the assurance that once the Complainant knew the attacker, they will search for him later.

The PW3 testified that he was a teacher and resides at Arhinkofi and knew both the Complainant and the accused person as neighbors. The accused person being somebody other neighbors usually call to weed around their premises. He alleged that on 13/01/22, about 8:30pm, he was standing in front of his louse, near the place where the Auto Mechanics have parked their vehicles and saw the Complainant walking from the New Apostolic Church direction towards her house. He said at the same time, the accused person was also standing on that same lane wearing a white short and a white cap but because the place was a little dark, he could not identify the color of his top dress. He further stated that he clearly saw the accused person passed where he was standing and followed the Complainant towards the same direction and after they both passed by him, he entered his house.

PW4 No. 47273 Detective Corporal Anthony Nti told the Court that he was on duty at the Kojokrom Police Station on 14/1/22 about 9:00am when a case of causing harm and robbery was referred to him for investigation. He said the Complainant Leticia Godonoo was issued with a Police Medical Form to attend hospital for treatment and she later returned with the form endorsed and her statement as well. That through further interrogation of the Complainant, she gave a description of the person who attacked and robbed her and said she clearly mentioned to the attacker that she knows him in the neighborhood.

According to PW4, with the aid of informants and intelligence, the police arrested the accused James Kyereboah alias simple on the same day around 7:30pm, near Kojokrom Cemetery and upon his arrest, an identification parade was conducted at the station and the Complainant identified the accused as the culprit after which the accused person was taken to the Takoradi Central Police Station for detention since he was highly intoxicated.

The witness stated that on 16/1/22, the accused person's investigative cautioned statement was obtained and on 17/1/22, the accused together with the Complainant were led to the house of the accused and the scene of the crime.

According to him, a search was conducted at the place where the accused sleeps but nothing was found. The Complainant showed the police where the incident occurred and all were photographed and filed in the docket.

After his evidence in chief, the PW4 tendered the following exhibits.

Exhibit 'A' – Initial Statement of PW1

Exhibit 'B' – Initial Statement of PW3

Exhibit 'C' – Initial Statement of PW2

Exhibit 'D' – Investigative Cautioned Statement of Accused person.

Exhibit 'E' – Photograph.

Complainant's injured thumb after the attack.

'F' – Photograph of Complainant's hand in bandage.

'G' – Photograph of Complainant's hand after her bruises have been healed.

'H' – Photograph of Complainant standing at the Spot of the attack.

'J' – Police Medical Report.

'K' – Charged Statement of the Accused person.

COUNT ONE CAUSING HARM

Section 69 of **Act 29/30** provides that *“whoever intentionally and unlawfully causes harm to any person shall be guilty of a second-degree felony”*. In proving any intentional and unlawful

harm against the accused person, the prosecution needs to prove that the act of the accused caused bodily hurt, disease or disorder, whether permanent or temporary to the person, whether the act was intentioned or unlawful. The prosecution gave evidence of how the accused attacked the Complainant (PW1) with a stick and left her bleeding after snatching her bag that contained a Bible, a torchlight, hand gel, notebook, 1 Itel A36 mobile phone valued at Three Hundred and Fifty Ghana Cedis (GH¢350.00) and cash of Twenty Ghana Cedis (GH¢20.00). To confirm the harm caused to the PW1, the prosecution tendered exhibits 'E', 'F' and 'H' which were photographs showing the injury or harm caused to her.

The Prosecution also tendered exhibit 'J', a Police Medical Report from a Hospital showing that the PW1 attended a hospital as a result of the injury she sustained from her attacker.

The other issue to be determined is whether the harm caused to the PW1 was caused by the accused person. The accused person denied attacking the PW1 even though he admitted both in his evidence in chief and in his investigation cautioned and charge statements that he knew the PW1. That he knew her house also and passes around her house and greeted her anytime he passes her.

In his evidence in chief to the Court, the accused stated that among other things that " ... on the evening of the said day of the incident, after my evening meal and my wife was asleep, I went to sit in front of the provision shop of one Santana" who the accused alleged he intended to call as a witness but the Santana died during the course of the trial. The above means that after the meals of the accused on that date, 13/01/22, he went to sit in front of a provisions shop. This was the statement of the accused to the Court on 6/12/22. However, in the cautioned statement given by the accused on 16/1/22, he said "... On that

Thursday evening, that is 13/01/2022, after taking my evening meal around 9:30pm, I went to sleep. I do not know anything about what the women is saying". From the above two statements, did the accused person went to sleep after his meals on that evening or he went to sit in front of a provisions shop? It was held in the case of **Yaro and Another vs. The Republic (1979) GLR** to that "*A previous statement made by a witness to the police which was in distinct conflict with his own oath was always admissible to discredit or contradict him and it would be presumed that the evidence on oath was false unless he gave satisfactory explanation of the prior inconsistent statement*".

The inconsistency in the two statements of the accused, from the above, shows that what he told the police in his cautioned statement that he went to sleep after his every meal was false.

PW3 testified that "... the complainant passed by where I was standing and continued walking towards her house and at the same time, the accused person was also standing on that same lane wearing a white short and a white cap ... I clearly saw the accused person also bypass where I was standing and followed the complainant towards the same direction".

In cross examination of the PW3, the accused asked these;

Q: When you saw me, why did you not ask me anything?

A: Where you were standing was not around my home so I could not ask you any question.

Q: At that time, it was not me. All persons are not the same so it was not me?

A: What I saw was you and I say what I saw.

The above denial of the accused of his presence that night was not convincing. He ended up saying all persons are not the same so it was not him. The PW3 testified that he knew the accused person who has been doing weeding for people around the neighborhood and that he knew him very well. The accused did not deny that the PW3 knew him.

Important is the fact that the complainant also insisted right from the beginning of her attack that she knew the accused person and it was upon her description of the accused alone that led to his arrest by the police.

PW2 also testified that when the PW1 was narrating her ordeal to him, she kept repeating that she knew the attacker and it was based on that believe of what she said that they decided to stop pursuing the accused in the night.

The above facts convince the Court that the person who attacked the complainant was the accused person.

The next thing to consider is whether he caused harm to the victim. The evidence of the photographs attached and described above and the medical report all indicate that the accused person caused harm which was unlawful and intentional because the aim of the harm was to snatch the complainant's bag from her.

COUNT TWO, ROBBERY

Section 149 of the Criminal Offences Act, **Act 29/60** as amended by **Act 646 of 2003** provides that, *"A person who commits robbery commits a first-degree felony"*

Section 150 of the Act defines robbery and provides 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 other person, with the intent to prevent or overcome the resistance of the other person to the stealing of the thing"*

Act 646 of 2003 provides that *"whoever commits robbery is guilty of an offence and shall be liable upon conviction on trial summarily or on indictment to imprisonment for a term of not less than ten (10) years and where the offence is committed by the use of an offensive weapon or missile, the offender shall upon conviction, be liable to imprisonment for a term not less than fifteen (15) years"*.

The accused person who was charged with robbery denied the charge and said on that day he slept immediately after his evening meals. The prosecution was however able to prove that he did not sleep as he alleged but went onto. The Court has also found that the accused caused harm to the complainant (PW1). The purpose and intention of the harm was to take PW1's hand bag which contained the items mentioned above. In the process, the accused used a stick to hit the PW1.

The evidence of PW2 was that "... I heard the voice of a female screaming; my bag has been snatched, I know you, about hundred meters from my house ..." When I got closer to the complainant, I saw blood on her left hand and she informed me that her handbag had been snatched ...". The complainant said the accused used a stick to hit her hand and evidence of the harm caused to her is found in the Police Medical Report and Exhibits 'E', 'F' and 'G'. The Court therefore finds that the accused used this harm on the PW1 in order to overcome her, to snatch the handbag and its contents.

It was held in the case of **Frimpong alias Iboman v. Republic (2012) 1SCGLR 197** that *“The prosecution has a duty to prove the essential ingredients of the offence with which the appellants and the others have been charged beyond any reasonable doubt. The burden of proof remains on the prosecution throughout and it is only after a prima facie case has been established to link the appellant and the others to the commissioning of the Offences charged that the appellant therein the accused, is called upon to give his side of the story”*. The ingredients of the offence of robbery are that; the accused person used force or caused harm to any person and whether the accused person in using the force or causing harm used offensive weapon.

In the opinion of this Court, the prosecution has been able to prove beyond all reasonable doubt that the ingredients in this offence have been established against the accused person. He attacked the victim, complainant injured her by hitting her hand with a stick and took her hand bag together with its content from her. After the prosecution established the prima facie case against the accused person hence the burden of proof.

It was held in the case of the **State v. Afenuvor (1961) GLR 655** that *“The burden of proof”* is used in two bases”. It only mean (a) the burden of establishing a case which rests upon the prosecution or (b) the burden of explanation which shifts to the prisoner once the prosecution has produced some prima facie evidence from which the guilt of the prisoner may be prescribed if no answer or explanation is given, see also **Section 14 of Act 323 of 1975**. After the prosecution’s case, the case of proof shifted onto the accused person to offer an explanation. He told the Court that the witness he intended to call; one Santana died shortly after the trial commenced. Investigation however revealed that the said provision store’s owner was not called Santana but Emma. The accused person could therefore not give any explanation to offences proved against him.

This Court therefore finds him guilty on the two Counts of Causing Harm contrary to section 69 of Act 29/60 and Robbery contrary to section 149 of Act 29/60 as amended by Act 646 of 2003.

In sentencing him, the Court takes cognizance of the fact that the youth of today take delight in reaping where they have not sowed and have no sympathy for others around them. Robbery has therefore become rampant of late and the sentence should serve as a detect to others. The Court will however take notice of the fact that the accused is a first-time offender and has been in custody for a long time due to his inability to meet his bail conditions.

He is therefore sentenced to fifteen (15) years imprisonment in hard labor on each of the two counts. The sentences are to run concurrently.

SGD

**H/H. MICHAEL K. AMPADU
(CIRCUIT COURT JUDGE)**