

IN THE CIRCUIT COURT HELD AT SOGAKOPE ON MONDAY, 5TH JUNE, 2023 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE

CASE NO. 51/2022

THE REPUBLIC

VRS

1. AGBOVI HARRISON

2. RAPHAEL HLORTSI

3. ONE OTHER @ LARGE

1ST AND 2ND ACCUSED PERSONS PRESENT

CHIEF INSPECTOR JOSEPH AJONGBAH HOLDING THE BRIEF OF CHIEF INSPECTOR SEIDU KODUA FOR THE REPUBLIC PRESENT

JUDGEMENT

The Accused persons stand charged before this Court charged with the following offences:

- i. Conspiracy to commit crime contrary to section 23(1) of the Criminal Offences Act, 1960 (Act 29); and
- ii. Robbery contrary to section 149 of Act 29.

Upon their arraignment before this Court, the Accused persons pleaded Not Guilty to all the charges.

THE FACTS OF THE CASE

On the 23rd January, 2022 about 3:00pm, the complainant was in charge of Sanya motorbike with registration number M-22-VR-121. The 3rd Accused person

spotted the complainant at Ziope and hired his service to carry him to Kporwuvi near Akatsi and complainant agreed. On reaching the outskirts of Kporwuvi town, the 3rd Accused person ordered the complainant to stop at a place where the 1st and 2nd Accused persons had laid ambush on their motorbike. The 3rd Accused person alighted and suddenly coiled a nylon rope around the neck of complainant and pulled him to the ground. The 1st and 2nd Accused persons climbed on complainant's motorbike and sped off. The 3rd Accused person also climbed onto the motorbike his accomplices brought and followed them whilst the complainant was still on the ground. On reaching a section of the road towards Gornikope, the engine of the motorbike they robbed from complainant went off. The Accused persons then pushed the motorbike to a nearby bush and were trying to repair it. The complainant went to his friends who are motor riders at Avadre Junction near Wute and informed them of the attack on him and the robbery of his motorbike. Few minutes later, the complainant received a telephone call telling him that the 1st and 2nd Accused persons were arrested in the bush with the exhibit motorbike whilst the 3rd Accused person escaped. The police received an emergency call that the youth in the area wanted to lynch the Accused person, hence proceeded to the location and rescued the 1st and 2nd Accused persons and brought them to Hoggar Clinic where they were admitted, treated and discharged.

The prosecution called four (4) witnesses to testify in support of its case.

PW1, Detective Inspector Japhet Prempeh investigated the case. PW1 relied on his Witness Statements together with the exhibits attached.

The testimony of the complainant and victim, PW2 (Tobias Edro) confirmed the facts as presented by the prosecution.

PW3 (Atigah Cephas) told the court that on the 23rd January, 2022 at about 3:30pm he was at Ziope working with his motorbike where PW1 called him on the phone and told him that his motorbike had been robbed at the outskirts of Kporwuvi. So, he quickly rushed to Kpevi where he met the complainant and PW4 searching for the motorbike. Whilst there, they overheard people shouting that they saw the culprits in the bush with the exhibit motorbike. So, he rushed to the location with the complainant, PW4 and others and they entered the bush and got the 2nd Accused person arrested with the exhibit motorbike and brought to the roadside. The 1st Accused person was also chased and arrested.

The evidence of PW4 (Johnson Sowada) was that on the 23rd January, 2022 about 3:30pm, he was at Avadre Junction working with his motorbike when the victim arrived crying. The victim told them that three people robbed him of his Sanya motorbike with Registration Number M-22-VR-121 at the outskirts of Kporwuvi. So, he carried the complainant on his motorbike and went round searching for the people and the motorbike. He informed some friends on their mobile phones about it. Shortly, he received a telephone call that they saw some people in the bush near Avadre Junction with the exhibit motorbike. So, he rushed to the location and saw the 3rd Accused person who is at large sitting on their motorbike in the bush. Immediately the 3rd Accused person saw them, he ran away and they retrieved their unregistered Sanya motorbike. So, he and others advanced into the bush and they saw the 1st and 2nd Accused person working on the exhibit motorbike. The 1st and 2nd Accused persons took to their heels upon seeing them but they chased them and got them arrested.

After the close of the case of the prosecution and in line with section 173 of the Criminal Offences (Procedure) Act, 1960 (Act 30) and based on the evidence adduced at that stage of the trial, this Court held that the prosecution has made

out a prima case against the 1st and 2nd Accused persons. Consequently, this Court called on the 1st and 2nd Accused persons to enter into their defence.

THE CASE OF THE DEFENCE

In opening their defence, the Accused persons testified themselves and did not call any witness.

The 1st Accused person told the Court that he did not know the complainant and that he met him for the first time on or about Sunday, 23rd January, 2022 when the 2nd Accused person asked him to accompany him to Avadre School where the complainant called him on telephone and asked him to bring his motor cycle to the Avadre School compound for the complainant's brother to inspect and probably purchase it. It is the case of the 1st Accused person that the 2nd Accused person was offering his motor cycle for sale, and as such informed him that the complainant had previously seen the said motor cycle and had wanted his brother to buy it. On arrival at the said school compound they met the complainant and another person whom he now knew to be called Johnson Sowada who is also a prosecution witness in this matter. Johnson Sowada indicated to them that he needed the motor cycle to buy. Subsequently, the 2nd Accused person bargained the selling price of the motor cycle and insisted on GH¢4,000.00 but Johnson Sowada offered GH¢3,000.00 which price he declined. Johnson Sowada told them that he was going to make a call to a brother of his for some financial assistance to make the GH¢4,000.00. Johnson went away some distance and purportedly made a phone call. Not quite long some three (3) persons arrived on a motor cycle. One of them he now knows to be Atigah Cephas and who is a prosecution witness in this matter. Soon after Atigah

Cephas and his two (2) other persons arrived. Immediately the two (2) persons demanded the documents covering the 2nd Accused person's motor cycle that he was offering for sale. In response, he suggested to them to come to his house in Akatsi when they get the GH¢4,000.00 for them to inspect the documents. The two (2) persons became infuriated by that response from the 2nd Accused person and quickly shouted and invited other persons particularly the okada riders at a station nearby to attack them on suspicion that they were thieves who had stolen the motor cycle. That is why he could not produce the relevant documents covering the motor cycle. They were severely physically assaulted. On the following two (2) days, he found himself at Hoggar Hospital. The 1st Accused person stated that they only went to the Avadre school to meet the complainant's brother and the supposed buyer of the motor cycle and unfortunately, they were suspected as robbers or thieves. It is the case of the 1st Accused person that he never gave any statement to the police at all and that when in pains someone forcefully held his hand to thumbprint some documents which is now his statements to the police. The documents were not read nor interpreted to him at all and that he is literate and signs his document. The 1st Accused person concluded his Evidence-In-Chief by denying all the charges against him.

The 2nd Accused person in opening his defence told the Court that he did not know the complainant until he met him on or about 18th January, 2022 when he expressed interest in his motor cycle he was offering for sale. That the complainant wanted to buy the motor cycle for his brother's use. Subsequently, he collected his telephone number with the promise to get back to him anytime his said brother was ready. Then on Sunday, 23rd January, 2022, the complainant called him on the telephone and asked him to bring his said motor cycle to the Avadre school compound for his said brother's inspection and probable

purchase of the motor cycle. It is the case of the 2nd Accused person that he honoured the invitation and on his way he picked up the 1st Accused person to accompany him to meet the complainant and his said brother. On arrival at the school compound they met the complainant and another person who he got to know as Johnson Sowada who is a prosecution witness in this matter. Johnson Sowada indicated to them that he needed the motor cycle to buy. Subsequently, they bargained the selling price of the motor cycle and insisted on GH¢4,000.00 but Johnson Sowada offered GH¢3,000.00 which price he declined. Johnson Sowada told them that he was going to make a call to a brother of his for some financial assistance to make the GH¢4,000.00. Johnson went away some distance and purportedly made a telephone call.

ISSUES FOR DETERMINATION

The legal issues that fall for determination after the end of the trial are:

- i. Whether or not all the 1st and 2nd Accused persons agreed to act together with common purpose to rob the complainant of his motorbike.
- ii. Whether or not the 1st and 2nd Accused persons robbed the complainant of his motorbike.

BURDEN OF PROOF

This being a criminal case, the prosecution bears the burden of proof to establish the guilt of the accused person beyond reasonable doubt as per sections 11(2) and 13(1) of the Evidence Act, 1975 (NRCD 323) and also as was stated in the case of *Bruce-Konuah v. The Republic* [1967] GLR 61–617, where Amissah J.A. stated thus:

“Barring the well-known exceptions, an accused is under no obligation to prove his innocence. The burden of proof of the accused person’s guilt is on the prosecution.”

In the case of Republic v. Adu-Boahen & Another [1993-94] 2 GLR 324-342, per Kpegah JSC, the Supreme Court held that:

“A plea of not guilty is a general denial of the charge by an accused which makes it imperative that the prosecution proves its case against an accused person..... When a plea of not guilty is voluntarily entered by an accused or is entered for him by the trial court, the prosecution assumes the burden to prove, by admissible and credible evidence, every ingredient of the offence beyond reasonable doubt”. See Asare v. The Republic [1978] GLR 193-199.

THE LAW ON CONSPIRACY TO COMMIT CRIME

Section 23(1) of Act 29 provides that:

“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 the case of Frimpong @ Iboman vrs Republic [2012] 1 SCGLR 297, Dotse JSC stated thus:

“It is important to note that in this case, it is sufficient if the prosecution succeed in proving the essential ingredients of the offences of conspiracy to commit robbery and robbery. For the offence of conspiracy, it is necessary to establish the following:

- i. Agreement to commit the unlawful act of robbery – acting for a common design. There need not be any prior deliberation.
- ii. Intention on their part to commit that unlawful act – this was manifested in their common pursuit of the robbery agenda.”

Section 150 of Act 29 defines Robbery as follows:

“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 intent to prevent or overcome the resistance of the other person to the stealing of the thing.”

In the case of Frimpong @ Iboman v. Republic (supra), the Supreme laid out the following five (5) elements to establish by the prosecution in a charge of robbery:

1. That the appellant stole something from the victim of the robbery of which he is not the owner.
2. That in stealing the thing, the appellant used force, harm or threat of any criminal assault on the victims.
3. That the intention of doing so was to prevent or overcome the resistance.
4. That this fear of violence must either be of personal violence to the person robbed or to any member of his household or family in a restrictive sense.
5. The thing stolen must be in the presence of the person threatened.

Throughout the trial, the Accused persons denied the charges levelled against them. The Accused persons filed their Witness Statements on the 9th September, 2022 and they accordingly relied on same as their Evidence-In-Chief to the Court. However, when they gave their respective Cautioned Statements to the police on the 24th January, 2022, what they stated was totally different from what is contained in their Witness Statements. For the avoidance of doubt, I reproduce the Cautioned Statements of the 1st and 2nd Accused persons below:

Cautioned Statement of 1st Accused person given to the police on the 24th January, 2022:

"I am living at Agbaflome-Akatsi. Yesterday, 23/1/2022 about 2:30pm – 3:00pm I was using my unregistered Sanya motorbike for okada. At that time, I had a charter to Ziope. A certain man hired me to carry him to Ziope and I agreed. I sent the man to Ziope and on my way back, I got to a certain village I cannot remember. I stopped there and I was making phone call when people came and arrested me. The people pounced on me with beatings that, I was among some people who robbed motorbike. In fact, I did not rob any motorbike as alleged. Hence my statement to that effect."

Cautioned Statement of 2nd Accused person given to the police on the 24th January, 2022:

"I am a fitter. I am staying at Akatsi. Yesterday, 23/1/2022 about 3:00pm I saw a man at Akatsi Central Market area. I was using my motorbike for okada. The man hired my services to carry him to Ziope and I agreed. I called one Harrison to join me on the motorbike to alight the man at Ziope. On reaching Kpovi, I felt stomach pain so I gave the motorbike to Harrison to ride the man to Ziope. I was waiting for Harrison at Kpovi school compound. Whilst at the school premises, I heard people shouting. Someone was

saying they snatched his motorbike from him. When people were shouting, I became afraid hence I entered a nearby bush. I was there when a man came with questions. I was answering the man when people surrounded me. They arrested me and were beating me up that I was among two others who robbed a motorbike. I did not take part this crime. Hence my statement to that effect.”

In their respective Charge Statements given to the police on the 26th January, 2022, the 1st and 2nd Accused person both relied on their Cautioned Statements given to the police on the 24th January, 2022.

It is on record that on the day the investigator (Detective Inspector Japhet Prempeh) mounted the witness box to give evidence by relying on his Witness Statements and all the Exhibits attached, the then counsel for the Accused persons was present. The defence counsel did not raise any objection concerning the Cautioned and Charge Statements of the Accused persons. A careful scrutiny of these statements show that they were taken in compliance with section 120 of the Evidence Act, 1975 (NRC 323). There was an independent witness in the person of Peter Gadri.

In the case of *Brempong II v. The Republic* [1995-96] 1 GLR 350 per holding 5, the Court of Appeal stated that:

“In law, for conflicts and inconsistencies in evidence to influence a decision, they had to be material and also destroy proof of an element of the offence or totally discredit the witnesses so as to make their testimony unreliable.....”.

Also, in the case of *Kuo Den alias Sobti v. The Republic* [1989-90] GLR 203, the Supreme Court in a charge of murder explained at page 213 that where there are material inconsistencies in the defence put up by the accused person, there was sufficient justification for the jury to reject the defence.

In the Evidence-In-Chief of the Accused persons, they both told the Court that the complainant called the 2nd Accused person on the 23rd January, 2022 and asked him to bring his motorbike to the Avadre School premises. The following is what the 1st Accused person told the Court in his Evidence-In-Chief at paragraph 4:

*"4. I do not know the complainant herein. I met him for the first time on or about Sunday, 23/01/2022, when the 2nd accused asked me to accompany him to the AVADRE school where **the complainant called him on phone** and asked him to bring his motor cycle to the AVADRE SCHOOL compound for the complainant's brother to inspect and probable purchase of the motor cycle."* (Emphasis mine)

At paragraphs 3 and 4 of his Witness Statement, the 2nd Accused person stated the following:

*"3. I do not know the complainant herein. I met him for the first time on or about 18/01/2022 when he expressed interest in my motor cycle I was offering for sale, which motor cycle the complainant had desired to be bought and own by his brother whom I do not know. Subsequently, **he collected my phone number with the promise to get back to me** anytime his said brother was ready."*

4. Then on one Sunday, 23/01/2022, *the complainant called me on phone and asked me to bring my said motor cycle to the AVADRE SCHOOL compound for his said brother's inspection and probable purchase of the motor cycle.*" (Emphasis mine)

The inconsistencies in the evidence of the defence are clearly irreconcilable and the Court cannot gloss over them.

Before the Accused persons opened their defence in the course of the trial, the then counsel for the Accused persons made an application directed at MTN to furnish the defence with the transcript or audio recordings of the conversation held on the mobile phone number 0558408457 of the 2nd Accused person. This application was granted on the 3rd October, 2022. Surprisingly, the defence did not pursue this order. However, the prosecution obtained the same order from this Court and received the itemized bills of this same number on the date in question. This was tendered in evidence by the prosecution as Exhibit 'E'.

On the face of Exhibit 'E', there was no call transaction on this telephone number. When the 2nd Accused person was cross examined by the prosecution on the 27th February, 2023, he confirmed ownership of telephone number 055-8408457 and told the Court that it was a pre-registered SIM card, hence the name used to register the SIM card was not his name. It is therefore not surprising to see 'Kwame Kofi' as the name that appeared on Exhibit 'E' instead of the 2nd Accused person's real name (Raphael Hlortsi). See excerpts of the cross examination below:

Q. You are charged with conspiracy and robbery. Not so?

A. That is so.

Q. You filed a motion with a telephone number. Not so?

A. Yes My Lord.

Q. The number is 055-8408457. Not so?

A. That is so.

Q. How long have you used this number?

A. I cannot recall.

Q. Can you identify this document?

A. This is the motion I filed.

Q. Look at these itemized bills too concerning your telephone number.

A. I have seen it.

Q. When were you born?

A. 14/7/1988.

Q. Is the number registered in your name?

A. It was a pre-registered SIM I bought.

Q. I put it to you that there was no communication between you and PW2 on this number.

A. That is not true.

See excerpts of further cross examination of the 2nd Accused person by the prosecution on the 27th March, 2023 below:

Q. The very number you gave to the police is your number which you stated you used to call PW2 that number was switched off on the very day in question.

A. If the number was off, it is 2 SIMs in the phone. It was one of the numbers that he called on. The second SIM in the phone was new I had bought because of the re-registration but I cannot recall the number.

Q. I put it to you that when the phone is switched off, the date will not reflect in the

itemized bills and there will be no call history on the itemized bills.

A. That is why I said they called through the other SIM. If they hadn't called me I wouldn't move my motorbike and go to them.

Q. I put it to you that the very number you used to file your ex parte motion is the same number that was presented to MTN for the itemized bills.

A. That is not true. When they were taking my number my lawyer never called for my number.

Q. You admitted the number is for you.

A. I accepted when you asked me whether it was mine. I cannot tell if that is what they called me on. Because the phone had 2 SIMs.

Q. You are throwing dust into the eyes of the court.

A. That is not true.

I have carefully examined the evidence adduced by the prosecution at the trial. I have also evaluated the evidence put forward by the Accused persons. I find that, on the totality of the evidence, there is overwhelming evidence on record to safely convict the Accused persons on all the two (2) charges. On the other hand, I find the defence of the Accused persons as afterthought, misconceived and an attempt to extricate themselves from criminal liability. As a matter of fact, the defence of the Accused persons do not only lack substance, but infantile and lacked merit. In the circumstances, I find the Accused persons herein guilty of the offences of Conspiracy to commit crime to wit Robbery and Robbery, and they are accordingly convicted.

SENTENCING:

In sentencing the Accused persons, the Court took take into consideration of the fact that they are first time offenders and also young men. They have also been in

police lawful custody since their arrest because they were unable to get sureties to sign their bail for them. The Court also took notice of the increased rate of robbery offences especially robbery of motorbikes in Akatsi and its environs within the jurisdiction of this Court, using the same modus operandi. Also considered, is the seriousness of the crime and the fact that it was premeditated. Such young persons have become a danger and a threat to the society and must be kept away from the society for a considerable length of time. This would ensure that they do not mingle with innocent people to influence them. The 1st and 2nd Accused persons are hereby sentenced to serve the following prison terms:

Count 1: The 1st and 2nd Accused persons shall serve a prison term of Fifteen (15) years each IHL

Count 2: The 1st and 2nd Accused persons shall serve a prison term of Fifteen (15) years IHL.

Both sentences shall run concurrently.

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ISAAC ADDO
CIRCUIT JUDGE
5TH JUNE, 2023