

**IN THE CIRCUIT COURT 3 HELD AT ACCRA ON TUESDAY THE 28<sup>TH</sup> DAY OF  
FEBRUARY 2023 BEFORE HER HONOUR SUSANA EDUFUL (MRS.), CIRCUIT  
COURT JUDGE**

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**COURT CASE NO. D2/102/2022**

**THE REPUBLIC**

**VRS**

**1. ATSU DENTEH**

**2. SETH – AT LARGE**

**JUDGMENT**

The 1st Accused Person has been arraigned before this court by Prosecution and charged with two counts of;

1. Conspiracy to Rob contrary to sections 23(1), 149 of the Criminal and other Offences Act, 1960 (Act 29)
2. Robbery contrary to section 149 of the Criminal and other Offences Act, 1960 (Act 29)

The 1st Accused pleaded not guilty to the offence charged under count one and Count 2. The 2nd Accused Persons is at large at the time of trial consequently the court proceeded without him. Counsel for Accused filed a notice of alibi which prosecution investigated and filed his report. According Prosecution, per the Report, there was no substance in the notice of Alibi filed. Counsel after Accused closed his case applied to file an address but he has not done so as at February 24, 2023.

**THE BRIEF FACTS**

The brief facts as given by prosecution are that; “Complainant Azih Nneameka is a scrap dealer residing in Dansoman, whiles 1st Accused Person is a labourer who resides at North Dzorwulu, 2nd Accused Person Seth is at large. The Complainant who has his scrap business around Dzorwulu for some time now distributed his contact number on

posters to some of the mechanics around the North Dworwulu enclave so that he should be called up whenever they have scrap for sale. On 23/02/2021 at about 6:00pm the Complainant received a call from an unknown number and the caller assured the Complainant to meet him at a certain washing bay. But the Complainant proposed they meet him at a certain washing bay, but the Complainant proposed that they meet at Lucas Collage, Ayigbey Town, since he is not familiar with the said washing bay. At about 7:00pm same day, the complainant finally arrived at Lucas Collage on his Royal Motobike with registration number M-21-GR 2027 and his back pack containing an amount of 2,000.00.

Immediately Complainant stopped and put off his engine, the Accused Persons suddenly surrounded him. The Accused Persons who were armed with knife and cutlass ordered the Complainant to get off the motorbike and surrender all his belongings to them. One Edem who is currently standing trial at circuit court 3 Accra in connection with this same robbery become furious after his orders were disobeyed by the complainant, collected a cutlass from the 1st Accused and used it to hit the Complainant at his back. The Complainant out of fear attempted to flee but he was prevented by 1st and 2nd Accused Persons. Edem Morkli who is currently standing trial at Circuit Court 3 then pulled the complainant's back pack

containing GHC2,000.00 as well as posters with his contact numbers. On them from his back and passed same to the 1st Accused. The Accused Person not satisfied with the money taken from the Complainant started struggling with Complainant to snatch his motorbike as well. As a result, Edem Morkli used the cutlass to inflict a deep wound on the Complainant's left arm and the Complainant started screaming on top of his voice which attracted people to the scene. 1st and 2nd Accused Persons managed to escape with the Complainant back pack with its contents before the arrival of the people. Edem Morkli who could not escape pretended to have arrested a thief and started pronouncing the complainant as a thief who has stolen a convertor from a car parked at a nearby mechanic shop and he wanted to take the complainant to the Police Station. The crowd then decided to call Police. Edem Morkli quickly jumped on a standby motor bike and attempted to flee from the scene but luck eluded him and he was arrested by the crowd who handed him over to the Police patrol team that came around. On same day after the arrest of Edem Morkli, 1st Accused went to confide in one Prosper Mortsii, a community Police Assistant stationed at the Airport Police station that he together with Edem and the 2nd Accused now at large committed the robbery and gave him one of the posters that was taken from the Complainants back pack bearing the name and contact number of the Complainant. On 6/10/2021 at about 2:30am while Edem Morkli was standing trial at the Circuit Court 3, 1st Accused was arrested at his hideout at North Dworwulu. Ayigbe Town by the Police with the assistance of the Community Police Assistant. On 6/10/21, 1st Accused admitted the offence in his Investigation Caution Statement stating that he was advised together with the 2<sup>nd</sup> Accused Person to hide from being apprehended by the Police and based on that he run away to his hometown at Dzodze in the Volta Region. The 1st Accused was charged with the offence and arraigned before court. Efforts are underway to apprehend the 2nd Accused Person.

The Prosecution called 3 Witnesses and tendered 6 exhibits.

## **PW1'S EVIDENCE**

PW1 is Detective Sergeant Rita Petra stationed at Airport Police Station.

On 23/02/2021 the Investigator stated that she was on duty when A1 was arrested and brought to the station by C/Insp Kenneth Acheampong.

PW1 corroborated the evidence of PW2 to the court. PW1 further stated that On October 6, 2021 A1 was arrested at his hide out by PW3. According to PW1 A1, on the same day of the incident went to PW3 and confided in him that they had robbed Complainant. Upon A1's arrest he narrated his side of the story to PW1. A1 also told PW3 that he was at home when Seth came to him with the victim's bag containing a piece from a convertor and flyers and handed them over to him. Thus, PW1 corroborated PW3's evidence as well. PW1 took the caution statement and charge statement of Accused. PW1 was the person who issued PW2 with a medical form for endorsement after medical treatment at a hospital. PW1 later took the statement of the complainant as well.

## **PW2'S EVIDENCE**

PW2 is Azih Nnaemeka, he is a scrap dealer and resident at Dansoman in Accra. He stated that he conducts his business mostly around New Dzorwulu and its environs. He stated that due to the nature of his business he had left his contact number with most of his customers to contact him as and when they have any scraps for sale. He further stated that on 23/2/21, at around 6:00 pm an unknown caller called him with cell phone number 0594845581 to meet him at a washing bay in Dzorwulu but since he did not know there, the unknown caller directed him to a popular place called Lucas College and he agreed. According to PW1 upon reaching Lucas Collage 3 men approached him. The 3 were Edem Morkli and the Accused Persons. Edem Morkli pulled a knife at Complainant and ordered him to get off his motorbike and the 3 men got closer to Complainant. PW2 obliged under fear. Edem, then dropped the knife and took a cutlass from 1st Accused. Edem used the blunt side of the cutlass to hit PW2's back. PW2 sensing danger jumped unto his motor bike and attempted to flee the scene. Edem slashed PW2's left hand with the cutlass. Edem then jumped and sat behind PW2 on the motorbike and then removed PW2's back pack containing GHC2,000.00 and gave it to A1 and A2 who are his accomplices. Edem pulled the motorbike in a bid to snatch it

from PW2. As a result, both Edem and PW2 fell off the motorbike unto the ground. PW2 shouted for help. The 1st and 2nd Accused runaway with PW2's bag containing GHC2,000.00. PW2 narrated his plight to the witnesses at the scene who called the police patrol team to the scene. Edem was arrested by the police but 1st and 2nd Accused Persons managed to escape arrest.

### **PW3'S EVIDENCE**

PW3 was Mortsii Prosper. He is a Community Police Assistant stationed at the Airport Police Station. According to PW3 on February 23, 2021 at about 8pm, he was at home when A1 run to him from a bush which is opposite PW3' house. A1 handed an object which he claimed was a convertor to him and A1 informed PW3 that he together with A2 and Edem Morkli wanted to sell the convertor to a Nigerian but resulted in a fight and the crowd came to the scene and started beating Edem and therefore called upon PW3 to go out and Assist Edem. PW3 upon reaching the scene was told Edem had been arrested by the Police and was at the Airport Police station. PW3 went to Chief Inspector Acheampong with the convertor and asked PW3 to keep the items until A1 was arrested. PW3 further stated that on the day A1 was arrested he handed over the convertor brought to him by A2 to Sergeant Rita Petra the investigator. PW3 tendered in the photograph of the convertor as well as the actual convertor and the flyer by Complainant.

The Prosecution tendered the following exhibits;

1. The Investigation Caution Statement and Charge Statement of Accused (Exhibit A and B series)
2. Police Medical Report Form endorsed by a Medical Officer (Exhibit C)
3. A piece of Convertor and flyer used by Complainant in his business (Exhibit D and E)
4. Photograph of the real object that is the flyer of Complainant and a piece of a convertor (Exhibit F)

5. The Dairy of Action was tendered by Accused through PW1 (Exhibit 1 series)

After the close of prosecution's case Counsel for A1 prayed that he files submission of no case to answer. The said submission was file on October 28, 2022 is summed up below. The court in a ruling delivered November 15, 2022 called upon the Accused to open his defence.

Accused in defence, denied the charge of robbery against him. According to Accused he has nothing to do with the robbery incident on February 23, 2021. According to him he was not at the scene of crime. He did not meet prosper Nortsi PW3 on that day neither did he go to him to rescue Edem and he also did not give any bag that was purportedly collected from Seth. According to Accused PW3 has his own problem with him, which is that he and PW1 clashed over a girl and pW3 vowed as to teach he Accused a lesson by implicating him. According to Accused on the day of the incidence was at Premier Soccer Bet Centre at near Barkin Gutter and not at the scene of crime. According to Accused his notice of alibi filed was not properly investigated. Also the complainant PW1 also told the court he could not identify him as he was not able to do same at the identification parade. Again, it is not true that he left his residence after the incident, if even at all he left home for one or two days when he attends parties or funerals but not a month as alleged. The Accused tendered exhibit 1 series which are photograph of the location of Premier Soccer Bet. Prosecution's duty was to prove the charge preferred against Accused 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. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. 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. But then unless and until Prosecution has discharged the burden of proving the guilt of the accused to the requisite degree, no burden will be shifted on to the accused or assumed by him.

### **COUNT ONE (1)**

#### **1. The charge of conspiracy to rob**

**Conspiracy per Section 23(1) under the Criminal Offences Act 1960, (act 29)**

**provides that "If two or more persons agree or act together with a common purpose for or in committing or abetting a crime, whether with or without any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet that crime, as the case may be".**

In the case of **FRANCIS BOAFO @ CUDJOE V. THE REPUBLIC (2017) JELR 63751. SUIT NO: H3/9/2013, dated 4th MAY 2017;**

the Court of Appeal in determining whether or not the prosecution has sufficiently proved the Charge of Conspiracy to commit a crime against the Appellant to warrant the conviction, it noted inter alia,

that; **In short, it has to be proved that the Appellant agreed with the other Accused Persons to act together to commit the robbery or that he abetted the commission of the robbery.**

For the count of conspiracy to succeed against the accused persons as spelt out under section 23 of Act 29 the prosecution must prove

- i. That the Accused Persons agreed to act together to commit robbery or

ii. That the Accused Persons acted together with a common purpose to commit robbery.

In the instant case, the Prosecution in establishing that there was an agreement between Edem Morkli A1 and A2 with a common purpose. In the case of **COMMISSIONER OF POLICE v AFARI** [1962] 1GLR 483 the Supreme Court defined the scope of the law of conspiracy of Ghana that:

‘In the opinion of the court, the Ghana law on conspiracy ... consists not only in the criminal agreement between two minds, but also in the acting together in furtherance of a common criminal objective’.

It is difficult to prove the agreement between the accused persons since the prosecution was not present during the planning and that evidence of outward manifestations of acting together by accused persons gives rise to an inference that there has been a previous agreement between them to act for the common purpose to commit an unlawful act of robbery.

According to Prosecution the Accused Person (A1) was with the two others at the scene of crime. But A1 and A2 after receiving the money in the bag left the scene of crime. Edem Morkli however attempted to run away when he became apprehensive that he was about to be exposed. He was arrested at the scene of crime. PW2 he could not identify A1 as among the persons who caused harm to him and robbed him. PW3 also told the court that on February 23, 2021 at around 8 pm he was in his house when Atsu Denteh run to him from the bush and indicated to him that he was with Edem Morkle and Seth was is A2 but currently at large wanted to sell a convertor to a Nigerian. The negotiation resulted in a fight and the crowd came and started beating Edem so he should go and offer assistance to Edem. Accused handed over to him a piece of convertor and a poster/ flyer with PW2’s name and address embossed.



Accused denied the charge of conspiracy to rob with Edem and Seth contrary to what was stated on the charge. According to him on the day of the incident he was not at the scene but was at Premiere my bet near Barkin Gutter.

Having examined the evidence on record as a whole the court finds that, Accused stated in exhibit A the investigation caution statement that on the day of the incident he returned from work and was sleeping at home when he heard some noise around locus collage. "On February 23, 2021 at about 7:00pm I returned from work and was sleeping and later I heard some noise around Lucas Collage and went there to find out what was going on. Immediately I got to the scene a certain guy from the crowd pointed at me as one of the guys who sliced the hand of the complainant with a cutlass and took his bag so I took to my heels and the crowd started pursuing me."

The piece of evidence given by the Accused goes to establish that he was not at Premire Bet as he told the court and he wants the court to believe. Rather he was at home near the scene of crime. What then can be the reason for the inconsistent statement of the Accused if not to throw dust into the eyes to the court? The inconsistent evidence of accused discredits his statement of alibi and therefore the court rejects the evidence and accept the Prosecution's evidence that he was with Edem and Seth to commit the crime as being reasonably probable.

### **The Charge of Robbery**

**Section 150 of Act 29**, if a person causes any harm to any person or threat of criminal assault is used with the intent to overcome the resistance of the person in custody of the thing for the purposes of stealing the person commits robbery. For Prosecution to succeed it must establish stealing plus the use of force or threat of use of force or criminal assault to steal or overcome or prevent the resistance of the person in charge of the property. See the case of **BEHOME v. REPUBLIC** supra the intention must be to dishonestly appropriate the property of another with the accused not being the owner and must not also have a claim of right in that property. See P. K.

In the Court of Appeals case, **Akwasi Annin V Republic Ayebi** JA stated -

“One is only guilty of robbery if in stealing a thing he used any force or caused any harm or used any threat of criminal assault with intent thereby to prevent or overcome the resistance of his victims, to the stealing of the thing” as held in **Behome v. The Republic [1979] GLR 112.**

In the case of **Abaka v. The Republic (2010) 28 MLRG 111 at page 125** the Court of Appeal stated the ingredients to be proved to secure a conviction for robbery as follows:-

- “1. The accused has stolen a thing.
2. For the purpose of stealing, the accused person used force or caused harm to any person (or used the threat of harm on any person).
3. The force or the threat of harm used must be with intent to prevent or overcome the resistance of any person to the stealing of the thing.
4. The identity of the Accused with regard to the commission of the robbery”.

The Prosecution must be able to prove each and every one of the above four ingredients.

PW2 in his testimony stated that he was attacked at Lucas Collage where he met with A1 and two others to buy scraps from them. According to him, one of them took a knife from his pocket and threatened him to get off his motorbike. When the Complainant resisted, Edem took a cutlass from one of two accomplices and used the blunt side of the cutlass to hit PW2’s back. Sensing danger PW2 attempted to run away to save his life, Edem realizing PW2 wanted to escape used a sharp knife he was holding to slash his left hand and quickly took his backpack containing

GHC2,000.00 and other complimentary cards and handed them over to A1 and A2. The indication of stealing accompanied by the use of force is established.

The fundamental issue that must be resolved by prosecution to succeed in proving the charge beyond reasonable doubt to determine whether or not it was the Accused Person (A1), Edem Morkli and Seth now at large who committed the offence charged.

Prosecution's evidence is that it was Atsu Denteh (A1) who went to PW3 with the items which are the piece of convertor and a flyer of PW2 which has PW2's name and contact address embossed.

Accused has denied ever meeting PW3 with the said exhibits but it is PW3's hatched plan to implicate him because the two clashed over a girl they both were interested in.

In other words, prosecution must prove that Accused Person was part of the persons who participated in the commission of the offence. Prosecution may do so either by direct evidence of persons who swear to have witnessed the event or by circumstantial evidence being one of the surrounding circumstances of the case that may irresistibly

point to the accused as the perpetrator of the crime. See **DOGBE v THE REPUBLIC** [1975] 1GLR 118.

PW2 in his testimony and under cross examination emphatically said that he cannot recognize the person A1 due to the manner in which the incident happen that is the attack on him.

From the foregoing evidence of prosecution, the fact that the complainant (PW2) was robbed on the day of the incident is not in doubt. What the prosecution now needs to establish is whether or not it was the Accused person who committed the crime with his accomplices.

Now in establishing the identity of A1, I will make reference to the case of **Dogbe v. The Republic [1975] 1 GLR 118**, holding I, where the High Court, per Ata-Bedu J, stated thus:

“In criminal trials, the identity of the accused as the person who committed the crime might be proved either by direct testimony or by circumstantial evidence of other relevant facts from which it might be inferred by the court.

In the Supreme Court case, **IGNATIUS HOWE V REPUBLIC**, Akamba JSC in his judgment stated.

“The issue of identification is a fact that must be determined by the court. Hence in a criminal trial, the Prosecution is obliged to lead evidence to identify the Accused Person as the person who committed the crime for which he/she is charged. His Lordship made reference to **Phipson book on Evidence 10th edition, p. 170, para 1381**, and it states: Identification may take several forms. It may be proved or disproved not only by direct testimony, or opinion evidence, but presumptively by similarity or dissimilarity of personal characteristics such as age, height, size, hair, complexion, voice, handwriting, manner, occupation, family relationship, education, travel, religion, knowledge of particular people, places, or facts, and other details of personal history including identities of mental qualities, habits and disposition.

From this narration, Astu Denteh (A1) does not admit in exhibit A his Investigation Caution Statement that he was part of Edem and Seth when they committed the offence. What he however admits is that he facilitated Edem and Seth with the commission of the crime, by collecting the items they took at the scene of crime and handed it to PW3. This piece of evidence suggests that A1 played the role of facilitation and shielding Seth from getting arrested when Edem had already been arrest.

From the evidence PW3 who lives in the same vicinity with Accused told the court that it was Accused who approached him with the exhibits and persuaded him to go

and assist his accomplice Edem Morkli. Accused has denied this piece of evidence as not being true. He indicates to the court that he was nowhere to around the scene of crime. This piece of evidence is the word of Prosecution as against that of Accused. Accused has vehemently denied any such meeting between him and PW3. And as noted in the case **MAHAMADU LAGOS v COMMISSIONER OF POLICE** [1961] GLR 181; see also **REGINA v ABISA GRUNSHIE** [1955] 1 WALR p. 36 that it is not enough for the bench to reject a defence because it does not believe the accused; and that the court has a duty to consider whether the defence can reasonably be true or reasonably probable. In effect accused pleaded alibi though no formal notice was served by learned counsel for accused on the prosecution. And as it was noted in the case of **AFWIRENG v THE REPUBLIC** [1992] 1GLR 270 that failure to give formal notice of alibi does not exclude the evidence of alibi. Has accused given any evidence to raise a doubt in the mind of the court that he was at the Premere Bet? The answer is no.

Again, Accused's evidence that he was not at home or the scene of crime contradicts what he told Police in his investigation caution statement exhibit A.

According A1 it was A2 and Edem who committed the offence. The vexed question is, why did A1 not go with PW3 to the scene and to the Police station when he knew Edem had been arrested but rather flee the scene and the neighborhood for a long time just to hid himself. The court is not convinced that A2 did not have anything to do with the crime committed against PW2. From the evidence on record the court presumes that items which A1 handed to PW3 connects A1 to the offence of robbery charged. The court again notes that the Accused Person's evidence is not credible and therefore rejects it.

The court according finds Accused guilty of both offence charged and convict him.

## SENTENCE

Accused has been in custody since January 11, 2022 until today February 28 2023 which is more than one year. I am duty bound under article 14(6) of the 1992 Constitution to take the period that he has been in lawful custody into consideration. Prosecution has submitted to the court Accused Person is not known. In passing sentence the court is not supposed to exercise its power in a capricious manner nor make the sentence harsh or excessive. But to determine harshness or excessiveness due regard must be had to the nature of the of the offence, mode of its commission and lack of remorse shown as well as the need to send the right signal to others of Accused's kind that the court will deal firmly with them. Having regard to the four theories on sentencing – retribution, deterrence, prevention and rehabilitation, I find deterrence to be the greatest imperative in this case.

The punishment for robbery under section 149 of Act 29 as substituted by Criminal Code (Amendment) Act, Act 646 is imprisonment for not less than ten years and where the offence is committed by the use of offensive weapon not less than fifteen years.

Accused you are hereby sentenced to a term of 15 years imprisonment in hard labour.

**PROSECUTOR**

**ASP EVANS KESSE**

**REPRESENTATION**

**RAPHEAL KOFI BONNEY FOR ACCUSED PERSON**

**H/H SUSANA EDUFUL (MRS)  
(CIRCUIT COURT JUDGE)**