

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON TUESDAY, 31<sup>ST</sup> JANUARY, 2023

**SUIT NO. D18/14/21**

**THE REPUBLIC**

**VRS**

**EMMANUEL AMATEY**

---

**JUDGMENT**

---

The accused person is before this court on a charge of robbery contrary to **Section 149 of the Criminal Offences Act, 1960 (Act 29)**. The particulars of offence are that on the 8<sup>th</sup> of October, 2020 at about 8:am, at Central University area near Dawhenya in the Tema Metropolis and within the jurisdiction of this Court, with intent to overcome the resistance of Kofi Ansah, you used a knife and threatened to kill him and dishonestly appropriated his royal motorbike with registration number M-20-GT 3261 valued at three thousand nine hundred Ghana cedis (Ghs 3,900).

The accused person pleaded not guilty to the charge. By that plea, he was shielded by the constitutional provision that he was innocent until proven guilty. In ***Gligah & Atiso v. The Republic [2010] SCGLR 870 @ 879*** the court held that “Under article 19(2)(c) of the 1992 Constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved.

*In other words, whenever an accused person is arraigned before any court in any criminal trial, it is the duty of prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof is therefore on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person would be called upon to give his side of the story.”*

Prosecution in proof of its case called one witness, the investigator. He tendered in evidence the investigation caution and charge statement of the accused person as EXHIBIT A and B respectively, copies of documents covering the motorbike which the accused person supposedly robbed as EXHIBIT C series and photographs of the crime scene as well as a room accused claims his owner lives in as EXHIBIT D series, EXHIBIT E as the alibi report as well as photographs of the Somanya/Kpong GPRTU station on the day in question.

PW1's evidence is that after the complaint was made by the complainant and the owner of the car, he arrested the accused person. Accused person denied the offence. He visited the crime scene with the accused person and complainant. It was an uncompleted building and the complainant pointed out a sachet of water which he claimed the accused person took a bag of water to.

That upon interrogation, the accused person told him that at the time of the offence, he was driving a sprinter bus and had loaded passengers from Ashaiman to Somanya. That he investigated the alibi and realized it was false.

Prosecution closed its case after this.

**Section 173 of the Criminal and other Offences Procedure Code, 1960 (Act 30)** provides that; "If at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him."

In deciding whether or not a case is made out against the accused sufficiently to require him to make a defence, the Court must make certain considerations. According to the Supreme Court in the case of **Asamoah &Anor. v. The Republic**[ 2017-2018] 1 SCGLR, 486, **Adinyira JSC** speaking for the apex court, stated that "the underlying factor behind the principle of submission of no case to answer is that, an accused person should be relieved of the responsibility of defending himself when there is no evidence upon which he may be convicted. The grounds under which a trial court may uphold a submission of no case as enunciated in many

landmark cases whether under a summary trial or trial by indictment may be restated as follows;

- a) There had been no evidence to prove an essential element in the crime
- b) The evidence adduced by the prosecution had been so discredited as a result of cross examination; or
- c) The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it.

The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt, one with innocence. See the cases of *The State v. Ali Kassena* [1962] 1 GLR 144 in which the *Practice Direction issued by the Queens Bench Division in England* [1962] 1 E.R 448 (Lord Parker CJ) was approved of, *Moshie Alias Adama v. The Republic* [1977] 1 GLR 186, *Kofi alias Buffalo v. The Republic* [1987-88] – *Tsatsu Tsikata v. The Republic* [2003-2004] SCGLR 1068).

The offence of robbery is provided for in **Section 149 of the Criminal Offences Act, 1960 (Act 29)**. It is however defined by **section 150** of the same Act to be:

## **“Section 150 – Definition of Robbery**

*A person who steals a thing is guilty of robbery if in and for the purpose of stealing the thing, he uses any force or causes any harm to any person, or if he uses any threat or criminal assault or harm to any person, with intent thereby to prevent or overcome the resistance of that or of other person to the stealing of the thing.”*

A person who steals a thing commits robbery

- a) If in and for the purpose of stealing the thing, the 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 resistance of the other person to the stealing of the thing.
- c) The thing stolen must be in the presence of the person threatened.

In the case ***of Behome v. The Republic [ 1979] GLR 112***, the court held that “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 the intent thereby to prevent or overcome the resistance of his victims to the stealing of the thing”

Thus prosecution, in the circumstances of this case, in order to establish a prima facie case on count one and two must prove that;

1. The accused person stole complainant’s motorbike

2. That in stealing the said item, by the use of a knife, he threatened complainant with criminal harm.
3. That his intention of using the threat was to prevent or overcome complainant's resistance to the stealing of the motorbike.

On the first element that the accused person stole complainant's motorbike, according to PW1, this was the complaint that the complainant and one other who happens to be the owner of the said motorbike made to him.

Neither the said motorbike or a picture of same was tendered in this court. However, prosecution tendered in evidence EXHIBIT C series as the DVLA documents covering the said motorbike. It is in the name of Francis A Siplim. That is clearly not the accused person and so it cannot be said that the accused person is the owner of the said motorbike.

Having established that the accused person was not the owner, prosecution must go on to prove that the accused person appropriated the said motorbike with a dishonest intention. The evidence of prosecution on this simply is that the complainant says it was the accused person who forcibly took the motorbike from him.

The said complainant did not testify in this case. The motorbike was not found on the accused person or found anywhere or with anyone through

whom an inference can be made that it was being kept upon the authority of the accused person. PW1 had admitted these at page 25 of the record of proceedings;

*Q: In your investigation, did you find the motorbike with me?*

*A: No My Lord.*

As complainant did not testify before this court, save for the brief facts of the case which does not constitute evidence, there is no evidence before this court as to how the accused person committed the offence.

PW1's evidence is that in the course of his investigation, he visited the crime scene with the accused and complainant. That complainant pointed to a sachet water rubber as being part of the bag of sachet water that the accused person was carrying.

There were no finger prints to indicate that indeed the accused person had held on to that sachet water. The site was an uncompleted house and so any one at all could have left that sachet water pack at the scene. Without prosecution establishing a direct link between the accused person and that sachet of water, their case remains in the sphere of speculations and not proof.

Prosecution's case per EXHIBIT E is that an alibi accused had given could not be confirmed. The report concludes that accused person's alibi should be disregarded as same is unfounded.

The fact that an alibi provided by an accused person upon investigation turns out to be false cannot on its own prove that the accused person has committed an offence. If at all, a false alibi is a manifestation that an accused person is not forthcoming with the truth. Prosecution must lead copious and clear evidence of the accused person committing an offence and then the alibi report would go in to lead to an inference that the accused person was lying because he had committed the offence.

That an alibi report is false cannot be the basis of proving the guilt of an accused person. That would negate from the duty of prosecution to establish positive evidence to prove the 'how, where, when and why' an offence has been committed by an accused person.

I find based on the available evidence that prosecution has failed to lead any evidence to prove the first element of the offence. As all elements of an offence must be proven by prosecution, it would be an exercise in futility to proceed to find out if they had proved the other elements. Indeed, for the offence of robbery, once prosecution fails to establish



that the accused person stole the item, it stands to say that prosecution cannot establish the offence.

On this basis, I hereby find that prosecution has failed to lead evidence to establish all the ingredients of the offence. That being so, they have failed to establish a prima facie case against the accused person. He is accordingly acquitted and discharged.

**H/H BERTHA ANIAGYEI (MS)**  
**(CIRCUIT COURT JUDGE)**

ASP STELLA ODAME FOR THE REPUBLIC PRESENT