

**IN THE CIRCUIT COURT HELD AT ACHIMOTA, ACCRA ON FRIDAY, THE 15TH
DAY OF DECEMBER, 2023 BEFORE HER HONOUR AKOSUA ANOKYEWAA
ADJEPONG (MRS.), CIRCUIT COURT JUDGE**

CASE NO.: D2/002/23

THE REPUBLIC

VRS

- 1. ISAAC KORANTENG A.K.A JAY-Z**
- 2. EMMANUEL NANA OWUSU A.K.A WASTY**
- 3. PRINCE BIMPEH A.K.A BLACK - AT LARGE**

FIRST ACCUSED PERSON PRESENT
SECOND ACCUSED PERSON ABSENT
THIRD ACCUSED PERSON AT LARGE

INSPECTOR RITA A. KONADU FOR THE REPUBLIC PRESENT

RAPHAEL KOFI BONIN, ESQ. FOR SECOND ACCUSED PERSON ABSENT

JUDGMENT

THE CHARGES

The accused persons herein were charged with the offences below however the third accused person has never appeared before this court since the case was registered in this court as the prosecution says he is at large. Therefore the first and second accused persons were arraigned before this Court on the following charges;

1. Conspiracy to commit crime namely defrauding by false pretence contrary to *sections 23(1) and 131(1) of the Criminal Offences Act, 1960 (Act 29)*.

2. Defrauding by false pretence contrary to *section 131(1) of the Criminal Offences Act, 1960 (Act 29)*.
3. Causing harm, contrary to *section 69 of the Criminal Offences Act, 1960 (Act 29)*.

THE PLEA

The first and second accused persons pleaded not guilty to all the charges after same had been read and explained to them in their choice of language, being Twi. The accused persons having pleaded not guilty to the charges, the prosecution assumed the burden to prove the guilt of the accused persons beyond reasonable doubt.

FACTS

The brief facts of the case as presented by the prosecution are that the complainant Abraham Akwei is a machine operator residing at Korle Gonno, Accra. The victim Sybil Bannerman is unemployed residing at Mamprobi. Accused persons, Isaac Koranteng A.K.A Jay-Z, Emmanuel Nana Owusu A.K.A Wasty are traders residing at Abeka and Lapaz respectively. Prince Bimpeh A.K.A Black is at large. That on 10/02/2023, the victim saw an advert of iPhone 11 pro max on 'Jiji', an online advertisement platform being sold at GH¢5,000.00. She contacted the seller and they agreed to meet at Lapaz the next day. The next day 11/02/2023, she asked the complainant who is her friend to accompany her to meet the seller. They met first accused and second persons in a taxi cab at Lapaz opposite the Abrantie spot at about 11:15 am and they showed her an iPhone 12 pro max. When she saw that it was an iPhone 12 pro max, she complained to them that it was not what she saw online but they told her that there was a mix up and that they had mistaken her for another buyer. She gave them GH¢4,900.00, and they gave her the phone. Immediately she received the phone, she detected that it was a fake phone. Just when first accused person who was driving the car was about to move the car away, the victim held on to the back door of the car and raised an alarm. The first accused person drove

off whilst she held on to the door. The second accused person, who was then sitting in the back seat tried to remove her hands from the door whilst the car was in motion, but the victim refused to let go. They drove to a distance with speed, and she eventually fell off and, in the process, broke her spinal cord and neck leading to her paralysis. She was rushed to Lapaz Community Hospital, but she was referred to Korle Bu Teaching Hospital where she was admitted. That, later the complainant came to the Police Station and lodged a complaint, and the accused persons were arrested.

To prove their case, the prosecution called two witnesses including the investigator.

EVIDENCE OF PW1

PW1, Abraham Akwei, who is also the complainant told the court that he is a machine operator and lives at Korle Gornor, a suburb of Accra. That he knows the first and second accused persons. He continued that on 11th February 2023, at about 11:30am, he accompanied his friend Sybil Bannerman to Lapaz to buy a phone. That when they got to Lapaz, first accused person called the victim on phone and beckoned her to cross the road to the opposite side where first accused person was standing so they crossed the road to the opposite side and first accused person took them to a taxi cab which they had parked at a spot opposite Abrantie drinking spot. According to PW1, second accused person was sitting inside the car and first accused person was the one driving. That first accused person gave the victim an iPhone 12 Pro Max and after inspecting it, she gave it to him to hold whilst they bargained about the price. That the victim gave them GH¢4,700.00 but they refused to collect it and asked her to add some. That she pleaded with them, but they refused and gave her back the money and collected the phone. That she later added GH¢200.00 to make GH¢4,900.00 and gave it to them and they returned the phone to her. That when she collected the phone, she detected that it was not the iPhone 12 Pro Max but a cloned one. That when they were about to move the car away,

she quickly held the back door of the car and raised an alarm, but they did not stop. That they drove off and she fell down and sustained an injury. PW1 continued that he rushed the victim to the Lapaz Community Hospital, but she was referred to Korle-Bu Teaching Hospital where she was admitted. He concluded that according to the doctors at the Korle-Bu Teaching hospital, she is paralyzed.

EVIDENCE OF PW2

PW2, the investigator herein, No. 47488 Detective Corporal Hubert Klenam Dzakpasu stationed at the Tesano Police Station testified that he knows the complainant Abraham Akwei, as well as the first and second accused persons. That on the 15/02/2023, the complainant came to the Tesano police station and reported that on 11/02/2023 he accompanied his friend called Sybil Bannerman to Lapaz to buy a phone. That they met the sellers at a spot opposite Abrantie spot at Lapaz and bought iPhone 12 Pro Max from them at a cost of GH¢4,900.00. That they detected that the phone was not an iPhone 12 Pro Max but a clone one and just when the suspects who were inside the taxi cab were about to move the car, his friend held the door of the car. That they drove off and she fell down and sustained an injury and was rushed to Lapaz Community Hospital but later referred to the Korle-Bu Teaching Hospital.

According to PW2, he visited the crime scene together with the complainant and he observed that the incident happened at Lapaz opposite the Abrantie spot. That he also observed that there was a CCTV at the junction leading to Bigot where the incident occurred. That he also visited the Korle-Bu Teaching Hospital and saw the victim Sybil Bannerman on admission at the surgical ward. That the victim could talk but could not move any part of her body. He showed her photographs of some suspects and she identified first accused person as one of the suspects. He took a statement from her and issued her a medical form. He wrote a letter to the Police Emergency Command Centre

for them to furnish him with the CCTV footage of the incident and they provided him with the footage.

PW2 continued that on 17/02/2023, he arrested first accused person and took investigation caution statement from him. That first accused person during interrogations admitted the offence and mentioned second and third accused persons his accomplices. That on 18/02/2023, first accused person led him to the house of second accused person whom first accused person mentioned as his accomplice and he arrested second accused person and took his investigation caution statement.

He further told the court that his investigations revealed that the victim saw an advert of an iPhone 11 Pro Max on “Jiji”, an online advertisement application, being sold at GH¢5,000.00. She called the number of the seller and they agreed to meet at Lapaz for the transaction. On 11/02/2023, she asked her friend Abraham Akwei to accompany her, to go and meet the seller when they got to Lapaz about 11:15 am the seller called the victim on the phone with a different number and directed her to cross the road and meet him at a spot opposite Abrantie spot. When they crossed the road, first accused person who was standing by the roadside beckoned them to come. They went and first accused person entered a taxi cab with registration number EN-60-23 and second accused person was sitting at the back. They asked the victim to sit in the car for them to transact the business, but she declined. She stood outside and first accused person gave her the phone. She inspected it and realized it was not an iPhone 12 Pro Max. When she complained to them that it was not what she saw online, they told her that it was a mix-up, but they could still sell it to her, but she should add some money to what they had agreed on. The first accused person then collected the phone from the victim. She pleaded with them and added some money to make up GH¢4,900.00 and gave it to first accused person and he gave the phone back to her. Immediately she received the phone, she detected that they had swapped it and given her a cloned one. Just when they were about to drive off, the victim held the door of the car and raised an alarm, but they did not stop and drove off.

She fell down and sustained an injury and was rushed to Lapaz Community Hospital but was later referred to the Korle-Bu Teaching Hospital where she was admitted to the surgical unit. That his investigation also revealed that the advert that was posted on "Jiji" by the third accused person. At the close of investigations, he charged the accused persons for the offences as stated on the charge sheet. He tendered the following in evidence: a flash drive containing the CCTV footage of the incident as exhibit 'A', medical report form as exhibit 'B', investigation caution statements of first and second accused persons and their charge statements as exhibit 'C', 'C1', 'D' and 'D1' respectively.

Thereafter, the prosecution closed its case.

The second accused person in the course of the trial jumped bail and has since then not appeared before the court. The prosecution after about six adjournments of the case where second accused person had been absent and also made unsuccessful efforts to arrest second accused person on Bench Warrant and further brought second accused person's sureties before the court on an application for forfeiture, prayed the court to continue the trial with first accused person. The court having dealt with the sureties of second accused person, granted the prayer to continue the trial in respect of first accused person. Therefore the instant judgment is in relation to the first accused person herein.

After the close of the case of prosecution against first accused person, the Court examined the evidence of the prosecution witnesses to determine whether a prima facie case had been made by the prosecution to warrant the first accused person herein to open his defence. The Court then ruled that a prima facie case had been made and the first accused person was to raise a reasonable doubt in the case of the prosecution.

In view of the above, the Court found that the first accused person had a case to answer and was therefore called upon to enter into his defence, after his rights and options available to him as an accused person were explained to him by the court.

EVIDENCE OF THE FIRST ACCUSED PERSON

The first accused person testified that he lives at Abeka and is a driver. That he knows the prosecution witnesses, second and third accused persons. He continued that his friend placed his phone on Jiji and the lady called his friend that she wanted the phone so they met at Abrantie. That his friend informed him that the girl will be coming to buy the phone so they met with her and showed her the phone. The first accused person further testified that he was by then in a taxi whilst his friend was with the lady at Abrantie near the polytank bargaining the price of the phone. That they finally agreed on GH¢4,900.00 and he gave the phone to the lady and sat inside the car. According to first accused person when he moved the car there were trotro around so one could not have moved fast so he moved at a short distance. The first accused person further testified that he did not know the lady was holding on to the car. That a week later he got a call from one CID, Mr. Gumah that they did a deal at Abrantie which resulted in someone getting hurt so he should report at the Lapaz container which he did and the CID asked that they should go to the Tesano police station. That he led the police to the house of the phone owner and he was brought to the police station. The first accused person concluded that he is well known in Lapaz as a driver but he does not sell phones.

The first accused person did not call witness and closed his defence thereafter.

LEGAL ISSUES

The legal issue to be determined by this court are as follows:

1. *Whether or not first accused person did agree with second and third accused persons to act together with a common purpose to commit crime namely; defrauding by false pretence.*
2. *Whether or not first accused person with intent to defraud did obtain the consent of Sybil Bannerman to part with cash, the sum of GH¢4,900.00 by falsely pretending that if the said amount was given to him and second and third accused persons they could sell her an iPhone 11 Pro Max, a statement he knew well at the time of making it to be false.*
3. *Whether or not first accused person did intentionally and unlawfully cause harm to Sybil Bannerman resulting in severe injuries leading to permanent paralysis to her.*

BURDEN AND STANDARD OF PROOF

The fundamental rule in all criminal proceedings is that the burden of establishing the guilt of the accused person is on the prosecution and the standard of proof required by the prosecution should be proof beyond reasonable doubt.

This being a criminal case, the prosecution bears the burden of proof to establish the guilt of the first accused person beyond reasonable doubt.

Under Article 19(2)(c) of the 1992 Constitution, a person charged with a criminal offence is presumed innocent until proven guilty or has pleaded guilty. This requirement is the essence of *sections 11, 13 and 15 of the Evidence Act, 1975 (NRCD 323)*.

In the case of *Asante (No.1) v. The Republic (No.1) [2017-2020] 1 SCGLR 132* at 143 per Pwamang JSC, it was held that:

“Our law is that when a person is charged with a criminal offence it shall be the duty of the prosecution to prove his guilt beyond reasonable doubt, meaning the prosecution has a burden to lead sufficient admissible evidence such that on an assessment of the totality of the evidence adduced in Court, including that led by the accused person, the Court would believe beyond a reasonable doubt that the offence has been committed and that it was the

accused person who committed it. Apart from specific cases of strict liability offences, the general rule is that throughout a criminal trial the burden of proving the guilt of the accused person remains with the prosecution. Therefore, though the accused person may testify and call witnesses to explain his side of the case where at the close of the case of the prosecution a prima facie case is made against him, he is generally not required by law to prove anything. He is only to raise a reasonable doubt in the mind of the Court as to his commission of the offence and his complicity in it except where he relies on a statutory or special defence.”

Also, in the case of **Asare v The Republic [1978] GLR 193 – 199**, Anin J. A. delivering the Court of Appeal decision stated thus:

“There was no burden on the accused to establish his innocence, rather it was the prosecution that was required to prove the guilt of the accused beyond all reasonable doubt.”

Again, in the case of **Kugblenu vrs. The Republic [1969] CC 160 CA**, Ollenu JA stated the law as follows:

“It is trite law that the onus upon the prosecution is to prove their case beyond all reasonable doubt. This applies to all material issues and matters, which form the pivot of the case of the prosecution or the pillar or foundation of the case upon which the case rests. If the prosecution leads evidence which creates uncertainty, they have failed and the accused should be acquitted”.

ANALYSIS

1. *Whether or not first accused person did agree with second and third accused persons to act together with a common purpose to commit crime namely; defrauding by false pretence.*

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 law, Conspiracy consists not merely in the intention of two or more persons, but also in the agreement of two or more persons to do an unlawful act or to do a lawful act by an unlawful means. And a person could be charged with conspiracy to commit a crime whether he was involved in the conspiracy before the act (accessory before the fact) or after the act (accessory after the fact). What is material is whether there was a common design by the parties to commit the crime.

The essential ingredients of the offence which the prosecution must prove to succeed on as stated by Kyei Baffour JA sitting as an additional High Court Judge in the case of *Republic v. Eugene Baffoe Bonnie (unreported); Suit No. CR/904/2017 delivered on 12th May, 2020*, are as follows:

- i. That there were at least two or more persons
- ii. That there was an agreement to act together
- iii. That the sole purpose of the agreement to act together was for a criminal enterprise.

In the case of *Faisal Mohammed Akilu v. The Republic [2017-2018] SCGLR 444* the Supreme Court per Yaw Appau JSC stated as follows;

“Conspiracy could therefore be inferred from the mere act of having taken part in the crime where the crime was actually committed. Where the conspiracy charge is hinged on an alleged acting together or in concert, the prosecution is tasked with the duty to prove or establish the role each of the alleged conspirators played in accomplishing the crime”

PW1 in his evidence in chief told the court that he accompanied his friend who is the victim to buy a phone. That when they got to Lapaz, first accused person called the victim on phone and beckoned her to cross the road to the opposite side where first accused person was standing so they crossed the road to the opposite side and first accused person took them to a taxi cab which they had parked at a spot opposite Abrantie drinking spot. According to PW1, second accused person was sitting inside the car and first accused person was the one driving. PW1 also told the court that first accused person gave the victim an iPhone 12 Pro Max and after inspecting it, she gave it to him to hold whilst they bargained about the price. That the victim gave them GH¢4,700.00 but they refused to collect it and asked her to add some. That she pleaded with them, but they refused and gave her back the money and collected the phone. That she later added GH¢200.00 to make GH¢4,900.00 and gave it to them and they returned the phone to her.

From the evidence of PW2, first accused person during interrogations admitted the offence and mentioned second and third accused persons as his accomplices. That first accused person led him to the house of second accused person whom he mentioned as his accomplice and he arrested him also and took his investigation caution statement as well. PW2 tendered the caution statement of the first accused person as exhibits ‘C’.

For the avoidance of doubt I reproduce the relevant part of exhibits ‘C’ being the caution statement of the first accused person as follows:

“Wasty and I met the lady at Lapaz opposite the Abrantie spot. She was in the company of a guy... I gave the phone an iphone 12 pro max to the lady and she gave GH¢4,700.00 to Wasty and we drove off... Wasty have the original Iphone 12 pro max that we first gave to the lady to inspect and later swapped it with the fake one. I did the work with Wasty, Black, Quarshigah, Gabby, Wizzy. The money was shared amongst us by Wasty and I received GH¢1,000.00. I know of all of them their house except Quarshigah.”

The above statement was taken from the first accused person in compliance with all the relevant provisions of **section 120 of the Evidence Act, 1975 (NRCD 323)** applicable to the taking of confession statements and which was designed to protect accused persons.

Akamba JSC in the case of **Ekow Russel v. The Republic [2016] 102 GMJ 124 SC**, stated as follows:

*“... A confession is an acknowledgment in express words, by the accused in a criminal charge, of the truth of the main fact charged or of some essential part of it. **By its nature, such statement if voluntarily given by an accused person himself, offers the most reliable piece of evidence upon which to convict the accused.** It is for this reason that safeguards have been put in place to ensure that what is given as a confession is voluntary and of the accused person’s own free will without fear, intimidation, coercion, promises or favours ...” (Emphasis provided)*

Twumasi J in stating the position of the law as to whether confession statements can be taken as part of prosecution’s case in establishing whether a prima facie case had been made stated in the case of **Amukyi v. The Republic [1982-83] GLR 1010-1016** as follows:

“The court would like to sound a note of warning to trial lower courts that in considering whether a prima facie case had been made by the prosecution in a criminal trial, they should confine themselves to the analysis of the evidence of the prosecution witnesses with regard

*to their credibility. Thus a police statement made by an accused person, **unless it was a confession statement admitted in evidence**, was not to be taken as part of the prosecution's case ..."* **(Emphasis supplied).**

Exhibits 'C' is a confession statements to the extent that first accused person admitted that he agreed to act together with the other accused person and others to defraud the victim herein. The role first accused person played was to drive his accomplices and also to hand over the phone to the victim to inspect which they later swapped it with a fake phone.

From the evidence on record and the authorities above, I find that the prosecution has been able to establish the elements of conspiracy. I accordingly find that the first accused person conspired with the other accused persons for a criminal enterprise.

2. *Whether or not first accused person with intent to defraud did obtain the consent of Sybil Bannerman to part with cash, the sum of GH¢4,900.00 by falsely pretending that if the said amount was given to him and second and third accused persons they could sell her an iPhone 11 Pro Max, a statement he knew well at the time of making it to be false.*

Section 132 of Act 29 provides:

"A person defrauds by false pretences if, by means of a false pretence, or by personation that person obtains the consent of another person to part with or transfer the ownership of a thing."

From the above, the elements of defrauding by false pretences are as follows:

1. The use of false pretence or personation,
2. To obtain the consent of another person,

3. So that the person parts with or transfers the ownership of something.

Section 133 of Act 29, in defining defrauding by false pretences, lays out the following ingredients:

1. Representing the existence of a state of fact,
2. Either with the knowledge that such representation is false or without the belief that it is true,
3. The representation should be made with the intention to defraud.

The House of Lords, in **Welham v. Director of Public Prosecutions [1961] A.C. 103**, held, as stated in Archbold, Criminal Pleading, Evidence and Practice (36th ed.), para. 2043 at p. 753 that:

“Intent to defraud’ means an intent to practise a fraud on someone and would therefore include an intent to deprive another person of a right, or to cause him to act in any way to his detriment ...”

In the case of **Asiedu v. The Republic [1968] GLR pgs 1-8**, Amissah J.A. stated:

“An intent to defraud is an essential element of the offence of defrauding by false pretences whether the method of fraud adopted was personation or a false representation”.

Archer J. (as he then was) in the case of **Blay v. The Republic [1968] GLR 1040-1050** stated:

“In a charge of defrauding by false pretences, if the evidence showed that the statements relied on consisted partly of a fraudulent misrepresentation of an existing fact and partly of a promise to do something in future, there was sufficient false pretence on which a conviction could be based”.

PW1 told the court in his evidence that when the victim collected the phone, she detected that it was not the iPhone 12 Pro Max but a cloned one; so when they were about to move the car away, she quickly held the back door of the car and raised an alarm, but they did not stop.

PW2 also adduced evidence to the effect that his investigation revealed that the victim saw an advert of an iPhone 11 Pro Max on “Jiji”, an online advertisement application, being sold at GH¢5,000.00. She called the number of the seller and they eventually met at Lapaz for the transaction. That the first accused person gave her the phone and she inspected it and realized it was not an iPhone 12 Pro Max. When she complained to them that it was not what she saw online, they told her that it was a mix-up, but they could still sell it to her, but she should add some money to what they had agreed on. That the first accused person then collected the phone from the victim. She pleaded with them and added some money to make up GH¢4,900.00 and gave it to first accused person and he gave the phone back to her. Immediately she received the phone, she detected that they had swapped it and given her a cloned one. Just when they were about to drive off, the victim held the door of the car and raised an alarm, but they did not stop and drove off.

In exhibit ‘C’ this is what first accused person one told the police during investigations: *“Wasty have the original Iphone 12 pro max that we first gave to the lady to inspect and later swapped it with the fake one. I did the work with Wasty, Black, Quarshigah, Gabby, Wizzy. The money was shared amongst us by Wasty and I received GH¢1,000.00. I know of all of them their house except Quarshigah.”*

From the evidence above, it can be established that first accused person and the other accused persons represented the existence of a state of fact, with the knowledge that such representation was false or without the belief that it is true because they knew that they were not going to give the original phone to the victim when they negotiated with her to

pay the amount of GH¢4,900.00 for the said iPhone they first gave her to inspect before swapping it with a fake one. In addition the representation was made with the intention to defraud the victim in the sense that their conduct indicated an intention to practice a fraud on the victim which they succeeded.

I therefore find that the prosecution has been able to prove the offence of defrauding by false pretence against the first accused person beyond reasonable doubt.

3. *Whether or not first accused person did intentionally and unlawfully cause harm to Sybil Bannerman resulting in severe injuries leading to permanent paralysis to her.*

Section 69 of Act 29 on Causing Harm, provides as follows:

“Whoever intentionally and unlawfully causes harm to any person shall be guilty of second degree felony.”

Section 76 of Act 29 defines Unlawful Harm as follows:

“Harm is unlawful which is intentionally or negligently caused without any of the justification mentioned in Chapter I of this Part.”

Section 31 of Act 29 is the chapter 1 mentioned under section 76 being grounds on which harm may be justified and it provides as follows:

“Force may be justified in the cases and manner, subject to the conditions, hereinafter in this Chapter mentioned, on the ground of any of the following matters, namely—(a) express authority given by an enactment; or (b) authority to execute the lawful sentence or order of a Court; or (c) the authority of an officer to keep the peace or of a Court to

preserve order; or (d) authority to arrest and detain for felony; or (e) authority to arrest, detain, or search a person otherwise than for felony; or (f) necessity for prevention of or defence against crime; or (g) necessity for defence of property or possession or for overcoming the obstruction to the exercise of lawful rights; or (h) necessity for preserving order on board a vessel; or (i) authority to correct a child, servant, or other similar person, for misconduct; or (j) the consent of the person against whom the force is used."

From the evidence on record, PW1 told the court that, when the victim collected the phone, she detected that it was not the iPhone 12 Pro Max but a cloned one. Therefore when they were about to move the car away, she quickly held the back door of the car and raised an alarm, but they did not stop. That they drove off and she fell down and sustained an injury. PW1 continued that he rushed the victim to the Lapaz Community Hospital, but she was referred to Korle-Bu Teaching Hospital where she was admitted. He concluded that according to the doctors at the Korle-Bu Teaching hospital she is paralyzed.

According to PW2, his investigation revealed that immediately the victim received the phone, she detected that the accused persons had swapped it and given her a cloned one. Just when they were about to drive off, the victim held the door of the car and raised an alarm, but they did not stop and drove off. She fell down and sustained an injury and was rushed to Lapaz Community Hospital but was later referred to the Korle-Bu Teaching Hospital where she was admitted to the surgical unit. PW2 also told the court that he visited the Korle-Bu Teaching Hospital and saw the victim Sybil Bannerman on admission at the surgical ward. That the victim could talk but could not move any part of her body. That he showed her photographs of some suspects and she identified first accused person as one of the suspects.

It is not in dispute that first accused person was the one driving the vehicle which caused her harm as first accused person admitted in exhibit 'C' that he was the one driving the car but he did not know that the victim had held on to the door of the taxi. That he later got to know about that and the fact that she sustained injuries.

From exhibit 'B' which is the medical officer's report signed by Dr. Richmond Hagan for Dr. Patrick Bankah, on 11/02/2023 the victim was presented to the accident and emergency centre of Korle Bu Teaching Hospital. The finding of the medical officer indicates that, a diagnosis of complete cervical spine injury was made. That five days after admission, the victim went into respiratory distress which necessitated inhibition and ventilation at the intensive care unit.

From the above, there is evidence that the victim was harmed. From the entire evidence on record, particularly where first accused person was seen in exhibit 'A' talking on phone and signaling the victim to come to where he had parked the said taxi, first accused person's own admission that they swapped the original iPhone the victim had inspected with a fake one and decided to drive off, it can be reasonably inferred that after having successfully defrauded the victim, first accused person together with his accomplices did not care whether the victim had held onto the car or not because first accused person cannot say he did not hear the shouts of the victim asking for her money after they defrauded her. The first accused person knew or ought to have known that the victim had held on to the car he was driving amidst shouting for her money but he decided to still drive away from the victim thereby causing her harm. From the entire evidence before this court, I find that the first accused person did intentionally and unlawfully cause harm to the victim herein resulting in severe injuries being complete cervical spine injury.

In the case of *Commissioner of Police v. Isaac Antwi* [1961] GLR 408-412, it was held that the accused person is not required to prove anything. All that is required of him is to raise a reasonable doubt as to his guilt.

This is further emphasized by *sections 11(3) and 13(2) of the Evidence Act, 1975 (NRCD 323)*.

All that first accused person needed to do was to raise a reasonable doubt in the case of the prosecution against him but the defence he raised in his evidence could not do so because he was exposed as being incredible witness when he was cross examined by the prosecutor. He also did not cross examine the prosecution witnesses to attempt to raise a reasonable doubt in the case of the prosecution against him.

I support my decision with the dictum of Denning J. (as he then was) in the case of *Miller v. Minister of Pensions* [1947] 2 All E.R. 372 at p. 373 where he said:

"Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable,' the case is proved beyond reasonable doubt, but nothing short of that will suffice."

CONCLUSION

For the foregoing reasons, I find that the prosecution has been able to establish beyond reasonable doubt that, indeed the first accused person committed the offences under counts one, two and three. Consequently, I pronounce the first accused person herein guilty on counts one, two and three being the offences of conspiracy to defraud by false

pretence, defrauding by false pretence and causing harm. I accordingly convict the first person herein on counts one, two and three.

Pre-Sentencing hearing

Court: Any plea in mitigation before sentence is passed?

First accused person: Today is my birthday so I plead with the court.

Court: Is the first accused person known?

Prosecutor: No, he is a first time offender.

SENTENCING

In sentencing the first accused person herein, the court takes into consideration his plea in mitigation, the fact that he is a first time offender and his youthful age. In accordance with Article *14(6) of the 1992 Constitution*, time spent in custody pending trial is considered. However, the court has equally considered the entire evidence on record and the role played by the first person in committing the said offences. The court also takes into consideration, the extent of harm first accused person has caused to the victim herein. The court is of the view that there is a need to impose a deterrent sentence to deter the first accused person from committing future similar offences and other people with similar criminal inclination to curb the spate of these crimes within the community. I consequently sentence the first accused persons as follows:

Count 1: The first accused person is sentenced to serve a term of imprisonment of seventy-two (72) months in hard labour (I.H.L.). In addition the first accused person shall pay a fine of five hundred (500) penalty units. In default of the fine, he shall serve a term of imprisonment of twenty-four (24) months in hard labour (I.H.L.)

Count 2: The first accused person is sentenced to serve a term of imprisonment of seventy-two (72) months in hard labour (I.H.L.). In addition the first accused person shall pay a fine of five hundred (500) penalty units. In default of the fine, he shall serve a term of imprisonment of twenty-four (24) months in hard labour (I.H.L.)

Count 3: The first accused person is sentenced to serve a term of imprisonment of seventy-two (72) months in hard labour (I.H.L.). In addition the first accused person shall pay a fine of five hundred (500) penalty units. In default of the fine, he shall serve a term of imprisonment of twenty-four (24) months in hard labour (I.H.L.)

The sentences on all the three counts shall run concurrently.

Consequential Order

In accordance with *section 148 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30)*, the first accused person is ordered to pay an amount of GH¢6,000.00 to the victim herein who is injured by the offence of causing harm as compensation.

Restitution Order

In accordance with *section 146 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30)*, the first accused person is ordered to refund an amount of GH¢1,000.00 to the victim herein, being the amount he admitted in exhibit 'C' as his share of the proceeds from the crime of defrauding by false pretences he and the other accused persons committed.

[SGD.]

H/H AKOSUA A. ADJEPONG (MRS)
(CIRCUIT COURT JUDGE)