

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON TUESDAY, 27<sup>TH</sup> JUNE, 2023

SUIT NO. D3/9/21

THE REPUBLIC

VRS

KINGSLEY ADU @GHAJI

BRIGHT TEI TORFIC

BABA MOHAMMED

MOHAMMED SANI

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JUDGMENT  
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The four Accused Persons stand arraigned before this Court each on two counts; Conspiracy to Commit Crime; namely *Causing Unlawful Damage contrary to section 23 (1) and 172 of the Criminal Offences Act, 1960 (Act 29) AND Causing Unlawful Damage contrary to section 172 of Act 29.*

The particulars of offence for count one are that on the 26<sup>th</sup> day of March, 2021, at Apollonia in the Tema Circuit and within the jurisdiction of this Court, they did agree to act together with a common purpose to commit crime; namely causing unlawful damage.

The particulars of offence for count two are that on the aforementioned date and place within the jurisdiction of the court, they intentionally and unlawfully caused damage to a pay loader machine valued at GH¢500,000.00 the property of Daniel Tettey Tetteh by setting fire to it.

In their various languages of preference and in the presence of their lawyer, they all pleaded not guilty to both charges. By so doing, they cast upon prosecution the singular duty of leading cogent, reliable and credible evidence to establish their guilt beyond reasonable doubt. The veritable Dotse JSC in reading the decision of the Supreme Court in the case of *Amaning v. The Republic* [2020] GHASC 47, had this to say by way of a prologue;

“William Blackstone, an 18<sup>th</sup> century English jurist in a statement on the hallowed principle of “Innocent until proven guilty:-rights of an accused person” upon which our criminal justice administration has been founded in Article 19(2) (c) of the Constitution, 1992 stated as follows: “better that ten guilty persons escape than that one innocent suffer”. The above constitutes the fulcrum of our criminal justice jurisprudence”.

In the case of *Domena v. Commissioner of Police* [1964] GLR 563 the Supreme Court per Ollenu JSC (as he then was) commented on the burden and standard of proof as such: “Our law is that by bringing a person before the court on a criminal charge, the prosecution takes upon themselves the onus of proving all the elements which constitutes the offence to establish the guilt of the defendant beyond reasonable doubt, and that onus never shifts. There is no onus upon an accused person, except in special cases where the statute creating the offence so provides...”

In the case of *Richard Banousin v. The Republic, Criminal Appeal NO. J3/2/2014 delivered on 18<sup>th</sup> March, 2014*, The Supreme Court per Dotse JSC noted that “the prosecution has the burden to provide evidence to satisfy all the elements of the offence charged”.

That being so, prosecution may lead credible and positive evidence to upset that presumption. A court thus commences a criminal trial where an accused has pleaded not guilty on the rebuttable presumption that the accused person is innocent until proven guilty.

The onus lies on prosecution to lead evidence to establish a prima facie case against the accused persons by the close of their case. It is only then, that prosecution would be deemed, prima facie to have upset the presumption of innocence in favour of the accused and he would in turn be called upon not to prove his innocence, but to raise a reasonable doubt as to his guilt.

Prosecution in proof of its case called four witnesses. PW1's evidence-in-chief is that he is the operator of the payloader machine. That on the 26<sup>th</sup> of March, 2021, after he had closed from work, at about 5:40pm, he was contracted by Samuel Nuerthey Abotsi to pull down some pillars on his land.

That he charged GH¢400.00 and decided to do the job immediately. Whilst he was doing the job, some young men led by A1 came to the bush and started firing gun shots. One of them threatened to kill him and for fear of his life, he did not even put off the ignition when he jumped out of the machine and fled to call for help.

When they returned, he saw that the pay loader machine had been set ablaze.

## **THE EVIDENCE OF PW2**

According to PW2, he is the owner of an 18-acre piece of land at Apollonian. That the ownership of the land is in issue and a court has by an injunction restrained himself and all parties from developing the land.

That he abided by the injunction but had information that some unidentified persons were developing the land under the cover of darkness. He thus engaged the services of a pay loader machine to pull down the pillars to enable whoever is doing the development to own up.

On the 26<sup>th</sup> day of March, 2021, the pay loader machine was set ablaze after A1 and some other young men attacked PW1 and fired gun shots.

### **THE EVIDENCE OF PW3**

According to PW3 he went on to his land on the said day around 5:30pm. While there, he saw some young men numbering about ten emerge from the bush. They fired gun shots.

The pay loader machine's engine was still running and one of the young men attempted to drive it but could not. He overheard them saying they should set the machine ablaze. One of the young men managed to move the machine some distance away and they then set it ablaze.

PW3 says that he was hiding in the bush all this while. However, he could identify A1 and A4 as well as another man since they were standing close to the machine while the remaining were hiding in the darkness.

### **THE EVIDENCE OF PW4**

PW4 is the investigator. His evidence is that in the course of investigations, he visited the scene and saw the burnt pay loader machine. He took photographs. It was disclosed that there was a dispute on the land between Samuel Nuerthey Abotsi and Adu King. That the

latter was the master of the first three accused persons. Adu King had sold the land to one Madam Grace and A4 was the caretaker of the said woman.

In all about eight suspects were arrested. An identification parade was conducted on the 22<sup>nd</sup> of April, 2021 and all four accused persons were identified by a witness as those who set the pay loader machine ablaze.

He tendered in evidence the investigation caution and charge statements of the accused persons, photographs of the land in dispute and the pay loader machine, photocopies of the documents covering the pay loader machine as well as a photocopy of the transfer receipt of the pay loader machine.

EXHIBIT A&A1- Investigation caution statement and charge sheet of A1

Exhibit B & B1- Investigation caution statement and charge sheet of A2

Exhibit C & C 1- Investigation caution statement and charge sheet of A3

Exhibit D & D1 – Investigation caution statement and charge sheet of A4

Exhibit E series (E – E4- pictures of the alleged burnt pay loader machine)

Exhibit F – D.V.L.A form C of the pay loader machine

## **CONSIDERATION BY COURT**

Per section *173 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30)*, I am enjoined to at the close of prosecution's case, determine whether prosecution has made

out a case against the accused person sufficiently to require the Accused to make a defence. The generally accepted meaning of this section is that prosecution must at the close of their case, establish a prima facie case against the accused person. It is only then that the accused person would be called upon to open his defence.

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
- d) 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 celebrated case 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

In the case of *The Republic v. Eugene Baffoe Bonnie & 4 ORS* delivered by the Court of Appeal on 25<sup>th</sup> day of March, 2020 (Crim. Appeal No 82/2/2019), the Court of Appeal held

that “It is true that at the close of the case for the prosecution, the guilt of the accused is not supposed to have been proved beyond reasonable doubt. As the authorities however show, and having regard to the provisions of section 11 (2) of the Evidence Decree, 1975 (NRDC 323), the evidence led at this stage should however be such that it should be capable of convicting the accused if he/she offers no explanation. Not only should all the elements of the offence have been proved, but also that the evidence adduced should be reliable and should not have been so discredited through cross examination that no reasonable tribunal can safely convict on it. The evidence at this stage should also not be so equally balanced as to be susceptible to two likely explanations or consistent to both guilt and innocence”.

On count one, the applicable sections of the *Criminal Offences Act, 1960 (Act 29)* are *sections 23 (1) and 171 (b)*. Prosecution’s first obligation is to provide cogent, material and credible evidence to establish that the Accused Persons agreed to act together with a common purpose of causing damage by arson to the pay loader machine of Daniel Tettey Tetteh.

The applicable section for *Conspiracy in the Criminal Offences Act, 1960 (Act 29)* is *section 23 (1)*. It 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 *Agyapong v. The Republic [2013-2015] 2 GLR 518*, the court of Appeal noted that “under the old formulation of section 23(1) of Act, 29, the prosecution needed to prove only one of two things. One was that the accused persons agreed to act together in furtherance of the commission of the offence and the other was that even without agreeing to act together, they acted together in furtherance of the crime. Under the new formulation, the prosecution had a duty to prove that there was a prior agreement by the accused persons to act together with a common purpose, before it could secure a conviction for conspiracy”. See also the decision of

Marful Sau J.A (as he then was) sitting as an additional High Court Judge in the case of *Republic v. Augustina Abu and others, (Unreported) Criminal Case No. ACC/15/2013*.

In order for prosecution to establish its case against the accused persons on count one, it must lead positive, cogent and credible evidence to establish that;

1. The accused persons agreed to act together
2. The agreement to act together was for the common purpose of undertaking the criminal enterprise of causing unlawful damage to the pay loader machine

*In Commissioner of Police v. Afari & Addo [1962] 1 GLR 483*, it was held by Azu Crabbe JSC that “it is rare in conspiracy cases for there to be direct evidence of the agreement which is the gist of the crime. This usually has to be proved by evidence of subsequent acts, done in concert, and so indicating a previous agreement.” This position of the law was reiterated by the Supreme Court in the oft cited case of *Azametsi & Others v. The Republic [1974] 1 GLR 228*, where the Court held that “it was not always easy to prove agreement by evidence, but it could be inferred from the conduct of and statements made by the accused persons. See also the case of *Duah v. Republic [1982-88] 1 GLR 343*.

The offence of Unlawful Damage is provided for by *Section 172 (1) of the Criminal Offences Act (1960) Act 29*. The relevant elements for prosecution to establish on a charge of unlawful damage are;

1. The accused persons caused the damage
2. That the damage was caused intentionally
3. The damage was unlawful
4. The value of the damage exceeds GH¢100.00



On the first element, prosecution must establish that the properties mentioned in the particulars of offence and brief facts were damaged either permanently or temporarily by the accused persons.

Damage is defined by *section 173 of Act 29* to include not only damage to the matter of a thing, but also any interruption of the use thereof, or any interference therewith, by which the thing becomes permanently or temporarily useless, or by which expense is rendered necessary in order to render the thing fit for the purposes for which it was used or maintained.

Prior to examining the evidence to establish whether the necessary elements of the offences have been proved or not, I have to first determine whether the prosecution succeeded or not in establishing the identity of the Accused Persons as the alleged perpetrator of the offences. This is so because the Accused Persons were not caught in the act of committing the offences. According to PW4, the investigator, they were arrested at different places within Ashaiman after the supposed act.

In the case of *Howe v The Republic [2013-2014] 2 SCGLR 1444*, the apex court held that in a criminal trial, the prosecution is obliged to lead evidence to identify the accused as the person who had committed the crime.

At the earliest opportunity, all accused persons through their counsel indicated that they were not present at the scene and pleaded alibi. Through their counsel, they filed particulars of their alibis for investigation by the Republic.

Again, A4 insisted that he was identified even before the identification parade when PW4 came to him followed by two persons and one of those persons pointed to him.

With all these contentions by the Accused Persons as to their presence at the scene of the event, it was imperative for prosecution to lead positive evidence to establish their identity as the perpetrators of the offence(s).

In the case of *Dogbe v. The Republic [1976]2 GLR82, Atta Bedu J*, stated thus 'in criminal trials, the identity of the accused person as the person who committed the crime might be proved either by direct testimony or circumstantial evidence of other relevant facts from which it might be inferred by the Court''.

On this, Prosecution's case is that it conducted an identification parade and PW3 positively identified the four Accused Persons as the perpetrators of the crime. Prosecution did not tender any identification report in evidence and neither are there any photographs of the said identification parade. There is an indication that there were eight persons arrested but no indication as to the number of people who were present at the identification parade in PW4's evidence-in-chief. This is despite the fact that PW4 was well aware of the importance of an identification parade and its proper conduct.

At page 59 of the record of proceedings, learned counsel for the Accused Persons asked PW4 under cross examination:

Q: *In your evidence-in-chief (paragraph 16), you allude to the fact that you organized an identification parade. Am I right?*

A: *Yes, my lord.*

Q: *Do you know that an improperly conducted identification parade can be fatal to the entire prosecution?*

A: *Yes my lord.*

Q: *And do you know that as part of establishing your case as prosecution, per police service instructions 195, you ought to furnish the court with a full report of the said identification parade?*

A: *My lord, there is an identification parade form that is filed at the end of each identification parade and same submitted.*

Q: *Can you refer us to that form in a statement or anywhere in the disclosures?*

BY COURT: *Disclosures handed to PW4.*

A: *My lord, it is not here but I think it is on the main docket because I did it and I filed it.*

Regulation 195 of the Ghana Police Service Regulations guides the conduct of identification parades. Regulation 195 recommends a minimum of eight persons in an identification parade. The regulation for the conduct of an identification parade is in consonance with the guidelines in the English case of *R v Turnbull (1977) Q.B.224*.

The Regulation indeed recommends that as far as possible the participants should be of similar age, height, general appearance and class of life as the suspect. (See page 306 of *Criminal Procedure in Ghana* by A.N.E.Amissah, 1982)

As the Accused Persons by themselves and through their learned counsel challenged the propriety of the identification parade, Prosecution was duty bound to establish not only that an identification parade took place but that same was carried out in accordance with Regulation 195 of the Ghana Police Service Regulations. Prosecution failed to establish this. The non-production of any form of evidence as to the identification parade means

the court is placed in a position where it cannot determine the propriety or otherwise of the identification parade.

Now to the evidence of the eyewitness; PW3. PW3 who testified as an eyewitness, in paragraph 11 of his evidence-in-chief said he could only identify A1 and A4, that although there were about ten men engaged in the shooting of guns and the setting of the pay loader machine on fire, he could positively identify A1, A4 and another person because they were close to the machine.

As was held in *Ameshinu v. The Republic* [2010] 34 MLRG 207, “where the identity is in issue there can be no better proof of his identity than the evidence of a witness who swears to have seen the accused committing the offence charged”.

Learned counsel for accused persons and accused persons themselves challenged the authenticity of PW3’s evidence and put forth a case that it was because he “had a beef with A1” that he was falsely identifying him.

PW1, the driver of the pay loader machine, answered under cross-examination that he began work on the land around 6:30pm. At page 23 of the record of proceedings, he had answered;

*Q: Can you tell the court what time of the day you started to work on this said piece of land?*

*A: I cannot recall the exact time but it was around 6:30pm.*

PW3’s evidence is that he went to the land after he had information that the sound of a machine was working on his land. That he received this information around 5:30pm. Under cross-examination by learned counsel for the accused persons at page 35 of the record of proceedings, he had answered;

*Q: May I know the exact time you actually got to the land?*

*A: 5:00p.m – 5:30pm.*

PW3 wants this court to believe that he received information about a machine being on the land around 5:30pm, got to the land between 5-30pm and indeed saw a machine close to his land with the engine on.

The said machine he saw is what PW1 was driving and PW1 himself says he started work around 6:30pm on the land on the said date. That it was in the course of working that he was attacked and threatened with death by some men and so he run away leaving the engine of the machine on.

That means that there was sometime between the 6:30pm when he started work till the time he was attacked. PW3 says when he got to the land, there was no driver in the machine and he did not see the driver. That means he got there after PW1 had abandoned the machine in supposed fear of his life. That being so, PW3's claim of seeing A1 and 4 committing the offence when he got to the land between 5-5:30pm cannot be true.

Moreover, although PW3 maintains that he saw A1 and A4 setting the pay loader ablaze, his evidence is silent as to how they did so and with what they did so. What did they use to start the fire, how did they set the fire to the pay loader machine? PW3's evidence was silent on this.

Again, PW3 answered at pages 36-37 of the record of proceedings;

*Q: So in your statement to the police, are you telling this court that you never mentioned their names?*

*A: I mentioned their names after they were paraded.*

Q: *Did you have any interaction with the machine operator (PW1) before the parade?*

A: *No please.*

Q: *So after the incident, did you give a statement to the police?*

A: *I gave a statement after they were paraded.*

Q: *Can you kindly look at this statement? Please take a look at your statement as given at the police station on 28<sup>th</sup> March 2021.*

BY COURT: *Document shown to PW3.*

Q: *Can you identify that statement?*

A: *Yes. I can identify my signature and mark.*

Q: *Can you tell the court the date on that statement?*

A: *Yes. 28<sup>th</sup> March 2021.*

Q: *And you do not think you gave this statement to the police,*

*Counsel: My Lady, before then, I would like to tender the document through the witness.*

*Prosecution: No objection my lord.*

BY COURT: *Admitted and marked as Exhibit 1.*

A: *I gave my statement which was written after they were paraded.*

Q: *I put it to you that you are not being truthful to the court.*

A: *I am being truthful.*

Q: *I further put it to you that you wrote this statement before the parade and you gave the names Adu Kingsley and Mohammed Sani in that statement.*

A: *My lord, my statement was taken when they were paraded.*

Q: *I further put it to you that the parade was conducted on the 22<sup>nd</sup> April 2021, almost a month after your statement.*

A: *I cannot remember the date and month. However, I know that it was on the very day that the parade was conducted that my statement was taken.*

PW4 who is the investigator testified in paragraph 16 of his evidence-in-chief that the identification parade was conducted on the 22<sup>nd</sup> day of April, 2021. Exhibit 1, which is the statement of PW3 as given at the police station, was taken down on the 28<sup>th</sup> day of March, 2021; two days after the alleged incident and 25 days before the identification parade was conducted. Yet, PW3 wants the court to believe that he only gave a statement to the police after the identification parade.

I cannot believe his evidence and I find that his evidence as to the identity of A1 and A4 is beset with far too many inconsistencies that same cannot be relied on as having established the identity of A1 and A4 in this matter.

To conclude, PW4's answers under cross-examination as to how he conducted the investigation into the alibis of Accused Persons left much to be desired. He approbated and reprobated at will, gave inconsistent and contradictory answers and generally put himself in a position where this court cannot believe his evidence.

For instance, at page 56 to 58 of the record of proceedings, he answered under cross examination by learned counsel for the accused persons;

Q: *In the specific case of 3<sup>rd</sup> Accused Person, you were supposed to proceed to Akosombo or if possible invite the said witness for investigations. Can you tell the court how you went about it?*

A: *My lord, as indicated, I started calling the number provided for the alibi. It goes through countlessly but nobody answers the call. However, for the sake of justice, I proceeded to Akosombo, booked at the charge office and one of my colleagues who knows Akosombo very well led me through. All this while I was still calling the line and the person did not pick the call and so we could not place the address provided so I had to return to Tema.*

Q: *Is it the case that the call was not going through or he was not picking up the call?*

A: *My lord, it could have been either not going through or not picking because I did not get a response from the other side.*

Q: *Are you telling the court you cannot differentiate between a call not going through and a person not picking a call?*

A: *My lady, I can differentiate. Sometimes it goes through and sometimes it does not.*

Q: *So in this specific instance, sometimes it went through sometimes it did not go through?*

A: *Yes, my lady.*

Q: *You took off from Accra, left other duties and went all the way at the expense of the State to Akosombo to look for someone you had not established contact with on phone to know where he was at the time. Is that what you are telling the court?*

A: *Yes, my lord.*

Q: *When you got to the Akosombo police station, where you sought assistance, what kind of assistance were you seeking from them?*

A: *My lord, per the alibi, they said Akosombo Zongo so I went there to know if it is one or more Zongos that are in Akosombo, and since the Police is a public office, they are familiar with the name as provided by the Accused Person in the contact since they are the local police on the grounds.*



Q: *Again, you are not being truthful to this court because there is nowhere in our alibi application that we have Zongo associated with the said witness.*

A: *My lord, if I can be shown the document.*

BY COURT: *Notice of alibi filed in court on the 12<sup>th</sup> July 2021 shown to PW4.*

A: *My lord yes, there is no Zongo attached. So upon discussion with the Commander and the crime officer at the time and other men available and the name was not ringing a bell because they have no knowledge of the witness, they could not offer any assistance.*

Q: *So you are telling the court that you went to Akosombo just with the name Musa Mahama and you were expecting the police to know who Musa Mahama was in the whole Akosombo town.*

A: *My lord, it is likely they would know especially with the phone number attached.*

Earlier at pages 52-55, PW4 answered under cross-examination by learned counsel for the Accused Persons;

Q: *And so when you called the first witness for 2<sup>nd</sup> Accused Person, the person said he did not know 2<sup>nd</sup> Accused. Am I right?*

A: *That is correct my lady.*

Q: *And that was where you ended that investigation.*

A: *Yes my lady.*

Q: *You never asked the said Accused Person, 2<sup>nd</sup> Accused, to check and give you the correct number possibly if there was any mistake.*

A: *My lady, I did not know how I was going to ask a witness provided by the Accused Person and who said he does not know the Accused Person to give me the correct contact of another witness. At the time, I had driven to Ashaiman, closer to the addresses provided and I even asked the witness to direct me to the area but the person refused and hang the line up on me.*

Q: *And you did not ask the counsel as well in the matter who filed the notice to assist you in anyway so that you could do proper investigations?*

A: *My lady I did not ask because I was doing an independent investigation and did not want any kind of influence by any other person so my lady I was following the lead given on the document by the counsel.*

Q: *When you say influence, can you specifically say the kind of influence you are referring to?*

A: *My lady we have instances where witnesses are being coached by people who call them to witness if those have prior notice of when the investigator is about contacting them for independent investigations.*

Q: *So I take it that at all times you would want to contact the witness just by yourself with no one around.*

A: *Yes my lady.*

Q: *You are not being truthful to the court in this regard*

A: *That is not correct.*

Q: *In the specific case of 4<sup>th</sup> Accused Person, how did the witness get to you at the station for you to investigate him in respect of the alibi?*

A: *As I got to Ashaiman, I tried to call all the witnesses. With regard to 4<sup>th</sup> Accused Person, he responded and told me he was not around hence I cannot meet him so I invited him that he should come to my office or direct me to where he would be and I would come and take his statement. So my lady, I was there when he came in the company of 4<sup>th</sup> Accused Person.*

Q: *Before 4<sup>th</sup> Accused Person came with the witness, it was he 4<sup>th</sup> Accused who called you and informed you that his witness was now around and asked if he could bring him and you answered in the affirmative. Am I right?*

A: *My lady there was a call but because of time, I cannot remember who specifically called me and I asked the witness to come.*

Q: *I put it to you that you asked the 4<sup>th</sup> Accused Person to bring the said witness and he took him there.*

A: *My lady, with regard to alibi, I would not encourage an Accused Person to bring his witness so when they even arrived, I made him sit outside far from the office before I interviewed and took the statement.*

Q: *You would agree with me that between when they took off and when they arrived at your station, whatever influence could have happened would have happened.*

A: *My lord that is why I always want to contact witnesses specifically relating to alibi on my own.*

Q: *And I further put it to you that taking somebody all the way from Kpone to Tema Regional CID has the chance of creating a bigger opportunity for influence than an accused person just giving you a witness's correct contact number*

A: *My lady that is not correct.*

Q: *Are you telling us that when you are looking for a suspect and the complainant gives you a number and you call the number and it turns out to be a wrong number, that would be the end of the case?*

A: *No my lord, I would not end there.*

I found PW4's evidence as to the investigation he conducted into the alibis not convincing. Indeed, his entire evidence as to how he conducted the investigations into this matter leaves much to be desired. He could not even be candid with the Court as to how the Accused Persons were arrested.

At page 45 -46 of the record of proceedings, under cross-examination by A3, this is what transpired;

Q: *Was I arrested or I came to the police station myself?*

A: *My lord, they were all arrested from various locations in Ashaiman. (emphasis mine)*

Q: *Can you tell this court where I was arrested?*

A: *I cannot specifically pinpoint where A3 was arrested because I am not very conversant with the location and suburbs of Ashaiman and its environs and eight (8) accused persons in this particular case from different locations.*

Q: *I put it to you that as an investigator, if you say you do not know where we were all arrested specifically, then you are not well versed in your job.*

A: *That is not so my lord. The subject of investigations is not where the Accused Persons were arrested but where the crime took place.*

Q: *I put it to you that I was not arrested from any hideout. I walked to you in your office.*

A: *My lord, as to whether he came to me, he was still arrested and that is why his statement is on caution.*

Under cross-examination by A4, this is what transpired at page 46 of the record of proceedings

Q: *Do you recall that you called me on phone that you were looking for me? Did I show up or not?*

A: *My lord, he showed up.*

Q: *And you asked me if I know why I was there and I said no and you then told me.*

A: *That is so my lord.*

The non-production of the evidence of the identification parade, the inconsistencies in PW3's evidence, the contradictions, approbation and reprobation of PW4 as to how he conducted the alibi investigations together with the inconsistencies in how he conducted the entire investigations mean at the close of Prosecution's case, they have failed to identify the Accused Persons as those who committed the offence.

Failure to identify the Accused Persons is fatal to the success of Prosecution's case. Their failure to discharge this duty means the court cannot proceed to go into the merits of the case. Consequently, at the close of Prosecution's case, I find that they have failed to establish a prima facie case against the Accused Persons. All Accused Persons are accordingly acquitted and discharged.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

D.S.P. JACOB ASAMANI FOR THE REPUBLIC

ABDUL FATTAU ALHASSAN FOR THE ACCUSED PERSONS