IN THE CIRCUIT COURT OF JUSTICE HELD IN HO, VOLTA REGION ON THURSDAY, THE 23RD DAY OF NOVEMBER 2023 BEFORE HIS HONOUR FELIX DATSOMOR, ESQUIRE, CIRCUIT COURT JUDGE

COURT CASE NO. D21/17/2023

THE REPUBLIC

VRS

EPHRAIM BOAFO

J U D G M E N T

INTRODUCTION:

The accused person, Ephraim Boafo, was charged with the offence of robbery contrary to section 149(1) of the Criminal Offences Act, 1960 (Act 29) (hereinafter referred to simply as Act 29) as amended by the Criminal Offences (Amendment) Act, 2003 (Act 646). He was alleged, per the particulars of offence, to have stolen from one Wise Kaizer a black coloured Haojue motorbike with registration number M-22-VR 558 and a mobile phone by the use of force with intent to overcome the resistance of the said Wise Kaizer. The offence was allegedly committed on 8 September 2022 at about 7:30 p.m. at Sokode Lokoe near Ho.

PLEA OF THE ACCUSED AND THE EFFECT THEREOF

The accused pleaded *"not guilty"* to the charge preferred against him on 26 September 2022, the very day he was arraigned before the court. The effect of this plea is that he has joined issues with prosecution not only by the mere denial of the charge as framed, but also a denial of all the ingredients of the said offence, and that means the prosecution must lead evidence to prove every element of the offence represented in the charge. This is because the accused, by virtue of his plea, is deemed to have put himself upon his trial. See ***Philip Assibit Akpeena v. The Republic (2020) 163 G.M.J. 32***, per Tanko Amadu, JA (as he then was).

BURDEN OF PROOF IMPOSED ON THE PROSECUTION

This being a criminal trial, the onus was heavily on the prosecution to prove beyond reasonable doubt that the accused person has indeed committed the offence charged. However, "proof beyond reasonable doubt" does not mean "proof beyond a shadow of doubt". The prosecution is only under obligation to produce sufficient evidence so that on the totality of the evidence, a reasonable mind could find the existence of the fact beyond a reasonable doubt. See the dictum of Dennis Adjei, JA in ***Philip Assibit Akpeena v. The Republic*** cited *supra*. The prosecution can discharge this burden if only they proffer enough evidence to convince the court that the accused is guilty of all the ingredients of the offence charged, and this is the highest burden the law can impose, and it is in contra distinction to the burden a plaintiff has in a civil case which is proof on a preponderance of the evidence. What "beyond a reasonable doubt" means is that the prosecution must overcome all reasonable inferences favouring innocence of the accused. It must however be noted that the prosecution is not to disprove all imaginary explanations that establish the innocence of the accused. See: ***Osei Adjei & Another v. The Republic [2010-2012] 2 GLR 754 at 764*** as well as ***Richard Banousin v. The Republic [2016] 94 GMJ 1.***

Section 149(1) of Act 29 which criminalizes robbery provides thus:

> ***Section 149—Robbery***
>
> *"(1) Whoever commits robbery is guilty of an offence and shall be liable, upon conviction on trial summarily or on indictment, to imprisonment for a term of not less than ten years, and where the offence is committed by the use of an offensive weapon or offensive missile, the offender shall upon conviction be liable to imprisonment for a term of not less than fifteen years."*

Section 150 of the same Act 29 defines robbery in the following words:

> ***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."*

In the case of ***Razak & Yamoah v. The Republic (2012) 2 SCGLR 750,*** the Supreme Court had this to say regarding the ingredients of the offence of robbery:

> *"This being a criminal trial, the onus was heavily on the prosecution to prove beyond reasonable doubts that on the day stated in the charge sheet, the appellants used force or threat of harm to any person or the complainants for the purpose of stealing their properties, that there was the intention to prevent or overcome the resistance of the complainant and lastly, and more importantly, that it was the accused who committed the offence of robbery on the prosecution witnesses, the complainants at the trial."*

In the instant case, the prosecution was required to prove beyond reasonable doubts that on 8 September 2022, i.e., the day stated in the charge sheet, at about 7:30pm at Sokode Lokoe near Ho, the accused used force against the complainant (Wise Kaizer) for the purpose of stealing his Haojue motorbike and mobile phone, that there was the intention to prevent or overcome the resistance of the complainant and lastly, and more importantly, that it was the accused who committed the said offence of robbery on the complainant.

Significantly, whereas the prosecution carries the burden to prove the guilt of the accused persons beyond reasonable doubt, there is no such burden on the accused to prove his innocence. At best, all that the accused is required by law to do is to raise a reasonable doubt in the case of the prosecution. See ***Bruce-Konuah v. The Republic [1967] GLR 611*** and ***Section 11(2) and (3) of NRCD 323***. This is because the accused is presumed to be innocent until otherwise proven guilty pursuant to ***Article 19(2)(c) of the Constitution, 1992***. And, where the prosecution successfully makes out a *prima facie* case against the accused, the doubt which the accused is required to create in the case of the prosecution must be real and not fanciful. ***Miller v. Minister of Pensions [1947] 1 All ER 372 at 373*** per Denning J (as he then was) applies.

I am therefore enjoined by law to determine the fortunes of this case in the light of the foregoing principles of law.

<u>THE ALLEGED FACTS IN SUPPORT OF THE CHARGE</u>:

The facts underpinning the charge are as follows: Both the complainant, Wise Kaizer, and the accused, Ephraim Boafo, are commercial motor riders in Ho, what is popularly known in our local parlance as "Okada". On 8 September 2022 at about 7:30 pm, the complainant picked the accused and one Elorm (a suspect in the case) as pillion riders on his Haojue

motorbike from Ho market through Ahoe Roundabout enroute Sokode Lokoe. Upon reaching a section of the road, the accused and Elorm ordered the complainant to stop. The accused then pointed a locally manufactured gun at the complainant. The accused and Elorm then attacked the complainant and robbed him at gunpoint of his motorbike and Itel mobile phone valued at GH¢6,000 and GH¢100 respectively. Elorm then sat on the motorbike, started it, waiting for the accused to join him on the motorbike and they sped off. About 20 metres away from the spot where they sped off, the accused fell off the motorbike and sustained multiple injuries on the head, knees and elbows. However, Elorm managed to escape with the complainant's motorbike and mobile phone. A bag was retrieved from the scene belonging to the accused and it contained a sharp knife and an enema bulb syringe (famously known in our local parlance as *"bentoa"*). The enema bulb syringe was filled with grounded pepper. The police were informed about the incident and the accused was taken to hospital for treatment. In the course of investigations, the accused admitted robbing the complainant with suspect Elorm. The accused stated in his caution statement that the knife and enema bulb syringe filled with grounded pepper found in his bag were means he deployed to overcome the resistance of his victims in the course of robbing them. The accused however maintained that the robbery was engineered by Elorm who had bolted away with the gun. Whilst efforts were underway to arrest the said suspect Elorm and possibly retrieve the motorbike from him, the accused was charged with the offense of robbery and arraigned before this court to stand trial.

PROSECUTION WITNESSES CALLED AT THE TRIAL:

At the trial, the prosecution called three witnesses to testify in support of its case against the accused. The said witnesses were Wise Kaizer (the complainant), one David Afeku and No. 46041 Detective Corporal Kwadwo Otibu-Gyan (the case investigator).

For the sake of convenience, brevity, simplicity of description and/or ease of reference, I propose to refer to the prosecution witnesses as PWs 1, 2 and 3 respectively.

In this delivery, I will endeavour to distil the salient facts contained in the testimonies variously presented to the court by the prosecution witnesses as constituting the case of the prosecution against the accused person. This is because this court is enjoined by case law to consider only relevant and material evidence that goes to establish the issues based on what is required by law to prove same. The case of ***Buildaf Ltd & Others v. Catholic Church (2017-2020) 1 SCGLR 1143*** is apposite here.

CASE FOR THE PROSECUTION:

As already indicated, the case of the prosecution was composed by the testimonies of the three witnesses called at the trial. All the said prosecution witnesses filed their witness statements embodying their respective testimonies to the court on 24 November 2022.

The gist of PW1's testimony is essentially that on 8 September 2022 at about 7:00 pm, whilst working with his Haojue motorbike on commercial basis, he picked Elorm as a passenger at the Ho market area. Elorm then informed him that his brother was waiting to join him at Ahoe Roundabout for both of them to go to Sokode Lokoe together so they used that route. When they got to Ahoe Roundabout, the said brother of Elorm (who happened to be the accused) joined them on the motorbike. PW1 testified further that the two requested him to use the UHAS-Sokode Lokoe road, and he obliged. For the avoidance of doubt, "UHAS" is simply the formal abbreviation for "University of Health and Allied Sciences". Fast forwarding, PW1 said that whilst they were on the road, they got to a dark place beyond the UHAS school junction where Elorm ordered him to stop the motorbike [and he obliged]. Elorm then pulled a locally manufactured gun, pointed it at him and removed the ignition key from the motorbike. After that, the two attacked

him and took from him the motorbike and his Itel keypad phone which he had placed on the dashboard. Elorm then jumped onto the motorbike and started it, and the accused joined him on the motorbike and the two sped off. He (PW1) then started making distress call by shouting for help. PW1 narrated that whilst the two were in motion with the motorbike, the accused fell off the motorbike within a distance of about 30 metres away and sustained serious injuries on his head, face, knees and legs making him to bleed quite profusely. Elorm however bolted with the motorbike and the mobile phone [ostensibly leaving the accused behind]. However, some residents [in the neighbourhood] who heard the distress call came around and called the police patrol team and informed them about the incident so the police patrol team came and arrested the accused and took him to the hospital for treatment. PW1 testified that as a result of the attack launched on him by the accused and Elorm, he sustained injuries on his right hand causing it to swell so the police issued him with a police medical form to attend hospital so he took the form to the Ho Teaching Hospital where he received treatment. After that, PW1 said he informed the owner of the motorbike, one David Afeku, on 9 September 2022 about the incident and subsequently submitted the endorsed medical form and his statement to the police.

On the part of PW2, I find that his testimony to the court was superfluous. This is because his testimony was in effect to establish that he is the owner of the motorbike that was taken from PW1 in the robbery incident on 8 September 2022. He was not at the scene when the robbery incident took place. Whatever narration he gave to the court about the robbery incident was an information passed on to him by PW1 a day after the incident, i.e. 9 September 2022. His testimony therefore brings to bear very little or no probative value on the fortunes of the case. It is observed at this juncture that establishing in these proceedings the true owner of the motorbike that PW1 was robbed off on the day of the incident is clearly a *brutum fulmen.* In other words, it is an exercise in futility. I say so because what is important for the prosecution to prove is that the said motorbike did not

belong to the alleged robbers. That is enough! Amegatcher, JSC (speaking for the Supreme Court) in ***The Republic v. Francis Arthur [Criminal Appeal No. J3/02/2020 dated 8 December 2021],*** had this say which, I think, is somewhat applicable to the instant case:

> *"... On the ingredient of ownership, Section 123 of Act 29 states that the offence of stealing, and robbery can be committed in respect of a thing living or dead, valuable or of no value. It is unnecessary to prove the ownership or value of the thing. Thus, in the criminal case of R V Halm [1969] CC 155, it was held that a charge of stealing is not founded on a relationship between the accused and an identified owner of the thing allegedly stolen, but rather on the relationship between the accused and the thing alleged to have been stolen."*

It is on the strength of the foregoing that I take the view that establishing the true owner of the motorbike in this case adds nothing substantial to the fortunes of the case. This explains why I think calling PW2 to testify at the trial was not necessary. It was held in the case of ***Ghana Ports & Harbours Authority v. Captain Zeim & Nova Complex Limited (2007-2008) SCGLR 806,*** that *"…witnessed are weighed but not counted and that a whole host of witnesses are not needed to prove a particular point".* This is an ancient position of the law rendered in Latin as *"testes ponderantur, non numerantur".* I believe the prosecution thought that calling the owner of the motor bike was an essential exercise in the trial process, but I am afraid it is not. This court is not to ascertain who the owner of the motor bike is. It is to determine the criminal liability or otherwise of the accused in relation to the said robbery incident of 8 September 2022 which took place at Sokoe Lokoe. Whether or not the rider of the motorbike was the owner of it or he was simply a trustee of the motor bike is immaterial once it is established that it did not belong to the robber[s] at the time of the incident. I deem it pertinent to make these observations because the thrust of PW2's testimony is that he bought the motorbike on 31 January 2022 from one Stephen Kugblenu of Logba at a cost of GH¢6,600 and caused same to be registered in his

name. He also testified that on 1 February 2022, he handed over the motorbike to PW1 to use it on "work-and-pay" agreement basis and PW1 has since been using the motorbike and rendering regular weekly sales to him. He testified further that on 9 September 2022 at about 6:00 am, PW1 called him on phone and informed him about the robbery incident he had suffered the previous day, 8 September 2022 in the evening at about 8:00 pm and the antecedents thereto. According to him, the investigator and PW1 were the people who even took him to the scene of crime on 10 September 2022 to familiarize himself with the incident which had occurred there, and it was sometime thereafter that he went to Area 51 police station and submitted his statement and copies of the documents covering the motorbike to facilitate investigation.

Clearly, from the tenor of PW2's testimony, his presence at the trial as a prosecution witness was needless, to say the least. He was simply not a material witness to the case.

Having said so, I shall now turn my attention to the testimony that PW3, a police officer stationed at Area 51 and the investigator in this case, offered to the court at the trial.

PW3 testified that he reported for duty at Area 51 police station as the available investigator on 8 September 2022 when a case of robbery involving the accused and one Elorm was reported by PW1 at about 8:30 p.m. and same was referred to him for investigations. He confirmed that it is the police patrol team from the Regional Police Command in Ho that arrested and brought the accused to the station. According to him, the police patrol team brought along with the accused a black bag which had been retrieved from the accused containing one sharp knife and an enema bulb syringe filled with grounded pepper. PW3 explained that the accused had a deep laceration on his head with blood oozing profusely therefrom with some other injuries on his knees and elbows so he was rushed, with the assistance of the patrol team, to the Ho Municipal Hospital for medical attention. However, due to the critical condition of the accused, he was referred to the Ho Teaching Hospital. PW3 narrated further that PW1 returned to the

station on 9 September 2022 and reported of general body pains and swollen right leg following the attack on him by the accused and Elorm the previous day so he issued PW1 with police medical form to attend hospital for treatment. Continuing with his testimony, PW3 said that the owner of the motorbike, PW2 called at the station with documents covering the motorbike and submitted same to the police and also volunteered a statement. After that, he (PW3) proceeded to the scene of crime located around UHAS school junction with PWs 1 and 2 and PW1 pointed to the spot where he was robbed of the motorbike and his mobile phone. PW3 said he found some blood stains at the said spot which PW1 claimed were blood from accused person's head injury when he fell off the motorbike shortly after the robbery. He consequently took photographs of the said blood spots for evidential purposes. Quite apart from these, PW3 told the court that the accused was interviewed on 12 September 2022 at about 11:00 am whilst still on admission and he admitted robbing PW1 of the motorbike and mobile phone at gunpoint with Elorm and that Elorm was the one who engineered the robbery incident. According to PW3, the accused further admitted ownership of the black bag containing the knife and the enema bulb syringe filled with grounded pepper claiming that they were means he deployed to overcome resistance from robbery victims in any robbery operation he embarks on. Flowing from these engagements, PW3 said he obtained investigation caution statement from the accused, and upon the instructions of the acting Ho District Police Commander, ASP Mr. Alex Adade Yeboah, the accused was accordingly charged with the offence of robbery. A charge caution statement was then obtained from the accused as a prelude to his arraignment before this court.

I recall that PW3 tendered a couple of exhibits at the trial which were eventually admitted into evidence by the court, namely:

i. the knife and the enema bulb syringe filled with grounded pepper;

ii. the black bag belonging to the accused;

iii. the hand-written statements of PWs 1 and 2;

iv. the investigation and charge caution statements obtained from the accused, Ephraim Boafo;

v. duplicate copies of documents covering the motorbike in question;

vi. the endorsed medical form issued in respect of PW1 Wise Kaizer; and

vii. the photographs taken in connection with the case.

Should the need arise for me to evaluate the said exhibits, I shall do so before eventually drawing down the curtains on this matter.

Having heard the testimonies of the prosecution witnesses as recounted *supra*, the court took the view that the accused had a case to answer in respect of the charge preferred against him. That decision was taken pursuant to ***sections 173 and 174(1) of the Criminal and Other Offences Act, 1960 (Act 30)***. The court therefore called upon the accused to enter his defence to the charge. As was held in ***Gligah & Atiso v. The Republic [2010] SCGLR 870; [2010-2012] 1 GLR 39, SC; [2010] 25 GMJ 1, SC:***

> *"…it is only after a prima facie case has been established by the prosecution that the accused person is called upon to give his side of the story."*

See also ***Michael Asamoah & Another v. The Republic [2017-2018] 1 SCLRG 486***.

The effect of the finding that a *prima facie* case exists against the accused to answer is that the constitutional presumption of innocence that worked in favour of the accused at the time he was charged with the offence is rebutted and therefore he assumes the burden of raising a reasonable doubt as to his guilt. In ***Philip Assibit Akpeena v. The Republic*** *supra,* the Court of Appeal speaking through Dennis Adjei, JA held thus:

> *"The constitutional presumption of innocence of an accused person is that an accused is presumed to be innocent unless he pleads guilty or convicted by a court. The presumption is rebutted when the prosecution establishes a prima facie case against the accused person and the accused shall be called upon to raise a reasonable doubt as to his guilt."*

In such circumstances, the burden shifts onto the accused to adduce sufficient evidence to avoid a ruling against him on the particular issue as stake pursuant to ***section 11(1) of the Evidence Act, 1975 (NRCD 323).*** The nature and extent of the onus on the accused person was articulated in the case of ***Woolmington v. Director of Public Prosecutions (1935) AC 462 at 481***, where HL Sankey LC stated that:

> *"...while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence".*

This position of the law has been given statutory backing in sections 11(3) and 13(2) of NRCD 323, and the Supreme Court has given an outline of how a court of law ought to examine the case of the defence (or accused) in the event where the court forms such an opinion that a *prima facie* case has been made against the accused and thereby proceeds to call upon him to make a defence to the charge(s) levelled against him. For the avoidance of doubt, that authoritative pronouncement was made in the case of ***Lutterodt v. Commissioner of Police (1963) 2 GLR 429,*** and the following is what the Supreme Court said as captured in the law report (per holding 3 thereof):

> *"(3) In all criminal cases where the determination of a case depends upon facts and the court forms the opinion that a prima facie case has been made, the court should proceed to examine the case for the defence in three stages:*

(a) if the explanation of the defence is acceptable, then the accused should be acquitted;

(b) if the explanation is not acceptable, but is reasonably probable, the accused should be acquitted;

(c) if quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict…"

See also: ***The Republic v. Aku Kedevi @ Mansanor & Michael Boti*** *(Suit No. MIC/02/2018 dated 13th July, 2020) per Eric Baah, J (as he then was).*

I feel set now to begin the evaluation of the case of the accused by, first and foremost, recounting the testimony which he offered to the court.

EVIDENCE OF THE ACCUSED:

The defence of the accused was quite lengthy. However, it is an unsworn statement that the accused elected to give to the court as his defence. I will therefore endeavour to distil only the salient portions of the accused's testimony that are germane to the case.

The accused testified that on 8 September 2022 at about 11:00 am, his friend Elorm Newton called him on phone and told him that if he (accused) closes from work that day, he should accompany him to UHAS to see a certain fetish priest. As a result, when he closed from work, he went to wait for Elorm at the Ahoe Roundabout. He said whiles he was waiting at the said roundabout, his friend came with a motor rider. Not having any

bad intention, the accused said he also joined Elorm innocently on the motor bike and they set off towards UHAS but when they got to Mirage, Elorm gave a bag that he (Elorm) was carrying to him to hold for him while he (Elorm) goes to buy something from a nearby shop. The accused added that he carried the bag in his arms whilst Elorm went and came back some few minutes later and said he did not get what he wanted to buy. As a result, they got onto the motorbike again and moved towards UHAS road. The accused said that upon reaching the fetish priest's place, he expected the motor rider to stop the bike but he did not so he asked Elorm where they were actually going to and Elorm responded that they were going a little ahead. The accused narrated that when they eventually got to UHAS junction, the motor rider stopped the motor bike and Elorm got down so he (accused) also got down and the motor rider also followed suit. Elorm and the motor rider then moved a little distance ahead whilst he was standing by the motorbike. Few moments later, said the accused, Elorm came back and got on to the motorbike again [ostensibly without the rider] so he asked Elorm where the motor rider was. Elorm then ordered him to get onto the motorbike for them to go. Within a twinkling of an eye, the motor rider emerged on the scene and threw a big stone at them and the stone unfortunately hit his (accused's) forehead and he fell off the motorbike. The accused said he managed to get up with the view to running away from the scene. However, before he could, the motor rider hit him on the knee with his (motor rider's) right leg and he fell again. He then saw that some two guys had emerged from the bush. Suddenly, the said guys pounced on him and started beating him claiming that he is a thief. But, thankfully, a good Samaritan came to his rescue and advised that they report the matter to the nearest police station for necessary action. The accused testified further that upon reaching the police station, they kept beating him till they saw that he had become unconscious, and that was when they rushed him to the hospital. He added that because of the way and manner he was beaten, he could not open his mouth to talk so when the CID officer [ostensibly referring to the case investigator] came to the hospital, he

(accused) was not able to talk to him. The accused therefore challenged whatever the police investigator had written against him [in his caution statement] saying that he did not know where they got that information from.

EVALUATION OF THE EVIDENCE ON RECORD AND FINDINGS OF FACT:

The defence put up by the accused suggested that though he was on the scene of the crime on that fateful day, he was not the one who committed the crime and did not even have the intention of committing any crime at that material moment. He seemed to be totally at a loss when the incident happened. To him, he had only accompanied his friend, Elorm, to UHAS for the friend to go and see a fetish priest he had occasionally been going to, and could not have envisaged that his friend, Elorm, had hatched a criminal plan which he was going to execute. That is, in summary, the crux of the accused person's defence. Is such a defence worthy of belief? If not credible, does it raise any reasonable probability? An affirmative answer to any of these questions will inure to the benefit of the accused. The law is settled on that fact! Ordinarily, the fact that a person is found at a crime scene at the time a crime is committed does not make him culpable if he did not participate in the commission of the crime. I recall that the Supreme Court held in the case of ***Logan v. The Republic (2007-2008) SCGLR 76*** that mere presence at the scene of crime without more is not proof of guilt. The question which arises therefore is this: "is it not possible for an innocent person to be among evil doers, be in their company and yet have no knowledge of their intentions?" The Supreme Court decision in the case of ***Faisal Mohammed Akilu v. The Republic (Criminal Appeal No. J3/8/2013) dated 5 July 2013*** answers this question in the affirmative.

There is no doubt that there was one Elorm on the scene of the crime on the day in question. Whereas PW1 said it was both the accused and Elorm who attacked him and

perpetrated the crime on him, the accused said it is only Elorm who did the act and that he (accused) was at a loss as to the ordeal Elorm had subjected PW1 to. There is the possibility that the testimony of PW1 represents the true state of affairs. However, the defence of the accused cannot also be ruled out as a possibility. In the case of ***Razak & Yamoah v. The Republic [2012] 2 SCGLR 750,*** the Supreme Court held that "in every criminal trial it is not only necessary for the prosecution to prove the commission of the crime, but also to lead evidence to identify the accused as the person(s) who committed it." This is because proving the identity of an accused person as the one who committed the offence is of a very crucial importance since a proven case of mistaken identity is a good ground for acquitting an accused person. I have taken pains to read through the testimony of the accused over and over again to ascertain if there is any material to expose his complicity in the crime but the more I do, the harder it becomes for me to reach that conclusion. But I think I can identify where the difficulty lies. The only people at the crime scene at the time the incident took place was unarguably PW1, the accused and Elorm (who is presumably still on the run). The other persons who came onto the scene in response to PW1's distress call all came few moments after the crime had been completed so they could not have testified to seeing what actually happened. They only came to meet the accused on the scene bleeding profusely from the injuries he had sustained. Explaining what led to the said injuries sustained by the accused, the testimony of PW1 appeared convincing. That of the accused on that same issue also appeared plausible. I am therefore left in a state of soliloquy as to whether to convict or acquit the accused. In ***Mohammed Faisal Akilu v. The Republic*** *(supra),* the Supreme Court emphasized the principle in criminal trials that all reasonable doubts that make the mind of the court uncertain about the guilt of the accused are always resolved in favour of the accused and held that *"…where, from the totality of the evidence before a trial court, a soliloquy of; 'should I convict', or 'should I acquit' takes control of the mind of the court, then a reasonable doubt has*

been raised about the guilt of the accused. The appropriate thing to do, in such a situation, is to acquit, as required by law."

It is not lost on me that the testimony of the accused was composed of an unsworn statement which therefore required corroboration to make it substantially believable. By law, since the accused resorted to giving an unsworn statement to the court, the prosecution was effectively proscribed from subjecting the accused to any form of cross-examination on the testimony he had given to the court in his defence to the charge levelled against him. That is to say that the accused having elected to speak from the dock and thereby not testifying under oath, the prosecution was consequently deprived of the right to cross-examine him. I must, however, say at this point that even though the accused did not testify on oath, that alone does not lead to a wholesale rejection of his unsworn statement. The court is still enjoined by law to consider same and form an opinion on the defence the accused had put up before taking a stance on the matter. The right of an accused in opening his defence by electing to make his statements from the dock and not subject to cross-examination on same is provided for by section 174(1) of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) as well as sections 63(1) and 96(4) of the Evidence Act, 1975 (NRCD 323). In the case of *Dochie v. The State (1965) GLR 208 at 210,* it was held that:

> *"It is a statutory right conferred on accused persons and the mere fact that an accused elects to make an unsworn statement does not … amount to proof of guilt. It is a statement which must be considered by the court…"*

See also: *Yirenkyi v. The State (1963) 1 GLR 66, SC*

The only issue with the accused's unsworn testimony has to do with the probative value and/or the weight to be attached to same. In *Dochie v. The State (supra)*, it was held on this point that:

"The probative value of the statement is of course weakened by the right to give sworn evidence accorded to the accused under statute."

According to S. A. Brobbey, JSC (now retired) in his invaluable book, *"Practice and Procedure in the Trial Courts and Tribunals of Ghana (Second Edition)"* he stated at page 162 paragraph 344 that unsworn evidence will need to be corroborated before it can carry much weight and that if the unsworn evidence remains uncorroborated till the trial ends, such evidence will be weakened by the failure to give sworn evidence which could be subject to cross-examination.

I recall, however, that the accused, after presenting his unsworn statement to the court, did not call any witness to testify in corroboration of the facts he had recounted in his testimony. Therefore, in line with the legal requirement that unsworn evidence would need to be corroborated before it can carry much weight and that if it remains uncorroborated till the trial ends, such evidence will be weakened by the failure to give a sworn evidence, it goes without saying that the testimony of the accused should generally not deserve any weight at all to be attached to it, and that at best, the weight to be put on it must be little or negligible. But it is worth noting that the corroborative evidence that needs to be introduced at the trial to give some considerable weight to the case of the accused must not always come from the camp of the accused. If the prosecution had introduced any fact, document, material or object at the trial which seems to corroborate the case of the accused, then a fortiori, the unsworn statement of the accused could gain the weight of the law that it deserves.

In the instant case, my considered view is that, judging from the circumstances of the case, the accused could not have obtained such corroboration from any other person as a witness to throw some considerable weight behind his case, particularly when the people

present at the crime scene at the time of the commission of the crime were only PW1, the accused himself and Elorm. From whom therefore would the accused find corroboration for his testimony save Elorm who is admittedly on the run? But through it all, PW1 revealed a fact whilst under cross-examination by the accused which deepens my belief that the case of the accused is reasonably probable. The following episode is what I am talking about:

> *"Q: When Elorm pulled the locally manufactured gun and pointed same at you, did I do any action?*
>
> *A: Yes.*
>
> *Q: Did he point the gun at you when we were still on the motor bike or we had alighted?*
>
> *A: We had alighted before he pointed the gun at me.*
>
> *Q: You said it was because of the beating we subjected you to, your ankle got swollen?*
>
> *A: It was Elorm who slid me."*

Most of the unlawful actions which one sees happening in the above episode were allegedly done by Elorm and not the accused. Could it therefore be said that the accused was a victim of circumstances? I think so! In my view, it is probable from the foregoing discussions that the story presented by the accused was what happened. On my part, I strongly feel that the circumstances of the case should lead me to tread cautiously in condemning the accused herein, being mindful of the fact that our criminal justice system is premised upon the principle that it is better for ninety-nine criminals to go away scot free than for one innocent person to be wrongly incarcerated or jailed. The case of ***Ekow***

Russel v. The Republic (Criminal Appeal No: J3/5/2014 dated 13th July 2016) comes in handy.

CONCLUSION AND DECISION OF THE COURT:

Based on all the foregoing discussions, I am minded to find accused not guilty of the offence charged. He is therefore legally entitled to be, and is accordingly, acquitted and discharged.

(SGD) H/H FELIX DATSOMOR
CIRCUIT COURT JUDGE
23/11/2023

REPRESENTATION:

CHIEF INSPECTOR CLEVER AYAYEE APPEARS FOR PROSECUTION

ACCUSED PERSON IS SELF-REPRESENTED