

IN THE CIRCUIT COURT HELD IN ACCRA ON THURSDAY THE 6TH DAY OF
APRIL, 2023 BEFORE HER LADYSHIP JUSTICE PRISCILLA DAPAAH MIREKU
(MRS.), SITTING AS ADDITIONAL CIRCUIT COURT JUDGE.

SUIT NO. D21/159/2022

THE REPUBLIC

VRS:

MARTIN ADJEI & ANOTHER

JUDGMENT

THE CHARGES AGAINST ACCUSED PERSONS;

The first accused person was arraigned before this honourable court and charged with abetment of crime namely robbery contrary to sections 20(1) and 149 of the Criminal Offences Act, 1960 (Act 29) and possession of arms and ammunition without authority contrary to sections 11(a) and 26(1) of the Arms and Ammunition Act, 1972 (NRCD 9)

The second accused person was also arraigned before this honourable court and charged with conspiracy to commit crime namely robbery contrary to sections 23(1) and 149 of the Criminal Offences Act 1960 (Act 29).

The accused persons both pleaded not guilty to the charges against them after same were read and explained to them in a language of their choice.

THE FACTS OF THE CASE;

Complainant Atta Boateng Afrane is a resident of Onwe near Ejisu. The deceased, Sampson Owusu Adjei aged 32years was a mobile money merchant at Onwe near Ejisu who was robbed, shot and killed. First accused person, Martin Adjei @ Preman aged 40 years is a taxi driver resident at Techiman in the Bono East Region. Second accused person, Umaru Sanda aged 22 years is a cattle herdsman. Third accused person Soldier is at Large.

On 27/08/2020 at about 12:40am, some police officers at Kodie who were manning a police barrier were informed by an unknown man that he had left a bag in a taxi cab with some money in it. He told the police men that the taxi cab will be coming in their direction. He also told them that the said taxi was red and yellow Daewoo Matiz with registration number AS. 880-16. After about 45 minutes, the police spotted the said taxi approaching them from Kumasi towards Offinso with the first accused driving it. A search in the car revealed an AK47 rifle No. 74369511 together with two magazines

containing 24 rounds of AK47 rifles ammunition concealed in the front passenger's seat, a bag containing one locally manufactured pistol, a butcher's knife, three mobile phones, two pullovers ,a pair of surgical gloves and cash GH¢1050.00 all in GH¢5.00 denominations with a Juaben Bank band on it.

First accused person was then arrested. A call by the police to the person who earlier sought their help proved futile. In his caution statement to the police, he denied any involvement in the actual robbery at Onwe but admitted among other things abetting the robbers by transporting them to and from the robbery. He also further stated that the person who gave information to the police leading to his arrest was the 3rd accused whose number he confirmed with the police.

Investigation into the phone records of all the three accused persons revealed communication between them on the day, time and location of the robbery incident. Furthermore, police investigations revealed that the 1st accused person was indeed the driver of the said taxi that he was arrested in and that he bolted with the taxi from Techiman, where he usually plies his trade on or about 8/8/2020 without the consent and knowledge of his car owner who lives in Techiman.

The 3rd accused person is yet to be apprehended and investigations are still ongoing in relation to him and other persons and their involvement in the murder and robbery at Onwe.

THE ISSUES FOR DETERMINATION;

1. Whether or not the first accused person on the 26th of August, 2020 Onwe near Ejisu in the Ashanti Region and within the jurisdiction of this court did facilitate three (3) others at large by driving them in his taxi cab with registration number AS 880-16 to commit robbery.
2. Whether or not the first accused person at Kodie in the Ashanti Region and within the jurisdiction of this court had in his possession one AK 47 rifle with two (2) magazines loaded with 24 rounds of ammunitions, one (1) live AK47 Rifle ammunition, one locally manufactured pistol and five (5) spent (empty) Ak47 ammunition without lawful authority whilst driving a Daewoo Matiz cab with registration number AS 880-16.
3. Whether or not the 2nd accused person on or about 26th August 2020 at about 8:30pm at Onwe near Ejisu in the Ashanti Region and within the jurisdiction of this court, did agree to Act together with two other persons including one Soldier to commit the offence of robbery.

As aforementioned, all the accused persons pleaded not guilty to the charges against them and the 3rd accused person is at large.

EVALUATION OF EVIDENCE AND LAW;

Article 19 clause 2(c) of the 1992 Constitution of Ghana provides that,

“A person charged with a criminal offence shall – be presumed to be innocent until he is proved or has pleaded guilty.”

Thus the accused persons are also in this case presumed to be innocent as they have pleaded not guilty to all the charges against them. The onus is therefore on their accuser that is, the prosecution to prove their guilt.

Section 11(2) of the Evidence Decree, 1975 (NRCD 323) provides that,

In a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the facts beyond reasonable doubt.

Thus the onus on the prosecution is proof beyond reasonable doubt but in the case of **Miller v. Minister of Pensions [1947] 2 A11 ER 372 at 373**, Denning J. (as he then was) explained proof beyond reasonable doubt as,

“... It need not reach certainty, but it must carry a high degree of probability, proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice.”

The prosecution in proving their case called three witnesses to testify against the accused persons.

In the case of **COP v. Antwi [1961] GLR 408**, it was held that,

“The fundamental principles underlying the rules of law are that the burden of proof remains throughout on the prosecution and the evidential burden shifts to the accused only if at the end of the case for the prosecution an explanation of circumstances peculiarly within the knowledge of the accused is called for.”

The prosecution first witness (PW1) Corporal Moses Duffour testified as to how an unknown individual came to them at a police check point at Kodie that he has left his bag in a taxi cab containing GH¢5,000.00 and describe the said vehicle to them. That not too long after the complaint, the first accused person approached them with the said taxi cab and upon inspection of the vehicle found the following; one AK47 rifle No. 74369511 together with two magazines containing 24 rounds of AK47 rifles ammunition concealed in the front passenger’s seat, one live AK 47 rifle ammunition, one locally manufactured pistol, five spent AK47, a butcher’s knife, three mobile phones, two pullovers, a pair of gloves, one power bank, 2 pairs of sandals, cash of GH¢1050.00, two Chinese Yuan and one United States Dollar.

Constable Richard Amo Kumi was the prosecution’s second witness (PW2) and he also basically corroborated the evidence of PW1 as he claimed he was at the police

check post with PW1. The prosecution third witness was the investigator Detective inspector Samuel Nyatenu.

The evidence of PW3 starts with a robbery that took place at Ejisu-Onwe on the 26th day of August, 2020 that resulted in one victim Owusu Adjei losing his life. The investigator testified that at the scene of the robbery, he found one live AK47 rifle ammunition on the floor close to the mobile money container. That the regional crime scene team of which he was part also took photographs and measurements of the various scenes for evidential purposes. That he also retrieved five AK 47 empty shells which were earlier retrieved from the scene from one Detective Lans Corporal Ohene Gyan of Ejisu Police. PW1 also tendered photographs of the exhibits retrieved from the first accused person by the Kodie police when he was handed over to him. According to PW3 the ballistic report from the police forensic laboratory indicated that the empty shells retrieved from the robbery crime scene were discharged from the AK47 found in the accused person's taxi cab. PW3 further tendered itemized bills of communication between the first and third accused persons and same was marked Exhibits 'W', 'X', 'Y' and 'Z'.

The itemized bill showed that both accused persons were in Onwe on the date of the robbery and had communication with the third accused person at large.

Section 149 of Act 29 states that,

whoever commits robbery is guilty of an offence and shall be liable, upon conviction on trial summarily or on indictment, to imprisonment 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 20(1) of Act 29 provides that,

every person who, directly or indirectly, instigates, commands, counsels, procure, solicits, or in any manner purposely aids, facilitates, encourages, or promotes, whether by his act or presence or otherwise, and every person who does any act for the purpose of aiding, facilitating, encouraging or promoting the commission of a crime by any other person, whether known or unknown, certain or uncertain, is guilty of abetting that crime, and of abetting the other person in respect of that crime.

PW3 tendered the caution statement of the accused persons. The first accused person's first caution statement dated 28th August 2020 marked as Exhibit 'U' denies taking part of the robbery and stated categorically that he has never been to Ejisu before. He stated that the third accused person called him from Techiman to come to Kumasi to put a gun in his vehicle for them to go for robbery which he did come to Kumasi. That A3 gave him Gh¢500.00 for fuel which he did not use same. That he decided not to go for the robbery so he drove away with the mind to throw away the bag and gun in his car together with the money at a bush but before he could do that, he was arrested by the

police. The second caution statement dated 22nd October, 2021 admits conveying the 3rd accused person and one other person to Onwe but deny taking part of the robbery.

According to the first accused, the third accused person wanted them to go on another robbery operation at Techiman which he refused and drove away with the Ak47. The first accused person claims it is the third accused person who reported him to the police.

The evidence tendered by the prosecution put the first accused person at the crime scene of the robbery. The evidence also proves that, the accused person knew the robbers were going to rob at Onwe when he drove them to Onwe and back from the robbery. Saying that he did not take part of the robbery will not hold.

The evidence clearly shows that the arm ammunitions were found in the taxi cab of the first accused person.

Section 11 of NRCD 9 also provides that,

Where any firearms, arms of war, munitions or war or ammunition are, without the proper authority,

- a. Found in the possession of a person,*
- b. Kept in a place other than a public warehouse, or*
- c. Unlawfully kept in a private warehouse,*

That person or the occupier of that place, or the owner of the place or any other person keeping them, commits an offence unless that person, occupier or owner can prove that they were deposited

there without the knowledge or consent of that person, occupier or owner.

The evidence shows that the AK47 and the other items in the bag were placed in the taxi cab with the consent of the first accused person.

Section 23(1) of Act 29 provides that,

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

The **Republic v. Azametsie [1974] 1GLR 228, CA @ holding 2**, it was stated,

The crime of conspiracy consisted in an agreement or acting together by two or more persons with a common purpose for or in committing or abetting a crime whether with or without any previous concert or deliberation. It was not always easy to prove agreement by evidence but it could be inferred for the conduct of and statements made by the accused persons.

The 2nd accused person is charged with conspiring to commit robbery with others at large. The evidence tendered by the prosecution place the second accused person at Onwe and also showed that the 2nd accused person had communications with the third accused person at large.

At the close of the prosecution's case, this honourable court found that, the prosecution has established a prima facie case for the accused persons to answer.

In the case of **Gliga & Atiso v. The Republic** [2010] SCGLR 870 at holding 1 at 871 the Supreme Court held that:

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

Thus this court gave the accused persons the right to give their side of their story.

Section 13(2) of the Evidence Act, 1975 (NRCD 323) provides that,

except as provided in section 15(3), in a criminal action, the burden of persuasion, when it is on the accused as to fact essential to guilt requires only that the accused raise a reasonable doubt as to guilt.

Both accused person denies knowing each other. The first accused denies having knowledge of the contents of the bag and even knowing the bag was in his car. He does not give any reasonable explanation as to how the AK47 was place in his car as per Exhibit 'D'.

The second accused person denies 0553624122 as his mobile number and indicates that his number is a Vodafone number under cross examination. The second accused person admits 0209273904 is his number but per the itemized bill from Vodafone the number is registered under the name of Rapheal Oteng. The details of the itemized bill from Vodafone place the second accused person at Pollux hotel, the hotel the 1st accused claim to have sent the third accused and another to after the robbery. However there is no indication of the 2nd accused person making calls to any of the other accused persons on the Vodafone number or being at Pollux hotel on the 20th of August, 2020. The prosecution also did not lead evidence to connect the second accused person as being the owner of the MTN number aforementioned.

The only evidence that connect the second accused person to this whole thing was the exhibit 'Z' from MTN which the accused person has denied the number to be his.

CONCLUSION;

At the end of the case, this honourable court finds on the evidence on record that the prosecution proved beyond reasonable doubt that the first accused person committed the two charges against him. The first accused person is hereby convicted on both counts.

The prosecution however failed to prove the case against accused the second accused person beyond reasonable doubt. The second accused person is hereby acquitted and discharge on the third count.

First accused person do you have anything to say before sentencing as a form of mitigation?

Upon consideration of the fact that the first accused person is known, abetted to commission of a crime to wit robbery, which led to the killing of an innocent person and the unremorseful nature he portrays to the court, that the accused person is a first time offender and the fact that the accused has been in custody since 2020, the first accused person sentence to 25 years in prison in hard labour on count one.

Section 26(1) of NRCD 9 also states,

A person commits an offence and is liable on summary conviction to a fine not exceeding one thousand penalty unit or to a term of imprisonment not exceeding five years or to both the fine and imprisonment, if that person

(a) Contravenes a provision of this Act or a condition or restriction imposed in respect of a permit granted to the person."

On count two, the first accused person is sentence to 800 penalty units in default 4 years in prison. The sentence is to run consecutively.

H/L PRISCILLA DAPAAH MIREKU J.

CIRCUIT COURT 2, ADUM