

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON MONDAY, 28TH NOVEMBER, 2022

SUIT NO. D1/05/22

THE REPUBLIC

VRS

HARRISON DEKU

LUCKY NYADI MASCILINE

RULING

The accused persons are before this Court on four counts. On count one and count two, both accused persons are charged with the offence of conspiracy to commit crime and attempt to commit crime. The particulars of offence are that on the 10th day of November, 2021 at Mataheko Afienya in the Tema Metropolis and within the jurisdiction of this court, they did agree to act together with a common purpose to commit the criminal offence of robbery.

It is only A1 who was charged on count three and four. He was charged with the offence of robbery contrary to *Section 149 of Act 29* on count three.

The particulars of offence for count three are that on the same date, time and place, with force and to overcome the resistance of Amertome Juliana, A1, pulled

a pistol on her in an attempt to take away all her sales of a drinking spot that she runs.

On count four, he was charged with possession of fire arm without lawful authority contrary to *Section 11 (b) of the Arms and Ammunition Act, 1972 (N.R.C.D. 9)*.

The particulars of offence for count four are that on the same date, time and place, A1 had in his possession one locally manufactured pistol without lawful authority.

They both pleaded not guilty to all the charges after they were read and explained to them in Ewe.

BRIEF FACTs

Complainant Juliana Ametorme is a drinking spot attendant and resides at Mataheko Afienya. 1st accused person Harrison Deku alias addicted boss aged 21 is a mason whilst 2nd accused person Nyadi Masciline Lucky alias Thug Money is a labourer. Both reside at scrap yard a slum at Ashiaman.

On 10th November 2021 about 7:15am the complainant was at her drinking spot when accused person walked in and asked if she would buy kente as they have three (3) pieces they were selling. Complainant told them she had no money to buy. A1 asked complainant to serve them with storm energy drink each and she did. A1 and A2 after drinking, requested for another drink but complainant asked that they pay for the drink they took before she gives them another.

A1 asked if they could pay for the drinks with mobile money which she affirmed and pointed to a number boldly displayed on the gate of her shop and went behind the counter. A1 walked towards the counter and went and joined the complainant at the back of the counter whilst A2 was keeping watch. A1 pulled a locally manufactured pistol and pointed on the head of complainant, took her Itel IT2190 mobile phone and asked her to surrender all her sales. Complainant told A1 the sales is in another room and pleaded to let her take it for him. Complainant mastered courage and run out of the shop and pounced on A2 who was standing outside. Complainant started shouting and struggling with A2. A2 managed to free himself from complainant's grips and took to his heels. A1 who was then busy inside the complainant shop searching for the money sensed danger and also took to his heels.

Complainant raised alarm and accused persons were given a hot chase and eventually arrested by some people around the area where they retrieved the locally manufactured pistol from A1 and handed over to the police. Accused persons were later brought to RCID/TEMA for investigation. During investigation, it came to light that A1 acquired the pistol from one Godsway Anornu in Ho in the Volta Region.

Both accused persons who are friends conspired to rob the victim with the pistol. A1 failed to lead police to the arrest of Godsway as he stated he does not know the abode of the said Godsway in Ho. The accused persons were charged and arraigned before this court. Investigation is underway to get the suspect Godsway Anornu arrested.

The accused person had by their plea of not guilty,, cast upon the prosecution the duty of leading evidence to establish their guilt. A plea of not guilty serves as both a shield and a sword. A shield for the accused persons who are presumed to be innocent until proven guilty and do not have to say anything in proof of their innocence and a sword pointed their accusers to lead evidence to establish a prima facie case against them.

It is only when prosecution has discharged their duties by leading cogent and credible evidence in proof of their case that the sword would now turn towards the accused persons; not to establish their innocence but to raise a reasonable doubt in the mind of the court.

Where prosecution fails to establish such a prima facie case, the court must acquit and discharge the accused persons.

Also by their plea of not guilty, the accused persons had invoked the protection accorded them under *Article 19 (2) (c) of the 1992 Constitution*. Per that provision, they are presumed innocent until proven guilty. According to the case of *Davis v. U.S. 160 U.S 469(1895)*. "Upon that plea the accused may stand, shielded by the presumption of his innocence, until it appears that he is guilty; and his guilt cannot in the very nature of things be regarded as proved, if the jury entertain a reasonable doubt from the evidence".

Prosecution in proof of its case called two witnesses, the complainant and the investigator.

According to PW1, she was in her drinks shop on the 10th day of November, 2021 at about 9:am when the accused persons came in and asked if she was interested in purchasing a kente cloth. That she declined interest and they ordered for a storm energy drink which she served them.

That A1 indicated that he would like to pay through mobile money and she showed him her number which was boldly written in front of her shop. That the accused persons requested for more drinks and she demanded payment first.

That A1 suddenly came to the back of the counter where she was standing and pulled a gun on her, took her phone and demanded that she hand over her sales. That out of fear, she told him the money was in another section of the room and that A1 should follow her.

That whilst they were going for the money, she run away and held A2 who was standing outside. She then began to struggle with A2 and shout for help. That A2 tore her dress and both A1 and A2 took to their heels but were given a hot chase by the neighbours around who apprehended them and sent them to the police station.

PW2 is the investigator. His evidence is that on the said date around 12:30pm, the patrol team together with PW1 brought in the accused persons and a locally manufactured pistol.

That after taking a complaint from PW1, he took the investigation caution and charge statement of the accused persons.

That A1 admitted the offence and said he pulled the gun on PW1 so that she would give them some money. That A2 also indicated that he was standing outside the shop keeping watch. That he knew that they did not have mobile money and A1 pulled the pistol on PW1 to scare her into giving them money or force her to buy the kente cloth.

That A1 indicated that he had acquired the pistol from one Godsway Anornu in Ho but could not lead police to the said person's place of abode. That he took the accused persons to the scene and reconstructed the crime scene. He tendered in evidence the investigation caution and charge statements of the accused persons as well as a photograph of a locally manufactured pistol.

Both accused persons extensively cross examined prosecution witnesses on their evidence. Prosecution closed its case after this.

At the close of prosecution's case and in line with section 173 of the **Criminal and other Offences Procedure Act, 1960, Act 30**, the court hereby finds that on count 1, count 2 prosecution has established a prima facie case against the accused persons. The evidence of prosecution though its 2 witnesses established all the relevant element of the offence, the evidence has not been so discredited under cross-examination, the evidence is such that it is manifestly reliable and the court can safely rely on same and the evidence points to only one explanation at the moment, that of the prima facie guilt of the accused persons. Accordingly, they are hereby called upon to open their defence if they so desire. On count 3, prosecution's own evidence on record, indicates that PW1 foiled the attempt to rob her. Accordingly, 1st accused is acquitted and discharged on the said count.

On count 4, prosecution has established a prima facie case against 1st accused and he is hereby called upon to open his defence if he so desires.

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

ASP STELLA ODAME FOR THE REPUBLIC PRESENT