IN THE CIRCUIT COURT DUNKWA-ON-OFFIN; SITTING ON 22ND NOVEMBER 2023

CORAM: HIS HONOUR YAW POKU ACHAMPONG

CASE NO.: B18/02/2024

THE REPUBLIC

VS

JULIUS AGBANA

ACCUSED PERSON PRESENT

SERGEANT PRINCE ADU AMOAKO FOR PROSECUTION, PRESENT

JUDGMENT

Accused person was arraigned charged as follows:

COUNT ONE

STATEMENT OF OFFENCE

POSSESSION OF OFFENSIVE WEAPON: CONTRARY TO SECTION 206(1) OF ACT 29

PARTICULARS OF OFFENCE

JULIUS AGBANA; GALAMSAYER, AGED 38 YEARS: For that you on 28th day of February 2023 at the railway line near Kalakuta a suburb of Dunkwa-On-Offin in the Central Circuit and within the jurisdiction of this court, without lawful authority, you had in your possession an offensive weapon to wit, scissors.

COUNT TWO

STATEMENT OF OFFENCE

ROBBERY, CONTRARY TO SECTION 149 OF ACT 29

PARTICULARS OF OFFENCE

JULIUS AGBANA; GALAMSAYER, AGED 38 YEARS: For that you on the 28th day of February, 2023 at the railway lines near Kalakuta, a suburb of Dunkwa-On-Offin in the Central Circuit and within the jurisdiction of this court did rob one John Nyan of his infinix smart mobile phone valued GH¢800 and cash the sum of GH¢ 1,500.00.

Section 206(1) of Act 29 states:

Any person who, without lawful authority the proof where, of shall lie on him, has with him in any public place any offensive weapon shall be guilty of a misdemeanour.

Section 149(1) of Act 29 states:

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 149(3) of Act 29 states:

In this section "offensive weapon" means any article made or adapted for use to cause injury to the person or damage to property or intended by the person who has the weapon to use it to cause injury or damage; and "offensive missile" includes a stone, brick or any article or thing likely to cause harm, damage or injury if thrown.

The facts the prosecution relied on to charge accused, verbatim, are as follows:

"Complainant John Nyah[sic] is a Galamsayer and resident at Dunkwa Zongo a suburb of Dunkwa-On-Offin. Whilst the accused Julius Agbana is a Galamsayer and resident of Railway quarters. On the 28/02/2023 about 9:30pm whilst the complainant was walking towards railway nears[sic] kalakuta[sic] and met accused and three others, accused asked for coins from the complainant and the complainant gave his GH¢5.00 out from his bag. That after the complainant has[sic] given the money to the accused, accused … held his bag and pull[sic] him back and drew scissors and one of his accomplices also drew knife and pointed it at his rib to surrender his belongings in the bag. In the process one of accused persons hit the complainant with a wood on his cheek from behind and fell down and became unconscious. Complainant regained his conscious[sic] and detected that his bag containing cash sum of GH¢1,500 and infinix mobile phone valued GH¢800 has been taken away by the accused and the three others who are now at large. On 1–3-2023 around 9:20am whilst Police accompanied by the complainant on their way to accused's hideout, accused saw police and took to his heels and ran away into the Offin river and swamped[sic] to the other side of the river bank[sic]. Accused has been hiding from police since the case was reported, on 07/07/2023 around 5:20pm accused was arrested by Dunkwa-On-Offin Police Divisional patrol team and was sent to Atechem police station for detention. Police retrieved the complainant's mobile phone from one Soumaila Moro. That investigation revealed that the accused gave the mobile phone to the said Soumaila and collected GH¢40.00 under the pretex[sic] of bringing the money back for his mobile phone. After thoroughly[sic] investigation the accused was charged with the offences as contained on the charge sheet."

From the outset it can be said that the facts as presented by the prosecution are fraught with grammatical errors, spelling mistakes and some illogical statements.

In the facts attached to the charge sheet, it is stated: "...one of accused persons hit the complainant with wood on his cheek…" but there is only one accused person standing trial in the instant case. It is provided that complainant became unconscious and regained consciousness and detected that accused and three others at large had taken some items belonging to him. How did somebody who was unconscious get to know the one who took his items? Let us see whether the evidence adduced by the prosecution at the trial will be of any assistance into understanding this mystery.

Prosecution called two witnesses – the complainant herein and the investigator herein. They were referred to as PW1 and PW2 respectively when they testified.

Evidence-in-chief of PW1 as in his witness statement is, inter alia, as follows:

> "1. I am John Nyan.
>
> ...
>
> 4. On 28/02/2023 about 9:30pm accused person Julius Agbana and three others I can identify them when seen met me at railway line near Kalakuta and asked of coins and I gave him GH¢ 5.00
>
> 5. I turned around going and the accused person grabbed me and held my bag and pulled me back. The accused person drew scissor and one of the three who are now at large pull[sic] a knife and pointed it on my rib and also hit me with a wood on my cheek from behind which I fell unconscious.
>
> 6. That later when I gained conscious, I saw my[sic] no one around me and detected that the bag which contain[sic] cash of GH¢1,500 and infinix mobile phone valued GH¢800.00 have[sic] been taken away by the accused persons and blood oozing from my upper lips
>
> 7. On 1/03/2023 about 8:00am I and my friend Latif found the accused person at Ascona's friend place sleeping. We quickly rushed to the police when we returned accused had already bolted

8. Whiles[sic] with the police accused saw us and started running and run[sic] into offin[sic] river and cross[sic] to the other side of the Offin river.

...

10. Later the phone was retrieved from one Soumaila who told police that it was the accused who collected an amount of GH40.00[sic] from him under the pretext of bringing his money back for his phone."

Evidence-in-chief of PW2, inter alia, as in his witness statement is as follows:

"1. I am No.48132 G/CPL Benjamin S Asante

...

3. On 1-03-2023 the complainant John Nyan reported that on 28-02-2023 the accused person and his three accomplices robbed him of his bag containing GH¢1,500 and infinix mobile phone valued GH¢800,00 with scissors and knife and also hit him with a wood on his cheek.

...

5. G/Sgt Akwasi Boateng in charge I accompanied by the complainant reported for the arrest of the accused and when the accused person saw us he took to his heels and ran into the Offin river and swamped[sic] to the other side.

6. During investigation the complainant lead[sic] us to one Soumaila Moro and his mobile phone was retrieved and the Soumaila told me that the accused Julius Agbana collected an amount of GH¢40.00 under the pretext of bringing the money later and come for his mobile phone

7. The accused person remained at his hideout until 07/07/2023 he was arrested at his hideout

..."

The following is the investigation cautioned statement that PW2 said he took from Accused:

> "On December 2022 I went to work with complainant at Mr. Ben mining site and complainant was supposed to pay before I got sentenced to jail, on 28-02-23 around 8:30pm I met complainant near Kalakuta club house and asked him the work I did with [him] where is[sic] my money and he removed GH¢150 from his bag and wanted to give me GH¢150 and I told him I won't[sic] accept it and he wanted to put back the money into his bag and I took the bag from him and he got angry and walk[sic] away from me. I went to give the phone and the bag to Renteni should in case if he sees complainant he should give it to him. On 1/03/23 around 8:00 am complainant came to see Renteni whiles I was asleep but Renteni didn't give the phone to complainant because he wanted to give the phone and the bag to complainant infront[sic] of me but complainant didn't understand and went to call the police. It wasn't my intention to steal from complainant because I wanted to take my money from him, the money I took from [him] is GH¢150 not ¢1,500, that is all that I know."

The charge statement PW2 said he took from Accused reads:

> "I rely on my former statement. I will like to plead with police that I will not do such criminal act like this anymore and that I will also like to give him back his GH¢150.00."

I wonder the kind of investigations that were done into the case. Investigations must be thorough and every aspect of the statement of the complainant and the accused must be investigated. I find that the investigator failed to investigate the claims made by the accused and straight away accepted the complainant's claims and jumped to the conclusion that the accused was liable for robbery by the use of offensive weapon, to wit scissors.

Section 150 of Act 29 states:

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.

Section 125 of Act 29 states:

A person steals if he dishonestly appropriates a thing of which he is not the owner.

Section 10(1) of NRCD 323 defines "Burden of Persuasion" and it states:

For the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.

Section 10(2) of the Evidence Act adds that:

The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establishes the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

Section 11 of NRCD 323 defines "Burden of Producing Evidence" and states further as follows:

(1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.
(2) 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 fact beyond a reasonable doubt.
(3) In a criminal action the burden of producing evidence, when it is on the accused as to any fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable

doubt as to guilt.

(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.

In *Ackah v. Pergah Transport Limited and Others*[2010] SCGLR 728; Sophia Adinyira JSC stated at page 736 that:

> *"It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things(often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as a jury. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable[sic] than its non-existence. This is a requirement of the law on evidence under sections 10 and 11 of the Evidence Decree[sic]."*

The court, after the prosecution had closed its case, proceeded to make a determination in accordance with section 173 of the *Criminal and Other Offences(Procedure)Act*, 1960(Act 30).

Section 173 of Act 30 states:

> *If at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him.*

The court found that Accused might have used force on PW1 but by the definition of *stealing* supra, the court held the view that Accused did not have the intent to steal from PW1. The court, therefore, held that the charge of robbery could not hold.

Section 154 of Act 30 states:

> *(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete lesser offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the lesser offence although he was not charged with it.*
> *(2) When a person is charged with an offence and facts are proved which reduce it to a lesser offence, he may be convicted of the lesser offence although he was not charged with it.*

The court found that Accused might be liable for the offence of *threat of harm* contrary to section 74 of Act 29, under count two.

Section 74 of Act 29 states:

> *Whoever threatens any other person with unlawful harm, with intent to put that person in fear of unlawful harm, shall be guilty of a misdemeanour.*

The court, by virtue of the foregoing findings, held that the prosecution had made out a case against Accused sufficiently on count one, and on count two in regard to the offence of *threat of harm*.

The court made reference to a pronouncement by Korsah CJ in *Commissioner of Police v. Isaac Antwi*[1961] GLR 408 and called on Accused to open his defence, if so desired. See section 174(1) of Act 30.

In *Commissioner of Police v. Isaac Antwi* supra, *per* Korsah CJ stated that:

"The fundamental principles underlying the rule of law that the burden of proof remains throughout on the prosecution and that the evidential burden rests on the accused where at the end of the case of the prosecution an explanation is required of him, are illustrated by a series of cases. Burden of proof in this context is used in two senses. It may mean the burden of establishing a case or it may mean the burden of introducing evidence. In the first sense it always rests on the prosecution to prove the guilt of the accused beyond reasonable doubt; but the burden of proof of introducing evidence rests on the prosecution in the first instance but may subsequently shift to the defence, especially where the subject-matter is peculiarly within the accused's knowledge and the circumstances are such as to call for some explanation."

The court proceeded to explain section 174(1) of Act 30/ section 63 of NRCD 323 as well as Article 19(10) of the *Constitution*, 1992 to Accused.

Section 174(1) of Act 30 states: *At the close of the evidence in support of the charge, if it appears to the Court that a case is made out against the accused sufficiently to require him to make a defence, the Court shall call upon him to enter into his defence and shall remind him of the charge and inform him that, if he so desires, he may give evidence himself on oath or may make a statement. The Court shall then hear the accused if he desires to be heard and any evidence he may adduce in his defence.*

Section 63 of NRCD 323 states: *(1) An accused in a criminal action may make a statement in his own defence without first taking an oath or affirmation that he will testify truthfully and without being subject to the examination of all parties to the action.*
(2) Such a statement by an accused is admissible to the same extent as if it had been made under oath or affirmation and subject to examination in accordance with sections 61 and 62.
(3) The fact that the evidence was given without oath or affirmation, or that there was no

possibility of examination, may be considered in ascertaining the weight and credibility of the statement, and may be the subject of comment by the court, the prosecution or the defence.

Article 19(10) of the *Constitution*, 1992 states: *No person who is tried for a criminal offence shall be compelled to give evidence.*

Accused chose to give a statement from the dock. Below is what Accused stated:

"John Nyan is someone I know. We play together and we use the same route to go to work. The said John Nyan called and said we should go and work. After we had done the work, John Nyan had to give me GH¢300.00 for the work I did. After the work I never saw John Nyan again and I did not receive the money I was to receive from him. On 28th February 2023, I met John Nyan and asked him to give me my money. He took GH¢150.00 from his bag and told me he was giving me GH¢50.00 as part payment of my money and that the following day he would give me the remainder of the amount he owed me. I then told John Nyan that it had taken so long for him to pay my money and so he should hand over his phone to me so that the following day he would give me the rest of my money and I would give the phone to him. I did not exert any force on John Nyan before collecting the phone from him. John Nyan gave the phone to me willingly. After John Nyan had given me the phone, I told him that we should meet the next day at where we played for me to give him his phone and that if he did not come to meet me, I would leave the phone with somebody there so that he would collect the phone and I mentioned that person's name to John Nyan. So the next day, John Nyan went to where we played and went to the person who I left the phone with. That person is called Sumaila Moro a.k.a. Renteni. John Nyan made the police arrest Renteni and the police retrieved the phone and gave it to John Nyan. What happened between me and John Nyan was based on the agreement the two of us had and so I do not understand why he should get the police to arrest me. I did not threaten John Nyan."

The following, inter alia, is the cross-examination Accused did of the prosecution witnesses:-

Of PW1:

Q. Mention the names of the three other people you stated that I was with.

A. I do not know any of them. They all boys

...

Q. Did you show to the police the part of your body that you claim that someone hit with wood.

A. Yes. There is a picture of that on phone.

Q. Did the police take a photograph of that.

A. No.

Q. Were you issued with any police medical form to attend hospital for you to be examined for confirmation that somebody hit you with wood.

A. No.

...

Q. I put it to you that I and the others did not take any phone and money of yours away.

A. You took my phone and money away.

Q. Rather I took GH¢150.00 from you which was money you owed me.

A. It is not true.

Q. I put it to you that I and some other people did not put any scissors nor knives or any other item at you; I am the only one who met you.

A. It is not true. You and three others met me.

Of PW2:

Q. Was there any mark on complainant showing that he had been hit with wood.

A. No. I didn't see any mark but complainant was complaining of pains.

Q. Did you give complainant a medical form to attend hospital with it.

A. Yes. But the complainant did not go to the hospital. He told me he didn't have money to attend hospital.

Q. I put it to you that what you just told the court is not true because I asked complainant and he told me you never gave him a medical form to attend hospital.

A. I gave him a medical form to attend hospital.

Q. Did you find any weapon at the place where complainant said he was attacked.

A. No.

Q. I put it to you that your evidence-in-chief is mere fabrication which seek to implicate me.

A. No."

Section 80 of NRCD 323 states:

(1) Except as otherwise provided by this Decree, the court or jury may, in determining the credibility of a witness, consider any matter that is relevant to prove or disprove the truthfulness of his testimony at the trial.

(2) Matters which may be relevant to the determination of the credibility of the witness include, but are not limited to the following:

(a) the demeanour of the witness;

(b) the substance of the testimony;

(c) the existence or non-existence of any fact testified to by the witness;

(d) the capacity and opportunity of the witness to perceive, recollect or relate any matter about which he testifies;

(e) the existence or non-existence of bias, interest or other motive;

(f) the character of the witness as to traits of honesty or truthfulness or their opposites;

(g) a statement or conduct which is consistent or inconsistent with the testimony of the witness at the trial;

(h) the statement of the witness admitting untruthfulness or asserting truthfulness.

In *Ntiri* v. *Essien* [2001-2002] SCGLR 451, it was held that the trial judge has the duty to ascertain credibility of a witness.

Though Accused was not subjected to cross-examination because he did not testify on oath or by affirmation, I do not find Accused to be credible as a witness.

I hereby pronounce Accused guilty on count one. And on count two, I find him guilty for the offence of *threat of harm*.

In sentencing Accused, I find that he has been well behaved before the court generally throughout the trial. I will therefore not impose a custodial sentence on him. Accused is sentenced to pay a fine of forty(40) penalty units on count one and in default serve six(6) months imprisonment. Accused is sentenced to pay a fine of fifty(50) penalty units on count two and in default serve six(6) months imprisonment. The sentences are to run concurrently.

(SGD)

HH YAW POKU ACHAMPONG

CIRCUIT COURT JUDGE

22/11/2023