IN THE CIRCUIT COURT, HELD IN NSUTA, ON FRIDAY, THE 26TH DAY OF APRIL 2024 BEFORE HER HONOUR WINNIE AMOATEY-OWUSU, CIRCUIT COURT JUDGE

CASE NO: 01//23

THE REPUBLIC

VRS.

ABDULLAI ALHASSAN

JUDGMENT

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1. On 3rd October 2022, the accused was arraigned before this Court on two counts of robbery and one count of causing harm contrary to Section 149 and 69 respectively of the Criminal Offences Act, 1960 (Act 29). He pleaded guilty with explanation to the robbery charges but not guilty to the charge of causing harm. Upon his explanation, the Court entered a plea of not guilty for him on the robbery charges.

2. A summary of the facts as contained in the accompanying Charge Sheet and read by the prosecution at the commencement of the case is that, the complainants are Janet

Serwaa, aged 25, a hairdresser apprentice resident at New Town Mampong-Ashanti; and Boakye Nana Yaa Konadu, aged 22, a nurse resident at Abrukutuaso Mampong-Ashanti. The accused, aged 20, is a farmer resident at Zongo Mampong. On 26th September 2022 at about 12:00 noon, Janet Serwaa was on her way home from work due to ill health to attend hospital for treatment. At a section of the road and a place called "Odii" at Abrukutuaso, a suburb of Mampong-Ashanti, the accused emerged from a nearby bush wielding a cutlass and attacked her from behind in an attempt to snatch her bag amidst threat of death if she refused to surrender her bag containing iPhone seven plus valued GH¢1,500, rings valued GH¢30, make-up valued GH¢20 and a cash sum of GH¢600. Out of fear for her life, Janet Serwaa gave out the bag containing the items mentioned and the accused bolted with same. She made a report to the Police. Later the same day, around 6:58 p.m., the accused attacked Boakye Nana Konadu with the same cutlass around the same spot popularly known as "Odii" while she was on her way her home after work, inflicted serious wounds on her right arm, bit her right ring finger and robbed her of her

iPhone 13 mobile phone valued GH¢8,000, laptop charger valued GH¢450, power bank valued GH¢300, iPod valued GH¢2,500 and a pair of shoes valued GH¢100 and absconded with same. Boakye Nana Yaa Konadu reported the case to the Police and a medical form was issued to her to attend a facility for treatment. On 29th September 2022, the accused was arrested from his hideout and a search conducted on him revealed the iPhone seven plus and iPhone 13 mobile phones. In his Investigation Cautioned Statement, the accused admitted the offence in respect of the two retrieved mobile phones but denied knowledge of the other items. The scene of crime was visited which also captured the exhibit cutlass, slippers and scissors purported to have been used in committing the crime. After investigations, the accused was charged before this Court.

3. Article 19(2)(c) of the 1992 Constitution states that an accused is presumed innocent until he is proved guilty or he pleads guilty. In a criminal trial, the burden rests with the prosecution to prove the charge against the accused.

4.The burden of proof in criminal cases is codified in the Evidence Act, 1975 (NRCD 323) as follows:

"Burden of Proof

10. Burden of persuasion defined

(1) For the purposes of this Act, 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.

(2) The burden of persuasion may require a party

(a) to raise a reasonable doubt concerning the existence or non-existence of a fact, or

(b) to establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

11. Burden of producing evidence defined

(1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.

(2) In a criminal action, the burden of producing evidence, when it is on the prosecution as to a fact which is essential to guilt, requires the prosecution 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.

(3) In a criminal action, the burden of producing evidence, when it is on the accused as to a fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt.

13. Proof of crime

(1) In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt.

(2) Except as provided in section 15 (c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt."

Also, Section 22 of NRCD 323 provides:

"22. Effect of certain presumptions in criminal actions

In a criminal action, a presumption operates against the accused as to a fact which is essential to guilt only if the existence of the basic facts that give rise to the presumption are found or otherwise established beyond a reasonable doubt, and, in the case of a rebuttable presumption, the accused need only raise a reasonable doubt as to the existence of the presumed fact."

5.In **Abdul Raman Watara Benjamin v. The Republic, Criminal Appeal No. H2/17/2019 dated 9th July, 2020 (unreported),** the court stated, "It is trite that in criminal trials it is the duty of the prosecution to prove the case against the accused person beyond reasonable doubt. This has been codified in sections 11(2), 13(1) and 22 of the Evidence Act, 1975 (NRCD 323). At the end of the trial the prosecution must prove every element of the offence and show that the defence is not reasonable. The prosecution assumes the burden of persuasion or the legal burden as well as the evidential burden or the burden to produce evidence. The legal burden or the burden of persuasion is to prove every element of the charge. The evidential burden is to adduce evidence that will suffice to establish every element of the offence. This burden remains on the prosecution throughout the case. Proof beyond reasonable doubt also implies that it is beyond dispute that the accused person was the one who committed the offence." Also, in **Asare v. The Republic [1978] GLR 193 @ 197**, Anin JA held, "As a general rule there is no burden on the accused; that he is presumed innocent until his guilt is established beyond

reasonable doubt; that the burden is rather on the prosecution to prove the charge against him beyond reasonable doubt".

6. In **Brobbey & Ors v. The Republic [1982-83] GLR 608,** Twumasi J explained the expression "proof beyond reasonable doubt" as follows: "Proof beyond reasonable doubt in a criminal trial implies that the prosecution's case derives its essential strength from its own evidence. Therefore, where part of the evidence adduced by the prosecution favors the accused, the strength of the prosecution's case is diminished proportionately and it would be wrong for a court to ground a conviction on the basis of the diminished evidence." Lord Denning MR in **Miller v. Minister of Pensions [1947] ALL ER 372** also explained the principle when he stated that: "The degree of cogency need not reach certainty but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to affect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his

favor which can be dismissed with a sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt but nothing short of that will suffice".

7. When the prosecution makes a prima facie case against the accused and the Court calls on the accused to open his defence, the accused's only duty is to raise a reasonable doubt about his guilt. See Section 11(3) and 13(2) of NRCD 323. In **Commissioner of Police v. Antwi [1961] GLR 408**, the court held, "The fundamental principles underlying the rule 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 accused is not required to prove anything. If he can merely raise a reasonable doubt as to his guilt he must be acquitted."

8. In considering the accused's defence, the Court is bound to consider any evidence which favors his case as well as the

cautioned statements obtained from him by the Police and tendered during the trial. See **Kwame Atta & Anor v. Commissioner of Police [1963] 2 GLR 460; Annoh v. Commissioner of Police [1963] 2 GLR 306.** Further, questions asked and answers given during cross-examination form part of a party's evidence and must be considered by the court in evaluating the evidence as a whole. See **Ladi v. Giwah [2013-2015] 1 GLR 54.**

9. In **Lutterodt v. Commissioner of Police [1963] 2 GLR 429,** the Supreme Court per Ollennu JSC set out how the court should approach the defence of the accused as follows: "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."

10. Also, in **Republic v. Francis Ike Uyanwune [2013] 58 GMJ 162, CA,** it was held per Dennis Adjei, JA that: "The law is that the prosecution must prove all the ingredients of the offence charged in accordance with the standard burden of proof; that is to say the prosecution must establish a prima facie case and the burden of proof would be shifted to the accused person to open his defence and in so doing, he may run the risk of non-production of evidence and/ or non-persuasion to the required degree of belief else he may be convicted of the offence. The accused must give evidence if a prima facie case is established else he may be convicted and, if he opens his defence, the court is required to satisfy itself that the explanation of the accused is either acceptable or not. If it is acceptable, the accused should be acquitted and if it is not acceptable, the court should probe further to see if it is reasonably probable. If it is reasonably probable, the accused should be acquitted, but if it is not, and the court is satisfied

that in considering the entire evidence on record the accused is guilty of the offence, the court must convict him. This test is usually referred to as the three-tier test."

11. Upon the direction of the Court, the prosecution filed its Witness Statements and other disclosures on 2nd February 2023. Case Management Conference was held and the case proceeded to trial with the prosecution's case. Subsequently, in the course of the trial, the prosecution sought leave to file the Investigation Cautioned Statement in respect of Nana Yaa Konadu, one of the complainants, on grounds that it could not trace the said statement at the time of filing its disclosures on 2nd February 2023. Leave was granted and upon that, on 3rd August 2023, the prosecution filed the Investigation Cautioned Statement relating to Nana Yaa Konadu. The prosecution called four witnesses who relied on their Witness Statements and the other disclosures as their evidence in this case. They are:

i. Boakye Nana Yaa Konadu–PW1: One of the complainants/victims. She is a nurse resident at Abrukutuaso, Mampong-Ashanti;
ii. Janet Serwaa - PW2: One of the complainants/victims. She is a hairdresser apprentice resident at New Town, Mampong-Ashanti;
iii. Kwadwo Dwomoh – PW3: A driver resident at Asikafoamantem, Mampong-Ashanti; and
iv. No. 5888 PW/D/Sgt. Josephine Jubin Afriyie – PW4: The investigator of the case stationed at the Station CID, Mampong-Ashanti.

12. The following were tendered by the prosecution through PW4:

i. Exhibit A: Investigation Cautioned Statement of the accused dated 29th September 2022 in respect of PW2;
ii. Exhibit B: Investigation Cautioned Statement of the accused dated 30th September 2022 in respect of PW1;

iii. Exhibit C: Charge Cautioned Statement of the accused dated 29th September 2022 in respect of PW2;

iv. Exhibit D: Charge Cautioned Statement of the accused dated 29th September 2022 in respect of PW1;

v. Exhibit E: Photograph depicting the cutlass wound inflicted on PW1's right arm by the accused;

vi. Exhibit E1: Photograph of the accused's pair of slippers and cutlass retrieved from the scene of crime;

vii. Exhibit E2: Photograph of scene of crime;

viii. Exhibit E3: Photograph of PW2's mobile phone retrieved from the accused;

ix. Exhibit E4: Photograph of PW1's mobile phone retrieved from the accused;

x. Exhibit E5: Photograph of a pair of scissors found in the possession of the accused at the time of his arrest; and

xi. Exhibit F: Further Statement of the accused dated 30th September 2022 in respect of PW1.

13. By the Court's Ruling delivered on 16th February 2024, the Court held that the prosecution had made a prima facie case against the accused on the two counts of robbery (count 1 and 2) but not on the count of causing harm. Consequently, the accused was invited to answer count 1 and 2 but acquitted and discharged on the charge of causing harm (count 3). The accused testified personally but called no witness. With the permission of the Court, the accused gave viva voce evidence. He did not tender any exhibit.

14. I shall now deal with the charges, evaluating the evidence against the accused to determine if it meets the standard of proof of proof beyond reasonable doubt and the accused's defence, if it raises a reasonable doubt.

15. Count 1 and 2 read:

"COUNT ONE

STATEMENT OF OFFENCE

ROBBERY: CONTRARY TO SECTION 149 OF THE CRIMINAL OFFENCES ACT, 1960 (ACT 29).

PARTICULARS OF OFFENCE

ABDULAI ALHASSAN, AGED 20, FARMER: For that you, on the 26th day of September, 2022, about 12:00 noon at a place popularly known as "Odii", Mampong in the Ashanti Circuit and within the jurisdiction of this court, did steal a thing namely, dressing bag containing iPhone 7 plus valued GH¢1,500.00, rings valued GH¢30.00, make up valued GH¢20.00 and a cash the sum of GH¢600.00 in possession of Janet Serwaa and for the purpose of stealing the thing, used force on the said Janet Serwaa with intent to prevent or overcome the resistance of that other person to the stealing of the thing.

COUNT TWO

STATEMENT OF OFFENCE

ROBBERY: CONTRARY TO SECTION 149 OF THE CRIMINAL OFFENCES ACT, 1960 (ACT 29).

PARTICULARS OF OFFENCE

ABDULAI ALHASSAN, AGED 20, FARMER: For that you, on the 26th day of September, 2022, about 6:58pm at a place popularly known as "Odii", Mampong in the Ashanti Circuit and within the jurisdiction of this court, did steal a thing namely, an iPhone 13 mobile phone valued GH¢8,000.00, laptop charger valued GH¢450.00, power Bank valued GH¢300.00, iPod valued GH¢250.00 and a pair of shoes valued GH¢100.00 in possession of Boakye Nana Yaa Konadu and for the purpose of stealing the thing, caused harm to Boakye Nana Yaa Konadu with intent to prevent or overcome the resistance of that other person to the stealing of the thing."

16. Section 149 (1) of Act 29 as amended by the Criminal Offences (Amendment) Act, 2003 (Act 646) states that a person who commits robbery is guilty of an offence and shall be liable, upon conviction, 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, to imprisonment for a term of not less than fifteen years. Section 150 states that a person who steals a thing commits 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 to prevent or overcome the resistance of that person to the stealing of the thing. The offence of stealing is created under Section 124 (1) of Act 29. Under Section 125 of Act 29, a person steals when he dishonestly appropriates a thing of which he is not the owner. A thing is not stolen unless taken without the consent of the owner or his duly authorised agent. See **Salifu v. The Republic [1974] 2 GLR 291; Ampah v. The Republic [1977] 2 GLR 171.** To successfully prove the charge, the prosecution must lead sufficient evidence to prove that:

i. The accused stole a thing;
ii. In stealing the thing, the accused used force or threat or criminal assault or harm on the victim; and
iii. The force or threat or criminal assault or harm used was with the intent to prevent or overcome the resistance of the victim or any other person to the stealing of the thing.

See **The Republic v. Aaron Mfarfo [2011] DLHC 7952; Kwabena Mensah v. The Republic [2021] DLCA 10047**

17. In **Behome v. The Republic [1979] GLR 112,** the court stated, **"**The essence of robbery is the taking of property by violence or by threat of violence to a person with the intent that the resistance of that person or any other person will be prevented or overcome to the stealing of the thing. A mere idle show or threat of violence excited can hardly satisfy the test. It is, however, enough if money is demanded and the fact be attended with such circumstances of violence or threats, as, in common experience, are likely to create an apprehension of danger and induce a person or a member of his family to part with the money…. From the authorities explaining robbery at common law (upon whose principles section 150 of Act 29 is framed) the fear may be either of personal violence to the person robbed, or to a member of his family. Family here is, of course, applied in the restrictive sense of a man, his wife and children. Again, the thing stolen must be from the person of the one threatened, or in his presence, if the property is under his immediate and personal care and protection."

18. PW1 testified that on 26th September 2022 at about 6:58 p.m., while on her way home from work, and upon reaching a section of the road, she had a phone call. She was also using her iPhone 13 mobile phone valued GH¢8,000 as a flashlight for safe movement to her house. Exactly at a spot called "Odit", a young man in a pair of dirty jeans with brown belt wearing slippers and holding a cutlass ordered her to hand over her phone to him. She refused and the young man struggled with her and overpowered her, took her phone together with her brown lady's handbag containing her laptop charger, power bank, iPod, shoes and keys, whose value she does not know. Later, she felt some sharp pain in her lower right arm and detected that she had been injured with the cutlass. She took the cutlass and the young man's slippers which he had left behind to the Police Station and lodged a complaint.

19. PW2 also testified that on 26th September 2022 at about 12:00 noon, she was feeling unwell at work and decided to go back home. On reaching a section of the road at Abrukutuaso at a place popularly called 'Odiee', she was suddenly attacked

from behind by a young man whose name she does not know but can identify when seen. The young man held her handbag and she struggled with him to prevent him from snatching it but he pulled out a cutlass and threatened to slash her with it so she handed her handbag containing her iPhone seven plus valued GH¢1,500, rings valued GH¢30, make-up valued GH¢20 and cash sum of GH¢60 to him out of fear and panic. She screamed for help but nobody came to her aid. Later, she went to the Police Station to make a report.

20. PW3 testified that on 26th September 2022 at about 12:30 p.m., while on his way to town, he heard someone shouting "thief, thief, thief" but he did not see anyone and the shouting ceased. He thought someone was stealing plantain because there were a lot of plantains cultivated at the direction from which the shouting came. Few minutes later, a young man without slippers whose name he does not know but can identify when seen, passed by him with a cutlass around his neck and blood oozing from the back of his neck. When he saw the young man, he became suspicious and told him that in the event anyone told him his or her item was stolen, he

would direct the person to him because he knew him very well. Later that day, PW2 saw him and told him someone had snatched her mobile phone from her. After the accused had been arrested, he went to the Police Station and identified him as the one he saw on the day of the incident.

21. PW4 testified that on 26th September 2022 at about 4:50 p.m., she was on duty as the available investigator when a robbery case involving the accused was reported by PW1 and PW2 and referred to her for investigation. She took statements from PW1, PW2 and witnesses and the Police, acting on intelligence, arrested the accused from his hideout and Investigation Cautioned Statement was obtained from him. Subsequently, she charged the accused with the offences herein.

22. In her evidence-in-chief, PW1 did not give the physical description of her attacker apart from his clothing. However, under cross-examination, she stated she could identify her attacker when seen and that the accused was the one who attacked her with the cutlass on the said date. PW2 also did

not give any description of her attacker in her evidence-in-chief but stated under cross-examination that prior to the accused's arrest when the Police called her to come and identify her attacker from among the initial suspects, she did and told the Police her attacker was not one of them. She said her attacker was slim, dark in complexion and had a haircut and that he was bare chested or shirtless and wore a black pair of trousers and that the accused is that person. I must state that on 2nd June 2023 as the accused stood in Court, I made the impression that he is slender but not dark in complexion. Be that as it may, I am mindful that about eight months had elapsed since the incident and therefore, the possibility of bodily change, in whatever form, could not be overlooked.

23. In **Adu Boahene v. The Republic [1972] 1 GLR 70,** the court held that where the identity of an accused is in issue, there can be no better proof of his identity than the evidence of a witness who mounts the witness-box and swears that the man in the dock is the one he saw committing the offence, which is the subject-matter of the charge before the court.

24. PW3 maintained under cross-examination that the accused was the one he saw on the said date and that he knows him very well. He said the accused used to come to a place called Tadieeano to do his job. Under re-examination, he explained that Tadieeano is a suburb of Akyeremade.

25. PW4 testified under cross-examination that when the accused gave his Investigation Cautioned Statement, he stated that after robbing the complainants, he sold the mobile phones to one Kwaku Feli. So, the Police proceeded with the accused to see the said Kwaku Feli but he was not around. But through Kwaku Feli's aged grandmother, the two mobile phones were retrieved. After the retrieval of the mobile phones, the complainants were called and they came to identify them as theirs. She testified further that the accused was the one who led her and one Abdul Majeed Dramani to Kweku Feli's house where the complainants' phones were retrieved from Kwaku Feli's grandmother. PW1 also testified under cross-examination that, as soon as the accused was arrested, the Police brought her a phone to identify which she identified as

hers. She described her phone as a blue black iPhone 13 in a case with her picture on it. See Exhibit E4. Also, according to PW2, it was when the accused was arrested that the Police handed her phone to her and told her it was retrieved from him. She said when Majeed brought the accused to the Police Station, he came along with her phone. See Exhibit E3.

26. By way of defence, the accused raised for the first time, the defence of alibi when he gave his sworn testimony on 1st March 2024. He denied he robbed the complainants. He testified that on 26th September 2022, he went to the farm with his father, Abdullai Mohammed at Botoku near the Akenten Appiah-Menka University of Skills Training and Entrepreneurial Development (AAMUSTED), Mampong. He said that on the said date, he did not even go to town and thus, could not have committed a robbery. He said on the day of his arrest, he had gone to Akyeremade to see a 'koko' seller whom he called "Maame" to ask whether she would buy his maize. On arrival at the 'koko' seller's house at a place known as Jamaica Spot, some young men around told him a certain slim

young man had robbed someone of his or her belonging and that that young man was him. The young men arrested him and took him to the Mampong Police Station. He said he did not meet the 'koko' seller so he made up his mind to go and have a haircut. The barber told him he was going to buy blade so he asked the barber to give him his pair of scissors and comb, which he did, after which he left to go and buy the blade. It was while waiting for the barber that the young men came to arrest him and removed the pair of scissors and accused him of being a murderer because of the pair of scissors in his possession. They took him to the Police Station. At the Mampong Police Station, nothing incriminating was found on him concerning the complaint made to the Police. He was kept in the Police cell as they said they were conducting investigation. PW4 told him that a certain young man called Kwaku Feli's grandmother had brought some phones to the Police that Kwaku Feli said he (the accused) gave them to him. But, he did not see Kwaku Feli nor his grandmother.

27. Exhibit A is the Investigation Cautioned Statement of the accused dated 29th September 2022 and obtained by PW3 in

respect of the complaint by PW2. The accused admitted he robbed PW2 of her mobile phone but denied robbing her of her handbag. He said, he went to sell the phone to one Kwaku Feli at a cost of GH¢200. In his Charge Cautioned Statement obtained the same day, Exhibit C, the accused relied on his former statement, Exhibit A.

28. Exhibit B is the Investigation Cautioned Statement of the accused dated 30th September 2022 and obtained by PW3 in respect of the complaint by PW1. The accused denied robbing PW1 of her mobile phone and further denied using a cutlass to cause harm to her hand. In his Charge Cautioned Statement obtained on 29th September 2022, Exhibit D, the accused relied on his former statement, Exhibit B. On 30th September 2022, the accused gave a Further Statement in respect of PW1, Exhibit F, and stated that on 26th September 2022 at about 6:00 p.m., he met PW1 and snatched her mobile phone but she started struggling with him to get her phone back. He said he did not know if PW1 sustained any injury because of the struggle and that he did not attack her with a cutlass.

29. Exhibit A and F are confessions. Whereas Exhibit A was admitted without any objection from the accused, Exhibit F was admitted after a mini trial. Confessions are governed by Section 120 of NRCD 323. A confession statement voluntarily made in accordance with the law is admissible and sufficient ground for the conviction of an accused. See **Duah v. The Republic [1987-88] 1 GLR 343.** In **Ekow Russell v. The Republic [2017-2020] SCGLR 469,** Akamba JSC stated, **"**A confession is an acknowledgment in express words, by the accused in a criminal charge, of the truth of the main fact charged or of some essential part of it. By its nature, such statement if voluntarily given by an accused person himself, offers the most reliable piece of evidence upon which to convict the accused. It is for this reason that safeguards have been put in place to ensure that what is given as a confession is voluntary and of the accused person's own free will without any fear, intimidation, coercion, promises or favours."

30. In the recent case of **Francis Arthur v. The Republic, Criminal Appeal No. J3/02/2020 dated 8th December 2021 (unreported),** the Supreme Court held that confession statements may be used alone in the conviction of an accused person, and such evidence is sufficient as long as the trial judge enquired most carefully into the circumstances in which the alleged confession was made and was satisfied of its genuineness. In the earlier case of **State v. Otchere & Ors [1963] 2 GLR 463,** the Supreme Court stated that a confession made by an accused in respect of the crime for which he is tried is admissible against him provided it is affirmatively shown on the part of the prosecution that it was free and voluntary and that it was made without the accused being induced to make it by any promise or favour, or by menaces, or undue terror. That, a confession made by an accused of the commission of a crime is sufficient to sustain a conviction without any independent proof of the offence having been committed by the accused.

31. In Exhibit C, the accused relied on Exhibit A, the confession. When an accused has an opportunity to give another statement to the Police and he relies on his former or earlier statement, it is deemed that he gave the statements voluntarily. See **Kerechy Duru v. The Republic [2014] 71 GMJ 186**. As indicated earlier, Exhibit F was admitted after a mini trial when the Court satisfied itself that same was taken in compliance with Section 120 of NRCD 323. I have also given thoughtful consideration to Exhibit A and find that it was taken in the presence of an independent witness in the person of one Abdul Majeed Dramani who gave his certificate indicating the accused voluntarily gave the statement and same was read and explained to him after which the accused thumbprinted to signify his approval. Exhibit A thus meets the requirements of Section 120 of NRCD 323.

32. It will be observed that in both Exhibit A and F, the accused admitted robbing PW1 and PW2 of their mobile phones but not their other belongings. The law is certain that in an offence involving dishonesty, the charge is sustained, however paltry

the amount or value proven by the prosecution or admitted by the accused. See **Section 123 (1) and (2) of Act 29; Obeng Alias Donkor & Ors v. The State [1966] GLR 25; The Republic v. Mohammed Libabatu & 2 Ors [2016] DLHC 7656.**

33. Despite the accused's claim that he did not know Kwaku Feli, Exhibit A shows clearly that he knows him and that he did sell the two phones he robbed to him. Although he did not mention in Exhibit F what he did with PW1's phone which he robbed, there is evidence from PW4 that PW1 and PW2's phones were retrieved from Kwaku Feli's grandmother when the accused led them to Kwaku Feli's house.

34. Even though the accused admitted to the robbery in Exhibit A and F, he denied that he attacked PW1 and PW2 with a cutlass. But, PW1 and PW2 testified that the accused attacked them with a cutlass in order to rob them. Also according to PW1, at the time the accused robbed her around 6:58 p.m., he was wearing a pair of dirty jeans with brown belt and slippers. There is evidence that the accused is a farmer and therefore the

probability that he was on his way to, or from the farm at the times the incidents occurred cannot be overruled. The accused himself has told this Court in his sworn testimony that he went to the farm on the said date. Being a farmer, I daresay he would not go to the farm without at least, a cutlass. Exhibit E1 depicts the accused's pair of slippers and cutlass which PW1 said she picked and took to the Police to report the crime. There is also evidence from PW3 that he saw the accused wielding a cutlass shortly after the evidence shows he had robbed PW2. A cutlass can easily be seen and identified when someone is holding it and I have no doubt in my mind that PW1, PW2 and PW3 are credible, unlike the accused whom the evidence shows is not worthy of believe.

35. Apart from the accused's incoherent narration in his evidence-in-chief which goes to show that he was while in the witness box fabricating his lies, there is also the defence of alibi which he raised for the first time which is inconsistent with Exhibit A and F. The accused gave no reasonable explanation for the contradiction. In **Gyabaah v. Republic [1984-86] 2 GLR**

461 @ 471, the Court of Appeal per Osei-Hwere JA held that, "For the law was that a witness whose evidence on oath was contradictory of a previous statement made by him, whether sworn or unsworn, was not worthy of credit and his evidence could not be regarded as being of any importance in the light of his previous contradictory statement unless he was able to give a reasonable explanation for the contradiction." See also **Odupong v. Republic [1992-93] GBR 1038**

36. Where an accused intends to put forward as a defence a plea of alibi, it is provided in Section 131(1)(a) of the Criminal Offences (Procedure) Act, 1960 (Act 30) that the accused shall, before the prosecution calls its first witness in a summary trial as in this case, give notice of the alibi to the prosecution with particulars as to the time, place and of the witnesses by whom it is proposed to be proved. Apart from merely denying he robbed PW1 and PW2, the accused did not at any stage of the case, give the slightest indication that he had an alibi. Despite raising the defence of plea of alibi too late in the day and his non-compliance with Section 131, same will be considered by the Court.

37. The evidence before the Court is that the accused is a farmer. He said he was nowhere near or at the crime scene on 26th September 2022. He said on the said date, he went to the farm with his father, Abdullai Mohammed at a place called Botoku and did not even go to town. Although his alibi hinges on his father's testimony, he failed to call him as a witness. In **Mallam Ali Yusuf Issah v. The Republic [2003] DLSC2390**, the Supreme Court stated, "The burden of producing evidence and the burden of persuasion are the components of 'the burden of proof'. Thus, although an accused person is not required to prove his innocence, during the course of his trial, he may run a risk of non-production of evidence and/or non-persuasion to the required degree of belief, particularly when he is called upon to mount a defence." See also **Republic v. Francis Ike Uyanwune [supra]**

38. There is ample evidence from Exhibit A and F that the accused was at the crime scene on the said date and therefore, I consider his belated plea of alibi merely an afterthought. I do

not find the accused's defence acceptable or reasonably probable.

39. I find that the accused has failed to raise reasonable doubt about his guilt on both counts. I find him guilty and he is accordingly convicted.

40. In passing sentence, I have taken into account the fact that the accused is a first offender and his mitigation plea. I am mindful that in committing the robbery, he used a cutlass, an offensive weapon within the meaning of Section 146(3) of Act 29 as amended by Act 646. Therefore, the minimum applicable punishment is imprisonment for a term of 15 years. Further, I am mindful that he has been in lawful custody throughout the duration of the case due to his failure to execute his bail. I sentence him to 18 years' imprisonment IHL on each count. The sentences shall run concurrently.

SGD.

HH WINNIE AMOATEY-OWUSU

CIRCUIT COURT JUDGE

PARTIES AND REPRESENTATION:

1. **THE ACCUSED PRESENT AND SELF-REPRESENTED**
2. **C/INSP. KOFI AMANKWAH FOR THE PROSECUTION PRESENT**