IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE SITTING AT NSAWAM MEDIUM SECURITY PRISONS ON TUESDAY, 30TH MAY 2023

CORAM: HIS LORDSHIP JUSTICE KOFI NYANTEH AKUFFO – JUSTICE OF THE HIGH COURT

CASE NO. D15/20/2018

UZOKING CHINAGORO

V.

THE REPUBLIC

JUDGEMENT

INTRODUCTION

Uzoking Chinagoro (hereinafter called "Appellant") was charged with the following offence at the Circuit Court sitting at Takoradi.

- Robbery, Contrary to Section 149 of the Criminal Offences Act-Act 29, 1960. He pleaded not guilty.

After a full trial, he was convicted and sentenced to twenty (20) years in prison.

The brief facts of the case before the trial court was that the Appellant, on the 21st November, 2013 robbed the complainant (Paul Armah) and took away his money.

According to the facts narrated to the trial court, the Appellant used a pistol during the Robbery. Dissatisfied with and aggrieved by the conviction, the Appellant has appealed against same.

The following are the grounds of Appeal:

1. That the findings of the trial are not supported by the evidence.
2. The learned trial judge erred in law and in fact when she called upon the Appellant to open his defence when at the close of the prosecution case there had been no evidence to constitute a prima facie case against the Appellant.
3. At the end of the prosecution case there was no evidence which proved the guilt of the Appellant in respect of all the essential ingredients of the offence of robbery.
4. That at the end of the case for the prosecution there was reasonable doubt that the offence of robbery had been committed and that it was the Appellant who was the offender.
5. The learned trial judge admitted inadmissible hearsay evidence that did not form part of the res gestae.
6. That the prosecution case was full of material conflicts or irreconcilable discrepancies and such was manifestly unreliable.
7. The identity of the Appellant was not sufficiently proved.
8. The Applicant did not receive a fair trial.

Both the Appellant and the Republic filed written submissions.
The Appellant also filed a supplementary submission.

For the same of a systematic and methodical approach, I proceed to elaborate on the following:

(a) Burden and standard of proof in Criminal trials.
(b) Elements/ingredients of the offence under consideration.
(c) The applicable principles governing appeals against conviction.
(d) The decision of the court.
(e) Conclusion.

BURDEN AND DEGREE OF PROOF

With regards to criminal trials in this jurisdiction, it is the duty of the prosecution to prove the guilt of the Accused person.
Moreover, the guilt of the Accused person needs to be proved to the degree of beyond reasonable doubt. The dicta of two (2) prominent Jurists are in point.

S.A.Brobbey J (as he then was) stated the following in **Republic v. District Magistrate Grade II, Osu, ex parte Yahaya (1984-1986) 2 GLR 361 at 365:**

> **"…One of the cardinal principles of criminal law in this country is that when an accused person pleads not guilty, his conviction must be based on evidence proved beyond reasonable doubt…".**

The ubiquitous Ollenu JSC, on his part, stated as follows in the celebrated case of **Oteng v. The State (1996) GLR 352 at 354, SC:**

> **"…The citizen too is entitled to protection against the state and that our law is that a person accused of a crime is presumed to be innocent until his guilt is prove beyond reasonable doubt….".**

So what constitute reasonable doubt?

Once again, the words of two (2) eminent common law Jurists amply define its meaning. Justice Shaw, former Chief Justice of the United States of America (USA) stated as follows in 1850, during the trial of Professor Webster of Harvard University for the murder of Dr. Parkman.

> **"… It is the condition of mind which exists, when Jurors cannot say that they feel an abiding conviction, a moral certainty of the truth of the charge. For it is not sufficient for the prosecution to establish probability, even though a strong one according to chance. He must establish the fact to a moral certainty, a certainty that convinces the understanding, satisfies the reason and directs the Judgement…".**

On a more recent note, Denning J (as he then was) commented on the topic as follows in the case of **Miller v. Minister of Pensions (1947) 2 All ER 372 at 373:**

> **"…It need not reach certainty, but it must carry a high degree of probability, proof beyond reasonable doubt does not mean proof beyond shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice… if the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible but not in the least probate', the case is proved beyond reasonable doubt…".**

ELEMENTS/INGREDIENTS OF OFFENCE UNDER CONSIDERATION

The current offence under consideration is the offence of Robbery. It is defined in **Section 150 of Act 29, 1960** as follows:

"A person who steals a thing commits robbery.

- **(a) If in, and for the purpose of stealing the thing, that person uses force or causes harm to any other person, or**
- **(b) If that person uses a threat or criminal assault or harm to any other person, with intent to prevent or overcome the resistance of other person to the stealing of the thing.".**

In the case of **Kofi Asiedu v. The Republic- Criminal Appeal No. H2/16/2010,** the respected Dennis Dominc Adjei, JA; elaborated on the ingredients of Robbery as follows:

> **"From the above definitions, a charge of robbery could be proved where one uses force or causes harm to any other person in his effort to steal something or the person who is stealing must have used threat or criminal assault or harm to any person with intent to prevent or overcome the resistance of the other person to the stealing"**

THE APPLICABLE PRINCIPLES GOVERNING APPEALS AGAINST CONVICTION

So, what are the grounds upon which an Appellate Court can rightly disturb the findings of a trial court?
The most important ground is that there has been a substantial miscarriage of justice.
Additionally, is it apt to establish that there exists three (3) ways upon which substantial miscarriage of justice can be grounded.
The esteemed scholar and Jurist, Dennis Dominic Adjei, in his authoritative book, Criminal Procedure and Practice in Ghana, Volume 1, wrote the following on what constitutes substantial miscarriage of justice at page 469:

> **"…There is one main ground under which an appeal may succeed, that is where the Appellant proves that there is a substantial miscarriage of justice. There are three separate grounds of Appeal which constitute substantial miscarriage of justice and a successful proof of any one of them may allow the appeal. The first ground is where the appellate court considers that the verdict or conviction or acquittal ought to be set aside on grounds that it is unreasonable or cannot be supported having regard to the evidence. The second ground is where the court considers that the judgement was decided on wrong question of law or fact. The last ground is where the court finds that there was a miscarriage of justice. Any other ground of appeal outside the three grounds discussed above shall fail. The Court shall dismiss any appeal on procedural error or defect or technically unless it has occasioned substantial miscarriage of justice…".**

DECISION OF THE COURT

As stated ut Supra, there are eight (8) grounds of Appeal against the conviction of the Appellant.
For the sake of emphasis, they are as follows:

1. That the findings of the trial are not supported by the evidence.
2. The learned trial judge erred in law and in fact when she called upon the Appellant to open his defence when at the close of the prosecution case there had been no evidence to constitute a prima facie case against the Appellant.
3. At the end of the prosecution case there was no evidence which proved the guilt of the Appellant in respect of all the essential ingredients of the offence of robbery.
4. That at the end of the case for the prosecution there was reasonable doubt that the offence of robbery had been committed and that it was the Appellant who was the offender.
5. The learned trial judge admitted inadmissible hearsay evidence that did not form part of the res gestae.
6. That the prosecution case was full of material conflicts or irreconcilable discrepancies and such manifestly unreliable.
7. The identity of the Appellant was not sufficiently proved.
8. The Applicant did not receive a fair trial.

As stated ut Supra, in support of their positions, both the Appellant and the Republic filed written submissions.

Amongst the points raised in the Appellant's written submissions are the following:

(a) There exist no proof that any items were taken from the house of the complainant.
(b) There is no evidence of the Appellant taking money from the House of the complainant.
(c) The reliance on hearsay evidence by the trial Judge to prove stealing was wrong.

(d) The trial Judge committed an error of law when she invited the Appellant to upon his defence notwithstanding the inability of the prosecution to prove the guilt of the Appellant in respect of the elements of the offence.
(e) The fact that the Appellant was wrongly identified.
(f) The failure by the trial Judge to observe and take into consideration the Turnbull Guidelines.
(g) The trial Judge admitted inadmissible evidence and that was an error of law.
(h) The specific time of the alleged Robbery was not available to the trial court.
(i) The trial judge was prejudiced against the Appellant.
(j) There was failure by the investigator to conduct requisite Forensic Investigations.
(k) The tendering of the Ballistic Report without the Ballistic Expert appearing in court was wrong.
(l) The trial Judge failed to record what the Appellant said in mitigation but proceeded to take into consideration a plea of leniency by the Appellant.
(m) There existed contradictions and discrepancies in the evidence provided by prosecution witnesses.
(n) The trial Judge wrongly placed the burden of proof on the Appellant.

The authourties relied on by the Appellant in support of the instant Appeal includes the following:

(1) Yirenkyi v. Republic (2016) 99 GMJ 1 S.C.
(2) Russell v. The Republic (2016) 102 GMJ 124 S.C.
(3) The State v. Ali Kassena (1962) 1 GLR.
(4) Nyarko & others v. The State (1963) 2GLR.
(5) Donkor v. The State (1964) GLR, 812.
(6) Adu Boahene v. The Republic (1972) 1GLR.
(7) Hanson v. The Republic (1978) GLR.
(8) Ratten v. The Republic (1972) AC378.

(9) **The Republic v. Andrews (1987) AC281.**
(10) **The Republic v. Turnbull (1977) 1 QB 224.**
(11) **The Republic v. Thomas (1994) Crimi. LR 128.**
(12) **Bater v. Bater (1951) P35 pp36-38**

With regards to the written submissions filed by the Republic, same contained complete rebuttal of the points raised and canvassed by the Appellant.

The following are some of the authorities relied on by the Republic in their vehement disagreement of the points contained in the Appellant's written submissions.

(1) **Miller v Minister of Pensions (1947) 2 ALL ER 372.**
(2) **Republic v. Bossman and others (1968) GLR, 595.**
(3) **Frimpong alias Iboman v. the Republic (2012) 1 SCGLR, 297.**
(4) **Tsatsu Tsikata v. The Republic (2003-2004) SCGLR,1068.**
(5) **Karim v. The Republic (2003-2004) SCGLR, 812.**
(6) **Amartey v. The State (1964) SCGLR, 256.**
(7) **Kwashie v. The Republic (1971) 1 GLR, 488.**

It is trite learning that an Appeal is by way of hearing.
Accordingly, it is totally incumbent upon the Appellate Court to consider the evidence, facts and circumstances placed before the trial court, evaluate same and establish whether the Appeal ought to succeed.

- See **Bosso v. The Republic (2009) SCGLR, 420.**

Upon subjecting the evidence placed before the trial court to microscopic analysis, could it be said that the instant Appeal ought to be successful? I think not.
Seven (7) cogent and pertinent reasons inform my conclusion and hereby ut infra will deal with same.

First, the prosecution duly called witnesses to prove each and every one at the ingredients of the offence of Robbery.
Specifically, evidence was produced that the Appellant caused harm to the complainant by shooting him in order to steal money.
The complainant testified on oath that his money was stolen as consequence of the incident.
Also, evidence in the form of a Medical Report was tendered to prove that the complainant suffered harm upon being shot.
In coming to my conclusion, I took into account the fact that it is the quality of evidence needed to prove elements of an offence that matters.
It is not the quantity of witnesses called to prove elements of an offence.
What is of paramount importance is that evidence is led to prove each element of the offence.
The learned Jurist Dotse JSC stated as follows in **Gligah and Atiso v. The Republic (2010) SCGLR, 870 at 887**:

> **"… We have always held the view that in establishing the standard of proof required in a civil or criminal trial, it is not the quantity of witnesses that a party upon whom the burden of proof rests calls to testify that is important, but the quality of the witnesses called and whether at the end of the day the witnesses called by the party have succeeded in proving the ingredients required in a particular case. In other words, does the evidence led meet the standard of proof required in a particular case? If it does, then it will be a surplusage to call additional witnesses to repeat virtually the same point or seek to corroborate evidence that has already been corroborated…".**

Second, it is my considered opinion that the Appellant did not provide the requisite evidence to raise reasonable doubt as to his guilt.
The case of the Appellant at the trial court consisted of a denial of the assertions of the prosecution.
The Appellant testified on oath to deny committing the offence of Robbery and did not call any witnesses to support his case.
As a consequence of the trial court establishing that a prima facie case has been made out, I believe the bare denial at the Appellant without more was inadequate and insufficient in the circumstances.
It is a legal truism that an Accused person in a criminal trial is under no obligation to prove his innocence.
However, it is also incumbent upon an Accused person to produce evidence to raise reasonable doubt as to guilt.
The esteemed Jurist, Sophia Akuffo JSC, (as she then was) made the following commentary in **Ali Yussif Issah (No.2) v. The Republic (2003-2004) 2 SCGLR, 181**:

> **"… Taken together, the burden of persuasion and the burden of producing evidence…. are the component 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…"**

Third, from the record available to this Appellate Court, it is crystal clear that the Appellant was clearly identified as the person who committed the offence of Robbery.
It must be noted that the identification of an Accused person as a culprit is of Supreme importance in determining if the accused is guilty as charged.

At the trial Court, the issue of identification was highly important because the Appellant claimed that he was not the person who committed the offence of Robbery.
It was therefore incumbent upon the prosecution to produce evidence that identified the Appellant.
The prosecution produced evidence in the form of the testimony of the complainant to prove the identification of the Appellant.
The evidence of the complainant was not discredited by the Appellant.
The importance of identification was stressed in the case of **The Republic v. Adu Boahene (1976) 1 GLR, 70.**
Azu-Crabbe JSC (as he then was) stated as follows:

> **"… Where the identity of an accused person is in issue, there can be no better proof of his identity than 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…"**

I must hasten to add the fact that the Appellant relied heavily on the Turnbull Guidelines in support of the instant Appeal.
The Turnbull Guidelines consist of some rules which aims to guide a trial court when identification is an issue.
In the instant matter, I am not convinced that the trial Judge could be said to have failed, refused or neglected to consider the Turnbull Guidelines.
It is my considered view that she was right to conclude that the Appellant was clearly identified as the person who committed Robbery.

Fourth, it must be noted that it is not only direct evidence that can be produced to prove the elements of an offence.
If there exist circumstantial evidence, same can be used as proof to establish elements of an offence.

It is pursuant to the instant proposition that Lord Hewart CJ, stated as follows in **Republic v. Taylor (1928) Crim.App 21 at p.29**:

> **"…[Circumstantial] is evidence of surrounding circumstances which by undersigned coincidence is capable of providing a proposition with the accuracy of mathematics…"**

In the instant case, it was firmly established that prior to the Robbery, the Appellant had "Rasta Hair".

After the Robbery, the Appellant proceeded cut-off the Rasta Hair.

The instant fact is a quintessential circumstantial evidence led by the prosecution and relied on by the trial Court.

I am of the firm view that the trial Judge was correct in taking into account the instant circumstantial evidence.

This is particularly so when it is obvious that the explanation of same by the Appellant remained uncorroborated.

I also do not find the explanation of the Appellant to be reasonably probable.

When the direct evidence is juxtaposed with the instant circumstantial evidence, one can only come to the conclusion that the Appellant was rightly convicted for the offence of Robbery.

Fifth, it is the contention of the Appellant that there are contradictions and inconsistencies in the evidence placed before the court by the prosecution.

According to the Appellant various timelines were not given and this resulted in the prosecution witnesses giving evidence in a confused manner.

Amongst the times not put before the court are the following:

(1) The time when a Report was made to the Police.
(2) The time when the Police visited the crime scene.
(3) The time when the complainant was interviewed.
(4) The date and time of the Appellant's arrest.

Additionally, the Appellant detailed various contradictions he claims exist with regards to the evidence of the prosecution witnesses.

Is this Appellate Court in agreement with the contentions of the Appellant?
The answer is in the negative.
It is an established truism that a trial court ought to consider contradictions, discrepancies and inconsistencies when evaluating evidence.
However, it is equally true that only material, significant and relevant inconsistencies must be taken into due consideration.
If the contradictions relate to immaterial facts, the trial court would be entitled to gloss over same.
The case of **Adekura v. The Republic** is directly in point.
The distinguished Jurist Osei-Hwere JA (as then was) stated as follows:

> **"… If the evidence was offered to prove a proposition which was not a matter in issue or probate of a matter in issue, the evidence was properly said to be immaterial. The conflicts referred to were immaterial and they could not be used either to bolster the defence or to impeach credibility…"**

Relating the above dictum to the instant Appeal, the contradictions and inconsistencies relied on by the Appellant are largely immaterial vis-a-viz the essential ingredients of the offence of Robbery.
As a direct consequence, this Appellate Court does not believe that same can be relied on to ensure the success of the instant Appeal.

Sixth, it was the contention of the Appellant that the trial Judge committed an error of law when she admitted and relied on hearsay evidence.
According to the Appellant, four (4) prosecution witnesses (PW2, PW3, PW4 and PW5) testified to the effect that the complainant told them that it was the Appellant who shot him.
It was argued that the above evidence ought not have been admitted as it did not form part of the res gestae.
Is the above contention meritorious?
I do not believe it is.
Three (3) factors helped this Court to reach the instant conclusion.

The evidence of the prosecution witnesses that forms the basis of the Appellant's complaint is relevant evidence.
It is a notorious fact that relevant evidence is admissible.

- **See sections 51 (2) and 51 (3) of the evidence Act 1975 (NRCD 323).**

Also, this Appellate Court is of the considered opinion that the evidence in issue forms part of the res gestae.
This is because same satisfies the requirements of res gestae which is detailed in 124(a) and (b) of the evidence Act (Supra).
The statement relayed to the prosecution witnesses were made shortly after the occurrence of the Robbery and same was made when the event must still have been at the forefront of the complainant's mind.
Also, it must be borne in mind that the said evidence of PW2, PW3, PW4 and PW5 were placed before the Court without objection.
The Case of **Ghana Ports and Harbours Authourity and Captain Zema v. Nova Complex (2007-2008) 2 SCGLR, 806** is in point. Chief Justice Georgina Wood stated as follows:

> **"… The law is that a party who fails to object to the admission of evidence, which in his opinion is inadmissible, would be precluded on appeal under section 5(1) of the Evidence Act, 1975 (NRCD 323), from complaining about the erroneous reception, unless it can be demonstrated that the wrong reception has occasioned a substantial miscarriage of justice…"**

Taking into due consideration the above analysis, this Court is not convinced by the assertion that the evidence of the prosecution witness was in admissible hearsay evidence.

Seventh, as stated Ut Supra, there exist one fundamental ground upon which an appeal may succeed.
That is the need for substantial miscarriage of justice to occur.

- **See section 31 of the Courts Act 1993 – Act 459.**

What then constitutes miscarriage of justice?

The Supreme Court provided the following answer in the case of **Adu v. Ahamah (2007-2008) SCGLR, 143.** It stated thus:

> **"…That miscarriage of justice means such a departure from the rules which permeate all judicial procedure as to make that which happened not in the proper sense of the word judicial procedure at all. That the violation of some principle of law or procedure must be such an erroneous proposition of law that if that proposition be corrected the finding cannot stand; or it may be neglect of some principle of law or procedure, whose application will have the same effect.."**

Relating the above dictum to the instant Appeal, I am not convinced that the trial Judge committed any errors at law that caused a substantial miscarriage of justice.

On the contrary, I am of the firm opinion that she correctly evaluated the evidence on record and came to the right conclusions.

Additionally, she did not commit any errors of law with regards to the sentencing of the Appellant.

CONCLUSION

The net effect of the above analysis is that, the Court does not see any merit in the instant appeal.

As direct consequence, the instant appeal fails and same is dismissed.

***Kwasi Opare Esq,. for the Appellant.**

*** State Attorney Absent.**

SGD.
HIS LORDSHIP JUSTICE KOFI AKUFFO
(JUSTICE OF THE HIGH COURT)