IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2021

CORAM: DOTSE, JSC (PRESIDING)
PWAMANG, JSC
MARFUL-SAU, JSC
TORKORNOO (MRS.), JSC
AMADU, JSC

CRIMINAL APPEAL
NO. J3/04/2019

21ST JULY, 2021

KINGSLEY AMANKWAH (a.k.a SPIDER) ..... APPELLANT

VRS

THE REPUBLIC ..... RESPONDENT

JUDGMENT

DOTSE JSC:-

PROLOGUE

After reflecting on the sordid and traumatic events that culminated in the arrest, successful prosecution of three young men aged 23, 21 and 22 years respectively as at 2009, and their subsequent conviction and sentence to 65 years each on charges of conspiracy to commit crime namely robbery contrary to *Sections 23 and 149 of the Criminal and other Offences Act, 1960, Act 29 as amended by The Criminal Offences (Amendment) Act, 2003 Act 646, and robbery, contrary to section 149 of the Criminal*

and Other Offences Act, 1960, Act 29 as amended by Criminal Offences (Amendment) Act 646, 2003, we deem it appropriate to refer to the following statement.

This statement itself was made by this court as its concluding remarks in its unanimous judgment in the case of ***Frimpong alias Iboman v The Republic [2012] 1 SCGLR 297, at 340*** where we stated as follows:-

> *"Before we conclude our judgment in this appeal, let us share with you the first stanza of Rudyard Kipling's poem titled "IF"*
>
> *If you can keep your head when all about you*
>
> *Are losing theirs and blaming it on you;*
>
> *If you can trust yourself when all men doubt you,*
>
> *But make allowance for their doubting too;*
>
> ***If you can wait and not be tired by***
>
> ***waiting;***
>
> ***Or, being lied about, don't deal in lies or being hated don't give way to hating****,*
>
> *And yet don't look too good, nor talk too wise." Emphasis supplied*

After referring to the above poem and its words, the court continued and concluded its unanimous judgment thus:-

> *"The above is relevant in the instant appeal because from the record of appeal, the appellant had a thriving business at Kantamanto. Besides that, he was married and had a stable life. If only the appellant could have resisted the temptation from the co-conspirators, ie. keeping his head cool when all those around him were losing theirs and wait patiently for the natural turn of events unfold in his life, the unfortunate scenario he found himself in, would have been completely avoided*.

This indecent haste on the part of the appellant to get rich overnight was unnecessary.

At this moment, we are of the considered opinion that the battle against indiscipline in the society is being lost and decadence of the society is rising at an alarming rate. This trend must, however, change. This change must be the collective responsibility of all, state and society." Emphasis

WHAT THEN ARE THE SALIENT FACTS OF THIS APPEAL?

Facts

The complainant Dr. Robert Darko Osei is a research fellow and lecturer who lives with his family at North West Odorkor Accra. The first accused Solomon Duodu is a barber and 2nd accused, Eric Cobbina a shoemaker, the 3rd accused, and appellant herein was reputed to be a footballer.

On the 12th day of September 2008 at about 1.30 am the complainant and his household were awoken by a loud bang on their kitchen door. Suddenly six armed men, two of whom had masked their faces stormed the house breaking into all the seven rooms in the apartment. In the process LT. Col. Darko (rtd), the complainant's father was shot in his right thigh, assaulted and various items, one laptop computer, four mobile phones, two wedding rings, jewelry and cash the sum of GH¢1,540.00 were taken away.

The case was reported to the Police and during investigation A1 (Solomon Duodu) was arrested with one of the mobile phones the robbers took from the scene. A1 in his cautioned statement mentioned A2 (Eric Cobbina) and Kingsley a.k.a Spider appellant herein as those who sold the phone to him. A2 was later arrested and in his cautioned statement to the Police he denied any knowledge of the phone.

A2 further stated that he has never met A1 and the said 3rd accused, appellant herein in respect of the phone. On the 6th day of October 2008, identification parade was held at

Odorkor police station during which A2 (Eric Cobbina) was identified by a witness in the case as one of the robbers who attacked them on 12th September 2008.

Having set out in context the facts upon which the appellant and the others were arrested and arraigned before the High Court for prosecution, it is deemed appropriate at this stage to refer to the charges that were preferred against the appellant and the others.

CHARGE SHEET

Count One
Statement of Offence

Conspiracy to commit crime namely robbery; Contrary to Sections 23 and 149 of the Criminal Code 1960, Act 29 as amended by Act 646, 2003

Particulars of Offence

Solomon Duodu a.k.a Alhaji, Eric Cobbina a.k.a Adolf Hitler, Kingsley Amankwah a.k.a Spider, Opele (at large), Tilapia (at large) on 12th September 2008 at about 1.30 am you did act together to rob Dr. Robert Darko Osei of cash the sum of GH¢1,540.00, 4 mobile phones, one wallet, jewelry, two wedding rings, one wrist watch, one Compaq laptop computer and one pen drive the values not known in his house at Northwest Odorkor, Accra.

Count two
Statement of offence

Robbery contrary to Section 149 of the Criminal Code 1960, Act 29 as amended by Act 646, 2003.

Particulars of Offence

Solomon Duodo a.k.a Alhaji, Eric Cobbina a.k.a Adolf Hitler, Kingsley Amankwah a.k.a Spider, Opele (at large) Tilapia (at large) on 12th September 2008 at about

1.30 am you did rob Dr. Robert Darko Osei of cash the sum of GH¢1,540.00, 4 mobile phones, one wallet, jewelry, two wedding rings, one wrist watch, one Compaq laptop computer and one pen drive the values not known in his house at Northwest Odorkor, Accra."

Upon the said facts and the charges referred to supra, the appellant and the others were tried before the High Court, Accra. The prosecution called the following witnesses in support of their case:-

PWI - Sylvia Osei Darko, wife of the complainant, Dr. Robert Darko Osei

PW2 - Dr. Robert Darko Osei

PW3 - Lt. Col Kwabena Darko (Rtd), Father of the complainant

PW4 - Robert Kwasi Owusu Darko, brother of the complainant

PW5 - D/Sgt Musa Bawa, The Detective Police Investigator

Counsel for all the accused persons exhaustively cross-examined the prosecution witnesses.

It must be noted that, all the first three accused persons namely Solomon Duodu, aka Alhaji, Eric Cobbina a.k.a Adolf Hitler and Kingsley Amankwa a.k.a Spider, appellant herein testified and were extensively cross-examined. It is only the 2nd accused who called a witness before the trial court and from the appeal record, the 4th and 5th accused persons were not available to be tried.

DECISION OF THE TRIAL HIGH COURT

Thereafter, the learned trial Judge evaluated both the cases of the prosecution and the Defence and concluded his judgment which was delivered on 27th February 2009, as follows:-

"I have no doubt that the accused persons agreed and acted together to rob PWI, PW2, PW3 and PW4 and the entire household on the 12th September 2008. Indeed I hold that the 1st the 2nd and 3rd accused persons are all guilty of the offences of

conspiracy to commit robbery contrary to Section 23 (1) and 149 of the Criminal Offences Act 1960 Act 29 as amended. Again I hold that the 1st, the 2nd and the 3rd accused persons are guilty of the offence of Robbery contrary to section 149 of the Criminal Offences Act 1960 Act 29 as amended. They are each convicted accordingly."

After stating the reasons why he convicted the appellant and the others, the learned trial Judge then proceeded to state the following before he passed sentence on the appellant and the others:-

"In passing sentence I have taken into consideration the youthfulness of the accused persons whose ages have been stated as 23 years, 21 years and 22 years respectively. *I have also had regard to the fact that the crime committed by the accused person is on the upward surge in the country and hence there is the compelling need to send a potent signal to deter likeminded persons and for them to know that the court will deal very severely with them when they are caught and brought before it.*

Members of the public are entitled to enjoy their fundamental right of freedom to go about their lawful duties both day and night without the fear of attack by people like the accused persons and hence there is the need to keep such people out of the public for a considerable long time if not for ever.

The fact that the accused person pointed a gun at a one year old innocent baby girl and threatened to shoot her showed how ruthless and callous they could be and how heartless they are. Indeed, the heartlessness of the accused persons is reinforced by the cruel manner in which they assaulted and shot a man as old as the 3rd prosecution witness without showing mercy towards him. In ***Adu Boahene v The Republic*** *(supra) the court also held that:-*

"Where the court finds an offence to be very grave, it must not only impose a punitive sentence, but also a deterrent or exemplary one so as to indicate the disapproval of society of that offence. ***Once the court decides to impose a***

deterrent sentence, the good record of the accused is irrelevant*. The trial Judge must have taken into consideration the prevailing wave of robbery in the country before imposing such a deterrent sentence." Emphasis supplied*

The learned trial Judge continued and concluded thus:-

"I therefore sentence them as follows:-

1st accused count one – 65 years imprisonment with hard labour. Count two – 65 years imprisonment with hard labour.

2nd accused Count one – 65 years imprisonment with hard labour. Count two – 65 years imprisonment with hard labour.

3rd accused count one – 65 years imprisonment with hard labour. Count two – 65 years imprisonment with hard labour

The sentences are to run concurrently."

These no doubt are very harsh sentences. It must be noted that, the appellant was reputed to be 22 years old at the time i.e. in 2009 which to all intents and purposes was a very young age.

There is also no doubt that, the previous criminal records if any of the appellant and the others were not brought before the court. This we daresay meant that they probably did not have any previous criminal record worth being taken notice of by the law enforcement institutions.

APPEAL BY THE APPELLANT TO THE COURT OF APPEAL AND DISMISSAL OF SAME BY THE COURT

Dissatisfied with the conviction and sentence, the Appellant appealed against his conviction by the High Court to the Court of Appeal on the 11th March 2009.

However, the Court of Appeal, in a unanimous decision rendered on 12th January 2012 dismissed the said appeal, in the following words:-

"Apart from the fact that P.W.2 ***identified the appellant as one of the robbers who entered their bedroom that night, the trial court was able to pin-point certain pieces of evidence on record that connect the appellant to the crime****. The evidence of P.W.2 that he saw the appellant on the day of the robbery and that he was part of the robbery gang was amply corroborated by other pieces of evidence, particularly that concerning the mobile phone of the complainant that was also stolen on the night in question. The first accused person from whom the phone was retrieved, told the court below during the trial that, it was sold to him by the appellant. The appellant also told the court that he bought the phone from second-hand phone dealers on 13th September 2008, i.e. just some few hours after the robbery which was in the night of 12th September 2008. The appellant, however, could not identify the phone dealers from whom he allegedly bought the phone which was one of the items stolen during the robbery in the night before. The charge that the trial court based its judgment on uncorroborated or unsubstantiated judgment does not therefore hold.*

The fact is that the judgment of the trial court is unassailable and this court would not do anything to disturb it. Rather, we commend the trial Judge for the able and expeditious manner in which he handled the case before him. The appellant and three others were arraigned before the trial Court on 28/10/2008 and the trial proceeded that very day. Notwithstanding the Christmas and New Year holidays that fell in December and January, beginning 24th December 2008 and ending 6th January 2009, the trial was completed within a short period of four (4) months with the delivery of judgment on 27th February 2009. That was commendable given the fact that the case went through a full trial.

On the third ground of appeal on the alleged harshness of the sentence, the introduction to appellant's submissions quoted in the opening pages of this judgment is the best answer to it. According to the submissions, the perpetrators of the robbery on that day in question deserve severe sentences considering the callous manner in which it was carried out. The beef of appellant's counsel was

that appellant was not among so he did not deserve the punishment. ***Contrary to his submissions, however, the records are clear that appellant was part of the robbery gang. We also think the same way as counsel for the appellant, that the manner in which the robbery was conducted demand that the appellant and others be made to suffer very severe sentences and that being the case, the sentence of 65 years IHL from appellant counsel's own observation is within limits.***

We do not think, we should be justified in disturbing it. The appeal merits dismissal and we accordingly dismiss it." Emphasis supplied

With the above words from the Justices of the Court of Appeal, the fate of the appellant was consigned to spending the rest of the 65 years sentence imposed on him earlier by the trial court.

APPEAL TO THE SUPREME COURT AND GROUNDS OF APPEAL

Still dissatisfied, the Appellant appealed against the court of appeal decision of even date to this court as per Notice and grounds of appeal filed on 10th January 2016.

Part of the decision complained of:-

a. **Conviction and sentence on the charge of conspiracy to commit crime** namely robbery contrary to section 23 and 149 of the Criminal Offences Act of 1960 Act 29 as amended by the Criminal Offences (Amendment) Act, 2003, Act 646.

Grounds of Appeal

1. **Lack of evidence to establish the elements of the offences against me**
2. **The prosecution failed to prove case beyond reasonable doubt.**
3. The appeal has a great chance of success as the appellant case together is similar to that of the 1st convict whose appeal before this court was successful

Relief being sought

a. **To set aside the conviction and the sentence."** Emphasis supplied

PRELIMINARY COMMENTS ON THE APPEAL

Powers of an Appellate Court In Criminal Appeals

Section 30 of Courts Act, 1993, Act 459

Orders available to Superior Courts over appeals

30. Subject to this Act, an appellate court may in a criminal case

(a) on an appeal from a conviction or acquittal

(i) reverse the finding and sentence and acquit and discharge or convict the accused or order the accused to be retried by a court of competent jurisdiction, or commit the accused for trial; or

(ii) alter the finding, maintaining the sentence or with or without altering the finding, ***reduce or increase the sentence; or***

(iii) with or without the reduction or increase and with or without altering the finding, alter the nature of the sentence; or

(iv) annul the conviction and substitute a special finding to the effect that the accused was guilty of the act or omission charged but was criminally insane so as not to be responsible at the time when the act was done or the omission was made, and order the accused to be confined as a criminally insane person in a mental hospital, prison or any other suitable place of safe custody; or

(v) annul or vary an order of imprisonment or any other punishment imposed on the person convicted; or

(vi) annul or vary an order for the payment of compensation, or of expenses of the prosecution, or for the restoration of property to a person whether or not the conviction is quashed.

(b) on an appeal from any other order, alter or reserve the order, and make an amendment or a consequential or an incidental order that may appear just and proper." Emphasis supplied

From the above provisions, it is quite apparent that as an appellate court, this court can exercise any of the following powers when exercising its criminal appellate jurisdiction:-

i. Reverse the findings completely and acquit and discharge the convict or convict as the case may be. This can also result into the setting aside of the sentence and or make orders for a re-trial or committal for trial.

ii. Alter the findings, whilst maintaining the sentence or **without altering the findings, reduce or increase the sentence.**

iii. Has jurisdiction to alter or not alter the findings, reduce or increase the sentence.

iv. Annul the conviction, substitute a special finding of guilty but insane.

v. Annul or vary any order of imprisonment or other punishment imposed on the person convicted.

vi. Annul or vary any order for payment of compensation etc.

vii. Jurisdiction in other cases to alter or reverse the order and or make an order for amendment of any consequential orders as deemed appropriate.

In the instant case for example, it therefore bears emphasis that, this court has powers to vary and or reduce the sentence. Section 30 of the Courts Act, 1993, Act 459 is therefore authority for the proposition that irrespective of the grounds of appeal filed by an appellant in criminal appeals, an appellate court such as this Supreme Court has jurisdiction to deal with the issue of reduction of sentence notwithstanding the fact that an appellant may not have specifically filed grounds of appeal to that effect.

CONSIDERATION OF STATEMENTS OF CASE FILED BY LEARNED COUNSEL IN THIS APPEAL

We deprecate the wishy washy statement of case filed by learned counsel for the Appellant Mathias Kwasi Yakah in this case. Apart from the fact that the statement of case lacks substance it is also completely bereft of any legal arguments referable to the grounds of appeal that has been filed.

On the contrary, learned Principal State Attorney, for the Republic, (Ms) Dufie Prempeh in a well researched and detailed statement of case set out in a chronological order the reasons why the appeal should be dismissed. It is the view of this court, that learned counsel for the Appellant on receipt of the Respondent's statement of case should have awoken from his slumber and seek leave to file a reply to answer the points of substance raised in Respondent's Statement of case.

BY COUNSEL FOR APPELLANT

Learned counsel for the appellant in his statement of case argued that the appellant ought to be acquitted and discharged because the evidence against him was woefully insufficient to establish the elements of the offences against him.

Learned counsel for the appellant indeed was quite on spot when he stated that, an appeal is a re-hearing.

Secondly, learned counsel argued that the prosecution failed to prove the offence of conspiracy beyond reasonable doubt since there was no evidence that there was a prior agreement between the conspirators or that the appellant acted overtly with the others with a common purpose to commit the offences with which he was convicted.

In this respect, learned counsel relied on the case of ***State v Boahene [1963] 2 GLR 554*** and concluded that, the test for conspiracy ***was whether the parties had a common purpose and not whether they were acquainted with each other.***

In this instance, learned counsel for the appellant argued that the evidence led before the trial court woefully failed to meet the standard required as per the ***State v Boahene*** case supra.

Thirdly, learned counsel for the appellant without any evidence argued that the testimony of PW5, the Investigator should have been discounted as the appellants' cautioned statement was obtained under duress. Learned counsel therefore sought to capitalise on the evidence of some of the prosecution witnesses e.g. PW3 and PW4 that they did not see the appellant in the house that dawn to mean that he was not part of the criminal gang that invaded the house.

Finally, learned counsel for the appellant reiterated the fact that, the sentence of 65 years is harsh and indicative of the fact that the learned trial Judge had already made up his mind that the appellant was guilty. He therefore craved the indulgence of the court that the appeal be allowed.

STATEMENT OF CASE BY LEARNED COUNSEL

Appeals are by way of re-hearing

Learned counsel for the Republic reiterated the settled principle of law that appeals are by re-hearing.

Learned counsel then referred to the following cases in support of this settled principle of law:-

1. ***Tuakwa v Bosom [2001-2002] SCGLR 61***
2. ***Oppong v Anarfi [2011] 1 SCGLR 556 - 558***
3. ***Kwa Kakraba v Kwesi Bo [2012] 2 SCGLR 834***

Learned counsel therefore urged this court to evaluate the entire evidence led at the trial court and make the appropriate orders that are deemed necessary.

LEARNED COUNSEL FOR THE RESPONDENT ON GROUNDS 1 AND 2 OF APPEAL

Learned counsel for the Respondent, Ms. Dufie Prempeh argued that the prosecution was able to lead evidence to satisfy the requirements of Section 13 of the Evidence Act, NRCD 323 which required the standard of proof in criminal cases such as this appeal and this is ***"proof beyond reasonable doubt".***

See Sections 10, 11 and 13 of the Evidence Act, 1975 (NRCD 323) which learned counsel referred to. Learned counsel for the Republic referred also to the following cases in support of her submission that the prosecution indeed proved the case against the appellant beyond reasonable doubt as established in the cases.

See ***Frimpong @Iboman v The Republic [2012] 1 SCGLR 297, Gligah & Anr v The Republic [2010] SCGLR 870 and Miller v Pensions [1972] 2 ALL E. R. 372*** where Lord Denning stated the principle as follows:-

> *"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. If the evidence is strong against a man as to leave a remote possibility in his favour which can be dismissed with the sentence,* ***"of course, it is possible but not the least probable," the case is proved beyond reasonable doubt, but nothing short of that will suffice." Emphasis supplied***

Learned counsel then referred to the Prosecution witnesses called in support of the ingredients of the offence with which the appellant was charged.

After narrating in detail, what all the prosecution witnesses said, she confined her arguments to the evidence of PW2, the Complainant who identified the appellant as one of those who entered their bedroom. Indeed, PW1 also identified A2 as one of those who entered their bedroom alongside another whom she could not identify. As a matter of fact, if one considers the evidence of PW1, who was a nursing mother at the time and the traumatic effect of having a gun pointed at her baby that night, it is possible that her

attention and focus will be on A2 who was threatening to cause unimaginable havoc on their family.

After putting pieces of both PW1 and PW2's evidence together with the cautioned statement of the appellant, learned counsel for the Republic concluded that the prosecution had led credible evidence that the appellant was at the crime scene on 12th September, 2008.

This therefore meant the burden of proof had shifted to the appellant to show that there existed reasonable doubts in the case of the prosecution.

However, rather than lead credible evidence to cast doubts on his caution statement which was very incriminating, the appellant failed to lead any credible evidence to cast doubts on the evidence that the caution statement, exhibit G, was involuntarily obtained through duress. It must be noted that, during the trial, the said statement was admitted without any objection.

Learned counsel then referred to Section 6 (1) of the Evidence Act, 1975 NRCD 323 in support of the above submission. It therefore does not matter that, the appellant during his evidence when he opened his defence then stated that he was tortured during the time the Exhibit G was obtained from him and tendered a blood soaked attire. It must be noted that there have been no scientific proof that the colour in the dress is first of all human blood, let alone that of the appellant.

Learned counsel therefore concluded her statement on grounds 1 and 2 and stated that the prosecution had provided sufficient evidence to support the charge of Conspiracy to commit Robbery and Robbery

GROUND THREE

Learned Principal State Attorney, Ms. Dufie Prempeh admirably drew the courts attention to the fact that the case of 1st accused, Solomon Duodu a.k.a Alhaji and that of the appellant herein are quite different. She indeed provided details of the appeal of the said 1st accused as Criminal Appeal No. H2/14/2016 dated 17th March 2016.

It is however interesting to observe that, whilst the 1st convict, Solomon Duodu was acquitted on the two counts of conspiracy to commit Robbery and Robbery, the Court of Appeal held that a charge of Dishonestly Receiving had been established against him and by virtue of Section 152 (2) of the Criminal and Other Offences (Procedure) Act 1960 Act 30, it was the duty of the court to convict him on the offence proved against him. He was therefore subsequently convicted on the charge of Dishonestly Receiving and sentenced to Ten (10) years imprisonment with hard labour. Learned counsel for the appellant, should have sought leave to reply to these submissions if he thought that was not the case. Under the circumstances, we have no reason to doubt the sanctity and credibility of these submissions. In any case, the evidence on record clearly does not indicate the involvement of the said Solomon Duodu in the conspiracy to commit Robbery and Robbery offences. However, as a matter of principle, if those who dishonestly receive stolen items under very suspicious circumstances like the instant one would be dealt with severely, maybe, robbery and stealing will be reduced.

SENTENCE

Learned Principal State Attorney for the Republic, Ms. Dufie Prempeh referred to the following locus classicus cases on the principle that guide the courts in sentencing and invited this court not to disturb the sentence of 65 (IHL) years imposed on the appellant.

1. ***Adu Boahene v The Republic [1972] 1 GLR 70***
2. ***Kwashie v The Republic [1971] 1 GLR 488 at 493 CA***

Learned counsel therefore urged this court on the basis of Section 31 of the Courts Act, 1993 (Act 459) to dismiss the entire appeal.

ANALYSIS

APPEAL IS BY WAY OF RE-HEARING

One of the clearly settled principles of law which admits of no controversy is that an appeal is by re-hearing. What does this mean?

In essence, what this means is that, as an appellate court, whenever an appeal comes up for hearing, the appellate court must consider its task as re-hearing of the case. The appellate court must put itself in place of the trial court and as in this instance, also that of the intermediate Court of Appeal and consider in detail whether the trial of the appellant conformed to settled principles governing the proof of criminal cases by the prosecution and this must be based on settled time tested principles of proof beyond reasonable doubt.

In determining whether the trial court, and intermediate Court of Appeal performed their role of hearing and re-hearing the matter, cases which come up for consideration no doubt must include the following which were referred to by learned counsel for the Respondent. See ***Tuakwa v Bosom supra at holding 1, Oppong v Anarfi supra at 558 holding (4), Kwa-Kakraba v Kwesi Bio supra at holding (2) thereof.***

See also the following cases where this settled principle of an appeal being a re-hearing has been well defined and applied. ***Ampomah v Volta River Authority [1989-90] 2 GLR 28, Djin v Musah Baako [2007-2008] 1 SCGLR 686, Akufo-Addo v Cathline [1992] 1 GLR 377 and International Rom Ltd (No.1) v Vodafone Ghana Ltd & Fidelity Bank Ltd. (No 1) [2015-2016] 2 SCGLR 1389*** just to mention a few.

Explaining what the principle meant, Sophia Akuffo JSC (as she then was) in the ***Tuakwa v Bosom*** case supra stated at page 65 thereof thus:-

> *"In such a case…….it is incumbent upon an appellate court, in a civil case to* ***analyse the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial*** *before it arrives at its decision, so as to satisfy itself that, on a balance of probabilities, the conclusions of the trial Judge are reasonable or amply supported by the evidence."* Emphasis

Applying the above stated principle in a criminal appeal might result in **the court embarking upon the following to analyse the entire record of appeal and this must include the charge sheet, the Bill of indictment where this is applicable, the witness statements of all witnesses, all documents and exhibits tendered**

and relied on during the trial as well as the evidence during testimony and cross-examination to satisfy itself that the Prosecution has succeeded in establishing the key ingredients of the offences charged against the appellant beyond any reasonable doubt and that the entire trial conformed to the settled procedures under the Criminal and other Offences (Procedure) Act and that the acceptable rules of Evidence under the Evidence Act, (1975) NRCD 323 had been complied with including the Practice Directions issued following the decision of this court in the case of Republic v Baffoe-Bonnie & 4 Others [2017-2020] 1 SCGLR 327.

The following then will constitute useful ***Guidelines or Criteria*** that an appellate court will embark upon when it is re-hearing a criminal appeal as in the instant case.

GUIDING PRINCIPLES IN RE-HEARING CRIMINAL APPEALS

1. In considering an appeal as one of re-hearing, the appellate court must undertake a holistic evaluation of the entire record of appeal
2. This evaluation must commence with a consideration of the charge sheet with which the appellant (s) was charged and prosecuted at the trial court. This must involve an evaluation of the facts of the case relative to the charges preferred against the appellant.
3. This also involves an assessment of the statutes under which the charges have been laid against the appellant (s) and an evaluation of whether these are appropriate vis-à-vis the facts of the case.
4. An evaluation of the various ingredients of the offences preferred against the appellant (s) and the evidence led at the trial court. This is to ensure that the evidence led at the trial court has established the key ingredients of the offence or offences preferred against the appellant.
5. There must be an assessment of the entire trial to ensure that all the witnesses called by the prosecution lead evidence according to the tenets of the Evidence Act, 1975, NRCD 323.
6. Ensure that the entire trial conforms to the rules of natural justice.

7. An evaluation of all exhibits tendered during the trial, documentary or otherwise to ensure their relevance to the trial and in support of the substance of the offence charged and applicable evidence.
8. A duty to evaluate the application of the facts of the case, the law and the evidence led at the trial vis-à-vis the decision that the court has given.
9. To ensure that the basic principles inherent in criminal prosecution, that is to ensure that the prosecution had proved or established the ingredients of the offences charged beyond reasonable doubt, against the appellant had been established.
10. In other words, the appellate court, and a final one like this Supreme Court, must ensure that even if the appellant's defence was not believed, it must go further to consider whether his story did not create a reasonable doubt either. See cases of ***Amartey v The State [1964] GLR 256 SC***, which was applied in ***Darko v The Republic, [1968] GLR 203***, per Amissah JA sitting as an additional High Court Judge.

In the case of ***Amartey v State***, supra, the Supreme Court, speaking with one voice through Ollennu JSC held at page 256, holding (1) as follows:-

> Where a question boils down to oath against oath, especially in a criminal case, ***the trial Judge should first consider the version of the prosecution, applying to it all the tests and principles governing the credibility of witnesses; when satisfied that the prosecution's witnesses are worthy of belief, consideration should then be given to the credibility of the accused's story,*** *and if the accused's case is disbelieved,* ***the Judge should consider whether, short of believing it, the accused's story is reasonably probable. Emphasis supplied.***

Even though not specifically mentioned in the latter case of ***Darko v Republic [1968] GLR 203,*** the principles discussed in ***Amartey v State*** supra found expression in the

dictum Amissah JA, sitting as an additional High Court Judge and held in the ***Darko v Republic*** case at page 205 of the report and explained the burden of proof that lies on the prosecution as follows

> *"The cases of* ***R v Abisa Grunshie (1955) 1 WALR 36, WACA and R v Ansere (1958) 3 W.A.L.R 385,*** *CA which explain the principle that an accused person should be acquitted if his defence is believed or if it is reasonably probable have been urged on me. They do not to my mind, call for uniformity of expression by Judges or the use of any particular form of words. The crucial question relevant to the point in any ordinary criminal trial turns on whether the Judge or tribunal of fact upon consideration of the whole evidence finds that the case of the prosecution has been* ***proved beyond reasonable doubt. If the defence is believed, the prosecution has failed. This result equally follows if the story of the defence does cast a reasonable doubt on the case of the prosecution****. The cases referred to, do not as far as I know lay down any new principle of criminal justice on the contrary, all they do is to approach the problem of the onus of proof from the position of the case for the defence.* ***Where, therefore, the court convicts only because it takes the view that the accused person's defence is not to be believed, this is equivalent to shifting the burden of proof onto the defence****."emphasis supplied*

11. Finally, the burden on a final appellate court such as this court, is generally to go through the entire record of appeal and ensure that in terms of substantive law and procedural rules, the judgment appealed against can stand the test of time. In otherwords, that the judgment appealed against can be supported having regard to the record of appeal and that there is no substantial miscarriage of justice that results from the trial court or the intermediate Court of Appeal.

HAVE THE ABOVE GUIDELINES OR ROADMAP BEEN ESTABLISHED IN THIS CASE?

Analysis and Evaluation of the evidence led by the Prosecution Witnesses

In order to establish whether the above guidelines for re-hearing criminal appeals have been complied with or not, it is deemed expedient to analyse in some detail the evidence of some of the Prosecution witnesses.

Evidence of P.W.1 - Sylvia Darko Osei, wife of Dr. Robert Darko Osei

> "My Lord on the 12th September 2008 around 1.30am we have a dog in our house. The dog was at the window barking and we were wondering why. And I was not asleep because I was breast feeding my one year baby. So when we heard the dog barking my husband Dr. Robert Osei woke up and went to the window and looked out and he didn't see anything. Just as he got to bed we heard a loud bang. I thought it was the fridge. So we lifted up our heads and looked through the window. Our window is opposite the kitchen window then suddenly the light came on in the kitchen and we saw about six gentlemen in the kitchen. The next moment we heard the second and third bang and then mine (sic) children started screaming in their room by then we had seen them already and we were panicking. Not long I heard them asking where is our mother's room and my husband got out of bed because he has seen them with gun. He went to the door just as he was going to open the door they broke the door down and about four of them came in initially and then two retreated. So there were two in the room one that is the 2nd accused had a gun, he entered with another gentleman. They came in and he the 2nd accused pointed the gun at my one year old daughter on the bed.

He pointed the gun and said where is the money and my husband said if it is money you want so hold on and he picked his bag opened it and then the 2nd accused person grabbed the money while the gun was still on my daughter and he picked the phone that was on the bed.

Q. You mean the 2nd accused person?

A. Yes, my Lord this Eric Cobbina alias Adolf Hitler picked the phone and the 2nd gentleman which I can't make out but the Adolf Hitler picked jewelry, money and bag…." Emphasis supplied

After narrating in graphic detail how the criminal gang entered their house, PW1 then equally narrated facts that subsequently happened and how she facilitated the arrest of one of the criminal gang which led to the arrest of the rest.

This is the remarkable story of how the criminal gang were arrested

Q. "Do you know how the accused person was arrested?

A. Yes my Lord, My Lord the robbery took place on the 12th of September 2008 and then the Monday that was on the 15th September 2008, I was there when I had a text message from a strange number and the text message read "now we just about to fly and I will see you soon." When I saw the text message I knew the text message. It is a text message that my husband sent me sometime ago when he was out of the country. So I was wondering where the text message came from but I didn't know the number so I called that number the person said it was wrong line so l left. So late in afternoon I called the number with my other phone number and I said you have been calling me and he said no I haven't called you. And I said okay I don't know but we can be friends and started talking and this gentleman told me that he was a trotro driver and I said where you ply and he said Odorkor Madina road. And I said I live at Adenta which wasn't true and I gave my name as Aku. **So I communicated with this gentleman for about two weeks.**

And he thought he got a girl friend so on the Islamic holiday we arranged to meet at Odorkor and then I went directly to the Police station and I told them all that had happened. So they gave me some policemen to go with me and that was where the Police arrested the gentleman." Emphasis supplied

The skills and dexterity of the police and the sheer bravado displayed by PW1 ought to be appreciated and commended. The following quotation further illustrates the cooperation that was indeed between complainants and the law enforcement agencies. PWI continued her evidence thus:-

"We went to Odorkor with the policemen also in another taxi so they got down and they were in the area. And I called the gentleman and I was at Odorkor and he asked what taxi I was in and I gave him the taxi number and everything. Then I called him again and I said since I don't know him I will like him to describe what he is wearing so that when I see him coming I will get out of the car. So he told me he was in white T shirt and a black pair of Jeans so quickly I called the police and told them and they were already at Odorkor at the designated point. I told the police that the gentleman is in a white T-shirt and a pair of black jeans. So when the gentleman was walking to the car I saw the police following him. And the moment he got to the car I mention his name and he was coming round the car since I was at the back that was when the police grabbed him."

PW1 further testified that, after the said Kweku was apprehened by the Police, they found the Nokia Phone N70, on him and this was one of the items stolen by the criminal gang on the night of the robbery from their home on Kweku. This is how she described these events.

Q. "Was there anything found on him?

A. **Yes the Nokia N70 was found on him which happens to be one of my husband's phone. We told the police that this is my husband's phone Nokia N70 and the box is even at home. So they asked that I go for the box. I brought the box and we checked the IMEI number and it matches with that** of the IMEI number of the phone that the gentleman Kweku had

Q. What is the name of this gentleman?

A. Kweku My Lord That is the name I know him by

Q. Did he say anything about the Phone?

A. When they interrogated him he said he bought the phone from a vendor at Odorkor and he led them to one Alhaji

After the above evidence, counsel for the 1st accused – Solomon Duadu aka Alhaji cross-examined PW1 as follows:-

Q. "When you informed the Police that one Kweku had called you on the phone that your husband was using did he mention Solomon Duodu's name as the one who gave the phone to him?

A. Yes my Lord, Kweku said he bought the phone from one Alhaji, which is Solomon Duodu." Emphasis supplied

The above answer is very revealing

In further cross-examination, this is what PW1 said

Q. You see as I said Alhaji is a phone repairer and therefore the phone that you claim that belonged to your husband was given to him by the 3rd accused person?

A. That is what they said when Alhaji was asked, he said one Hitler and one Spider brought the phone to him to sell. That is the story he told us." Emphasis supplied

It must therefore be understood that, the 1st accused Solomon Duodu – Alhaji mentioned the 2nd accused, Eric Cobbina aka Adolf Hitler **and the appellant herein as those who brought the phone to the appellant herein and another to sell.**

The evidence of PW1 has therefore created the necessary nexus between the criminal gang and their activities on the night of the robbery and an item that was stolen during the said robbery, and those who were put on trial including the appellant herein.

For example, the further cross-examination of PW1, by counsel for the 2nd accused person went like this

Q. Cast your mind back to the moment when the Robbery was taking place, did you take a good look at the people who were doing the robbery?

A. **My Lord I took a very good look at the 2nd accused because he had the gun pointed at my one year old daughter and in the process of taking everything in the room the handkerchief that he has used to tie the mouth dropped so I really took a good look at him.**

Q. Madam are you sure you are not having a mistaken identity of the 2nd accused?

A. My Lord I am very positive because at the identification parade I was able to identify him. **When you look at the 2nd accused lips it is so obvious I could really identify him.**

Judge: What is on his lips?

Q: My Lord initially he had a handkerchief so I was wondering who he was and then **the handkerchief dropped his denture and everything and I had a good look.**

Judge: What specifically is on his lips?

A: **My Lord the denture the way it is sticked out, the lips dark and this is a gentleman who had a gun on my one year old daughter so I was looking at him wondering what he was going to do to my one year old daughter on the bed."** Emphasis supplied

Indeed, this evidence under cross-examination came out so strongly that it not only portrayed the 2nd accused as a very callous person, but heartless as well. Someone who can point a gun at a one year girl is indeed something the mother of the child cannot easily forget. That indeed was the trauma that PWI went through.

We will now turn our focus on the evidence of PW2 and how he connected the appellant herein to the criminal conduct on the night of 12th September 2008 in the house of the complainant.

Evidence of PW2, Dr. Robert Darko Osei, husband of PW1

Q: Do you know the 3rd accused Kingsley Amankwa?

A: My Lord I do

Q: Can you point at the 3rd accused?

Witnessed identified the 3rd accused. My Lord I do not know his name but I do know him by appearance.

Obour: My Lord on the charge sheet the name of the 3rd accused is Kingsley Amankwah alias Spider

Q. Tell us how you got to know the 3rd accused?

A: My Lord on the early morning of the 12th September 2008 which was a Friday around 1 am I heard the dog barking so I did wake up because it wasn't usual for the dog to be barking behind my window at the time. So I woke up and I was wondering what was happening just then I heard a loud bang from the kitchen so I looked up from my window in my bedroom overlooks the kitchen. There are windows between my room and also the main kitchen so I could see through from my room. I saw a number of young men entering from the kitchen. They switched on the light and then my wife woke up so I told her that we had some visitors. So I was actually going to open the door when they broke my door as well**. Immediately two men came in, one of them was smaller as compared to the other was holding a gun and then pointed the gun at me and switched on my light and said we are armed robbers, hands up so I followed their instructions.** So I raised my hand and then my wife also did the same thing. And I told them they should come down and I said to them if they wanted anything they should take I have some money which I have kept in my bag was also there and I showed them where it is and they should take whatever they wanted. **So it was then those two**

gentleman who came in my room the 2nd gentleman is the 3rd accused.

Q. You mean the 3rd accused was in your room?

A. Yes my Lord. And so they both collected whatever they could collect. I personally showed them where the money was in my bag." Emphasis supplied

He also confirmed that a gun was pointed at his one year old daughter.

It is to be noted that, PW2 also corroborated the fact that, the appellant like what PW1 said was one of the armed robbers who stormed their house at Odorkor during the robbery

What has to be noted from the evidence of PW2 is that, he corroborated in all material particulars the evidence of PW1 as recounted earlier. Secondly, it is also important to observe that, PW2 further corroborated the fact that appellant herein was one of the armed robbers who stormed their home at Odorkor on the night of the robbery.

It should be further noted that, the evidence of PW3, Lt. Col. Kwabena Darko (Rtd) father of PW2 and PW4, Robert Kwasi Owusu Darko, who were both on the premises on the night of the robbery also confirmed in all material particulars the events of the armed robbery by the criminal gang.

Indeed, it was only PW3 who was shot by the gang of armed robbers on the night. This actually gives the impression that, if the other inmates had resisted the robbers, there would have been violence and fatalities. The only significant points of departure of the evidence of PW3 and 4 was their inability to identify the robbers, because those who went into the rooms of PW3 and 4 were masked.

By far, the evidence of detective Sergeant Musa Bawa, PW5, the Investigator of the armed robbery by the criminal gang threw a lot of light on the case. In this respect, a lot

of understanding is revealed when this evidence is put in its proper perspectives. We will therefore set out in context this evidence as follows:-

Q. "Did you conduct any other investigation?

A. Yes My Lord in the course of the investigation and on 30th September 2008 PWI informed the Police that she has received a text message on her phone which was sent to her some time ago by her husband and that she has received the same content message on her phone with a different number so she called the number and a man picked it. So in the course of the conversation he proposed to her and she also accepted it. So they have arranged to meet on that very day. **My Lord we led her to the scene we made her to call the person and the person showed up and we arrested him. And while a search was conducted on him thus (sic) Kweku Donkor. My Lord the phone was retrieved from him and same was shown to PW1 who identify it as hers being bought to her by her husband. My Lord we made her to produce document covering the phone and she was able to produce the box of the phone and when we read the serial number on the phone and that on the box they tallied which exactly shows that the phone is exactly hers.**

My Lord this Kweku Donkor in his statement to the Police mentioned 1st Accused Solomon Duodu alias Alhaji as source of the phone." Emphasis supplied

The above evidence vividly captures how Kweku Donkor was arrested with the Nokia N70 phone which was one of the items stolen from the house of the complainants.

This evidence further revealed how he, the said Kweku Donkor came by the phone. He mentioned 1st accused, Solomon Duodu as the source of the phone.

PW5 further testified on how he proceeded with the investigations into this case as follows:-

Q. "After getting the phone, did anything happen?

A: Yes my Lord PW1 Sylvia Osei Darko identified the phone as hers according to her it was bought for her by her husband and it is also one of the phone picked by the robbers on the day of the attack. **My Lord this Kweku Donkor from whom we seize the phone mentioned 1st accused Solomon Duodu as his source of the phone. My Lord he led Police to arrest 1st accused on the 1st October 2008. My Lord in his caution statement admitted selling the phone to Kweku Donkor by swapping it with and this Kweku Donkor paid an additional money of ¢450,000 old cedis.** He swapped it with Motorola V3 and Kweku Donkor added additional ¢450,000 old cedis to it.

Judge: What you are saying is that Kweku Donkor swapped the Nokia N70 with his phone whose brand name is Motorola V 3 and he Kweku Donkor paid additional ¢450,000 to it to Solomon Duodu.

A: Yes my Lord

A: Yes my Lord 1st Accused in his statement admitted selling the phone to Kweku Donkor and also mentioned **3rd Accused Kingsley Amankwah as his source of the phone. My Lord according to 1st Accused he bought from 3rd Accused in presence of 2nd Accused Eric Kobbina at a place popularly called Tsumani around 5.30 some two weeks earlier before the day of the attack.** My lord according to 1st Accused he used the phone for 9 days before selling it to the said Kweku Donkor. My Lord Kweku Donkor also told the police that he bought the phone on the 14th September 2008 which is exactly two days after the incidence. **My Lord 1st Accused also mentioned 2nd Accused as being present when he has bought the phone from 3rd Accused. My Lord he also led Police to arrest 2nd Accused in his caution statement denied ever being present when 1st Accused bought the phone from 3rd Accused.** My Lord he further stated that he knows 3rd Accused as well as 1st Accused and that they were friends but he had a problem when he went to prison and on his return all the friends rejected him because he has become an informant to the Police. My Lord he mentioned one Opelle.

PW5 continued his evidence thus:-

Judge. Who mentioned Opelle?

A. ***My Lord, 2nd accused mentioned one Opelle and Tilapia as the close friends of 3rd accused Kingsley Amankwa alias Spider?*** This 3rd accused it must be noted is the appellant herein." Emphasis supplied

The above pieces of evidence by PW5 completely created a credible connection between the acts of robbery in the complainant's residence, the appellant and the other co-accused persons.

After the evidence of PW5, all the accused persons including the appellant gave evidence and were extensively cross-examined.

CASE FOR THE APPELLANT

Even though the cautioned statement of the appellant, Exhibit G, was tendered into evidence without any objection, the appellant distanced himself from the said statement. According to the appellant, he was severely tortured by the police as a result of which he sustained injuries at his back and the shirt he was wearing was blood soaked. Indeed, the said singlet was also tendered as Exhibit 1 into evidence by the appellant without any objection. However, it must be noted that, no connection whatsoever was made by learned counsel for the appellant to connect the said blood soaked singlet with the blood of the accused. In this day and age, when forensic science has so advanced, the said exhibit could have been properly stored, and tested with the appellants DNA to ascertain the truth or otherwise of these claims. In addition, no medical report or evidence whatsoever was called to establish these claims.

During cross-examination, of the appellant by Augustine Obour, State Attorney the following emerged and we wish to set them out as recorded.

Q. Solomon Duodu said you gave him a phone to sell, your lawyer did not say anything about it, so what do you have to say about what?

A. My Lord, that is true

Q. When did you get that phone from?

A. My Lord **I have this phone on the 13th day of September 2008 and I bought it from this second hand dealer from Odorkor.**

Q. How much did you buy it?

A. My Lord GH¢50.

Q. And how much did you sell it to Solomon Duodu?

A. GH¢70.00"

It must be further noted that, even though the appellant said a lot and was extensively cross-examined, the crux and substance of his evidence is the fact that **he admitted having sold the phone to 1st accused and failed in his bid to identify the person from whom he claimed he bought the phone from.**

POINTS TO NOTE

1. The charge sheet with which the appellant has been charged, prosecuted and convicted are on point and therefore appropriate.
2. An evaluation of the facts and evidence vis –a-visa-the laws under which he was charged, prosecuted, convicted and sentenced are all appropriate and referable to the appellant herein.
3. The various ingredients of conspiracy to commit robbery and committing robbery have all been proven as set out in the judgment of the trial High Court, explained further and illustrated in this rendition.
4. The evidence led by the Prosecution witnesses have been satisfactory and consistent with the provisions of Act 30 and the Evidence Act NRCD 323 as well as conforming to the principles of natural justice.
5. The trial court and the intermediate Court of Appeal took into consideration all exhibits and documents tendered during the trial and properly evaluated them.

6. In our opinion, the basic cardinal principle inherent in sustaining a criminal conviction, ***"proof beyond reasonable doubt"*** was amply demonstrated during the trial and was also applied in evaluating the evidence of the appellant.
7. The trial also considered the appellants defence in context, applied the necessary tests to it before discounting it as not creating any reasonable doubt in prosecution's case. See cases of ***Amartey v Republic and Darko v Republic supra.***

The above then positively meant that the trial, conviction and sentencing of the appellant was done according to settled principles of criminal prosecution. After applying the guidelines set out above as a re-hearing of the case, this court is certain that the trial court and the intermediate appellate court did not err in their conclusions.

HAS THE PROSECUTION PROVED THE CASE AGAINST THE APPELLANT?

The Supreme Court in a unanimous decision in the case of ***Abdulai Fuseini v The Republic, reported in [2020] Crim LR, page 331*** reiterated and affirmed the basic philosophical principles underpinning criminal prosecution in our courts as follows:-

> ***"In criminal trials, the burden of proof against an accused person is on the prosecution. The standard of proof is proof beyond reasonable doubt. Proof beyond reasonable doubt actually means "proof of the essential ingredients of the offence charged and not mathematical proof." Emphasis supplied***

Section 11 (2) of the Evidence Act 1975 NRCD 323 provides as follows:-

> *"In a criminal action, the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt required the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of a fact beyond reasonable doubt." Emphasis supplied*

Lord Denning explained this standard of proof beyond reasonable doubt in the seminal case of ***Miller v Pensions*** supra as follows:-

"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. If the evidence is strong against a man as to leave a remote possibility in his favour which can be dismissed with the sentence, "of course, it is possible but not the least probable," the case is proved beyond reasonable doubt, but nothing short of that will suffice." emphasis

See also the following local cases on the above:-

1. ***Tetteh v The Republic [2001-2002] SCGLR 854***
2. ***Dexter Johnson v The Repulic [2011] 2 SCGLR 601***
3. ***Frimpong a.k.a Iboman v The Republic supra***
4. ***Francis Yirenkyi v Republic [2017-2020] 1 SCGLR 433 at 457 and 464-466, just to mention a few***

In this case, as has already been referred to, the appellant and the others were charged, prosecuted and convicted on two counts of

a. Conspiracy to commit crime namely Robbery, contrary to sections 23 and 149 of the Criminal and Other offences Act, 1960, Act 29 as amended by Act 646, 2003
b. Robbery contrary to Section 149 of the Criminal and other Offences Act, Act 29 as amended by Act 646, 2003

23. Conspiracy

(1) When two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence.

149. Robbery

A person who commits robbery commits a first degree felony

150. Definition of Robbery

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 the other person to the stealing of the thing.

We have produced the evidence of all the prosecution witnesses, as well as those of the accused persons including the appellant herein.

We have also applied ourselves to the necessary ingredients of the offence with which he was charged.

For example the evidence on conspiracy is so overwhelming that the learned trial Judge did not find it difficult to so hold. In this instance, reference must be made to the presence of the appellant with the second accused person in the bedroom of the complainant PW2 and his wife PW1. Furthermore, the fact that, when the PW5 traced the phone that was used to send the "proverbial" text message to PW1, the investigations further revealed that the 2nd accused person and the appellant herein were in the thick of affairs as those who sold the proceeds of the robbery attack. The explanations given by the appellant and his co-accused persons apart from being confusing and unintelligible, also created the firm impression that these were persons who know each other very well. Therefore when the trial Judge concluded the matter that the prosecution had proven the case against them beyond all reasonable doubt, he had good reason to so hold.

When this court was faced with the problem of considering the ingredients of the offence of conspiracy under Section 23 (1) of Act 29 under the old and new formulation after the work of the Statute Law Revision Commissioner, this is what the Court held in a unanimous decision. In the case of ***Francis Yirenkyi v The Republic supra***, at holding 1 at page 435 the court held as follows:-

1. Under the old formulation of the offence of conspiracy under section 23 (1) of Act 29, conviction could be obtained by the establishment of three ingredients, namely (i) prior agreement to the commission of a substantive crime, to commit or abet that crime, (ii) acting together in the commissioning of a crime in circumstances which showed that there was a common criminal purpose; and (iii) a previous concert even if there was evidence that there was no previous meeting to carry out the criminal conduct. However, under the new formulation, the offence of conspiracy could be established by only one ingredient namely **(1) the agreement to act to commit a substantive crime, to commit or abet that crime. The effect therefore was that the persons must not only agree or act, but must agree to act together for common purposes**.

   Thus under the new formulation, a person could no longer be guilty of conspiracy in the absence of any prior agreement, whereas under the old formulation a person could be guilty of conspiracy in the absence of any prior agreement. Dictum of Korbieh JA in ***Republic v Abu and others Criminal Case No. ACC/15/2013 (unreported) and Sgt. John Agyapong v The Republic, Criminal Appeal No. H2/1/2009, 12th February 2915 (unreported cited)*** *Emphasis supplied*

With the above decision of this court, and taking guidance from the evidence of PW1, PW2, and PW5, the Investigative Officer, it bears sufficient emphasis that the offence of conspiracy to commit the offence of Robbery had been sufficiently proved by the fact that the appellant and other co-accused persons not only agreed to act together before, and during the robbery attack, but also continued to act in the sale of the phone of the

complainants wife PW1 to the 1st accused person. That satisfies the proof of the offence of conspiracy.

In the case of ***Frimpong @Iboman v The Republic*** supra, the Supreme Court in holding 2 of the report at page 300 listed the following as the essential ingredients of robbery.

> *"To prove the offence of robbery the prosecution must establish the following* ***(i) that the accused had stolen something from the victim of the robbery; (ii) in stealing the thing, the accused had used force, harm or threat of any criminal assault on the victim; (iii) the intention of doing so was to prevent or overcome any resistance (iv) the fear of violence must be either of a personal violation to the person robbed or to any member of his household or family in a restrictive sense, and (v) the theft must have been in the presence of the person threatened.*** *In the instant case, where it was the appellant who had kept guard outside, whilst his accomplices used threat to procure the stolen items and the keys to the BMW car, which he drove away and kept, he was as much guilty of the offence as those who had used the threat because it was he who had facilitated the committing of the offence and their exit from the scene". Emphasis supplied*

By parity of reasoning, we are of the considered opinion that, in the instant case, all the above ingredients had been proved against the appellant.

This is because ***(i) the appellant and his criminal gang had stolen the items listed in the charge sheet supra from the residence of the complainants. It was one of the items stolen, the Nokia N 70 which they sold that blew their cover in this criminal conduct (ii) in stealing the items there is abundant evidence that they used violence, reference the shooting of PW3 and threatening the one year baby girl with a gun and other acts of violence recounted elsewhere in this rendition, (iii) the intention of doing so was to prevent or overcome any***

violence (iv) the fear of the violence was actually not only to the complainant and his wife PW2 but to the entire household or family, and finally (v) the theft was in the presence of the complainants and the others.

In putting all the strings and pieces of evidence together some direct and some indirect and therefore circumstantial, this court has evaluated same and applied them to some locus classicus decisions on the weight of circumstantial evidence and concluded that it is safe to do so.

See cases of

i. State v Anani Fiadzo [1961] 1 GLR 416 at 418
ii. Dogbe v Republic [1975] 1 GLR 118
iii. Dexter Johnson v Republic supra
iv. Gligah and Anr v Republic supra
v. **Frimpong @ Iboman v Republic** supra, which all affirm the principle **that where direct evidence was lacking, but there were bits and pieces of evidence connecting the appellant to his deep involvement in committing the offences with which he had been charged, the court must not shy away from using such strong circumstantial evidence."**

On the basis of the above rendition, we have no difficulty in dismissing all the grounds of appeal which attack the conviction of the appellant on the two counts for conspiracy to commit robbery and robbery respectively contrary to *Section 23 and 149 of the Criminal and Other Offences Act, 1960, Act 29 as amended by Act 646, 2003.*

The appeal against conviction therefore fails and is accordingly dismissed.

WE NOW CONSIDER THE LAST GROUND ON SENTENCE

SENTENCE

The only ground of substance which has seriously agitated our minds is the issue of the 65 (sixty five) years imprisonment imposed on the appellant and the others. We have already set out elsewhere in this judgment, what the learned trial Judge said on the ages

of the appellant before he passed sentence. On pain of being repetitive, let us reiterate this statement briefly as follows:-

> ***"In passing sentence I have taken into consideration the youthfulness of the accused persons whose ages have been stated as 23 years, 21 years and 22years respectively. I have also had regard to the fact that the crime committed by the accused person is on the upward surge in the country and hence there is the compelling need to send a potent signal to deter likeminded persons and for them to know that the court will deal very severely with them when they are caught and brought before it." Emphasis***

From the records available, the appellant herein was 22 years old in 2009 and the learned trial Judge has duly acknowledged this as a youthful age. He cannot be faulted on this. Is there really a compelling need to send a signal to deter likeminded young persons from committing such crimes? Yes, we think there is such a need. Is the sentence of 65 years, what we need to deter a young person aged 22 years from committing such a heinous and reprehensible crime like robbery? Maybe no, maybe yes.

The issue of sentencing is a vexed subject under criminal law and needs to be approached with caution and circumspection.

THEORIES OF PUNISHMENT

Professor Henrietta Mensa-Bonsu, now Justice of the Supreme Court writing on the theories of punishment in her invaluable book *"The General part of Criminal Law – A Ghanaian Casebook" volume 1*, at page 105-106 states as follows:-

> "Purpose/Aims of Punishment
>
> It is appropriate at this point, to examine the question of the purpose of the institution of criminal punishment. Why do we have punishment at all? Why not something else altogether? Why do we punish people who commit offences? The question can be answered shortly by stating that there has not as yet been found

any method of ensuring compliance with rules that have been handed down either within the family or within the state. The fact that punishment per se has its own intrinsic worth **does not mean that it is imposed mindlessly, without a consideration of the ends its imposition on offending individuals is intended to achieve. The imposition of punishment therefore has various aims. The main aims for the imposition of punishment are generally acknowledged to be**

1. Retribution
2. Deterrence
3. Prevention
4. Reformation
5. Rehabilitation and
6. Justice"

The learned author, a distinguished academic and now a proud member of this court, then referred to Retributive and Utilitarian theories of punishment, as the philosophical underpinnings that guide the issues of punishment.

A. Retributive Theories

- The first is grounded in revenge, i.e. the fact that the state should avenge the wrong done by the accused to the victim.
- The second is that the punishment must fit the crime.

B. Utilitarian Theories

This according to the learned author, was espoused by Jeremy Bentham which is generally to the effect that laws must ***ensure the greatest good for the greatest number of people.*** Thus whatever the law-making effort engaged in, it must produce useful results that would ensure the happiness of the greatest number. For this reason, ***punishment must not be considered as an end in itself, but as a means to an end. It must serve a purpose, or it is an exercise in waste.***

The learned author continued on page 130 as follows:-

> ***"When punishment succeeds in reducing crime because people realize that offender would be punished, that is a useful end. Therefore the concept of deterrence is very prominent in the arsenal of utilitarian's." Emphasis***

The Supreme Court was confronted with the guiding and governing principles in sentencing upon conviction in the case of ***Banahene v The Republic [2017-2018] 1 SCGLR 606*** .

The court considered the following past authoritative decisions on the issue of punishment such as ***Apaloo v Republic [1975] 1 GLR 156, CA, Kwashie v The Republic supra, Gligah and Atiso v The Republic supra, Kamil v The Republic [2011] 1 SCGLR 300, Frimpong alias Iboman v The Republic supra, and Bosso v The Republic [2009] SCGLR 420***

Our very distinguished sister, Sophia Adinyira JSC speaking unanimously on behalf of the court in the ***Banahene v Republic*** case supra, re-formulated the following as the guiding principles that a court must consider when considering whether a sentence was excessive or not

> **"... sentencing is a matter of discretion for a trial court and an appellate court would only interfere when in its opinion sentence is manifestly excessive having regard to the circumstances of the case or that the sentence was wrong in principle. The factors that a court considers in determining the length of sentence include**

i. Any period of time spent in lawful custody in respect of that offence before the completion of trial as provided by article 14 (4) of the 1992 constitution;
ii. The intrinsic seriousness of the offence;
iii. The degree of revulsion felt by law abiding citizens of the society for the particular crime;

iv. The premeditation with which the crime was committed;
v. The prevalence of the crime within the particular locality where the offence took place or in the country generally
vi. The sudden increase in the incidence of the particular crime
vii. Mitigating circumstances such as the extreme youth, good character, remorse and reparation; and
viii. Aggravating circumstance such as the violence or the manner in which the crime was committed."

Continuing, the court, in the ***Banahene v Republic*** *supra* concluded thus:-

> *"In the instant case, the sentence of twenty years imprisonment with hard labour imposed on the appellant is rather excessive t****aking into account the factors that a court has to consider in determining the length of sentence, the plea for leniency;*** *and the fact that all the properties the appellant acquired during the period he committed the crime have been confiscated and restored to the complainant. In addition, since the judge in contravention of article 14 (4) of the Constitution did not take into consideration the period of time the appellant spent in lawful custody pending the trial, the* ***Supreme Court would temper justice with mercy and reduce the sentence from twenty years imprisonment with hard labour to twelve years imprisonment with hard labour on each count to run concurrentl****y."*

Applying the above guiding principles to the circumstances of the instant appeal, would yield the following results.

1. The issue of whether the time spent by appellant in custody during the trial was taken into consideration in the computation of his 65 years prison term has not been established. However, since this is a constitutional provision which has been interpreted in many cases, it has become a rule of practice, and we will urge that, if that situation exists, it should be taken into consideration in the computation of the appellant's prison sentence.

2. There is absolutely no doubt, that the offence of armed robbery is a serious one and remains to this day. Indeed the ruthlessness with which the appellant and his criminal gang perpetrated violence on the night in question leaves no one in doubt of their being dangerous to society.
3. There is also no doubt that society generally abhors such specie of criminal conduct, to wit armed robbery.
4. The appellant and his criminal gang acted with such precision and professionalism that, the premeditation with which they acted left no one in doubt about their criminal antecedents.
5. There is absolutely no doubt that armed robbery is one of the violent crimes that continues to plague the law enforcement agencies, and there is no sign of this abating.
6. There is indeed a surge in this particular crime of armed robbery in the country at this very moment that the appeal is being considered.
7. There is also no doubt that all the persons who perpetrated this violent crime are very young. **Indeed the appellant himself is reputed to be aged only 22 years at the time the offence was committed in 2008. This means the appellant is now about 35 years. This appears to be the only mitigating circumstance in favour of the appellant, and we dare say a very important one.**

   The appellant after completing basic school started playing football, and was reputed to have been a good footballer.

   There is however no evidence for or against his good character. Under normal circumstances, there should have been a report on the appellant and the other convicts as to their character and whether they have had any previous criminal conviction.

   This is a basic procedure adopted in criminal proceedings anytime person standing criminal trial are convicted. This practice has become so well known that, there is normally adjournments to enable the

investigator to provide this critical information to the court. The failure of the trial court to conduct this basic enquiry considering the youthful age of the appellant is such as to have amounted to a substantial miscarriage of justice in the imposition of the excessive and harsh 65 years prison term.

We cannot conclude whether the appellant showed remorse or not. As regards reparation none whatsoever was offered by the appellant and the others.

8. As recounted elsewhere in this delivery, the violent manner in which the offence was committed no doubt constituted aggravating circumstances.

However, the youthful age of the appellant, and the lack of any information on his character before the imposition of sentence is something we frown upon.

In this respect, we would under the circumstances rely on the words of this court, in the case of ***Frimpong alias Iboman v The Republic***, supra at pages 303 -304 thereof as follows:-

> *"It appeared that the sentence of 65 years imprisonment imposed on the appellant for the offence of robbery was punitive enough and might deter others who were right thinking, and that such long sentence would appease society and safeguard them from criminal conduct. However, in the view of the Supreme Court, for such sentences to be really deterrent to others, a different approach must be adopted to the imposition of sentences.* ***The court will therefore advocate a scheme of sentence where the length of the sentence, whilst being commensurate to an extent with the gravity of the crime and revulsion which law abiding citizens felt towards the crime, would be such that, the peers and younger persons of society would have an opportunity to observe the life of the convict after his release and hopefully be deterred from committing crimes." Emphasis***

Continuing further with explanations why there was the need for the court to reduce a similar 65 years sentence in a violent armed robbery case, the Supreme Court on page 304 of the report concluded the matter in such terms

> "*On the facts and circumstances of the instant case, there was the need for a reduction in the sentence of 65 years imprisonment imposed on the appellant. The remission to be benefitted by the appellant ought to be considered in any reduction of sentence. The court would also consider the fact that even though the robbery gang was violent, no one was injured or harmed during the robbery. In addition, most of the items had been retrieved.* ***And long sentences such as was imposed on the appellant, ie. 65 years imprisonment, meant that he was virtually being consigned to a life in prison throughout his active adult life.*** *That would also mean an extra strain on the scarce resources of the state to cater for him for all the period in prison.* ***These factors constituted mitigating circumstances which should have been considered by both the trial High court and the Court of Appeal." Emphasis supplied***

We concede the fact that, unlike the ***Frimpong alias Iboman v Republic*** case supra where there was no violence, in the instant case there was violence with the shooting of PW3, by one of the robbery gang. However, by the evidence of PW1 and PW2 it was whilst the appellant and one other criminal gang member were with them in the bedroom that they heard the shots that injured PW3 being fired. That meant, apart from the traumatic effect of the appellant terrorising and robbing PW2 at gun point, no other acts of violence took place***. In the Frimpong case supra, the 65 years sentence was reduced to 30 years.***

ANCIENT AND MODERN APPROACH OF THE COURTS IN DEALING WITH SENTENCING

ANCIENT APPROACH

In the case of ***Rex v Modus Wray, 7 W.A.C.A 14 (Nigeria 1941), Coram: Kingdom C. J. Nigeria, Petrides C.J Goldcoast, Graham Paul C. J. Sierra Leone***

"In this case the appellant was charged with murder and convicted of manslaughter and sentenced to fifteen years imprisonment with hard labour. ***He is not a member of the professional criminal class and so far as appears his act was a simple instance of violence. Having regard to this we think that the sentence was far too severe. At the same time a sentence of considerable severity is necessary as a deterrent. The sentence passed at the trial is quashed and in substitution therefore the appellant is sentenced to five years imprisonment with hard labour to date from the date of his conviction." Emphasis***

See page 43 of the *"Source book of the Criminal Law of Africa, Cases, Statutes and materials by Robert Seidman*".

In ***Regina v Mavera, reported as [1952] S.R, 253*** (on page 36 of the book referred to supra)

"The appellant was convicted by a Native Commissioner of the crime of theft as defined by the Stock and Produce Theft Repression Act Chapter 43 and sentenced to nine months imprisonment with hard labour. He now appeals against his conviction on the ground that it was against the weight of evidence and against his sentence on the ground that in the circumstances ***it was harsh and excessive.*** *In justification of the sentence the Native Commissioner in his reasons for judgment gives two considerations that influenced his assessment of the punishment namely* ***(a) that stock theft is rife in the district, and (b) that the appellant had held a position of trust in the district as a dip tank attendant*** *for a number of years and as such knew the seriousness of the crime he had committed.*

Thomas J, held as follows:-

*" I must confess that the exact significance and relevance of the latter consideration eludes me****, but the prevalence of stock theft in the locality is a proper consideration and one which justifies the imposition, within***

reason, of a heavier punishment. *It has been repeatedly stressed that the infliction of punishment is pre-eminently a matter for the discretion of the trial court and that an appellate court will not interfere with the sentence unless it is manifestly excessive.* ***But in considering the quantum of a sentence regard must be had to the maximum penalty prescribed by law****. As the learned authors of Gardiner and Owen's Criminal Law say, at page 534 of the 5th edition of the work.* ***A maximum sentence is intended for the worst offence of the class for which punishment is provided. A court, in sentencing for an offence, should consider whether it may not be likely that far worse instances of the same class may in future come before it, and should keep some penalty in reserve in order to be able more severely to punish the greater offender.*** *Thus it is undesirable to punish a first offender who steals a lamb with the maximum penalty provided for stock theft by Act 26, 1923, for then no greater penalty can be inflicted on the hardened criminal, who steals an ox or a horse, or a number of sheep, unless he happens to come within the provisions allowing a greater punishment in case of a second or subsequent conviction.*

See also ***Rex v Zule and others 1951 (1) S. A. 489 [see problem, p. 35]***

"Bearing these considerations in mind, it seems to me that a sentence of nine months' imprisonment with hard labour on a first offender for the theft of a goat worth only £1 is manifestly excessive. Accordingly, the appeal against the severity of sentence succeeds and the sentence is reduced from nine to four months with hard labour." *Emphasis*

Tredgold C. J concurred – page 38

MODERN APPROACH TOWARDS SENTENCING

Apart from the locus classicus decision on sentencing guidelines set out clearly by the Supreme Court, per Adinyira (Mrs) JSC in the case of ***Owusu Banahene v The Republic,*** supra, the following cases also represent some of the modern trends and

approach by the courts in dealing with sentencing. In the case of ***Henry Kwaku Owusu v The Republic [2020] Crim LR 54*** the Supreme Court, per our illustrious brother Appau JSC had this to say on what appellate courts take into consideration when dealing with sentencing:-

> *"The principle upon which this court acts on an appeal against sentence are well settled. It does not interfere with sentence on the mere ground that if members of the court had been trying the appellant they might have passed a somewhat different sentence.* ***The court will interfere with a sentence only when it is of the opinion either that the sentence is manifestly excessive, having regard to all the circumstances of the case or that the sentence is wrong in law." The court stated that it relied on Apaloo v The Republic supra. Emphasis supplied.***

In ***Kwame Nkrumah a.k.a Taste v The Republic [2020] Crim LR 294 at 295***, the Supreme Court, in a unanimous decision per Adinyira (Mrs) JSC reiterated the principle stated previously in ***Frimpong alias Iboman v Republic*** as follows:-

> *"In passing a sentence, the following principles must be considered (a) The seriousness of the offence, (b) the premeditation with which the criminal plan was executed, (c) the prevalence of the crime within the locality in particular and the country in general (d) the degree of revulsion felt by law abiding citizens of the society; and* ***(e) mitigating circumstances such as extreme youth, first offender and good character.*** *We also recall the purpose of sentencing to be punitive, calculated to deter others, to reform the offender, to appease the society and to be a safeguard to this country. However, the court adopts the sentiment for a scheme of sentence whereby the length of the sentence, whilst being commensurate to an extent with the gravity of the crime and revulsion which law-abiding citizens feel towards the crime, will be such that, the peers and younger persons of society will have an opportunity to observe the life of the convict after his release and hopefully be deterred thereby." Emphasis supplied*

In the case of ***Kofi Abban and Anr. v The Republic [2020] Crim LR 430 at 431***, Honyenuga JA, (as he then was) in a unanimous decision of the Court of Appeal stated on sentencing as follows:-

> ***"The appellants are first offenders and there is the need for them to reform. I think that the sentence of 30 years IHL for the offence of manslaughter in the circumstance is harsh and excessive.*** *Consequently, this ground of appeal succeeds. We would therefore set aside the sentence of 30 years imposed on them by the trial High Court Sekondi and in its place impose a sentence of fifteen (15) years IHL."*

The dominant and prevailing approach towards sentencing generally is to look at the youthfulness and character of the appellants, especially the following factors:

1. Youthfulness
2. Good character
3. Prevalence of the offence in the community
4. Severity of the nature of the crime
5. Maximum or severe sentences should be reserved for very serious cases, this is to ensure that there is always a reserve for the court to deal with in unprecedented serious cases.
6. Even though sentencing is a matter within the discretion of the trial court, its excessive and harsh nature might influence an appellate court to interfere

CONCLUSION

We have indeed considered all the cases referred to supra and the factors or guidelines on sentencing which the courts considered in imposing sentence.

Bearing all the above in context, we are of the view that, there appears to be sufficient good reason why the sentence of 65 years imposed on the appellant for the offences charged should be considered and treated as harsh and excessive.

Under these circumstances, we will vacate the sentence of 65 years and substitute therefore a sentence of (40) years on the appellant in respect of each of the two counts with which he was charged to run concurrently. These are conspiracy to commit robbery and robbery.

SUGGESTED REFORMS

On the basis of our delivery so far, we can safely conclude that there is an urgent need to reform our criminal justice system with particular reference to consideration of restorative justice and also suggest alternatives to custodial sentence and possibly introduce "parole" for well behaved prison inmates.

We are aware that the office of Attorney-General and Ministry of Justice, the Law Reform Commission, the Judiciary, the Prisons Service and the other Law Enforcement Agencies have been thinking of review of the criminal justice system. It appears that these proposals have remained too long on the debating line without any concrete proposals being tabled for discussions and approval. ***Data received from the Ghana Prison Service as at 9th July 2021 indicate that, there is a total prison population of 13, 200, out of which the male population is 13,053 and female is 147. Total authorised capacity of the country's Prisons is 9,945. This means the prisons are over populated as at the above date by 3,255***. This situation is definitely unacceptable and we would wish to add our voice once again to the many calls for reforms in our sentencing procedures and punishment in general. The overcrowding rate of 32% has to be substantially improved to make our prisons a habitable place for the inmates. This is definitely the time to implement non-custodial sentencing guidelines and procedures.

The objectives for the call for reforms is to ensure that the goals of punishment by way of sentencing of offenders adjudged by the courts is executed with a view to ensuring that it is done with the following aims:-

1. Correction
2. Rehabilitation
3. Re-Integrating them into society

We wish to reiterate our endorsement of the Tokyo Rules (Rules which were adopted by the UN General Assembly Resolution 45/100 of 14th December 1990) which states as follows:-

> ***"....the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible."***

We also propose that Restorative aspects of our sentencing policies be given serious attention to bring some modicum of reforms into this much abused system. Tony F. Marshall, in a Report by the Home Office Research Development and Statistics Directorate, 1999 – in a paper titled *"Restorative Justice an Overview"* defined restorative justice as

> ***"a way of dealing with victims and offenders by focusing on the settlement of conflicts arising from crime and resolving the underlying problems that result from it. It is also more widely a way of dealing with crime generally in a rational problem solving way."*** Emphasis supplied.

Long prison sentences purely by their nature and prison conditions does not and will not achieve any of the stated objectives of punishment stated elsewhere in this delivery. We have times without number in our judgments advocated for a second look to be taken at this phenomenon. See our decision in ***Frimpong @Iboman v Republic*** supra for example. We hope that this time around, those who shape policy in this regard and care about the deteriorating criminal justice system will take very prompt actions.

EPILOGUE

We intend to end this judgment by the words of William Shakespeare's in Hamlet. Hamlet, the Prince of Denmark spoke about the frustrations that he faced from his uncle who had succeeded his father as King of Denmark and then married his mother. These words of Hamlet aptly describe the way the appellant is feeling now having spent part of his youth in prison. As a man, one must be bold and decisive in the decisions that we make. This is what Hamlet said in Act III Scene 1, of the Book, Hamlet, one of Shakespeare's Tragedies

"To be, or not to be, - that is the question

Whether tis nobler in the mind to suffer

The slings and arrows of outrageous

Fortune,

Or to take arms against a sea of troubles

And by opposing end them?

To die, - to sleep

No more, and by a sleep to say we end

The heartache, and the thousand natural shocks

That flesh is heir to, tis a consummation

Devoutly to be wisht – **To die, - to sleep**

To sleep! Perchance to dream ay there's the rub,

For in that sleep of death, what dreams may

Come,

When we have shuffled off this mortal coil,

Must give us the pause: that's the respect

That makes calamity of so long life…" Emphasis supplied

The above words clearly indicate the fact that, in this life, whatever that goes up, comes down and whatever is hidden is exposed. How else can we explain that a mere text message accidentally sent to Kweku would lead to the arrest of the appellant and the others in what they thought was a successful armed robbery operation?

Even if we have a sleep of death, perhaps we might dream, and who knows what type of dreams comes after death. It is therefore very imperative that, the words "*To be or not to be"* must be taken seriously by us all in this walk of life in this transient world. A word to the wise is enough. We would again reiterate our appeal to our traditional rulers, all religious leaders, politicians of all walks of life, students and youth leaders to join in the crusade to rid this country of acts of indiscipline and violence which has been triggered by the get rich attitude and greed that has engulfed the country.

The appeal against sentence succeeds by virtue of section 30 (a) (iii) of the Courts Act, 1993 (Act 459) as amended and referred to supra. We accordingly maintain the conviction, but set aside and vacate the sentence of 65 years and instead substitute a sentence of (45) years I.H.L on the appellant herein in respect of the two counts of conspiracy to commit robbery and robbery as per the charge sheet for them to run concurrently.

V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

S. K. MARFUL-SAU
(JUSTICE OF THE SUPREME COURT)

G. TORKORNOO (MRS.)
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