IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: DOTSE, JSC (PRESIDING)
APPAU, JSC
PWAMANG, JSC
DORDZIE (MRS), JSC
KOTEY, JSC

CRIMINAL APPEAL
NO. J3/05/2018

28TH JULY, 2020

HAYFORD OFOSU AMANING ..... APPELLANT

VRS

THE REPUBLIC ..... RESPONDENT

JUDGMENT

DOTSE, JSC:-

PROLOGUE

William Blackstone, an eighteenth century English jurist, in a statement on the hallowed principle of *"Innocent until proven guilty:- rights of an accused person"* upon which our criminal justice administration has been founded in article 19 (2) (c) of the Constitution 1992 stated as follows:-

"Better that ten guilty persons escape than that one innocent suffer."

The above constitutes the fulcrum of our criminal justice jurisprudence. We shall demonstrate whether the prosecution lived up to the above principles of ensuring the innocence of the accused until he is proven guilty.

FACTS

The complainant (hereafter referred to as PW1) in this case, one Yaw Yeboah, is a driver of Kasoa and at all times material to this case which is 19th February 2010 was in charge of Opel Astra Taxi Cab with registration Number GE 3635 V. On the said date, at about 2pm, the 3rd Accused, Nana Kwame, who was at large during the trial, engaged the services of PW1 and requested that he drive him from Kasoa to Agona-Swedru. After agreeing on the fare, PWI undertook the service and drove the 3rd accused to Agona-Swredru. At Swedru, the 3rd accused instructed PW1 to pick 1st Accused, (Kwame Annan) from his house whilst the 2nd Accused (Hayford Ofori Amaning), hereafter Appellant was picked from the lorry station. With the three accused persons now on board the Taxi driven by PW1, he was directed to convey them to Agona-Nyakrom and back to Kasoa as a result of which the fare was re-negotiated from GH¢60.00 to GH¢100.00. On the way to Agona-Nyakrom, 3rd Accused pulled a pistol on PW1 and asked him to stop the Taxi.

PW1 then got out of the Taxi with the pistol still pointed at him by the 3rd accused. Whilst the 1st accused held the hands of PW1 behind him, the Appellant and 3rd accused removed the belt of PW1 and tried to strangle him with the belt**. When that failed, the Appellant then stabbed PW1 in the chest and as a result PW1 fell to the ground**

and he observed that one of the accused whom he could not identify tried to slit his throat when he lay on the ground unconscious. At this stage, with the hands of PW1 tied behind him, 3rd accused shot at him and they left thinking he was dead and drove the taxi away. Fortunately PW1 was not dead, and he shouted for help. After first aid was administered to him, he was rushed to Swedru Government Hospital, admitted and treated for his injuries sustained as a result of the violent attack on him. A report was made to the Swedru Police. Later, PW1 was invited to the Police station to identify some suspects who were arrested by the Police.

During this identification, PW1 identified 1st accused and the appellant as being among those who attacked and robbed him of his Taxi cab. PW1 knew 3rd accused before this incident. After investigations the accused persons were arraigned before the Circuit Court, Agona-Swedru, on three counts of conspiracy, robbery and attempted murder.

JOURNEY FROM TRIAL COURT, THROUGH HIGH AND APPEAL COURTS

This is an appeal by the appellant, therein 2nd accused who was arraigned with two others before the Circuit Court, Agona-Swredru on three counts of conspiracy, contrary to section 23 (1) of Act 29/60, Robbery contrary to section 149 of Act 29/60 and attempt to commit crime to wit murder contrary to section 18 (1) and (46) of Act 29/60.

Out of abundance of caution, we produce in full the statements and particulars of the offence with which the appellant and the others were charged with as follows:-

"*The Republic*

Vrs

1. *Kwame Annan*
2. *Hayford Ofosu Amaning*
3. *Nana Kwame – at large*

STATEMENT OF OFFENCE

Conspiracy Contrary to Section 23 (1) of The Criminal Offences Act, 1960 Act 29

PARTICULARS OF OFFENCE

1. *Kwame Annan 2. Hayford Ofosu Amaning 3. Nana Kwame: For that you on the 19th day of February 2010 at Agona Nyakrom in the Central Circuit and within the jurisdiction of this court came together with a common purpose to commit crime to wit Robbery.*

Count Two

Robbery Section 149 of The Criminal Offences Act, 1960 Act 29

Particulars of Offence

1. *Kwame Annan 2. Hayford Ofosu Amaning 3. Nana Kwame: For that you on the 19th day of February 2010 at Agona Nyakrom in the Central Circuit and within the jurisdiction of this court did robbed one Yaw Yeboah of his Opel Astra Taxi car No. GE 3635 V at gunpoint.*

Count Three

Attempts to Commit Crime to Wit Murder Section 18 (1) & 46 of The Criminal Offences Act, 1960 Act 29

Particulars of Offence

1. *Kwame Annan 2. Hayford Ofosu Amaning 3. Nana Kwame: For that you on the 19th day of February 2010 at Agona Nyakrom in the Central Circuit and within the jurisdiction of this court did attempt to commit crime to wit murder."*

After a tortious trial, the Circuit Court, Agona - Swredu on the 29th day of August, 2012 convicted the appellant and his co-accused persons as follows:-

"Looking at the entire evidence on record, can I say that the prosecution has a weak case. No, From the evidence I find that the prosecution has proved its case

against each accused persons on counts 1, 2 and 3 beyond. 1st Accused is convicted accordingly on each count. 2nd Accused is convicted on each count, 3rd Accused is convicted on each count".

On sentence, this is what the learned Circuit Judge said:

"I have considered the plea of mitigation by 1st and 2nd Accused persons but the manner the offence was committed must also be taken into consideration along with the prevalence of robbery in the country. Each of the Accused persons is therefore sentenced to 20 years I.H.L on each count. Sentences to run concurrently. The Court has taken into account the period 1st and 2nd Accused persons spent in custody."

APPEAL TO HIGH COURT

Feeling aggrieved by the conviction and sentence, the Appellant herein appealed to the High Court. On Friday, the 19th June 2015, the learned High Court Judge in dismissing the appeal against both conviction and sentence held thus:-

"Appellant has been actively involved in a criminal enterprise that nearly resulted in the death of the victim of the crime. The criminal enterprise was well orchestrated, they put their evil scheme into motion, armed with a pistol, an indication of their preparedness to gun down any victim who demonstrated the least resistance. ***Admittedly, appellant does not deserve the relief sought,***

that is mitigation of sentence. *On the contrary, a deterrence sentence should be imposed on him.*

Accordingly, I vacate the twenty years imprisonment imposed on appellant by the trial Court and replace it with twenty five (25) years imprisonment with hard labour. The sentence is to commence on the date of conviction – 29th August 2012". *Emphasis supplied*

APPEAL TO COURT OF APPEAL

Feeling yet aggrieved by the orders of the High Court, the appellant further appealed to the Court of Appeal against both the conviction and sentence. After hearing at the Court of Appeal, the court in a unanimous decision coram*: Marful-Sau, K.A. Acquaye and Barbara Ackah-Yensu JJA* on the 11th May 2017 delivered a considered judgment which upheld part of the grounds of appeal and dismissed the substance of the appeal.

In view of the deep learning and consideration in the Court of Appeal delivery, we deem it expedient to quote it in extenso.

The Court of Appeal dismissed ground one of the appeal which was erroneously founded on the grounds that a Circuit Court has no jurisdiction to try robbery cases summarily because robbery is a first degree felony.

This is what Acquaye JA speaking for the court stated:-

"It is true that jurisdiction is conferred by the Constitution or an Act of Parliament. Section 149 of the Criminal Offences Act, Act 29 of 1960 was amended by Section 6 of the Criminal Code (Amendment Decree 1969) (NLCD 398) to read

"A person who commits robbery commits a first degree felony". This was further amended by the Criminal Code (Amendment) Act 646 of 2003 which deleted the description of robbery as a first degree offence and further made it triable either summarily or on indictment".

Continuing further, the leaned Judge stated as follows:-

"Once section 149 had further been amended in 2003 by Act 646 to read:-

Whoever commits robbery is guilty of an offence and shall be liable upon conviction on trial summarily or on indictment to imprisonment for a term not less than ten years, ***and where the offence is committed by the use of an offensive weapon or offensive missile, the offender shall upon conviction be liable to imprisonment for a term of not less that fifteen years."*** *From the date of the last amendment in 2003 the position is as if the old law never existed. The reference to robbery being a felony and the jurisdiction of Circuit Tribunals which has also been abolished by Section (5) of the Courts (Amendment) Act 620 of 2002 misled Counsel for the appellant into making the submissions he did." Emphasis*

After referring copiously to the Interpretation Act, 2009 (Act 792) Section 32 thereof, and Act 646 supra and Section 43 of the Courts Act, 1993 Act 459, the learned Judge concluded this ground thus:-

***"The current position of the law is that robbery can be tried summarily by the Circuit Court and summarily or on indictment by the High Court under direction of the Attorney-General. The arguments of Counsel for the appellant on this ground are untenable and are hereby dismissed**."*

Emphasis

The court adequately dealt with the second ground of appeal which is to the effect that a Circuit Court has no jurisdiction to try attempted murder. This is how this aspect was rendered by the Court of Appeal.

*"Sections 46 and 47 of the Criminal Offences Act 29 of 1960 has always maintained that a person who intentionally causes the death of another person commits murder and as section 18 (2) provides that "A **person who attempts to commit a criminal offence commits a criminal offence and except as otherwise provided in this Act, is liable to be convicted and punished as if the criminal offence has been completed." Emphasis***

Concluding their reasons why this ground of appeal was upheld and the contention of learned Senior State Attorney for the retrial of the Appellant was rejected, this is what the court stated:-

"In this country jury trials exists only in the High Court. It means therefore that a Circuit Judge sitting alone in the Circuit Court has no power or jurisdiction to try attempted murder cases the punishment of which may amount to a sentence of death. ***The conviction and sentence of the appellant for attempted***

murder by the Circuit court is therefore void and is hereby set aside."

Emphasis

On the last ground of appeal which is against the harshness of the sentence, the Court of Appeal opined that, having set aside the conviction for attempted murder, "there is no reason why the enhanced sentence should stand."

Concluding on this score, the Court of Appeal finally held thus:-

"We accordingly set aside the 25 years I.H.L imposed by the High Court and restore the original 20 years I.H.L for each of the two counts imposed by the trial court to run concurrently from the date of first conviction being 29th August 2012." Emphasis

APPEAL TO THE SUPREME COURT

It is against this well considered and erudite judgment that the Appellant has yet again appealed to this court. In the Notice of Appeal filed by the Appellant to this court, he indicated the following as the grounds of appeal to this court which indeed make interesting reading.

Grounds of Appeal

(a) The trial Circuit Court lacked jurisdiction in relation to the offences on the charge sheet for which the appellant was convicted and sentenced at the first instance.

(b) The Court of Appeal erred in law when it held that the law under which the appellant was charged with robbery did not exist at the time he was convicted and sentenced but proceeded to reduce the sentence from 25 years to 20 years.

(c) The charge sheet based on which the appellant was sentenced and convicted was defective.

(d) The evidence on record does not support the sentence and conviction of the appellant.

(e) Additional grounds will be filed upon receipt of the record of appeal."

ADDITIONAL GROUNDS OF APPEAL

Learned Counsel for the Appellant on the 9th of May 2019 was granted leave by this court to file additional grounds of appeal. Pursuant to the said leave, the following additional grounds were filed.

(e) That the leaned trial Judge and the Appellate court erred when they failed to examine and judicially interrogate the constitutional and statutory standard of proof beyond reasonable doubt in their criminal case.

(f) That the Court of Appeal erred when it upheld the trial court's decision to ignore all the contradictions in the case of the prosecution to arrive at the decision to convict the appellant.

(g) That the Court of Appeal erred when it held that the Appellant's action of appealing only against sentence as well as expression of remorse amounted to admission of commission of the crime.

We have perused the statement of case filed by learned counsel for the appellant, Ekow Egyir Dadson and also that of learned Principal State Attorney, Sefakor Batse for the Republic/Respondent.

Our opinion of the statement of case of learned counsel for the appellant is that, he either appeared not to have understood the facts and the applicable laws under which the appellant was arraigned, tried and convicted as well as the decisions of the appellate courts, i.e. the High Court and especially that of the Court of Appeal, or was just out to impress his client.

We observe that, he was not the counsel that defended the appellant during the trial of the case as well as the prosecution of the appeal in the intermediate appellate courts. However, we think that, every counsel, as an officer of the court owes it as a duty to ensure that he does not sacrifice the settled and uncontradictd facts and law applicable in a given case for the convenience of his client.

For example, in the Court of Appeal, the court whilst considering the ground of appeal on the trial of the appellant on a charge of attempted murder which indeed is an indictable offence and triable only in the High Court by a jury delivered itself and concluded that:-

> *"Thus punishment for murder is the same as attempted murder which is death. Article 19 (2) (a) of the 1992 Constitution provided that a person charged with a*

criminal offence ***shall in the case of an offence other than high treason or treason, the punishment of which is death or imprisonment for life, be tried by a judge or jury".*** *Emphasis*

Having thus in our view rightly set aside the conviction and sentence of the appellant on the offence of attempted murder, and also reduced the sentence from 25 years to 20 years, it was a mark of lack of appreciation and understanding on the part of learned counsel for the appellant to again rely on the original grounds of appeal filed. We accordingly dismiss all the arguments in respect of all the original grounds of appeal as not being related and referable to the Court of Appeal decision.

In coming to this decision we have been guided by the decision of this court in the case of ***Gligah & Atiso v The Republic [2010] SCGLR 870*** where the court speaking with unanimity stated the principle of law thus:-

"Under article 19 (2) (c) of the 1992 Constitution, everyone charged with a criminal offence was presumed innocent until the contrary was proved. In other words, whenever an accused person was arraigned before any court in any criminal trial, it was the duty of the prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof was therefore on the prosecution and it was only after a prima facie case had been established by the prosecution that the accused would be called upon to given his side of the story."

In this appeal, the facts upon which the evidence was led with a high degree of credibility established quite conclusively that the appellant and two others formed part of the criminal gang who robbed PWI of his Taxi cab, and fatally wounded him which nearly resulted into his death. It was basically because of the procedural irregularities that the ground of appeal on attempted murder had been allowed by the Court of Appeal.

Under what circumstances did the trial Court lack jurisdiction to try and convict the appellant for the remaining two offences of conspiracy to commit robbery and robbery is not clear to us from the arguments of Counsel.

Similarly, what the Court of Appeal stated in relation to the existence of the offence of robbery. This bizarre and strange submission is not clear to us and we reject it with all the vehemence at our command.

See the concurring opinion of Dotse JSC in unreported ***Suit No. J5/20/2019 dated 29th April 2020*** *intitutled* ***The Republic v High Court, Accra (Commercial Division) – Respondents; Ex-parte Environ Solutions and 3 others – Applicants, Dannex Limited and 5 others – Interested Parties.***

And also the majority decision in unreported ***Suit Number CAJ4/09/2019 dated 20th May 2020 intitutled Board of Governors, Achimota School - Plaintiffs v Nii Ako***

Nortey II and 2 others - Defendants where the Court, speaking through Dotse JSC stated on the effect of the Interpretation Act 2009 (Act 792) on repealed legislation as follows:-

> *"In a concurring opinion delivered by Dotse JSC in unreported Suit No. CMJ5/20/2020 dated 29th April 2020 intitutled* ***The Republic v High Court, Accra (Commercial Division)- Respondents; Ex-parte Enviro Solutions and 3 Others – Applicants, Dannex Limited and 5 Others – Interested Parties****, where a similar situation arose in respect of a repealed statute with a savings provision, Dotse JSC, after reviewing relevant legislation in the Interpretation Act, 2009 (Act 792), the Companies Act 2019, Act 992, cases like* ***Nii Kpobi Tettey Tsuru v Attorney-General [2010] SCGLR 904, Spokesman Publications Ltd. v Attorney-General [1974] 1 GLR 88 at 89****, Dr. S. Y. Bimpong-Buta's classical work "The Law of Interpretation in Ghana", page 171 and the Invaluable Book of VCRAC Crabbe,* ***"Understanding Statutes"*** *pages 140-141, concluded and held in his concurring opinion in the case referred to supra as follows:-*
>
> *"It must also be emphasized clearly that, from the principles of interpretation of statutes dealt with supra in respected legal texts, statutes as well as case law, it is apparent that, a repealed statute does not lose all of its effect and operating provisions simply because a new statute had been enacted.* ***General principles of interpretation as well as the effects of relevant provisions in the Interpretation Act must all be considered and read together to give a***

***wholistic application and meaning to the situation**. When this is done, it becomes evident that the High Court had jurisdiction to hear the application for the confirmation albeit under a repealed enactment." Emphasis*

The import of the above decisions on the effect of the Interpretation Act on an amended legislation clearly vests the trial Circuit Court with jurisdiction to have tried the offence of robbery summarily.

The delivery of the Court of Appeal on the existence of the offence of robbery had been dealt with adequately by the Court of Appeal and there is no need to re-invent the wheel, save what has been rendered supra.

It thus bears emphasis that the charge sheet upon which the appellant was tried and convicted was not defective.

ADDITIONAL GROUNDS

The evidence of PW1 in relation to the offence of conspiracy had been properly made out. For example, after narrating the circumstances under which he picked the 3rd accused at Kasoa, he testified regarding 1st accused and the appellant thus:-

"We got to Agona Swedru between 3.00 pm and 4.00pm. He made us pick 1st accused at his house and 2nd accused at the lorry station. They told me to drive them to Agona Nyakrom…"

The 2nd accused is the appellant.

Continuing his evidence further, PW1 said concerning the appellant thus:-

"2nd accused and 3rd accused removed my belt and tried to strangle me with it. 1st accused was then holding my hands behind me. 2nd accused then stabbed me in the chest. One of the accused persons tried to slit my throat after I had collapsed but I cannot tell who it was." Emphasis

This PW1 appears to us to be honest and sincere. When he cannot put a finger to the perpetrator of the offence, he was candid with the court, but whenever he was able to be specific he did so loudly. On another occasion, PW1 testified and identified the appellant in this damning testimony as follows:-

Q. How were the accused persons arrested?

A. I had reported the matter to the Police. I described the accused persons to the Police. The Investigator later invited me to come and see whether certain people arrested were among those who robbed me. **When I went, I identified the 1st and 2nd accused persons as being among those who robbed me." Emphasis**

What type of cross-examination did the Appellant conduct of PW1 on the identification? The question and answer session went like this:

Q. "Who called you to come and identify me?

A. The CID man

Q. Did the Police tell you that they had arrested me with your car?

A. I was asked to come and see whether you were one of the robbers."

Q. I suggest to you that you wrongly identified me because the robber you are talking of was bushy haired but I am bald.

A. I deny your suggestion

Q. I put it to you that I am not among those who robbed you?

A. I deny your suggestion" Emphasis

From the above pieces of evidence, it is apparent that the appellant was properly identified by the victim of the robbery after Police investigations had been conducted into the case following the report to the Police by the victim.

The evidence of the 1st accused person when he opened his defence and the subsequent cross-examination that the appellant conducted of his co-accused person laid bare the fact that the accused persons including the appellant, infact conspired together for a common purpose to commit crime to wit robbery.

After our evaluation and analysis of the entire evidence, we are of the opinion that, the conclusions reached by the Court of Appeal in the matter are consistent with our own views of the law and the decision to arrive at in this appeal posed.

As no complexities whatsoever, it is the duty of the prosecution to prove all the ingredients of the offence against an accused person, in this instance, we are satisfied

that the prosecution indeed has discharged that responsibility in respect of the two offences, conspiracy to commit robbery and robbery.

We are also satisfied that the constitutional stipulation that an accused person is presumed innocent until proven guilty in article 19 (2) (c) of the Constitution 1992 has been complied with. There being no breach of the said constitutional provisions, we dismiss as unfounded grounds of appeal urging a contrary position.

We are thus of the opinion that the appellant has not succeeded in tilting the case against him as finally dealt with by the Court of Appeal. Accordingly, we dismiss all the additional grounds of appeal filed and urged upon us by learned counsel for the appellant.

We deem it appropriate to commend learned counsel for the Republic/Respondent for her erudite statement of case which dealt adequately with the substance of the appeal and not with peripheral matters of no consequence.

In the premises, the appeal by the appellant against the Court of Appeal judgment dated 11th May 2017 fails in its entirety and is accordingly dismissed.

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

Y. APPAU

(JUSTICE OF THE SUPREME COURT)

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

A. M. A. DORDZIE (MRS)

(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY

(JUSTICE OF THE SUPREME COURT)

COUNSEL

KWESI ASEBU KWAKYE FOR THE APPELLANT.

SEFAKOR BATSE, PRINCIPAL STATE ATTORNEY LED BY MRS EVELYN KEELSON, CHIEF STATE ATTORNEY FOR THE RESPONDENT.