THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2019

CORAM: DOTSE, JSC (PRESIDING)
BAFFOE-BONNIE, JSC
MARFUL-SAU, JSC
DORDZIE, JSC
AMEGATCHER, JSC

CRIMINAL APPEAL
SUIT NO. J3/1/2019

22ND NOVEMBER 2019

MAHMOUD MOHAMED	.....	APPELLANT
VRS		
THE REPUBLIC	.....	RESPONDENT

JUDGMENT

THE UNANIMOUS JUDGMENT OF THE COURT IS READ BY DOTSE JSC, AS FOLLOWS-:

This is an appeal by the appellant against the unanimous judgment of the Court of Appeal, coram: Kanyoke *(of blessed memory),* Mariama Owusu and Cecilia Sowah (Mrs) JJA, dated the 27th day of March 2015 wherein an appeal by the appellant against the High Court decision dated 14th day of October, 2011 which convicted him among others of the offences of Conspiracy to commit Robbery and Robbery contrary to Sections 23 (1) and 149 of the Criminal and Other Offences Act, 1960 Act 29 was dismissed by the Court of Appeal

Out of abundance of caution, the following are the statements of offence and particulars of the two counts that the appellant was tried and convicted upon by the High Court, presided over by Quist J on 14th October 2011.

COUNT ONE

STATEMENT OF OFFENCE

Conspiracy to Rob: Contrary to Section 23 (1) and 149 of The Criminal Offences Act, 1960 (Act 29)

Particulars of Offence

(1) **Mamoud Mohammed** (2) Ayitey Sackey (3) Richard Boahene Quaye (4) Yintimani Saman @PDD @ Burger (5) Ahmed Tijani @ Charles Taylor for that you on or about the 25th day of February, 2008 at Adenta Lotto Kiosk in the Greater Accra region and within the jurisdiction of this court did conspire or agreed together with a common purpose to commit crime to wit robbery.

COUNT TWO

Robbery: Contrary to Section 149 (1) of the Criminal Offences Act, 1960 (Act 29)

Particulars of Offence

(2) **Mamoud Mohammed** (2) Ayitey Sackey (3) Richard Boahene Quaye (4) Yintimani Saman @PDD @ Burger (5) Ahmed Tijani @ Charles Taylor for that you on or about the 25th day of February, 2008 at Adenta Lotto Kiosk in the Greater Accra region and within the jurisdiction of this court did use force and attack one Alex Adu a businessman resident in Adenta with cutlass and robbed him of one lap top computer valued at GH ¢1,500.00, 40 inch Plasma Television set valued GH¢4,000, six mobile phones valued at GH¢2,300, one Sony digital camera valued GH¢400 and cash the sum of GH¢12,300 all totaling GH¢20,500.

FACTS OF THE CASE

The complainant, Mr. Alex Adu (PWI) a businessman, was violently attacked at his home on 25/2/2008 at Lotto Kiosk, Adenta in Accra by a group of about six armed robbers. At the time of the attack, PWI Alex Adu was in the house with his fiancé, Janet Otchere (PW2), his daughter, his house boy, Atta Kwabena (PW3) and his driver, Kwasi Adjei @Farouk.

Three of the robbers broke through his kitchen door with a big block and ordered him at gun point to bring his money and dollars. The robbers threatened to kill him if he didn't give them the money. PWI led the three robbers to his boy quarters where he collected an amount of about 19,500.00 old Ghana Cedis from his houseboy Atta Kwabena (PW3) and gave it to them. Not satisfied they marched them back to his bedroom where he was ordered to lie flat on the floor whilst they took his laptop, watches, a television set, six mobile phones and other electrical equipments. Apart from the three robbers who entered his premises through the kitchen, PW1 in his evidence recounted that there were other robbers on the compound because the robbers in his kitchen were communicating with others outside. **PW1 was able to recognize the first accused person Mammoud Mohammed at the time of the robbery and subsequently at an identification parade as one of the robbers who attacked him**. During the robbery they beat up the house boy, PW3, Atta Kwabena and used the butt of the gun to hit the head of PW1 resulting in a cut on his forehead which sent him on the floor rendering him semi-unconscious. The robbers took PW1 for dead and left him bleeding in a pool of blood in the room and went about ransacking his house.

PW1 regained consciousness after a time and got up from the floor, jumped his fence wall and escaped to a neighbour's house. During the robbery, the first accused person, **Mammoud Mohammed (who is the appellant herein)** and the third accused person Richard Boahene Quaye entered PW2 Janet Otchere's room and the third accused person ordered her to show him all the rooms in the house. After that the third accused person sent her to the living room where she was alleged to have been raped at gunpoint. After that the first accused person, Mammoud who was holding a laptop he had taken from the house, loaded stuffs of stolen items into PW2's bag which he took from the house.

The appellant was also alleged to have entered the room of PW2, Janet Otchere and raped her. **Janet Otchere recognized and identified the first accused person and the third accused person as the ones who raped her during the robbery**. **She subsequently identified them to the police at an identification parade, as the ones who committed the robbery.** The houseboy, PW3 Atta Kwabena, also testified that during the robbery, the second accused person, Ayitey Sackey, climbed and stood on the fence wall of the house and acted as a security for the intruders.

He also identified the first accused person, Mammoud and the fifth accused person Ahmed Tijani among the robbers who attacked them during the robbery. He said during the robbery the fifth accused person used a big stone to break into the Kitchen door after which the first accused person Mammoud, broke into PW1's bedroom and ransacked the room.

ARRAIGNMENT, TRIAL, CONVICTION AND SENTENCE BY HIGH COURT

The Appellant upon arraignment, pleaded not guilty, and after trial in which the prosecution called four witnesses , the appellant opened his defence by testifying whereupon, the learned trial Judge evaluated the case against the appellant, convicted him and the others and thereupon sentenced the appellant to 40 years I.H.L. Concluding the evaluation of the summary of the evidence, this is what the learned trial Judge stated by way of his concluding remarks on the offences with which the appellant was charged.

EVALUATION OF EVIDENCE AND CONCLUDING REMARKS BY TRIAL HIGH COURT JUDGE

> *"PW1 Alex Adu, the victim of the robbery said on 25/2/2008 around 2 am, three armed robbers wielding guns violently entered his kitchen and attached him with the butt of a gun. He sustained a cut on his forehead.*
>
> *They took his laptop, camera, watches, money and other electrical gadgets. When he fell on the floor and was bleeding, one of the robbers stood on him with a gun on his head whilst two of the robbers rushed into his bedroom and used a six inch*

block to break into his bedroom. They ransacked his bedroom. ***He recognized the first accused `person Mammoud among the robbers who attacked him that night***.

PW2 Janet Otchere, a fiancé of PW1 who was at home at the time of the robbery, testified that during the robbery she was in her room when she heard the robbers shouting:-

"give me the car keys, gun and dollars" and her boyfried PW1 said " I don't have any money on me please."

"Two of the robbers, the first accused person, Mammound, and the third accused Richard Quaye entered her room and raped her in turns before escaping with a lot of stolen items. ***Thus if two or more persons agree or act together for a common purpose such as robbery, they are guilty of conspiracy to rob. In the present case, during the robbery, PW1 said the robbers were communicating with others outside; PWI was attacked on his forehead with a gun by one of the robbers, his houseboy PW3 was beaten up; the robbers stole money and other valuables from him at gunpoint; the second accused person, Ayittey, stood on the fence wall and acted as a sentry during the robbery and PW2, PW1's girlfriend was raped by the first and third accused persons. Thus the robbers acted together in a coordinated fashion to rob PW1 and his family. In C.O.P. v Afari and Adoo [1962] 1 GLR 483*** *the Supreme Court held that:*

"It is rare in conspiracy for there to be direct evidence of the agreement which is the gist of the crime. This usually has to be proved by existence of subsequent acts, done in concert and so indicating a previous agreement. There is here, clear, ample and affirmative evidence of the conspiracy in addition to the evidence of the completed offence."

In the circumstances of the instant case, the prosecution established that the first, second and third accused persons acted together to rob

PWI and his household. The Supreme Court in State v Yao Boahene [1963] 2 GLR 554 held that:-

(4) "Where it is found that there is a conspiracy, each conspirator becomes the agent of the other conspirators, any overt act committed by any one of the conspirators is sufficient on the general principles of agency to make it an act of all the conspirators."

INSTANCES NARRATED BY THE TRIAL JUDGE TO INDICATE THAT THE PROSECUTION WITNESSES PROPERLY IDENTIFIED APPELLANT

"From the numerous and long encounters between the robbers and the prosecution witnesses during the robbery, the first second and third accused persons particularly exposed themselves to the PW1, PW2 and PW3. ***PW1 saw and recognized the first accused person among the robbers on the night of the robbery. He was able to identify him at an identification parade at the Police Headquarters and also in court."***

The concluding factual remarks of the learned trial Judge put the involvement and identification of the appellant beyond doubt in the following terms:-

"From the totality of the evidence adduced in this case there was sufficient evidence on record from the testimonies of the prosecution witnesses to establish the identities of the accused persons by the numerous encounters and occurrences between PWI, PW2, and PW3 and the accused persons during the robbery that occurred at Adenta on 25/2/2008. The encounters were prolonged enough for the prosecution witnesses to distinctly observe and recognize the accused persons as the perpetrators of the robbery. The first, second and third accused persons are each convicted on both counts of the offences of robbery levelled against them. *In passing sentence, I will be guided by the dictum of the Court of Appeal* ***in Kwashie and Another v The Republic (1971) GLR 448****, where it was held that:-*

"2. Since the offence was of a very grave nature, the sentence must not only have been punitive but it must also have been a deterrent or exemplary in order to mark the disapproval of society of such conduct…"

APPEAL OF APPELLANT

Feeling aggrieved by the conviction and sentence of 40 years that was slapped on him, the appellant appealed both the conviction and sentence to the Court of Appeal.

APPEAL TO COURT OF APPEAL AND ITS DISMISSAL

Unfortunately, the Court of Appeal, in substance also dismissed the appeal against conviction and sentence as per the following words of Kanyoke J.A.

"According to the trial judge, the strong evidence adduced by the prosecution was sufficient or strong enough to debunk the accused person's plea of alibi.

He then proceeded to narrate, analyse and evaluate that "strong evidence" of the prosecution and concluded at page 454 of the ROA just as has already been quoted at length by the concluding remarks of the trial Judge referred to supra.

Continuing, the learned Judges of the Court of Appeal, per Kanyoke JA, stated as follows:-

"We have taken the trouble to very carefully read, examine and critically analyse, and study the entire record of appeal ***and we have come to the inevitable conclusion that the findings and conclusions made by the trial Judge in the passage quoted supra are amply and reasonably supported by the evidence on record****. Even though we have ruled as inadmissible or wrongly admitted the hearsay assertions of Markus Tekpah contained in the evidence of PW5- the police informant, we are satisfied that* ***there is overwhelming evidence on the record to prove beyond all reasonable doubt the identities of A1 and A3 as persons among the six persons who raided the house of PWI on 25/2/2008 at night and stole his movable properties with violence and at gun point.*** *We find and conclude that despite the wrong admission in evidence of that hearsay evidence and the failure of the trial Judge*

to consider or adequately consider the evidence of DWI and DW2, ***we are satisfied that there has been no miscarriage of justice in the conviction and sentence*** *of A1 and A2 for the offence of conspiracy to rob and robbery contrary to Sections 23 (1) and 149, and 149 of Act 29/60 as amended."*

With the above words, the Court of Appeal dismissed the appeal against both the conviction and sentence of the appellant by the High Court.

APPEAL TO SUPREME COURT

Feeling still aggrieved by the decision of the Court of Appeal, the appellant yet again appealed that decision to the Supreme Court.

In this court, this is the Notice and ground of appeal that was filed.

GROUNDS OF APPEAL

a. Part of the decision complained of
   The Ruling of the Court of Appeal dismissing the appeal
b. Grounds of Appeal
   i. **The Court of Appeal erred very serenity in law in not upholding our objections to the identification process**
c. Reliefs being sought
   To acquit and discharge the Appellant
a. Persons Directly Affected by the Appeal;

STATEMENTS OF CASE OF LEARNED COUNSEL FOR BOTH APPELLANT AND RESPONDENT

We have apprized ourselves of the statements of case filed by learned Counsel for the appellant, Nkrabeah Effah Dartey and the learned Senior State Attorney, Elizabeth Sackeyfio (Mrs).

The crux of the statement of case filed on behalf of the appellant dealt mainly on the issue of the Police Identification or Lineup that was held to identify the appellant to the crime simpliciter. Learned counsel for the appellant relied on Justice A. N.E. Amissah's

Book, *"Criminal Procedure in Ghana"* page 41, where the learned author stated as follows:-

> 41- "*Wherever it appears necessary to identify an accused, or suspected person by giving a potential witness the opportunity to pick him out from a number of persons an identification parade is held.* ***The suspect is placed in a line together with others at a position chosen by himself.*** *Then the witness is brought on the scene and asked whether he can point out the suspect from the line." Emphasis supplied.*

Referring also to instruction 2 (b) of the Police Standing Order 195 which was also referred to by the learned author Justice Amissah in his book and which states as follows:-

> ***"The parade shall consist of at least eight persons as far as possible of similar age, height, general appearance and class of life as the suspect. The suspect shall be asked whether he has any objection to any of the persons forming the parade or to the arrangement made..."****Emphasis*

Learned Counsel for the appellant then argued the ground of appeal referred to supra.

Counsel for the appellant, Nkrabeah Effah Darteh, rightly in our view on this point listed the following which we have amended as the key indicators that must be present in any proper identification parade or lineup as per the relevant operating guidelines on lineup identification.

1. There must be the need to hold an identification parade to identify the suspect as a key person in committing the crime.
2. The suspect must have chosen where he wants to stand in the line or parade.
3. There must be at least eight persons
4. Each of the persons must be as nearly of the same height and of general appearance as the suspect.
5. The suspect shall be asked whether he has any objection to the persons who have been lined up with him to conduct the identification.

Based on the above indicators, learned counsel for the appellant, then made the following misguided statement in his statement of case without proof as follows:-

> "*Per the requirements of the law, my Lords, Why did the Police hold an identification parade? Was the Accused asked or made to CHOOSE where he wants to stand in the line? How many persons were paraded? Were they of equal height and build as the suspect? Was the suspect given any opportunity to agree to those he was being paraded with?*
>
> *Where can we find answers to these mandatory questions? Short of them, how can we, or for that matter, the court of competent jurisdiction RELY on a so call "Identification Parade" as a "Properly held identification parade."*

Learned counsel for the appellant, then made a rhetorical statement as follows:-

> " *I strongly urge you, Supreme Court, to hold that in a criminal trial where appellant is facing 40 years IHl, this roughshod is "illegal" so called identification parade cannot be said to be in conformity with the law and must therefore be shot down as null, void and ineffectual."*

We have combed through the record of appeal to find whether there are any grounds for the said statements and conclusions.

What must be noted is that, it is the duty of learned counsel to try to elicit evidence through cross-examination especially of the Investigator of the case who must have conducted the Identification or lineup.

The crux of the complaint of learned counsel for the appellant appears to be two fold.

1. That the complainant and his girlfriend, PWI and PW2 were given an unfair advantage by going to visit him earlier on at the Police Hospital.

This particular fact had been rendered moot by the same learned counsel when he relied on a statement made by Kanyoke JA in the Court of Appeal judgment referred to supra as follows:-

"The learned Judge held as a fact that even though the PW1 and PW2 did visit the Appellant at the Police Hospital, it was much later after the identification parade."

If indeed, learned counsel agrees with the above statement, then it is consistent with common sense and the position of the learned Senior State Attorney in her erudite statement of case.

This is so because, if really the identification parade was held before PWI and PW2 did visit the appellant at the Police Hospital, then wherein lies the collusion and the undue advantage.

The issues raised in this appeal resolve around what really are the common pretrial identification procedures that are used to identify culprits or suspects.

In the US for example, three methods are normally used to identify suspects in a crime. These are:-

1. **Lineups -** which we call in Ghana Identification. This consists typically of five to six people, in which case one is the suspect while the others may be other persons i.e. Police Officers or other "decoys" ***who bear a resemblance to the suspect or fit the description that the eye witnesses have given to the Police***. Generally, a lineup is held by the Police after they have made an arrest.

2. **Showups –** This is a one on one identification procedure, where the eyewitness views a single suspect perhaps at a Police Station or sometimes at a crime scene. Again, the Police will generally conduct a showup after they have identified and arrested a possibly guilty suspect. This procedure is not commonly used in Ghana.

3. **Photo Identifications:**- This procedure calls for eyewitnesses to view photographs, typically head shots in a police department's files. This is resorted to when the Police do not have enough information to make an arrest.

The eyewitnesses's positive identification of a suspect's photo is what allows the Police to make an arrest. It should also be noted that, quite apart from using the above procedures to identify a suspect, it is also available to clear a suspect, if for example an eyewitness fails to make a positive identification at a lineup, the Police will have to release the suspect. ***Reference Pages 97-98 of the 13th Edition of "The Criminal Law Handbook" by Bergman and Berman.***

These days, there are a lot of literature on eyewitness Identification. See for example ***Elizabeth Loftus, Eyewitness Identification (Harvard University Press, 1960) and Edward Geiselman, Eyewitness Expert Testimony (Eagle Publishers 1995).***

We believe that the provisions we have in our statute Books i.e. Act 30 and the Police Standing Orders which we have referred to supra call for extensive and quick reforms to bring it in line with best practices worldwide.

For example, is it still prudent to maintain the number eight (8) to constitute line ups? What about the odd number five (5) as a suggested number and also allowing persons who generally bear a resemblance or fit the suspect's resemblance other than what is now the prevailing practice.

This is because in the 21st century with the advance acts of criminality and the widespread and the phenomenon of high tech nature of crime, it may be difficult to comply with the existing procedural rules in Ghana, if we have to apprehend suspects of crime.

Secondly, when like it has happened in the instant case the prosecution witnesses, like PW1, especially PW2, who was alleged to have been sexually assaulted by the appellant, and PW3, the houseboy of PW1, who had a close contact with the appellant and his criminal gang, other methods of identification other than a lineup can be used for the identification.

In such situations, eyewitnesses who have direct contact with the suspects which can aid them give sufficient information to the Police which may aid them to arrest suspects should be the norm rather than the lineup procedure.

In the instant case, we have reviewed the entire evidence on record. We have also taken guidance from both the learned trial Judge's narration of the facts which we have referred to in extenso as well as the Court of Appeal judgment to infer that **there are indeed verifiable pieces of other evidence on record other than the lineup identification to link the appellant to the crime.**

It was therefore very disheartening to observe that, learned counsel for the appellant decided to put all his eggs in one basket on an agenda of a botched up identification of the appellant during the lineup procedure. We observe that, learned counsel did not acquit himself creditably in the performance of his professional duty to his client in the write up in the statement of case.

Counsel who accept briefs on behalf of their clients owe a fiduciary duty to them in line with their oaths of office as well as their professional duty.

Even though we are not satisfied with the conduct, output and performance of learned counsel for the appellant, we have decided not to press any recommendation against him. In future, erring Solicitors may not be so lucky because it is our determination to raise the professional etiquette and standard at the Bar.

It should also be noted that, learned Senior State Attorney for the Republic, quoted the following portion from the Court of Appeal judgment to support the contention that the identities of the appellant and his other accomplices were thoroughly done and proven beyond doubt in the following terms:-

> *"We are satisfied that there is overwhelming evidence on the record to prove beyond reasonable doubt the identities of Appellant and A1 as persons who raided the house of PW1 on 25th February 2008 that night and stole his moveable properties with violence and at gun point."*

We have verified this from the appeal record and agree with the learned Senior State Attorney. There is no substance in the contentions of learned counsel for the appellant to the contrary, that the appellant was wrongly identified and linked up with the crime.

2. The second issue which arises from the incoherent statement of case of the appellant is that, the identification parade was not regularly and properly done according to laid down procedure.

As we have already pointed out, the onus lies on the learned counsel for the appellant to have elicited evidence to the contrary that the said identification parade was irregular. As we have indicated much earlier in this judgment, there are sufficient indications that the identification parade complained about had been regularly and properly held and conducted.

For example, learned counsel for the appellant in an attempt to elicit some critical information from the Police Investigator P.W.4 L/Cpl Frank Yeboah cross-examined him on some material particulars relevant to the identification as follows:-

Q. "At the time you took over the investigations had A1 been arrested?

A. Yes My Lord

Q. You don't know why and how A1 was arrested?

A. I know why and how A1 was arrested

Q. How was he arrested?

A. He was arrested based on information by the Police. The Police went to his house and arrested him."

Continuing later, this is how the further cross-examination of learned counsel for the appellant went in respect of PW4.

Q. "Are you aware that when A1 was in hospital on admission the previous Investigator escorted the complainant to visit him in hospital?

A. I am not aware

Q. You took the complainant to visit the A1 in hospital

A. I went to the hospital with the victim Janet Otchere who alleged that she was raped by A1. Therefore she was to confront the A1 with the allegation.

Q. You did this before the identification parade?

A. No, the identification parade was done earlier.

Q. You know that Janet saw A1 at the Police station and did not identify him until you took her to the hospital

A. It is not true, she had already identified him.

Q. Janet at the identification parade identified someone who had already been in custody for 6 months?

A. I am not aware

Q. It was you who told Janet that there was a robbery suspect on admission at the hospital and you took her to A1.

A. Not true

Q. You told the court, you took her there for confrontation.

A. The victim had already identified the A1 at the CID Headquarters but she had not told the Police that she was also raped by the Al that was why the victim was taken to the hospital to identify the A1.

Q. Is it part of your Police training that you should take a witness to a suspect on admission for confrontation?

A. **It is so when the suspect is in the custody of the Police.** "

From the above cross-examination, it is apparent that the only thing learned counsel sought to establish was that PW2 visited the appellant in hospital before the identification

took place. That fact had been debunked long ago by the concurrent findings of fact by the trial court and the first appellate court, the Court of Appeal.

Nowhere in the cross-examination of PW4, and of PW2 which is also produced elsewhere in the judgment below was there the slightest idea or suggestion that the number of persons on parade during the identification were less than eight and were not of the same resemblance of the appellant. It therefore bears testimony to the fact that there is absolutely no basis whatsoever for the said contention by learned counsel for the appellant.

Indeed, when learned counsel for the appellant sought to unsettle PW2 during cross-examination on the essentials of the identification done by her, she remained resolute, firm and forthright as can be seen in the following exchanges:-

Q. "Is it not true that you have identified other people before in connection with this incident?

A. Before him, him? **He was the first person I identified.** Among the other men there he was the very first person I identified at the Police headquarters.

Q. Is it not true madam that you identified somebody who has been in custody for five years that he was one of the persons?

A. That was not at the Police Headquarters, it was at a different Police Station" Emphasis

The crux of the above is that, so far as the appellant is concerned, his identification had been done by PW1, PW2, and PW3 and there was no doubt whatsoever about his linkage to the robbery.

Secondly, it must be emphasized that the prosecution witnesses had identified the appellant earlier at the line up at the Police Headquarters before the visit to the appellant at the Police Hospital and during other identifications which have no bearing on the subject matter.

We have indeed perused the statements of case of both counsel, and we agree with learned Senior State Attorney for the Republic that the principles underlying the identification of an accused person propounded in cases like ***R v Turnbull and Others (1977) QB 224***, and ***Adu Boahene v The Republic [1972] 1 GLR 70 CA*** have been complied with in this case.

See also the quote from *Phipson on Evidence, 15th Edition, paragraph 14-03*, page 308 where the learned authors write as follows:-

> *"It is often important to establish the identity of a person who a witness testifies that he saw on a relevant occasion. Sometimes, the witness will testify that he had seen the person before, or even knew the person well and therefore recognized the person observed on the relevant occasion. But if the witness did not recognize the person he might still testify that on some subsequent occasion he was able to identify a person as the person he had initially seen on the relevant occasion. This subsequent occasion may have been formal, such as an identification parade or informal, for instance seeing the person in the street. In each situation, the reliability of the evidence of identification will depend on the quality of the opportunity which the witness had to see the person on original relevant occasion. Where the witness purports to have identified the person on a subsequent occasion the reliability of that evidence will also depend on the quality of the subsequent identification process. Thus, the reliability of visual identification evidence will be greater if, for instance the witness saw the person on the relevant occasion in good light, from close up for considerable length of time, and the reliability will be less, if for instance, he was drunk when he witnessed the incident, he had not seen the person he knew for a long time or felt under pressure when asked to point someone out on a subsequent occasion…"*

In the instant case we are of the considered opinion, that the identification of the appellant by PW1, PW2 and PW3 have been properly done and was in conformity with approved procedures and best known international practices.

SENTENCE

Section 30 (a) of the Courts Act, 1993 (Act 459) provides as follows:-

> *"Subject to the provisions of this sub-part, 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 as the case maybe or order him to be retried by a court of competent jurisdiction, or commit him for trial, or*
>
> (ii) *alter the finding,* ***maintaining*** *the sentence or with or without altering the finding,* ***reduce or increase the sentence****,"* emphasis

We are of the considered opinion that even though learned counsel for the appellant has not specifically appealed against sentence, the mere fact that, this is an appeal against conviction in a criminal case automatically called in aid the provisions of Section 30 (a) (ii) of the Courts Act, Act 459, referred to supra. Thus has reinforced the need for this appellate court to consider whether to ***maintain, reduce*** or ***increase*** the sentence as the case may be.

We are of the considered view that, as an appellate court, we are emboldened by the provisions of Section 30 (a) (ii) of Act 459 referred to supra to do any of the three things mentioned supra, i.e.

i. maintain
ii. reduce
iii. increase the sentence

Having taken all the prevailing circumstances of this case into consideration, there appears to us, to be no justifiable and verifiable reason why the sentence of 40 years imposed by the trial High Court and confirmed by the Court of Appeal should be disturbed.

We accordingly maintain the sentence of 40 years I.H.L on the appellant.

CONCLUSION

On the basis of the above analysis, we are of the considered view that no real, genuine or substantial grounds have been urged on us to overturn the judgment of the Court of Appeal.

We accordingly dismiss this appeal in its entirety as grossly incompetent and in its place affirm the judgment of the Court of Appeal dated 27th March 2015.

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

SGD P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

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

SGD A.M. A. DORDZIE
(JUSTICE OF THE SUPREME COURT)

SGD N. A. AMEGATCHER
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