

GHANA / JUDGMENT

REPUBLIC VRS ADAMA (B7/01/2024)

[2023] GHACC 1155 (2 October 2023)

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COURT

Circuit Court

CASE / FILE NUMBER

B7/01/2024

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IN THE UPPER WEST CIRCUIT HELD AT WA ON MONDAY THE 2ND DAY OF OCTOBER 2023
BEFORE HIS HONOUR JONATHAN AVOGO ESQ. CIRCUIT COURT JUDGE B7/01/2024 THE
REPUBLIC VRS JALIRU ADAMA

JUDGMENT

Charges & Plea The accused person is charged with one count of robbery an offence contrary to sections 149 of the Criminal and Other Offences Act 1960 [Act 29]. When the charge was read out and explained to accused person, he pleaded not guilty to the charge and so his trial was adjourned for discoveries to be served him for case management and his trial. Facts for which Accused was charged The facts of the case are that on the 22nd day of May 2023 Jahara Braimah the complainant in this case and a pregnant woman aged 31 years went to pick shea picking in the early hours of that morning and whilst on that errand, she was attacked by accused person who had gotten himself undressed naked and wielded a knife to the throat of complainant. Accused then demanded to have sexual intercourse with complainant else he will split open her throat. In the complainants attempt to resist the accused, the knife he held cut her palm during the struggle and so she bled profusely. Accused then overpowered the complainant by bringing her to the floor and using his knife to cut her underwear open, restrained her by pushing away her right and with her vagina then left wide open, accused's left knee kept taps on her right leg then inserted his penis into her distress vagina and had sex with complainant. Just when accused settled with a force entry into her, the complainant pleaded with accused not to continue because she was married and heavily pregnant at the time which accused obviously saw and pleaded that it was against her tradition to have sex whilst pregnant for another man. Accused however refused to stop thrusting but instead gave complainant an option that could assuage her pain. The option was that she should rise up from the floor and bend down (doggy position) to allow him have sex better access to her vagina because her front was encumbered with her protruding tummy as she was very pregnant. Complainant having no choices complied and gave accused the sexual posture he demanded and when he was done by ejaculating, he wore his dresses and collected her Tecno mobile phone, demanded the password to her momo account and took an amount of GHC50 complainant had on the cover of the phone. Complainant however pleaded

that she be allowed to remove her chip before surrounding the phone to him but he declined and walked away into the farmlands. EVIDENCE OF PW1 PW1 was Asmiru Iddrisu who described himself as a resident of Kusali in the Sissala East District of the Upper West Region the community this bastardly act occurred and that he is a tractor operator. He told the court that at about 9am of 22nd May 2023 he had information from his brothers that a young man had raped a lady at that dawn when she went shea picking and that he should join them to go arrest him. He further said he and three others went to the location the crime had occurred and indeed did see someone from a distance leaving the vicinity but took to his heels upon sighting them, so, they chased and caught up with him but in the process of arresting him, he stabbed him PW1 in his right leg with a knife he had on him but he was over powered and arrested and together with complainant they were taken to the Gwollu Government Hospital for medical treatment. EVIDENCE OF PW2 PW2 Zakaria Karim said he is a farmer and lived in the same community with PW1 and the Complainant and that he heard the complainant wailing in pain on the farmlands where she will usually come to pick shea nuts in the wee hours of the night. So upon hearing her scream, he run to her aid and enquired what was amidst and she pointed at accused who was at a distance fleeing the scene that he had raped her. PW2 said upon receiving the information of what accused had done, he called some youth to assist him arrest accused and together with PW1 and others, they chased and arrested him after he had stabbed PW1 in the leg and knee. PW2 said PW1 and the complainant were then taken to the Gwollu Government hospital for treatment and the accused delivered to the Police. EVIDENCE OF PW3 PW3 the complainant then told the court she is a farmer and lives in Kusali a community in the Sissala East District and that she was on her usual shea fruit picking in the early hours of 22nd May 2023 when accused person emerged from her back wielding a knife and attacking her by the throat demanding to have sex with her else he will slit her throat open. PW3 said she immediately went for the hand of the accused that held the knife in an attempt to restrain him and in the process, the knife cut her palm and she bled very profusely but accused was not bordered and asked her to choose between death and sex and went ahead to use the knife to slit the dress she wore open and pushed her right leg wide open and restraining her by his knee leaving her lie with her vagina wide open for the accused to penetrate. That accused did enter her amidst her begging that she was married and pregnant and that accused should stop since it was culturally abominable but accused kept thrusting her and even asked her to wake up and bend for him to continue if she wanted it smooth and quick and in fear she yielded and after accused had ejaculated he asked her to produce her mobile phone and the pin to her momo account. She said she pleaded that she removed her sim card before handing over the phone but accused refused and took away the phone with a GHC50 she had on her t the time leaving her to clean up as much as she could whilst wailing with a dress that she could not use because accuse had slit it open. That she eventually got to PW2's farm which was not too far from where the incident happened and because accused had barely left he area he was pursued and arrested. PW4 said she was then taken together with PW1 to the Government Hospital in Gwollu from where she gave a statement to the Police. EVIDENCE OF PW4 The evidence of the investigator from Guollu Police station who had to stay overnight in Wa for the matter to be summarily dealt with told the court he was the available witness when the matter was reported at the station and that he quickly went to the scene of crime where he saw the slit

open dress of PW4, a catapult and a short knife with blood stains on it. The investigator also told the court the dress of PW3 was soaked with blood when he visited the scene of crime and after interrogating her at the hospital her account was that she went picking shea fruits in the early hours of the morning when accused emerged and demanded to have sex with her whilst wielding a knife. That she had to succumb because accused pushed her on the floor and treated her in a manner she could not resist penetrating her and so he went ahead and had sex with her and even at a point gave PW4 an option to rise up and bend for him to continue because that will be faster, smoother and without pain to her. That accused enjoyed himself and took PW3's phone and a GHC50 she had on her away. But he did not go far when PW4 relayed the news to PW2 who was on his farm nearby and accused was quickly arrested. He further said some blood stains were at the time of arrest of the accused seen on his legs and when he was interrogated he did not deny the offence. PW4 tendered into court the investigative caution statements, the charge statements when he was instructed by his superiors to charge accused, the photographs of the dress of PW3, the catapult, the short knife and the mobile phone. These were appropriately labelled as exhibits after the accused had a look at them and agreed these were his implements. Prosecution ably led by the Principal State and his Assistant State Attorney then closed their case leaving the accused to give his account in his defense. Accused earlier to opening his defense had no questions in cross examinations as he indicated all that was told the court was the actual events of his actions that occurred that dawn. The court then asked that his investigative caution statement be read to remind him of what he told the police so he could defend himself. Accused after listening to his account to the police read to him admitted to the content again and in his evidence in chief barely recounted same to the court when he said upon seeing PW3 picking the shea fruits he enquired from her who she had come to the farm with and he said he was around with PW2 but he told her she was not speaking the truth and went ahead to pull on the floor and had sex with her against her will. Accused admits he cut the palm of the PW3 when she attempted holding the knife and also admits to using the knife to cut open her dress to have access to her. According to accused she asked her to choose between him slaughtering her to having sex with her and in fear, she succumbed and he had sex with her after which he took her phone and a GHC50 and demanded her pin to her mobile money wallet and left the scene of crime. In the cross examination of the accused, he admitted to all that was told the court including the fact that his victim was pregnant and barely stood in the witness box as if what he did was normal. He called no witness to his case and the matter was slated for judgment in the coming legal year in October because it was not safe to grant accused person bail because of the nature of the offence and the evidence given in the matter.

APPRECIATION OF THE EVIDENCE & LAW The fundamental rule in criminal practice has been stated in the 1992 Constitution of Ghana as follows; "A person charged with a criminal offence shall be presumed innocent until he is proved or has pleaded guilty". See Article 19 [2] [c]. The offence of robbery however is one of those offenses where the offence is capped with a prison term for where an offensive weapon is involved and when the implement is not offensive. Therefore, in this trial, for prosecution to sustain a conviction and sentence on the only count charged, prosecution should prove that indeed and in fact, accused robbed PW3 of her GHC50 after her mobile phone was also taken away from her. To avoid a conviction however, the responsibility on accused is that he has no

duty under the law to prove his innocence but to raise just a doubt on the case of prosecution to entitle him to an acquittal. The Evidential Burden The evidential burden which is the obligation to show that accused committed the offence lies squarely on the prosecution. The proof required of the prosecution in a criminal trial such as the present one is said to be proof beyond reasonable doubt. Section 11 [2] of the Evidence Act 1975 [Act 323] says; “In a criminal trial, the burden of producing evidence, when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond reasonable doubt”. It is not easy to determine what constitutes ‘reasonable doubt’. In the case of *Oteng vs The State* [1966] GLR 352, the Supreme Court had said; ‘... the citizen too is entitled to protection against the State and that our law is that a person accused of a crime is presumed to be innocent until his guilt is proved beyond reasonable doubt as distinct from fanciful doubts’. Appreciation of the Evidence In turning my attention to the charge against the accused persons under Section 149 which reads: “A person who commits robbery commits a first degree felony’ Section 150 however defines robbery as; “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”. I have decided to extract the ingredients of robbery for the court to evaluate if the accused first set off to commit robbery or it was an offence incidental to committing the offence he first set off to commit to wit if accused went after PW3 to robe her or to rape her. To appreciate this the particulars of the offence read as follows: Jaliru Adama, farmer, aged 19 on or about the 22nd day of May 2023 at about 8am at Kusali a suburb of Guollu did steal a Tecno mobile and a cash sum of GHC50 from Braimah Jahara by cutting her palm with a knife for the purpose of overcoming any possible resistance. From the particulars of the offense, it can be gathered accused over powered PW3 by cutting her palm to be able to robe her of the cash amount but from the evidence of all the prosecution witnesses her palm got cut in the process of restraining the accused from using the knife on her especially if she did not submit to his demand to have sex with her. The facts and the evidence before the court did not relate the knife to have cut PW3 because she was resisting an attempt to prevent accused from robbing her. I have evaluated the case of prosecution and the apparent admission of the accused and I have formed the opinion that the particulars of the offence does not support the charge of robbery and I will proceed to discharge the accused of the offence charged but will however preserve the presence of the accused on remand for him to be arraigned before the court above on charges of rape or go under Section 154 of Act 30 and find him guilty of a similar offence of causing harm where accused can be sentenced to a lesser offence because he appears so young and confused and should not be allowed to waste away in jail for long which a sentence on robbery or rape will do to him. The punishment upon conviction for robbery in the Criminal Code [Amendment] Act 2003 [Act 646] provides as follows; “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 of not less than ten [10] 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 than fifteen [15]

years”. Conviction & Sentence I have painstakingly offered to tow this line of reasoning because I am convinced that justice and reformation will be better served this way than merely being rudimentary and textualist. I therefore convict and sentence accuse to two years (2) prison term with hard labour. HIS HONOUR JONATHAN AVOGO ESQ CIRCUIT COURT JUDGE, WA 9

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