IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD 2025

CORAM: BAFFOE-BONNIE AG. CJ (PRESIDING)

AMADU JSC

KULENDI JSC

GAEWU JSC

DARKO ASARE JSC

14TH MAY, 2025

CRIMINAL APPEAL
J3/02/2025

CHARLES ANSAH ……. APPELLANT

VRS

THE REPUBLIC ……. RESPONDENT

JUDGMENT

DARKO ASARE JSC:

This appeal is at the instance of the Convict/Appellant, (hereafter referred to as Appellant) against the judgment of the Court of Appeal, Accra dated the 26th of October

2016, by which the Appellant's term of imprisonment of 33 years imposed by the trial court was reduced to a term of 25 years in respect of a charge of robbery contrary to section 149 of the Criminal and other Offences Act, 1960 Act 29 as amended by Act 646 of 2003.

FACTS

The facts of the case may be stated simply.

The complainant, a trader, was traveling from New Akim Tafo to Accra with his driver, George Ansah, and the driver's son, the 1st accused person, who worked as the driver's mate. The complainant had informed them that he intended to buy goods and pay creditors in Accra and was carrying GHC28,550.00. Along the way, they picked up the 2nd accused person, who was dressed in farm gear and carrying a cutlass, and later the 5th accused person joined them. At Nsuo Abenaso, the 2nd accused person suddenly attacked the complainant with a cutlass and robbed him of the sum of GHC28,550.00. The driver pursued the 2nd and 5th accused persons but was threatened with harm. Shortly after, a passerby was informed of the incident and helped arrest the 2nd accused person. The 2nd accused person confessed to the crime and implicated the 1st accused person, alleging that they had conspired with others to commit the robbery. The 4th accused person was charged with dishonestly receiving part of the stolen money and pleaded guilty. The 1st, 2nd, and 3rd accused persons were convicted of conspiracy to commit robbery and robbery and sentenced to 33 years' imprisonment with hard labor. The High Court Judge imposed the sentence to deter others from committing similar crimes, considering the rising crime rate and the circumstances of the offense. The 2nd accused person appealed the sentence to the Court of Appeal, which allowed the appeal in part and reduced the sentence from 33 years to 25 years, reasoning that the Appellant was entitled to a lesser sentence than the 1st Accused person who was the actual architect of the crime. Being dissatisfied with the reduction of his sentence from 33 years to 25 years

by the Court of Appeal, the Appellant has further appealed to this Court, inviting us to interfere with the decision of the Court of Appeal and reduce his 25 year sentence to the barest minimum as same is harsh and excessive. He formulated the following grounds:-

> *"The Appellant prays the Apex Court to temper justice with mercy and reduce his 25 years imprisonment sentence to the (sic) bearest minimum as same is harsh and excessive"*

The Appellant anchors his submissions on a number of grounds, principal of which were that he deserves a reduction in his term of imprisonment as the 1st Accused person, the actual architect of the crime had had his sentence reduced on appeal to a term of 20 years IHL; that the 25 years sentence was inimical to his ailing health and age and further that he is a first time offender and this deserves more lenient consideration.

Learned Counsel for the Respondent in response vehemently disputes the claim that the 1st Appellant had had his term of imprisonment reduced to 20 years IHL as alleged by the Appellant. In any event, so the argument run, the fact that a co-accused person had had his sentence reduced on appeal is not a relevant consideration to be taken into account in allowing the appeal in this case. Learned Counsel further submitted that contrary to the Appellant's assertions, the Court of Appeal took into serious account a number of relevant mitigating factors prior to reducing the Appellant's term of imprisonment from 33 years to 25years. Finally it was contended on behalf of the Respondent that these were factors which had already been taken into account by the Court of Appeal before reducing the sentence to 25 years. Consequently there was no merit in the appeal and same should be dismissed.

Consideration of Issues

Having closely examined the Parties respective arguments in their Statement of Case, we find no credible substance in the contentions urged upon us by the Appellant. We find the contentions by the learned Principal State Attorney weightier and more impressive. In short, we are not convinced that the Appellant has successfully demonstrated any valid grounds for interfering with the Court of Appeal's decision to impose a reduced term of 25 years for the offence of armed robbery.

The Courts have severally held that the exercise of the power of sentencing lay entirely within the discretion of the trial court and provided the sentence falls within the maximum permitted by the statute creating the offence and the trial judge duly considered those matters that should go in mitigation of the sentence, an appellate court should not disturb the sentence only because it would have felt disposed to imposing a lighter sentence. See the cases of KOMEGBE V THE REPUBLIC (1992) 2 GLR 370 and ABU V THE REPUBLIC (1980) GCR 294 ***Banda v Republic [1975] 1 GLR 52;*** and ***Haruna v The Republic [1980] GLR 189***.

In ***Kwashie v. The Republic [1971] 1 G.L.R. 488,*** Azu Crabbe JA (as he then was), stated thus at page 493:-

> ***"The determination of the length of sentence within the statutory maximum sentence is a matter within the discretion of the trial court, and the courts always act upon the principle that the sentence imposed must bear some relation to the gravity of the offence: see R. v. Connolly [1959] Crim. L.R. 530, C.C.A."***

Section 149(1) of the Criminal Offences Act 1960 (Act 29) as amended 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 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 15 years."***

By the effect of the above provisions, the Court of Appeal acted within its criminal jurisdiction and the term of sentence also fell within the term authorised by statute. Consequently we find no merit in the complaint charged against the judgment on appeal that it was excessive.

It follows therefore that one of the principal grounds upon which this entire appeal has been anchored, being the fact that a co-accused had had his sentence reduced to 20 years on appeal, even if true, is not a relevant factor to take into account in impugning the term of imprisonment imposed by a court of law which falls within the statutory limits imposed by law. This ground of appeal lacks merit and hereby fails.

The more recognized factors that may guide the court in imposing appropriate sentence include factors like, the intrinsic seriousness, severity or gravity of the offense, the degree of revulsion felt by law-abiding citizens toward the particular crime, the prevalence of the crime and its sudden increase, in the locality or country as a whole. In addition, the Court may also take into account any mitigating or aggravating circumstances, such as extreme youth, good character, or the violent manner in which the offense was committed.

The above position of the law was settled in ***Kwashie v The Republic*** (supra) thus:-

"In determining the length of sentence, the factors which the trial judge is entitled to consider are: (1) the intrinsic seriousness of the offence; (2) the degree of revulsion felt by law-abiding citizens of the society for the particular crime; (3) the premeditation with which the criminal plan was executed; (4) the prevalence of the crime within the particular locality where the offence took place; or in the country generally; (5) the sudden increase in the incidence of the particular crime; and (6) mitigating or aggravating circumstances such as extreme youth, good character and the violent manner in which the offence was committed"

See also the cases of ***Frimpong @ Iboman v Republic [2012] SCGLR 297,*** ***Adu-Boahene v The Republic [1972] 1 GLR 70,*** CA and ***Kamil v The Republic [2011] SCGLR 300***.

The crime committed by the Appellant and the other accused persons was a heinous one, which left the victim seriously traumatized and horrified.

The facts disclose that the Appellant threatened the complainant with a cutlass and succeeded in robbing him of his money when the Complainant had been a good Samaritan and offered him a lift in his car. Such dastardly acts of boorishness must surely incite the outrage of any court of law. For these reasons, we are of the view that severe punishment must be justifiable as a deterrent not only to the criminal himself, but also, to those who may have similar criminal dispositions.

The learned Justices of Appeal in imposing the reduced sentence of 25 years stated as follows:-

"The trial Judge exercised his discretion in accordance with law, particularly looking at the circumstances under which the offence was committed. We are however of the opinion that

the appellant herein should have been given a sentence lesser than the first accused person who was the architect of the crime. We have taken all the mitigating factors alluded to by the Appellant into consideration and we have therefore decided to set aside the sentence of 33 years imposed on the appellant and substitute 25 years from the date of conviction, that is 7th February, 2014."

We have tested the above determinations against the established evidence on record and we are satisfied that the Court of Appeal properly exercised its discretion in reviewing the term of imprisonment imposed on the Appellant by the trial court.

As already indicated above, we are not persuaded that the grounds relied upon by the Appellant for sentence reduction are pertinent to the success of an appeal against sentence. The age of a convict is not a determinative factor in sentencing and the Appellant's claim of ailing health lacks sufficient evidence from the record to warrant any judicious consideration. Besides, the Court of Appeal took into account all the mitigating factor in favour of the Appellant before arriving at the reduced sentence of 25 years.

In determining whether or not the reduced term of 25 years is justified under the circumstances of this appeal, it may be pertinent to recall to mind the oft-cited dictum of Azu Crabbe CJ (as he then was), in the case of ***Apaloo and Others v. The Republic [1975] 1 GLR 156*** where he stated at pages 190-191, thus:-

"The principles 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 principle."

In the final analysis, and having closely reviewed the record of appeal, we find no reversible error in the Court of Appeal's decision to impose the reduced sentence of 25 years, given its thorough evaluation of all the relevant circumstances of this case, including the gravity of the crime of robbery, as well as the very same mitigating factors urged on this Court by the Appellant herein. In the premises, we are bound to hold that the assault against the determinations by the Court of Appeal in this case are unfounded and must be rejected.

CONCLUSION

After careful consideration of the record of appeal, we are not satisfied that the Appellant has demonstrated any compelling reasons to justify an interference with the term of imprisonment imposed on the Appellant by the Court of Appeal in this case.

For all the reasons above stated and for the well articulated reasons by the learned Justices of Appeal, this instant appeal against sentence fails, and is therefore dismissed in its entirety. The judgment of the Court of Appeal dated the 26th of October 2016 is hereby affirmed.

(SGD.) Y. DARKO ASARE
(JUSTICE OF THE SUPREME COURT)

(SGD.) P. BAFFOE-BONNIE
(AG. CHIEF JUSTICE)

(SGD.) **I. O. TANKO AMADU**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **E. YONNY KULENDI**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **E. Y. GAEWU**
(JUSTICE OF THE SUPREME COURT)

COUNSEL

APPELLANT REPRESENTS HIMSELF.

HILDA CRAIG (PRINCIPAL STATE ATTORNEY) FOR THE RESPONDENT LED BY WINIFRED SARPONG (CHIEF STATE ATTORNEY).