

IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA-GHANA, A.D. 2003

CORAM:- MISS ROSE OWUSU, J.A. (PRESIDING)
AKOTO BAMFO, J.A.
ASIAMAH, J.A

CRIMINAL APPEAL NO.74/87

18TH DECEMBER 2003

ARYEEQUAYE ARMAH }
@ JOE SINA } **... APPELLANT**

VRS

THE REPUBLIC } **... RESPONDENT**

ASIAMAH, J.A.:

The appellant together with six others was convicted for Robbery under section 149 of PNDC 78 and sentenced to death by the erstwhile Public Tribunal. He feels dissatisfied with his conviction and the resultant sentence and has consequently appealed against both the conviction and sentence.

The brief facts of the case are that sometime in May or June 1985 the first convict Samuel Kwadwo Amankwah had information that one of the complainants had sold his vehicle and was keeping the purchase-money in his home at Kwaku Pamfo village. The 1st convicted prisoner quickly rallied the six other convicts conspired to go and rob the complainants, a cripple, of whatever he had obtained on the sale of his vehicle. They hired a vehicle to the village. Before they arrived at the village they changed their ordinary clothing and garbed themselves in a Pseudo-Police uniform fully armed with fire arms.

On arriving at the village the seven convicts took vantage positions around the premises of the complainant. The appellant had a pistol, the 3rd and 7th convict had in their possession a pump action gun and an SMG gun respectively. It was the 6th convict who kicked the 1st victim's door and it flung open. They entered, seized him, a cripple and threw him away through a window and they plundered the room. The appellant and his accomplices

fired warning shots to scare and keep off the villagers. It was on their return after executing their diabolical intent that the appellants and his collaborators were intercepted by the Police at the Weija Police barrier. Some of them managed to escape arrest at the Police barrier. Later however, all the Seven convicts including the appellant were arrested, tried and convicted by the then National Public Tribunal.

It is only the 2nd convict, Aryeequaye Armah who has appealed against his conviction and sentence. In the notice of appeal filed by the appellant in paragraph 3 thereof the grounds of appeal have been stated thus:

"3. That your petitioner is aggrieved by the said conviction and sentence of the trial Tribunal and humbly prays that he may appeal against such conviction and sentence on the following grounds:-

- (a) That the conviction and sentence are wrong having regard to the evidence on record.
- (b) That the trial judge failed to consider the defence of your humble petitioner adequately or at all.
- (c) That additional grounds of appeal would be filed on receipt of the record of proceedings."

This notice of appeal was filed on 21st May 1987 and on 20th October, 2003 the appellant's new Solicitor filed additional grounds of appeal which contained the following two grounds.

- "(a) That the trial, conviction and sentence of the appellant was a nullity and void.
- "(b) That the different panel members and Chairmen who heard the case instead of trying the case de novo occasioned a great miscarriage of justice against the appellant."

The additional ground (b) is palpably incoherent but in the course of the hearing counsel explained to the court that he is to be understood to be referring to the fact that in the course of the trial at the lower court the composition of the adjudicating panel changed and some new panel members were substituted for the original panel members and when this happened the case should have been heard de novo. But this was not done. It is on the basis of this apparent change in the composition of the Tribunal Panel that he is contending in ground (a) of the additional grounds of appeal "that the trial, conviction and sentence of the appellant was a nullity and void."

The gist of the *raison d'être* of the appellant's argument in support of his appeal is rooted in this one sentence of appellant's counsel in the course of

arguing the appeal that "once the chairman is replaced with another chairman a new panel is constituted and a new panel must hear the case de novo".

It is an undeniable fact that the original Chairman of the adjudicating panel passed away in the course of the trial and a new Chairman was brought in. There were occasions prior to the conclusion of the trial when fresh Chairmen, as it were, made to step into the breach as a locum tenens when the need arose to get the trial going to sustain continuous and speedy trial. This situation might possibly have been unacceptable under the Criminal Procedure code, 1960 Act 30 but it was permissible under the Public Tribunals Law, 1994 (PNDCL 78) under which the appellant was tried. This law stipulates in its section 24(2) as follows:

"No decision, order, finding, ruling or proceeding of a Public Tribunal set up under this Law shall be regarded as invalid by reason of any defect in the composition of the Tribunal or in the appointment of any member thereof."

The appointment of Chairman Aggrey and Boakye-Danquah to sit on the panel at various stages of the trial though incongruous in our criminal procedure nevertheless the operative law (PNDCL 78) makes such changes in the composition of the panel legally permissible so far as the composition at any given time did not fall short of the minimum or maximum number of the adjudicating panel. The lower and upper limits of the composition of the National Tribunal panel is prescribed in section 2(3) of the Law. It reads:

"The National Public Tribunal shall in the exercise of its original jurisdiction consist of at least three members and not more than five members, one of whom shall be selected by the panel sitting on any particular case from among themselves to preside...."

Aside from Exhibit C which the appellant is belatedly in this appeal trying to put up a non est factum defence, there is ample viva voce evidence of the prosecution witnesses including PW3 the driver of the get-away vehicle hired by the appellant and his accomplices for their armed robbery operation which in a credible manner strongly support the culpability of the appellant and his cohorts.

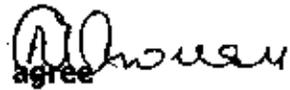
An earlier judgment of this court in the case of Harry Bawatuah & anor. v The Republic delivered on 30th April 2001 was brought to the notice of this court. Unlike the present action the composition of the panel in that earlier case fell short of the minimum number of three members. That panel was constituted by only two members. For this reason that case is distinguishable from our present case to the extent that it was deficient in its composition and therefore lacked the judicial power to hear the case.

The appeal can't be sustained and it is dismissed accordingly. However the sentence of murder imposed on the convicts was inordinately excessive. The capital punishment is hereby commuted to 30 years imprisonment.



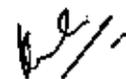
ASIAMAH, J.A

MISS ROSE OWUSU, J.A.



I agree

MRS. AKOTO BAMFO, J.A.



I also agree