

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

Vs

ALPHA TURAY

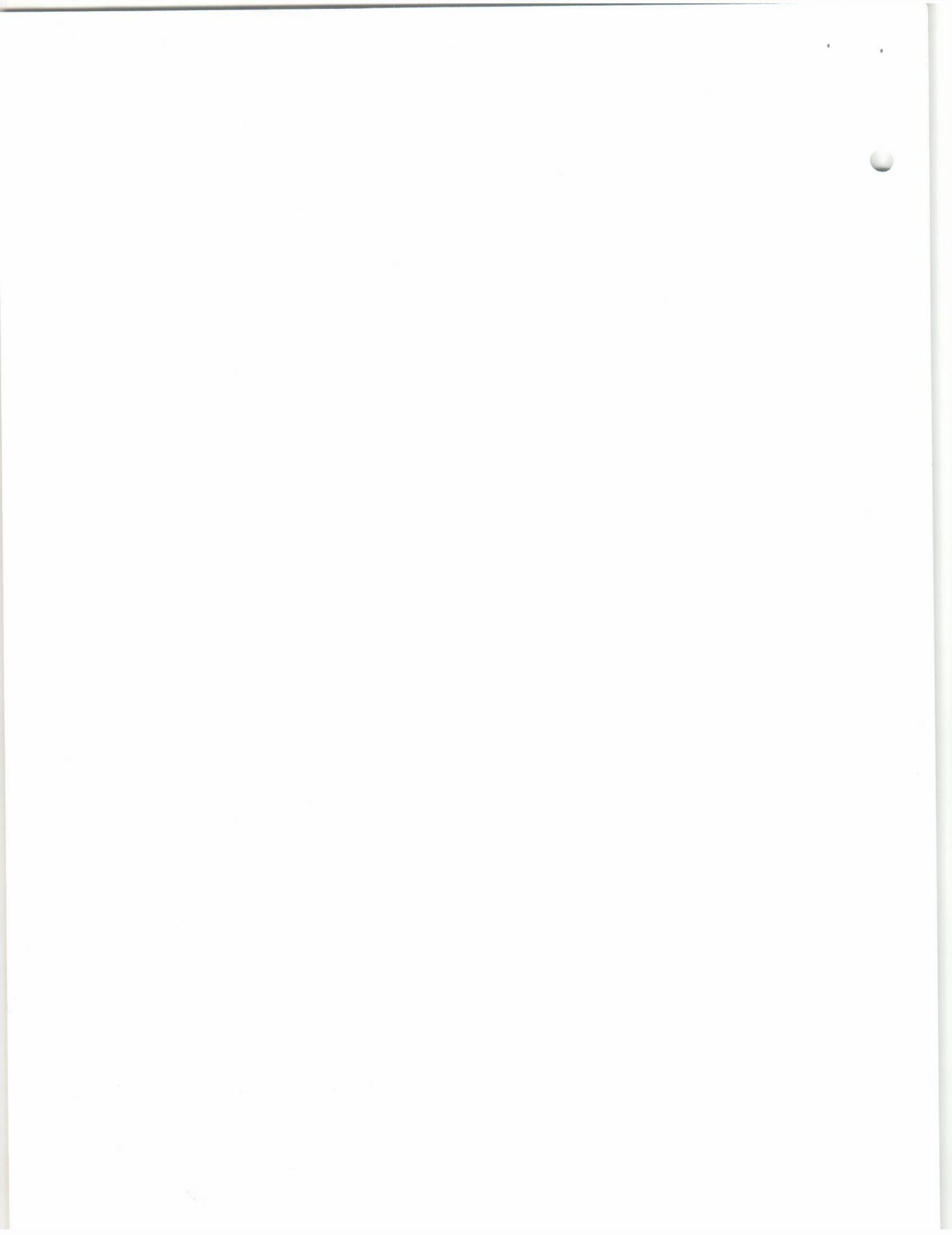
COUNSEL:

MISS. S. M. BAH - THE STATE

MISS. C. TUCKER - DEFENCE

JUDGMENT DELIVERED THIS 18TH DAY OF OCTOBER 2018 BY THE HON. JUSTICE F.
BINTU ALHADI, J.





IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN

THE STATE

Vs

ALPHA TURAY (alias BOND)

1. OFFENCE

At the Criminal Sessions of the High Court holden at Freetown on the 5th day of April 2017, State Counsel on behalf of the State informed the Court that Alpha Turay (alias Bond) stands charged with the offence of Robbery, contrary to section 23(2) of the Larceny Act 1916 as repealed and replaced by section 2 of the Imperial Statutes (Criminal Law) Adoption (Amendment) Act No. 16 of 1971.

2. ALLEGATION

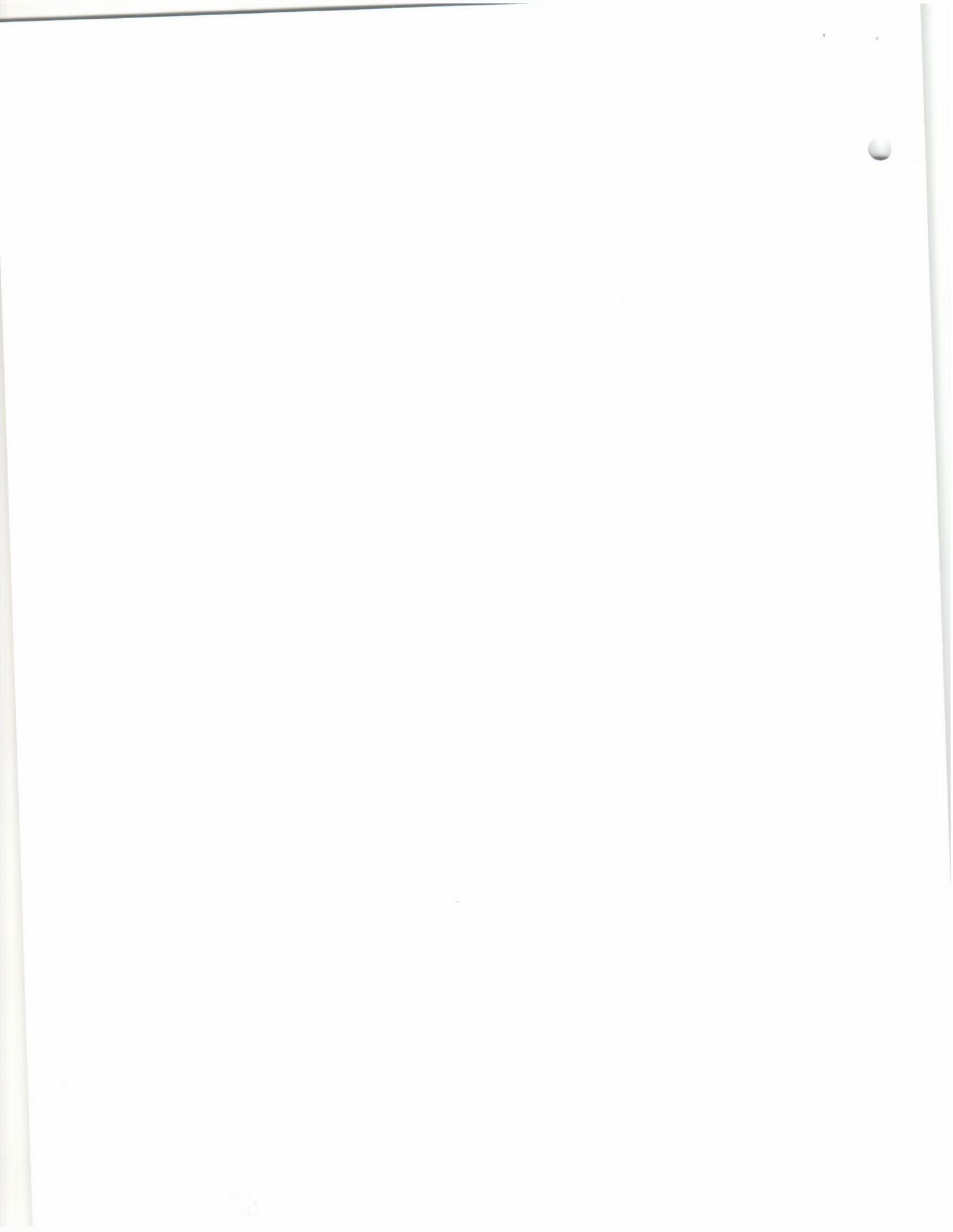
The allegation is that on the 20th day of December 2015 at Freetown in the Western Area of the Republic of Sierra Leone, the Accused robbed Josephine Turay of: one ladies coat of the value of Le 300,000 (Three Hundred Thousand Leones), two pair of jeans of the value of Le 200,000 (Two Hundred Thousand Leones), one Samsung Galaxy Note 2 mobile telephone of the value of Le 2,000,000 (Two Million Leones), one ladies bag of the value of Le 250,000 (Two Hundred and Fifty Thousand Leones), medicines of the value of Le 195,000 (One Hundred and Ninety-Five Thousand Leones) and the sum of Le 3,800,000 (Three Million Eight Hundred Thousand Leones); all to the value of Le 6,745,000 (Six Million Seven Hundred and Forty-Five Thousand Leones).

3. EVIDENCE

In proving its case, the Prosecution called two witnesses who testified in Court.

1ST PROSECUTION WITNESS (PW1) – JOSEPHINE TURAY

The first prosecution witness (PW 1) was the complainant. She told the Court that she recognised the Accused Person and recalled that on the 20th of December 2015 at approximately 12 midnight she was at the Total Fuel Station at Jui Junction, when she was approached by the Accused Person on board a motorcycle and who agreed to transport her to Hastings for a fare.



That on the way to Hastings, the Accused Person elected to use a back route through the Hastings Cemetary and half way across the cemetery, the Accused stopped claiming that he was experiencing some mechanical difficulties with his motorcycle. She said that she became suspicious and decided to disembark the motorcycle and crossed over to the other side of the road. She said that the Accused followed her to the other side of the road and produced a small knife, which he threatened her with and demanded that she hand over to him the bag she was holding. When she refused to do so, the Accused tried to snatch the bag away from her and slapped her across the face and she fell to the ground.

The Accused then pointed the knife at her and threatened to kill her. She was then scared for her life and at this point, the Accused snatched her bag which contained: one ladies coat, two pairs of jeans, one Samsung galaxy note 2 mobile phone, one ladies bag, medicines and the sum of Le 3,800,000 from her grasp and then ran away from the cemetery carrying the bag with him.

She was eventually rescued by passers-by and whilst at the scene, a mobile phone which she did not recognise, was discovered by one of the rescuers, who claimed to recognise the picture on the phone as a person named Alpha Turay. They then proceeded to Jui Police Station where she made a report and the said phone was handed over to the Investigating Officers.

Second Prosecution Witness – DPC 14078 Bangura, A. (PW2)

DPC 14078 Alimamy Bangura attached to the Anti-Robbery Unit, Freetown East Region, Ross Road Police Station, testified in Court on the 12th of April 2017. He told the Court that DPC 12089 Conteh, S. and himself conducted an interview of the Accused Person.

PW2, DPC 1407 Bangura, A. went to the scene of the incident together with other officers and the complainant the next day. They switched on the phone in the presence of the Complainant PW1 and identified a telephone number saved as "black" as one of the most frequent contacts. The Officers called the telephone number saved as "black" and they observed an individual standing right in front of them answer the call. He was eventually arrested.

He said that the individual called "black" was arrested and questioned and admitted that he knew the individual identified as Alpha Turay; and that he had seen him earlier that day at a place called "Attire Base". "Blacker" then escorted the officers to the said "Attire Base" and pointed out a person who he identified as Alpha Turay. The Complainant also identified Alpha Turay as the individual who attacked her the previous ~~day~~ at Hastings Cemetary and had stolen her bag.

The Accused was arrested by the Police and taken to Jui Police Station. He was searched at the station and was found to be carrying a telecentre card in his pocket; which he claimed was given to him when he took his phone there to be charged. PW1 accompanied the police and the Accused to the telecentre and she identified the phone that was retrieved with the card; as belonging to her and that was stolen by the Accused on the day of the incident.

The Accused then led them to the back of a mosque at Freetown Teachers College, where they discovered two bags and where she identified one of them as the one that was robbed from her by the Accused. PW2 said that, at that point Alpha Turay then admitted to have stolen all of the aforesaid items except for the sum of Le 3,800,000.

When a search of his premises was conducted by the Police after obtaining a search warrant, they discovered a jacket, which the Complainant identified as the jacket he was wearing when she was attacked and the knife he used to threaten her.

Under cross-examination, DPC 14078 Bangura, A. stated that the Accused had informed him that the person who attacked the Complainant, was an individual who used the alias "Take Salary". He however failed to provide information on how to locate the said individual or even give a description of him in order to trace him and corroborate his claim.

The prosecution submitted that, based on all the evidence provided and given that although the Accused initially denied the allegation put to him during interrogation, on page 5 of Exhibit "B" the Accused confessed that he robbed "PW 1" Josephine Turay. That the burden of proof for the offence of robbery against the Accused Person, Alpha Turay, has been discharged by the prosecution beyond all reasonable doubt. Ms. Bah urged the Court to find the Accused, Alpha Turay guilty.

DEFENCE

At the opening of the Defence's case, the Accused Person elected to rely on his Voluntary Caution Statement he made at the police station in which he denied committing the offence. He stated that he was a professional motorbike rider at Jui and that he lived at Jui. He however had an opportunity to cross-examine PW1 in which he denied that PW1 was present at Ross Road Police Station, when he was being interrogated; and that she was not present where the telecentre card was taken from him.

Defence Counsel, Ms. Cecilia Tucker of the Legal Aid Board, argued that the statement of PW1 was not corroborated by any factual witness. She said that the Accused claimed that he had left his phone in the custody of a friend, one Christopher, who managed the telecenter; but that the police failed to investigate that piece of evidence. She argued that from the evidence, it is clear that this was a case of mistaken identity, which was not clarified or investigated by the police.

She submitted that the Prosecution had failed to prove its case against the Accused Person beyond reasonable doubt as was held in: DPP v Woolmington (1935). She urged the Court to acquit and discharge the Accused Person.

4. JUDGMENT

The burden to prove the elements of the offence charged rests solely on the Prosecution. The proof must also be beyond all reasonable doubt for a successful conviction of any offence; Woolmington v DPP (1935) AC 462; Kargbo v R (1968-69) ALR SL 354 CA per Tambiah, JA at 358 LL3-5. In my opinion, this burden was proved by PW1 and PW2 by their testimonies in Court.

The offence of Robbery contrary to section 23(2) of the Larceny Act 1916 as amended by Act No. 16 of 1971 is defined as: "Every person who robs any person shall be guilty of a Felony and on conviction shall be liable toimprisonment for life."

"Robbery consists of felonious taking of money or goods of any value from the person of another or in his presence against his will, by violence or putting him in fear. Taking by either of these, means against the will of the party is sufficient to constitute robbery." Archbold Criminal Pleading, Evidence & Practice 36th Edn. The elements that the Prosecution is required to prove as contained in paragraph 1760 to 1771 of Archbold Criminal Pleading, Evidence & Practice 36th edn. at p644 are:

- (a) The actual taking either by force or by putting the victim in fear. "An actual taking either by force or by intimidation of property which is in the peaceable possession of another must be proved; it must appear that the robber actually got possession of the goods....." Para. 1762 p 644 of Archbold Criminal Pleading, Evidence and Practice 36th edn.

From the evidence presented in Court by PW1, the Accused, Alpha Turay, forcibly took the bag containing the alleged stolen items from the Complainant, Josephine Turay after physically assaulting her and threatening her with a knife, which put her in fear of her life. Also, PW2 testified that when they presented at

the telecentre the card which was discovered on the person of the Accused, they were handed a phone which was identified as the property of PW1.

Furthermore, PW2 testified that the Accused took them to a site where they recovered a bag identified by PW1 to be her stolen bag; and at page 5 of Exhibit A1-6, the Accused admitted that he had stolen the handbag from PW1. I find this piece of evidence compelling and therefore proves the elements as presented in paragraph (a) above.

(b) That the property stolen was taken either from the person of the victim or in her presence and against her will. In Archbold (supra) at para. 1763 at p645, "the goods must be proved to have been taken either from the person of the prosecutor or in her presence." Also, "for the taking to have taken place in the presence of the victim, it sufficient that the property taken should have been under her immediate and personal control at the time when the force or fear was effectively made to operate and that the robber's purpose could have been effected only if the victim's power to protect was overcome." Archbold (supra) at para. 1764 at p 645.

In proving this element, the PW1 testified that after being physically assaulted, the Accused snatched her bag from her grasp that contained the alleged stolen items and this was not controverted during cross-examination. From the evidence presented, it proves beyond all reasonable doubt that the bag was taken from the control of PW1 and against her will.

(c) That the taking was against the will of the person. Archbold (supra) at para. 1765 p 646 states that: "it must appear in evidence that the goods were taken against the will of the party robbed; that is, that they were either taken from her by force and violence or delivered up by her to the prisoner under the compulsion of that degree of fear and apprehension which is necessary to constitute robbery." "The prosecution must either prove that she was actually in bodily fear from the prisoner's actions, at the time of the robbery, or she must prove circumstances from which the court and jury may presume such a degree of apprehension of danger as would induce the prosecutor to part with his property;" Archbold (supra) at parag. 1766 at p 645.

PW1 testified that the Accused pointed a knife at her and threatened to kill her if she did not hand over her bag to him. She said that when she refused, he slapped her and assaulted her, which caused her to fall to the ground and that was when the Accused snatched her bag away from her. She actually told the court that she was in fear of her life. From the facts of the evidence, the prosecution has proven this element of the offence.

(d) That there was a carrying away/Asportation. Carrying away is defined as the removal of anything from the place which it occupies, but in the case of a thing attached, only if it has been completely detached; Section 1(2)(ii) of the Larceny Act 1916. In: The State v. Unisa Swarray and Another [6th Nov. 2015 at p 4] [unreported], "carrying away" was described as one which requires the active conduct on the part of the Accused Persons."

The prosecution was able to prove from the testimony of PW1 that after the Accused had physically assaulted her, he snatched her bag from her grasp and carried it away with him when he ran away from the cemetery. The prosecution was able to show that the Accused imputed active conduct which proved this element of the offence beyond all reasonable doubt.

Defence Counsel argued vehemently that this has been a case of mistaken identity; an argument that I do not subscribe to. At no point during the case did the Accused indicate that he was not the person. He even cross-examined the Complainant, PW1 and never raised the issue.

The Mens rea

In addition to the actus reus stated above, the prosecution must prove the Mens rea of the offence. This is to prove the guilty mind of the Accused Person. Intention or guilty mind is not capable of positive proof, but it can be implied from overt acts of the Accused Person. *"The intention of the party at the time when he commits an offence is often an essential ingredient in it, and, in such case, it is necessary to be proved as any other fact or circumstance laid in the indictment. Intention, however, is not capable of positive proof but may be implied from overt acts;"* at paragraph 1010 of Archbold (supra).

From the testimonies of PW1 and PW2, it can be inferred that the actions of the Accused Person were willful and intentional. He willfully and intentionally stole the bag of PW1 by putting her in fear and thereby committed the offence of ~~burglary.~~ *Robbery*

Confession

As I have discussed earlier, it is clear from Exhibit A1-6 at p 5, that the Accused admitted that it was true that he robbed the Complainant of her bag containing various items and her mobile phone and a handbag. He said that he made a mistake by not confessing. He also confessed that it was only Le 144,000 that he found in PW1's bag and not Le 3,800,000 as she had claimed.

Paragraph 1128 of Archbold (*supra*) states that: "...a free and voluntary confession of guilt by a prisoner, whether under examination before a magistrate or otherwise, if it is direct and positive and is duly made and satisfactorily prove, is sufficient to warrant a conviction, without any corroboration evidence." Suffice to say that this was a free and voluntary confession made by the Accused; and one that warrants a conviction.

5. FINDING/VERDICT

I find that the Accused Person, Alpha Turay committed the offence of Robbery, contrary to section 23 (2) of the Larceny Act of 1916 as repealed and replaced by section 2 of the Imperial Statutes (Criminal Law) Adoption (Amendment) Act No. 16 of 1971 and is therefore **GUILTY**

6. SENTENCING REMARKS

No one, let alone a female, should be in fear of their life when they board a taxi, a bus or a motorbike, for a fare to be taken to their destination. The minute you feel that fear, your fundamental freedom and right of movement has been undermined.

I think the Accused, Alpha Turay is a heartless Robber, who is a danger to the public and women in particular. He needs to spend a lot of time behind bars to be rehabilitated.

He has a conviction for the same offence committed in this instance and he has re-offended. Alpha Turay wasted the Court's time by pleading not guilty when in his voluntary caution statement to the police, he confessed to the crime.

7. SENTENCE

The Accused, Alpha Turay, is to be imprisoned for **Ten (10) years**. This is in addition to his previous sentence of Five (5) years.



Hon. Justice F. Bintu Alhadi
Judge of the High Court.

Date: 18th October 2018