

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA**

SUIT NO: CR/533/2019

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN

COMMISSIONER OF POLICE _____ COMPLAINANT

AND

**1. ABDULLAHI MUHAMMED
2. BABANGIDA ABDULLAMEED
3. AMINU HARUNA** } _____ **DEFENDANTS**

FINDING

The defendants were arraigned before this court for the offences of an agreement to commit armed robbery and armed robbery punishable under sections 6(a) & (c) of the Robbery and Firearm (Special Provision) Act Cap. R11 LFN 2004 and they all pleaded not guilty.

The burden was then placed upon the prosecution to prove the allegations beyond reasonable doubt as envisaged in section 135(1) and (3) of the Evidence Act, 2011. See the case of **Osagie V. People of Lagos State (2020) All FWLR (pt. 1048) p. 287 at 331; paras. A-D** where the Court of Appeal, Lagos Division held that the requirement of the law is that an allegation of the commission of a crime must be proved beyond reasonable doubt by the prosecution in order to secure a conviction of an accused person. To succeed therefore, the prosecution must lead credible evidence establishing the essential ingredients of the offence charged.

In trying to discharge the burden placed upon it, the prosecution called two witnesses.

The PW1 testified before the court on the 24th February, 2020, and in his testimony told the court that the 1st defendant was his security guard whom he trusted to the extent of taking the 1st defendant as his brother, and was used to giving the 1st defendant a key to his master's bedroom.

He testified that on the 1st day of November, 2018 at about 12.30am, he heard a sound in the kitchen and he woke up and stood and checked the window, and he could not see anything, and he decided to check at the main house with a view what was happening, and as he opened the master's bedroom, he saw about ten men all of them were holding cutlasses and torch light. The torch lights were on and the corridor was very bright.

The PW1 testified that the men tied his hand with that of his wife, and the 3rd defendant went to his wardrobe and picked his jacket and wore it. He further told the court that they were asked to lie down and the men started the operation until after three hours.

The PW1 told the court that the men collected his car keys, opened the bonnet of the car and the boot. He further testified that the men asked him of the keys to his boxes, and he told them the numbers.

It is in evidence of the PW1 that he checked the 1st defendant around 5:00am but could not see him, but the key to the gate was opened and hanged, but that he said saw a blood stain on the 1st defendant's bed, and after an hour, he saw the 1st defendant returned.

He told the court that he asked the 1st defendant as to where was he, and the 1st defendant replied that he jumped the fence and ran away. The PW1 told the court that he expressed a doubt, that "for few hours you were able to escape and you could not shout or tell anybody

and now you are coming back?", and the PW1 thereafter reported the matter to the police, and took the 1st defendant to Maitama General Hospital for treatment, and it was while washing the spot of the injury of the 1st defendant, he discovered that it was a minor injury, and that the blood on his body was very scary.

The PW1 testified that three months after the incident, he went to a private tracker, and he has paid, and within same times, he was called, and he was shown through Google that the phone stolen was used in Daura, and that is the town where the 1st defendant come from. That the person that was using the phone was coming from Kwangolam to Daura.

The PW1 told the court that the police said that they would carry out their operation, and after a week he was called that he should come to the station that the 2nd and 3rd defendants were brought, and that he identified the 3rd defendant as he saw him the day of the incident, and that the 3rd defendant was the one that was caught with the phone. It was at that time the 2nd defendant started to make comment that the 2nd defendant and others were the ones who came to the house of the PW1 and it was the 1st defendant who employed them for the robbery. That it was the 1st defendant that told them to come and retrieve his salary from the PW1 for having not been paid since when the 1st defendant was employed.

The PW1 told the court that the 2nd defendant further told them that the 1st defendant took a golf from Katsina that would bring them, while the next was from Mpape where they stayed somewhere around Eco Bank and even the 1st defendant gave them money for launch, and in the evening the 1st defendant gave them money for dinner till

that 12:00 midnight, and when the men came, they took away some items which he has already listed them.

The PW1 tendered the two statements he made at the police station and were marked EXH. "A1" and "A2" and that the difference between EXH. "A1" and "A2" according to the PW1, is that the name of the 1st defendant was added in EXH. "A2" as a suspect.

The PW1 was cross-examined by the counsel to the defendants, and in that course the PW1 was asked whether in his testimony he did not say that he trusted the 1st defendant, and he answered that it was when he caught the 1st defendant siphoning his petrol from his generator, that was when he stopped giving to the 1st defendant the key to his bedroom.

The PW1 was also asked whether he took the 1st defendant to the hospital, and he answered that he did but that the injury was so minor.

When asked that was it not that the 1st defendant jumped the fence to save his life, and the PW1 answered that he is not in a position to say that the 1st defendant was scared.

Also when asked by the counsel to the 2nd defendant that he employed the 1st defendant to protect him and he never expected the 1st defendant to run away in an accident like that, and the PW1 answered that he did not say so, but that as the 1st defendant escaped, it could have been an avenue for the 1st defendant to have alerted all the neighbours within the good period of four hours.

When asked by the counsel to the 2nd defendant that in the statement the PW1 wrote to the police he mentioned it was about ten robbers that came to his house, and that he listed the items carted away, but that he never mentioned that one of them engaged him to the extent of

calling him an idiot, whether it was so, and the PW1 answered that he can't know whether he has captured that in his statement.

Also when asked by the counsel to the 2nd defendant whether he has mentioned in his statement that his car key was taken away, and he answered that he did not think that he stated that in his statement.

When asked by the counsel as to whether he has mentioned in his statement that the 3rd defendant went to his wardrobe and took away his jacket, and the PW1 answered that what he mentioned in his statement that the 3rd defendant took away his caftan. The PW1 further told the court that his phone was traced and found in the possession of the 3rd defendant in Daura.

The PW2 testified before the court that on the 1st November, 2018 at about 8:00 hours the PW1 reported that on the same date at 0030 hours a group of unknown persons gained access to his house while he was sleeping with his family, tied him with his wife and carted away his valuables such as phones, laptops, wrist watches, cloth and other items valued at N3.5m and they absconded to an unknown destination leaving him and his wife in that stage.

The PW2 further testified that initially the 1st defendant stated in his statement made to the police that the 1st defendant was overpowered by the same group of persons who gained access, but later investigation revealed that the 1st, 2nd and 3rd defendants and others at large conspired to perpetrate the act.

The PW2 also testified that investigation was extended to Katsina State with a view to search and arrest the others at large as well as the receivers of those items carted away from the scene of the incident.

The PW2 told the court that as at the time the 2nd and 3rd defendants were arrested, they made mention it was the 1st defendant who invited them all the way from Katsina down to Mpape, FCT Abuja.

That he took step to arrest the 3rd defendant, and he made effort to recover the carted away items and to arrest the others at large, and the efforts seemed to be abortive, he then transferred the matter to the State (C.I.D) Criminal Investigation Department for further investigation.

The PW2 tendered the statements of the 1st, 2nd and 3rd defendants made at the station and were marked as EXH. A2, A3 and A4, and he further testified that his investigation revealed that the 1st defendant conspired with the 2nd and 3rd defendants and others at large to rob the PW1 being his boss, and that the defendants were armed with cutlasses, the PW1 and his wife were tied of and valuables worth the sum of N3.0m were stolen away.

In the course of cross examination the PW2 was asked to look at EXH "A2" and to confirm whether there is anywhere the 1st defendant knows the two defendants, and the PW2 answered in the negative.

The PW2 further told the court during the cross-examination that it was on the 1st of November, 2018 at about 800 hours that the PW1 reported the case, and the PW1 gave his statement.

When asked what time did the PW1 give that statement, and the PW2 answered that he would not be able to remember, but that the PW1 came by 800 hours and gave his statement. The PW2 told the court that the 1st defendant was invited immediately after the report to the police.

When asked as to when did he extend his investigation to Katsina State, and the PW2 told the court that he could

not remember the period. That he arrested the 2nd and 3rd defendant from Katsina State and he remanded them.

The PW2 was asked to look at EXH. A3 and A4 to show where in those statements where the 2nd and 3rd defendants link the 1st defendant in this case, and he answered in the negative.

The 1st defendant gave evidence in defence as DW1 and testified that he worked for the PW1 as his security guard for two years and two months, and as that day, he was sleeping and an armed robbers woke him up, and they tied him and they entered into the main house, and he twisted his hands and loose the rope, and they even stabbed him by the elbow and his palm. That his boss (PW1) took him to hospital the next day, and he treated himself and traveled to his village and his father said he should not do this kind of work so that he would not be killed.

The DW1 told the court that when he came back, he told his boss (PW1) and his boss said no problem and he then returned back to his job he was doing, that is Okada riding, and one day he was called to come to the police station. At the police station, he was shown two persons, and he then told the police that he did not know them.

The DW1 told the court that he was then asked as to who went and robbed his boss, and he said those that came were big and tall. That he was arrested one certain Tuesday, being August, 2018.

The DW1 told the court that when he untie himself, he called one of his neighbours to help him call police, and it was him and his neighbour that went and informed his boss, but he could only know the name of the children of the neighbour by name Babagana. He testified during cross examination his work was to secure his boss and their

relationship was cordial and was never owed any salary and that he has not offended his boss.

The DW1 told the court during cross examination that it was him and his boss that reported the matter to the police, and he was then taken to Maitama Hospital together with the police.

When asked by the prosecuting counsel whether his boss allowed him to trek to his house without any suspicion, and answered in the affirmative, and that when he came back from his village, the PW1 allowed him to go freely.

When asked whether he would agree that his arrest as a suspect was due to the fact that he planned a robbery along with one Ndubuisi, and he answered that he did not call anybody.

The prosecuting counsel put it to the DW1 that he did not know the phone was traced to Daura, and he answered that he did not know how the phone was traced down.

When asked by the prosecuting counsel that he planned to carry out this robbery in his boss's residence because he said his boss was owing him an arrears of salary, and the DW1 answered that his boss never owed him salary, and whenever his boss could not pay him, the wife would pay.

The prosecuting counsel put it to the DW1 that he was given N10,000.00 and three caftans out of what was stolen from the house of his boss, and he answered that he did not know the armed robbers, and how could he have been given N10,000.00

The DW1 was asked whether he would be surprised to know that the 2nd and 3rd defendant never come to Abuja before coming for the robbery, and he answered that he has never seen them and they have never seen him.

The DW1 was asked what those armed robbers were holding, and he answered that he saw a cutlass and that was what they used in inflicting injury on him. He was also asked when the armed robbers tied him, he did not see their faces, and the DW1 told the court that he did not know anyone of them but that they were huge and tall. He further told the court when the robbers came he was sleeping and they woke him up. He further told the court that he was not brought before the Commissioner of Police and he did not tell the commissioner that he was given three caftans and that the three caftans were in Daura.

The 2nd and 3rd defendants relied on the case of the prosecution.

The counsel to the 1st defendant filed his final written address dated the 21st day of June, 2021 and raised this question for determination, to wit:

Whether the prosecution proved the charges against the defendants beyond reasonable doubt?

The counsel enumerated the ingredients required in proving the offences of armed robbery which are:

- (a) That there was a robbery;
- (b) That the robbery was an armed robbery; and
- (c) That the accused while arms participated in the robbery;

and he cited the case of **Oseni V. State (2012) 5 NWLR (pt 1293) p. 351 at 386, paras. A-C**, and to him, the Supreme Court held firmly that these three ingredients must co-exist in relation to an accused person for him to be found guilty of the crime of armed robbery.

The counsel to the 1st defendant took his time to review the evidence of the prosecution's witness, and submitted that the PW1 testified that his house was broken into by about 10 men who ransacked the house, tied him and his

wife and carted away his phones and other valuables. To him, the PW1 further testified that during the robbery the 1st defendant was nowhere to be found and that it was after the incident that the 1st defendant reappeared and told him how the 1st defendant scaled the fence and ran away, and that he (PW1) took the 1st defendant for treatment of the injury sustained during the robbery.

The counsel further submitted that the PW1 who is the Investigating Police Officer that investigated the case told the court that on the 1st November, 2018 the PW1 came to Mpape Police Station, FCT Abuja and reported that on the same day a group of unknown persons gained access to the PW1's house and made away with valuables items, and that he obtained the statement of the PW1 and that of the defendants as EXH. A1, A2, and A3 which were tendered through him, and under cross-examination, he cannot remember the time when the statement were made and cannot recall when he went to Katsina to cover the investigation on the case. That EXH. A1 was requested for during cross examination and PW2 was asked if there was any where the 1st defendant mentioned knowing the 2nd and 3rd defendants, and he answered in the negative.

The counsel submitted that the 1st defendant testified and told the court that he was sleeping when he was forced to wake up by a gang who forced their way into the house and tied him, he was attacked and had his elbow cut in the process, and after the incidence his boss (PW1) took him to Maitama Hospital where he was treated, and days later he traveled to his village in Katsina State, and it was there he was called and arrested on the allegation of armed robbery. The DW1 told the court that he does not know the 2nd and 3rd defendants and that he does not know anything about the robbery.

The counsel then submitted that the ingredients of the offence of conspiracy to commit armed robbery as per counts 1 & 2 before the court have not been proved by the prosecution beyond reasonable doubt to warrant this court to convict the 1st defendant.

The counsel to the 1st defendant submitted that there are material contradictions in the evidence of both the PW1 and PW2 to the effect that they both gave testimony that a group of unknown persons gained access to his house and made away with valuables and the items were valued N3,500,000.00 and the PW1 and PW2 did not link the 1st defendant with the crime alleged as he was not at the scene where the crime was committed, and that non of the prosecution's witnesses that made mention of any weapon or arms found from the 1st defendant at the trial, and to him, the reasonable conclusion is that the items are either non-existent or if available and tendered would be unfavourable to the prosecution's case, and he urged the court to so hold.

That the evidence of PW1 and PW2 create a doubt that there was a robbery and that the 1st defendant took part in it, and he cited the case of **Emeka V. The State (2015) 13 NWLR (pt 1425) p. 614 at 619** and urge the court to discharge and acquit the 1st defendant.

The counsel submitted that non of the prosecution's witness that said the 1st defendant was armed as they are silent as to the nature of the arms defendants carried, and there is no investigation report as to the kind of weapon used. To him, the possession of the firearms is integral to part of the offence of armed robbery, and where there is no such proof, the prosecution must fail, and he cited the case of **Friday Michael V. The State (2002) 1 NWLR (pt 749) p. 500 at 509-519; paras. H-B** where it was held that the offence of

robbery with firearms is committed when at the time of the commission of the robbery the accused is proved to be armed with firearms as an offensive weapon, and he further cited the case of **State V. Ajayi (2016) 14 NWLR (pt 1532) p. 196 at 234, para. F** to the effect that the failure to tender weapons was fatal to the prosecution's case.

The counsel submitted that the uncorroborated and unchallenged evidence of the 1st defendant cast a doubt on the case of the prosecution, and the reasonable doubt is created, and to him, the 1st defendant is entitled to acquittal as the reasonable doubt is to be resolved in favour of the 1st defendant, and he cited the cases of **State V. Danjuma (1997) 5 NWLR (pt 506)** and **Onafowokan V. State (1987) 3 NWLR (pt 61) 536**.

The counsel submitted that where evidence relevant to an issue in controversy is adduced in court and if is neither challenged nor successfully debunked, it becomes good and credible evidence, which ought to be relied upon by the trial court, and he cited the case of **State V. Oladotun (2011) 10 NWLR (pt 1256) p. 542 at p.558 – 559 paras. G-B**.

On the whole, the counsel submitted that the prosecution's case is severely lacking in the concrete materials upon which conviction may be provided that the 1st defendant has committed the alleged offences charged, and submitted that conviction could only follow where the charge against an accused person has been proved beyond reasonable doubt, and he referred to the case of **Augustine Onuchukwu V. State (1998) 4 NWLR (pt 547) 576 ratio 87** and he urged the court to discharge and acquit the 1st defendant.

The counsel to the 2nd and 3rd defendants filed his written address dated the 18th day of June, 2021 raised the sole issue for determination to wit:

Considering the peculiar fact and circumstances of this case, particularly the entire evidence led on record, whether the prosecution has proved his case against the 2nd and 3rd defendants beyond reasonable doubt as required by law to justify their guilty as charged?

The counsel to the 2nd and 3rd defendants submitted that it is settled that the onus of proof in criminal trials is always on the prosecution to prove either by direct, indirect and circumstantial evidence linking all the defendants in this case to the commission of the offences to which they are alleged to have committed as they are presumed innocent until their guilt are established, and he cited the case of **Babatunde V. State (2014) 2 NWLR (pt 1391) 298 at 343 paras. A – B**. The counsel also referred to the following cases: **Obi V. State (2013) 5 NWLR (pt 1346) 68 at 87 paras. D – F; Alkhadueki V. State (2014) 15 NWLR (pt 1431) 530 at 546 paras. F – G**.

The counsel submitted that the proof is beyond reasonable doubt which is to be secured by leading cogent and credible evidence which satisfied the requirements of the law, otherwise the accused persons standing trial will be discharged and acquitted, and he cited the cases of **Afolabi V. State (2010) 16 NWLR (pt 120) p. 586 and Akpan V. State (1991) 3 NWLR (pt 182) p. 695**. He further submitted that in discharging the burden of proof required by law the prosecution cannot rely on the weakness of the evidence of the defendant, and he cited the case of **Udosen V. State (2007) 4 NWLR (pt 1023) 125 at 150 paras. D – E**. To him, on proving the prosecution's case beyond reasonable doubt, every ingredients which constitutes the offence must be established by way of credible evidence before the court,

and failure to lead credible evidence will then be cast on the prosecution's case, and he referred to the case of **Ikomi V. State (1986) 3 NWLR (pt 28) 340**, and **Mustapha V. State (2013) 17 NWLR (pt 1383) 350 at 405 para. A**.

The counsel submitted that the ingredients required to prove the offences of criminal conspiracy to commit the offences of armed robbery are:

- (a) That there was armed robbery;
- (b) That the accused was armed or that it was armed robbery carried out with the use of offensive weapon; and
- (c) That the accused person was armed with gun or participated in the robbery which makes it armed robbery; and he cited the case of **Olayinka V. State (2007) 9 NWLR (pt 1040) p. 561**, and submitted further that any failure on the part of the prosecution to prove the above mentioned ingredients is fatal to the prosecution's case.

The counsel submitted that the ways by which the guilt of the accused person in a criminal matter can be established are through the under listed means:

- (a) By confessional statement;
 - (b) By circumstantial evidence;
- and (c) By evidence of eye witness, and he referred to the case of **Olowoye V. State (2012) 17 NWLR (pt 1329) p. 346**.

The counsel then posed this question; whether in this case and based upon the facts and circumstances stated in the two count charges against the 2nd and 3rd defendants there has been positive, cogent and credible evidence, direct or circumstantial adduced by the prosecution that proved the ingredients of the alleged offences against the 2nd and 3rd defendants? The counsel answered this question

in the negative, and to him, this is in view of many lacuna and serious flaws as the case presented by the prosecution which raised serious doubt as to the commission of the offences by the 2nd and 3rd defendants. So it is his contention that the prosecution in this case failed to discharge the sacred burden of proof which the law places on the prosecution's shoulder by virtue of section 133 (1) (2) of the Evidence Act 2011, and to him, the doubt must be resolved in favour of the 2nd and 3rd defendants.

The counsel pointed out the lacuna in the evidence led by the prosecution as follows:

- (a) That there is no iota or scintilla of evidence which shows that the 2nd and 3rd defendants committed the alleged offences, and that it is clear from the evidence of the 1st defendant that the 2nd and 3rd defendants were not part of the armed robbers who invaded the victim's house on the fateful day.
- (b) That the PW1 testified that some armed robbers numbering about ten invaded the house on 1st November, 2018 at about 12:00am and carted away all his properties, and that the 3rd defendant called him an idiot and removed his jacket from the wardrobe and move same, and this the PW1 did not state in his written statement to the police, and at that time the evidence was very fresh in his brain. That when the PW1 was asked during cross examination as to why did he not mention that the 3rd defendant removed his jacket from his wardrobe, and the PW1 answered that he has stated that in his written statement, and the PW1 did not deem it fit to produce and tender the said statement in proof of the involvement of the 3rd defendant.

The counsel submitted that there is no credible evidence to show that the 2nd and 3rd defendants were the ones who committed the said offences, and that whatever is alleged without proof can also be denied without proof, and he cited the case of **K.S.J.S.C. V. Tolani (2019) 7 NWLR (pt 1671) 382 at 405 – 406; paras. H – A.**

The counsel submitted that the evidence of the PW1 is very contradictory in the sense that the evidence stated on oath is different from the one in his written statement to the police and the provision of the law is clear that where the evidence led by any party in a criminal matter is quite different from the one statement or contained in the statement made at the police station without any satisfactory explanation in resolving or justifying the difference, then the court is bound to reject such evidence, and he relied on the case of **Ishaya V. State (2019) 4 NWLR (pt 1661) p. 79 at 90 paras. D-E,** and he then urged the court to reject the evidence of the PW1.

The counsel submitted that the PW1 did not produce the second statement he made at the police station as to the involvement of the 3rd defendant as alleged by him, and same was never attached as part of evidence and without tendering it to show the truth of what he (PW1) asserted, and this is strong enough to create a serious doubt in the mind of the court, and this doubt is to be resolved in favour of the 3rd defendant, and he urged the court to so hold. To him, the failure on the part of the prosecution to tender the second statement will be treated under section 167 (d) of the Evidence Act that it produced, it will be unfavourable to the prosecution, and he cited the cases of **Ogudo V. State (2011) 18 NWLR (pt 1278) p. 1 at 33 paras. E-F;** and **Adamu V. State (2019) 8 NWLR (pt 1675) 478 at 507 paras. E-H,** and the counsel urged the court to reject the

evidence of the PW1 in totality as same raises doubt as to the culpability of the 2nd and 3rd defendants, and urged the court to discharge them.

The counsel to the 2nd and 3rd defendants also submitted that the PW2 was asked during cross examination as to the exact time the PW1's statement was recorded, and the PW2 said the statement was recorded at 8:00am and then turned out to be false as the same statement was taken by 12:10pm, and this is contrary to evidence of the PW2.

The counsel submitted that the PW2 was asked during cross-examination to confirm it from the said exhibits A2 and A3, there is anything stated there in which incriminates the 2nd and 3rd defendants and to which he answered in the negative; and to him, the evidence of the PW2 did not in any way incriminate the 2nd and 3rd defendants to the commission of the crime, and the PW2 did not convince the court as to convince that the 2nd and 3rd defendants are the ones who committed the offences, and even EXH. A2 and A3 which the PW2 said were obtained from the 2nd and 3rd defendants revealed the opposite of what the PW2 stated in his evidence.

With respect to the confession of the 2nd defendant in his written statement that he stole an infinix phone black colour from someone's pocket at Daura market in which he explained that he stole the said phone 3 weeks preceding the 8th March, 2019 when the said statement was taken and that he sold the phone to the 3rd defendant at the rate of N10,000 =, and to him, by EXH. A2 it is revealed that the 2nd defendant has never been in Abuja all his life not until the time he was arrested and taken to Abuja, and by that the 2nd defendant set up a defence of alibi, and there is nothing from the record to show that the PW2 has

investigated that, and this is fatal to the prosecution's case, while it is the duty of the PW2 to investigate the plea of alibi raised by a suspect, and the failure to investigate will lead to the discharge and acquittal of the suspect, and he cited the case of **Idemudia V. State (2015) 17 NWLR (pt 1488) 375 at 402 paras. F-G** to the effect that failure to investigate a plea of alibi will lead to acquittal, and he cited the cases of **Ani V. State (2009) 16 NWLR (pt 468) 443 at 457 paras. B – F**, and **Adebiyi V. State (2016) 8 NWLR (pt 1555) 459 at 475 – 476; paras. H-F**.

The counsel submitted that where the evidence of the prosecution supports that of the defendant, the court must, as a matter of duty, to consider such evidence that enures to the benefit of the defendant, and he relied on the cases of **Kolade V. State (2017) 8 NWLR (pt 1566) p. 60 at 97 paras. G – H**; and **Edibo V. State (2007) 13 NWLR (pt 1051) 306 at 322 paras. A – C**. To him, where the evidence given in any proceeding by a party is not contradicted or controverted, the court must treat it as unchallenged as the actual truth, and he cited the cases of **Zuberu V. State (2015) 16 NWLR (pt 1486) 504 at 527 paras. B – C**; **Okoebor V. Police Council (2003) 12 NWLR (pt 834) 444 at 483 paras. D-G**; and **Omoregbee V. Daniel Lawani (1980) 3 – 4 SC 108 at 117**, and to the judicial authorities listed, and urged the court to so hold that the evidence of DW1 is uncontroverted and unchallenged, and he cited the cases of **State V. Azeez & Ors. (2008) (Supra)**; **Uwa V. State (2015) 4 NWLR (pt 1450) 438 at 455 – 456 paras. G-B**; and **Bolanle V. State (2005) 7 NWLR (pt 925) 431**.

The counsel submitted that in the evidence of the prosecution, there is no iota of evidence that the defendants were armed with offensive weapons, and to him, every averments in the charge must be proved

otherwise doubt will be created in the case of the prosecution, and he cited the case of **F.R.N. V. Barminas (2017) 15 NWLR (pt 1588) p. 177 at 202 paras. G-A**. The counsel finally urged the court to discharge and acquit the 2nd and 3rd defendants.

The prosecuting counsel filed his final written address dated the 30th day of June, 2021, and in it, he raised this issue for determination, to wit:

Whether the prosecution has proved his case beyond reasonable doubt against the defendants before this Honourable Court?

The counsel submitted that in criminal matters all allegations are proved beyond reasonable doubt and failure of which the accused persons are liable to be discharged, and he cited the cases of **Ezeugo V. State (2013) 9 NWLR (pt 1415) 508 ratio 4; Anekwe V. State (2014) 10 NWLR (pt 1415) 353 at 378 paras. E – F** to the effect that the proof beyond reasonable doubt does not mean the prosecution should prove its case to the point of mathematical certainty, and he urged the court to approach this matter with that principle.

On the charge of conspiracy, the counsel submitted that the armed robbery was carried out pursuant to their agreement. He took his time to reproduce the evidence of the PW1. The counsel cited the case of **Gbadamosi V. State (1991) 6 NWLR (pt 196) p. 182 at 204 paras. G-H** where the court defined conspiracy to mean meeting of two or more minds to carry out an unlawful purpose or to carry out a lawful purpose by an unlawful means.

The counsel relied on the above cited case in determining the meeting of the two minds that the court should take into consideration the totality of the conduct of the parties, and that the offence of conspiracy could be

committed through either written communication by way of letter or oral communication by way of message, and that once the court comes to the conclusion that the prosecution has established some community efforts on the part of the accused person aimed at committing a crime, there should be no difficulty in convicting them of conspiracy.

The counsel also cited the case of **Nguma V. Attorney General of Imo State (2014) 7 NWLR (pt 1405) 119 ratio 9** to the effect that reasonable inferences from the acts of the parties would suffice, and that it is immaterial whether the offender is guilty as a principal offender, or participated as an abettor or aider, and to the counsel, the defendants were present at the scene of the crime, and one of them was tracked and arrested while in possession of the robbed phones belong to the PW1. The counsel urged the court to so hold that the offence of conspiracy has been established.

The prosecuting counsel also listed the ingredients required in proving the offence of armed robbery, and he cited the case of **Sani V. State (2014) 1 NWLR (pt 1387) ratio I**, and submitted that by both oral and documentary evidence before the court there was robbery at plot 5196, Mpape Layout Abuja on the 1st November, 2018 where items valued N2,980,000.00 were carted away; and this is not contradicted and he urged the court to so hold that the ingredient No. I has been established.

The counsel submitted that the robbery was an armed robbery and this is by the evidence of the DW1 who testified that he was injured, and the PW1 told the court that the robbers were with torchlight and guns, and to him, the robbery was an armed robbery, and the ingredient No. 2 is established.

The counsel submitted further that the defendants participated in the armed robbery, and the confessional statement alone is enough to convict the defendant, once it is made voluntarily, and he cited the case of **Tope V. State (2019) LPELR 47837 (SC)** to the effect that an accused person can be convicted solely on his confessional statement. The counsel cited the following cases on the same principle that **Fatai V. State (2013) LPELR-20182 (SC); Igba V. State (2018) All FWLR (Pt. 951) 1816 at 1837; Akpan V. State (supra); and Idowu V. The State (2000) NWLR (Pt. 16) 2672.** He also cited the cases of **Egboghonome V. State (1993) 7 NWLR (Pt. 306) p. 383 and Aremu V. State (1991) 7 NWLR (Pt. 201) P. I** to the effect that the same confession even if not consistent with the evidence.

The counsel submitted that there is supposed to be some evidence outside the confession be it slight or circumstantial which is independent and makes it probable that their confession was true, and to him, the evidence of the PW1 and PW2 can suffice that they are independent evidence before the court, and the statement of the defendant marked as EXH. A3 corroborates the evidence of the prosecution towards the planning and participation in the robbery, and that the 3rd defendant admitted that he bought the phone from the 2nd defendant three weeks to his arrest. To him, the 3rd defendant did not show to the court the receipt of the purchase of the phone, and what the 2nd and 3rd defendants was to rest their case on the case of the prosecution and the effect is that the defendants do not want to place any facts before the other than those which the prosecution presented in evidence, and by this, the 2nd and 3rd defendants have admitted the totality of the allegations against them as presented in the

charge before this Honourable Court, and he urged the court to so hold.

The counsel submitted that it is not every contradiction that affect the prosecution's case, but that the contradiction must be fundamental and for a contradiction to be material, it must in addition lead to a miscarriage of justice, and he cited the case of **Ahmed V. Nigeria Army (2016) LPELR-40826**.

The counsel concluded by urging the court to consider the demonstration of justice as was held in the case of **Bello V. State (2012) 8 NWLR (Pt. 1302) p. 237, paras. A-D** to the effect that justice will cease to be just, if only viewed from the end of the accused. There must be justice from the end of the wronged. He then urged the court to evaluate the totality of the evidence before the court and to do justice by convicting and sentencing the defendants according to the law.

Let me quickly formulate the issue for determination in this case, to wit:

Whether the prosecution has proved its case beyond reasonable doubt against the defendants?

The burden of proving the ingredients of the offences of criminal conspiracy and armed robbery rests squarely on the prosecution. See the case of **Anyasoddor V. State (2019) All FWLR (pt. 982) p. 940 at pp. 959-960, paras. G-D**. See also the cases of **State V. Ibrahim (2019) All FWLR (Pt. 1007) p. 707 at 729, paras. A-B**.

It is at this juncture that I have to evaluate the evidence of the prosecution with a view to ascribe probative value to the one that is credible. See the case of **Enukora V. F.R.N. (2019), All FWLR (pt 979) p. 351 at pp. 364 – 365, paras. H - A** where the Supreme Court held that the

evaluation of evidence and ascription of probative value to same is primarily the function of the trial court.

The PW1 told the court that when he opened the master's bedroom, they were already there about ten of the men and all of them were holding cutlass, and only one of them that was holding a gun. But the PW2 in his testimony told the court that his investigation revealed that the defendants were armed with cutlasses.

It is pertinent to note that the evidence of the prosecution contradicts each other with regards to what the armed men were holding at the scene of the crime, as the PW1 said one of the men was holding a gun, and the PW2 said they were all armed with cutlasses.

It is worthy to note that no gun was tendered by the prosecution as an exhibit. None of the two witnesses that the prosecuting counsel asked to be declared by the court as a hostile witness, and therefore, it is not the duty of the prosecution to pick and choose which of his witness he would be relying on. See the case of **Popoola V. State (2019) All FWLR (pt. 982) p. 903 at pp. 919-920, paras. E-A**, where the Supreme Court held that where two or more witnesses are called by the prosecution in a criminal case, and one witness contradict the other on a material point the prosecution is expected to show that the witness is hostile before the court can be asked to reject the other witness. See also the case of **State V. Gambo (2019) All FWLR (pt. 973) p. 424 at 446; paras. A-B** where the Supreme Court held that while it is not the law that weapon used for the robbery must be tendered or the items robbed produced in evidence before a conviction can stand, the tendering of such items will provide the necessary corroboration that the confessional statement was true.

The PW1 also told the court during examination-in-chief that he saw one of the robbers with mask and a gun, and that he saw them in large numbers. He further testified that around 5:00am he went and checked the 1st defendant, and could not see him, but he (PW1) saw bloodstains on the bed of the 1st defendant.

The PW1 told the court that later the 1st defendant came back and he then asked him what happened, and the 1st defendant said that it was armed robbers and he succeeded in jumping the fence and ran away. The PW1 told the court that he then asked the defendant “four hours and you are able to escape and you could not shout or tell anybody and now you are coming back?”

The PW1 told the court that after that, he reported the matter to the police, and he picked the 1st defendant to Maitama hospital for treatment. The PW1 told the court that when they were washing the spot of the injury, he discovered that it was a minor injury, but that the blood on the body of the 1st defendant was scary.

The PW1 told the court that the police started to track down the stolen phones for almost one month, knowing well that the robbers would not throw away the phones as they are expensive but they can either sell them or keep to themselves.

The PW1 told the court that three months thereafter he contacted a private tracker and within sometimes they called him that the defendants have started using one phone which is the infinix and it was in Daura, and that was where the 1st defendant come from and the police tracked down the person holding or using the phone, and after a week he was called to the police station for identification and they brought the 2nd and 3rd defendants out, and he then identified the 3rd defendant as he saw him on the day

of the incident, and as it is, the 3rd defendant was caught with the phone. The PW1 told the court that it was at that point the 2nd defendant started to make comment saying that it was the 1st defendant that employed them for the robbery.

During the cross-examination, the counsel to the 1st defendant could not ask anything that will contradict the PW1 as he only wanted the PW1 to repeat what he had earlier told the court during cross examination.

During cross-examination by the counsel to the 2nd and 3rd defendants the PW1 was asked whether he said that one of the defendants called him an idiot, and was also asked whether he has captured that in his written statement, and he answered that he can't remember whether he has captured that in his written statement.

The PW1 was also asked whether he did not mention in his statement that "my brothers" and one of them said "who are your brothers an idiot", and the PW1 told the court this is the statement made at Mpape Police Station, and there is another one made at the command.

The PW1 was also asked whether he has mentioned in his statement that car key was taken away, and he answered that he did not think if it is in his statement.

The PW1 was also asked that he did not mention in his statement that the 3rd defendant went into his room and took from wardrobe his jacket, and the PW1 answered that in his statement he said that they took his caftan.

The counsel to the 2nd and 3rd defendants asked for the said statement of the PW1 made at C.I.D, and the prosecuting counsel said that he would tender it through the IPO.

The PW1 was asked whether all that he has told the court that are not contained in his statement are an

afterthought, the PW1 told the court that they are not afterthought as the phone was traced to Daura, and there cannot be two co-incidence.

Now, the question that needs an answer is whether the evidence of the PW1 is credible? See the case of **Bello V. FRN (2019) All FWLR (pt. 1001) p. 748 at 761; paras. G-H** where the Supreme Court held that credibility is the quality of being convincing or believable, and since the trial court has the liberty and privilege to believe one witness or disbelieve another witness, its findings predicated on the belief or disbelief of witnesses, is almost sacrosanct, by this can only be questioned on appeal if it is against the drift of evidence before the trial court, when considered as a whole.

What the PW1 said about the 1st defendant is that the 1st defendant upon jumping the pence could not shout or tell anybody. That what surprised him was the gravity of the injury that it is minor injury but the blood on his body was so scary. Another evidence by the PW1 with respect to the 1st defendant is that the 2nd defendant made comments at the police station that it was the 1st defendant that employed them for the robbery.

Those of evidence, even though, not so challenged during cross-examination, it is not credible in itself, this is because circumstantially the PW1 want to conclude that the 1st defendant, having not shouted or call the attention of the public, he is one of those robbers that attacked the PW1, and to my mind this is mere variant of imaginative guess which, even, when it appears plausible, should never be allowed by a court of law to fill the hiatus in the evidence before it. See the case of **Ivienagbor V. Bazuaye (1999) 6 SCNJ p. 235 at pp. 243 – 244.**

In dealing with circumstantial evidence where the circumstances are susceptible to two equally possible inferences, the court should accept that inference which goes in favour of the defendant. See the case of **Ahmed V. Nigerian Army (2017) All FWLR (pt 869) p. 813 at 841**. In the instant case, as the PW1 only drew an inference that the 1st defendant having not shout or call the attention of the public after jumping through the fence to escape is an imaginative guess which this court has to reject the inference and is hereby rejected.

On the 2nd defendant, the PW1 told the court that when the 2nd and 3rd defendants were brought to the police station, the 2nd defendant made comment that it was the 1st defendant that employed them to carry out the robbery. The question that this court will need an answer to is whether this piece of evidence was recorded in writing by the PW1? It is on this, I have to look at EXH. A1 which is the statement made by the PW1 at the police station. Looking at the statement of the PW1 made at the police station "EXH. A1" the PW1 did not mention that the 2nd defendant said that he was employed by the 1st defendant to carry out the robbery. This is a material contradiction as it relates to admission in favour of the 1st defendant. This piece of evidence is not credible in itself.

As to the statement made by the 2nd defendant that it was the 1st defendant that employed them for the robbery, however, this evidence is not from the personal knowledge of the PW1, rather it was comment made by the 1st defendant at the police station, and this piece of evidence falls within the category of the hearsay evidence. This is because the comment was made to the police, in the cause of investigation which is not in his statement, and the

PW1 intend to introduce the comments to establish the truth of the statement/evidence. Then certainly it is hearsay.

By the above analyses, I have come to the conclusion that the evidence given against the 1st defendant is not credible enough to warrant a conviction, and to this, the evidence is hereby rejected.

On the 2nd defendant, the PW1 told the court that when the 2nd and 3rd defendant were brought to the police station, the 2nd defendant made comment that it was the 1st defendant that employed them to carry out the robbery. The question that the court will need an answer for is whether this piece of evidence was recorded in writing by the PW1? It is on this, I have to look at Exh. A1 which is the statement made by the PW1 at the police station. Looking at the statement of the PW1 now, at the police station “EXH. A1” the PW1 did not mention that the 2nd defendant said that he was employed by the 1st defendant to carry out the robbery. This is a material contradiction as it relates to admission of the crime by the 2nd defendant. See the case of **Orisa V. State (2019) All FWLR (pt 992) p. 232 at 267. Para. D – G** where the court held that for a fatal effect, the contradiction has to be on material point.

It is worthy of note that this is the only thing the PW1 told the court with respect to the 2nd defendant. Even though it is not challenged during cross – examination, the piece of evidence is not credible based upon the material contradiction on the material point.

On the 3rd defendant, the PW1 told this court that when the 2nd and 3rd defendants were brought out, he was able to identify the 3rd defendant, and that the phone was found in his possession after being tracked to Daura. This bring the issue of identification of the 3rd defendant. See the case of **Olasehinde V. State (2019) 1 NWLR (pt 1654) p. 555 at 575,**

and the case of **Alufohai V. State (2015) All FWLR (pt 765) p. 198 at 213** all to the effect that identification evidence is evidence tending to show that the person charged with an offence is the same as the person who was shown committing the offence. Where a trial court is faced with identification evidence, it should be satisfied that the evidence of identification has established the guilt of the accused person beyond reasonable doubt. By the evidence of the PW1, it is not shown that the PW1 has given a descriptive features of the defendant before the actual identification parade which is mandatory, and the PW1 also fails to give the features of the 3rd defendant in his statement to the police, his oral evidence in court about his identification of the 3rd defendant in a parade is unreliable. See the case of **Akatiba V. State (2018) All FWLR (pt. 960) p. 1234 at 1254**. The evidence of the PW1 on identification of the 3rd defendant is unreliable and not worthy of believe, and is rejected.

The PW2 gave evidence and tendered the statements of the 1st, 2nd and 3rd defendants in evidence, and was cross-examined.

During examination – in – chief, the PW2 told the court that the initial statement of the 1st defendant was that he was overpowered by the same group who gained access to the house, but investigation later revealed that the 1st defendant and the two other defendants and those at large conspired to perpetrate the act.

While eliciting for an evidence from the PW2, the prosecuting counsel asked as to how the investigation reveal the conspiracy, and the PW2 told the court that as at the time the 2nd and 3rd defendants were arrested with regards to the crime, they made mention of the 1st defendant, and it was revealed that they were of the same

village all the way from Kastina State, and that it was the 1st defendant that invited them to Mpape, FCT, Abuja.

The PW2 told the court that he extended his investigation to Daura, Katsina State, and made an efforts to recover the stolen items and to arrest the rest of the defendants who are at large, and all efforts seem to be abortive in arresting the unknown person, and from there he transferred the matter to the C. I. D. Abuja. He has also obtained the statements of the three defendants, and this court admitted this in evidence. He told the court that they were armed with cutlasses, and they stole away items worth the sum of N3.m from the house of the PW1.

During cross-examination, the counsel to the 1st defendant asked the PW2 that he should look at the EXH-A2, which is the statement of the 1st defendant, and to tell the court whether it is stated in the statement where the 1st defendant stated that he knows the two defendants, and the PW2 answered in the negative.

When asked during cross examination that at what time he gave his statement to the police, and PW2 told this court he can't remember. The PW2 also told this court he could not remember when he went to Katsina State.

The PW2 was asked to show to the court in the statements of the 2nd and 3rd defendants whether they have mentioned the 1st defendant, and he answered in the negative.

Now, looking at the evidence of the PW2 in its entirety, it can be inferred that having said the initial statement of the 1st defendant that he was empowered by the same group of men, but the investigation later revealed that the 1st defendant and the 2nd and 3rd defendants and others at large conspired together to perpetrate the act, however, during cross-examination, he told the court that in his

statement the 1st defendant did not show that he knows the 2nd and 3rd defendants, and also that he did not mention in his statement the 2nd and 3rd defendants.

The PW2 in his evidence did not tell the court the circumstances as to how the 1st defendant incriminated or implicated the 2nd and 3rd defendants, and he did not also tell the court as to how the 1st, 2nd and 3rd defendants conspired. Having extended his investigation to Daura in Katsina State, and in his testimony, he did tell the court that efforts to recover the stolen items proved abortive and he then transferred the case to C.I.D. at Command Headquarters, Abuja. It is also in the evidence that no mention was made by the 1st defendant of the 2nd and 3rd defendants in his statements.

Looking at EXH-A2 made by the 1st defendant, it can be seen that there is no where he mentioned the names of the 2nd and 3rd defendants that they have agreed to carry out the robbery and the statement is not a confessional one.

Also looking at the EXH-A3 and A4 of the 2nd and 3rd defendants, it can be seen that he did not mention the name of the 1st defendant at all rather he mentioned the name of the 3rd defendant who bought the handset, infinix Black in colour, at the Rate of N10,000=. The 2nd defendant added that he stole the handset on a market day when he picked it from some one's pocket, and removed the sim card, and that he has never been to Abuja in his life and that did not have any relation who reside in Abuja, and he does not have any knowledge of the robbery.

Further looking at EXH-A4, which is the statement of the 3rd defendant, he only admitted to buying a phone infinix note 4, black in colour at the Rate of N10,000= from the 2nd

defendant, and he did not ask the 2nd defendant any receipt.

Now, the question is: whether the evidence of the PW2 is credible?

The PW2 has been discredited during cross-examination as he could not give an account as to how the investigation revealed that the 1st defendant conspired with the 2nd and 3rd defendants to commit the crime, and he did not give an account as to how the 1st defendant linked the 2nd and 3rd defendants with the commission of the crime. He has also not given an account as to how the investigation revealed that the 1st defendant conspired with the 2nd and 3rd defendants to perpetrate the act.

While the PW1 told the court that he saw one of the robbers with a gun, the PW2 told the court that the robbers were with cutlasses, however, neither the gun nor the cutlasses were tendered in evidence by the prosecution. Although it is not the law that weapon used for the robbery must be tendered or the items robbed produced in evidence before a conviction can stand, the tendering of such items will provide the necessary corroboration that the confessional statement was true. See the case of **State V. Gambo (2019) All FWLR (pt 973) p. 424 at 446, paras. A – B**. In the instant case, the prosecution has not produced the gun, and has not produced the infinix 4 handset before the court, and more so, the defendants have not confessed to the commission of the offences. So, even if the 1st, 2nd and 3rd defendants confessed, which they have not, to the commission of the crime, the prosecution should have produced the weapon used or items robbed to corroborate the confession.

On the identification of the 3rd defendant, it could have been so vital to take into account the following:

- (a) The description of the accused given to the police shortly after the commission of the offences;
- (b) The opportunity the victim had of observing the accused; and
- (c) The features of the accused noted by the victim and communicated to the police which mark the accused from other persons. See the case of **Afolalu V. State (2008) All FWLR (pt 446) p. 1887 at 1912, paras. A – C**. In the instant case, and throughout the evidence of the prosecution no where it was testified that the description of the 3rd defendant was given to the police shortly after the commission of the offence. The prosecution witnesses did not tell the court as to how the identification was conducted.

Even though, it is established that there was a robbery in the house of the PW1, however, the prosecution has failed to prove beyond reasonable doubt that the three defendants have took part in the robbery.

The ingredients required in proving the offences of robbery are:

- (a) That there was a robbery;
- (b) That the robbery was an armed robbery; and
- (c) That the accused persons took part in the robbery.

See the case of **Oyebola V. State (2008) All FWLR (pt 402) p. 1178 at 1186, paras. D – E**. In the instant case, even though it is established that there was a robbery in the PW1's house, the three defendants are not established to have participated in the act.

The ingredients required in proving the offence of criminal conspiracy are:

- (a) That there was an agreement between two more persons to do or cause to be done some illegal act or some act which is not illegal by illegal means;
- (b) Where the agreement is other than an agreement to commit an offence that act beside the agreement was done by one or more of the parties in furtherance of the agreement; and
- (c) That each of the accused individually participated in the conspiracy. See the case of **Orisa V. State (2019) All FWLR (pt 992) p. 226 at 246; paras. D –H.**

In the instant case, the prosecution has not been able to link the three defendants with first count charge of criminal conspiracy to commit robbery as there is no evidence of such to warrant this court to convict the defendants on that.

In the circumstances of this case, I hold the strong view that there exists a doubt in the prosecution's case which conviction cannot stand against the defendants, and the doubt has to be resolved in their favour. See the case of **Giki V. State (2019) All FWLR (pt 979) p. 508 at 521, paras. E – F.**

Having come to the conclusion that there exists a doubt in the case of the prosecution, the burden will not shift to the defendants to prove their innocence by virtue of the provisions of section 138 (3) of the Evidence Act, 2011.

Based upon the above consideration and analyses, I therefore, do not find the 1st defendant guilty of the offences of conspiracy to commit robbery and armed robbery.

I do not find the 2nd defendant guilty of the offence of criminal conspiracy to commit robbery and armed robbery.

I also do not find the 3rd defendant guilty of the offence of criminal conspiracy to commit robbery and armed robbery.

The 1st defendant is hereby discharged and acquitted of the offences of criminal conspiracy to commit robbery and armed robbery.

The 2nd defendant is hereby discharged and acquitted of the offence of criminal conspiracy to commit robbery and armed robbery.

The 3rd defendant is hereby discharged and acquitted of the offences of criminal conspiracy to commit robbery and armed robbery punishable under sections 6 (a) and (c) and 1 (2) (b) of the Robbery and Firearms (Special Provision) Act Cap. R11 LFN, 2004.

Signed
Hon. Judge
29/09/2021

Appearances:

Bosede Ogundare Esq appeared for the 1st defendant. K. A. Ematidon Esq appeared for the 2nd and 3rd defendants holding brief on behalf of L. O. Fagbemi Esq.

CT – 1ST DC: Was the counsel to the prosecution informed of today's date?

1ST DC –CT: I was informed that the counsel to the 2nd and 3rd defendants informed the prosecuting counsel, had he been in court, he would have informed the court of that.

CT: The matter is adjourned to tomorrow the 30th day of September, 2021 for Judgment. The registry of this court is directed to inform the prosecuting counsel of the next adjourned date.

Signed
Hon. Judge
29/09/2021

The court resumes sitting with the same membership. The three defendants are in court.

G.A. Adeosun Esq holding the brief of John Ijagbemi Esq for the prosecution.

Bosede Ogundare Esq appeared for the 1st defendant.

J.A. Imafidon Esq appeared with O.T. Onoja Esq holding the brief of L.O. Fagbemi Esq for the 2nd and 3rd defendants.

L.O. Fagbemi Esq later appeared before the court.

CT: The judgment delivered on the 30th September, 2021.

Signed
Hon. Judge
30/09/2021