

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA ON THE 15TH FEBRUARY, 2024
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE
SUIT NO. FCT/HC/CR/72/19

COURT CLERK: JOSEPH BALAMI ISHAKU.

BETWEEN:

COMMISSIONER OF POLICE.....COMPLAINANT

AND

CHRISTIAN OGHENE.....DEFENDANT

JUDGMENT

The Charge against the Defendant dated 25/11/19 is a two Count Charge of Criminal Conspiracy to commit the offence of armed robbery contrary to Section 6(b) of the Robbery and Firearms (Special Provision) Act LFN 2004 and armed robbery contrary to Section 1(2) (a) and (b) of the Robbery and Firearms (Special Provision) Act LFN 2004.

The Charge states:

That you, Christian Oghene, Male 35 years old of Block 2/66 Area B Nyanya, FCT Abuja on or about 25th day of December

2018 at about 11 pm at Plot R116A Nyanya Phase 4 Extension FCT Abuja within the jurisdiction of the Honourable Court committed a criminal offence to wit: criminal conspiracy to commit the offence of armed robbery, in that on the said date, you criminally conspired with other gang members now at large to rob one Mr Ibrahim OlusholaBalogun and his family at the above mentioned address and thereby committed an offence punishable under Section 6(b) of the Robbery and Firearms Special Provision Act LFN 2004.

COUNT 2:

That you Christian Oghene Male 35 years old of Block 2/66 Area B, Nyanya, FCT, Abuja on or about 25th day of December 2018 at about 11 pm at Plot R116ANyanya, Phase 4 Extension, FCT Abuja within the jurisdiction of the Court committed a Criminal Offence to wit: armed robbery; in that on the said date, while armed with guns, cutlass and other dangerous weapons robbed one Ibrahim OlusholaBalogun and his family at the above mentioned address and carted away the following items.

- (1) One HP Core Laptop with its Carton and receipt.
- (2) Two Gionee Phones, M5 and M7.
- (3) One Samsung Galaxy X5.
- (4) One Cubolt Phone.
- (5) Two Nokia phones.
- (6) Six set of new wrappers.
- (7) A wallet containing the followings items:

Three ATM cards, National Identity Card, Cash of N15,000 Naira and other valuable items.

And thereby committed an offence punishable under Section 1(2) (a) and (b) of the Robbery and Firearms (Special Provision) Act LFN 2004.

The Defendant was arraigned and he pleaded Not Guilty to the two Count Charge.

The Prosecution called a lone witness in proof of its case. He is ASP GiwezeIhekonye a Policeman attached to Nyanya Division of the FCT Police Command Abuja. He stated that he knows the Defendant. That the Nominal Complainant came to

the Police Station on the 25/12/18 to inform the Police that some hoodlums invaded his house at about 10:30 p.m. He volunteered his Statement. He also visited the scene of crime with the Nominal Complainant Ibrahim OlusolaBalogun. He saw that the hoodlums broke into the house with weapons, gun, cutlasses and battle axe.

That on 28/05/19, investigation led them to Magdalene Danladi. The said phone Gione M3 was recovered from her. It was amongst the phones stolen from the Nominal Complainant. He cautioned her in English language and recorded her voluntary statement. She said the Defendant gave her the phone. She led them to the Defendant's house. He was arrested, cautioned and he volunteered a statement. In the said statement, he said he carried out the operation with other boys who are members of Eye Confraternity amongst them were Tobi, Shoga and four others at large.

That he told them where the guns were kept and led them to place somewhere behind Area B Nyanya where they recovered

one of the locally made pistols and a battle axe. He came back to the station and the Defendant made additional statement. That he wrote his findings (1) The Defendant owns a cult group. That Defendant robbed the nominal complainant. That he was in possession of two locally made pistols. That one was recovered with three live cartridges. The case was later transferred to State CID for continuation of investigation. The statement of the Defendant is Exhibit A.

Under cross examination by the Defendant's Counsel, the witness says the Police received the information on the 26/12/18. He is not aware that the gun was given to him by Shoga his gang member. He was not aware that there was another robbery that very night. That Magdalene is a witness in the case. she was transferred along with the Defendant to CIIB. The Prosecution failed to call other witnesses despite all the opportunities afforded it.

The Court was forced to foreclose the Prosecution when the Prosecution failed to call further witnesses five years after

arraignment. The Defendant gave evidence in his Defence. He is Christian OgeneUfuoma. He was working with a company that produces tiles in Lagos i.e Goodwill Ceramics. He is an automobile Engineer. He does not know anything about the case against him. He was arrested in his house because of a phone a friend gave to him. That he gave the phone to his girlfriend called Magdalene Danladi. He does not know the whereabouts of the said Magdalene. He denied making the Confessional statement Exhibit A. He was in SARS for six months. Nobody told him to make any Statement. He was there until the Judiciary took him to Keffi Correctional Centre. He was there for a year without a Charge. He wants the Court to temper justice with mercy.

Under cross examination by the Prosecution he said he did not participate in any robbery. That the Exhibit A was not signed by him. He cannot read the handwriting. He recanted stating he does not know Magdalene Danladi. He further denied giving her a Gione phone. He does not know if Magdalene led the Police to his house. He denied belonging to a cult group

in Nyanya. He did not make any Statement in Nyanya. He is from Delta State. The above is the case of the Defendant.

Parties adopted their Written Addresses. The Prosecution's Final Written Address is dated 10/11/23 but filed on the 13th. The issue for determination in the said Written Address is Whether the Prosecution has proved its case beyond reasonable doubt against the Defendant. He argues that proof beyond reasonable doubt does not mean proof to a scientific/mathematical certainty or proof beyond all shadows of doubt. That by Exhibit A, the Defendant linked himself and others at large to the commission of the alleged crime.

In respect of conspiracy, Learned Counsel adopting the Ratio 17 of Niki Tobi JCA as he then was in ***GBADAMOSI VS. STATE (1991) 6 NWLR (PT. 196) 182*** said in determining whether the minds of the accused persons really met to commit an offence, the Court should not only consider the physical meeting of the minds in a known and identifiable place as crime hatching or planning base or ground but the

totality of the conduct of the parties. Therefore, the offence of conspiracy could be committed through either written communication by way of letter or oral communication by way of message. That some community effort is required. That from the statement of the Defendant Exhibit A, a meeting of the minds can be inferred. That the Prosecution has established criminal conspiracy.

In respect to Count 2, the Prosecution argued that from the evidence, there was a robbery at the residence of the nominal complainant. That when the phrase on or about is used in a charge, it is not necessary to prove the precise time. That from Exhibit A, the Defendant and his gang members were armed. The Prosecution further argued that the Defendant participated in the armed robbery, refers to Exhibit A which is a Confessional Statement. That denial or authorship of a Confessional Statement does not make it inadmissible. That the evidence of an investigating Police Officer narrating the outcome of his investigation or enquiries is not hearsay.

Failure to tender the weapon employed in the robbery cannot be prejudicial to the case of the Prosecution and it is not the law that the Prosecution must tender weapons used in a robbery attack before an accused can be convicted.

The Defendant's Final Written Address is dated and filed on the 13th day of October 2023. Learned Counsel also posited the same issue for determination. He argued that the Prosecution failed to discharge the burden of proof placed on it by law.

That the burden cannot be shifted to the Defendant. That all the element of the offence are missing in the evidence adduced. That there was no evidence of any identification by the nominal complainant who was not even called as a witness. There was no identification parade. The victim of the alleged armed robbery was not produced before the Court to testify. The nominal Complainant's Statement was not tendered. That Exhibit A failed the six veracity tests to garner any evidential value to make them credible and reliable. The

PW1 did not give evidence of how the robbery took place. The PW1 testified that the robbery took place on 25/12/18. Under cross examination, he said it was on 26/12/18 by 10:30 pm while the charge reads about 11 pm.

That the above contradictions are fatal to the Prosecution's case. That the identity of the Defendant as one of those who robbed the victim is in doubt having not been identified. He urges the Court to discharge and acquit the Defendant on the two count Charge.

Failure of the Prosecution to tender the extra judicial Statement dated 01/06/2019 which may have exculpated him amounts to persecution. The place of robbery in the Exhibit A is Area C Nyanya while the charge reads Block 2/66, Area B Nyanya.

In PW1's testimony, the place said to have been robbed is R1164, Phase 4 Extension Area C, Nyanya. That Prosecution woefully failed to establish the offence of conspiracy. There is

no evidence that Defendant conspired with some other persons. There was also no evidence of agreement. The essential elements of the offence of conspiracy were also not proved. He finally urges the Court to dismiss the two countCharge and discharge and acquit the Defendant.

I have painstakingly summarized the evidence and the Final Written Submission of Counsel. I have also reproduced the two countCharge against the Defendant at the beginning of this Judgment.

In criminal trial, the onus lies throughout upon the Prosecution to establish the guilt of the Defendant beyond reasonable doubt by virtue of Section 135 of the Evidence Act. The burden does not shift. Even where a Defendant as in this case is alleged to have admitted committing the offence, the Prosecution is not relieved of that burden.

See ***AKINFE VS. STATE (1988) 3 NWLR (PT. 85) 729 SC. AIGBADION VS. STATE (2000) 4 SC (PT. 1) 1 AT 15 & 16.***

ANI VS.STATE (2003) 11 NWLR (PT. 830) 142.

GARKO VS.STATE (2006) 6 NWLR (PT. 977) 524.

In essence what the above does mean is that a Defendant is presumed innocent until proven guilty. There is no question of a Defendant proving his innocence before a Court of law.

The Defendant was alleged in Count I to have conspired with other gang members to rob one Mr Ibrahim OlusholaBalogun and his family members on the 25/12/18 at 11 p.m.

In Count 2, the Defendant was alleged to have committed an offence to wit: Armed robbery in that on the same date while with guns, cutlass and other dangerous weapons he robbed the aforesaid Mr Ibrahim OlusholaBalogun and his family.

The Prosecution called only the PW1, the IPO in proof of the case. He said the nominal complainant informed him that some hoodlums invaded his house at about 10:30 p.m on 25/12/18. He said the nominal complainant volunteered a

Statement. He said the hoodlums broke into the house with weapons, gun, cutlasses and battle axe. The above discovery seems like a fairy tale. The PW1 was not there when the house was broken into. The weapons were not left behind. How he discovered that the house was broken into with battle axe, gun etc on the first day of his visit is a mystery to me.

The statement of the nominal complainant is not in evidence. He was also not called to testify in this case. In his evidence he said investigation led them to one Magdalene Danladi. There is no evidence of how he got to know about Danladi. The said Magdalene Danladi was not called to give evidence.

Aside recording the statement of the nominal complainant, Magdalene and the Defendant, there is no evidence that the PW1 carried out any investigation. He gave evidence as the nominal complainant, IPO, Magdalene and other witnesses.

In other words, he gave the evidence the nominal complainant Ibrahim OlusholaBalogun would have given. He also gave the

evidence Magdalene Danladi would have given and gave scanty evidence for himself as IPO. This cannot be the product of investigation or evidence elicited during investigation but hearsay evidence received by the IPO from persons who would have been called to testify. The said evidence is hearsay evidence and lacks probative value. The PW1 said in evidence that the scene of the crime was R116 Phase 4 Extension, Area CNyanya. The Charge states the offence was committed at R116ANyanya, Phase 4 Extension. None of the items allegedly recovered were tendered neither was any instrument allegedly used in committing the offence.

The items allegedly carted away belong to Mr Ibrahim OlusholaBalogun and his family. No member of the family was called to give evidence. No vivid description of how the robbery took place was availed the Court.

No witness or evidence pinned the Defendant to the scene of crime. The first evidence linking the Defendant to the crime is the alleged recovery of a Gione phone which was found with

Magdalene Danladi, the girl friend of the Defendant as stated in evidence. She was not called to give evidence. The said Gione phone was not tendered. The 2nd evidence is Exhibit A. It is a Confessional Statement of the Defendant. The Statement is dated 29/05/19. The offence was alleged to have been committed on 25/12/18. The alleged Confessional Statement was taken about 5 months after the commission of the crime. There is nothing outside the confession to show that it is true. It is not corroborated. I also read the other Statement of Defendant dated 01/06/2019 which was not tendered. I am weary in placing any probative value on the aforesaid Exhibit A.

The offence against the Defendant is a capital offence. There is no direct evidence of conspiracy. I cannot also infer any agreement between the Defendant and the alleged persons at large. The PW1 said in evidence the robbery took place on 25/12/18.

Under cross examination, he said it took place on 26/12/18. The Court cannot pick and choose which of the dates the robbery took place. It is a material inconsistency. It casts doubt as to whether a robbery took place and if yes where?.

Aside the alleged Confessional Statement, there is no evidence of the Defendant's participation in the robbery. Those who would have identified him or pin him down to the crime were not called to give evidence. The evidence of the nominal complainant and Magdalene would have strengthened the Prosecution's case.

On the other hand, the evidence of the Defendant is also flat. It is unreliable full of inconsistencies. However it is the duty of the Prosecution to prove his guilt.

In the circumstance of this case, it is my view that the Prosecution failed to prove the two count Charge against the Defendant beyond reasonable doubt and I so hold. The

Defendant is consequently found Not Guilty. He is accordingly discharged and acquitted.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
15/02/2024