

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 18 GUDU-ABUJA
ON THE 28TH NOVEMBER, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE OSHO-
ADEBIYI

SUIT NO: FCT/HC/CR/353/2019

BETWEEN

COMMISSIONER OF POLICE FCT..... COMPLAINANT

AND

AMADU ADAMU.....DEFENDANT

JUDGMENT

Defendant was charged before this court on a three (3) count charge of armed robbery, intention to cause death and attempt to kill. The charge reads as follows:

COUNT ONE:

That you Amadu Amadu on or about the 18/08/2018 at about 1900hrs at Pegi Area of Kuje Abuja, within the jurisdiction of this Honourable Court did commit an illegal act to wit: Armed Robbery; when you armed yourself with cutlass, attacked, cut off the arm of one Margaret KpadooNyitse “f” and robbed her of her bag containing her personal belonging. You thereby committed an offence contrary to and punishable under Section 1(1)(2)(a)(b) of the Robbery and Firearms (special Provisions) Act cap R11 2004.

COUNT TWO

That you Amadu Amadu on or about the 18/08/2018 at about 1900hrs, at Pegi Area of Kuje FCT Abuja, within the jurisdiction of this Honourable Court did commit an illegal act to wit: Attempted Culpable Homicide; when you armed yourself with cutlass, attacked, cut one Margaret KpadooNyitse severally on her shoulder, elbow and finally cut off her arm with intention of causing her death and robbed her of her property. You thereby committed an offence contrary to Section 229 of Penal Code Laws of Northern Nigeria

COUNT THREE

That you Amadu Amadu on or about the 18/08/2018 at about 1900hrs, at Pegi Area of Kuje FCT Abuja, within the jurisdiction of

this Honourable Court did commit an illegal act to wit: Causing grievous hurt; when without any provocation, you inflicted severe machete cuts, on the elbow, shoulder and completely cut off the left palm of one Margaret KpadooNyitse in an attempt to causing her death. You thereby committed an offence contrary to Section **247 Penal Code Law of Northern Nigeria.**

Defendant pleaded not guilty. Prosecution fielded three witnesses and the following is a recap of the case of prosecution. PW1 whose name is Margaret KpadooNyitse, female and a teacher by profession testified that on 18th March, 2018 that on her way back from teaching home lesson to some of her students around 6:30pm to 7pm, she saw Defendant come out of the bush walking in front of her, that she walked past him which resulted in Defendant walking behind her. That she immediately crossed the bridge that went towards her estate where she lives. That Defendant also crossed the bridge walking behind her. That she kept looking back and seeing Defendant. That her phone rang while she was on the bridge and she stopped to answer her phone and put her phone back into her bag. That she continued her journey home and headed towards a short route that led to her residence; that Defendant suddenly entered the bush and appeared in front of her. That she noticed Defendant walking ahead of her but Defendant suddenly stopped beside a tree and was “playing” with the leaves on the tree giving the impression that he wanted to cut the leaves because Defendant had a machete hanging by the side of his body enclosed in a leather sheath. That as she walked past the Defendant, she suddenly developed a feeling that she should run but she calmed her nerves and did not run. That she continued walking and suddenly turned around to notice Defendant was walking behind her in a suspicious manner. That it was at that instant it dawned on her that Defendant wanted to harm her. That immediately she turned back to run the next thing she felt and heard was the sound of cutlass on her shoulder bone which broke her shoulder. That she was using her left hand to defend herself and Defendant used the same cutlass to hit her by the wrist. That her bag fell down in the process and Defendant picked up her bag. That she ran out of the foot path into the road and sat by the road side. That it was at that point she realized that her left hand had been cut off her arm by the wrist. Luckily, she saw people who were able to recognize her. That she used her right hand to call the family she had gone to teach their child after school lessons. That the family said they were on their way and she should wait. That a good Samaritan, (male),

carried her inside his car to Navy hospital. At the Naval hospital, they managed to tie up the stump at the base of her arm because she was bleeding excessively so much so that the personnel at the Naval hospital carried her inside their ambulance to Gwagwalada Specialist hospital. That all these happened on 18th March, 2018. That on 21st March, 2018, she was taken into the theatre for surgery where two pieces of iron was inserted in her shoulder in order to attach her arm to her shoulder. That presently she has two pieces of iron holding her arm to her shoulder. In the hospital, she was asked if she could recognize the Defendant and she answered positively. That on 14/12/2018, Defendant was apprehended at Pegi Village and handed over to the Navy. That the Navy called her to come and identify defendant. That she was able to identify Defendant because the day was clear when the incident happened. That when she got to the Navy premises, Defendant and 3 other people had been apprehended. That out of the four people, she immediately pointed out the Defendant and identified him as the culprit. That Defendant did not deny but rather confirmed that he knew PW1 and was the person who attacked her. That officials of Special Anti Robbery Squad (SARS) came and picked Defendant up. That at SARS office Defendant told the police in the presence of PW1 that he liked PW1 and wanted to rape her and knowing PW1 would not accept his overtures he did not want any other man to desire PW1. That on the day the incident happened, the Naval officers looked for her decapitated hand around the scene of crime but couldn't get it; that they were able to locate her missing hand the following day but by the time the Navy officers ran back to the hospital with her hand, the hand was already dead and it was too late to attach it back to her arm, hence PW1 was left with a stump in place of her hand. Under cross-examination PW1 insisted that the day was very bright on the day of incident, hence she was able to positively identify the Defendant. Under cross-examination when asked to show the injury on her shoulder blade to the court, PW1 exposed a deep but gruesome long scar starting from her back to the front of her left shoulder. The scar looked ghastly.

PW2 is a Police Officer by name Sergeant James Ameh attached to anti-violence crime section formerly called SARS FCT command. PW3 is also a police officer by name Inspector Tanim Abdul who was serving at SARS when the incident happened. Both PW2 and PW3 investigated the crime. Both PW2 and PW3 reported and corroborated the testimony of PW1 regarding how Defendant

attacked PW1. In the course of investigation, the two police officers testified that the incident happened around a village called Pegi and PW1 was rushed to the Navy hospital at Pegi village. PW3 testified that he led a team of detectives to investigate the crime. Both officers testified that they visited the scene of crime along with complainant. That no evidence nor exhibit was recovered from the scene of crime because there was a 6 to 7 weeks interval before the police could visit the scene of crime due to the surgery and hospitalization of PW1. That a team of investigators gathered intelligence report through the surveillance team at Pegi that the perpetrator was a Fulani man. That the chief of Fulani in Pegi village honoured their invitation and revealed the name of the Defendant as being the perpetrator. That the father of Defendant was invited by the police and he promised to assist in apprehending the Defendant. That Defendant was eventually apprehended by Fulani Vigilante men who sighted Defendant coming out of the bush, pursued him and arrested him. That he confessed to the Fulani vigilante that he was the person who attacked PW1. That the Navy took the Defendant from the vigilante office to their office. That the Navy eventually released him to the police(SARS) in company of two other persons whom Defendant alleged were his cohorts. That the level of injuries sustained by PW1 during the attack necessitated surgery and her shoulder which had dislocated from its ball joint had to be surgically tied with iron to her arm. That Defendant in his statement eventually exonerated the 2 other men who were ultimately released. That Defendant actually implicated 5 people who were all arrested but he eventually exonerated all five. Both PW2 and PW3 testified on different dates before this court that the facts of their findings in their investigation are as follows:

That they were able to establish that Defendant was the perpetrator as Defendant himself admitted to the crime. The PW1 was able to identify Defendant from a line-up of 4 people (Defendant and 3 others). The kinsmen of Defendant who are also Fulani's in the Gbagyi vigilante of Pegi village confirmed that Defendant committed the crime and a press conference was conducted wherein Defendant admitted to perpetrating the crime. When asked why he cut off the hand of PW1, Defendant told the press that he liked PW1 and desired her but knew in his mind that PW1 would likely turn him down so he cut off her hand. That in proving the charge of armed robbery, Defendant was armed with a sharp machete which he used on PW1. In proof of the charge of culpable homicide, if PW1 had not

blocked the second strike with her left hand which Defendant aimed at her head would have killed PW1 because it would have divided her skull; that PW1 was lucky that the strike landed on her wrist and shoulder. That for the machete to cause such damage to PW1, the severity of the force used by Defendant to strike PW1 was apparently a great force aimed at killing PW1. That the machete used in inflicting the injuries on PW1 was recovered from Defendant and Defendant confessed to using that machete on PW1. That 3 other Fulani men made statement to the police corroborating that it was indeed Defendant that perpetrated the crime. The names of the Fulani men who corroborated the statement of Defendant are: Abdullahi Ibrahim, Abdulkareem Hassan and Sansum .G. Peyi all Fulani vigilantes. That Defendant made his confessional statement in the presence of the Fulani vigilantes. That these Fulani vigilantes were unable to attend court because they are nomads who move from place to place with their cows. That Defendant was caught with the weapon he used on PW1 and recovered from him. Statement of all the two Fulani nomads arrested with Defendant but whom Defendant later exonerated were all admitted in evidence and marked as Exhibit A3 & A4. Under cross-examination PW3 testified that the machete used to inflict injury on PW1 was recovered from Defendant after arrest and when asked if there was a video recording of the Defendant making his statement, PW3 replied in the negative. Defendant opened his defence on the 5th of December, 2023 and testified as an only witness. Defendant testified that his name is Amadu Adamu and that he is a herdsman. Defendant testified that he was not guilty of the criminal charge and that he did not cut the hand of PW1 as alleged in the charge before the court. Defendant admitted that the machete belongs to him but he did not use it in cutting off the hand of the PW1 as alleged. That the Fulani vigilante had suddenly arrested him after he came back home with his cows. That the vigilante handed him over to the Navy. That he is innocent of the charge. Under cross-examination when asked to confirm that the Fulani vigilante singled him out of the whole Fulani herder's community, arrested him and handed him over to the Navy, Defendant replied "yes". When asked if he had proof that he was tortured into giving statement, Defendant said he had shown the court proof of torture. Under re-examination, when asked the proof of torture he showed the court Defendant said he had shown the court the marks on his back and his legs. The following exhibits were admitted in evidence;

1. Statement of PW1 Exhibit A1
2. Cutlass in a red leather sheath - Exhibit A2
3. Statement of Abdul Halidu - Exhibit A3
4. Statement of Abdulkarim Hassan - Exhibit A4
5. Picture of PW1 Exhibit – A5
6. Picture of Defendant with a sword – Exhibit A6
7. Certificate of authentication – Exhibit A7

Casewas adjourned for adoption of their respective written addresses.

The Defendant in their final written address raised two (2) issues for determination to wit;

1. Whether or not, the failure of the prosecution to tender the Hausa version of the defendant's purported confessional statement renders exhibit a3 translated from the same inadmissible and unreliable.
2. Whether given the evidence adduced by the parties, the prosecution has established the elements of the offences for which the defendant was charged beyond reasonable doubt to entitle it to a conviction.

On issue one, counsel submitted that in the absence of the Hausa version containing the original statements made by the Defendant to the police and then the same being cross-matched with the English version recorded by the police, the English version tendered by the police as Exhibit A3 is inadmissible and unreliable. Counsel urged the court to find and hold that Exhibit A3, being the purported translation of the Defendant's purported confessional statement made in Hausa language is unreliable to sustain the allegations for which he was charged before the Honourable Court and thus inadmissible and accordingly expunge it or hold that it is unreliable and the court should decline to rely on the said confessional statement.

On issue two, counsel submitted that it is trite law that in criminal cases, the burden of proof lies on the prosecution hence, the burden of proving that the Defendant committed the offences of armed robbery, attempted culpable homicide and causing grievous hurt is on the prosecution and that it must be proved beyond reasonable doubt. Counsel submitted that the prosecution failed to link the Defendant in any way to the alleged armed robbery. Counsel further submitted that an examination of all the exhibits tendered by the prosecution do not establish a case of armed robbery and urged the court to find and hold that the Prosecution has failed to adduce any evidence in

proof of the element of the Defendant' s participation in the armed robbery of the PW 1.Counsel submitted that the prosecution is required to prove all the essential elements of the charge of attempted culpable homicide,that the prosecution further failed to establish the elements of attempted culpable homicide against the Defendant in proof of count 2 of the charges before this Honourable Court beyond reasonable doubt. Counsel submitted that it is the law that where the prosecution fails to establish or prove the existence of all the elements of an offence, it has failed to discharge the burden of proof of the offence beyond reasonable doubt and the defendant is entitled to an order of acquittal. Counsel relied on the following authorities amongst others; **Magaji v. state (2024) LPELR - 61656 (CA) Pp. 41 - 43 Paras. B – D; Section 135 (1) (2) of the Evidence Act 2011; Manu v. State (2023) 10 NWLR (Pt. 1892) 231 @ 245-246, paras H-A; Sections 1(1) (2)(a) & (b) of the Robbery and Firearms (Special Provisions) Act, cap R11 2004Samuel v State (2020) 6 NWLR (Pt. 1721) 557 @ 573-574 paras H-A; Sanusi v. State (2023) 3 NWLR (Pt. 1871) 259 @ 299 Paras. G — H; Amodu v. State (2021) LPELR - 56422 (CA) Pp 27 - 28, Paras.E — D; State v. Masiga (2018) 8 NWLR (Pt. 1622) 383 @ 402 Para E; C.O.P. V. Ogor (2022) 14 NWLR (Pt. 1849) 49 @ 96 Paras F-G andSimeon v. State (2018) 13 NWLR (Pt. 1635) 128 @ 142 Paras. D-E.**

The prosecution did not file final written address.

In the circumstances, I will adopt the issue for determination as raised by the Defendant counsel in his final written address to wit:

- 1) **Whether or not the failure of the prosecution to tender the Hausa version of Defendants purported confessional statement renders Exhibit A3 translated from the same inadmissible and unreliable.**
- 2) **Whether given the evidence adduced by parties the prosecution has established the elements of the offences for which the Defendant was charged beyond reasonable doubt to entitle it to a conviction.**

I will take both issues for determination simultaneously. Learned counsel to the Defendant in his written address submitted that failure of the prosecution to tender the statement of Defendant in Hausa Language (which is the language Defendant understands) before translating it to English language, made the English statement unreliable. Learned counsel to the Defendant relied on the Court of Appeal case of **MAGAJI VS STATE (2024) LPELR 61656**

(CA) PP.41 – 43 Paras B-D where Mbapa JCA held that a Defendant who does not understand English, his statement must be recorded in the language he understands and later translated to English language. That both statements must be tendered by the prosecution. I have looked at the facts of the Court of Appeal case of **MAGAJI VS STATE** (Supra) cited by the Defendant counsel and the facts of that case is not on all fours with the case at hand. In the case of **MAGAJI** (Supra) the Appellant only understood Hausa language but statement was recorded in English and read over to Appellant in English language whereupon the Appellant signed. Nowhere in the case of **MAGAJI** (Supra) was evidence provided that the statement was translated to the Appellant in Hausa language, rather statement in that case was recorded in English language and read over to him in English language. The sharp difference between the case of **MAGAJI** (Supra) and the case at hand is that there is evidence before this court that the statement was translated to the Defendant in Hausa language and the said translator who doubled up as the person who wrote the statement is PW3 who gave evidence of same before this court. Excerpt of the evidence of PW3 during trial within trial on the 17th November, 2022 is hereby reproduced below:-

PW3: Because accused was not privileged to go for Western education, he could not write by himself and for the fact that I'm fluent in Hausa language, I was able to interview him which I translated into oral and written. Even before I recorded that statement, I translated the cautionary words to him in Hausa and let him realise that whatever I write down will be given in evidence.

Also under cross examination of PW3.

Defendant counsel: You confirm Defendant does not speak English?

PW3: Yes; he does not as at the time I recorded his statement.

Defendant counsel: What language did he speak?

PW3: I'm fluent in English so I interpreted in Hausa read to him and interpreted to him.

From the above excerpts, it is the evidence of PW3 that he took the statement in Hausa, wrote in English and interpreted what he wrote down to Defendant in Hausa language.

The Apex court has held in multiple decisions that a confessional statement taken in a language other than English language must be interpreted to the Defendant and the said interpreter must be called

to testify else such statement would be “hearsay” before the court.

In **FRN vs USMAN (2012)8 NWLR (Pt.1301) 141 @ Pg 163** the SUPREME COURT held as follows:

“Where an interpreter has to be used in taking down of a confessional statement of an accused person, that statement remains inadmissible unless and until the person who served as interpreter in taking down the statement is called as a witness as well as the person who wrote down the statement. Under the law, such statement recorded through an interpreter remains hearsay and therefore inadmissible and can only be confirmed by the evidence of the interpreter as to the questions put to the accused person whose statement was being taken in the language understood by him”.

From the above, the Supreme Court has held that it is the law that the person who served as interpreter in taking down a confessional statement must be called as a witness as well as the person who wrote down the statement. That anything to the contrary will be hearsay evidence which would amount to deniable of fair-hearing as the Defendant would be unable to conduct cross-examination if both the interpreter and the person who wrote the statement in English is not produced as witnesses. In applying the above holding of the Supreme Court to the case at hand the PW3 has testified that he wrote the statement of the Defendant and also interpreted in Hausa language. There is no evidence to the contrary that PW3 does not understand Hausa neither is there any evidence to suggest that PW3 cannot interpret Hausa to English and vice versa... Therefore with the evidence of PW3 that he read and administered the cautionary words to the Defendant in Hausa language and the evidence of PW3 that Defendant gave his confessional statement in Hausa language which PW3 wrote down in English and interpreted to Defendant in Hausa has definitely satisfied the requirement as laid down by the Supreme Court that the statement must have been interpreted to the Defendant in Hausa language (although Defendant spoke in Hausa and PW3 wrote in English) and secondly that the interpreter and writer must be called as a witness. In this case PW3 was both the writer and interpreter of that statement. I also refer to the case of **BELLO VS STATE(2012) 8 NWLR (Pt. 1302) 207 @ Pg. 238** in this case the court of appeal held that an interpreter should have testified in a case where Defendant does not understand English in order to supply credence to a confessional statement. From the above it is evident that the case cited by Defendant counsel

MAGAJI VS STATE (Supra) is not on all fours with the case at hand and will not avail the Defendant. Learned counsel to the Defendant also raised another ground upon which the said confessional statement of the Defendant should be deemed unreliable by the court. The learned counsel to the Defendant in his adumbration while adopting his final written address referred the court to the case of **FRN V NWAJIOFOR (2024) 10 NWLR (Pt. 1947) PP 483 – 484 paras F – B**, in this case the Supreme Court held that by the provisions of **Section 13 (4) and 17 (2) of Administration of Criminal Justice Act 2015**, the law enforcement agencies are mandated to electronically record the process of obtaining confessional statements of accused persons. I have read this decision of the Apex court and I do agree with learned counsel to the Defendant that the failure of the police to tender the video recording of the Defendant while the Defendant was confessing to the crime makes the confessional statement inadmissible. Having read the confessional statement of the Defendant and being satisfied that it was not accompanied by a video recording of Defendant while obtaining the said confessional statement, I am of the view that the confessional statement is unreliable and I so hold.

The Defendant before this court is being charge with the offence of robbing and attacking the PW1 with a cutlass and cutting off the hand of the PW1 (Margaret KpadooNyitse “F”) contrary to Section 1 (1) (2) (a) (b) of the Robbery and Firearms (Special Provision) Act. Attempted culpable homicide by attacking the Pw1 with a cutlass and cutting off the arm of PW1 with intention of causing her death contrary to Section 229 of Penal Code and the third charge being causing grievous hurt by inflicting severe machete cut and cutting off the left palm of PW1 without provocation in an attempt to cause her death contrary to Section 24 Penal Code. I will go ahead to evaluate evidence of Defendant outside his confessional statement.

On the first count charge of robbing and attacking the PW1 with a cutlass and cutting off the arm of PW1 contrary to **Section (1) (1) (2) (a) (b) of Robbery and Firearms (Special Provisions) Act**. The section states:

(1) Any person who commits the offence of robbery shall upon trial and conviction under this Act be sentenced to imprisonment for not less than 21 years.

(2) If –

- (a) Any offender mentioned above in subsection (v) of this section is armed with any firearms or any offensive weapon or is in company with any persons so armed; or*
- (b) At or immediately before or immediately after the time of the robbery the said offender wounds, or uses any personal violence to any person, the offender should be liable upon conviction under this Act to be sentenced to death.*

The interpretation section of the Robbery and Firearms Act: Section 9 defines robbery to mean stealing anything and, at or immediately before or after the time of stealing it, using or threatening to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained.

Under **Section 1 (1) (2) (a) Robbery and Firearms (Special Provisions) Act** the prosecution in order to convict an accused must establish beyond reasonable doubt the following ingredients:

- (1) That the accused persons stole something capable of being stolen.*
- (2) That at the time of stealing, the accused was armed with any firearms or offensive weapon.*
- (3) That at the time of stealing, the accused person threatened to use violence immediately before or immediately after the time of stealing.*
- (4) The violence could be on either a person or on a property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained.*

In **FRN VS USMAN (2012) 8 NWLR (Pt. 1301) 141 @ Pg 157**; In this case, the Supreme Court per Rhodes-Vivourheld as follows:

“A charge under Section 1 (2) (b) of the Robbery and Firearms (Special Provisions) Act succeeds if the prosecution establishes beyond reasonable doubt that the accused persons stole something capable of being stolen, and at the time of stealing the accused person threatened to use violence or used violence immediately before or immediately after the time of stealing. The violence could be on either a person or on property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained”.

See **HENRY OTTI VS STATE (1991)8 NWLR (Pt. 207) 103**.

I will take all the four (4) ingredients of armed robbery under Section 1 (1) (2) (a) simultaneously as they are all interwoven. It is

unchallenged and uncontroverted that PW1 was robbed of her bag which was hung on her shoulder. However, prosecution witness has given evidence that the Defendant stole the bag of PW1 and in the process harmed PW1 by inflicting bodily injuries on PW1 with a machete? Under our criminal jurisprudence, there are three (3) ways of proving the guilt of an accused person as enunciated in the case of **EMEKA VS STATE (2001) 32 WRN 37 @ 49** where the courts laid down the three (3) methods by which the prosecution may prove the guilt of an accused person as:

- (1)By reliance on a confessional statement of an accused person voluntarily made*
- (2)By circumstantial evidence*
- (3)By the evidence of eye witness.*

Now having knocked off the confessional statement of Defendant, I will go into number 2 above which is circumstantial evidence. In the case of **NWEKE VS STATE (2001) LPELR (2119)1 @ 11** the Apex court held as follows:

“Circumstantial evidence is very often the best. It is evidence of surrounding circumstances which, by undesigned coincidence is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial”

Therefore, from the case of **NWEKE VS STATE (Supra)** the circumstantial evidence relied on by prosecution must be compelling, conclusive and strong. It must lead to the irresistible conclusion that the accused person and no one else committed the crime..... PerOGAKWU JCA in **NWEKE (Supra)**

Prosecution in this case tendered exhibit A4 which is a statement from Abdulkareem Hassan a Fulani vigilante commander, Exhibit A3 is a statement by Abdullahi Ibrahim a Fulani cattle rearer. The makers of Exhibit A3 and A4were not called to testify. According to PW3 these two people are Fulani cattle rearers who are nomads that taketheir cows all around West Africa, hence they were not available to be called as witnesses. Although defendant counsel submitted in his final written address that these statements fall under hearsay evidence as the makers were not available to be cross-examined by defendant; it is my view that they fall under **Section 46 of the Evidence Act** which states that such statement as in Exhibit A3 and A4 is only hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is however not hearsay when it is to establish by the evidence, not the

truth contained in the statement but the fact that it was made. Therefore, the essence of Exhibit A3 and A4 is to the extent that the Fulani Kindred of the defendant willingly made statements to the police against the defendant. See **NWOBOSI VS. ACB LTD (1995)6 NLWR (PRT.404) PAGE 658 @ 679 PARAF-G** where ONU JSC held that evidence of what a person told a witness may be allowed by the court if the purpose is not to prove the truth of what was alleged to be said by person but to prove the fact that it was made.

The 3 prosecution witnesses gave evidence that defendant stole the bag of PW1. PW1 who is the victim testified that defendant had been trailing her but she thought nothing of it. That the time of incident was between 6:30pm and 7pm. That it was not dark as there was still some semblance of daylight. That defendant suddenly walked past her, appeared in front of her, pretended he was looking at some leaves in front of her, that as she walked past the defendant, she realized defendant was about to hurt her and took to her heels, but alas! she was too late as defendant swung his machet on her shoulder blade and in the process of defending herself against the 2nd blow with her arm, defendant cutoff her hand. Clearly evidence of PW1 was not brief or perfunctory; rather evidence of PW1 as to the way and manner defendant attacked her was well outlined and properly enunciated. PW1 in her testimony explained how she was coming from her lesson classes, how she saw the defendant in front of her, how she walked towards the defendant, how she walked past the defendant, how defendant followed her and how she knew defendant was following her but she thought nothing of it; how defendant entered the bush and appeared ahead of her, how she saw the defendant ahead of her and how she walked towards defendant a second time, how defendant stood holding some leave from a tree and pretending to be cutting the leaves, and how defendant attacked her. From this lengthy and well elucidated testimony of PW1 it is clear that PW1 had ample opportunity to get a good look at defendant as she had the opportunity of walking towards him at the initial stage, saw defendant, walked past defendant, defendant thereafter entered the bush and appeared in front of PW1, PW1 saw defendant in front of her again and walked towards him a 2nd time before the attack. Clearly the attack was not one that happened in a few seconds or brief minutes as PW1 gave evidence of what happened before, during and after the attack suggesting that she had ample opportunity to look and recognize defendant's face. Also, there is unchallenged and uncontroverted evidence of PW1 that when

defendant was handed over to the Navy, the Navy lined up the defendant along with 3 other people and PW1 testified that she immediately picked out defendant from the lined up. PW1 in her evidence in chief stated that:

“The Navy called me. I know I will recognize him because it was clear when the incident happened it was not dark. When I came he had been arrested with 3 other guys and I immediately pointed him out and he did not deny. He even confessed that he knows me and was the one who attacked me”

The learned counsel to the defendant in his written address raised the issue that defendant was not apprehended immediately until after some days and that PW1 would have likely forgotten the identity of defendant, moreover it was between 6:30-7:00p.m. However, from testimony of PW1 there was no doubt that she had a good view of defendant in the events leading to the attack, during the attack and after the attack. Prior to the attack, PW1 had never met defendant hence, I am of the view that an identification parade was necessary. However, PW1 has given unchallenged and uncontroverted evidence that she was able to pick out defendant easily from an identification parade. In *RVS TURNBULL AND ORS* (1976) 3 ALL E.R. 549 @ P.551 the courts held that where a victim of armed robbery did not know the accused before and was confronted by the offender for a very short time and in which time and circumstances, he might not have had full opportunity of observing the features of the accused in such a situation, identification parade is necessary.

Prosecution witnesses further gave evidence that defendant was armed with a machete. I have seen the machete tendered as Exhibit A6 and it is a sharp cutlass enclosed in a leather sheath. I have looked at the machete and the machete is extremely sharp. Defendant in open court admitted in his examination-in-chief and cross-examination that the said machete belongs to him but maintained that he did not use it on the PW1. PW1 on the other hand maintained that the machete used by the defendant was so sharp that it dislocated her shoulder in one swoop and cut off her hand in another swoop. From evidence before me, the PW1 was able to identify the defendant from a line up identification parade. There were four persons lined up in the parade. There is no evidence before me that the 3 other people lined up with defendant had a sharp machete on them save for the defendant. It is definitely not a coincidence that

PW1 was able to positively identify the defendant as the owner of a sharp matchet used to perpetrate the robbery and inflicting injury on her. It is also not a coincidence that defendant has owned up that the matchet belongs to him. Circumstantial evidence in this regard points to the following facts

- (1) That PW1 was able to positively identify the defendant in a line-up of 4 people
- (2) There is no evidence that all the other three men in the line-up owned a sharp matchet enclosed in a leather sheath
- (3) That the PW1 confirmed that defendant owned a sharp matchet enclosed in a leather sheath
- (4) That after identifying defendant; defendant owned up that the sharp matchet enclosed in a leather sheath belonged to him.

In his examination in chief defendant testified thus

“The cutlass is mine, I agree it is mine, but I didn’t cut her hand with it; I use it for cutting grass”.

It is worthy to note that circumstantial evidence relates to the existence of facts which raise a logical inference as to the existence of the fact in issue. To ground a conviction, circumstantial evidence must be cogent, complete, unequivocal but compelling and lead to the irresistible conclusion that only the accused is the culprit as held in the case of **LORI VS STATE (1986) 8-11SC; 81** it is my view that circumstantial evidence points to defendant as the person who hit PW1, robbed her of her bag and inflicted injury on PW1. It is necessary at this point to define the word “offensive weapon” the Robbery and Firearm (special provision) Act interpreted offensive weapon under **Section 11** to mean “*any article (apart from a firearm) made or adapted for use for causing injury to the person or intended by the person having it for such use by him and it includes an air gun, air pistol, bow and an I Tow, spear, cutlass, matchets, dagger, cudgel or any piece of wood, metal glass or stone capable of being used as an offensive weapon*”.

The question that begs to be answered is whether the matchet of defendant falls under offensive weapon? It is worthy to state that it is the use which a weapon is put to which makes it offensive. The test of what constitutes an offensive weapon under the Robbery and Firearms Act is “what an average, normal right thinking person placed in the same circumstances as the victim would have been

expected to think”?? The courts in the case of **KAYODE VS STATE (2012) 11NWLR (PRT. 1312) 533 @ 539** answered this question when the court held that any object with the robbers which creates in the mind of the victim a reasonable apprehension that were it used on the person would caused death or harm, falls under offensive weapon by the provision of the Robbery and Firearm (Special Provision) Act. In other words, any object in the mind of a reasonable person that such object if used on him has the potential to cause death or grievous harm falls under the meaning of offensive weapon “under the Robbery and firearms Act. In the instant case prosecution witnesses had given evidence that the defendant was armed with a machet and had attacked PW1 with the machet. PW1 had further given evidence that immediately before the attack; she felt an urge to run and was apprehensive that the defendant was armed with a weapon that had the potential of causing her bodily harm if used on her. In **KOLAWOLE VS STATE (2012) NWLR (PRT.1313) 104 @ 120** the court in that case held that a broken bottle falls under offensive weapon once it can be proved that it was meant to cause injury to the person or the person having it intended to use it to cause harm on another or put fear and apprehension in the mind of another while perpetrating a crime (robbery). From evidence before me prosecution witnesses testified that defendant was armed with a machet when he attacked PW1 and cut off her arm. That in the process, defendant also robbed PW1 of her handbag. There is unchallenged evidence before me that 4 people were lined up by the Navy in an identification parade and PW1 picked out defendant effortlessly. There is no evidence before me that the 3 men in the line up had machets on them rather there is evidence of defendant confirming in this court that he owned the machet which is an exhibit before this court. Defendant in his exam-in-chief testified as follows:

Q: A machet was tendered that was alleged that you use it in stabbing a lady’s wrist?

A: The cutlass is mine. I agree it is mine but I did not cut her hand with it, I use it for cutting grass.

The case of the prosecution is that the defendant is a cattle rearer from the Fulani tribe in Nigeria. The defendant has also admitted in open court that he is a cattle rearer who’s primary occupation is raising livestock in the form of goats and cows. It is common knowledge that Fulani herdsmen in Nigeria move their cows from place to place in search of grass or greenery for open grazing. Open grazing is an age long practice of herdsmen and it is defined as the

act of pasturing livestock by allowing them to roam freely to find pasture and wild vegetation to eat. In essence these livestock which consist mostly of cows and goats are left to roam in open fields where the cattle search for grass to eat. It is also known as “free range” (i.e. roaming around). From this definition of free range, it is not the practice of cattle rearersto go about with matchets in order to cut grass from their livestock, rather livestock roam freely in open fields in search of what to eat. It is only when livestock have limited access to grazing that food like grass will be brought to them and such livestock lives in barns and cages or enclosed places with no opportunity to roam the fields. Therefore, there is no reason for defendant to go about with a matchet to cut grass for his livestock to eat. Herdsmen are not known to go around with machetes in other to cut grass for cattle which ordinarily are open grazing cows and goats. It is my view that defendant has failed to give satisfaction reasons to this court as to why he moves about with a matchet as the excuse that defendant uses it to cut grass will not suffice. Ultimately prosecution has been able to prove all the ingredients contained in **Section 1(1)(2)(a)(b) of Robbery and firearms (Special Provisions) Act** to wit:

- (1) That the defendant stole something capable of being stolen (bag of PW1)
- (2) That at the time of stealing the defendant was armed with an offensive weapon being his matchet
- (3) That at the time of stealing, the defendant used violence on the PW1 with the use of his matchet
- (4) That the violence used on the person of PW1 was to obtain or retain the bag of PW1 and to prevent/overcome resistance to the bag being stolen or returned.

Consequently, I therefore find defendant guilty of the first count charge. I will take both count 2 and 3 together as the main ingredient of these two counts is proof that defendant by attacking PW1 with a matchet had the intention of causing her death and same was done without provocation. On the issue of provocation, the PW1 had given evidence that defendant was a random person whom she encountered on a lonely footpath. Defendant on the other hand had also given evidence that he does not know the PW1. It is therefore safe to come to a fast conclusion that there was no provocation involved in this crime and I so hold.

On the issue that defendant by attacking PW1 had the intention of causing her death. It is the case of prosecution that on the day of the

incident both the PW1 and defendant were the only two people walking on the footpath which PW1 had said was a short cut she routed in order get home early. Being the only two people on that footpath, PW1 testified that she got a good look at defendant and was able to remember his face. It is worthy at this stage to mention the demeanour of defendant in this case. Defendant is a small statured person with an extremely young looking face. I have carefully chosen the word “small” because on the date defendant was arraigned, this court had berated the prosecution for charging a minor before this court but prosecution had insisted defendant is a grown man and not withstanding his extremely young look and small stature, that defendant is a married man. Defendant also confirmed to this court that he is married when the court enquired. It is obvious that defendant is blessed with a rare gene which makes him look extremely younger than his age as he has not beard or evidence of maturity showing on him. The demeanour of the defendant was that of someone devoid of emotions all through his trial before this court. PW1 had testified that defendant had attacked her with his machet by hitting her in one hard and severe swoop on the shoulder thereby dislocating her shoulder. That in the process of using her hand to defend herself against the second attack; defendant had cut of the hand of PW1 in a second hard swoop. It is unchallenged and uncontroverted that PW1 had been rushed to the Navy hospital where surgery was performed on her arm by using two iron rods to hold her shoulder firmly to her hand. PW3 had also given unchallenged evidence that without the two iron rods holding the arm of PW1 firmly to her shoulder, PW1 would have had her arm totally dislocated from her shoulder. Also, when defendant cut off the hand of PW1, she was left with a stump on her hand. PW1 had shown the court the stump which used to be attached to her hand and also the court had observed the gory site of stiches with deep but healed machet cuts on the shoulder of PW1. Having earlier held that defendant attacked PW1 while robbing her with his machet, it therefore flows that from the gravity of injury experienced by the PW1, it is my view that defendant had the intention of causing the death of PW1 which is contrary to **Section 299 and 247 Panel Code Laws of Nigeria**. The defence counsel in his final written address had submitted that defendant having not been caught at the scene of crime cannot be held guilty of attacking PW1. As I had earlier stated proof of a crime does not necessarily have to be by direct evidence, circumstantial evidence can be adopted by a trial judge in proof of a

crime. The circumstantial evidence linking defendant to the crime he is charged are as follows.

- (1) Defendant lives among his Fulani kindred at Pegi area within the Fulani settlement.
- (2) Defendant was arrested by the Fulani Vigilante in Pegi area who handed him over to the Navy. As earlier stated, these vigilantes were the Fulani kinsmen of the defendant, living in the same Pegi community with defendant.
- (3) In the whole Fulani settlement of Pegi village, defendant was the only person apprehended by these Fulani vigilantes who willingly handed over defendant to the Navy not minding that defendant was their kinsman. Under cross-examination:

Q: Of all the people in that community, you were the only person arrested by the vigilante

A: Yes

Excerpts of testimony of PW3 is as follows:

“The vigilante men (Fulani Vigilante) recognized him, pursued and got him arrested. He was interrogated by the Fulani vigilante and he admitted that he attacked PW1”

- (4) The Navy to whom the vigilante handed over defendant had conducted an identification parade of 4 men and PW1 testified that she was able to pick out defendant from the line up without much ado. This testimony of PW1 was unchallenged.
- (5) PW1 had stated that she was attacked by the defendant whom she saw shortly before the attack holding a matchet enclosed in a leather sheath.
- (6) Defendant confirmed that the matchet enclosed in a leather sheath belong to him
- (7) There is no evidence before this court that the other 3 men lined up alongside defendant in the identification parade owned machetes. Evidence before this court is to the effect that defendant was the only person in the identification parade who owned a matchet enclosed in a leather sheath.

The court have held in the case of **EBENECHI VS STATE (2009) 2-3 MJSC 138 @ 148** that it is sufficient to ground a conviction only where the inference drawn from the whole history of the case points strongly to the commission of the crime by the accused person. As I had earlier stated, circumstantial evidence points to the existence of facts which raise a logical inference as to the existence of the fact in issue. From the chronological order highlighted in numerical sequence above, there is an unbroken chain of evidence from which

the only inference that can be drawn is that the defendant is guilty of all the offence he is charged and I so hold.

Consequently, on count 1, I hereby find the defendant guilty as charged

On count 2, I hereby find the defendant guilty as charged

On count 3, I hereby find the defendant guilty as charged

ALLOCUTUS

DEFENDANT COUNSEL: Defendant is a first time offender, a family man and we urge the court to tamper justice with mercy.

DEFENDANT: I plead for mercy and leniency I want the court to help me.

SENTENCING

Having considered the allocutus of the defendant, the **Robbery and Firearms Act** under which the defendant is charged, particularly **Section 1(1)(2)(a)(b)** does not give the court any discretion as to sentencing.

- (1) Consequently, on the 1st count charge, defendant is hereby sentenced to death by hanging
- (2) On the second count charge, defendant is hereby sentenced to 5 years imprisonment
- (3) On the 3rd count charge defendant is hereby sentenced to 5 year imprisonment

All sentences to run concurrently.

Parties: Defendant is present.

Appearances: Sunday Onubi appearing with David Okeke for the Defendant. Prosecution is not represented.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE**

28TH NOVEMBER, 2024