

IN THE HIGH COURT OF JUSTICE
IN THE FEDERAL CAPITAL TERRITORY, ABUJA
HOLDEN AT WUSE ZONE 2, ABUJA
BEFORE HON. JUSTICE NJIDEKA K. NWOSU-IHEME
ON WEDNESDAY, 1st DAY OF FEBRUARY, 2023.

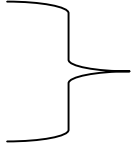
CHARGE NO: FCT/HC/CR/586/2022

BETWEEN:

1. COMMISSIONER OF POLICE - - COMPLAINANT

VS

1. HUSSEINI WADA
2. KABIRU MOHAMMED
3. AUDU MUSA



- DEFENDANTS.

JUDGMENT

On 11/11/2022, the defendants were arraigned on 4-count charges filed on 17/10/2022. The defendants pleaded not guilty to all the counts. The Particulars of the Offences in respect of the 4-countcharges are:

COUNT 1

That you Hussein Wada "m", Kabiru Mohammed "m" and Audu Musa "m" of the FCT Abuja on or about 03/08/2022 at about 22:00 hours within the jurisdiction of this Honourable Court, on the said date did conspire amongst yourselves to commit an offence to wit: Armed Robbery. You thereby committed an offence provided under Section 6(b) of the Robbery and Firearms (Special Provisions) Act and punishable under Section 1(2) (b) of the Robbery and Firearms (Special Provisions) Act.

COUNT 2

That you Hussein Wada "m", Kabiru Mohammed "m" and Audu Musa "m" of the FCT Abuja on or about 03/08/2022 at about 22:00 hours within the jurisdiction of this Honourable Court, on the said date did commit an offence of Armed Robbery punishable with death, in that you attacked one Luka Hosea "m" with a knife and stick and wounded him on the head. You therefore committed an offence punishable under Section 1(2) (b) of the Robbery and Firearms (Special Provisions) Act.

COUNT 3

That you Hussein Wada "m", Kabiru Mohammed "m" and Audu Musa "m" of the FCT Abuja on or about 03/08/2022 at about 22:00 hours within the jurisdiction of this Honourable Court, on the said date did commit an offence of Attempted culpable Homicide punishable with death, in that you attacked one Luka Hosea "m" with a knife and stick with the intention or knowledge that grievous bodily harm would be the probable consequence of your act. You therefore committed an offence punishable under Section 229 of the Penal Code Law.

COUNT 4

That you Hussein Wada "m", Kabiru Mohammed "m" and Audu Musa "m" of the FCT Abuja on or about 03/08/2022 at about 22:00 hours within the jurisdiction of this Honourable Court, on the said date did commit an offence of voluntarily causing hurt on one Luka Hosea "m" in that you attacked him with a knife and stick wounded him on the head. You therefore committed an offence punishable under Section 300 of the Penal Code Law.

The defendants were arraigned before this Court on 11/11/2022 and they pleaded not guilty to each of the 4 counts. The charges were rendered in Hausa language and interpreted into English by Blessing Ndian, Senior Registrar I (Litigation) High Court of the FCT In proof of its case, the prosecution called 2 witnesses namely:

- a. Luka Hosea [PW1];
- b. Sergeant Suleiman Yahaya [PW2].

The 3 defendants testified in their defence as DW1, DW2 and DW3 respectively.

Evidence of PW1 – Luka Hosea:

The evidence of PW1 is that on 3rd August, 2022 he was closing from work in Gudu on his way to Kabusa by Ikotu road. Immediately he climbed the hill, he was attacked by the 3 defendants. The 2nd Defendant hit him with a stick which sent him into confusion and he fell down. The 2nd Defendant attempted to hit him again when he held him and they began "dragging". The 1st and 3rd defendants took his machine. When they turned around and did not see the 2nd defendant, they turned back to meet him and he ran for his dear life. He called the Chairman of Okadas who placed a call to police and they carried him to

the station and told him to come back the next day. The next morning, before he woke up, the chairman had called him to come to the station as there were 3 thieves the police had caught and he should come with his motorcycle papers.

When he got to the station, he went close to his motorcycle but did not recognize it as the leather he put on the motorcycle had been removed. But he recognized his motorcycle because he was able to identify the iron he put in front of the motorcycle. He handed the papers to the motorcycle over to the police and they confirmed that the chassis number on the paper and the one on the motorcycle were the same. The police brought out more than 8 people and he was able to choose the 3 defendants from amongst them.

PW1 tendered the following:

1. C. Jaco Global Resources Ltd Receipt 0415 for complete motorcycle dated 5/10/2021 issued to Hosea Luka **Exhibit P1.**
2. C. Jaco Global Resources Cash Receipt No. 0466 dated 5/10/2021 **Exhibit P2.**

During cross-examination, PW1 stated that the incident occurred at 8 o'clock in the night and his machine light flashed on the defendants and they hit him. He admitted that he saw the defendants for the first time during the incident. The second time he saw them was at the police station when the police brought them out and he was able to recognize the defendants because he held the 2nd defendant to the ground and he had flashed his motorcycle light on them. PW1 further stated as to the date he purchased the motorcycle and the amount he purchased it for.

Evidence of PW2 – Sergeant Suleiman Yahaya:

The evidence of PW2 the investigating police officer is that on 3/8/2022 at about 8:30pm the surveillance team received a distress call and they moved immediately to the scene of the crime where they met the victim who explained the incident to them. He was taken to the police station and then asked to come back the next day. As the police began moving round, they got information that somebody was putting a motorcycle inside 'bacha' (a shop constructed with wood [shop]). Upon arriving at the shop, they met the 3rd defendant inside the shop with the motorcycle and he was arrested and taken to the police station.

The 3rd defendant told the police that the said motorcycle belonged to 2nd defendant they turned back, went to his house and arrested him. The PW2 further testified that the 2nd defendant said they were 3 in

number that went for the operation and the 1st defendant was among them that went for operation.

Upon taking all the defendants to the station, case was referred to PW2 for investigation that same day 3/8/2022.

Under cross-examination, PW2 stated that the 3rd defendant was arrested in his shop with the motorcycle on 3rd August, 2021. He testified that 3rd defendant was arrested around 9.00pm and when asked what time he arrested the 2nd Defendant, he said "**15 minutes after we turned around and arrested 2nd Defendant**".

When asked how the complainant identified the 3 defendants he responded; "**when they were coming the motorcycle light flashed them. The same clothes they were wearing were same clothes they wore when we arrested them.**"

PW2 tendered the following:

1. Motorcycle; red in color with the black seat cover with make Bajaj **Exhibit P3.**
2. Bond to produce/release Exhibit in court signed by Hosea Luka dated 4/8/2022 **Exhibit P4.**
3. Big brown stick admitted as **Exhibit P5.**

Evidence of DW1 – HUSSEINI WADA:

Testifying for himself as DW1 his evidence was rendered in Hausa language and interpreted into English by Shehu Bashir;Principal Executive Officer (Litigation) High Court of the FCT.

The evidence of the 1st defendant is that he is a Mairuwa pusher who lives in Kabusa and on 3/08/2022 they went to eat food and on their way back from eating, they saw police on patrol arresting people and the 3 of them present in court were arrested at the Central Mosque,Kabusa at about 10 o'clock after the arrest, they were taken to the station and the next day a person was brought to them and he said they snatched his motorcycle. From there, they were handcuffed, taken to a room and tortured and were made to confess to the allegation leveled against them and they did not answer to the allegation and said they did not commit the offence. 5 days later they were taken to SARS office the torture suffered at the police station was repeated at SARS office and they did not say anything different from what they said at the police station which was that they were arrested on their way back from eating. They were taken back to the cell and locked for 4 months before being brought to court.

Under Cross-examination DW1 admitted that he only knew of time he got to police station and not the time he was arrested as he was not with his phone he had left it in his room charging as it had run down.

He had never seen PW1 before that day at the police station. He also stated that they were all arrested together and handcuffed together and he was unable to know who entered the vehicle first between himself and Audu Musa the 3rd defendant when asked.

Evidence of DW2 -KABIRU MOHAMMED

Testifying for himself as DW2, his evidence was rendered in Hausa language and interpreted into English by Shehu Bashir;Principal Executive Officer (Litigation) High Court of the FCT to being a KekeNapep driver and on 3/8/2022 himself and the other Defendants were on their way back from eating through Central Mosque Road then they saw Suleiman police arresting people and on reaching the main road, they flashed their torch light on them and arrested the 1st and 3rd defendants. He tried to run but they caught him. After his arrest they were handcuffed together and taken to the police station. The next day they were beaten and told they stole a motorcycle. After the beating they were taken back to the cell and around 11 am the nominal complainant who was owner of the motorcycle came and they were all taken to the DPOs office. Their picture was taken in the office and then outside with the motorcycle. The following morning, they were transferred to **SARS** Office where they started beating them and put down some statements on paper and they do not know what they wrote they took them to their cell where they spent 4 months in **SARS** office till they were brought to court.

Under cross-examination of DW2 he stated that the clothes they were wearing in the pictures taken at the police station were the ones they were wearing when they were arrested. He admitted that he started running from the police when he saw the other 2 defendants had been arrested. Pertaining to the statement made at the police station.He denied making any statement at the police station and the one he made, he wrote when they were beating him. He does not know the content as he is illiterate.

DW2 tendered the following;

1. Picture of Defendants and motorcycle along with certificate of compliance **Exhibit D1**
2. Nigeria Police statement of Witness/Accused dated 8/8/2022 of Kabiru Mohammed **Exhibit D2**

Evidence of DW3 - AUDU MUSA

Testifying for himself as DW3 his evidence was rendered in Hausa language and interpreted into English by Shehu Bashir;Principal Executive Officer (Litigation) High Court of the FCTthat he is a water seller and sells firewood too. He lives at Kabusa. Himself and the other 2 defendants went to eat at Okada Park after eating, they were about to depart when they saw a Police vehicle which had Suleiman Police Officer among them. The policemen were about 5 in the vehicle when they came to where they were, they stopped the vehicle and came down.They came to him, held his cloth and also held 1st Defendant, they joined their hands. They were thrown into the police vehicle and he sustained an injury on his leg because of the way they were arrested and his cloth tore in the process.

When they got to the station, they put them in a small room and started beating them and at this point he was not able to walk properly. They denied stealing the motorcycle. The owner of the motorcycle came and identified them as the ones that stole his motorcycle and hehas never seen him in his life.

They were transferred to **SARS** Office and in **SARS** Office they were completely beaten. He maintained his position that he did not do it. From **SARS**office, they were taken down to court.

Under cross examination,he stated that he did not have any quarrel with the owner of the motorcycle and he had never seen him in his life until the day he came and accused them.

Issues for Determination:

At the conclusion of trial, Kingsley Uwakwe Esq. filed the 1st, 2nd and 3rd defendant's final address on 11/1/2023; while ChikaosoluOjukwu Esq. filed the final address of the prosecution on 16/1/2023.

In the final address of the 1st, 2nd and 3rddefendants, Kingsley UwakweEsq. formulated one issue for determination, to wit:

From the totality of evidence before this Honourable Court, did the prosecution prove the allegation of the Criminal conspiracy to commit the offence of Armed Robbery, Offence of Robbery, Attempted Culpable Homicide and Offence of voluntarily causing hurt in the charges against the 1st, 2nd and 3^d defendants as required by law?

In the final address of the prosecution, ChikaosoluOjukwu Esq. distilled a sole issue for determination, namely:

Whether upon a cursory examination of the entirety of evidence adduced at the trial and having regard to the provisions of section 135(1) of the Evidence Act, 2011, the Prosecution has discharged the burden of proof beyond reasonable doubt on the four (4) count charge proffered against the 1st, 2nd and 3^d Defendants so as to warrant their conviction by this Honourable Court?

By virtue of section 36[5] of the 1999 Constitution [as amended] (the constitution), every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. Thus, the prosecution has the duty or burden to prove the guilt of a person alleged to have committed a criminal offence beyond reasonable doubt.

In the light of the above, the Court shall adopt the issue as formulated by the Prosecutor.

SOLE ISSUE FOR DETERMINATION

In count 1, the defendants are charged with the offence of conspiracy to commit Armed Robbery under section 6(b) of the Robbery and Firearms (special provisions) Act and punishable under section 1(2)(b) of the Robbery and Firearms (Special Provisions) Act. The said provisions read:

6(b)

Any person who-

**(b) Conspires with any person to commit such an offence;
or**

1(2) (b)

(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 in subsection (1) of this section is armed with any firearms or any offensive weapon or is in company with any person 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 shall be liable upon conviction under this Act to be sentenced to death.

In Count 2 the defendants are charged with the offence of Armed Robbery under section 1(2)(b) of the Robbery and Firearms (Special Provisions) Act same has already been captured above.

In count 3, the defendants are charged with the offence of Attempted Culpable Homicide punishable under section 229 of the Penal Code law. The section reads:

(1) Whoever does any act not resulting in death with such intention or knowledge and in such circumstances that if he by the act caused death, he would be guilty of culpable homicide punishable with death shall be punished with imprisonment for life or for any less term or with fine or with both.

In count 4, the defendants are charged with the offence of voluntarily causing hurt in committing robbery under section 300 of the Penal Code law. The section reads:

If any person in committing or in attempting to commit robbery voluntarily causes hurt, such person and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

Submissions of Learned Counsel for the Defendant:

Uwakwe Esq. answered the issue formulated in his written address in the negative on the basis that the prosecution failed to prove the necessary ingredients of the offences charged which not only need to be proven but to be proven beyond reasonable doubt. Relying on ***NNAJIOFOR V PEOPLE OF LAGOS STATE (2015) LPLER- 24666 (CA)*** and Section 36(5) of the constitution. If at the end of the trial and on the totality of the evidence adduced, a reasonable doubt about the guilt of the accused is created, the prosecution would have failed to discharge the onus cast on them by law to prove his guilt beyond reasonable doubt and in that instance, the accused will be entitled to an acquittal. Relying on ***EDOH V. STATE (2004) 5 NWLR (PT.565) P.17: IGABELE V STATE (SUPRA), ONUBOGU & ANOR V THE STATE (1974) 9 S.C. P.I. NJOKU V STATE (1993) 6 N.W.L.R (PT.299) P.272 and ODAH V AHMADU (1999) 5 N.W.L.R (PT.601) P.22 at P.29.***

On count 1 the prosecution is duty-bound to prove beyond reasonable doubt that there was agreement, whether express or implied between or among the defendants to commit an illegal act. Relying on ***Friday v. State (2017) All FMVLR Pt 885 P.1814 @ 1832 paras A-D***

Counsel submitted that the Prosecution had failed to prove that the 1st, 2nd and 3rd defendants committed criminal conspiracy to commit the offence of Robbery as there was no evidence before the court to prove same for reason that the confessional statements of the defendants attached to the charge sheet as proof of evidence, though not tendered would have been tendered by the prosecution to prove their case.

On count 2, Uwakwe Esq. submitted that the evidence of the prosecution is devoid of facts to prove the offences of armed robbery and conspiracy to commit armed robbery against the Defendants. The evidence of the prosecution was materially impugned and contradicted under cross examination. As PW1, he was only able to identify the defendants because the 2nd defendant was wearing a red shirt, which was the same shirt his alleged robbers wore when they robbed him. No proper identification parade was conducted as PW2 said he took Defendants to his "OC Surveillance" office the same night the Defendants were arrested and it was in that office that the PWI came to identify them.

Counsel argued that defendants were arrested on the basis of mere suspicion and the courts have consistently stated that suspicion alone, no matter how grave, cannot sustain a criminal charge relying on ***Idowu vs State (1998) 11 NWLR (PT 574) 354, Mbang vs State (2010) 7 NWLR (PT 1194) 431, Shehu vs state (2010) 8 NWLR (PT 1195) 112, Rabiu vs State (2010) 10 NWLR (PT 1201) 127 and Oladotun Vs. State (2010) 15 NWLR (pt. 1217) 490.***

On Count 3, Counsel to the Defendants submitted that the prosecution has not proven this offence against the Defendants as no reasonable evidence was laid before the court that the defendants were indeed the alleged robbers that attacked and hit the PW1 with a "big brown stick" Exhibit P5. PW2 could only say that the Defendants were wearing the same clothes when they were arrested, meaning that there was no Identification parade conducted to ascertain the veracity of the claim that the Defendants were the alleged robbers. On this count counsel insisted that they were charged on mere suspicion.

On Count 4, Counsel argued that the prosecution failed to prove that the Defendants were the alleged robbers that allegedly robbed and hit the PWI with a "big brown stick." The testimonies of the defendants proved that they all went to eat and were arrested during a raid while they

were coming back home. The PW2 who was the Investigating Police Officer did not tender the report of his investigation nor the "voluntary statement" of the defendants though very crucial to the case, because same would have exposed the falsehood in the investigation. PW2 not tendering these documents is suppression of evidence. Relying on ***Odofin Bello v. The State (1966) NSCC 268.***

The defendants testified as DW1, DW2 and DW3 that they were subjected to torture, inhuman and degrading treatment before their statement was written and they were made to sign contrary to sections 15 and 17 of the Administration of Criminal Justice Act, 2015.

In conclusion, Counsel to the Defendants urged the court to consider all the evidence available to the Defendants including the ones they did not raise on their own in determining this case. Relying on appellate decision of ***OBEM V. C.O.P. (2013) ALL FWLR (688) 940 @ 960D-E.*** Counsel urged this court to hold that the prosecution has not proved their case beyond reasonable doubt as to warrant a conviction of the Defendants on the charges preferred against them.

Submissions of Learned Counsel for the Prosecution:

On counts 1 and 2, Ojukwu Esq. submitted that the ways for the prosecution to establish the guilt of the accused beyond reasonable doubt under section 135(1) of the Evidence Act are; direct and credible evidence of eye witnesses; By circumstantial evidence and/or the confessional statement of the accused relying on the apex decision of ***OFUADORHO v. STATE (2019)1 NWLR (PT. 1654) 538 p. 553-554. Paras. H-B.***

The direct eye-witness evidence of PW I -Luka Hosea which placed the 1st, 2nd and 3rd defendants at the scene of the crime and eye witness evidence is the best evidence section 126(a) of the Evidence Act, 2011 and ***BISI v. STATE (2021) LPELR-56680(SC)***, according to Ojukwu Esq, the eye witness was able to establish the following facts; that there was an agreement between 1st to 3rd defendants to commit armed robbery on the night of 3rd August, 2022 evident in the active role each of the Defendants played in the robbery, PW1 was attacked during the robbery by 2nd defendant- Kabiru Mohammed who was armed with a stick (Exhibit P5) and PW2 tendered the offensive weapon (Exhibit P5)

The 2nd Defendant's physical attack on the upper left side of PW1's head using Exhibit P5 revealed the offence of culpable homicide had it succeeded. The 1st and 3rd Defendants participated in the armed robbery and made away with PW1's red colored Bajaj motorcycle (Exhibit P1), the PW1 identified the 1st to 3rd Defendant from a line-up of more than 8 persons during an Identification parade conducted by the police and all

the defendants also confirmed this fact and the three persons identified by PW1 in the identification parade conducted by the police are the same persons arrested by PW2 and his surveillance team with the Bajaj motorcycle stolen during the armed robbery (Exhibit P3)

The conspiracy to commit the offence was evident from the confessional statement of DW2 in Exhibit D2.

Counsel submitted that the agreement or confederacy of the defendants can be inferred from the surrounding circumstances. Relying on the case of **SHAIBU v STATE (2021) 1NWLR (Pt. 1756) 84 @ 104 PARAS. A.D.**

Ojukwu Esq. posited that from the identification evidence, it was clear that PW1 unequivocally fixed the Defendants at the scene of the incident and under his cross-examination PW1 stated that he was able to recognize the Defendants because; **"By that time, my machine light is on, its machine light that flashed on them... I hold 2nd Defendant for ground and I flashed them light"**. The evidence of PW1 was unimpeached under cross-examination and counsel urged this court to accept same as true relying on **DANLADI v. STATE (2019) 16 NWLR (Part 1698) 342, p. 393 Para. A-B.**

Counsel argued that the evidence of PW1 was strengthened by the evidence of PW2 implicating the Defendants in the sequence of events leading to their involvement in the armed robbery, their subsequent arrest and identification by PW1. The circumstances of the arrest of the defendants from the shop of 2nd Defendant and discovery of the motorcycle in the shop all strengthen the case of the prosecution. The Exhibit D2 also confirms that 2nd defendant drove the motorcycle to his shop in Kabusa after the crime. Counsel relied on the Supreme court decision of **IGWE V THE PEOPLE OF LAGOS STATE (2021) 7 NWLR (PT. 1776) 425, 451 PARAS B- A** to buttress the prosecution's case is the discovery of the stolen motorcycle in the shop of the 2nd Defendant raises a presumption against the 3rd defendant. Relying on Section 167(a) of the Evidence Act.

Ojuwku Esq. further submitted that Exhibit D2 the confessional statement when subject to the veracity test **KUSHIMO v STATE (2021) 16 NWLR (PT. 1801) 147 at p. 175 paras. C-F** and was confirmed by the evidence of PW1, the stick exhibit P5 all confirm the consistency and veracity of the confession that the robbery was an armed robbery.

According to Counsel, the confessional statement confirmed that;

(a) There was a robbery on the night of 3rd of August, 2022,

(b) That the robbery was an armed robbery,

(c) that the 2nd Defendant was one of those who participated in the robbery,

(d) that the 1st and 3rd Defendants are also implicated in the armed robbery incidence and that in the armed robbery attack; attempt was made on the life of PW1 with Exhibit P5.

Ojukwu Esq. submitted that the Defence put up by the Defendants were conjured and made up. The 1st defendant who claimed they were all arrested together could not recall who entered the police vehicle first, as by virtue of PW2; the 3rd Defendant was first to be arrested in a wooden shanty with Exhibit P3, the oral evidence of 1st defendant is at variance with his Exhibit D2 confessional statement.

The 3rd Defendant under cross examination contradicted the 1st Defendant (DWI), he agreed that the 1st Defendant's account of what transpired was not correct. The court who saw the demeanor of the 1st - 3rd defendants would agree that they are not witnesses of truth whose evidence should be relied on without corroboration. They contradicted each other's evidence in the account of things, running from the police while claiming not to be guilty of any offence.

Counsel submitted that the contradictory testimonies of 1st- 3rd defendant render their evidence unreliable.

The Prosecution argued that it has creditably discharged the burden cast on it by the provisions of section 135(1) of the Evidence Act 2011 the Prosecution has without any iota of doubt established the guilt of the 1st – 3rd defendants to four count charges beyond any reasonable doubt.

Decision of the Court:

Before I take each count individually and treat, I believe at this stage it is imperative to treat Exhibit D2 the confessional statement and the import of same.

It is interesting to point out that the extra-judicial statement of the 2nd defendant Exhibit D2 was admitted during his cross-examination by the Prosecution witness.

Uwakwe Esq. submitted to the court that the confessional statements of the defendants were not tendered and this amounted to suppression of evidence. Counsel further argued that during trial, the defendants testified as DWI, DW2 and DW3 that they were subjected to torture, inhuman and degrading treatment, and beaten mercilessly to admit to a crime they did not commit, before their statement was written and they

were made to sign. Counsel argued that this act is contrary to sections 15 and 17 of the Administration of Criminal Justice Act, 2015.

OjukwuEsq on the otherhand argued that the appropriate time to object to the admissibility of an extra-judicial statement is at the point of tendering same in evidence. Referring to the case of **OGHENEVOU v F.R.N (2019) supra** Counsel further submitted that the evidence of DW2 was an afterthought as it is not enough to say he was tortured to make Exhibit D2, he must raise objection at the point it was sought to be tendered in evidence.

I have painstakingly reproduced the events that occurred leading to the admission of the Exhibit D2 and considered the content of Exhibit D2. The counsel to prosecution is arguing that if an objection was to have been made same should have been done at point of tendering the document which raises the question of voluntariness of the document and whether a trial-with-trial ought to have been conducted.

I shall reproduce what transpired in court on 6/12/2023 cross-examination of DW2;

Question – *did you make any statement to Police?*

Answer – *I did not give any statement to Police it is only the one they wrote when they were beating us.*

Question – *the one you claimed they wrote when they were beating you, did you sign that statement?*

Answer – *yes, there was a time they were taking us to **SARS** and brought a paper to me and told me to write.*

Question – *look at this paper, is that paper?*

Answer – *Yes, this is my writing, this is where I signed*

Question – *in other words, you made this confession statement admitting you stole this motorcycle*

Answer – *I don't know content since I am illiterate, all I know is they ask me and I am writing*

Question – *is your father's name Sanusi?*

Answer – *yes.*

Question – *are you 36 years old?*

Answer – *yes I am 36 years old*

Question – *where does your father stay?*

Answer – *Abuja*

Question – where in Abuja?

Answer – Kabusa

Question – did you attend school at Zamfara

Answer – yes I did

Question – I seek to tender this statement made by DW2 in evidence.

Uwakwe- No Objection

RULING

Nigeria Police statement of Witness/Accused dated 8/8/2022 of Kabiru Mohammed admitted and marked as Exhibit D2

From what transpired in court, the DW2 was stating that he did not make the statement his words are clear;

"I did not give any statement to Police it is only the one they wrote when they were beating us."

"I don't know content since I am illiterate, all I know is they ask me and I am writing"

It is clear that DW2 is saying he did not write the statement and does not know the content. It is a clear retraction and by law the court will determine the weight to be attached to such a statement.

In ***ADESHINA RAFIU v. THE PEOPLE OF LAGOS STATE (2017) LPELR-51035(CA) (Pp. 12-13 paras. C)***The apex court held;

"There is a distinction between a retracted confessional statement and an attack on the voluntary nature of the confession. Retraction has to do with an assertion by the Accused Person that he never made the statement made at the point where the said statement is being sought to be tendered, while denial of voluntary nature of a confession is an assertion by the Accused person that the statement though made by him, was gotten either by torture or threats or promise or any other means of inducement. The involuntary nature of a confessional statement must be clearly raised at the point such statement is sought to be tendered, after which the Court would order a trial within trial to ascertain the veracity of the Accused Person's claim. The effect of a retraction affects the weight that a trial Court would place on such confessional statement, while an involuntary confession, if so

proven, after a trial within trial, is disregarded by the Court and struck out of the Records."

There is no doubt that the Exhibit D2 is a retracted confessional statement as the Defendant clearly denied making it on basis that he is an illiterate.

From the above case, it is settled law that the court can convict on a retracted confessional statement as long as it is satisfied with the truth of the statement. See ***BELIEVE AYIUWA V COMMISSIONER OF POLICE (2022) 9 NWLR PART 1834 P. 89 @132 PARA C.***

This court would be satisfied with the confessional statement and attach great weight to it only after testing the truth of the statement via probability tests to verify the statement. See ***BELIEVE AYIUWA V COMMISSIONER OF POLICE (supra) P. 132 Paras E-H and ABU MOHAMMED v. THE STATE (2020) LPELR-52451(SC) (Pp. 12-13, paras. B-D)*** the tests are;

1. Is there anything outside the confession to show that it is true?
2. Is it corroborated?
3. Are the relevant statements made in it of facts, true so far as they can be tested?
4. Was the accused one who has the opportunity of committing the Offence?
5. Is his confession possible?
6. Is it consistent with other facts which have been ascertained and have been proved?

It is important to set out in substance the content of Exhibit D2;

"That I understand English language but I cannot write very well and I want insp. NuhuShaibu to write my statement for me...

...I am a tricycle driver on 3rd August 2022 at about 2100 hrs I went to Ekwa 2 Kabusa Fct Abuja with Audu Musa and Hussein Wada and blocked one motorcycle driver in a bush/road while we were armed with touch light and sticks, Audu Musa flashed his Touch light on the motorcycle rider and he matched break, then I hit him with my stick on the head, he then left the Bajaj Motorcycle and ran away we carry the robbed motorcycle and took it to my shop where I used to sell black market in Kabusa village Fct Abuja. One Ado heard that we have robbed one motorcycle and reported to kabusa police because he has bought two Bajaj motorcycle before without paying us Ado is our receiver..."

Test 1; From the oral evidence of PW2, the police responded to a distress call on 3/8/2022 and in the process of investigation, they were

tipped that someone was seen putting a motorcycle into a shop upon arriving at the venue, they saw the 3rd Defendant inside with the motorcycle and arrested him, after the arrest 3rd defendant said the motorcycle belonged to 2nd defendant and they went to arrest the 2nd defendant. 2nd defendant said there was a 3rd assailant the 1st defendant that went on operation with him and he was picked up as well.

PW1 in his examination-in-chief identified the 2nd Defendant as the one who hit him with a stick and whom he was "dragging" with till he ran away".

The motorcycle recovered was identified by the PW2 as the motorcycle that was stolen from him and which was discovered in the possession of the 3rd Defendant.

These details are outside the Exhibit D2 and tally with the content of Exhibit D2.

While tendering Exhibit D2, prosecution asked the following questions;

Question - *is your father's name Sanusi?*

Answer – *yes.*

Question – *are you 36 years old?*

Answer – *yes I am 36 years old*

Question – *where does your father stay?*

Answer – *Abuja*

Question – *where in Abuja?*

Answer – *Kabusa*

Question – *did you attend school at Zamfara*

Answer – *yes I did*

From the Exhibit D2

"I am 36 years old born into the family of Muhammed Sanusi I came to Abuja last three years ago to stay with my father by name Sanusi who was staying in Garki village but presently in Kabusa FCT Abuja,..."

The Exhibit D2 has passed the 1st test as there are overwhelming facts outside the Exhibit D2 that reveal exhibit D2 to be true.

Test 2: The confessional statement is corroborated by the evidence of PW1, identification of the defendants by PW1, evidence of PW2 as well as the motorcycle and stick tendered in evidence all corroborate the

confessional statement. I am satisfied that there is enough corroborative evidence outside Exhibit D2 that could aid the reliance on same by the trial court. Corroborative evidence may be direct or circumstantial. In whatever form it comes, the court must ensure that the corroborating evidence is not only independent of the main evidence it seeks to corroborate, but also supports the main evidence by rendering the story of the latter implicating the accused more probable in some material particular. See ***Natasha v State (2017) 18 NWLR (PT 1596) 38 SC.***

Test 3: As far as can be tested, the facts in the confessional statement are true as it is in conjunction with the account of events as recounted by PW1 and PW2 in their respective testimonies before this court.

Test 4: The accused had the opportunity to commit the offence; they were 3 in number and approached a single motorcycle driver at night when there were no onlookers and they all admitted to staying in the same Kabusa area.

Test 5: The 2nd defendant's confession is possible as it tallied with the vivid accounts given by PW1 and PW2.

Test 6: The confession is consistent with other facts which have been ascertained and proved by testimony of PW1 and PW2.

I hold that the entirety of the evidence and the bits of the 2nd defendant's answers under cross examination confirm the truth of the content of Exhibit D2. They make the other facts contained in the Exhibit D2, probable and give answers in the affirmative to the six laid down tests above.

Having considered the Exhibit D2, this court is satisfied with the truth of the statement and will be relied on to determine this matter.

The law is trite that in a criminal trial, the prosecution has the duty to prove the guilt of the defendant beyond reasonable doubt. There are three ways of proving the commission of a crime, namely:

[a] evidence of eye witnesses;

[b] The confession of the accused person; or

[c] Circumstantial evidence. See the case of ***Nwokearu v. State [2010] 15 NWLR [Pt. 1215] 1.***

This Court will first determine the guilt or otherwise of the defendants in respect of count 2 for armed robbery before the charge of conspiracy in count 1.

Robbery is the illegal taking of property from the person of another; while armed robbery is robbery committed by a person carrying dangerous weapon regardless of whether the weapon is revealed or used.

The elements or ingredients to be proved by the prosecution to establish the charge of Armed Robbery under 1(2)(b) of the Robbery and Firearms (Special Provisions) Act is captured in the apex decision of ***KAMILU DISU BISI v. THE STATE (2021) LPELR-56680(SC) Page 11 B-C.***

To ground a conviction for the offence of armed robbery, the prosecution has the duty of proving beyond reasonable doubt that;

- a. That there was a robbery;
- b. That the robbers were armed with offensive weapons as at the time of the robbery; and
- c. That the accused person participated in the robbery.

PW1 gave direct eye witness testimony of the incident that occurred on the fateful day of 3/8/2022 excerpts from his evidence-in-chief;

Answer – on 3^d August, I was closing work for Gudu, I am on my way to Kabusa by Ikotu road. They get hill there

Question – do you recognize defendants in this matter?

Answer – yes

Question – the 3 of them?

Answer – yes

Question – from Ikotu road, what happened?

Answer – Immediately I climbed the hill, they now attacked me the 3 of them hit me, Kabiru hit me with stick, I now confuse come fall down. He want to hit me another stick I hold am and we started dragging. These 1st and 3^d Defendants took the machine they turned no see 2nd Defendant that I held, they started coming to meet me and I ran for my life.

PW1 also identified the defendants at the police station as the persons that attacked him and collected his motorcycle he said; *"They bring more than 8 people out I am the one that choose these 3 people"*. Under cross-examination when asked how he was able to identify the defendants;

Question – after the day they hit you. Have you seen them again?

Answer – the day I go the police station they bring them out, I see them

Question – when you saw them at station, how did you recognize them?

Answer – because I hold 2nd Defendant for ground and I flashed them light

It is clear that he saw his assailants and when taken to the police station he was still able to identify them with clarity. The evidence of PW1 was unimpeached under cross-examination and the law is trite in the apex decision of **MOHAMMED v. STATE (2020) LPELR-52451(SC) (Pp. 18-19 paras. F)** That the Court can convict on a clear and credible evidence of a single witness. See **AFOLALU V. THE STATE (2010) 16 NWLR (PT 1220) 584 at 613**. The evidence of PW1 alone is enough to convict the Defendants as same is cogent, direct and unimpeachable.

The evidence of PW2 the investigating police officer is that upon responding to a distress call, they met a victim PW1 who recounted to them how the incident occurred. They got information of people putting a motorcycle inside a shop and upon getting to the shop they saw the 3rd Defendant with a motorcycle and arrested him upon his arrest the 3rd defendant said the motorcycle belonged to 2nd defendant so they picked him up then the 2nd defendant said they were three in number and the 1st defendant was mentioned and they picked him up as well.

It is worthy to note that the evidence of PW2 corroborates the evidence of PW1 however the PW2 gave direct eye witness account as he saw the 3rd defendant with the motorcycle in his shop and picked up the other defendants one by one. This testimony was unimpeached. In his written address counsel to the Defendants had argued that the investigation report was not tendered in evidence and this is fatal to his testimony. The law is clear that not tendering an investigation report is not fatal to the case **FAWEHINMI V IGP (2002) 7 NWLR PART 767 P. 606 @PAGE 680** it is just to guide the Court that there is prima facie evidence to support the charge before the Court. See **UZOR V. STATE (2016) LPELR-40809(CA) (PP. 27 PARAS. B)**.

Once again I find that the evidence of PW2 was unimpeached under cross examination.

The Exhibit D2 which is the confessional statement having been given great value this court finds that its content fingers the 2nd defendant as the one who hit the PW1 with a stick it also corroborates the evidence of

PW2. However, it is trite that the confessional statement cannot be used to convict the other co-defendants. In **OKASI V. STATE (2016) LPELR-40454(CA) (PP. 27-30 PARAS. D)**

"... it is the maker of a voluntary confessional statement that is bound and caught in its web. A co-accused cannot directly or indirectly be made liable or implicated vide a confession not made by him unless that other co-accused implicated or incriminated in the confessional statement is confronted with the alleged confessional statement and he (co-accused) agrees with the contents or portion of the confessional statement implicating or roping him in the commission of the offence for which the maker of the confessional statement and the co-accused are charged. In the absence of that, it is the maker that will face the music all alone.

See **THE STATE VS JAMES GWANGWAN (2015) 9 SCM 253 at 271 D-G per OKORO JSC** who said:

*"One other issue which afflicted this case relates to the decision of the learned trial judge that the evidence of PW5 and the co-accused persons corroborated the alleged confessional statement of the respondent. Happily, the Lower Court shot down the said decision. The reason is not far-fetched. First, where an accused person makes a confessional statement as to his participation in a crime, he is not confessing for his accomplices. An accused person's confession is only evidence against him and not against co-accused persons and it is a misdirection which may lead to the quashing of the conviction. However, a confessional statement of a co-accused can only be used against an accused person if he voluntarily adopts it. See **Ozake V. State (1990) LPELR-2888 (SC), (1990) 1 NWLR (pt. 124) 92, Evbuomwan V. COP (1961) WNLR 257**. In the instant case, the use of the statements of co-accused persons against the respondent without him adopting them as his, was unlawful and has a vitiating effect on his conviction by that Court."*

Therefore, the Exhibit D2 shall only be used against the 2nd defendant and I so hold.

From the elements of the offence of armed robbery, the prosecution has been able to establish that;

1. There was a robbery and robbery from the interpretation section of the Robbery and Fire Arms (Special Provisions Act) means 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; as evidenced by testimony of PW1 "*they now attacked me the 3 of them hit me, Kabiru hit me with stick, I now confuse come fall down. He want to hit me another stick I hold am and we started dragging. These 1st and 3^d Defendants took the machine...*" the evidence of PW2, Exhibit D2 and the discovered motorcycle Exhibit P3 all go to confirm that indeed there was a robbery and the prosecution has proven this ingredient.

2. That the robbers were armed with offensive weapons as at the time of the robbery; under the section 11 of the Interpretation section of the Robbery and Fire Arms (Special Provisions Act), "*offensive weapon*" means 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 arrow, spear, cutlass, matchet, dagger, cudgel, or any piece of wood, metal, glass or stone capable of being used as an offensive weapon; the stick was tendered in evidence as Exhibit P5, the testimony of PW1 and PW2 which states that the Defendants had sticks with them as well as the Exhibit D2 which reveals that 2nd defendant had a stick with him goes to establish this ingredient; Only one stick was tendered in evidence in ***ISA V. STATE (2015) LPELR-26011(CA) (PP. 19-20 PARAS. B)*** Court held; "In a charge of Armed Robbery, what is of utmost importance is to show that the Appellant was in the company of armed robbers. In the case of ***OKPULOR V. THE STATE (1990) 7 NWLR (PT.164) AT 455 PARAS E-G:***

"Once the prosecution has established that the accused person was among the robbers and they were armed with offensive weapons, e.g. Firearms, by common design, the accused is guilty of armed robbery. It matters not that the accused person himself did not carry a weapon. In the instant case under consideration, the PW1 stated that one of the armed robbers was armed. PW1 also under cross examination stated that it was the Appellant who was armed. The most important thing is once it is established that the Appellant was among the robbers who were armed, it does not matter that he himself was not armed, he would be guilty of armed

robbery." Per ABBA AJI, J.C.A in ISA V. STATE (2015) LPELR-26011(CA) (PP. 19-20 PARAS. B)

The law is trite that all the weapons used during a crime need not be tendered in evidence. The requirement to tender the weapon may however be dispensed with if there are credible eye witnesses to the crime who testified at the trial. **SEE AJAYI V. STATE (2011) LPELR-4682(CA) (PP. 36-37 PARAS. C)** in the instant case a stick was tendered and this will suffice.

3. That the accused person participated in the robbery. The eye witness of the victim alone establishes that all the defendants participated in the armed robbery, the Exhibit D2 places the 2nd defendant at the scene of the crime and the identification parade conducted at the police station places all 3 defendants at the scene of the crime. The evidence of PW2 is crucial as the 3rd defendant was found with the motorcycle and there is a presumption which he has a duty to rebut. By virtue of section 167(a) of Evidence act which he failed to rebut. The court held in **VICTOR UGBEREM v. THE STATE OF LAGOS (2021) LPELR-55666 (CA)(Pp. 36-37, paras. C-D)** being in possession of a stolen or robbed item is prima facie evidence that the accused participated in the robbery. And, that that being the case, the onus is on the accused to give satisfactory account, on the balance of probability, as to how the goods got to his possession, failing which the Court would be right, as in this case, to convict the accused of robbery, or armed robbery as was the case here.

An identification parade was conducted at which the PW1 pointed out the defendants in a line-up with other people. In **AMINUABDULLAHI V. STATE(2021) LPELR-53453(CA)(PP. 30-36 PARAS. F);**

"The law is trite as to when an identification parade will be necessary. An identification parade will be necessary under the following circumstances:

1. When the victim of the offence never knew the offender or accused before
2. Where the victim was confronted by the offender for a very short while

3. Where the victim, due to time and circumstance might not have the opportunity of observing the features of the accused person or offender.

The principle as to when identification parade will be needed and when it will not be needed is spelled out in a number of cases. In **ADESINA & ANOR VS. THE STATE (2012) 14 NWLR (PT. 1321) 429**, the apex Court held: "I must explain that the purpose of an identification parade in all criminal trials is to show that the person charged with the offence actually committed the offence. It is not in every case that an identification parade is necessary. Where the prosecution witness has knowledge of the accused person, identification parade is not necessary. In order to ascribe any values to the evidence of an eyewitness identification of a criminal, the Court in guiding against cases of mistaken identity must meticulously consider the following issues-

1. Circumstances in which the eyewitness saw the suspect; was it in difficult conditions
2. The length of the time the witness saw the suspect or defendant at a glance or longer observation
3. The opportunity of close observation.
4. Previous contact between the two parties.
5. The lighting conditions.

It is trite however that where an accused person by his confession has identified himself, there would be no need for any further identification parade. **ARCHIBONG V. STATE (2004) 1 NWLR (PT.855)" AGBOOLA V. THE STATE (supra)**. Identification parade, otherwise known as "line up", is a Police identification procedure in which criminal, suspect and other physically similar persons are shown to the victim or a witness to determine whether the suspect can be identified as the perpetrator of the crime. See Black's Law Dictionary, 9th Edition page 1014.

In **AGBOOLA V STATE (supra)**. Identification parade is ordinarily not a sine qua non for identification in all cases where there has been a fleeting encounter with the victim of a crime, if there are yet other pieces of evidence leading conclusively to the identity of the perpetrator of the offence. Per TOBI, J.C.A in **ABDULLAHI V. STATE (PP. 30-36 PARAS. F)**

In the case before me, an identification parade was necessary because the event occurred at night specifically, 8.00pm, the PW1 did not know his assailants, he was with the assailants for a short time and he may not have had the opportunity of observing the features of the assailants. In view of the fact that PW1 evidence of a visual identification was not shaken under cross examination, I am inclined to act on his evidence see **VICTOR UBGEREM v. THE STATE (2021) LPLER 55666 (P. 27, paras. C-F)**. even the argument of Uwakwe Esq. and the question under cross-examination of PW2 that it was color of the attire of the Defendants that the PW1 used to identify the assailants will not suffice as the PW1 said that he identified the assailants at the station because his light shone on them during the incident and because he wrestled with the 2nd Defendant.; the law is settled that *it is only those contradictions that are material and result in a miscarriage of justice that would warrant a rejection of the evidence.* **OYETUNJI V. AWOYEMI & ORS (2013) LPELR-20226(CA) (PP. 47 PARAS. C) (PP. 47 PARAS. C)**. this contradiction is not material and is hereby discountenanced.

The three ingredients for the offence of armed robbery must be jointly established and proved beyond reasonable doubt. See **MOHAMMED v. STATE (2020) LPELR-52451(SC) (Pp. 18-19 paras. F)** And I find all ingredients proven in this instant case.

Before I proceed to the next count, I would like to state categorically that the charges mentioned use of knife in the commission of the offences of armed robbery, attempted culpable homicide and hurt. Throughout trial, no mention of the use of a knife or knives came up PW1 never mentioned seeing a knife neither did PW2 and exhibit D2 and I will discountenance the existence of same in the commission of the offenses the Defendants are charged for.

In order to prove the offense of Conspiracy to commit armed robbery the prosecution has to prove as captured in **KAMILU DISU BISI v. THE STATE (2021) supra (P. 12, paras. C-F)** as follows;

- a. That there was an agreement between the accused and others to commit armed robbery;
- b. That in furtherance of that agreement the accused took part in the commission of the robbery or series of robberies;
- c. That the robbery or each of the robberies was an armed robbery.

Conspiracy is an agreement between two or more persons to plan an unlawful act or carry out a legal act through illegal means. It is an

agreement by two or more persons acting in concert or in combination to accomplish or commit an unlawful act coupled with intent to achieve the objective of the agreement; Black's Law Dictionary, Ninth Edition, page 351, defines conspiracy as: An agreement between two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective, and action or conduct that furthers the agreement; a combination for an unlawful purpose. See **VICTOR UBGEREM v. THE STATE OF LAGOS (2021) supra) (Pp. 29-30, paras. B-A)**

As is the case in all criminal trials, the burden is on the prosecution to prove beyond reasonable doubt that persons accused of conspiracy to commit criminal offence did reach an agreement to commit such offence. The charge can be proved either by leading direct evidence in proof of the common criminal design or it can be proved by inference derived from the commission of the substantive offence; **Orisa v State (2018) LPELR-43896(SC)**. The evidence required in this kind of criminal offence is of such quality that irresistibly compels the Court to draw such inference as to the guilt of the accused person; **Orisa v State (supra)**. Recognizing the difficulties that could be encountered in proving conspiracy, Peter-Odili, JSC in **Kayode v State (supra) at page 67** of the E-Report commented: "It is because of the uniqueness of conspiracy and the fact that it is near impossible at times to establish it by direct evidence that it is usually proved through inference of the facts and circumstances of each case." **VICTOR UBGEREM v. THE STATE OF LAGOS (supra) (Pp. 30-31, paras. C-A)**

I will now place the ingredients side by side with the evidence of the prosecution:

1. That there was an agreement between two or more persons to do or cause to be done some illegal act or some act which is not illegal by illegal means. The act in question is the taking of the motorcycle of the PW1 using sticks, the PW1 gave direct evidence to the effect that all the Defendants accosted him on the fateful day brandishing sticks and he was hit on the head by the 2nd Defendant and both of them engaged in a tussle at which time the 1st and 2nd defendants took the motorcycle. The PW1 further stated that he identified the defendants because he shone light on them and he also identified them at the police station when they lined them up with other people this direct eye witness testimony which points to the fact that the 3 defendants must have agreed to take the motorcycle from the PW1. PW2 in his evidence stated that his team was directed to the shop of the 2nd Defendant where

the motorcycle was seen and the 3rd defendant mentioned the name of the 2nd defendant and the 2nd defendant in turn made mention of the 1st defendant. This evidence of PW2 SHOWS A MEETING OF THE MINDS. Exhibit D2 which is the confessional statement goes to show a meeting of the minds of all the parties to snatch the motorcycle.

2. That in furtherance of that agreement the accused took part in the commission of the robbery or series of robberies; the prosecution has to show that each party participated in the act, 1st defendant was seen at the scene of the crime by the PW1 and he was also identified at the police station, the PW2 also arrested the 1st defendant whose name was mentioned by the 2nd defendant when he was arrested. The 2nd Defendant was identified by the PW1 as the one who hit him with the stick and he was again identified at the police station. The Exhibit D2 puts the 2nd Defendant as one of the assailants. The 3rd defendant was identified by PW1 as one of his assailants and PW2 found the 3rd defendant at the shop with the motorcycle and 3rd defendant told him the motorcycle belonged to the 2nd defendant.
3. That the robbery or each of the robberies was an armed robbery, in order to prove this ingredient, the prosecution has to show that an offensive weapon was used during the incident. Exhibit P5 was tendered in evidence and this court has already established that same is an offensive weapon pursuant to section 11 of the interpretation provision of the Robbery and Fire Arms (Special Provisions) Act. The testimony of Exhibit PW1 and PW2 which states that the Defendants had sticks with them as well as the Exhibit D2 which reveals that 2nd Defendant had a stick with him goes to establish this ingredient.

Cross-examination of PW1;

Question – *After the day they hit you. Have you seen them again?*

Answer – *The day I go the police station they bring them out, I see them*

Question – *When you saw them at station, how did you recognize them?*

Answer – *Because I hold 2nd Defendant for ground and I flashed them light*

The PW2 also identified the defendants

Answer- after the arrest, 3rd defendant said motorcycle belonged to 2nd defendant we turned back, went to his house and arrested him. 2nd defendant said they were 3 in number that went for operation and 1st defendant was among them that went for operation that is what happened.

The Exhibit D2 places the 2nd defendant at the scene of the crime.

From the circumstantial evidence before me, prosecution has been able to establish that the defendants conspired to commit the offence of armed robbery.

The burden of proof in a criminal case is on the prosecution who must prove its case beyond reasonable doubt. The evidence of PW1 was credible and discharged the onus of proof on the prosecution regarding the identity of the appellant. The evidence of PW1 as a single eye-witness which was cogent, unequivocal and unshaken was sufficient. The evidence of PW2 the IPO who was involved in the arrest of the defendants is credible and was unshaken under cross-examination. The credibility of exhibit D2 was not in doubt as there was copious evidence to support the veracity of the confessional statement. Therefore, the prosecution discharged the burden placed on it and I so hold.

In order for the prosecution to prove attempt to commit culpable homicide under section 229 of the Penal Code, the prosecution has to show that;

1. The death of a human was attempted
2. That such attempt was the act of the accused
3. That such act was done with the intention of causing death or that the accused knew. Or had reason to know that death would be the probable cause and not only the likely consequence of the act or of any bodily injury which the act was intended to cause.

On ingredient one, the prosecution has been able to prove this ingredient as the use of a stick Exhibit P5 to hit the PW1 could amount to his death.

Examination in chief of PW1

Answer: they now attacked me the 3 of them hit me, Kabiru hit me with stick, I now confuse come fall down. He want to hit me another stick I hold am and we started dragging.

Cross examination of PW1

Answer: They hit me here (PW1 pointed to left upper part of his head)

On ingredient two, the prosecution has been able to prove by the direct eye witness testimony, the testimony of PW2 that the defendants were the ones who hit him with a stick during the incident and the confessional statement Exhibit D2 places the 2nd defendant as one of the accused persons involved in the incident.

On ingredient three, which is the intention of causing death, in ***EX. PC SMART UDEME v. COMMISSIONER OF POLICE (2017) LPELR-44316(CA)(PP. 29-31 PARAS. D);***

"Intention "is the purpose or design with which an act is performed. It is the fore knowledge of the act coupled with the desire to do the act. The foreknowledge and desire from the cause of the act is so far as they fulfil themselves through the operation of the will". See ***Nwokearu vs. State (2013) 1 & NWLR (PT. 1380) 207 at 235.*** The prosecution must prove, must have the criminal intent to do an unlawful act of grievous bodily harm to a deceased. By law, the criminal intention of an accused can be gleaned from the instrument used and the part of the body targeted. Where an accused uses a dangerous weapon in attacking the deceased, a Court is at liberty to infer that the injury arising therefore caused his death. **See MICHAEL VS. STATE (2008) 13 NWLR (PT. 1104) 361: SULE VS. STATE (2009) 17 NWLR (PT 1169) 33.**

This court is to infer intention from the weapon used and the body part targeted and I am not convinced that the Defendants intended to kill the accused at best they intended to subdue and dispossess him of the motorcycle I am not convinced by the totality of evidence before me that the Defendants intention of causing death therefore, the prosecution has failed to prove this charge.

The prosecution was unable to tender medical report or pictures of the hurt occasioned which would amount to attempted culpable homicide. The prosecution has failed to prove this charge beyond reasonable doubt.

Count 4 which is the offence of voluntarily causing hurt in committing robbery under section 300 of the Penal Code, the onus is on the prosecution to prove that;

1. The accused or someone jointly concerned with him committed or attempted to commit robbery

2. That the accused or some other person voluntarily caused hurt in doing so

The first leg of the ingredient is clear and has been proven by the barrage of evidence before me, the direct eye witness evidence of the PW1 and identification of the Defendants at the police station, the evidence of PW2, the Exhibit D2 all show that the defendants committed the offence of robbery and places them at the scene of the crime.

On the second leg, voluntarily causing hurt, the unimpeached direct evidence of PW1 proves the prosecution's case on this ingredient;

Examination in chief of PW1

they now attacked me the 3 of them hit me, Kabiru hit me with stick, I now confuse come fall down. He want to hit me another stick I hold am and we started dragging.

Cross examination of PW1

they hit me here (PW1 pointed to left upper part of his head)

The Defences put up by the DW1, DW2 and DW3 all tally to the effect that they were on their way from eating when they were arrested by the police officers. Alibi is the latin expression meaning "elsewhere"

In ***ANEFOK UKPA v. THE STATE (2012) LPELR-15429(CA) (Pp. 28-29, paras. D-B)*** the defence is based on the physical impossibility of an accused person's guilt by placing him in a location other than the scene at the relevant time. It also means the fact or state of having been elsewhere when an offence was committed - see ***Dagawa V. State (2006) 7 NWLR (Pt. 980) 637 SC.*** In other words, by raising the defence of alibi, the accused person is saying that he was somewhere else at the time of the crime - see ***Umani V. The State (1988) 1 NWLR (Pt. 70) 274.*** And it is settled law that where the defence of alibi has been properly raised by an accused in the course of the investigation of the offence for which he is charged, it is the duty of the Police to investigate it, and for the Prosecution to disprove it.

I have strenuously gone through **Exhibit D2**, there is nowhere the Defendant raised the defence of alibi. Also in **Exhibit D2**, the particulars of alibi which are supposed to be unequivocal were not furnished. In ***DAGE V. STATE(2019) 12 NWLR (PT. 1686) 204 AT 218-219, PARAS E-A*** the Supreme Court held thus:

“...It ought to be emphasized that to be entitled to the beneficent effect of *alibi*, an accused person must raise it at the earliest opportunity...which would preferably be in his extra-judicial statement...what is more, the said defence must be unequivocal as to the particulars of his whereabouts and those present with him...it is only where an accused person, such as the appellant, raised the said defence at the earliest opportunity without any ambiguity that a burden is cast on the prosecution to investigate it”.

The Defendants did not raise or properly raise alibi to exonerate themselves from the act at the earliest possible time when they were arrested and taken to the Police Station. The Defendants struggled during trial merely to paint a picture of *alibi* in their evidence in Court and as ingeniously buttressed via MrUwakwe Esq., their Counsel’s address. I hold that raising this at this time though an afterthought is late in time and place of raising same. It was merely cunningly introduced by the Defendants to excuse them of the act in the armed robbery.

For an *alibi* to be investigated and successfully proved in aid of the defendants, it must show requisite particulars especially of the persons who were with them on that day, the time, and what they were doing at the material time. It must not be replete with ambiguities and obvious generalizations. See **Dage v. State** (supra).

In ***IKUMONIHAN V. STATE(2018) 14 NWLR (1640) 456 AT PAGE 483 PARAS. C-F*** the Supreme Court held thus:

“...What is more, to be worthy of investigation, the defence of *alibi* must be precise and specific in terms of the place that the accused was and the person (s) that he was with, and possibly what he was doing at the material time”

In the instant case, there are no such particulars in Exhibit D2, rather Exhibit D2 shows full involvement of the 2nd defendant in the crime with unequivocal admission of all the ingredients of the offences he is charged with. The plea of *alibi* will therefore not suffice and I so hold. See ***Anyim v. State(2019) 8 NWLR (Pt. 1675) 513 at page 533-534 Paras. F-F***, where the Supreme Court held thus:

"Where there is unequivocal evidence fixing the accused to the scene of the crime, as the one or one of those who committed the offence, the *alibi* cannot avail him. In other words, sufficient evidence of the prosecution's eye witness or witnesses pinning the accused person within the scene of the crime will certainly dislodge the plea of *alibi*."

In ***IKUMONIHAN V. STATE***(supra) at **PAGE 483 PARA C-F**the Supreme Court

"...it is not in all cases that the failure to investigate an *alibi* will be fatal. Once there is evidence that the accused committed the offence, this raises the question of credibility to wit; whether the evidence is believable and if believed, the alibi is logically demolished or fizzles into thin air and so doomed..."

In ***OCHEMAJE V. STATE(2008) 15 NWLR (PT. 1109) 57*** per Tobi, JSC (of blessed memory) held thus:

"...Investigation is not a necessity if the evidence unequivocally points to the guilt of the accused person, either in the evidence of the witness or under cross-examination of the accused or his witness"

I hold that the Defendants have not made out any defence of *alibi*.The testimony of PW2 disproves the defence of alibi, the PW2 clearly gave his evidence on where the defendants were arrested and how they were arrested and the defence put up by the defendants is a mere afterthought.

PW2 gave in detail that the police went to the shop of the 2nd defendant and found 3rd defendant with the motorcycle and from there the 3rd defendant made mention of the 2nddefendant so they arrested the 2nd defendant and he in turn mentioned the 1st defendant and he was then picked up. Exhibit D2 debunks the defence of alibi.

During examination in chief of 1st Defendant he testified that he was arrested at exactly 10pm but under cross-examination, he stated thus when questioned;

Question – you only knew of time you get to police station and not time you were arrested.

Answer – yes that is it.

He further testified that he was arrested together with the 3rd defendant but from the account of the PW1, the 3rd defendant was arrested first at 9.00pm in the shop before they went round and picked up the 2nd defendant and 1st defendant in that order.

I do not agree that the case of the prosecution is weak evidentially and founded in suspicion. The decisions of the Apex Court IN **ODOGWU V. THE STATE (2013) LPELR-42802(SC) (PP. 64-66, PARAS. E-C)** and **ARCHIBONG V. STATE(2006) 14 NWLR (1000) 349 PAGE 376 PARAS B-E** on circumstantial evidence are apt.

The existence of testimony of PW1, PW2 and Exhibit D2 collapsed every iota of suspicion but laid bare the true facts on the involvements of the Defendants over the offences they are charged for.

Conclusion:

From all that I have said, this Court finds the 1st, 2nd and 3rd defendants guilty of the offences of Conspiracy to commit armed robbery and armed robbery in counts 1 and 2.

The 1st, 2nd and 3rd defendants are hereby convicted for the charges in counts 1 and 2 contrary to **Section 6(b) of the Robbery and Firearms (Special Provisions) Act and punishable under Section 1(2) (b) of the Robbery and Firearms (Special Provisions) Act.**

This Court enters a verdict of not guilty on the 1st, 2nd and 3rd defendants in respect of the offence of attempted culpable homicide punishable with death. On count 3, the defendants are discharged and acquitted.

The Court finds the 1st, 2nd and 3rd defendants guilty of the offence of voluntarily causing hurt in committing robbery on count 4.

The 1st, 2nd and 3rd defendants are hereby convicted for the charge in counts 4 contrary to section 300 of the Penal Code law.

Allocutus:

Court –Do you have anything to say in allocutus?

UwakweEsq – We plead that in sentencing the convicts, the court should temper justice with mercy. We pray court sees convicts with eye of the proverbial mother who beats the child with one hand and still draws back child with another hand, Defendants had no previous criminal record. Justice of this Court is not only punitive, it is not just to

punish but to reform. We pray court considers age of Defendants; 3rd convict is 20 years, 2nd convict 36 years and while 1st convict is 25 years. They would have contributed to society.

Odum Esq. – while we do not oppose to the position taken by Defendant counsel, we wish the Court is guided by laws and does justice.

1st Convict – I want Court to have mercy and at home, I am eldest, I have 2 wives and children. I came from Kano, my family is based in Kano, I am breadwinner. Consider my children and the situation that they will be left in.

2nd Convict – Court should consider our wives and children since they got into situation it is possible children are not in school anymore.

3rd Convict – I stay around borehole and it is from proceeds I take care of my family and have mercy on me.

Sentence

Court: I have listened to both counsel and the Defendants, the law under which the Defendant is charged makes no room for this courts discretion in sentencing. I therefore, abide by the law as it is.

On Counts 1 and 2 **punishable under Section 1(2) (b) of the Robbery and Firearms (Special Provisions) Act;**

Husseini Wada the sentence of the court upon you is that you be hanged by the neck until you are dead or by lethal injection.

On Counts 1 and 2 **punishable under Section 1(2) (b) of the Robbery and Firearms (Special Provisions) Act;**

Kabiru Mohammed the sentence of the court upon you is that you be hanged by the neck until you are dead or by lethal injection.

On Counts 1 and 2 **punishable under Section 1(2) (b) of the Robbery and Firearms (Special Provisions) Act;**

Audu Musathe sentence of the court upon you is that you be hanged by the neck until you are dead or by lethal injection.

On Count 4 **punishable under section 300 of the Penal Code law,** Husseini Wada you are hereby sentenced to 14 years imprisonment

On Count 4, **punishable under section 300 of the Penal Code law,** Kabiru Mohammed you are hereby sentenced to 14 years imprisonment

On Count 4, **punishable under section 300 of the Penal Code law,** Audu Musathe you are hereby sentenced to 14 years imprisonment

HON. JUSTICE NJIDEKA K. NWOSU-IHEME
[JUDGE]

ChikaosoluOjukwu Esq. with C. F. Odiniru and C. E. Odumfor the
Complainant.

Kingsley Uwakwe Esq. for the 1st, 2nd and 3rd Defendants