

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE NYANYA JUDICIAL DIVISION

HOLDEN AT COURT 7, NYANYA ON THE 16TH DAY OF JUNE 2021

BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE

SUIT NO. FCT/HC/CR/36/19

COURT CLERKS: JOSEPH BALAMI ISHAKU & ORS.

BETWEEN:

COMMISSIONER OF POLICECOMPLAINANT

AND

BASHIRU MOHAMMED

2. CHUKUEMERE SIMON

3. ISAAC OMEH

4. DANIEL KABIRU

.....DEFENDANTS

JUDGMENT

The charge against the Defendants dated 30/10/19 is as follows:

COUNT ONE:

That you, Bashiru Mohammed male, 20 years old of Nyanya, Abuja, Chukwuemerie Simon, male 25 years old of Karu, Abuja, Isaac Umeh , male 23 years old of Karu, Abuja and Daniel Kabiru male, 20 years old of Jikwoyi

Abuja on or about the 17th day of July 2019 at about 1900hrs at Nyanya Plaza, Behind Morning Star Hotel, Nyanya FCT, Abuja within the jurisdiction of this Court committed a criminal offence to wit: criminal conspiracy to commit the offence of armed robbery in that on the said date, you all conspired amongst yourselves to rob one Mr. Anthony Nnamdi at the above mentioned address and you thereby committed an offence punishable under Section 6(b) of the Robbery and Firearms (Special Provisions) Act Cap R11 LFN 2004.

COUNT TWO:

That you, Bashiru Mohammed male, 20 years old of Nyanya, Abuja, Chukwuemere Simon, male 25 years old of Karu, Abuja, Isaac Umeh , male 23 year years old of Karu, Abuja and YOU Daniel Kabiru male, 20 years old of Jikwoyi Abuja on or about the 17th day of July 2019 at about 1900 hrs at Nyanya Plaza, Behind Morning Star Hotel, Nyanya FCT, Abuja within the jurisdiction of this Court committed a criminal offence to wit: armed robbery in that on the said date while armed with agun,

cutlasses and other dangerous weapons jointly robbed one Anthony Nnamdi of the sum of N250,000 and thereby committed an offence punishable under Section 1 (2) (a) and (b) of the Robbery & Firearms (Special Provision) Act Cap R11 LFN 2004.

COUNT THREE:

That you, Bashiru Mohammed Male, 20 years old of Nyanya, Abuja, Chukwuemere Simon, male 25 years old of Karu, Abuja, Isaac Umeh , male 23 year years old of Karu, Abuja and Daniel Kabiru male of 20 years old of Jikwoyi Abuja on or about the 17th day of July 2019 at about 1900 hrs at Nyanya Plaza, Behind Morning Star Hotel, Nyanya FCT, Abuja within the jurisdiction of this Court committed a criminal offence to wit: armed robbery in that on the said date while armed with gun, cutlasses and other dangerous weapons, you jointly robbed one Shaibu Abdullai of the sum of N2,000 and one G.S. M. Phone, you thereby committed an offence punishable under Section 1 (2) a and b of the Robbery and Firearms (Special Provision) Act Cap R11 LFN 2004.

The Charge was read to the Defendants and they all pleaded NOT Guilty.

The Prosecution called four witnesses in proof of its case.

The 1st Prosecution Witness is Anthony Nnamdi, a trader of No. 10 Ant Ali's Road Mararaba, Nasarawa State.

That on 17/07/19 at about 7 p.m the 1st Defendant and four others came to his place of business known as Blessed Nyanya Plaza at Nyanya. The four others include the 3rd Defendant and others in the dock. He deals in Musical Instrument. The Defendants stated beating the security in front of his shop. They rushed into his shop where he was. They shot their gun. The Defendants asked of the money. They beat and collected N250,000 from him. They escaped through Nyanya Village.

He reported the case at the Police Station Nyanya with the security man they beat. The security man was taken to hospital. His statement was obtained. He was asked if

he knows any one of them and he said he knows the 1st Defendant.

The 1st Defendant was arrested and the matter transferred to FCT Police Command. The security man's name is Shaibu. The 1st Defendant was the person who fired the gun. It was a shot gun. He cannot specifically identify who collected the money.

That the money was not recovered.

Under Cross-examination, he said the gun was fired inside the shop. He insisted he knows the 1st Defendant as a person who lives in Nyanya. He does not know the other people. He answered that the 1st Defendant's mother came to plead with him. He does not know of any fight between 1st Defendant and Hausa people. It was his own security that was beaten.

The 2nd Prosecution Witness is Isaiah Abdullai. He works as a Security Guard at Nyanya Plaza. He can only recognize the 1st Defendant.

On 17/7/19, 1st Defendant came to meet him where he was working. He showed him gun, he tried to stop him but he could not. It is only (Bashiru) the 1st Defendant that he recognized.;

He came with other persons. He could also recognize the 4th Defendant. When he tried to stop them they hit him with iron. He did not know what happened again.

The 3rd Prosecution Witness is Inspector Ofor Jonah of the FCT Police Command, CID attached to SARS. He said he knows the Defendants.

That on 17/7/19, a case of criminal conspiracy and armed robbery was transferred to the CID and he was detailed to investigate same. He obtained their statements under caution. They confessed to the crime. That 1st – 3rd Defendants were transferred from Nyanya

while the 4th Defendant was arrested by him. The 1st Defendant led him to arrest the 4th Defendant.

The 1st Defendant told him that they went into the shop of the 1st Prosecution Witness to rob him of N250,000 with a gun. He said the gun belongs to the 2nd Defendant.

The 2nd Defendant according to him confessed that the gun belongs to his father. That he came from Abia with the gun. That the 3rd Defendant also admitted the crime. He stated how the money was shared. He tried to get 'capture' who the gun was given to but could not. He is still at large.

Under Cross-examination, he answered that there is nothing in Exhibit B that affects 1st, 2nd and 4th Defendants.

The 4th Prosecution Witness is Inspector Grace Umole. She is a Police Officer attached to Nyanya Divisional Police Headquarters.

That on 17/07/19, she was on duty at the Crime Branch when a case of armed robbery was reported at the Counter. She was detailed to investigate.

She recorded the statement of PW1. He signed and she countersigned as a witness. He came with his security guard who was full of blood. She took the victim to the General Hospital Nyanya. She visited the scene of crime the Blessed Nyanya Plaza along Morning Star Hotel.

On 30/07/21, the Complainant PW1 came back to inform her that he identified 1st Defendant. He was arrested. The 1st Defendant resides in Nyanya close to the scene of crime.

She recorded his statement. He signed and she countersigned. That during the Course of investigation, he confessed to the crime. That all he Defendants confessed to the crime.

He mentioned the remaining gang members i.e 2nd, 3rd and 4th Defendants which led to their arrest.

She recorded their statement under caution. They signed and she countersigned as a witness.

The 1st Defendant said he is the leader of gang.

The 3rd Defendant said the gun was hired from one Joseph Aka Rapture. They rented it in the sum of N10,000. That the Defendants gathered in the house of 1st Defendant before they carried out the act.

That in her investigation, she found that robbers invaded Complainant's Shop. That Security man Saibu Idris was injured.

The above is the case of the Prosecution.

The defence opened and called two witnesses in defence of the charge.

The 1st Defendant's witness is Faith Isaiah, a sales girl in Gegu Filling Station dutse Junction, Kubwa Express, Kubwa, Abuja. She stated that she was buying something inside the market close to Morning Star Hotel Nyanya when she saw 1st and 2nd Defendants fighting

with wheel Barrow people. She was separating them but they broke the head of the wheel barrow person. They pursued the 1st and 2nd Defendants to Nyanya village. That there was no robbery there. That it was just a fight.

Under Cross-examination, she answered that she cannot remember the date the 1st and 3rd Defendants fought with Wheel Barrow people.

To another question, she answered that she called 1st Defendant's mother. That she stays with 1st Defendant in the same area. That they are friends. That the fight took place in the evening around 7 p.m.

That the fight took place opposite the Plaza.

The 2nd Defendant's witness is Bashiru Mohammed. He is a fashion designer.

That on 17/07/19, Wednesday, he went to the market with 3rd Defendant to buy second hand clothes(Okrika, bend down select)

As he was selecting his clothes, one Hausa man started dragging the clothes with him.

Fight ensued. He separated them. People also joined in separating them. He left the place with the 3rd Defendant to Nyanya village. That the Hausa people were many following them. They left. That they did not rob any body.

Under Cross-examination, he answered that it was the 3rd Defendant and the Hausa man that were fighting. That it was the Hausa man's head that was broken. He does not know who broke his head. That his house is not far from the market.

That before his arrest, he never knew PW1.

He was arrested a week after the incident. That the 2nd and 4th Defendants are his friends but they were not with him on that day. He is not aware of any robbery incident that took place on 17/07/19. He is not aware of any settlement.

That 3rd Defendant was not with any instrument.

The 3rd Defendant and the Hausa man were fighting with bare hands.

He answered that he is not connected with any case of armed robbery. He does not know if the Hausa man is a Wheel Barrow Pusher.

The Defendants' Counsel adopted his Written Address and posited an issue for determination which is 'Considering the peculiar fact and circumstances of this case and evidence, whether the Prosecution has proved its case against the Defendants beyond reasonable doubt as required by law to justify their guilt.'

He argues that the Prosecution has failed woefully to discharge the sacred burden of proof placed on the Prosecution. That there is no iota of evidence from Prosecution witnesses which shows that 2nd and 4th Defendants took part in the alleged incident on 17/07/19.

The 2nd and 4th Defendants were not linked to the commission of the offence charged. The evidence of PW1 – PW4 are not credible.

That the Court is not confined to considering only defence raised by a Defendant. A Defendant in a criminal trial is entitled to any defence which on the totality of the evidence is available to him whether raised by him or not.

The Prosecution witnesses are not witnesses of truth.

That the deficiencies pointed out in the evidence of the Prosecution has cast serious doubt in the Prosecution's case and the doubt must be resolved in favour of the Defendants.

That the ingredients of the offence were not proved.

He finally urges the Court to resolve the sole issue in favour of the Defendants against the Prosecution.

The Prosecution's Final Written Address is dated 11/01/21 but filed on 1/02/21

Learned Counsel also raised the same issue as submitted by the Defendants' Counsel for determination in the said Final Address.

He submits that the Prosecution has proved the charge of criminal conspiracy to commit the offence of armed robbery against the Defendants.

Learned Prosecution Counsel canvassed that the count of armed robbery has also been proved beyond reasonable doubt. That 1st and 2nd Defendants are eye witnesses. They directly identified 1st, 2nd, 3rd and 4th Defendants as those who robbed the PW1. He concluded that the Prosecution has proved beyond reasonable doubt all the three count charge against the Defendants. He urges the Court to so hold.

The three count charge against the Defendants is for Conspiracy and Armed Robbery contrary to Section 6(b) and Section 1(2) (a) and (b) of the Robbery & Firearms (Special Provision) Act Cap R11 LFN 2004 respectively.

Conspiracy is an agreement of two or more persons to do an act which is an offence to do.

See *NWOSU VS STATE (2004) 15 NWLR (PT.897) 466.*

AMACHREE VS. NIGERIA ARMY (2004) 3 NWLR (PT.807) 256.

The ingredients of the offence of conspiracy are:

1. 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.
2. That each of the Defendants individually participated in the conspiracy.

See ***AITUMA VS. STATE (2006) 10 NWLR (PT.989) 452.***

On the other hand to secure a conviction for armed robbery, the Prosecution must prove the following:

- a. That there was an armed robbery.
- b. The Defendant was armed.
- c. That the Defendant with the arm or arms participated in the robbery.

The above ingredients must be proved beyond reasonable doubt.

The evidence of PW1 is that on 17/07/19, the 3rd Defendant and others came to his business place, Nyanya Blessed Plaza. They beat up the Security man in his Shop. They rushed into his shop, fired a shot, beat him up and collected N250,000 from him and escaped through Nyanya village. It was 1st Defendant that fired the gun. He does not know the person who collected the money.

The PW2's evidence is that he is a security man in the Plaza. He knows only the 1st Defendant. 1st Defendant came to meet him where he was working. He showed him gun.

He could also recognize the 4th Defendant. He hit him with iron.

That he said three people were in the Shop while two people were with him. He does not know the owner of the shop or PW1.

The PW3 said the Defendants confessed to the crime that they robbed PW1 and made away with N250,000.

That they said the gun belongs to 2nd Defendant. That it has been given to Capture. That he ran away with the gun.

That 2nd Defendant confessed that his father owns the gun and that he came all the way from Abia with the gun.

The 4th Defendant said 1st Defendant who was identified about three weeks after the commission of the alleged offence which took place by 7 p.m lives close to the scene of crime.

That the security man's name is Shaibu Idris.

The guilt of a Defendant can be proved by

- a. Confessional Statement of the Defendants.
- b. Circumstantial evidence.
- c. Evidence of eye witnesses.

The Prosecution contended in his final argument that the Defendants confessed to the crime.

The Prosecution did not tender any statement of the Defendant suggesting that they confessed to the alleged crime.

Exhibit A is the statement of PW2, Shaibu Abdullai while Exhibit B is the Statement of 3rd Defendant tendered by the defence through the 3rd Prosecution witness. The statement of the 3rd Defendant is a complete denial of the offence for which they were charged. There is no iota of evidence to suggest that the Defendants made confessional statement. No such evidence is before the Court.

The offence was alleged to have been committed on 17/07/19.

The evidence is that on the same date, the complainant reported to the Police at Nyanya Divisional Police Headquarters.

However, the statement of PW2 was recorded on 27/08/19 while that of the 3rd Defendant was recorded on 07/08/19. None of the statements of the 1st – 3rd Defendants arrested at Nyanya Divisional Police Headquarters were tendered.

The PW1 and PW2 are the alleged eye witnesses.

They were both the alleged victims of the crime. The evidence of PW1 is that he was shown gun. It was fired. His money was taken specifically N250,000.

On the 1st Count of conspiracy which is an agreement. The 2nd Prosecution Witness said he could only identify 1st Defendant. He later said he could also recognize 4th Defendant. There was no mention made of 2nd and 4th Defendants.

The PW1's evidence is a general statement to the effect that all the Defendants robbed him in his shop. There is no eye witness evidence or confession that the

Defendants conspired. The only circumstantial evidence is that of PW1.

It is not corroborated.

The offence for which the Defendants are charged is a capital offence. The standard of proof is beyond reasonable doubt. There is no evidence of agreement amongst the Defendants to commit the offence. It can also not be inferred.

In my humble view, Count One is not proved beyond reasonable doubt and I so hold.

On Count 2, robbing PW1 of the sum of N250,000 while armed with a gun.

The PW2 said he does not know PW1 who is the owner of the shop that was allegedly robbed of the 250,000.

He said the security man's name is Shaibu PW2 who is the security man said his name is Isaiah Abdullai.

He said he was outside the Plaza. He did not witness the incident inside the Plaza.

In Count 3, the PW2 was allegedly robbed of N2,000 and a GSM Phone.

The PW2 in his testimony before the Court, did not give evidence that he was robbed of N2,000 or that his phone was stolen.

However in his statement made at the FCT Police Command which was made more than a month after the incident i.e. (Exhibit A), he made allusion to his phone and N20,000 that was robbed from him.

His extra judicial statement contradicts his evidence before the Court.

The charge alleges that the Defendants were armed with gun, cutlasses and other dangerous weapons. There is no such evidence except that the gun was fired inside the shop while PW2 said he was shown a gun. The evidence of the ownership of the gun is also contradictory.

At a breadth, the evidence of PW4 is that the 2nd Defendant confessed that the gun belongs to him.

At another breadth, it belongs to Capture. There is also evidence that it belongs to 2nd Defendant's father. The confession is also not before the Court.

The evidence is that the 1st Defendant resides close to the scene of crime. He is well known to PW1 and PW2. The incident took place at about 7 p.m.

The PW1 did not identify him to the Police until 30/07/19 as stated in evidence by PW4.

The question is why the Complainant did not inform the Police at the earliest opportunity that it was 1st Defendant and his gang that robbed him until about a month and some weeks. As stated by PW4 while PW1 said in evidence that he identified PW1 same date he was robbed.

There is a contradiction.

It has created a doubt in my mind.

In my humble view, the Prosecution did not prove beyond reasonable doubt all the ingredients of the offence of robbery under the Robbery & Firearms (Special Provision) Act. The available evidence before the Court is contrary. The Court cannot pick and choose which evidence to believe. I also want to put on record that I do not believe the evidence of the Defendants. The evidence of Wheelbarrow fight is a farce. Nevertheless the Prosecution did not prove the case beyond reasonable doubt.

The Defendants are therefore not found guilty. They are accordingly discharged and acquitted.

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HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

16/06/21

Defendant present

D.F. Abah for the Prosecution.

L.O. Fagbemi for the 1st-4th Defendants.

Judgment delivered.

Signed.

Hon. Judge.

16/06/21