IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 10, AREA 11, GARKI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

CHARGE NO. FCT/HC/CR/84/2017

DATE: 9/7/2024

B E T W E E N

INSPECTOR GENERAL OF POLICE } **COMPLAINANT**

AND

AMINU KABIRU ABUBAKAR } **DEFENDANT**

J U D G M E N T

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

The only Defendant arrested in connection with this case is Aminu Kabiru Abubakar. He was charged along with others who are now at large with five (5) count charge dated and filed the 23rd January, 2017 and the charge read as follows;

Count 1:

That you Aminu Kabiru Abubakar M. 19 years of sugar cane line Nyanyan FCT – Abuja and others now at large, on or about the 6th November, 2016, at about

02:30 hours in Galadimawa FCT, Abuja, of the Abuja Judicial Division, while armed yourselves with knives and cutlass and some other dangerous weapons and robbedMr. Saliman Ibrahim Imam of his Toyota Sienna Minivan with registration Number BWR 309KR valued sum of ₦1,150,000.00 (One Million, One Hundred and Fifty Thousand Naira)(2) One Nokia Phone valued sum of N28,000.00 (3) One itel Phone valued sum of ₦11,000.00 (4) One Laptop Computer valued sum of N65,000.00 all the properties stolen valued the total sum of ₦1,254,000.00 (One Million, Two Hundred and Fifty-Four Thousand Naira) and cash sum of ₦9,000.00 (Nine Thousand Naira) and during the police investigation you admitted committing crime and you thereby committed an offence punishable under Section 1 of the robbery and fire arms (Special Provision) Act Cap Rules 11 Laws of the Federation Nigeria 2004.

Count 2

That you Aminu Kabiru Abubakar M. 19 years of Sugar Cane Line Nyanya FCT Abuja and others now at large on or about the 5th November, 2016, at about unspecified hour in Nyanya FCT Abuja, of the Abuja Judicial Division agreed to do an illegal ACT TO WIT; ROB THE HOUSE OF Mr. Saliman Ibrahim Imam of Galadimawa Lugbe Abuja, of his car, money, handsets, Laptop Computer and some other valuable items, and the same act was committed pursuant to the agreement and that you therefore committed an offence contrary to Section 6 and punishable under Section 1 of the Robbery and Fire Arms (Special Provisions Act Cap. Rule 11 Laws of the Federation Nigeria 2004).

Count 3

That you Aminu Kabiru Abubakar M. 19 years of Sugar Cane Line Nyanya FCT Abuja and others now at large on or about the 6th November, 2016 at about 02:30 hours, you committed house trespass by entering intothe house and premises occupied by Mr. Saliman Ibrahim Imam and his family, behind police station Galadimawa FCT- Abuja of the Abuja Judicial Division in order to commit the offence of Armed Robbery, which upon trial and conviction punishable with death and that you thereby committed an offence punishable under Section 350 of the Penal Code Law; (Cap 89 Laws of Northern Nigeria 1963).

Count 4

That you Aminu Kabiru Abubakar M. 19 years of Sugar Cane Line Nyanya FCT - Abuja and one other now at large were on the 6th November, 2016 attested at military check point sited along Abuja/Keffi Expressway by a Military Officers for having illegal possession of a Toyota Sienna Minivan with Registration Number BWR 309KR valued sum of N1,150,000.00 (One Million, one Hundred and Fifty Thousand Naira), property of Mr. Saliman Ibrahim Imam Male aged 38 years. And during the Police Interrogation you confessed to had being the vehicle you robbed from the owner and intended to delivered it in Keffi where to change its paint colour and you thereby committed an offence punishable under Section 319 A of the Penal Code Law (Cap 89 Laws of Northern Nigeria 1963).

Count 5

That you Aminu Kabiru Abubakar M. 19 years of Sugar Cane Line Nyanya FCT – Abuja and others now at large, were on the 6th November, 2016 along Abuja/Keffi Road were arrested for having belonged to a gang of persons associated for the purpose of habitually of committing armed robbery terrorizing FCT – Abuja Nasarawa State and other of its neighboring environment, and during the Police Investigation you admitted to had belonged to a group of three (3) Man Squad specializing in Armed Robbery, and you thereby committed an offence punishable under Section 306 of the Penal Code Law (Cap 89 Laws of Northern Nigeria 1963).

The trial commenced immediately in this Court, and the prosecution called three (3) witnesses, the 1st witness is Mr. Saliman Ibrahim Imam.

After identifying the Defendant in open Court, he commenced his oral testimony by stating that, on the 6th November, 2016 at about 4:00am, the Defendant and others trespassed into his house, located at Galadimawa Lugbe, Abuja and assaulted him and his family, while they armed themselves with knives, cutlasses and short –gun.

That three of them broke and entered through the window into his room, and they carted away three different phones, laptops, money, and his car key they used in opening his Toyota Sienna Minivan Car and drove it away, that he did not see them again.

That one of the Bandit in the process of the robbery threatened to cut off his hand with the heavy machete he is holding, that while police were investigating the case, as of then there was no any arrest made, not until a Military officer called him on phone, that his Toyota Sienna Minivan with Registration No. BWR 309 KR had been recovered, because he left in the Pidgin-hole, the duplicate copies of the car documents where his phone number can be sighted, and saw his car that was carted away by the robbers, and he was shown the Defendant as the person his car was recovered from.

That upon sighting the Defendant he quickly recognized him to be among the robbers that robbed him, and took away the Sienna Minivan bus along with other of his valuable properties in his compound, during the robbery transaction on him.

The 2nd witness Mrs. Ibrahim Omolayo Monsurat the wife of the Nominal Complainant herein referred to as one of the victims her testimony is substantially the same with that of testimony of her husband, the first witness; and also the PW3 being the IPO Investigating Police Officer named Inspector Echeipu Ochoche on the 9th November, 2017, where he stated that on the 6th November, 2016, the Defendant was arrested for having in custody of the robbed car Toyota Sienna Minivan with Reg. No. BWR 309KR with one other of his cohort are in occupation before he escaped in the hand of the military officers that intercepted them in Keffi, Nasarawa State, when they could not give satisfactory account of the car, as one of the cohort escaped from their

hands in the cause of interrogating them, but they were able to arrest the Defendant, and brought him to their office, for further investigation.

That he took over the Defendant along with his team members for the purpose of investigating him, over Toyota Sienna Minivan with Reg. No. BWR 309 KR that he orally confessed to the military officers that arrested him, that himself and others now on the run robbed in Abuja, and took possession of the car, that the Defendant upon taking him over from the military officers that handed him over to them in his office, he questioned the Defendant as to the allegations the Defendant could not deny and he did not suffer them, as he orally confessed how himself and others conspired in Mararaba and went to Lugbe and robbed the complainant, that the Defendant further confessed and explained how they conspired and arranged themselves for the purpose of that robbery operation.

That in the cause of their investigation the Defendant confessed that himself and others as their names were contained in the confessional statement, arranged themselves and went to Gidan Soldier Area Mararaba of Nassarawa State, where they agreed to commit the act of armed robbery, as the Defendant took him and others of his fellow officers to the scene of robbery.

That after the oral confession of the Defendant, he volunteered to offer his statement into writing, for that he was cautioned in English Language, and he reduced his confessional statement into written; the statement was tendered and admitted in evidence in this Court, and that formed part of the records of

the Court, also in the cause of the testimony of the IPO, he also tendered the application for the release of the Toyota Sienna Car, when the nominal complainant seek to collect its, which was given to him, the application he made and the bond releasing the car to him all dated 16th November, 2016, were all tendered and admitted in evidence.

The confessional statement of the Defendant, the application for the release of car and the bond were all tendered in this Court through the instigating police officer on the 9th November, 2017, all this has formed the record of this Court regarding the case at hand, they were marked as Exhibits A, B, and the Voluntary statements of the victim are also marked as Exhibit C, which were also rely upon to proof the guilt of the Defendant in connection to the offences charged. And with the evidence of PW3, the Prosecution closed his case.

This in brief is the gist or crux of this case. The defendant's counsel in his defence to all the charges chose to rely on the case of the prosecution as his defence. He submitted three (3) issues for determination to wit:

(a) Whether there exist contradictions in the evidence as adduced by the prosecution that creates reasonable doubt in the case of the prosecution;
(b) Whether the doubt in the case of the prosecution is to be resolved in favour of the defendant;
(c) Whether the prosecution has proved the case of armed robbery, trespass, illegal possession of Toyota Sienna and offence of belonging to

a gang against the defendant beyond reasonable doubt as required by law in the entire circumstances of this case.

I think with due respect to the learned counsel to the defendant, his third issue formulated is detailed enough and is the one appropriate for the resolution of this case and I so hold.

It is the submission of the defence counsel that for the prosecution counsel to establish the offence of armed robbery, he must prove the following:

(a) That there was in fact a robbery
(b) That the robbery was an armed robbery
(c) That the accused person was the armed robber or one of the armed robbers.

He commended to the court the case of **OLATINWO VS. STATE (2013) LPELR-19979 (SC).**He said the question to be answered is whether there was a robbery, if the robbery was an armed robbery and if the defendant was the armed robber or one of the armed robbers? He then submitted that the prosecution has not been able to prove beyond reasonable doubt that the robbers were armed with dangerous weapons and the failure to tender the cutlass or any picture showing cutlass cuts on PW1 goes to show that there was no armed robbery whatsoever.

On the offence of conspiracy, he submitted that a successful conviction for conspiracy is often time, one of those offences predicated on circumstantial evidence which is evidence not on the fact in issue but of other facts from

which the fact in issue can be inferred. He said conspiracy is embedded in the agreement or plot between the defendants or co-conspirators which could be deduced from the acts of the parties thereto which are focused towards the realization of their common or mutual criminal purpose. He referred the court to the case of **ODUNEYE VS. STATE (2001) 2 NWLR (PT. 697) 311.**

He stated that the offence in count 3 of the said charge stated as House Trespass by the prosecution does not link the defendant to the commission of the said offence. He said the evidence of PW1 to the effect that he could not recognize the faces of any of the robbers on the said date lays credence to the fact that they could not have possibly seen that it was the defendant who robbed them.

On count 4, the defence counsel argued that the mere fact that a person was allegedly caught with an item belonging to the victim of a crime does not in itself mean that the person was among the persons who took part in the alleged robbery incident and that the prosecution has not been able to prove that the defendant who was allegedly found in possession of the vehicle, as the prosecution alleged, was the one who took part in the robbery incident.

On the issue of confessional statement, he argued that a defendant who retracts his confessional statement is telling the court that he did not make the said statement. He said when exhibit D, which is the alleged confessional statement of the defendant was sought to be tendered, the defendant stated that he did not make the said statement. He submitted further that, there are

conditions the court must consider when faced with the issue of a retracted confessional statement as expounded by Supreme Court in the case of **ONYENYE VS. STATE (2012) 14 NWLR (1324) 594 (SC),** which are; (a) whether there is anything outside the confession to show that it is true; (b) whether it is corroborated; (c) whether the statements made in it are true as far as they can be tested; (d) whether the accused had opportunity of committing the crime; (e) whether the confession is possible; (f) whether it is consistent with other facts which has been ascertained and have been proved.

He finally submitted that from the laid down test cited above, the conditions listed do not find live in the present case. He said there is nothing outside the confession to show that the defendant committed the offence, more so as the testimonies of the prosecution witnesses were full of contradictions and as there was also no material evidence to corroborate the said confessional statement.

The prosecution counsel on other hand submitted that the Defendant confessional statement was admitted in evidence and the status of a properly admitted confession, was to the effect that;

> *"Once a confessional statement is in evidence, it becomes part of the case for the prosecution and the Court is bound to consider it, provided that it admits of the essential elements of the offence charged and such that when tested against proven facts will show that the accused committed the offence. See* ***OSUNG VS. STATE (2012) 18 N.W.L.R. (PART 1332) page 256 (SC).*** *A confessional statement made by a Defendant, which is properly*

admitted in evidence is, in law, the best pointer to the truth of the role played by such Defendant in the commission of the offence. Such a confessional statement can be accepted as satisfactory evidence upon which alone the accused can be convicted. See ***F.R.N. VS. IWAKA (2013) 3 N.W.L.R. page 285 (SC).*** *See also* ***OJEGELE VS. STATE (1988) 1 N.W.L.R. (PART 71) 414; OGBU VS.STATE (1992) 8 N.W.L.R. (PART 259) 255; OGOALA VS.STATE (1991) 2 N.W.L.R. (PART 175) 509;AKPAN VS. STATE (1986) 3 N.W.L.R. (PART 27) 225"***

He submitted further on when confessional statement will be sufficient to ground conviction.

"It is however trite that for a confession to be relevant and therefore admissible for the conviction of an accused person it must be direct, positive and unequivocal in the sense that it points irresistibly to the guilt of the accused or leaves no reasonable doubt in the mind of the Court or reasonable persons that the accused committed the offence. ***AFOLABI VS.C.O.P. (1961) ALL N.L.R. 654; (1961) 2 S.C.N.L.R. 307, R. JONAH & ORS.(1934) 2 WACA 120, NJOVENS & ORS. VS. THE STATE (1973) 1 N.M.L.R. 331; (1973) N.N.L.R. 76; (1973) 5 (SC) 17"***

Per Adekeye, JCA (page 85) Lines 35 – 45.

On ways of proving the guilt of an accused person, he argued thus;

"It is trite law that, the guilt of accused persons can be proved by three methods namely: be confessional evidence, by circumstantial evidence,

by direct evidence or eye witness evidence, see the case of ***EMEKA VS. THE STATE (2001) 32 W.R.N. 37; (2001) 6 S.C.N.J. 259; (2001) 6 S.C. 227; (2001) M.J.S.C. 5 paragraph 5, Ratio 9"***
Per Denton-West, JCA (page 64) lines 25 – 30.

The extra-judicial confessional statement of the Defendant to the Police dated the 11th November, 2016 that was recorded by Sergeant Abel Idoko now an Inspector of Police, the team member of Inspector Echeipu Ocheche that testified as a 3rd Prosecution witness in this Court, its contents are explicit for the Court to agree that there is a conspiracy on the part of the Defendant to commit the offence of armed robbery on his victim as contained in Count 2 of the charge.

On whether it is necessary to establish that conspirators known themselves before conspiracy can be established, he said;

"It is not necessary in order to establish conspiracy that the conspirators should know each other or like those who murdered Julius Caser of Shakespeare play, that they should be seen together coming out of the same premises at the same time. Even, conspirators do not have to know each other so long as they know of the existence and the intention or purpose of the conspiracy. See ***TITUS OYEDIRAN & ORS. VS. THE REPUBLIC (1966) N.S.C.C. 252 at 257; (1969) NM 122"*** Per Ariwoola, CJN (page 39) lines 10 – 20.

On nature of the offence of conspiracy, he contends thus;

"It is apt to state it here that conspiracy is often hatched with utmost secrecy. The circumstance of the matter should be properly considered. In ***PATRICK NJOVENS VS.THE STATE (1973) 1N.M.L.R. 331; (1975) 5 S.C. 17; (1973) 1 ACLR 224; (1973) NMLR 76; (1973) NSCC 257".***

The oral testimony of the victim in this Court Mr. Saliman Ibrahim Imam and his wife made it clear that it is not just only the Defendant that trespassed into his house, and robbed him of his valuable properties by saying that three of them entered through the window to his room, and gained entrance into the parlour, while others were standing outside, which was corroborated in the confessional statement of the Defendant that he made on the 11th November, 2016, where he stated that on the 6th November, 2016 at about 17: 00 hours himself, Biggy, one Baba went to Gidan Soldier Area in Mararaba, that is where their conspiracy to commit armed robbery took place, and they all departed from there to Galadimawa Lugbe to the house of the victim and robbed him of his valuable properties.

In Count 4 of the charge, which deal with an offence of having in possession of the defendant the robbed Toyota Sienna Minivan Car.

By virtue of **Section 319(A)** provides for having in possession of things reasonably suspected to have being stolen. The provision stated thus;

"Whoever knowingly has in his possession or under his control anything which is reasonably suspected of having been stolen or unlawfully obtained and who does not give an account to the satisfaction of a Court of justice as to how he came by the same shall be punished with imprisonment which may extend to two years or with fine or with both"

And this was supported in the case of **UDO VS. STATE (1993) 5 N.W.L.R. (PART 295) 556 (CA)** held;

"The doctrine of recent possession is a matter of evidence by which the Court may presume the commission of a crime derives from the English Common Law as incorporated in Section 149(a) of the Evidence Act, Cap 112 LFN 1990 (now Section 167(a) of the Evidence Act, 2011), and is a rebuttable presumption which is not one of law but of fact to be determined in the light of the circumstances of each case especially the time lag between the period when the offence was committed and the stolen goods were found on the accused"

On the charge of Armed Robbery in Count 1 of the charge against the Defendant, its punishments are contained in **Section 1 of the Robbery and Firearms (Special Provisions) Act CAP F 28, LFN 2004**. It provides thus:

1. Punishment for robbery

"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.
3. The sentence of death imposed under this section may be executed by hanging the offender by the neck till he be dead or by causing such offender to suffer death by firing squad as the Governor may direct.

On what prosecution must prove to succeed in proof of the offence of armed robbery, he stated thus;

"It is trite that for the prosecution to succeed in proof of the offence of armed robbery there must be proof beyond reasonable doubt of the following;

1. *That there must be robbery or series or robberies.*
2. *That the robbery or each robbery was an armed robber*
3. *That the accused was one of those who took part in the armed robbery.*

ARUNA VS. THE STATE (1990) 6 N.W.L.R. (PART 155) 125 at 135, OKOSI

VS. A – G BENDEL STATE (1989) 1 N.W.L.R. (PART 100) 642, NWACHUKWU VS. THE STATE (1985) 1 N.W.L.R. (PART 11) 218, ANI VS. STATE (2004) 16 W.R.N. 163; (2003) 11 N.W.L.R. (PART 830) 142" Per Adekeye, JSC (par 36) lines 30 – 45.

He said the victims had explained how the Defendant and others armed themselves and trespassed into his house at Galadimawa along Airport Road Lugbe Abuja, and robbed him and his family of their properties, while they armed themselves with knives, machete and other dangerous weapons, during the robbery operation, and also the testimonies of the IPO Inspector Echeou Ocheche also corroborated the evidence given by the victims of the robbery. It is trite in a criminal matter that the prosecution is under a duty of proving its case beyond reasonabledoubt.

Proof beyond reasonable doubt can only emanate or be attained from evidence adduced it may either be a direct or circumstantial, from a witness or witnesses called for the purpose of establishing same. Per **ONU JSC in the case of EDAMINE VS. STATE (1996) 3 N.W.L.R. (PART 438) 530 at 536 paras. F – G.**

Proof beyond reasonable doubt "*does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted of fanciful possibilities to deflect the course of justice. If the case is strong, so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible, but not in the least probable" the case*

is proved beyond reasonable doubt but nothing short of that will suffice. See also; ***RVS. ANI NWOKARAFOR & ORS. (1944) 10 W.A.C.A. 221"***

Per Onu, JSC **Edamine VS.STATE (1996) 3 N.W.L.R. (PART 438) 530 at 538 para.G; 539 para. A.**

The evidence of PW2 and PW3 against the Defendant are cogent,and compelling to link the Defendant to the offences charged coupled with his own confessional statement in his extra-judicial statement he volunteered to the police in the cause of their investigation into the matter, the statement and the bond releasing the Toyota Sienna Minivan with Reg. No. BWR 309KR recovered in custody of the Defendant, that was arrested by the military officers at Keffi Nassarawa State soon after the robbery are very cogent, and compelling to fix the Defendant at the spot of the crime, coupled with him being identified by the victims of the crime. Though there is no law that says all the crime suspects must be arrested, what Court need to know is whether the one or those arrested actually participated in the crime for him or them to be punished for the offence committed.

I have considered the arguments and submissions of both counsel in this case. I have adverted my mind critically to the facts of this case as well. To start with, let me point out the facts already established. They are as follows:

1. Both PW1 and PW2 identified the defendant as one of those that came for the robbery.
2. The defendant did not give any evidence in his defense.
3. There was robbery on the 6th of November, 2016 at Galadimawa Lugbe, Abuja.

4. The defendant was arrested with the Toyota Sienna Minivan with Registration number BWR 309 KR belonging to the victim of the said robbery.
5. Biggy who was with the defendant en-route Keffi, Nasarawa State escaped from Military Check point when he sensed danger and being afraid of arrest.

It should be noted as well that the learned counsel to the defendant chose to rest his defense on the case of the prosecution. This his decision is with a risky consequences. There are plethora of unbroken chains both from Supreme Court and Court of Appeal attesting to the danger embedded in resting the defence of the defendant on the case of the prosecution.

In the case of GABRIEL VS. STATE (2014) LPELR-23109 (CA), the Appellate Court held thus:

> "Where an accused person rests his case on the prosecution's case, the position of the law is quite clear. In the case of Ada vs.The State (2008) 13 NWLR Part 1103 p.149, the Supreme Court per Ogbuagu, JSC state thus: "It is firmly settled that where an accused person rests his case on that of the prosecution, the evidence of the prosecution which has not been controverted by the accused person is deemed to have been accepted or admitted by such an accused person. Such evidence being unchallenged, uncontroverted, a trial Court has a duty and in fact, is entitled to act on it where credible." Per DANIEL-

KALIO, J.C.A in Gabriel v. State (2014) LPELR-23109(CA) (Pp. 22 paras. B)

The Apex Court in the case of NWAOBOSHI VS. FRN & ORS (2023) LPELR-60698 (SC) stated as follows:

> "at the close of the prosecution, the Appellant deemed it expedient to merely rest his case upon that of the prosecution. And he actually did so at his own peril. As this Court aptly reiterated the trite fundamental doctrine in MAGAJI VS. NIGERIAN ARMY (2008) 3 NWLR (pt. 1089) 338:
>
> "Again, merely resting his case on that of the prosecution amounts to nothing less than admission of the evidence led by the prosecution."

Also, the Supreme Court in the case of MUSA VS STATE (2022) LPELR-58849 (SC) held thus:

> "...Most importantly, in the Appellant's case where the Appellant made an extra-judicial statement to the police but he neither testified nor called evidence in rebuttal the evidence led by the Respondent's witness,

whichdemonstrates that the Appellant was well aware of what he was doing. The trial Judge had no alternative but to accept as true, the evidence of PW1 and PW2 on provocation.

The Appellant has relied on the decision in Lado vs. State (1999) 9 NWLR Part 619, 369. However, the circumstances of that case are different from that in the case at hand. In

that case, the Appellant testified in his own defence, and thereby gave the benefit of his own testimony in line with his extra-judicial statement. The veracity of his testimony was also tested at trial. In Ada vs. State (2008) 13 NWLR Part 1103, 149 at 164 paragraphs G-H, this Court, per Ogbuagu held:

"It is firmly settled that where an accused person rests his case on that of Respondent, the evidence of the Respondent which has not been controverted by the accused person, is deemed to have been accepted or admitted by such an accused person".

See also Yaro vs. State (supra), Oforlete vs. State (2000) 7 SCNJ 162 at 179, Sanusi vs. The State (supra) and Magaji vs. Nigeria Army (2008) 8 NWLR Part 1080, 338.

> A closer look into Lado's case would show that it was the Appellant himself that raised the defence of provocation and therefore consciously led evidence in proof of the defence. Also, there was nothing in the records to show that the Court considered the defence. In the instant appeal, the trial Court deduced it from the Appellant's extra-judicial statement and considered it. Indeed, both lower Courts considered the defenceof provocation against the backdrop of the only available evidence before their lordships. The Appellant failed to discharge the burden of proof that lay on him and his decision to rest his case on that of the Respondent was an acceptance of the truth of the Respondent's case - See Ada vs. State (supra) and Section 141 of the Evidence Act." Per PETER-ODILI ,J.S.C in musa v. state (Pp. 49-51 paras. D)

The foregone in summary is the evidence and arguments of counsel in this case.

It is worth repeating at this juncture, that where a defendant rests his defence on the prosecution's case, the effect is that he rests his case completely on the evidence adduced by the prosecution. By so doing, he takes a very big risk, as

he must succeed or fail upon such evidence adduced by the prosecution. See also the cases of **IGABELE VS. STATE (2004) 15 N.W.L.R. (PART 890) 314; AKINYEMI VS. STATE (1999) 6 N.W.L.R. (PART 607) 449.**

By resting its case on the prosecution's case, the Defendant adopts the evidence led by the prosecution in its entirety and declines to give evidence or call witnesses in his defence. I must emphasis that this procedure is only appropriate where the case of the prosecution is apparently weak. See **AKWA VS. (C.O.P. (2003) 4 N.W.L.R. (PART 811) 461.**

Now, the big question is, is the case of the prosecution weak?

My swift answer is NO. In fact, a capital NO.

From the available evidence as Marshaled by the prosecution, I see a very strong case to nail this Defendant for guilt of offense as charged. Save count 1.

Let me be specific. The Defendant was charge in five counts for the following;

1. ***Armed Robbery***
2. ***Conspiracy to commit Robbery***
3. ***House Trespass***
4. ***Illegal Possession of a stolen vehicle***
5. ***Belonging to gang of persons habitually committing armed robbery.***

What are the ingredients of these offences? Already, I have with me the evidence of PW1, PW2 and PW3. More importantly, I have the confessional statement of the Defendant. On this alone i.e. confessional statement, where direct, and positive, I may enter a verdict of guilt. See **EMEKA VS. STATE (2001) W.R.N. 37**. But what do I find in the confessional statement?

Count 1

To secure a conviction for armed robbery, the prosecution must prove the following:

1. ***That there was armed robbery***
2. ***That the Defendant was armed***
3. ***That the Defendant while with arm or arms participated in the robbery.***

There is no principle of law which required the prosecution to tender the weapons used in an alleged robbery in order to establish the guilt of the Defendant. Whether or not the prosecution needs to tender the weapon with which the offence was committed depends on the character and circumstances of the case. It was thus held in **OLAYINKA VS. STATE (2007) 9 N.W.L.R. (PART 1040) 561** that since there was no assertion from witnesses that any weapon was recovered from the Defendant, proof of any weapon of the alleged robbery was unnecessary.

In this case, none of the prosecution witnesses mention recovery of any weapon used during the robbery. However, the charge mentioned knives, cutlass, and some dangerous weapons. None of these specific weapons were tendered in evidence.

So, how do I come to the conclusion that the Defendant was armed during the operation. I have my doubt if that is the case. The doubt is consequently resolved in favour of the Defendant. Count 1 not proved.

Count 2

This is robbery simpliciter. The evidence of PW1, PW2 and PW3 is enough for me to ground this offence of conspiracy. Nothing from the Defendant to contradict them. The count is therefore proved and the Defendant is therefore convicted of robbery contrary to **Section 6 of the Robbery and Firearms (Special Provision Act Cap. R11 Laws of the Federation 2004.**

My conviction for conspiracy to commit armed robbery here is based on the principle that the court can convict a person for conspiracy to commit an offence notwithstanding that the substantive offence has not been successfully proved. This is because, conspiracy to commit an offence is a separate and distinct offence which is independent of the actual commission of the offence to which the conspiracy is related. See **BALOGUN VS. A.G. OGUN STATE (2002) 6 N.W.L.R. (PART 763) 512.**

From the confessional statement Exhibit B1, it is clear there was an agreement between this Defendant and one Biggy to do an illegal act i.e. steal. I therefore find this count II proved. The Defendant is accordingly convicted of criminal conspiracy as charged.

Count III

The ingredients of offence of House trespass under **Section 350 of Penal Code** are;

1. ***Entry with intention to commit an offence***

2. ***Entry without permission***

From the confessional statement this offence in count 3 is also proved and I so convict.

Count 4

The ingredients of this offence are;

1. ***Knowledge that item is stolen***
2. ***Property stolen***
3. ***Possession***

From the confessional statement, this offence is also proved and I so convict accordingly.

Count 5

The ingredients are;

1. ***…***
2. ***…***
3. ***…***
4. ***…***

The confessional statement of Defendant also ground this offence. I therefore convict the Defendant accordingly.

In view of all the above, I found the Defendant guilty of 4 of the 5 counts in this charge. i.e. conspiracy to commit armed robbery, house breaking, being in possession of stolen vehicle and Belonging to gang of thieves.

Having listened to the plead of the learned Counsel to the convict and the convict himself for mercy and leniency and also having considered the submission of the learned Prosecuting Counsel that the convict has no record of previous conviction, I am convinced that the convict has shown some level of remorsefulness, regret and therefore deserved some element of leniency in the least form.

The convict is a young man in the prime of his age with an aged parent to take care of.

However, the law must take it's course. I am mindful of the principle of sentencing in the forms of deference, retribution and reformation. I feel free to combine all of them in the spirit that justice must be served to the victim and the society at large.

It is for the above reason that I sentence the convict as follows:

Sentencing:

Count II

The punishment for this offence is codified under section 6 of the Robbery & Firearms Act, 2004 reads:

> ***"Any person who –***
>
> ***(a) Aids, counsels ……***
>
> ***……***

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

(c) Supplies, procures, or provides any person with fire arms for use to commit an offence under section 1 or 2 of this Act, whether or not he is present when the offence is committed or attempted to be committed, SHALL BE DEEMED GUILTY OF THE OFFENCE AS A PRINCIPAL OFFENDER and shall be liable to be proceeded against and PUNISHED ACCORDINGLY under this Act"

From the above provision, punishment for conspiracy to commit robbery is treated as punishment to commit the actual offence. Meaning the punishment for conspiracy is also the same as punishment for the commission of the principal offence.

Now, what is the punishment for the offence of robbery under section 1 or 2 of this Act? Section 1 provides that:

> ***"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"***

So the answer is imprisonment for not less than 21 years.

In consequence, I sentence the convict to 21 years imprisonment for conspiracy to commit Robbery under section 1 and 6 of the Robbery & Firearms (special provision) Act, Cap R.11 Laws of the Federation of Nigeria, 2004.

Count III (House Trespass)

The punishment for this offence is found in section 350 of the PC. It reads:

> ***"Whoever commits trespass in order to commit any offence punishable with imprisonment shall be punished with imprisonment for a term which may extend to seven years also be liable to fine"***

In consequence of the above, I sentence the convict to 7 years imprisonment and N10,000 fine or 2 years imprisonment in default of payment of fine.

Count IV (Possession of Stolen Property)

Section 319(A) of the PC provides,

> ***"Whoever knowingly has in his possession or under his control anything which is reasonably suspected of having been stolen ……shall be punished with imprisonment which may extend to six month or with fine or with both"***

In consequence of the above provision, I sentence the convict to a fine of N10,000 or 2 years imprisonment in default of payment of fine.

Count V (Belonging to gang of criminals)

Section 306 (1) of the PC, provides;

> ***"Whoever belongs to any wandering or other gang of persons associated for the purposes of habitually committed theft or robbery and not being a gang of brigands, shall be punished with imprisonment for a term which extend to ten years and shall also be liable to fine"***

Consequently, I sentence the convict to a 10 years imprisonment and N10,000 fine or 2 years imprisonment in default of payment of fine.

In furtherance of the above sentence, the terms of imprisonment imposed for the four(4) counts shall run concurrently while the fines are cumulative. Meaning that the convict shall spend only a total of 21 years imprisonments while the total amount of fine to be paid is N30,000 only OR additional 6 years imprisonment in default of payment of fines.

In conclusion, and this is very instructive, I take note of the fact that the convict has been in detention since 2016 to date while the trial lasted without bail. That is a period of 8 years. It is only fair that that period of 8 years of incarceration be subtracted or be reckoned with in the terms of imprisonment the convict shall serve. This means, the period left for the convict to serve his terms of imprisonment shall be thirteen years (13 years) from today.

……
S. B. Belgore
(Judge) 9-7-2024