

IN THE HIGH COURT OF JUSTICE EDO STATE OF NIGERIA
IN THE AUCHI JUDICIAL DIVISION HOLDEN AT AUCHI
BEFORE HIS LORDSHIP, HON. JUSTICE T.U. OBOH – JUDGE
ON TUESDAY, THE 15TH DAY OF NOVEMBER, 2016.

BETWEEN

CHARGE NO: HSO/3C/2012

THE STATE

AND

SUNDAY DIO DOGO (ALIAS SUNDAY IDOGO)

JUDGMENT

COUNT I: That you, SUNDAY DIOGO DOGO (Alias Sunday Idogo) (m), and others now at large on or about the 8th day of October, 2011 at Ozalla Emura road in the Sabongida-Ora Judicial Division did conspire amongst yourselves to commit a felony to wit: Armed Robbery and thereby committed an offence contrary to Section 6 (b) and punishable under Section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act Cap RII, Laws of the Federation of Nigeria, 2004.

COUNT II: Sunday Dio Dogo (Alias Sunday Idogo) (m) and others now at large on or about the 8th day of October, 2011 at Ozalla Emura road in the Sabongida-Ora Judicial Division did rob one Ajayi Paul (m) of his Techno mobile phone and the sum of N4,700.00 (Four Thousand Seven Hundred

Naira) and at the of the said robbery, you were armed with an offensive weapon to wit: a gun and thereby committed an offence punishable under Section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act Cap RII, Laws of the Federation of Nigeria, 2004.

COUNT III: Sunday Dio Dogo (Alias Sunday Idogo) (m) and others now at large on or about the 8th day of October, 2011 at Ozalla Emura road in the Sabongida-Ora Judicial Division did rob one Friday Imanna (m) of his mobile phone and the sum of N3,500 (Three Thousand Five Hundred Naira) and at the time of the said robbery you were armed with an offensive weapon to wit: a gun and thereby committed an offence punishable under Section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act Cap RII, Laws of the Federation of Nigeria, 2004.

V.A OMOZENUMU ESQ.

COUNSEL FOR DEFENCE

A.J IZUWA-EWEKA (MRS)

COUNSEL FOR PROSECUTION

On arraignment, the accused person pleaded not guilty to the three count charge against him. To prove her case, the prosecution called three witnesses and closed her case. The accused person defended himself and called no witness.

In all, the prosecution tendered two exhibits A and B. The case of the prosecution at the trial was that on the 8th of October, 2011, Mr. Ajayi Paul (PWI) a driver, told one of his friends Mr. Friday Imanna (PW2) to accompany him to Ekpoma. He had some girls inside his vehicle that he was

carrying to Ekpoma. On their way after Uhumora-Ora by Cocoa Research, they met that the road was blocked with a lump of wood. This was about 1.00am. While the PW1 was about to move on reverse gear, two men came out of the bush armed with gun. All the occupants of the vehicle were ordered to lie down on the road. They all meekly obeyed. They were all robbed of their properties. The PW1 was robbed of his mobile phones Nokia and Techno and some amount of money he could not remember. The PW2 was robbed of his N3,500 (Three Thousand Five Hundred Naira) and a mobile phone. The girls were also robbed of their valuables.

After the robbery, one of the robbers instructed the PW1 to remove the lump of wood from the road. He obeyed. While he was about to drive out of the scene of crime, the PW2 told the PW1 that one of the girls in the vehicle was instructed not to go along with the rest of them as there was an intention to rape her. This made the PW1 to alight from the car and requested to know why the girl should not be allowed to go with the rest after she has been robbed. While the discussion between the PW1 and one of the robbers was going on, the PW2 held the robber. In an attempt to free the accused person from the hold of the PW2, the robber that was talking to the PW1 shot at the PW2. The pellets met the PW2 on his hand and his rib. When the other robber saw that the PW2 was not deterred by the gun shot on

him, he ran away. The accused person was overpowered when the PW1 joined the PW2. The accused person was taken from the scene of crime straight to Sabongida-Ora Police Station where a complaint was lodged.

The investigating Police Officer informed the court that on the 8th of October, 2011, a case of armed robbery was referred to him along with the accused for investigation at the Anti-Robbery Section of Edo North Area Command Auchi where he was attached. He identified the accused person as the one referred to him on 8/10/2011. He informed the court that the two police officers who obtained statements from the accused were his team mates. That they had worked together for an upward of five years. That they were then P.C Olusola now Sergeant and Sergeant A. Christopher, now Inspector A. Christopher. He informed the court that those officers were no longer at Auchi. That he was very familiar with their hand-writings. He tendered the statements they obtained from the accused person. They were admitted as exhibits A and B. He was not cross examined by the defence counsel.

The accused person denied the three count charge against him. He stated on oath that on the fateful day, after he had taken his break-fast in one restaurant, himself and three other bike riders were waiting for passenger. That suddenly, a vehicle occupied by vigilante men came and arrested the

four of them and carried them to the Police Station at Sabongida-Ora. That an allegation of armed robbery was lodged against them. That the police instructed them to confess to the robbery allegation against them. That in the alternative, each suspect should pay N100,000 (One Hundred Thousand Naira) or else they will be charged for robbery. While the three other suspect were able to pay the said N100,000 each, he was unable to pay, hence he was the only one charged to the court for the offence. He bluntly denied making exhibits A and B. He closed his defence without calling any witness.

At the conclusion of the evidence from both sides, the learned counsel on both sides filed their final addresses and adopted same.

The defence counsel stated in his written address that:

The accused person is charged on three counts:

Count I: Conspiracy

Count II: Armed Robbery

Count III: Armed Robbery.

He formulated two issues for determination.

ISSUE ONE

Whether there was any case of Armed Robbery on the 8th day of October, 2011.

ISSUE TWO

Whether the evidence before the court supports the charge of Armed Robbery.

He submitted on issue one that the date on the charge is the 8th of October, 2011, but that the evidence of the investigating Police Officer (IPO) said the robbery took place on the 6th of October, 2011. He argued that the evidence did not support the charge against the accused person. And that the alleged robbery of 8/10/2011 has not been investigated. He posited that the statement of PW1 to the Police bore 7/10/2011 and that there is therefore a contradiction which the prosecution could not explain. He argued that the court cannot pick and choose in a situation of this nature. He cited HARUNA v THE STATE (1998) 1 ACLR 369.

On issue two, he submitted that the evidence before the court is hinged on the investigation report of the IPO. That the investigating police officer told the court that he investigated this case on the 6th day of October 2011. That the charge before the court stated that the robbery was on the 8th day of October, 2011. he argued that the court is in dilemma in choosing the correct or actual date of the crime.

He argued that the pieces of evidence from the prosecution witnesses are fabricated. He summed up his submission by finally urging the court to

discharge and acquit the accused person. He cited *ONAFOWOKAN v THE STATE* (2008) 6 ACLR 461.

In her own address, the prosecuting counsel stated that the three count charge against the accused person are for conspiracy to commit armed robbery and armed robbery contrary to Section 6(b) and punishable under Section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act Cap RII Volume 14 Laws of the Federation of Nigeria, 2004. That he was alleged to have robbed Ajayi Paul (PW1 and Friday Imanna (PW2) of their mobile phones and some money and at the time of the robbery, he was armed with gun.

The sole issue she distilled for determination is:

Whether the prosecution has proved its case against the accused person beyond reasonable doubt.

She submitted that in a criminal trial, for the prosecution to succeed, it must prove the charge against the accused person beyond reasonable doubt. That the element of proof in criminal cases is governed by Section 135 of the Evidence Act, 2011.

She argued that one thing that is certain is that where all the essential ingredients of the offence charged have been proved or established by the

prosecution as done in this matter, the charge is proved beyond reasonable doubt. She cited *ALABI v THE STATE* (1993) 7 NWLR (PT. 307) 511.

She posited that proof beyond reasonable doubt is that there is enough evidence to leave out any probability of the innocence of the accused person. In a charge of armed robbery, the ingredients which the prosecution must prove beyond reasonable doubt to ground conviction include:

- (a) Theft by the accused person(s);
- (b) The causing of hurt or wrongful restraints on the victims(s) by the accused person;
- (c) That the acts complained of were done in the process of committing the theft or in order to commit the theft and/ or carry away the property obtained by the theft, that the accused persons did the act complained of voluntarily and
- (d) That the accused persons(s) was/were armed with dangerous weapons while committing the offence in question. She cited *ALABI v THE STATE* (Supra) for the above legal proposition. For emphasis, she went further to state the holding of the Supreme Court in *BOZIN v THE STATE* (1998) 1 ACLR 1 at 11 that:

For the prosecution to succeed in this case, there ought to be proof beyond reasonable doubt:

- i. There was a robbery or series of robberies;
- ii. That each robbery was an armed robbery and
- iii. That the accused was one of those who took part in the armed robberies.

She referred to the evidence of the prosecution witnesses to the effect that the accused person was arrested at the scene of crime by the victims of the robbery and was duly handed over to the police at Sabongida-Ora Police Station. She argued that the accused person told a story that was diametrically opposed to the statements he made to the police at the earliest opportunity ie exhibits A and B. That at the time the statements were sought to be tendered and were eventually tendered, the accused person did not object to their being admitted as exhibits. Apart from retracting his extrajudicial statements to the police, he created the impression that he was arrested by the vigilante group and that he was tortured and forced to make the statements, exhibit A and B.

She submitted that the appropriate time to raise objection to the admissibility of a document is when it is sought to be tendered as exhibit. That the denial of a statement after it has been admitted as exhibit is an after

thought. That the pieces of evidence of the PW1 and PW2 were not discredited under cross examination.

She argued that Section 1(2)(a) of the Robbery and Firearms (Special Provision) Act Cap RII incriminated any one who committed that offence of armed robbery with any firearms or any offensive weapon or in company of any persons so armed.

She submitted that proof beyond reasonable doubt can be established in either of three ways or a combination of the three. That is to say:

- i. By evidence of an eye witness;
- ii. By circumstantial evidence and
- iii. By confessional statement of the accused person.

She argued that the PW1 and PW2 informed the court that the accused person robbed them. That for the fact that the accused person was pinned to the scene of crime rendered any identification parade irrelevant in this matter.

She urged the court to treat exhibits A and B as confessional statements. She defined confession as follows:

“A confession is an admission made at any time by a man charged with a crime stating or suggesting that he committed the crime.” She cited SAIDU v THE STATE (1982) 4 S,C, 42 for the definition.

She submitted that it is now settled law that a man may be convicted on his confession. That it is however, desirable to have some evidence of circumstances which make it probable that the confession was true. She cited RV SYKES (1913) 8 CAR 233. That exhibits A and B have passed the test of a voluntary confessional statements as there are facts outside them that made them probable and credible.

On conspiracy, she submitted that the accused person who was in company of another armed robber, would have had common intention with that other robber. That, that singular fact has completely established a case of conspiracy against the accused person. She cited NJOVENS v STATE (1998) ACLR 224. She argued further that the accused person was in company of the other robber who was armed with gun at the scene. That it was the gun that was used on the PW2 on his hand and rib. That they had common intention to rob the PW1 and PW2 and they did rob them.

In conclusion, she submitted that the prosecution has discharged the onus of proof on the three count charge of conspiracy to commit armed robbery and armed robbery against the accused person.

On points of law the prosecuting counsel submitted that the differences in dates if any should be treated as mere discrepancies which do not go to the root of the case.

She urged the court to return a verdict of guilt against the accused person in the three count charge.

I have carefully gone through the evidence of the prosecution witnesses. The charge against the accused person is conspiracy to commit armed robbery and armed robbery.

I have also gone through the defence of the accused person. I found that the facts contained in his defence did not relate to the facts in the case. I entirely agree with the submissions of the learned counsel for the prosecution that the prosecution witnesses, particularly PW1 and PW2 who were victims of the armed robbery led cogent, positive and credible evidence to prove conspiracy against the accused person. The pieces of evidence they led in proof of conspiracy were not discredited under cross examination. When the accused person was held by the PW2, one of the armed robbers at large shot at the PW2 in a vain attempt to free the accused person from the hold of the PW2. Their reason for blocking the road at about 1.00am was a common intention to rob the PW1 and PW2 and they did rob them of their valuables.

He made two voluntary confessional statements, exhibits A and B to the police. The statements were duly tendered and admitted in evidence.

They therefore formed part of the evidence before the court. The statements are weighty enough to ground the finding of guilt.

In his defence, the accused person resiled from them totally. A confessional statement does not become inadmissible or inapplicable merely because there is a subsequent retraction of the confession by its maker. The court can act and convict on it when it is satisfied that it was voluntarily made. But it is desirable to find outside the confession some evidence no matter how slight to make it probable that the confession was true see *FATAI BUSARI v THE STATE* (2015) 5 NWLR (PT. 1452) 343. To corroborate the confessional statements of the accused person, the PW1 and PW2 led evidence before the court to show that they were robbed by the accused person and others. That the PW2 was shot with a gun by one of robbers. And that they robbed them of their valuables. The fact that the accused person retracted his statements did not add any value to his defence whatsoever.

The prosecution witnesses were able to prove beyond reasonable doubt that they were robbed on that fateful day, that the robbery was carried out with offensive weapon, to wit: gun and that the accused person participated fully in the robbery. The elements of armed robbery were fully

established against the accused person. See *ABDULKARIM MOHAMMED & 2 ORS v THE STATE* (2014) 2 NWLR (PT. 1390) 44.

His defence that he was arrested along with three other persons by the vigilante group was fabricated. His defence that he was charged to the court for conspiracy and armed robbery just because he could not afford the payment of N100,000 (One Hundred Thousand Naira) demanded by the police is not backed up by the facts of this case. He did not state those facts in exhibits A and B, his earliest statements to the police. I consider his story a fabricated one intended to deceive the court.

On the final address by the defence counsel where he heavily relied on some differences in the date stated by PW1 in his statement and the date contained in the charge sheet, the prosecuting counsel, on points of law submitted that it should be regarded as mere discrepancies.

I entirely agree with the prosecuting counsel that such differences are mere discrepancies. They do not go to the root of the case. They did not also address the issues at stake in this matter. The defence counsel totally avoided the facts of the case. His approach towards the matter is sounding in technicality. The roles of the prosecuting and defence counsel are called in aid in the process of seeking for justice in any matter. Any resort to

technicality by either of them constitutes a clog on the free flow of the stream of justice.

For any contradiction to avail an accused person, it must be material to the case of the prosecution and go to the root of the charge against the accused person.

Where there are differences in the narration of events by prosecution witnesses, especially as to recounting or recollecting the dates of the events, which are mere discrepancies that would not avail the accused person, because some of such discrepancies are expected as being natural see

1. BONIFACE ADONIKE v THE STATE (2015) 7 BWKR (PT. 1458) 237.
2. OGBU v THE STATE (2007) 5 NWLR (PT. 1028) 635
3. GOLDEN DIBIE v STATE (2007) 9 NWLR (PT. 1038) 30

I prefer the case of the prosecution to that of the defence. From the totality of the facts before me, I am of the firm opinion that the prosecution successfully proved the charge of conspiracy to commit armed robbery and armed robbery beyond reasonable doubt based on the evidence of the prosecution witnesses or his voluntary confessional statements to the police-exhibits A and B respectively. Unnatural deeds do breed unnatural troubles. He is hereby convicted as charged.

In accordance with Section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act Cap RII Laws of the Federation of Nigeria, 2004, you have been found guilty of the offence of conspiracy to commit armed robbery and armed robbery.

The sentence of the court upon you is that you be hanged by the neck until you be dead and may the Lord have mercy on your soul.

The defence counsel pleaded for leniency. Having regard to the circumstances of this case I have nothing to say against the sentence.

T.U. OBOH
(JUDGE)
15/11/2016