

IN THE COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF NNEWI JUDICIAL DIVISION
HOLDEN AT NNEWI:

BEFORE HIS LORDSHIP, THE HON JUSTICE O. M. ANYACHEBELU ON
MON THE 12TH DAY OF FEB 2018.

CHARGE NO HN/ 14C/2011:

BETWEEN:

THE STATE

APPLICANT

AND

1. NGOZI ONUCHUKWU
2. OSITA ANOZIE

DEFENDANTS

JUDGMENT

The initial charge in respect of this case was filed on 24th October 2011. It was a two count charge of the offences of conspiracy to commit felony to wit: Armed Robbery and Attempted Armed Robbery.

Trial proceeded and on the 26th day of September 2017, at the close of the case for the Defendants and before the final address, the prosecution sought leave to amend the charge in terms of the Amended Charge filed on 26/9/2017. The said Amendment was with respect to count one of the charge and its particulars, and also to recall the PW4 for further examination. This was not opposed and so was granted as prayed. That brought about the birth of a substituted charge.

Fresh plea was taken thereto on the said 26th September 2017, where upon the Defendants pleaded not guilty.

From the Amended Charge, the statement of offence in respect of this case reads as follows;

COUNT 1

STATEMENT OF OFFENCE

Conspiracy to commit felony to Wit: Attempted Armed Robbery contrary to section 5 (b) of the Robbery and Firearms (Special provisions) Act Cap 398 Laws of the Federation of Nigeria 1990 (as Amended) by act No. 62 of 1999.



PARTICULARS OF OFFENCE

Ngozi Onuchukwu, Osita Anozie and others still at large on the 7th day of December 2009 at Umuoyi Village Ukpok, in the Nnewi Judicial Division conspired among yourselves to attempt robbing one Hyacinth Okigbo while armed with gun.

COUNT 2

STATEMENT OF OFFENCE

Attempted Robbery, contrary to Section 2 (1) (2) (a) (b) of the Robbery and Fire Arms (Special Provisions) Act Cap 398 Laws of the Federation of Nigeria 1990 as Amended by Act No 62 of 1999.

PARTICULARS OF OFFENCE

Ngozi Onuchukwu, Osita Anozie and others still at large on the 7th day of December 2009 at Umuoyi Village Ukpok, in the Nnewi Judicial Division while armed with gun attempted to rob one Hyacinth Okigbo and in the process shot him on his left arm.

As already indicated, the Defence pleaded not guilty to the amended charge.

The PW1 was Hyacinth Okigbo who incidentally is the complainant in this case. His case was that on 7th December 2009, around 7.30pm while he was in his house at Ukpok, a masked man entered his compound. He inquired from him what he wanted but the man quickly broke the PW1's lantern, raised his cloth and brought out a gun. He shot him on his left hand and waist. The PW1 further heard other people making noise at the back of his house.

He thereafter ran out and hid beside the bush outside his compound. As he was shouting, the vigilante and neighbours pursued the hoodlums while the PW1 was taken to the police station and then to the Teaching hospital at Nnewi by the said vigilante. The matter was subsequently transferred to SARS Nnewi where he made statement.

Under cross-examination, PW1 admitted that on the day of the incident, only one person entered his compound while the rest whom he did not see were making some noise at the back. He confirmed that he did not see the face of the person that entered his compound due to the fact that he wore a mask over his face, and it was dark. The offender broke the lantern when he entered. He also stated that his family members were present at the scene of the incident and admitted knowing the 2nd Defendant prior to the incident.

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PW2 was Basil Nnadi. He is the chairman of the vigilante of Ohina eleke Village Ukpok. He admitted knowing the 1st Defendant and recalled the 7th December 2009 when on patrol with his team heard two gun shots and people crying. Thereafter, he received a call informing him of the presence of Armed Robbers in PW1's house. They quickly moved to the house and on a track road leading to PW1's house, they saw two motorcycles parked by the bush side. They also met the PW1 by the side of the track road. He was shot at his hand and waist. PW2 instructed one of his members to take him to the hospital while they trace the robbers. The 1st Defendant was then apprehended. They further invited the central vigilante of Ukpok and with their assistance carried the 1st Defendant and the two motorcycles to the police station.

According to the PW2, the next day he was invited by SARS Nnewi where he narrated his story. He also learnt that the other robbers were at large. He made statement at SARS Nnewi.

Under cross-examination by defence counsel, PW2 stated that they were on patrol when they heard the gun shots followed by the phone call he received. He however admitted that the 1st Defendant had nothing on him when he was apprehended.

PW3 was Sunday Okoye, a security man. According to him, on 7th December 2007, he was on patrol with his team when they received a phone call that robbers were in the house of PW1. On getting to the scene, they heard gun shots and they equally released their own gun shots. At that time, they saw the Defendants and one man called Chinyeaka in the PW1's house.

PW3 contended that the Defendants on sighting them, jumped across the fence and started running while they pursued them immediately. They ran into the bush but the 1st Defendant was caught and two motorcycles were recovered in the house of PW1. They also took the 1st Defendant to the police station at Ukpok.

The next day, the 1st Defendant was said to have mentioned the name of the 2nd Defendant at the Police station. Consequent upon that, they went to the 2nd Defendant's house and arrested him. The DPO transferred the case to SARS Nnewi.

PW3 did not make any statement at the police station. He was however invited by SARS Nnewi where he made his statement.



Under cross-examination, he stated that the PW2 being Basil Nnadi was not in the patrol van when he got the distress phone call but conceded that the said PW2 was from the village vigilante. He also stressed that he did not see the PW2 at all at the scene. He confirmed that he knew the 1st Defendant before the incident of 7th December 2009. PW3 insisted that in his statement at the police station, he stated that he saw the two accused persons at the house of the PW1.

The statement of the PW3 i.e. Sunday Okoye dated 12/12/2009 was admitted in evidence and marked as Exhibit P1.

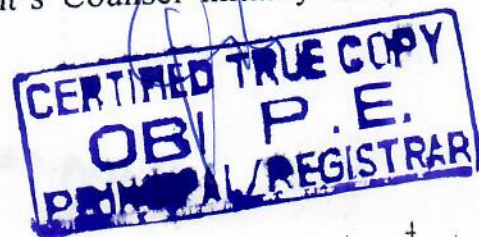
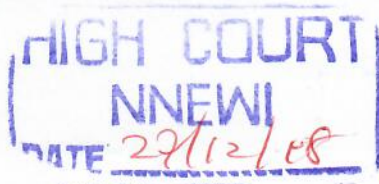
PW3 further contended that he did apprehend the 1st Defendant himself. He admitted that nothing was found on him when he was apprehended. He admitted that when they got to the PW1's house that day, they met him within the compound but outside the house, with bullet wound on his hand. He stated that they recovered two expended bullets and confirmed that there was no electric light but that lantern was on. He maintained that no gun was recovered from the 2nd Defendant when he was arrested. He stated that although it was dark outside at the scene of the incident, he maintained that it was the 2nd Defendant that he saw just because the 1st Defendant later mentioned his name at the police station.

PW4 was one Sergeant Ikpi Okoi - Force No FN 327094 attached to the SARS Awkuzu. He told the story of how on 8th December 2009, the DPO Ukpokor transferred the two Defendants to SARS Nnewi for investigation. He contended that the suspects were charged, cautioned and they confessed to the crime of armed robbery. They were subsequently taken before a police officer who attested to the confessional statements.

PW4 also obtained statement from the complainant at the Nnamdi Azikiwe Teaching Hospital Nnewi. Search warrant was executed in the Defendants' premises but nothing incriminating was found. All efforts to get the other fleeing suspects failed. Also, the said pump action gun allegedly used by the Defendants were not recovered. The matter was then charged to court and the two motorcycles recovered were registered as Exhibits.

At the point of the PW4 tendering the two statements of the Defendants perceived as confessions, the Defendant's counsel raised objection on grounds of involuntariness.

Due to the nature of objection by Defendant's Counsel initially as to involuntariness, a trial within trial was ordered.



At the end of the trial within trial, it was held unnecessary and thereby discountenanced, as evidence rather show cased retraction. After the ruling the PW4 completed his testimony.

PW4 mentioned further, that the two motorcycles recovered at the scene of the incident were nowhere to be found at the police station and it seems that they have been auctioned. They were not tendered in evidence.

Under cross-examination, PW4 maintained recording the statements of the PW1, PW2 and PW3. He stated that he only conducted search in the premises of the suspects alone. He reinstated that the motorcycles were recovered at the scene of the incident where the 1st Defendant was also arrested.

PW4 maintained that the pump action gun used for the operation was with the suspect who is still at large and that nothing was found on the 1st Defendant. He stated that the arrest of the 2nd Defendant was prompted by the statement of the 1st Defendant at Ukpok police station.

With the conclusion of the evidence of PW4 on 13/4/2017, the prosecution announced the close of case for the prosecution on the said 13/4/2017 whereupon the Defence opened on 10th May 2017 with the evidence of the 1st Defendant as DW1.

His evidence in defence is to the effect that on the said 7th December 2009, he attended a music programme. In the evening, he again, prepared and rode on his motorcycle proposing to get to St. John Anglican Church Ukpok for a three months night vigil programme which started on 1st December.

On his way, he got a phone call from someone who booked him to play at a wedding reception on 30th December 2009. The man requested that he should come to his house for part payment. He drove to the man's residence at Ukpok and collected N30,000.00 (thirty thousand Naira) advance. On leaving, he yet again received another call from the Vicar of St. John's Anglican Church Ukpok who was hosting the vigil. He informed the vicar that he was on the way to the church. After the call, a security man blocked him, flashed a torch on him and called his name. He asked him whether he brought some people. DW1 asked him which people and he pointed to a nearby compound saying that some people robbed the house few minutes ago at about 7.30pm. He indentified the said security man by name Ebuka and explained to him that he was on his way to church for a programme.

At that point, two other vigilante men came and they all exchanged greetings. The said Ebuka told them how he saw the DW1. They thereafter

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called their commander who spoke with the DW1 on phone. DW1 narrated all that happened to the commander. Eventually, they all proceeded to their office at Afor Ukpok where they met their commander who demanded for further explanation. The commander later left that night and did not come back.

DW1 slept at the vigilante office. He called his Assistant to back him up at the church. At about 6.00 am the next morning, the DPO Ukpok came to the office and DW1 narrated what happened to him. From there, they proceeded to the station. At about 7.00 am, he was taken to the charge room counter and then to another office. They wanted to obtain his statement but he informed them that he could write. After writing, they took the statement to another office.

In the afternoon, SARS officers Nnewi came. The 2nd Defendant was then brought out from the cell and they all proceeded to SARS Nnewi. At about 5 minutes after 7 pm, one police officer called the DW1 into his office and offered him drinks which he declined. The police officer asked him to mention names of 10 (ten) musicians who will bail themselves with N100,000.00 (One hundred thousand naira) each. He promised that the DW1 would be released thereafter. DW1 refused to call the names and the police officer narrowed it down to five names but he still refused. The officer then brought out a small gun and shot the DW1 on his leg. Subsequently he was tortured and he became unconscious till the next morning.

DW1 denied the entire charge and counts against him.

Under cross-examination, he contended to have written in his statement that he was going for a musical show. He denied that the motorcycles impounded by the vigilante belonged to him and the 2nd Defendant. He stated that he was with his own motorcycle along the road at the time he was arrested and taken to the vigilante office before heading to the police station the following day.

He denied mentioning the name of the 2nd Defendant at Ukpok police station and maintained that it was at the station that he met the 2nd Defendant for the first time. He admitted knowing the names of some of the vigilante members that arrested him on the night of the incident. He also confirmed that nothing incriminating was found on him. DW1 mentioned the name of his back-up singer, one Joshua Chinemerem, a native of Nnewi who he called that night to back him up. He also stated that no opportunity was given to him to report the incident to any of his relations. He maintained that the gun shots were on both of his legs.



DW2 was Osita Alozie, the 2nd Defendant on record. His version was that on 7th December 2009 at about 7.30pm, he was on duty conveying two boys on his bike to the compound of one Ndefo family where the boys were to collect money for the job they did as masons. As they approached the said compound, they heard gunshots. The next thing they saw was torchlight on them, and a voice directing that they should stop. Out of fear, he ran into his sister's compound nearby, abandoning his motorcycle. He eventually passed the night in the said sister's place.

The next morning when he came outside, he did not see the motorcycle again. He called one of the security vigilante in his town and briefed him of what happened the previous night. The vigilante security man advised that he should lodge a report at the police station which he did.

After reporting and making statement at the station, he was detained till about 4.00 pm before he was taken to SARS Nnewi. He was tortured at SARS. He stated that Exhibit P2 was not made by him.

Under cross-examination, he denied being arrested by the vigilante and taken to their office before being taken to the police station. He denied knowing the 1st Defendant or whether the 1st Defendant mentioned his name.

He conceded knowing and usually visited the PW1's compound before the incident because the PW1 is his in-law. He however denied knowing one Emenike Ibeagwu and Chinyeaka Egwu. He admitted that he usually sees the 1st Defendant in church as a musician. He admitted that his mother's senior sister whom he ran into her compound that night did not come to the station when he was arrested. He admitted that he signed the statement he made at Ukpokor police station.

At the close of the case for defence, the prosecution was granted leave to recall the PW4 being Inspector Ikpi Okoi for further examination. The PW4 reinstated that after the statements of the Defendants were taken, they took the Defendants to a Superior Police Officer named ASP Sunday Okpeh now S.P who attested to their statements. The said statement was read to them in English language and they confirmed.

Through PW4, the following were admitted in evidence:

1. Exhibit P2 – Statement by 1st Defendant at SARS office
2. Exhibit P3 – Statement by 2nd Defendant at SARS office



3. Exhibit p4 – Attestation Form in respect of Ngozi Onuchukwu dated 8/1/2009.
4. Exhibit P5 – Attestation Form in respect of Osita Anozie dated 8/12/2009.

Under further cross-examination, he reinstated that himself, the SPO Okpeh and the two Defendants were present at the time the attestation was signed.

Eventually, on 15th November 2017, both counsel addressed the court on which date learned counsel for the Defendants namely U.S. Awoke Esq., (chambers of E. C. Chikaelo Esq.) adopted the address filed 10/8/2017 and reply on points of law filed 15/11/2017 in urging court to discharge and acquit.

On the part of the prosecution, D.E. Ejeabukwa, Chief State Counsel, adopted the address filed on 6/11/2017 in urging court to convict accordingly.

I have read the processes, the record of proceedings, exhibits and appreciated the written submissions of both counsel as duly adopted.

Both counsel each formulated 4 issues and dwelt on that. I have had the privilege of perusing the addresses and I believe a final decision one way or the other will depend on the determination of the following two issues namely;

- (1) Whether the Prosecution proved the offence of conspiracy as stated in the 1st count beyond reasonable doubt based on law and evidence.
- (2) Whether the Prosecution proved the offence of attempted armed robbery as stated in the 2nd count beyond reasonable doubt based on the law and evidence.

Before delving into the issues, it may be necessary to reinstate some basic fundamentals in order to provide a working tool for evidence assessment and appreciation.

The onus of proof beyond reasonable doubt in criminal cases lies on the prosecution. It does not shift, for indeed the Defendants could choose to remain silent.

See Section 131 of Evidence Act.

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See also the cases of

**UWA VS THE STATE.
2015 8 NWLR PART 1450
Pg 438.**

**AL – MUSTAPHA HAMZA (MAJOR)
VS
THE STATE (2013) 17 NWLR
PART 1383 550.**

The court is however conscious of the fact that proof beyond reasonable doubt does not translate to proof beyond any shadow of doubt. For indeed if the evidence is 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 in the least probable, the case is still said to be proved beyond reasonable doubt.

See the case of Uwa Vs State (Supra).

Due to the fact that the evidence in this case is intertwined in respect of the two counts, I intend to take both issues together.

The first count is that of conspiracy. The offence and particulars thereof are as indicated hereinabove.

Section 5 (b) of the Robbery and firearms (Special provision) Act Cap 398 LFN 1990 provides;

Section 5 – Any person who

- (a) No applicable
- (b) Conspires with any person to commit such an offence, whether or not he is present when the offence is committed or attempted to be committed, shall be deemed to be guilty of the offence as a principal offender and shall be liable to be proceeded against and punished accordingly under this act.

The second count has to do with attempted armed robbery. The relevant section is Section 2 (1) 2 (a) (b) of the same Robbery and Fire Arms (Special Provisions) act Cap 398 LFN 1990.

It provides thus;



Section 2 (1) – Any person with intent to steal anything assaults any other person and at or immediately after the time of assault uses or threatens to use actual violence to any other person or any other property in order to obtain the thing intended to be stolen shall upon conviction under this Act be sentenced to imprisonment for not less than 14 years but not more than twenty years.

Section 2 (2) –

- (a) Any offender mentioned in sub section (1) of this Section is arrested with any firearms or any offensive weapon or is in company with any other person so armed, or
- (b) At or immediately before or immediately after the time of the assault the said offender wounds or uses any other personal violence to any person, the offender shall upon conviction under this Act be sentenced to imprisonment for life”.

The offence of conspiracy consists in an agreement by two or more persons to do or cause to be done an illegal act or a legal act vides an illegal means.

See the cases of

PATRICK IKEMSON & 7 ORS VS THE STATE
1989 1 CLRN 1 at 22 – 23.

ADEYEMI JOHNSON VS THE STATE
2013 3 NWLR PART 1340 Pg 78.

On the other hand and with regards to the count of attempted armed robbery, it is agreed that to constitute attempt, the overt acts must be immediately connected with the possible commission of the substantive offence. There must therefore be a clear intent of overt acts to commit the substantive offence.

See the case of **IDEN VS STATE**
1994 8 NWLR PART 365 Pg 719.

In that wise, it becomes imperative to consider the elements of the offence of the substantive offence which is armed robbery in order to have a clear view of whether there was the offence of attempt.

In the case cited by the learned Prosecuting counsel namely

SAMUEL BOZIN VS THE STATE
1998 1 ACLR Pg 1, Ratio I,



OPUTA JSC (as he then was) delivering the lead judgment held

“On what the Prosecution must prove to establish the offence of armed robbery, there must be proved beyond reasonable doubt.

- (1) That there was robbery or series of robberies.
- (2) That each robbery was an armed robbery.
- (3) That the Defendant was one of those who took part in the armed robbery”.

As rightly further submitted the attempt to commit the full offence must be as near as possible or come very close to committing the full offences.

See also the cases of

OKEKE VS THE STATE
1995 4 NWLR PART 382
Pg 676.

OKPULOR VS THE STATE
1990 2 NWLR PART 164
Pg 581.

See also 573 of the Criminal Code Cap 36 Vol. 2 of the Revised laws of Anambra State of Nigeria 1991 which gives a guide as to the term attempt. It provides thus;

“When a person intending to commit an offence begins to put his intention into execution by means adapted to the fulfillment and manifests his intention to such extent as to commit the offence, it is immaterial as far as regards punishment whether the offender does all that is necessary on his part for completing the commission of the offence or whether the complete fulfillment of his intention is prevented by circumstances independent of his will or whether he desists of his intention, it is immaterial that by reason of circumstance not known to the offender, it is impossible in fact to commit the offence.

In all, I share the Prosecuting Counsel's view that the actus reus and the mens rea are the most important ingredients of the offence of attempt.

From the evidence before the court, there is no direct evidence from the prosecution witnesses with regards to conspiracy. In any case as in most cases,

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this is not usually possible as the court is left usually to deduce that from the circumstances. That is understandable, being in mind that it is said that there is no act to find a man's construction on the face.

It must therefore be reinstated that in proving the case for the prosecution, resort could be had to;

- (a) Direct evidence – i.e. evidence of an eye witness.
- (b) Confessional statement
- (c) Circumstantial evidence.

See the cases of

FATILEWA VS THE STATE
2007 5 ACLR 507 at 514 Ratio 17.

GODWIN IGBOKE VS THE STATE
2006 6 NWLR PART 975 Pg 100.

In the instant case, the only witness that testified as an eye witness was the victim/complainant. According to this witness, he was confronted by only one of the alleged robbers who was wearing a mask over his face. He positively testified and admitted that he could not identify the person. He heard voices outside the room of encounter but did not see any of them. That was PW1.

There was no doubt that he was actually shot on his hand and waist and that he sustained injuries for which he was treated at the Nnamdi Azikiwe Teaching Hospital Nnewi. In fact, upon the arrest of the two Defendants, this witness did not identify any of them as robbers that besieged his house.

PW2, PW3 and the PW4 who was the IPO were not eye witnesses. They came on board after the commission of the offence.

With regards to the issue of conspiracy, the only trump card of the Prosecution was reliance on what they termed confessional statement of the two Accused persons.

Let me pause to reiterate at the risk of repetition for emphasis, that indeed the court was led into conducting a trial within trial to determine the voluntariness or otherwise of the alleged confessional statements. Incidentally, at the end of the trial, it was obvious to the court that the Defendants actually retracted from the statements and so the trial within trial had to be discountenanced bearing in mind the legal position that in a case of retracted confession, the court has to resort to considering the credibility of the retracted confession and weight to attach to it.

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**ADISA WALE VS STATE
2013 14 NWLR (PART 13 75) 567.**

In the course of the trial, the Prosecution through PW4 (IPO) tendered the alleged confessional statement of the 1st Defendant – Ngozi Onuchukwu dated 8th December 2009. It was admitted as Exhibit P2.

The attestation forms by the Superior Police Officers in respect of the said confessional statement were marked as Exhibits P4 and P5 respectively.

The two Defendants maintained that they did not in fact make the said statement. These statements were purportedly made at SARS office. They insisted that it was only at Ukpok Police Station that they made statements but the said statements were not produced by either the police or the Prosecution.

I am aware that the Defence had urged the court to in fact expunge the said statement from evidence alleging that they were admitted in error. Since there was nothing to show compliance with Section 13 (2) of the Administration of Criminal Justice Law of Anambra State 2010 with regards to video coverage and making statement before a retained legal practitioner or relation. Let me say straight away that in my view that law did not say that any purported confession not obtained in accordance with that law is inadmissible as a confessional statement. The section remains merely directive and not mandatory.

Moreover, the facts on the basis of which the court can make that finding one way or the other were not raised at trial. I am minded in the circumstance to discountance that aspect of contention by the Defence.

On point is the fact that a reading and appreciation of the said confessional statement, Exhibit P2 and P3 respectively, show that if the confession is true, that it was a clear admission of the fact of conspiracy between the two Defendants and some others said to be at large. It was also a clear admission of the fact that the offence was truly committed.

But that is not the end of the matter. It is indeed the beginning. As already indicated, the Defendants retracted the said statements, insisting it was not their statement, positioning that their statements were only made at Ukpok police station. Counsel had indeed argued that for a Defendant to both sign and thumb print as indicated on the said statements were in itself suspicious.



Weight and credibility therefore must be resorted to.

Section 34 (1) of the Evidence Act states thus;

"in estimating the weight, if any to be attached to a statement rendered admissible as evidence by this act, regard shall be had to all the circumstances from which any reference can reasonably be drawn as to the accuracy or otherwise of the statement".

There is no doubt that generally, a confession properly and duly so admitted is the best evidence against a Defendant. The court is entitled to convict on that alone, although in practice there is always generally other independent corroborative evidence.

See

UDEDIBIA VS STATE
2007 5 ACLR 430,
Ration 3.

It is true, that the said statement were allegedly attested to by a superior police officer, but the fact remains that truly or as an afterthought, the said statements were retracted.

The Defence counsel in his addresses graciously provided a guide as to the questions that should agitate the mind of the court while considering a confessional statement that was retracted, namely

- (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 facts true as far as they can be tested?
- (4) Was the prisoner one who had the opportunity of committing the offence?
- (5) Is his confession possible?
- (6) Is it consistent with other fact that have been ascertained and proved?

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1st Defendant was arrested on the date of incident and subsequently in his statement to Police, he mentioned the name of 2nd Defendant which prompted his arrest the next day.

Apart from the above which tend to taint the credibility of the said confessional statement putting doubt as to its authenticity, the court is enjoined to access other evidence by Prosecution to see if there is anything that can show that the confession was true or really was enough corroboration.

Let me start with the PW4 (IPO). It does appear with respect that the much the PW4 could do in the process of the investigation was just to allegedly obtain statements. Having received what he perceived to be confessionary, he felt that was the end of the matter.

The prosecution had urged the court to hold it against the Defendants for not inviting the persons they mentioned that caused them to be within the neighbourhood of where the crime was committed. The prosecution probably forgot that the Defendant was entitled to remain silent and yet the burden of proof beyond reasonable doubt will not shift. For indeed it is only thereafter that it is necessary for defence to make explanations to dent the proof.

The DW1 had mentioned the name of the person whom he went to his house in that area to collect N30,000= as part payment for a music programme. He mentioned the name of the church and the priest who had invited him that night for a programme. He mentioned the name of the assistant who held forte for him due to his absence caused by his encounter with the vigilante.

Interestingly the witness was not challenged on this evidence.

The 2nd Defendant was said to be an Okada man – commercial motorcyclist. He was in the area to drop some passengers who went to somebody's house in that area. When he heard gun shots, he abandoned his motorcycle on the track road and ran into his sister's house in that area. Again he was not challenged on that.

The fact of the matter is that the apparent contradictions in this version surrounding the arrest of 1st Defendant and 2nd Defendant the next day gave credence to the version by Defendants.

I recall that 2nd Defendant insisted he abandoned his motorcycle on the road till the morning. He was the one who made report at the police station with regard to the motorcycle and was detained thereafter. That appeared to have given credence to the fact that according to the 1st Defendant, it was at the

station that the 2nd Defendant was brought out and there he saw him for the first time. That version with respect, appeared to make more sense, as it flowed.

An appreciation of the two crucial witnesses for the Prosecution – PW2 and PW3 who are both vigilante at village and town levels respectively showed crucial contradictions as it relates to what transpired at the scene in the course of which the 1st Defendant was arrested and two motorcycles recovered.

Before then, let it be reiterated that for no justified reasons the two motorcycles recovered at the scene, supposedly belonging to the Defendants were never tendered in evidence and identified as such. The court recalls that the 1st Defendant claimed he was in possession of his own motorcycle at the time of the arrest. DW1 has stated that none of the recovered motorcycles at the scene did relate to him.

PW2 is one Basil Nnadi said to be the chairman of the Ohi na eleke village, vigilante, Ukor. The details of his evidence has already been summarized. He claimed only to know 1st Defendant. According to him they were on patrol at about 8.30pm. They heard gun shot and people crying. He also received distress phone call. They moved towards PW1's house. They were on foot. At the track road into PW1's house, they saw two motorcycles and also saw PW1 who was shot at by hoodlums. They chased the robbers and apprehended 1st Defendant. It was they that invited the Central Vigilante, who came and assisted.

PW3 – Sunday Okoye is also a member of the said Central Vigilante, Ukor. On that day he was with his team. They rushed to the scene after receiving calls. There, they heard gunshots. They saw the Defendants and one Chinyeaka in the house of PW1. When they saw them, the Defendants ran, jumped across the fence but they succeeded in catching up with the 1st Defendant.

From the totality of the evidence of PW2 & PW3, the material contradictions were in the following areas.

1. PW2's team claimed to have been at the scene first, while the PW3 claimed that it was his team that got there and intervened.
2. Interestingly whereas, PW2 claimed to have phoned PW3 & Co to come to assist, the PW3 emphatically denied under cross-examination of seeing PW2 at all at the scene.

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