

IN THE HIGH 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
THURS THE 7TH DAY OF JUNE 2018.

SUIT NO HN/22C/2016:

BETWEEN:

THE STATE : : : : : **COMPLAINANT**

AND

PAUL MATHEW : : : : : **DEFENDANT**

JUDGMENT

The initial charge in respect of this case was filed on 14th June 2016. It was a one count charge of the offence of burglary contrary to Section 378 and Stealing contrary to Section 353 (12) of Criminal Code, Cap. 36, Vol. ii Revised laws of Anambra State, 1991 (as amended). The particulars of offence were supplied.

Plea was taken on 30th January 2017. The Defendant pleaded not guilty. Actual trial started on 15th March 2017 with the evidence of PW1. Altogether three (3) witnesses testified for the prosecution. The prosecution tendered one (1) exhibit. The case of the prosecution was closed on 14th November 2017.

Before the Defence opened, the prosecution sought leave to amend the charge by way of substitution. This was not opposed and was granted as prayed. That saw the birth of the Amended Charge deemed filed on 6/12/2017 which become the subject matter of the trial. The Amended charge reads thus;

STATEMENT OF OFFENCE

AIDING, Contrary to Section 4 (1) (c) of Criminal Code, Cap 36, Vol. ii, Revised laws of Anambra State, 1991.

PARTICULARS OF OFFENCE

Paul Mathew on the 14th day of October, 2014 at Okpuno Otolo, Nnewi in Nnewi North Local Government Area within the Nnewi Judicial Division being the security guard of one Chief Donatus Obieze aided one Tochukwu and



Ogbonna now at large to enter the dwelling house of one Chief Donatus Obiezie by opening the gate for them with intent to commit a felony therein, namely to steal therein, and did steal therein one Jianshe Motorcycle with registration No. JJT 926 QC valued N110,000 (One Hundred and Ten thousand Naira) and one Sumec Fireman Generator valued N35,500 (Thirty five thousand Naira), property of one Okechukwu Chijioke and one Busca Jaguar Motorcycle with registration No JJT 721 QE property of one Paul Okafor valued N120,000 (One hundred and twenty thousand Naira).

On the said 24/1/2018, the Defendant pleaded not guilty to the charge as amended.

The Defence opened on the same 24/1/2018 with the evidence of the Defendant who testified as DW1. He was a lone witness. No exhibit was tendered or admitted.

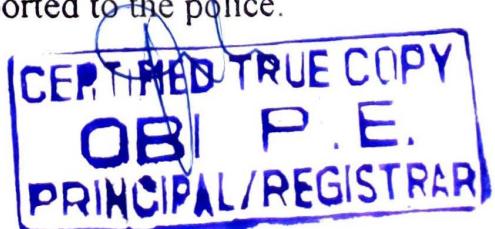
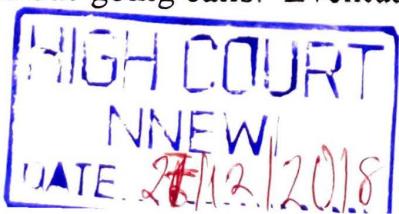
The evidence before the court can be summarized thus:

PW1 was one Okechukwu Chijioke Martin. He told the story of how on 14/10/2014 at about 6:00am his apprentice called Chibuzor Asogwa informed him that he overheard PW1's neighbor discussing that thieves came to their premises and stole generator, motorcycle and other things. PW1 immediately went downstairs to where his motorcycle Jianshe Motorcycle – Reg. No JJT 926 QC valued at N110,000.00 was parked and discovered that it has been stolen. He also noticed that his generator valued at N35,500.00 was stolen. It was also discovered that one Jaquar Motorcycle belonging to Paul Okafor was also stolen.

The tenants tried to trace how the thieves gained access to the compound to no avail. The security man who lives by the gate was summoned and queried. Their landlady, at that point came down and stated that she was calling the security man on phone to put off generator at night but he did not answer.

The said security man stated that he did not answer because his phone was with his brother. He further said that the thieves cut the keys to the gate in order to gain entrance.

PW1 contended that one of their neighbors confirmed that he called the security man on phone around 1:00am and he answered. He stated that the security man's phone was retrieved and it was discovered that he had deleted his received and out-going calls. Eventually, he was reported to the police.



Under cross-examination by the defence counsel PW1 conceded that the official time for locking the gate of their premises is about 10pm but he comes back to the compound at about 7 pm daily. He confirmed that the compound has two gates.

PW1 maintained that in the course of interrogation of the Defendant, one Izuchukwu said that he called the Defendant around 1:00am to open the gate for him and not 10pm as suggested by the defence counsel. He maintained that the Defendant opened the gate at the said 1:00am and Izuchukwu came in with his motorcycle but it was in the morning around 6:00am that they discovered the missing items.

PW1 conceded that the alleged call by their landlady to the Defendant was before 1:00am but added that he was not present when the call was allegedly made. He agreed that nobody saw the Defendant removing any item from the compound. However PW1 insisted that he did not see the padlock to the small gate which the Defendant said was cut and that he did not know who alerted the tenants over the missing items.

PW2 was one Sgt. Willie Udeme – Force No. 446375 attached to SARS Nnewi. His version was that on 14/10/2014, a case of burglary and stealing was reported to his office for investigation by one Paul Okafor and Okechukwu Chijioke against the Defendant.

PW2 recorded statements from the two complainants and the Defendant was subsequently rearrested, charged and cautioned. PW2 stated that the Defendant made two confessional statements on 17/10/2014. However the first statement was attested to by the S.P.O. though not countersigned by PW2. It should be noted at this point, a trial within trial was conducted to determine the voluntariness of the said confessional statements. It was found by the court to be involuntary and was therefore rejected. PW2 wrote police investigation Report. A copy the said police investigation Report was admitted and marked as Exhibit P1. However it was noted by the court that the said Report was not signed.

Under cross-examination, PW2 conceded that the motorcycle handed over to the police was not recovered at the scene of the crime. He however admitted that two motorcycles belonging to the two complainants were allegedly stolen. He confirmed that the motorcycle found along Amukor road belonged to one of the complainants, Chijioke and was released on bond to him. He confirmed that it was only the two complainants that he invited to their office and that none of them told him that they witnessed the Defendant commit



the offence. He further admitted that the Investigation Report was not signed but had their commander's name on it.

PW3 was one Paul Okafor. He told the story of how on 14/10/2014 at about 7:00am, the Defendant knocked on his door and notified him that his motorcycle had been stolen. The motorcycle make is BOSKA (red) with Reg. No JJT 721 QE. When the PW3 asked him where he was when the motorcycle was stolen, he did not give a reasonable answer. When further asked about his phone he stated to have given it to his brother around 4 pm the previous day.

PW3 alleged that one of their neighbours said that he came back around 10pm and that the Defendant who he called as at then answered and opened the gate for him. When the Defendant was asked to provide the phone he answered the call with, he gave no response.

PW3 thereafter collected the phone he saw the Defendant with but discovered that the call log had been deleted. He also saw a padlock that was cut and kept on the ground at their small gate. He however observed that it was an old key cut at the generator house.

PW3 contended that it was all these that convinced him that the Defendant actually stole the motorcycle. He made statement at the SARS police Nnewi.

Under cross-examination, PW3 admitted that they have a specified time for closing and opening the compound gate which is 10pm to 6am. He confirmed that the said Izuchukwu whom the security man opened the gate for on the day of the incident is a tenant and not an apprentice to a tenant. He also confirmed that the small gate of the compound has a different padlock from the main gate.

PW3 conceded not having seen the Defendant cut the padlock or steal the machines or any item at all and that he only believed that he committed the crime because he as the one that woke him up to notify him about the missing items.

With the conclusion of the evidence of PW3 on 14/11/2017, the prosecution closed their case.

Defence opened on 24/1/2018 so soon after plea to the amended charge was taken.



The defendant testified as DW1. His evidence in defence is to the effect that on 14/10/2014, around 6am, some unknown persons he thought was the apprentice to one of the tenants who normally go out early to the market, entered the compound.

DW1 on coming out to open the gate discovered that the padlock had been cut. He also noticed that the padlock to the generator room was also cut and one of the generators missing. He then went to where they park motorcycle but did not see the motorcycle. He alerted one Innocent, a tenant and told him that his motorcycle was nowhere to be found.

Innocent rushed to the gate where he discovered one stolen motorcycle abandoned at the gate. He also recovered an abandoned slippers by the thieves. The said Innocent then questioned the Defendant about the missing motorcycle, alleging that the Defendant stole it.

DW1 alleged that his Boss one Donatus Obieze requested that Innocent should take it easy but he refused. The Defendant added that he and Innocent have had problems in the past when Innocent spoilt his phone. He conceded that the missing motorcycle belonged to Innocent though he was being referred to as Paul Okafor in the charge.

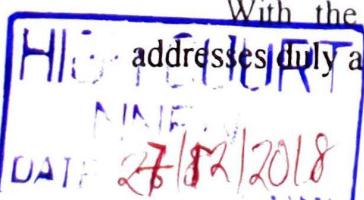
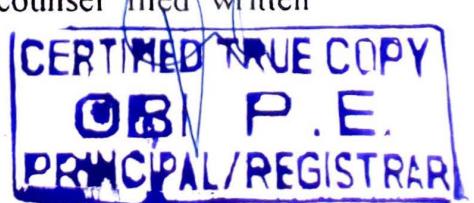
DW1 stated that Innocent invited the police who came and arrested him. He conceded to have made statement to the police.

Under cross-examination, DW1 confirmed that two motorcycles and one generator were reported missing in the course of his duty as a security man. He stated that he found out that the said items were missing around 6:30am. He denied knowing or meeting one Tochukwu and one Ogbonna (now at large) at a wedding which took place in the compound on 11/10/2017.

DW1 maintained that he opened the gate on the said day by 7am. He agreed that the motorcycles were parked under the staircase while the generator was inside the generator house. He however denied deleting his call log that morning.

DW1 reinstated that he is not the only one with the keys to the gate padlock but he is the one that usually locks and opens the gate daily. He also denied to have opened the gate for Tochukwu and Ogbonna to enter the compound and steal the missing items.

With the close of the case for Defence, both counsel filed written addresses duly adopted as final addresses on 25/4/2018.



I have read the record of proceedings, exhibits and appreciated the legal submissions of both learned counsel.

It is conceded that only one issue really arises for determination namely,

"Whether the Prosecution has proved the case beyond reasonable doubt to warrant the conviction of the Defendant"?

The Defendant is charged under Section 4 (1) (c) of the Criminal Code, Cap 36, Vol. II, Revised Laws of Anambra State 1991

It provides thus; Section (4) – When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence and may be charged with actually committing it, that is to say;

(c) "*Every person who aids another person in committing the offence.*".

In the instant case, the Defendant was said to have aided one Tochukwu and Ogbonna now at large, to enter the dwelling house of one Chief Donatus Obiezé by opening the gate for them with intent to steal, and they actually stole two motorcycles and one generator belonging to the tenants in the compound.

There is no doubt that the burden in criminal cases is for the prosecution to prove the guilt of the accused person beyond reasonable doubt. See **OSUAGWU VS THE STATE 2013 MRSCJ Vol. 20**. See Section 138 of the Evidence Act. This burden does not shift. It is also settled that in going about the process of discharging this burden thrust upon the prosecution, they could do so by one or more of the following ways namely;

1. Evidence of eye witness to the crime.
2. Confessional statement of the Defendant
3. Circumstantial evidence.

See the case of **DAU VS STATE (2016) 7 NWLR PART 1510 Pg 83, Ratio 3.**

In the instant case, from the totality of the evidence before the court, it is clear that the Defendant did not make a confessional statement. This is so because the voluntariness of the Defendant's confessional statement was successfully put in issue and the statement was rejected. Also there was no eye witness to the commission of the crime. All that the case of the state is hinged upon is circumstantial evidence.



The question at this point is whether the prosecution proved the case beyond reasonable doubt so as to warrant the conviction of the Defendant.

The Defendant is basically charged for the offence of aiding one Tochukwu and Ogbonna in the commission of the alleged offence.

PW1 was one of the complainants whose items allegedly got missing. In his testimony, he never mentioned the alleged Tochukwu or Ogbonna. It was clear from the evidence in chief of PW1 that the reason why the Defendant was reported was that he was being suspected since he was the security man that was in charge of the house. Indeed under cross-examination, he, the PW1 has this to say

Q – Did you see the Defendant remove your motorcycle or generator?

Ans – I did not but he is the security man.

Q – Did any neighbor say he saw him?

Ans – Nobody saw him and nobody said he saw him.

PW2 was the IPO. His trump card was the extra judicial statement held out to be confessionary. Incidentally consequent upon a trial within trial, the State statement were rejected on grounds of being involuntary and marked Rejected 1 & 2.

One of the missing motorcycles belonging to Okechukwu Chijioke was said to have been recovered by Vigilante men as abandoned on the road and released on bond to him.

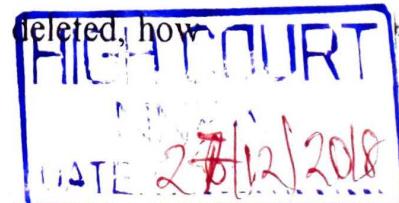
Hear the PW2 under cross-examination,

Q – None of the complainants told you that they saw the Defendant commit the offence?

Ans – They did not say so. They were only suspecting him.

Again the said PW2 did not say anything about the alleged Tochukwu or Ogbonna, who were the people allegedly aided.

The 3rd and last witness for the prosecution was PW3 i.e. Paul Okafor. In his evidence in chief, he alleged that he collected the phone of the Defendant and found out that incoming calls were deleted. If the calls were deleted, how



he knew the numbers that constituted expected incoming calls that were missing, the court was not told. He made some observations with regards to the keys that were cut. For these two reasons, he stated that he was convinced that it was the Defendant that stole.

Incidentally, the charge against that Defendant is not for stealing. But more importantly is the fact that this same PW3 did not mention the two people that were alleged to have been aided in committing the offence.

Under cross-examination, the PW3 stated ,

Q – You are only suspecting the Defendant?

Ans – I believe he was the one because he woke me up to notify me that the machine was missing.

On his part, the Defendant denied the charge, insisting that he knew nothing about the stolen items. He maintained and insisted under the rigours of cross-examination that he did not know the said Tochukwu and Ogbonna allegedly the actual culprits.

From the totality of the evidence before the court, it is clear that nothing was said about the existence of the said Tochukwu and Ogbonna, whom the Defendant allegedly aided. Were they really in existence or manufactured just for this case? This question continued yawning for answer and there was no respite.

The Defendant stood his ground on this issue. As it were, it is doubtful if such persons existed as far as this case was concerned. How then the Defendant can be found guilty of aiding non-existent people, even as circumstantial evidence, I am yet unable to appreciate.

The Defendant who was the security man, from inception insisted that he was not the only person that had the keys to the premises. Under cross-examination, he stated thus;

Q – You are the only one that has the keys to the gate padlock?

Ans – It is not only myself.

The others having the keys are Chibuzor and Izuchukwu. The Defendant was resolute on this issue and that aspect of evidence remained unchallenged.



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In the case of MATANMI & ORS VS DADA & ANOR 2013 CPELR
19929 (SC) IT WAS STATED

*"Unchallenged evidence is deemed to be correct
and be acted upon by the court".*

The evidence was clear. There were many other tenants within the premises. Even the landlord could not make himself available for interview. The only reason why the Defendant was being suspected was that he was the security man in charge. Indeed all the prosecution witnesses were clear that they were just suspecting the Defendant.

Incidentally, there was no clear positive evidence to make the suspicious shift to proof at all. It remained suspicious. It is settled, that suspicion, no matter how strong cannot constitute proof beyond reasonable doubt. See the case of

**STATE VS OGBUBUNJO 2001
13 WRN 1.**

It is human that the Defendant who was the security man should in the circumstances have a first line suspicion. But in the absence of any further evidence, the suspicion remained suspicion. As I had stated earlier, the alleged suspects who were alleged aided, were not even shown to be in existence at all. Obviously, the Defendant is entitled to a benefit of doubt.

It is for the above reasons that I come to the irresistible conclusion that prosecution really and obviously failed to prove the case beyond reasonable doubt. The lone issue is so resolved.

In consequence, the Defendant Mr. Paul Mathew is hereby discharged and acquitted.


O. M. ANYACHEBELU.

Judge.

7th June 2018.

*Attestation
Certified & Recd at Addo
polo Ad 200 Qm 27-12-18 pd on co do
1086655*

Parties – The Defendant is present.

Appearances – E. V. Edu Esq., Senior State Counsel, for the State.

C. C. Akor Esq. for the Defendant is absent.

