IN THE HIGH COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA
BEFORE HIS LORDSHIP, HON. JUSTICE M.N.O. OKONKWO
ON WEDNESDAY, THE 11TH DAY OF OCTOBER, 2017

CHARGE NO. O/11C/2016

STATE

VS.

1. *ANAYO NWACHUKWU*
2. *MADUABUCHUKWU ELOM*

JUDGMENT

On the 18th day of February, 2016, the State filed an information which was accompanied by proof of evidence against the Defendants. In the said information, the Defendants were charged for conspiracy to commit felony and armed robbery pursuant to Sections 6(b) and 1(2)(a) of the Robbery and Firearms (Special Provisions) Act, Cap. R11, Laws of the Federation of Nigeria, 2004. The name of the 1st Defendant was struck out from the charge on the 22nd day of March, 2016 on application by the prosecution who stated that he (1st Defendant) was released on bail and he went for another armed robbery and met his death. By striking out the name of the 1st Defendant, the 2nd Defendant, Maduabuchukwu Elom became the sole Defendant in the information filed by the state. The plea was taken and the Defendant pleaded not guilty to each of the counts of the information. Three witnesses testified for the prosecution – PW1, PW2 and PW3. DW1 and DW2 testified for the Defendant. The case of the prosecution, in summary is that on

20/10/2012 in the evening hours, the PW2 (Jude Ani) and his wife Nwakaego Nnadi were walking down along Owerri Road when three men blocked them with motorcycle. The three men at gun point asked the PW2 and his wife to hand them everything on them. The PW1 gave them his bag containing some documents and money including pictures. After robbing the PW2 and his wife, the three men drove away with their motorcycle. The PW1 started shouting "thief, thief" and people started coming to the scene. The security people (vigilante) came by and told the PW1 to go and that they must get the robbers. The vigilante men led by PW1 trailed the robbers. When they got to St. Luanga Hospital gate, they saw the robbers robbing people with pistol. The vigilante men pursued them and they ran away on seeing the vigilante men. The robbers were pursued to Ede Road where the robbers stopped, packed their motorcycle and ran away. The vigilante men searched for the robbers and saw the rider of the motorcycle where he hid himself inside a "Keke Napep" that was parked nearby. They arrested him. The present Defendant was the person arrested inside the "Keke Napep" and he told the vigilante men where his other gang members were. With the assistance and co-operation of the Defendant, the girl friend of their leader and Anayo Nwachukwu, whose name as 1st Defendant was struck out were arrested. The present Defendant was the one that drove the motorcycle during the robbery operations. Early the next day (21/10/2012), the PW2 went to the police station to make a report of the incident and saw the security people. The people arrested by the security people at night were produced and he identified them as those that robbed him and his wife. He saw only two of the suspects but did not see the 3rd person. The two persons arrested started begging the PW2 saying

that they were sorry. The PW2 knew the two arrested suspects but knew the place of only one of them at Okpoko before the incident. All efforts made to arrest Ebuka, the gang leader who escaped with their operational weapon proved abortive.

The Defendant denied committing the offences. He was living at No. 13 St. Charles, Luwanga Street, Okpoko before this incident and was the Commander of Man O' War, Ogbaru Zone. The Defendant before the incident, did not know the people allegedly robbed. The Man O' War control Traffics and worked in collaboration with the Police. On 20/10/12, the Defendant was in his street at Ede Road, Okpoko. The vigilante men came to the street and were arresting motorcycle riders at the junction of the road. The Defendant came there and asked them why they were arresting the motorcycle riders. He was asked what was his concern with those arrested and informed him that there was a robbery incident along Owerri Road. The Commander of the vigilante people asked the Defendant to step out otherwise he would deal with the Defendant. The Defendant insisted on knowing why the motorcycle riders were being arrested. They entered into a form of argument. The vigilante Commander's men started beating the Defendant for exchanging words with their boss. The Defendant started to defend himself and one of the vigilante men gave him a matchet cut at his leg. As the defendant was dragging with them, they called their Hilux van, put him there and took him to their office at Awalite Street, Okpoko where they started beating the Defendant again. The Defendant called the vigilante boss and wanted to know why he was being embarrassed and disgraced but the boss asked the Defendant if he would challenge him again. The Defendant was asked to bring out the

gun which he normally used for robbery but he told them that he was not a robber. The vigilante people took the Defendant to Okpoko Police Station where he was asked to write a statement at the anti-crime office. The Defendant wanted to write his statement but was told that he would not write it himself. One police officer came and asked what was happening and they told him that the defendant did not want to write his statement. The officer started beating the Defendant and pushed him into a dirty pool of water. He was taken to the police cell but he refused to give statement to them to record. The next day, the Defendant was taken to SARS office where he was hanged with his two hands tied to his back. The Defendant was, on the next day transferred to Awkuzu SARS. He was put inside their Awkuzu cell and threatened to be killed if he refused to say the truth. The Defendants were taken to Ogbaru Magistrate Court. He denied all the charges at the Magistrate's Court and from there he was sent to prison. The Defendant did not know the name of the IPO but he was called "Itego." The Defendant never had any problem with the vigilante security commander, Victor Okpara (PW1) as both of them had been co-operating.

At the close of the case for the Defendant, both learned Counsel for the Defendant, P.O.T. Okeja, Esq. and that for the prosecution, A. J. Muojeke, Esq. each filed their final written address. Their said final written addresses were adopted as argument and submissions against and in support of the information. The learned defence Counsel prayed the court to discharge and acquit the Defendant on the ground that the prosecution has failed to prove the charge against the Defendant beyond reasonable doubt as required by law.

The learned prosecution's Counsel, on his part, prayed the court to convict the Defendant and sentence him accordingly since the prosecution has proved the case against the Defendant beyond reasonable doubt.

When the prosecution sought to tender the statement allegedly made by the Defendant to the police, the learned defence counsel P.O.T. Okeja, Esq. objected on the ground that it was obtained under torture and was not confessional. He also prayed the court to conduct a trial within trial to determine the confessional nature of the statement and referred to the case of ***LT. COMMANDER STEVE OBISI VS. CHIEF OF NAVAL STAFF (2004) ALL FWLR (Pt. 215) 192.*** *I over-ruled him and admitted the statement as "Exhibit A" and stated that I would determine the probative value to be attached to it in this judgment when the Defendant must have testified in his defence and stated the nature and form of the torture under which he made "Exhibit A." The Defendant testified in chief as to how "Exhibit A" was obtained in the following form.*

"- - - I was later asked to write a statement at the anti-crime office. I asked why I should make a statement. He asked me to comply that he knew me very well. I wanted to write but he told me that I won't write by myself. One of the officers came and asked them what was happening between us. He told him that I did not want to write statement. The officers started beating me and pushed me into a dirty pool of water. I was later taken to the police cell after beating me and I refused to give statement to them to record. The

and was threatened to be killed if I refuse to say the truth. The next thing was that we were taken to Ogbaru Magistrate Court - - -." Under cross-examination, the Defendant had this to say.

"Q. In your evidence-in-chief, you told the court that you were taken to Okpoko Police Station and SARS, Okpoko. Is that correct?

Ans. It is true.

Q. Put: You made statements in both Okpoko Police Station and SARS, Okpoko?

Ans. I did not make statement at the two places. I only made at SARS.

Q. Can you tell the court the names of the officers at Okpoko and SARS Police Station that were forcing you to make statement?

Ans. I do not know any other officer at the two stations except "Itego" that wrote my statement."

The first observation from the testimony of the Defendant is that the beatings, hanging etc were because he refused to make statement hence they were trying to force him to volunteer a statement. The beatings were not to extract any particular piece of information from him or to coerce him to accept and adopt any evidence as his. The Defendant was threatened to be killed if he refused to say the truth at SARS, Awkuzu. But he was not threatened to be killed if he refused to accept committing the crime. It follows that whatever he told the police after the threat was the truth assuming the threat made him to tell the truth. In any case, the Defendant did not make any statement at Awkuzu SARS hence, the threat achieved nothing as he admitted making statement only at Okpoko SARS.

The Defendant did not know any of the officers that were forcing him to make statement and he did not allege that "Itego" that took his statement tortured him. He did not call anybody to testify on his alleged torture. In the circumstance, I am of the humble view that "Exhibit A" was not obtained by torture but was voluntary.

Where a confessional statement of an accused person contains lucid details as to his background, graphic description of his day to day activities, it underscores the point that it is the Defendant that gave same to the police and the statement is voluntary. See ***KAYODE VS. THE STATE (2016) 7 NWLR (Pt. 1511) 199 at 237.*** *In the instant case, "Exhibit A" contains details of the Defendant's background – name, age, sex, tribe, home town, all about his life prior to his arrest. The Defendant did not meet or know the police officer (Itego) that took his statement before his arrest, hence, there was no way the said officer would know his (Defendant's)personal details and all the other contents of "Exhibit A" if he was not the one that told him. Besides, there is no evidence to the contrary. I am also of the view that non compliance with Section 13 of the Administration of Criminal Justice Law of Anambra State 2010 cannot an does not render "Exhibit A" inadmissible as admissibility of evidence is governed by the relevance of the item sought to be admitted. See* ***Sections 14 and 15 of the Evidence Act, 2011; OGU VS. M. T. & M.C.S. LTD. (2011) 8 NWLR (Pt.1249)345 at 371.*** *Without belabouring the issue, I am of the opinion that "Exhibit A" was properly tendered and received through the PW3. This is because PW3 is not only a member of the Nigerian Police Force but also a member of the team that investigated this case. See* ***Section 214(1) of the 1999***

Constitution of the Federal Republic of Nigeria as amended; AWOSIKA VS. THE STATE (2010) 4 NWLR (Pt. 1198). *It is necessary to add that mere denial of making or signing a confessional statement by an accused person is not sufficient ground on which to reject its admissibility in evidence when properly tendered. Also, where an accused person merely disputes the correctness of a confessional statement or states that he made no statement at all (as in the instant case) it is not necessary to conduct a trial – within-trial. See* ***IGAGO V. STATE (1999) 14 NWLR (Pt.637) 1; MADJEMU V. STATE (2001) 9 NWLR (Pt.718) 443.***

The learned defence Counsel had submitted that, there was improper identification of the Defendant as no identification parade was conducted in accordance with the law. In the instant case, the PW1 and his team allegedly arrested the Defendants and handed him over to the police. The PW1 and his team pursued the Defendant and his alleged robbery gang members after they had allegedly robbed the PW2 and his wife. They saw the Defendant and his gang while allegedly committing the second robbery. The Defendant fled from the scene of the 2nd robbery and was pursued and apprehended and handed over to the police before the PW2 (the victim of the robbery) came to the police station. The Defendants were brought out and he identified them as those that allegedly robbed him and his wife. Prior to the incident, the PW2 knew the Defendant and where he was living. He did not however know the Defendant by name. In the circumstance, the issue of identification parade becomes not imperative and does not arise. See ***OLANIPEKUN V. STATE (2016) LPELR – 40440 (SC).*** *It is*

also not necessary for the PW2 to mention, in the circumstance, the name of the Defendant to the police when he came to the station and saw the Defendant already in police custody. That would have been necessary if the Defendant was still at large in such a situation, it would have been wise for him to say the name of the person he was suspecting or to describe him. In ***UDE V. STATE (1999) 7 NWLR (Pt.609) 1 at 19 – 20, Paras. H – A, 25 Paras. F – H,*** *it was held that failure to mention the name of a suspect to the police at the earliest point will not be fatal where there is nothing in the evidence to show that the witness knows the name of the Defendant although he must have known him for long. It is not in every case that identification parade is necessary. Where the prosecution witness has knowledge of the accused person, identification parade is not necessary. See the case of* ***OCHIBA V. STATE (2011) LPELR – 8245 (S.C.); OLANIPEKUN V. STATE (supra). In the case of SADIKU V. STATE (2013) 11 NWLR (Pt. 1364) 191 at 213,*** *it was held that identification parade is useful and indeed essential wherever there is a doubt about the power of a witness to recognize an accused person or when the identification of the accused person is in dispute. It is not necessary where the witness knew or was familiar with the accused or suspect well before the alleged crime was committed. The Supreme Court went further, in this case, to state the circumstances under which an identification parade is necessary to include -*

(1) the accused was not arrested at the scene and denies taking part in the crime; or

(2) the victim did not know the accused before the offence; or

(3) the victim was confronted by the accused for a very short time; and/or

(4) the victim due to time and circumstances must not have had full opportunity of observing the features of the accused.

In the present case, the Defendant was arrested by the PW1 and his team while escaping from the scenes of the robberies; the PW2 (the victim) knew the Defendant and where he was living before the offence was allegedly committed and the victim observed the alleged robbers very well and was even able to describe the physique of the fleeing suspect. Under such a situation, identification parade becomes totally unnecessary and I so hold.

In the case of **AUGUSTINE ONUCHUKWU & 2 ORS. V. THE STATE (1998) 4 NWLR (PT. 547) 576 at 590, Paras. D – E,** it was held that where there are contradictions and inconsistencies in the evidence before a criminal court such as to cast reasonable doubt upon the guilt of an accused person, such accused person should not be convicted on the basis of such unreliable contradictory and inconsistent evidence. Based on this, the learned Counsel for the Defendant pointed out what he considered as contradictions and inconsistencies in the evidence of the PW1 & PW2. These, according to him, include that the PW1 in his evidence in court did not see or witness the 1st robbery but said in his statement at SARS that he and his men saw the robbers in operation along Onitsha – Owerri Road by Enamel and not by Lake Filing Station; that the PW1 said that the incident happened on 21/10/12 in the evening hours (between 7.45 pm and 8.30 pm). The PW2 stated in his statement at SARS that the incident happened while they

were going to his wife's house to give the wife's father a burial invitation while in his statement at Okpoko Police Station, he stated that it happened while they were returning from the wife's shop at Awada; the PW2 also said that he knew the robbers and their places before the incident but said under cross-examination that he knew two of them but that it was only one of them that he knew his place; also that the PW2 never said in his two statements that the robbers fired gun but stated under cross-examination that one of the robbers fired his gun; that the PW3 stated in his evidence-in-chief that he was a member of the team that investigated the case but admitted under cross-examination that he was not the IPO and did not record the statement of the Defendant. These, are the main contradictions and inconsistencies in the evidence of the prosecution witnesses which the learned Counsel for the Defendant submitted have cast reasonable doubt on the guilt of the Defendant hence he should not be convicted.

I have thoroughly read the statements of the PW1 and PW2 at the various police stations and their evidence in court. The date of the incident was 20/10/2012 and the incident happened along Onitsha-Owerri Road. The PW2, who was the victim, did not contradict himself on any material point in this regard. Even the PW1 clearly classified that the report was made to them in the late hours of 20/10/12 but at the time they arrested and took the Defendants to the police station at Okpoko, it was already 21/10/12 and that he indeed made his statement in the morning hours of 21/10/12. It is common knowledge that a new day starts after 12 midnight. The PW1 thoroughly explained this under cross-examination and I do not need to produce same here.

Whether the PW2 and his wife were coming from the wife's shop at Awada or going to deliver burial invitation to the wife's father, to me is not material to the information or as to whether an offence was committed or not. I do not also see any contradiction (not to talk of its being reasonable) in the testimony of the PW3.

In any case, it is not in all cases where there are discrepancies or contradictions in the prosecution's case that an accused person will be entitled to an acquittal. It is only when the discrepancies or contradictions are on material point or points in the prosecution's case which creates some doubts that the accused is entitled to benefit therefrom. See the case ***of WANKEY V. THE STATE (1993) 6 SCNJ (Pt. II) 152 at 161.*** *In the case of* ***NAMSOH VS. THE STATE (1993) 6 SCNJ 55 at 68****, it was held that "for any conflict, contradiction or mix-up in the evidence of the prosecution witnesses to be fatal to a case, the conflict or mix-up must be substantial and fundamental to the issues in question before the court." Having considered the "conflicts, contradictions, discrepancies or mix-up" in the prosecution's case as pointed out by the learned defence Counsel, I am satisfied that they are not on material point(s) in the prosecution's case and did not create any doubt in the court's mind hence the Defendant cannot benefit therefrom. I also hold the view that they are not* ***substantial*** *and* ***fundamental*** *to the issues in question before the court hence they are not fatal to the prosecution's case.*

The Defendant, in his evidence-in-chief stated that on 20/10/12 (i.e. the day of the incident) he was at his street at Ede Road Okpoko. The incident was said to have taken place along Onitsha – Owerri Road. By implication, the Defendant has raised a

defence of **alibi**. He is impliedly saying that he was not at the scene of the crime. A person who intends to raise the defence of alibi should do so at the earliest opportunity and furnish sufficient particulars to enable the police to check on it. See **OMOKRI V. C.O.P. (1966) 2 A.N.L.R. 1 at 11; HAUSA V. THE STATE (1992) 1 NWLR (Pt. 219) 600 at 609.** The Defendant in this case did not tell the police, when he was arrested, that he was not at the scene of crime. He raised this issue in his evidence in court hence he did not raise it at the earliest opportunity. It has also been held that where an accused person did not give the particulars of the place he was at the time of the offence, the names of those who were with him and the time they were together, at the time of the alleged offence, it is not the duty of the prosecution to go on a wild goose chase. See **OGUORA V. THE STATE (1991) 2 NWLR (Pt.175) 509 at 534; AGENU V. THE STATE (1992) 7 NWLR (pt. 256) 749 at 763.** In the instant case, the Defendant merely stated that he was at his street at Ede Road, Olgpoko without the number of the place, the names of the people with him and the particular time. In the light of the above, he cannot be availed of the defence of **alibi** and I so hold. See also **UDE V. STATE (2016) 14 NWLR (Pt.1531) 130, ANYANWU V. STATE (2012) 16 NWLR (Pt. 1326) 221 at 288 - 289.**

From the evidence adduced in support of the case for the prosecution, it was the man at the middle of the motorcycle that had the operational weapon of the gang. The said man at the middle was identified as "Agamba." The said "Agamba" escaped with the operational weapon and is still at large despite all efforts to trace and arrest him by both the police and the vigilante men. In such a situation, it becomes impossible to tender the gun

allegedly used in the robbery. There is, however, no principle of law requiring the tendering of the weapon(s) used in an armed robbery to establish the guilt of an accused person. Once the prosecution proves the ingredients of armed robbery as required by law, failure to tender the operational weapon cannot result in the acquittal of the accused person. See ***OLAYINKA V. STATE 30 NSCQR 149 at 172 – 173; ALABI V. STATE (1993) 7 NWLR (Pt 307) 511.*** *The production and tendering of the items allegedly stolen in a robbery incident is not one of the elements of the offence hence they need not to be produced and tendered in evidence to ground a conviction. See* ***UWA V. STATE (2013) LPELR – 41275.*** *In the instant case, the items allegedly stolen were not recovered. It is also necessary to state that failure to prove with certainty the exact amount allegedly stolen is not fatal to the prosecution's case. See* ***NWOMUKORO V. STATE (1995) 1 NWLR (Pt. 372) 432 at 448 – 449.***

The offence of armed robbery can be established by proof of the ingredients of the offence. The said ingredients or elements of the offence are –

(a) that there was a robbery or series of robberies;

(b) that each or any of the robbers was armed at the time of the robbery operation;

(c) that the accused was one of the robbers or had taken part in the robbery operation.

See ***AKWUOBI V. STATE (2017) 2 NWLR (Pt. 1550) 421 at 453, paras. A – D; EFFIONG V. THE STATE (2017) 2 NWLR (Pt, 1549) 205; BOZIN V. THE STATE (1985) 2 NWLR (Pt. 8) 465.***

In the instant case, the PW2 testified on how he and his wife were

robbed along Onitsha-Owerri Road by a three-man gang operating with one motorcycle. There is also ample evidence of a subsequent robbery by the same gang. This piece of evidence of subsequent or second robbery by the same gang came from the PW1, the Commander of the Okpoko vigilante group who pursued the gang and arrested the Defendant where he hid in a keke after dropping his two accomplices. Both the PW1 and the PW2 (victim of the robbery) testified that one of the robbers had a gun. Indeed, the PW2 was emphatic that it was the one at the middle whom the Defendant identified as (Agamba) that had a pistol. The PW2 also described the man with the gun as "the black one with marks on his cheeks" and that they were three on the motorcycle. The Defendant, from the evidence, was the one that was driving the motorcycle. Prior to the incident, the Defendant was a commercial motorcyclist from the evidence adduced by the PW1 and PW2 coupled with the statement of the Defendant, "Exhibit A." There was indeed a robbery or series of robberies and that one of the robbers was armed at the time of the robbery operation. The Defendant, from the evidence, was one of the robbers, though he was not the one with gun but the driver of the motorcycle. ***By Section 4 of the Criminal Code Law Cap 36, Laws of Anambra State 1991****, the Defendant participated or took part in the robbery regardless of the degree of his participation in the commission of the offence. See also the case of* ***IYARO V. THE STATE (1998) 1 NWLR (Pt.69) 256.***

Generally in order to prove the guilt of an accused person, the prosecution has to do so in either or all of the following ways:-

(a) by evidence of eye witness(es);

(b) by confessional statement of the accused person;

(c) by circumstantial evidence

See **MBANG V. THE STATE (2013) 7 NWLR (Pt. 1352) 48; THE STATE V. ISAH (2012) 16 NWLR (Pt. 1327) 613; AKWUOBI V. THE STATE (supra).** In the instant case, the PW2 was an eye witness to the robbery incident. He was indeed, the victim with his wife. The PW1 did not physically witness the first robbery but the second one which is not part of this charge. He and his team pursued the robbers and arrested the Defendant who assisted them to arrest the 1st Defendant as earlier indicated in this judgment. There is also "Exhibit A" which is the confessional statement of the Defendant. The evidence of an eye witness outweighs any other evidence and is one of the best evidence available even where it is a lone eye witness. See **IMO V. THE STATE (2001) 1 NWLR (Pt. 694) 1 NWLR (Pt. 694) 314.**

I consider it pertinent to say that after watching the PW1 and PW2 testify in court that I am impressed with their demeanour. I am particularly impressed with the demeanour of the PW2. Both of them gave evidence with candour and without fear or favour. All attempts by the learned defence Counsel to contradict their evidence ended up strengthening the prosecution's case. I believe them.

The Defendant from the evidence adduced before this court, brought his motorcycle and drove the other two to rob people along Onitsha – Owerri Road on the day material to this charge. They had a common mission which they put into effect by robbing the PW2 and his wife. They also committed another robbery within the same period. Conspiracy can therefore be inferred from

the conduct of the Defendant and his accomplices. In the case of **AKWUOBI V. THE STATE (supra)**, it was held that it is not always easy to prove the actual agreement. The court can infer the agreement from the surrounding circumstances of each given case and from the inferred circumstances, it can safely presume the conspiracy. The conduct of the accused and/or his co-accused conspirators often go a long way to suggest or establish that there had been implied or explicit agreement amongst them to commit a criminal offence or offences. This is clearly the situation in the instant case where the conduct of the Defendant and his co-conspirators show an explicit or implied agreement amongst them to commit the criminal offence as charged.

The general rule is that in criminal cases, the onus is on the prosecution to prove its case against the Defendant beyond reasonable doubt. See **THE STATE V. FAGBOLU (1978) 1 L.R.N. 111 AT 115; ALAKE V. THE STATE (1991) 7 NWLR (Pt. 205) 567 at 591; ADEKOYA V. THE STATE (2012) 9 NWLR (Pt. 1306) 539.** However, the onus of proving beyond reasonable doubt does not require the prosecution to prove the guilt of the accused beyond any shadow of doubt. It is enough if the Judge is satisfied that the evidence before him has proved the ingredients of the offence and is sufficient to establish the guilt of the accused. See **OTEKI V. A-G (1986) 2 NWLR (Pt. 24) 648; OTTI V. THE STATE (1991) 7 NWLR (Pt. 207) 103 at 118; EKECHI & ANOR. V. EKAH (1993) 1NWLR (Pt. 267) 34 at 47 – 48.** I am satisfied that the evidence before me has proved the ingredients of the offence as charged and is sufficient to establish the guilt of the Defendant. I must state that while the onus is on the prosecution to prove the charge against an accused person

beyond reasonable doubt, the later has the burden of bringing the evidence on which he relies for his defence. See **OHUNYON V. THE STATE (1996) 2 SCNI 280 at 288.** The evidence brought by the Defendant is too fanciful to be believed. It is indeed a clear case of fabrication borne out of assiduous tutoring. In the case of **THE STATE V. ANOLUE (1983) I.N.C.R. 71,** it was held that court may convict on the evidence of a single witness if it prefers his evidence to that of the accused person. There is no basis for comparing the evidence of the Defendant with that of the prosecution's witnesses who gave cogent, direct and credible evidence in support of the prosecution's case. I far prefer their evidence to that of the Defendant and his witness – the DW2 who had no purpose for coming to court to testify at all as his testimony added nothing to the case of the Defendant. It has also been held that a single credible witness can establish a case beyond reasonable doubt, unless of course, such a witness is an accomplice, in which case his testimony would require corroboration. See **AKWUOBI V. THE STATE (supra); AKPABIO V. THE STATE (1994) 7 NWLR (Pt. 359) 635.** I have already held the evidence of the prosecution's witnesses to be credible. As a matter of fact, I believe, strongly, that the evidence of the PW2 is credible enough to establish and indeed established the guilt of the Defendant beyond reasonable doubt. He is not an accomplice hence his testimony in the circumstance does not need any corroboration.

In view of all the above, I hereby find the Defendant guilty as charged.

I must state that I have no doubt in my mind that the convict is a first offender. Ordinarily, that ought to be considered in his favour in passing sentence on him. However, where sentence prescribed is death only, the trial judge cannot exercise any judicial discretion to reduce the death sentence to a term of years. See ***AMINU TANKO V. THE STATE (2009) 2 SCNJI; THE STATE V. BABANGIDA JOHN (2013) 5 SCNJ (Pt.1) 30.*** *It was also held in the latter case that allocutus is inapplicable and of no use once the Defendant is found guilty of a capital offence. In the instant case, the punishment prescribed for the offence of armed robbery is death only. That means that I cannot exercise any discretion to reduce the death sentence to any term of imprisonment. In other words, I am duty bound to impose the sentence prescribed by the law after due consideration of* ***Section 221 of the ACJL of Anambra State 2010.*** *In the circumstance, it is hereby pronounced that "The sentence of the court upon you, Maduabuchukwu Elom, is that you be hanged by the neck until you be dead and may the Lord have mercy on your soul.*

APPEARANCES:

Defendant in court.

A. J. Muojeke, Esq. SSC with C. V. Ekwerekwu, Esq. SSC, C. A. Ndianefo, Esq. S.S.C. and U. V. Ekwerekwu, Esq. for the State.

M. S. Iyida, Esq. for the Defendant.

M. N. O. OKONKWO
(JUDGE)
11/10/17