IN THE COURT OF APPEAL
IN THE AKURE JUDICIARY DIVISION
HOLDEN AT AKURE

ON FRIDAY THE 8TH DAY OF DECEMBER, 2017

BEFORE THEIR LORDSHIPS:

HON. JUSTICE MUHAMMED AMBI-USI DANJUMA	JUSTICE, COURT OF APPEAL (PRESIDING)
HON. JUSTICE OBANDE FESTUS OGBUINYA	JUSTICE, COURT OF APPEAL
HON. JUSTICE RIDWAN MAIWADA ABDULLAHI	JUSTICE, COURT OF APPEAL

APPEAL NO: CA/AK/205C/2014
CHARGE NO: HOS/6C/2011

BETWEEN:

BABATUNDE OGUNJOBI :::::::::::: APPELLANT

AND

THE STATE :::::::::::::: RESPONDENT

JUDGMENT

(DELIVERED BY HON. JUSTICE RIDWAN MAIWADA ABDULLAHI, JCA)

The Appellant, a prison warder with the Nigeria Prisons Service, along side his acquaintances, Abdulgafar Oluwarinu Yusuf – ex-police man and Kelvin

Igha Ighodalo, were arraigned before the High Court of Osun State sitting at Osogbo on 28th May, 2012 for the following six offences.

COUNT 1

STATEMENT OF OFFENCE

Conspiracy, contrary to Section 8 (c) and Punishable under Section 1 (3) of the Advance Fee Fraud and Other Related Offences Act, 2006.

PARTICULARS OF OFFENCE

KELVIN IGHA IGHODALO, BABATUNDE OGUNJOBI AND ABDULGAFAR OLUWARINU YUSUF **and others at large on or about 27th November, 2010, at about 4pm at Osun State Technical College, Osogbo Sports Ground, within Osogbo Judicial Division did conspire to commit a felony to wit: Obtaining property by false pretence.**

COUNT 2

STATEMENT OF OFFENCE

OBTAINING PROPERTY BY FALSE PRETENCE contrary to Section1 (1) (c) and 1 (3) of the Advance Fee Fraud and Other Related Offences Act, 2006.

PARTICULARS OF OFFENCE

KELVIN IGHA IGHODALO, BABATUNDE OGUNJOBI AND ABDULGAFAR OLUWARINU YUSUF and others at large on or about 24th May, 2011 using a GSM number 080-39404966 stolen with a Sony Ericson phone from Engr. Rauf Adesoji Aregbesola on 27th at Osogbo with intent to defraud and under false pretence did obtain the sum of ₦200,000.00 (Two hundred thousand naira) from Shenge Rahman.

COUNT 3

STATEMENT OF OFFENCE

OBTAINING PROPERTY BY FALSE PRETENCE contrary to Section1 (1) (c) and 1 (3) of the Advance Fee Fraud and Other Related Offences Act, 2006.

PARTICULARS OF OFFENCE

KELVIN IGHA IGHODALO, BABATUNDE OGUNJOBI AND ABDULGAFAR OLUWARINU YUSUF and others at large on or about 3rd June, 2011 at about 10.00am using a GSM number 080-39404966 stolen with a Sony Ericson phone from Engr. Rauf Adesoji Aregbesola on 27th November, 2010 at Osogbo with intent to defraud and under false pretence did obtain the sum of ₦500,000.00 (Five hundred thousand naira) from His Royal Majesty Oba Adekunle Aromolaran, the Owa Obokun of Ijeshaland.

COUNT 4

STATEMENT OF OFFENCE

STEALING, Contrary to Section 390 and punishable under Section 390(9) of the Criminal Code Law Cap. 34 Laws of Osun State 2002.

PARTICULARS OF OFFENCE

KELVIN IGHA IGHODALO, BABATUNDE OGUNJOBI AND ABDULGAFAR OLUWARINU YUSUF and others at large on or about 27th November, 2010 at Technical College Sports Ground, Osogbo within Osogbo Judicial Division stole a Sony Ericson phone with GSM No. 080-39404966 worth over ₦50,000.00 (Fifty thousand naira) belonging to Engr. Rauf Adesoji Aregbesola.

COUNT 5

STATEMENT OF OFFENCE

IMPERSONATION, Contrary to Section 484 of the Criminal Code Law Cap. 34 Laws of Osun State 2002.

PARTICULARS OF OFFENCE

KELVIN IGHA IGHODALO, BABATUNDE OGUNJOBI AND ABDULGAFAR OLUWARINU YUSUF and others at large on or about 24th May, 2011 within Osogbo Judicial Division and with intent to

defraud Shenge Rahman falsely represent yourselves to be Engr. Rauf Adesoji Aregbesola.

COUNT 6

STATEMENT OF OFFENCE

IMPERSONATION, **Contrary to Section 484 of the Criminal Code Law Cap. 34 Laws of Osun State 2002.**

PARTICULARS OF OFFENCE

KELVIN IGHA IGHODALO, BABATUNDE OGUNJOBI AND ABDULGAFAR OLUWARINU YUSUF **and others at large on or about 24th May, 2011 within Osogbo Judicial Division and with intent to defraud His Royal Majesty Oba Adekunle Aromolaran, falsely represent yourselves to be Engr. Rauf Adesoji Aregbesola.**

Upon arraignment, Kelvin Igha Igbodalo pleaded guilty and was convicted and sentenced accordingly. The Appellant and Abdulgafar Oluwarinu Yusuf pleaded not guilty and their case went to trial. The prosecution called three

witnesses and closed their case. Each of the two accused testified for himself and called no other witness.

SUMMARY OF FACTS

A Sony Ericson Model cell phone with GSM NO. 08039404966 belonging to the incumbent Governor of Osun State, His Excellency Engineer Abdurauf Adesoji Aregbesola was stolen in the frenzy of his inauguration as the Governor at Governrnent Technical College play ground, Osogbo on 27th November, 2010. The cell found its way to Kelvin Igha Igbodalo, who was at that time an inmate at Ikoyi prison and was awaiting trial for a capital offence. He had earlier been an inmate, after his conviction for another offence between year 2005 and 2007, during which he met and struck friendship with the Appellant herein. Then the Appellant was a Warder at kitchen section of Ikoyi Prisons and so was selling gari to Kelvin Igha Ighodalo in addition to being his friend.

However, by the time Kelvin Igha Ighodalo came back to Ikoyi Prison for the second time, the Appellant had been transferred to Alagbon Headquarters Prisons, at Dog Section. Nonetheless, Kelvin Igha Ighodalo

re-established communication link with the Appellant, who let his salary account he maintained with Diamond Bank, Awolowo road, Ikoyi Account No: 054-1050010086 to Kelvin Igha Ighodalo in May 2011 for use to launder proceeds of crime. Vide the assistance of the Appellant, Kelvin Igha Ighodalo then commenced fraudulent extortion of money from the names he found on the cell phone and SIM card of His Excellency, Engineer Abdurauf Adesoji Aregbesola in his possession. Kelvin Igha Ighodalo posed as the real owner of the cell phone and directed his victims to be paying money into the account provided for him by the Appellant.

Pw1, one Shenge Rahman, who described himself as a lawyer and old school mate of Engr. Abdurauf Adesoji Aregbesola gave evidence on how he first received a call from Kelvin Igha Ighodalo, who posed as his friend Engineer Abdurauf Adesoji Aregbesola, asking him to pay the sum of ₦200,000 into the account of the Appellant, for an emergency he, the Governor cannot personally attend to. Pw1 paid the said amount into the Appellant's account through a teller which he tendered in evidence. When the money kept coming in and it became too much for the Appellant to handle or for whatever reason known to him, the Appellant brought in

Abdugafar Oluwarinu Yusuf and sent his account number 1007440399 maintained with Intercontinental Bank, Moloney Branch, Lagos to Kelvin who began to use same to launder proceeds of crime. His Royal Majesty, Oba (Dr.) Gabriel Adekunle Aromolaran II was a victim and through one Mrs. Alaba Abosede, his secretary, the sum of N500,000.00 was paid into the account of Abdulgarfar Oluwarinu Yusuf on June 3rd, 2011 via a bank teller which was also tendered in evidence.

It is noteworthy that as the Appellant and Abdulgafar were receiving the money into their accounts, they were withdrawing it on the instruction of Kelvin and handed part of the money to third parties whose identities have also not been disclosed, while keeping the other part for themselves. The crime was busted when Kelvin made a second request for money from Pw1, posing as usual, as Mr. Governor. Coincidentally, Pw1 was in the same state function with Mr. Governor who was reading an address when Pw1 received the call. The Directorate of State Security, then stepped into the matter, resulting on the arrest of the 2nd accused, Abdugafar at the point of withdrawing some of the illegal money paid into his bank account. And through him, the Appellant and Kelvin were arrested, investigated and

charged. While Kelvin pleaded guilty, the Appellant and second Accused, Abdulgafar pleaded not guilty. The matter went to trial and at the end of trial, the learned trial judge, in a considered judgment delivered on 28/02/2014, convicted and sentence the Appellant to 10years, 7years and 7years for counts 1, 2 and 3 respectively, but discharged and acquitted him on counts 4, 5 and 6

Dissatisfied with his conviction and sentence the Appellant filed a Notice of Appeal, dated 21/12/2015, on 22/3/2016, containing 7 grounds of appeal. The parties duly filed and exchanged Brief of Argument in compliance with rules of this court. Appellant's Brief of Argument dated 31/5/2016 and filed 1/6/2016, was settled by **Remi Ayoade Esq.,** who distilled the following four (4) issues for determination:

1. **Whether the prosecution had proved the alleged commission of the offences for which the Appellant was found guilty, convicted and sentenced beyond reasonable doubt as required by law.** ***(Grounds 1, 2, 4 and 5).***

2. Whether the learned trial Judge was right in the invocation of the provisions of *Section 7 of the Criminal Code Law of Osun State* in finding the Appellant guilty of the alleged offences in the light of the facts and circumstances of the case before him *(Ground 7)*

3. Whether the trial Judge properly evaluated the evidence led at the trial by both the prosecution and the defence before convicting the Appellant. *(Grounds 6, 8 and 9).*

4. Whether the conviction and sentence of the Appellant can stand in view of the heavy reliance placed by the learned trial Judge on the evidence of bad character of the Appellant when his bad character in the circumstances of the case was not a fact in issue before the trial Judge. *(Ground 3).*

On the other hand, the Respondent's Brief of Argument dated 30/3/2017 and filed on 8/5/17 was settled by **Adedapo Adeniyi Esq.,** who raised a lone issue for resolution of the appeal, thus:

> **Whether the prosecution proved the offence for which the Appellant was found guilty, convicted and sentenced beyond reasonable doubt.**

Since the lone issue raised by the Respondent is subsumed in the four issues raised by the Appellant, I shall resolve the appeal on the four issues raised by the Appellant, the owner of the appeal.

ARGUMENT OF ISSUES

ISSUE 1

Arguing this issue, learned counsel for the Appellant posited that the offence of conspiracy was not defined in Advance Fee Fraud and other Related Offences Act, 2006 and the Criminal Code Law, Cap. 34 Laws of Osun State 2002, under which the Appellant was convicted. He furthered that in the case of **Oduneye v. State (2011) 13 WRN 100-101 and Kaza v. State (2008) 32 WRN 96**, it was held to the effect that for the offence

of conspiracy to be established, there must exist a common criminal design or agreement by two or more persons to do or omit to do an act criminally. He further relied on **Dr. Edwin Onwudiwe v. FRN (2006) NSCQR 257 at 306** to the effect that to establish the offence of obtaining by false pretence the prosecution must prove that the accused had an intention to defraud; that the item must be capable of being stolen and that the proof is beyond reasonable doubt. He submitted that there was no evidence led by the prosecution that the Appellant at any time conspired with any person to commit the offence of obtaining property by false pretence against Pw1 and Pw2. He argued that the offence of conspiracy to obtain property by false pretence could only be established by confessional statement, circumstantial evidence or evidence of an eye witness of the alleged crime. He placed reliance for this submission on **Igbale Godwin v. The State (2006) 2 WRN 1 SC 40-45 and Emeka v. The State (2001) 32 WRN 37.**

He submitted that exhibit J could not qualify as confessional statement since the Appellant did not therein admit the guilt of the alleged offences. He argued that there was no eye witness evidence and as such Section 7 of

the Criminal Code Law of Osun State is not applicable to this case. He quarrelled with the evaluation of facts by the learned trial judge at pages 166, 167 and 168 of the record of appeal. He furthered that on the authority of **Ibrahim v. C.O.P (2008) 1 WRN 22 at 36 and Felix Nwosu v. State (1986) 4 NWLR (Pt. 35) 348 at 359,** that a court of law is not allowed to speculate on facts and evidence but to hinge its findings and conclusion on evidence and sound logical reasoning. He submitted that the Appellant's testimony that the money he received for Kelvin Igha Ighodalo's use was send to Kelvin through the scheduled prisons officer, less the amount that was given as appreciation to him, was not impeached in anyway by the prosecution and as such should have been countenanced by the trial court. He submitted that there was nothing to warrant any inference of a common criminal design or agreement by the Appellant and 2nd Accused or with Kelvin Igha Ighodalo to commit the offence of obtaining property by false pretence.

He referred to evidence of the prosecution at pages 118-131 of the record of appeal to concede that Pw1 and Pw2 were victims of obtaining money by false pretence but submitted that there was no evidence before the trial

court to show that the Appellant was part of the criminal enterprise of Kelvin Igha Ighodalo since the Appellant only let the use of his bank account number for transfer of money meant to secure the release of Kelvin Igha Ighodalo from prison. He argued that there was no evidence to show that the Appellant has knowledge of the criminal intention of Kelvin or that the Appellant made false representations to Pw1 and Pw2 to transfer money into his account. He submitted that the evidence as to the reason the Appellant allowed the use of his bank account to receive money meant for Kelvin's bail and that when he received the said money, he sent same to Kelvin at Ikoyi prison is as unimpeachable as it is not contradicted by the prosecution. He relied on the case of **Michael Alake & Anor v. The State (supra)** to the effect that a honest belief in the truth of the statement on his part that the various sums of money received for Kelvin through his account were meant for his bail which turned out to be false ought not be used to convict him for the offence of false pretence.

On issue 2, Counsel submitted that there was no bases for the learned trial judge to have invoked Section 7 (a), (b), (c) and (d) of the Criminal Code Law of Osun State, in the conviction of the Appellant herein, since the only

seeming link with the Appellant was the evidence of Pw1 at page 119 of the record which was copiously defended by the evidence of the Appellant at pages 140-141 of the record of appeal. Counsel is of the opinion that for Section 7 C.C.L of Osun State to apply there must be clear evidence that either prior to or at the time of the commission of the offence, the Appellant did something in the nature of direct encouragement to assist in the commission of the crime with the full knowledge of the crime being committed. He argued that once the intention and knowledge is lacking the independent will of the aider will not be enough to ground conviction. He is of the opinion that neither the percentage of the received money with held by the Appellant, nor his initial denials of other monies received for Kelvin as exposed by the prosecution is of any moment, since he has no knowledge of the criminal intentions of Kelvin Igha Ighodalo and mere denial, does not in law ground conviction without more.

On issue 3, Learned Counsel adopted his submission on issues 1 and 2 to submit that the learned trial Judge was in a hurry to conclude this case and as such did not properly evaluate the totality of evidence adduced at trial.

He relied on the case of **Osetola v. State (2012) 50 NSCQR 598 at 628**, to the effect that where an indictment contains conspiracy and substantive charge, the proper approach is to deal with the substantive charge before determining the fate of the conspiracy charge. He submitted that no evidence should be considered in isolation or out of context. He is of the opinion that the trial Judge, at pages 167-168, shifted the onus on the Appellant to prove his innocence and as such came to a hasty conclusion not supported by evidence that the Appellant was guilty as charged. He furthered that a proper evaluation of the evidence led at trial would have created a doubt in the mind of the trial court. He relied on **Ukwunneyi v. State (1997) 4 NWLR (Pt. 497) 80**, to the effect that such doubt would have been to the benefit of the accused, and that this court is by law empowered to rise to the occasion by drawing necessary inferences to come to a proper and just conclusion based on the evidence on record.

On issue 4, Counsel argued that the learned trial Judge placed undue reliance on evidence of bad character of the Appellant by references to various acts of the accused that were not part of the charge that the

Appellant was standing trial before the court. For instance, said Counsel, at page 142 of the record, the court made reference to the fact that the Appellant received other monies for Kelvin Igha Ighodalo; at 167, reference was made to the fact that Pw1 and Pw2 were not the only victims of the crime and that the Appellant has never been of a good character and that Appellant was selling garri meant for prisoners to the prisoner, Kelvin Igha Ighodalo. He is of the opinion that all these references blurred the mind of the learned trial Judge against the Appellant. He relied on Section 81 and 82 (a) and (b) of Evidence Act, 2011, to submit that the bad character of an accused person is generally irrelevant, unless it is a fact in issue or the accused had given evidence of his good character. He submitted that the bad character of the Appellant was neither an issue before the court, nor did the Appellant testify as to his good character. He opined that the wisdom for excluding evidence of the bad character of an accused person is that it may prejudice the mind of the court and lead it to a hasty conclusion that the accused must have committed the instant offence too. He conceded that the combined effect of Sections 82 (3) and 180 (c) of the Evidence Act, 2011 is to the effect that evidence of bad character of an

accused person can be given when he is called as a witness, but argued that the benefit of Section 180 (g) which forbids the prosecution from asking the Appellant any question tending to show that he has committed any other offence other than the one for which has was standing trial, ought to have availed the Appellant. He concluded that factoring in evidence of Appellant's bad character occasioned miscarriage of justice and urged that the trial court's judgment be set aside and this appeal upheld.

Reacting, the Learned Counsel for the Respondent vide argument on his lone issue relied on **Miller v. Minister of Pensions (1947) 2 ALL ER 372 at 373** to submit that proof beyond reasonable doubt does not mean certainty of truth but a high degree of probability of the accused's commission of the alleged offence. He further relied on **Lori v. State (1980) 12 NSCI 269 at 279 and Adebayo v. State (2008) 6 ACLR 372 at 395** to submit that, it also does not mean proof beyond all shadow of doubt or all iota of doubt and that the doubt that will avail an accused person must not only have evidential basis but also the mind of the judgment would be unsure as to the circumstances as it occurred and in particular as to whether the suspect had committed it. He submitted that the prosecution's

case contained admissions and circumstantial evidence. He referred to **Njovens & Ors v. The State (2004) 1 CAC 255 at 257** for a description of the offence of conspiracy, to submit that the fact that a conspiracy is abandoned halfway does not disprove the commission of the offence since same is deemed completed once there is an agreement to pursue illegal or unlawful act; and that all conspirators need not start off at the same time. He submitted that it was in evidence that Sony Ericson handset of the victim was stolen with GSM no. 08039404966 and that impersonating the owner of the cell phone, various sums of money were fraudulently obtained from his close associates like Pw1 and Pw2 vide the bank account of the Appellant. That the Appellant in Exhibit J admitted that he received various sums of money for Kelvin Igha Ighodalo, kept sum percentage for himself and introduced Abdugafar to the fraudulent act. Counsel submitted that it was also in evidence that as at the time of commission of Counts 2 and 3 that kelvin was in prison at Ikoyi where the Appellant was working and that Kelvin was able to defraud his victims through the Appellant's submission of his bank account and that of Abdugafar to him. He referred to Section 8(1) of Evidence Act, 2011 to submit that the acts of impersonating the victim,

the calling of the victim's associates to pay money into the account of the Appellant and the voluntary and willing surrender of the Appellant's and Abdugafar's bank accounts to be used to receive the various sums of money and subsequent withdrawals and sharing of the proceeds, show the actions of each of the conspirators in the instant case which are relevant facts as against each of the conspirators. He furthered that these are facts from which the court can legitimately infer agreement of the co-conspirators to prosecute illegal or unlawful purpose. He argued, on the authority of **Njovens v. State (supra)** that the conspirators need not all have started the conspiracy at the same time as conspiracy began by some people may be joined later by some others.

He argued that the defence of the Appellant that he innocently let his bank account number be used to assess money for the bail of Kelvin Ighodalo can not avail, in view of the fact that he received various sums of money from many victims; participated in sharing the proceeds and introduced Abdulgafar in order to spread the intake of the various sums coming in so that his bank account will not be flagged.

He cited *Section 1 (1) (c) of Advance Fee Fraud and other Related Offences Act, 2006* and **Onwudiwe v. FRN (supra)** on the definition and ingredient of the offence of obtaining property by false pretence, to point out that Kelvin Ighodalo, the ring leader, had pleaded guilty and have been convicted on all counts of the charge which is similar to the one faced by the Appellant. Counsel cited Section 7 of the Criminal Code Law of Osun State to submit that both the person who committed the unlawful act and the aiders or facilitators can lawfully be charged for the offence and convicted as the actual person that committed the offence. He submitted that the Appellant by his act or omission of willingly giving his bank account number to Kelvin Igha Ighodalo to use; helping him to recruit Abdugafar to perpetuate the fraud and also knowing fully well that he was an inmate in prison where he is working with no particular or identifiable means of livelihood before coming to prison; facilitating the withdrawal of various sums paid by victims; running errands to deliver the money to specific people still at large and ultimately benefiting from the proceeds of the fraud without qualms rendered him culpable under Section 7 (b) and (c) of the Criminal Code Law of Osun State.

Counsel argued that the Appellant cannot deny their friendship given the fact that he is not working at the Welfare Section of the prison nor was he the officer assigned to receive gift for inmates but he went out of the rules to comfortably let his bank account number be used to launder proceeds of crime. He is of the opinion that Appellant's defence is an afterthought since in Exhibit J, he stated that on the money involved in count 3 he got a share of ₦100,000.00. He called in aid the case of **George v. FRN (supra)** to the effect that intention can properly be inferred from the facts, evidence and circumstances of a given case since it is very rarely disclosed or made manifest by an accused person. He reiterated that the Appellant who willingly let his bank account to a prison inmate for use as a conduit to dupe people, run errand to deliver the money while keeping part of it cannot be said to have acted ignorantly in the circumstance. He submitted that the acts of the Appellant made the commission of the offence possible.

In response to the Appellant's submission that Section 7 of Criminal Code Law does not apply in this case because the Appellant only assisted Kelvin to assess money for his bail and that the sum he kept for himself was a gift thereby denying any criminal intention, Counsel submitted that it is of no

moment in view of the fact that Section 7 of C.C.L. Osun State did not state that intention must be proved in the application of subsections (b) and (c). Counsel submitted, that assuming without conceding, that intention is a requirement, that such intention in enabling or aiding Kelvin Igha Ighodalo to commit the offence can be inferred from the actions of the Appellant. He is of the opinion that the facts and circumstances of this case clearly justify the invocation of the provisions of Section 7 (b) and (c) of Criminal Code Law of Osun State.

Counsel submitted that there is nothing on pages 167-168 of record to confirm the allegation of the Appellant that the learned trial Judge shifted the burden of proving his innocence on the Appellant. It was argued that a dispassionate evaluation of the totality of evidence adduced at trial as did by the learned trial Judge will only lead to an irresistible conclusion that the Appellant was part of the fraud syndicate. On the bad character of the Appellant, Learned Counsel submitted that the fact and evidence of other sums of money for which the Appellant was not charge with is not an issue of bad character but an issue of fact relevant to the fact in issue under Section 4 of the Evidence Act, 2011, and as such the Respondent is obliged

to give evidence of other sums due to the explanation given by the Appellant that he only received money for Kelvin to help him arrange his bail. Said Counsel, assuming without conceding that it is an evidence of bad character, the evidence is admissible and can be relied upon under Section 82 (2) (b), 180 (b) and (g) (ii) of the Evidence Act, since the Appellant had given evidence that he was innocently helping Kelvin to get money for his bail and that he was not participating in any fraud. He urged us to dismiss the appeal and uphold the conviction and sentence of the Appellant.

RESOLUTION

It is settled in law that proof beyond reasonable doubt does not mean proof beyond all shadows of doubt or all iota of doubt. In other words proof beyond reasonable doubt means proving the essential ingredients of the crime satisfactorily and not beyond absolute doubt. See **Emmanuel Eke v. The State (2011) 2 SCNJ 57, Lori v. The State (1980) 12 NSCI 269 at 279 and Adebayo v. State (2008) 6 ACLR 272 at 395.**

All that is expected of the prosecution is to establish the guilty of the accused with compelling and conclusive evidence of having committed the

offence charged. See: **Adewale Joseph v. The State (2011) 6 SCNJ 222 and Rabi Ismail v. The State (2011) 7 SCNJ 102.**

The Appellant was charged, tried and convicted along side Abdugafar for the offence of conspiracy and obtaining money by false pretence. The substratum of the offence of conspiracy is the meeting of minds or the agreement of the conspirators. After all, the offence of conspiracy cannot be committed by one person.

In the case of **Njovens & Ors v. The State (supra)** the apex court, on the nature of the offence of conspiracy, opined, thus:

> **"It is not necessary to prove that the conspirators like those who murder Julius Caeser was seen together coming out of the same place at the same time and indeed conspirators need not knew each other .... They need not all have started the conspiracy, because conspiracy started by some persons may be joined at a later stage or later stages by others. The gist of this offence of conspiracy is the meeting of the mind of the**

conspirators. This is hardly capable of direct proof..... Hence conspiracy is a matter of inference from certain criminal acts of the parties concerned done in pursuance of an apparent criminal purpose in common between them and in proof of conspiracy the acts or omission or omissions of any of the conspirators in furtherance of the common design may be and very often given in evidence against any other or others of the conspirators."

Since the offence of conspiracy is hardly capable of direct proof by its very nature, it is usually the conducts of the party, acts or omissions in the circumstances, that recourse are made to, to establish same. It is instructive at this juncture to note that the ring leader, Kelvin Igha Ighodalo had pleaded guilty to similar charges, tried, convicted and sentenced. It goes without saying that the said ring leader, Kelvin Igha Ighodalo must have conspired with someone to commit the offence. The issue for resolution is not whether the said offences the Appellant was convicted by the trial court was indeed committed, but whether by the conduct of the

Appellant, he was the person or one of the persons who conspired with the ring leader and committed the said offences.

Equally instructive is the fact that parties are ad idem that a Sony Ericson Cell Phone with GSM No. 08039404966 belonging to Engr. Abdulrauf Adesoji Aregbesola was stolen, and that same was used, by the ring leader, Kelvin Igha Ighodalo, to call Engr. Aregbesola's associates to send various sums of money to the ring leader, through the bank accounts of the Appellant and Abdulgafar. Exhibit J is the extra-judicial Statement of the Appellant. By the said Exhibit J, the Appellant admitted that he willingly gave his bank account No. 054-1050010086 with Diamond Bank, to the ring leader and that various sums of money were paid to the account which he collected and delivered to third parties as directed by the ring leader. The Appellant also admitted that at one instance, when ₦500,000.00 was paid through his said bank account, that Kelvin Igha Ighodalo "dashed" him N100,000.00. In the same Exhibit J the Appellant also confessed that he introduced his brother Abdugafar into the transaction and various sums of money were also paid into Abdugafar's bank account which he the

Appellant ensured were given to people as instructed by Kelvin Igha Ighodalo.

The only defence the Appellant put forward was that he was merely assisting the ring leader to get money for his bail and innocently hand over his bank account for that purpose. This defence, I must say, pale out in the face of some pertinent questions, like: (1) Why didn't the ring leader ask his brothers and friends to send the money for his bail to his lawyer directly or to the account of those third parties that he usually send to collect the money from the Appellant? (2) Did the Appellant introduce his brother, Abdugafar to Kelvin to also help Kelvin get money for his bail? (3) Was the sum of ₦100.000.00 as gift for simply using your account to receive money by a prisoner for his bail not suspicious? At the point when the Appellant in Exhibit J, stated that he became afraid, what step did he take, as a security officer to report to his superior or other security agencies for appropriate action? There is no doubt that dispassionate answers to these questions will definitely yield compelling and conclusive evidence that the Appellant was not merely helping the ring leader to get money for his bail. Indeed, it can properly be inferred from the conducts of the Appellant that there was

conspiracy to obtain money from the associates of the owner of the stolen cellphone by false pretence, and I so hold.

On the offence of obtaining property by false pretence, parties are in agreement that the ring leader, Kelvin Igha Ighodalo impersonated Egnr. Aregbesola and used Engr. Aregbesola's cellphone to call his (Aregbesola's) associates, asking that various sums of money be paid to the bank account of the Appellant and that those sums were paid and shared by the Appellant and Kelvin Igha Ighodalo. That established obtaining property by false pretence, no doubt. Evidence on record showed that it was Kelvin that impersonated Engr. Aregbesola and not the Appellant. However, Section 7 of the Criminal Code Law of Osun State fixes the Appellant in the same position with Kelvin Igha Ighodalo.

For ease of appreciation, I shall reproduce Section 7 (a), (b) and (c) of Criminal Code Law of Osun State, thus:

> **"Section 7: 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:

(a) Every person who actually does the act or makes the omission which constitutes the offence

(b) Every person who does or omits to do any act for the purpose enabling or aiding another person to commit the offence.

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

An appreciation of the provisions cited above will disclose that Section 7 (b)& (c) clearly fixed the Appellant in committing the offence of obtaining property by false pretence, given the fact that he aided Kelvin Igha Ighodalo by making available his bank account number and introducing his brother, Abdugafar into the transaction for the purpose of enabling Kelvin Igha Ighodalo to commit the offence of obtaining money by false pretence, and I so hold.

It is notorious in law that the evaluation of the totality of evidence adduced at trial by parties and ascription of probative value therein is within the exclusive domain of the trial court that had the opportunity of watching and observing the demeanor of witnesses during trial. On that score, it is not proper for the appellate court to interfere or substitute its own views for those of the trial court, unless the trial court did not properly evaluate same. See: **Sule Anyegwu v. The State (2009) 1 SCNJ 91, Joseph Oyewole v. Karimu Akande & Anor (2009) 7 SCNJ 225, and Iheonunekwu Ndukwe v. The State (2009) 2 SCNJ 223.**

In the case of **Iheonunekwu Ndukwe v. The State (supra)** at 257 paragraph 20, the Supreme court, opined thus:

> **"In other words where a trial court fails in evaluating facts found by it, an appellate court can re-examine the whole facts and come to an independent decision as the trial court."**

A careful perusal of the judgment of the trial court as contained at pages 157 to 169 of the record of appeal will disclose that the learned trial Judge

did justice in evaluating the facts and evidence adduced in this case. For instance, after appreciating the facts and applicable laws to the issues in this case at pages 166 to 167, the learned trial Judge at last paragraph of pages 167 to 168, evaluated thus:

> **"None of the persons who collected the money from the 1st accused was described as a lawyer or indeed identified. He admitted that as a warder, he knew that there is an officer designated in each prison yard to handle personal items for prisoners. He admitted taking a sum of ₦100.000.00 (one hundred thousand naira) from a ₦500,000.00 windfall. He brought in the 2nd accused to assist in laundering the illegal proceeds. Even after the arrest of the 2nd accused, the 1st accused confessed to have received a sum of USD 3,000 by Western Union Money Transfer on behalf of the prisoner. Indeed Pw1 and Pw2 were not the only victims of the crime. The accused raked in millions of naira from the crime. For example, on the day the 2nd accused went**

to his bank to collect the money N500,000.00 paid in a behalf of Oba Aromolaran II, the 2nd accused received an alert payment of another N750,000 into his bank account before the 2nd accused was waiting to hand over the money to the 3rd party. All these add together, point irresistibly to the fact that the 1st accused knew that through the prisoner, crime is being committed. Of course the 1st accused had never been of good character."

Having been seized of the facts and evidence adduced in this case, it is my humble view that the learned trial Judge properly evaluated the totality of evidence led by parties in this case. This position is consolidated by the fact that almost all the facts in this case are not in dispute between the parties.

The receipt of other sums of money by the Appellant for Kelvin Igha Ighodalo for which he was not charged cannot be said to be an issue of bad character, when given in evidence. It squarely falls within the purview of Section 4 of the Evidence Act, 2011. I shall reproduce the said Section 4 of the Evidence Act for ease of appreciation, thus:

"Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction are relevant, whether they occurred at the same time and place or at different times and places"

From the above reproduced Section, it is obvious that both facts in issue and facts relevant to fact in issue by its proximity to fact in issue whether or not in terms of times and place, are all relevant facts in the determination of the fact in issue. In Exhibit J, the Appellant confessed to having received various sums of money such as 3,000 dollars, ₦750,000, ₦200,000 – to the tune of ₦1.7m between May and July, 2011. His explanation was that he merely received the sum of ₦200,000 for which he is charged to assist Kelvin Igha Ighodalo to process his bail through his bank account. Therefore, since it is already in evidence before the court that the Appellant received some other monies for Kelvin Igha Ighodalo which monies were not part of the charge before the court, same is relevant to the fact in issue before the court, the trial court is at liberty to factor same in during the course of evaluating the totality of evidence led

by both parties. Facts in issue and fact relevant to facts in issue are admissible in the light of Section 4 of the Evidence Act, 2011.

On the remark of the learned trial Judge at page 168, first paragraph, on the character of the Appellant, it should borne in mind that in the course of evaluating the totality of evidence led by parties, a judge is at liberty and expected to bear his mind on all possibilities before arriving at a decision. It is not every consideration that the court bears its judicial mind on that forms the basis for his decision. This informs why certain statement made by court during evaluation of evidence are called obiter dictum, while others are termed *ratio decidendi*. On this score, the four (4) issues in this appeal are resolved against the Appellant.

Having resolved all the issues in this appeal against the Appellant, this appeal lacks merit and is hereby dismissed.

The conviction and sentence imposed on the Appellant by the High Court of Osun State, sitting at Osogbo in Suit No: HOS/6C/2011 are hereby affirmed.

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HON. JUSTICE RIDWAN MAIWADA ABDULLAHI
JUSTICE, COURT OF APPEAL.

APPEARANCES:

1. Remi Ayoade Esq. with K. E. Ngwoke Esq. and Luqman Adeleke Esq. for the Appellant
2. Abiodun Badiora Esq. (ACSC) Osun State with Alarape Abdulraheem Esq. for the Respondent.

MOHAMMED AMBI-USI DANJUMA, JCA

My learned brother, **Ridwan Maiwada Abdullahi, JCA** had availed me the benefit of a preview of the leading judgment in draft; and a perusal of same alongside the record of Appeal brings the conclusion arrived at by His Lordship that the appeal is one devoid of merit, inevitable.

The chain of conspiracy and inferences for culpability is obvious.

I endorse the reasoning of His Lordship and also dismiss the appeal.

MOHAMMED AMBI-USI DANJUMA
JUSTICE, COURT OF APPEAL

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OBANDE FESTUS OGBUINYA, JCA

I had perused the leading judgment delivered by my learned brother: **Ridwan Maiwada Abdullahi, JCA.** I endorse, *in toto*, the reasoning and conclusion in it. I, too, penalise the appeal with a deserved dismissal. I abide by the consequential orders decreed in it.

OBANDE FESTUS OGBUINYA
JUSTICE, COURT OF APPEAL.