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IN THE HIGH COURT OF JUSTICE  
OYO STATE OF NIGERIA  
IN THE IBADAN JUDICIAL DIVISION  
HOLDEN AT IBADAN

BEFORE THE HONOURABLE JUSTICE ATILADE OJO - JUDGE  
WEDNESDAY THE 31ST DAY OF MARCH, 2004

BETWEEN:

CHARGE NO. I/85C/2000

THE STATE   ...                     ...                     ...                     COMPLAINANT

A N D

1. JOHN ANOSIKE                     )                     ...                     ...                     ...                     ACCUSED  
2. IKECHUKWU ABEL                     )                     ...                     ...                     ...                     ACCUSED  
3. AUGUSTINE EGBU                     )                     ...                     ...                     ...                     ACCUSED

2nd accused person present.  
1st and 3rd accused persons absent.  
Mr. N. A. Abiola, Legal Officer, for the State.  
Mr. G. Abdulateef for the accused person.

J U D G M E N T

The three count Information against the accused persons charged them for the following offences:

"STATEMENT OF OFFENCE

1. Conspiracy to commit felony to wit: Obtaining money under false pretences contrary to and punishable under Section 516 of the Criminal Code Cap. 30, Vol. II, Laws of Oyo State of Nigeria, 1978.

PARTICULARS OF OFFENCE

John Anosike (m), Ikechukwu Abel (m) and Augustine Egbu (m) on or about the 2nd day of August, 1999 at Olorunsogo Area, Ibadan, in the Ibadan Judicial Division conspired together to obtain money under false pretences from Miss Dorcas Adunola Akangbe.

"STATEMENT OF OFFENCE

2. Obtaining money under false pretences contrary to and punishable under Section 419 of the Criminal Code Cap. 30, Vol. II, Laws of Oyo State of Nigeria, 1978.

PARTICULARS OF OFFENCE

John Anosike (m), Ikechukwu Abel (m) and Augustine Egbu on or about the 2nd day of August 1999 at Olorunsogo Area, Ibadan, in the Ibadan Judicial Division, with intent to defraud obtained the sum of ₦174,000.00 (One Hundred and Seventy-four thousand Naira) property of Oyo State Government from Miss Dorcas Adunola Akangbe under false pretences.

"STATEMENT OF OFFENCE

3. Stealing, contrary to and punishable under Section 390(9) of the Criminal Code Cap. 30, Vol. II, Laws of Oyo State of .../2.

Nigeria, 1978.

PARTICULARS OF OFFENCE

John Anosike (m), Ikechukwu Abel (m), and Augustine Egbu (m) on or about the 2nd day of August, 1999 at Olorunsogo Area, Ibadan, in the Ibadan Judicial Division stole the sum of ₦174,000.00. (One Hundred and Seventy-four Thousand Naira) property of Oyo State Government from Miss Dorcas Adunola Akangbe."

Even though three accused persons were charged to court, it was only the 2nd accused person, Ikechukwu Abel, who faced the trial; the other accused being at large. The 2nd accused person pleaded not guilty to the three counts on the Information. In proof of the case for the prosecution, seven (7) witnesses were called to give evidence against the 2nd accused person. After a no case submission made on behalf of the 2nd accused person was dismissed, the 2nd accused gave evidence in his defence and called no witness.

The prosecution led evidence through the 1st P.W. (Mrs. Grace Adebolu), 2nd P.W. (Alfred Olubunmi Osunbunmi) and 3rd P.W. (Mrs. Florence Oyebanji Okeniyi) who were officials of the Ministry of Education of Oyo State that on the 2nd of August 1999 the necessary officials whose consent was required to pay money into the Ministry's account at the Diamond Bank, Lebanon Street, Ibadan, was obtained. Following the consent, the P.W.1 (Mrs. Grace Adebolu) handed over the sum of one hundred and seventy-four thousand Naira (₦174,000.00) to Miss Dorcas Adunola Akangbe (P.W.4), a junior clerk under her in the Ministry for payment into the Ministry's account at the Diamond Bank, Lebanon Street, Ibadan. The money was the total of the proceeds realised from the sale of forms by the Ministry of Education. When it was 2.30 p.m. and the P.W.4 had not come back from the bank, the P.W.1 brought this to the notice of her superior officers, the P.W.2 and P.W.3. They traced P.W.4 to the Bank where they learnt that she was at no time at the bank for any lodgment that day. Thereafter other superior officers, including the Permanent Secretary of the Ministry were informed and the incident was reported to the Police on the 3rd of August 1999. On the 4th of .../3.

August 1999, the P.W.4 showed up at the Ministry and was immediately handed over to the Police.

The principal witness in this case was the P.W.4 (Miss Dorcas Adunola Akangbe). It was her evidence that she first came across the 1st and 2nd accused persons on the 5th of July 1999 when the 1st accused person approached her on the road, showed her a piece of paper and requested her to direct him to Coker Road, written on the sheet of paper. When she could not assist him, he again approached the 2nd accused who also came to her and implored her that both of them should assist the 2nd accused in locating the address. The three of them then left together in the quest for the address, which was eventually located when the 2nd accused himself knocked <sup>at</sup> a door and the 3rd accused person answered them. The 3rd accused thanked them for bringing home the 2nd accused person who he alleged had left home since the previous day. After this, when the P.W.4 wanted to leave she was dragged into the house by the 3rd accused who then started a conversation. After inquiring about where they met the 2nd accused person, then went on to inform them that the 2nd accused person brought some films. He took the films to some Europeans to be tested but met the Europeans holding a meeting. The 3rd accused then suggested that they should buy a chemical needed to develop the film. And that if the films were developed to produce the picture of Jesus Christ, the pictures would sell for ₦20.00 each, while <sup>if</sup> any other picture is produced, they would sell for ₦10.00 each. Both the 1st and 3rd accused persons offered to purchase the film, but the 2nd accused offered to sell the films only if the P.W.4 was also interested in the purchase. When P.W.4 showed no interest in the transaction, she was made to part with a sum of ₦1,700.00 allegedly needed to purchase chemical. After the chemical was produced, a member of the group, called Doctor Ajayi (Robert) suggested that there was need to dilute the chemical and to pray for the P.W.4 and others in room. Before this, the 4th P.W. and other members of the gang were made to take an oath of secrecy not to tell anyone anything that happened between them otherwise



ny one leaking the secret would die. In the course of the  
 prayer, the 1st accused person went out of the room and not long  
 after they started hearing strange voices that requested that it  
 be addressed "My Lord". The voice went on to say that the films  
 they had seen was not ordinary film but one that produces blood  
 money and evil spirit around them. As a result of their having  
 seen the films, the evil spirits would be following them about  
 and that they would eventually die. To avoid the untimely death  
 various sacrifices had to be made together with other demands  
 including the purchase of an anointing oil and ram,  
 and for further prayer sessions to follow daily. The P.W.4, to  
 avoid the predicted untimely death, attended continually the  
 prayer sessions at which demands for monies were continually made  
 for one thing or the other. Various predictions, <sup>prophesies</sup> and  
 injunctions were also made or ordered at the prayer sessions. The  
 first of such predictions that led to this case was one made on  
 the 1st of August 1999, when P.W.4 was told that she was to be  
 given a sum of money to be paid to ~~a~~ Bank the next day and that  
 soon as the money gets to <sup>be</sup> her, she should promptly bring it  
 to him (Dr. Ajayi) to <sup>be</sup> prayed upon to avoid being consumed by an  
 ill fire resulting in her death.

Consequently, the following day, the 2nd of August 1999,  
 a sum of one hundred and seventy-four thousand Naira  
 (N174,000.00) was given to her for deposit at the Diamond Bank,  
 Lagos, in obedience to the words of the spirit, brought the money  
 to the gang. Dr. Ajayi instructed her to give the money to the  
 1st accused. Immediately the money was received by the 1st  
 accused, he drove away with the 2nd accused on a motorcycle.  
 Thereafter, Dr. Ajayi took the P.W.4 to an hotel where she was  
 left for further prayer sessions. She remained alone in the  
 hotel in continuation of the prayer session and awaiting  
 the arrival of Dr. Ajayi. Since then neither of the accused  
 persons nor Dr. Ajayi saw her again and continued praying in the  
 hotel and was forced by the hotel personnel to vacate hotel at  
 Lagos on the 4th of August 1999.

P.W.4 further testified that the sum of N174,000.00 was not  
 .../5.



handed over to the gang voluntarily or under any agreement and that the money has not been returned or paid back to her. She maintained in her evidence that she gave the money to the gang because of their prediction that she would die if she failed to bring the money ~~or~~ <sup>if she told</sup> the truth about what had happened. Witness maintained that it was because of the threat that she would die that made her not to tell the truth about the incident to the Police in the first statement the Police obtained from her. It was also her evidence that she decided to tell the truth to the Police in her second statement after she had been publicly disgraced by being taken to her residence and office in handcuff, in order to clear her good name. She maintained that given the circumstance she found herself <sup>later,</sup> she felt that it was better to die than have a bad name.

Under cross-examination, she stated that when Dr. Ajayi asked her on the 1st of August 1999 to bring the money being expected on the 2nd of August 1999, the 1st and 2nd accused persons were there together and that only the 3rd accused person was not there present. She admitted that the 2nd accused did not ask her to bring the money. She also admitted that in her first statement to the Police which does not contain the true facts of the case she stated that armed robbers robbed her of the sum of ₦174,000.00 ~~when~~ she boarded a taxi-cab which drove her to the road leading to Abeokuta and that she was robbed in the taxi-cab. She maintained that in her first statement she did not mention the names of the accused persons because of what she had been told that if she told anyone that the money was given to them she would die. The 1st statement of the witness (P.W.4) was tendered as Exhibit "A".

The P.W.4 also agreed to have made a second statement. The second statement was tendered as Exhibit "A1". In the course of their interaction, the 1st accused used to be called Indiridi and came to know his true first name as John before the case got to the Police on the 2nd of August, 1999. She also got to know the 3rd accused person as Augustine when the case got to the Police, before then she knew him as Kingsley. She denied that

her association with the accused persons was to print currencies (money).

Another witness of the prosecution was the landlord in whose house the accused persons and the P.W.4 were meeting. It was his evidence that the 1st accused used to be his tenant during which time different people including P.W.4 used to come in and out of the house for prayers. Under cross-examination, he stated that he learnt from the 1st accused person that the 2nd accused person was his junior brother.

It was the evidence of the Investigating Police Officer, Sergeant Isaac Ajibade (P.W.5) that P.W.4 (Dorcas Akangbe) first stated that she was robbed at Apata Area in Ibadan. Later, she revealed that she was duped and provided another statement (Exhibits "A1" - "A2"). He further testified that on inquiry from the P.W.4 why she had earlier told the police a different story, she explained that she did not initially tell the truth because the people (the gang of the accused persons) had warned her not to tell anybody about the affair and that if she did she would die. The P.W.5 testified on how the accused persons were arrested and tendered the voluntary statement of the 1st, 2nd and 3rd accused persons which were admitted as Exhibits "B" - "B5".

Under cross-examination, the witness stated that the 2nd accused person admitted in his statement that he received part of the money obtained from P.W.4. The witness stated that the reason given by the P.W.4 for making different statements in her first and second statements was reasonable and not made in order to get her freed from the case. The investigating police officer admitted that when P.W.4 was making her first statement she was hand-cuffed, while she was not so hand-cuffed when she made the second statement.

Mrs. Wosilat Omoke gave evidence as P.W.7. She testified that sometime about four or five years ago, she had met 2nd accused person when a partner of his (the 2nd accused) approached her, told her that he was from Lagos to look for a customer who had bought goods and duped him. He showed her an address written on a sheet of paper and requested her assistance to trace the address. When she told him that the address was not correct, the 2nd accused

intervened and requested that the partner be assisted because he (the partner) had been duped. She followed the 2nd accused person and his partner to a house in Odinjo where they met a woman, called Bukky, who on seeing them stated that she had been looking for the partner of the 2nd accused person since the morning. However, when they got into the house, the woman advised that in wanting to assist the partner of the 2nd accused person, they got to take an oath and they deeped their hands into a bucket, containing water and a bible, from where two currency notes of ₦20.00 denomination were brought out. After the exercise, the 2nd accused person and the woman then threatened that anyone amongst them who leaked the secret of the happenings would not only die but his or her children as well. The witness was then requested for monetary contributions towards the making of sacrifices of appeasement of the spirit as a result of their deeping their hands into the bucket of water, to avoid death. As a result of the threat of death to the P.W.7 and her children, various sums of money amounting to ₦30,000.00 within a week, were collected from the witness at various times following the continued threat that she (witness) would die for the failure to contribute or make the payments demanded for. She maintained that she continued making contribution or payment because of the threat issued by one of the gang who was called "Doctor" that she and her children would die and her house burnt if she defaulted.

Under cross-examination, she stated that the gang that defrauded her were made up of four members among whom were those called by their aliases as Bukky, Sailor (the 1st accused). She denied the suggestions that the monies collected from her were payments for washing the two ₦20.00 currency notes retrieved from the bucket of water or that the monies were paid to drive out evil spirits from the currency notes. She maintained that the monies were paid to avoid death and to save the lives of herself and her children.

The 2nd accused person gave evidence in his defence. He testified that the P.W.4 and P.W.7 were respectively girl friend and wife of the 1st accused and first came across each of them in



he house of the 1st accused. The 1st accused was his friend and had been together for a year or nine months before the incident. The 2nd accused denied in the main the testimonies of the witnesses for the prosecution. He denied that he or anybody to his knowledge took the sum of ₦174,000.00 from P.W.4.

On the statements tendered as his in this case, he denied making any statement to the investigating police officer (P.W.6). The P.W.6 in the presence of P.W.7 only showed a statement to him and told him to sign it, but that he told him that he did not know how to sign his name being an illiterate. However, because he was beaten and tortured by the Police and the P.W.6 promised to let him free if he signed the statement, he agreed and signed the statements (Exhibits "B3" and "B4") without reading it or being read to him.

Under cross-examination, witness admitted knowing all the other accused persons. He admitted knowing the houses of the 1st accused and that he was visiting him regularly but that when the police requested him to take them to the house of the 1st accused he denied knowing his house. He stated that the 3rd accused is a junior brother of the 1st accused person and that they live and work together as traders. He also knew Bukky as a girl friend of the 1st accused. The 2nd accused admitted that he was arrested in the house of the 1st accused where he had slept the previous night and that the 3rd accused led them to the house. He stated that the P.W.4 alleged before him, the 1st accused person and the police that she was duped by the 1st accused.

The accused persons were charged for conspiracy, obtaining money under false pretences and stealing. I shall deal with each of the three counts one by one. On the count of conspiracy, Mr. A. Abiola, the Legal Officer for the prosecution contended that the charge has been proved that the 2nd accused person who is before the court, had conspired with the other accused persons to obtain money under false pretences. Counsel referred to the evidence before the court showing that the 2nd accused person was a member of a gang of con-men who set up traps to unsuspecting victims like the P.W.4. In this case, the trick was to approach

the victim for assistance to trace an address. The gang introduced oath taking, making threatening prophecies and death threat, all in an effort to create fear in the mind of the victim to bring monies for particular purposes, for example for prayers to avert a threat of an imminent death hanging on the head of the victim. The P.W.4 thus became their victim and trapped resulting in her paying ₦174,000.00 to the gang. The learned Legal Officer submitted that there is sufficient evidence of conspiracy before the court showing that the gang knew the existence of a criminal design for the purpose of defrauding their victim. In this case, there is the existence of an agreement to defraud the P.W.4 of the sum of ₦174,000.00. He referred to the evidence of P.W.4 from which the court can make inferences of criminal complicity from the act of the 2nd accused and the other accused persons at large. Counsel relied on the cases of IKEMSON VS. THE STATE (1989) 1 CLRN 1; OSONDU VS. FEDERAL REPUBLIC OF NIGERIA (2000) 12 NWLR (Part 682) 483 at 501 and ADEBAYO VS. THE STATE (1987) 2 NWLR (Part 57) 468 at 482.

On the other hand, it is the contention of the learned counsel for the 2nd accused, Mr. J. Abdulateef that there is no evidence before the court that the 2nd accused person agreed with the other accused persons and therefore the prosecution has failed to prove the offence of conspiracy. He pointed out that the evidence of the 2nd accused person as contradicting the evidence of the P.W.4 when he testified that he knew nothing about the case and was only arrested in the house of the 1st accused because he slept in the house when he had no money to go back to his own house. The learned counsel for the 2nd accused person went further to submit that the oral evidence and the first statement (Exhibit "A") of the P.W.4 when compared are contradictory and therefore unreliable to be believed, while the second statement (Exhibits "A1" - "A2") is an involuntary statement. Counsel relied on Section 27 of the Evidence Act and the cases of MAHARAJI VS. THE STATE (2000) 2 CLRN 111 (Ratio 3); AKPAN VS. THE STATE (2000) 2 CLRN 88 (Ratio 9); AKOGBU VS. THE STATE (2000) 2 CLRN 31 (Ratio 3).

On the statements of the 2nd accused (Exhibits "B3 and "B4"), the learned counsel contended that both statements were inadmissible under Section 28 of the Evidence Act having been obtained by torture. Alternatively, counsel submitted that the statements being equivocal are not confessional, the accused having agreed to have taken only ₦25,000.00 and not ₦174,000.00 alleged in the charge. According to the counsel for the defence, the evidence of either P.W.4 or P.W.7, both of whom gave evidence in the same line as to the manner they were tricked or duped, should not be believed when all the facts of the case are considered; instead that the evidence of the 2nd accused person be believed.

Respecting the 2nd count, Mr. Abiola submitted that the offence of false pretences has been proved and referred to the evidence of P.W.4 on how she was accosted on the road and made to follow them to their house, where the 2nd accused and his cohorts washed a black paper in a bucket of water and made her to believe that a spirit somewhere witnessed the actions and creating fear in the P.W.4 that all who witnessed the washing of the paper would die unless prayers are offered and monies offered as sacrifice to appease the spirit. The prosecuting counsel also referred to the confession of the 2nd accused that money was obtained from the P.W.4.

On behalf of the 2nd accused, the counsel for the accused submitted that the prosecution has failed to prove the ingredients of the offence - false pretence as enunciated in the case of ALAKE VS. THE STATE (1991) 7 NWLR (Part 205) 567 at 591 going by evidence of the 2nd accused person denying making any pretence or promise, or inducing the transfer of any property.

It was the alternative contention of the counsel for the 2nd accused that the pretence, if any, is as to a future event relying on the case of AJEWOLE VS. C.O.P. (1989) 1 CLRN 318 at 319 (Ratio 1). He submitted further that the pretence cannot also be regarded as false as the P.W.4 who has been prayed for has not died and thereby the purpose of the receipt of the money has been achieved by the P.W.4.



On the count of stealing, there is evidence that the amount appropriated was the sum of ₦174,000.00 being a thing capable of being stolen. The Oyo State Government, the owner of the money has, by the evidence, been deprived permanently of the ownership of the money as the 1st accused ran away with the 2nd accused person soon after collecting the money. There is also evidence that the money was obtained fraudulently from P.W.4 who had been cajoled, deceived and threatened of death to collect the money from her.

Replying on the submissions of the defence that P.W.4 is an accomplice, counsel for the prosecution submitted that the P.W.4 was a victim, even though stupid by her behaviour relying on ADEBAYO VS. THE STATE (supra) at 485. He also submitted that there is no evidence before the court that the P.W.4 wanted to double the money collected from her.

On the statements of the 2nd accused person, it is the contention of the learned Legal Officer, that the statements are confessional and that the fact that they have been retracted will not preclude the court from acting on them to convict relying on the case of AKINMOJU VS. THE STATE (2000) 6 NWLR (Part 662) 608 at 628.

And on the issue raised by the court as to whether or not the second count of obtaining by false pretence is properly framed, counsel contended that even though the court cannot close its eyes to the fact of the defect, the 2nd accused has not been misled by the defect since the second accused person is represented by a counsel and the 2nd accused knew the charge against him.

On the third count of stealing, it is the submission of the counsel to the 2nd accused person that going by the evidence of the 2nd accused that he knew nothing about the case there is no reliable evidence in proof of the count of stealing. He referred to the ingredients of the offence of stealing as enunciated in MOHAMMED VS. THE STATE (2000) 2 CLRN 66 at 76 - 77. He also referred to the evidence of the prosecution that P.W.4 brought the money to the accused persons as evidence of the consent of P.W.4 to pass the ownership over the money to the accused persons in order to pray

or her not dying . It was his further submission that the statements of the 2nd accused if held to be confessional, will till not support conviction in the absence of other or evidence outside the confession which make the confession credible or corroborated. He relied on Section 27(1) of the Evidence Act and the case of AKPAN VS. THE STATE (supra) at page 86 (Ratio 6).

It was also submitted that because the 2nd accused testified that he was not aware of the commission of the alleged crime, it means that he was not at the place where the offences were committed and thereby had raised a defence of alibi, relying on the case of IKEMSON VS. THE STATE (supra) at 6 (Ratio 15).

On the defect of the second count of obtaining by false pretences, counsel submitted that the defect is fundamental and that the evidence on the second count of the Information is against the charge. He relied on the case of FAWEHINMI VS. THE STATE (1989) 1 CLRN 292 at 304 and 306.

The brief facts of this case is as narrated by the P.W.4 who is the principal witness in this case. According to the case of the prosecution, on or before the 2nd of August 1999 the P.W.4, Miss Dorcas Adunola Akangbe has, by various devices, been put into fear that an evil spirit was watching her and that she would die if she failed to abide by their demands. In particular, she was told by one Dr. Ajayi, a member of the gang, that a spirit had predicted that an amount would be given to her for payment at a Bank and that on the receipt of the money she should bring the money to be prayed upon in order to avoid death. From the evidence, the said Dr. Ajayi was a member of a gang which included the 2nd accused and the other accused persons. This is so, going by the fact that he took active part in the threatening of P.W.4 that she would die if the secret of their activities were leaked to an outsider. It is the evidence that it was he (Dr. Ajayi) who joined the 1st, 2nd and 3rd accused persons at the house of the 1st accused on the first day when the 1st and 2nd accused persons got P.W.4 hooked to their fraudulent venture. Initially, on the 5th of July 1999, it was the 1st accused who approached the P.W.4

to assist him to trace an address, but when the P.W.4 told him (the 1st accused) of the address being wrong and was about to leave the 1st accused to his faith, it was the 2nd accused who prompted P.W.4 to join him in assisting the 1st accused. Again when they got to the house of the 1st accused, it was the 2nd accused who was the owner of the films to be developed and who offered to sell the films to the P.W.4 and requested her to contribute money towards the purchase of a chemical to produce pictures from the films for sale. The gang got P.W.4 to swear by water and salt which she drank with other members of the gang that the activities of the gang would not be leaked to outsiders. It was while they were still in the room that another member of the gang, Dr. Ajayi (Robert) came to meet them and offered to dilute a bottle of chemical brought by the 3rd accused. Before Dr. Ajayi would dilute the chemical he promised to pray for the accused persons and P.W.4 to ward off evil spirits associated with the films and which spirit would be following them about. In the course of the prayer session, prophecies were made, voices of spirits heard and demands for monies made for sacrifice to buy anointing oil and ram. There is also the evidence that initially it was the 1st and 2nd accused that got the P.W.4 to follow them to the house of the 1st accused where the P.W.4 was put into a fear of death to be caused by an alleged evil spirit. P.W.4 was then made to pay and contribute monies to appease the spirit. When the money was collected from P.W.4 on the 2nd of August 1999 following the prediction of Dr. Ajayi, it was handed over to the 1st accused who rode away with the 2nd accused on a motorcycle with the money. On the arrest of the 2nd accused, he was found in the house of the 1st accused and by his own evidence, he slept in the house the previous night to his arrest. He also admitted that he was a friend of the 1st accused who paid for his transport expenses and that the 3rd accused was a junior brother of the 1st accused person with whom he was living.

Against the evidence of the prosecution, the 2nd accused merely denied taking part in the acts alleged by the P.W.4. He,



however, admitted knowing the P.W.4 as a girl friend of the 1st accused whom he used to meet in his (1st accused's) house. Apart from the evidence of P.W.4 is also <sup>the</sup> evidence of P.W. 7, a woman who also fell a victim of the same gang. The evidence of P.W.7 shows that the same method employed in obtaining money from the P.W.4 was also employed by almost the same gang which included the 2nd accused in obtaining from her too. In respect of her, the 2nd accused also stated that she was a wife of the 1st accused. The P.W.4 and P.W.7 identified the 2nd accused as a member of the gang while the 2nd accused person merely denied knowing them in respect of this case. From the pieces of evidence referred to above, there is evidence before me that the 2nd accused person is a member of the gang and took active part in the activities of the gang to defraud the P.W.4 (Miss Dorcas Adunola Akangbe) on the 2nd of August 1999. This is the only reasonable inference that can be inferred from the activities of the 2nd accused and his gang in this case. It is trite that the Court has a duty to consider the evidence led before it and draw the necessary inferences from the acts of commission or omission attributable to the accused persons - See DR. ODUNEYE VS. THE STATE (2001) 5 NSCQR 1 at 11 - 12; (2001) 1 SCNJ 1; ONOCHIE VS. THE STATE (1966) NMLR 307 and IKEMSON VS. THE STATE (1989) 1 CLRN 1 at 23. Considering the totality of the evidence before the Court and the demeanour of the witnesses and the 2nd accused in the witness box, I prefer the evidence of the prosecution and believe the prosecution witnesses as against the evidence of the 2nd accused person.

The conspiracy described in the charge is that the three accused persons on or about the 2nd of August 1999 conspired to obtain money under false pretences from P.W.4. The pieces of evidence highlighted above shows that the 2nd accused was a member of <sup>gang</sup> which also include Dr. Ajayi which was out to dupe P.W.4. They have a common intention to defraud P.W.4 and this brings them within the provision of Section 11 of the Evidence Act. Having believed the evidence of the prosecution, particularly P.W.4 as to how she parted with the sum of N174,000:00, there is evidence

conspiracy established in this case.

Apart from the evidence of the prosecution is the first statement of the 2nd accused (exhibit "B3") where he admitted that he was a member of a gang of 419 businessmen who took monies from P.W.4 even though he did not know the total of the actual amount taken from her. The statement being of facts against his own interest is an admission and is admissible against him - See SHAZAL VS. THE STATE (1988) 5 NWLR (Part 93) 164 at 177, NWACHIKWU V. THE STATE (2002) 12 SCM 143 at 159. The statement was admitted without objection even though during his defence he denied that his statements were voluntary. At another breath he stated that he never made any statement at all to the Police.

However, it is my view that without the consideration of the statements there is ample evidence of conspiracy before the Court. Considering the circumstances of this case and the role of the P.W.4 in it, it is incumbent on me to advert my mind to the fact that P.W.4 might be a witness with a purpose of her own to serve and therefore I have treated her evidence with caution in the case and will continue to do so hereafter.

I shall now deal with a number of points raised in the addresses of Counsel. Firstly, the Counsel for the 2nd accused has submitted that the 2nd statement (EXHIBIT A1 and A2) of the P.W.4 is inadmissible, on the ground that she made an earlier <sup>one.</sup> statement of P.W.4 which the Counsel for the accused person is now objecting to was tendered by his Counsel through P.W.4 under cross-examination. The question to ask is whether the same Counsel can now submit that the same statement is inadmissible. I do not think so. It is trite that where a document or evidence is admitted at the instance of a party, it is not proper to allow the party to challenge its admission. The Counsel for such a party cannot be heard to say that the statement is an admission. SEE EZEKEKE & ORS. VS. UGA & ORS. (1962) 1 All N.L.R. 482 (485). Another related ground of objection to the statement is that the statement was <sup>not</sup> voluntary because the P.W.4 was handcuffed when she made the statement. This objection cannot also be sustained as the evidence before the Court is that she did not



write the statement herself. It is not the case of the P.W.4 that being handcuffed had handicaped her in any way in making her statement to the writer. At any rate, the Court will also not lose sight of the fact that this statement was tendered at the instance of the same Counsel objecting to its admissibility.

It was also the contention of the Counsel for the 2nd accused person that the evidence of P.W.4 is contradictory to her first statement (EXHIBIT A) made to the Police and submitted that consequently her evidence is unreliable. It is trite that a witness who has made a previous statement which is in direct contradiction to the evidence by the witness, and there is no cogent reason for the inconsistency, both the statement and the evidence should be regarded as unreliable. SEE ONUBOGU V. THE STATE (1974) 1 All NLR (Pt. 2) 5 at 16 - 17; R. V. GOLDER (1960) 450 Cr. App. R. 5.

However, where there is evidence given of sufficient reason for the contradiction, for example, that he has been threatened or that his earlier statement is not true, it is unobjectionable in principle to accept the explanation on the inconsistency. SEE ABOSEDE V. THE STATE (1996) 4 SCNJ 223 at 231 - 232; PIUS JIZURUMBA V. THE STATE (1976) 1 NMLR 303 at 310; AKPABIO V. THE STATE (1994) 7 NWLR (Pt. 359) 635 at 664. The duty is on the witness to explain such contradiction or inconsistency between her extra judicial statement and her oral testimony in Court. If the explanation is believed and satisfactory his evidence can be believe. In this case, P.W.4 gave evidence that she made the first statement (EXHIBIT)A) because of the threat to her life that if she exposed the events and activities of the gang she would die. The explanation given in this case by the P.W.4 is, in my view, satisfactory and credible.

This also leads to another point raised by the Counsel to the 2nd accused that the evidence of the P.W.4 should not be believed because she is an accomplice. On the other hand it is the contention of the prosecution that the P.W.4 is a victim and not an accomplice.

A person becomes an accomplice if he falls within the class



or category of witnesses recognised under Sections 7 and 10 of the Criminal Code. Such person must be a perpetrator of the offence, one who prepares the way for or facilitates the crime; the one who assist in the preparation of the crime, the one who forments or incites the commission of the crime and one who receives or assists another in order to enable him escape punishment. In the case of ISHOLA V. THE STATE (1978) 2 LRN 11 at 117, the Supreme Court held that the common feature of all the persons described as participants to a crime under Section 7(b), (c) and (d) of the Criminal Code, are persons who not only wish the offence to be committed, they also play a part towards its commission. The evidence before the Court is that the 2nd accused person and his gang by various means or tricks lured the P.W.4 into their enterprise, collected monies from P.W.4 and made her to believe that if she exposed them or told anybody of the events or activities of the gang, she would die. She sincerely believed the members of the gang and got along with them because of their threat that she would die. For this reason, she originally told the Police that some robbers robbed her of the money alleged stolen in the charge. To be categorised as a party to a crime, there must be clear evidence that either prior to or at the time of the commission of the offence she did something or omitted to do any act, such as aiding or abetting (within the purview of Section 7 of the Criminal Code) to facilitate the commission of the offence.

The facts of this case do not show that the P.W.4 is an accomplice or a tainted witness. The evidence instead show her as a victim rather than a participant. The association of P.W.4 with the gang do not appear voluntary neither was the giving out of the money. On these facts, I find the 2nd accused person guilty and is convicted of conspiracy as charged, contrary to Section 516 of the Criminal Code, Cap. 30, Volume II, Laws of Oyo State of Nigeria, 1978.

The second count is one of obtaining money under false pretences. The particulars of the offence are, as contained in the information, read thus:

"PARTICULARS OF OFFENCE

Jehn Anosike (m), Ikechukwu Abel (m) and Augustine Egbu on or about the 2nd of August 1999 at Olorunsofe Area, Ibadan, in Ibadan Judicial Division with intent to defraud obtained the sum of ₦174,000:00 (One hundred and seventy-four thousand Naira) property of Oyo State Government from Miss Dorcas Adunola Akangbe under false pretences."

It was the Court that raised the issue whether or not there is any defect in the second count of the Information in the absence of any particulars as to the facts of the pretence alleged. While the Legal Officer for the prosecution contended that the 2nd accused has not been misled by the defect, it was submitted on the other hand, by the Counsel to the 2nd accused person that the defect is fundamental. The essence of particulars of an offence is to give to the accused person a notice of the facts of the offence contained in the count; this is essential to a good charge as required by Sections 152, 338 and 339 of the Criminal Procedure Act. In this count, the mode of the pretences is not set out in the count as the count did not allege the kind of pretence by which the money was obtained. An example of the particulars of the form of an offence of obtaining money by false pretences is contained in Brett and McLean's Criminal Law and Procedure of the Southern States of Nigeria, 2nd Edition by C. O. Madarikan and T. Akin Aguda at page 818 paragraph 2122 and read thus:

"PARTICULARS OF OFFENCE

AB on the ..... day of ..... 19 ....., in the Province of ....., with intent to defraud obtained from CD the sum of ..... Naira by falsely pretending that he had delivered 5 tons of Grade I cocoa at the store of the said CD."

In DARAMOLA VS. C.O.P. (1981) 1 OYSHC 193 and GBADAMOSTI VS. QUEEN (1959) WNLR 297 at 298, it was held that the particulars of the charge in the two case were defective in that the particulars of offence in the two charges did not set out what the false pretence or information was alleged.



In a charge for false pretence, the false pretences must be proved as laid down in the charge and that any evidence of the pretence given outside the false pretence alleged goes to no issue. In other words, it is important that the charge or count must state in clear terms, the manner by which the victim was defrauded - See *AWOBOTU VS. THE STATE* (1976) 10 NSCC 21; *ARUNA VS. THE STATE* (1990) 6 NWLR (Part 155) 125. It is trite that one test which every charge or count should satisfy is whether a good plea of *autrefois convict* or *autrefois acquit* could be founded on it - See *FAWEHINMI VS. THE STATE* (1989) 1 CLRN 292 at 305.

In this case, it is my view that the accused was not given reasonable information by way of full particulars as to give him sufficient notice of the offence with which he is charged. In the circumstance, I hold that the second count of the information is defective and is accordingly struck out.

On the last count of stealing, the 2nd accused together with the other two accused persons are charged for stealing from Miss Dercas Adunola Akangbe (P.W.4) the sum of ₦174,000:00, the property of the Oyo State Government. The short facts of the case have been stated earlier in the judgment. It was that on the 2nd of August 1999, P.W.1 with the consent and approval of P.W.2 and P.W.3 gave the sum of ₦174,000:00 the property of Oyo State Government to the P.W.4 for the purpose of paying the same into the account of her employer, the Oyo State Government at the Diamond Bank, Ibadan. Instead of effecting the payment at the Bank, the P.W.4 took the money to the accused persons and their gang.

Before the money got to the hands of the P.W.4, precisely on the 1st of August 1999, Dr. Ajayi (Robert) a member of the gang of the 2nd accused in furtherance of the conspiracy had prophesied into the life of P.W.4. This time he (Dr. Ajayi) prophesied that some money was soon to be given to her (P.W.4) to be taken to a Bank and that immediately the money was received, she should bring the money to him to be prayed over to avoid death and being consumed



by fire. Indeed, it was the evidence of P.W.4 that on that day, these of them at the prayer session had an experience of what she termed hell fire when they experienced heat waves all over their bodies. Consequently, when on the 2nd of August 1999, a sum of ₦174,000:00 was given to her for the purpose of payment into the account of the Ministry of Education of the Oyo State Government at the Diamond Bank, she took the money to their meeting place where the 1st accused collected it and drove off with the money with the 2nd accused person.

The evidence of the 2nd accused was at one breath a denial of the events narrated above, while at another breadth it was contended that the evidence of the prosecution witnesses was unreliable.

I have adverted my mind to the fact that the P.W.4 by her statements to the Police and her conduct in the events leading to this case may be treated as a witness with a purpose of her own to serve. Having warned myself of the need to be cautious in accepting her evidence, I will still believe her and rely on her evidence in this case, having examined closely the circumstances of this case. The P.W.4 appears also in my view to be victim rather than an accomplice. The evidence shows that the P.W.4 was under a terrible fear that if she exposed the activities of the gang she would die. She had been so threatened and she believed the threat. She remained in fear until she was publicly disgraced before <sup>she</sup> summoned the courage to expose the gang and die if necessary, with a good name.

From the evidence highlighted above the sum of ₦174,000:00 does not belong to the P.W.4, the same have been given to her to pay into the account of the Ministry of Education of Oyo State. The money did not belong to her and had no authority to give it out to the gang. The prosecution has proved that the gang of the accused persons obtained from P.W.4, the said amount of money which is the property of the Oyo State Government. The property was received by the P.W.4 for a particular purpose and therefore, as a servant of the Oyo State Government, she has limited authority to part with the ownership <sup>of</sup> the money - See AWOBOTU VS. THE STATE

(1976) 5 SC 49 at 78 and R. Vs. SAMUEL SUTTON (1966) 50 Cr. App. R. 114 at 117 - 118.

Relevant to disbelieving the case of the 2nd accused person is the evidence of P.W.7 which goes to rebut the defence of the 2nd accused that he knew nothing about these events. This is because similar events led to taking of monies from the P.W.7 by the same gang about the same time when she was also under the fear of the gang that she would die. Added to this is the first statement of the 2nd accused where he admitted that he was a member of the gang and that an amount of money, the total of which he did not know was collected from the P.W.4. Having considered the totality of the evidence together with the circumstances of the case highlighted above and the demeanour of the witnesses, I am inclined to believe the evidence of the prosecution as against the evidence of the 2nd accused person. The 2nd accused person has no respect for truth at all as can be gathered from his evidence. I do not believe the evidence of the 2nd accused and reject his defence that he knew nothing about the theft of the sum of N174,000.00.

I find the 2nd accused person guilty of the offence of stealing as charged, contrary to Section 390(9) of the Criminal Code, Cap. 30, Volume II, Laws of Oyo State of Nigeria, 1978 and is accordingly convicted of the third count of the Information.

On the whole, I find that the prosecution have proved their case against the 2nd accused in respect of count 1, the offence of conspiracy and count 3 on the offence of stealing. I find him guilty of the two counts and I convict him accordingly in respect of the 1st and 3rd counts.

*Atilade Ojo*  
 .....  
 HON. JUSTICE ATILADE OJO  
 J U D G E  
 31/3/2004

2nd accused person present.

1st and 2nd accused persons absent.

Mr. N. A. Abiola, Legal Officer for the state.

Mr. G. Abdullateef for the accused persons.