

IN THE HIGH COURT OF JUSTICE OF SOKOTO STATE
IN THE SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO
ON THE 21ST JUNE, 2022
BEFORE HIS LORDSHIP:
HON. JUSTICE MOHAMMED MOHAMMED (JUDGE)

SUIT NO: SS/41^C/2015

BETWEEN:
THE STATE.....COMPLAINANT
AND
1. ABDUL MUMINI YUSUF
2. ILIYASU HASSAN.....DEFENDANTS
3. MUSA ABDULKARIM

Court Resumed Today 21/6/2022

Appearances

A. Shetima Esq: For the Defendants. The case is for judgment. We are ready.

I.M. Mande Esq. with H.M. Abarshi Esq. for prosecution.

JUDGMENT

Court: By a transfer order dated 18/2/2021, the defendants' case was transferred to this court from High Court 1, and by a charge sheet dated 8/12/2015 and filed on the same date, the defendants were arraigned before this Honourable Court on the 15/3/2021 for the offences of *Criminal Conspiracy, Causing grievous hurt and Robbery* contrary to sections 97, 248(2) and 298 (c) of the penal code respectively.

The charged were tread and explained to the defendants in Hausa Language to the satisfaction of the court because the defendants speak and understand Hausa language. After the

charges were read and explained to the defendants, they all pleaded not guilty to the three {3} counts charges. The charges to which the Defendants pleaded not guilty are hereby reproduced below as follows;-

CHARGE 1

1. *That you (1) Abdulmumini Yusuf 'm' (2) Iliyasu Hassan 'm' (3) Musa Abdulkarim 'm' all of Baguni village, Argungu Keebi state on or about the 6th day of April, 2014 at about 1600hrs at Kantin Daji Area, along Abdullahi Fodio Road, Sokoto state within Sokoto Judicial Division agreed to commit an armed robbery and such act was done in pursuance of the agreement and that you thereby committed an offence punishable under section 97 of the penal code.*

CHARGE 2

2. *That you (1) Abdulmumini Yusuf 'm' (2) Iliyasu Hassan 'm' (3) Musa Abdulkarim 'm' all of Baguni village, Argungu Keebi state on or about the 6th day of April, 2014 at about 1600hrs at Kantin Daji Area, along Abdullahi Fodio Road, Sokoto state within Sokoto Judicial Division while armed with iron rod attacked and hit one Aminu Bala and Isah Samaila on their heads thereby inflicted serious injuries on the said victims, thereby committed an offence punishable under section 248(2) of the penal code.*

CHARGE 3

3. *That you (1) Abdulmumini Yusuf 'm' (2) Iliyasu Hassan 'm' (3) Musa Abdulkarim 'm' all of Baguni village, Argungu Keebi state on or about the 6th day of April, 2014 at about 1600hrs at*

Kantin Daji Area, along Abdullahi Fodio Road, Sokoto state within Sokoto Judicial Division while armed with iron rod attacked and one Aminu Bala and Isah Samaila and snatched away of their motorcycle, thereby committed an offence punishable under section 298(c) of the penal code.

After the plea of not guilty of the defendants were taken, the case was then adjourned for hearing to enable the prosecution call their respective witnesses with a view to prove the allegations against the defendants.

In their efforts to prove the allegations against the defendants as contained in the charge sheet, the prosecution called three {3} witnesses and tendered eight {8} exhibits marked as exhibits 'A', 'A1', 'B', 'B1', 'C', 'C1', 'D' and 'D1' respectively.

Exhibits A and A1 are 2 iron rods alleged to have been used by the defendants in attacking their victims.

Exhibits B and B1 are the Hausa and English translated versions of the 1st defendant's extra-judicial statement.

Exhibits C and C1 are the Hausa and English translated versions of the 2nd defendant's extra-judicial statement.

Exhibits D and D1 are the Hausa and English translated versions of the 3rd defendant's extra-judicial statement.

After the close of the prosecution's case, the defendant opened their defence and called three {3} witnesses who happened to be the defendants themselves and tender no exhibits and thereafter the case was adjourned for adoption of counsel's respective written addresses after the defendants have closed their defence. On 19/4/2022, both counsel adopted their

respective written address and the case was thereafter adjourned for judgment.

The defence counsel in their adopted written, formulated one {1} issue for determination and is hereby reproduced below as follows:-

“Whether going by the totality of the evidence adduced by the prosecution against the defendants, the prosecution has discharged the burden of proving the alleged offences of armed robbery grievous hurt and conspiracy contrary to sections 298, 247 and 97 of the penal code respectively.”

The prosecuting counsel also formulated one {1} issue for determination in their adopted written address and is hereby reproduced below as follows:-

“Has the prosecution proved its case beyond reasonable doubt regards been had to the evidence adduced before this Honourable Court.”

For the purpose of this judgment, this court has decided to hybrid the two {2} issues formulated by counsel in the following words:-

“Whether from the totality of the evidence adduced before the court, the prosecution has proved its case beyond reasonable doubt against the defendant.”

The case of the prosecution against the defendants is as presented by the evidence of the three {3} prosecution witnesses, and the facts upon which the charges were framed against the defendants, are as contained in three {3} charges earlier reproduced above in this judgment.

The three {3} offences for which the defendants were arraigned before this court, are criminal conspiracy, causing grievous hurt and robbery contrary to sections 97, 248 (2) and 298 (c) of the penal code respectively. The three {3} sections provide as follows:-

“97(1) whoever is a party to a criminal conspiracy to commit an offence punishable with death or with imprisonment shall where no express provision is made in this penal code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

248(2) whoever except in the case provided for by section 245, voluntarily causes grievous hurt by any of the means mentioned in subsection (1), shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

298 Whoever commits robbery shall be punished:-

(C) if the robbery is committed by any person armed with any dangerous or offensive weapon or instrument, to imprisonment for life or any less term and shall also be liable to fine.”

At paragraph 4.5 of their adopted written address, the defence counsel submitted that looking at the evidence of PW1, PW2 and PW3, the only evidence adduced by the prosecution against the defendants, once the statement of the three {3} defendants marked as exhibits ‘B’, ‘B1’, ‘C’, ‘C1’, ‘D’ and ‘D1’ respectively.

He further submitted at paragraph 4.6 of their adopted written address that even though the defendants appeared to have admitted committing

the offences alleged against them as shown by their respective statements, the burden of proving the guilt of the defendants beyond reasonable doubt, is on the prosecution as it is always desirable to have some evidence outside the confessional statement of a defendant which will make the confession probable and true.

- Emmanuel V State (1994) 5SCNJ P 88 at 96
- Alarape V. State {2006} 5 LRCNCC 375
- Afolabi V. State {2014} 9 NCC 375

He argued that looking at the evidence of PW1-PW3, there is nothing outside their statements that links them to the commission of the offences alleged against them and so the case of the prosecution against the defendants, is based on suspicion and suspicion however strong cannot lead to conviction.

- Shehu V. State {2012} 10 LRCNCC 173
- Igabele V. State {2006} 5LRCNCC 30

He further contended that the prosecution did not tender the motorcycle in evidence before the court nor where the arresting officers called to give evidence.

In paragraph 4.10 of their adopted written address, the defence counsel further contended the 2 iron rods admitted as exhibits A and A1 tendered through PW1, was not linked to any of the defendants and as such, urged the court to discountenance them.

It was his submission that PW3 through whom the statement of the 3rd defendant was tendered and admitted, did not lay any foundation as to why Sgt. James Danjuma who recorded the statement could not be in

court to justify the tendering of the statement through him and therefore hears any.

- Sections 37 and 126 of the Evidence Act 2011
- Sections 49 and 50 of the Evidence Act 2011
- Umoren V. The Queen {1963} NSCC 293

As to causing grievous hurt, defence counsel submitted that PW2 although PW2 testified to the fact that he was attacked by the defendants, he did not mention the name of the defendants or identify which of them attacked him neither was a medical report tendered to show the extent of the injury sustained by the witness. He therefore urge the court to hold that the prosecution has failed to prove the offence.

Defence counsel submitted that as to the offence of conspiracy, there is no evidence of the meeting of the minds of the defendants to commit any crime which was led before this court by the prosecution and urge the court to so hold.

Defence counsel finally submitted that by the evidence of the prosecution, the prosecution has failed to prove the offences alleged against the defendants and urge the court to discharge and acquit the defendants of the three {3} offences.

In his response, the prosecuting counsel that the offence of conspiracy has been proved by the prosecution through the evidence of PWs 1, 2 and 3 as well as exhibits 'A', 'A1', 'B', 'B1', 'C', 'C1', 'D' and 'D1'.

He submitted that PW2 in his evidence has informed this court how the 3 defendants stopped them and requested him to convey them to Kantin Daji Area as well as how they used iron rods and hit him on the

head. The prosecuting counsel further submitted that the evidence of PW2, was corroborated by the substance of the confessional statements of the defendants. He then urge the court to infer conspiracy from the facts of doing things towards a common end by the defendants.

- Aduku V. State {2009} 4NCC 350
- Busari V. State {2015} 11NCC 43
- Salawu V. State {2015} 11NCC 4

As to the offence of causing grievous hurt the prosecution counsel submitted that the evidence of PW2 and the exhibits tendered, all pointed to the fact that the prosecution has proved the elements of the offence against the defendants.

- Ezigbo V. State [2007]7 NCC426 at 594
- Ahmad V. Nigerian Army {2011} 1NWLR pt 1227 p 89
- Abdullahi V. State [2008]3NCC 549
- Nwachukwu V. State [2007]11QCCR80

As to the offence of robbery, prosecuting counsel submitted that the evidence of PWs 1, 2, 3 and the exhibits tendered, showed that there was robbery incidence on the 6/4/2014 when PW2 was robbed of his motorcycle by the defendants. He submitted further that since the evidence of the witnesses were never contradicted nor controverted, this court has no option than to act upon it

He argued that though they tendered photocopies of the defendants statements not original, the originals got lost due to series of transfers of this case from two {2} different courts before it was transferred to this court as the third court.

- Sections 89(c) and 90 of the Evidence Act, 2011.

He finally submitted that the prosecution having discharged the burden of prove placed on him of the three offences of criminal conspiracy, causing grievous hurt and robbery he urge the court to convict the defendants as charged.

Let me start by saying that it is trite law that the burden of proving a criminal allegation against a defendant beyond reasonable doubt has always rested on the prosecution. This is because under our adversarial system of Criminal Justice, a defendant standing trial for any criminal offence, is constitutionally presumed innocent until he is proved guilty.

- Ajibade V. State [2013]8NCC221
- Smart V. State [2016] LPELR 40827
- Akinolu V. State (2015) LPELR 25986
- Ibrahim V. FRN {2016} LPELR 40059
- Section 36(5) of the CFRN 1999 as amended.

Furthermore, section 135(1) of the Evidence Act 2011 also provides as follows:-

“if the commission of a crime by a party to any proceeding civil or criminal, it must be proved beyond reasonable doubt.”

As to the offence of criminal conspiracy punishable under section 97(1) of the penal code, and which is the first count charge against the defendants, it is trite law that in a charge of criminal conspiracy, all that is necessary, is for the prosecution to lead evidence of an agreement to commit an offence, and in the absence of an agreement, then evidence of some community efforts on the part of all the accused persons aimed at committing a crime and once either of these two {2} is established by the prosecution before the trial court it will be safe to convict for the offence

of criminal conspiracy as it always be inferred from the surrounding circumstances of each case.

- Salawu V. State {2016} 12NCC1
- Obiakor V. State {2002} 10NWLR pt 776 p 612
- Abacha V. State {2002} 11NWLR pt 779 p 437
- Patrick Njovens V. State {1973} 8 SC 17 at 263

The prosecution submitted that the offence of criminal conspiracy was proved through the evidence of PW1, PW2, PW3 and exhibits A, A1, B, B1, C, C1, D and D1 which are the Hausa and English translated versions of the defendants' statements.

However in paragraph 2 of page 7 of the of the prosecutor's adopted written address, the prosecuting counsel submitted that though what they tendered and admitted were the photocopies of the defendants' statements because original got lost due to series of transfers of this case to three {3} different courts including this court, and submitted that they relied on the provisions of sections 89(c) and 90 of the Evidence Act, 2011 for their admissibility. The said sections provide as follows:-

"89. Secondary evidence may be given of the existence, condition or contents of a document when:-

(C) the original has been destroyed or lost and in the latter case, all possible search has been made for it;

90(1) The secondary evidence admissible in respect of the original documents referred to in the several paragraphs of section 89, is as follows:-

(a) In paragraphs (a), (c) and (d), any secondary evidence of the contents of the document, is admissible."

In consideration of the decision of the Supreme Court in the case of *Araka V. Egbue* {2003} 7SC75 at 82 in which the court held that the only acceptable secondary evidence of a public document is the certified true copy of the document coupled with the fact that the statements of the defendants marked and admitted as exhibits B, B1, C, C1, D and D1 for Hausa and English translated versions of the 1st, 2nd and 3rd defendants respectively have been certified, I am certified that the said exhibits were properly admitted in evidence before the court explanations having been offered as to why as to why the originals cannot be tendered and this court has accepted them and will act upon them in the cause of this judgment, their admissibility having been justified by the foregoing provisions of sections 89(1) and 90(1)(a) of the Evidence Act 2011.

- *Minister of Lands, Western Nigeria V. Dr. Azikiwe* {1969} 1 ALLNLR49
- *Nzekwu V. Nzekwu* {1989} 3 SC pt II p 76
- *Fawehinmi V. IGP* {2002} 5SC p I p 63
- *Ogboru V. Uduaghan* {2011} 2 NWLR pt 1232 p 538
- *Ugoh V. B.S.L.G.S.C* {1995} 3 NWLR pt 383 p 288

In Exhibit 'B1' which is the English translate version of the 1st defendant's statement, the defendant stated as follows:-

“On the 6/04/2014 at about 0800hrs, I Abdulmuminu Yusuf, Musa Abdulkarim & Iliyasu Hassan all 'm' of same address came to Sokoto with the intention to rob motorcyclist.

From the foregoing portion of the 1st defendant's statement and the community efforts of all the defendants as disclosed by the substance of their respective statements coupled with the evidence of the victim who

testified as PW2, it has become very apparent that the defendants did agreed between themselves to commit an illegal act and each of them participated in the agreement. I therefore agree with the submission of the learned prosecuting counsel that the prosecution has proved the offence of criminal conspiracy against the three {3} defendants beyond reasonable doubt as required by law and found them guilty as charged. As to the offence of causing grievous hurt contrary to section 248(2) of penal code, PW2 one Isah Samaila who happened to be the victim in this case, testified as follows:-

“I know the defendants. I came to know them when on one day while I was doing my Kabu-Kabu work, the defendants stopped me and requested me to stop another motorcyclist and thereafter asked us to take them to Kantin Daji Area, Sokoto. We took them and on reaching there and before payment, I just had a struck on me with an iron on my back and on my head and so I fell down unconscious and they took my motorcycle and ran away. Someone reported the matter to police and as a result, the defendants were arrested at Wamakko. I was later taken to Specialist Hospital Sokoto for treatment. One week later after I was discharged from hospital, I went to State CID Office Sokoto and collected my motorcycle.”

Corroborating the foregoing piece of evidence of PW2, is the statement of the 3rd defendant {Musa Abdulkarim} who stated in exhibit D1 which is the English translated version of his extra-judicial statement as follows:-

“....On our reaching Buzaye Mechanical Workshop Abdulmuminu removed one iron and started beating the Kabu-Kabu man. We also continue beating them. We then overloaded ourselves one Daylong motorcycle.

The substance of the contents of the statement of both 1st and 2nd defendants, also further corroborated the evidence of PW2 with respect to the grievous hurt caused by the defendants against PW2.

The evidence of PW2 having been corroborated by the respective statements of the defendants, is hereby accepted and believed as the truth of what has actually happened having been further substantiated by exhibits A and A1 which are the iron rods believed to have been used by the defendants in causing the grievous hurt against the said PW2.

From the foregoing pieces of evidence it is the finding of this court that the defendants did in fact caused grievous hurt against the person of one Isah Samaila who testified as PW2 without any provocation. Having found as above, I also agree with the submission of the prosecuting counsel that the prosecution has proved all the elements of the offence of causing grievous hurt beyond reasonable doubt and found the defendants guilty as charged.

As to the offence of robbery contrary to section 298(c) of the penal code, and as rightly submitted by both counsel, to secure a conviction for the offence of robbery, the prosecution is required to prove the following elements:-

- (i) That there was robbery incident,
- (ii) That the defendant(s) or one of the defendants was armed with a dangerous or offensive weapon; and
- (iii) That the defendant(s) participated in the robbery.

- Egbufor V. State {2019} 15WRN 60
- Onyeyemi V. State {2019} 34WRN 75
- Sakiru V. State {2019} 29 WRN 109
- John V. State {2019} 37WRN 143
- Sections 296 and 298 of the Penal Code
- State V. Isiaku{2013} LPELR20521

It is also trite law that robbery is committed by a person who in the cause of committing theft, carried a dangerous weapon or was accompanied by another person carrying a dangerous weapon.

- Bello V. State {2007} 10 WRN 564
- Osetola V. State {2012} 17 NWLR pt 1329 p 343
- Adekoya V. State {2017} 18 WRN 1

In the case of Oyeyemi V. State {supra} at page 91 paragraph 15, My Lord Abdullahi JCA clarified the position of the law in the following words:-

“The law is that it is not the requirement of the law that all the accused persons must be armed with dangerous weapon, the offence is complete once an offensive weapon is used by either of the accused persons.”

Part of the evidence of PW2 earlier reproduced in this Judgment, clearly shows that the victim was robbed of his motorcycle by the defendants who were armed with iron rods on the date of the incident after he was beating by the defendants to a state of unconsciousness.

The evidence of PW2 was substantially corroborated by the substance of the respective statements of the defendants, admitted in evidence and

marked as exhibits B, B1, C, C1, D and D1 respectively which was further substantiated by exhibits A and A1 which are the iron rods.

From the evidence of PW2, the statements of the defendants admitted as exhibits B, B1, C, C1, D, D1 and the 2 iron rods marked as exhibits A and A1, it has become very obvious that a robbery incident did actually occurred against PW2 by the defendants during which they carted away with his motorcycle after beating him with iron rods to a state of unconsciousness. I therefore agree with the prosecuting counsel that the prosecution has proved all the elements of the offence of robbery against the defendants beyond reasonable doubt as required by law and found the defendants guilty as charged.

Having earlier held that the prosecution has proved all the elements of the three {3} offences with which the defendants were arraigned before this Honourable Court, it automatically follows that the prosecution has proved its case beyond reasonable doubt as required by law.

- Ajayi V. State {2013} 5JSCQLR pII p 631
- Ikaria V. State {2013} 8NCC248
- Alabi V. State{1993}7NWLR pt 307 p 511

Consequently upon the foregoing, I resolve the sole issue formulated in favour of the prosecution and against the defendants

Accordingly the prosecution having proved its case beyond reasonable doubt against the defendants in respect of the offences of criminal conspiracy, causing grievous hurt and robbery contrary to sections 97, 248(2) and 298 (c) of the penal code, with which the defendants were arraigned before this court, I hereby find you (1)Abduluminu Yusuf

(2)Iliyasu Hassan and (3)Musa Abdulkarim guilty as charged and convict you accordingly.

ALLOCUTUS

A. Shattima Esq: On behalf of the convicts, the convicts are first time offenders. We urge the court to look at the period spent in detention from 7/4/2014 and the charge was filed on 8/12/2015 and since then we have been before this court on sentencing the convict especially sections 415 ACJL as well as the need for the defendants to be re-integrated into the society. They have been remorseful and urge the court not to give maximum sentence. They are young persons and married.

I.M. Mande Esq: They are first time offenders and we have no objection to leniency.

SENTENCE

Court: By the provision of Section 310(3) of the ACJL of Sokoto State 2019, the trial court after conviction while sentencing, is required to take into consideration all aggravating and mitigating factors or information as a guide in deciding the nature and extent of the sentence to be passed on the convict. I have considered the allocutus made by the defence counsel on behalf of the convicts as well as the response of the prosecution and the provisions of section 415(2) (d) of Sokoto state ACJL 2019 which required a trial court not pass the maximum sentence on a first offender all as a guide in deciding the extent of sentence to be imposed on the convicts. I have also taken into consideration from the evidence of PW2 that the motorcycle which was the subject of robbery has been recovered and given back to him as part of the factors to be

considered in deciding the nature of the sentence to be imposed on the convicts.

Furthermore, from the wordings of sections 97, 298(c) and 248(2) of the penal code respectively under which the convicts were convicted, the trial court has been given some discretion to exercise as to the term of imprisonment to be imposed on the convicts.

It is trite law that where the statute creating the offence gives discretion to the trial court to exercise in sentencing the convict as in this case, and it has become judicious and judicial to do so, then the trial court can pass a sentence less than the one provided by the law creating the offence after having regards to the circumstances and justice of the case.

- Musa V. State {2012}3NWLR p 50
- Amoshina V. State {2011}14NWLR pt 1268 p 50
- Ogunbayo V. State {2007}8NWLR pt 1035 p 157

Considering the grounds upon which the plea of leniency is made on behalf of the convicts, it is the humble view of this court that this case is a case in which this court can temper justice with mercy.

Accordingly the convicts (1) Abdulmuminu Yusuf (2) Iliyasu Hassan (3) Musa Abdulkarim are hereby sentenced to a fine of ₦100,000 each for the offence of criminal conspiracy punishable under section 97 of the penal code or 2 years imprisonment in default; ₦20,000 each for the offence of causing grievous hurt punishable under section 248(2) of the penal code or 3 years imprisonment in default; ₦150,000 each for the offence robbery punishable under section 298(c) of the penal code or 5 years imprisonment in default.

The sentences are to run concurrently with effect from the date they were individually first remanded.

Signed
Hon. Justice Mohammed Mohammed
(Judge)
21/06/2022

CERTIFIED TRUE COPY:

FATIMA SAIDU MOH'D

Ag. Director Litigation
High Court of Justice,
Sokoto.