

IN THE HIGH COURT OF JUSTICE OF SOKOTO STATE
IN THE SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO
ON THE 19TH DAY OF JANUARY, 2024
BEFORE HIS LORDSHIP:
HON. JUSTICE MOHAMMED MOHAMMED (JUDGE)

SUIT NO: SS/98^C/2021

BETWEEN:

THE STATE-----COMPLAINANT

AND

MUAZU MODI & 2 ORS-----DEFENDANTS

Appearances:-

P.A. Chadi Esq. for the prosecution.

Kamal O. Fagbemi Esq. with A.M. Lukman Esq for the 1st defendant
and also holding the brief of M.L. Mai doki Esq for
the 2nd and 3rd defendants.

P.A. Chadi Esq: The defendant are in court and we ready

JUDGMENT

Court: By a two {2} counts charges, the defendants were arraigned before this court for the offence of *criminal conspiracy and the offence of causing death when intention is to cause hurt only punishable under Section 60(1) and 195 of the Sokoto State Penal Code Law 2019*. The facts upon which the two {2} counts charges were framed, are as contained in the charge sheets.

When the charges were read and explained to the defendants, they pleaded not guilty to all the two {2} counts charges and so the case was thereafter proceeded to

full trial. In their efforts to prove the charges against the defendants, the prosecution called two {2} witnesses and tendered twelve {12} exhibits marked as exhibit A, A1, B, B1, C, C1, D, D1, E, E1, F and F1 respectively.

At the close of the prosecution's case, the defendants entered their respective defence. The defendants are the only witnesses who testified in their defence.

Upon the close of the trial, parties filed their respective written addresses which were later adopted by counsel and the matter was thereafter adjourned for judgment.

For the purpose of this judgment, this court has decided to formulate one {1} issue for determination and is hereby produced below as follows:-

Whether considering the totality of the evidence led by the prosecution, the prosecution has proved its case beyond reasonable doubt in respect of the offence alleged to have been committed by the defendants."

The case of the prosecution against the defendants, are as presented by the evidence of the two {2} prosecution witnesses and the exhibits tendered and admitted.

From the two {2} counts charges with which the defendants were arraigned before this court, the defendants were alleged to have conspired among themselves at Mallanji Village, Tureta Local Government Area of Sokoto state to meet and hit one Nuhu Modi with a stick on his head and which act they have executed leading to the subsequent death of the said Nuhu Modi consequent upon which they were arraigned.

By the established principles of criminal justice, it is trite law that in criminal trial it is the responsibility of the prosecution to prove its case beyond reasonable doubt against the defendants who is alleged to have committed a crime.

- **Ajibade V State {2013} 8ncc 221**
- **Smart V. State {2016} LPELR 40827**
- **Akinola V. State {2015} LPELR 25986**

The rationale behind this duty upon the prosecution, is derived from the constitutional presumptions of innocence of a defendant alleged to have committed a crime as guaranteed by the provisions of section 36(5) of the constitution of the Federal Republic of Nigeria 1999 as amended.

As to the offence of criminal conspiracy which is the 1st count charge, apparently both counsel in their respective written addresses, submitted that there is no evidence of agreement by the defendants from which an inference can be drawn that the defendants agree to do an illegal act, or a legal act by illegal means. As according to them, there is nothing in the body of the evidence showing that the defendants have a common intention to commit any crime. They therefore submitted that the prosecution has failed to prove the allegation of criminal conspiracy against the defendants and urge the court to acquit the defendants and discharge them.

The prosecution on the other hand, submitted that as to the offence of conspiracy, exhibits A, A1, B, B1, C and C1 which are the statement of the defendants shows that there was an agreement by the defendants

and some youth from their village to revenge the beating of their friend by the youth from the deceased's village.

As to the 2nd count charge, counsel to the defendants appeared to have submitted that the prosecution has failed to prove through any credible evidence that someone called Nuhu Modi actually died and that the death resulted from the acts of the defendants. They argued further that the evidence of PW1 and PW2 did not state the cause of death of the deceased nor tender medical report or autopsy of the deceased body to show the cause of the death.

Reacting to the submission, the prosecution submitted that by the statements of the defendants recorded at Tureta Division which were admitted as exhibits D, D1, E, F and F1, the defendants admitted knowing the deceased {Nuhu Modi} and that he died during the fight between the youth of Malenji Village and youth of Ketare Village. It was further submitted by the prosecution that the substance of the said exhibits have been corroborated by the contents of exhibits A, A1, B, B1, C and C1.

The prosecution therefore urge the court to hold that the prosecution has proved its case beyond reasonable doubt against the defendants and convict them as charged.

As to the offence of criminal conspiracy which is the 1st count charge, it is trite that in a charge of criminal conspiracy, all that is necessary is evidence of agreement to commit an offence, and in the absence of an apparent agreement, evidence of some community efforts on the part of all the defendants aimed at committing a crime, and once either of these is established by the prosecution before the trial court, then the

trial court can safely convict the defendant for the offence of conspiracy.

- **Salawu V. State {2016} 12 NCC1**
- **Obiakor V. State {2002} 10 NWLR pt 776 p 612**
- **Abacha V. State {2002} 11 NWLR pt 779 p 437**
- **Patrick Njovena V. State {1973} 5 SC p 17 at 263 – 264.**

By exhibit A and A1 which is the statement of the 1st defendant made at CID office Sokoto, the 1st defendant stated that he and his friends made a reprisal attack after they armed themselves with sticks against the youth of Ketare who beat up their friend one Shehu who sustained a dislocation on his hand as a result of the beating meted on him, it was part of his statement that in the process of the fight, one Nuhu Modi was killed.

The statement of the 2nd defendant which was admitted in evidence and marked as exhibits B and B1 for Hausa and English translated versions respectively, also corroborated the statement of the 1st defendant.

Exhibits C and C1 which is the Hausa and English translated versions of the 3rd defendant's statement, also corroborated the statement of the 1st defendant on their joint reprisal attack with sticks and the death of one Nuhu Modi.

The statement of the defendants at Tureta Police Divisional Headquarters admitted in evidence and marked as exhibits D, D1, E, E1, F and F1 for Hausa and English translated versions of the 1st, 2nd and 3rd defendants respectively, also corroborated the statements of the

defendants at CID office with respect to their participation in the commission of the offences alleged against them.

With all the foregoing pieces of evidence as disclose by the statements of the defendants at both Tureta Divisional Headquarters and the State CID, it has become very clear and apparent that the defendants are part of the youth from Malanji Village who after they armed themselves with sticks, launched a reprisal attack on the youth of Ketare Village during which attack, one Nuhu Modi was killed and I so hold.

This is because, it is trite law that a trial court has adjudicatory powers to accept and act on a retracted confession where there is evidence before the court tending to show that the defendant in fact made the statement as in this case.

- **State V. Yahaya {2019} 38 WRN 14**
- **Abdullahi V. State {2019} 16 WRN 145**
- **Amos V. State {2019} 10 WRN 80**

It is also trite law that a defendant can be convicted of an offence on his own confession because confession is the best form of evidence.

- **Kolo V. COP {2019} 22 WRN 1 at 25**
- **Musa V. State {2019} 10 WRN 1**
- **Umar V. FRN {2019} 3 WRN 1**

Furthermore, a though defence counsel contended that the statements of the defendants were recorded in violation of section 17 of the ACJL of Sokoto State 2019, by the provisions of sections 14 and 15 of the

Evidence Act, 2011, evidence obtained in contravention of an existing law, is admissible in evidence unless the court is of the opinion that the desirability of admitting the evidence is outweighed by the undesirability after considering the manner in which the evidence was obtained.

- **Kekong V. State {2017} 18 NWLR pt 1596 p 108 at 135-136**
- **Haruna V. AGF {2012} ALLFWLR pt 632 p 1617 at 1636**
- **Ibrahim V. Ogunleye {2012} 1 NWLR pt 1282 p 489**

From the foregoing cases, it follows therefore that while the ACJL sets the ground or steps on how statement should be recorded, such statement when passes the test set out in the Evidence Act, it will be admitted as the ACJL must bow to the provisions of the Evidence Act.

- **Elewanna V. State {2019} 46 WRN 147**
- **AG Abia State V. AGF {2002} 6 NWLR pt 763 p 263**
- **AG Lagos State V. Eko Hotels ltd {2017} LPELR 43713**

In the view of all the foregoing, this court is of the humble view that since the defendants were duly cautioned but decided to voluntarily made their statements, and there is no evidence before this court that the contravention of section 17 of the ACJL of Sokoto State 2019 was either deliberate or done recklessly and the statements have been declared relevant by section 1 of the Evidence Act 2011, the said statements were rightly admitted in evidence and the urge to expunge them from the record of this court, is hereby refused.

In view of all the foregoing, it is the humble view of this court that the prosecution has proved its case against the defendants in respect of the two {2} offences beyond reasonable doubt as required by law and found you **(1) Muazu Modi (2) Ali Usman and Abu Ali** guilty as charged in respect of the offences of *criminal conspiracy and causing death when the intention is to cause hurt punishable under section 60 and 195 of the Sokoto State penal code law 2019*.

- **Ajayi V. State {2013} 53 SCNQR pt II p 632**
- **Ikaria V. State {2013} 8 NCC 248**
- **Alibi V. State {1993} 7 NWLR pt 307 p 511**

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

ALLOCUTUS

Kamal O. Fagbami Esq: The appeal passionately that the convicts are first term offenders who have been in detention since sometimes in November, 2019 which is more than 4 years. They appeared remorseful of their action and they are young age. When the convict was arrested, he was 15 years while 2nd and 3rd were 25 years. They are young men who will be productive to the society if justice is tempered with mercy. By section 195 of the Sokoto state penal code law, this court can give fine in lieu of imprisonment, we therefore urge this court to give convict option of fine.

P.A. Chadi Esq: I have no objection to the allocutus made by the defence counsel by which he urge the court to temper

justice with mercy. To the best of my knowledge, the convicts are first term offenders.

SENTENCE

Court: By the provisions of Section 310 (3) of the ACJL of Sokoto State 2019, a trial court after conviction while sentencing the convict, is required to take into consideration all aggravating and mitigating information or evidence as a guide in deciding the nature and extent of the sentence to be imposed on the convict.

I have taken into consideration the allocutus made by the defence counsel on behalf of the convicts as well as the response of the prosecuting counsel before passing this sentence on the convicts as a guide in deciding the nature and extent of the sentence to be imposed on the convicts.

By the provision of Section 195 of the Sokoto State Penal Code Law 2019, whoever causes the death of any person by doing an act not amounting to culpable homicide, but done with the intention of causing hurt or grievous hurt, shall be punished with imprisonment for a term which shall not be less than seven {7} years or with fine of not less than five hundred thousand naira or with both.

From the wordings of the section it is very clear that a trial court has been given some discretion to exercise in relation imprisonment or option of fine in lieu of imprisonment.

It is trite law that where a statute gives discretion to a trial court to exercise in sentencing the convict and it has become judicious and

judicial to do so, then the trial court has the adjudicatory powers to exercise the discretion.

- **Musa V. State (2012) 3 NWLR 50.**
- **Amoshina V. State (2011) 14 NWLR pt 1268 p 50.**

I have also taken into consideration in passing this sentence of the provision of section 415(2) (d) and (e) of the ACJL of Sokoto State 2019 which requires a trial court not to pass the maximum sentence provided for an offence against first offender as well as the need of a trial court to take into consideration the period spent in detention by the convict while undergoing trial in computing the sentence.

In sentencing the convicts, I have also taken into consideration the provision of subparagraph (2) (K) of section 415 of the ACJL of Sokoto State 2019 which provided that sentencing to a term of imprisonment shall apply but only to those offenders who should be isolated from society and those whom other forms of punishment have failed or is likely to fail.

In consideration of all the foregoing, the sentence of this court upon you *(1) Muazu Modi (2) Ali Usman and (3) Abu Ali for the offences of causing death when the intention is to cause hurt punishable under section 195 of the Sokoto state penal code law 2019 and criminal conspiracy punishable under section 60* of the same law is an option of fine of N200,000 each and N50,000 each for the said offences respectively or five {5} years and two {2} respectively in default. The sentences are to run concurrently and with effect from the date the convicts were first remanded at the correctional center.

Signed
Hon. Justice Mohammed Mohammed
(Judge)
19/01/2024

CERTIFIED TRUE COPY:

FATIMA SAIDU MOH'D
DIRECTOR LITIGATION
HIGH COURT OF JUSTICE,
SOKOTO.