

IN THE HIGH COURT OF JUSTICE OF SOKOTO STATE
IN THE SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO
ON THE 12TH DAY OF FEBRUARY, 2024
BEFORE HIS LORDSHIP:
HON. JUSTICE MOHAMMED MOHAMMED (JUDGE)

SUIT NO: SS/04^C/2021

BETWEEN:

THE STATE-----COMPLAINANT

AND

MUHAMMAD ZAMNAU BOTO-----DEFENDANT

Appearances:-

Umar Aliyu Esq: For the prosecution.

M.K. Abdulkadir Esq: For the defendant.

Umar Aliyu Esq: The defendant is before the court and speak Hausa Language and the matter is for judgment.

JUDGMENT

Court: By a one {1} count charge, the defendant was arraigned before this Honourable court for the offence of *robbery punishable under Section 298(c) of the Sokoto State Penal Code Law Cap 104 Laws of Sokoto State 1996.*

When the charge was read and explained to the defendant in Hausa Language, the defendant pleaded not guilty and so the matter was proceed upon into full trial.

in their effort to prove the allegation against the defendant, the prosecution called 4 witnesses and tendered exhibits which were admitted in evidence and marked as exhibits A-F respectively.

After the close of the prosecution's case, the defence counsel opened their defence by calling one {1} witness who happened to be the defendant himself and thereafter close their defence.

After the close of the defendant's defence, the case was adjourned for adoption of written addresses of counsel.

Upon the adoption of the filed respective counsel's written addresses, the case was thereafter adjourned for judgment.

For the purpose of this judgment, this court has decided to formulate one {1} issue for determination, and the issue so formulated, is more comprehensive and all-encompassing enough to address the issues formulated by both counsel.

The issue formulated, is hereby produced below as follows:-

“Whether considering the totality and nature of the evidence adduced before this Honourable Court, the prosecution has proved its case beyond reasonable doubt against the defendant in respect of all the offences alleged against him.”

The case of the prosecution is as presented by the evidence of the 4 prosecution witnesses and the exhibits tendered and admitted.

Similarly, the case of the defendant is as presented by the evidence of the sole defence witness who happened to be the defendant himself.

The facts upon which the charge was framed against the defendant are as captured on the charge sheet.

In the adopted written address, defence counsel submitted that aside tendering the statement of the defendant which is exhibit A and A1, the evidence of PW1 offered no any evidential value to the prosecution's case because his evidence according to the defence counsel, merely hearsay on the most important issues

- **sections 37 and 38 of the Evidence Act, 2011**
- **FRN V. Usman {2012} ALL FWLR pt 632 p 1639 at 1652-1653**

Defence counsel further contended that the virus which affected the evidence of PW1, has also affected the evidence of PW2 whose evidence according to the defence counsel has only shown that he registered the exhibits brought to him for registration but did not take part in the investigation of the case, nor did he knows whether or not the exhibits were recovered from the defendant.

It was further contended by the defence counsel that the evidence of PW1, PW2 and PW4 lack evidential value because none of their testimony before this court establish single element of the offence against the defendant.

It was the submission of the defence counsel that the evidence of PW3 is shrouded with several material contradictions that goes to the root of the charge against the defendant.

- **Etim V. Akpan {2023} LPELR 44904**

Defence counsel also argued that this court cannot rely on the statement of the defendant which was admitted in evidence and marked as exhibit A and A1 this is because apart from the fact that the

defendant pointed out that he did not make any statement to the police, there is also no evidence before this court which links the statement with the defendant.

- Mohammed V. State {2020} LPELR 52451

Defence counsel then urge this court not to attach any weight to the said exhibit A and A1 as well as expunge same from the record.

Contrasting the evidence of the prosecution witnesses with the charge defence counsel submitted that a holistic consideration of the offence charged and the evidence led, will clearly show that the evidence do not support the charge nor establish the offence with which the defendant is accused.

- Section 298(c) of the Sokoto state penal code Cap. 104 Laws of Sokoto state 1996.**
- Dairo V. State {2015} LPELR 41740**
- Etim V. Akpan {supra}**

Defence counsel argued further that the failure of the prosecution to call other victims whom PW3 said were together with him during the robbery incident, is fatal to the prosecution's case because they are vital witnesses.

- Ochiba V. State {2011} LPELR 8245.**
- Addo V. State {2011} ALLFWLR pt 566 p 589**
- Section 29 Evidence Act, 2011**
- Ifaramoye V. State {2017} 8 NWLR pt 1568 p 457**
- George V. FRN {2014} ALLFWLR pt 718 p 879**
- FRN V. Sani {2014} 16 NWLR pt 1433 p 299**

Defence counsel finally urge the court to hold that the prosecution has failed to establish the essential elements of the offence against the defendant and discharge the defendant.

Responding to the submissions of the defence counsel, the learned prosecuting counsel submitted that by the evidence of PWs 1-4 and the exhibits tendered and admitted, it is very clear that there was armed robbery incident along Bachaka – Gudu road on the 26/2/2018 at about 0330hrs in which the defendant and 2 others now at large armed themselves with sticks, cutlasses and gun and robbed one Shehu Muhammed and his passengers.

- Otuedon V. Olughor {1997} 7 SCNJ 41

He submitted further that the evidence of the prosecution witnesses was also corroborated by the contents of exhibit A and A1.

Prosecuting counsel further submitted that burden of Proof does not mean proved beyond every shadow of doubt as it only entails that prosecution should produce evidence to justify the charge and indicate that the defendant did in fact committed the offence alleged against him.

- Bassey V. State {2012} NCC 379 at 382

Prosecuting counsel finally urge the court to hold that the prosecution has proved its case beyond reasonable doubt as required by law and convict the defendant as charged.

Having summarily reproduced the various submissions of both the prosecuting counsel and the defence counsel, let me state that in our

adversarial system of criminal justice, it is trite law that in criminal trials, it is the duty of the prosecution to prove its case beyond reasonable doubt against the defendant who is being charged with allegation of committing a crime.

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

The rationale behind this duty upon the prosecution, is derived from the constitutional presumption of innocence in favour of the defendant which has been guaranteed by section 36 (5) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

- **State V. Odomo {2019} 24 WRN 164**
- **Tobi V. State {2019} 14 WRN 149**
- **Nwodo V. State {2019} 20 WRN 58**

By the contents of the charge sheet, the defendant is alleged to have committed the offence of robbery along Bachaka - Gudu road in Gudu Local Government Area of Sokoto in that according to the charge, the defendant along with others now at large, armed themselves with stick, cutlass and gun, blocked the road and thereafter attacked and robbed one Shehu Muhammed and his passengers the sum of N287,720 four {4} handsets, clothes and some provisions the value of which were not ascertained in the recent case of Aliyu V. State {2023} 18NWLR pt 1915 p1 Ratio 3 at page4, the Supreme Court has held that to prove the offence of robbery, the following elements must be established by the prosecution:-

- (i) That there was robbery;
 - (ii) That the robbery was an armed robbery and
 - (iii) That the defendant participated in the robbery operation.
- **Pedro V. State {2018} 17 NWLR pt 1649 p 463**
 - **Ogugu V. State {1990} 2 NWLR pt 134 p 539**
 - **Kim V. State {1992} 4SCNJ 81**

By the evidence of PW1 in person of Inspector Markus Dangana, the defendant made statement in respect of the allegation made against him in Hausa Language after the defendant was cautioned and thereafter, the statement was endorsed by his superior in person of DSP Hassan Hassan after the defendant confirmed making it and which he later translated into English. PW1 further testified that the defendant also took them to a village called Kalgo with a view to arrest the other 2 suspects who were then at large, but when they realized the village is in the territory of Niger Republic, they decided to come back.

PW3 in person of Shehu Muhammed testified before this court that while they were coming from Niger Republic and as they were approaching Boto Village around 4:30am, they were attacked by armed robbers and when they attempted to escape, the armed robbers started firing gunshots and surrounded the car he was driving. It was his evidence that one of the robbers cut him on the shoulder with a cutlass. He said at the time of the robbery incident, the light of his car was still on and because of that, he was able to identify 3 of the armed robbers and pointed at the defendant as one of the armed robbers who attacked and robbed them. He testified further that the armed robbers took away his money, wallet clothes and other materials. The police

also recovered empty shells at the scene because the witness went to the scene with the Police Boarder Patrol Team. It was part of the evidence of PW3 that identification parade was also conducted at the State CID office, Sokoto where he identified the defendant, and that as a result of the identification parade, the defendant confirmed to the police that he was part of the armed robbers only that he only held a torchlight while others were carrying guns and also informed the police that he knew the village of the other run away suspects and mentioned the names of Jahowa and Iftineri among others. Under cross examination, it was also the evidence of the of the witness that on the date and time of the incident between 430-500am, even if the light of his car was not on, one can still see who is around him.

The evidence of PW4 one Ibrahim Mohammed also confirmed that a robbery incident happened during which PW3 was attacked after he escaped from the attack of the armed robbers. It was his evidence that he was the one driving in front while PW3 was following him from behind in his own car, and on reaching a bush close to Boto Village, he saw people carrying guns and stopping them with a touch light, but drove towards them and the armed robbers dodge into the bush.

The statement of the defendant made on the 28/02/2018 and admitted in evidence as exhibit 'A' and 'A1' for Hausa and English translated version also substantially corroborated the evidence of PW3 because the statement is confessional in nature. in exhibit A1 which is the English translated version of the defendant's statement, the defendant stated as follows:-

“--- the truth of the matter is that on Tuesday 20/2/2018 at about 1600hrs myself, Jaho Umaru and Iftimanere

Alto --- met at Boto hill where we discussed that we should come out on Sunday and block the road that leads to Bachaka --- On Monday at about 0200hrs we met at Boto hill Iftimanere Alto was holding a gun a police type while Jaho was holding a machete, while I was holding a stick and a touch light. When a vehicle came, I was the one that flashed my touch light and stopped the vehicle, then Jaho and Iftimanere packed some properties from the vehicle but I don't know the type of the properties they packed---."

In view of the foregoing, pieces of evidence adduced by the prosecution before this court, the question now is has the prosecution proved its case beyond reasonable doubt against the defendant in respect of the offence of robbery alleged against the defendant as required by law?

Going by the decision of the Supreme Court in the case of Aliyu V. State {supra} earlier referred to in this judgment the 1st element for the offence of robbery, is that there was robbery.

By the evidence of PW3, Pw4 and statement of the defendant which was admitted in evidence and marked as exhibit 'A' and 'A1' it is very clear that there was an armed robbery in February, 2018 along Gudu Bachaka road, in Gudu Local Government Area of Sokoto state. Consequently, I hold that the prosecution has the 1st element of the offence.

As to the 2nd element that the robbery was an armed robbery, this court is also of the humble view that by the evidence of PW3, PW4 and the

statement of the defendant admitted and marked as exhibit 'A' and 'A1' the robbery under consideration, was an armed robbery because some of the armed robbers were armed with gun as disclose by the evidence before this court and confirmed by the said statement of the defendant.

As to 3rd element that the defendant participated in the robbery, this court is also of the humble view that the evidence of Pw33 who identified the defendant during an identification parade conducted by the police as one of the robbers who attacked them, and also pointed at the defendant during his oral evidence before this court as one of the armed robbers who attacked them, coupled with the quoted portion of the defendant's statement, it is crystal clear that the defendant did participated in the robbery alleged against him.

The Prosecuting counsel having proved all the elements of the offence of robbery with which the defendant was arraigned before this court, it flows therefore that the prosecution has also proved its case against the defendant as required by law.

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

Consequently, I resolve the sole issue formulated in favour of the prosecution against the defendant. Accordingly, I hereby found you Muhammad Zamnau Boto guilty of the offence of robbery punishable under section 298 of the Sokoto state Penal Code Law Cap. 104 Laws of Sokoto State 1996.

ALLOCUTUS

M.K. Abdulkadir Esq: We appeal to this court to temper justice with mercy in sentencing the convict. The convict has been in custody since 2018. He is remorseful and considering his age the defendant can be a useful member of the society. The convict is married and has 2 children.

Umar Aliyu Esq: While we are not objecting to the allocutus, we urge this court to consider the rampancy of the offence while sentencing the convict.

SENTENCE

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

I have considered the allocutus made by the defence counsel on behalf of the convict as well as the response of the prosecuting counsel. Cognizance must however be taken of the provision of section 298 of the Penal Code Law of Sokoto State Cap. 104 Laws of Sokoto State 1996 in relation to the punishment provided for the offence of robbery which prescribed life imprisonment with or without fine in clear terms.

It is trite law that where a statute prescribes a mandatory sentence in clear terms, a trial court has no discretion to do otherwise except the law provides otherwise. Because it is a duty imposed by law and the

trial court cannot go contrary to the penal policy of the law creating the offence.

- **Amoshima V. State (2011) 14 NWLR pt 1268 p 530.**
- **Tanko V. State {2009} 4 NWLR pt 1131 p480**

By the wordings of section 298 of the Sokoto State Penal Code Law Cap. 104 Laws of Sokoto State 1996, the punishment is life imprisonment with or without fine.

In view of the foregoing, the sentence of this court upon you Muhammad Zamnau Boto for the offence of robbery punishable under section 298 of the Sokoto state Penal Code Law Cap. 104 Laws of Sokoto State 1996, is life imprisonment.

Signed

**Hon. Justice Mohammed Mohammed
(Judge)
12/2/2024**

CERTIFIED TRUE COPY:

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