IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT JABI

THIS WEDNESDAY THE 2ND DAY OF MARCH, 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

CHARGE NO: CR/266/16

BETWEEN:

COMMISSIONER OF POLICE ..... COMPLAINANT

AND

1. SAMUEL KAKA (DECEASED)
2. ABDULSALAM MUSA
3. SANUSI IBRAHIM MUSA
4. ELISHA MOSES } **.....DEFENDANTS**
5. PROSPER AMAKWE
6. MICHEAL USMAN

JUDGMENT

The 2nd – 6th Defendants were arraigned on 16th February, 2017 on a Four (4) Counts Charge as follows:

COUNT ONE:

That you Samuel Kaka 'm' 45 years of Jayi II Village FCT Abuja, Abdulsalam Musa 'm' of 26 years of Jayi 1 Village FCT Abuja, Sanusi Ibrahim Mohammed 'm' 34 years of Mando Camp Kaduna State, Elisha Moses 'm' 30 years of Lugbe Zone 9, FCT – Abuja, Prosper Amakwe 'm' 32 years of Osubi town Delta State and Michael Usman 'm' 24 years of Mararaba Nasarawa State. That on the 26th January, 2016, at about 0300hrs at No. 53 Parakou Crescent Wuse II and No. 100 River Niger

Maitama, Abuja respectively within the Abuja Judicial Division; did conspired amongst yourselves with intent to commit an offence to wit: Criminal Conspiracy, Armed Robbery, Causing Grievous Hurt and Culpable Homicide. You thereby committed an offence punishable under Section 97 sub 1 of the Penal Code Law.

COUNT TWO:

That you Samuel Kaka 'm' 45 years of Jayi II Village FCT Abuja, Abdulsalam Musa 'm' of 26 years of Jayi 1 Village FCT Abuja, Sanusi Ibrahim Mohammed 'm' 34 years of Mando Camp Kaduna State, Elisha Moses 'm' 30 years of Lugbe Zone 9, FCT – Abuja, Prosper Amakwe 'm' 32 years of Osubi town Delta State and Michael Usman 'm' 24 years of Mararaba Nasarawa State. That on the 26th January, 2016, at about 0300hrs at No. 53 Parakou Crescent Wuse II and No. 100 River Niger Maitama, Abuja respectively within the Abuja Judicial Division; while armed with two (2) AK 47 rifles Nos. 07112, 09062, one pump action gun with two live cartridges did forcefully robbed on Barrister Kaloma Mustapha 'm' and Mr. Oscar Igbokwe 'm' on gun point of the following valuables: Telephones, Laptop computer, ipads, wrist watches, jewelries, clothes, shoes and many other items which values are yet to be ascertain. You thereby committed an offence punishable under Section 298 (b) of the Penal Code Law.

COUNT THREE:

That you Samuel Kaka 'm' 45 years of Jayi II Village FCT Abuja, Abdulsalam Musa 'm' of 26 years of Jayi 1 Village FCT Abuja, Sanusi Ibrahim Mohammed 'm' 34 years of Mando Camp Kaduna State, Elisha Moses 'm' 30 years of Lugbe Zone 9, FCT – Abuja, Prosper Amakwe 'm' 32 years of Osubi town Delta State and Michael Usman 'm' 24 years of Mararaba Nasarawa State. That on the 24th July, 2015, at about 0300hrs at house No. 4 Nyaba Close Maitama, Abuja within the Abuja Judicial Division; while armed with two AK 47 rifles numbers 07112, 09062, one pump action gun, two live cartridges and some live ammunitions shot one Police Corporal Nathaniel Danladi 'm' of SPU base 10 Sokoto to death and made away with his AK 47 rifle with sixty rounds of live ammunitions. You there committed an offence punishable under Section 221 of the Penal Code Law.

COUNT FOUR:

That you Samuel Kaka 'm' 45 years of Jayi II Village FCT Abuja, Abdulsalam Musa 'm' of 26 years of Jayi 1 Village FCT Abuja, Sanusi Ibrahim Mohammed 'm' 34 years of Mando Camp Kaduna State, Elisha Moses 'm' 30 years of Lugbe Zone 9, FCT – Abuja, Prosper Amakwe 'm' 32 years of Osubi town Delta State and Michael Usman 'm' 24 years of Mararaba Nasarawa State. That on the 23rd January, 2016, at about 0215hrs at No. 733 Gitto Company Mabushi, within the Abuja Judicial Division; while armed with two AK 47 rifles numbers 07112, 09062, one pump action gun, two lives cartridges and some lives ammunitions shot one Police Sgt. Henry Bello 'm' of SPU Base Seven FCT Command Abuja at his left hand and cut two of his fingers. You there committed an offence punishable under Section 221 of the Penal Code Law.

It is important to state that the 1st defendant on Record, **Samuel Kaka** was deceased even prior to the arraignment. The remaining 5 defendants all pleaded not guilty and the matter proceeded for hearing. In proof of its case, the prosecution called four witnesses. I will here summarize the essence of their testimonies.

PW1 is **Inspector Kingsley Ojemokhai**, a police officer attached to the Nigerian Police Force FCT Command, C.I.D (SARS). His evidence is that on the 28th January, 2016 at about 15.30 hours, a case of criminal conspiracy and armed robbery was transferred from Utako Division and he was instructed to investigate. He and his team then took action and took the statement of the complainant, Barrister Kalloma Mustapha, male of No. 15, Parakou Crescent, Wuse II, FCT - Abuja.

PW1 stated that the case was transferred with 4 exhibits, to wit: one techno phone that was abandoned by one of the defendants, one chain and a cutter. They commenced investigation by analyzing the abandoned techno phone and a name was found on the sim card – Samuel Kaka who is now late. They tracked him down and arrested him at Jahi Village and he was brought to SARS Office where his statement was obtained under caution.

PW1 stated they showed Samuel Kaka the phone and he mentioned Abdulsalam Musa (2nd defendant). That Samuel Kaka then led them to a cashew garden at Jahi Village Gwarinpa where 2nd defendant was arrested and brought to their

office where his statement was taken voluntarily under words of caution. That he accepted that he is the owner of the techno phone.

PW1 said that they enquired from Abdulsalam about their Gang leader, and he gave them a number which was analysed through internet true caller and they got the name of one Sanusi. That they also got the name of one Buchi and he was arrested and he led them to Sanusi Ibrahim Mohammed (3rd defendant) in Kaduna. He was confronted with the phone number and he agreed it was his own and he was brought to SARS Office.

They also executed a search warrant in his house at Mando Kaduna and they recovered a Pump Action Gun with 2 cartridges. He was asked how he got the gun and he said they got it during a robbery operation at Gwarinpa, Abuja. PW1 stated that when they got to Abuja, he made a statement under caution where he confirmed that he led the gang that robbed at Parakou Street. That he mentioned 7 people who went for the operation as follows: **(1) Samuel Kaka (now deceased) (2) Abdulsalam Musa (2nd defendant) (3) Elisha (4th defendant) (4) Prosper (5th defendant) and (5) Usman (6th defendant)**.

PW1 said they asked him how they could get to the others and he contacted Elisha and told him about a deal and they agreed to meet at Berger Junction. That when Elisha came, he was arrested and taken to SARS office where he voluntarily made his statement and that he agreed that he was the pilot who drove the gang members to Parakou Street for the operation.

PW1 further stated that the 3rd defendant now contacted Prosper on phone and told him that there was an operation to be carried out but he told 3rd defendant that he was in Warri but that he will take the next available bus to Abuja and when he came to Abuja as agreed, he was arrested at Banex Plaza Junction and taken to the station.

At the station, he was asked about arms and Prosper then took them to Jahi and from a soakaway pit, he brought out 2 AK 47 guns that was collected from some of their police colleagues. That Prosper admitted in his statement that one of the AK 47 gun was obtained from a slain police man attached to a house of one Mr. Alex Otti. His statement was then endorsed by a superior police officer.

PW1 said that they asked 3rd and 5th defendants to take them to the house where the incident happened and they also went to Maitama Police Division to see whether the robbery was incidented in the police diary.

PW1 also stated that the 3rd defendant also called 6th defendant and he was arrested at A.Y.A. He was taken to the office where his statement was also taken voluntarily under words of caution and that he confessed to been a member of the gang led by Sanusi (3rd defendant).

PW1 stated that they confronted the defendants with the pump action gun, the AK 47 guns and they also visited all the houses they robbed at 15 Parakou Crescent, Maitama, Gwarinpa, Mabushi e.t.c and that the defendants confessed to all working together. That the exhibits recovered were all duly registered and kept with the Exhibit keeper. PW1 stated that the AK 47 recovered belongs to a colleague and he later applied to have it released to him and it was granted on police bond. The following was tendered through PW1 thus:

1. **Black Pump Action Gun with serial No. 6627 was admitted as Exhibit P1.**

2. **2 live cartridges (colour red and white) admitted as Exhibits P2 a and b.**

3. **Application for release of AK 47 rifles dated 11th May, 2016 and the bond to produce/release the Exhibit were admitted as Exhibits P3 a and b.**

4. **Two (2) statements of Abdulsalam Musa (2nd defendant) both dated 11th February, 2016 was admitted as Exhibit P4.**

5. **The statements of Sanusi Ibrahim Mohammed (3rd defendant) dated 17th February, 2016 and 14th March, 2016 were admitted as Exhibit P5.**

6. **The statement of Gara Elisha Moses (4th defendant) dated 18th March, 2016 was admitted as Exhibit P6.**

7. **The statement of Prosper Anakwe (5th defendant) dated 19th February, 2016 was admitted as Exhibit P7.**

8. The statement of Michael Usman dated 20th February, 2016 and the statement dated 14th March, 2016 were admitted as Exhibit P8.

Cross-examined by P.O. Onucheyo for and behalf of all the defendants, PW1 stated that he is not a ballistician but that a police man is trained on how to fire a gun, what is fired and even the make up of what was fired. That the police that died was at a robbery in Maitama. That it is correct that a medical doctor must certify a person is dead and that a medical doctor certified that Corporal Nathaniel died. That he does not know the name of the doctor. That a post-mortem was conducted and a coroners form filled but that these documents are with the legal department.

PW1 said he did not write any of the statements of the defendants; that his boys did and he supervised. That late Samuel Kaka mentioned Sanusi (3rd defendant) as their leader.

That he was not there when the incident at Maitama happened but that during investigation, it was discovered that Michael Usman (6th defendant) fired the fatal shot and that he was instructed by Sanusi. PW1 said he does not know which of the guns that was used to kill the late Nathaniel. He stated that there was however an empty AK 47 shell and one empty cartridge at the security post where the dead officer was found. That a Mercedes 230 was recovered from Sanusi. PW1 stated that the norminal complainant is one Barrister Kalloma Mustapha but he does not know where he is. That there was also a civilian security man and that he made a statement.

That one Dr. Alex Otti is another complainant and the late Nathaniel was attached to him. That nothing was taken from Dr. Otte's house because they could not gain access as he had a bullet proof door.

PW2 is **Sergeant Henry Bello**. He works with the FCT Base 7 Abuja Special Protection Unit. That on 28th January, 2016, he was at his duty post at Mabushi Plot 233 by Gitto Company, the residence of his boss. That he was in the security post inside the compound and that there is a generator close to the security post.

That around 02.15 hours am at midnight, he was inside the security post when he heard movement outside the security post. That before he could come out of the security post, he saw two men; one with a pump action gun and the other

with AK 47 rifle. That immediately they saw him, they fired the gun at his stomach and while he was struggling to get his own AK 47, the other robber with the AK 47 shot two of his finger and he then fainted.

PW2 stated that they took away his AK 47 rifle assigned to him for official duties, 2 of his phones and a rechargeable torchlight. PW2 further stated that when they were about to move, he heard one of them say "smart, shoot him in the head". One of the robbers aimed at his forehead but he pretended to be dead. They then left but before leaving, they shot at him again but he dodged as it was dark and he had switched the light in the security room. That the person with the pump action gun shot at him first and that it was 3rd defendant Sanusi. PW2 stated that he was then taken to the National Hospital.

Cross-examined, PW2 stated that there is a generator light in the premises. That he saw the person who shot him with the pump action gun and it is Sanusi, the 3rd defendant. That he does not know who shot him with the AK 47 rifle. That immediately he was shot, he fainted. That after he fainted, he lost consciousness. That despite that, he was able to hear that "Smart shoot his head."

PW2 stated that immediately he heard the unusual sound, he put out the light in the security room. That the generator made him not sure of the sound. That he only saw two people at that point. That there was light in the premises and he sighted two of the robbers before they saw him. That he was shot before he could do anything.

PW3 is **Chizoba Mabule**. He lives at No. 733 Mabushi District Abuja. That he knows 3rd – 5th defendants. Further he knows 6th defendant fairly from his face. That he knows all of them as they came to his house to rob on 27th January, 2016. That he was sleeping in the Bush bar in his house where he entertains his guests and the incident happened around 3 – 4 am.

That somebody woke him up when he was sleeping and pointed a gun at him. That when he saw the gun, he thought it was the police man on patrol. He thought it was a joke until he was given a big slap and he screamed loudly and when he opened his eyes clearly and looked up, he saw 4 men. They asked for the number of policemen on the premises and he told them 4. That they now tied his hands behind his back.

Two then left for the police post while 2 stayed with him. They took his itel phone and the sum of N2,000 and also tied his face with a singlet. He then heard gun shots from the police post. That later the 2 men who went to the police post came back and they jumped over the fence and left; that subsequently, a man in the house came and untied him. He then saw one of the police officers coming towards him holding his chest with blood trailing him. He quickly then took him to a hospital from where they were transferred to the National Hospital. That the matter was reported at Mabushi Police Station and his statement was taken and admitted in evidence as **Exhibit P10**.

Cross-examined by counsel on behalf of 3rd – 6th defendants and whose cross-examination, the 2nd defendant adopted, PW3 said he can't say which of the defendant's slapped him or who pointed the gun at him. That there was light on the day but he switched off the bulb in the Bush Bar because he can't sleep with light on. That he saw Sergeant Bello coming towards him and he was shot with blood dripping and he took him to the hospital. That he later discovered that his gun was taken.

PW3 stated that the police tracked the defendants but they never called him to identify them. He stated that the light in the Bush Bar may be off but there was security light in the premises so he could see.

PW4 is **Inspector Douglas Ishaku**, a police officer attached to Special Anti Robbery Squad, old Abattoir, FCT Police Command. That he knows all the defendants. That a case of criminal conspiracy and armed robbery was transferred to the SARS office and he was part of the team led by Kingsley Ejemokhai (PW1). They recorded the statements of defendants and visited the scene of the crime in Maitama where they discovered a robbery operation took place and a police man was killed. That there was a functional CCTV Camera installed which captured the activities of defendants during their operation. They requested for the photographs of the images captured by the CCTV and it was produced and given to them. That after the photographs were brought, they arrested 1st defendant and one Gadafi and they denied having any hand in the robbery.

That at the time the case was transferred, there was no suspect, only a handset. That they used a private tracker to track one Chibuzor who led them to Kaduna to arrest 3rd defendant in the dock. That following his arrest, a pump action gun was recovered from his house and he was brought to Abuja. That on reaching

Abuja, he called Elisha, 4th defendant their driver who was then arrested. That 2nd defendant also called Prosper 5th defendant, their amourer and in possession of their guns who said he was not in town then. When he however came from Delta, he was also arrested. That following his arrest, Prosper led them to Jahi Village where he kept 2 AK 47 rifles which were recovered from a covered sewage.

PW4 stated that at the station, the 3rd defendant said that it was 6th defendant that killed the police man despite his instructions that nobody was to be killed. That 3rd defendant also called Usman which led to his arrest. That initially, the 2nd defendant a.k.a. Gadafi denied having knowledge of the crime but that when he saw 3rd defendant and others, he confessed to been part of the robbery operations with them.

That the arms recovered were given to defendants and their photographs taken. The following documents were tendered through PW4 as follows:

1. **Six (6) pictorial representation produced from CCTV Camera admitted in evidence as Exhibits P11 (1-6).**

2. **9 photographs showing various images admitted as Exhibits P12 (1-9).**

3. **Certificate of Compliance admitted as Exhibit P13.**

Cross-examined by counsel to 3rd – 6th defendants, PW4 stated that statements of defendants were taken after their arrest. That Prosper, 5th defendant is the keeper of the Guns. That there were no ammunitions on the rifles recovered.

That it is not correct that the police took the pump action gun to 3rd defendant's house in Mando. That he knew Barrister Kalloma Mustapha in the course of investigations. That the arrest of 2nd defendant was in Jahi, Abuja but that it is not correct that they were beaten and tortured.

Cross-examined by counsel to the 2nd defendant, PW4 stated that he only arrested 2nd defendant and the late Samuel Kaka. That no item was recovered from 2nd defendant. That they went through the phone found at the scene to trace Abdulsalam and all the other defendants. That it was their investigations that led to their arrest.

With the **evidence of PW4**, **the prosecution rested or close its case**.

The defendants then **chose** or **elected** to make a **no-case to answer submission**. Written submissions were made and in a considered Ruling, delivered on 17th July, 2020, the court called on defendants to enter their defence with respect to only Counts 1, 2 and 4 and they were **discharged** with respect to **Count 3**. The said count therefore no longer has any bearing in this judgment.

The 3rd – 6th defendants each gave evidence in defence. I will also highlight the essence of their testimonies.

The **2nd defendant, Abdulsalam Musa**, testified as DW1. He stated that before his arrest, he was living in Gwarinpa and engaged in interlocking business, a trade he learnt as far back as 2004. He stated that he has never seen or met 3rd, 4th, 5th and 6th defendants before his arrest. That he is not an armed robber. That he was arrested on 2nd February, 2016 at Danjan Plaza where he was working. That as they were working, they saw a police Hilux van and 3 police men dropped from it and people started running. He said that he did not run because he did not do anything wrong. That the police then told him to enter the Hilux and they started beating him and he was then taken to SARS office. He met three people there who were being beaten and he was also beaten there with cutlass and iron and that his head was broken in the process and that he sustained serious injuries resulting from the beatings.

He stated that he was asked whether he knew the two people he met there and he said no. He was then severly tortured and when the torture became unbearable, he told them what he knew.

The 2nd defendant further stated that his phone was seized together with the sum of N9,550 which has not been released to him till date. That he was kept in SARS cell for nearly 8 months and he was mostly unwell before he was finally taken to court.

That his statement was written for him and he was forced to sign after he was beaten. That he has never robbed anybody and has never shot any police officer or handled a gun. That all the allegations against him are false.

Cross-examined by counsel to 3rd and 5th defendants, he stated that he has never met 3rd and 5th Respondents until his arrest by SARS.

Cross-examined by the prosecution, he stated that he is into the business of tiles and interlocking. That he never met the other defendants before their arrest.

That when the police came, he did not run away because he did nothing wrong. That he was arrested in the morning and taken to SARS office where he was beaten and tortured. That his statement was written for him since he cannot write and he was forced to signed. That he attended only an Islamic School.

DW1 stated that he has never met any of the defendants. That when he was arrested, his itel phone was taken. That he does not have a techno phone. With his evidence, he closed his defence.

The **3rd defendant**, **Sanusi Ibrahim Musa** testified as DW2. The substance of his narrative was to completely deny involvement in any armed robbery. That he has never lived in Mando, Kaduna State and he does not know Samuel Kaka or any of the other defendants. That it was only in SARS office that he met the other defendants. That he was kept in SARS for over 5 months before been taken to Keffi Prison. That he never wrote any statement voluntarily and he only signed out of fear. He stated that he never took part in any robbery at Gitto, Mabushi and that he was not arrested with any pump action gun.

The 3rd defendant was not cross-examined by counsel to the other defendants.

Under cross-examination by the prosecution, he stated that he was arrested in October 2015 during stop and search. That his wife and family had to leave Suleja for Kano after his arrest. That he does not know Samuel Kaka. That he was forced to write his statement. He also denied that any pump action was recovered from his house and that he does not know Barrister Kalloma Mustapha. That he has never robbed anywhere in Abuja. That the Police forced them to hold the gun when there picture was taken and this was after they were beaten and threatened with been shot. With his evidence, he closed his defence.

The **5th defendant**, **Elisha Prosper** then testified. His evidence was taken after that of 3rd Defendant because they had the same counsel. He also testified as the only witness for his defence. He stated that he lives in Dawaki, FCT and is a carpenter by profession. He also in essence denied participating in any robbery incident. That he was returning from a club with his girlfriend and while waiting for taxi to go home he was arrested by the police and taken to the police command before they were separated from the ladies and taken to the SARS office. That he was equally severely beaten and tortured at SARS. That they were put into groups and guns given to them to hold while their pictures

are taken. After been kept for months at SARS, they were then taken to Keffi Prison before he was arraigned in respect of charges he knows nothing about.

Again the other counsel for the co-defendants chose not to cross-examine 5th defendant.

Cross-examined by the prosecution, the 5th defendant stated that he never wrote any statement. That he was arrested on 28th February, 2016 on his way from the club. That he does not know 3rd defendant and never heard of 2nd defendant until they met in court. He stated that Exhibit P7 is not his statement. That he does not belong to any gang and that he does not have or own an AK 47 rifle. That he does not know any Samuel Kaka. That he is not an armed robber. With his evidence, the 5th defendant close this case for defence.

The **4th defendant, Elisha Moses** also gave evidence in his defence and the only witness. He says he is a baker and similarly also denied involvement in any robbery operation. That sometime on 13th January, 2016, he applied for work and he was asked to report and on getting there, as he dropped out of the taxi, he was attacked by some people asking about the phone he was using; he told them from whom he bought the phone and they were both arrested and taken to the police command and then to SARS office where he said he was severely beaten and tortured and told to confess. He also stated that they were put into groups and forced to take pictures with them holding guns.

Cross-examined by 2nd defendant, he stated that he has never met 2nd defendant. That he only met him when they were brought to court. The other defendants chose not to cross-examine 4th defendant.

Cross-examined by the prosecution, he said that he is a baker and that he never wrote any statement himself. He denied knowing Samuel Kaka. He stated that he is not a driver but a baker. That he does not know how to drive and is not a driver to any gang. He denied writing **Exhibit P6** or any statement. That it is one Douglas that wrote the statement.

With the evidence of 5th defendant, he also closed his case for defence.

The **6th defendant**, **Michael Usman** also testified in his defence and the only witness. That he is into sale of electronics. He also denied been in any robbery operation. He stated that on his return from one of his business trips, he was arrested by the police and despite explaining where he was coming from, he was

arrested and taken directly to SARS office. He also stated that he was severely beaten and tortured at the SARS office and forced to sign a statement. That like the other defendants, they were forced into groups and guns given to them and their photographs taken.

He denied knowing Samuel Kaka and the other defendants. That he met them for the first time in court and saw them for the first time when they were grouped and their photographs taken. He stated that he has never belonged to any armed robbery group or engaged in armed robbery.

Cross-examined by 2nd defendant, he stated that he has never known or met 2nd defendant until their pictures was to be taken. The other defendants did not cross-examine 6th defendant.

Under cross-examination by the prosecution, he stated that he was arrested by the police in Zuba over stolen property despite the fact that they presented the receipts for the goods. He stated that he does not have any gang leader by name 'Smart'. That he is not a killer of anybody. That he never wrote any statement. He stated that he is not an armed robber.

Re-examined, he said that his electronics that were seized is still with SARS.

With his evidence, the 6th defendant closed his case.

Pursuant to the Order of Court, the parties filed and exchanged written addresses. The final written address of 3rd - 6th Defendants was settled by P.O. Onucheyo, Esq. dated 13th October, 2021 and filed same date at the Court's Registry. Learned counsel raised only one issue as arising for determination:

"Whether the prosecution has proved his case against the 3rd – 6th defendants beyond reasonable doubt as required by law."

The written address of 2nd defendant was settled by **Professor Agbo J. Madaki**. Learned counsel formulated two issues as arising for determination:

1. **Whether the prosecution having regard to the evidence on record before the court, has proved its case beyond reasonable doubt to warrant the conviction of the 2nd defendant.**

2. **Whether in view of the totality of evidence led before the Honourable Court, the purported extra-judicial statement of the 2nd defendant having been admitted and marked Exhibit P4 should not be expunged**.

The final written address of the prosecution on the other hand was settled by **Chief Superintendent of Police (CSP) Blessing Ezeala**. Learned counsel also raised one issue as arising for determination to wit:

"Whether the prosecution based on the circumstances and facts of this case has proved its case beyond reasonable doubt as required by law."

I have carefully considered the charge in this matter, the evidence adduced by parties and the written addresses filed by the learned counsel herein to which I may refer to in the course of this judgment where necessary. It seems to me that the single issue for determination in this matter and which requires the most circumspect of consideration is whether the prosecution has proved the charge against the accused persons beyond reasonable doubt to warrant a conviction for the offences charged.

Now, it is not a matter for dispute that the charge accused persons are facing involves the alleged commission of crimes. Under our criminal justice system and here all parties are in agreement, that the burden or onus is clearly on the prosecution to prove the guilt of the accused persons beyond reasonable doubt.

Before dealing with this issue, it appears to me important to deal quickly with the second issue formulated by the **2nd defendant** with respect to his extra-judicial statement marked as **Exhibit P4** and which it has been argued should be expunged because the 2nd defendant did not write same and that it was not a product of free will or voluntarily obtained. Counsel to the **3rd – 6th Defendants** may have not specifically identified or raised an issue on the admissibility of the extra-judicial statements of 3rd – 6th Defendants but he equally advocated the same submissions in his address contending that the statements of 3rd – 6th Defendants admitted as **Exhibits P5, P6, P7** and **P8** were equally not voluntarily obtained but that the defendants were tortured and threatened with Guns before the statements were obtained.

Now it is important to state that from the Records, the following statements were made by defendants and tendered in evidence as follows:

1. **Two statements of 2nd Defendant Abdulsalam Musa both dated 11th February, 2016 were admitted as Exhibit P4.**

2. **The Statements of 3rd defendant Sanusi Ibrahim dated 17th February, 2016 and 14th March, 2016 were admitted as Exhibit P5.**

3. **The Statement of 4th Defendant Elisha Moses dated 18th March, 2016 was admitted as Exhibit P6.**

4. **The Statement of Prosper Amakwe (5th Defendant) was admitted as Exhibit P7 and finally**

5. **The statement of Michael Usman (6th Defendant) was admitted as Exhibit P8.**

It is correct that in their oral evidence, the defendants denied making these statements and or making them voluntarily. It is however important to state that when these statements were all tendered and admitted, **there was no objection raised to their admissibility on any legal and or factual grounds by either defendants or their counsel** who represented them in court. The complaints now been made against and specific to these statements would appear belated.

In **Nwachukwu V State (2001) All FWLR (pt.390) 1380 at 1411,** the Apex Court stated that the proper time for taking an objection to the admission of documentary evidence is when it is sought to be tendered and not later. Generally, during trial, an accused person who desires to impeach his statement is duty bound to establish that his earlier confessional statement cannot be true or correct by showing any of the following:

i. That he did not infact make any such statement as presented.

ii. That he was not correctly recorded;

iii. That he was unsettled in mind at the time he made the statement, or

iv. That he was induced to make the statement. See **Folrunsho Kazeem V The State (2009) 29 WRN 43 at 68-69.** However the way a defendant or accused on trial can discharge the burden of establishing any of the above at the tendering of his confessional statement is by taking evidence during a **trial**

within trial. See **Osetola & Anor V The State (2012) 17 NWLR (pt.1329) 251; Adebayo V The State (2014) LPELR-22988 (SC).**

A trial within a trial therefore provides the proper legal conduit to present the allegations of beatings and torture which will them go to show that the statements were not voluntarily obtained and the court would have then made findings at that point on the issues before determining whether the statements are admissible. The final address of counsel however beautifully articulated is no medium to challenge the voluntariness of a confessional statement.

On the question of **retraction**, the legal position is now fairly settled that retraction will be of no effect if the court is satisfied of the truthfulness of the retracted statement. The Supreme Court in **Nwachukwu V The State (supra)** held thus:

> ***"The retraction of a confessional statement by an accused person in his evidence on oath during the trial is of no moment as it does not adversely affect the situation once the court is satisfied as to its truth and it can rely solely on the confessional statement to ground a conviction."***

Furthermore in **Akinwoyi V The State (2000) 21 WRN 88** the court held thus:

> ***"Even where there is a confession, the fact that it has been retracted does not preclude the court from acting on it to convict."***

See also I**dowu V The State (2001) FWLR (pt.16) 2672 at 2703.**

The denial and or retraction by defendants of the confessional statements during their oral evidence may raise the relevant question of whether the inconsistency Rule will apply to the statements of the defendants. Now it is settled position of law that if the statement of an accused person is **confessional**, the inconsistency Rule does not affect it. In **Usung V The State (2009) All FWLR (pt.462) 1203 at 1235**, the Court instructively stated as follows:

> ***"The inconsistency rule does not apply to retracted extra judicial confession of an accused person. The implication is that it applies to extra judicial statements which are not confessional statements. The consequences are that where an accused makes an extra judicial statement admitting the commission of the offence with which he is***

charged, the statement will still be considered or taken into account in the determination of his guilt notwithstanding that he resiled from that evidence in his testimony at the trial by giving evidence contrary to the statement."

See also **Egbohomome V The State (1993) 7 NWLR (pt.306) 383 at 419**.

Accordingly, the retraction or complaints of torture and or beatings with respect to the statements of all the defendants shall accordingly be discountenanced.

The only point to perhaps underscore as I now deal with the substantive question of whether the guilt of defendants has been established is that in law, a free and voluntarily confession of guilt by an accused person if it is **direct** and **positive** and is **satisfactorily proved** should occupy the highest place of authenticity when it comes to proof beyond reasonable doubt. That is why in law such a confession by itself alone is sufficient without further corroboration to warrant a conviction. And there cannot be such a conviction unless the trial court is satisfied that the case has been proved beyond reasonable doubt. See **Ada & Anor V The State (1986) NWLR (pt.24) 581 at 593 – 594 H-A.**

It may also be relevant to refer to another aspect of procedure for determining the truth or for attaching due weight to confessions. The court is required to answer certain questions before relying on a confessional statement. These include:

a. Is there anything outside to show it was true?

b. Is it corroborated?

c. Are the statements in so far as they can be tested be true?

d. Was the prisoner a man who had opportunity of committing the offence?

e. Is the confession possible?

f. Is it consistent with other facts ascertained and proved?

See **Danielo V The State (1991) 8 NWLR (pt.212) 715 at 729 and Nwachukwu V The State supra at 1410.**

In law, where the making of a statement is denied, the trial court is expected to admit it in evidence as an exhibit and in its judgment decide whether or not such denial avails the defendant(s). And as also pointed out, it is also desirable to have outside the confession some corroborate evidence, no matter how slight of some circumstances which makes it probable that the confession is true and correct because the court is not generally disposed to acting on a confession without testing the truth thereof. See **Yahaya V State (2005) 1 NCC 120 at 123**.

Having stated some of the relevant principles on aspect of law relating to confession, the next stage is to apply them to the case at hand, as appropriate.

Now back to the substantive question of whether the prosecution has established the charge against the defendants beyond reasonable doubt. As stated earlier, we are left with only 3 Counts to wit: **Counts 1, 2** and **4**. I take them seriatim.

Under **Count 1**, the defendants are charged under **Section 97 (1) of the Penal Code Law** which is the punishment section for criminal conspiracy. The offence of criminal conspiracy is however defined under **Section 96 (1)** as follows:

"96(1) When two or more persons agree to do or cause to be done

(a) an illegal act; or
(b) an act which is not illegal by illegal means, such an agreement is called a criminal conspiracy.

(2) Notwithstanding the provisions of sub section (1), no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."

From the above definition, the vital elements of the offence of criminal conspiracy on the authorities are as follows:

1. **That there must be an agreement of two or more persons to do an unlawful or a lawful act by unlawful means;**

2. **That the actual agreement alone constitutes the offence and it is not necessary to prove that the act has in fact been committed;**

3. **That the external or overt act of the crime of conspiracy is the concert by which mutual consent to a common purpose is exchanged; and**

4. **That the agreement is an advancement of an intention conceived secretly in the mind of each person. The overt act is the proof of the intention, mutual consultation and agreement.**

See the cases of **Obiakor V State (2002) 1 NWLR (pt.776) 612; Gbadamasi V State (1991) 6 NWLR (pt.196) 182; Njovens V The State (1973) NSCC 257.**

I must also point out that the **offence of conspiracy** is rarely or seldom proved by direct evidence but by circumstantial evidence and inferences drawn from certain proved acts or through inferences drawn from surrounding circumstances. See **Obiakor V State (2002) 36 WRN 1 and State V Osoba (2004) 21 WRN 131.**

The offence of conspiracy is therefore complete the moment two or more persons have agreed that they will do immediately or at some future date or time, certain things, and it is not necessary in order to complete the offence that any one thing should be done beyond the agreement reached. See **Erin V The State (1994) 5 NWLR (pt.364) 525**.

Let us situate or subject the evidence led to judicial scrutiny to see if conspiracy was established.

Now it is to be noted that the charge of **conspiracy is specific** and perhaps for the sake of clarity, I will repeat only the relevant contents of the count. After the mention of the names of the defendants and their addresses, the **Count 1** provides as follows:

"...That on the 26th January, 2016, at about 0300hrs at No. 53 Parakou Crescent Wuse II and No. 100 River Niger Maitama, Abuja respectively within the Abuja Judicial Division; did conspired amongst yourselves with intent to commit an offence to wit: Criminal Conspiracy, Armed Robbery, Causing Grievous Hurt and Culpable Homicide. You thereby committed an offence punishable under Section 97 sub 1 of the Penal Code Law."

The charge of **conspiracy** therefore in my view were specific to the actions committed at:

1. 53 Parakou Crescent Wuse II and

2. No. 100 River Niger Maitama, Abuja.

I have carefully evaluated the evidence on record of all the prosecution witnesses PW1 – PW4. It should be pointed out immediately that PW2 and PW3 only gave evidence of the robbery attack and the grievous injury suffered by PW2 which occurred at **733 Mabushi Abuja FCT which strangely and surprisingly was not made a feature of this count**. The attack on PW2 and PW3 clearly therefore will have no resonance with respect to this extant count and it will be difficult to make inferences of conspiracy from their evidence and circumstances outside the context of the count been dealt with.

It is equally relevant to state that nobody who was directly attacked in the above premises was produced in court to give evidence providing further situational circumstances to infer or situate the offence of conspiracy.

The statement of Barrister Kaloma Mustapha who was attacked at **53 Parakou Crescent Wuse II** may have been tendered, by the prosecution police witness (PW1) as **Exhibit P9** but he was not in court to give evidence and be open to cross-examination and this affected the probative value that would have been accorded the statement. It is also to be noted that no allusions was made directly in the statement to any of the defendants subject of the charge.

It is however to be noted that by the evidence of PW1 and PW2, the case made out by the prosecution particularly through PW1 is that a case of criminal conspiracy and Armed Robbery was transferred from Utako Police Division with certain exhibits and they were instructed to investigate. They then took the statement of Barrister Kaloma Mustapha of No. 53 Parakou Crescent Wuse II vide **Exhibit P9** and commenced investigations. The largely unchallenged evidence of PW1 show that from one of the exhibits, a Techno phone forwarded to them, they were able to trace one Samuel kaka (now late). It is true that the tecno phone may not have been tendered but the evidence led show that Samuel Kaka led them to arrest 2nd defendant who admits owning the tecno phone and who in turn mentioned the 3rd defendant as the gang leader who was then arrested in Kaduna and a pump action gun tendered as **Exhibit P1** was recovered at his residence with 2 live cartridges tendered as **Exhibits P2 a** and **b**. On the evidence of PW1, the 3rd defendant mentioned all the other defendants as members of his gang of robbers and also facilitated their arrest

and recovery of 2 AK 47 rifles through 5th defendant which was released vide **Exhibits P3 a** and **b** to police operatives to underscore their relationship and that they know each other.

The statements of defendants tendered vide **Exhibits P4 – P8** show clearly these expressed familiarity and that they indeed participated in acts of robbery at different locations in Abuja including at Wuse II and Maitama but these statements clearly did not mention or allude to any robbery at:

1. No. 53 Parakou Crescent, Wuse II and
2. No. 100 River Niger Maitama, Abuja.

which is clearly the subject of **Count 1**. Yes there may have been reference by defendants to having committed acts of robberies at Wuse II and Maitama and at different locations in Abuja, FCT but **No. 53 Parakou Crescent is a specific street or Area** at Wuse II and does not aggregate to the whole of **Wuse II**. Similarly **No. 100 River Niger Maitama is equally a specific Area at Maitama** and does not equally aggregate to the whole of **Maitama** in Abuja.

It appears to me logical to hold that since the conspiracy charge here is in respect of **2 identified houses as contained in the charge**, then the confessional statements vide **Exhibits P4-P8** which do not mention clearly and positively any of the houses as operational base for acts of robbery by defendants do not provide or qualify as a confessional statement upon which a conviction of conspiracy on Count 1 can be based.

Let us further give close scrutiny to the statements vide **Exhibits P4-P8**. For purposes of clarity, by **Exhibit P4**, the 2nd defendant Abdulsalam Musa admitted knowing Late Samuel Kaka who introduced him to armed robbery and admitted that he lost his phone during the robbery operation at Wuse II. He admitted owning the tecno phone found at the scene of the robbery at Wuse II. He equally in the statement admitted participating in robbery operations with late Kaka, Sanusi, the 3rd defendant and Elisha (4th defendant) in the robbery at Wuse II and at different locations in Abuja.

By **Exhibit P5**, the 3rd defendant on the charge, Sanusi Ibrahim Mohammed, a.k.a Smart also admitted to participating in the robbery at Wuse II and Maitama where 2 AK 47 Guns was collected from the police. He acknowledged that he owns a pump action gun which on the evidence was

recovered at his residence. He also stated that he went for the robbery operation at Wuse II along with "Kaka Samuel, Gadafi (AK), PRO, Jboy and Elisha who was their driver."

Exhibit P6, the statement of **4th defendant**, Elisha Moses situates that he knows the late Kaka Samuel who introduced him to 3rd defendant and serves as a driver when they go on armed robbery operations and that after such operations, he is paid by the 3rd defendant. He admitted in his statement going for the robbery operation at Wuse II.

By **Exhibit P7**, the 5th defendant, **Prosper Amakwe** stated that the 3rd defendant called him for an armed robbery operation and they robbed at Wuse II, Maitama and Mabushi and that at Mabushi, they shot the police man and took away his AK 47 rifle. He agreed in his statement that he keeps the weapons for the **gang** and indeed led the police to recover the AK 47 rifles in a sewage facility.

Finally by **Exhibit P8**, the statement of 6th defendant situates that he is a member of a gang of armed robbers who operated at different locations in Abuja, Wuse Zone 6, Maitama, Gwarinpa and that they are led by 3rd defendant who resides in Kaduna but comes to Abuja for operations and who shares the loot after every robbery operation.

In all of the statements identified above, absolutely no mention was made of the **specific houses** subject of this Count. Indeed the clear message in the statements of defendants do not situate any conspiracy to commit armed robbery in these houses. A charge or count cannot be framed at large. In the light of the very unclear and fluid facts as presented by the prosecution, I am in grave doubt that an agreement to commit armed robbery by defendants in these two houses has been established. The point to underscore is that in a charge of conspiracy, there has to be evidence of the mere agreement of parties express or implied which would have been sufficient for a conviction. The offence lies not in the doing of the thing, but in the agreement to do the unlawful thing. The question here is where is the basis to hold that there was an agreement to commit armed robbery by defendants with respect to the houses in Count 1. On the evidence, I am afraid there is no such firm basis to situate conspiracy.

It must be conceded that the difficulty in determining the nature of the agreement in conspiracies has therefore necessitated the drawing of reasonable

inferences of such agreements but the inferences cannot be drawn outside of the evidence led based on the charge the defendants are facing. See **Joseph Okosun V A.G Bendel State (1985) 11 SC 194.** The confessions here which are not direct and positive do not situate clearly the agreement between the defendants to carry out the unlawful act of armed robbery at **No. 53 Parakou Crescent Wuse II and No. 100 River Niger Maitama** and I am clearly also not satisfied by the truth of the confessions as it relates to the conspiracy allegation.

One more point. To prove conspiracy, it is true that it is not necessary that there should be direct communication between each conspirator and every other conspirator provided the criminal design alleged is common to all. The conspirators need not meet. If there is no common design on the evidence with respect to the houses allegedly attacked and robbed, it will be difficult to deduce conspiracy. There are a lot of missing gaps in the case of the prosecution and any such doubt must enure in favour of defendants. Count 1 has thus not been **established beyond reasonable doubt**.

Now Count 2 charges the defendants with armed robbery again at:

1. No. 53 Parakou Crescent Wuse II and
2. No. 100 River Niger Maitama Abuja.

For purposes of clarity, the relevant portion of the **Count 2** reads thus:

"...That on the 26th January, 2016, at about 0300hrs at No. 53 Parakou Crescent Wuse II and No. 100 River Niger Maitama, Abuja respectively within the Abuja Judicial Division; while armed with two (2) AK 47 rifles Nos. 07112, 09062, one pump action gun with two live cartridges did forcefully robbed on (sic) Barrister Kaloma Mustapha 'm' and Mr. Oscar Igbokwe 'm' on gun point of the following valuables: Telephones, Laptop Computer, ipads, wrist watches, jewelleries, clothes, shoes and many other items which values are yet to be ascertain. You thereby committed an offence punishable under Section 298 (b) of the Penal Code Law."

It is noteworthy to state again that the robbery the defendants are charged with is specific to two persons: **Barrister Kaloma Mustapha** and **Mr. Oscar Igbokwe** and the robbery was carried out at the two houses identified above.

Let me quickly point out that the defendants were charged for the offence of robbery under the punishment section, however the offence of robbery is defined in **Section 296 of the Penal Code Law** thus:

"(1) In all robbery there is either theft or extortion.

(2) Theft is robbery if, in order to commit the theft or in committing the theft or in carrying away or attempting to carry away property obtained by the theft, the offender for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or of instant wrongful restraint.

(3) Extortion is robbery, if the offender at the time of committing the extortion is in the presence of the person put in fear and commits the extortion by putting that person in fear of instant death, of instant hurt or of wrongful restraint to that person or to some other person and by so putting in fear induces the person so put in fear then and there to deliver up the thing extorted."

First and foremost, Robbery generally is the illegal taking of property from the person of another or in the person's presence by violence or intimidation. While armed robbery is robbery committed by a person carrying a dangerous weapon regardless of whether the weapon is revealed or used.

From the above definitions, the vital elements or ingredients of the offence of armed robbery which the prosecution must prove beyond reasonable doubt to sustain a conviction for the said offence are as follows:

(a) That there was a robbery or series of robberies;

(b) That the robbery or each of the robbery was an armed robbery; and

(c) That the accused was one of those who took part in the robbery. See **Peter V The State (2015) LPELR – 25574 (CA), State V Salawu (2011) LPELR – 8252 (SC) and Osetola V State (2012) LPELR – 9348 (SC).**

Let us again situate from the evidence whether these elements have been met or established beyond reasonable doubt by the prosecution.

I have here carefully evaluated the evidence and there is really no clear unequivocal evidence in support of this count. As stated earlier, the **two persons** subject of this count earlier identified who were subject of the armed robbery did not give direct evidence of what happened at **No. 53 Parakou Crescent Wuse II** and **No. 100 River Niger Maitama, Abuja**.

In carrying out the act of robbery, the offender voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or of instant wrongful restraint. There must therefore be **positive and clear evidence** by the person who suffered these streamlined threats or attack or other positive and unequivocal evidence to situate the robbery.

In this case, on the Record and as earlier alluded to, the evidence of **PW2** and **PW3** related to a different robbery attack not subject of count 2. PW1 and PW4 were only investigators and had no direct knowledge of what transpired at the houses in question. They were also not attacked and cannot give evidence of the attack. Yes, their evidence may have shown that these robberies may have been committed but there is on the evidence no **direct** material linking the defendants with the **robberies** at the two identified houses in question. Put another way, there is no direct evidence situating that the defendants took property belonging to **Barrister Kaloma** and **Oscar Igbokwe** by violence or intimidation. There is no physical or forensic evidence establishing a clear nexus between defendants and the houses in question. No finger print of any of the defendants for example was found in any of these houses to situate their presence. None of the items allegedly stolen were identified and tendered and linked to defendants.

In this case, **Oscar Igbokwe** did not give evidence at all or make any statement with respect to what happened at his home at **100 River Niger, Maitama** as earlier stated. Also Barrister Kaloma may have made a statement vide **Exhibit P9**, but he was not in court to give evidence and be subject to cross-examination. His statement was equally not categorical with respect to who dispossessed him of his possessions during the attack on his residence and or whether the defendants were part of those who took part in the armed robbery attack. These are not matters for speculation or guess work.

I have again alluded, to the extra-judicial statements of the defendants vide **Exhibits P4 – P8** and while they alluded to participating in robbery operations at different locations in Abuja, there is nothing conclusive in all their statements

which I had comprehensively evaluated under Count 1 showing that they took part in armed robbery operations at:

1. **53 Parakou Crescent Wuse II and**
2. **No. 100 River Niger Maitama Abuja.**

As already alluded to, a free and voluntary confession of guilt by an accused if **direct** and **positive** is sufficient to warrant his conviction without any need for corroboration provided, the court is satisfied with the truth of the confession.

In this case as demonstrated, the confessional statements talks in general terms of robbery operations at Wuse II and Maitama. No mention was made of any robbery at the two specific houses mentioned under Count 2. The statements were thus not **direct** and or **positive** and there is really no corroborative evidence, however slight of some circumstances which makes it probable on the evidence that they participated in any armed robbery in the houses in question under Count 2.

The circumstantial evidence denoted by the evidence of PW1 and PW4 is not positive and unequivocal. They were not victims of the Robbery and could not have given evidence of probative value as to what happened in the 2 houses subject of Count 2. No forensics of any kind was identified linking the defendants to the two houses. Not one single valuable as stated earlier said to have been robbed off Barrister Kaloma and Oscar Igbokwe which was listed in the count was tendered by the prosecution and shown to have been found with defendants to provide some basis for further inquiry and to put the defendants on a pedestal to further respond to why the possessions are with them.

Again, there are lots of gaps in the case of the prosecution on this count and in such patently unclear and fluid circumstances, it would be unfair and unjust to convict on count 2.

At the risk of prolixity, I must repeat again that I agree with the prosecution that proof beyond reasonable doubt does not mean proof beyond the shadow of any doubt. That is correct and settled principle. See **Mufutau Bakare V. The State (1987)3 SC 1 at 32; Sule Ahmed (Alias Eza) V. The State 8 NSCR 273; Miller V. Minister of Pensions (1947)2 AII ER 372.**

It is however firmly established that the burden of the prosecution is only discharged when the essential ingredients of the offence have been established

and the accused is unable to bring himself within the defences or exceptions countenanced by the law generally or the statute creating the offence. See **Oteki V. A.G Bendel State (1986)2 NWLR (pt.24)658.**

Therefore while proof beyond reasonable doubt needs not attain the degree of absolute certainty, it must however attain a high degree of probability excluding any other conceivable hypothesis than the accused guilt. The authorities are clear that the accused be acquitted if the set of facts elicited in evidence is susceptible to either guilt or innocence in which case doubt has been created. Mere allegations, no matter how believable, does not amount to proof required in law to prove such allegations. In **Mbanengen Shande V. The State 22 NSCQR 756 at 772-773;** *Pats Acholonu J.S.C (of blessed memory)* instructively stated as follows:

"When an accused is being tried for any case whatsoever, because of the principle of law ingrained in our Constitution that he or she shall be presumed innocent, it behoves of the Court to subject every item of facts raised for or against him to merciless scrutiny. Nothing should be taken for granted as the liberty of the subject is at stake. Where there is a doubt in the mind of the Court either as to the procedure adopted or failure to address on very important latent issues that assail or circumscribe the case, the Court should acquit and discharge. Although the standard of proof is not that of absolute certainty (that should be in the realm of heavenly trials) the Court seised of the matter must convince itself beyond all proof that such and such had occurred. It is essential to stress times without number that the expression proof beyond all reasonable doubt- a phrase coined centuries ago and even ably applied by the Romans in their well developed jurisprudence and now verily applicable in our legal system, is proof that excludes every reasonable or possible hypothesis except that which is wholly consistent with the guilt of the accused and inconsistent with any other rational conclusions. Therefore it is safe to assume that for evidence to warrant conviction, it must surely exclude beyond reasonable doubt all other conceivable hypothesis than the accused's guilt. The accused should be acquitted if the set of facts elicited in the evidence is susceptible to either guilt or innocence in which case doubt has been created".

I need not add to the above eloquent admonition by the revered jurist. From the evidence adduced on record by the prosecution, I have not been put in a

commanding height by the prosecution to comfortably hold that the case has been proved beyond all reasonable doubt with respect to count 2. Here there is clearly reasonable doubt as to the culpability of the Accused Persons in relation to the offences charged therein. The implication therefore is simply that the prosecution has failed to discharge the onus of proof placed upon it by **Section 135 of the Evidence Act**. Count 2 has equally not been established against defendants.

The defendants under **Count 4** are charged with voluntarily causing grievous hurt under **Section 247 of the Penal Code** which is the punishment section. Voluntarily causing grievous hurt is however defined under **Section 243** as follows:

"Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause if grievous hurt and if the hurt which he causes is grievous hurt, is said voluntarily to cause grievous hurt."

Now on this count, the unchallenged evidence of PW2, Sgt. Henry Bello, the police security man at 733 Gitto Company Mabushi show that he was attacked during an armed robbery operation by men who were armed with a pump action gun and an AK 47 rifle causing grievous bodily injuries leading to loss of his two fingers. The physical deformity and the loss of his fingers was obvious when he testified in court and showed his hand and the disfigured fingers in open court.

In his evidence he stated that he was attacked by two men and stated or identified positively that it was **3rd defendant** who shot at him first with the pump action gun before the other assailant fired the AK 47 Gun that led to the loss of his fingers. After the attack, they took away his own AK 47 rifle.

It is true that he stated that he fainted after he was shot but that cannot in my opinion significantly impact his evidence negatively to the clear extent that he saw the assailants before he was shot and fainted. He stated clearly that he came out of his security room into the premises and there was light so he could see them. Indeed it was because he came out of the security post that the robbers saw him and immediately fired the gun at him. The narrative of PW2 of the gruesome attack on him was not impugned under cross-examination.

PW3 who was also at plot 733 corroborated in material particulars the evidence of PW2. In his evidence, he confirmed knowing all of 3rd – 5th defendants very well and 6th defendant fairly well as part of the robbers that attacked and robbed him while armed with guns. His evidence is that four men came into where he was sleeping and woke him up and tied his hands and enquired from him about the police men in the premises and he told them that they were four. Two of the robbers now left and he later heard gunshots from the vicinity of the police post.

That the two men who went to the police post later came back and they then jumped over the fence and left after robbing him of money and valuables. He was subsequently untied by another person in the premises and then he saw PW2 who was grievously hurt and he had to take him to the hospital. He stated unequivocally that he saw defendants because there was light in the premises on the day in question.

On the evidence of PW1, a pump action gun was recovered from 3rd defendant and the 5th defendant led them to recover 2 AK 47 rifles. These are guns seen and mentioned by PW2 who as stated earlier is a police officer and obviously conversant with these type of Guns. Again on the extra-judicial statements of the 3rd – 6th defendants already analysed they all confirmed to have played one role or the other in different robbery operations in Abuja including the incident at Mabushi. On the evidence and by his statement vide **Exhibit P4**, it is clear that the 2nd defendant did not participate in the robbery operation at Mabushi. To use his own words, "he was not invited". The statements of the 3rd – 6th defendants did not also situate that he participated in the robbery at Mabushi. Most importantly neither PW2 or PW3 stated that they saw him during the armed robbery operation and this enures in his favour. The 4th defendant may have stated in his statement that he did not participate at the robbery operation at Mabushi but the unchallenged positive evidence of PW3 which I find more reliable places him squarely at the scene of the robbery at Mabushi where the attack on PW2 took place.

The 5th defendant in his statement stated that he was part of the gang that shot PW2 and that he keeps the guns for the gang with 3rd defendant as their team leader. Indeed on the evidence as alluded to already, he led the police to recover the AK 47 rifles. Again in the statement of 6th defendant, he categorically confessed to having shot the police man and took away his gun and also acknowledged the 3rd defendant as their leader. The statements of

defendants shows clearly a fraternity of band of young men who engage in acts of robbing innocent Nigerians of their possessions and there is no doubt on the evidence that they attacked PW2 at Mabushi.

In this case, their actions of robbing and shooting PW2 on his hand with an AK 47 rifle which led to loss of two fingers clearly was done with the knowledge that it was likely to cause grievous bodily hurt and indeed it caused grievous hurt to PW2 in the circumstances. The PW2 has been permanently disfigured for life with the loss of his two fingers.

The confessional statements here with respect to the attack at Mabushi is in my opinion direct and positive as demonstrated above and can properly ground a conviction. Let us, before concluding, subject the confessional statements to the tests earlier highlighted.

The positive evidence of PW2 and PW3, who saw 3rd – 6th defendants; the unchallenged evidence of PW1 and PW4 and the recovery of the pump action gun and the 2 AK 47 rifles from 3rd and 5th defendants shows that the confessional statements with respect to the attack on PW2 at Mabushi is true.

Is it corroborated? What is even corroboration? Corroboration is a technical term which means no more than evidence tending to confirm, support and strengthen other evidence sought to be corroborated. The kind of evidence that would have supported the extant charge would include:

a. Cogent and compelling evidence showing that the accused committed the offence as charged
b. Independent evidence which connects the defendant with the offence charged

c. Evidence that implicates the defendant in the commission of the offence charged.

Again the evidence of PW2 and PW3 describing the attack and the fatal injuries PW2 suffered; the arms used during the attack that were recovered which was traced to defendants provides clear corroboration connecting the defendants with the offence charged under Count 4.

The statements clearly as far as can be tested on the evidence are true. The grievous injury resulting in the loss of two fingers of PW2 confirms the veracity of the statements relating to the attack and the grievous injury caused.

Of course, the defendants by the trajectory of their narrative clearly have the opportunity of committing the offence. The 3rd – 6th defendants admitted to engaging in different robbery operations and indeed attacked the PW2 and took away his AK 47 Rifle which was subsequently recovered through 5th defendant. So the confession is clearly possible after the gruesome attack, after they must have calmed down to the reality of the act they committed. Conscience they say is an open wound; only truth can heal it. Conscience may have propelled them to make the confessional statements. The admissibility of the confessional statements as stated earlier was not contested.

Flowing from the above, the last question is answered in the affirmative. The other facts proved are perfectly consistent with an admission. Having passed the test, all the confessional statements of 3rd – 6th defendants, **Exhibits P5 – P8** are reliable and can be used by this court in determining the guilt of 3rd – 6th defendants with respect to Count 4.

At the risk of sounding prolix, Admissions or confessional statements alone can ground a conviction when tested and found to have been voluntarily made. It is therefore good evidence upon which the guilt of the accused can be adjudged. See the case of **Nwachukwu V The State (supra) at 1406** where the Supreme Court held thus:

> ***"the admission of a confessional statement which has satisfied all requirements of law to be confessional properly so called can satisfy the burden of proof required of the prosecution to discharge in order to secure a conviction."***

A confessional statement is the best form of evidence in our criminal jurisprudence.

For reasons expressed in the foregoing and borne out by the evidence led on record, I hereby hold that the prosecution has proved Count 4 against only the 3rd – 6th defendants beyond reasonable doubt and accordingly found them guilty on count 4. The 2nd defendant is however discharged from this Count since it is

clear that he did not participate in the robbery operation that led to the violent attack on PW2.

Before I round up, it is important to state that the prosecution ought to have done much in view of the threshold of proof in criminal trials. The charge here could and should have been more properly and elegantly formulated and evidence better harnessed and presented.

In every charge or count, there are key elements that must be established. For a prosecutor, there must be evidence of value to situate those elements before a charge is even filed. That is the starting point. Where such credible evidence is not available, then a prosecutor is bound to face an uphill challenge in securing a conviction. The filing of any charge must therefore be propelled by the quality of available evidence and not any other extraneous consideration. Where evidence is not available, to ascertain a count, then such count must be jettisoned. The evidentiary challenges and the gaps in the evidence has created serious doubts that has resulted in the present outcome. I say no more.

On the whole, I find the Defendants not Guilty on **Counts 2** and **3** and they are discharged and acquitted. The **2nd Defendant** is equally found not guilty on **Count 4** and he is discharged and acquitted. I however find **3rd – 6th Defendants guilty as charged on Count 4 and convict them accordingly on the said Count**.

…….....

Hon. Justice A. I. Kutigi

SENTENCE

I have carefully considered the plea in mitigation by learned counsel to the convicted defendants. Now in considering the plea, I am obviously guided by the clear provisions of the law which provides the punishment for the offence. The punishment under **Section 247 of the Penal Code Act** is imprisonment for a term which may extend to seven (7) years and shall also be liable to fine. Whatever discretion that may be exercised by court must be such obviously allowed by law. It is trite law that the sentence of a court must be in accordance

with that prescribed by the statute creating the offence. The court cannot therefore impose a higher punishment than that prescribed for the offence neither can a court impose a sentence which the statute creating the offence has not provided for. See **Ekpo V. State (1982) 1 NCR 34.**

Now my attitude when it comes to sentencing is basically that it must be a rational exercise with certain specific objectives. Some of these objectives have now been expressly provided for under the new Administration of Criminal Justice Act 2015 vide **Sections 311(2) and 401(2) of the Act.** It could be for retribution, deterrence, reformation etc in the hope that the type of sanction chosen will put the particular objective chosen however roughly into effect. The sentencing objective to be applied and therefore the type of sentence to give may vary depending on the needs of each particular case.

In this case, I think the objective of the present exercise is deterrence and reformation for the young defendants. As rightly stated by learned counsel to the defendants, they have suffered complete disruption to their lives in the last 6/7 years. It is also indicated that some have young families and the impact of this case on their lives can also not be discounted. It is also stated that one of the defendants lost his father during the process of this trial. I have taken all these factors into consideration but the victim of the action of the defendants must also be a factor in any sentence that may be given. In the evidence, PW2, Sergeant Henry Bello lost two fingers and has been permanently disfigured for life. How the loss of his two fingers has affected him can only be better imagined.

The court must therefore engaged carefully in a balancing act to ensure that there are consequences for bad behavior while at the same time ensuring that whatever punishment that is meted serves its purpose and gives an opportunity for redemption by defendants.

Having weighed all these factors, I incline to the view that the appropriate and desirable sentence to give in the circumstance is one that would achieve the noble goals of deterrence and reformation of the defendant towards a pristine part of moral and behavioral rectitude. The sentence must however be in accordance with the provision of **Section 247 of the Penal Code Act**, as earlier alluded to.

As I round up, it is the hope of this court that when these young men finally leave the prison or correctional facility, they will now fall in love with hard work, avoid bad company and engage in legitimate source of earning their livelihood. They should equally seek forgiveness from the Almighty for their admitted several acts of transgressions and learn to live on the straight path. I say no more.

Accordingly, pursuant to **Section 247 of the Penal Code Law**, which provides for imprisonment which may extend to seven (7) years and also provides that they shall also be liable to fine, I sentence the convicted **Defendants** to a term of **seven (7) years** each with a fine of **N100, 000**. Pursuant to **Section 416 (2) (e) of ACJA 2015** the period Defendants have spent in prison awaiting or undergoing trial is inclusive.

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Hon. Justice A. I. Kutigi

<u>Appearances:</u>

1. ***Blessing Ezeala, CSP, for the Prosecution.***

2. ***Professor Agbo J. Madaki, phd, FICMC with Mimido P. Anudu, Esq., for the 2nd Defendant.***

3. ***P.O. Onucheyo, Esq., for the 3rd – 6th Defendants.***