

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

ON THE 11TH DAY OF MARCH, 2022

BEFORE HIS LORDSHIP; HON. JUSTICE J. ENOBIE OBANOR

CHARGE NO; FCT/HC/CR/O11/2021

BETWEEN;

COMMISSIONER OF POLICE COMPLAINANT

VS

TAYO AWOBAMISHE DEFENDANT

JUDGMENT

On the 18th day of January, 2021, the prosecution filed a one count charge against the Defendant. The charge reads as follows;

COUNT 1:

“That you Tayo Awobamishe ‘m’ on the 8th day of December 2020 at Tipper Garage Mpape Abuja, armed with a knife did rob one Idoko Emmanuel Sunday ‘m’ of his Mazda 323 car with Registration Number RBC 84 XC valued at N2,000,000.00 [Two Million Naira] and thereby committed an offence punishable under Section 1 (2) (a) (b) of the Robbery and Firearms [Special Provisions] Act, Laws of the Federation.”

The brief facts of the case against the Defendant is that on the 8th day of December, 2020 at about 0700hrs, one Emmanuel Idoko of Jikoko Mpape, FCT Abuja, a driver reported at Mabuchi police Station alleging that he was robbed of his Mazda 323 car with Registration Number RBC 84 XC valued at N2,000,000.00 [Two Million Naira].

The nominal complainant further alleged that the Defendant armed with a knife pulled up the hand break of his car, brought out a knife, ordered him to stop, took over the car steering and drove off the car. Based on intelligent report, the Defendant and the car was tracked to Lokoja, the Kogi State capital, where he was arrested and the vehicle recovered from him. After police investigation, a prima facie case of armed Robbery was established against Defendant and he was subsequently charged to court.

On the 7th of July, 2021, the prosecution opened it's case and called a total of three witnesses, while Defendant testified for himself. One SGT. Okekwu Ilemona who testified as PW1 stated as part of his testimony that he is a police officer attached to Mabuchi police station with force Number 505695 who initially investigated the case before transferring it from Mabuchi police Station to the FCT police Headquarters.

He stated further that the Nominal Complainant came to Mabuchi police station alleging that his Mazda 323 car with Registration Number RBC 84 XC was snatched on top of Katampe Bridge with knife, which car was later tracked to Lokoja, Kogi State where the Defendant was arrested alongside the vehicle.

The following day, he prepared an official letter to Kogi State police Headquarters Lokoja to bring the Defendant and the car back to FCT Command, where he was interrogated at Mabuchi Police Station and his confessional statement obtained.

That the Defendant authorized him to assist him in writing his statement, after which he read the cautionary words to the Defendant which he understood and signed. The said statement of Defendant which was tendered through PW1 was admitted and marked 'A'.

Under cross examination, PW1 confirmed that the Defendant was arrested at Lokoja where he met Defendant for the first time on the 10th of December, 2020 at 'B' Division Lokoja who finally handed over the Defendant and the car to him for further investigation. When

asked whether he was among the officers who arrested the Defendant, he said no.

PW2 is one Inspector Muazu Musa, a police officer with force number AP191134 attached to FCT CID, Abuja. He testified and stated that PW1 handed over the case file to him for further investigation. He recorded Defendant's statement under words of caution.

It is his testimony that the nominal complainant reported the incident to Mabuchi police station which prompted the police to radio all state commands to assist in recovering the stolen car. In the process, Defendant was arrested with the car at Lokoja and brought back to Abuja where he confessed to committing the alleged crime.

The confessional statement of Defendant made at CID police Headquarters was tendered and admitted as Exhibit 'B', while the bond to produce in respect of the stolen car was tendered and admitted as Exhibit 'C'.

Under cross examination, he confirmed that Defendant told him he is an SSCE certificate holder and that at the time he met nominal complainant, there was no injury on him. That Defendant authorized him to assist him write his statement after which he read the statement over to the Defendant and took him to a superior officer after recording his statement, but there was no endorsement.

To a question, he answered that it was PW1 who travelled to Lokoja to bring back the stolen car.

PW3 is Idoko Emmanuel, the nominal complainant and victim of the alleged crime. He testified on the 13th of January, 2022 and stated that he is the driver of the vehicle with vehicle Registration No. RBC 84 XC attached to Brekete family taxi.

It is his further testimony that at 5 am in the morning of 8th December, 2020, one man boarded his vehicle and while on transit on top of Katampe Bridge, he brought out a knife, pulled up the

car handbrake, threatened him with the knife and dispossessed him of the car.

He reported the matter to the police and Defendant and the stolen car were tracked down to a mechanic workshop at Lokoja, Kogi State where Defendant was arrested with the car and brought back to Abuja for further investigation. He further confirmed to the court that at the police station, he recognized the Defendant as the passenger who robbed him of his car, and that the police later released the vehicle to him on bond.

Under cross examination, he admitted that the car was seen the same day 8th December 2020 and brought back to the Police station the following day as the Defendant was arrested by Lokoja police and brought back to Abuja on 10th December 2020. He confirmed that the knife was not recovered from the Defendant.

On the 2nd day of February, 2022, the defence opened its case and Tayo Awobamishe the Defendant testified as DW1. He testified as a sole witness in his defence. He testified that he knows Pw3 and that they were living in the same place but Pw3 does not recognise him. He stated that he was the one who recognised the Pw3 at Lokoja before he called the police for him. He admitted to the crime. Subsequent relevant parts of his testimony will be recalled where necessary.

At the close of trial, the court adjourned the matter to the 18th of February, 2022 for adoption of final written addresses.

The prosecution's final written address is dated the 16th day of February, 2022, wherein, the prosecution formulated a sole issue for determination to wit;

"Whether the prosecution has proved its case against the Defendant beyond reasonable doubt."

B.G. Emenike Esq of counsel for the prosecution submitted that the established position of the law in criminal trials is that the burden of proof is beyond reasonable doubt, and this burden rests on the

prosecution throughout trial. The burden is to be discharged by credible and cogent evidence which is sufficient enough to eliminate reasonable doubt that it was the Defendant who committed the offence he was charged with. He referred the court to the case of **C O P VS AMUTA LPELR - 41386 [SC]**.

That the presumption of innocence in favour of an accused person can be completely displaced by any of the following ways;

1. Confessional statement of the Defendant which satisfies the requirement of the law.
2. Direct evidence [eye witness evidence].
3. Circumstantial evidence which meets the requirement of law.

He cited the case of **IGBABELE VS STATE [2006] 5 NWLR [PT.975]** for reference.

He submitted further that to prove the offence of armed robbery, the prosecution is duty bound to prove the following ingredients.

1. There was a robbery or series of robberies.
2. Each of the robberies was an armed robbery.
3. The accused person took part in the robbery or series of robberies.

He argued that from the evidence before the court, there was a robbery on 8th December, 2020, and the said armed robbery was certified by Exhibits 'A' and 'B'. He urged the court to so hold.

Secondly, the evidence of PW3 as well as other witnesses support the fact that the robbery was an armed robbery, as Defendant was armed with a knife when he snatched the car from PW3.

Further, PW3 in his evidence testified that it was Defendant who entered his car that faithful day, and brought out a knife with which he threatened PW3 before dispossessing him of the car.

He submitted that the above mentioned ingredients which are a critical component for the proof of the offence of armed robbery

have completely discharged the burden of proof placed on the prosecution, and that contrary to the argument of the defence, the evidence of PW2 is not hearsay evidence, as he investigated the case against the Defendant and gave testimony about the outcome in court. In addition, both PW1 and PW2 recorded the statements of the Defendant in the course of the investigation. He urged the court to hold that Exhibits 'A' and 'B' alone could sustain conviction in this matter.

In the same vein, non-endorsement of Exhibit 'B' by a superior police officer cannot impeach Defendant's confessional statement, as the practice is not a law but merely desirable. He cited the case of ***EHIMIYEIN VS. STATE [2016] LPELR 4084 [SC]*** where it was held that non-endorsement alone cannot invalidate a confessional statement.

The Defendant's final written Address is dated 11th of February, 2022 wherein, O.B. Ibenegbu Esq formulated a sole issue for determination to wit;

“Whether from the totality of the testimonies of the witnesses, the prosecution has proved the essential elements of the offence of armed robbery contrary to section 1 [2] [a] [b] of the Robbery and Fire Arms [Special Provision] Act LFN 2004 beyond reasonable doubt to enable this Hon. Court safely convict the Defendant.”

Counsel on behalf of the Defendant submitted that it is the duty of the prosecution to prove all the ingredients of Armed Robbery Punishable with death, and all such proof must be beyond reasonable doubt. He referred the court to the case ***OF ADUN VS. OSUNDE [2003] 16 NWLR [PT.847] 643 AT 647 RATIO 2***. Where the court held thus;

“proof beyond reasonable doubt excludes possibility, the evidence led in proof of an allegation or crime must neither leave room for speculation nor create doubt”.

On the first element whether armed robbery was committed, counsel submitted that there is no direct testimony before this Hon. Court to show that a robbery involving the use of arms took place. The Defendant himself stated during his examination in chief and cross examination that he did not use any knife. There is also no other evidence before this court to show that any other kind of weapon was used whatsoever, as none was recovered or tendered in evidence.

She argued that even if Defendant made exhibits 'A' and 'B' as recorded by PW1 and PW2, it clearly had the statement "I did not use knife". It is trite that part of a Defendant's defence includes any statement of assertions or denials he is able to make independently at the point of investigation. She urged the court to so hold.

On the second element that the robbery was committed by the use of fire arms, he submitted that there is no proof before this court that the robbery was committed by the use of arms. No fire arms or weapons were recovered from the Defendant, nor was any tendered.

On the third element if the Defendant was the robber, he raised two questions whether the Defendant was arrested at the scene of the crime, or whether the prosecution was able to prove beyond reasonable doubt that the accused was located at the scene of the crime. He answered the questions in the negative and argued that these questions raised doubt as to the culpability of the Defendant in the alleged armed robbery without more, and that any doubt so raised must be resolved in favour of the Defendant.

Further, he submitted that the court cannot rely on the testimony of PW2 as it amounted to hearsay. Pw2 admitted during cross examination that apart from the fact that Defendant was handed over to him and he wrote a statement on his behalf, all that he told the

court was recounted to him by PW1 and Pw3, which falls short of an investigation.

On the retracted Exhibit 'B', he urged the court not to attach any weight to it as Pw2 having testified that Defendant was an SSCE holder, still took the liberty and wrote Exhibit 'B' by himself. Aside this, there is no endorsement by a superior police officer on Exhibit 'B' to show that Defendant consented to be recorded by Pw2. He therefore urged the court to discountenance the testimony of Pw2 and submitted that in fact, it will not be safe and will occasion a miscarriage of justice if Defendant is convicted on Exhibit 'A' and 'B', as it was seen during trial that Defendant's state of mind was unstable.

I have gone through the case of the prosecution as well as the defence put up by the Defendant. I shall now proceed to examine the law in relation to the offence charged and evaluation of the evidence adduced during the trial.

The law is that in criminal trials, the burden of proof is proof beyond reasonable doubt which is on the prosecution and never shift till the end of the trial. It simply means the establishment of all the ingredients of the offence charged in tandem with the dictates of Section 138 of the Evidence Act and Section 36 [5] of the 1999 constitution [as amended]. **SEE AJAYI VS. STATE [2013] LPELR – 19941 [SC].**

By Section 138 [1] of the Evidence Act, the prosecution must establish the guilt of an accused person with compelling evidence which is conclusive. It means a degree of compulsion which is consistent with a high degree of probability. **SEE BASSEY VS. STATE [2012] LPELR – 7813 [SC].**

In order to prove the offence of armed robbery for which the Defendant was charged beyond reasonable doubt, the prosecution

called three witnesses and tendered Five Exhibits which were admitted as Exhibits 'A' 'B' 'C', 'D' and 'E' respectively.

PW1 is SGT. Okekwu Ilomena, the initial investigating police officer who testified on the 7th of July, 2021 that the nominal complainant reported a case of car robbery at Mabuchi police Station, alleging that the defendant snatched his car on top of Katampe bridge after threatening him with a knife. The car was later tracked down to Lokoja where Defendant was arrested with the car and brought back to Abuja for further investigation.

PW2 took over the case from PW1 for further investigation at FCT CID Abuja, while PW3 is the nominal complainant who reported the case at Mabuchi police station.

On the other hand, the Defendant who is the accused testified for himself at the trial, admitted in his confessional statements Exhibits A and B of committing the crime but denied using a knife.

It is trite on the issue of burden of proof that where an accused in his statement to the police admitted committing the crime, the prosecution is not relieved of the burden; any failure to discharge this burden renders the benefit of doubt in favour of the accused. See ***IGABELE V. STATE (2000) 6 NWLR (PT.975) PG.100.***"

As the Defendant herein is charged with the offence of Armed Robbery, the Prosecution is under a duty to prove the ingredients of the offence beyond reasonable doubt failing which it will fail. The Defendant herein is charged under Section 1(2)(a) and (b) of the Robbery and Firearms (Special Provision) Act, Cap R11 Laws of Federation of Nigeria, 2004. The section provides thus: -

"(1). Any person who commits the offence of robbery shall upon trial and conviction under this Act, be sentenced to imprisonment for not less than 21 years.

(2). *If -*

(a). *Any offender mentioned in subsection (1) of this Section is armed with any firearms and offensive weapon or is in company with any person so armed; or*

(b). *At or immediately before or immediately after the time of the robbery the said offender wounds or uses any personal violence to any person, the offender shall be liable upon conviction under this Act to be sentenced to death.”*

From the above provisions, it is apparent that the ingredients of the offence of armed robbery (as charged) which the prosecution must prove beyond reasonable doubts for it to succeed are: -

- (1). That there was a robbery incident.
- (2). The Defendant either alone or with others was involved in the robbery.
- (3). The Defendant was armed with firearms or any offensive weapon or
- (4). The Defendant was in company with any person so armed.
- (5). At or immediately before or after the time of the robbery, the Defendant wounds or used any personal violence to any person.
See: **BOZIN V STATE (1986) 2 NWLR (8) P. 465.**

The first ingredient of the offence of armed robbery is that there was a robbery.

An overview of the evidence of the prosecution witnesses and even the Defendant himself shows the parties are not in dispute there was a robbery incident on 8th December, 2020 wherein the Pw3's Mazda car 323 with

Registration Number RBC 84 XC was robbed. The Pw1, Pw2 and Pw3 testified to this and admitted by the Defendant.

In the light of this, the Court has no difficulty in holding that the prosecution has proved beyond reasonable doubt the first ingredient of the offence of armed robbery as charged. This issue is therefore resolved in favour of the prosecution.

The second and third ingredients are proof that the Defendant either alone or with others was involved in the robbery and that it was an armed robbery.

In this regard I have examined the exhibits and testimonies of Pw3 and Dw1. Whereas the Pw3 both his testimony and Exhibit D and E maintained that his car was snatched with the use of a knife. The Defendant himself during his testimony and also in Exhibit A and B denied same. There is also no other evidence before the court to show that any other kind of weapon whatsoever was used and none was recovered or tendered in evidence before this honourable court. Under Section 135(1) to (3) of the Evidence Act 2011, the standard of proof on the prosecution in criminal matters is proof beyond reasonable doubts.

On the ingredient as to whether or not the Defendant was involved in the robbery. The Defendant in Exhibits A and B admitted same but as already stated above it is trite on the issue of burden of proof that where an accused in his statement to the police admitted committing the crime, the prosecution is not relieved of the burden; any failure to discharge this burden renders the benefit of doubt in favour of the accused. See ***IGABELE V. STATE (SUPRA)***. The defendant's counsel has also urged the court to treat exhibits A and B as retracted statements of the defendant. The position of the law is that when retraction takes place; it is the weight the Court would place on the facts therein contained that matters and this is usually assisted where there are some evidence outside of that statement that would make it probable that the confession was true. When the finding is in the affirmative a conviction can be properly founded on that resiled confession. See ***AMOS v. STATE(2018) LPELR-44694(SC)***.

In this case, I have examined the testimonies of the witnesses in this case, apart from the evidence of the Pw3 who witness the robbery, no other evidence was called to linked the defendant with the robbery of the car at the scene or immediately thereafter even when one should have been called. For instance the Pw3 in his testimony testified as follows;

“ I went to our office and made a complaint and when I got there I was told that they were already aware and that the man has driven the car to Abagana in Kogi State. That he carried someone along the road and the husband who escorted her to get a transportation snapped the plate number and when he heard about the theft on the radio called that the wife entered the vehicle.”

From the above testimony of the Pw3, one would have expected that the prosecution ought to have called at least one or two of these persons who had a closer contact with the robber while on transit to confirm that it was the defendant whom they saw with the vehicle. None of them was called as a witness in this case. Even the police in their investigation did not reach out to them through the phone number they used in making the call to the radio station.

Moreso this court in examining the evidence of the prosecution witnesses observed some contradictions in their testimonies.

For instance the Pw1 testified as follows:

“a call came into my phone that the said car is heading to Lokoja Kogi State and I told him to call the C.P FCT Command and he did and the C.P. called C.P. Kogi State and the Divisional Police Officer B Division Lokoja was called. While he was going into the state, the police there stopped him because the car particulars was given to them and I was called that he was arrested.”

On the other hand the Pw3 testified in this regard as follows:

“I went with my brother to Abajina and we got there around 8 in the night and we saw the place where the car was parked along road side mechanic and when we saw it , we asked about the owner, they

told us that the mechanic had gone but the person who brought it just left and before then my brother asked for Police station and he went there while I waited by the car. The police said that since they did not see who brought the car that they will come and tow the car. After police left the Defendant came back and I went to meet him and he carried knife and people ran away and I slept around the place where the car was packed. Around 5am in the morning I used my wife's phone to call my number which was with the Defendant. I called him to come so that we can repair the car and at that time my brother went to meet the police to tow the car and as he was going, the police were already about to tow the motor when the Defendant came and police asked him who he was and he said he is the one who drove the vehicle but when they asked him who own the vehicle he said he was not the one and from there he was taken to the Police station. The engine of the car was already changed even the brain box was scattered.”

From the above testimonies of Pw1 and Pw3, it is clear that there are material contradictions as to where and how the defendant was arrested. Whereas Pw1 testified that the defendant was arrested with the vehicle by Police on the same day on his way driving to the Lokoja, Pw3 testified that the defendant was arrested the following day at a mechanic workshop. In the case of ***EKPOISONG V. STATE (2009) 1NWLR (PT1122) P.359*** the appellate court held thus

“Where there is a substantial mix up or contradiction which makes it unsafe to convict on the testimony of the prosecution, the accused must be acquitted. It is improper to order a retrial in such a case. Also where there are contradictions in the testimony of two prosecution witnesses that were not explained or resolve, it is not proper to pick and choose which witness to believe. In the instant case it was not proper for the trial court to accept testimony of either PW1 or Pw2”.

In the light of the foregoing, the Court holds that the prosecution has failed to discharged the fundamental burden of proof beyond reasonable doubt on it to show that the Defendant was armed with knife and was the person

who robbed the nominal complainant (Pw3) of his Mazda 323 car with registration no RBC 84 XC. It serves no purpose inquiring into the other ingredients of the offence. Moreso as no evidence was led on any injury inflicted on PW3

In totality and by reasons of all I have managed to say above, I hold the Defendant has not been proved guilty of the offence of Armed Robbery. He is in consequence discharged and acquitted of the one count of the charge.

SIGNED
HON. JUDGE
11/3/2022

LEGAL REPRESENTATIONS:

- (1). SP. B.G. Emenike Esq for the Prosecution.
- (2). O.B. Ibenegbu for the Defendant.