

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

INDICTMENT NO: DPP/2016/219

THE STATE

VS.

1. ABU BAKARR SESAY
2. JOHN KARGBO ALIAS SIX CUTS

JUDGMENT DATED THE 30TH JULY 2016

The Prosecution made an application for an amendment pursuant to section 148 of the Criminal Procedure Act 1965 and same was granted by the Court, and so the Accused persons were now facing a charge of Robbery and the Particulars now alleged that the Accused persons herein, on the 24th day of September 2015 at Freetown in the Western Area of the Republic of Sierra Leone, robbed Mohamed Jalloh the sum of Five Hundred and Sixty Thousand Leones (Le 560,000.00).

The Accused Persons pleaded not guilty to the Charge.

In his testimony to the Court, the PW1, Detective police Inspector, Delwyn Macaulay, an Officer attached to the Special Operation Department Ross Road, police Station, told the Court that both Accused Persons before the Court were arrested by the Complainant with the help of Police constable 11912 James Nabieu, and the Complainant made a report of Robbery with Violence. The Complainant was issued with a Police Medical request form for treatment. The Endorsed Medical request form produced and tendered as Exhibit A.

Statements were obtained from the complainant and witnesses. The Accused persons were cautioned and Voluntary Cautioned Statement obtained separately, same tendered as Exhibit B and C respectively for the 1st and 2nd Accused persons. The Accused persons were again cautioned and were accordingly charged and the said Charge Statements tendered as Exhibits D and E for the 1st and 2nd Accused persons respectively.

In Cross, the PW1 told the Court he mainly complied with the investigative procedure in bringing the Accused Persons to book.

The PW2, Mohamed Jalloh, the Complainant herein told the Court that he is a salesman at Alpha Bar Restaurant, Jui. The Complainant said he was accused by the 2nd Accused person of having stepped on him, the PW2, apologized to the 2nd Accused person but the 2nd Accused person replied by hitting him on his chest and a fight ensued and in the process other persons joined the fight including the 1st Accused person and he held his assailants till the security guard came to his rescue, but the third person escaped and the Complainant realized that his money as stated on the Indictment was stolen from his pocket.

In Cross, the PW2 said the area was not too clear and it was around 3am to 4am and cannot for sure say who exactly took his money.

The PW3, James Nabieu, a Police officer, told the Court that he is a Security Guard at the said Alpha Bar restaurant, and he mainly rushed to the scene when he received a call for help from the PW2.

In Cross, the PW3 said he did not witness the incident but mainly acted upon the information given to him by the PW3.

The Prosecution closed its case and the Committal certificates were tendered as Exhibits F and G for the 1st and 2nd Accused persons respectively.

Commencement of Defence case:

The Accused persons relied on their Voluntary Cautioned Statements made to the police and they have no witness.

The Prosecution and Defence submitted written Addresses. The Prosecution gave reasons as all the elements of the offence of Robbery have been proved to warrant a conviction.

But the Defence disagreed citing insufficient evidence to warrant a conviction.

A very careful perusal of the testimony of the Complainant, the PW2, has raised some doubt in the view of the bench as to whether in fact he was robbed or not. There is no clear case of Robbery pointed at the Accused persons before the Court ‘

I agreed absolutely with the Defence, that the Prosecution had not proved its case beyond reasonable doubt.

The best option of the prosecution in my view was to make an additional charge of Assault which would have been sustainable in Law since an endorsed Medical request formed was tendered.

Besides, there is no evidence in the case of the Prosecution that there was a consensus ad adiem or a meeting point of mind between the 1st Accused person and the 2nd Accused person in the commission of any offence. In fact, the 1st Accused person and 2nd Accused person maintained that they do not have a close relationship, although the 1st

Accused person said he used to see the 2nd Accused person in the area, but that again was not established by the Prosecution.

For an offence of Robbery to succeed, or both Accused persons be held criminally reprehensible, a joint criminal enterprise must have been established in the case of the Prosecution, but that is not seen by the Bench.

I humbly submit, from the entirety of the evidence the case of the Prosecution has created doubt in my mind. In the case of Miller v. Minister of Pensions (1947) 2 ALL E.R. 372, DENNING, J. spoke about the degree of cogency which the evidence must reach in a Criminal case before an Accused person can be convicted, and he said inter alia 'Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The Law would fail to protect the community if it permitted fanciful possibilities to deflect the course of justice...'. I hold that doubt has been created in my mind as to whether or not the Accused persons herein committed the Offence of Robbery. The Prosecution has therefore failed to prove its case beyond reasonable.

For the foregoing reasons highlighted, I hereby hold that the Accused Persons are Acquitted and Discharged for the offence of Robbery.



30-7-2016

Justice APhaji
High Court Judge