**AKINBAMI**

**V.**

**STATE**

COURT OF APPEAL (LAGOS DIVISION)

THURSDAY, 9 JUNE 2016

CA/L/1248C/2014

**LEX (2016) - CA/L/1248C/2014**

OTHER CITATIONS

2PLR/2017/34 (CA)

**BEFORE THEIR LORDSHIP**

U. I. NDUKWE-ANYANWU, JCA (Presided and Read the Lead Judgment)

CHINWE EUGENIA IYIZOBA, JCA

TIJJANI ABUBAKAR, JCA

**BETWEEN**

ABIODUN AKINBAMI

AND

THE STATE

**ORIGINATING COURT**

HIGH COURT OF LAGOS STATE (Judgment of Hon. Justice M. Olokoba delivered on 30 August 2012)

**REPRESENTATION/LAWYERS**

C.O.P. EMEKA (with him, OLUWAKEMI AGUNBIADE and E.O. EKEOCHA) - for the Appellant.

F.A. DALLYE [with him, O.A. OLUDE] - For the Respondent.

**ISSUES FROM THE CAUSE(S) OF ACTION**

CRIMINAL LAW AND PROCEDURE - CONSPIRACY – Offence of - Ingredients of under the Penal Code – Inference of from facts of a case - Propriety of - Definition of under common law.

CRIMINAL LAW AND PROCEDURE - CORROBORATION OF COMMISSION OF AN OFFENCE:- Quality of evidence required as.

CRIMINAL LAW AND PROCEDURE - INCONSISTENCY RULE IN CRIMINAL PROCEEDINGS - Operation of.

CRIMINAL LAW AND PROCEDURE - INVESTIGATING POLICE OFFICER - Duty on investigating police officer to investigate alleged crimes and testify of his findings.

CRIMINAL LAW AND PROCEDURE – BURDEN OF PROOF IN CRIMINAL PROCEEDINGS - Discretion of prosecution to determine the number of witnesses to call therein.

CRIMINAL LAW AND PROCEDURE – WITNESSES:- Defence urging prosecution to call a specific witness - Propriety of.

CRIMINAL LAW AND PROCEDURE – POLICE INVESTIGATIVE OFFICER (IPO):- Duty of the IPO in the investigation of crime – fantastic claims by Police IPO not backed with credible evidence – Suspicion that IPO was advancing a trumped-up charge against innocent persons – Attitude of court thereto

WORDS AND PHRASES – “CONSPIRACY” - Definition of under common law.

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE – CONSPIRACY:- Inference of from facts of a case – Propriety of.

EVIDENCE - CORROBORATION OF COMMISSION OF AN OFFENCE:- Quality of evidence required.

EVIDENCE - INCONSISTENCY RULE IN CRIMINAL PROCEEDINGS:- Operation of.

EVIDENCE – BURDEN OF PROOF IN CRIMINAL PROCEEDINGS:- Discretion on prosecution to determine the number of witnesses to call therein

EVIDENCE - WITNESSES - Defence urging prosecution to call a specific witness - Impropriety of.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant was charged along with two others on five counts of conspiracy to commit robbery and robbery contrary to section 403A and section 402(1) of the Criminal Code Law, Cap. C17 Vol. 2, Laws of Lagos State, 2003. The appellant, together with the two accused, pleaded “not guilty” and the matter proceeded to trial.

The prosecution/respondent called only one witness, one Corporal Sunday Ogbamebor and closed its case. PW1/IPO testified that while he and his team were on patrol on 11 June 2006, they noticed a suspicious commercial bus and decided to tail it. At about 11pm around Fadeyi bus stop, they noticed one of the passengers jumped off the bus unceremoniously and when interviewed he stated to the police team that his reason lay behind the fact he was being taken off his agreed route. This fact strengthened their decision to continue pursuing the bus. Upon reaching the top of the bridge at Fadeyi, they heard screams of distress of passengers and decided to bring the bus to a halt. When that was done the appellant and two others were thereafter arrested upon identification by the passengers that they tried to rob them.

The appellant’s counsel on his part filed a no-case submission. In delivering his ruling dated 22 February 2010, the trial judge dismissed the 2nd - 5th counts (four counts) of robbery against the appellant and the two accused persons but however held that the appellant had a case to answer in respect of the first count of conspiracy to commit robbery.

Consequently, the appellant’s counsel opened its case by calling the appellant, DW3, and the 1st and 2nd accused as his witnesses. It is the case of the appellant that he was not part of any conspiracy. He stated that he was not arrested on 11 June 2006 (the date of the alleged commission of the crime) but on 9 June 2006. He stated on the said day of his arrest, after close of work, he boarded a commercial bus from Obalende to Oshodi. At Anthony bus stop, the bus broke down and he headed for the next bus stop to board another but was over ran by some men in a bus who seized him and beat him up cutting his lips, sprayed tear gas into his eyes and bundled him into their bus heading to Shomolu Police Station. At the Police Station, a statement was produced for him to sign. He resisted but had to succumb when he was shown the blood of others who had put up similar resistance.

DECISION(S) APPEALED AGAINST

At the conclusion of the trial, the trial court in a considered judgment found the appellant and the 1st and 2nd accused persons guilty of the offence and sentenced the appellant together with the two accused persons to 21 years each with hard labour.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

“(1) Whether the prosecution discharged the burden of proof required by law to establish the offence of conspiracy against the appellant.

(2) Whether the learned trial judge was right to have convicted the appellant on exhibit P1, the alleged confessional statement.”

*BY RESPONDENTS*

“Whether upon reviewing the totality of the facts presented and the evidence adduced before the trial court, the respondent proved the offence of conspiracy to commit robbery contrary to section 403A of the Criminal Code Law, Cap. 17, Vol. 2, Laws of Lagos State, 2003, against the appellant and if the answer is in the affirmative, whether or not the learned trial judge ought to have convicted and sentenced the appellant to 21 years in prison with hard labour.”

DECISION OF COURT OF APPEAL

1. The ingredients of the offence of conspiracy under the Penal Code needs to be proved by the Prosecution to succeed viz:

“(a) An agreement between two or more persons to do or cause to be done some illegal act, or some act which is not illegal by illegal means;

(b) Where the agreement is other than an agreement to commit an offence, that some acts besides the agreement was done by one or more of the parties in the agreement; and

(c) Specifically, that each of the accused persons individually participated in the conspiracy”.

2. From the evidence of the IPO, PW1 he saw a bus and he suspected the occupants of some nefarious activities. He claimed that they followed the bus. He claimed they saw people fighting in the bus and could hear them screaming. He admitted that the patrol car had the siren on and the revolving lights on. The IPO claimed they were pursuing the bus and it stopped and one man jumped out. They interrogated the man who jumped out. The man said the bus was heading away from the destination he called. The man did not say there were robbers in the bus robbing people. The IPO did not get the number of the bus he had been following for a long time. He also did not produce in court the people the appellant robbed. He did not recover any of the items stolen. He also claimed that the occupants of the vehicle fired at them and they returned fire by shooting at the tires of the bus. No weapons were recovered from the scene.

3. The job of an IPO is to investigate crime. He said he was at the spot when the bus stalled and the passengers rushed out. In that rush he was able to quickly identify the passengers and the robbers. The IPO did not arrest all the passengers if he was there as they were rushing out of the vehicle. The IPO could not recover any of the so-called stolen items from the robbers neither could they recover any gun. The vehicle used in that robbery was neither detained and the driver of the vehicle was not identified either. In the usual run of events, if the bus was used in committing a crime, it is detained for sometime until investigation is over. There was no mention of this aspect. You will recall that the IPO said that the patrol team shot at the tires of the vehicle to demobilize it. The IPO forgot to state what happened to the person who was hit by their bullets. I believe that this charge is trumped up to cover for the shooting of an innocent man in a bus. How could the IPO in a patrol car with siren blowing and the blue lights on, see the fracas in the vehicle and hear the sound of the cries of the occupants of the bus. It is unimaginable.

4. The DWS had given different testimony of how they were arrested at various bus stops. The other passengers who were robbed did not get to the police station to say how they were robbed and to state their missing items. How can there be a robbery, you arrested the robbers supposedly at the scene of crime and no items found including the firearms used.

5. The IPO in any investigation is not usually an eyewitness to any crime. He investigates alleged crimes reported to him. He interrogates the suspects, and takes down their statements. He visits the locus in quo for further investigations. He interviews witnesses and investigates alibi. The IPO never gave in evidence, that he interviewed anyone. There was only one supposed eyewitness, Kayode Babalola who he interviewed and obtained his statement, exhibit P4 but was not called as a witness to corroborate the extrajudicial statement of the appellant.

6. The appellant’s evidence in court was at variance with his extrajudicial statement made to PW1 who does not appear to be a truthful witness from his anecdote of how the appellant and two other accused persons were arrested. The inconsistency rule is to the effect that where a witness statement to the police contradicts with the evidence in court, the court should regard him as an unreliable witness and discountenance both his statement to the police and his testimony in court. It would be recalled that none of the items stolen was found on the appellant nor with the other two accused persons. The stolen items were not also found in the bus nor around where the appellant was arrested.

7. Evidence in corroboration must be an independent testimony, direct or circumstantial which confirms in some material particular not only that an offence has been committed but that the accused person has committed it. Corroboration need not consist of direct evidence that the accused person committed the offence nor need it amount to a confirmation of the whole account given by the witness, provided that it corroborates the evidence in some respect material to the charge.

8. As it stands now, there is no corroboration of the testimony of the appellant. The IPO, PW1 is not in any position to corroborate any evidence of the appellant. Without corroboration of the tainted and unreliable evidence of the IPO, PW1, it would be difficult to convict the appellant with this sort of evidence.

9. It is difficult to decipher how the PW1 would manufacture evidence that may be inferred to convict the appellant of conspiracy. The learned trial judge was therefore wrong to have believed the cock and bull story of the IPO, PW1. His story was incredible to say the least. At best he concocted the statement of the appellant and the other two accused persons to cover their own crimes. The IPO, PW1 and his crew shot a passenger in the vehicle. They claimed the vehicle was used to rob some imaginary people. The vehicle was neither detained nor the driver investigated. How then could any iota of conspiracy could be inferred from a botched investigation.

This appeal is therefore meritorious. It is allowed. The judgment of the trial judge is hereby set aside. The conviction and sentence are also set aside. The appellant, Abiodun Akinlami is discharged and acquitted.

**MAIN JUDGEMENT**

NDUKWE-ANYANWU JCA (DELIVERING THE LEAD JUDGMENT):

This is an appeal against the judgment of the High Court of Lagos State by Hon. Justice M. Olokoba delivered on 30 August 2012.

The fact as briefly stated are as follows:

By way of an amended information dated 17 March 2008, the appellant (3rd accused) was charged along with two others on five counts of conspiracy to commit robbery and robbery contrary to section 403A and section 402(1) of the Criminal Code Law, Cap. C17 Vol. 2, Laws of Lagos State, 2003. The appellant together with the two accused pleaded “not guilty” and the matter proceeded to trial.

The prosecution/respondent called only one witness, one Corporal Sunday Ogbamebor and closed its case. PW1/IPO testified as follows: that while he and his team were on patrol on 11 June 2006, they noticed a suspicious commercial bus and decided to tail it. At about 11pm around Fadeyi bus stop, they noticed one of the passengers jumped off the bus unceremoniously and when interviewed he stated to the police team that his reason lay behind the fact he was being taken off his agreed route. This fact strengthened their decision to continue pursuing the bus. Upon reaching the top of the bridge at Fadeyi, they heard screams of distress of passengers and decided to bring the bus to a halt. When that was done the appellant and two others were thereafter arrested upon identification by the passengers that they tried to rob them.

The appellant’s counsel on his part filed a no-case submission. In delivering his ruling dated 22 February 2010, the trial judge dismissed the 2nd - 5th counts (four counts) of robbery against the appellant and the two accused persons but however held that the appellant had a case to answer in respect of the first count of conspiracy to commit robbery.

Consequently, the appellant’s counsel opened its case by calling the appellant, DW3, and the 1st and 2nd accused as his witnesses. It is the case of the appellant that he was not part of any conspiracy. He stated that he was not arrested on 11 June 2006 (the date of the alleged commission of the crime) but on 9 June 2006. He stated on the said day of his arrest, after close of work, he boarded a commercial bus from Obalende to Oshodi. At Anthony bus stop, the bus broke down and he headed for the next bus stop to board another but was over ran by some men in a bus who seized him and beat him up cutting his lips, sprayed tear gas into his eyes and bundled him into their bus heading to Shomolu Police Station. At the Police Station, a statement was produced for him to sign. He resisted but had to succumb when he was shown the blood of others who had put up similar resistance.

At the conclusion of the trial, the trial court in a considered judgment found the appellant and the 1st and 2nd accused persons guilty of the offence and sentenced the appellant together with the two accused persons to 21 years each with hard labour. Being dissatisfied, the appellant filed a notice of appeal with five (5) grounds. The appellant also filed his appellant’s brief on 3 November 2015. In it, the appellant articulated two (2) issues for determination. They are as follows:-

“(1) Whether the prosecution discharged the burden of proof required by law to establish the offence of conspiracy against the appellant.

(2) Whether the learned trial judge was right to have convicted the appellant on exhibit P1, the alleged confessional statement.”

In response, the respondent filed its brief on 3 December 2015. In it, the respondent articulated a sole issue for determination viz:

“Whether upon reviewing the totality of the facts presented and the evidence adduced before the trial court, the respondent proved the offence of conspiracy to commit robbery contrary to section 403A of the Criminal Code Law, Cap. 17, Vol. 2, Laws of Lagos State, 2003, against the appellant and if the answer is in the affirmative, whether or not the learned trial judge ought to have convicted and sentenced the appellant to 21 years in prison with hard labour. (Distilled from grounds 1, 2, 3, 4, and 5 of the notice of appeal).

Issue 1

Learned counsel for the appellant submitted that for the offence of conspiracy to be made out, the following must be established:

“(a) There must be a consent of two or more persons.

(b) There must be an agreement which is an advancement of an intention conceived in the mind of each person secretly i.e. mens rea.

(c) The secret intention must have been translated into an overt act or omission or mutual consultation and agreement i.e. actus reus”

See the case of Yakubu v. State (2012) 12 NWLR (Pt. 1313) 131 at 142 - 143, paragraphs H - B.

It is the contention of counsel that the prosecution have failed to establish the offence of conspiracy against the appellant and the trial court also failed to properly evaluate the evidence of the prosecution. He further contended that for there to be conspiracy, there must be a common intention between the alleged conspirators. It is his submission that the prosecution has failed to establish common intention between the appellant and any other person beyond reasonable doubt. He contended that the evidence of PW1 (the sole witness of the prosecution) did not establish any agreement between the alleged conspirators.

According to counsel, it is the uncontroverted evidence of the appellant as DW3 that he has never met any of the other alleged conspirators until he met them in court for the first time. Counsel said the evidence before the court raised reasonable doubt which ought to be resolved in favour of the accused. He also contended that failure to call any passenger in the bus, who were supposed to be eyewitnesses and therefore vital witnesses raised the presumption of withholding of evidence under section 167(d), Evidence Act, 2011 which failure is fatal to the case of the prosecution. See the case of Ogudo v. State (2011) 18 NWLR (Pt. 1278) 1; Ochiba v. State (2011) 17 NWLR (Pt. 1277) 663.

He also contended that the evidence of PW1 which was based on the statement recorded by him was wrongly admitted and relied upon by the trial court to convict the appellant. It is his contention that any conviction based on such evidence cannot be sustained.

He also contended that it was also wrong for the trial court to admit the alleged confessional statement of the appellant and based the conviction thereon when the appellant had denied the making of that confession and when there was no other credible evidence outside of the confession to justify the conviction of the appellant. He referred to State v. Gwangwan (2015) 13 NWLR (Pt. 1477) 600.

Issue 2

Learned counsel for the appellant submitted that it was wrong for the court to convict the appellant on the confessional statement allegedly made by him and the making of which, the appellant had denied. According to the counsel, the appellant through his testimony before the court denied the making of exhibit P3 and testified to the fact that the confessional statement credited to him was not made by him. It is also the case of appellant’s counsel that there is no credible evidence outside the supposed confession which can render probable the content of the confession as required by law. He relies on Lasisi v. State (2013) All FWLR (Pt. 694) 39, (2013) 9 NWLR (Pt 1358) 74.

It is the contention of the appellant’s counsel that in the face of the retraction of the confessional statement of the appellant, the learned trial judge ought not to proceed to act on the statement without applying the necessary test, which are:

“(1) Is there anything outside the confession to show that it is true?

(2) Is it corroborated?

(3) Are the relevant statements made in it of facts true as far as they can be tested?

(4) Was the prisoner one who had the opportunity of committing the crime?

(5) Is his confession possible?

(6) Is it consistent with other facts which have been ascertained?”

See the case of Osuagwu v. State (2009) All FWLR (Pt. 460) 700, (2009) 1 NWLR (Pt. 1123) 523 at 541 - 542, paragraphs G - G.

He contended that the conviction of the appellant cannot be sustained solely on the retracted confessional statement in the absence of the above stated test.

He also contended that the trial court failed to evaluate the evidence of the appellant as against the prosecution’s evidence and that such evaluation would have shown to the trial court the probability of the commission of the offence by the accused. He urged this court to resolve this issue in favour of the appellant.

On the other hand, learned counsel for the respondent acknowledges that the burden of proving the guilt of the accused is on the prosecution and that the burden must be discharge by evidence beyond reasonable doubt. According to counsel, the prosecution in this case had been able to prove the offence of conspiracy against the appellant beyond reasonable doubt. It is his contention that the offence of conspiracy requires the proof of certain elements as follows:

“a. There must be an agreement between two or more people.

b. They must have agreed to do an illegal act or they must have agreed to do legal acts by illegal means.

c. The agreement must be followed by an overt act.”

See the case of Waziri v. State (1997) 3 NWLR (Pt. 496)

It is his submission that each of this elements may be established either by direct or circumstantial evidence. It is his contention that the elements of conspiracy in this case can be inferred from circumstantial evidence of PW1 along with exhibit P3 being the confessional statement of the appellant. According to counsel, it is unnecessary for co-conspirators to have met or to have known each other, as long as the agreement to commit the offence can be inferred from the conduct of the give accused person in the instant case.

As regards the confessional statement of the appellant, it is his argument that the court has the power to convict an accused person upon the voluntary confessional statement of an accused notwithstanding the retraction of the statement by the accused. He relied on Idowu v. State (1998) 11 NWLR (Pt. 574) 354, (1998) 9-10 SC 1.

It is his contention that in addition to the confessional statement, the testimony of PW1 who was an eyewitness and whose evidence was unchallenged and uncontroverted offer corroborative support to the confessional statement of the accused.

As regards to the failure to call any of the alleged bus passengers/victims, it is the contention of counsel that the prosecution is not obliged to call any number of witness as far as it can establish his case by credible evidence otherwise. It is his submission that the submission of the appellant’s counsel in this regard is misconceived and is not borne out by the relevant laws. He relied on section 200 of the Evidence Act and the case of Emmanuel Ugwumba v. State (1993) 5 NWLR (Pt. 296) 660, (1998) 6 SCNJ (Pt. II) 217; Ore-Ofe Adesina (A.k.A. Alhaji) & Anor. v. The State (2012) All FWLR (Pt. 644) 1, (2012) LPELR 9722.

Counsel also submitted that evidence of an investigating police officer about what he personally saw or discovered in the course of his investigation is not hearsay evidence and is admissible. He referred to the case of Suleiman Olawale Arogundade v. The State (2009) All FWLR (Pt. 469) 409, (2009) 2 SCNJ 44; Mr. Ubong Obot v. The State (2014) LPELR 23130.

He finally submitted that the court can convict on the credible and cogent evidence of one witness, being PW1 in this case. He relied on the case of Basil Akalezi v. State (1993) 2 NWLR (Pt. 273) 1. He thus urged this court to uphold the conviction. The appellant, Abiodun Akinbami was convicted on a count of conspiracy to rob together with two other co-accused. Conspiracy is a criminal offence. However it is not defined in the Criminal Code Act, 1916. Thus it is necessary to draw guidance from the Common Law. Under the Common Law doctrine, it is an agreement of two or more persons to do an act which it is an offence to agree to do. Nwosu v. State (2004) All FWLR (Pt. 218) 916, (2004) 15 NWLR (Pt. 897) 466; Amachree v. Nigerian Army (2003) 3 NWLR (Pt. 807) 256.

The ingredients of the offence of conspiracy under the Penal Code are as follows:

“(a) An agreement between two or more persons to do or cause to be done some illegal act, or some act which is not illegal by illegal means;

(b) Where the agreement is other than an agreement to commit an offence, that some acts besides the agreement was done by one or more of the parties in the agreement; and

(c) Specifically, that each of the accused persons individually participated in the conspiracy”.

Abacha v. F.R.N. (2006) 4 NWLR (Pt. 970) 239; Aituna v. State (2006) 10 NWLR (Pt. 989) 452; Waziri v. State (1997) 3 NWLR (Pt. 416) 689.

For us to understand the case of the appellant, the court would go through the evidence of the witnesses in this case. The prosecution only proffered evidence from only one witness, the IPO. The job of the IPO is to investigate crime and come to court to testify as to the form or outcome of his investigations.

From the evidence of the IPO, PW1 he saw a bus and he suspected the occupants of some nefarious activities. He claimed that they followed the bus. He claimed they saw people fighting in the bus and could hear them screaming. He admitted that the patrol car had the siren on and the revolving lights on. The IPO claimed they were pursuing the bus and it stopped and one man jumped out. They interrogated the man who jumped out. The man said the bus was heading away from the destination he called. The man did not say there were robbers in the bus robbing people.

The IPO did not get the number of the bus he had been following for a long time. He also did not produce in court the people the appellant robbed. He did not recover any of the items stolen. He also claimed that the occupants of the vehicle fired at them and they returned fire by shooting at the tires of the bus. No weapons were recovered from the scene.

The above information is the sum of the IPO’s evidence. The job of an IPO is to investigate crime. He said he was at the spot when the bus stalled and the passengers rushed out. In that rush he was able to quickly identify the passengers and the robbers. The IPO did not arrest all the passengers if he was there as they were rushing out of the vehicle. The IPO could not recover any of the so-called stolen items from the robbers neither could they recover any gun. The vehicle used in that robbery was neither detained and the driver of the vehicle was not identified either. In the usual run of events, if the bus was used in committing a crime, it is detained for sometime until investigation is over. There was no mention of this aspect. You will recall that the IPO said that the patrol team shot at the tires of the vehicle to demobilize it. The IPO forgot to state what happened to the person who was hit by their bullets. I believe that this charge is trumped up to cover for the shooting of an innocent man in a bus. How could the IPO in a patrol car with siren blowing and the blue lights on, see the fracas in the vehicle and hear the sound of the cries of the occupants of the bus. It is unimaginable.

When the vehicle stalled the passengers scampered off as the policemen in the patrol car had shot at them. Probably the ones who couldn’t run away fast enough were arrested beaten and made to confess. The DWS had given different testimony of how they were arrested at various bus stops. The other passengers who were robbed did not get to the police station to say how they were robbed and to state their missing items. How can there be a robbery, you arrested the robbers supposedly at the scene of crime and no items found including the firearms used.

The IPO in any investigation is not usually an eyewitness to any crime. He investigates alleged crimes reported to him. He interrogates the suspects, and takes down their statements. He visits the locus in quo for further investigations. He interviews witnesses and investigates alibi. The IPO never gave in evidence, that he interviewed anyone. There was only one supposed eyewitness, Kayode Babalola who he interviewed and obtained his statement, exhibit P4 but was not called as a witness to corroborate the extrajudicial statement of the appellant. The appellant’s evidence in court was at variance with his extrajudicial statement made to PW1 who does not appear to be a truthful witness from his anecdote of how the appellant and two other accused persons were arrested. The inconsistency rule is to the effect that where a witness statement to the police contradicts with the evidence in court, the court should regard him as an unreliable witness and discountenance both his statement to the police and his testimony in court. It would be recalled that none of the items stolen was found on the appellant nor with the other two accused persons. The stolen items were not also found in the bus nor around where the appellant was arrested.

It is true that the crime of conspiracy has to be inferred from the circumstances of the case. In this case, what are the circumstances that could be deciphered from the evidence of only the PW1, the lone prosecution witness. The law does not impose on the prosecution to call a host of witnesses to prove its case, all it needs to do is to call enough material witnesses to prove its case and in so doing, it has a discretion in the matter. It does not lie in the mouth of the defence to urge the prosecution to call a particular witness, Olayinka v. State (2007) 9 NWLR (Pt. 1040) 561, (2007) All FWLR (Pt. 373) 163. Thus, the evidence of a single witness, if believed by the court, can establish a criminal case even if it is a murder charge. Effiong v. State (1998) 5 NWLR (Pt. 562) 362. Amusa v. The State (2002) 2 NWLR (Pt. 750) 73; Egboghonome v. State (1993) 7 NWLR (Pt. 306) 383; Okafor v. State (2006) All FWLR (Pt. 318) 719, (2006) 4 NWLR (Pt. 969) 1. The court with the evidence of the appellant in total contradiction with his extrajudicial statement, the court would need to corroborate the evidence of PW1.

Evidence in corroboration must be an independent testimony, direct or circumstantial which confirms in some material particular not only that an offence has been committed but that the accused person has committed it. Corroboration need not consist of direct evidence that the accused person committed the offence nor need it amount to a confirmation of the whole account given by the witness, provided that it corroborates the evidence in some respect material to the charge. Nwambe v. State (1995) 3 NWLR (Pt. 384) 385; Dagayya v. State (2006) All FWLR (Pt. 308) 1212, (2006) 7 NWLR (Pt. 980) 647; Ogunayo v. State (2007) 8 NWLR (Pt. 1035) 157.

As it stands now, there is no corroboration of the testimony of the appellant. The IPO, PW1 is not in any position to corroborate any evidence of the appellant. Without corroboration of the tainted and unreliable evidence of the IPO, PW1, it would be difficult to convict the appellant with this sort of evidence. Unreliable to say the least! It is true that the conspiracy is difficult to prove except by inference. For the offence of conspiracy to be made out, the following must be established.

(a) There must be a consent of two or more persons.

(b) There must be an agreement which is an advancement of an intention conceived in the mind of each person secretly i.e. mens rea.

(c) The secret intention must have been translated into an overt act or omission or mutual consultation and agreement i.e. actus reus. The prosecution could not prove that there is any agreement between the appellant and the 1st and 2nd accused persons. Apart from the discredited exhibit P3, nothing connects the appellant with the crime. There was no proof that the appellant knew the other two accused persons before now. He was arrested on a different date other than the date the crime was said to have been committed. The prosecution gave in evidence that the appellant and the other two accused were arrested at the scene. It turned out they were arrested at different bus stops on different days.

It is true that the conspirators need not know themselves and need not to have agreed to commit the offence at the same time. A conspiracy can be inferred from the facts of doing things, towards a common end, where there is no direct evidence in support of an agreement between the accused persons. Aje v. State (2006) 8 NWLR (Pt. 982) 345.

It is difficult to decipher how the PW1 would manufacture evidence that may be inferred to convict the appellant of conspiracy. The learned trial judge was therefore wrong to have believed the cock and bull story of the IPO, PW1. His story was incredible to say the least. At best he concocted the statement of the appellant and the other two accused persons to cover their own crimes. The IPO, PW1 and his crew shot a passenger in the vehicle. They claimed the vehicle was used to rob some imaginary people. The vehicle was neither detained nor the driver investigated. How then could any iota of conspiracy could be inferred from a botched investigation. The learned trial judge was therefore wrong in inferring conspiracy from the evidence of PW1 and the so-called exhibit P3.

This appeal is therefore meritorious. It is allowed. The judgment of the trial judge is hereby set aside. The conviction and sentence are also set aside. The appellant, Abiodun Akinlami is discharged and acquitted.

**IYIZOBA JCA**: I read in advance, the lead judgment just delivered by my learned brother, Uzo I. Ndukwe-Anyanwu JCA. I am in agreement that the appeal has merit. I also allow it. The conviction and sentence of the appellant is set aside. The appellant is discharged and acquitted.

**ABUBAKAR JCA**: I had the privilege of reading before now, the lead judgment prepared and rendered by my learned brother, Uzo Ndukwe-Anyanwu JCA. I am in complete agreement with the reasoning and conclusion and adopt the entire judgment as my own. I also allow the appeal and endorse the order made by my learned brother discharging and acquitting the appellant.

Appeal allowed