

SUPREME COURT OF NIGERIA
25TH JUNE, 1993. SC. 152/1992
CORAM:- A. G. KARIBI-WHYTE, S. KAWU,
U. OMO, I. L. KUTIGI, E. O. OGWUEGBU, JJSC

EMMANUEL UGWUMBA APPELLANT
V.
THE STATE RESPONDENT

APPEALS - Concurrent findings of two lower Courts - Is there any justification to interfere with the findings

CRIMINAL LAW - Armed robbery - accused person's defence in denial of the charge - whether considered by the trial Court

CRIMINAL LAW - Armed robbery charge- good and cogent evidence linking accused to the robbery- whether conviction was proper

EVIDENCE - Hearsay - testimony of two prosecution witnesses - who helped in arresting accused - whether hearsay - merely because witnesses were not present at scene of crime

EVIDENCE - Failure to call two material witnesses - whose whereabouts was unknown at time of trial - whether fatal to prosecution's case

EVIDENCE - Conviction- whether based on the fact that accused was seen running away from scene of crime - or on Evidence of eye witness - identification parade - when unnecessary

FACTS

The Appellant and another person were jointly charged in the High Court of Lagos State for an offence of armed robbery. He was alleged to be amongst a team of 4 men that robbed the sum of N21,150.00 property of S.C.O.A. Ltd from two of its staff who were taking the money to bank. The Appellant who was armed with a pistol snatched the bag containing the money from the complainant's messenger. As alarm was raised, people chased up the arm robbery

gang in spite of Appellant's shootings to prevent that. Two armed policemen emerged at the time Appellant was being chased and arrested him after some exchange of shootings. Appellant was subsequently tried and convicted for the offence of armed robbery after 5 prosecution witnesses had testified, and death sentence was passed on him. His appeal to the Court of Appeal was dismissed whilst the other accused jointly convicted with the Appellant was acquitted.

Being dissatisfied Appellant has further appealed to the Supreme Court. His counsel submitted inter alia, that the two lower Courts erred in basing (Appellant's conviction on the evidence of the two policemen that arrested him when such evidence was hearsay as they were not eye-witness to the crime. The Supreme Court had to determine whether the prosecution proved its case beyond reasonable doubt and whether the trial court properly evaluated the evidence before it.

HELD (unanimously dismissing the appeal)

1. The evidence of two prosecution witnesses were not hearsay as both witnesses testified as to what they actually saw and did. None of them claimed to be an eye-witness of the actual robbery but they testified as to the part they played in arresting the Appellant soon after the robbery.
2. The finding by the Court of Appeal that there was no need to call the driver and the messenger to testify, as the evidence of other prosecution witnesses cover all the facts needed to be established towards discharging the burden of proof is correct (P. 198 L 14)
3. The trial Judge based his decision principally on the evidence of the eye witness to the crime who soon after the robbery identified the Appellant as one of the robbers and that evidence directly connected the Appellant to the crime. The trial Court's decision was not based solely on the fact that the Appellant was seen running away from the scene of the crime. (P.200 L1)
4. The submission that the defence of the Appellant was not considered is not supported by the record. His defence was properly con-

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sidered by the trial judge who had no hesitation in rejecting it.
(P200 L10)

5. As there was good and cogent evidence linking the Appellant to the robbery on the day of the incident, the Court of Appeal was right in holding that a formal identification parade was absolutely unnecessary. (P200 L24)

6. Appellant's complaints being essentially against the findings of the two lower Courts, there is no justification for interfering with those findings. (P201 L11)

REPRESENTATION

Chief Jide Oki with Suppati John, for the Appellant
Bode Rhodes-Vivour, Director of Public Prosecutions, Ministry of Justice Lagos State, C. Okafor, Legal Officer, Ministry of Justice, Lagos State, for the Respondent

LEAD JUDGMENT BY KAWU JSC

This appeal came up for hearing on Thursday, the 8th day of April, 1993. On that day, having carefully perused the record of proceedings, and having studied the briefs of argument filed on behalf of the appellant and the respondent, and having heard oral submissions of both counsel in expatiation of their briefs. I came to the conclusion that there was nothing in all the submissions made on behalf of the appellant that could possibly justify my interfering with the judgment of the court below and consequently dismissed the appellant's appeal and reserved my reasons for doing so till today. I now proceed to give those reasons.

The appellant and another person were jointly charged in the High Court of Lagos State, holding at Lagos, for an offence of armed robbery. The charge reads as follows:-

"STATEMENT OF OFFENCE

Armed robbery under section 402(2) (1) of the Criminal Code.

PARTICULARS OF OFFENCE

Francis Dose (m) and Emmanuel Ugwumba (m) on or about the 20th day of June, 1980 at Lagos Judicial Division being armed

with an offensive weapon to wit: a gun, robbed one Siraju Taguna, Boniface Nwakoko and Tijani Ajala of N21,150.00 property of S.C.O.A Ltd."

Both accused pleaded not guilty. At the trial the prosecution called five witnesses in support of their case and both accused testified in their defence but called no witnesses. At the end of the case the learned trial judge BAKARE, J. E found both accused persons guilty as charged. He consequently convicted them of the offence of armed robbery and sentenced them to death.

In his judgment, in respect of the case against the appellant (who was the 2nd accused), he held as follows:-

"I have no hesitation in holding that a robbery was committed on the material day in the manner narrated by Prosecution Witness 2. There is also no doubt in my mind that the 2nd accused was one of the four persons who committed the said robbery. He was seen by Prosecution Witnesses 1, 2 and 4 holding and firing a pistol and was overpowered by Prosecution Witnesses 1 and 4 who disarmed and arrested him. Learned Counsel for the 1st accused submitted that the case against his client was one of oath against oath. That might be so, but there is nothing preventing a conviction on this type of evidence if there are sufficient reasons to prefer the oath of Prosecution Witnesses to that of the accused; Joshua Alonge vs. Insp. Gen. of Police (1959) SCNLR 516; (1959) 4 FSC 203 at p. 205. I have set out in some detail the evidence of Prosecution Witness 2 to show that the robbery was not a swift operation where perpetrators escape with ease. The crowd at the scene, who were attracted by the alarm raised by Prosecution Witness 2 rose to the occasion by giving the four robbers a fight, not escape in it. They ran out of the car and took to their heels. They were still pursued, Prosecution Witness 2 said the whole drama lasted about an hour and he had sufficient time to see and identify the four evil men who were not masked. When he got to the Police Station to report the incident he saw the 2nd accused who he identified as one of the robbers,"

With regard to the 1st accused, whose appeal was allowed by the Court below, he stated as follows:-

"I prefer the evidence of the arrest of the 1st accused given by Prosecution Witness 4 to that of the accused himself. There is no doubt that the officer was somehow mistaken about the hour of the

arrest. This is not fatal to the prosecution's case. On the totality of the evidence before me, I find that the 1st Accused was one of four men who committed the robbery and was in hiding in the disused shop where he was arrested. The Prosecution the defence put forward by the two accused persons. I find the two accused persons guilty as charged."

Both the appellant and the 1st accused, being dissatisfied with the judgment of the court of first instance appealed to the Court of Appeal, and that court, having given very careful consideration to all the submissions and arguments of the parties, in a lead judgment written by Kalgo, J.C.A., with which Kolawole and Tobi, JJ.C.A. agreed and which was delivered on 10th June, 1992, allowed the appeal of the 1st accused and consequently acquitted and discharged him. The appeal of the appellant was, however, dismissed and his conviction and sentence of death passed on him by the trial court, affirmed. This appeal is from that decision.

Now the facts of the case leading to this appeal were admirably set out in the judgment of Kalgo, J.C.A. as follows:-

"On the 20th of June, 1980, One Suraju Jaguma a Senior Cashier of S.C.O.A. General Goods of 68, Marina, Lagos, was taking the sum of N21,150 being previous day's sales to International Bank of West Africa to pay into the S.C.O.A. account there when the vehicle in which they were travelling, a Peugeot 304 car, registration No. LA 5156 AE was stopped by someone who stood in front of the vehicle. Mr. Jaguma was together with the office messenger, one Tijani Ajala and the driver of the vehicle, one Boniface Nwaokwu in the same vehicle. Mr. Jaguma sat in the front seat together with the driver but Tijani Ajala who was holding the bag containing the N21,150 was sitting on the back seat of the car.

According to Jaguma who gave evidence at the trial, as P.W.2 as the car in which they were travelling moved about 200 metres from the office, the driver slowed down to negotiate a bend, and suddenly a man emerged from under the Eko Bridge, opposite C.F.A.O. building, Elegbata and ran in front of the car with a brief case raised over his head and shouting 'stop, stop!' The driver of the vehicle conveying P.W.2 stopped, and P.W.2 thinking that the man was a robber ordered the driver to reverse the car. But before the driver could do so, three other men have surrounded the messenger

at the back of the car. P.W.2 and the driver then came out of the car but before they could do anything, the men opened the car where the messenger was sitting and one of them who was armed with a pistol (later identified as 2nd accused) snatched the bag containing the N21,150.00 from the messenger. P.W.2 then raised an alarm "thief, thief". The 4 men ran towards a Peugeot 504 parked about 15 meters 5 away from the scene of the incident.

Meanwhile many people who heard the alarm rushed to the scene and attacked the 504 car. As a result, the car was damaged and could not move in the sand. The 4 men then rushed out of the car, abandoned it and ran towards Ebute-Ero Motor Park. The 2nd accused 10 who had the gun with him continued to shoot it to prevent people from chasing him, but people still chased them up.

In the course of the pursuit, one Cpl. Lawal Olatunji who was returning from First Bank, Ilupeju where he escorted L.S.T.C. staff to 15 deposit money there, arrived at the scene. He was also armed, and as soon as the 2nd accused saw him he fired at him and Col. Lawal fired back. The Cpl. still chased the 2nd accused and finally caught up with him at Idunmota near the African Continental Bank and with the assistance of Sgt. Omowunmi, arrested him. The 2nd accused 20 was then disarmed and when searched the sum of N2,000.00 and 8 round of live ammunition were found on him. Cpl. Lawal Olatunji was P.W.1 at the trial, and Sgt Omowunmi was P.W.4.

The 1st appellant, a Togolese, was arrested by P.W.4 in an abandoned ship near the place where the 2nd appellant was earlier arrested. He was escorted to the Central Police Station immediately. 25

As stated earlier the appellant has appealed to this court on five original grounds of appeal. He subsequently obtained leave of the Court to file four additional grounds which additional grounds 30 appellant's counsel indicated he would rely upon. The additional grounds are as follows:-

"ADDITIONAL GROUNDS OF APPEAL

1. The Justices of the Court of Appeal misdirected themselves in holding that the prosecution proved its case beyond reasonable 35 doubt.

PARTICULARS OF MISDIRECTION

(a) The identification of the 2nd appellant by P.W.2 was possibly a plot to save his own neck as he was himself a suspect.

(b) The oath of P.W.4 against the 2nd appellant as to the commission of the offence was not corroborated by testimonies of any eye-witness.

5 (c) No explanation no matter how feeble was adduced by the prosecution as to where the suitcase containing the stolen money went.

(d) The car allegedly used by the robbers was not tendered in
10 court at all.

(e) The driver and the messenger who witnessed the alleged robbery were not called to testify when the prosecution knew that their evidence would have helped the court to decide in one way or the other whose case is more credible.

15 (f) The Court of Appeal failed to advert its mind to the material contradictions in the amount alleged to have been stolen. For the purpose of clarity N21,150 was stated in the charge sheet whereas N21,750 was mentioned in the evidence of P.W.2 (the cashier).

(g) P.W.2 the only material witness for the prosecution did not
20 witness the arrest of the 2nd appellant and could only be called upon to see those who robbed them at the Police Station.

2. The Court of Appeal erred in law and misdirected itself when it held as follows:

25 "..... *The evidence of identification by the 1st and 4th P.W.s cannot therefore be hearsay.*"

PARTICULARS OF ERROR/MISDIRECTION

(a) The finding by the Court of Appeal was not consistent with
30 the rule of evidence regarding admissibility of same.

(b) The learned Justices of the Court of Appeal made so much weather about the evidence of P.W.1 & P.W.4 who were not even eye-witnesses.

3. The Court of Appeal erred in law in holding as it did that
35 failure of the prosecution to call material witnesses was not fatal to the prosecution's case after conceding to the materiality of such, evidence.

PARTICULARS OF ERROR

The Court of Appeal held as per p.10 lines 18-21 of the Record

of Appeal as follows:

(i) *"There is no doubt that evidence of the driver who drove the vehicle on the day of the robbery and the messenger from whom the bag of money was confiscated by the robbers must be material to the prosecution."*

After holding as per (i) above, the Court of Appeal vide p.10⁵ lines 22-24 made a volte-face and held:

(ii) *"But can the failure by the prosecution to call them simpliciter be fatal to the prosecution's case in the circumstances of this case? I think not."*

4. The Justices of the Court of Appeal misdirected themselves by failing to consider the defence proffered by the 2nd appellant.

PARTICULARS OF MISDIRECTION

(a) The Justices of the Court of Appeal did not avert their minds to the principle of law enunciated in the case of Ajidahun v. The State (1991) 9 NWLR (Pt.213) 33 at 36 to the effect that a court of law is bound to consider and evaluate the defence made by an accused person no matter how bizarre, stupid, foolish, unreasonable it might be or sound.

(b) Nowhere in the judgment of the Court of Appeal was mention made of the evaluation of the defence canvassed by the 2nd appellant."

In his brief of argument, learned counsel for the appellant formulated two main issues for determination as follows:

(a) Whether upon the evidence, it could safely be said that the prosecution has proved his case beyond reasonable doubt.

(b) Whether there was anything supposedly to be done by the Court of Appeal which is material to the instant appeal".

In his own brief of argument learned counsel for the respondent also formulated two issues for determination, and they are:-

(1) Whether the case against the appellant was proved beyond reasonable doubt.

(2) Whether the trial court properly evaluated the evidence before it?

I will, in this judgment, confine myself alone to the issue raised for determination by the appellant's counsel.

As regards the first issue for determination, although learned counsel for the appellant in his brief raised several points. I think only

three of the points raised are worth considering. The first of these is that both the trial court and the Court of Appeal were wrong in basing the conviction of the appellant on the evidence of P.W.1 and P.W.4 who did not witness the robbery. It was learned counsel's submission that since they were not eye-witnesses to the crime, the evidence they proffered was hearsay which the court should have rejected. In support of his submission, reference was made to section 76 of the Evidence Act. He also cited the cases of *Ezeokafor Umeojiako & Ors. v. Ogbeide Ezenamuo & ors* (1990) 1 NWLR (Pt. 126) 253; (1991) 1 SCNJ 181 and *Awoyegbe & Anor v. Ogbeide* (1988) 3 SCNJ 99. I find it difficult to accept learned counsel's submission that the evidence of P.W.1 and P.W.2 was hearsay when both witnesses testified as to what they actually saw and did. Neither of them claimed to be an eye-witness of the actual robbery. P.W.1 testified as follows:

15 *"I saw 2nd accused (i.e. the appellant) holding a pistol in his right hand. He was running to escape from the crowd. He also tried to stop a vehicle to aid his escape... I succeeded in arresting the 2nd accused near A.C.B. I disarmed the 2nd accused and on searching his body found 8 rounds of live ammunition... Also recovered from*

20 *him was the sum of N2,000.00."*

P.W. 4 also testified as to what he saw and did. He stated as follows, confirming the testimony of P.W.1:-

25 *"I then saw P.W.1 a colleague of mine at the Central Police Station pursuing the 2nd accused and exchanging fire with him, I removed my pistol and fired at the 2nd accused. He was hit on the leg and fell down. P.W.1 and I rushed at the 2nd accused and dispossessed him of the pistol in his hand. We conducted a search on his person and recovered 8 rounds of live ammunition and N2,000.00"*

30 It is plain that both witnesses testified as to the part they played in arresting the appellant soon after the robbery and their testimony cannot be described as hear-say evidence.

The second point made by learned counsel for the appellant is about the failure of the prosecution to call the messenger and the driver of the vehicle who were said to be present when the crime was committed. This same complaint was made by the defence in the Court of Appeal and it was dealt with by that court as follows:-

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"In the 2nd appellant's brief, learned counsel also submitted

that the fact that the driver of the S.C.O.A. vehicle (which conveyed P.W.2 to the bank on the day of the robbery) and the messenger who held the bag of money and from whom it was snatched, were not called by the prosecution to give evidence at the trial, was fatal to the case of the prosecution, because they were all vital witnesses. The prosecution, it is to be observed, had explained through P.W.2 that the driver and the messenger left the services of the S.C.O.A. In 1980 and 1981 respectively, hence they were not called.

There is no doubt that evidence of the driver who drove the vehicle on the day of the robbery and the messenger from whom the bag of money was confiscated by the robbers must be very material to the prosecution. But can the failure by the prosecution to call them simpliciter, be fatal to the prosecution case, in the circumstances of this case? I think not. If the evidence adduced by the prosecution through those witnesses it was able to call, proved the ingredients of the offence, it is my view, that the failure to call any additional witness even though relevant or material, cannot be fatal to the case of the prosecution, especially in a case like the instant where the law does not require any particular number of witnesses to prove any fact. It is sufficient if the evidence called of the witnesses was enough to discharge its onus of proof beyond reasonable doubt.

Dealing with the duty of prosecution to call witnesses at the trial in proof of an issue, Nnaemeka-Agu, J.S.C., in the Ogoala case (supra) at p. 527 had this to say:

"The prosecution has the duty only to prove facts in issue, and for the purpose is not obliged to call every or any number of witnesses or indeed, save any law where corroboration is necessary, or a fact is one witness on any particular point.

Prosecution will in fact be a very laborious exercise and the task of the trial court unduly cumbersome if every person whose name has been mentioned in the testimony or statement of every case will be regarded as a material witness whom the prosecution must call. That is fortunately not the law."

Following this statement of the law, I am satisfied that there was no need in this case to call the driver and the messenger as the evidence of P.W.1, P.W.2, P.W.3 and P.W.4 cover all the facts which prosecution need to establish to discharge the burden of proof."

The above exposition of the law on the point by Kalgo, J.C.A. is, in my view, absolutely correct and I entirely agree with the learned Justice of Appeal. I see no substance in the complaint.

The third point made on behalf of the appellant was that the lower courts were wrong when they concluded that the appellant must have committed the crime because he was seen running away from the scene of the incident. In this regard reference was made to Ademola's J.C.A. (as he then was) pronouncement in *Dosunmu v. State* (1986) 5 NWLR (Pt.43) 658 at 662 to the effect that the mere fact that a person is seen running away from the scene of crime is not indicative of a guilty mind. I do not see the relevance of this statement to the instant case. The learned trial Judge did not base his decision solely on the fact that the appellant was seen running away from the scene of the crime. He based his decision principally on the evidence of the eye-witness to the crime - p.w.1 who was present when the offence was committed and who, soon after the commission of the offence identified the appellant as a member of the gang who robbed him of his money at gun point. The evidence of p.w.1 in my view directly connected the appellant to the crime.

With regard to the second issue for determination, the first point made by learned counsel for the appellant was that both the trial court and the Court of Appeal were in error in failing to consider the appellant's defence. It was submitted that it is the duty of a court to consider the defence of an accused person however "stupid, unreasonable or bizarre it might be", citing in support the case of *Ajidahun v. The State* (1991) 9 NWLR (Pt.213) 33. But the submission that the defence of the appellant was not considered is not supported by the record. In his judgment, the learned trial Judge in considering the defence of the appellant stated as follows:

"The 2nd accused who described himself as a trader in clothes and..... from Onitsha from Tin Can Island to purchase baby dresses when on the Apongbon Bridge passengers started jumping down from the bus and he followed suit thinking that the bus was on fire. As he was inspecting the bus, some unknown persons held and searched him and removed the sum of N1,500.00 in his possession. He was handed over to the Police at a check -point who took him to the Central Police Station. He denied being in possession of a pistol on the material day."

In rejecting the appellant's defence, the learned trial Judge stated in his judgment-

"I have no hesitation in holding that a robbery was committed on the material day in the manner narrated by Prosecution Witness 2. There is

also no doubt in my mind that the 2nd accused was one of the four persons who committed the said robbery. He was seen by Prosecution Witness 1, 2 and 4 holding and firing a pistol and was overpowered by Prosecution Witness 1 and 4 who disarmed and arrested him."

He then, on p. 59 of the record, evaluated the defence of the appellant and finally concluded that the prosecution had established their case against the appellant whose defence he had no hesitation in rejecting. I am satisfied the appellant's defence was properly considered by the learned trial Judge.

With regard to the issue of identification, I also agree with the Court of Appeal that in this case, a formal identification parade was absolutely unnecessary. There was good and cogent evidence linking the appellant to the robbery on the day of the incident. The appellant, after committing the crime took to his heels. He was chased and arrested and soon after the arrest, he was identified by P.W.2 as a member of the gang that robbed him of the money at gun point. I am satisfied that the appellant was properly identified.

In this appeal, the complaints of the appellant are essentially against the concurrent findings of the two lower courts. As is now well settled, as a general rule, this court will not normally interfere with such findings unless there is some miscarriage of justice or a violation of some principles of law or procedure. See *Nigerian Bottling Co. Ltd. v. Ngonadi* (1985) 1 NWLR (Pt.4) 739 S.C.; *Overseas Construction Ltd. v. Creek Ent. Ltd.* (1985) 3 NWLR (Pt. 13) 407 S.C. and *Coker v. Oguntola* (1985) 2 NWLR (Pt.5) 87 S.C. In this case I am satisfied there is no justification for interfering with the findings of the lower courts.

The above are my reasons for dismissing the appellant's appeal on 8th April, 1993 and affirming his conviction and the sentence of death passed on him.

KARIBI-WHYTE JSC

I summarily dismissed appellant's appeal after argument on the 8th April, 1993. I indicated that I will give my reasons today. This I now proceed to do.

I have read the judgment of my learned brother Kawu, J.S.C., I agree entirely with him and adopt his reasoning and conclusions. I only wish to comment very briefly on appellant's contention challenging the correctness of his identification.

The issues for determination were formulated in the general. No specific issue of law was isolated for challenge. In my view a formulation

which only raises the issue whether the case against the appellant had been proved beyond reasonable doubt is not merely raising the issue of the burden of proof, it questions the proof of the essential ingredients of the offence and the validity of the procedure adopted. Appellant challenged the conclusion of the lower courts that they were wrong to have convicted him
 5 on the ground that he must have committed the offence because he was seen running away from the scene of the incident.

I concede that the mere fact that a person was seen running away from a locus criminis is not conclusive or even indicative that the person so running away is the culprit. But this is not the case here. The learned trial
 10 Judge based his conclusion of the identity of the appellant on the evidence of eye witnesses. P.W. 1 who was present at the time of the commission of the offence and a victim of the offence identified appellant as a member of the gang who robbed him at gun point.

I think it is acceptable to postulate that when an offence has been
 15 committed and the offender is being hotly pursued and in full view of the victim, it naturally follows that the issue of his identification can be conclusively settled by the victim who was engaged in the pursuit.

The victim was among the pursuers of the appellant after the commission of the offence. The question of his identity by one of the victims
 20 which is P.W.1 cannot in the circumstance be a matter of dispute among reasonable people.

The appeal is completely without merits.

The above reason and the much fuller reason in the judgment of my learned brother Kawu, J.S.C, are my reasons for dismissing the appeal.
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OMO JSC

The appellant in this case was charged to court for robbing SCOA staff of the sum of N21,150 in the company of one Francis Bose and at
 30 least two other persons now at large. Francis Bose and himself were arraigned before the Lagos State High Court as 1st and 2nd accused, and charged with armed robbery. After a hearing before Bakare J, they were convicted and duly sentenced. The evidence before the trial court revealed that the present appellant was armed with a pistol which he used for the
 35 operation, and was apprehended by police officers as he fled the scene of the crime. The 1st accused was taken from a nearby location by some persons and handed over to the police. He was identified at the police station to which he was taken as one of the robbers by P.W.2, one of the persons robbed (a Senior Cashier with SCOA).

The Court of Appeal took the view that the evidence of identification of the 1st accused is very unreliable and doubtful. It was, in its view, a case in which an identification parade was needed, but unfortunately not conducted. It concluded that his conviction is unsafe and allowed his appeal. In the case of the present appellant (2nd accused) it believed the evidence of his participation in the crime, and his being caught in pursuit from the scene of the crime. His conviction and sentenced were accordingly affirmed.

In this Court it has been urged on behalf of the appellant that his appeal should be allowed because (1) of the refusal/failure of the prosecution to call as witnesses the driver of the vehicle from which the money was snatched and the messenger who witnessed the robbery. This, it is submitted, is fatal to the prosecution's case (2) the evidence of P.W.1 and P.W.4, the policemen who apprehended the appellant in pursuit, is hearsay. (3) of the variation (in figure) in the evidence as to the amount stolen and the amount charged (4) the Court below did not consider the defence of the appellant properly or evaluate the evidence led sufficiently. The answer to (1) above is that whilst the two witnesses can be described as material, they are not such witnesses that failure to call them will be fatal to the case of the prosecution. The appellant was caught "in pursuit", with a pistol and ammunition in his possession. What is more he was identified as one of the robbers by P.W.2. Once the trial court believed these pieces of evidence, the evidence of the driver and the messenger can be described as unnecessary. The second reason (2) for seeking a reversal cannot be sustained. The evidence of P.W.2 and P.W.4 is not hearsay. Whilst it is not a statement of what happened at the point when the money was snatched, it is direct evidence of what the witnesses saw and heard. There is no substance in the third reason (3). Such variations are immaterial on a charge of stealing, as the court can convict on the particular amount proved. The defence of the appellant, which he made before the trial court, is that he is an innocent victim of mistaken identify as far as this offence of robbery is concerned. This defence was considered by the trial Judge, who disbelieved same, having regard to the evidence before him.

I have read in draft the judgment of my learned brother, KAWU, J.S.C. where these and other points (issues) raised in this appeal, have been considered. It is for these reasons set out by me above and the further reasons in the aforementioned lead judgment of my learned brother, with which I am in complete agreement, that

I also dismissed this appeal and affirmed the judgment of the court below.

KUTIGI JSC

On 8th April, 1993 after hearing counsel and reading their briefs of argument we dismissed the appeal and reserved our reasons for judgment to today.

- 5 I have had the privilege of reading before now the Reasons for Judgment just delivered by my brother Kawu, J.S.C., I agree with him and adopt the reasons as mine.
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OGWUEGBU JSC

- 10 This appeal was dismissed on 8th April, 1993 and our reasons for doing so were reserved until today.

I have read the reasons for judgment as given by my brother Kawu, J.S.C. and I agree with him and adopt them as my own.

- 15 The appellant invited the court to consider the following issues as arising for determination in the appeal:

"(a) Whether upon the evidence, it could safely be said that the prosecution has proved his case beyond reasonable doubt.

- 20 *(b) Whether there was anything supposedly to be done by the Court of Appeal which is material to the instant appeal"*

Under issue one several sub-issues were raised and argued in the appellant's brief of argument. Among them are:-

- 25 (a) That the trial court and the Court of Appeal were in grave error in holding that the evidence of P.W.1 and P.W.4 were not hearsay when it was conceded that both witnesses did not witness the robbery;

(b) The failure of the prosecution to call the driver and the messenger who witnessed the alleged robbery and whose evidence could have helped the court to decide the case one way or the other and.

- 30 (c) The wrong conclusion drawn by the courts below that the appellant must have committed the offence because he was seen running away from the scene of the crime.

- I am unable to see how the evidence of the two witnesses (P.W.1 and P.W.4) can be regarded as hearsay when both witnesses testified as to what they did and saw at the scene of crime as opposed to what they heard.

P.W.1 testified as to how he saw a crowd gathered under Eko Bridge. He saw the appellant running to escape from the crowd. He had a pistol in his right hand.

The witness ordered the driver of the vehicle in which he was traveling to stop. He came out. The appellant wore a pair of trousers and a shirt. The appellant ran towards Ebute-Ero market. P.W.1 and others pursued him. The accused was arrested at Idumota near African Continental Bank Ltd. He was disarmed and searched by P.W.1. Eight rounds of ammunition in the right pocket of his trousers and the sum of N2,000.00 were recovered 5 from the left pocket of the said trouser. The pistol and the ammunition were tendered in evidence as Exhibits "A" and "B".

One Police Sergeant Omowunmi who was on guard duty at the A.C.B. Ltd. joined the P.W.1 in arresting the appellant and taking him to the Central Police Station. 10

Police Sergeant Omowunmi is the P.W.4. He testified as to how he saw people chasing the appellant and shouting. He was in mufti and on duty at the bank. He came out and saw P.W.1 pursuing the appellant and exchanging fire with him. He removed his pistol and fired at the appellant who fell down. He and P.W.1 rushed and dispossessed the appellant of the 15 pistol in his hand. They searched him and recovered eight rounds of live ammunition and the sum of N2,000.00. They took the appellant to the Central Police Station in a taxi with the exhibits.

P.W. 2 (the cashier) who was going to pay the money into the bank testified to how he was going to the bank in a Peugeot 304 saloon car 20 driven by the Company driver. The Company messenger sat at the back of the car with a bag containing the money. About two hundred metres from their office, a man with a brief case emerged from under the bridge and ran in to the front of their vehicle waving a brief case above his head and ordered the driver to stop. 25

As the driver stopped, three other men surrounded the messenger at the back of their vehicle. The appellant who was armed with a pistol snatched the bag containing the money from the messenger. P.W.2 raised an alarm. The four men ran towards a vehicle about fifteen metres away.

Those who watched the incident threw missiles of all kinds at the 30 vehicle and smashed the front windscreen. When the driver tried to put it on the reverse, the back tyres were sunk in the sand. They abandoned the vehicle and took to their heels. The appellant who held the pistol was firing it to prevent people from chasing him but people still pursued him. He identified the appellant at the Central Police Station when he went there to 35 report the incident.

The three prosecution witnesses testified as to three different stages of the crime and these three stages involved the appellant. The appellant who was represented by counsel did not cross examine P.W.1.

I have no doubt that these witnesses are honest witnesses who have related faithfully what they saw and did at the relevant time. The appellant was pursued from the scene of crime and was arrested shortly after the pursuit. The evidence of P. W.1, P.W.2, and P.W.4 were direct, referred to facts which could be seen and it was the evidence of witnesses who participated in the arrest. They gave convincing evidence as to the identity of the appellant. Identification parade was unnecessary in the circumstances. The learned trial Judge and the Court of Appeal were right in relying on their evidence.

As to the failure of the prosecution to call the driver and the messenger to testify, the court below agreed that their evidence was material to the prosecution but came to the conclusion that the failure to call them was not fatal to the prosecution's case.

The question here is whether the case of the prosecution was otherwise proved beyond reasonable doubt despite its failure to call the two men. A court can act on the evidence of one single witness if that witness can be believed given all the surrounding circumstances. A single credible witness can establish a case beyond reasonable doubt unless where the law requires corroboration. See *Ogoala v. The State* (1991) 2 NWLR 509 (Pt. 175) at 523 and *Onafowokan v. The State* (1987) 3 NWLR (Pt.61) 538.

The appellant has appealed against concurrent findings of two courts. As a general rule, this court will not normally disturb such findings unless there is some miscarriage of justice or a violation of some principles of law or practice.

It was for the above reasons and the more detailed reasons for judgment of my learned brother Kawu, J.S.C. a draft of which I saw before now that I dismiss the appeal."

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