

SUPREME COURT OF NIGERIA
8TH DECEMBER, 2000. SC. 160/1999
CORAM:- A. G. KARIBI-WHYTE, M. E. OGUNDARE,
S. U. ONU, U. A. KALGO, S. O. UWAIFO, JJSC

1. THEOPHILUS EYISI (ALIAS SUNDAY EYISI)
2. JOSEPH EZEBUILO APPELLANTS
3. TITUS EYISI
V.
THE STATE RESPONDENT

APPEALS - *Concurrent finding of facts - Shall not be interfered with except if found to be perverse.*

APPEALS - *Technical fault - Must not be allowed to defeat substantial justice.*

CRIMINAL LAW - *Armed Robbery - Jurisdiction - Decree No. 5 of 1984 grants jurisdiction to tribunals - And to High Court only for cases already commenced before its promulgation.*

CRIMINAL PROCEDURE - *Alibi - Must be raised at the earliest opportunity and evidence adduced.*

CRIMINAL PROCEDURE - *Alibi - Not investigated - Is not fatal unless accused adduces evidence in its support.*

CRIMINAL PROCEDURE - *Identification parade - May not be necessary depending on surrounding circumstances.*

CRIMINAL PROCEDURE - *Sentencing - Collective verdict - Procedural slip - May be amended at discretion of appeal court - If no accused was misled - And thus no injustice meted out.*

JUDGMENTS - Appeals - *The law presumes regularity of judgment - Until the contrary is proved.*

STATUTES - Criminal law - Robbery and Firearms (Special Provisions) Decree No. 47 of 1970 - *Remains a State legislation as from October 1979.*

WORDS & PHRASES - 'Each' in relation to plea - *Does not mean block plea - But rather refers to every one of the accused persons' plea mentioned or considered.*

FACTS

The appellants were charged and found guilty of armed robbery at the Anambra State High Court and sentenced to death. They had been accused of attacking and robbing a car belonging to one of the prosecution witnesses and containing the owner and his business associates as well as the sum of N5,000 and 54 packets of records in Onitsha. The appellants accompanied by three others were armed with daggers, guns and knives on the fateful day and had inflicted injuries on the car owner. They were identified by the prosecution witnesses through the light of the vehicles which were left on. Two days after the incident the 1st and 2nd appellants had come to prosecution witness's father to sell some records identical to those stolen from the prosecution witnesses.

The law was thus set in motion resulting in the arrest of 1st and 2nd appellant and on their information the house of the 3rd appellant was searched and identical records were recovered as well as 3 double barrel locally made pistols, 40 cartridges and a carton of long playing records with 49 pieces of records. They all made extra judicial Statements to the police, admitted in evidence without objection and all denied involvement in the commission of the robbery. They were however convicted and their appeal to the court of appeal was dismissed. They have therefore further appealed to the supreme court formulating the following issues for determination.

ISSUES FOR DETERMINATION

1. *Whether the Justices of the Court of Appeal were right to hold*

that the failure of the trial Judge to enter separate verdict and sentence against each of the accused persons was not fatal to the conviction and sentence of the 1st Appellant.

2. Whether the Justices of the Court of Appeal were right in sustaining the findings that the 1st Appellant was sufficiently identified given the facts and circumstances of the case.

3. Whether the Justices of the Court of Appeal were right to hold that the learned trial Judge duly and properly considered the defence set up by the 1st Appellant.” Etc. see p. 3118

HELD (Unanimously dismissing the appeal per lead judgment of **ONU JSC**)

Statutes - Criminal law

1. From the date of the promulgation of the Robbery and Firearms (Special Provisions) Decree No. 47 of 1970 up to the date of the coming into force of the 1979 Constitution i.e. on 1st October, 1979, the State Attorney-General became vested with the prosecution of armed robbery matters in the Tribunals. On the eve of the transition into the Republican Constitution, that is the 1979 Constitution, the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals etc) Decree No. 105 of 1979 was passed. This Decree repealed Section 6 of the Robbery and Firearms (Special Provisions) Decree 1970, as amended. It also deleted the definition of “*Tribunal*” therefrom. It then appears that from this Decree the authority of the State Attorney-General to prosecute offences under the Decree in the State Tribunals had been removed. Therefore, the Tribunal ceased to exist with the 1979 No. 105 Legislation, which came into force simultaneously with the 1979 Constitution i.e. on 1st October, 1979. In Decree No. 105 of 1979, schedule 3 thereto under which Section 6 of the Robbery and Firearms (Special Provisions) Decree No. 47 of 1970 was repealed, Section 5 of the 1970 No. 47 Decree was amended by substituting the following:

“Trial of Offences Offences under this Decree shall be triable in the High Court of the State concerned.”

Thus, by Section 5 of the 1970 No. 47 Decree, that Decree i.e.

(Decree No. 47 of 1970) remains a State Legislation as from 1st October, 1979. By virtue of Section 274(4)(b) of the 1979 Constitution it became an Existing Law of the State and “Robbery per se became a residual matter while the Legislation i.e. (1970 No. 47 as amended) was deemed to be a law made by the House of Assembly. As section 6 of the Legislation which deals with only procedure had been repealed by Decree No. 105 of 1979, by virtue of Section 239 of the 1979 Constitution the provision for practice and procedure became vested in the State House of Assembly while the High Court thereby is to exercise its jurisdiction in accordance with such procedure and Rules pertaining to Criminal Procedure in the State that would be applicable. (p. 3120 E)

Criminal law - Armed robbery

2. However, with the coming back of the Military to the rulership of Nigeria at the end of the year 1983, another Decree – Armed Robbery and Firearms (Special Provisions) Decree No. 5 of 1984, was promulgated and Tribunals were re-established. By Section 1(2) of the Robbery and Firearms (Special Provisions) Amendment Decree No. 21 of 1984, part-heard matters were allowed to continue and be concluded in the High Courts while new matters were transferred to the Tribunals – see Emelogu v. The State (supra) at page 880.

From the records, trial in the present appeal started at the High Court on 10th November, 1983 and thus was part heard at the time when Decree No. 5 of 1984 came into force. Therefore, the High Court under Section 1(2) of the Amended Decree No. 21 of 1984 had to continue with the trial of the case.

I therefore hold that at all times materials to the trial of this case the High Court of Anambra State sitting at Onitsha had the jurisdiction to hear and determine this case. (p. 3121 G)

Words & phrases - 'Each'

3. The question is – what is the meaning of “each” used by the trial court? Does it mean block plea as submitted by the 2nd Appellant’s Counsel? According to Webster’s New Encyclopedic Dictionary, New

Revised Edition “*each*” means being one of two or more distinct individuals; each one. See also Black’s Law Dictionary (Sixth Edition) where ‘*each*’ is defined as “a distributive adjective pronoun, which denotes or refers to every one of the persons or things mentioned’ every one or two or more persons or things, composing the whole, separately considered.” I am of the firm view that the record of the trial court shows that each distinct individual accused person separately pleaded not guilty after the one count charge had been read to them and interpreted to them in Ibo Language. The records do not show that there was a block-plea or communal plea as contemplated by the learned Counsel for the 2nd appellant. The recording of the plea in Alaka’s case (supra) which was commended by the Court of Appeal and which involved three accused persons with 18 counts charge is synonymous with the recording of plea in the instant case which involved three accused persons with a one count charge. (p.3122 E)

Judgments - Presumption of regularity

4. The law presumes the regularity of a judgment until the contrary is proved. Since the contrary in respect of the recording of the plea of the appellants in the instant case has not been shown, I hold unto the presumption. See also Ogba v. The State 1992 2 NWLR (Part 222)164. (p. 3123 E)

Identification parade

5. The Court of Appeal agreed with the findings of the trial court, as there is no cogent reason to show that the findings and conclusions were perverse. In the leading judgment delivered by Mamman Nasir, President, Court of Appeal, he said at page 210 as follows: “*I respectfully agree with the reasoning and conclusions, of the learned Judge in respect of the identification. The circumstances were such that the witnesses PW2 and PW3 recognised their assailants in such an impromptu manner as to make any formal identification a mockery of the system. In my opinion, in a case like the one under consideration where the learned trial Judge had carefully shifted the evidence an appeal court would not*

interfere with such conclusion unless there was presented to the court cogent reasons to show that the findings and conclusions were perverse – see (Ebba v. Ogodo and Anor. (1984) 4 SC.84). In the present appeal the ‘natural reaction’ and manner in which the appellants were recognized left no room for the prosecution to hold formal identification parade.” I cannot agree more. (p. 3126 E)

Appeals - Technical fault

6. From the records, it is clear that all the essential features of a well-conducted trial were satisfied by the Trial Court save that the learned trial Judge pronounced his verdict and passed his sentence as it were in one breath instead of three breaths. It is not the appellants’ case that either the verdict or sentence is erroneous in the sense that no reasonable tribunal could have found or imposed that term of punishment; rather the grave men of their complaint is a technical fault in pronouncing verdict and imposing sentence on the appellants collectively. It is now settled law that technicalities ought not be allowed to defeat substantial justice (p. 3128 F)

Sentencing - Collective verdict

7. The trial Judge having found the appellants guilty after due consideration of the totality of the evidence before him in the single count charge, he had no option other than to find each of them individually guilty as laid in the one count charge. Similarly, with regard to sentencing, the trial court was mandatorily obliged to impose death sentence severally on each of the appellants. Therefore despite what is dubbed “collective” verdict and sentencing, each of the appellants cannot be said to be misled as to the verdict of the court and as to the sentence imposed on him.

I therefore uphold the contention of the learned Deputy D.P.P. To affirm the decision of the court below which lumped together the verdicts and sentences of the three appellants in the circumstances. Although the procedural slip has not been shown to be fatal in the sense that it has not occasioned any miscarriage of justice, the court below in the exercise of the vast powers invested on it under Section 16 of the

Court of Appeal Act, 1976 has, in my opinion, appropriately amended this procedural slip bearing in mind that no appellant was misled. (p. 3129 A)

Alibi - To be raised at earliest opportunity

B

8. The law relating to alibi is that an accused person who wishes to raise alibi must raise it at the earliest opportunity to enable the police to investigate it and must offer evidence. (p. 3129 G)

Alibi - Not investigated

C

9. It is only where an accused person has adduced evidence in support of his alibi and the police fail to investigate it that it could be construed against the prosecution. Not so in this case.

In the above purported alibi of the 1st Appellant he did not offer any evidence in support of his alibi and therefore has not discharged the onus on him. D

Also in Exhibit E the 1st statement of the 3rd appellant where he said: “On 17/7/81 I went to my home town at Adazi.” Similarly, in Exhibit 11 which is his 2nd statement to the police he said: “I traveled to Adazi-Ani on 17/7/81 and when I returned I heard that the police arrested my brother Sunday Eyisi in connection of records.” Even if the above statements of the 3rd appellant could be regarded as alibi, there is no evidence whatsoever supporting the alibi which could enable the police to investigate the truth or otherwise of the purported alibi. (p. 3130 C) F

Concurrent finding of facts

G

10. I hold as was held by the trial court and the court below that based on the totality of the evidence before the trial Court, the prosecution proved its case beyond all reasonable doubt. It is well settled law that the Supreme Court will not usually or generally interfere with the concurrent findings of fact of the Court of Appeal and the trial court unless such findings are found to be perverse. See Ahmed v. State (1999)5 SCNJ page 223 at 246 – 247; State v. Emine (1992) 7 NWLR (Part 61) at page 556; Asanya v. State (1991) 3 NWLR 180 at page 422. H

In the instant case, both the findings of the trial Court and the Court of Appeal are based on cogent and credible evidence before the Trial Court. The issue proffered here is resolved against the Appellants. (p. 3132 A)

B
NOTABLE POINTS OF INTEREST

OGUNDARE JSC

1. Failure of trial judge to record satisfaction with plea taking is not fatal

C While it may be good practice for the trial judge to record that “the charge was read and fully explained to the accused to the satisfaction of the court” I am not prepared to say however that the judge’s failure to so record is fatal to the proceedings. Such a conclusion cannot **D** take cognizance of section 150(1) of the Evidence Act. (p. 3139 F)

2. Identification parade is not the only way of establishing identity

E Identification parade is only one way of establishing the identification of an accused person in relation to the offence charged; it is a misconception of the law to say that it is the only valid way as is being suggested by learned counsel in this case; where, for instance, the accused person is well known to the witness before the day of the commission of the offence alleged, there can be no need for an identification parade. **F** Similarly, where the witness had ample opportunity to identify the accused person, as in the case on hand, I would not think an identification parade was necessary. (p. 3146 F)

G
REPRESENTATION

Dr. Onyechi Ikpeazu, with Ben Osaka and Ugonna Nwachukwu, for the 1st Appellant

Alhaji F. A. Oso, for the 2nd Appellant.

H A. A. Kayode, with A. A. Adesina Esq., for the 3rd Appellant.

Miss Ada Unobagha, D. P. P. Anambra State, for the Respondent.

CASES REFERRED TO

Alake v The State (1991) 7 NWLR (Part 205) 567 - 589
Kajubo v The State (1988) 1 NWLR (Part 73) 721
Emelogu v The State (1988) 1 NSCC 869 (1988) 2NWLR (Part 78) 524
Ogba v The State 1992 NWLR (Part 222) 164 (1992) 2 SCNJ B
State v Odidika & Anor (1077) 2 SC. 21 at 23
State v Francis Odili (1977) 4 SC.1 AT 6
Bonzin v The State (1985) 2 NWLR (Part 8) page 465 at 467 and 472

STATUTES REFERRED TO

Robbery and Firearms (special provisions) Act 47 of 1970
Constitution of FRN (certain consequential Repeals etc) Act No. 105 of 1979
Robbery and Firearms (Special Provisions) Amendment Decree D
Decree No. 21 of 1984 S. 1(2)

BOOKS REFERRED TO

Webster's New Encyclopedic Dictionary, New revised Edition E
Blacks Law Dictionary (6th Edition)

LEAD JUDGMENT BY ONU JSC

The origin of this case comprising of an attack on a vehicle (a Peugeot 504 G.L. saloon car) occupied by two persons – P.W.2 and P.W.3 – involved the three accused persons (Theophilus Eyisi alias Sunday Eyisi, Joseph Ezebuilo and Titus Eyisi, who in the rest of this judgment I shall refer to as 1st, 2nd and 3rd Appellants respectively). They were jointly charged in a one-count information with the offence of Armed Robbery contrary to Section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act, 1970 (No. 47 of 1970) as amended by the Robbery and Firearms (Special Provisions) (Amendment) Act, 1974 (No. 8 of 1974). The Appellants who then subsequently stood trial before the High Court of Anambra State presided over by Obiesie, J. of blessed memory, sitting at Onitsha, were found guilty, convicted as charged and accordingly sentenced to death.

Aggrieved by this decision, the Appellants appealed unsuccessfully against their conviction and sentence to the Court of Appeal holden in Enugu (hereinafter referred to as the Court below). Being further dissatisfied with the decision of the court below, they have finally appealed to this Court.

The facts of the case, which are themselves not complicated, may be briefly stated as follows:

On the 18th day of July, 1981, at Onitsha, in the Onitsha Judicial Division, Osita Okeke (PW2) and Onyebuchi Onwuzuligbo (PW3) who had earlier that day been to Aba to purchase some music playing records and were on their way back to Onitsha in PW2's Peugeot 504 G.L. Car registration No. AN 1616 SA entering Oguta Road, Onitsha saw a saloon car blocking the road in front of them and appearing to be reversing. This made PW2 to stop his car to watch the Appellants and three other occupants of their vehicle immediately alighting therefrom, all armed with daggers, guns and knives. This was about 9.30 p.m. but the headlights of PW2's car were fully on. Four of these robbers attacked PW2 with the other two going to the side of PW3. As those who converged on PW2 ordered him out of his car and he declined to do so, he was soon attacked with daggers and knives, with the 3rd Appellant hitting him at the mouth with the butt of his gun thus forcing PW3 to run away to a nearby building. All six attackers after being described as having in their possession locally made shotguns, it was shown how these guns were fired into the air to scare away people.

The armed men upon being said to have driven away in PW2's car together with his brief case containing N5,000 and 54 packets of records, it was shown that after this, PW3 came out of hiding and called a taxi which took PW2 to hospital where he was treated by Dr. Chukwuemeka Godwin Anyika (PW1), who gave a vivid description of the injuries sustained by PW2, the latter who in turn subsequently made a report of the matter to the police.

On the 20th of July, 1981, barely two days after the incident just narrated, 1st and 2nd Appellants came to Obed Onwuzuligbo, who later testified as PW5 and who incidentally is father of PW3, to sell some

packets of records – identical to those involved in the robbery thus freshly perpetrated on PW2 and PW3 in the neighbourhood. The law was set in motion by the police being contacted with the natural follow up leading to the arrest of the 1st and 2nd Appellants. After the arrest, the 2nd Appellant made a useful statement to the Police that there were other (identical) B records in the house of the 3rd Appellant at Number 6, Pam Pam Lane, Onitsha. Following the trail of this information and sequel thereto, the Police imminently went to the house where the 3rd Appellant was arrested and some records recovered. On the following day – 21st July, C 1981 – the Police, armed with a search warrant (Exhibit P), conducted a search of 3rd Appellant's premises and recovered thereat:

- (a) 3 double barrel locally made pistols,
 - (b) 40 cartridges,
 - (c) One carton of long-playing records containing 49 pieces of records. D
- During the search, Sergeant E. Anyano (PW6), who conducted the search and Sergeant Momodu Aliyu (PW4) as well as (PW3), one of the robbery victims, were all present.

All three Appellants made extra-judicial statements to the Police, E namely, (Exhibit C, D, E, H and N) which were admitted in evidence without any objections. The prosecution's case in the first place was effectively that all the Appellants took part in the commission of the crime and were pin-pointedly identified by either PW2 or PW3 or both at the F scene of the crime. Secondly, it was their (prosecution's) contention that the Appellants were found in possession of the property stolen during the robbery that earlier, and one may dare add, took place contemporaneously to the detection thereof.

The case of all the Appellants taken separately and together, was G a complete denial of their involvement in the commission of the robbery. In addition, the 1st Appellant in his voluntary statement to the Police (Exhibit 'C') dated 20th July, 1981 and his evidence in court, stated unequivocally that it was the 2nd Appellant who brought the cartons of H records on 19th July, 1981 at between 4.00 and 5.00 am to the room at Pam Pam Lane, Onitsha and at that time 3rd Appellant was absent. On the other hand, the 2nd Appellant, both in his extra-judicial statement to

the Police (Exhibit ‘D’) and his evidence in court, stated that it was the 1st Appellant who met him (2nd Appellant) and offered to sell the records to him.

All three Appellants, as I had hereinbefore pointed out, were found guilty of robbing PW1 and PW3 of the records as charged and were each sentenced to death. Each appealed to the court below, which found no substance in their appeals and so did not hesitate in dismissing them. The appeal to this court by each of the Appellants is from the affirmation of both their convictions and sentences.

Each of the 1st, 2nd and 3rd Appellants, has brought his appeal solely upon the grounds of appeal filed with the Leave of this Court dated the 24th day of November, 1999 contained in a Notice of Appeal consisting of four grounds and granted on 9th December, 1999. The parties eventually filed and exchanged Briefs of Argument in accordance with the rules of Court.

The 1st and 3rd Appellants at first submitted the following three over-lapping issues as arising for our determination, to wit:

1. *Whether the Justices of the Court of Appeal were right to hold that the failure of the trial Judge to enter separate verdict and sentence against each of the accused persons was not fatal to the conviction and sentence of the 1st Appellant.*
2. *Whether the Justices of the Court of Appeal were right in sustaining the findings that the 1st Appellant was sufficiently identified given the facts and circumstances of the case.*
3. *Whether the Justices of the Court of Appeal were right to hold that the learned trial Judge duly and properly considered the defence set up by the 1st Appellant.”*

The lone issue formulated on 2nd Appellant’s behalf queries succinctly, “whether the trial of the Appellant was valid in law.”

Finally, 1st Appellant and the Respondent each proffered five identical issues for our determination as follows:

1. *Whether at the time (that is 18th July, 1981) when the appellants*

herein allegedly committed the offence of armed robbery and as at 9th November, 1983 when criminal proceedings were instituted against them for which they were tried and convicted by the High Court of Anambra State of Nigeria, the Robbery and Firearm (Special Provisions) Act No. 47 of 1970 as amended by the various other enactments, including the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals) Act, No. 105 of 1979 was a Federal Law or whether it should be regarded as a State enactment and whether the State High Court has jurisdiction to hear and determine the case.

2. Whether the Justices of the Court of Appeal were right in sustaining the findings of the trial court that by the nature of the armed robbery incident the identifications of the appellants were clear and certain to enable the Trial Judge act on them.

3. Whether the Justices of the Court of Appeal were right in holding that the collective conviction and sentence of the appellants by the Trial Court did not occasion any miscarriage of justice.

4. Whether the Justices of the Court of Appeal were right in sustaining the findings of the trial Court that the purported defence of alibi set up by the 1st and 3rd appellants was not available to them.

5. Whether the Justices of the Court of Appeal were right in affirming the decisions of the trial court that based on the totality of evidence before it the prosecution proved its case beyond all reasonable doubts.”

Before I embark on the consideration of these issues, however, I wish to point out firstly, that the panel of the court below that decided the case was made up of Nasir, President, Ogundere (of blessed memory) and Achike, JJ.C.A. and not Nasir, President and Ogundare and Achike, JJ.C.A. as set out in the records. Secondly, that up till the hearing of this appeal on 5/10/2000 the record remained incomplete and not intact, with the judgment of Ogundere, J.C.A. missing. We resolved albeit to hear the appeal moreso, that the missing record (that of Ogundere, J.C.A.) being a dissenting judgment, neither adds to nor subtracts from the appeal papers when all is said and done. Besides, since the appeal herein attacks the majority judgments of Nasir P. and Achike J.C.A. as he then was respectively, the absence of the dissenting judgment of Ogundere,

J.C.A. from the records, in my opinion, would not make any difference to the outcome of this appeal. Suffice it to say, that since the Respondent has, through learned Deputy D.P.P. identified five issues which overlap the five submitted at the instance of the 1st Appellant for our consideration, I wish to adopt those formulated and treated by the 1st Appellant and Respondent as adequate to dispose of this appeal as follows:-

ISSUE ONE:

Whether at the time (that is 18th July 1981) when the appellants herein allegedly committed the offence of armed robbery and as at 9th November, 1983 when criminal proceedings were instituted against them for which they were tried and convicted by the High Court of Anambra State of Nigeria, the Robbery and Firearms (Special Provisions) Act No. 47 of 1970 as amended by the various enactments, including the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals) Act No. 105 of 1979 was a Federal Law or whether it should be regarded as a State enactment and whether the State High Court has the jurisdiction to hear and determine the case.

From the date of the promulgation of the Robbery and Firearms (Special Provisions) Decree No. 47 of 1970 up to the date of the coming into force of the 1979 Constitution i.e. on 1st October, 1979, the State Attorney-General became vested with the prosecution of armed robbery matters in the Tribunals. On the eve of the transition into the Republican Constitution, that is the 1979 Constitution, the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals etc) Decree No. 105 of 1979 was passed. This Decree repealed Section 6 of the Robbery and Firearms (Special Provisions) Decree 1970, as amended. It also deleted the definition of “*Tribunal*” therefrom. It then appears that from this Decree the authority of the State Attorney-General to prosecute offences under the Decree in the State Tribunals had been removed. Therefore, the Tribunal ceased to exist with the 1979 No. 105 Legislation, which came into force simultaneously with the 1979 Constitution i.e. on 1st October, 1979. In Decree No. 105 of 1979, schedule 3 thereto under which Section 6 of the Robbery and Firearms

(Special Provisions) Decree No. 47 of 1970 was repealed, Section 5 of the 1970 No. 47 Decree was amended by substituting the following:

“Trial of Offences Offences under this Decree shall be triable in the High Court of the State concerned.” B

Thus, by Section 5 of the 1970 No. 47 Decree, that Decree i.e. (Decree No. 47 of 1970) remains a State Legislation as from 1st October, 1979. By virtue of Section 274(4)(b) of the 1979 Constitution it became an Existing Law of the State and “Robbery per se became a residual matter while the Legislation i.e. (1970 No. 47 as amended) was deemed to be a law made by the House of Assembly. As section 6 of the Legislation which deals with only procedure had been repealed by Decree No. 105 of 1979, by virtue of Section 239 of the 1979 Constitution the provision for practice and procedure became vested in the State House of Assembly while the High Court thereby is to exercise its jurisdiction in accordance with such procedure and Rules pertaining to Criminal Procedure in the State that would be applicable. D

In the case of Emelogu v. The State (1988)1 NCC 869; (1988)2 NWLR (part 78)524, facts of which are similar to the present case, this Court held thus “(1) that by virtue of the provisions of Section 274(4)(b) of the 1979 Constitution the Robbery and Firearms (Special Provisions) Act No. 47 1970 became an Existing Law of the State and Robbery per se a residual matter, while the Act as amended was deemed to have been made by the House of Assembly and that in view of this, offences under the Robbery and Firearms (Special Provisions) Act No. 47 of 1970 as amended, are not Federal but State offences.” E

However, with the coming back of the Military to the rulership of Nigeria at the end of the year 1983, another Decree – Armed Robbery and Firearms (Special Provisions) Decree No. 5 of 1984, was promulgated and Tribunals were re-established. By Section 1(2) of the Robbery and Firearms (Special Provisions) Amendment Decree No. 21 of 1984, part-heard matters were allowed to continue and be concluded in the High Courts while new matters F

were transferred to the Tribunals – see Emelogu v. The State (supra) at page 880.

From the records, trial in the present appeal started at the High Court on 10th November, 1983 and thus was part heard at the time when Decree No. 5 of 1984 came into force. Therefore, the High Court under Section 1(2) of the Amended Decree No. 21 of 1984 had to continue with the trial of the case.

I therefore hold that at all times materials to the trial of this case the High Court of Anambra State sitting at Onitsha had the jurisdiction to hear and determine this case.

Still on the question of the so-called invalid trial, Counsel for the 2nd appellant urged us to nullify the proceedings of the trial court and allow the appeal as, according to him, the trial court failed to comply with Section 215 of the Criminal Procedure Law the plea of each accused person was not recorded separately. He relied on Alake v. The State (1991) 7 NWLR (part 205) 567 – 589; Kajubo v. The State (1988) 1 NWLR (Part 73) 721.

At page 22, line 1 – 3 of the records the learned trial Judge recorded as follows – “Charge dated 9/11/83 read over to the accused persons in English Language and translated into Ibo and each pleads not guilty to the charge.” The question is – what is the meaning of “each” used by the trial court? Does it mean block plea as submitted by the 2nd Appellant’s Counsel? According to Webster’s New Encyclopedic Dictionary, New Revised Edition “each” means being one of two or more distinct individuals; each one. See also Black’s Law Dictionary (Sixth Edition) where ‘each’ is defined as “a distributive adjective pronoun, which denotes or refers to every one of the persons or things mentioned’ every one or two or more persons or things, composing the whole, separately considered.” I am of the firm view that the record of the trial court shows that each distinct individual accused person separately pleaded not guilty after the one count charge had been read to them and interpreted to them in Ibo Language. The records do not show that there was a block-plea or communal plea as contemplated by the learned Counsel for the

2nd appellant. The recording of the plea in Alaka's case (supra) which was commended by the Court of Appeal and which involved three accused persons with 18 counts charge is synonymous with the recording of plea in the instant case which involved three accused persons with a one count charge. See also Pele Ogunye & Ors. B V. The State (1999) 5 NWLR (Part 604) 548 at page 565; (1999)4 SCNJ 33 at page 48 and Okoro v. The State (1998)14 NWLR (Part 584)181; (1998) 2 SCNJ 84 where it was observed as follows:

“The provision of the law should not be stretched to a point of absurdity by reading into it that the Judge must record that the charge was explained to the accused to his satisfaction before taking his plea. It will be impeaching the integrity of the Judge to do that as no Judge will take the plea of an accused if he is not satisfied that the charge was read and explained to the accused to his satisfaction.”

In Kajubo's case (supra), the records do not show that the two counts charge was read to the accused person and interpreted to him in the language he understood before he pleaded not guilty. This court allowed the appeal and ordered a retrial of the case. Compare Edet Effiom v. The State (1995) 1 NWLR (Part 373) 507 and Madu v. The State (1997)1 NWLR (Part 482) 306 at 402 where re-trial for its own sake was never ordered.

The law presumes the regularity of a judgment until the contrary is proved. Since the contrary in respect of the recording of the plea of the appellants in the instant case has not been shown, I hold unto the presumption. See also Ogba v. The State 1992 2 NWLR (Part 222)164; (1992)2 SCNJ (Part 1) 106 where at pare 195, paragraphs B-D of the Latter Report, (NWLR), Karibi-Whyte, JSC held inter alia as follows:

“Learned Counsel to the Respondent has pointed out and I entirely agree with him that there is sufficient evidence on the record to show by implication that Appellant understood both Ibo language and English language. Appellant's Statement to the Police Exhibit 2 was in English. His oral testimony at his trial (see page 29 – 30 of the record) to show that there was no interpretation from Ibo language to English

and vice versa. The only defect was the absence of a certificate of the trial Judge or note showing that the proceedings were interpreted. There is no doubt there is the useful usual practice to so indicate. There is neither a statutory or constitutional support for the practice. The non-compliance with the practice can therefore not affect the validity of the proceedings. Appellant could not have raised any objection on that ground.”

Besides, no miscarriage of justice would have been occasioned in the instant appeal where the Appellants were represented by Counsel and no clear proof has been shown that no interpretation of the proceedings was made to them. See Muhammad Arab v. Bauchi N.A (1961) NNLR 48, 50 and Ubi Yola v. Kano N.A (1961) NNLR 103 – “*Omnia Praesumuntur rite et solemniter esse acta.*”

D ISSUE TWO

Whether the Justices of the Court of Appeal were right in sustaining the findings of the Trial Court that by the nature of the armed robbery incident the identifications of the appellants were clear and certain to have enabled the trial Judge act on them.

The principal witnesses for the prosecution in this case are PW2 and PW3 who were the victims of the armed robbery attack. In a statement made by PW2 to the police on the night of the incident he said: “I can identify them by their faces because they had no mask on their faces” page 8 lines 1 – 2. Also in the statement made by PW3 Onyebuchi Onwuzuligbo on the same night of the incident i.e. 18/7/81 he said, “I can identify the thieves if seen because they had no mask” – page 10 lines 7 – 8.

Even though the time of the robbery was 9.30 p.m. There was ample evidence that PW2 and PW3 recognized the faces of the robbers with the aid of the headlights and the interior lights of their vehicle which were fully on; also the lights from the attacker’s vehicles and other vehicles that stopped at the scene of the incident.

PW2 in his evidence in chief at page 24 lines 29 to 31 said thus: “I saw the faces of these men through the aid of the lights of my vehicle and when they opened the door of the car, I also saw their faces. The

accused persons were among the six persons that attacked me that night.”

There is no doubts that PW2 saw the faces of the robbers clearly on the night of the incident because the headlights and the interior lights of PW2’s car were fully on. Also the robbers made no attempt to conceal their faces, as they wore no masks. Moreover PW2 did not run away during the attack but stayed on to fight it out with the robbers and was able to recognize their faces clearly. See page 186 of Diary on need or otherwise of identification parade etc. This explains why PW 2 after going to the hospital for treatment on 20/7/81 went to the police station to find the progress of the case he reported (quite unknown to him that some of the robbers had been arrested) and on seeing the 1st and 2nd appellants in the midst of other people at the police station immediately identified them as being among the robbers who attacked him on the night of the incident. PW2 also immediately identified the 3rd appellant at the police station on that same 20/7/81 as soon as he was arrested and taken to the police station.

PW3 who was with the PW2 during the attack was also positive that he clearly saw and recognized the appellants on the night of the incident. At page 26 lines 33 to page 27 lines 1-3, PW3 said thus *“I saw the faces of these men. The accused persons were among the people I saw that day. I recognized the men who attacked us because the light of the vehicle was on.”* Also at the same page 27 lines 7 – 10, PW3 said, *“I recognized the people who brought the records. The 1st and 2nd accused persons were among the men who beat us up. The stolen records were among those brought for sales.”* Therefore it is in evidence that PW3 recognised the 1st and 2nd appellants at No. 51J Iweka Road, Onitsha when they brought the stolen records to sell to PW5, where they were arrested by PW4 and PW6.

Also PW3 identified the 3rd appellant not in his house but some distance away from his house when he PW3 was going with PW4 and PW6 to the 3rd appellant’s house at No. 6 Pam Pam Lane, Onitsha. One wonders how PW3 could have identified the 3rd appellant not even in his house but some distance away from his house if he PW3 had not seen him on the night of the incident.

Therefore the learned trial Judge was right when he found at page 96 lines 30 – 33 and page 97, lines 1 – 22 as follows: *“It is fully established to my utmost satisfaction that the incident happened at night and that the headlights of PW2’s vehicle were on as well as the interior light of the car which made visibility very bright added to the fact that the vehicle used by the accused persons and others stopped in front of the said vehicle. The distance between the two vehicles was not far. In addition, PW2 never ran away and PW3 who escaped went to an adjacent house and watched what happened and thereafter called a taxi that took PW2 to the General Hospital Onitsha for treatment. Brightness, locus and distance are paramount for identification and these factors are in favour of the prosecution. Furthermore, 1st and 2nd accused persons were easily recognized at the police station where there were many people and when PW4, PW6 and PW3 were going to the house of the 3rd accused. It was PW3 who recognized him (3rd accused) not in his house but some distance away. In view of all these over-whelming evidence, the necessity for further identification does not arise.”* See Madagwa v. The State (1998) 5 NWLR (Part 92) 60, a case whose facts are similar to the one in hand.

The Court of Appeal agreed with the findings of the trial court, as there is no cogent reason to show that the findings and conclusions were perverse. In the leading judgment delivered by Mamman Nasir, President, Court of Appeal, he said at page 210 as follows: *“I respectfully agree with the reasoning and conclusions, of the learned Judge in respect of the identification. The circumstances were such that the witnesses PW2 and PW3 recognised their assailants in such an impromptu manner as to make any formal identification a mockery of the system. In my opinion, in a case like the one under consideration where the learned trial Judge had carefully shifted the evidence an appeal court would not interfere with such conclusion unless there was presented to the court cogent reasons to show that the findings and conclusions were perverse – see (Ebba v. Ogodo and Anor. (1984) 4 SC.84). In the present appeal the ‘natural reaction’ and manner in which the appellants were recognized left no room for the*

prosecution to hold formal identification parade.” I cannot agree more.

The following cases on identification are relevant and I adopt them as applicable to the case in hand.

- (1) State v. Odidika & Anor. (1077)2 SC.21 at 23 B
- (2) State v. Francis Odili (1977)4 SC.1 AT 6
- (3) State v. Sunday Omega (1965) NMLR 58 at 59
- (4) State v. Mathew Orimoloye (1984) 10 SC.138 at 143
- (5) State v. Udo Umoren & Anor. (1983) 6 SC.217 at 219
- (6) Bozin v. The State (1985)2 NWLR (Part 8) page 465 at 467 and 472 C
- (7) State v. Ajibade 1987 1 NWLR 205 at 210

I accordingly uphold the concurrent findings of the Trial Court and the Court below with regard to the identification of the appellants. See Ebba v. Ogodo (supra). D

ISSUE THREE

Whether the Justices of the Court of Appeal were right in holding that “*the collective conviction and sentence*” of the appellants by the trial court did not occasion any miscarriage of justice. E

After a well conducted trial, the trial court when passing its verdict and sentence said at page 99, lines 29 – 32 and page 100, lines 1 – 5 as follows – “*I find the accused persons guilty and following the provisions of Section (1), (2)(a) of the Robbery and Firearms (Special Provisions) Act No. 47 of 1970, as amended by the Robbery and Firearms (Special Provisions) Amendment Act No. 8 of 1974, all the accused persons are hereby sentenced to death. May the Lord have mercy on your souls*”. But the question is, has this occasioned any miscarriage of justice as would have misled each appellant as to the offence for which he was convicted and as to the sentence passed on him? It is the submission of the 1st and 3rd appellants’ Counsel that the trial Judge was in serious error when he failed to return separate verdicts and separate sentence for each of the appellants and that failure had occasioned a miscarriage of justice. In support they cited and relied on the authorities of Oyediran & 5 Ors. V. The Republic (1967) NMLR 122 at 125 and The State v. Aibangbee, Collins Ojo & Anor. (1988) 3 NWLR (Part 84) 548 at F
G
H

552. In Oyediran's case (supra) there were at least six accused persons charged in an information containing sixteen counts. Some of the accused persons were not charged in some of the counts and some were convicted in the counts for which they were not charged. At the end of the trial the trial Judge failed to record his verdict on each accused person in respect of each count. This Court carefully went over the convictions, which were clear and upheld them but quashed the wrong convictions.

In the instant appeal the trial on the one count charge was well conducted with witnesses who gave evidence being recalled for further cross-examination. The learned trial Judge meticulously and carefully reviewed and evaluated the case of each appellant, how each appellant was identified by PW2 and PW3 at the scene of crime and how each was subsequently identified to the police and separately considered the submissions of Counsel but later fell into some procedural error in pronouncing its verdict and passing sentence on each of the appellants. Throughout the trial the appellants were aware of the scope of the one count charge for which they were being tried i.e. armed robbery and their Counsel were equally aware of the scope of the one count charge which they were defending. Therefore the possibility of their being misled as to the offence they were charged with, tried, convicted of and sentenced was not just there.

From the records, it is clear that all the essential features of a well-conducted trial were satisfied by the Trial Court save that the learned trial Judge pronounced his verdict and passed his sentence as it were in one breath instead of three breaths. It is not the appellants' case that either the verdict or sentence is erroneous in the sense that no reasonable tribunal could have found or imposed that term of punishment; rather the grave men of their complaint is a technical fault in pronouncing verdict and imposing sentence on the appellants collectively. It is now settled law that technicalities ought not be allowed to defeat substantial justice – see City Engineering Nig. Ltd. V. N.A.A. (1999)11 NWLR (Part 625 page 1 at 80, Ratios 4 & 5, Falobi v. Falobi (1976) NMLR Volume 1 page 169. In the

words of Eso, JSC in Okonjo v. Dr. Odje & Ors. (1995) 10 SC.267 at 268 “*justice by technicality is no justice.*”

The trial Judge having found the appellants guilty after due consideration of the totality of the evidence before him in the single count charge, he had no option other than to find each of them individually guilty as laid in the one count charge. Similarly, with regard to sentencing, the trial court was mandatorily obliged to impose death sentence severally on each of the appellants. Therefore despite what is dubbed “*collective*” verdict and sentencing, each of the appellants cannot be said to be misled as to the verdict of the court and as to the sentence imposed on him.

I therefore uphold the contention of the learned Deputy D.P.P. To affirm the decision of the court below which lumped together the verdicts and sentences of the three appellants in the circumstances. Although the procedural slip has not been shown to be fatal in the sense that it has not occasioned any miscarriage of justice, the court below in the exercise of the vast powers invested on it under Section 16 of the Court of Appeal Act, 1976 has, in my opinion, appropriately amended this procedural slip bearing in mind that no appellant was misled.

ISSUE FOUR

Whether or not the Court of Appeal was right in sustaining the findings of the trial court that the purported defence of alibi set up by the 1st and 3rd appellants was not available to them.

Exhibit C is the statement of the 1st Appellant. His statement in Exhibit C resembling an alibi is where he said, “*I did not steal the records, and I was in my brother’s house at Pam Pam Lane Onitsha on 18/7/81. I slept in Titus house that day.*” The law relating to alibi is that an accused person who wishes to raise alibi must raise it at the earliest opportunity to enable the police to investigate it and must offer evidence. See the following cases:

Salami v. The State (1988)3 NWLR 670

State v. Peter Eze (1976)1 SC.125 at 129 – 130

State v. Francis Odili (1977)4 SC.1 at 5 – 6

State v. Dikeocha & Ors. 10 ENLR 155

State v. Odidika & Anor. 1977 2 SC.21 at 23

In the case of Hemyo Ntam & Anor. V. The State (1968) NMLR 86, this Court was of the view that when there is a positive evidence of the accused's complicity in the offence, the police need not investigate his alibi.

Also in Ekpo Ibor & Anor. V. The State (1983)3 SC.1 this Court held that an alibi can be negated by eye witness account of the commission of an offence by an accused person. See also Patrick Njovens & Ors. V. The State NNLR 76, at 78; (1973) 5 SC.17 at 65 where the fixing of the accused at the scene of crime melted away his plea of alibi.

It is only where an accused person has adduced evidence in support of his alibi and the police fail to investigate it that it could be construed against the prosecution. Not so in this case.

In the above purported alibi of the 1st Appellant he did not offer any evidence in support of his alibi and therefore has not discharged the onus on him.

Also in Exhibit E the 1st statement of the 3rd appellant where he said: *"On 17/7/81 I went to my home town at Adazi."* Similarly, in Exhibit 11 which is his 2nd statement to the police he said: *"I traveled to Adazi-Ani on 17/7/81 and when I returned I heard that the police arrested my brother Sunday Eyisi in connection of records."* Even if the above statements of the 3rd appellant could be regarded as alibi, there is no evidence whatsoever supporting the alibi which could enable the police to investigate the truth or otherwise of the purported alibi.

Therefore, the learned trial Judge was right when he said thus at page 96 lines 15 – 18 *"it is not enough to say that one is at Nkpor or at Adazi,"* and the Court of Appeal was right when it said at page 212 as follows:

"In the present case the trial Judge rightly considered all the statements of the appellants to the police and concluded that none of them raised an alibi which could be investigated."

I am therefore of the firm view that this Court would not disturb

these concurrent findings of the Trial Court and the Court below that the purported defence of alibi was not available to the 1st and 3rd Appellants.

ISSUE FIVE

Whether the Justices of the Court of Appeal were right in affirming the decision of the Trial Court that based on the totality of evidence before it the prosecution proved its case against each of the appellants beyond all reasonable doubts. I agree with the learned D.D.P.P. That the prosecution proved its case beyond all reasonable doubt for the following reasons:-

1. Each of the Appellants was clearly seen and recognized by PW2 and PW3 at the scene of crime actively taking part in the crime. None of them masked his face and both the vehicle headlights and the interior lights of PW2's vehicle were fully on. Moreover the headlights of the vehicle used by the robbers including the headlights of other vehicles that parked at the scene of the crime during the incident were also fully on.
2. The Appellants were subsequently identified by their victims both at No. 51J Iweka Road, Onitsha at the police station, and along the road to No. 6 Pam Lane, Onitsha.
3. Soon after the robbery operation, the 1st and 2nd appellants were found in possession of the stolen records and none of them could give a reasonable account of his possession. Instead each accused the other of being the owner of the records – see the presumption in Section 149(a) of the Evidence Act.
4. On a visit to the house of the 3rd Appellant, two days after the incident, a carton of the stolen records was found and no reasonable explanation was offered of how he came in possession of the records – see also Section 149(a) of the Evidence Act. See also the following cases:-
R v. Jombo 1960 LLR 192

R v. Kwashie 1950 13 WACA 86

See also Madagwa v. The State (supra)

5. Also on a search of the house of the 3rd Appellant at No. 6 Pam Pam Lane a common rendezvous of the Appellants three locally made double barrel pistols and forty rounds of ammunitions were found and none of them could offer any reasonable explanation of their being there. He, the

3rd Appellant, admitted that the guns found in his house were under his mattress wrapped in a polythene bag.

I hold as was held by the trial court and the court below that based on the totality of the evidence before the trial Court, the prosecution proved its case beyond all reasonable doubt. It is well settled law that the Supreme Court will not usually or generally interfere with the concurrent findings of fact of the Court of Appeal and the trial court unless such findings are found to be perverse. See Ahmed v. State (1999)5 SCNJ page 223 at 246 – 247; State v. Emine (1992) 7 NWLR (Part 61) at page 556; Asanya v. State (1991) 3 NWLR 180 at page 422.

In the instant case, both the findings of the trial Court and the Court of Appeal are based on cogent and credible evidence before the Trial Court. The issue proffered here is resolved against the Appellants.

In the result I dismiss the appeals of the 1st, 2nd and 3rd Appellants respectively as lacking in merit.

E _____

KARIBI-WHYTE JSC

I have had the privilege of reading in draft the leading judgment of my learned brother S.U. Onu, JSC in this appeal. I agree entirely with his reasoning and eventual conclusion that the grounds of appeal are lacking in merit and that the appeal should be dismissed. I too will and hereby dismiss the appeals of the Appellants. The judgment of the court below is accordingly affirmed.

G _____

OGUNDARE JSC

This judgment is in respect of the respective appeals of the three appellants herein. They have each appealed against the judgment of the Court of Appeal affirming the conviction for armed robbery and the sentence of death passed on each of them by the trial High Court of Anambra State sitting at Onitsha.

The case for the prosecution was that on 18th July 1981, Osita Okeke (P.W.2) and Onyebuchi Onwuzuligbo (P.W.3) went from Onitsha (where they lived) to Aba to purchase records. They traveled in a Peugeot 504 GL saloon care with registration No. AN 1616 SA owned and driven by PW2. On their return journey to Onitsha in the evening of that day B and as they were going on Oguta Road, Osita observed that a taxi cab blocked their path. PW3 stopped his car. All of a sudden six men came out of the taxi cab, armed with guns, daggers and knives. Four of the six men attacked PW2 who was at the driver's seat of his car while the remaining two men attacked PW3. The attackers ordered the two witnesses out of their car but PW2 refused to come out. PW3 escaped and hid himself nearby. Meanwhile, PW2 was assaulted by the six men who inflicted severe injuries on him and subsequently overpowered him. He was thrown out of the car and the six attackers made away with the car D together with PW2's briefcase containing the sum of N5,000.00 and the 54 packets of records PW2 and PW3 had earlier that day purchased at Aba. The car was later abandoned by the attackers and recovered where it was abandoned. PW3 emerged from his hiding place, hailed a taxicab E passing by and conveyed PW2 in the cab to the hospital where he was treated by PW1, Dr. Anyika.

On 20th July, 1st and 2nd appellants came to Obed Onwuzuligbo (PW5) and offered to sell him some records. PW5 is the father of PW3. F It is not clear from the record of appeal if the two appellants knew this fact but presumably they did not know he was the father of one of the victims of the robbery incident of 18th July. PW5 agreed to buy the records and asked the two appellants to bring them. Being suspicious of the offer of the 1st and 2nd appellants, PW5 alerted the servants of PW2, G PW3 and the police who came to PW5's place waiting for the 1st and 2nd appellants. On their arrival with the records, they were promptly arrested by the police.

After the arrest, and following information given to the police by H the 1st and 2nd appellants, the police and the two appellants left for a house at Pam Pam Lane where more records were recovered in the room occupied by the 3rd appellant as tenant. He too was arrested by the

police. On 21st July the police, armed with a search warrant, searched the 3rd appellant's room in the house at Pam Pam Lane and recovered 3 double barrel locally made pistols, 40 cartridges and one carton of long playing records containing 49 pieces of records.

B The three appellants made statements to the police which were admitted in evidence at the trial and marked Exhibits C, D, E, H & N. Both in their statements to the police and in oral evidence at the trial, they all denied taking part in the robbery incident of 18th July. They also denied ownership of the records recovered by the police. The learned trial Judge accepted the case for the prosecution and convicted all of them and sentenced them to death. They each appealed to the Court of Appeal which in a split decision dismissed and affirmed the decision of the Court of trial. For unexplained reason the dissenting judgment of D Ogundere J.C.A. was not included in the record of appeal to this Court. This notwithstanding, their further appeals to this Court were proceeded with. I do not think this occasioned any prejudice to any of the parties to this appeal.

E In their notices of appeal and written briefs the three appellants raised various issues that call for determination in this appeal. After considering the issues raised in the written brief of each appellant I am of the view that their appeals stand to be determined on the following questions, which, as regards 1st and 3rd Appellants, are:

F *"1. Whether the Justices of the Court of Appeal were right to hold that the failure of the trial Judge to enter separate verdict and sentence against each of the accused persons was not fatal to their convictions and sentences of death.*

G *2. Whether the Justices of the Court of Appeal were right in sustaining the findings that the Appellants were sufficiently identified given the facts and circumstances of the case.*

H *3. Whether the Justices of the Court of Appeal were right to hold that the learned trial Judge duly and properly considered the defence set up by each Appellant.*

And as regards the 2nd appellant only, the following question

1. *Whether the trial of the appellant was valid in law."*

The 2nd appellant has raised only issue 4 in his appeal and as this issue calls into question the jurisdiction of the trial High Court to hear and determine the charge against the appellants and the validity of the trial I think it is important that I consider that issue first. It has two limbs – jurisdiction of the trial court and validity of the trial itself.

B

Trial Court's Jurisdiction:

The main argument of the 2nd appellant on this issue runs thus:

“From the tenor of the two Acts, [that is Robbery and Fire Arms (Special Provisions) Act 1970 and Robbery and Fire Arms (Special Provisions) (Amendment) Act 1974] the jurisdiction to try offences under Act No. 47 of 1970 as amended by Act No. 8 of 1974 was still vested in the Armed Robbery Tribunal. There was no where in the enactments, where jurisdiction to try armed robbery offences, was taken away from the tribunal and vested in the High Court of Anambra State sitting at Onitsha”.

C

(Words in brackets are supplied by me)

With profound respect to learned counsel for the 2nd appellant, I think the submission is totally lacking in merit. Learned counsel lost sight of the provisions of the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals, etc) Decree No. 105 of 1979, subsection © of section 1 of which provided:

E

“1. Subject to section 6 of the Interpretation Act 1964 (which relates to the effect of repeals, expiration and lapsing of enactments)-

F

(c) the enactments set out in the first column of schedule 3 to this Decree shall be amended to the extent set out in the second column of that Schedule and the said Decrees as amended shall come into force with effect from the day on which the Constitution of the Federal Republic of Nigeria 1979 comes into force.”

G

The first item in Schedule 3 to the Decree read:

“1970 No. 47... Robbery and Firearms (Special Provisions) Decree 1970

H

1. For section 5 there shall be substituted the following section-

Trial of Offences

5. *Offences under this Decree shall be triable in the High Court of the State concerned.*

2. *Sections 6, 7 and 8 are hereby repeated.*

3. *The definition of tribunal in section 9 shall be deleted.*"

Section 5 of the Act which prescribed the place of trial of offences under the Act was amended by replacing the Tribunal set up under the original section 5 with "*the High Court of the State concerned.*" The 1979 Constitution came into force on 1st October 1979. From the date the High Court of a State became seized of offences under the Robbery and Firearms (Special Provisions) Act, 1970. It follows, therefore, that when the High Court of Anambra State sitting at Onitsha became seised of the matter on hand by the arraignment of the appellants on 10th November 1983, it had jurisdiction to try them.

According to the record before us, the trial of the appellants did not end in that Court until 29th May 1987. The case was, thus, part-heard on 31st December 1983 when the constitutional governance of the country was overthrown by the armed forces and military dictatorship was once again introduced. That regime in 1984 promulgated the Robbery and Firearms (Special Provisions) Decree No. 5 of 1984 which repealed the 1970 Act and part of Schedule 3 to Decree No. 105 of 1979 amending the 1970 Act. It reverted to trial of robbery and Firearms offences by Tribunals. This decree was soon amended by the Robbery and Firearms (Special Provisions) (Amendment) Decree No. 21 of 1984 sub-section (4) of section 1 of which provided:

"*Any part-heard proceedings before any High Court on the date of the coming into force of this Decree shall be continued and completed as if the provisions of this Decree had not been made.*"

This saving clause preserved the trial in the State High Court of offences under the 1970 Act where the proceedings had commenced and were part-heard on 29th March 1984, the date Decree No. 5 of 1984 came into force.

The trial of the appellants by the High Court of Anambra State was one of such proceedings saved by Decree No. 21 of 1984. I, there-

fore, hold that the trial High Court had jurisdiction to try the appellants. This conclusion disposes of the first limb on the 2nd appellant's complaint.

Validity of Trial:

The 2nd Appellant also attacked the validity of the trial in the High Court. He premised this on the arraignment of the appellants which his learned counsel submitted was invalid as being in non-compliance with section 215 of the Criminal Procedure Law applicable in Anambra State. After stating the conditions required of a valid arraignment, it is argued in the brief thus:

“Failure to comply with any of these conditions will render the whole trial a nullity. See EYOROKOROMO V THE STATE (1979) 6-9 SC, 3: KAJABO V. THE STATE (1988) 1, NWLR, (PT.73) 721. The condition that the charge must be read over and explained to the accused in a language that he understands of necessity implies that, if it is a charge of more than one-count, then each count must be read and explained to him. He would then be called upon to make his plea at the end of reading each count. His plea on each count would be simultaneously recorded by the court. It is elementary practice that, where there is more than one accused, each accused must be called upon to plead separately to each of the counts and the trial court must also record their plea separately. See ALAKE V. THE STATE (1991), 7, NWLR (PT.205) 567-589. The record of the court must show that this procedure is followed. It is good practice for trial courts to specifically record that ‘That charge was read and fully explained to the accused to the satisfaction of the court’. Before proceeding to record his plead thereto. See ALAKE V. THE STATE, (supra).

In the instant appeal, the plea of the appellant is on page 22 of the record. At the risk of repetition, the record of the court on that date reads thus: ‘Charge dated 9/11/83 read over to the accused persons in English and translated into Ibo and each pleads not guilty to the charge.’

While the record shows that the charge was in fact, read over and explained to the appellant in Ibo and each accused pleaded not guilty thereto, the record is silent as to whether these was done to the satisfaction of the court. Also, the plea of each accused persons was not re-

corded separately. Block-pleas are not envisaged by Section 215 of the Criminal Procedure Law. The conditions contained in Section 215 of the CPL; are mandatory and must therefore be complied with. Failure to comply with any of them, will render the trial of the appellant however
 B *ably conducted a nullity. See EYOROKOROMO V. STATE (supra)."*

With respect, I find no substance in the above argument. Following the withdrawal of the former charge and the substitution of a new one on 10th November 1983, the proceedings for that day read in part:

C *"Charge dated 9/11/83 read over to the accused persons in English and translated into Ibo and each pleads not guilty to the charge."*
 This is what 2nd Appellant says amounts to invalid arraignment.

Now section 215 of the Criminal Procedure Law provides:-

D *"The person to be tried upon any charge or information, shall be placed before the court unfettered unless the court shall see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court and such person shall be called upon to plead in-*
 E *stantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has not been duly served therewith".*

The application of this section has come for consideration by this Court in a number of cases. I refer in this respect to Eyokoromo v. the State (1979) 6-9 SC.3; Kajubo v. The State (1988) 1 NWLR 721; Alake v. The State (1991) 7 NWLR 567, 589; Effiom v. the State (1995) 1 NWLR 507 and lately Kalu v. The State (1998) 13 NWLR 531; and Okoro v. The State (1998) 14 NWLR 181. The sum total of all the Court
 G said in these cases can be summed up in the words of Iguh JSC in Kalu v. The State at page 599 B-C of the Report:

H *"It is plain to me that the said mandatory requirement laid down for a valid plea together with the provisions of Section 33(6)(a) of the 1979 Constitution have been provided mainly to guarantee the fair trial of an accused person and thus safeguard his interest at such a trial."*

On whether it is mandatory for the trial judge to record that he was satisfied that the accused understood the charge before pleading thereto,

I need to quote from my judgment in the same case where at page 617A-C I observed:

“It is on record in this case that after the explanation of the charge to the appellant, he pleaded to it. Surely, if the Judge was not satisfied he would not proceed to take the plea of the appellant. By his taking the plea, therefore, it must be presumed that he was satisfied that the charge was properly explained to the appellant and the latter understood same. After all the maxim is: Omnia Praesumuntur rite et solenniter esse acta. That is to say: All acts are presumed to have been done rightly and regularly. In Derby v. Bury Imp Commors L.R. 4 Ex 222 at p.226 it was held that in the absence of proof to the contrary, credit should be given to public officers who have acted, prima facie, within the limits of their authority, for having done so with honesty and discretion.

The maxim apart, there is section 150(1) of the Evidence Act which provides:

‘150(1) When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with.’

This presumption of regularity avails in this case.”

In Effiom v. The State (supra) I did say at page 592:

“I do not understand the authorities to say that it must be recorded that the court is satisfied with the explanation as it is being submitted to us by learned counsel for the appellant.”

While it may be good practice for the trial judge to record that *“the charge was read and fully explained to the accused to the satisfaction of the court”* I am not prepared to say however that the judge’s failure to so record is fatal to the proceedings. Such a conclusion cannot take cognizance of section 150(1) of the Evidence Act.

As to the taking of the plea of the appellants, I am satisfied from the recording that *“each pleads not guilty to the charge”* that the learned trial Judge took the plea of the appellants separately.

All things considered, therefore, I am satisfied that there has

been substantial compliance with section 215 of the Criminal Procedure Law in the arraignment of the appellants at the trial.

On the whole, I answer the only question raised in the 2nd appellant's brief in the affirmative and I have no hesitation in dismissing B his appeal.

I now turn attention to the questions raised in the briefs of the 1st and 3rd appellants.

Issue (1) – Verdict and Sentence:

C The learned trial Judge had concluded his judgment in these words:

“In view of my findings and the weapons used by the accused and injury inflicted on Osita Okeke PW2 when the accused stole the items embodied in the indictment, I find the accused persons guilty and D following the provisions of Sect. (1)(2)(a) of the Robbery and Firearms (Special Provisions) Act No. 47 of 1970, as amended by the Robbery and Firearms (Special Provisions) Amendment Act No. 8 of 1974, all the accused persons are hereby sentenced to death.”

E This passage has come under attack both in the Court below and in this Court as amounting to joint verdict and joint sentence which rendered the trial invalid. Reliance is placed on Oyediran & Ors. V/ The State (1967) NMLR 122 AT 125 where this Court, per G.B.A. Coker JSC, held:

“Where several persons are tried together, it is trite law that F separate verdicts must be returned in respect of each of the accused persons and where, as in the present case, there are several counts on the same Information, separate verdicts must be delivered in respect of the several counts. The verdicts must be delivered before the Court proceeds G to give judgment on the several counts and we are unable to find any support for the contention of learned Counsel for the respondent that the sentences passed on the appellants in respect of counts on which no verdicts were recorded read along with the Judge's findings are tantamount H to a finding of guilt even though no formal verdicts were entered. A Judge sitting at the Assizes may at any time during the same Assizes or Session, before Judgment has been entered on the record, vacate his Judgment and substitute another. Thereafter, however, that is after the end of

the Assizes or Session, he may not alter the judgment for he is functus officio although in a proper case a Court of Appeal may reverse or amend the judgment. There must, however, be a judgment based on a verdict and a Court of Appeal does not appear to possess the power to otherwise complete an imperfect trial.”

B

A close study of the case reveals, in my respectful view, that it is not helpful to the appellants in the present case. In that case there were 6 accused persons charged as follows:

1st accused - Counts 1 – 16

2nd accused - Counts 1 – 16

3rd accused - Counts 1,5,6,7,11,12 & 13

4th accused - Counts 1,8,9,10,14,15 & 16

5th accused - Counts 1- 16

6th accused - Counts 1 – 16

C

D

At the end of the trial, the trial judge, in his judgment, observed as follows:

“I am satisfied that the charges against the six accused have been proved by the prosecution beyond reasonable doubt. On the 1st count I find all the accused persons guilty. I find the 1st and 6th accused persons guilty on counts 2, 3 and 4. I find the 1st, 2nd, 4th and 5th accused persons guilty on counts 5, 6 and 7. I find the 1st, 2nd, 4th, 5th and 6th accused persons guilty on counts 11, 12 and 13”.

F

He then sentenced them to various terms of imprisonment on the several counts as follows:

“1st Accused - All 16 counts

2nd accused - All 16 counts

3rd accused - Counts 1, 5, 6, 7, 11, 12 & 13

4th accused - Counts 1, 8, 9, 10, 14, 15 & 16

5th accused - All 16 counts

6th accused - All 16 counts.

G

On appeal to this Court, the record was closely examined and it was discovered that some of the accused persons had been convicted on counts on which they were not charged and secondly that some of them had been sentenced to terms of imprisonment in respect of counts on

H

which they were not convicted. This Court observed at page 125 of the Report:

“It is illegal to convict an accused person of an offence on which he was not charged and unless where the conviction is in respect of a substituted offence, as provided for by law, it is apparent that such an accused person was neither arraigned nor tried in respect of such an offence. The arraignment consists of charging the accused or reading over the charge to him and taking his plea thereon. The denial of a hearing manifestly howbeit unwittingly is a fundamental breach of all principles of criminal law. The 3rd appellant was not charged on counts 8, 9 and 10 and his conviction on those counts must be and is hereby quashed and any sentence passed on him in respect of those counts are set aside. The 4th appellant was not charged on counts, 5, 6, 7, 11, 12 and 13 and his convictions on those counts are accordingly quashed and set aside together with any sentences passed on him in respect of those counts.”
(underlining is mine)

This Court in Oyediran did not quash the whole trial but amended the verdicts and sentences to reflect what the trial court ought properly to have entered. The Court concluded at p. 125:

“The net result of the above Orders is that the appellants stand convicted and sentenced as follows:-

F 1 st appellant	-	counts 1 – 13
2 nd appellant	-	counts 1, 5-13
3 rd appellant	-	count 1
4 th appellant	-	count 1
5 th appellant	-	counts 1, 5, 6, 7, 11, 12 & 13
G 6 th appellant	-	counts 1, 2, 3, 4, 8-13.”

In the case on hand, the three appellants were charged on one count of armed robbery, and were sentenced to death, the mandatory punishment imposed by law. While it is desirable that the learned trial Judge should have recorded the conviction and sentence of each appellant separately, I cannot say that any of them was misled or that a miscarriage of justice was occasioned by the manner the trial Judge recorded the verdict and sentence in the passage of his judgment earlier

quoted in this judgment. I agree entirely with the observations of, and the course of action, taken by the Court below when in the lead judgment of Nasir P. He said:

“In my humble view, the lumping together of the verdicts and sentences of the three appellants in the circumstances of this case although a procedural slip has not been shown to be fatal in the sense that it has resulted in any miscarriage of justice. In my judgment, it will be manifestly unjust to upset the judgment of the trial court on the basis of this slip. After all, the position posed by this slip is not insurmountable. Accordingly, in exercise of powers Invested in this court under section 16 of the Court of Appeal Act, 1976 and all other powers enabling this Court in that behalf and bearing in mind that none of the appellants was misled, I would now vary the judgment of the lower court and make the following substitutional orders at page 99 starting from line 28 to page 100 line 5:

(a) I find the 1st accused guilty of armed robbery contrary to section 1(22) 9a) of the Robbery and Firearms (Special Provisions) Act 1970 as amended by the Robbery and Firearms (Special Provisions) Amendment Act, 1974;

(b) I find the 2nd accused guilty of armed robbery contrary to section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act 1970 as amended by the Robbery and Firearms (Special Provision) Amendment Act, 1974;

(c) I find the 3rd accused guilty of armed robbery contrary to section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act 1970 as amended by the Robbery and Firearms (Special Provision) amendment Act, 1974;

(d) Accordingly, 1st accused is sentenced to death;

(e) 2nd accused is sentenced to death; and

(f) 3rd accused is sentenced to death.

May the Lord have mercy on the soul of each of you.”

I, therefore, resolve Issue (1) against the 1st and 3rd appellants.

Issue (2) – Identification

The appellants were not picked at any identification parade by PW2 and PW3 but were recognized by either or both of them at PW5's place, at Pam Pam Lane and at the police station. This method of identifying the appellants is the kernel of appellants' complaint in Issue (2). I have carefully considered the submissions of learned counsel in their respective written briefs. Regrettably, however, I am not persuaded to hold that the two Courts below were wrong.

The learned trial Judge had, in his judgment, said:

"Coming to identification which formed the back bone of the defence raised, learned counsel for accused persons appeared to be oblivious of evidence before the Court. It was fully established to my utmost satisfaction that the incident happened at night and that the head light of PW2 vehicle were on as well as the interior light of his car which made visibility very bright added to the fact that the vehicle used by the accused persons and others stopped in front to the said vehicle. The distance between the two vehicles was not far. In addition PW2 never ran away and PW3 who escaped went to an adjacent house and watched what happened and thereafter call a taxi that took PW2 to the General Hospital Onitsha for treatment. Brightness, locus and distance are paramount for identification and these three factors are in favour of the prosecution. Furthermore, 1st and 2nd accused persons were easily recognized at the police station where there were many people and when PW4, PW6 and PW3 were going to the house of the 3rd accused, it was PW3 who recognized him (3rd accused) not at his house but some distance away. In view of all these overwhelming evidence, the necessity for further identification does not arise."

The Court below, per Nasir P., had this to say on the issue of identification raised before it:

"It is, perhaps, a befitting prefatory remark to observe that whenever the defence of an accused is strongly hinged on his identification, the trial court should attend to that issue with the utmost care. See R v. Williams (1956) Cr.L.R. 833 and R v. Turnbull (1976) 3 All E.R. 550. The question which must be posed for due consideration is, was the evi-

dence placed before the trial court sufficiently positive to establish the identification of the appellants? One must, of necessity, laboriously search the record to identify such excerpts of evidence relied on in proof of the identity of each appellant.”

After a review of the evidence led on identification of the appellants, the learned President of the Court of Appeal observed:

“The above excerpts of evidence, particularly those of PW2 and PW3 seem to me to be quite positive and vivid; they did not appear to border on fantasies or improbabilities. The last excerpts from the evidence of PW4, Sgt. Aliu, elicited from him under cross-examination, showed the spontaneity PW2, the star witness for the prosecution identified the appellants immediately he called at the Police station on his own volition because that witness said ‘I never saw Osita (PW2) until he entered and said ‘These are the accused persons’

If the narration on identification by the prosecution rested merely on evidence of fantasies and improbabilities, then the trial Judge would be precluded from taking shelter under the overstrained and abused judicial jargons such as ‘I believe’ or ‘I am satisfied’. If such a situation ever arose, the appellate court on sighting the evidence on record would be bound to discountenance such egg-shell belief of satisfaction. I am of the settled view that reliance placed by 1st appellant’s counsel on Bosin v. The State (1985) 7 SC.450 cannot avail him because the quality of the evidence the Supreme Court decried in that case was grossly fragile and unsatisfactory unlike the case in hand where amply and lucid evidence was adduced in proof of the identification of the three appellants. I am unable to discover from this record any encouragement by the police as contended by learned counsel.”

The above conclusion (that of the trial Judge) was reached after a thorough review of prosecution and defence and addresses by counsel and appraisal of evidence adduced. As I had earlier said, and would now also reiterate, the evaluation of evidence with particular reference to the vexed issue of identification, was satisfactory. I am, therefore, in accord with the learned trial Judge that the identity of each of the appellants was properly established. Accordingly, the issue of identification is

resolved against the appellant.”

I agree entirely with the learned President of the Court of Appeal and see no merit in the attack on the evidence of identification in this case. The law on identification is, in my respectful view, correctly stated
B by Katsina-Alu JCA (as he then was) in Akor & Ors. V. The State (1992) 4 NWLR 198 at p.208 D when the learned Justice of Appeal said:

*“It is now settled practice that whenever the case against an
C accused depends wholly or substantially on the correctness of the identification of the accused which the defence alleges to be mistaken, the Judge must closely examine and receive with caution the evidence alleged before convicting the accused in reliance on the correctness of identification.”*

Identification may take various forms – visual identification, voice
D identification as was the case in the English case of R v. John Keating (1909) 2 Crime App. Report 61 followed in Ibe v. The State (1992) 5 NWLR 642, 649, identification parade, etc. The State v. Aigbangbee (1988) 3 NWLR 548, Nnaemeka-Agu JCS defined identification to mean:

*“.....a whole series of facts and circumstances for which a wit-
E ness or witnesses associate a defendant with the commission of the offence charged. It may consist of or include evidence in form of finger prints, hand-writing, palm prints, voice, identification parade, photo-
F graphs, or the recollection of the features of the culprit by a witness who saw him in the act of commission which is called in question or a combination of two or more of these.”*

See also Anyanwu v. The State (1985) 5 NWLR 612. Identification
G parade is only one way of establishing the identification of an accused person in relation to the offence charged; it is a misconception of the law to say that it is the only valid way as is being suggested by learned counsel in this case; where, for instance, the accused person is well known to the witness before the day of the commission of the offence alleged,
H there can be no need for an identification parade. Similarly, where the witness had ample opportunity to identify the accused person, as in the case on hand, I would not think an identification parade was necessary. As, rightly in my humble view, stated by Lord Widgery, CJ in R v. Turnbull

(1976) 63 Ch. App R. 132, 137 –

“Recognition may be more reliable than identification of a stranger.”

What a trial court must bear in mind in all cases of identification is that care must be taken in accepting, and relying on evidence of such identification to convict more so where the defence contends that it is mistaken. The Courts in Nigeria have come to accept and apply the dictum of Lord Klidgery, CJ in R v. Turnbull (supra) wherein the learned Lord Chief Justice said at p.137 of the Report:

“First, whenever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the Judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided this is done in clear terms the Judge need not use any particular form of words.

Secondly, the Judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example, by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance? If in any case, whether it is being dealt with summarily or on indictment, the prosecution have reason to believe that there is such a material discrepancy they should supply the accused or his legal advisers with particulars of the description the police were first given. In all cases if the accused asks to be given particulars of such

descriptions, the prosecution should supply them. Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence.

Recognition may be more reliable than identification of a stranger, but even when the witness is purporting to recognize someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.

All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger."

The learned Lord Chief Justice added at p.138

"When, in the judgment of the trial Judge, the quality of the identifying evidence is poor, as for example when it depends solely on a fleeting glance or on a longer observation made in difficult conditions, the situation is very different. The Judge should then withdraw the case from the jury and direct an acquittal unless there is other evidence which goes to support the correctness of the identification."

See: Abudu v. The State (1985) 1 NWLR 55 at p.61-62 SC; Mbenu v. The State (1988) 1 NWLR 615 at 628 SC; Akor v. The State (1992) 4 NWLR 198 at 205 CA; Bello v. The State (1994) 5 NWLR 177.

In the case on hand there was plethora of evidence to support the finding of the learned trial Judge on the identification of the appellants as being among the six hoodlums who attacked and robbed PW2 and PW3 on the 18th July 1981. The evidence of identification by PW2 and PW3 apart, there was evidence that barely two days after the incident of robbery 1st and 2nd appellants were seen in possession of some of the records stolen from PW2 and PW3 that night thereby raising the presumption that they were either the thieves or had received the goods knowing them to be stolen. See section 149(a) of the Evidence Act. It was for them to account for their possession of the records. This they failed to do. Rather, each tried to shift ownership onto the other.

In conclusion, I resolve Issue (2) against 1st and 3rd appellants.

Issue (3):

It is the complaint of the 1st and 3rd appellants that their defences were not adequately considered, if at all, by the trial Judge and that the Court below was, therefore, wrong in affirming his decision. I don't think this complaint is well founded. It must be born in mind that the defence raised by the appellants is one of complete denial of the case against them. They contended that they were not at the scene of crime but somewhere else on the day and time the offence was allegedly committed. The learned trial Judge after a review and evaluation of the evidence led by all parties and submissions of learned counsel found, on the defence of alibi raised by the appellants –

“Counsel for the accused persons raised the issue of alibi as a defence. A thorough study of the statements of the accused persons in Exh. C, D, E and H indicates that the purported defence was not raised at the earliest opportunity. Furthermore details of the alibi should also be furnished. It is not enough to say that one was at Nkpor or Adazi, see The State v. I. Dikeocha & 6 Others 10 E.N.L.R. 155. Furthermore, the burden of establishing the defence lies on the accused although it is conceded that it can be discharged by the balance of probability and not by proof beyond reasonable doubt. See Suberu Bello & Ors. V. Commissioner of Police (1959-1961) 1 W.N.L.R. 124.”

Later in his judgment, the learned Judge added:

“Defence raised by learned counsel have been thoroughly examined and found wanting.”

Having rejected the so called defence of alibi and accepted the case for the prosecution, I do not know what is left of the defence that was not considered by the learned Judge.

The Court below, per Nasir P., considered a similar complaint raised before it and observed:

“The issue raised on alibi can be disposed of easily as it was considered by the learned trial Judge and rightly rejected. The initial responsibility to introduce evidence in support of an alibi is the responsibility of the accused. This is not the type of evidence which an accused person can use as his trump card in his proof of innocence. Any evidence suggesting alibi as a defence must be told to the investigation police

officers at the earliest opportunity. (*Udo Akpan v. The State* (1986) 3 NWLR (Part 27) 258 at 262).

In the present case the learned trial Judge rightly considered all the statements of the Appellants to the police and concluded that none of them raised an alibi which could be investigated. While it is not the duty of the accused to prove his defence of alibi nevertheless the accused or his counsel can either ask the court to call the witness on the alibi or he himself can call the witness as part of his defence (*Abudu v. The State*) (1985) 1 NWLR (Part 1) 55, *Onafowokan v. The State* (1987) 3 NWLR (Part 61) 538 etc.

In the present appeal the alleged defence of alibi which was not put forward until the Appellants went into the witness box to give evidence was met by the evidence of not only identification as discussed earlier but also all the Appellants were at one time or the other during the relevant period linked with 6, Pam Pam Lane Onitsha where the property stolen and weapons used were found. In my opinion the evidence adduced by the prosecution leaves no room for any belated defence of alibi to succeed (*Okosun & Ors. V. A.G. Bendel State* (1985) 3 NWLR (Part 12) 283 at 294 and *Yanor & Anor. V. The State* (1968) NMLRL 337. In my opinion the complaint in respect of the defence of alibi fails.”

(Underlining is mine)

I entirely agree with the above observations and resolve Issue 3 against the 1st and 3rd Appellants.

It is for the reasons I have given herein that I agree with my learned brother Onu JSC that the appeals of all the appellants fail and are hereby dismissed by me too. I affirm the judgment of the Court below which in turn also affirmed the conviction and sentence of death passed on each of the 3 appellants.

H

KALGO JSC

I have read in draft the judgment delivered in this appeal by my learned brother Onu JSC. He has painstakingly dealt with all the issues raised and argued by learned counsel for the appellants both in their re-

spective briefs and orally in this court. I agree entirely with the reasoning and conclusions reached in the judgment which I hereby adopt as mine. I however wish to add a few words of mine by way of emphasis.

For each of the 1st and 3rd appellants, the following issues for the determination of this court were raised in their briefs:- B

1. *“Whether the justices of the Court of Appeal were right to hold that the failure of the trial judge to enter separate Verdict and sentence against each of the accused persons was not fatal to the conviction and sentence of the appellant.”* C

2. Whether the justices of the Court of Appeal were right in sustaining the findings that the appellant was sufficiently identified given facts and circumstances of the case.

3. Whether the justices of the Court of Appeal were right to hold that the learned trial Judge duly and properly considered the defence set up by the appellants”. D

For the 3rd appellant the only issue raised and argued was whether the trial of the appellant was valid in law.

The issues raised by the learned counsel for the 1st and 3rd appellants are in fact the same in all respects and the issue raised by the learned counsel for the 2nd appellant is also very much the same as issue 1 of the 1st and 3rd appellants, except as to the competence of the trial court to try the offence of Armed Robbery. E

The 3rd appellants were charged and tried together of the offence of Armed Robbery contrary to the provisions of section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act No. 47 of 1970 as amended by Robbery and Firearms (Special Provisions) (Amendment) Act No. 8 of 1974. At the end of the trial, all the 3 appellants were found guilty of robbery with arms and were sentenced to death. Their appeals to the Court of Appeal were dismissed. F G

On issue 1, I entirely agree with Onu JSC that the effect of the amendment to the Robbery and Firearms (Special Provisions) Act of 1970 was to give jurisdiction to try offences under the Act to a single judge of the High Court. It was not necessary to constitute a Tribunal for that purpose. See Section 8 (2) of the Act (Cap. 398) of Laws of the Federation H

of Nigeria 1990 which provides that –

“Notwithstanding subsection (2) of this section where the persons designated under paragraphs (b) and (c) of that subsection are unable to sit at the tribunal at the commencement of any trial under this Act the judge sitting alone may proceed with the trial of the offender”.

The learned trial Judge proceeded to try this case sitting alone which he had power to do under the Act. Although this point was argued by the learned counsel for the 2nd appellant in his brief I find that there is no merit in the argument and the issue must fail.

The second point argued by the learned counsel for the 1st and 3rd appellants under issue 1, is the so called “collective verdict or conviction” of the appellants by the learned trial Judge and confirmed by the Court of Appeal. In his judgment, the learned trial Judge after reviewing the evidence and the law applicable to the case concluded thus:-

“In view of my findings and the weapons used by the accused persons and injury inflicted on Osita Okeke PW2 when the accused stole the items embodied in the indictment, I find the accused persons guilty.....and all the accused persons are hereby sentenced to death.....”.

(Underlining mine)

The Court of Appeal, per Nasir PCA on page 204 of the record – referring to the above findings, held –

“Whether the above was described as “collective conviction” or “collective verdict,” the true position is that the appellants “collectively” and individually knew that the learned trial Judge had convicted each of them for the offence of robbery as charged. In my opinion it is serious injustice to allow this appeal on the flimsy ground of “collective conviction.” I am satisfied from the findings and conclusions of the learned trial Judge that none of the appellants was misled in this case.”

I agree entirely with the learned President on this. The findings clearly and without any ambiguity were that “all” the appellants were found guilty of the offence charged. And the sentence also stated clearly that “all” the accused persons are sentenced to death. In my opinion, “all” includes “each” and although there is the legal requirement to sepa-

rately find each accused guilty and convict him and separately sentence or punish him, I agree with the learned President that in this particular case, the findings and sentence pronounced by the learned trial Judge are so clear and the conviction so obvious that the appellants could not have been misled and no miscarriage of justice was occasioned thereby. B

Issue 1, must therefore fail completely. I so find.

On issues 2 and 3 of the 1st and 3rd appellants, I am in agreement with the findings and conclusions of my learned brother Onu JSC on them, and I adopt his reasoning and conclusions as mine. I have C nothing to add thereon.

In the result, I also find no merit in the appeal of all the 3 appellants and I accordingly dismiss each of them. I affirm the decision of the Court of Appeal delivered on the 19th day of December, 1989, confirming that of the trial Court. D

UWAIFO JSC

I read in advance the judgment of my learned brother Onu JSC E and agree fully with it that each of the appeals fails. I shall consider briefly the issues raised on the appeals. The facts have been extensively stated in the leading judgment and ordinarily I would have had no need to repeat any aspect of them. But I consider it useful to refresh with the F salient facts

In this case, the simple facts are that Osita Okeke (p.w.2) and Onyebuchi Onwuzuligbo (p.w. 3) were on 18 July, 1981 at Onitsha accosted by some six armed men after stopping their car which was driven G by p.w.2. This was about 9.30 p.m. The headlights of the car were on. The armed men ordered p.w.2 out of the car but he resisted. He was then attacked with daggers and knives, and in particular the 3rd appellant hit him in the mouth with the butt of the gun he held. It was possible for H the p.w.2 and p.w.3 to identify their attackers from the effect of the headlights of the car driven by p.w.2. As the attack of p.w.2 was going on, p.w.3 escaped. The men eventually dispossessed p.w.2 of his car and drove it away together with 54 packets of music playing records

which p.w.2 and p.w.3 were conveying from Aba where they bought them and a brief case containing N5,000.00. On 20 July, 1981, i.e. two days after the incident, 1st and 2nd appellants approached Obed Onwuzuligbo (p.w.5) who trades in music records and offered to sell him some of the very records which were stolen from p.w.2 and p.w.3. It happened that p.w.5 is the father of p.w.3. In the process of the bargain, the police were alerted. The police came and the 1st and 2nd appellants were arrested. Upon the information given by the 2nd appellant that more of the records were at a house at No. 6 Pam Pam Lane, Fegge, Onitsha, the police went there. More records were recovered in one of the rooms and the 3rd appellant who occupied the room was arrested. The following day a warrant was executed there leading to the recovery of three locally made pistols and forty rounds of cartridges hidden under the bed mattress.

The appellants were prosecuted at the High Court, Onitsha. In his defence, 1st appellant denied being at the scene of crime. He said the 2nd appellant brought some cartons of music records to 3rd appellant's house on 19 July, 1981. He had come down from Kano on July 18 and stayed in 3rd appellant's house. The 3rd appellant is his younger brother but he was not at home when the 2nd appellant brought the records. He admitted being present when the 2nd appellant negotiated with p.w.5 for the sale of the records. He later helped the 2nd appellant to load the records into a taxi in the 3rd appellant's house.

On the other hand the 2nd appellant said in his defence that it was the 1st appellant who brought those records and asked him to help get a customer for him to purchase them. That was how he took him to Iweka Street where p.w.5 was approached. On his part, the 3rd appellant said he locked his door and kept the keys in a place where fowls were kept for his brother, the 1st appellant. When he eventually returned home and opened the door, he saw a carton of records on the table. He also admitted that guns and cartridges were found under his mattress by the police soon after he returned home and was arrested.

The learned trial Judge (Obiesie, J) in his judgment given on 29 May, 1987 came to the conclusion that the prosecution discharged the

onus of proof on it. He rejected the defence of each appellant as wanting in credibility. He found the appellants guilty of armed robbery and consequently he imposed the statutory punishment by recording that “*all the accused persons are hereby sentenced to death.*”

The appeal of each of the appellants was dismissed by the Court of Appeal by a majority decision given on 19 December, 1989.

The 1st appellant in his appeal to this court wants decided (1) whether the failure to enter separate verdicts and sentences against the appellants was not fatal; (2) whether the 1st appellant was sufficiently identified; and (3) whether the 1st appellant’s defence was properly considered. The 2nd appellant relied on a sole issue whether the trial was valid in law. As learned counsel for him conceded in the course of hearing of the appeal that issue could not be resolved in his favour, and accordingly abandoned it, no more will be said about the merit of his appeal. The 3rd appellant raised three issues. The first two are identical with the first two by the 1st appellant. The third one is similar to the 1st appellant’s third issue except that it asks whether all defences set up or open to the 3rd appellant were properly considered.

I shall start with the first common issue. The argument there as regards entering separate verdicts is based on the principle enunciated by this court in *Oyediran & Ors v. The Republic* (1966) NSCC (vol.4) 252 at 255 where it was said that:

“*Where several persons are tried together, it is trite law that separate verdicts must be returned in respect of each of the accused persons and where, as in the present case, there are several counts on the information, separate verdicts must be delivered in respect of the several counts.*”

I think this principle should be understood in relation to what actually happened in that case and how it was finally resolved by this court. In that case, six accused persons were charged. Four were charged with the same counts 1 to 16. Two were charged with count 1 and six others unidentical counts.

At the close of the case, the learned trial Judge returned the following verdicts and sentences:

“I am satisfied that the charges against the accused have been proved by the prosecution beyond reasonable doubt. On the 1st count I find all the accused persons guilty. I find the 1st and 6th accused persons guilty on counts 2, 3, and 4. I find the 1st, 2nd, 4th and 5th accused persons guilty on counts 5, 6 and 7. I find the 1st, 2nd, 3rd and 6th accused persons guilty on counts 8, 9 and 10. I find the 1st, 2nd, 4th, 5th and 6th accused persons guilty on counts 11, 12 and 13.”

The learned Judge then imposed various terms of imprisonment, and classified the accused persons and the counts as follows:

- C “1st Accused All 16 counts
- 2nd Accused All 16 counts
- 3rd Accused Counts 1, 5, 6, 7, 11, 12, 13
- 4th Accused Counts 1, 8, 9, 10, 14, 15, 16
- D 5th Accused All 16 counts
- 6th Accused All 16 counts.”

It was on these verdicts and sentences that the appellants raised two issues namely:

- E 1. Whether there is a legal requirement for separate verdicts where several persons are tried together.
- 2. Whether, where there are several counts on the same information, separate verdicts must be delivered in respect of each of the several counts.

The observation of this court reproduced earlier appears to answer both issues in the affirmative. But this court did not set aside the convictions *en masse* simply because the accused persons were convicted together on some of the counts. It considered the counts on which it could be said that conviction was not returned in respect of particular accused persons and came up with the following results:

- G “1st Appellant Counts 1 – 13
- 2nd Appellant Counts 1, 5 – 13
- H 3rd Appellant Count 1
- 4th Appellant Count 1
- 5th Appellant Counts 1, 5, 6, 7, 11, 12, & 13
- 6th Appellant Counts 1, 2, 3, 4, 8 – 13”.

It will be observed in particular that all the accused persons were found guilty on count 1 and a 'block' or 'collective' verdict was returned thereon by the learned trial Judge against them; so also was the manner of sentence imposed. If the law were to be applied as having established that in respect of that count, separate verdicts must be returned for each accused persons, then it would have been against that principle to uphold the verdict and sentence on count 1 as this court clearly did. It will be recalled that the three appellants in the present case were charged on only one count for which the sentence on conviction is by law not open to the court's discretion. It is the death penalty and nothing else. All three were found guilty and the verdict was returned in 'block' or 'collective' form. The lower court held that there was no possibility that the appellants were misled as to what their respective convictions and sentences were. That is a legitimate conclusion from this court's approach in *Oyediran's* case. It seems to me that a block verdict in respect of the *same count* is not necessarily fatal so long as it is clear what the verdict is and against whom it is made. Ideally, it is advisable to give the verdict, even on such a count, in a way that it refers to every one of the accused persons. This can simply be done by adding the word 'each' appropriately. Although that was not done in this case, the verdict and sentence are unmistakable that they refer to each accused person. I therefore answer issue 1 in the negative.

As regards the question of the identification of the appellants, the evidence of p.w.2 and p.w.3 was such that a formal identification parade was unnecessary. The two witnesses on separate occasions were able spontaneously to recognize them as those who accosted them that night. This was when p.w.2 saw them for the first time thereafter at the police station and p.w.3 saw 3rd appellant at his residence at No. 6 Pam Pam Lane in company of the police. There is nothing to suggest that they were prompted or guided to pick on the appellants so as to make the identification an accomplished fact – a *fait accompli*. The fact that there is evidence that the music records were found in the possession of the appellants soon after the theft in addition to the 3rd appellant having guns and ammunition hidden under his mattress would, I think, strengthen the

reliability of the identification so as to obviate any possibility of a miscarriage of justice arising from such identification. I answer the common issue 2 in the affirmative.

As for the defence set up by the 3rd appellant, namely that he was not in Onitsha at the material time of the armed robbery but was at a place called Adazi – a sort of alibi – the learned trial Judge observed:

“Counsel for the accused persons raised the issue of alibi as a defence. A thorough study of the statements of the accused persons in Exhs. C, D, E and H indicates that the purported defence was not raised at the earliest opportunity. Furthermore details of the alibi should also be furnished. It is not enough to say that one was at Nkpor or Adazi. Furthermore, the burden of establishing the defence lies on the accused although it is conceded that it can be discharged by the balance of probability and not by proof beyond reasonable doubt.”

This observation was approved by the Court of Appeal, quite rightly in my view, having regard to the evidence in support of the alleged *alibi*. In order to be able to rely on *alibi*, an accused must give a sufficient lead to the police at the earliest opportunity. The facts supporting it are not to be given half-heartedly or sprung upon the prosecution or the court. *Alibi* is a radical defence and simply means an accused was somewhere else at the material time an offence was committed and could not possibly be at the scene to partake in it: See *Nwabueze v. The State* (1988) 4 NWLR (pt.86) 16; *Ozaki v. The State* (1990) 1 NWLR (pt.124) 92. If succeeds, it would mean the accused was in no way involved in crime, unlike other defences which may still have implicated or connected him with a particular offence. For example, the defences of automatism or of accident under s.24 of the Criminal Code, mistaken (s.25), instantly (s.28), provocation (s.284) serves as excuse for the offences in which the accused is implicated. The defence of *alibi* is quite different. The facts of the *alibi* are known to him and such witnesses may be available. He should therefore disclose them with necessary details and particulars at the earliest opportunity so as to put the burden on the police to check on them and deal with them with some finality: See *Esangbedo v. The State* (1989) 4 NWLR (pt.113) 57. If he does not, the police cannot be expected to go

on a wild goose chase. In the present case, the 1st appellant did not disclose sufficient facts and so his *alibi* became a non-issue. Also, there is no defence set up by the 1st appellant that was not adequately considered. The case against the appellants was very strong and clearly proved, even on the basis that they were found in possession of the stolen goods B soon after the offence, and they had no reasonable explanation as to that possession. I answer the respective issue 3 in the affirmative.

For the above reasons and the fuller ones given by my learned brother Onu JSC, I find no merit in the appeals of the 1st and 3rd appellants. I have already pointed out that the appeal of the 2nd appellant collapsed when the only issue canvassed by him was seen to have no basis, and his counsel rightly conceded. I accordingly dismiss each of the three appeals and affirm the decisions of the two lower courts.

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