

SUPREME COURT OF NIGERIA
MONDAY 25TH FEBRUARY, 2002. SC. 246/2001
CORAM:- M. E. OGUNDARE, S. U. ONU, S. O. UWAIFO,
A. O. EJIWUNMI, E. O. AYOOLA, JJSC

ANTHONY ISIBOR APPELLANT
V.
THE STATE RESPONDENT

EVIDENCE - Contradictions - Effect - Contradictions are deemed irrelevant - Where they do not affect the substance of issue for determination (H1)

ARMED ROBBERY - Identification of robbers - Appellant's argument - Purpose - Contention that PW4 could not identify the robbers - Was made to assist court on what to believe (H2)

EVIDENCE - Evaluation - Where trial court made proper evaluation - Appellate court is not entitled to interfere - Particularly when evaluation was based on credibility of witness (H3)

EVIDENCE - Findings of trial court - Substituted with Doctrine of recent possession - Correctness of - Since there is direct evidence before trial court - Court of Appeal wrongly introduced the doctrine (H4)

COURTS - Conviction - Correctness of - The conviction was proper - Since error made by Court of Appeal - Has not affected case against appellant (H5)

FACTS

Accused/appellant was stopped by policemen at a check-point near Benin City. Appellant was at the material time, in possession of a Peugeot 504 car and a lady's bag containing N600.00. Appellant could not give a satisfactory explanation of how he came about the items. Hence, the police arrested and put him in custody. Later on, it was discovered that appellant and others (now at large) had robbed the owner of the vehicle at a gun point. Appellant was consequently

arraigned before the High Court of Oyo State, Ibadan for armed robbery contrary to section 1 (2)(a) of Robbery and Firearms (Special Provisions) Act No 47 of 1970 (as amended).

Prosecution called several witnesses including PW4 and PW5 who testified of how the robbery incident took place. Both witnesses gave slight contradictory testimonies of how the robbery took place. Appellant contended that the contradictions in the testimonies of the witnesses should be resolved in his favour. At the end of trial, the court convicted and sentenced appellant to death. Not satisfied, appellant appealed to the Court of Appeal, Ibadan. The court in its judgment introduced the doctrine of recent possession. Nevertheless, the appeal was dismissed and conviction also affirmed. Appellant was again aggrieved. Hence, he filed appeal at Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether or not the weight and quality of evidence adduced at the trial (court) and upheld by the lower court can sustain a sentence of death passed on the appellant.

2. Whether or not the lower court was right in evaluating the evidence obtained in Benin City which was outside the locus criminis at Ibadan as part of the direct evidence establishing the appellant’s guilt.”

HELD (Unanimously dismissing the appeal per UWAIFO JSC)

EVIDENCE - Contradictions - Effect

1. There is no doubt that the contradictions pointed out do exist in the evidence of PW4 and PW5. But in considering a case where contradictions have been recorded in the evidence of witnesses, it is important always to assess the materiality of those contradictions to the case presented. It is well established that contradictions which do not affect the substance of the issue to be decided are irrelevant. The contradictions must be shown to amount to a substantial disparagement of the witness or witnesses concerned, making it unsafe to rely on such witness or witnesses. (p. 276 B)

Identification of robbers - Appellant's argument - Purpose

2. Learned counsel therefore invites this court to hold that PW4 could not claim he observed the armed robbers well, particularly, as submitted in the brief of argument: "it has become part of our history of tragedies in this country that robbery victims who risk prying into the faces of the robbers are usually instantly shot fatally to prevent identification." In my view, this argument is one that might have been canvassed at the trial court in order to, or if it will, assist the court make up its mind as to who and what to believe. (p. 276 F)

EVIDENCE - Evaluation

3. When a trial court has performed its primary duty of assessing and evaluating the evidence before it and has made findings of fact which the evidence justifies, an appeal court is not entitled to make contrary findings, particularly when such findings depend largely on the credibility accorded to the witnesses by the trial court. It is normally within the province of the trial court, which has the advantage of hearing and watching witnesses testify, to assess their credibility. (p. 277 B)

EVIDENCE - Findings of trial court

4. It is clear to me that the doctrine of recent possession is inappropriate for application in this case. The appellant himself admitted he stole the vehicle in question and the court below so adverted to his evidence. The trial court had direct evidence before it and relied solely on it. The court below was therefore in error to have gone beyond the findings of the trial court upon the direct evidence before it to introduce the doctrine of recent possession, which is circumstantial evidence, to establish the offence charged. That was untidy, and was inconsistent with the direct evidence and the clear admission of the appellant. (p. 278 D)

Conviction - Correctness of

5. However, this has not affected the case against the appellant. I am satisfied that the conviction was proper and that the court below rightly affirmed the same. It was in view of this I

dismissed this appeal on 29 November, 2001. (p. 278 G)

NOTABLE POINTS OF INTEREST

EJIWUNMI JSC

1. Prosecution to establish the guilt of accused

B It seems to me after a careful perusal of the issues, that in framing them, that care should have been taken to remember that in an appeal against conviction for a crime, the focus has always been whether the guilt of the Appellant was established beyond reasonable doubt. This is because it is settled law that the burden lies on the prosecution to establish the guilt of the Appellant as stated above. C For that reason, the prosecution has a right to call evidence that relates to and connects the accused with the offence for which he stands charged. The evidence does not have to emanate only from what D was referred to as the locus criminis in the second of the grounds of appeal and in the brief filed for the Appellant. (p. 282 H)

2. When appellate court may reverse finding of trial court

E It must be borne in mind that an Appellate court will not ordinarily reverse the finding or conclusion of the trial court. An Appellate court may also reverse the verdict of the trial Court if it considers that it is unreasonable in the light of its knowledge both of the primary facts found by the trial Court and of the inferences which the trial Court F drew from the primary facts. (p. 284 B)

3. Identification parade was not stage-managed

G As the allegations so made by the learned counsel for the Appellant have not been supported by concrete facts, the contention that the identification parade was stage-managed must be rejected. It is therefore my view that without showing that the witnesses were assisted in any manner to identify the Appellant in the identification parade, or it was otherwise irregular, this contention that the identification parade was not properly conducted must be rejected. (p. 284 F) H

REPRESENTATION

P. Onegbedan Esq., with B. Offiong Esq., for the appellant
A. A. Lawal Esq., A-G Oyo State, with A. I. Raheem Esq., Senior

Legal Officer, for the respondent

CASES REFERRED TO

- Arehia v. The state (1982) 4 SC 78
- Enahoro v. The state (1965) NSCC (vol.4) 98
- Nasamu v. The State (1979) 6-9 SC 153 B
- Atanda v. The State (1983) 6 SC 1
- Nwamukoro v. The State (1995) 1 NWLR (Pt. 372) 435
- Efe v. The State (1976) 11 SC 75
- Bozin v. The State (1985) 2 NWLR (Pt. 8) 465 C
- Oseni v. The State (1984) 11 SC 44
- Atanda v. The State (1983) 6 SC 1
- Ikemson v. State (1989) 3 NWLR (Pt. 110) 455
- R. v. Olagunju (1961) All NLR 21
- Onafowokan v. The State (1986) 2 NWLR (Pt. 23) 496 D
- Sugh v. The State (1988) 2 NWLR (Pt. 77) 475
- Ahmed v. The State (2000) 7 NWLR (pt. 612) 641

STATUTE REFERRED TO

Robbery and Firearms (Special Provisions) Decree No. 47 of 1970, E
as amended by Robbery and Firearms (Special Provisions) Amend-
ment (No. 8) Decree of 1974, s. 1(2)(a)

LEAD JUDGMENT BY UWAIFO JSC

On 29th November, 2001 when this appeal came on for hear- F
ing, I dismissed it having earlier perused the record and the briefs of
argument filed in addition to hearing the oral submissions of both
counsel that day. I then reserved the reasons for my judgment till
today. G

The appellant was charged with armed robbery contrary to
and punishable under section 1(2)(a) of the Robbery and Firearms
(Special Provisions) decree (now Act) No.47 of 1970 as amended by
the Robbery and Firearms (Special Provisions) (Amendment) De-
cree (Act) No. 8 of 1974. The particulars of the offence were stated H
to be that on or about the 5th day of April, 1980 along Old Ife Road
by the Express Way of Ibadan, the appellant armed with firearms,
and in the company of other persons unknown, robbed one Alhaji
Y. A. Afolabi of his Peugeot 504 car with registration No. OYB 2118

A valued at about N9,000.00 and a lady's bag containing N600.00.

Without going into much details of the facts, the evidence which was accepted by the two courts below, in summary, was that the appellant was on 6 April, 1980 at about 1.30 a.m. at a police check point near Benin City found in possession of a Peugeot 504
B car with registration No. OYB 2118 A. He drove it from Lagos direction. After some initial questioning by the police, he was ordered to come out of the vehicle and thereafter was arrested. On being questioned further as to how he came by the car in which some women wears, passport photograph of a woman and a bunch of keys were
C found, he said those items belonged to his boss and that she permitted him to drive her car to Benin to visit his sick father. The police were not convinced; so they took him into custody. It later turned out that the vehicle had been snatched at gun point on 5 April, 1980
D between 8.30 p.m and 8.45 p.m from the owner, Alhaji Yekini Abolade Afolabi, who testified as PW4, on his way to attend a marriage party at Green Spring Hotel, Ibadan in the company of one Mrs. Yetunde Adegbola, PW5.

The appellant was found guilty of armed robbery by
E Olowofoyeku, J, sitting at the High Court, Ibadan on 4 November, 1980 and sentenced to death. His appeal against the conviction was dismissed by the Court of Appeal, Ibadan Division, on 28 June, 2001. He has further appealed to this court upon two issues, namely:

F “1. *Whether or not the weight and quality of evidence adduced at the trial (court) and upheld by the lower court can sustain a sentence of death passed on the appellant.*

G 2. *Whether or not the lower court was right in evaluating the evidence obtained in Benin City which was outside the locus criminis at Ibadan as part of the direct evidence establishing the appellant's guilt.*”

The two eye-witnesses, p.w.4 and p.w.5, gave their account of how the armed robbery took place. They both testified to the effect that on the night in question (about 8.30 to 8.45 p.m.) on
H their way to Green Spring Hotel, Ibadan in the car (No. OYB 2118 A) driven by PW4 as soon as they turned from the Express Way into an un-tarred road, they ran into a barricade created with a taxi cab No. OY 6898 A across the said road. They had to stop and while the headlight of their car was on, they saw three men alight from the taxi

cab. Two of them demanded for the cab at gunpoint and the PW4 handed over the ignition key without hesitation. In his evidence, PW4 said he observed all three men well: two were tall and the third short; one of the two tall men wore a beard and that was the appellant. They all drove away his car, abandoning the taxi cab. He said he took the ignition key of the taxi cab when he observed it was not removed by the armed robbers and lodged a report at Iyaganku police Station. The police took possession of the taxi cab. Upon a public announcement of the incident on the television, the driver of the taxi cab (Basiru Popoola, PW6 who had earlier made a report at Agodi Police Station that he had been dispossessed of his taxi cab, showed up at the Iyaganku police Station. His taxi cab was later returned to him.

The appellant has argued on issue 1 that there were discrepancies between the evidence of PW4 and PW5 which weakened the case of the prosecution. These discrepancies were set out in the appellant's brief of argument wherein regard to the robbery incident, PW4 was recorded to have said –

“Two of them (the three men) came to my side of the car whilst the third went to Mrs. Adegbola's side. I switched off the ignition and came out of the car with the key.” But PW5 narrating the same incident said –

“The three men all went to Afolabi's side of the car.”

As to how money was demanded, PW4 said –

“One of them pointed a shot gun at me and made a demand for the ignition key... He further demanded to know how much money I had on me. I said I had no money on me but informed him quickly that there was some money in the lady's hand bag on the back seat of my car. Two of them were tall and the third person was short. One of the two tall men was wearing a beard... The accused was one of those three persons and he was one of the two tall ones. He was the one wearing beard.” But PW5 on the same event said –

“The short one of them asked for what we had on us. Mr. Folabi said he had nothing on him. I then said I had my bag at the back of the car.”

While PW5 said all three men went to PW4's side of the car, PW4 himself said only two came to his side and that the third person went to PW5's side. In view of the discrepancies, learned counsel for

the appellant has raised the question as to who actually made the demand for the ignition key and money among the three men. His submission is that this would be a matter of mere speculation which the court should not engage in to choose which of the two witnesses to believe, citing *Arehia v. The State* (1982) 4 SC 78; *Ahmed v. The State* (2000) 7 NWLR (pt. 612) 641 at 672.

There is no doubt that the contradictions pointed out do exist in the evidence of PW4 and PW5. But in considering a case where contradictions have been recorded in the evidence of witnesses, it is important always to assess the materiality of those contradictions to the case presented. It is well established that contradictions which do not affect the substance of the issue to be decided are irrelevant. The contradictions must be shown to amount to a substantial disparagement of the witness or witnesses concerned, making it unsafe to rely on such witness or witnesses: see *Enahoro v The State* (1965) NSCC (vol.4) 98 at 113. In the present case, the issue is not who demanded money or the ignition key. The simple issue is whether the car in question was snatched from the PW4 by persons armed and whether the appellant was one of those persons. In order to establish whether the appellant was one of them, it is not necessary to show in the circumstances that he demanded for money or the ignition key. It is enough if the evidence is that he was present at the scene and was armed, or in the company of armed persons.

The further contention of learned counsel for the appellant is that the encounter of P.W.4 with the armed robbers was sudden and that from his evidence he said he panicked when he saw them. ***Learned counsel therefore invites this court to hold that PW4 could not claim he observed the armed robbers well, particularly, as submitted in the brief of argument: "it has become part of our history of tragedies in this country that robbery victims who risk prying into the faces of the robbers are usually instantly shot fatally to prevent identification."*** In my view, ***this argument is one that might have been canvassed at the trial court in order to, or if it will, assist the court make up its mind as to who and what to believe.*** The learned trial judge rejected the story of the appellant as to how he came by the car of P.W.4. On the other hand he said:

"I accept the testimony of the 4th and 5th prosecution witnesses as regards the manner by which the accused and two others robbed 4th P.W. of his Peugeot 504 saloon car No. OYB 2118 A when it contained among other things the amount of N600.00 belonging to the 5th P.W. I also believe and accept the evidence of the 4th and 5th prosecution witnesses that at the time of the said robbery the accused was armed with a fire arm."

When a trial court has performed its primary duty of assessing and evaluating the evidence before it and has made findings of fact which the evidence justifies, an appeal court is not entitled to make contrary findings, particularly when such findings depend largely on the credibility accorded to the witnesses by the trial court. It is normally within the province of the trial court, which has the advantage of hearing and watching witnesses testify, to assess their credibility: see *Nasamu v. The State* (1979) 6-9 SC 153 at 159; *Onafowokan v. The State* (1986) 2 NWLR (pt.23) 496 at 497; *Sugh v. The State* (1988) 2 NWLR (pt.77) 475. In this particular case, the evidence of the appellant that he stole the car when he found it parked and unoccupied and drove it away, even when a man and a woman later ran after him, was rejected by the learned trial judge. The learned trial judge also considered that that story was in conflict with the story he earlier told the police that the owner of the car was his boss and that she allowed him to drive it to Benin to see his sick father. The evidence that the car was snatched from PW4 was not difficult for the learned trial judge to accept as the appellant himself made his presence at the scene of crime a fact not in dispute. What the trial judge had to decide was whether the appellant was armed and whether he acted alone. He decided, quite rightly in my view, that he was armed and in company with two others: see *Atanda v The State* (1983) 6 SC 1 at 3-4. The evidence of PW6 Basiru Popoola, was also what the learned trial judge could not overlook. He said:

"...I have the evidence of 6th PW Bashiru Popoola who testified that he was robbed of his taxi cab a day before it was used for the robbery of the 4th P.W.'s car and that the police had since returned his taxi cab to him."

The use of the taxi cab, for the purpose of robbery, its abandonment at the scene immediately after the robbery, the recovery

thereof by the police at the scene shortly after the robbery and the fact of its having been the subject of a different robbery a day earlier all make it impossible to give any credence to the story of the accused as to how he stole the Peugeot 504 saloon car no. OYB 2118 A."

Both PW4 and PW5 testified that the appellant and two others alighted from that taxi cab while armed with fire-arm to rob the PW4 of his car with threat of violence. I must therefore answer issue 1 in the affirmative.

Issue 2 is whether or not the lower court was right in evaluating the evidence obtained in Benin City which was outside the locus criminis at Ibadan as part of the direct evidence establishing the appellant's guilt. The argument canvassed under this issue is that the lower court introduced the doctrine of recent possession on the basis that the car that was robbed from its owner was found with the appellant some five hours after the robbery implying that he must be the thief or armed robber. Learned counsel for the appellant argues that the issue of recent possession was not raised before the lower court. ***It is clear to me that the doctrine of recent possession is inappropriate for application in this case. The appellant himself admitted he stole the vehicle in question and the court below so adverted to his evidence. The trial court had direct evidence before it and relied solely on it. The court below was therefore in error to have gone beyond the findings of the trial court upon the direct evidence before it to introduce the doctrine of recent possession, which is circumstantial evidence, to establish the offence charged. That was untidy, and was inconsistent with the direct evidence and the clear admission of the appellant.***

However, this has not affected the case against the appellant. I am satisfied that the conviction was proper and that the court below rightly affirmed the same. It was in view of this I dismissed this appeal on 29 November, 2001.

I need to add here that when this appeal was being heard, this court was told that the appellant had been released from custody. The learned Attorney-General of Oyo State, Mr. A. A. Lawal, who represented the respondent confirmed that he was aware of that information. We were shown a letter dated 16 January, 2001 reference No. PHAB.282/VIII/072 addressed by the Asst. Controller

of Prisons Welfare for the Controller of Prisons Ogun State Command to the Director of Public Prosecutions, Ministry of Justice, Ibadan, the body of which reads:

"I am directed to refer to your letter reference number 4495/275/18 dated 20th December, 2000 on the above subject matter and to inform you that ANTHONY ISIBOR was among the prisoners granted Amnesty/Release of 646 inmates from detention by the Head of State Commander-in-Chief of the Armed Forces – General Abdul-Salam Abubakar on the 5th May, 1999."

A Photostat copy of the said radio message that was attached to the letter cannot be better described than as hurriedly handwritten scraps of information un-befitting of any public office let alone the Office of the Head of State. It does not seem to have any aura of authority or authenticity about it: no official stamp, no decipherable originating officer, no office of origin. If however the message is authentic, then I have to say with every sense of concern that it is a denigration of our collective respect for whatever is presented as emanating from the office of the Head of State.

OGUNDARE JSC

I have read in advance the reasons given by my learned brother Uwaifo JSC for dismissing this appeal on 29th November, 2001. I agree with his reasons which I adopt as mine. It is for the same reasons that I, too, dismissed the appeal on 29th November 2001. I have nothing more to add.

ONU JSC

I read before now the judgment of my learned brother Uwaifo, JSC just delivered. I agree with his reasoning and conclusion.

EJIWUNMI JSC

This appeal was heard on the 29th November 2001. After hearing the oral arguments of counsel who appeared for the parties in this appeal, I decided to dismiss the appeal and reserved my reasons for dismissing the appeal till today.

The facts that led to the arrest and prosecution of the Appellant that resulted in his conviction for the offence of armed robbery contrary to and punishable under section 1(2)(a) of the Robbery and Firearms (Special Provisions) Decree No. 47 of 1970, as amended by the Robbery and Firearms (Special Provisions) Amendments (No.8)

B Decree of 1974, may be stated briefly as follows:

On or about the 5th day of April 1980, one Alhaji T. A. Afolabi who gave evidence at the trial as the 4th PW was the driver of his Peugeot 504 saloon car. With him in the said car was one Mrs. Adegbola, who also gave evidence as the 5th PW. They were on the expressway facing the direction of Ife and just before getting to the end of the expressway in that direction, they turned into an un-tarred road. Shortly after entering the un-tarred road they saw from the lights of their car that the road in front of them had been barricaded by a taxicab. 4th PW stopped the car but had the headlamps of the car fully on. They observed three men immediately alight from the taxicab. Two were fairly tall and one was short. One of the tall men was carrying a gun and 4th PW also observed that he wore a small beard. 4th PW said he was ordered out of the car and the Appellant whom he said was the one carrying the gun and pointing the same at him ordered him to surrender the ignition key of the car and he complied immediately. At that stage 5th P.W. came out of the car. One of the robbers demanded to know how much money they had on them and they immediately answered that there was money in the lady's handbag on the back seat of the car. 5th PW. observed then that the Appellant was pointing a gun at the 4th P.W. The robbers then got inside 4th P.W.'s Peugeot car, turned the car back and drove it into the expressway towards the direction of Lagos.

G The robbers having abandoned the taxicab with which they blocked the path of 4th PW's car, 4th PW then peeped inside the abandoned taxicab; in the taxicab he saw the ignition key and removed it. Thereafter, the 4th PW and 5th PW reported the robbery incident at the expressway tollgate police station. There, 4th PW was given an escort of ten armed policemen back to the scene of crime. Futile searches for the stolen car were made and police eventually drove the abandoned taxicab back to the Iyaganku police station.

While the car was thus in the custody of the police following the announcement on the television about the car, the 6th PW Basiru

Popoola came forward to identify the taxicab as that which was stolen from him when four persons attacked him on 4th of April 1980 as he was driving the taxicab No. OY 6898 A. He then reported the incident at the Agodi police station.

Now, the 1st PW Corporal Yusuf Raji from the Benin Police Command testified as to how on the 6th of April 1980, whilst in company of other police officers at about 1.30 a.m., the Appellant was arrested at a police check point in Benin whilst driving the Peugeot 504 saloon No OYB 2118A towards the direction of Benin from the direction of Lagos. The Appellant was alone in the car. When he was stopped, he was ordered to come down from the car. After he came down from the car, the car was searched. Inside the car were found some female properties such as bra, panties and other undies and a woman's bag on the passenger seat in the front. In the glove compartment were found a driving licence bearing the passport photograph and name of a woman. When the Appellant was ordered to open the boot of the car, a bunch of keys that looked like those of an hotel was found. When asked how he came about the properties, the Appellant said that the car belonged to his boss. And when further interrogated, he said that his boss permitted him to drive the car to Benin to visit his sick father. As the Appellant, whose account of his movements and how he came by the car was not satisfactory, the police detained him in Benin. He was eventually brought to Ibadan where he made a statement to the police and was identified by the 4th PW and 5th PW at an identification parade. At his trial, the Appellant gave evidence in his own defence.

After the learned trial judge had carefully considered his evidence and that of the prosecution, he reached the conclusion that the prosecution had by the evidence led against him established beyond reasonable doubt the guilt of the Appellant and he was convicted accordingly. Upon his conviction, the Appellant appealed to the Court below which dismissed his appeal. In dismissing his appeal, the Court below, per Onalaja JCA, who read leading judgment and in upholding the findings of the trial court said inter alia, thus:-

"To sustain the offence of Robbery the Respondent must prove not only that robbery was committed by the accused person, but also that the accused was armed with firearms or offensive weapons at the time of the incident and that weapon or firearms comes within

the meaning of section 9 of the said Act so decided in the case of Nwamukoro v The State (1995) 1 NWLR (pt. 372) page 435. In the instant case Respondent established by cogent, conclusive evidence beyond reasonable doubt that appellant (1) stole the Peugeot 504 saloon car OYB 2118A from 4th PW, the owner of the said vehicle (2) that at the time of stealing the car appellant used actual violence when he pointed a gun at the 4th PW and 5th PW who surrendered the ignition key of 4th PW's car to appellant and (3) that appellant used the type of threat or violence by actually armed with a short gun. The totality of evidence of the 4th, 5th and 1st PW and evidence adduced by the prosecution were so strong, cogent and compelling that the trial court had no alternative than the conviction of appellant accordingly."

The Appellant has now appealed further to this Court. Pursuant thereto, two grounds of appeal were filed. They read thus:-

"GROUND ONE

The judgment of the Lower Court is unreasonable, unwarranted and cannot be supported by the weight and quality of the direct evidence adduced.

GROUND TWO

The Lower Court erred in law for evaluating the evidence obtained in Benin City which was outside the locus criminis at Ibadan as part of the direct evidence establishing the Appellant's guilt".

In this Court the learned counsel for the Appellant filed in accordance with the Rules, an Appellant's brief and also a reply brief, after he was duly served with the Respondent's brief. In the said Appellant's brief, two issues were identified for the determination of this appeal. They are:-

(1) Whether or not the weight and quality of evidence adduced at the trial and upheld by the lower Court can sustain a sentence of death passed on the Appellant.

(2) Whether or not the lower Court was right in evaluating the evidence obtained in Benin City which was outside the locus criminis at Ibadan as part of the direct evidence establishing the appellant's guilt.

It is, I think, desirable to comment briefly upon the issues framed for the Appellant before the submissions made thereon are considered. It seems to me after a careful perusal of the issues, that in

framing them, that care should have been taken to remember that in an appeal against conviction for a crime, the focus has always been whether the guilt of the Appellant was established beyond reasonable doubt. This is because it is settled law that the burden lies on the prosecution to establish the guilt of the Appellant as stated above. For that reason, the prosecution has a right to call evidence that relate to and connect the accused with the offence for which he stands charged. The evidence does not have to emanate only from what was referred to as the locus criminis in the second of the grounds of appeal and in the brief filed for the Appellant. Be that as it may, it would appear from the grounds of appeal and the issues set out above that the real complaint of the Appellant is that his conviction was not established beyond reasonable doubt, and that the Court below was wrong to have adverted in its consideration of the evidence led against the Appellant the evidence of what took place at Benin when he was arrested. In this regard, it is pertinent to refer to the issues framed in the Respondent's brief. They are:-

"(1) Whether or not there was sufficient evidence before the trial Court to sustain the appellant's conviction on a charge of armed robbery contrary to section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act No. 47 of 1970.

(3) Whether it was right for the lower Court to rely on the doctrine of recent possession under section 149(a) of Evidence Act as part of prosecution case to affirm the judgment of the trial Court."

Now what was canvassed for the Appellant in the Appellant's brief with regard to the nature of the evidence adduced by the prosecution and upon which the Appellant was convicted falls into three principal parts. The first part of the complaint of the Appellant is the contention that the Court below should not have upheld the finding of the trial Court that the 4th PW and 5th PW gave credible evidence with regard to how the vehicle, Peugeot 504 saloon car Reg. No. OYB 2118A, belonging to the 4th PW and in which they were traveling, was stopped and stolen at gunpoint by the Appellant and his confederates. In support of that contention references were made to the contradictions in the evidence of these two witnesses, with regard to who demanded money from them and who also pointed a gun at 4th PW before the Appellant and his confederates robbed him of his vehicle. It is clear from a perusal of the written record that this argu-

ment is similar to that which was advanced before the Court below. That argument was rejected by the Court below. In rejecting that argument, the Court below rightly took the view that the alleged contradictions referred to by the Appellant's counsel did not show that the conclusion reached by the learned judge on the evidence of the 4th PW and 5th PW was perverse as the pieces of evidence given by them did not establish the fact that the Appellant was not one of those who robbed the 4th PW of his vehicle. It must be borne in mind that an Appellate court will not ordinarily reverse the findings of a trial Court unless there was no evidence to support such finding or conclusion of the trial court. An Appellate court may also reverse the verdict of the trial Court if it considers that it is unreasonable in the light of its knowledge both of the primary facts found by the trial Court and of the inferences which the trial Court drew from the primary facts. See *R. v. Olagunju* (1961) A All N.L.R 21; *Efe v. State* (1976) 11 S.C. 75. In the instant appeal, having read the evidence on the printed record and the findings made thereon by the trial Court, I have no reason to depart from the conclusion reached by the trial Court and affirmed by the appellate Court that the 4th PW and 5th PW are credible witnesses.

Another argument put forward for the Appellant is that the identification parade conducted by the police in which the Appellant was identified by the 4th PW and 5th PW was not properly conducted. It was contended for the Appellant that the parade was stage-managed. The thrust of the argument of learned counsel in this respect appears to be that the witnesses had an opportunity of seeing or identifying the Appellant before he was put on the identification parade. As the allegations so made by the learned counsel for the Appellant have not been supported by concrete facts, the contention that the identification parade was stage-managed must be rejected. In this context, it must be remembered that when the robbery incident occurred, the witnesses had very full and clear opportunity of identifying the Appellant and the other persons who attacked them. This is because the evidence on record and which remained unchallenged is that when the Appellant and his confederates alighted from the taxicab with which they had blocked the road on which the 4th PW was driving his car at that time of the night, he turned the full head lights of the car on them. With the aid of the full headlights of

the car and the light of the moon in evidence, the witnesses had every opportunity of identifying the Appellant and his confederates. Indeed the witnesses gave a clear description of each of them in relation to one another. It is therefore my view that without showing that the witnesses were assisted in any manner to identify the Appellant in the identification parade, or it was otherwise irregular, this contention B that the identification parade was not properly conducted must be rejected. See *Bozin v. State* (1985) 2 NWLR (Pt. 8) 465; *Ikemson v. State* (1989) 3 NWLR (Pt. 110) 455.

The Appellant in his brief has also argued that the Court below was wrong to have applied the law of recent possession to affirm C the conviction of the Appellant. The facts disclosed on record no doubt established that the Appellant was stopped as he was driving the stolen car into Benin on the day following its robbery from the 4th PW. It is no doubt the law that if a person is found in possession D of property, which was property reported to have been recently stolen, with or without violence from another person, it is open for a trial Court to convict that person of the theft. See *R v. Loughlim* 35 CR App. P. 69; See S. 149 (a) of the Evidence Act Laws of the Federation of Nigeria 1990; *Isiaka Ayinde Oseni v. The State* (1984) E 11SC 44 and *In Re. Karimu Atanda v. The State* (1983) 6 SC 1. However, it must be pointed out that resort is usually made by the prosecution to the Doctrine of Recent possession where there was no direct evidence available to establish the guilt of the person charged F with a criminal offence such as that disclosed in this case. But in the instant appeal, there was no dearth of evidence to establish beyond reasonable doubt the guilt of the Appellant. That evidence had been properly considered and evaluated by the trial Court before the Appellant was found guilty. The Court below has also approved the G appraisal of the evidence led at the trial. The evidence with regard to the arrest of the Appellant in Benin, no doubt, formed part of the pieces of evidence, which led to the conviction of the Appellant. In my humble view it is not necessary in the circumstances to import the doctrine of recent possession to uphold the guilt of the Appellant. To H that extent, the submission of the learned counsel for the Appellant is right. However, that cannot be of any avail for the Appellant as I am of the firm view that the guilt of the Appellant was established beyond reasonable doubt upon the evidence led at his trial. The ap-

peal was therefore dismissed by me for the reason given above.

Before concluding this judgment, it is necessary to refer to the information given to the Court during the hearing of this appeal that the Appellant had been discharged from prison custody. The learned Attorney General of Oyo State, Mr. A. A. Lawal who appeared for the Respondent confirmed this fact. He then showed the Court a letter dated 16th January 2001, reference No. PHAB.282/VIII/072 addressed by the Assistant Controller of Prisons Welfare for the Controller of Prisons, Ogun State Command to the director of Public Prosecutions, Ministry of Justice, Ibadan. The relevant portion of the letter reads:-

"I am directed to refer to your reference number 4495/275/18 dated 20th December, 2000 on the above subject matter and to inform you that Anthony Isibor was among the prisoners granted Amnesty/Release of 646 inmates from detention by the Head of State Commander-in-Chief of the Armed Forces –General Abdul-Salam Abubakar on the 5th May, 1999. Attached herewith is the Radio message relayed to Controller of Prisons, Ogun State in respect of the affected inmates, please."

It is clear that the Appellant from the above, has been made a free man by the fiat of the Head of State Commander-in-Chief of the Armed Forces-General Abdul-Salam Abubakar on the 5th May 1999. However, having regard to the verdict of this Court in this appeal, it does now appear that the Appellant cannot be punished as provided by law in respect of the offence for which he stands convicted. It is hoped that deliberate effort would be made in the future to avoid situations of this kind when exercises of this nature are carried out.

AYOOLA JSC

I have had the privilege of reading in draft the reasons for judgment dismissing this appeal given by Uwaifo, JSC. I entirely agree with the reasons he gives and I adopt them as reasons for my judgment dismissing the appeal on 29th November, 2001.