

SUPREME COURT OF NIGERIA

9TH MARCH 2007. SC. 103/2005

**CORAM:- I. L. KUTIGI CJN, A. I. KATSINA-ALU, N. TOBI,
S. A. AKINTAN, I. F. OGBUAGU, JJSC**

1. GOLDEN DIBIE
2. FRIDAY IYAMA APPELLANTS
3. GODFREY OJOMU
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Arraignment - Propriety of - Armed robbery - Where the record shows that appellants - Made their pleas in English that they clearly understood - Their arraignment is proper under s. 215 CPL (H1)

CRIMINAL PROCEDURE - Contradictions - Materiality of - Where the contradictions are trivial discrepancies - That did not go to the root of the charge - Lower courts' finding will not be disturbed (H2)

CRIMINAL PROCEDURE - Armed robbery - Proof - Confessional statements - Were rightly relied upon - After finding corroboration though corroboration is not mandatory - Case was proved beyond reasonable doubt (H3)

CRIMINAL PROCEDURE - Armed robbery - Link with the offence - Is established - As accused persons were convicted - On their voluntary confessional statements (H4)

FACTS

The appellants who were students of a polytechnic were jointly arraigned before the High Court of Delta State holden at Agbor upon an information containing two counts. Appellants were charged with conspiracy to rob, and armed robbery punishable under the Robbery and

Firearms (Special Provisions) Decree, 1984 as amended. On 22/10/1999, the trial court took the pleas of the appellants. The record on that day showed that all the appellants pleaded not guilty to the charges in English Language. In proof of its case, the prosecution called five witnesses. Each of the accused persons testified on his own behalf and called no witness.

At the close of evidence and addresses of counsel, the learned trial judge convicted and sentenced the appellants to death by hanging. Their appeals to the Court of Appeal were dismissed. Appellants have further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the entire trial was not a nullity?
2. Whether the lower court was right in holding that the contradictions in the case of the prosecution were mere discrepancies? (sic)
3. Whether the case was proved beyond reasonable doubt as required by law?

The second and third appellants added a fourth issue which is whether they were properly linked with the offence as charged.

HELD (Unanimously dismissing the appeal per **KATSINA-ALU JSC**)

Arraignment - Propriety of

1. In *Adeniji v. The State* (supra) I had this to say on section 215 of the Criminal Procedure Law:

“..... Thirdly, the appellant understood English. This is evident in the record. He made his plea and also gave his evidence in English. The omission by the learned trial Judge to state that he was satisfied that the Appellant understood the charge is of no moment. Where the accused understands the language of the court - English, it becomes unnecessary to record that fact. It is however, good practice to ask the accused the question whether he understood the charge so read and explained and to record the answer. But the omission to do so would not constitute non-compliance with the constitutional and procedural requirements. I am therefore, in agreement with the respondent that the appellant was properly arraigned.”

The appellants in the instant case clearly understood English. The record shows that they made their pleas in English, made statements to the Police in English and they also testified in English. In my judgment, the arraignment of the appellants was in compliance with the law. I resolve this issue therefore against the appellants. (p. 1270 F)

Contradictions - Materiality of

2. One could see that all these alleged contradictions are not substantial to the main issue in question as to raise doubt in the mind of the trial Judge. Whether there were four persons or three is not material to the charge against them. It is therefore my considered opinion that all the alleged contradictions are mere discrepancies. They are so trivial that they do not go to the root of the offence. My answer to the second issue is therefore in the affirmative. The learned trial Judge was right in holding that the contradictions in the case of the prosecution were mere discrepancies.”

A material contradiction must go to a material point in the prosecution's case, as to create doubt in the case that the appellant is entitled to benefit from. See the case of *Ahmed v. The State (2002) FWLR (Pt.90) 1358 at 1385*. The alleged contradictions were ably treated serially by the learned trial Judge and subsequently on appeal by the court below as can be seen from the above quoted passages. Both courts held that the alleged contradictions were mere discrepancies that were trivial in nature and did not go to the root of the charge against the appellants. I have not been persuaded that this finding is perverse. I resolve this issue also against the appellants. (p. 1273 C)

Armed robbery - Proof - Confessional statements

3. On the state of the facts before the trial court I am satisfied and hold that the case of the prosecution was proved beyond reasonable doubt. The 1st appellant was caught at the scene of the robbery while the 2nd and 3rd appellants made confessional statements that were admitted in evidence in the course of the trial.

Although an accused person can be convicted solely on his con-

fessional statement, it is desirable to have some evidence outside the *confession* which would make it probable that the confession was true. There is nothing sacrosanct about retraction of a confession. In Akpan v. The State (2001) 15 NWLR (Pt.737) 745 this court held that once a confession of guilt is shown to have been made freely and voluntarily, be it judicial or extra-judicial, if it is direct, positive and properly established, it constitutes proof of guilt and is enough to sustain a conviction so long as the court is satisfied as to its truth.

The appellants admitted in their respective statements Exhibits ‘G’ and ‘K’, that they participated in the robbery and gave details of how they executed their conspiracy to rob PW1. The learned trial judge warned himself of the need to look for corroborative evidence outside the confessional statements in order to test the truth of their confessions and found that the evidence of PW1 corroborated the said confessional statements. (p. 1273 H/ 1274 E)

Armed robbery - Link with the offence

4. The last issue is whether the 2nd and 3rd appellants were properly linked with the offence as charged. This issue is indeed sub-summed in issue No. 3 where I have already, shown that the appellants were convicted on their confessional statements which were voluntary, direct, positive and properly proved before the court.

The appellants have not shown that the concurrent findings of the trial court and the court below are perverse. I have no reason therefore to disturb such findings. There was thus ample evidence upon which the learned trial judge could convict the appellants of armed robbery. (p. 1276 A)

NOTABLE POINTS OF INTEREST

TOBI JSC

1. *Lack of minor contradictions may be suspicious*

Contradictions in evidence of prosecution witnesses can only be of assistance to an accused person if they are material and substantial. Where contradictions are immaterial and are regarded as mere discrepancies,

they cannot exculpate an accused from criminal responsibility. On the spur of the moment, a moment of fear, anxiety and desperation caused by uncompromising and trigger happy and trigger excited rogues, witnesses are not in their best frame of mind and therefore are not in a position to give the same evidence to the minutest detail. Accordingly, contradictions are bound to arise. In my view, if the evidence of all eye witnesses in such a tense and gruesome situation are exactly the same or similar, a trial Judge is entitled to suspect such evidence as likely to be outcome of some tutoring or tutorial. (p. 1278 F)

C

2. *What proof beyond reasonable doubt implies*

Reasonable doubt which will justify acquittal is doubt based on reason and arising from evidence or lack of evidence, and it is a doubt which reasonable man or woman might entertain and it is not fanciful doubt, and is not imagined doubt as would cause prudent men to hesitate before acting in matters of importance to themselves. See Black's Law Dictionary, Sixth Edition at page 1265.

Proof beyond reasonable doubt does not mean proof beyond any shadow of doubt. Once the proof drowns the presumption of innocence of the accused, the court is entitled to convict him, although there could exist shadows of doubt. The-moment the proof by the prosecution renders the presumption of innocence on the part of the accused useless and pins him down as the owner of the *mens rea* or the *actus reus* or both, the prosecution has discharged the burden placed on it by section 138(3) of the Evidence Act. (p. 1280 D)

G

3. *Student armed robbers - Dangers & way out*

It is sad, very sad indeed, that students of a polytechnic who are sent by their parents to study and obtain qualifications to improve and enhance their societal status can abandon the goodwill and magnanimity of their parents to resort to armed robbery, an apparent short cut to get rich quickly. Although the parents are the primary and immediate losers, society is also a loser. A society which breeds student armed robbers is in a big danger in terms of instability and disequilibrium. The child's life be-

gins and starts from the home. One way of avoiding the malady is for the parents to inculcate serious moral lessons. Thereafter, the primary schools can join the homes and impart the same lessons. I will boldly recommend the resuscitation of moral instructions in our primary schools curricula.

B (p. 1281 D)

OGBUAGUJSC

4. When retraction of confession will not count

C I wish to add quickly and this is also settled, that the retraction of a confessional statement by an accused person in his evidence on oath during trial, does not adversely affect the situation once the court, is satisfied as to its truth and can rely solely on the confessional statement, to ground a conviction. See the cases of Onyejekwe v. The State (1992) D 4 SCNJ. 1 @ 8; Nwaebonyi v. The State (1994) 5 NWLR (Pt.343) 138 @ 150; (1994) 5 SCNJ. 86 @ 100 -101. (p. 1288 H)

REPRESENTATION

E H. O. Ogbodu for 1st Appellant
A. P. A. Ogefere for 2nd Appellant
E. T. Macfoy for 3rd Appellant
Prof. A. A. Utuama, SAN (Att. Gen. Delta State) with him Mrs. U. I. Amioku Eshalomi (Legal Officer), O. Pedro and E. Ohworiole for the F Respondent.

CASES REFERRED TO

Ahmed v. The State (2002) FWLR (Pt.90) 1358 at 1385
G Emmanuel Nwaegbonyi v. The State (1994) 5 NWLR (Pt.343) 138
Effiong v. The State (1998) 8 NWLR (Pt.562) 362
Akpan v. The State (2001) 15 NWLR (Pt.737) 745
R. v. Kanu 14 WACA 30. at pages 120-121
H Tobby v. The State (2001)10 NWLR (Pt. 720) 23
Kajubo v. The State (1988)1 NWLR (Pt.73) 721
Rufai v. The State (2001)13 NWLR (Pt.731) 718
Erekanure v. The State (1993) 5 NWLR (Pt. 294) 385

Ogunye v. The State (1999) 5 NWLR (Pt.604) 548

Adeniji v. The State (2001) FWLR (Pt.57) 809

STATUTE REFERRED TO

Criminal Procedure Law of the Bendel State s. 215

B

LEAD JUDGMENT BY KATSINA-ALU JSC

This is an appeal against the judgment of the Court of Appeal, Benin Division, delivered on 28 June 2004 which dismissed the appeals of the three appellants. C

The appellants who were students of Oko Polytechnic, Anambra State, were jointly arraigned before the High Court of Delta State, holden at Agbor upon an Information containing two counts to wit:

“STATEMENT OF OFFENCE COUNT 1

D

Conspiracy to rob, contrary to section 4(b) and punishable under section 1 (2)(a) respectively of the Robbery and Firearms (Special Provisions) Decree 1984 as amended.

PARTICULARS OF OFFENCE

E

Golden Dibie (m), Friday Iyamah (m) and Godfrey Ujomu (m) on or about the 21st day of August, 1996 at Agbor in the jurisdiction of the Asaba Robbery and Firearms Tribunal, conspired with one another to commit a felony to wit: Armed Robbery:

F

STATEMENT OF OFFENCE COUNT 11

Armed Robbery punishable under section 1(2)(a) of the Robbery and Firearms (Special Provisions) Decree, 1984 as amended.

PARTICULARS OF OFFENCE

G

Golden Dibie (m), Friday Iyamah (m) and Godfrey Ujomu (m) on the 21st day of August, 1996 at Agbor in the jurisdiction of the Asaba Robbery and Firearms Tribunal, while armed with a locally made pistol robbed one Mrs. Florence Iyamah of the sum of four thousand Naira cash.”

H

On 22 October 1999 the trial court took the pleas of the appellants. The record on that day reads as follows:

“Accused persons present; J. G. Eze-Owens Senior Legal Officer,

Ministry of Justice, for the prosecutions: (sic) A. O. Ewere Esq. for 1st and 2nd accused Persons. K. N. Njokuemini Esq. for 3rd Accused.

Court:

Each of the 2 counts is read out in English Language to the Accused persons to the satisfaction of the court and each say as follows:-

Court I: *1st Accused; not guilty:*

2nd Accused not guilty

3rd Accused not guilty

Court II: *1st Accused; not guilty*

2nd Accused; not guilty

3rd Accused; not guilty"

In proof of its case, the prosecution, called five witnesses. Each of the accused persons testified on his own behalf and called no witness.

At the close of evidence and addresses of counsel, the learned trial Judge convicted and sentenced the appellants to death by hanging.

The appeals of the appellants to the Court of Appeal were dismissed. They have further appealed to this court upon a number of grounds. They filed similar or indeed same grounds of appeal.

Based upon the grounds of appeal filed, the appellants, in their respective briefs of argument formulated the following issues for determination:

1. Whether the entire trial was not a nullity?

2. Whether the lower court was right in holding that the contradictions in the case of the prosecution were mere discrepancies? (sic)

3. Whether the case was proved beyond reasonable doubt as required by law?

The second and third appellants added a fourth issue which is whether they were properly linked with the offence as charged.

The Respondent, for its part adopted the issues for determination formulated by the appellants. I will deal with the issues seriatim.

ISSUE No. 1 The appellants have contended on this issue that the trial did not satisfy the requirements of section 215 of the Criminal Procedure Law, Cap. 49 Vol. 11 Laws of Bendel State of Nigeria 1976 applicable to Delta-State. It was argued that the plea as recorded did not meet

the requirement of a valid arraignment under section 215 of the Criminal Procedure Law and section 36(6)(a) of the 1999 Constitution which states that every person who is charged with a criminal offence shall be entitled to be informed promptly in the language that he understands and in detail of the nature of the offence. Learned counsel relied on the cases of *Tobby v. The State* (2001)10 NWLR (Pt. 720) 23, *Kajubo v. The State* (1988)1 NWLR (Pt.73) 721, *Rufai v. The State* (2001)13 NWLR (Pt.731) 718, *Erekanure v. The State* (1993) 5 NWLR (Pt. 294)385 and *Ogunye v. The State* (1999) 5 NWLR (Pt.604) 548. It was finally contended that the mandatory provisions of section 215 CPA and section 36(6)(a) of the 1999 Constitution were not complied with since the charge was not explained to the-appellants. The trial, as a whole it was said, is defective, null and void. The court was urged to resolve this issue in favour of the appellants.

For the Respondent it was submitted that the arraignment of the appellants did not breach the provisions of section 215 of the Criminal Procedure Law. Learned Senior Advocate of Nig. placed reliance on the cases of *Effiom v. The State* (1995) 1 NWLR (Pt. 373) 507 and *Adeniji v. The State* (2001) FWLR (Pt.57) 809. The Court was finally urged to affirm the finding of the court below that the arraignment of the appellants was in compliance with the law and the trial was not a nullity.

Section 215 of the Criminal Procedure Law provides as follows:

“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 instantly thereto, unless where the person 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.

This court has, in a number of cases, laid down the requirements of a valid arraignment of an accused person. In *Tobby v. The State* (supra) this court laid down the following requirements of a valid arraignment:

(a) The accused must be placed before the court unfettered unless the court shall see cause otherwise to order;

(b) The charge or information must be read over and explained to the accused to the satisfaction of the court by the registrar or other
B officer of the court;

(c) It must be read and explained to the accused in the language he understands;

(d) The accused must be called upon to plead thereto unless there
C exists any valid reason to do otherwise such as objection to want of service where the accused is entitled by law to service of a copy of the information and the court is satisfied that he has in fact not been duly served therewith.

These requirements are inherent in the provision (section 215 CPA).
D See also *Effion v. The State* (supra) and *Adeniji v. The State* (supra).

I have earlier on reproduced the record of arraignment on 22 October 1999. In this connection the court below found as follows:

*“From the record of appeal as a whole, coupled with the fact that
E the appellants are literate in English and the statement of the trial Judge which could only mean that she was satisfied the appellants understood the charge, I am of the firm view that the appellants clearly understood the charge before they were called upon, to enter their pleas. In the circumstance, I hold that the requirements of S.215 of the Criminal Procedure
F Law has (sic) been substantially complied with. My answer to the first issue is that the trial was not a nullity.”*

In Adeniji v. The State (supra) I had this to say on section 215 of the Criminal Procedure Law:

G *“..... Thirdly, the appellant understood English. This is evident in the record. He made his plea and also gave his evidence in English. The omission by the learned trial Judge to state that he was satisfied that the Appellant understood the charge is of no moment.
H Where the accused understands the language of the court - English, it becomes unnecessary to record that fact. It is however, good practice to ask the accused the question whether he understood the charge so read and explained and to record the answer. But the omission to do so*

would not constitute non-compliance with the constitutional and procedural requirements. I am therefore, in agreement with the respondent that the appellant was properly arraigned.”

The appellants in the instant case clearly understood English. The record shows that they made their pleas in English, made statements to the Police in English and they also testified in English. In my judgment, the arraignment of the appellants was in compliance with the law. I resolve this issue therefore against the appellants.

I now turn to issue No. 2. This is whether the lower court was right in holding that the contradictions in the case of the prosecution were mere discrepancies. In this regard the trial Judge said at pages 119 - 120 as follows:

“..... Counsel for the defence has pointed out some alleged contradictions in the evidence of the prosecution witnesses, some of which are:-

1. That the PW1 testified that 3 people came to the house as opposed to 4 people she mentioned in EXHIBIT ‘A’ her previous statement to the police;

2. That the PW1 testified that they heard the PW2’s car when they were searching for money in their room as opposed to what she said in EXHIBIT ‘A’, that she wanted to take them into their room when they heard the car.

3. That the PW1 testified that one of the accused persons pointed a pistol at her as opposed to what she said in EXHIBIT ‘A’ that one of them pointed what looked like a pistol to her;

4. That the PW1 said it was the 2nd accused who knocked on the door as opposed to the evidence of the PW4 who said it was the 1st accused;

5. That the PW2 denied that PW1 told him 4 men came to the house, as opposed to what he said in his statement.

6. That the evidence of the PW5 that he arrested the 2nd accused at Oke Polytechnic contradicts the earlier testimony in EXHIBIT ‘J’.

7. That the PW 4 did not tell the court that any of the accused persons has any object at the time they came to their house.

It is the submission of counsel that these are material contradictions, capable of creating doubt in the mind of the court. Counsel for the prosecution submitted that they are mere discrepancies that do not go to the root of the offence. I tend to agree with the prosecution. The accused persons were in the house of the PW1. Whether there were 4 of them or 3, or whether the PW1 told the PW2 that they are 4 are immaterial to the charge against them. That PW4 did not say that any of them had an object in his hand does not take into consideration the evidence of this witness that he ran away through the back door after he saw one of the accused at Oko in court. And stated in his earlier testimony that the 2nd accused was brought to the station and handed over to him has nothing to do with the fact of robbery itself. That PW1 did not profess to be an expert in firearms, that she said in Exhibit 'A', her statement to the Police that the object pointed at her looked like a pistol, does not detract from the fact that it is a firearm. The type of firearm used is immaterial, as which of the accused persons knocked at the door. On this issue therefore, the court holds that the alleged material contradictions are mere discrepancies that do not affect the substance of the charge.

The court below confirmed the position of the trial court. At page 309 to page 310 of the Record the court below said:

"The alleged contradictions mostly concern the testimony of PW1 and her statement to the police. In her testimony, she said three people came to the house while in her statement to the police she stated that four people came to the house. It is my considered opinion that this is a mere discrepancy. What is important to the proof of the charge is that the appellants went to her house, whether they were three or four, to my mind is immaterial. PW1 also testified that they were searching for money in the room when they heard PW2's car coming whereas in her statement she stated that she was taking the appellants to the room when they heard the car coming. This discrepancy too has no moment in the proof of charge, (sic) The third alleged contradiction is that PW1 testified that one of the accused persons pointed a pistol at her as opposed to what she said in her statement that one of the accused pointed what looked like a pistol to her. Whether it was a real pistol that was pointed at PW1 is immaterial. What

is material is that either an actual pistol or what looked like a pistol was used to threaten her which induced fear in her. It is the use made of an object and the manner it is made use of that qualifies it to be an offensive weapon. In our present case, an object which is either a pistol or what looked like a pistol was used.

B

See: Sele Vs State (1993) 1 NWLR (Pt 269) 276.

The other alleged contradictions are that PW1 said it was the 2nd accused who knocked on the door while PW4 said it was the 1st accused who knocked on the door. Also it was stated that PW2 denied that PW1 told him four men came to the house as opposed to what he said in his statement. Another alleged contradiction is that PW5 testified that he arrested the 2nd accused at Oko Polytechnic which contradicts his earlier statement in Exhibit 'J'. One could see that all these alleged contradictions are not substantial to the main issue in question as to raise doubt in the mind of the trial Judge. Whether there were four persons or three is not material to the charge against them. It is therefore my considered opinion that all the alleged contradictions are mere discrepancies. They are so trivial that they do not go to the root of the offence. My answer to the second issue is therefore in the affirmative. The learned trial Judge was right in holding that the contradictions in the case of the prosecution were mere discrepancies.

C

D

E

A material contradiction must go to a material point in the prosecution's case, as to create doubt in the case that the appellant is entitled to benefit from. See the case of *Ahmed v. The State* (2002) FWLR (Pt.90) 1358 at 1385. The alleged contradictions were ably treated seriatim by the learned trial Judge and subsequently on appeal by the court below as can be seen from the above quoted passages. Both courts held that the alleged contradictions were mere discrepancies that were trivial in nature and did not go to the root of the charge against the appellants. I have not been persuaded that this finding is perverse. I resolve this issue also against the appellants.

F

G

H

I now move to issue No. 3. which is whether the case of the prosecution was proved beyond reasonable doubt as required by law. **On**

the state of the facts before the trial court I am satisfied and hold that the case of the prosecution was proved beyond reasonable doubt. The 1st appellant was caught at the scene of the robbery while the 2nd and 3rd appellants made confessional statements that were admitted in evidence in the course of the trial.

PW1 identified the 1st appellant as one of the armed robbers who came to her house. It was PW2 with the assistance of PW3 who apprehended the 1st appellant at the scene of the crime. The learned trial judge believed these eye-witnesses and came to the conclusion that the 1st appellant was guilty of the offence as charged.

The 2nd and 3rd appellant escaped from the scene of the robbery but were later arrested. Both of them made confessional statements which were tendered and admitted as Exhibits ‘G’ and ‘K’ respectively, after they were subjected to trials within trial in order to determine if the appellants made them voluntarily. The lower court affirmed the finding of the trial court that the 2nd and 3rd appellants’ confessional statements were voluntarily and freely made. There is of course no evidence stronger than a person’s own admission or confession. Such a confession is admissible in evidence. **Although an accused person can be convicted solely on his confessional statement, it is desirable to have some evidence outside the *confession* which would make it probable that the confession was true.** See Emmanuel Nwaegbonyi v. The State (1994) 5 NWLR (Pt.343) 138, Effiong v. The State (1998) 8 NWLR (Pt.562) 362. **There is nothing sacrosanct about retraction of a confession. In Akpan v. The State (2001) 15 NWLR (Pt.737) 745 this court held that once a confession of guilt is shown to have been made freely and voluntarily, be it judicial or extra-judicial, if it is direct, positive and properly established, it constitutes proof of guilt and is enough to sustain a conviction so long as the court is satisfied as to its truth.**

The appellants admitted in their respective statements Exhibits ‘G’ and ‘K’, that they participated in the robbery and gave details of how they executed their conspiracy to rob PW1. The learned trial judge warned himself of the need to look for corroboration.

rative evidence outside the confessional statements in order to test the truth of their confessions and found that the evidence of PW1 corroborated the said confessional statements. See R. v. Kanu 14 WACA 30. At pages 120-121 of Records, the learned trial judge stated as follows:

“On the relevance of Exhibits’ F and’ H’ other implements the accused persons were alleged to have been armed with on the day in question, counsel for the accused persons had urged the court to disregard them as they are not part of the charge. It is trite law that a charge must disclose all relevant particulars. The only object mentioned in the charge is a locally made pistol. No mention was made of a wheel spanner or knife. The submission of counsel appears to be well founded. The Court therefore disregards the evidence of the PW1 and 2 (sic) relating to these objects.

Before I reach my conclusion on the eye witness account of the PW1 and 4, (sic) I would pause here to comment on Exhibits ‘G’ and ‘K’ the confessional statements made by the 2nd and 3rd accused persons respectively. It is trite law that a court can convict on the confessional statement of an accused person. It is also prudent for a court, before doing so, to test the confessional statement against with other facts outside the confessional itself. EXHIBIT ‘G’ is the confessional statement of the 2nd accused, while EXHIBIT ‘K’ is that of the 3rd accused. The 2nd accused persons, in these statements said it was the 3rd accused who armed with the gun and that he was the one who pointed at the PW1 and demanded for money. The evidence of the PW1 corroborates this. They also state that the sum of N4,000 was handed over to the 3rd accused. The evidence of the PW1 corroborates these statements. They stated that the 1st accused was at the corridor or outside acting as the lookout. The evidence of the PW1 corroborates these statements. These are the material facts in an offence of armed robbery, and the court is of the view that the evidence of the PW1 corroborates EXHIBITS ‘G’ and ‘K’ in all material particulars. The court is satisfied therefore, that EXHIBITS ‘G’ and ‘K’ are free and voluntary statements made by the 2nd and 3rd accused persons respectively, and that the court can convict them on these state-

ments, even standing alone.”

A voluntary confession by itself without any other evidence is sufficient to support a conviction. The learned trial judge however, found corroboration. I resolve this issue also against the appellants.

B The last issue is whether the 2nd and 3rd appellants were properly linked with the offence as charged. This issue is indeed subsumed in issue No. 3 where I have already, shown that the appellants were convicted on their confessional statements which were voluntary, direct, positive and properly proved before the court.

C The appellants have not shown that the concurrent findings of the trial court and the court below are perverse. I have no reason therefore to disturb such findings. There was thus ample evidence upon which the learned trial judge could convict the appellants of armed robbery.

In the result the appeals of the 1st, 2nd and 3rd appellants fail. Accordingly I dismiss the appeals and affirm their convictions and sentences.

E _____

KUTIGI CJN

F I read before now the judgment just delivered by my learned brother Katsina-Alu, JSC. I agree with the conclusion that the appeals lack merit. Each of the three (3) appeals is accordingly dismissed. The judgment of the Court below is affirmed.

G TOBI JSC

H The appellants were charged to court on a two-count charge of conspiracy to rob and armed robbery contrary to the provisions of the Robbery and Firearms (Special Provisions) Decree, 1984. It was stated in the particulars of the offence that armed with a locally made pistol, they robbed one Mrs. Florence Iyamah of the sum of N4,000.00.

The learned trial Judge convicted the appellants and sentenced them to death. They appealed to the Court of Appeal. That court dis-

missed their appeal and affirmed the judgment of the High Court. They have come to this court on appeal.

The 1st appellant formulated three issues for determination. The 2nd appellant formulated four issues for determination. The 3rd appellant formulated four issues for determination. The respondent also formulated four issues for determination. B

The case of the appellants put forward in their briefs is similar. They argue that the entire trial was a nullity because it did not satisfy the requirement of section 215 of the Criminal Procedure Law, Cap 49 Volume 2, Laws of Bendel State of Nigeria, 1976. They submit that the contradictions in the case of the prosecution were substantial and that the prosecution did not prove the case beyond reasonable doubt. The 2nd and 3rd appellants contended that they were not properly linked with the offence as charged. I will take the above *seriatim*. C D

Section 215 of the Criminal Law reads:

“A 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 instantly thereto, unless where the person is entitled to service of a copy of the information he objects the want of such service and the court finds that he has not been duly served therewith.” E F

Counsel relied on the decision of this court in *Tobby v. The State* (2001) 10 NWLR (Pt.720) 23 where it was held that the charge or information must be read over and explained to the accused in the language that he understands to the satisfaction of the court by the registrar or other officer of the court. G

It is recorded at pages 4 and 5 of the Record of Appeal:

“COURT

Each of the counts is read out in English language to the accused H persons to the satisfaction of the court and each say as follows:

COURT I: 1st Accused; not guilty.

2nd Accused; not guilty.

3rd Accused; not guilty.

COURT II: 1st Accused; not guilty.

2nd Accused; not guilty.

3rd Accused; not guilty.”

B The language of the court is English. The appellants speak English. They were students of the polytechnic and I know as a matter of fact that English language is the medium of instruction in polytechnics in Nigeria. The charge was therefore read in English. It is *a* clear and constant human conduct for a person who is addressed or spoken to and who does not hear or understand what is spoken, to immediately ask for an explanation. Why should a human being provide an answer to a statement or question that he does not understand and particularly when that human being is a polytechnic student? Why did the appellants not plead guilty to the charge if they did not understand it? The submission of the appellants is tommyrot. If he does not, it will not be wrong to presume that he understood what was said to him. I have not the slightest doubt in my mind that the appellants, polytechnic students, perfectly understood the charge and that was why they pleaded not guilty, I would like to think that section 215 is more for accused persons who are not literate in the language of the court. I am not saying that section 215 will not apply to persons who are literate in the language of the court. I expect such a person not to plead if he does not understand the charge and ask for an explanation.

And that takes me to Issue No. 2 on contradictions. Contradictions in evidence of prosecution witnesses can only be of assistance to an accused person if they are material and substantial. Where contradictions are immaterial and are regarded as mere discrepancies, they cannot exculpate an accused from criminal responsibility. On the spur of the moment, a moment of fear, anxiety and desperation caused by unpromising and trigger happy and trigger excited rogues, witnesses are not in their best frame of mind and therefore are not in a position to give the same evidence to the minutest detail. Accordingly, contradictions are bound to arise. In my view, if the evidence of all eye witnesses in such a tense and gruesome situation are exactly the same or similar, a trial Judge

is entitled to suspect such evidence as likely to be outcome of some tutoring or tutorial.

All the appellants in unison enumerated some seven items of contradictions in the same trend and complexion. Evidence of witnesses in court is not an exact thing like a triangular in geometry. Human beings will see the same object and describe it in different ways with some personal embellishments here and there that colour the object in some inarticulate difference. This does not detract from the main object. The case before the trial court is that the three appellants armed with a locally made pistol robbed Mrs. Florence Iyama of N4,000.00. I therefore entirely agree with the submission of Professor A. A. Utuama, SAN, that the number of armed robbers who went for the robbery is immaterial to the charge that the three appellants were identified by PW1 as the armed robbers who were in her house and participated in the robbery.

PW1, the victim of the robbery, said in her evidence- in-chief at pages 9 and 10 of the Record:

“The 3 accused persons came in together but the one who asked questions was the 2nd accused. I asked them to come into the parlour. When they came in the third accused went near the shelf and pulled off his shoes. He then dragged me up from where I was sitting and pointed a pistol at my face... The second accused locked the window. The second accused was armed with dagger and a rod. They said they had come for me and that I should give them N100,000.00. They said they would shoot me if I did not give them. I gave them N4,000.00 which I arranged in two; two hundred... I handed over the money to the 3rd accused. When I gave him the money he gave me a blow on the chest and asked me to take them to my bed room... While we were there searching, we heard the sound of my husband’s vehicle. The third accused ran out from the bed room to the parlour... They left the room and I remained behind and closed the bed room door. I then raised .an alarm shouting ‘thief thief. I heard the sound of running footsteps... By the time I came outside my husband had pursued them. On his return he had caught the 1st accused.”

PW2, the husband of PW1, said in evidence -in-chief at page 16 of the Record:

“... I heard the voice of PW1 shouting ‘thief, thief, armed robber.’ I started pursuing them. One of them ran to one direction while the other two ran to a different direction... They ran into a bush and I followed them. I caught one of them and he started fighting. He used iron
 B and dagger to wound me on the head and leg. As I was shouting the 1st accused tried to gag me with my clothes. I gave him a bite and cut off the nail and the tip of one finger... I kept shouting and people came. One of them was Tobias Iwuchukwu. He helped me hold the 1st accused...”

C The above is the evidence of two eye witnesses. One, the victim of the robbery and the other, the husband who had injury in the course of the robbery. It is clear from the above that PW2 corroborated the evidence of PW1. There is no contradiction. And the above are the material parts of the evidence against the appellants.

D Learned counsel for the appellants submitted that the prosecution did not prove the charge beyond reasonable doubt. Reasonable doubt
 E which will justify acquittal is doubt based on reason and arising from evidence or lack of evidence, and it is a doubt which reasonable man or woman might entertain and it is not fanciful doubt, and is not imagined doubt as would cause prudent men to hesitate before acting in matters of importance to themselves. See Black’s Law Dictionary, Sixth Edition at page 1265.

F Proof beyond reasonable doubt does not mean proof beyond any shadow of doubt. Once the proof drowns the presumption of innocence of the accused, the court is entitled to convict him, although there could exist shadows of doubt. The-moment the proof by the prosecution renders the presumption of innocence on the part of the accused useless and
 G pins him down as the owner of the *mens rea* or the *actus reus* or both, the prosecution has discharged the burden placed on it by section 138(3) of the Evidence Act.

H All counsel submitted that the prosecution must prove the essential elements of the offence, *viz.*: (1) that there was robbery or series of robberies; (2) that each robbery was an armed robbery; (3) that the accused was one of those who took part in the robbery.

The evidence of PW1 and PW2 above clearly prove the three in-

gredients. They proved that there was an armed robbery in which the appellants participated. They were armed with a local pistol. The 1st appellant was caught at the scene of crime. The 2nd and 3rd appellants made confessional statements that were admitted at the trial. *Exhibits G* and *K* tell a flowing story of guilt. The truth of the confessional statements was corroborated by other witnesses. B

And finally the 2nd and 3rd appellants argue that they were not properly linked with the offence. Why should they say so? Are they correct to say so in the light of the evidence before the court? What will they make out from *Exhibits G* and *K*, their confessional statements, which were duly admitted by the learned trial Judge? What will they say in respect of the evidence of PW1 and PW2? I do not think I will take this issue further. C

It is sad, very sad indeed, that students of a polytechnic who are sent by their parents to study and obtain qualifications to improve and enhance their societal status can abandon the goodwill and magnanimity of their parents to resort to armed robbery, an apparent short cut to get rich quickly. Although the parents are the primary and immediate losers, society is also a loser. A society which breeds student armed robbers is in a big danger in terms of instability and disequilibrium. The child's life begins and starts from the home. One way of avoiding the malady is for the parents to inculcate serious moral lessons. Thereafter, the primary schools can join the homes and impart the same lessons. I will boldly recommend the resuscitation of moral instructions in our primary schools curricula. D E F

It is in the light of the above, and the more comprehensive and abler reasons in the judgment of my learned brother, Katsina-A!u, JSC, that I too dismiss the appeal i affirm the decision of the Court of Appeal, It is a pity that these three young men have to die in this way. This court has no alternative. The law says so. So be it. G

H

AKINTAN JSC

I had the privilege of reading the draft of the lead judgment written

by my learned brother, Katsina-Alu, JSC. The facts of the case are well set out and all the issues raised in the appeal are fully discussed therein. I entirely agree with his reasoning and conclusions reached in the said lead judgment.

B The appellants were arraigned before the Delta State Robbery and Firearms Tribunal, Holden at Asaba on a two count charge of conspiracy and armed robbery. They pleaded not guilty at their trial and the prosecution led evidence in support of its case against them. Each appellant presented his case in defence of the charge against him. The tribunal thereafter delivered its judgment in which each of the appellants was found guilty as charged and sentenced to death by hanging. Their appeal to the court below was dismissed. The present appeal is from the judgment of the court below.

D Among the issues raised and canvassed in this court are that the mode of taking the plea was improper and thereby rendering the entire trial a nullity; that there were material contradictions which ought to have been resolved in favour of the appellants; and that the prosecution failed to prove its case beyond reasonable doubt as required by law.

F It is quite clear from the record that the charge was read to the accused persons in English language and that a plea was duly recorded. The main complaint of the appellants is that it was not recorded that each of the appellants understood the charge before the plea was recorded. The tribunal's note which preceded the plea is thus:

"Court: Each of the 2 counts is read out in English Language to the accused persons to the satisfaction of the court and each says as follows -----"

G The charge read out is in English Language in which it was written. Each of the accused persons spoke English Language throughout the trial and their statements tendered at the trial were written in English Language. It may be mentioned that the court notes are not expected to be a verbatim report of all that was said or took place at a trial. It is meant to be an account of what transpired at the hearing. While it is necessary that it should not leave out the essential matters in the particular case, a trial will definitely not be set aside only on account of the form a particu-

lar account is recorded, as in the instant case. There is therefore no merit in the appeal as it relates to the mode of taking the plea.

On the question whether there were material contradictions, it is necessary to say that for a contradiction to be regarded as material, it must go to the root of the charge before the court. It must be one that touches an important element of what the prosecution needs to prove in the case. Contradictions that are outside the aforementioned class are usually expected in unconcocted evidence given from human memory. They are usually expected in every trial since human memories do not have equal capacities of storing and retrieving events that happened. There is therefore bound to be minor discrepancies in an account of the same event in the evidence of same event given by different eye-witnesses. Such could only not exist where such witnesses are schooled as to what to say. The alleged discrepancies in the instant case are immaterial and do not and could not impeach the verdict of the trial tribunal.

For the reasons given above and the fuller reasons given in the lead judgment, I also dismiss the appeals and affirm the judgment of the court below.

OGBUAGU JSC

The facts of the case leading to this appeal have been clearly stated in the lead Judgment of my learned brother, Katsina-Alu, JSC, that it will serve no useful purpose for me, to repeat them in this Judgment. They are really worrisome in the sense that students who prefer to get money through armed robbery instead of concentrating on their studies for which they were sent to the school - Polytechnic, perhaps, want this Court, to part them at the back and congratulate them for their reprehensible and condemnable “exploit”. So to say.,

I have heard the privilege of reading before now, the lead Judgment of my learned brother, Katsina-Alu, JSC. I agree with his reasoning and conclusion that the appeals fail and should be dismissed. I have not the slightest sympathy for the Appellants who deserve no mercy at all as they have reaped, what they sowed so to say. I only wish to touch firstly

on issue I of the Appellants in relation to the requirement of Section 215 of the Criminal Procedure Law. (hereinafter called “the C.P.L.”) which provided as follows:

“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 instantly thereto, unless where the person 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”.

There is no dispute that the Appellants who were/are students in a Polytechnic institution, made their respective statements, in English and also testified in their respective defence, in the English language. The language of the court, is also English. The cross-examination of the prosecution witnesses by the learned counsel for the Appellants, was in English. Apart from the PW1 whose evidence was interpreted into English by an interpreter, the 2nd, 3rd, 4th and 5th PWS, gave their evidence in English. I even note that at page 4 of each of the Appellants’ Brief, each of their learned counsel, reproduced the recording of the trial court, thus:

COURT: -

“Each of the 2 count (it is recorded in the Records at page 4, as counts) is read out in English Language to the accused persons to the satisfaction of the court and each say as follows:”

Each of the accused persons or Appellants, pleaded to the charge. There is no record that any of them, pleaded in any other language, other than in the English language. At the time and day of their arraignment in court, the Appellants, on the said date (22nd October, 1999), were represented, by counsel - O. Ewere, Esqr, for the 1st and 2nd Appellants and K. Nnjoknemeni, Esqr., for the 3rd Appellant; and when their respective pleas, were taken by the trial court. No objection, was ever taken by any of the said learned counsel as to the now alleged complaint of non-compliance with Section 215 of the C.P.L I believe and hold that this Issue I, was/is an afterthought. It amounted to the learned counsel, with respect, hang-

ing their clients' hands like a drowning men, on a straw or perhaps on technicality which has no place in our courts.

I note that although the three (3) Briefs of Argument filed separately for each of the Appellants and signed by Chief H. O. Ogbodu for the 1st Appellant, A. P. A. Ogefere, Esqr, for the 2nd Appellant and E. T. B Macfoy, Esqr, for the 3rd Appellant, contain the same arguments/submissions except that the 2nd and 3rd Appellants, added a 4th issue respectively in their said Brief.

It is now firmly established in a string of decided authorities, that an arraignment, consists of charging the accused person and the reading over and explaining the charge to him, to the satisfaction of the court after which, his plea is taken. Subject to the provisions of Section 100 of the CPL, Section 215 of the CPL, is mandatory and not directory. The mandatory nature, is further confirmed, by Section 33(6)(a) of the 1979 Constitution now Section 36(6)(a) of the 1999 Constitution. The condition of a valid trial of an accused person, were also stated and restated in the cases of *Sanmabo v. The State* (1967) NMLR 314; *Eyorokorama v. The State* (1979) 6-9 S.C. 3; *Josiah v. The State* (1985) 1 NWLR (Pt.1) 125; (1985) 1 S.C. 406; *Kajuba v. The State* (1988) 1 NWLR (Pt.73) 721 at 731, 734-737; (1988) 3 SCNJ. (Pt.1) 1179 and *Ebem v. The State* (1990) 7 NWLR (Pt.160) 113 at 118-119 C.A. just to mention but a few. Non-compliance with Section 215 of the CPL, will lead to an order for re-trial as the trial will be vitiated and rendered a nullity. My learned brother, Katsina-Alu, JSC, restated what amounts to a valid arraignment in the case of *Idemudia v. The State* (1999) 5 SCNJ. 47 at 55.

In the case of *Sharfal v. The State* (1992) 9 SCNJ. 1 at 6, the recording of the plea of accused persons in a charge containing more than one count and in a joint trial, was emphasized. In the case of *Francis Durwode v. The State* (2000) 12 SCNJ. 1 at 14-15; (2000) 12 S.C. 1; (2000) 15 NWLR (Pt.691) 467, Onu, JSC, citing several other cases, stated that failure to comply with Section 33(6) (a) (now Section 36(6) (a) of the 1999 Constitution and Section 215 of the CPL, will not occasion a miscarriage of justice where an accused person, had earlier made a statement to the Police (e.g. in English language) and once the trial

court, was satisfied that the accused person, understood, the nature of the charge against him. See the cases of *Ewe v. The State* (1992) 6 NWLR (Pt.246) 141; (1992) 7 SCNJ. (Pt.1) 15 at 17 -18 and *Erakanure v. The State* (1993) 5 NWLR (Pt.294) 385 at 396 ; (1993) 6 SCNJ. (Pt.1) 73 at 76 -77 - per Olatawura, JSC, (the later, also cited and relied on in the Appellants' Briefs.) The need and importance of strictly complying with Section 215 CPL, is predicated on the principle of fair hearing. A fair hearing, it is settled, means a fair trial. Trial in a criminal case; is said to commence with an arraignment which in turn, consists of the charging of the accused person or reading over the charge to the accused person and taking of his plea thereon. See the cases of *Oyediran & ors. v. The Republic* (1967) NMLR 122 at 125; *Isiaka Mohammed v. Kano N.A.* (1968) 1 ANLR 424 and *Asakitikpi v. The State* (1993) 6 SCNJ. (Pt.11) 201 at 207.

I have gone this far because, with respect, of the fuss made in the Appellants' Briefs. It is submitted at page 6 thereof, that the trial was a nullity because,

"there is no way the Appellants would have understood the charge which the same was not explained to them as required by law."

I have noted earlier in this Judgment, that the learned defence counsel, were present, when the charge was read to the Appellants and when they took their respective plea. None of them, ever raised any objection as to a purported non-compliance with the mandatory Section 215 of the CPL. In any case, both the Appellants and their learned counsel, have not shown in their respective Brief, what prejudice, embarrassment nor miscarriage of justice any of the Appellants suffered because of the alleged non-compliance. Learned counsel waited until the Appellants who completely defended themselves at the hearing, were convicted and sentenced. It is my respectful view, that this issue is raised in very bad faith. I have stated in this Judgment that issue 1 is an after thought. I hold that Section 215 of the CPL, was substantially complied with by the learned trial Judge.

Before I am done with this issue, it must be stressed and also borne in mind, and this is also settled, that procedural requirements such

as the provision in Section 215 of the CPL, are inserted for the protection of the interest of an accused person in order to ensure that he receives a fair trial. See also the cases of *Ogunyi & 4 ors. v. The State* (1999) 5 NWLR (Pt.604) 548; (1999) 4 SCNJ. 33-@.50, 55; *Paulinus Tobby (alias Udo Ebby) v. The State* (2001) 10 NWLR (Pt. 720) 23 @ 31 - 32, B 33; (2001) 4 SCNJ. 256 @ 362-363; - per Ogwuegbu, JSC. and *Rufai v. The State* (2001) 13 NWLR (Pt.731) 718; (2001) 7 SCNJ. 122 (citing *Effiom v. The State* (1995) 1 NWLR (Pt.373) 507; (1995) 1 SCNJ. 1) also cited and relied on in the Appellants' Briefs. As a matter of fact, the person that the lawmaker had in mind to protect by these provisions, was/is an illiterate Nigerian otherwise, the words "..... *In the language he understands*" would have been meaningless. This is because, the said words, presupposes, that the accused person, does not understand the language of the court which is English. D

In the case of *Cyril Edeh v. The State* (1999) 5 SCNJ. 187 @ 194, Ayoola, JSC, stated that when persons (two or more persons), are jointly arraigned or tried on any charge or Information and are placed before the court, that what the law requires and what satisfies the purpose of the law, is that each of them, should plead separately to it. I note that this is what happened in the instant case leading to this Appeal. His Lordship further opined that it would be manifestly absurd, to suggest that if there are twenty or more jointly accused persons, the charge should be read twenty times notwithstanding that the charge, may have mentioned each of the accused persons, as joint participants in the crime charged. On this pronouncement, I rest this issue as I note also that the Appellants were charged with conspiracy. See also the case of *Akpan & 3 ors. v. The State* (2002) 5 SCNJ. 301 @ 310 - 31 - per Katsina-Alu, JSC, who held that the failure to record that the charge was read and fully explained to the accused person to the satisfaction of the court", will not render the trial a nullity. His Lordship held however, that it is a good practice, but that such failure, will not render the trial a nullity. The cases of *Eyisi v. The State* (2000) 15 NWLR (Pt.691) 555; (2000) 12 SCNJ. 104 and *Durwode v. The State* (*Supra*), were cited therein. G

Secondly, it is on record, that the 1st Appellant, was caught by the

PW2 - the husband of the PW1 and got wounded by the 1st Appellant, with an iron and a dagger. The 1st Appellant, is even lucky that he is still alive and was not lynched by the crowd that pounced on him and gave him a beating of his life. The 2nd and 3rd Appellants on the record, made B voluntary confessional statements. It is long been established in a string of decided authorities, that a court is entitled, to convict an accused person, on his confessional statement. Where the confessional statement of an accused person, is direct, positive and unequivocal about his com- C mittal of the crime, he can be convicted for the offence. See the cases of *Ogugu & 4 ors. v. The State* (1990) 2 NWLR (Pt. 134) 539 @ 548 (citing the cases of *Yusufu v. The State* (1976) 6 S.C. 167 @ 173 and *Okegbu v. The State* (1984) 8 S.C. 65 ; *Bature v. The State* (1994) 1 NWLR (Pt.320) 267; (1994) 1 SCNJ. 19 @ 29 and *Efiong v. The State* (1998) 8 NWLR D (Pt.562) 362 @ 371; (1998) 5 SCNJ. 158, just to mention but a few. The confessional statement of the 2nd Appellant - Exhibit “G”, is at pages 153 to 156 of the Records and his admission of making it voluntarily before a Superior Police Officer - Exhibit “G” is at pages 157 to 158 thereof. That E of the 3rd Appellant - Exhibit “K”, is at page 163 to 166 and his admission of making it - Exhibit “K”, is at pages 167 to 168.

It need be stressed by me and this is also settled, that there is no requirement of law in Nigeria, but that the practice of taking an accused F person along with his confessional statement, to a Superior Officer who reads over and interprets the statement to him and he confirms it as his voluntary statement, has been highly commended and a wise one as giving extra assurance of fairness to the accused person and the voluntariness G of his confession. See the cases of *The Queen v Omerewure Sapele & anor. In Re German Awip* (1957) 2 FSC 24; *Nwiboko Obodo & 5 ors. v. The Queen* (1958) 4 FSC 1; *R. v. Igwe* (1961) ANLR 330 @ 333 and *Kim v. The State* (1992) 4 SCNJ. 81. Also, confessional statements not so treated, should not necessarily, be viewed with suspicion. See the H case of *Nwigboke & 6 ors. v. The Queen* (1959) 4 FSC. 101 @ 102 - per Mbanefo, F.J.

I wish to add quickly and this is also settled, that the retraction of a confessional statement by an accused person in his evidence on oath

during trial, does not adversely affect the situation once the court, is satisfied as to its truth and can rely solely on the confessional statement, to ground a conviction. See the cases of *Onyejekwe v. The State* (1992) 4 SCNJ. 1 @ 8; *Nwaebonyi v. The State* (1994) 5 NWLR (Pt.343) 138 @ 150; (1994) 5 SCNJ. 86 @ 100 -101 - per Iguh, JSC, citing other B cases therein, (the later, also cited and relied on in the Respondent's Brief). See also the case of *Akpan v. The State* (2001) 15 NWLR (Pt.737) 345; (2001) 7 SCNJ. 567.

I note that the conviction of the 1st Appellant, was based on the direct evidence of the eye witnesses - i.e. PWS 1, 2, 3 and 4 respectively and not on the confessional statements of the 2nd and 3rd Appellants as submitted in the Appellants' Brief. C

Finally, there are the concurrent judgments of the two lower courts and it is now settled that in these circumstances, this Court, will not interfere. See the cases of *Akpunya v. The State* (1976) 11 S.C, 269 @ 276; *Azu v. The State* (1993) 6 NWLR (Pt. 299) 303 @ 316; (1993) 7 SCNJ. 151 and many others. D

It is from the foregoing and the fuller reasons given in the lead Judgment of my learned brother, Katsina-Alu, JSC, that I have no hesitation, in dismissing the appeals as lacking in substance whatsoever. I too affirm the decision of the court below affirming the judgment of the trial court. E

F

G

H