

SUPREME COURT OF NIGERIA
26TH MARCH, 2010, SC. 44/2009, SC. 45/2009
D. MUSDAPHER, W. S. N. ONNOGHEN, F. F. TABAI,
I. T. MUHAMMAD, O. O. ADEKEYE, JJSC

SAMUEL ATTAH APPELLANT
V.
THE STATE RESPONDENT

VINCENT FRIDAY APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Charges - Application to prefer - Propriety of grant - Once prosecutor shows that an offence appears to have been committed - As required by the rules - The court should grant his application (H1)

CRIMINAL PROCEDURE - Initiation of trials - Irregularity - When to complain - Where there is irregularity in initiating criminal trial - Defence has a duty to object timeously - And not when the trial is concluded (H2)

CRIMINAL PROCEDURE - Prosecution witnesses - Discrepancies in evidence - Effect - It is not every such discrepancy that is fatal to prosecution's case - It is only such as are crucial to the main issues in question (H3)

JUDGMENTS - Forms - S. 269(1) of C.P.C. of Kano State - Compliance with - The judgments of trial court is in full compliance - With the provisions of the section - Contrary to submission of appellant's counsel (H4)

CRIMINAL PROCEDURE - Prosecution witnesses - Previous statements - Duty of defence to demand - It is the duty of defence to demand them - If he requires them - Else he cannot complain that they were withheld (H5)

CRIMINAL PROCEDURE - Alibi - Not investigated - Propriety of conviction - Where there is visual and positive identification of accused - At scene of crime - Believed by trial judge - Conviction is proper (H6)

CRIMINAL PROCEDURE - Identification parade - Relevancy - Where the prosecution witnesses knew the accused person - Before the commission of the crime - Identification parade is unnecessary (H7)

FACTS

Appellants were arraigned and tried with three other accused persons before the High Court of Kano State on a two head charge of conspiracy to commit robbery contrary to the provisions of the Robbery and Firearms (Special Provisions) Decree 1984 as amended by Decree No. 62 of 1999. The case of the prosecution was that all the accused persons had conspired and robbed the house of one Alhaji Danjuma Ali Garko of money and jewelry in September 2000. Though appellants had pleaded alibi which plea was not investigated by the police, some of the victims of the crime who had known appellants before the commission of the crime, had positively identified appellants as among those that robbed them.

At the end of trial, all accused persons were found guilty as charged and sentenced accordingly. Aggrieved they had appealed to Court of Appeal but their appeal was dismissed. Still dissatisfied, appellants have brought separate appeals against the judgment of Court of Appeal. However, as the appeals were identical in all respects and filed by the same counsel they were, with consent, considered together. It is appellants' contention, among others, that in the absence of the filing of proof of evidence with the application for leave to prefer charges, the trial court erroneously granted the application by the prosecution.

ISSUES FOR DETERMINATION

"1. Whether the discretion of the learned trial judge in granting leave to prefer charge against the appellant(s) was exercised in accordance with the law.

2. Whether there was enough credible and admissible evidence before the learned Justices of the Court of Appeal for confirming and affirming the conviction(s) and sentence(s) of the appellants.

3. Whether the non-compliance of the judgment of the learned trial judge with the mandatory provisions of Section 269(1) of the Criminal Procedure Code did not vitiate the entire proceedings and thus rendering it a nullity.

4. Whether having regard to the entire circumstances of the case the prosecution did not withhold evidence thereby denying the appellant(s) a fair trial.

5. Whether the appellant's defence(s) of alibi was (were) adequately considered and rightly rejected by the courts below.

6. Whether having regard to the circumstances of this case, the learned justices of the Court of Appeal were right to hold that an identification parade was unnecessary."

HELD (Unanimously dismissing the appeals per **MUSDAPHER JSC**)

Charges - Application to prefer - Propriety of grant

1. It appears that the learned trial judge was satisfied having regard to what the witnesses would state, that the accused persons appeared to have committed the offences. I too, having regard to what was brought before the court of trial, am of the opinion that the learned trial judge had exercised his discretion both judicially and judiciously and I am not convinced that there is any thing which would warrant my interference with the proper exercise of the discretion. It is clear that what the rules required a prosecutor to do was merely to show that an offence appeared to have been committed by the accused and not at that stage, that the accused will be convicted for the offence charged. (p. 1049 G)

Initiation of trials - Irregularity - When to complain

2. In any event, the appellant ought to have complained against the exercise of the discretion by the trial judge to grant the application to prefer the charge before the trial and not when the trial was concluded and on an appeal to the last court of resort, the Supreme Court. At the trial, evidence was adduced by the prosecution witnesses which was believed by the trial judge that the appellant(s) committed the offences charged. In my view such a complaint can only be valid before the trial and accordingly, where an accused person consented to his trial after even a faulty exercise of discretion to

prefer a charge, he cannot after the conclusion of the trial raise the complaint. In my view, it is too late. Where there is an irregularity in the initiation of the procedure for a criminal trial, the defence has a duty to object timeously and not when the trial is concluded.

(p. 1050 B)

B

Prosecution witnesses - Discrepancies in evidence - Effect

3. Where there are conflicts, discrepancies or contradictions that are material in nature, that go to the root of the substance of the case, so as to raise doubts in the mind of the court, the court should not convict.

C

But the point must be made, it is not every trifling inconsistency in the evidence of the prosecution witnesses that is fatal to the case. It is only when such contradictions, inconsistencies, or conflicts are substantial, crucial and fundamental to the main issues in question, which therefore necessarily create doubts in the mind of the trial judge, an accused may be entitled to benefit there from.

D

In the instant case, the minor discrepancies in the evidence of the prosecution witnesses are not substantial or sufficient, by themselves, to entitle the appellant to an acquittal. (p. 1052 C)

E

JUDGMENTS - Forms - Compliance with

4. It is submitted that the record of the judgment of the trial judge as contained on pages 61 - 118 of the printed record did not contain the signature or seal of the trial judge as required by section 269 (1) of the Criminal Procedure Code.

F

I have examined the record of proceedings and at page 118 it is recorded thus:-

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“Signed Hon.
Judge 24/07/03”

In my view this is full compliance with the provisions of section 269 (1) of the Criminal Procedure Code of Kano State in relation to the signing of the judgment. I without much ado also resolve issue No. 3 against the appellant(s). (p. 1054 C/D)

H

Previous statements - Duty of defence to demand

5. It is the duty of the defence at the crucial moment to demand the admitted previous statements made by witnesses for the purposes of

cross-examination. The issue that the prosecution withheld the statements cannot hold water. If the defence wanted the statements they should have demanded the statements from the prosecution. The prosecution have no duty to disclose what they have in the case diary. It is not an issue of withholding evidence under section 149 (a) of the Evidence Act. (p. 1055 G) B

Alibi - Not investigated - Propriety of conviction

6. It is the law where an alibi is properly raised, the prosecution must investigate it, however, it is also the law where there is visual and positive identification of the accused at the scene of the crime which is believed by the trial judge, the appellate court should not disturb such a finding. In the instant case, I am satisfied that the trial court had adequately and properly dealt with defence of alibi raised by the appellant(s) and having regard to the overwhelming evidence of the prosecution witnesses which fixed the appellant (s) at the scene of the crime, the evidence of alibi being weaker, the appellant (s) was properly convicted. (p. 1057 E) C D

Identification parade - Relevancy

7. Now, an identification parade is often necessary where the witness's first acquaintance with the accused is during the commission of the crime, then an identification parade may be held. E

But it is the law that identification parade is irrelevant and unnecessary where the witnesses knew the accused person or persons. It will be superfluous and completely unnecessary when as in this instant case the prosecution witnesses knew the accused persons. F

The offence took place under a bright light and the accused were not masked or disguised and the witnesses called by the prosecution identified them as those living in their neighbourhood. Indeed, some of the accused persons used to go to the house of the witnesses to take water. (p. 1058 B/D) G

NOTABLE POINT OF INTEREST

ADEKEYE JSC

1. Identification need not be through identification parade

"In the case of *The State v. Aibangee*, (1988) 3 NWLR pt. 14 pg. 548 the Supreme Court defined identification to mean "a whole series of H

facts and circumstances for which a witness or witnesses associate a defendant with the commission of the offence charged. It may consist of or include evidence in form of finger prints, handwriting, palm prints, voice, identification parade, photographs or the recollection of the features of the culprits by a witness who saw him in the act of commission which is called in question or a combination of two or more of these". (p. 1065 B)

REPRESENTATION

C Dr. J. Y. Musa with him I. H. Yarnah M. O. Onyilokwu, E. E. Eko, M. C. Sojachukwu, Theophilus Ejeh and Bassey Etubudo for the Appellants.
Alhaji Aliyu Umar A.G. Kano with him Shuaibu Sule DPP, Mustapha Mohammad DDPP, Hapsat Wali and Halima Ahmad for the Respondents.

CASES REFERRED TO

IKOMI VS. THE STATE (1986) 3 NWLR (Pt. 38) P. 341
OTTI VS. STATE (1993) 4 NWLR (Pt. 290) 675
E ABACHA VS. THE STATE (2000) 7 SCNJ 1 at 35
OKONJI VS. THE STATE (1987) 1 NWLR (pt. 52) 659
SALAMI VS. THE STATE (1988) 3 NWLR (Pt. 85) 670
OGBU VS. THE STATE (1992) 8 NWLR (Pt. 259) 255
WILLIAM VS. THE STATE (1992) 8 NWLR (Pt. 261) 515
F THE STATE VS. AIBANGBEE (1988) 3 NWLR Pt. 84 P. 548
NGWO KALU VS. THE STATE (1988) 4 NWLR (pt. 90) 503
ISAH VS. THE STATE (2008) ALL FWLR (Pt. 443) at P. 1243
ADEKUNLE VS. THE STATE (2006) 14 NWLR (Pt. 1000) 717
G OMOPUPA VS. THE STATE (2008) ALL FWLR (Pt. 445) P. 1648
NDIDI VS. THE STATE (2007) ALL FWLR (Pt. 381) P. 1617 at 1639
YAKUBU VS. CHIEF OF NAVAL STAFF (2005) ALL FWLR (Pt. 248) P. 1693
ADIGUN VS. ATTORNEY-GENERAL OF OYO STATE (1987) 1
H NWLR (pt. 53) p. 678

STATUTES & RULES REFERRED TO

Criminal Procedure Code of Kano State, ss. 269 and 185
Criminal Procedure (Application for Leave to Prefer a Charge in the

High Court) Rules, 1970.

Constitution of the Federal Republic of Nigeria, 1999, s. 36

Evidence Act, s. 149

LEAD JUDGMENT BY MUSDAPHER JSC

These are two separate appeals against the judgment of the Court of Appeal Kaduna Judicial Division delivered on 6/1/2009, wherein the court below affirmed the decision of the Kano State High Court convicting the appellants and others for the offences of conspiracy to commit robbery and of armed robbery contrary to the provisions of the Robbery and Firearms (Special provisions) Decree 1984 as amended by Decree No. 62 of 1999.

Before the trial High Court, the appellants herein and others were tried on a two count charge as follows:-

"1. First Head of Charge

That you SAMUEL ATTAH, VINCENT FRIDAY IKECHUKWU SUNDAY and HYGINUS OFROMOTA On or about the 10th day of September 2000 at Naibawa Quarters, Kano, within Kano Judicial Division agreed to do an illegal act to wit; rob the house of Alhaji Danjuma Ali Garko at Naibawa Quarters of money and jewelry and the same act was done pursuant to the agreement and that you thereby committed an offence contrary to section 5(b) of the Robbery and Firearms (Special Provisions) Decree, 1984 as amended by Decree No. 62 of 1999.

The Second Head of Charge

That you SAMUEL ATTAH of Naibawa Quarters VINCENT FRIDAY of Unguwa Uku, Quarters, IKECHUKWU SUNDAY of Naibawa Quarters and HYGINUS OFORMATA of Unguwa Uku Quarters, within the Kano Judicial Division on the 10th day of September, 2000 at about 8.30 .p.m. while armed with guns committed the offence of armed robbery in the house of Alhaji Danjuma Ali Garko, of Naibawa quarters and robbed them of cash and jewelry worth N94,000.00 and thereby committed an offence punishable under section 1(2) (a) of the Robbery and Firearms (Special Provisions) Decree, 1984 as amended by Decree No. 62 of 1999".

In proof of its case against the accused persons, the prosecution called five witnesses. In their defence all the accused persons including the appellants, testified on their own behalf and, called four

other witnesses. At the conclusion of the trial the learned trial judge found all the accused persons guilty as charged. All the accused persons were sentenced to death. The appellants together with the others appealed to the Court of Appeal, Kaduna Judicial Division in appeal No. CA/K/70/C 2004 and their appeal was dismissed as afore-said on the 6/1/2009. In each of these two appeals by the 1st and 2nd accused persons before the trial court, this court granted each of them extension of time to appeal and leave to raise fresh issues raised in grounds 2,3,4, 5, and 7 of the grounds of appeal. Each of the appellants filed a separate Notice of Appeal containing eleven grounds of appeal on the 27/7/2009. It should be mentioned that the appellants have filed identical grounds of appeal, briefs of argument and appellant's reply briefs. All the briefs filed by the appellants are identical in all particulars. At the hearing of these appeals, since, it is the same counsel appearing in both appeals, for the appellants it was agreed that the appeals be considered together.

As mentioned above, the briefs are identical and the learned counsel for the appellant (s) has identified and submitted the issues for the determination of the appeal (s) as follows:-

“1. Whether the discretion of the learned trial judge in granting leave to prefer charge against the appellant(s) was exercised in accordance with the law.

2. Whether there was enough credible and admissible evidence before the learned Justices of the Court of Appeal for confirming and affirming the conviction(s) and sentence(s) of the appellants.

3. Whether the non-compliance of the judgment of the learned trial judge with the mandatory provisions of Section 269(1) of the Criminal Procedure Code did not vitiate the entire proceedings and thus rendering it a nullity.

4. Whether having regard to the entire circumstances of the case the prosecution did not withhold evidence thereby denying the appellant(s) a fair trial.

5. Whether the appellant's defence(s) of alibi was (were) adequately considered and rightly rejected by the courts below.

6. Whether having regard to the circumstances of this case, the learned justices of the Court of Appeal were right to hold that an identification parade was unnecessary.”

Now, I shall discuss the issues as they appear in the appellant(s)

briefs.

Issue No. 1

Whether the discretion of the learned trial judge in granting the leave to prefer the charge against the appellant(s) was exercised in accordance with the law.

This is a fresh point or issue which was not discussed in the courts below, this court granted leave to the appellant (s) to raise it. It is submitted that, the leave granted to prefer the charge before the trial court was contrary to the provisions of section 185 (b) of the Criminal Procedure Code of Kano State and also the Criminal Procedure (Application For Leave To Prefer a charge In the High Court) Rules 1970, in that the proofs of evidence of the witnesses were not accompanied with the application. It is again argued that the failure to accompany the proofs of evidence amounted to a denial of fair trial as provided by section 36(6)(b) of the Constitution. It is submitted that the grant of the application was not a proper exercise of discretion in that the learned trial judge had no materials with which to exercise the discretion judiciously and judicially as he is required to do. Learned counsel for the appellant relied on the cases **BATURK VS. THE STATE** (1994) 1 SCNJ 19. In which case **OGUNDARE JSC** of blessed memory stated that the non-compliance with the provisions of section "185 of the Code is not a mere irregularity". The cases of **OKEGBU VS. THE STATE** 1979 11 SC 1 and **ONUOHA VS. C.O.P** (1959) 4 FSC 23 were mentioned. It is further submitted that the failure to strictly comply with the provisions of section 185 (b) of the Criminal Procedure Code rendered the trial a nullity Learned counsel referred to **MADUKOLU VS. NKEMDILIM** (1962) All NLR (pt. 2) 581.

Learned counsel also referred to the Cases **IKOMI VS. THE STATE** (1986) 3 NWLR (Pt. 38) P. 341 **STATE VS. SAMPSON GALI** (1974) 5 SC. 67, **OHWOVORIOLE VS. FR.N.** (2003) FWLR (Pt. 141) P. 2019. **ABACHA VS. THE STATE** (2000) 7 SCNJ 1 at 35, **THE STATE VS. AIBANGBEE** (1988) 3 NWLR Pt. 84 P.548.

It is submitted that the grant of the leave without the proofs of evidence was made on mere suspicion and speculation and was therefore not a proper exercise of discretion and was done without jurisdiction and as such the whole trial was a nullity.

It is submitted for the respondent on the other hand that the application to prefer the charge was not under the provisions of section 185 (b) of the Criminal Procedure Code and that it was made under section 9(2) of the Robbery and Firearms (Special Provisions) Decree 1984 as amended by Decree No. 62 of 1999. It is further submitted that the case of **BATURE VS. STATE** does not apply because in that case the issue was not on the question of proof of evidence but on the issue whether leave to prefer the charge was clearly granted or not. It is further submitted that the requirement of the proof of evidence under section 185 of the Criminal Procedure Code of Kano State and the Criminal Procedure (Application for leave to prefer a charge) Rules 1970 was introduced in era of holding Preliminary Inquiry and by Kano State Edict No. 13 of 1977, the 1970 rules of necessity became spent. It is further submitted that section 185 the Kano State Criminal Code is unique and there is no similar provision in the Criminal Procedure Act and as such the cases of **IKOMI** and **ABACHA** do not apply, further it was decided that the proofs of evidence filed on those cases were insufficient to sustain the charges. It is also argued that the decision of **OHWOVORIOLE** supra does not also apply.

It is also submitted that in the instant cases, the issue only arose when the trial was concluded and the appellant(s) were confronted with Iron clad evidence. It cannot now, after the trial where an abundance of evidence was adduced, for the appellant (s) to complain. It is finally submitted that the application to prefer the charges was not predicated under section 185 of the Criminal Procedure Code of Kano State but under Decree No. 5 of 1984 which did not envisage the filing of proofs of evidence.

Now, there is no doubt that the application before the trial judge was not premised under section 185 of the Criminal Procedure Act of Kano State. The heading of the application reads:-

"APPLICATION TO PREFER A CHARGE UNDER SECTION 9 (2) OF THE ROBBERY AND FIREARMS (SPECIAL PROVISIONS) DECREE, NO. 5 OF 1984 AS AMENDED BY DECREE NO. 62 OF 1999."

Now, the application contained the list of the witnesses and what they were going to state as follows:

"1. Inspector Murtala Sallau

To state his findings during his investigations of the case.

2. Hajiya Majjidda Danjuma

To state how the accused persons robbed her.

3. Hajiya Zainab Danjuma

To state how the accused forcefully removed the key to her husband's saving box and robbed them of cash and jewelry contained in the box. B

4. Hakeem Danjuma.

To state how the accused forcefully robbed his mother of her cash and jewelry. C

5. Mustapha Danjuma

To state how the accused forced him to take them to his father's room."

"Summary of evidence

The prosecution will lead evidence to show that the accused D persons threatened the victims with guns and other dangerous weapons thereby robbing them of cash and jewelry."

In my view, the above clearly satisfies the provisions of Robbery and Firearms Tribunal Rules of procedure. The rules provides:-

"1. The trial of offences under this Act shall commence by way E of an application supported by evidence made to the tribunal by the prosecutor.

2. Where after the perusal of the application and the evidence F or any further evidence in such form as the tribunal may consider necessary, the tribunal is satisfied that any person appears to have committed offence under this Act, it shall cause the person to be brought before the tribunal on such a date and such time as it may direct."

(underline supplied by me)

It appears that the learned trial judge was satisfied having G regard to what the witnesses would state, that the accused persons appeared to have committed the offences. I too, having regard to what was brought before the court of trial, am of the opinion that the learned trial judge had exercised his discretion both judicially and judiciously and I am not convinced H that there is any thing which would warrant my interference with the proper exercise of the discretion. It is clear that what the rules required a prosecutor to do was merely to show that

an offence appeared to have been committed by the accused and not at that stage, that the accused will be convicted for the offence charged.

The cases cited by the learned counsel for the appellant clearly are inappropriate, and do not apply. The legislation on armed robbery was a special legislation to deal with the serious menace afflicting the public and was clearly different from the situations envisaged under section 185 of the Criminal Procedure Code or the cases of IKOMI VS. THE STATE 1986 supra or ABACHA VS. THE STATE supra.

In any event, the appellant ought to have complained against the exercise of the discretion by the trial judge to grant the application to prefer the charge before the trial and not when the trial was concluded and on an appeal to the last court of resort, the Supreme Court. At the trial, evidence was adduced by the prosecution witnesses which was believed by the trial judge that the appellant(s) committed the offences charged. In my view such a complaint can only be valid before the trial and accordingly, where an accused person consented to his trial after even a faulty exercise of discretion to prefer a charge, he cannot after the conclusion of the trial raise the complaint. In my view, it is too late. Where there is an irregularity in the initiation of the procedure for a criminal trial, the defence has a duty to object timeously and not when the trial is concluded. See AGBO VS. THE STATE (2006) 6 NWLR (Pt.977) 545. ADEKUNLE VS. THE STATE (2006) 14 NWLR (Pt. 1000)717.

In my view, the learned trial judge properly, exercised his discretion to grant the leave to prefer the charge against the appellant(s), accordingly issue No. 1 is resolved against the appellant(s).

Issue 2

Whether there was enough credible and admissible evidence before the learned justices of the Court of Appeal for confirming the conviction(s) and sentence(s) of the appellant(s)

It is submitted for the appellants that the evidence adduced by the prosecution is not credible or reliable to convict the appellants, P.W. 1 for example did not give the names of the accused person even when she said she knew them. Learned counsel referred to the case of ISAH VS. THE STATE (2008) ALL FWLR (Pt. 443) at P. 1243.

It is also submitted that the evidence of P.W. 2 who stated that she was very frightened and that she had never seen the accused persons before the incident, could not identify the appellant(s), with any degree of Certainty. Learned counsel referred to the case of NDIDI VS. THE STATE (2007) ALL FWLR (Pt. 381) P. 1617 at 1639 and IKEMSON VS. THE STATE (1989) 6 SC (Pt. 5) 14. It is also argued that although P.W. 3. said she knew the accused persons, she was frightened of guns especially when Accused No. 1 and 3 pointed guns at her. P.W. 4 the IPO, did not give comprehensive evidence as to which of the witnesses properly identified the appellant(s) at the identification parades. It is further submitted that none of the witnesses claimed to have identified all the four accused persons at the identification parades.

It is again submitted that P.W. 1 made an inconsistent statement in her evidence before the court and her statement to the Police. Learned counsel relied on the case of EGBOHONOME VS. THE STATE (1993) 9 SCNJ 1 at 21 and submitted that the evidence of P.W. 1 cannot be relied upon. Learned counsel also referred to the case of PRINCEWILL VS. THE STATE (1994) 7-8 SCNJ 226 and submits that since no explanation was given to explain the contradictory nature of the evidence of the prosecution witnesses, such evidence could not be acted upon. See JAMES IKHANE VS. C.O.P 1977 ALL NLR 234 at 237; BOY MUKA VS. THE STATE (1976) 10 - 11 SC 305 NDIDI VS. THE STATE (2007) ALL FWLR (Pt.381) P. 1650; OMOPUPA VS. THE STATE (2008) ALL FWLR (Pt.445)P. 1648.

For the respondent, it is submitted that there was no contradiction in the evidence of the witnesses nor did any of the witnesses contradict themselves. P. W. 1, P. W. 2, P. W. 3 and P. W. 5 testified on what they saw during the robbery and that there was no doubt on the identity of the robbers who entered their house on that fateful day. Both P. W. 1 and P. W. 3 stated even before the trial that they knew the robbers. It is submitted that the finding is not perverse as it is supported by the evidence led and believed. It is further submitted that the case of EGBOGHONOME supra cited for the appellant does not apply. It is again submitted that there is no contradiction on the evidence of the prosecution witnesses as to the identity of the accused persons and even if there is difference in the testimony of the

witnesses as to the identity of the accused, which is not present in this case, the contradiction must be material, substantial and fundamental to the main issue in controversy.

Now, it is trite in all criminal prosecutions, it is the duty of the prosecution to prove the guilt of the accused beyond all reasonable doubt. Thus where there are substantial contradictions on material points in the evidence of the prosecution witness or witnesses or between the evidence of a witness, the accused will be discharged and acquitted on the premises that it cannot be said that there was proof beyond reasonable doubt. See AKOSILE VS. THE STATE (1972) 8 SC 332, NGWO KALU VS. THE STATE (1988) 4 NWLR (pt. 90) 503. ***Where there are conflicts, discrepancies or contradictions that are material in nature, that go to the root of the substance of the case, so as to raise doubts in the mind of the court, the court should not convict***, see EJIGBADERO VS. THE STATE (1978) 9 & 10 SC 81, IBRAHIM VS. THE STATE (1991) 4 NWLR (pt.186) 399. ***But the point must be made, it is not every trifling inconsistency in the evidence of the prosecution witnesses that is fatal to the case. It is only when such contradictions, inconsistencies, or conflicts are substantial, crucial and fundamental to the main issues in question, which therefore necessarily create doubts in the mind of the trial judge, an accused may be entitled to benefit there from***. See OKONJI VS. THE STATE (1987)1 NWLR (pt. 52) 659. ***In the instant case, the minor discrepancies in the evidence of the prosecution witnesses are not substantial or sufficient, by themselves, to entitle the appellant to an acquittal***. See IKO VS. THE STATE (2001) 14 NWLR (pt.733) 221. It is not a contradiction to say in evidence what a witness never told the police in his earlier statement. Such differences or variances on peripheral matters as in instant appeal, are neither material nor fundamental. The fundamental and crucial issues are that P. W. 1, P. W.2, P. W. 3 and P. W. 5 identified the appellants as the persons who robbed them in the night in question.

In the instant case, the learned trial judge found see page 109 of the printed record:-

“P.W. s 1 and 5 testified that the accused persons are their neighbours and they see them everyday either passing near their house or when P. W. 5 went to school or goes to play football in the

field near their house where he saw them daily. This is well corroborated by the testimonies of the 1st accused who as D.W. 1 admitted to being a neighbour of Alhaji Danjuma Ali Garko. (D. W. 1 being the appellant in SC. 44/2009). The 2nd accused as D.W. 2 testified that he did not know the complainant and his family but that he used to go to the residence of the 3rd accused xxxxx the 3rd accused as D.W. 3^B admitted to also being a former neighbour of the complainant he knew everybody in the complainant's house. xxxxxxxxxx That there was bright light during the robber operation. I believe the witnesses especially P. W. s 1, 2, 3 and 5, when they said they recognized the accused persons as their neighbours together with those who used to hang about with them as the persons who that robbed their house on the night of September, 2000. xxxxxxxxxx This knowledge was confirmed by some of the defence witnesses xxxxxxxxxx. An identification parade was therefore unnecessary xxxxxxxxxx. ” ^C

Thus the learned trial judge had in the main accepted as true the evidence of the prosecution witnesses. Similarly the Court of Appeal at page 242 of the record with reference to the evidence state:- ^D

“In the appeal at hand, the trial court in a most comprehensive manner properly evaluated the evidence adduced before it and made its findings thereon. There is a presumption that the findings of fact of a trial court or tribunal are right or correct and so remains until dislodged by the party who challenges such findings. The appellants in the instant appeal have not dislodged the findings of facts made by the trial court; equally they have not shown that the findings are perverse or that the trial court drew wrong inference from accepted facts to warrant us to interfere with the findings. xxxxxxxxxx. ” ^E

I too, am not convinced that there are any reasons why I should interfere with the concurrent findings facts by the two courts. The credibility of witnesses is a matter for the trial court see R. VS. OMISADE (1964)1 ALL NLR 233. I may add the complaint of the appellant(s) with reference to the identification parade is clearly insignificant from the undoubted facts of this case, it is not even necessary to hold an identification parade. See WILLIAM VS. THE STATE (1992) 8 NWLR (Pt.261) 515. In evidence of witnesses inaccuracies may no doubt occur and inaccuracies as opposed to conflict or contradictions which do not occasion miscarriage of justice do not avail ^F ^G ^H

the accused. See OGBU. VS. THE STATE (1992) 8 NWLR (Pt. 259) 255. In view of what I have stated above, issue No. 2 must also be resolved against the appellant(s).

Issue No. 3

B *“Whether the non-compliance of judgment of the learned trial judge with the mandatory provisions of section 269(1) of the Criminal Procedure Code did not vitiate the entire proceedings thus rendering it a nullity.”*

C This is a fresh issue for which leave of this court was sought and obtained. That is to say, the issue did not arise in the lower courts for their consideration. **It is submitted that the record of the judgment of the trial judge as contained on pages 61 - 118 of the printed record did not contain the signature or seal of the trial judge as required by section 269 (1) of the Criminal Procedure Code.** Learned counsel referred to the case of the QUEEN VS. FADINA (1958) NSCC, P. 52 at PP. 33-54 and also the case of YAKUBU VS. CHIEF OF NAVAL STAFF (2005) ALL FWLR (Pt. 248) P. 1693.

E ***I have examined the record of proceedings and at page 118 it is recorded thus:-***

“Signed Hon.

Judge 24/07/03”

F ***In my view this is full compliance with the provisions of section 269 (1) of the Criminal Procedure Code of Kano State in relation to the signing of the judgment. I without much ado also resolve issue No. 3 against the appellant(s).***

Issue No. 4

G *“Whether having regard to the entire circumstances of this case, the prosecution did not withhold evidence thereby denying the appellant fair trial”.*

H This is also a fresh issue for which leave of this court was sought and obtained to raise it. It is submitted that no proofs of evidence were filed by the prosecution even though evidence was abound that P. W. 1, P. W. 2, P. W. 3 and P. W. 5 made statements to the police. It is further submitted that P. W. 1, 3 and 5 made statements to the police and the prosecution had failed to produce such statements at the trial. It is urged on the court to hold that since there is no dispute that Such evidence existed and was not produced, such evidence

would be unfavourable to the prosecution vide section 149 (a) of the Evidence Act; if produced. Learned counsel referred to the case of ABACHA VS. THE STATE supra on the issue of non filing of proofs of evidence. Learned Counsel also referred to section 36 (6)(b) of the 1999 Constitution. He also referred to the cases of LAYONU & OTHER VS. THE STATE (1967) ALL NLR p. 210., AKPABIO VS. THE STATE (1994) 7- 8 SCNJ 429. It is submitted that the failure to give the accused the statements of witnesses amounts to a denial of fair hearing vide RANSOME KUTI VS. A.G. OF THE FEDERATION (1985) 2 NWLR (pt.6) P.211. Learned counsel also referred to SAUDE VS. ABDULLAHI (1989) 4 NWLR (Pt. 116) P. 387, FEDERAL REPUBLIC OF NIGERIA VS. IFEAGWU (2003) 15 NWLR (pt.842) 213.

The learned counsel for the respondent on the other hand submits that there is no requirement of the law that statements of witnesses to the police should be given to the accused. See GAJI VS. THE STATE (1975) NNLR 98 at 112. It is further submitted that none of the accused asked for those statements when they knew the existence of such statements.

Now, in the case of LAYONU & OTHERS VS. THE STATE supra BRET JSC observed at page 201. "In our experience the principle has always been applied, as it was held in R. VS. ADEBANJO (1935) 2 WACA 315, to any written statement in the possession of the prosecution which was made by a witness called by the prosecution and relates to any matter on which the witness has given evidence. Such a statement is not evidence of the facts contained in it and the only use to which the defence can put it is to cross-examine the witness on it and then if it is intended to impeach his credit. xxxxxx" The prosecution is not required by law to tender prosecution's witness statement to the police. See section 199 of the Evidence Act. See also GAJI VS. THE STATE supra.

It is the duty of the defence at the crucial moment to demand the admitted previous statements made by witnesses for the purposes of cross-examination. The issue that the prosecution withheld the statements cannot hold water. If the defence wanted the statements they should have demanded the statements from the prosecution. The prosecution have no duty to disclose what they have in the case diary. It is not an

issue of withholding evidence under section 149 (a) of the Evidence Act. The issue also has nothing to do with the provisions of section 36 of the Constitution or the issue of fair hearing. I must also resolve issue No. 4 against the appellant (s).

Issue No. 5

B *“Whether the appellant’s(s) defence of ALIBI was adequately considered an rightly rejected by the courts below.”*

C It is submitted that the appellant(s) raised the defence of alibi and the learned trial judge has failed to analyze the defence of alibi, he merely disbelieved the appellant(s). It is submitted that where an evidence of alibi is not considered or properly valued it amounted to a denial of fair hearing and natural justice, vide ADIGUN VS. ATTORNEY-GENERAL OF OYO STATE (1987) 1 NWLR (pt. 53) p. 678. It is submitted that it is not enough to reject the evidence merely D on the basis that those who gave evidence in support of the Alibi are members of the same family of the appellant (s). It was wrong also for the trial judge to opine that the raising of the alibi was an after thought see AKPAN VS THE STATE (1986) 1 ALL NLR (Pt 1) P. 436.

E The Court of Appeal was also in error to have held that the trial judge had properly considered the defence of Alibi and had rightly rejected it see AIGUOREGHIAN VS. THE STATE (2004) ALL FWLR (pt. 195) 753.

F The learned counsel for the respondent on the other hand argued that the trial judge had adequately dealt with the defence of alibi raised by the appellant(s) and as affirmed by the Court of Appeal rightly rejected the defence. It is submitted that the defence of alibi crumbles immediately the prosecution gives more credible or superior evidence. The appellant(s) were found and fixed at the scene G of the crime by the prosecution witnesses and the learned trial judge preferred the evidence of the prosecution witnesses as against that of the defence. Learned counsel referred to the cases of ALMU VS. THE STATE (2009) 10 NWLR (Pt.1148) 31 and DAGGAYA VS. THE STATE (2006) 7 NWLR (pt. 980) 637. ADAVA VS. THE STATE (2006) H 9 NWLR (Pt. 984) P.152.

Now, in any criminal trial, where an accused puts forward the defence, that he was somewhere else at the relevant time and not at the scene of the crime when the offence for which he is charged as committed he is said to have raised the defence of alibi.

The duty is on the prosecution to disprove the allegation as it is the duty of the prosecution to prove the guilt of the accused beyond reasonable doubt. The duty of the accused is merely to raise the defence promptly and properly. See YANOR VS. THE STATE (1965) NMLR 3371 NJOVENS VS. THE STATE (1973) 5 SC 17, ADEDEJI VS. THE STATE (1971) ALL NLOR 75 SALAMI VS. THE STATE (1988) 3 NWLR (Pt. 85) 670. See generally GACHI VS. THE STATE (1965) NMLR 333. B

An accused person is duty bound to furnish the necessary information from which his whereabouts at the crucial time can be checked and where there is more credible evidence believed by the trial judge fixing the accused person at the scene of the crime, where he is seen committing the offence, the defence of alibi will collapse see AKPAN VS. THE STATE (1991) 5 SCNJ 1, IKEMSON VS. THE STATE (1989) 20 NSCC (Pt. 11) 471. Once the defence of Alibi has been promptly and properly put up, the burden is on the prosecution to investigate it and rebut such evidence in order to prove the case against the accused person beyond reasonable doubt. See ADEDEJI VS. THE STATE (1971) 1 ALL NLR P. 75. C D

In any event, the trial judge has duty, even in the absence of the investigation of an alibi raised by an accused, to consider the credibility of the evidence adduced vis a vis the alibi see OZAKI VS. THE STATE (1990) 1 NWLR (Pt. 124) 92. ***It is the law where an alibi is properly raised, the prosecution must investigate it, however, it is also the law where there is visual and positive identification of the accused at the scene of the crime which is believed by the trial judge, the appellate court should not disturb such a finding. In the instant case, I am satisfied that the trial court had adequately and properly dealt with defence of alibi raised by the appellant(s) and having regard to the overwhelming evidence of the prosecution witnesses which fixed the appellant (s) at the scene of the crime, the evidence of alibi being weaker, the appellant (s) was properly convicted.*** I also resolve issue No.5 against the appellant(s). E F G H

Issue No. 6

Whether having regard to the circumstances of this case, the learned justices of the Court of Appeal were right to hold that the identification parade was unnecessary.

It is submitted that in this case 4 identification parades took place. It is submitted that it is curious to hold 4 identification parades when the accused person are known to the prosecution witness. It is submitted that in view of the evidence of P.W. 4, it would be unsafe to affirm the concurrent findings of facts when according evidence of P. W. 4 “*only some of the prosecution witnesses identified the accused person.*”

Now, an identification parade is often necessary where the witness first acquaintance with the accused is during the commission of the crime, then an identification parade may be held. But it must be remembered that such a parade is not fool proof. It is not a guarantee against the usual errors of observation, errors of recognition or errors of reconstruction. The criminal law is full of cases of mistaken identity see the case of WALTER GRAHAM ROWLAND (1947) 32 C.R. APP. R. ***But it is the law that identification parade is irrelevant and unnecessary where the witnesses knew the accused person or persons. It will be superfluous and completely unnecessary when as in this instant case the prosecution witnesses knew the accused persons.*** See IKEMSON VS. THE STATE *supra*. ***The offence took place under a bright light and the accused were not masked or disguised and the witnesses called by the prosecution identified them as those living in their neighbourhood. Indeed, some of accused used to go to the house of the witnesses to take water.*** See OTTI VS. STATE (1993) 4 NWLR (Pt. 290) 675. In the instant case the appellant (s) even corroborated the evidence of the prosecution witnesses that they were not strangers and that they knew themselves. The appellant(s) did not at any occasion during the trial claim that the prosecution witnesses P. W.1, P. W. 2, P. W. 3 and P. W. 5 never knew them before that fateful night. It is accordingly true that both the accused and the victims knew themselves. I am in agreement with the Court of Appeal that under the undoubted facts of this case formal identification parade is not necessary see ORINMOLOYE VS. THE (1984) 10 NWLR 188. Identification is only essential when the identity of the accused in relation to the commission of the offence is in dispute. So, what was done by the police in this case was superfluous and unnecessary and serves no purpose. I also find no merit in the appellant(s) complaint under issue 6 and I accordingly

resolve the issue against the appellant(s).

In the end, having considered all the identical issues in appeals SC. 44/209 and SC. 45/2009 and having resolved them against the appellants. These two appeals are dismissed by me. I affirm the decisions of the lower courts.

B

ONNOGHEN JSC

I have had the opportunity of reading in draft the lead judgment of my learned brother MUSDAPHER, JSC just delivered.

C

I agree with his reasoning and conclusion that the appeals are without merit and should be dismissed. I therefore order accordingly and abide by the consequential orders made in the said lead judgment.

Appeals dismissed.

D

TABAI JSC

I have read, in advance, the lead judgment of the two appeals prepared by my learned brother Musdapher JSC and I agree entirely with his reasons and conclusion that there is no merit in the appeals.

E

I do not think that for the purpose of establishing the criminal responsibility of the appellants, an identification parade was necessary. The uncontroverted evidence is that the appellants and some of the prosecution witnesses knew themselves before the incidence of the alleged robbery on the 10th of September 2000. An identification parade was in the circumstances therefore unnecessary.

F

In conclusion, I also dismiss the appeals for lack of merit.

G

MUHAMMAD JSC

I have had the advantage of reading before now, the judgment of my learned brother, Musdapher, JSC, just delivered. The judgment has comprehensively covered all the issues raised in the two appeals. I do not intend to add anything. I adopt the judgment. I abide by all orders made in the judgment.

H

ADEKEYE JSC

I had read before now the judgment just delivered by my learned brother, Dahiru Musdapher, JSC. My Lord had exhaustively dealt with all the issues raised for determination in these appeals. I agree with his reasoning and conclusion. I shall however add a few words on some of the issues for reasons of emphasis. On issue 1, the appellants challenged the exercise of the learned trial courts discretion in granting leave to prefer the charge against them; particularly whether it was in accordance with the relevant law. Both appellants were charged as reflected in the Record, with the offences of conspiracy and robbery contrary to sections 5 (b) and 1 (2) (a) of the Robbery and Firearms (Special Provisions) Decree, 1984 as amended by Decree No. 62 of 1999. This court granted leave to the appellants to raise fresh issues and this served as the platform for the appellants to observe as follows: -

“That the provisions of section 185 (b) of the Criminal Procedure Code and Criminal Procedure (Application to prefer a charge in the High Court) Rules 1970 were not complied with.”

My Lord in the leading judgment considered this issue in extenso. The bottom line are as follows: -

(1) The Attorney-General delegated the power to file the charges to a state counsel in his department in accordance with section 211 (1) (b) and (c) of the 1999 Constitution.

(2) There is no requirement for filing of proofs of evidence under section 185 (b) of the Criminal Procedure Code. Criminal Procedure (Application to prefer a charge in the High Court) Rules 1970 is no longer applicable in Kano State as the law is currently replaced by the Criminal Procedure (Preferment of Charges in the High Court) Rules Kano State Edict No. 10 of 1979. The date of commencement is 1st of April, 1979.

(3) Application for leave to prefer a charge was not brought under section 185 (b) of the Criminal Procedure Code but under section 9 (2) of the Robbery and Firearms (Special Provisions) Act Cap 398 Laws of the Federation 1990.

The objection to the exercise of discretion of the learned trial judge is now belated. The right to object has been waived by the steps taken by the appellants. The objection ought to have been

brought timeously and not after conclusion of trial. The learned trial judge in the circumstance exercised his discretion judiciously and judicially.

Issue V

Whether the appellants defence of alibi was adequately considered and rightly rejected by the courts below. B

The complaint of the appellants was that the learned trial judge did not adequately analyse their defence of alibi. That it was a denial of fair hearing and a clear case of miscarriage of justice. The Court of Appeal was therefore in error when it held that the learned trial judge considered the alibi and rejected same. The appellants gave the reasons why the trial court did not consider the alibi because the evidence in support came from members of their family and close associates. The alibi was not raised timeously but at trial stage. If the prosecution had tendered the statement of the appellants to the police in evidence, the court would have thought otherwise. C
D

The conclusion of the court at page 108 of the Record as to the defence of alibi raised by the appellants in the judgment of the court are as follows: - E

“There is therefore no issue about believing the alibi raised by the accused person. This is even especially so where the stories of the accused persons were all to the effect that they were all to the effect that they were at home. All the people that testified are either family members or close friends of the family. It is not necessary to analyse the testimonies of the defence witnesses as to the alibi to see if they are credible. Suffice it to say that an alibi being raised at this stage of trial is an after thought and cannot be taken seriously.” F

As a follow up, the lower court said- G

“It is therefore my finding that the learned trial judge has adequately considered the alibi presented by the appellants and has rightly rejected same in the light of overwhelming evidences fixing the appellants at the scene of crime on the date in question.”

I must emphasize that in all criminal trials, all defences raised by an accused person no matter how weak or stupid or fanciful, or figment of imagination they may appear, they must be considered by court. H

Audu v. The State (2003) FWLR pt 153 pg. 325, (2003) 7

NWLR pt. 820 pg. 516.

Williams v. I.G.P. (1965) NWLR pg. 470.

Alibi is a Latin word meaning “elsewhere”. Black’s Law Dictionary Eight Edition define alibi as a defence based on the physical impossibility of defendant’s guilt by placing the defendant in a location other than the scene of the crime at the relevant time. The fact or state of being elsewhere when an offence was committed.

I intend to illustrate the position of the defence of alibi in a criminal trial with reference to decided cases. In the case of Ndukwe v. The State 37 NSC (2) QLR pg. 425, a decision of this court-it was said at page 475 that

“It is now settled that even though it is the duty of the prosecution to check on a statement of alibi by an accused person and disprove the alibi or attempt to do, so, there is no flexible and or invariable way of doing this. If the prosecution adduces sufficient and accepted evidence to fix a person at the scene of crime at the-material time, his alibi is thereby logically and physically demolished and that would be enough to render such plea ineffective as a defence. See the case of Patrick Njovens & Ors. v. The State (1973) 1 NWLR E 331.

Bello v. Police (1959) WRNLR pg. 124.

R. v. Turner (1957) WRNLR pg. 34.

Gachi & ors. v. The State (1965) NWLR pg. 333.

Yanor v. The State (1965) NWLR pg. 337

In the case of Nwabueze & Ors. v. The State (1988) 7 SCNJ pt. 11 pg. 248 at page 260, this court said -

“It is well to remember that since the decisions of this court in Gachi & or s v. The State (1965) NWLR 333 at 335 and Yanor & Anor v. The State (1965) NWLR 337 which were followed in the case of Christian Nwosisi v. The State (1976) 6 SC pg. 109 and several other decisions the defence of alibi has ceased to be the type of cheap panacea that it used to be in the hands of criminals. Now not only has the accused an evidential burden of eliciting some evidence with all necessary particulars which can be checked to show that she was somewhere else at the time of the crime but also, if the prosecution investigates the alibi and calls some evidence in proof of it, the judge not disregarding the defence of alibi, is yet entitled to consider it from the backgrounds of other stronger evidence, if any, linking the ac-

cused person with the crime charged.”

In the case of Odu & anor v. The State (2001) 5 SCNJ 115 at page 120, it was held that-

“Although there are occasions on which failure to check on alibi may cast doubt on the reliability of the case of the prosecution yet where there is positive evidence which cancels the alibi, the failure to investigate the alibi would not be to conviction. The onus of establishing alibi being a matter within the personal knowledge of an accused person, lies on him. That it is not enough for the accused person to say to the court that he was at a particular place away from the scene of this crime. That he has to prove his assertion. That even if the police has failed to investigate such assertion, the accused person has the onus of adducing evidence on which he relies for his defence of alibi.”

In effect, it does not automatically mean that failure of the police to investigate result in failure of the prosecution’s case. The onus is on the accuse person to establish the plea of alibi raised by him on the balance of probabilities.

At the trial court, the learned trial judge attached more credence to and accepted the evidence of the 1st PW, 2nd PW3, 3rd PW and PW5 who identified the accused persons making possible the overall evidence of the prosecution which fixed the 1st – 4th accused persons, including the appellants at the scene of crime at the material time. The defence of alibi of the appellants must thereby fail in the circumstance. The two lower courts were right in dismissing the defence of alibi put up by the appellants.

Issue VI .

Whether having regard to the circumstances of this case the learned justices of the Court of Appeal were right to hold that an identification was unnecessary.

The appellants made reference to that portion of the judgment of the lower court on pages 245 - 247 of the Record of appeal from which I shall quote as follows -

“In the appeal at hand in the course of the investigation as shown in the testimonies the identities of the accused persons were too well known. In fact bearing the circumstances of this case identification parades carried out were unnecessary in the sense that the witnesses knew very well the accused persons that carried out the

robbery operation. This is borne out by the evidence on the printed Record. In the light of the foregoing, there were no doubts created in the identification of the appellants beside the fact that the conduct of the identification parades carried out the instant appeal satisfied the requirements of the law.”

B The grouse of the appellants are that under the circumstance of this case where after four identification parades only some of the prosecution witnesses identified the appellants. The testimonies of the prosecution witnesses leave a yawning gap, and it would be unsafe to affirm the concurrent findings of the courts below because they are perverse. It is trite that for the prosecution to succeed in proof of the offence of armed robbery, there must be proof beyond reasonable doubt of the following -

(1) That there must be robbery or series of robberies.
D (2) That the robbery or each robbery was an armed robbery.

(3) That the accused was one of those who took part, in the armed robbery.

E Amina v. The State (1990) 6 NWLR pt. 155 page 125 at page 135.

Okosi v. A-G Bendel State (1989) 1 NWLR pt. 100 pg. 642.

Nwachukwu v. The State (1985) 1 NWLR pt. 11 pg.218.

Ani v. State (2003) 11 NWLR pt. 830 pg. 142.

F Facts are readily available before the court to sustain legs (1) and (2) above from the prosecution witnesses. The prosecution has the onus of linking the appellants with participation in the robbery on the night of 10th of September 2000. At the time of the robbery, the appellants did not mask and there was light. They came to the houses of the 1st-5th prosecution witnesses armed with guns and at the end of the robbery operation they carted away money and jewelry. In the particular circumstance of the case and prior to the day of the robbery the prosecution witnesses who were victims of the robbery knew the 1st and 3rd accused persons in the neighbourhood. The 1st accused on the other hand, claimed knowing members of the household of the prosecution witnesses as he used to go to their compound to fetch water. The 3rd accused lived opposite the house where the robbery took place and he was also familiar with the family. The other accused persons were frequent visitors to their counterparts.

During the conduct of the parade - the 1st PW readily identified the 1st, 3rd and 4th accused persons. The 2nd PW identified the 1st and 3rd accused persons. PW3 identified the 1st and 3rd accused while the 5th PW identified the 2nd and 3rd accused persons.

This brings into focus the twin question, what is an identification parade and when it is necessary. B

"In the case of *The State v. Aibangee*, (1988) 3 NWLR pt. 14 pg. 548 the Supreme Court defined identification to mean "*a whole series of facts and circumstances for which a witness or witnesses associate a defendant with the commission of the offence charged. It may consist of or include evidence in form of finger prints, handwriting, palm prints, voice, identification parade, photographs or the recollection of the features of the culprits by a witness who saw him in the act of commission which is called in question or a combination of two or more of these*". C

In the case of *Archibong v. State* (2004) 1 NWLR pt. 855 page 488 at pages 509-510 paragraphs C- D and H -A has this to say about identification – D

"An identification parade is one tending to show that the person charged with an offence is the same person who committed the offence. When an identification evidence is poor, the trial court should return a verdict of not guilty unless there is other evidence which goes to support the correctness of the identification." E

Although an identification parade is not a sine qua non to a conviction for a crime alleged, it is essential in the following instances:- F

(a) Where the victim did not know the accused, before and his first acquaintance with him was during the commission of the offence.

(b) Where the victim or witness was confronted by the offender for a very short time and G

(c) Where the victim due to time and circumstances might not have had the full opportunity of observing the features of the accused.

(1) An identification parade is unnecessary where there is clear and uncontradicted eyewitness account and identification of the person who allegedly committed the offence. H

Ibrahim v. The State (1991) 5 SCNJ pg. 129.

Balogun v. A-G Ogun State (2002) 6 NWLR pt. 763 page

512 at page 534.

(2) It is unnecessary where witnesses knew the suspects previously.

Eyisi v. The State (2001) 8 WRN pg.1.

Williams v. The State (1992) 10 SCNJ pg. 74.

B (3) Where the accused is linked to the offence by convincing, cogent and compelling evidence, an identification parade is not a relevant fact.

Ugwumba v. The State (1993) 6 SCNJ pt. 11 pg.217.

C The case of Walaka v. The State (1991) 8 NWLR pt 211 pg.522 distinguished between identification and recognition. Recognition of an accused person arises when a person sees or acknowledges the identity of a man or woman well-known to him committing a crime. Such recognition dispels any shadow of doubt about his commission D of the crime.

In these appeals at the trial court, the prosecution witnesses who were victims of this robbery testified on what each of them saw, heard and experienced during the robbery. The testimony included their relationship with the robbers prior to the incident. The learned E trial judge believed the evidence and convicted the appellants. The Court of Appeal did not interfere with or disturb the findings of the learned trial judge. We have before us now the concurrent findings of fact of the two lower courts which this court in the same manner F cannot interfere with or overturn because it is neither erroneous nor perverse.

With the fuller reasons given in the leading judgment of my learned brother, I agree entirely that the appeals lack merit and I hereby dismiss it. Judgment of the lower court is confirmed.

G

H