

**SUPREME COURT OF NIGERIA**  
3RD DECEMBER. 2010 SC. 942010  
**CORAM:- A. M. MUKHTAR, F. F. TABAI, S. A. MUNTAKA-  
COOMASSIE, J. A. FABIYI, B. RHODES-VIVOUR, JJSC**

BELLO SHURUMO ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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EVIDENCE - Documents - Admissibility - Right to challenge - Limits  
- When an exhibit is tendered and admitted - Without any objection  
from counsel - Such counsel may lose the right to challenge the ad-  
mission on appeal (H1)

EVIDENCE - Proof - Overt act to commit robbery - Whether proved  
- In view of unexplained presence of appellant and his friends - At  
P.W. 4's room at night with arms - Overt act to commit robbery was  
proved (H2)

EVIDENCE - Proof - Conspiracy - Whether proved - Since there  
was a criminal purpose common to appellant and his friends - Who  
were at the house of PW.4 on the day of the incident - There is  
sufficient proof of conspiracy (H3)

EVIDENCE - Proof - Crime - Duty on prosecution - Though pros-  
ecution must prove its case beyond reasonable doubt - It is not bound  
to call every person at scene of crime - To testify before the court  
(H4)

EVIDENCE - Contradictions in a party's case - Effect on appeal - It is  
not every such contradiction that will affect the substance of the case  
- It is only such as have caused a miscarriage of justice (H5)

CRIMINAL PROCEDURE - Attempted armed robbery - Conviction  
- Based on confession - Sustainability - Where a confessional state-  
ment is satisfactorily proved - Conviction founded on it without more  
- Is sustainable (H6)

### ***FACTS***

The appellant was arraigned and tried on a two-count charge of conspiracy to commit armed robbery and armed robbery before the High Court of Kwara State, holden at Ilorin. The case of the prosecution was that appellant and three others (at large) had on or about the 13th day of September, 2006 conspired and robbed one Mohammed Natata of the sum of N2,000.00 (two thousand naira), and other valuable items, at gun point. Prosecution led evidence that on the night in question, appellant and his cohorts armed with cutlasses, went to the house of their victim, the P.W.4, one of them went into P.W.4's room and another into his wife's room. That when the assailants sighted P.W.4's neighbours, who were attracted by the noise in P.W.4's house approaching, they dispersed and took to their heels. Whereupon, the neighbours pursued and caught appellant after some struggles with him.

After the close of prosecution's case, appellant's counsel did not produce any defence but rested his case on that of the prosecution. At the end of hearing, the learned trial judge found appellant not guilty on the count of armed robbery but guilty of conspiracy and attempted armed robbery. Appellant was sentenced accordingly. Aggrieved, he appealed to Court of Appeal which dismissed his appeal. Still dissatisfied, appellant has come on a further and final appeal to the Supreme Court.

### ***ISSUES FOR DETERMINATION***

1. Whether the prosecution has discharged the burden of proof imposed on it to prove the charge of attempted armed robbery and conspiracy to commit armed robbery beyond reasonable doubt in order for the court below to affirm the judgment of the trial court.

2. Whether the court below was right in affirming the judgment of the trial court in the face of irreconcilable contradictions in the prosecution's evidence.

3. Whether the trial judge made proper evaluation of the confessional statements of the appellant contained in Exhibits B and C before relying on it to convict the appellant.

***HELD*** (Unanimously dismissing the appeal per ***MUKHTAR JSC***)  
***Documents - Admissibility - Right to challenge - Limits***

1. It can also be seen from the record that there was no resistance whatsoever in the tendering and admission of the caution statement. The same goes for Exhibit C which was also admitted in evidence without any objection. When a counsel stands by and allows exhibits to sail smoothly through to become evidence without batting an eyelid, then it becomes obvious that the counsel is comfortable with the evidence and sees no reason why he should challenge its admission. In other words, he had no quarrel with the procedure adopted in recording the statement and it was properly taken according to the laid down principle of law and he was consequently satisfied. To now ask the Court to set aside the statements is tantamount to crying over spilt milk, so to say. (p. 3029 B)

***Overt acts to commit robbery - Whether proved***

2. Indeed there is ample evidence in support of the fact that the appellant and his friends were in the house of PW 4, and the appellant and one of them went into PW 4's room and another into his wife's room. What if I may ask were they doing in that house uninvited and in the rooms, and at night, and also armed with cutlasses? Surely they were not on social visit or a meeting. At least PW4 did not say that he invited them. In the circumstances any reasonable man will conclude that they were there on a dubious mission, which would have succeeded but for the intervention of the neighbours. Definitely overt acts to commit armed robbery had been proved. (p. 3031 E)

***Conspiracy - Whether proved***

3. The above argument and findings applies to the issue of conspiracy raised by the appellant's counsel. I am satisfied that there was sufficient evidence before the learned trial court to prove conspiracy, for there was a criminal purpose common to the appellant and his friends who were present at the house of PW4 on the day of the incident. I will thus not belabour this point, as I have adequately dealt with the pertinent and relevant evidence earlier on in the judgment. (pp. 3031 G/3032 A)

***Proof - Crime - Duty on prosecution***

4. I think the most important thing is that in a criminal case, the prosecution must endeavour to prove its case beyond reasonable

doubt with the vital and relevant evidence it can produce.

The evidence of the complainant, PW 5, and the statement of the appellant himself in Exhibits B and C which I have already reproduced above are unequivocal, doubt cogent and credible enough to sustain the offence of attempted robbery for which the appellant was convicted. If that is the case, then what is the essence of calling other witnesses, just because of the mere fact that they were around at the time of the incident. It was not necessary. It is a settled principle of law that the prosecution is not bound to call every person that was linked to the scene of crime by physical presence or otherwise to give evidence on what he perceived. Once persons who can testify to the actual commission of the crime and the other relevant ingredients have done so, it will suffice for the satisfaction of the principle of proof beyond reasonable doubt, as stipulated by section 138 of the Evidence Act, Cap 112, laws of the Federation of Nigeria 1990. (p. 3032 E/G)

***Contradictions in a party's case - Effect on appeal***

5. The learned counsel made heavy weather of these contradictions. It is however the submission of learned counsel for the respondent that it is not every discrepancy, contradiction and/or inconsistency that will destroy the credibility of witnesses. Such discrepancies, contradictions, and/or inconsistencies must be substantial to affect the case of the prosecution.

A careful perusal of the alleged discrepancies and contradictions show that they are not substantial. The fact that one witness said there were three persons in the house of PW4, and the fact that another said there were four are to mind of no consequence to the substance of this case. The important thing is that there were more than one person, and that has been established.

The position of the law is that it is not every discrepancy, contradiction and or inconsistency that will affect the substance of a case, and thus lead to a judgment being disturbed. Whatever of such complaints must be of such magnitude and relevance that it would have caused a miscarriage of justice. It is not the case in this appeal. (p. 3033 G/3035 B)

***Conviction - Based on confession - Sustainability***

6. I find no justification in the appellant's quarrel at this stage, when he in fact had the opportunity to object to its admission, and he didn't. Be that as it may the confession in Exhibits B and C were enough to warrant the conviction of the appellant. I find solace in the words of Wali JSC in the case of Idowu v. State 2000 12 NWLR part 680 page 48, which reads thus:- B

*"If the confessional statement is satisfactorily proved, a conviction founded on it without more, will be sustained by an appellate court."*

I am fortified by above and I am satisfied that the confession in exhibits B and C could sustain the conviction, and rightly sustains it. C

Indeed there are other evidence which not only corroborated the contents of Exhibits B and C but equally showed that the contents were true. (p. 3036 D) D

### **NOTABLE POINT OF INTEREST** **FABIYI JSC**

#### *1. Exhibits B and C were sufficient proof of conspiracy*

A conspiracy consists not merely in the intention of two or more but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as the design rests on intention only, it is not indictable. When two or more agree to carry it into effect, the very plot is an act in itself, and act of each of the parties, promise against promise, actus contra actum, capable of being enforced if lawful, punishable if for a criminal object or for the use of criminal means. F

Same is in tandem with the provision of section 96 (1) and (2) of the Panel Code. G

In my considered opinion, the confession in Exhibits B and C by the appellant was enough to nail him on the count relating to conspiracy. He failed to wriggle himself out of it. After all, if a confessional statement is satisfactory, a conviction found on it, as herein, will be sustained by an appellate court. (p. 3042 B) H

### **REPRESENTATION**

Mr. Olalekan Yusuf, with him Adeyemi Ogunluwoye for appellant.  
Mr. Ali Ahamad Attorney-General, Kwara State, with him J. A.

Muminu D.P.P., Kwara State for respondent.

**CASES REFERRED TO**

- Emeka v. State 12 NWLR part 734 page 666
- Kim v. State 1992 4 NWLR part 233 page 17
- B Anaeze v. Anyaso (1993) 5 NWLR (Pt. 291) 1
- Yusuf v. State 2007 3 NWLR part 1020 page 94
- Ojegele v. State 1988 1 NWLR part 71 page 414
- Bello v. State 2007 10 NWLR part 1043 page 564
- C Azeez v. State 2005 14 NWLR part 1108 page 439
- Akpa v. The State 2007 2 NWLR part 1019 page 500
- Ogbubunjo & Anor. 2001 12 NWLR part 678 page 576
- Nasiru v. The State (1999) 2 NWLR Pt. 589) 87 at 98
- Abogede v. The state 1996 5 NWLR part 448 page 270
- D Ikemson v. The State, 1989 3 NWLR part 110 page 455
- Alabi v. The State (1993) 7 NWLR (Pt. 307) 511 at 523
- Egboghonome v. State 1993 7 NWLR part 306 page 383
- Echi & Ors. v. Nnamani & Ors. (2000) 5 SC 62 at page 70

E **STATUTES REFERRED TO**

- Armed Robbery and Fire Arms (Special Provisions) Act, Cap R. 11, L.F.N. 2004, s. 1
- Penal Code, S. 97
- F Evidence Act, Cap 112, L. F. N. 1990, ss. 138 & 149 (d)

**LEAD JUDGMENT BY MUKHTAR JSC**

- This is an appeal against the judgment of the Court of Appeal, Ilorin Division, which affirmed the decision of the High Court of Kwara State. In the High Court the appellant was arraigned on the following two counts charge which read as follows:-

*“Count one*

1. *That you Bello Shurumo, Manu Namuj (sic) (at large). Doju Namujere (at large) and Tanu Namujere (at large) on or about the 13<sup>th</sup> day September, 2006 at Alikeaikai via Aderan village Edu (sic) L. G. A. within the jurisdiction of this Honourable court did conspire to do an illegal act to wit Armed robbery and you committed an offence contrary to section 97 of the Penal Code.*

2. *That you Hello Shurumo. Manu Mamuj (at large). Doju*

*Namujere (at large) and Tanu Namujere (at large) on or about the 13<sup>th</sup> day September 2006 at Alikeikai via Aderan village Edu (sic) L. G. A. within the jurisdiction of this Honourable Court robbed one Mohammed Natata at gun point and carted away the sum of N2,000.00 and some other valuable items, and thereby committed an offence punishable under section 1(2) of Armed Robbery and Five (sic) Arms (Special provision) Act Cap R. 11 Laws of federation Nigerian, 2004.*"

The appellant denied the two count charge. In a bid to prove its case, the prosecution called five witnesses who gave evidence, but the defence rested their case on the prosecution's case, and did not produce any defence. The learned trial judge found the accused/appellant not guilty as charged, but found him guilty of attempted armed robbery and convicted him. He appealed to the Court of Appeal on three grounds of appeal, which were dismissed, and the judgment and conviction of the trial court were affirmed. Again in exercise of his constitutional right the accused/appellant has appealed to this court on four grounds of appeal from which three issues for determination were formulated in the appellant's brief of argument, and adopted by the respondent in its own brief of argument. The briefs of argument that were exchanged by the learned counsel for both sides were adopted at the hearing of the appeal. The first issue for determination is whether the prosecution has discharged the burden of proof imposed on it to prove the charge of attempted armed robbery and conspiracy to commit armed robbery beyond reasonable doubt in order for the court below to affirm the judgment of the trial court. In arguing this issue, the learned counsel for the appellant stated the essential ingredients of armed robbery as listed in the case of *Bello v. State* 2007 10 NWLR part 1043 page 564, as follows:-

- (a) that there was a robbery or series robbery;
- (b) that each of the robbery was an armed robber;
- (c) that the accused was one of those who robbed.

The learned counsel also stated the ingredients of attempt to commit armed robbery as follows:

- (a) that the accused had an intention to commit armed robbery;
- (b) that the accused was armed with dangerous weapon;
- (c) that the accused exercised violence against his victim in the

course of fulfilling his intention;

(d) that the accused actually exercised some overt acts to commit the robbery but was cut short as a result of a timely intervention;

The learned counsel for the appellant went to a great length of argument on the voluntariness of the confessional statements of the appellant, Exhibits B and C, which he argued were made in English language, and as such required the interpretation of somebody. He did not however suggest the language it should have been made in or interpreted to. This argument became necessary because reliance was placed on the confessional statements by the prosecution. According to learned counsel the requirements for an extra judicial statement were not all met. See *Kim v. State* 1992 4 NWLR part 233 page 17. The learned counsel for the respondent has however submitted that the procedures in *Kim v. State* supra were followed in making Exhibit B and C and trial court was satisfied before the two statements were admitted. Now, I will reproduce the evidence of the investigation officer who recorded the statement. Exhibit 'B'. On page 27 of the printed record of appeal can be found the following:-

*"Being a member of the anti robbery section, I was instructed by the team leader in person of Inspector Mathew Adilor to record the statement of the accused person which I did. I cautioned the accused person in English language and read it over to him in Hausa language which he told me he understood before he thumb printed it. He then volunteered (sic) as a confessional statement in Hausa language. After the statement was recorded. I read it over to the accused person in Hausa language which he understood to be correct before he thumb printed while counter signed as the recorder. Being a confessional statement (sic). I took the accused before my superior officer in the person of superintendent Emmanuel Ajayi for endorsement. The statement was again read over to the accused in English language and I interpreted it to the accused in Hausa language. He understood the statement and thumb printed it, my superior officer signed it and I also signed the statement.*

*Mr. Mumini: We apply to tender the statement of the accused person in evidence.*

*Mr. Ogbuechi: I have no objection.*

*Court: The statement of the accused person made to the police on*



*14/09/2006 is hereby admitted in evidence as exhibit B."*

What I can understand from the above proceeding is that there were interpretations of the caution statement, even though the statement itself was recorded in English. The most important thing is that the accused understood that was recorded as having him said, concerning the incident that necessitated the recording of the caution statement itself. ***It can also be seen from the record that there was no resistance whatsoever in the tendering and admission of the caution statement. The same goes for Exhibit C which was also admitted in evidence without any objection. When a counsel stands by and allows exhibits to sail smoothly through to become evidence without batting an eyelid, then it becomes obvious that the counsel is comfortable with the evidence and sees no reason why he should challenge its admission. In other words, he had no quarrel with the procedure adopted in recording the statement and it was properly taken according to the laid down principle of law and he was consequently satisfied. To now ask the Court to set aside the statements is tantamount to crying over spilt milk, so to say.*** The lower court in dealing with the complaint in its judgment, after reproducing the excerpt of the judgment of the trial court on the voluntariness of Exhibits B and C, referred to the case of *Olekan v. State* 2001 92 LRCN 3385 and had this to say.

*"Going by this authority, it is clear that all the hue and cry by the learned counsel for the Appellant on the evaluation of the probative nature of the confessional statements are neither here nor there as neither the Appellant nor his counsel raised any objection to the tendering of the said statements. They also took the risk of not proffering any defence after the close of prosecution's case and they ought to stand or fall with the evidence led by the witnesses for the prosecution and his confessional statements which were positive, unequivocal and consistent and point irresistibly to the conclusion that he, along with three Namujere brothers now at large conspired to go and rob one Natata Muhammed while they were armed with guns and Cutlasses on the night of 13/9/2006. The Appellant should rather count himself lucky that the PW4 faltered in respect of the stolen sum of money and the extreme magnanimity exhibited by the lower court in finding him guilty of a lesser offence."*

I endorse the above treatment of this point by the lower court. It suffices for the purpose of determining the voluntariness and probative value to be ascribed to Exhibits B and C. The case of *R. v. Bodom & ors* 1935 2 WACA 390 relied upon by learned counsel for the appellant is of no material consequence to this argument. As to the weapon used by the accused, the learned counsel for the appellant has argued that there are contradictions as to whether the co-conspirators were armed with a particular weapon. The statements in Exhibits B and C are different from the oral testimony in court. I will now look at the evidence and the content of the Exhibits. Learned counsel for the appellant has submitted that even the particular weapon/arms used by the other co-conspirators have not been ascertained as a result of the contradictory evidence of the prosecution witnesses, as there was no nexus between the cutlass tendered by them and the appellant. In reply the learned counsel for the respondent has argued that it will be wrong to argue that there was no nexus between the cutlass and the appellant. I will reproduce the pieces of evidence that are relevant to this discussion hereunder. In exhibit 'B' can be found the following:-

"It was Manu Nomujere 'm', that brought the idea, he told us that the man had just been paid for (sic) his daughter (sic) dowry and we planned the robbery on that same date at about 1700 hrs. The guns belong to Manu Nomujere 'm' while the cutlass belongs to me." P. W. 4 in his evidence said:-

"I know the accused person..... On that day at about 8 p.m. four persons including the accused person came to my house. All of them were armed with cutlasses..... On sighting my neighbours the two people outside the house took to their heels. So also was the person who entered my room. The accused person also attempted to run away but my neighbours pursued him and he was arrested"

The above evidence on the cutlass was not controverted in the course of cross examination.

P. W. 5 corroborated the above evidence, and the excerpts in Exhibit B reproduced above.

Again, the above evidence was not debunked in the course of cross examination. These pieces of evidence has directly connected the appellant with the offence of attempted robbery in that they re-

vealed that the appellant was involved in the invasion of the house of P.W. 4, together with his cohorts, and that they got to the house ready to attack anyone and prevent any resistance from the occupants of the house. The weapons they were armed with, albeit, cutlasses or other weapons they intended to use in the course of robbing P.W. 4, cannot be overlooked for there was no reason for their presence in the house at that time, other than to rob the complainant (PW4). That the appellant was not in the house alone, but in the company of his friends point to the irresistible fact that they had conspired to perfect a criminal act which they had hatched together. B

On the overt acts to commit armed robbery, the learned counsel for the appellant has contended that the law suggests that the act must conclusively point to nothing else but the offence charged before it can be said to be an attempt. He cited *Jegade v. The State* 2001 35 WRN page 84; *Ozigbo v. Commissioner of Police* 1976 ANLR 109, and *R v. Eagleton* ER 826, and *Orija v. IGP* 1957 NRNL 189. C

The learned counsel for the respondent again submitted that the overwhelming evidence of PW4 and PW5 who witnessed the robbery operation together with the appellant's extra judicial statement, points to the fact that the decision to rob PW4's house was taken by the appellant and his co-offenders who are now at large. E

***Indeed there is ample evidence in support of the fact that the appellant and his friends were in the house of PW 4, and the appellant and one of them went into PW4's room and another into his wife's room. What if I may ask were they doing in that house uninvited and in the rooms, and at night, and also armed with cutlasses? Surely they were not on social visit or a meeting. At least PW4 did not say that he invited them. In the circumstances any reasonable man will conclude that they were there on a dubious mission, which would have succeeded but for the intervention of the neighbours. Definitely overt acts to commit armed robbery had been proved.*** F

***The above argument and findings applies to the issue of conspiracy raised by the appellant's counsel. I am satisfied that there was sufficient evidence before the learned trial court to prove conspiracy, for there was a criminal purpose common to the appellant and his friends who were present at the house of PW 4 on the day of the incident.*** See *Haruna v. State* G

1972 8/9 SC. 174, R. v. Brisac 4 East 164, 171, and Onochie v. Republic of Nigeria 1966 All N. L. R. 86.

***I will thus not belabour this point, as I have adequately dealt with the pertinent and relevant evidence earlier on in the judgment.***

B Another grouse the learned counsel for the appellant has is that the prosecution did not call some vital witnesses in the case. He referred to the authorities of Yusuf v. State 2007 3 NWLR part 1020 page 94, Rex v. Dora Harris 1972 2 K. B. D. 587, Omogodo v. The State 1981 5 SC 5 and Eruku v. Queen 1959 WRNLR 77. The sub-  
C mission of learned counsel is that the wife of the complainant, his child and Lawal Haruna who was said to have been injured by the appellant were not produced at the trial court to testify. He referred to the case of Azeez v. State 2005 14 NWLR part 1108 page 439,  
D where the Supreme Court upheld the position of the Court of Appeal that section 149 (d) of the evidence Act can be invoked against a prosecution that fails to call a vital witness, being that such witness if called may give evidence against the prosecution. In reply the learned  
E Director of Public Prosecution has submitted that the prosecution is not bound to call any and every witness who was present at the locus criminis. He distinguished the Azeez case *supra* from the present one.

***I think the most important thing is that in a criminal case the prosecution must endeavour to prove its case beyond reasonable doubt with the vital and relevant evidence it can produce.*** What is vital evidence? An evidence that goes to the root of the ingredients and elements of an offence of which an accused person is charged. In this case, although the appellant was charged with armed robbery, he was convicted of attempt to commit robbery,  
F  
G having not actually committed the offence, but had the intention and had made plans which had reached the point and stage of execution.  
***The evidence of the complainant, PW 5, and the statement of the appellant himself in Exhibits B and C which I have already reproduced above are unequivocal, doubt cogent and credible enough to sustain the offence of attempted robbery for which the appellant was convicted. If that is the case, then what is the essence of calling other witnesses, just because of the mere fact that they were around at the time of the incident. It was not necessary. It is a settled principle of law that the***  
H

**prosecution is not bound to call every person that was linked to the scene of crime by physical presence or otherwise to give evidence on what he perceived. Once persons who can testify to the actual commission of the crime and the other relevant ingredients have done so, it will suffice for the satisfaction of the principle of proof beyond reasonable doubt, as stipulated by section 138 of the Evidence Act, Cap 1 12, laws of the Federation of Nigeria 1990.** See *Obue v. State* 1976 2 SC 141, *Sadau v. State* 1968 All W. L. R. 124 and *The State v. John Ogbubunjo & Anor* 2001 12 NWLR part 678 page 576. B

It is not Incumbent on the prosecution to call every eye witness to testify, in order to discharge the onus placed on it by the law of proving a criminal case beyond reasonable doubt. As a matter of fact a single witness who gives cogent eye witness account of the incident will suffice. See *Odili v. State* 1977 4 SC 1. C

In the present case, I am satisfied that the prosecution proved its case beyond reasonable doubt, and has thus discharged the burden of proof placed on it. In this light, I resolve the issue in favour of the respondent, and dismiss the related grounds of appeal. D

The next issue is whether the court below was right in affirming the judgment of the trial court in the face of irreconcilable contradictions in the prosecution's evidence. In arguing this issue the learned counsel for the appellant drew this court's attention to some contradictions in the evidence of PW 3 and PW4, which he submitted were fundamental and ought to have been resolved in favour of the appellant. He cited the cases of *Akpa v. The State* 2007 2 NWLR part 1019 page 500, *Ikemson v. The State*, 1989 3 NWLR part 110 page 455, and *Abogede v. The state* 1996 5 NWLR part 448 page 270. E

***The learned counsel made heavy weather of these contradictions. It is however the submission of learned counsel for the respondent that it is not every discrepancy, contradiction and/or inconsistency that will destroy the credibility of witnesses. Such discrepancies, contradictions, and/or inconsistencies must be substantial to affect the case of the prosecution.*** F

***A careful perusal of the alleged discrepancies and contradictions show that they are not substantial. The fact that one witness said there were three persons in the house of PW 4 and the fact that another said there were four are to my*** H

**mind of no consequence to the substance of this case. The important thing is that there were more than one person, and that has been established.** Another point raised by the learned counsel is how the children who were already in bed knew that there were armed robbers outside. I must say, with due respect that this is a most feeble argument; considering the time of the incident, which was only 8 p.m. Even though they were in bed they couldn't have been fast asleep not to hear the sound of strange movements in their house. It is instructive to note that a village house such as the one occupied by the complainant and his family must be so compact that any occupant must perceive the danger that looms in the next room, or what was transpiring therein at that time. PW 4 himself testified in the course of cross examination that he was not fast asleep. The learned counsel for the appellant reproduced an excerpt of the judgment in Abogede's case in support of his argument. The excerpt reads:-

*"It is not every discrepancy between what one witness says at one time and what he says at another that is sufficient to destroy the credibility of the witness altogether. However, where the discrepancy is at least enough to call for a mention by the judge, it should appear on the record that he averted his mind to it and the reason for believing the witness in spite of the discrepancy should also be stated. That will enable the Appellate court to determine if the learned trial judge overlooked the discrepancy or whether he averted his mind to it and consider it but find the witness credible nevertheless."*

The above excerpt is obviously in respect of a witness changing his evidence at different times, not discrepancies on evidence of different witnesses. At any rate, the discrepancy alleged by the appellant in respect of PW3's evidence was treated by the learned trial judge in his judgment where he said:-

*"After a careful examination of the evidence of PW 3 I found (sic) as a fact that he was not consistent on the date when the case of the accused was transferred from Bode Saadu Police Area Command to the State C. I. D., Ilorin. In one breath he said he couldn't remember the precise day, in another breath he said it was the following day after his visit to the scene of crime on 14/09/2006."*

.....  
 .....

*I find inconsistency in the evidence of PW 3, however, I am of the*

*view that the inconsistency is not on material issue and has not rendered the evidence of PW 3 unreliable as submitted by the defence counsel. The material issue is the admission of commission of crime by the accused in Exhibits B and C."*

So there is no gain saying that the learned trial judge averted his mind to the inconsistency as is enjoined in the Abogede's case <sup>B</sup> supra, and so discharged his duty on this aspect of the complaint. See Enahoro v. Queen 1965 1 All N.L.R. 125. ***The position of the law is that it is not every discrepancy, contradiction and or inconsistency that will affect the substance of a case, and thus lead to a judgment being disturbed. Whatever of such complaints must be of such magnitude and relevance that it would have caused a miscarriage of justice. It is not the case in this appeal.*** See Omisade v. Queen 1964 1 I All W. L. R. 233. Queen v. Ekanem 1960 5 SC 14, and Queen Iyanda 1960 5 F. S. C. 263. In <sup>C</sup> the circumstances, the court below was right in affirming the judgment of the trial court, and so I answer this issue in the affirmative. <sup>D</sup> Ground no. (3) in the notice of appeal, to which the issue is married fails and it is dismissed.

The third issue is, whether the trial judge made proper evaluation of the confessional statements of the appellant contained in Exhibits B and C before relying on it to convict the appellant. According to the learned counsel for the appellant, in ascribing probative value to the appellant's confession in Exhibits B and C, the judge <sup>E</sup> must ascertain the following:- <sup>F</sup>

- "i. If there is anything outside it to show that it is true;*
- ii. If it is corroborated;*
- iii. If the facts stated in it are true as far as can be tested;*
- iv. If the accused person had the opportunity of committing G the offence;*
- v. If the accused person's confession is possible;*
- vi. If the confession is consistent with the other facts ascertained and proved."*

See the cases of Akpa supra, Udofia v. The State 1984 12 <sup>H</sup> SC. 139, Daura v. State 1980 8 - 11 SC. 236 and Ojegele v. State 1988 1 NWLR part 71 page 414.

In his submission, the learned counsel contended that there is nothing outside the case to show that the confessional statements

are true, the confessional statements were not corroborated, and the facts are not true as far as can be tested.

He submitted that the statements in the confessional statements are not possible, the appellant did not have the opportunity to commit the crime alleged, and that the confessional statements are not consistent with other facts ascertained and proved in the case. It was further submitted that there is nothing outside Exhibits B and C that shows that the appellant committed any crime or intended same or that he conspired with any person(s) to do so.

The learned counsel for the respondent noted that when Exhibits B and C were tendered by the prosecution before the trial judge, there was no objection to its admissibility by the appellant. He submitted that Exhibits B and C being confessional statements of the appellants satisfied all the conditions laid down in Akpa's case supra. Going back to the proceedings that led to the admission of the Exhibits, which have been reproduced supra. ***I find no justification in the appellant's quarrel at this stage, when he in fact had the opportunity to object to its admission, and he didn't. Be that as it may the confession in Exhibits B and C were enough to warrant the conviction of the appellant. I find solace in the words of Wali JSC in the case of Idowu v. State 2000 12 NWLR part 680 page 48, which reads thus:-***

***"If the confessional statement is satisfactorily proved, a conviction founded on it without more, will be sustained by an appellate court. See The Queen v. Obasa (1962) 1 All NLR 645; Paul Onochie 7 ors v. The Public 1966 NMLR 307; Obue v. The State 1976 2 SC 141 and Jimoh-Yesufu v. The State (1976) 6 SC 167."***

***I am fortified by above and I am satisfied that the confession in exhibits B and C could sustain the conviction, and rightly sustains it.***

***Indeed there are other evidence which not only corroborated the contents of Exhibits B and C but equally showed that the contents were true.*** Example of this is an excerpt of the judgment already reproduced above on the owner of the cutlasses.

Then the following piece of evidence:-

***"On 13-09-2006 there was a marriage in my house for my Daughter by name Fatima. The accused person heard that I received***



*some money. On that day at about 8 p.m. four persons including the accused person came to my house. All of them were armed with cutlasses one of them came to me in my room. The accused person went inside my wife's room while the remaining stood outside my house."*

In his judgment the learned trial judge made the following evaluation and findings:-

*"In the case at hand the agreement reached by the accused and his other conspirators was to steal with violence, (sic) the accused in both Exhibits B and C state that they actually stole but the evidence before me did not establish stealing against the accused. PW4 and PW5 were emphatic that the accused entered the room of PW4's wife but in the confessional statements the accused stated that he was outside the house while his friends went inside to carry out their common intention.*

*I will prefer the story of the accused because it looks more probable. Both PW4 and PW5 stated in their evidence that it was dark and raining at the time the incident took place. I believe this evidence and in addition I find as a fact PW4 did not have direct contact with the accused in his house so also was PW5 who was not living in the same house With PW4. The witness wants this court to believe that the-accused entered the room of PW4's wife but the woman who was visited in her room by one of the conspirators was not called as a witness. The only reasonable inference that I can draw from this scenario is that it could be any of the four conspirators that went into the room of PW4's wife.*

*Also PW4 in his testimony did not mention any sum of money or valuable item was stolen either from his room or that of his wife. The accused who I believe his story that he did not enter PW4's house and whom the evidence before me does not suggest that he had the opportunity to know from his friends whether or not their mission was successful may not be saving the correct thing when he said they stole the sum of N2,000.00 from PW4."*

A careful perusal of the confessional statement and the evidence of PW1 reproduced above clearly show that some of the contents of Exhibit 'B' were corroborated by the evidence of PW4, i.e. the fact that dowry of his daughter was the object of the attempted robbery, and that more than one persons invaded the complainant's

house on the day of the incident are abundant corroboration. Also the fact that cutlasses were mentioned in both evidence confirms a sort of synergy. The excerpt of the judgment I have reproduced above is to my mind a superb evaluation of the evidence before the learned trial judge by him, for he painstakingly pin-pointed and punctured some salient points and evidence.

Then there is the following in Exhibit B:

*"During the robbery I was outside. While the three others were inside the house of the complainant, and I later matcheted one of the victims by name Haruna Musaige "m".*

P.W.4 in his evidence testified thus:-

*"When the accused was arrested, lie struggled to free himself and in the process he inflicted injury with the cutlass he was holding on one Haruna Lawal who was living with Labarau Mohammed."*

The said Labarau Mohammed who testified as PW5 corroborated the above pieces of evidence thus:-

*"On getting to the house, we saw the accused person coming from the room of P.W.4.'s wife. We saw him with a cutlass. He ran and we pursued him with a stick and he fell down. He got up and continued to run. We hit him again and he fell down. In the process of arresting him he inflicted injury on the hand of one of us by name Haruna."*

Again, the above is a perfect corroboration of the content of Exhibit B, the confessional statement. All these pieces of evidence in fact convinced the trial judge of the truthfulness of the confessional statements. In fact the overall evidence confirm that there were ample evidence outside Exhibits B and C to test their truthfulness, to sustain the conviction of the appellant and the affirmation of the judgment of the court below. See Emeka v. State 12 NWLR part 734 page 666, Egboghonome v. State 1993 7 NWLR part 306 page 383, and Obasa v. State 1965 NMLR 118.

In the present case the prosecution met the requirements. The lower court in affirming the judgment of the trial court rightly found as follows:-

*"I agree completely with the learned Director of Public Prosecution and indeed the lower court that the confessional statements met with the necessary criteria for the ascription of probative value by the court and apart from the said confessions, the evidence of the*

*PW4 who was the victim of the attempted robbery and his neighbour the PW5, who partook in his arrest that night, having sufficiently corroborated the confessional statements to warrant the conviction of the Appellant."*

I endorse the above finding in its entirety. In the light of the above reasoning I answer this last issue in the affirmative, and dismiss ground (4) of appeal. This appeal is on concurrent findings of two lower courts, which this court has on several occasions in a plethora of authorities cautioned should not be disturbed, unless they are not supported by credible evidence, and have occasioned miscarriage of justice. See *Sobakin v. State* 1981 5 SC. 75 and *Igwe v. State* 1982 9 SC 114.

This case definitely does not fall into this category of miscarriage of justice. In the circumstances the appeal deserves to fail in its entirety. I affirm the decisions of the two lower courts and dismiss the appeal.

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### **MUNTAKA-COOMASSIE**

The Appellant, Bello Shurumo was an Accused person in the High Court of Justice, Ilorin in Kwara State. The accused was arraigned before the High Court on a two count-charge of Conspiracy and Armed Robbery under Section 97 of the Penal Code and Section 1(2) of Armed Robbery and Fire Arms (Special Provision) Act, Cap. R. 11, Laws of Federation of Nigeria, 2004.

The Prosecution called five (5) witnesses and the Accused neither defended himself nor called any witness to testify on his behalf. At the end of the Trial the Accused was found guilty of Attempted Armed Robbery, and was convicted and sentenced to life imprisonment on each of the two count-charge of Conspiracy and Attempted Armed Robbery. The Accused unsuccessfully appealed to the Court of Appeal, Ilorin Division, hereinafter called Court below. That Court unanimously agreed with the Leading Judgment prepared by Agube, JCA. See Pages 113-154 of the record. On Page 154, 2<sup>nd</sup> Paragraph, Learned Justice has this to:-

*"I have painstakingly perused the entire Record of Proceedings in this case and am convinced that there is no failure of justice occasioned the Appellant who perfectly understood the charge (sic)*

*preferred against him when it was read to him and he pleaded to same without any objection thereto by a legal practitioner of no mean repute like Dr. Wahab Egbewole who represented him at the Trial. Like the Learned Trial Judge, I hold the considered view that the issues of ambiguity and vagueness as raised by the Appellant herein on Appeal are, to say the least, belated, frivolous and completely misconceived.”*

The Learned Justice of the Court of Appeal dismissed the Appeal and affirmed the Judgment of the Kwara State High Court hereinafter referred to as Trial Court. The appellant still not satisfied with the decision of the Court of Appeal and filed an Appeal to this Court.

My Learned Brother has meticulously thrashed out all the issues presented to us for deliberation. The reasons and conclusion reached by my Learned Lord, Mukhtar, JSC., tally with my little understanding of the law on the matter. For the reasons ably adumbrated in the Leading Judgment, which I was opportune to read in draft I too hold that the Appeal is devoid of any merit, same in dismissed by me. The decisions of the two lower court are hereby affirmed. The tree shall lie where it falls.

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### **FABIYI JSC**

I have read before now the judgment just delivered by my learned brother - Mukhtar, JSC. I agree with the lucid reasons therein advanced to arrive at the conclusion that the appeal is devoid of merit and deserves to be dismissed.

At the trial High Court the Accused/Appellant was arraigned on a two count charge of conspiracy to do an illegal act to wit: armed robbery as well as armed robber contrary to Sections 97 of the Panel Code and 1 (2) of the Armed Robbery and Fire Arms (Special Provisions) Act (Cap. R.11) Laws of the Federation of Nigeria, 2004. Appellant allegedly committed the two offences with three Namujere brothers said to be at large on or about the 13<sup>th</sup> day of September, 2006 at Alikeikai via Aderan village in Edu Local Government Area of Kwara State. Specifically, they were alleged to have robbed one Mohammed Natata at gun point and made away with the sum of N2000.00 and some unnamed valuable items. The owner(s) of the

said items were not stated.

When the charge was read to the appellant, he pleaded not guilty. To buttress their case, the prosecution called five witnesses and tendered three Exhibits - a cutlass as Exhibit A and two extra judicial statements of the appellant made to the police during investigation as Exhibits B and C respectively. At the end of the prosecution's case, the learned counsel for the appellant opted not to enter a defence but rested the Defence's case on that of the prosecution.

Thereafter, parties filed written addresses which were respectively adopted. In a considered judgment, the learned trial judge found as established the offences of criminal conspiracy and attempted robbery, a lesser offence under section 2 (a) of the Armed Robbery and Fire Arms (Special Provision) Act Cap. R. 11, Law of the Federation of Nigeria, 2004. The mandatory sentence was pronounced on him.

The appellant felt unhappy with the position taken by the trial court. He appealed to the Court of Appeal Ilorin Division (hereinafter referred to as the court below). Thereat, the appeal was heard and on 15<sup>th</sup> December, 2009, in a well considered judgment, the appeal was dismissed. The appellant, ex-debito justitiae, has further appealed to this court.

Let me start my discussion with the point relating to the offence of conspiracy which is often hatched in utmost secrecy. The circumstance of the matter must be carefully appraised and/or microscopically considered. In *Patrick Njovens v. The State* (1973) NWLR 331, G. B. A. Coker, JSC (of blessed memory) pronounced as follows:-

*"When it is proposed to give evidence of happenings inside hell, it is only a matter of common sense to call one of the inmates of that place or one whose business is earned out in reasonable propinquity to hell and it must be surprising indeed to find even a lone angel fit and qualified for the assignment. Indeed, it would be preposterous to look for such evidence in other directions."*

The evidence in respect of the offence of conspiracy is contained in Exhibits B and C, the appellant's cautioned statements which were tendered without objection. The appellant, in the stated exhibits, made a clean breath of how the offence of conspiracy was hatched. According to the appellant, himself and the three Namujere brothers got wind of the fact that P. W. 4, the victim got the bride price of his

daughter-Fatima and unlawfully conspired to go and steal or wrest same from him with the use of force which was carried cut on 13<sup>th</sup> September, 2006 at about 8.00 p.m. The appellant was arrested in the process with Exhibit 'A' a cutlass. The three others who sold the idea to him escaped arrest and are said to be at large.

B A conspiracy consists not merely in the intention of two or more but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as the design rests on intention only, it is not indictable. When two or more agree to carry it  
C into effect, the very plot is an act in itself, and act of each of the parties, promise against promise, actus contra actum, capable of being enforced if lawful, punishable if for a criminal object or for the use of criminal means. See: *Mukahy v. R.* (1968) 3 H. L. 317; *Dr. Oguneye v. The State* (2001) 5 NSCQR 1 at page 11 per Achike, JSC (of  
D blessed memory). Same is in tandem with the provision of section 96 (1) and (2) of the Panel Code.

In my considered opinion, the confession in Exhibits B and C by the appellant was enough to nail him on the count relating to conspiracy. He failed to wriggle himself out of it. After all, if a confes-  
E sional statement is satisfactory, a conviction found on it, as herein, will be sustained by an appellate court. See: *Idowu v. The State* (2000) 12 NWLR (Pt. 680) 48.

Section 27 (1) and (2) of the Evidence Act provides as follows:-

F “27 (1) Confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that offence.

(2) Confessions, if voluntary, are deemed to be relevant facts  
G as against the persons who make them only.”

From the above, to amount to an admission of guilt, it must be positive, direct and unequivocal as to the commission of the offence for which an accused is charged. All the elements pervade this matter. See: again *Patrick Njovens & Ors. v. The State* (1973) NNLR  
H 120; (1973) 5 SC. 17.

I now move to the conviction of the appellant for the offence of attempt to commit armed robbery. To constitute an attempt, the act must be immediately connected with the commission of the particular offence charged and must be something more than prepara-

tion for the commission of the offence. See: *Ojigbo v. Commissioner of Police* (1976) ANLR 109 at page 115.

The mere intention to commit a misdemeanour is not criminal. Some act is required. Acts remotely leading towards the commission of the offence are not to be considered as attempt to commit it. But acts immediately connected to it are of moment. 'The offender must have crossed the Rubicon and burnt his boat'. See: *R. V. Eagleton Dears* 515, 548, 169 ER 826, 835 per Parke, B. See: also *Orija v. I.G.P* (1957) NRNL 189. It literally means that the acts proved against an offender must be such as would show that he had done all he needed to do to complete the act before he was stopped.

In this matter, the appellant and his three co-horts conspired to go and rob the victim - P.W.4. They all went to P.W.4's abode on 13<sup>th</sup> September, 2006 at 8.00 p.m with the cutlass. They got there and entered into P.W.4's room and that of his wife. The shout by the children alerted neighbours who rushed to the scene. The three Namujere brothers escaped while the appellant was hotly pursued and arrested by P.W. 5.

There is no doubt about it that with the prevailing circumstance as depicted above, the appellant 'crossed the Rubicon and burnt his boat'. The essential elements of attempt to commit an offence to wit: armed robbery have been clearly established. The case was clearly proved beyond reasonable doubt. See: *Nasiru v. The State* (1999) 2 NWLR Pt. 589) 87 at 98 where all the essential ingredients for the offence have been established, as herein, the charge is proved beyond reasonable doubt. See: *Alabi v. The State* (1993) 7 NWLR (Pt. 307) 511 at 523.

The two courts below made concurrent findings of fact. This court will not ordinarily interfere unless compelling reasons are shown. None has been pointed out to us; even remotely. I shall not interfere. See: *Kale v. Coker* (1982) 12 SC. 252; *Echi & Ors. v. Nnamani & Ors.* (2000) 5 SC 62 at page 70. *Anaeze v. Anyaso* (1993) 5 NWLR (Pt. 291) 1.

For the above reasons and those fully set out in the lead judgment, I too, feel that the appeal should fail. It is hereby dismissed by me. As well, I affirm the decisions of the two lower courts.

**RHODES-VIVOUR JSC**

I have had the advantage of reading in draft the Judgment delivered by Justice A. M. Mukhtar, JSC. I agree with the reasoning and conclusions that the appeal be dismissed. . I wish merely to add  
 B my own views in concurrence. I shall not restate the facts because this has been done so admirably by my lord in the leading Judgment, but I shall refer to some of the facts in this concurring judgment.

The appellant was charged for conspiracy to do an unlawful  
 C act to wit: Armed Robbery and armed robbery contrary to Section 97 of the Penal Code and Section 1(2) of the Armed Robbery and Fire Arms (Special provisions) Act (Cap. R. 11) Laws of Nigeria, 2004.

The offence of conspiracy is complete once a concluded agree-  
 D ment exists between two or more persons that share a common criminal purpose. It is immaterial that the persons had not met each other, and concluded agreements can be inferred by what each person does, or does not do in furtherance of the offence of conspiracy.

Exhibits B and C are two extrajudicial confessional statements made by the appellant. Therein he said the three others (still at large)  
 E and himself planned and agreed to rob PW4. He stayed outside PW4 house while the others went in to rob, armed with dangerous weapons. They were chased out by PW4, PW5 and neighbours. He along with his three friends (all armed robbers) ran into the bush, he was  
 F caught but the others escaped. The offence of conspiracy is proved since he acted in concert with the three other's still at large. The only reasonable inference is that the appellant and the three others (still at large) agreed to rob PW4.

Eye witness evidence is one of the best evidence available in  
 G criminal trials, provided it is examined in detail by the trial judge. This is important because victims of violent crimes, e.g. Armed Robbery etc are always quick to implicate anyone shown to them by the police as the culprit. The circumstances of the case, antecedents and close contact with the suspect must be comprehensively examined by the  
 H judge.

Two eye witnesses gave evidence, (PW4 and PW5). They tell the same story as to how the appellant was arrested. There was corroboration. The appellants confessional statement is also not different from the testimony of PW4 and PW5. The salient part of the



testimony:

*“.....the accused also attempted to run away but my neighbours pursued him and he was arrested. When the accused was arrested he struggled to free himself and in the process he inflicted injury with the cutlass he was holding on one Haruna Lawal.....”*

PW4 and PW5 are eyewitnesses. Their story of how the appellant was arrested is true. B

Learned counsel for the appellant rested the appellants case on the prosecution's case. Resting the accused persons case on the prosecution's case is only appropriate where the case of the prosecution is weak, and has been so discredited by cross-examination to such an extent that the innocence of the accused person is obvious. Resting accused person's case on the prosecution's case means that the accused person accepts the prosecution's case completely and would not testify or call evidence in his defence. C

The evidence against the appellant has been one way. It is alarming that a defence counsel would decide to rest his case on the prosecutions case. D

Section 27 (1) of the Evidence Act, States that -

*“A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.”* E

*Before a confessional statement is admissible in evidence it must be voluntary, i.e. it must be shown to be voluntary and free from police influence. An accused person can be convicted solely on his confessional statement, this is premised on the reasoning that what an accused person says against his interest without any police influence is most likely to be true. See Ikemson v State 1989 3 NWLR p. 110 p. 455. Relevant extracts from exhibits C reads as follows:-* F

*.....Actually on 13/9/05 about 1800 hrs I was at home when three of my mate we are all friend living together in the same Area at Alikenken village vs. Aderan, there come to me and told me that I follow them to Haruna Lawal compound which resident at Alikenken Village vs Aderan three are (Dogu) (2) jump and (3) Mare there ante all 'M' of the same address and also the same father. After we proceed to the compound with two gun and cutlasses to go and rob them and collect their money. On getting to the I personally stand on the road I refused to follow them to compound, the remaining* G H

*three enter the compound and collect their money. The owner of the compound and money start pushing us the remaining three people ran into bush before I could have ran away I was beat and arrested by the people around the area, that is all about my statement."*

And from Exhibit B

B "What actually happened was that on the 13/9/06 at about 2000 hrs myself and three others (of my) by name (1) Manu Namujere "M" (3) Dogu Najmuere "M" and (4) Janu Namujere "M" all of Tashanleda at Aderan in Kaiyama Local Government Kwara State, C went and robbed one Natata Mohammed "M" while we armed ourselves with guns and Cutlasses and collected the sum of N2,000.00 (Two thousand naira) from him. It was Manu Namujere 'M' that brought the idea, he told us that the man had just been paid for his daughter dowry and we planned the robbery on that same date at D about 17 hrs. The guns belongs to Manu Namujere 'M' while the cutlass belongs to me. They are my friends because we were living in the same area. During the robbery I was outside, while the three others were inside the house of the complainants and I later matcheted one of the victims by name Haruna Musaige 'M' this is my first time E of robbing. I am an armed robber. I know the house of my other members, they are from the same family. I can take the police to their house. When I was trying to run away that was how I was got the injury on my head and I was later arrested. That is all my statement." F

The learned trial judge said:

*"I have calmly examined the two exhibits and I am satisfied that they both contain admission of commission of crime by the accused....."*

G I agree with the learned trial judge. Before a confessional statement can be relied on by the court to convict an accused person the confession therein must be consistent with other ascertained facts which had been proved. See R v. Sykes 1913 8 Cr App R. p. 233. If H the accused person did not object when his confessional statement is being tendered, as in this case the only reasonable conclusion is that it was made voluntarily.

On 11/6/08 Exhibit B was tendered by learned counsel for the state, MR. MUMINI.

MR. OGBUECHI learned counsel for the appellant had no

objection.

The court ruled this:-

"The statement of the accused person made to the police on 14/9/06 is hereby admitted in evidence as Exhibit B."

On 30/6/08 Exhibit C was tendered by learned counsel for the State, MR. MUMINI, learned counsel said:- B

*"We apply to tender the statement of the accused person in evidence in accordance with Section 36 of the Evidence Act."*

MR. EGBEWOLE, learned counsel for the appellant responded:-

"I have no objection. C

Court: The Statement of the accused obtained by late Inspector Ibilaye Olorunfemi on 14/7/06 is admitted in evidence as Exhibit C.

Exhibit B and C are confessional statement made by the appellant. They show clearly the role played by the appellant and others still at large in the Robbery incident that occurred in the early evening on the 13<sup>th</sup> day of September, 2006. The fact that there was no objection when both confessional statements were tendered and admitted as exhibits is conclusive evidence that they were both made voluntarily.

It is now too late in the day for learned counsel for the appellant to object to the admissibility of Exhibits B and C. E

Once the conditions for admissibility of a document are met by the trial court and the document is admissible an appellant who failed to object to them in the trial court cannot do so on appeal. F

Finally on the standard of proof in criminal cases. Proof beyond reasonable doubt does not mean proof beyond all doubt, or all shadow of doubt.

It means the prosecution establishing the guilt of the accused person with compelling and conclusive evidence. It means a degree of compulsion which is consistent with a high degree of probability.

In the case of *Miller v. Minister of Pensions* 1947 2ER p. 372 it was held that proof beyond reasonable doubt does not mean proof beyond all shadow of doubt and if the evidence is strong against a man as to leave only a remote probability in his favour which can be dismissed with the sentence "*of course, it is possible but not in the least probable*"; the case is proved beyond reasonable doubt. See *Baker v. State* 1987 1 NWLR pt. 52 p. 579. H

Proof beyond reasonable doubt is not achieved by the pros-

ecution calling several witnesses to testify. The court is only interested in the quality of the evidence and so one quality witness may be enough so long as the charge is not one that needs corroboration.

The case was proved beyond reasonable doubt and the Court of Appeal was correct to affirm the decision of the trial court. I affirm  
B the decision of the Court of Appeal and dismiss the appeal there being no redeeming features.

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