

SUPREME COURT OF NIGERIA
11TH MARCH, 2011. SC. 197/2010
CORAM:- C. M. CHUKWUMA-ENEH, J. A. FABIYI, O. O.
ADEKEYE, S. GALADIMA, B. RHODES-VIVOUR, JJSC

FABIAN NWATURUOCHA APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL LAW - Armed robbery - Ingredients - The essential ingredients are that - There was a robbery - In which the robbers were armed - And that the accused person was one of the robbers (H1)

CRIMINAL PROCEDURE - Armed robbery - Identification parade - Necessity of - There must be real doubt as to the identity of a culprit - To require an identification parade - And no such doubt exists in this case (H2)

ARMED ROBBERY - Identity of appellant - Whether proved - In view of the testimony of PW1 - Which trial judge believed - It is established that appellant committed the robbery (H3)

CRIMINAL PROCEDURE - Alibi - Plea - Sustainability - Where there is evidence identifying an accused person - Who has pleaded alibi - At the scene of crime - The accused person has to call evidence in proof of his alibi (H4)

CRIMINAL PROCEDURE - Burden of proof - Beyond reasonable doubt - Meaning - Where essential ingredients of the offence have been proved - As done in this matter - The offence is proved beyond reasonable doubt (H5)

FACTS

The appellant was arraigned and tried for the offence of robbery before the High Court of the Federal Capital Territory, Abuja. It was the case of respondent that appellant robbed one Taye Musa (PW1), a driver, of his commercial vehicle, at gun point at about 6:30pm on 22nd October, 2004. PW1 testified that he had carried

appellant on the front seat of the car on the said day. But at some point, in a bushy area, appellant had asked him to stop and when he refused, appellant brought out a gun and pointed it at him. PW1 then stopped and appellant pushed him out of the car and drove the car away. PW1, who was positive that he clearly saw the face of appellant in the course of his transaction with him, was the sole identifying witness.

No formal identification parade was conducted before PW1 identified the appellant. However, though appellant had raised a plea of alibi to the effect that he was at his brother's house at the material time, he failed to call his brother to testify even when PW2 testified in his presence that he only went to his brother's house at 8:00pm after the alleged crime, which took place at about 6:30 p.m. At the end of hearing, the learned trial judge found appellant guilty as charged and sentenced him accordingly. Aggrieved, appellant appealed to the Court of Appeal which appeal was dismissed. Still dissatisfied, appellant has come on a further and final appeal to the Supreme Court. He contends that in the absence of a formal identification parade, his identification by PW1 was super imposed by the two courts below.

ISSUES FOR DETERMINATION

“(i) Whether the prosecution proved the case beyond reasonable doubt, to warrant the affirmation of the conviction and sentence of the appellant by the Court of Appeal.

“(ii) Whether the learned Justices of the Court Appeal misdirected themselves on their evaluation of the evidence, with which they found that the appellant did not give a detailed particularization of his whereabouts on the crucial day of the offence, which misdirection in turn, led to a miscarriage of justice to the appellant.”

HELD (Unanimously dismissing the appeal per **FABIYI JSC**)

CRIMINAL LAW - Armed robbery - Ingredients

1. It is now firmly established that the essential ingredients of the offence of robbery as stated in the case of *Bello v. The State* (2007) 10 NWLR (Pt. 1043) 564 are as follows:-

“(a) That there was a robbery or series of robbery.

(b) That each robbery was an armed robbery.

(c) That the accused was one of those who robbed.”

(p. 828 A)

Armed robbery - Identification parade - Necessity of

2. Usually, there must be real doubt as to who was seen in connection with the offence, to require an identification parade.

With the above scenario, it is clear that the findings of the trial court and the court below, on the identity of the appellant as the culprit, cannot be faulted. PW1 recognized him as such. There was no need for the staging of a farcical identification parade in the prevailing circumstance. The concurrent findings of the two courts below are rooted in credible evidence on record and they are not perverse.

I have no hesitation in resolving issue (i) against the appellant and in favour of the respondent. (p. 828 D/H)

ARMED ROBBERY - Identity of appellant - Whether proved

3. PW1, the victim of the offence charged, was the only eye witness in this matter. The trial judge believed his testimony and considered him as 'a witness of truth in words and demeanour'. The witness stated how he bargained and agreed to carry the appellant, and the appellant sat in front of the car with him. The appellant asked him to stop in the bush and an argument ensued. When PW1 refused to stop, the appellant brought out a gun and pointed it at him. He stopped and the appellant pushed him out, asked him to run into the bush and drove his vehicle away. PW1 said he saw the face of the appellant. As the time was around 6.00 pm, he could recognize him very well. PW1's evidence established clearly that appellant committed robbery through extortion. (p. 828 E)

Alibi - Plea - Sustainability

4. I wish to point it out that failure to check an alibi, may cast doubt on the reliability of the case of the prosecution. But in a case like this one, where the appellant was identified by PW1, without any equivocation, a straight issue of credibility arose.

If the alibi had been true, it would have been open to and incumbent on the appellant to call his brother, Kingsley, to support his plea of alibi. This is more so, since PW2 stated in her evidence to the hearing of the appellant that, *"I discovered that the accused went to the house of Kingsley at 8.00 p.m and the alleged crime took place around 6.30 p.m"*. The appellant had the duty to call evidence in proof of

where he was around 6.30 p.m, the material time on the fateful day.
(p. 830 D)

Burden of proof - Beyond reasonable doubt - Meaning

5. I shall again state it, that proof beyond reasonable doubt as evolved
B by Lord Sankey, L. C. in *Woolmington v. DPP* (1935) AC 485, is not
proof to the hilt as stated by Denning, J., as he then was, in *Miller v.*
Minister of Pensions (1947) 3 All ER 373. It is not proof beyond all
iota of doubt as stated by Uwais, CJN in *Nasiru v. The State* (1999) 2
C NWLR (Pt. 589) 87 at 98. One thing that is certain is that, where all
the essential ingredients of the offence charged have been proved or
established by the prosecution, as done in this matter, the charge is
proved beyond reasonable doubt. (p. 830 H)

D ***NOTABLE POINT OF INTEREST***

ADEKEYE JSC

1. An identification parade is not essential to conviction

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

E a. Where the victim did not know the accused before and his
first acquaintance with him was during the commission of the of-
fence.

 b. Where the victim or witness was confronted by the offender
F for a very short time.

 c. Where the victim, due to time and circumstance, might not
have had full opportunity of observing the features of the accused.
None of the forgoing applies to this case, as PW1 had ample oppor-
tunity to familiarise and later recognise the appellant. (p. 834 F)

G ***REPRESENTATION***

R. O. Ahonaruogho for the Appellant.

D. C. Enwelum for the Respondent.

H ***CASES REFERRED TO***

Sobakin v. The State (1981) 5 SC 75

R v. Turnbull (1976) 3 All ER 549 at 552

Ukpabi v. The State (2004) 9 M.J.S.C. 120

Okon Udo Akpan v. The State (1991) 5 SCNJ 1

William v. The State (1992) 8 NWLR (Pt. 261) 51
 Ani v. The State (2009) 6 M.J.J.S.C (Pt. 11) 1 at 8
 Ogidi v. The State (2005) 5 M.J.S.C. 155 at 173-174
 Bozin v. The State (1985) 2 NWLR (Pt. 8) 465 at 469
 Alabi v. The State (1993) 7 NWLR (Pt. 307) 511 at 523
 Almu v. The State (2009) 4 M.J.J.S.C (Pt. 11) 147 at 163 B
 Moses Jua v. The State (2010) 4 NWLR (Pt. 1184) 217 at 260
 Awosika & Anr. v. The State (2010) 9 NWLR (Pt. 1198) 49 at 71
 Samuel Attah v. The State (2010) 10 NWLR (Pt. 120) 190 at 217
 Patrick Njovens & Ors. v. The State (1973) All NLR 371 at 401 - 402 C
 Segun Balgoun v. Attorney-General Ogun State (2002) FWLR (Pt. 1000) 1287 at 1301

STATUTES REFERRED TO

Penal Code, s. 296 D
 Evidence Act Cap 112 Laws of the Federation 1990, s. 138

LEAD JUDGMENT BY FABIYI JSC

This is an appeal against the judgment of the Court of Appeal, Abuja Division (hereafter referred to as 'the court below') delivered on 18th February, 2010, which upheld the decision of Bello, J. of the High Court of Justice, Abuja Federal Capital Territory delivered on 24th January, 2008. It is apt to note it here that the trial judge convicted and sentenced the appellant to 11 years imprisonment and a fine of N250,000.00 as mandated by the applicable law for the offence of robbery punishable under section 298 of the Penal Code. F

At the trial court, the appellant was arraigned for the offence of robbery. The respondent maintained that the appellant robbed one Taye Musa (PW1) a driver of his commercial vehicle, Toyota G Starlet car with registration No. AA 4445 ABJ at gun point around 6.30 pm on 22nd October, 2004. On 15/6/05, when the charge was read to the appellant, he pleaded not guilty. The prosecution called two witnesses to substantiate their case. Thereafter, the appellant testified in his own defence and called two other witnesses. In the judgment delivered on 24th January, 2008, the learned trial Judge convicted the appellant and sentenced him as stated above. H
 The appellant felt unhappy with the stance of the trial judge and appealed to the court below which heard the appeal and found same

to be unmeritorious in its own judgment handed out on 18th February, 2010. It dismissed the appeal and affirmed the judgment of the trial judge.

The appellant still felt aggrieved and has decided to appeal to this court. Briefs of argument were duly filed and exchanged by the parties. On 16th of December, 2010, when this appeal was heard, each counsel adopted and relied on the brief of argument filed on behalf of his client.

Two (2) issues formulated for the due determination of the appeal on page 2 of the appellant's brief of argument read as follows:-

“(i) Whether the prosecution proved the case beyond reasonable doubt, to warrant the affirmation of the conviction and sentence of the appellant by the Court of Appeal.

D (ii) Whether the learned Justices of the Court Appeal misdirected themselves on their evaluation of the evidence, with which they found that the appellant did not give a detailed particularization of his whereabouts on the crucial day of the offence, which misdirection in turn, led to a miscarriage of justice to the appellant.”

The above reproduced two issues were adopted by the respondent. I am of the considered view that such a stance is commendable.

Arguing issue (i), learned counsel for the appellant stated the ingredients of the offence of robbery, vide the provision of section 296 of the Penal Code. He submitted that it is an immutable principle of law that the prosecution must establish the guilt of an accused person beyond reasonable doubt in a criminal case. He asserted that such a duty remains static until discharged by the prosecution. He referred to the case of *Ogidi v. The State* (2005) 5 M.J.S.C. 155 at 173-174.

Learned counsel opined that the critical question begging for an answer is whether the evidence of PW1 regarding the recognition of the appellant as the person who robbed him of the commercial car has the potency superimposed on it by both the trial court and the court below. He felt that an identification parade was essential and required in the prevailing circumstance. He cited the cases of

Ani v. The State (2009) 6 M.J.J.S.C (Pt. 11) 1 at 8;

Almu v. The State (2009) 4 M.J.J.S.C (Pt. 11) 147 at 163;

Balogun v. Attorney-General Ogun State (2002) 4 M.J.S.C. 45 at 58;

R v. Turnbull (1976) 3 All ER 549 at 552;

Ukpabi v. The State (2004) 9 M.J.S.C. 120.

Learned counsel urged the court to find in favour of the appellant by holding that the affirmation of the conviction and sentence of the appellant by the court below is an error of law, which led to a miscarriage of justice to the appellant. B

On issue (i), learned counsel for the respondent submitted that for the prosecution to secure conviction for the offence charged herein, it must prove that there was robbery; that the robbers were armed and that the appellant was the robber or among the robbers. He cited the cases of *Bozin v. The State* (1985) 2 NWLR (Pt. 8) 465 at 469; *Alabi v. The State* (1993) 7 NWLR (Pt. 307) 511 at 523; *Awosika & Anr. v. The State* (2010) 9 NWLR (Pt. 1198) 49 at 71. C D

Learned counsel observed that it is not in dispute that there was robbery on 22nd October, 2004, along Usman Dan/Bwari Road, Abuja and that same was accompanied with a dangerous weapon, a gun, as discernible from the evidence of the two prosecution witnesses. He felt that the dispute relates to whether the appellant participated in the robbery. Learned counsel maintained that the real question is whether PW1 properly and sufficiently recognized the appellant as the person who robbed him of his Toyota Starlet car with registration No. AA 445 ABJ. E

Learned counsel submitted that the evidence of PW1, which was not challenged, proved the identity of the appellant as the offender and that identification parade was totally unnecessary. He cited the cases of *Segun Balgoun v. Attorney-General Ogun State* (2002) FWLR (Pt. 1000) 1287 at 1301; *William v. The State* (1992) 8 NWLR (Pt. 261) 515. F G

Learned counsel submitted that the concurrent findings of the trial court and the court below on the identity of the appellant are not perverse as they were supported by evidence on the record. He urged the court not to disturb such findings. He cited *Sobakin v. The State* (1981) 5 SC 75; *Moses Jua v. The State* (2010) 4 NWLR (Pt. 1184) 217 at 260; *Attorney-General Lagos State v. Eko Hotels Ltd.* (2006) 18 NWLR (Pt. 1011) 378. H

It is now firmly established that the essential ingredients of the offence of robbery as stated in the case of Bello v. The State (2007) 10 NWLR (Pt. 1043) 564 are as follows:-

“(a) That there was a robbery or series of robbery.

(b) That each robbery was an armed robbery.

(c) That the accused was one of those who robbed.”

For the above stated ingredients of the offence of robbery, see as well *Bozin v. The State (supra)* at 469,

Alabi v. The State (supra) at 523 and

Awosika & Anr. v. The State (supra) at page 71. The issue relating to identification of the appellant by PW1, the victim, was strenuously canvassed by the learned counsel for the appellant. In most cases of robbery, proper identification of the real culprit is very vital. Identification evidence is that which tends to show that the person charged is the same person seen at the locus criminis. See:

Sunday Ndidi v. The State (2007) All FWLR (Pt. 381) 1617;

Archibong v. The State (2006) 14 NWLR (Pt. 1000) 349.

Learned counsel for the appellant seriously contended that an identification parade ought to have been conducted. ***Usually, there***

must be real doubt as to who was seen in connection with the offence, to require an identification parade. See: *Ogoala v. The State (1991) 2 NWLR (Pt. 175) 509.*

PW1, the victim of the offence charged, was the only eye witness in this matter. The trial judge believed his testimony and considered him as ‘a witness of truth in words and demeanour’. The witness stated how he bargained and agreed to carry the appellant, and the appellant sat in front of the car with him. The appellant asked him to stop in the bush and an argument ensued. When PW1 refused to stop, the appellant brought out a gun and pointed it at him. He stopped and the appellant pushed him out, asked him to run into the bush and drove his vehicle away. P.W.1 said he saw the face of the appellant. As the time was around 6.00 pm, he could recognize him very well. PW1’s evidence established clearly that appellant committed robbery through extortion.

With the above scenario, it is clear that the findings of the trial court and the court below, on the identity of the appellant as the culprit, cannot be faulted. PW1 recognized him

as such. There was no need for the staging of a farcical identification parade in the prevailing circumstance. The concurrent findings of the two courts below are rooted in credible evidence on record and they are not perverse. This court does

not make a habit of disturbing such findings. See: Sobakin v. The State (supra); Moses Jua v. The State (supra) at page 260. B

I have no hesitation in resolving issue (i) against the appellant and in favour of the respondent.

Issue (ii) is whether the learned justices of the Court of Appeal misdirected themselves in their evaluation of the evidence with which they found that the appellant did not give a detailed particularization of his whereabouts on the crucial day of the offence, which misdirection in turn, led to a miscarriage of justice to the appellant. C

The issue relates to the plea of alibi put up by the appellant. Learned counsel for the appellant felt that his client gave sufficient particularization of his whereabouts on the crucial date of the offence charged in establishing his alibi. Learned counsel cited the case of Udoebre v. The State (2001) 5 M.J.S.C. 146 at 156. He urged that the affirmation of the conviction of the appellant by the court below, being erroneous on point of law, should be set aside. D E

Learned counsel for the respondent on this issue, submitted that where an alibi has been raised and there is a visual and positive identification of the accused which is believed by the trial court, the appellate court should not disturb such a finding. He felt that where there is more credible evidence fixing the accused person with the commission of the crime, the defence of alibi will not avail him. Learned counsel cited the cases of Okon Udo Akpan v. The State (1991) 5 SCNJ 1; Samuel Attah v. The State (2010) 10 NWLR (Pt. 120) 190 at 217; Patrick Njovens & Ors. v. The State (1973) All NLR 371 at 401 - 402. F G

Alibi means elsewhere. It is the duty of an accused person who pleads it, to furnish sufficient particulars of same. He must furnish his whereabouts and those present with him at the material time. It is then left for the prosecution to disprove same. Failure to investigate may lead to an acquittal. See: H

Yonor v. The State (1965) NMLR 337;

Queen v. Turner (1957) WRNLR 34;

Bello v. Police (1956) SCNLR 113;

Gachi v. The State (1973) 1 NWLR 331;

Odu & Anr. v. The State (2001) 5 SCNJ 115 at 120; (2001) 10 NWLR (Pt. 772) 668.

In Patrick Njovens & Ors. v. The State (supra) at page 401, GBA Coker, JSC (of blessed memory) stated as follows:-

B *“There is nothing extra ordinary or esoteric in a plea of alibi. Such a plea postulates that the accused person could not have been at the scene of the crime and only inferentially that he was not there. Even if it is the duty of the prosecution to check on a statement of*
 C *alibi by an accused person and disprove the alibi or attempt to do so, there is no inflexible and/or invariable way of doing this, if the prosecution adduces sufficient and accepted evidence of crime at the material time, surely his alibi is thereby logically and physically demolished.”*

D ***I wish to point it out that failure to check an alibi may cast doubt on the reliability of the case of the prosecution. But in a case like this one, where the appellant was identified by PW1 without any equivocation, a straight issue of credibility arose.*** I am unable to say that the learned trial judge’s findings of
 E fact, which were backed by the court below, were unreasonable or not supported by the evidence on record. ***If the alibi had been true, it would have been open to and incumbent on the appellant to call his brother, Kingsley, to support his plea of alibi. This is more so, since PW2 stated in her evidence to the hearing of the appellant that, “I discovered that the accused went to the house of Kingsley at 8.00 p.m and the alleged crime took place around 6.30 p.m”. The appellant had the duty to call evidence in proof of where he was around 6.30 p.m, the***
 F ***material time on the fateful day.***
 G

In short, the trial court and the court below rightly found that the evidence of PW1 and PW2 was credible and fixed the appellant with the commission of the offence charged. The findings of the two courts below in this respect are also concurrent. This court will not
 H disturb same since they are supported by evidence on record and not perverse. See: Nkebisi & Anr. v. The State (2010) 5 NWLR (Pt. 1188) 471; Dogo & Ors. v. The State (2001) 1 SCNJ 315.

The appellant felt that the case against him was not proved beyond reasonable doubt. ***I shall again state it, that proof be-***

yond reasonable doubt as evolved by Lord Sankey, L. C. in Woolmington v. DPP (1935) AC 485, is not proof to the hilt as stated by Denning, J., as he then was, in Miller v. Minister of Pensions (1947) 3 All ER 373. It is not proof beyond all iota of doubt as stated by Uwais, CJN in Nasiru v. The State (1999) 2 NWLR (Pt. 589) 87 at 98. One thing that is certain is that, where all the essential ingredients of the offence charged have been proved or established by the prosecution, as done in this matter, the charge is proved beyond reasonable doubt. See: Alabi v. The State (1993) 7 NWLR (Pt. 307) 511 at 523. Proof beyond reasonable doubt should not be stretched beyond reasonable limit. Otherwise, it will cleave.

In short, issue (ii) is also resolved against the appellant and in favour of the respondent.

In conclusion, I find that this appeal lacks merit. It is hereby dismissed. The judgment of the court below delivered on 18th February, 2010, which affirmed the conviction and sentence handed down by the trial court on 24th January, 2008, is hereby confirmed.

CHUKWUMA-ENEH JSC

I have had the advantage of reading before now the lead judgment prepared and delivered by my learned brother, Fabiyi JSC, in this matter. I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed. I endorse the orders contained therein.

ADEKEYE JSC

I had read before now the judgment just delivered by my brother, J.A. Fabiyi, JSC. I agree with his reasoning and conclusion that this appeal lacks merit. The appellant, Fabian Nwaturuocha was arraigned before the High Court of the Federal Capital Territory, Abuja for armed robbery punishable under section 298 of the Penal Code.

The particulars of the offence reads as follows: -

“That you Fabian Nwaturuocha on or about the 22nd day of October, 2004, along Usman Dam/Bwari Road, Abuja, within the

jurisdiction of this honourable court robbed at gun point, Taye Musa and Temihan Benga of a Toyota Starlet Car with registration number AA 445 ABJ and Mazda Car with registration number 516 RBC and thereby committed an offence punishable under section 298 of the Penal Code.”

B At the hearing of the case before the trial court, the prosecution now respondent, called two witnesses, the driver who was robbed of the vehicle at gun point and the investigating police officer. The appellant gave evidence and raised the defence of alibi. The learned trial judge found him guilty of the charges. In convicting him, sentenced him to eleven years prison term and a fine of N250,000.00 in addition. The appellant registered his dissatisfaction with the judgment at the Court of Appeal, Abuja. The lower court affirmed his conviction and sentence. He was still aggrieved by the decision of the lower court and that prompted him to appeal to this court.

The ingredients of the offence of Armed Robbery under section 298 of the Penal Code are: -

1. That the accused committed theft.
2. That he caused and attempted to cause some person
 - E a. Death, hurt or wrongful “restraint or
 - b. Fear of instant death or instant hurt or instant wrongful restraint
3. That he did as above.
 - F a. In committing theft or
 - b. In order to commit theft or
 - c. In carrying away or attempting to carry away the property obtained by the theft;
4. That he acted as in (b) above voluntarily or prove
 - G i. That the accused committed extortion
 - ii. That he was at the time of committing it in the presence of the person so put in fear and
 - iii. That he committed it by putting that person or some other person in fear of instant death or of instant hurt or of instant wrongful restraint
 - H iv. That he thereby induced the person to deliver up then and there the thing extorted.

It is trite law that, it is not the duty of an accused to prove his innocence as a matter of law, there is always a presumption of innocence

in favour of an accused. The standard of proof in a criminal trial is proof beyond reasonable doubt. It is not enough for the prosecution to suspect a person of having committed a criminal offence, there must be evidence which identified the person accused with the offence. However, proof beyond reasonable doubt does not mean proof beyond shadow of doubt. B

Aigbiddion v. State (2000) 4 SC pt. 1 pg. 1

Agbe v. State (2006) 6 NWLR pt. 977 pg. 545

Section 138 of the Evidence Act Cap 112 Laws of the Federation 1990

Akinyemi v. State (1999) 6 NWLR pt. 607 pg. 449. C

Aionge v. I.G.P. (1959) SCNLR pt. 576.

In the process of establishing the guilt of an accused, the prosecution has to prove all the essential elements of an offence as contained in the charge. While discharging the responsibility of proving D all the ingredients of the offence, vital witnesses must be called to testify during the proceedings. Before a trial court comes to the conclusion that an offence had been committed by an accused person, the court must look for the ingredients of the offence and ascertain critically that acts of the accused comes within the confines of the E particulars of the offence charged.

Amadi v. The State (1993) 8 NWLR pt. 314 pg. 644 at pg. 668.

Alor v. The State (1997) 4 NWLR pt. 501 pg. 511. F

The prosecution relied on the evidence of the victim of the incident, which was based on his proximity to the accused/appellant, prior to the incident. The appellant and the PW1 met at Dutse junction. The appellant needed a vehicle to convey him to Ushafa. They both bargained and he agreed to carry him. The appellant sat in front of the vehicle. He asked the PW1 to park as he wanted to ease himself in the course of the journey. When PW1 did not agree to stop immediately, the appellant brought out a gun to force him to stop, at that spot, where there was nobody and it was then dark. PW1 put the time at 6pm. The appellant opened the door of the car and pushed H PW1 out of the car, asking him to run into the nearby bush. Obviously, the incident gave enough room to PW1 to identify the appellant. They were both together inside a car and not that they were making contact from a distance to each other.

In his defence of alibi, the appellant gave evidence that: -

“On the day the car was alleged snatched, I was with my brother throughout after I closed from the office after 6pm.”

The appellant clearly raised the defence of alibi. Alibi is a defence which seeks to persuade the court that, the accused could not possibly be at the scene of the crime, as he was somewhere else, at a place where most probably there were people who could testify, that at the time of the alleged incident or act, he was not at the scene of the crime.

C Sowemimo v. The State (2004) 11 NWLR pt. 885 pg. 515.

Aiguorehian v. State (2004) 3 NWLR pt. 860 pg. 367

Onyegbu v. The State (1995) 4 NWLR pt. 391 pg. 510.

An accused must not raise the defence of alibi at large, he must give adequate particulars of his whereabouts at the time of the commission of the offence, to assist the police to make a meaningful investigation of the alibi.

Nsofor v. State (2002) 10 NWLR pt. 775 pg. 274.

Balogun v. A-G Ogun State (2002) 6 NWLR pt. 763 pg. 512.

PW2 investigated the alibi raised by the appellant and discovered that he went to the house of Kingsley, his brother, around 8pm, whereas the crime took place around 6.30pm. The appellant failed to account for his whereabouts between 6pm and 8pm.

There is overwhelming evidence from PW1, linking the appellant to the crime on the day of the incident, a formal identification parade is unnecessary in the circumstance of this case. The scenario is that in which PW1 can easily identify the appellant, regardless of his evidence that it was already dark. An identification parade is not sine qua non to a conviction for a crime alleged, it is essential in the following instances:-

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

H b. Where the victim or witness was confronted by the offender for a very short time.

c. Where the victim due to time and circumstance might not have had full opportunity of observing the features of the accused. None of the forgoing applies to this case as PW1, had ample opportunity to familiarise and later recognise the appellant.

Ukpabi v. State (2004) 11 NWLR pt. 884 pg. 439. Ebiri v. State (2004) 11 NWLR pt. 885 pg. 589

With fuller reasons given by my lord in the lead judgment, I also dismiss this appeal and affirm the conviction and sentence of the two lower courts.

B

GALADIMA JSC

I have had the opportunity of reading in draft the lead judgment of my learned brother, FABIYI JSC, just delivered. I agree with his reasoning leading to the conclusion that this appeal lacks merit and it should be dismissed. C

At the trial court, the Appellant was arraigned for the offence of robbery. He was found guilty of the offence, convicted and sentenced to 11 years imprisonment, and in addition a fine of N250, 000.00 under section 298 of the penal code. The prosecution called two witnesses to prove that the appellant robbed one Taye Musa, a driver of a commercial vehicle. In his defence, the appellant called two other witnesses, having testified himself. D

The learned trial judge after a careful consideration of the case, as stated above, convicted the appellant. His appeal to the court below was dismissed. That is to say the judgment of the trial court was affirmed. Aggrieved, the appellant further appealed to this court. E

The two issues formulated by the appellant was adopted by the respondent. The issues are as follows: F

“(i) Whether the prosecution proved the case beyond reasonable doubt, to warrant the affirmation of the conviction and sentence of appellant by the Court of appeal.

“(ii) Whether the learned Justices of the Court of Appeal directed themselves on their evaluation of the evidence with which they found that the appellant did not give a detailed particularization of his whereabouts on the crucial day of the offence, which misdirection in turn, led to a miscarriage of justice to the appellant G

I have carefully considered the argument and submissions of the learned counsel for the respective parties on the two issues. Learned counsel for the appellant submitted strongly that an identification parade was essential and required in the prevailing circumstance. He cited a number of authorities in support of this submission, such as H

ANI v. THE STATE (2009)6 MJSC (pt 11) at 18, BALOGUN v. ATTORNEY-GENERAL OGUN STATE (2002)4 MJSC 45 at 58; R v. TURNBULL (1976) 3 ALL ER 549 at 522 and UKPABI v. THE STATE (2004) 9 MJSC 120.

B Learned counsel for the Respondent submitted that the evidence of PW1 which was not challenged, proved the identity of the appellant, as the person who robbed PW1. That he sufficiently and properly recognised the appellant.

C The essential ingredients of the offence of robbery are that, there was robbery or series of robbery; that each robbery was an armed robbery and that the accused was the one of those who robbed. See: BELLO v. THE STATE (2007)10 NWLR (pt. 1043) 564; ALABI v. The state (1985)2 NWLR (pt. 8) 465 at 469.

D In most cases of robbery, it is required that proper identification of the real culprit be made. Usually, there must be real doubt as to who was seen in connection with offence, so as require an identification parade.

E In the case at hand, PW1 was the victim of the offence charged. He was an eye witness. He said that he saw the face of the appellant around 6.00pm. He could recognise him very well. The trial judge believed his testimony and considered him as a witness of truth in words and demeanour. He stated how he bargained with the appellant, carry him (the appellant) and the Appellant sat in front of the PW1's car. When the appellant asked PW1 to stop, he refused. It is F then the appellant brought out a gun, pointed it at him and pushed him out.

PW1's evidence clearly established that the appellant committed robbery. I cannot fault the concurrent findings of the trial court and the court below on the identity of the appellant. In the prevailing G circumstance, it was not necessary to conduct an identification parade.

H The second issue relates to the plea of alibi put up by the appellant. Learned counsel for the appellant has submitted that the appellant has given sufficient explanation of his where about on the crucial date of the offence charged. On the other hand, the learned counsel for the respondent has submitted that, where an alibi has been raised and there is a visual and positive identification of the accused, which is believed by the court, the appellate court should

not disturb such a finding.

An accused person who pleads alibi, must furnish sufficient particulars of same. He must explain his where about and those present with him at the material time. It is after this that the prosecution can disprove the plea of alibi. Where prosecution has failed to investigate this, the accused person is likely to be acquitted. See *GACHI v. THE STATE* (1973) 11 NWLR 331. B

If the prosecution adduces sufficient and accepted evidence of crime at the material time, then the plea of alibi by the accused person is logically demolished: See *PATRICK NJOVENS & ORS. v. THE STATE* (1973) ALL NLR 371 at 401 - 402. C

In this case the appellant was identified by his victim (PW1) clearly. To my mind, the plea of alibi was an after thought. Kingsley, the brother of the appellant, was not called upon to support his plea of alibi. The evidence of PW1 and PW2 was credible enough to fix D the appellant with the commission of the offence charged. The findings of the two courts below on this aspect are concurrent. This court cannot disturb it since they are supported by evidence on record and are not found to be perverse.

I find that all the essential ingredients of the offence of robbery E charged in this case have been proved by the prosecution.

In the light of the above reasoning and the fuller and detailed reasoning given in the lead judgment, I too find that this appeal is lacking in merit. It is dismissed. The judgment of the court below F which affirmed the conviction and sentence of the appellant is hereby confirmed.

RHODES-VIVOUR JSC

I read in draft the judgment delivered by my learned brother, Fabiyi JSC. I agree with his lordships reasons and conclusion that the appeal lacks merit. The charge against the appellant before trial court read as follows:

“That you Fabian Nwaturwocha on or about the 22nd day of October, 2004 and also on or about the 28th day of October, 2004, along Usman Dan Bwari Road, Abuja, within the jurisdiction of this honourable court robbed - at gun point Taye Musa and Temihan Benga of a Toyota starlet Car with registration number AA445 ABJ G

and a Mazda Car with registration number 516 RBG respectively and thereby committed an offence punishable under section 298 of the Penal Code.

To succeed, the prosecution must prove the following:

1. *That there was an Armed Robbery,*
- B 2. *That the accused/appellant was armed,*
3. *That the accused/appellant, while armed participated in the robbery."*

See Alabi v. State 1993 & NWLR pt. 301 p. 115

- C The standard required is proof beyond reasonable doubt. See section 138 (1) of the Evidence Act. Proof beyond reasonable doubt does not mean proof beyond all doubt, or all shadow of doubt. It simply means establishing the guilt of the accused person with compelling and conclusive evidence. A degree of compulsion which is
- D consistent with a high degree of probability. This court will not interfere with concurrent findings of the trial court and the Court of Appeal on issues of fact except where the findings are perverse, or there is established, a miscarriage of justice or a violation of principles of law or procedure. See Igwegu v. Ezengo 1992 6 NWLR pt. 249 p.
- E 561 Enang v. Adu 1981 11 - 12 SC p. 25.

In my view, the trial court carefully considered and evaluated the evidence in the case and have come to the correct decision, confirmed by the Court of Appeal, that the case against the appellant has been proved beyond reasonable doubt. The defence of alibi fades

F into insignificance, in the light of clear evidence to the Contrary. This is a clear case of robbery with nothing worth urging in favour of the appellant.

For this and the much fuller reasoning in the leading judgment, I dismiss the appeal. The judgment of the Court of Appeal dismissing the appeal is hereby affirmed.