

**SUPREME COURT OF NIGERIA**

20TH MAY, 2011. SC.64/2010

**CORAM:- A. M. MUKHTAR, F. F. TABAI, I. T. MUHAMMAD,  
MUNTAKA-COOMASSIE, B. RHODES-VIVOUR, JJSC**

THE STATE ..... APPELLANT  
V.  
FEMI OLADOTUN ..... RESPONDENT

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EVIDENCE - Inconsistency of - Criminal procedure - Where previous evidence is inconsistent with the one made at trial - Court should be directed that the evidence at trial as unreliable - Be directed that the previous evidence is not relevant (H1)

EVIDENCE - Unchallenged evidence - Relevance of - Evidence not challenged nor debunked - Becomes good and credible evidence - To be relied upon by Court (H2)

STATUTES - Interpretation - S. 3 Robbery & Firearms Act - Illegal possession of a firearm - Raises the presumption of guilt of an accused (H3)

STATUTES - Interpretation - Words used - Meaning - S.11 Robbery and Firearms Act - Provides for the physical act of the offence in the charge (H4)

EVIDENCE - Contradictions - Effect of - An accused that gave contradictory evidence - About his possession of firearms - Is guilty within the ambit of s.3 Robbery and Firearms Act (H5)

CRIMINAL PROCEDURE - Failure to cross examine - Effect - Where an accused fails to dislodge the evidence of prosecution - Prosecution's case is deemed proved beyond reasonable doubt (H6)

***FACTS***

Appellant/prosecution alleged that accused/respondent was arrested at Eruda whilst he was driving a Toyota Corolla car at about 01.45 a.m. by a Police night patrol team. As the team sighted the car

with registration No. Kwara AE 708 FUF, they pursued it, and on seeing them, accused drove faster until the car ran into a gutter and stopped. Three other occupants in the car ran away. The team searched the vehicle and found foreign made double barrel gun with seven cartridges. Accused gave evidence in his defence and denied that he was in possession of a gun in his car. He said he and his three friends were going to a party when they were stopped by the policemen at about 8 p.m.

Accused was subsequently charged to High Court of Kwara State, Ilorin for the offence of robbery and illegal possession of firearms contrary to Section 3(1) of the Robbery and Firearms (Special Provisions) Act Cap R 11, 2004. On 3rd of November, 2008, an amended charge was read to accused, of which he understood. He denied most of the contents of his caution statements, alleging that he was tortured when he wrote the statements. A trial within trial was subsequently conducted to ascertain the voluntariness of accused person's caution statement to the police. The learned trial Judge after evaluating the evidence before him, consideration of the submissions of learned counsel, found prosecution's case proved, convicted and sentenced accused as charged. Dissatisfied, accused appealed to Court of Appeal, Ilorin Division. The Court allowed the appeal and subsequently quashed the conviction by the High Court. Not satisfied, appellant appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

1. Whether the Court of Appeal was right to have held that the trial court placed reliance on the *Saka Oladejo v. The State* (1987) 3 NWLR part 61 as basis for convicting the respondent?

2. Whether the Court of Appeal was right to have held that the prosecution failed to establish the guilty knowledge of the respondent before the trial court?

3. Whether the Court of Appeal was right to have held that the trial court failed to consider the defence of the respondent before convicting him as charged?

**HELD** (Unanimously allowing the appeal per **MUKHTAR JSC**)

### **Inconsistency of evidence in criminal procedure**

1. Now, what did the learned trial judge say and hold on this inconsistency rule in his judgment? The following is what he held:-

*“The learned Director of Public Prosecution rightly stated the position of law which is to the effect that where a witness is shown to have made previous statements inconsistent with the evidence given by that witness at the trial, the jury should not be merely directed that the evidence given at the trial should be regarded as unreliable, they should be directed that the previous statements sworn or un-sworn do not constitute evidence upon which they can act.”*

I subscribe to the holding of the learned trial court reproduced above, for I am in full agreement with the learned Director of Public Prosecution that the learned trial judge did not make the decision in Saka Oladejo the basis for resolving the issue against the respondent. As can be illustrated with some excerpts of the judgment here below, what it did was to evaluate the confession and the testimony of the respondent with the totality of the evidence, as expounded in the Egboghomome’s case.

Indeed the above stands for the evaluation of some of the evidence before the court of trial, albeit the confession of the accused and his testimony in court together with the totality of the other pieces of evidence adduced in court.

The above succinctly lay to rest the propriety of consideration and reliance on confessional statement.

(pp.1470 G/1471 G/1472 D/1473 D)

### ***EVIDENCE - Unchallenged evidence - Relevance of***

2. The witness was neither cross-examined on the fact that the respondent was the one driving the Toyota car on that day, nor that the double barrel gun was found in the car. What does that suggest? It suggests that the evidence given in the examination in chief was true and it was accepted as what transpired on the day the respondent was arrested. If it was otherwise, the opportunity to demolish the evidence would have been seized by the respondent immediately it offered itself. More so, when the respondent was represented by a counsel. The position of the law as is settled in many authorities is that evidence adduced in court, that is relevant to the issue in controversy, and has neither been challenged nor successfully debunked becomes good and credible evidence, which ought to be relied upon by a learned trial judge.

In this respect, the piece of evidence of PW4 reproduced above

deserved to be relied upon and ascribed probative value. This same reasoning and principle applies to the evidence of PW1 supra. We think these pieces of evidence would have been ample enough to sustain the case of the prosecution. These to my mind form part of the totality of the evidence. (p. 1474 F)

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**STATUTES - Interpretation - S. 3 Robbery & Firearms Act**  
3. It is axiomatic that the possession of the double barrel gun found in the appellants car is thought provoking.

C It is palpably clear that the presence and recovery of the gun suggests that the respondent had guilty knowledge. I say so because no person can ordinarily be seen with such dangerous object with cartridges without an ill motive to perform acts that are contrary to the law. Moving around with a dangerous weapon when he is not a D law enforcement agent definitely raises the presumption of guilt. The provision of the Firearms Act supra is simply on possession, no more no less. That is to say that the intent of the legislature lays emphasis on possession, which represents that the mere fact that a firearm is found in possession of a person, once the three ingredients stated E above have been established, that provision has been met. The ingredients have been established in the case at hand. I will go into the details of these ingredients, starting with (1) above. There is no doubt that the respondent was found in possession of the double barrel F gun in his Toyota Corolla car, as is contained in the evidence of PW4, whose evidence was not controverted. It is on record that the respondent was driving the car, which he did not deny was his both in his caution statements and evidence in court. Despite the fact that there were other occupants in the car who escaped when the police G patrol team stopped them, the fact that the double barrel gun was in the car does not detract from the fact that the respondent was in the car and the gun was found in the car, which to my mind is within the meaning and contemplation of Section (3) of the Robbery and Firearms laws. This is beyond a mere suspicion. (p. 1477 G)

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**STATUTES - Interpretation - S.11 Robbery and Firearms Act**  
4. On ingredient No. 2, the prosecution witnesses testified that what they recovered in the Toyota car was a double barrel gun with live cartridges, which conforms with the provision of Section 11 of the

Robbery and Firearms Act supra, which interprets 'firearms' as follows:-

*"Firearms" includes any common gun, rifle, cartridge, machine-gun, cap-gun, flint lock gun, revolver, pistol, explosive or ammunition or other firearm, whether whole or in detached pieces."*

(p. 1478 E)

B

### ***EVIDENCE - Contradictions - Effect of***

5. Now, to the third ingredient which is on licence. It is a fact that the respondent did allege that the double barrel gun belonged to Yinka Mogaji his landlord's son and co-occupant of the car on the day he was arrested. This fact was contained in his caution statement exhibit D testimony in court. As a result of the claim that the gun belonged to Yinka Mogaji in his statement exhibit D, PW2 accompanied the respondent to Yinka's house at No. 23 Baboko Road, Ilorin where he told her they were both living. In exhibit C he admitted ownership of the gun, and in his defence in court the respondent denied knowing the owner of the gun. A real bundle of contradictions, but then the statements in exhibits C and D form part of the prosecution's case. Even where he admitted ownership of the gun, he did not mention that he had a licence to possess it.

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The respondent has not shown that he has a license to possess the gun, which was found in his car. In view of the above discussions on the three ingredients, I am satisfied that the ingredients have been established. The very fact that the respondent admitted ownership of the car, and the fact that he failed to stop when he was accosted by the police on that night but moved very fast until he fell into a gutter confirms guilty knowledge of the respondent. Added to these factors is the quick escape of the respondent's co-occupants. In this vein I refuse to endorse the finding of the lower court that the prosecution failed to prove the guilty knowledge of the respondent. For the foregoing reasoning, I answer issue (2) supra in the negative. In that case ground of appeal no. (2) from which the issue was distilled is not meritorious and it is hereby dismissed. (p. 1478 G)

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### ***CRIMINAL PROCEDURE - Failure to cross examine - Effect***

6. Again, the witness was not cross examined on this hide and seek of the respondent. In the circumstance, what else is opened to the

investigator to do? Nothing of course, because he has done all he could have done to trace and identify the said Yinka, but he was frustrated by the respondent. It was only the respondent who mentioned his name that could have led the police to him. I think the search for Yinka Mogaji was exhaustive enough. A thorough perusal of all the evidence before the learned trial Judge i.e. both prosecution and defence reveals that the case against the respondent was proved beyond reasonable doubt as required by the law and a plethora of authorities. The principle of proof beyond reasonable doubt as has been established in many authorities is not proof beyond shadow of doubt. As Lord Denning M. R. in the case of *Miller v. Minister of Pensions* 1947 2 All E.R. page 372 captured the principle thus:-

*“Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility 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, but nothing short of that will suffice.”*

His statement that the police recovered the weapon in his presence supports the evidence of PW4 that the search of the car was carried out on the spot of the arrest.

In the light of this discussion my answer to this last issue is in the negative, and so ground (3) of appeal from which it was distilled fails and it is dismissed.

I am satisfied that the prosecution proved its case beyond reasonable doubt as found by the learned trial court, and I affirm its judgment and conviction. The lower court was in error to have set aside the conviction and sentence because the respondent did not provide the defence to dislodge the case of the prosecution.  
(p. 1482 G)

## **NOTABLE POINT OF INTEREST**

### **MUKHTAR JSC**

#### *1. Under Firearms Act - Emphasis is on possession of firearms*

The position in the present case is however slightly different. The

inconsistency is on the ownership of Exhibit A alone. Firearms Act talks about possession and not ownership. I am of the opinion that a person can be in possession of a prohibited item without necessarily been (sic) the owner.” (p. 1471 A)

### **REPRESENTATION**

Mr. J. A. Mumini D.P.P. M.O.J. Kwara State, for the Appellant  
Mr. Olalekan Yusuf, with him Adeyemi Ogunluwoye, for the Respondent

### **CASES REFERRED TO**

Okpere v. State 1971 1 ANLR 1  
Okere v. State 2001 2 NWLR part 697 page 397  
Agbo v. State 2006 6 NWLR part 977 page 545  
Akpan v. State 2001 15 NWLR part 737 page 745  
Adiba v. Azega 1991 7 NWLR part 296 page 234  
Ikemson v. State 1989 3 NWLR part 110 page 455  
Egboghonome v. The State 1993 9 SCNJ 1  
Edoho v. State 2010 All FWLR part 530 page 1262 at page 1297

### **STATUTE REFERRED TO**

Robbery and Firearms (Special Provisions) Act Cap. R11 Laws of Federation of Nigeria 2004, s. 3 (1) and 11

### **LEAD JUDGMENT BY MUKHTAR JSC**

This is an appeal against the decision of the Ilorin Division of the Court of Appeal allowing the appeal of the accused/respondent and quashing his conviction by the High Court of Justice of Kwara State. On 3/11/2008, an amended charge was read to the accused/ respondent. The amended charge reads as follows:-

*“That you, Femi Oladotun, and others now at large on or about the 2nd day of May, 2006 at about 12.10 hours at Baboko area, Ilorin within the jurisdiction of this court was found to be in illegal possession of a foreign made double barrel cut to size gun and nine live cartridges and you thereby committed an offence contrary to Section 3(1) of the Robbery and Firearms (Special Provisions) Act Cap R 11, 2004.”*

The accused said he understood same and pleaded not guilty

to the charge. There was originally a charge that was read to the accused on 24/7/2008, but it was later amended to the above charge, with the leave of the court. Witnesses gave evidence for the prosecution and there was even a trial within a trial to determine the voluntariness of the accused's caution statement to the police. Briefly put, the case for the prosecution is that the accused was arrested at Eruda whilst he was driving a Toyota Corolla car at about 01.45 a.m. by the Police night patrol team. As the team sighted the car with registration No. Kwara AE708FUF, they pursued it, and on seeing them, the accused drove faster until it ran into a gutter and stopped. Three other occupants in the car ran away. The team searched the vehicle and found foreign made double barrel gun cut to size with seven cartridges. The caution statements of the accused were recorded by him after being cautioned.

The accused gave evidence in his defence and denied that he was in possession of a gun in his car. He said he and his three friends were going to a party when they were stopped by the policemen (sic) about 8p.m. He denied most of the contents of his caution statements, alleging that he was tortured when he wrote the statements.

The learned trial Judge after evaluating the evidence before him, and consideration of the submissions of learned counsel found the prosecution's case proved and convicted the accused thus:-

*"On the whole, I am satisfied from the overwhelming and believable evidence adduced against the accused that the prosecution has proved the charge of illegal possession of firearms against him to the standard required in criminal cases, that is, beyond reasonable doubt and I find him guilty of the offence as charged. The accused is accordingly convicted."*

The accused was not happy with the above decision, so he appealed to the Court of Appeal, which set aside the decision and held thus:-

*"In conclusion, I hold that the prosecution did not discharge the burden which the law placed on it. The lower court should have made this finding. It failed to do so. It erred. That is why its judgment cannot be allowed to stand" I therefore enter an order quashing the conviction and sentence passed on the appellant."*

Aggrieved, the prosecution has appealed to this court on three grounds of appeal. Learned counsel exchanged briefs of argument,

which were adopted at the hearing of this appeal. The appellant in its brief of argument formulated the following issues for determination:-

1. Whether the Court of Appeal was right to have held that the trial court placed reliance on the *Saka Oladejo v. The State* (1987) 3 NWLR part 61 as basis for convicting the respondent?

2. Whether the Court of Appeal was right to have held that the prosecution failed to establish the guilty knowledge of the respondent before the trial court? B

3. Whether the Court of Appeal was right to have held that the trial court failed to consider the defence of the respondent before convicting him as charged? C

The above issues were adopted by the respondent in his brief of argument. In arguing issue (1) above, the learned Director of Public Prosecution of Kwara State for the appellant, referred to the following excerpt of the judgment of the lower court:- D

*“In effect, by invoking Saka Oladejo (supra) the lower court was nibbling at the impregnable authority of the Supreme Court in the said Egbohonome v. State (supra) and even the latter authority of Aiguoreghian v. State (supra). Even on the ground alone, I am bound to vacate its findings with regard to the so called inconsistency between exhibit C and the oral testimony of the accused person/appellant in his oral evidence during his defence.”* E

The learned Director of Public Prosecution conceded that Saka Oladejo’s decision on the inconsistency rule has been overruled by this court in *Egbohonome v. The State* 1993 9 SCNJ 1, but his submission is that the learned justice carried the decision in *Egbohonome*’s case too far to have occasioned miscarriage of justice in this case. He submitted that the impression given by the lower court on this rule was that the trial court, acting on the decision in *Saka Oladejo*’s case refused and/or neglected to consider the defence raised by the respondent in his confessional statement as it was inconsistent with his oral testimony in court. The learned Director of Public Prosecution argued that though the learned trial Judge restated the inconsistency rule as applied in *Saka Oladejo*’s case, he did not make the decision the basis for resolving that issue against the respondent. What the learned trial Judge did was to evaluate the confession and the testimony of the respondent with the totality of the evidence in order to reach a decision as expounded by this court F  
G  
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in the Eghohonome's case supra. The learned Director Public Prosecution further argued that exhibit C is for all intent and purpose a confessional statement of the respondent, and notwithstanding its retraction, the law allows the trial judge to make use of same. He placed reliance on the cases of Ikemson v. State 1989 3 NWLR part B 110 page 455, and Edoho v. State 2010 All FWLR part 530 page 1262 at page 1297 .

In reply to the above submissions, the learned counsel for the respondent has contended that the correct position of the law as regards the inconsistency rule has been stated in Eghohonome's case supra to the effect that the rule is to be applied to extra judicial statements which are not confessional. It does not apply to retracted extra-judicial confession of an accused. He referred to Akpan v. State 2001 15 NWLR part 737 page 745, which according to him binds every lower court by the doctrine of stare decisis. According to the learned counsel, the lower court merely re-stated the correct position of the law as it relates to the inconsistency rule formulated in Eghohonome's case to rebut the wrong notion of the state of the law held by the learned trial judge, as a dispassionate look at the judgment would only reveal that the lower court did not hold the reliance (or lack of it) by the learned trial Judge as the basis for reversing the judgment of the trial court. The learned counsel, on the heavy weather made of the inconsistency in the two extra judicial statements and the testimony of the accused in court has argued that the mere fact that an accused person told lies is not by itself sufficient to ground his conviction for an offence. It does not relieve the prosecution of its duty of proving the guilt of the offence with which he is charged beyond reasonable doubt. He placed reliance on the cases of Agbo v. State 2006 6 NWLR part 977 page 545, and Okpere v. State 1971 1 ANLR 1.

**Now, what did the learned trial judge say and hold on this inconsistency rule in his judgment? The following is what he held:-**

**"The learned Director of Public Prosecution rightly stated the position of law which is to the effect that where a witness is shown to have made previous statements inconsistent with the evidence given by that witness at the trial, the jury should not be merely directed that the evidence given at the trial should be regarded as unreliable, they should be di-**

**rected that the previous statements sworn or un-sworn do not constitute evidence upon which they can act.** (See ADEBOYE AMUSA V. THE STATE (2006) 1 CLPR PART 78 AT PAGE 91. See also SAKA OLADEJO V. THE STATE (1987) 3 NWLR (part 61) page 419.) The position in the present case is however slightly different, the inconsistency is on the ownership of Exhibit A alone. Firearms Act talks about possession and not ownership. I am of the opinion that a person can be in possession of a prohibited item without necessarily been (sic) the owner.”

On the above pronouncement, the Court of Appeal posited thus:-

*“It is against the background of this current state of the law that I view with askance the reliance which the lower court placed on Saka Oladejo (supra), a decision which as shown above, the Supreme Court expressly overruled in Egbohonome v. State (supra); see also, Onu JSC in Aiguoreghian v. State (2004) 1 KLR (part 170) D 129, 152 approvingly referring to Egbohonome v. State (supra) which overruled Saka Oladejo (supra) and Asanya (supra).*

*In effect, by invoking Saka Oladejo (supra), the lower court was nibbling at the impregnable authority of the Supreme Court in the said Eghohonome v. State (supra) and even the latter authority of Aiguoreghian v. State (supra). Even on that ground alone, I am bound to vacate its findings with regard to the So-called inconsistency between exhibit “C” and the oral testimony of the accused person/appellant in his oral evidence during his defence. Most worryingly, that was not the only defect in the logic of the reasoning of the lower court with regard to its finding on the guilt of the accused person, a finding that wreaked havoc on the settled principle of the nature of the burden on the prosecution in a criminal case.”*

I do not endorse the above observation of the lower court. Instead, **I subscribe to the holding of the learned trial court reproduced above, for I am in full agreement with the learned Director of Public Prosecution that the learned trial judge did not make the decision in Saka Oladejo the basis for resolving the issue against the respondent. As can be illustrated with some excerpts of the judgment here below, what it did was to evaluate the confession and the testimony of the respondent with the totality of the evidence, as expounded in the Egbohonome’s case** supra. In its judgment, the learned trial judge

posited thus:-

*“Although the accused denied ownership of Exhibit A, the fact that it was found in his car he is deemed to be in possession along with his friends. The burden is on the accused to show that Exhibit A was possessed by one of the three persons that ran away without his knowledge.*

*In Exhibit D, the accused stated that the double barrel gun belonged to Yinka Magaji but instead of taking PW2 to where himself and Yinka Magaji reside he took him to wrong places thereby making it impossible for the police to investigate his claim. The evidence of PW2 was not challenged by the accused. The only reasonable inference I can draw from the scenario is that the accused knowingly possessed Exhibits A, A1 to A9 with his friends on 02/05/2006. I reject the defence of the accused in court that he did not carry a gun on the day he was arrested. The evidence of possession in Exhibit D is consistent with the evidence of prosecution witnesses”.*

**Indeed the above stands for the evaluation of some of the evidence before the court of trial, albeit the confession of the accused and his testimony in court together with the totality of the other pieces of evidence adduced in court.** At this stage, I am constrained to look into the Egbohonome case *supra*, and reproduce some salient extracts of the judgment. In the case, Bello C.J.N. (of blessed memory) dealt with the observation of Uwaifo J.C.A. (as he then was) in the case of *Ibina v. The State* 1989 5 NWLR part 12 page 238, (on the Oladejo’s case) which reads as follows:-

*“I must say, with due respect, that Saka Oladejo v. The State (supra) represents a departure from the principle well laid down as to how to treat the statement and evidence of an accused. I have always understood the principle in R. V. Golder (supra) which was considered in relevant cases particularly Jizurimba v. The State (supra) to relate to the ordinary witness and not an accused who testifies. The case of an accused person is quite differently treated and the guiding principles are fully established and have been applied before and after Saka Oladejo’s case. In R. V. Itule (1961) 2 SCNLR 163: (1961) All NLR, 46.2, the appellant retracted his confessional statement as a result of which the trial judge did not consider it, and convicted him on other evidence of murder. The statement contained some facts of*

provocation. The Federal Court held that to have failed to consider that evidence because the statement was excluded from consideration amounted to substantial miscarriage of justice.”

To the above observation, Bello C.J.N. concluded his lead judgment thus:-

*“I am now convinced by the forceful submissions of amici curiae that Uwaifo, J.C.A. correctly stated the law. He was right that the decision of this court in Oladejo’s case was a departure from the long established principle relating to consideration of confession and its retraction. Confession and testimony of the accused person shall be evaluated and assessed by the trial Judge together with the totality of the evidence in order to reach a just decision.*”

*For the foregoing reasons, I conclude that the decisions in Oladejo and Asamyo should be overruled and are hereby overruled. Accordingly, the trial court was right to rely on the confession of the appellant in convicting him of murder. The Court of Appeal was also right in affirming that the trial judge was entitled to act on the confession.”* (Underlining is mine).

**The above succinctly laid to rest the propriety of consideration and reliance on confessional statement.** I will now go back to the holding of the learned trial court in the case at hand, which has been reproduced earlier. It is a fact that the learned trial judge re-stated the position of the law, as expounded in the Oladejo’s case; it is not that he actually adopted and applied the principle. He in fact went further to throw some light on the inconsistency involved in this case by differentiating the two. The Egbohonome’s case supra propounded the need to evaluate the confession with the totality of the evidence, and I believe the learned trial judge did just that, as is illustrated in the excerpt of his judgment also earlier reproduced.

The heavy weather made on the use of the word ‘straightly’ instead of the correct word ‘slightly’ as in the record of proceedings in the appellant’s brief of argument by the learned counsel for the respondent is of no moment, in view of the overall argument in this issue.

Now, what is the totality of the evidence? I will reproduce the pertinent pieces of the evidence before the court, starting with the evidence of PW1. In his evidence, PW1 testified as follows inter alia:-

*“I am the exhibit keeper attached to the State C.I.D. Ilorin. On*

02/05/06, I was on duty when a woman constable Oluwatosin Joseph brought to me a foreign made double barrel gun loaded with one cartridge and nine other line cartridges to be registered as exhibits. She also brought a Toyota Corolla car with registration Number Kwara AE708FUF to be registered as Exhibit as well. I registered all the items as Exhibits No. KWS/85/2006. Since that time the Exhibits have been in my custody up till today that I brought them to court.”

The items were admitted in evidence without any objection from the learned counsel for the accused. Likewise, the witness was not cross examined. An eye witness PW4 Inspector Ojo Olorunshagba gave the following testimonies:-

“On 2nd May, 2006 at about 0145 a.m. I was on a night patrol with three other police officers along Baboko Eruda Area in Ilorin. At Eruda we sight (sic) a Toyota Corolla with registration NO. Kwara AE708FUF. The accused was the person who drove the car. When he saw us he moved faster and we pursued the car. At a spot the car ran into a gutter and it stopped. We immediately surrounded the car. There were four people inside the car; three of them came out and ran away but we arrested the accused. We searched the car and we saw a foreign made double barrel gun cut to size with seven cartridges. We took the accused, the car, the gun and the cartridges to ‘C’ Division of the Nigeria Police for investigation... The accused was the one who drove the car when it ran into a gutter.”

In the course of cross examination PW 4 said:-

“- the accused was not the only person in the car on the day of the incident. Three other persons were with him in the car. I don’t know whether anybody called Yinka was in the car.”

**The witness was neither cross-examined on the fact that the respondent was the one driving the Toyota car on that day, nor that the double barrel gun cut was found in the car. What does that suggest? It suggests that the evidence given in the examination in chief was true and it was accepted as what transpired on the day the respondent was arrested. If it was otherwise, the opportunity to demolish the evidence would have been seized by the respondent immediately it offered itself. More so, when the respondent was represented by a counsel. The position of the law as is settled in many authorities is that evidence adduced in court, that is relevant to the issue in**

**controversy, and has neither been challenged nor successfully debunked becomes good and credible evidence, which ought to be relied upon by a learned trial judge.** See *Adiba v. Azega* 1991 7 NWLR part 296 page 234, *Adiba v. Azega* 1991 7 NWLR part 296 page 234, *Okere v. State* 2001 2 NWLR part 697 pg. 397.

**In this respect, the piece of evidence of PW4 reproduced above deserved to be relied upon and ascribed probative value. This same reasoning and principle applies to the evidence of PW1 supra. We think these pieces of evidence would have been ample enough to sustain the case of the prosecution. These to my mind forms part of the totality of the evidence. The case of *Ikemson v. The State* relied upon by the learned Director of Public Prosecution on the efficacy of exhibit C, the confessional statement of the respondent, notwithstanding that it was retracted is of assistance to this discussion.**

A relevant excerpt of the judgment on the confessional statement reads thus:-

*“A denial of confessional statement by itself is no reason for rejecting the statement. The confession, where voluntary is admissible once the statement complies with the law and rules governing the method for taking it and it is tendered and not objected to by the defence, whereby it is admitted as an exhibit, then it is a good evidence and no amount of retraction will vitiate its admission...”*

I will come to the evidence of the respondent later. The posture taken by the lower court in respect of the reliance on the *Oladejo’s* case by the learned trial judge is wrong, in view of the discussion supra. For the foregoing reasoning I resolve issue (1) supra in favour of the appellant, and in consequence I dismiss ground of appeal No (1) to which it is married. Now, to issue (2) supra. In dealing with this issue, I refer to the reproduced excerpt of the judgment of the lower court supra, where the court said the prosecution failed to prove the guilty knowledge of the respondent in respect of the gun. The learned Director of Public Prosecution proffered the argument in his brief of argument that the lower court did not consider the contents of exhibit C wherein the respondent admitted ownership of exhibit A, the gun, but rather limited itself to the contents of exhibit D wherein the respondent stated that the gun belonged to one *Yinka Mogaji*, a co-occupant of his car on the day of his arrest. The contradiction of this

by the oral testimony of the respondent is also worthy of note. The learned Director of Public Prosecution in answer to a poser on whether the respondent will be exonerated of liability because the other occupants of the Toyota car escaped, in view of the contents of exhibit C and the evidence led by the prosecution, submitted that the answer B will be no, because of the following undisputable reasons:-

1. It is in evidence before the trial court that in order to investigate the claim of the respondent that Yinka Mogaji owned the gun PW2 followed him to the purported residence of Yinka Mogaji and the respondent only to be teased around without success by the Police team. C

2. In both exhibits C and D before the trial court, the respondent admitted that he was out on a revenge mission on a rival cult group which will necessitate the use of exhibit A, the gun.

3. It was in evidence that the respondent who was the man behind the steering when PW4 and his team accosted them ran away. D

This is a clear demonstration of guilty knowledge an irrefutable assumption that the respondent knew what he was carrying.

The learned Director of Public Prosecution finally submitted E that the facts disclosed by the evidence of the prosecution fixed the respondent as the possessor of the gun, and according to him the possessor of a thing is in law deemed to be the owner of it. See John Saymond, jurisprudence 285 (Glan Ville L. William 10th ed. 1947).

The learned counsel for the respondent, in reply to the above F submissions, has argued that to prove the offence of unlawful possession of firearms against an accused person, the law requires the prosecution to establish the following three essential ingredients:-

- a. That the accused was found in possession of firearms.
- G b. That the firearms were within the meaning of the Act.
- c. That the accused person has no licence to possess the firearms.

He placed reliance on the case of Momodu v. State 2008 All FWLR part 447 page 67. It was contended that ‘possession’ contemplated by the act and envisaged by the legislature is one accompanied by the guilty knowledge i.e. mens rea of the offender; as suspicions however strong cannot ground a conviction, neither can it displace the duty on the prosecution to prove the respondent’s guilt beyond reasonable doubt. Reliance was placed on the cases of H

Obiakor v. State 2002 10 NWLR part 776 page 612, and Bozin v. State 1985 2 NWLR part 8 page 465.

On the admissions in exhibits C and D that the respondent was on a revenge mission on a rival cult group which necessitated the use of exhibit A, the learned counsel argued that although an accused person can be convicted on his confessional statement alone, a trial court must exercise caution in convicting an accused upon a retracted confessional statement. B

He placed reliance on the cases of Nsofor v. State 2008 10 NWLR part 775 page 274, Tanko v. State 2008 16 NWLR part 1114 page 553, and Isah v. State 2007 12 NWLR part 1049 pages 582, C The learned counsel finally submitted that the burden of proof of a crime which is proof beyond reasonable doubt never shifts, until satisfactorily discharged. See State v. Azeez 2008 14 NWLR part 1108 page 439, and Mandilas and Karaberis Ltd v. Inspector General of Police SCNLR 335. D

Before I delve into the treatment of the above submissions it is pertinent that I reproduce the provision of the Robbery and Firearms Act, under which the respondent was charged here below. Section (3) of the Robbery and Firearms (special Provisions) Act Cap. E Rule 11, Laws of the Federation of Nigeria 2004 stipulates the following:-

*“3(1) Any person having a firearm in his possession or under his control in contravention of the Firearms Act or any order made there under shall be guilty of an offence under this Act and shall upon conviction under this Act be sentenced to a fine of twenty thousand naira or to imprisonment for a period of not less than ten years, or to both.” F*

***It is axiomatic that the possession of the double barrel gun found in the appellant’s car is thought provoking. G***

***It is palpably clear that the presence and recovery of the gun suggests that the respondent had guilty knowledge. I say so because no person can ordinarily be seen with such dangerous object with cartridges without an ill motive to perform acts that are contrary to the law. Moving around with a dangerous weapon when he is not a law enforcement agent definitely raises the presumption of guilt. The provision of the Firearms Act supra is simply on possession, no more no less. H***

***That is to say that the intent of the legislature lays emphasis on possession, which represents that the mere fact that a fire-arm is found in possession of a person, once the three ingredients stated above have been established, that provision has been met. The ingredients have been established in the case at hand. I will go into the details of these ingredients, starting with (1) above. There is no doubt that the respondent was found in possession of the double barrel gun in his Toyota Corolla car, as is contained in the evidence of PW4 supra, whose evidence was not controverted. It is on record that the respondent was driving the car, which he did not deny was his both in his caution statements and evidence in court. Despite the fact that there were other occupants in the car who escaped when the police patrol team stopped them, the fact that the double barrel gun was in the car does not detract from the fact that the respondent was in the car and the gun was found in the car, which to my mind is within the meaning and contemplation of Section (3) of the Robbery and Firearms laws supra. This is beyond a mere suspicion.***

***On ingredient No. 2, the prosecution witnesses testified that what they recovered in the Toyota car was a double barrel gun with live cartridges, which conforms with the provision of Section 11 of the Robbery and Firearms Act supra, which interprets 'firearms' as follows:-***

***"Firearms" includes any common, gun, rifle, cartridge, machine-gun, cap-gun, flint lock gun, revolver, pistol, explosive or ammunition or other firearm, whether whole or in detached pieces."***

***Now, to the third ingredient which is on licence. It is a fact that the respondent did allege that the double barrel gun belonged to Yinka Mogaji his landlord's son and co-occupant of the car on the day he was arrested. This fact was contained in his caution statement exhibit D testimony in court. As a result of the claim that the gun belonged to Yinka Mogaji in his statement exhibit D PW2 accompanied the respondent to Yinka's house at No. 23 Baboko Road, Ilorin where he told her they were both living. In exhibit C he admitted ownership of the gun, and in his defence in court the respondent denied***

**knowing the owner of the gun. A real bundle of contradictions, but then the statements in exhibits C and D form part of the prosecution's case. Even where he admitted ownership of the gun, he did not mention that he had a licence to possess it.** In

dealing with this third ingredient, the learned trial judge's stance is encapsulated thus:-

*"... I am of the view that the accused person was aware of the allegation against him which is unlawful possession of firearms. Both PW2 and PW5 told the court that a case of unlawful possession of firearms against the accused was transferred from C' Divisional Police Headquarters to the Criminal Investigation. I am of the opinion that the only way the accused would have justified his possession of Exhibits A, A1 to A9 was to show that he possessed them legally. Since the law forbids a private individual from possessing firearms without a license the onus is on the accused to show that he was granted a license by the appropriate authority."*

**The respondent has not shown that he has a license to possess the gun, which was found in his car. In view of the above discussions on the three ingredients, I am satisfied that the ingredients have been established. The very fact that the respondent admitted ownership of the car, and the fact that he failed to stop when he was accosted by the police on that night but moved very fast until he fell into a gutter confirms guilty knowledge of the respondent. Added to these factors is the quick escape of the respondent's co-occupants. In this vein I refuse to endorse the finding of the lower court that the prosecution failed to prove the guilty knowledge of the respondent.**

**For the foregoing reasoning, I answer issue (2) supra in the negative.**

**In that case ground of appeal no. (2) From which the issue was distilled is not meritorious and it is hereby dismissed"**

In arguing the final issue for determination the learned Director of Public Prosecution has submitted that the learned trial judge satisfied the requirement of the law by giving adequate consideration to the defence put forward by the respondent both in his oral testimony and in his statements admitted as exhibits C and D before the trial court. He argued that the trial court was not under any obliga-

tion to accept the defence put up by the respondent, what the law expects it to do is to give such defence its necessary consideration. It was further argued that in establishing the guilt of an accused person, the prosecution is expected to prove its case beyond reasonable doubt, the law does not expect him to establish its case beyond all shadow of  
 B doubt. It is also the submission of the learned Director of public prosecution that the lower court refused to be guided by the decision of this court in *Offorlete v. The State* 2000 12 NWLR part 681 page 437 and *Adeniji v. The State* 2001 FWLR part 51 page 809.

C In reply the learned counsel for the respondent has submitted that the court is bound not only to consider the defence specifically raised by the accused but also all such evidence and defence which favourably avail him. See *Maiyaki v. State* 2008 15 NWLR 1109 page 173. He argued that a trial court is required to subject every  
 D item of facts raised for or against an accused person to merciless scrutiny because of the principle of law ingrained in the constitution, that the accused is presumed innocent, and nothing should be taken for granted as the liberty of the accused is at stake. See *Shande v. State* 2005 12 NWLR part 939 page 301, and *Isah v. State* 2007 12 NWLR  
 E part 1049. The pertinent question I would like to ask at this juncture is what was the defence put forward by the respondent in the trial court? I am constrained to reproduce the evidence of the respondent. The salient excerpts read as follows:-

F *"On 22/5/06, one Shina Adeoye, a friend of mine invited me to a birthday party. On reaching the venue, we discovered that the party would no longer take place. I waited for about 30 minutes with the hope that the party may still hold. Thereafter, I left the venue. On my way home I saw my landlord's son. He waived me and I stopped.*  
 G *He said I should give him and his two friends ride home. It was about 8 p.m. or thereabout that I left the party. On our way, policemen stopped us and asked for the particulars of my vehicle which I gave to them. While the policemen were going through my documents my landlord's son and his two friends came out of the car and ran*  
 H *away. Immediately, the policemen ordered me to enter my car. At the station, I was locked up in the cell until the following day when they brought me out and told me that they saw a gun inside my car. I told the police that I did not know anything about the gun. I did not carry any gun on the day I was arrested. I told the police that I only*

*knew my landlord's son but I don't knew the other two people that ran away."*

In the course of cross-examination the respondent testified inter alia thus:-

*"The landlord's son I was referring to is called Yinka Mogaji... I now say it was at the venue of the party that I picked Yinka Mogaji and the other two people... The Police did not pursue me. It was where they asked me to stop that I stopped. The venue of the party was Pacific Hotel, along Airport Road, Ilorin. Odota is the name of the area where the hotel is situated. Odota and Eruba where I was arrested are far from each other."*

Under re-examination, the respondent reiterated his evidence in the course of cross examination on where he picked up Yinka Mogaji, This was a departure from his evidence in chief, where he said he picked him up after leaving the venue.

I have taken pains to reproduce the evidence of the respondent in order to ensure that I do justice to this issue under consideration. I will like to consider/evaluate the defence at this juncture, starting with the date of the incident, which is stated as 22/5/06 in the respondent's evidence, and 2/5/06 according to the prosecution's evidence. The date given by the respondent may well be a typographical error. I have made efforts to verify this from the original record of proceedings, but it seems that has not been forwarded to this court. My curiosity in the veracity of this date has prompted me to do some research on the day of the week both dates fall on. The date 2/5/06 falls on a Tuesday, and the date 22/5/06 falls on a Monday. Whichever day, the interesting fact is that they fall within a week day, days which ordinarily people do not hold parties on. It is instructive to note therefore that the story of the respondent about a birthday party is not feasible, in view of the fact that it was a working day, and the time of the night is worrisome. Then the respondent contradicted himself on the point where he picked Yinka Mogaji. This contradiction is worthy of consideration.

It must be a coincidence that both himself and his landlord's son found themselves in the same area at that time of the night. That the said Yinka Mogaji ran away as soon as they were stopped by the police is also intriguing, for a long known person, albeit a friend or otherwise will not at the sight of a policeman abandon the person

who gave him a lift in his car at that time of the night. Why will his co-occupants run away, unless they had ulterior motive on their mission? Perhaps, if the respondent was not driving the Toyota car and it did not belong to him he would have also run away. His total denial of the knowledge of the gun is also suspect, for I have observed  
 B earlier on that he did not cross-examine PW4 on the recovery of exhibit A, the gun. In his caution statement he alleged that the said Yinka Mogaji was the owner of the gun and inter alia stated thus:-

*“Yesterday around 22.30 hours Black Axe secret cult attack  
 C (sic) Yinka to informed (sic) us that is why we armed ourselves to go and fight them. On our returning home with the weapons Police stopped us and the remaining people escaped and I was arrested with my car and the weapons together with my handset.”*

It is manifestly clear from the above that the gun was recovered in the respondent's car. The fact that the gun is not owned by him is immaterial, for the offence he was charged with is possession, not ownership. Efforts were made by the police to investigate the claim of the respondent that the gun belonged to Yinka Mogaji, but it met with brick wall, as the said Yinka could not be traced. PW2 gave  
 E this evidence which reads thus:-

*“The accused told me the gun belonged to one Yinka who he said was his landlord's son. I told him to take us to Yinka. At about 5.30 a.m. to 6.30 a.m. I booked at the station and went out with the accused to look for Yinka. The accused told me they were living at  
 F No. 23 Baboko Road, Ilorin but when we got to the house the occupants told us they didn't know the accused and any person called Yinka. The accused told us again that their house is at Eruda Quarters. He said it was the house in front of the Spot where he was  
 G arrested. We left No. 23 Baboko Road to Eruda. Again the people living in the house the accused took us to in Eruda told us they did not know him or any person called Yinka. We then returned the accused to the station.”*

**Again, the witness was not cross examined on this hide and  
 H seek of the respondent. In the circumstance, what else is opened to the investigator to do? Nothing of course, because he has done all he could have done to trace and identify the said Yinka, but he was frustrated by the respondent. It was only the respondent who mentioned his name that could have**

**led the police to him. I think the search for Yinka Mogaji was exhaustive enough. A thorough perusal of all the evidence before the learned trial Judge i.e. both prosecution and defence reveals that the case against the respondent was proved beyond reasonable doubt as required by the law and a plethora of authorities. The principle of proof beyond reasonable doubt as has been established in many authorities is not proof beyond shadow of doubt. As Lord Denning M. R. in the case of Miller v. Minister of Pensions 1947 2 All E.R. page 372 captured the principle thus:-**

**“Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility 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, but nothing short of that will suffice.”**

See Alkalezi v. State 1993 2 NWLR part 273 page 1, and Oreoluwa Onakoya v. Federal Republic of Nigeria 2002 11 NWLR part 779 page 595.

**His statement that the police recovered the weapon in his presence supports the evidence of PW4 that the search of the car was carried out on the spot of the arrest.**

**In the light of this discussion my answer to this last issue is in the negative, and so ground (3) of appeal from which it was distilled fails and it is dismissed.**

**I am satisfied that the prosecution proved its case beyond reasonable doubt as found by the learned trial court, and I affirm its judgment and conviction. The lower court was in error to have set aside the conviction and sentence because the respondent did not provide the defence to dislodge the case of the prosecution. I do not agree that consideration was not given to the defence. It was, but the learned trial Judge was not satisfied with it.** The end result is that I find the appeal meritorious and I allow it.

**TABAI JSC CON**

I have had a preview of the lead judgment of my learned brother MUKHTAR JSC and I agree with the reasoning and conclusion therein that the appeal has merit.

The one count amended charge on which the Accused/Respondent B was tried reads:

*“that you, Femi Oludotun and others now at large on or about the 2nd day of May, 2006 at about 12:10 hours at Baboko area, Ilorin within the jurisdiction of this Court was found to be in illegal C possession of a foreign made double barrel cut to size gun and nine live cartridges and you thereby committed an offence contrary to section 3(1) of the Robbery and firearms (Special Provisions) Act...”* Section 3(1) of the Robbery and Firearms (Special Provisions) Act provide:-

D *“Any person having a firearm in his possession or under his control in contravention of the firearms Act or any order made there under shall be guilty of an offence under this Act and shall upon conviction under this Act be sentenced to a fine of twenty thousand naira or to imprisonment for a period of not less than ten years or to E both.”*

The case of the prosecution which is essentially uncontroverted is contained in the evidence of the PW2 and PW4. With respect to the evidence of possession, the PW4 at Page 54 of the record had this (sic) say:-

F *“I am inspector Ojo Olorunshagba attached to “C” Division, Nigeria Police, Ilorin. I know the accused person. On the 2nd May, 2006 at about 01:45 am I was on a night patrol with three other police officers along Baboko-Eruda area in Ilorin. At Eruda we sighted G a Toyota Corolla with registration No. Kwara AE 708 FUF.*

*The accused was the person who drove the car. When he saw us he moved faster and we pursued the car. At a spot the car ran into a gutter and it stopped. We immediately surrounded the car. There were four people inside the car, three of them came out and ran H away but we arrested the accused. We searched the car and we saw a foreign made double barrel gun cut to size with seven cartridges. We took the accused, the car, the gun and the cartridges to ‘C’ Division of the Nigeria Police for investigation.”*

Exhibits A to A9 were the gun and cartridges.

On this question of possession, the PW2 stated at pages 32-33 of the record as follows:-

“The accused told me the gun belonged to one Yinka who he said was his landlord’s son. I told him to take us to Yinka. At about 5:30 am to 6:30 am, I booked at the station and went out with the accused to look for Yinka. The accused told me they were living at No. 23 Baboko Road Ilorin but when we got to the house the occupants told us they didn’t know the accused and any person called Yinka. The accused told us again that their house is at Eruda quarters. He said it was the house in front of the spot where he was arrested. We left No, 23 Baboko Road to Eruda. Again the people living in the house the accused took us to in Eruda told us they didn’t know him or any person called Yinka...” The PW2 was not cross-examined on the above evidence. In his statement on the 2nd of May, 2006 the Appellant admitted the fact that the gun and cartridges were found in his car when he was arrested but claimed therein that it belonged to Yinka. His evidence was however debunked by the evidence of the PW2 reproduced above. Although in his evidence the Appellant denied carrying any gun in his car at the time of his arrest, the learned trial judge disbelieved his denial. In the course of his deliberations the trial judge reasoned and found as follows:-

“It is true that the accused said in Exhibit ‘D’ that Exhibit ‘A’ belonged to the son of his landlord, Yinka Mogaji, but I found that the accused deliberately shielded the said Yinka Mogaji from the Police during investigation. PW2 made efforts to investigate the claim of the accused but the accused refused to disclose the whereabouts of his landlord’s son. He took PW2 to wrong places thereby frustrating the efforts of the police. The court discovered that the accused did not cross-examine PW2 on this damaging testimony and did not show in his testimony that PW2 wasn’t saying the truth. The evidence of the PW2 stands admitted. The position of the law is that where a witness testifies on a material fact in controversy in a case, the other party should if he does not accept the testimony in the case as true, cross-examine him on that fact or at least show that he does not accept the evidence as true. see *FATILEWA V. STATE* (2007) ALL FWLR (Part 347) P.695 at 722. I hold that the accused in the present case did not lead evidence on innocent possession of firearm and same cannot avail him” (See page 76 of the record)

It is my view, with respect, that the above reasoning and conclusion cannot be faulted.

The Court below however had a different impression about the investigation concerning the claim of the Appellant that the gun and cartridges belonged to Yinka.

B At page 145 of the record the Court per Nweze JCA said:-

*“I endorse the submission of his counsel that the investigation concerning the whereabouts of Yinka Mogaji (the son of the Appellant’s landlord) was not only vague; it was actually shoddy.*

C *The conviction of the Appellant: a conviction resulting from such a vague and shoddy investigation was, unarguably, erected on the quick sand of the vagaries of ascertainable, although unfortunately unascertained circumstances surrounding the claim that the said firearms belonged to Yinka Mogaji. Accordingly, there is no way*  
D *such a conviction should be allowed to subsist.”*

With respect, the above view does not appear to be supported by the evidence on record, especially the evidence of the PW2 and the reasoning and findings of the learned trial judge. The evidence is that following the information given by the Appellant, the PW2 went  
E with him to No. 23 Baboko Road Ilorin but the residents therein denied knowing either the Appellant or the alleged Yinka Mogaji. The Appellant again took the PW2 in purported search of Yinka to a house at Eruda Quarters. The people living there again denied know-  
F ing either the Appellant or any person called Yinka. What else would the PW2 have done to get at the said Yinka in the course of his investigation? Without the necessary co-operation of the Appellant it was impossible for the PW2 to get to the alleged Yinka Mogaji in the course of his investigation. In these circumstances the finding of the  
G learned trial judge “that the accused deliberately shielded the said Yinka Mogaji from the Police during investigation” cannot be faulted. The finding is supported by the evidence on record. There was even not the slightest suggestion by way of cross-examination that the PW2 told a lie. There was therefore no basis whatsoever for the Court  
H below to disturb the findings of the learned trial judge on issue of illegal possession of firearms.

For the foregoing reasons and the fuller reasons contained in the lead judgment, I also allow the appeal.

**MUHAMMAD JSC**

I had the opportunity of reading the judgment just delivered by my learned brother, Mukhtar, JSC. I am in agreement with his reasoning and conclusions that the appeal is full of merit. I too allow the appeal. I affirm the judgment of the trial court.

B

**MUNTAKA-COOMASSIE JSC**

I have read in advance the lead judgment of my learned brother Mukhtar, JSC; I am in complete agreement with reasoning and conclusions therein reached. Based on the reasons ably adumbrated, in the lead judgment which are agreeable to me, I would myself allow the appeal and set aside judgment of the court of Appeal Ilorin Division, herein called court below:

C

The trial Court, with respect properly evaluated the evidence and rightly, in view, convicted the Respondent therein for the offence charged. It was clearly stated that the prosecution has done a good job and it proved its case against the accused person beyond reasonable doubt.

D

The learned Justices of the Court of Appeal, with tremendous respect, fell into a grave error when they allowed the appeal of the appellant before them. That decision was certainly wrongly arrived at. Same is hereby set aside by me. The decision of the trial court is restored and affirmed.

E

Appeal allowed.

F

**RHODES-VIVOUR JSC**

I read in draft the leading judgment just delivered by my learned brother Mukhtar, JSC. I am in complete agreement with the judgment. The judgment of the Court of Appeal is hereby set aside, while the judgment of the trial court is restored.

G

I adopt the facts as set out by Hon. Justice A.M. Mukhtar, JSC in the leading judgment, but for emphasis I must state that the weapon was recovered from the appellant in his car and in his presence by the police. The appellant was not charged with ownership of the weapon. He was charged with possession. The charge reads:

H

“That you, Femi Oladotun, and others now at large on or about

the 2nd day of May, 2006 at about 12.10 hours at Baboko area, Ilorin within the jurisdiction of this court was found to be in illegal possession of a foreign made double barrel cut to size gun and nine live cartridges and you thereby committed an offence contrary to Section 3(1) of the Robbery and Firearms (Special Provisions) Act.

B The appellant was charged with possession. He was driving his own car with two friends, who were with him in the car. The two friends escaped before the Police arrested the appellant while still in his car. After a search of the car in the presence of the appellant, a  
C gun was found in the car. It is only the appellant that is in a position to explain who owns the gun. But that is not the case. The case is possession. Possession means something you have with you at a particular time. In the circumstances of this case, a charge of possession would be successful against any of the occupants of the car, and in  
D the absence of the others and with no plausible explanation the appellant is answerable and liable for illegal possession of the gun etc.

The prosecutions in all criminal trials have the burden of proving its case beyond reasonable doubt. This principle has been recognized in all criminal cases in Nigeria. See *Lori v. State* 1980 8 - 11 SC  
E P.81.

In *Miller v. Minister of Pensions* 1947 2 ALL E.R. p. 372 at P. 373 it was stated therein that.

*“Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted to fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible but not in the least probable the case is  
F proved beyond reasonable doubt, but nothing short of that will suffice.”*  
G

Relying on the above explanation of proof beyond reasonable doubt I am of the firm view that the prosecution proved beyond reasonable doubt that the appellant was in possession of a gun , etc.

H For this, and the much fuller reasoning in the leading judgment I allow the appeal.