

SUPREME COURT OF NIGERIA
9TH DECEMBER, 2011. SC. 269/2010
CORAM: - A. M. MUKHTAR, F. F. TABAI, I. T.
MUHAMMAD, S. GALADIMA, N. S. NGWUTA, JJSC

1. STEPHEN JOHN
2. MAXWELL IDI APPELLANTS
V.
THE STATE RESPONDENT

EVIDENCE - Unchallenged evidence - Admissibility - Court rightly relied on the pieces of evidence - Since there were no objections to their admissibility (H1)

CRIMINAL PROCEDURE - Confession - Conviction - Validity of - Court can rightly convict an accused - If it is shown that his confessional statements were voluntarily made (H2)

APPEALS - Determination of - Role of appellate court - Is to assess evidence contained in judgment of trial court - In order to determine whether they are perverse - And are in consonance with applicable principles of law (H3)

ARMED ROBBERY - Ingredients - Proof - Prosecution must establish - That there was robbery in which accused participated - And that a person was wounded before or afterwards (H4)

CRIMINAL PROCEDURE - Standard of proof - Prosecution must prove its case beyond reasonable doubt - As required by Evidence Act s. 138 (H5)

EVIDENCE - Contradiction - Effect - Inconsistency in evidence of prosecution must be significant - In order to negatively affect the substance of the case (H6)

APPEALS - Concurrent findings - Supreme Court does not interfere - Save where findings are perverse - Or has occasioned miscarriage of justice (H7)

FACTS

Accused/appellants with one other (now at large) were arraigned before the High Court of Plateau State, Holden at Jos for the offence of armed robbery contrary to section 1(2) (b) Robbery and Firearms Act 1984 (as amended). The case of prosecution against the appellants and one other is that appellants while armed with firearms and offensive weapons robbed one Elizabeth Musa in her house and carted away many valuables on 22nd of February 1999. Appellants were subsequently arrested and they made confessional statements in respect of the crime.

At the trial, three witnesses testified for prosecution, while two testified for appellants. Prosecution presented several exhibits. Appellants did not object when exhibit 3 – confessional statement of appellants was sought to be tendered in evidence. Appellants contend that there are inconsistencies in the evidence of prosecution witnesses. The learned trial court after evaluation of the evidence and consideration of the addresses of learned counsel, found prosecution's case proved and convicted appellants. They were thus sentenced to death. Dissatisfied, appellants filed an appeal at the Court of Appeal, Jos Division. The court dismissed their appeal and confirmed the judgment of trial court. Aggrieved further, they appealed to Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the Honourable Court of Appeal was right in affirming the conviction and death sentence passed on the Appellants by the trial Court when exhibits 3 and 5, the alleged confessional statements of the Appellants, which were heavily relied upon by the trial judge, were inadmissible in law.

2. Whether the non consideration of the submissions of the Appellants on exhibits 3 and 5 by the Honourable Court of Appeal was proper.

3. Whether the Honourable Court of Appeal was right when it held that the prosecution proved the guilt of the Appellants beyond reasonable doubt.”

HELD (Unanimously dismissing the appeal per **MUKHTAR JSC**)
Unchallenged evidence - Admissibility

1. The supra reproduced evidence of PW3 explained the reason why

the maker was not in court to tender the confessional statement, and the fact that he identified the handwriting of the maker of the said exhibit 3 lends credence to its admissibility. The contention that exhibit 3 was inadmissible because it was not tendered by the maker, is in the circumstance of no moment. Besides, when the said exhibit 3 was about to be tendered, there was no objection by the learned counsel for the defence, as is reflected on pages 67 - 68 of the printed record of proceedings. Having not objected to the admissibility of the confessional statement (exhibit 3), this omission translated to the fact that the 1st appellant was comfortable with the admission, and saw no reason to challenge its admissibility.

In the instant case having determined that subsection (2) of Section 91 of the Evidence act supra has saved exhibit (3), the fact that the appellants did not object to its admission adds value to the efficacy and propriety of its admissibility, and the learned trial court was in order to rely and act on it.

The pieces of evidence are cogent and credible for they were not debunked in the course of cross examination, and so were credible and reliable as is demonstrated in the following excerpt of the judgment of the learned trial court.

“The uncontroverted testimonies of PW1, PW2 and PW3 established without an iota of doubt that there was indeed robbery incident at the resident of PW2 at Jenta Mongoro, Jos on the 22nd February, 1990 at about 2 a.m. I therefore find as a fact that the prosecution has proved the first ingredient.”

I am in tandem with the learned trial court in the above finding. The defences presented by the appellants were neither here nor there, for all the evidence contained therein are denials and retractions of their earlier statements, which were admitted in evidence without any objection. This I regard as an after thought. The appellants’ defences have not in any way dislodged the case of the prosecution. (pp. 2660 H/2661 G/2666 F)

Confession - Conviction - Validity of

2. On the way and manner of the recording of exhibits 3 and 5, I fail to see that they were by way of questions and answers and the case of Namsoh v. State supra is not to my mind on all fours with the present case. All the other argument in respect of exhibits 3 and 5 are

of no consequence, as all the requirements of caution and confessional Statements have been not. Once there is evidence of the administration of words of caution on a suspect in the language he understands, and he voluntarily makes his statement which is so recorded, and he signed the statement, a learned trial judge is at liberty to act on it, and predicate a conviction on it, even if the statement has been retracted.

Further more, the exhibits in this case i.e the caution statements were voluntarily made and the confessions which were admissions that the appellants committed the offence for which they were charged were corroborated by other evidence before the court.
(p. 2661 H)

APPEALS - Determination of - Role of appellate court

3. The pertinent question I will like to ask here, is, how else do the appellants wish the lower court should have considered their submissions, apart from or in addition to the above reproduced excerpt of the judgment of the lower court? The duty of an appellate court is to look at the judgment of a trial court vide the evaluation of the evidence before him, his findings based on such evidence to determine whether they are perverse or supported by the said evidence, and in addition the applicable principles of law. Once the appellate court has met the above requirements then it has discharged its duty to determine the appeal before it. This the lower court has done, in my own assessment. (p. 2663 D)

ARMED ROBBERY - Ingredients - Proof

4. Where, if I may ask lies the inconsistencies alleged? None I dare say. I find no justification in the attack of the evaluation complained against. The appellants were charged and convicted of the offence of armed robbery, and the law is settled that to ground a conviction, the following ingredients must be established by the prosecution. The ingredients are:-

1. That there was Robbery.
 2. That the Accused persons committed the Robbery.
 3. That at or immediately before or after the Robbery the Accused persons wounded or used personal violence to any persons."
- (p. 2664 G)

CRIMINAL PROCEDURE - Standard of proof

5. The settled law is also that to ground a conviction of any offence in the land, the prosecution must prove its case beyond reasonable doubt, as is required by Section 138 of the Evidence Act Cap 112, Laws of the Federation of Nigeria 1990. In the instant case, the appellants' learned counsel has submitted that the prosecution did not establish the guilt of the appellant's beyond reasonable doubt. B

It is a fact that there was no evidence of direct identification of the appellants by the prosecution witnesses, but there was ample evidence that linked the appellants with the offence.

It is instructive to note that the above pieces of evidence are corroborative of each other, and prove beyond reasonable doubt, that there was a robbery, appellants broke into Elizabeth Musa's house and robbed her of many of her various possessions, and in the process threatened her with knives and used personal violence on her. C D

There is no doubt in my mind whatsoever that the prosecution has proved its case beyond reasonable doubt. I will like to reiterate here that proof beyond reasonable doubt does not require absolute proof of facts that may transcend the ordinary memory of a human being. It does not involve the remembrance of every minute detail of an incident, which any ordinary man may not commit to memory. We must also not lose sight of the fact that the intervention of time also creates memory lapses, in remembering details which may not be consequential. We have been educated vide several authorities that proof beyond reasonable doubt should not be taken as proof beyond all shadows of doubt. (pp. 2665 A/2666 E/2667 D) E F

EVIDENCE - Contradiction - Effect

6. Whatever contradictions that may exist in the evidence of the prosecution witnesses are not material enough to affect the credibility or reliability of their evidence. The law is trite that for inconsistency or contradiction in evidence to negatively affect its veracity, such inconsistency and contradiction must be materially significant to the extent that it impacts negatively to the overall case of the prosecution. H

(p. 2667 B)

APPEALS - Concurrent findings

7. This appeal is on concurrent findings of two lower courts which

this court is always wary of disturbing or interfering with, unless the findings are perverse, not predicated on credible evidence and have occasioned miscarriage of justice.

The present case has been supported by ample cogent and credible evidence which have been properly evaluated by the lower courts,
B and so the need to disturb the findings is obviated. (p. 2667 H)

REPRESENTATION

Elisha Y. Kurah, Abdullahi Yahaya and H. U. El-Yakub for Appellants
C Mr. A. U. Mustapha,
O. M. Soyaye for the Respondent

CASES REFERRED TO

Omega Bank Nig. PLC. v. O.B.C. Ltd (2005) All FWLR (pt. 249)
D Flash Fixed Odds Ltd v. Akatugba (2001) FWLR (part) 76 708
Benjamin Opolo v. The State (1977) 11 - 12 SC 1
Regina v. Nyinya Kwagbo (1962) NLR 4
Shande v. The State (2005) All FWLR (part 279) 1342
Aremu v. State (1991) 7 S.C. (Pt. 111) 82
E Nwachukwu v. State (2007) 7 S.C.1
Adio and Ors. V. The State (1986) All NLR 425
Alade v. Olukade (1976) 2 SC. 183
Manshep Namsoh v. The State (1993) 6 KLR 125 at 139
Osho & Anor v. Ape (1998) 6 SC. 121
F Alarape v. State (2001) 2 S.C. 114
Ikemson v. State (1989) 3 NWLR (part 110) 530
Salawu v. State (1971) 1 NMLR 249
Edamine v. State (1996) 3 NWLR (part 438) 530

STATUTES REFERRED TO

Section 1(2) (B) Robbery and Firearms Act 1984 (as amended)
Section 2, 91(1) (a), (b) of the Evidence Act Cap 112 Laws of the
Federation of Nigeria 1990

H

LEAD JUDGMENT BY MUKHTAR JSC

The appellants in this appeal were arraigned with one other before the High Court of Plateau State for the offence of armed robbery, and they were consequently convicted, after the prosecu-

tion had proved its case, and the court did not find their defence tenable. After an appeal to the Court of Appeal in which they failed, they have appealed to this court on five and six grounds of appeal respectively, from which issues for determination were raised in this appeal. The issues are:-

“1. Whether the Honourable Court of Appeal was right in affirming the conviction and death sentence passed on the Appellants by the trial Court when exhibits 3 and 5, the alleged confessional statements of the Appellants, which were heavily relied upon by the trial judge, were inadmissible in law.” B

2. Whether the non consideration of the submissions of the Appellants on exhibits 3 and 5 by the Honourable Court of Appeal was proper.” C

3. Whether the Honourable Court of Appeal was right when it held that the prosecution proved the guilt of the Appellants beyond reasonable doubt.” D

In its brief of argument, the respondent raised the following issues:-

“1. Whether the learned Justices of the Court of Appeal were right in law to have convicted the Appellants on their confessional statements.” E

2. Whether the learned Justices of the Court of Appeal were right in law when they held that the prosecution has proved its case beyond reasonable doubt.”

The case of the prosecution against the appellants and one other is that the accused while armed with firearms and offensive weapons robbed one Elizabeth Musa in her house and carted away many valuable properties on 22nd of February 1999. The charge preferred against them reads as follows:- F

“THAT YOU STEPHEN JOHN, HENRY LAWRENCE AND MAXWELL IDI in company of SAMSON MADAKI AND FREEDOM (surname unknown and now at large) on or about the 21st day of February, 1999 at Jenta Mangoro, Jos, North Local Government Area, in the Plateau Judicial Division while armed, with guns, knives and sticks robbed one ELIZABETH MUSA of one Video cassette Recorder, one World Receiver Radio, One Car Stereo, six set of gold necklaces value (sic) at N216,000, two wrist watches, six sets of gold jewelry valued at N30,000, three Cameras, seven Cupion laces, as- G

H

sorted Wrappers and one Dictionary, thereby committed an offence punishable under Section 1(2) (B) Robbery and Firearms Act 1984 (as amended).”

Three witnesses testified for the prosecution, while two testified for the defence. The learned trial court after evaluation of the evidence, and consideration of the addresses of learned counsel, found the prosecution’s case proved and convicted the appellants. The appellants appealed to the Court of Appeal. The appeal was dismissed, and they have further appealed to this court. Briefs of argument were exchanged by learned counsel for the parties, who adopted the briefs at the hearing of the appeal. The issues formulated in the briefs of argument have already been reproduced above. I will however adopt the issues in the appellants’ brief of argument.

I will commence the treatment of this appeal with the argument covering issue (1) *supra*. The thrust of the argument in this issue is the inadmissibility of the confessional statements, exhibits 3 and 5. It is the argument of the learned counsel for the appellants that exhibit 3 ought to have been tendered through Sergeant Attah Idu, the recorder of the said statement, as required by Section 91(1) (a), (b) of the Evidence Act. In support of this argument, the following cases were cited: *Omega Bank Nig. PLC v. O.B.C. Ltd* 2005 All FWLR part 249 page 1964, *Flash Fixed Odds Ltd v. Akatugba* 2001 FWLR part 76 page 708, and *Benjamin Opolo v. The State* 1977 11 - 12 SC 1. According to the learned counsel, exhibits 3 and 5 were not voluntary as they were made consequent upon prompting by the police. Reliance was placed on the cases of *Regina v. Nyinya Kwaghbo* 1962 NLR 4, *Manshep Namsoh v. That State* 1993. Furthermore, whereas, exhibit 5 was said to have been recorded in Hausa, it was the translated English version that was tendered in evidence. Learned counsel referred to the case of *Shande v. The State* 2005 All FWLR part 279 page 1342.

In reply, the learned counsel for the respondent has submitted that the appellants’ argument on through exhibit 3 should have been tendered is an after thought, as they had ample opportunity to object to its admission when it was sought to be tendered. He referred to the case of *Aremu v. State* 1991 7 S.C. (Pt. 111) page 82. Besides, according to him this issue is raised for the first time in this court, and without leave. It is therefore incompetent to raise it now,

and so it should be struck out. Reliance was placed on the case of *Nwachukwu v. State* 2007 7 S.C.1. In their appellants' reply brief of argument, the learned counsel further submitted that even if it is an issue that was not raised before the lower court, being a substantial issue of law that concerns the admissibility of exhibit 3 which was extensively used to convict and sentence the appellants to death, it is the practice of the Supreme Court to allow such argument even in the absence of leave to raise same. He placed reliance on the cases of *Adio and Ors. V. The State* 1986 All NLR 425, *Alade v. Olukade* 1976 2 SC. 183, *Durosaro v. Ayorinde* 2005 3 - 4 SC. 14, and *Osho & Anor v. Ape* 1998 6 SC. 121. He further added that the confessional statements were admissible and could be relied upon, and that apart, the court went further to confirm that the confessional statements were corroborated. The case of *Alarape v. State* 2001 2 S.C. 114 was cited.

On the submission of learned respondent's counsel that the issue of the inadmissibility of exhibits 3 and 5 is raised in this court for the first time without leave, I will say that it is not absolutely correct to say that the issue of the admissibility of exhibits 3 and 5 were raised for the first time in this court. A very careful and thorough perusal of the grounds of appeal in the Court of Appeal will confirm that it was raised even in that court. Under ground (5) of the 1st appellant's additional ground of appeal are the following particulars:-

(i) The recorder of Exhibit (3) was not called by the prosecution, as P.W.3 did not record or know (sic) any knowledge of how Exhibit (3) was obtained.

The above, coupled with issue (1) in the appellants' brief of argument definitely signify that it is not a fresh issue that is now raised for the first time in this court. The submission that it is incompetent does not hold water, so I am discountenancing it. I will now proceed to the argument covering the issue as a whole, starting with the propriety of PW3 tendering the confessional statement of the 1st appellant (when he was in fact not the maker), and its admissibility. Section 91 of the evidence Act Cap 112 Laws of the Federation of Nigeria 1990 which the learned counsel for the appellants have cited stipulates the following:-

"91(1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a docu-

ment and tendering to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied -

(a) If the maker of the statement either had personal knowledge of the matters dealt with by the statement: ... or

B (b) If the maker of the statement is called as witness in the proceedings:”

But then the following provisions of the said Evidence Act can be evoked in the course of this argument. Section (2) of the said act states thus:-

C “(2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) of this D Section shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence

(A) notwithstanding that the maker of the statement is available but is not called as a witness.”

E It is instructive to note that the above provisions on which the learned counsel for the appellants relied upon in his submission are relevant to civil proceedings as specified therein. Be that as it may, even if the provisions are applicable to the case in hand, exhibit 3 is saved by the above later reproduced provision as is supported by the evidence of PW3, a relevant excerpt of which I will reproduce F hereunder.

Before the confessional statement of the 1st appellant was admitted in evidence, PW3 gave the following evidence inter alia:-

G “The statement of the first accused was recorded by Sergeant Attah Idu. He is now on transfer to Lagos. The Statements were all recorded on the same day; at the same place that is the anti-robbery section of the state C.I.D. I have been with Sergeant; Atta Idu since 1999 in the Police Force. I can identify his hand writing and signature. If I see the statement I can recognize his handwriting and signature. I see this statement. It is recorded by Sergeant Idu.”

The supra reproduced evidence of PW3 explained the reason why the maker was not in court to tender the confessional statement, and the fact that he identified the handwriting of the maker of the said exhibit 3 lends credence to its

admissibility. The contention that exhibit 3 was inadmissible because it was not tendered by the maker, is in the circumstance of no moment. Besides, when the said exhibit 3 was about to be tendered, there was no objection by the learned counsel for the defence, as is reflected on pages 67 - 68 of the printed record of proceedings. Having not objected to the admissibility of the confessional statement (exhibit 3), this omission translated to the fact that the 1st appellant was comfortable with the admission, and saw no reason to challenge its admissibility.

In a situation like this, the court is at liberty to ascribe probative value to the document, as is succinctly put in the case of *Alade v. Olukade* 1976 2 SC 183, which categorized the effect of the admissibility of inadmissible evidence thus:-

“However, in civil cases where the trial has been before a Judge and jury the wrongful admission of evidence cannot be made a ground of appeal unless the appellant had formally objected to the evidence at the trial. In a trial by a Judge alone, as in the case in hand, a distinction must be drawn between those cases where the evidence complained of is in no circumstance admissible in law and where the evidence complained of is admissible under certain conditions. In the former class of cases the evidence cannot be acted upon even if parties admitted it by consent and the Court of Appeal will entertain a complaint on the admissibility of such evidence by the lower court (although the evidence was admitted in the lower court without objection), in the latter class of cases, if the evidence was admitted in the lower court without objection or by consent of parties or was used by the opposite party (e.g. for the purpose of cross-examination) then it would be within the competence of the trial court to act on it and the Court of Appeal will not entertain any complaint on the admissibility of such evidence.”

In the instant case having determined that subsection (2) of Section 91 of the Evidence act supra has saved exhibit (3), the fact that the appellants did not object to its admission adds value to the efficacy and propriety of its admissibility, and the learned trial court was in order to rely and act on it.

On the way and manner of the recording of exhibits 3 and 5, I fail to see that they were by way of questions and

answers and the case of Namsoh v. State supra is not to my mind on all fours with the present case. All the other argument in respect of exhibits 3 and 5 are of no consequence, as all the requirements of caution and confessional Statements have been not. Once there is evidence of the administration of words of caution on a suspect in the language he understands, and he voluntarily makes his statement which is so recorded, and he signed the statement, a learned trial judge is at liberty to act on it, and predicate a conviction on it, even if the statement has been retracted. See Ikemson v. State 1989 3 NWLR part 110 page 530, Salawu v. State 1971 1 NMLR 249, Edamine v. State 1996 3 NWLR part 438 page 530, and Ubierho v. State 2005 5 NWLR part 919 page 644.

Further more, the exhibits in this case i.e the caution statements were voluntarily made and the confessions which were admissions that the appellants committed the offence for which they were charged were corroborated by other evidence before the court. See R. v. Sykes 1913 8 CAR 233, Ikpassa v. Attorney-General of Bendel State and Akpan v. The State 1992 6 NWLR part 248 page 439.

For the foregoing reasoning I answer issue (1) supra in the affirmative, and the related grounds of appeal in the two notices of appeal are un-meritorious and are hereby dismissed.

Issue (2) for determination in the appellants' brief of argument also revolves around exhibits 3 and 5, the quarrel of the appellant being that the lower court did not consider and rule on all issues raised and canvassed before it, especially in connection with exhibits 3 and 5, placing reliance on the cases of Attorney-General of the Federation v. A.I.C. Ltd 2000 FWLR part 26 page 1744, Okonji v. Njokanma 1999 12 SCNJ 259. This issue has been dealt with exhaustively under issue (1) supra. The above submission is absolutely untenable, because a very careful perusal of the judgment of the lower court on page 203 of the printed record of proceedings disclose that it considered and ruled on the issues raised and canvassed. The learned Justice of the Court of Appeal observed and found as follows in the lead judgment:-

"Exhibits 3 and 5 are the confessional statements of the two appellants, which were admitted without objection from the appel-

lants who were represented by counsels, (sic) it was only when the appellants were testifying in their defence that they denied the statements, the 1st appellant maintained that it was not voluntarily made while the 2nd appellant maintained that it was obtained as a result of a question and answer session between him and the PW3 - the police officer who recorded the statement... B

There is a linkage between the statements and the evidence as adduced by the prosecution that one is left with no doubt that the two statements were made by the appellants who executed the robbery and are corroborated in all material particulars with the evidence of PW1 and PW2 who did not even see the faces of the robbers when the offence was committed. Another factor which completely corroborates the prosecution case is the recovery of some of the stolen items in the residences of the appellants. The lower court was in the circumstances right in basing its conviction of the appellants on Exhibits, 3 and 5 and on the evidence before it." C D

The pertinent question I will like to ask here, is, how else do the appellants wish the lower court should have considered their submissions, apart from or in addition to the above reproduced excerpt of the judgment of the lower court? The duty of an appellate court is to look at the judgment of a trial court vide the evaluation of the evidence before him, his findings based on such evidence to determine whether they are perverse or supported by the said evidence, and in addition the applicable principles of law. Once the appellate court has met the above requirements then it has discharged its duty to determine the appeal before it. This the lower court has done, in my own assessment. E F

In respect of this case, the court discharged its duty in accordance with the above principles, and this court does not see any grave error committed. Issue (2) which this argument covers is therefore resolved in favour of the respondent, and grounds of appeal, to which it is, related fail, and it is hereby dismissed. G

In his submission under issue (3) supra, the learned counsel for the appellants attacked the lower court's evaluation of the witnesses' evidence in its judgment, which reads as follows:- H

"I have closely examined the statement of the prosecution witnesses particularly PW1 and PW3 and there is no inconsistency or

contradiction on the identity of the Robbers at the time of the Robbery.”

The gravamen of the quarrel of the learned counsel is that none of the witnesses who testified for the prosecution identified the appellants as those who committed the robbery. In this vein the above evaluation is faulted. In his argument, the learned counsel for the respondent contended that the appellants’ contention is bound to fail in the face of positive and unequivocal admission of guilt by the appellants regardless of the fact that they resiled or retracted the confessional statement. See *Mohammed v. State* 1991 7 SC 141, and *Alarape v. The State* supra.

It is a fact that neither PW1 and PW3 gave evidence of them identifying the robbers in either their statements or evidence in court. In fact they were consistent in their evidence that they could not recognize the robbers, and so the lower court was right in its assessment of the evidence that no inconsistency or contradiction exists on the identity of the robbers. I will illustrate this fact with the reproduction of some pieces of the evidence of PW1 and PW2. PW1 inter alia testified thus:-

“On the night of the robbery I could not say whether the robbers were the accused persons whom I had previously known. Throughout the operation I could not see them and I cannot say whether they were armed with weapons. I only saw the movement of people that is the robbers carting away goods.

PW2:-

“From the time the robbers came into my compound up to the time they left, they were all masked so I was not able to recognize them.”

Where, if I may ask lies the inconsistencies alleged? None I dare say. I find no justification in the attack of the evaluation complained against. The appellants were charged and convicted of the offence of armed robbery, and the law is settled that to ground a conviction, the following ingredients must be established by the prosecution. The ingredients are:-

“1. That there was Robbery.

2. That the Accused persons committed the Robbery.

3. That at or immediately before or after the Robbery the Accused persons wounded or used personal violence to

any persons.”

The settled law is also that to ground a conviction of any offence in the land, the prosecution must prove its case beyond reasonable doubt, as is required by Section 138 of the Evidence Act Cap 112, Laws of the Federation of Nigeria 1990. In the instant case, the appellants’ learned counsel has submitted that the prosecution did not establish the guilt of the appellant’s beyond reasonable doubt. B

It is a fact that there was no evidence of direct identification of the appellants by the prosecution witnesses, but there was ample evidence that linked the appellants with the offence. C

And I will reproduce some pieces of the evidence, here below:-

“PW1... The complaint in this case is my land/lady (sic) 22nd February, 1999, I was woken by I (sic) hard knock on the gate of the main entrance to our house. I came out thinking it was a visitor. I D asked in Hausa language “su wanene” translated in English it means, who are those I (sic) terrifying voice outside responded in Hausa that ‘wanda ya fita zamu kasheshi’. In English language this means whoever comes out we will kill, so we and the other co-tenants were so terrified, so we ran into the rooms. The hard knock on the gate E continued with intensity. At that point I could overhear the land/lady crying from her room... Feeling safe in my room I stood by the window. I saw people moving properties from the gate to the main road... I went into her house and saw that everything had been scattered.” F

“PW2... Three of them came in through the window and two of them forced me to lie down on the floor with a (sic) knives. They were beating me and blood was coming out of my face and nose. The two that were inside were asking the ones outside to give them pistol... I took them to one of the bedrooms where they started G packing things. They ran away with six sets of jewelry, six gold rings, a car stereo, a sharp video ... and other items which I cannot recall. There were also cameras for taking pictures that they took... On the same day somebody came to tell me that one of the robbers had been arrested by the police... It was the third accused Maxwell Idi H who took the police and I to Bukuru and the police arrested the person whom the third accused said some of the jewelry were sold to.”

“PW3... The first accused Stephen John was also transferred

to the State C.I.D. from 'A' Division. A cautionary (sic) statement was recorded from him, wherein, he confessed that they were five robbers not six. He mentioned the names of the gang more (sic) robbers; Henry Lawrence, the second accused and Maxwell Idi the third accused and one Samson Madaki and one Freedom who are at large.

B Our investigation took us to Mararaban Pushit where Maxwell Idi the third accused was arrested... Statements were recorded from all confessed (sic) breaking into the house of the complainant, PW2 and robbed her of one video machine, two wrist watches, six sets of gold, C six set of gold rings, a car stereo and one transistor radio... The first accused led us to where the stolen items were disposed, where some of them were recovered. They were the persons who had bought the gold stolen from the complainant.'

In exhibit 5, the caution statement of the second appellant is D the following:-

"...Three of us, Samson, Henry and myself went into the house while Stephen and Freedom remained outside. We met the woman alone. We all wore mask to disguise ourselves. Samson first slapped the woman and pointed knife on her. We demanded that she should E bring all the money with her. She told us that she had no money. We then searched all the rooms. We got some six necklaces ..."

It is instructive to note that the above pieces of evidence are corroborative of each other, and prove beyond reasonable doubt, that there was a robbery, appellants broke into F Elizabeth Musa's house and robbed her of many of her various possessions, and in the process threatened her with knives and used personal violence on her. The pieces of evidence are cogent and credible for they were not debunked in the course G of cross examination, and so were credible and reliable as is demonstrated in the following excerpt of the judgment of the learned trial court.

"The uncontroverted testimonies of PW1, PW2 and PW3 established without an iota of doubt that there was indeed robbery incident at the resident of PW2 at Jenta Mongoro, H Jos on the 22nd February, 1990 at about 2 a.m. I therefore find as a fact that the prosecution has proved the first ingredient."

I am in tandem with the learned trial court in the above

finding. The defences presented by the appellants were neither here nor there, for all the evidence contained therein are denials and retractions of their earlier statements, which were admitted in evidence without any objection. This I regard as an after thought. The appellants' defences have not in any way dislodged the case of the prosecution. Whatever contradictions that may exist in the evidence of the prosecution witnesses are not material enough to affect the credibility or reliability of their evidence. The law is trite that for inconsistency or contradiction in evidence to negatively affect its veracity, such inconsistency and contradiction must be materially significant to the extent that it impacts negatively to the overall case of the prosecution.

See State v. Azeez & Ors 2008 4 SC 188, and Dibbie & 2 Ors v. State 2007 3 SC part 1 page 176 cited by learned counsel for the respondent.

There is no doubt in my mind whatsoever that the prosecution has proved its case beyond reasonable doubt. I will like to reiterate here that proof beyond reasonable doubt does not require absolute proof of facts that may transcend the ordinary memory of a human being. It does not involve the remembrance of every minute detail of an incident, which any ordinary man may not commit to memory. We must also not lose sight of the fact that the intervention of time also creates memory lapses, in remembering details which may not be consequential. We have been educated vide several authorities that proof beyond reasonable doubt should not be taken as proof beyond all shadows of doubt. See Miller v. Minister of Pension 1947 2 All E.R. page 372, 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.

In the light of the above reasoning, I resolve this last issue in favour of the respondents, and dismiss the grounds of appeal which cover it.

This appeal is on concurrent findings of two lower courts which this court is always wary of disturbing or interfering with, unless the findings are perverse, not predicated on credible evidence and have occasioned miscarriage of justice. See Yaki

v. State 2008 7 SC. 128, Asimo v. Abraham 2001 6 SC.154.

The present case has been supported by ample cogent and credible evidence which have been properly evaluated by the lower courts, and so the need to disturb the findings is obviated. See Ibodo v. Enarofia 1980 5 - 7 SC 42, Enang v. Adu

B 1981 11 SC, Shandle v. State 2005 1 NWLR Part 907 page 218, and Samson Ovie v. Solomon Ighiwi 2005 5 NWLR Part 917 page 184.

The end result is that this appeal fails in its entirety and it is hereby dismissed. The judgment of the lower court is affirmed, and the conviction of the appellants stands.

C

TABAI JSC

I read, in advance, the lead judgment prepared by my learned D brother Mukhtar, JSC and I entirely agree with her well reasoned conclusion. The confessional statements were duly proved. They were each admitted in evidence without any objection to their admissibility. Besides, there was evidence outside the confessions that further confirmed the truth of the facts contained in the statements. Further E still some of the stolen items were either recovered from the accused persons or from persons to whom they were sold.

I am satisfied that the appeal has no merit. For the above reasons and the fuller reasons very ably set out in the lead judgment, I F also dismiss the appeal for lack of merit.

MUHAMMAD JSC

I read before now the judgment just delivered by my learned G brother, Mukhtar, JSC. I am in agreement with my lord that the appeal is devoid of any merit and it should be dismissed. I thereby dismiss the appeal and affirm the judgments of the two lower courts which are concurrent. The conviction and death sentence against the appellants must stand in order to reduce the number of such criminals in our society' who' day-in-day-out, carry out, mercilessly, their H nefarious activities of maiming, killing and dispossessing innocent citizens of their lives and belongings

GALADIMA JSC

The Appellants were arraigned before the High Court of Plateau State with seven other persons on an eight-count charge. By a Motion on Notice dated 17/04/2011, the prosecution sought and was granted leave of the trial court to amend the charges. As a consequence the names of the 4th - 9th accused persons and counts 3 - 8 of the charges were struck out. B

Having been found guilty, the Appellants were convicted. On appeal, to the court below, their conviction and sentence were confirmed. Being further dissatisfied, the appellants further appealed to this Court, filing 5 and 6 grounds of Appeal respectively. C

Appellants distilled 3 issues for determination as follows:

ISSUE ONE:

"1. Whether the Honourable Court of Appeal was right in affirming the conviction and death sentence passed on the Appellants by the Trial Court when exhibits 3 and 5, the alleged confessional statements of the Appellants, which were heavily relied upon by the trial Judge, were inadmissible in Law. (Grounds 1 & 2 of the 1st Appellants' Notice of Appeal and Grounds 1, 2, 4 of the 2nd Appellant's Notice of Appeal). E

ISSUE TWO:

Whether the non consideration of the submissions of the Appellants on exhibits 3 and 5 by the Honourable Court of Appeal was proper. (Grounds 4 of the 1st Appellant's Notice of Appeal and Ground 5 of the 2nd Appellant's Notice of Appeal). F

ISSUE THREE:

Whether the Honourable Court of Appeal was right when it held that the prosecution proved the guilt of the Appellants beyond reasonable doubt. (Grounds 3 & 5 of the 1st Appellant's Notice of Appeal and Grounds and 6 of the 2nd Appellant's Notice of Appeal)."

In the Respondent's brief of argument two issues were raised for determination thus:

"i. Whether the learned Justices of the Court of Appeal were right in law to have convicted the Appellants on their confessional statements. H

ii. Whether the learned justices of the Court of Appeal were right in law when they held that the prosecution has proved its case

beyond reasonable doubt.”

The amended charge against the Appellants reads thus:

“THAT YOU STEPHEN JOHN, HENRY LAWRENCE AND
MAXWELL IDI in company of SAMSON MADAKI AND FREEDOM
(surname unknown and now at large) on or about the 21st day of
B February, 1999 at Jenta Mangoro, Jos, Jos North Local Government
Area, in the Plateau Judicial Division while armed, with guns, knives
and sticks robbed one ELIZABETH MUSA of one Video Cassette
Recorder, one World Receiver Radio, one Car Stereo, six set of Gold
C Necklaces valued at N216,000, two Wrist Watches, six Sets of Gold
Jewelry valued at N30,000, three Cameras, seven Cupion Laces,
assorted Wrappers and one Dictionary and thereby committed an
offence punishable under section 1(2)(b) Robbery and Fire Arms
Act 1984 (as amended).”

D It is on Record that 3 witnesses testified for the prosecution,
while 2 testified for Defence. The trial Court after evaluation of evi-
dence and addresses of counsel convicted the Appellants. The Ap-
pellants have now further appealed to this Court filing 5 and 6 grounds
of appeal.

E Remarkably, an important issue that forms the basis of this
appeal is the question of inadmissibility of confessional statements as
in Exhibits 3 and 5. Learned counsel for the Appellants has argued
that the proper witness to tender Exhibit 3 was Sgt. Attah Idu, who
F recorded the said statement, as provided in Section 91(1) (a) (b) of
the Evidence Act. He cited a number of cases in support of this argu-
ment, some of which are: FLASH FIXED ODDS LTD. V. AKATU UBA,
and BENJAMIN OPOZO V. THE STATE (1977) 11 - 12 SC 1. He
contended that Exhibits 3 and 5 were not made voluntary as they
G were made upon prompting by the Police; relying on the cases of
REGINA V. NYINYA KWAGHBO (1962) NNLR. 4 at 4 - 5 and
MANSHEP NAMSOH V. THE STATE (6 KLR) 125 at 139 at 30 - 38.
That Exhibit 5, the 2nd Appellant’s statement was recorded in Hausa
language and translated into English and it was the latter that was
H admitted in evidence, (the said Exhibit 5.). Reliance was placed on
the case of SHANDE V. THE STATE (Pt 279) SCNLR 1342 at 1359.

The learned counsel to the Respondent has submitted that
the case of OMEGA BANK NIG.) Plc. O.B.C, (supra) does not sup-
port the Appellants’ case that it is only the maker of a document that

can tender same in evidence, but that the facts of that case support the contention of the Respondent in the absence of its maker. That relevancy is the key to admissibility. It is submitted that the argument of the Appellants is a mere afterthought and should be discountenanced; that the procedure to object to tendering of an Exhibit is during trial, which they had failed to take. He referred to the case of *AREMU V. THE STATE* (1991) 7 SC (Pt. III) 82 at 89 - 90. Furthermore, that this issue is raised for the first time in this Court without leave. It is urged on this Court to hold that it is incompetent to raise this issue now, and it should be struck out. He placed reliance on the case *NWACHUKWU V. THE STATE* (2007) 7 SC. 1. B
C

In their Reply Brief the Appellants Counsel has submitted further that even if this is an issue that was not raised before the lower court, it being a substantial issue of law, that concerns the admissibility of Exhibit 3 which was extensively considered to sentence the appellants to death; this Court for that reason must allow such argument even without leave to raise same. Reliance was placed on the cases of *ADIO & ORS. V. THE STATE* (1986) All NLR 425; *ALADE V. OLUKADE* (1975) 2 SC, *DURO-SARO V. AYORINDE* (2005) 3 - 4 SC. 14 and *MANSHEP NAMSOH V. THE STATE* (supra). D
E

The submission of learned Respondent's counsel that the issue of the inadmissibility of exhibits 3 and 5 is raised in this Court for the first time without leave has not been made on a firm ground. I agree with my learned brother that the issue of admissibility of exhibits 3 and 5 were not raised for the first time in this Court. For the 1st Appellant's particulars of Grounds of additional ground of appeal reproduced hereunder confirms this. It reads: F

"(1) the recorder of Exhibit (3) was not called by the prosecution, as PW3 did not record or know (sic) any knowledge of how Exhibit (3) was obtained." G

Besides, the above, the Appellants raised this issue in their joint brief of argument. This shows this is not a fresh issue. It is competent.

Now to the remaining argument on the admissibility of the confessional statement of the 1st Appellant, tendered by the PW3, when he was not the maker. The provisions of S.91 of the Evidence Act Cap 112 Laws of the Federation of Nigeria 1990 are to the effect that where direct oral evidence will be admissible, statement made H

by a person in a document is admissible, if the requirement of paragraphs (a) and (b) are satisfied. My discourse on this issue must be brief as this subsection has a limited application in a criminal case. See *ABADOM V. THE STATE* (1997) 1 NWLR (Pt 479) 1 at 24. In the instant case, although the maker of Exhibit 3 was not called by the prosecution to give evidence, that cannot vitiate its admissibility. This is more so when it is realized that by Section 91(2) of the Evidence Act the calling of the maker as a witness is at the discretion of the court. Even then Exhibit 3 is saved and made relevant considering the vital part of PW3's statement at page 67 of the Record reproduced hereunder:

"I recorded statements from the second and third accused person Henry Lawrence and Maxwell Idi. The statement of the first accused was recorded by Sergeant Attah Idu. He is now on transfer to Lagos. The statements were all recorded on the same day; at the same place that is the Anti-robbery Section of the State C.I.D. I have been with Sergeant Attah Idu since 1999 in the police force. I can identify his handwriting and signature. If I see the statement I can recognize (sic) his handwriting and signature. I see this statement. It is recorded by Sergeant Idu."

The above excerpt of PW3's evidence explains the reason why the maker of Exhibit 3 was not in court to tender the confessional statement. This lends credence to its admissibility. The contention of the Appellants that Exhibit 3 was inadmissible because it was not tendered by the maker is not tenable. The Appellants quoted the authority of this Court in *OMEGA BANK (NIG) PLC V. O.B.C.* (supra) out of context, TOBI, JSC in that case admonished as follows:

"I should not be understood as saying that documentary evidence cannot be admitted in the absence of its maker. See Igbohim V. Obianke (1976) 9 - 10 SC 179. After all, relevance is the key of admissibility."

I agree with the learned counsel for the Respondent that the argument on this issue is an afterthought and should be discounted. The procedure for objection to the tendering of an Exhibit is during trial. The fact that the Appellants did not object to its admission adds value to the efficacy and reliability on it by the trial court.

The unassailable position of the lower court is that Exhibits 3 and 5 were not obtained by way of question and answer session

contrary to the claims of the Appellants. Exhibits 3 and 5 were identified and admitted in evidence without any objection by the parties. By virtue of S. 27 of Evidence Act the Appellants can be convicted on their confessional statements.

ISSUE TWO

The complaint of the Appellants on this issue is that the Court of Appeal did not consider and rule on issue raised and canvassed before it, especially in connection with Exhibits 3 and 5. I must observe that the argument and submissions of both counsels revolving Exhibits 3 and 5 have been exhaustively dealt with under the, first issue of the Appellants. It is hard to fathom out why the Appellants are still canvassing this same issue tenaciously.

After a careful perusal of the judgment of the Lower Court on page 203 of the Record I am in complete agreement that that court considered and ruled on the issues raised and canvassed in connection with exhibits 3 and 5. The court found that Exhibits 3 and 5 are the confessional statements of the Appellants which were admitted without objection from the Appellants who were represented by their counsel. It was when the Appellants were testifying in their defence that they denied that the statement was made voluntarily by the 1st Appellant and that the statement of the 2nd Appellant was not obtained upon prompting by the police. The lower court went further to hold that there is a chain linking the statements and evidence as adduced by the prosecution and therefore it was proved that robbery was committed by the Appellants. The findings of the court were made based on the confessional statements of the appellants duly corroborated in all material particulars with the evidence of PW1 and PW2. Also that some of the items of the victim of the robbery such as sets of jewelry, gold rings, a car stereo, and video camera were found on the appellants. The court properly evaluated the evidence before it.

I have noticed that there are concurrent findings of facts by two lower courts that there is proper evaluation of evidence led before them. They have come to the right conclusion. No miscarriage of justice has occasioned. This Court cannot interfere with the findings. They are not perverse. It is for this reason that I resolve issue 2 in favour of the Respondent.

ISSUE 3

This is on whether the learned Justices of the Court of Appeal were right in law when they held that the prosecution has proved its case beyond reasonable doubt. The complaint of the learned counsel for the Appellants is that none of the witnesses who testified for the prosecution identified the Appellants as those who committed robbery.

For the Respondent, its learned counsel, has submitted that there are positive and unequivocal admissions of guilt by the Appellants, regardless of the fact that they had retracted their confessional statements. Granting, that neither PW1 nor PW3 gave evidence that they could identify the robbers (as the appellants) in their statements or testimony in court, yet, in their evidence they were quite consistent that they could not recognize the robbers. The lower court was therefore right when it held that no inconsistency or contradiction exists on the identity of the robbers. There is no justification in attacking the evaluation of evidence by the lower court.

Section (1) (2) (b) of the Robbery and Firearms Act 2004 under which the Appellants were charged reads as follows:

(a) "Any person who commits the offence of robbery shall upon trial and conviction under this Act, be sentenced to imprisonment for not less than 21 YEARS; if

(b) At or immediately before or immediately after the time of the robbery the said offender wounds or uses any personal violence to any person, the offender shall be liable upon conviction under this Act to be sentenced to DEATH." (Underlined for emphasis)

For the prosecution to succeed, it must be established beyond reasonable doubt that the following ingredients:

- (a) That there was robbery;
- (b) That the accused person committed the robbery, and
- (c) That at or immediately before or after Robbery the accused person wounded or used personal violence to any person.

These ingredients must be proved beyond reasonable doubt in accordance with s. 138 (1) (2) and (3) of the Evidence Act otherwise any reasonable doubt will be resolved in favour of the accused person.

This Court per NIKI TOBI JSC in the case of DIBBIE & 2 ORS. V. THE STATE (2007) 3 SC (Pt.1) 176 at 198 held as follows:

"Learned counsel for the appellants submitted that the pros-

ecution did not prove the charge beyond reasonable doubt which will justify acquittal is doubt based on reason and arising from evidence and it is a doubt which reasonable man or woman might entertain and it is not imagined doubt cause prudent men to hesitate before acting in matters of importance to themselves. See Black Dictionary Sixth Edition at page 1265.” B

The Learned jurist went further:

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

The 3 ingredients of the offence of robbery can be established from the careful evaluation of the entire evidence adduced by the Respondent. The learned trial Judge carefully outlined the ingredients of armed robbery and reviewed the entire evidence adduced by the prosecution and the Defence before convicting the Appellants. (See 93 - 119 of the Records) The Lower Court reviewed the findings of the trial court and came to the conclusion that the trial court was correct in its findings and that “this is not a situation where this Court can interfere”. Now to the consideration of the 3 INGREDIENTS: E F

PW1, PW2 and PW3 established that robbery did take place on 22/02/2009. The lower court found as a matter of fact thus:

“On the night of 22/02/2009 the house of the complainant one Miss Elizabeth Musa at Jenta Mangoro Jos was forced open by a big stone by six masked (sic) and three of them gained entry into the house by breaking the glass windows while the others remained outside the compound. She was beaten up and forced to lie down, while blood was gushing down from her face and nose, and a knife thrust at her, while she was lying down and crying, the intruders ransacked her house and removed jewelry, lace rappers, cameras, money, stereo, video machine and garments.” G H

In sum, from the foregoing the three ingredients of the offence of robbery have been established. In the lead judgment evi-

dence of each PW2 and PW3 were carefully reproduced. Their evidence supports the above finding of the trial court. The lower court rightly came to the conclusion that there was no inconsistency or contradiction in the case of the prosecution. Besides, the Appellants in their confessional statements in Exhibit 3 and 5 clearly admitted B that they were the ones who robbed PW2, (the complainant and victim of the robbery). By virtue of the provision of section 27 of the Evidence Act an accused person can be convicted on the confessional statement made by him once it is properly proved and admitted in evidence. See *OLALEKAN V. THE STATE* (2001) 12 S.C. (Pt. C 1) P55 - 57). The finding of the trial court that Exhibits 3 and 5 were confessional statement is unassailable. The testimonies of the witnesses corroborate the contents of the statements of the Appellants. The contention of the Appellants that the prosecution witnesses could not D identify the Appellants is bound to fail in view of positive and unequivocal admission of guilt by the Appellants, regardless of the fact that they resiled and retracted their confessional statement. See *ALARAFE V. THE STATE* (supra) and *MOHAMMED V. THE STATE* (1991) 7 SC. At 141.

E The Respondent has proved its case beyond reasonable doubt. Proof beyond reasonable doubt does not mean proof beyond all shadow of doubt. Proof required to sustain the guilt and conviction of the accused person needs not attain the degree of absolute certainty, although it must attain a high degree of probability. See: F *ALKALEZI V. THE STATE* (1993) 2 NWLR (Pt. 273) and *AHMED V. THE STATE* (2001) 12 SC (Pt.1) 135 at 162.

In the light of the foregoing, I too resolve this issue 3 in favour of the Respondent and dismiss the grounds of appeal that cover it. G Accordingly I agree with my learned Brother MUKHTAR JSC that this appeal fails and is dismissed. The Judgment of the Court of Appeal is affirmed. The sentence and conviction of the appellants is equally affirmed.

H

NGWUTA JSC

The appellants and one other accused person were arraigned before the High Court of Plateau State sitting at Jos for the offence of armed robbery punishable under S.1(2)(B) of Robbery and Fire-

arms Act 1984 as amended. They were each convicted as charged. Not satisfied with the judgment of the trial Court, they appealed to the Court of Appeal, Jos Division. The lower Court dismissed the appeal and affirmed the judgment of the trial Court.

Aggrieved by the judgment of the lower Court, the appellants appealed to this Court on five and six grounds of appeal, respectively. The following three issues were raised from the grounds of appeal in the appellants' brief for the court to determine:

“(1) Whether the Honourable Court of Appeal was right in affirming the conviction and death sentence passed on the appellants by the trial Court when Exhibits 3 and 5, the alleged confessional statements of the appellants which were heavily relied upon by the trial Judge, were inadmissible in law.

(2) Whether the non-consideration of the submissions of the appellants on Exhibits 3 and 5 by the Honourable Court of Appeal was proper.

(3) Whether the Honourable Court of Appeal was right when it held that the prosecution proved the guilt of the Appellants beyond reasonable doubt.”

The Respondent framed the following two issues in its brief of argument.

“1. Whether the learned Justices of the Court of Appeal were right in law to have convicted the appellants on their confessional statements.

2. Whether the learned Justices of the court of Appeal were right in law when they held that the prosecution has proved its case beyond reasonable doubt.”

This appeal is against the concurrent judgment of the two Courts below - the Plateau State High Court and the Court of Appeal, Jos Division. The issues raised in the briefs of argument were carefully and exhaustively treated and resolved against the appellants in the lead judgment of my learned brother, Mukhtar, JSC. I will add a few comments in support of the lead judgment.

On the admissibility of Exhibits 3 and 5, once the trial Court is satisfied that the confessional statement was freely and voluntarily made, unambiguous, true, direct and positive with reference to the offence charged, it is admissible in evidence and a conviction can be based on it. See *Dawa & Anor v. State* (1990) 8 - 11 SC 236 at 267;

Jimoh Yesufu v. State (1976) 6 SC 167 at 173.

Contrary to the claim of learned Counsel for the Appellants, with regards to the manner in which Exhibits 3 and 5 were recorded, the flow of language in the said Exhibits does not show that there were products of question and answer session conducted by the Police.

For the above and the more comprehensive reasons adumbrated in the lead judgment which I had the privilege of reading in draft before now, I also find that the appeal fails and it is hereby dismissed. I adopt the consequential orders in the lead judgment.

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