

SUPREME COURT OF NIGERIA
14TH DECEMBER, 2012. SC. 439/2011
**CORAM:- W. S. N. ONNOGHEN, C. M. CHUKWUMA-
ENEH, M. S. MUNTAKA-COOMASSIE,
M. D. MUHAMMAD, C. B. OGUNBIYI, JSC**

SEGUN AJIBADEAPPELLANT
V.
THE STATE RESPONDENT

FAIR HEARING - Breach - Allegation of - Party who fails to utilize opportunity given to present his case - Cannot be heard to complain of denial of right to fair hearing (H1)

EVIDENCE - Confession - Voluntariness of - Appellant's statements are credible evidence - Having been admitted without any objection (H2)

FACTS

Accused/appellant and three others whilst armed with offensive weapons to wit an iron rod, stole a Lister generating set at ELF FILLING STATION, Abeokuta Ogun State. In the process, appellant and the others killed a security guard by hitting him on the head with the iron rod. Subsequently, appellant and the others were arrested and arraigned before the High Court of Ogun State on two counts of conspiracy to commit felony to wit armed robbery and the offence of armed robbery contrary to section 5(b) and 1(2)(a) of the Robbery and Firearms (Special Provisions) Act Cap 398 Laws of Federal Republic of Nigeria as amended by the Tribunal (certain consequential Amendments etc) Decree 1999.

At the trial, prosecution/respondent called eleven witnesses and tendered 13 Exhibits while appellant rested his case on that of respondent. Opportunity that was presented to appellant to present his case was never utilized. At the end of trial, the court convicted and sentenced appellant and the others to death as per the charges. Being dissatisfied, appellant filed appeal at the Court of Appeal, Ibadan Division. The court dismissed the appeal and affirmed the judgment of trial court. Aggrieved further, appellant appeal to Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the trial and indeed the lower court were not in breach of the appellants right to fair hearing as entrenched in section 36 (4) (5) of the 1999 constitution on the singular application of section 287 (1) (a) (111) and (b) of the Criminal Procedure Act Cap 41 Laws of Federal Republic of Nigeria 2004 to the due determination of this case which has invariably occasioned gross miscarriage of justice.

2. “Whether the prosecution was able to prove beyond reasonable doubt the ingredients of the offence of conspiracy to commit armed robbery and armed robbery against the appellant based on the peculiar facts and circumstances of the entire case”.

HELD (Unanimously dismissing the appeal per
MUNTAKA-COOMASSIE JSC)

FAIR HEARING - Breach - Allegation of

1. My lords, on my own I also agree with the above findings of the lower court. The appellant’s counsel was called upon to proceed with the defence and refused to take the opportunity to be heard. I must say, there is limit to the operations of Section 36 (4) of the 1999 Constitution as amended. What it requires is to give a party a right to be heard in the determination of any allegation made against him, when such an opportunity is given and the party failed to utilize such opportunity to present his case or defence for determination, he could no longer be heard to complain that his right to fair hearing has been breached. (p. 2950 E)

EVIDENCE - Confession - Voluntariness

2. Finally and reverting to confessional statements of the appellant, I hold a strong view that the appellant did not or refuse or even fail to rebut or contradict the prosecution’s evidence. He chose to keep mum, within his legal right to do so, in a negative way. Neither did he advance any evidence that he did not participate in the commission of said armed Robbery. The confessional statements of the appellant must be regarded as

voluntarily made since the rules and the laws governing the methods for taking them were complied with fully. The confessional statements referred to above are consequently good and credible evidence having been admitted in evidence without any objection coming from the accused counsel. There was no evidence that the appellant in one way or the other retracted from the confessional statements. It is my view that both trial and lower courts have done a good job and they both arrived at correct conclusion. The contents of the said statements are such that they were made voluntarily by the appellant. (p. 2951 E)

NOTABLE POINTS OF INTEREST

OGUNBIYI JSC

1. Fair hearing – Concept of

The concept of fair hearing presupposes that all parties be given equal opportunity to present their respective case as they so propose in the manner laid down by the law and without any hindrance. The concept does not envisage a situation where a party is allowed to do as he wishes but must strictly be guided by the rules and regulations laid down and in accordance with the principles of the modus operandi to be implored. (p. 2953 C)

2. Accused rest of case on that of prosecution – Implication of

In further emphasis and even at the risk of repeating myself I will restate that an accused person who rests his case on that of the prosecution has taken a gamble and a risk. He has, in other words shut out himself and will have no one but himself to blame. This is because he does not wish to place any fact before the trial court other than those which the prosecution has presented in evidence. It also confirms that he does not wish to explain any facts, or rebut any allegation made against him. The rating of the effect is not less than admission of the evidence led by the prosecution. (p. 2955 E)

REPRESENTATION

B. Dambo with Mohammed Tukur Esq., for the Appellant

Miss. Olufunke Aboyade with J. K. Omotosho (DPP, MOJ Ogun State), for the Respondent

CASES REFERRED TO

- Garba V. University of Maiduguri (1986) 1 NWLR (pt. 18) 550
B Doharty V. Doharty (1964) 1 All NLR 292
Akinyede v. Appraiser (1971) 1 All NLR 164
Bozin V. The State (1985) 2 NWLR (pt. 8) 465.
Amala V. The State (2004) 6 SCNJ 55
C Emeka V. The State 7 NSCR 582
Ali v. The State (1988) 7 NSCC 14
Ijeoma V. State (1990) 1-6 NWLR (pt. 158) 567
Baba v. NCATC (1991) 5 NWLR (192) 388
Chungom v State (1992) 4 NWLR (233) 17
D Ogunsanya v. State (2011) 9 SCM 5
Olunsanya v. The State (2011) 6 SCNJ 190
R. V. Kanu & others 14 WACA 301
Emeka V. The State (2001) 6 SCNJ
Jozebon Industries v. R. Launers Import Export (1998) 1 All NLR
E 310

STATUTES REFERRED TO

- Robbery & Firearms (Special Provisions) Act Cap. 398 LFN (as amended), ss.1(2)(a) and 5(b)
F Constitution of Federal Republic of Nigeria 1999, s.36(4)(5)
Criminal Procedure Act Cap 41 LFN 2004, s.287(1)(a)(b)

LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC

- G The appellant herein and three (3) other persons were arrested and charged on two counts of conspiracy to commit felony to wit armed robbery and the offence of armed robbery contrary to section 5 (b) and 1 (2) (a) of the Robbery and Firearms (special provisions) Act Cap.398 Laws of Federal Republic of Nigeria as amended by the Tribunal (certain consequential Amendments etc)
H Decree 1999. On the 23rd of October, 2000 the appellant and three others, whilst armed, with offensive weapons to wit-an iron rod, stole a Lister generating set at ELF FILLING STATION, Abeokuta Ogun State. In the process, the appellant and others killed one of the guards

by hitting him on the head with iron rod, while the other was seriously injured.

At the trial the prosecution called eleven (11) witnesses and tendered 13 Exhibits while the appellant rested his case on that of the prosecution. On 25 /5/2002 Adebayo', the prosecution counsel, announced that the prosecution has closed its case. Then 'Adeniyi',^B the defence counsel asked for an adjournment to enable him adequately prepare for the defence, court then adjourned for defence. On 1/8/2002 the following happened in court;-

"B. A. Adebayo (PSC) appears for the state says he has seen^C the letter written to the court by the learned Counsel for the accused persons to explain his absence from court and to request for the adjournment of the case. Says further that he is not opposing the application for adjournment"

Court-Case is adjourned till 8/10/2002 for defence to open. D
On the 16 /10/2002, the record of proceedings also revealed what happened that day:-

"Accused persons are present.

B. A. Adebayo (PSC) appears for the state.

C. O- Adeniyi appears for the accused persons.^E

Adeniyi says: The prosecution has closed its case. He proceeds to address the court."

The record also shows that even though the accused persons counsel was in the court he did not challenge the statement made by^F the prosecution's counsel or made any attempt to call any witness and neither did he address the court even-though he was resting his case on that of the prosecution. The trial court proceeded to deliver its judgment on the 14 /1/2003 in which it found the accused persons guilty of the offences charged and sentenced them to death^G after convicting them. The trial court in its judgment found as follows:

"The accused persons on their respective statements disclosed that they entered into the station by stealth. In particular they disclosed that their vehicle in which they traveled to the station where the generator was parked some distance there-from and that it was not until they had loosened and secured the generator that the driver was summoned into the station with his vehicle and the generator placed in it. They also disclosed how they bought pure water for the^H

purpose of concealing the generator.

Given the objective of the accused persons which was to remove from the ELF filling station, the generator thereat and the clandestine manner adopted by them for the purpose; I find the element of unlawful act to wit, steal the generator at the ELF patrol Station.

B *As one of the accused person pursuant to their agreement to steal the generator in question was not only armed with an iron rod but actually used the same on at least one of the guards at the station in the process of executing the objective of their agreement and which objective I have earlier found they successfully accomplished accordingly found the accused persons guilty as charged in count*

C *In conclusion given the totality of the case presented by the prosecution and which is the only one before the court, I find counts 1 and 2 respectively proved beyond reasonable doubt against the*
D *accused persons. All the accused persons accordingly found guilty as charged". See P76 and 77 of the record.*

The appellant was dissatisfied with the judgment and as a result appealed to the Court of Appeal Ibadan Division, herein after called the lower court. The Court of Appeal in its judgment delivered on 25/7/2011 affirmed the judgment of the trial Court. In the lead judgment delivered by Alagoa JCA as he then was, the lower Court found as follows:

F *"There is no doubt that there was a meeting of the minds of the appellant with the other accused persons at the lower court to cart away the ELF generating electric plant on the 23rd October, 2000.*

G *The confessional statement of the appellant which were admitted in evidence without objection as Exhibits A and K shows clearly that he was part and parcel of the gang of robbers and even took part in loosening the electric generating plant from the ELF Filling station along Abeokuta/Lagos road on the 23rd October, 2000. I find conspiracy in count I against the appellant also proved beyond reasonable doubt by the prosecution and have no cause to disturb*
H *the findings of the learned trial Judge" See P135 of the record of proceeding.*

The appellant was again dissatisfied with the lower Court judgment and has appealed to this Court by filing his Notice of appeal. In accordance with the rules of this Court both parties filed and ex-

changed their respective briefs of argument. The appellant distilled two issues for determination from the grounds of appeal as follows:

“1. Whether the trial and indeed the lower court were not in breach of the appellants right to fair hearing as entrenched in section 36 (4) (5) of the 1999 constitution on the singular application of section 287 (1) (a) (111) and (b) of the Criminal Procedure Act Cap 41 Laws of Federal Republic of Nigeria 2004 to the due determination of this case which has invariably occasioned gross miscarriage of justice.

2. “Whether the prosecution was able to prove beyond reasonable doubt the ingredients of the offence of conspiracy to commit armed robbery and armed robbery against the appellant based on the peculiar facts and circumstances of the entire case”.

The Respondent also formulated two issues for the consideration of the appeal as follows:-

“1. Whether the learned Judge rightly convicted the appellant of the offences of conspiracy to commit armed robbery and armed robbery.

2. Whether the trial court was in breach of section 36 (4) (5) of the 1999 constitution”.

At the hearing the learned counsel to the appellant adopted his brief of argument and urged this court to allow the appeal.

On issue No I, learned counsel submitted that the appellant’s right to fair hearing was breached, as he was not called upon by the trial court to enter his defence. He cited Section 287 (1) (a) (111) and (b) of the Criminal procedure Act (C. P. A) and Section 36 (4) (5) of the 1999 Constitution of the Federal Republic of Nigeria as amended. It was his contention that the two lower courts failed to give Section 287 (1) (a) (111) and (b) of CPA its natural and correct interpretation and accordingly misapplied the provisions of the afore-said statutes. He distinguished this case from the judgment of this court in *Nbamali v. The State* (1998) 1 NSCC 14 in that the implications of the breach of the provisions of section 36 (4) of the 1999 constitution was not determined in that case. He contended that section 287 (1) (b) and (111) of the CPA places a burden on the trial Judge to the legal practitioner defending the appellant to proceed with the defence since at this stage the trial court had listened to all the prosecution witnesses and established that a prima facie case had

been made out and to accordingly call the legal practitioner representing the appellant to open his case in accordance with the provisions of Section 287 of the C.P.A. The trial Judge's duty is to ensure that justice is done. He relied on the case of Garba V. University of Maiduguri (1986) 1 NWLR (pt. 18) 550 at 619. He contended that the word 'shall' in both provisions made it mandatory for the trial court to call upon the appellant to proceed with his defence, he submitted that a party should not be punished for the mistakes of his counsel, he cites Doharty V. Doharty (1964) 1 All NLR 292 at 294; Akinyede v. Appraiser (1971) 1 All NLR 164 and Jozebon Industries v. R. Launers Import Export (1998) 1 All NLR 310 at 3 27.

On issue no.2, learned counsel contended that for the offence of armed robbery to be proved beyond reasonable doubt, the ingredients of the offence must be proved to wit:-

1. There was a robbery or a series of robberies;
2. The robber or robbers must be armed.
3. The accused person or persons were the ones who committed the robbery.

He cited the case of Bozin V. The State (1985) 2 NWLR (pt. 8) 465. He then submitted that the way and manner the entire proceeding was conducted if placed against the facts of the case, it cannot be said that the prosecution has proved its case beyond reasonable doubt. It was his submission that as regard the first two ingredients, there is no evidence that the appellant was caught at the scene of the robbery. The robbery took place in the night and none of the witnesses could identify the appellant as one of those who participated in the robbery. He referred to the evidence of PW1. He contended that there was no evidence to prove that the generating set allegedly stolen belongs to the Elf Filing station and the Exhibit 'C' shows that the owner of the Lister generator was one Olukoya Adedolope and not Elf Filing Station. Counsel referred to Exhibit 'A' and 'K', the confessional statements of the appellant on 11/11/2000. There is a presumption in favour of the appellant that if same were tendered it would have elicited more contradictions and evidence unfavourable to the prosecution. He therefore submitted that the court cannot pick and choose parts of the evidence of the defence favourable to the prosecution and reject the part favourable to the defence.

Learned counsel to the Respondent also adopted his brief of argument and urged this court to dismiss the appeal. On the issue No. 1, learned counsel restated the three ingredients that needed to be proved in case of armed robbery and referred to the findings of the lower court where it found that the appellant committed armed robbery. He referred to the evidence of PW1, Exhibits C and C1, i.e. the bonds to produce exhibits tendered by PW2 which showed that the Lister generating set that was robbed was released to Olukoya Adedolapo, an official of ELF Petroleum Filling station. Learned counsel also referred to Exhibit 'A' where the appellant admitted being one of the robbers that committed the robbery. This Exhibit 'A' was tendered without objection, which presupposed that the statement was made voluntarily. See *Amala V. The State* (2004) 6 SCNJ 55 at 67.

On the 2nd ingredients, learned counsel referred to the evidence of PW7 who gave evidence as to how the Toyota Hiace Bus conveying the Lister generating set was accosted and how PW7 traced the vehicle through its Registration Number in Licensing office and arrested the owner i.e 4th accused person, and it was PW4 who took the Police to the appellant's house where he was arrested. In Exhibit 4, the confessional statement of the 4th accused person which was admitted without any objection, he narrated how he was contacted by the appellant and the other accused persons and the role each of them played in the robbery operation. Exhibit 'A' and 'K', the statements of the appellant about the role he played in the operation. It was therefore submitted that the appellant could be convicted, on the basis of his confessional statements alone. See *Emeka V. The State* 7 NSCR 582; *Amala V. The State* (2004) 6 SCM 55 at 67.

On the third ingredient, he referred to the evidence of PW1 who gave account of how one of his colleagues was killed, he himself injured. Not only that evidence was used the appellant was also armed with iron rod which caused the death of one of the guards. He pointed out that the appellant elected not to give evidence in his own defence and rested his defence on the prosecution, as a result the court could be free to accept the un-contradicted evidence of the prosecution *Ali v. The State* (1988) 7 NSCC 14 at 22.

On its issue No.2, learned counsel referred to the provisions of Section 36 (4) of the 1999 Constitution as amended and con-

tended that the true test of fair hearing is the impression of a reasonable person who was present in court's trial whether from his observation justice was done in the case, amongst others the following cases were cited in support - Ijeoma V. State (1990) 1-6 NWLR (pt. 158) 567 at 580, Baba v. NCATC (1991) 5 NWLR (192) 388 at 430, B Chungom v State (1992) 4 NWLR (233) 17 at 37 and Ogunsanya v. State (2011) 9 SCM 5 at 12. Counsel then referred to the proceedings of the trial court and submitted that the counsel was called upon to give evidence on behalf of the appellant in line with provisions of Section 287 (1) (b) and the appellant was given adequate opportunities to put up his defence.

Issue No 1 of the appellant and No 2 of the respondent were on the issue of the breach of section 287 (1) (b) and (111) of CPA and Section 36 (4) of the 1999 Constitution as amended. Section D 287 (1) of the CPA provides:

"At the close of the evidence in support of the charge if it appears to the court that a prima facie case is made out against the defendant sufficiently to require him to make a defence, the court shall call upon him for his defence and:-

E *a) If the defendant is not represented by a legal practitioner, the court shall inform him that he has three alternatives open to him namely:-*

iii) he needs say nothing at all, if he so wishes.

F *b) if the defendant is represented by a legal practitioner, the court shall call upon the legal practitioner to proceed with the defence".*

While Section 36 (4) of the 1999 Constitution as amended provides thus:-

G *"Whenever any person is charged with a criminal offence he shall unless the charge is withdrawn be entitled to a fair hearing in public within a reasonable time by a court or tribunal..."*

H A close examination of the word will disclose whether or not these provisions were breached. On the 21/5/2002 the following happened:-

"Adebayo announces the closure of the prosecution's case.

Adeniyi asked for adjournment to enable him adequately prepare for the defence.

Court: Case is adjourned till 10/7/2002 for defence".

On 1/8/2002, the defence counsel wrote a letter for adjournment. This is what took place on that day.

“Accused persons are present.

B. A. Adebayo (PSC) appears for the State. Says he has seen the letter written to the court by the learned counsel for the accused persons to explain his absence from court and to request for the adjournment of the case. Says further that he is not opposing the application for adjournment.

Court - case is adjournment till 8/10/2002 for defence to open”.

Then on 16/10/2002 the following also took place in court.

“Accused persons are present

B.A. Adebayo (PSC) for the State

C. O. Adeniyi appears for the accused persons.

Adeniyi; - Says the prosecution has closed its case and that the defence is resting on the prosecution’s case.

He proceeds to address the court...”

Learned counsel to the appellant was in Court, no attempt was made to call any witness neither did he challenge the correctness of the prosecution’s counsel that rests its case on that of the prosecution. In the circumstances of this case can it be said that the trial court did not call the defendant to proceed with their defence. The lower court on this point held as follows:

“Perhaps it is at this juncture that I should say a word or two about the effect of an accused saying nothing in his defence as was observed in this case.”

At page 58 of the record of appeal is stated the fact that the accused person led no defence at the hearing of this case. Also at page 60 of the record of appeal the learned trial Judge remarked as follows:

“I have before now stated that the accused persons did not lead evidence at the hearing of this case. They rested their case on that of prosecution. Now what is the effect of this in law? The answer is provided in the case of N. M. Ali V. The State (1988), NSCC 14. In the said case Honourable Justice Craig JSC, in the lead judgment, dwelling on the legal effect of an accused person electing not to give evidence on oath stated at page 22 thus:

(1) Make an un-sworn statement from the dock, in which

case he will not be liable to cross examination or

(2) He may give sworn evidence in witness box and be cross-examined, or

(3) He may elect not to say anything at all.

The learned trial Judge went further to say that in the instant
B *case the appellant chosen (sic) the third alternative of not saying any-*
thing at all which is well within his legal rights to do so”.

On the effect of the accused adopting to remain silent the
learned trial Judge referred to the concurring judgment of Oputa
JSC in this case (Supra) at pages 27 - 28 thus:

C *“... if the defence rests and refuses to put an accused person*
into the witness box to depose to his own version of the events, then
the learned trial Judge is denied the opportunity of listening to the
accused tell his story of watching his demeanour, or assessing his cred-
D *ibility, and of making the necessary choice between his story and that*
of the prosecution.

In the final result, the, trial court will have to decide the case
on the evidence before it undeterred by the incompleteness of tale
from drawing all inferences that properly flow from the evidence of
E *the prosecution. The defence has shut itself out and will have itself to*
blame. The Court will not be expected to speculate on what the ac-
cused might have said if he testified. That is the law and I completely
agree”

F ***My lords, on my own I also agree with the above find-***
ings of the lower court. The appellant’s counsel was called
upon to proceed with the defence and refused to take the op-
portunity to be heard. I must say, there is limit to the opera-
tions of Section 36 (4) of the 1999 Constitution as amended.
G ***What it requires is to give a party a right to be heard in the***
determination of any allegation made against him, when such
an opportunity is given and the party failed to utilize such op-
portunity to present his case or defence for determination, he
could no longer be heard to complain that his right to fair
H ***hearing has been breached.*** See *Olunsanya v. The State (2011) 6*
SCNJ 190 at 217 - 212. The complaint of breach of his right to
fair hearing by the appellant is, I think, without foundation,
and I resolve this issue in favour of the respondent.

On whether the offence of conspiracy and armed robbery

has been proved against the appellant. It is clear from the evidence and the confessions and statements Exhibits A and K of the appellant, that he participated in the robbery that led to the killing of one guard while the other was injured. Exhibit 'H', the confessional statement of 4th Accused person gave details of how the robbery was planned and roles played by each of them. The lower court on this point found as follows:

"The appellants' position is compounded by Exhibits 'A' and 'K' which are without doubt confessional statements of the offence of Armed Robbery for which he was charged. These exhibits were admitted without objection at the trial Court. The appellant did not contend that the statements were not made by him or that they were not made by him voluntarily and must therefore be taken as having made the confessional statement chronicling his involvement in the crime. Exhibits 'A' and 'K' are a detailed step by step account of how the plan to steal the generator of the ELF filling station was hatched and meticulously executed ... It is the law that an accused person can be convicted on his confessional statement alone. See IKEMSON v. STATE (1989) 3 NWLR (pt.110) 455."

Finally and reverting to confessional statements of the appellant, I hold a strong view that the appellant did not or refuse or even fail to rebut or contradict the prosecution's evidence. He chose to keep mum, within his legal right to do so, in a negative way. Neither did he advance any evidence that he did not participate in the commission of said armed Robbery. The confessional statements of the appellant must be regarded as voluntarily made since the rules and the laws governing the methods for taking them were complied with fully. The confessional statements referred to above are consequently good and credible evidence having been admitted in evidence without any objection coming from the accused counsel. There was no evidence that the appellant in one way or the other retracted from the confessional statements. It is my view that both trial and lower courts have done a good job and they both arrived at correct conclusion. The contents of the said statements are such that they were made voluntarily by the appellant.

As a result, what I have been labouring to state along is that

the appeal is totally devoid of merit. I dismiss the appeal and affirm the judgment of the Court of Appeal which upheld the conviction and sentence of death on the appellant. He was rightly convicted. See *Emeka V. The State* (2001) 6 SCNJ at p.266 per Belgore JSC, and *R. V. Kanu & others* 14 WACA 301 the existence of the confessional statements of the appellant and other overwhelming evidence made me to dismiss this appeal out rightly. I so hold.

ONNOGHEN JSC

C I have had the benefit of reading in draft the lead judgment of my learned brother MUNTAKA-COOMASSIE, JSC just delivered. I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed. Appellant, by Exhibits “A” & “K” confessed D to the commission of the offence charged and can, in law be convicted solely on the confessional statements made by him as has been settled in a long line of authorities such as *Emeka vs The State*, NSC QR 582: *Amala vs The State* (2004) 6 SC M. 55 at 67. In this case, appellant elected not to give evidence in his defence but to rest his E case on that of the prosecution. The election is within his right under the law, but the legal effect of the said election is to leave the court of trial free to accept the un-contradicted evidence of the prosecution in proof of the charge, which the court rightly, in my view did.

F In the circumstance of this case, to talk of violation of appellant’s right to fair hearing is too farfetched and ought not to be countenanced. Appeal is dismissed for lack of merit.

MUHAMMAD JSC

G My learned brother Muntaka-Coomassie, JSC had obliged me a preview of his very comprehensive lead judgment. I have nothing useful to add to the thorough judgment. I adopt it as mine in dismissing the unmeritorious Appeal. I also abide by the consequential H orders decreed by his lordship in the lead judgment.

OGUNBIYI JSC

I have read in draft the lead judgment just delivered by my

learned brother Muntaka-Coomassie, JSC and I agree that the appeal is lacking in any merit and should be dismissed. The two issues raised by the appellant in this appeal are questioning the right of fair hearing which the appellant alleges had been breached and secondly that whether the prosecution had in fact proved the charges levied against the appellant beyond reasonable doubt. B

The issues in my opinion can easily be fused one into the other. This is because, if it is found that the prosecution had failed to prove its case beyond reasonable doubt, any conviction thereon would be tantamount to breach of fair hearing against the appellant. The centre of concentration should therefore be predicated on whether the prosecution had in fact proved its case beyond reasonable doubt. C

The concept of fair hearing presupposes that all parties be given equal opportunity to present their respective case as they so propose in the manner laid down by the law and without any hindrance. The concept does not envisage a situation where a party is allowed to do as he wishes but must strictly be guided by the rules and regulations laid down and in accordance with the principles of the *modus operandi* to be implored. D

On whether or not the prosecution proved its case beyond reasonable doubt, recourse must be had to the evidence, both oral and documentary at the trial court. With reference to exhibits 'K' and 'A' therefore, both of them are confessional in nature. For instance in the document exhibit 'K', the 1st accused/appellant disclosed that one Jide introduced him and one Igbe to a business which he (Jide) had already negotiated with the security men at an abandoned filling station in Abeokuta. That the business as disclosed in Exhibit 'K' was to steal a generator. He also disclosed that himself Jide and Igbe did introduce Ogbonna to the business and which he agreed. The appellant also disclosed that he recruited Kola for the same business. That Kola also recruited the driver named Sunday. The appellant further testified in his statement Exhibit 'K' that on the 23/10/2000 himself, Jide, Kola, Ogbonna and Sunday at about 1900 hours set out for Abeokuta where they actually removed a generator from a filling station. E F G H

Furthermore the appellant in his statement exhibit 'A' also confirmed his introduction of Ogboma, Kola and the driver to the business. He also stated how he in company of others went to the Elf

Filling Station along Abeokuta\ Lagos Express road to steal a Lister engine generator. He also admitted hitting one of the guards at the station with iron rod on the head. There is no contrary evidence from the appellant that the said statements were not made voluntarily. The fact that the appellant was never taken before a superior Police Officer to confirm the statement did not render them derogatory and therefore less confessional. The appellant as rightly found by the trial judge made the statements freely, voluntarily and in accordance with the judge's rules. See the case of Nemi & Ors. V. The State (1994) 10 SCNJ 1 at 28. The appellant in other words, and in his confessional statements Exhibits 'A' & 'K' supra admitted and stated clearly and unequivocally the role he played in the robbery. It is an established principle of law that the appellant could be convicted on the basis of his confessional statement alone. The law is also well settled that facts admitted need no further proof. See the case of Emeka v. State 7, NSCQR 582 and also Amala V. State (2004) 6 SCM 55 AT 67. Where a confessional statement is therefore admitted without any objection the irresistible inference is that same was made voluntarily and a court can rightly convict on the basis of the admission contained therein. It is also on record per the evidence at the trial court, that, in addition to the violence used in the course of the robbery, one of the guards also died in the process. There is therefore a conclusive proof that a case of armed robbery was proved beyond reasonable doubt against the appellant. It is pertinent to further emphasize that the appellant on his own volition elected not to give evidence in his own defence but rested his case on that of the prosecution. The legal effect is that the court would be free to accept the uncontradicted evidence of the prosecution witnesses. See the case of Ali V. State (1983) 7 NSCC 14 at 22; also the case of Igbo V. State (1978) 3 SC 87. With reference to the record of appeal the trial court in its judgment at pages 60 - 61 made the following remarks and said:-

"I have before now stated that the accused persons did not lead evidence at the hearing of this case. They rested their case on that of the prosecution. Now what is the effect of this in law? The answer is provided in the case of N.M. Ali & Anor V. The State (1988) 1 NSCC 14. In the said case Honourable Justice Craig JSC in the lead judgment, dwelling on the legal effect of an accused person elect-

ing not to give evidence on oath stated at page 22 thus:-

“Section 287 (1)(a) of the Criminal Procedure Act stipulates three alternatives open to an accused person after the prosecution has closed its case. The accused may-

1. Make an unsworn statement from the dock in which case he will not be liable to cross-examination or B

2. He may give sworn evidence in the witness box and be cross examined or

3. He may elect not to say anything at all.”

In the instant case, the appellant chose the third alternative and the trial court held his legal right to do so. The legal effect as drawn by the trial court is, very well founded wherein it held thus:- C

“The legal effect of that is this, that if in the course of the hearing, prosecution witnesses had given evidence which called for rebuttal or some explanation from the appellants and that rebuttal and/or explanation was not forthcoming, then the court would be free to accept the uncontradicted evidence of the prosecution witnesses. See the case of the State v. Nafui Rabi 1 NCR 47, Igbo V. The State (1978) 3 SC. 87.”

In further emphasis and even at the risk of repeating myself I will restate that an accused person who rests his case on that of the prosecution has taken a gamble and a risk. He has, in other words shut out himself and will have no one but himself to blame. This is because he does not wish to place any fact before the trial court other than those which the prosecution has presented in evidence. It also confirms that he does not wish to explain any facts, or rebut any allegation made against him. The rating of the effect is not less than admission of the evidence led by the prosecution.] See Magaji V. Nigerian Army (2008) 3 NCC 490 at 490 and Igabele V. State (2005) 1 NCC 59. In other words, by the appellant choosing to rest his case on the prosecution, he had denied the trial court the opportunity of assessing the credibility of the accused as a witness as compared to the prosecution for purpose of evaluation and determining which side to believe. The appellant should not therefore be given the privilege of being heard on that which he freely chose to do. The appellant in short had shut himself out and should therefore not be heard to complain. In the absence of any evidence from the appellant therefore, reliance was properly sustained on his confessional statement E
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which was admitted in evidence. The accused's statement, being confessional by nature is accorded the same effect as a witness's evidence which is credible. The accused as it were can be properly convicted solely on his own confessional statement without more. The further authorities are the cases of *Egboghonome V. The State* (1993) 9 SCNJ (Pt 1) 1 at 29 and *Ekpe V. The State* (1994) 12 SCNJ 131 at 137 and *Akpan V. The State* (2000) 7 SC (Part 11) 29 at 40 which are all relevant in point.

My learned brother Muntaka-Coomassie JSC has adequately dealt with the appeal and I completely agree with the reasoning and conclusion arrived thereat and also dismiss the appeal in its entirety as lacking in merit. The judgment of the lower court which affirmed that of the trial High Court is hereby also upheld.

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