

SUPREME COURT OF NIGERIA
FRIDAY 15TH JUNE, 2012. SC. 304/2010
CORAM:- W. S. N. ONNOGHEN, I. T. MUHAMMAD,
O. O. ADEKEYE, N. S. NGWUTA,
M. U. PETER-ODILI, JJSC

1. ORE-OFE ADESINA (AKA ALHAJI) APPELLANTS
2. RASHIDI OLAWALE (AKA EMEKA)

V.

THE STATE RESPONDENT

CRIMINAL PROCEDURE - Confession - Meaning - By s. 27 Evidence Act - Confession is admission made by accused - Stating the inference that he committed a crime (H1)

CRIMINAL PROCEDURE - Confession - Conviction - When confessional statement is proved to be voluntary - It is enough to sustain conviction - And a retraction of same at trial is immaterial (H2)

CRIMINAL PROCEDURE - Confession - Test - Court must test the truth of confession by inter alia determining - If there is anything outside the confession - That shows it is true (H3)

EVIDENCE - Circumstantial evidence - Definition - It is defined as evidence of surrounding circumstances - Which by undersigned coincidence can prove a proposition with accuracy (H4)

EVIDENCE - Circumstantial evidence - Conviction - Such evidence can ground conviction only - Where the inferences points strongly to the commission of the crime by accused (H5)

CRIMINAL PROCEDURE - Identification parade - Purpose - The parade is needed to show that accused actually committed the offence - Save where PW knows accused (H6)

COURTS - Evidence - Identification parade - To ascribe value to evidence from such parade - Court must inter alia - Consider circumstances in which eyewitness saw the suspect (H7)

CRIMINAL PROCEDURE - Crime - Number of witnesses - Proof - Prosecution has prerogative to call relevant witnesses - And he is not bound to call all eyewitnesses to a crime (H8)

FACTS

A gang of armed robbers invaded a commercial bank at Ijebu-Ode. While the robbery incident lasted, accused/appellants waited in a vehicle parked at the premises of the bank. The robbers eventually carted away the sum of N14 million. The incident was reported to the police. Later on at night, a police patrol team saw an unoccupied car which was involved in an accident. On searching the car, the police recovered some ammunition. Information was given to them to the effect that three men left the vehicle after the accident and that two of them carried “Ghana must go” bags. The next morning while still on patrol duty, the police saw three men, two of them were carrying “Ghana must go” bags. The two appellants were immediately apprehended while the third man ran into the bush. The bags were searched thereupon and the sum of N3, 777,900.00 was discovered therein. Appellants were thus arrested and their confessional statements taken by the police.

They were subsequently arraigned before the High Court of Ogun State, Ijebu-Ode division on two counts charge of conspiracy to commit armed robbery and armed robbery contrary to and punishable under Section 5 (6) and (2) (a) of the Robbery and Firearm (Special Provision) Act, Cap 398 LFN 1990. At the trial, prosecution/respondent called five witnesses. The confessional statements of appellants were admitted in evidence as Exhibits ‘A’ and ‘M’ after the conduct of a trial within trial in respect of each of the statements. Appellants testified for themselves. In his judgment, the learned trial judge held that the prosecution proved its case beyond reasonable doubt whereupon appellants were sentenced to death. Aggrieved, appellants appealed to the Court of Appeal, Ibadan Division. The court dismissed the appeal and affirmed the judgment of the trial court. Aggrieved further, appellants filed appeal to Supreme Court.

ISSUES FOR DETERMINATION

a. Whether the justices of the Court of Appeal were right in law that there was cogent or corroborative evidence outside the con-

fessional statements that made the confessions of the appellants probable.

b. Whether the Court of Appeal was right in affirming the conviction and sentence of the appellants by the trial court when none of the members of staff of the bank and the policemen on duty were called to identify the appellants as the persons they saw at the scene of crime.

c. Whether the circumstantial evidence in this case was cogent, direct, consistent, unequivocal and irresistibly led to the conclusion that the appellants were among the armed robbers who invaded and robbed the Gateway Bank, Ijebu-Ode on 28/2/2008.

HELD (Unanimously dismissing the appeal per
ADEKEYE JSC)

Confession - Meaning

1. By virtue of Section 27 (1) of the Evidence Act Cap 112 Laws of the Federation of Nigeria 1990, a confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime. It is an extra-judicial statement made by an accused person to the police containing assertion of admission showing that he participated in the commission of offence for which he stands accused. Once admitting the charge or creating the impression that he committed the offence charged; the statement becomes confessional. (p. 3723 E)

Confession - Conviction

2. When a confessional statement has been proved to have been made voluntarily and it is positive, unequivocal and amounts to an admission of guilt, it is enough to sustain or base the conviction of an accused. It does not matter whether the maker retracted the statement in the course of the trial. Such a retraction does not necessarily make the confession inadmissible. (p. 3723 G)

Confession - Test

3. Generally speaking, a confession made in judicial proceedings is of greater force or value than all other proofs and it can ground a conviction if the court is satisfied with its truth; there is however a duty on the court to test the truth of a confession by examining it in the light of the other credible evidence before the court which test will enable the court to determine whether -

- 1. There is anything outside the confession to show that it is true**
- 2. It is corroborated**
- 3. The statements made in it are in fact true as far as they can be tested**
- 4. The prisoner had the opportunity of committing the crime**
- 5. The confession is possible**
- 6. It is consistent with other facts which have been ascertained and which have been proved. (p. 3724 B)**

Circumstantial evidence - Definition

4. The other evidence offered by the prosecution before the trial court outside the evidence from direct eyewitnesses and the confessional statements is circumstantial evidence. Under the criminal legal system, circumstantial evidence is defined as the evidence of surrounding circumstances which by undesigned coincidence is capable of proving a proposition with the accuracy of mathematics. Circumstantial evidence means that there are a number of circumstances which make a complete unbroken chain of evidence, if that is established to the satisfaction of the court, it may well and properly act upon such evidence. (p. 3724 F)

Circumstantial evidence - Conviction

5. Circumstantial evidence is sufficient to ground a conviction only where the inferences drawn from the whole history of the case points strongly to the commission of the crime by the accused. In other words, for circumstantial evidence to ground a conviction, it must lead to one conclusion; namely the guilt

of the accused person. Where there are other possibilities that others other than the accused had the opportunity of committing the offence with which the accused was charged, such an accused cannot be convicted of the offence.

(p. 3724 H)

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Identification parade - Purpose

6. In this issue the appellants challenged the failure to identify the appellants by the victims of the robbery incident, policemen on duty when the robbery occurred and custodians of the key to the safe. I must explain that the purpose of an identification parade in all criminal trials is to show that the person charged with the offence actually committed the offence. It is not in every case that an identification parade is necessary. Where the prosecution witness has knowledge of the accused person, identification parade is not necessary. It is trite however that where an accused person by his confession has identified himself, there would be no need for any further identification parade. (pp. 3727 D/3728 A)

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Evidence - Identification parade

7. In order to ascribe any values to the evidence of an eyewitness identification of a criminal, the court in guiding against cases of mistaken identity must meticulously consider the following issues-

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1. Circumstances in which the eyewitness saw the suspect; was it in difficult conditions?

2. The length of the time the witness saw the suspect or defendant at a glance or longer observation?

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3. The opportunity of close observation.

4. Previous contact between the two parties.

5. The lighting conditions.

(p. 3727 E)

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Crime - Number of witnesses - Proof

8. On the issue of witnesses to call, it is the prerogative of the prosecution to call witnesses relevant to its case. It is also settled law that the prosecution is not bound to call every

person that was linked to the scene of crime by physical presence to give evidence of what he saw. Once persons who can testify to the actual commission of crime have done so, it will suffice for the satisfaction of proof beyond reasonable doubt in line with Section 138 of the Evidence Act. This issue is resolved in favour of the respondent. (p. 3728 A)

NOTABLE POINT OF INTEREST

NGWUTA JSC

C **1. Difference between direct and circumstantial evidence**

Circumstantial evidence differs from direct evidence merely in the logical relation to the facts in issue. While evidence as to the existence of the facts is direct evidence, circumstantial evidence relates to the existence of facts which raise a logical inference as to the existence of the facts in issue. (p. 3732 B)

REPRESENTATION

A.A. Adedeji, S. Aliyu, for the Appellants

E Akin Osinbajo, Abdulrasheed Sadiq Opeyemi Dada (Miss), for the Respondent

CASES REFERRED TO

- Ubani v. State (2003) 18 NWLR (Pt. 851) 22
- F Ukoroh v. State (1979) 4 SC 167
- Omogodo v. State (1981) 5 SC 5
- Lori v. State (1980) 8-11 SC 81
- State v. Nafiu Rabi'u (1980) 1 NLR 4
- Adie v. State (1980) 1-2 SC 116
- G Nasiru v. State (1999) 2 NWLR (pt. 589) 87
- State v. Ogbubunjo (2001) 1 SC (pt. 1) 90
- Ojegele v. State (1988) 1 NWLR (pt. 71) 414
- Dawa v. State (1980) 8-11 SC 236
- Aremu v. State (1991) 7 NWLR (pt. 201) 1
- H Ikemson v. State (1989) 3 NWLR (pt. 110) 455
- Garba v. COP (2007) 16 NWLR (pt. 1060) 378
- Mohammed v. The State (2007) 4 S.C. (Pt.) 181
- Uche v. State (2007) 5 NWLR (Pt. 1027) 214

STATUTES REFERRED TO

Robbery & Firearm (Special Provision) Act Cap 398 LFN 1990, s. 5(6) and (2)(a)

Evidence Act Cap 112 LFN 1990, ss. 7, 27(1), 138, 148(a)

B

BOOK REFERRED TO

Advanced Law Lexicon Book 2, p. 1673

LEAD JUDGMENT BY ADEKEYE JSC

C

This appeal is against the judgment of the Court of Appeal, Ibadan Division delivered on Monday the 19th of April, 2010. The decision affirmed the conviction and sentence of the appellants by the High Court of Ogun State, Ijebu-Ode Judicial Division on the two counts charge of conspiracy to commit robbery and armed robbery delivered on the 6th of July, 2004. The facts of the case are briefly; that on the 28th of February, 2008, a gang of armed robbers forcefully broke into the Gateway Bank, Ijebu-Ode Branch, Ogun State. Those who entered into the Banking Hall shot freely into the air leaving people running helter-skelter. The appellants before this court remained in a vehicle parked at the premises of the Bank. The others gained access into the bank's strong room from where they carted away the sum of Fourteen Million Naira in different denominations. A report of the incident was made to the police. At about 11.15 pm that day, a police patrol team along the Lagos-Benin Expressway saw an unoccupied Opel Omega car which was involved in an accident behind the Federal Government College, Odogbolu. On searching the car, the police recovered a carton containing 356 bullet cartridges and one pistol. They got information that three men left the vehicle after the accident and two of them carried "Ghana must go" bags. Around 6.15 the following morning while still on patrol duty, the police saw three men, two of them were carrying "Ghana must go" bags. The two appellants were immediately arrested while the third man ran into the bush. The "Ghana must go" bags were recovered from the appellants by the police. On searching the bags, a sum of N3, 777,900.00 in different denominations and wrapped in Gateway Bank currency wrappers were found inside the bags. The appellants claimed ownership of the money. They were apprehended

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and taken to the police station where they volunteered confessional statements to the police. Both appellants were arraigned and charged before the trial court on two counts charge of conspiracy to commit armed robbery and armed robbery contrary to and punishable under Section 5 (6) and (2) (a) of the Robbery and Firearm (Special Provision) Act, Cap 398 Laws of Federation 1990 as amended by the Tribunals (Certain Consequential Amendment Etc) Act 1999.

At the trial, the prosecution called five witnesses. The confessional statements of the appellants were admitted in evidence as Exhibits 'A' and 'M' after the court conducted a trial within trial in respect of each of the statements. The appellants testified for themselves. In the considered judgment of the trial court delivered on the 6th of July, 2004, the learned trial judge held that the prosecution had proved its case beyond reasonable doubt whereupon the accused/appellants were sentenced to death. The accused/appellants being dissatisfied with the said judgment appealed to the Court of Appeal Ibadan Division. In the judgment of that court delivered on the 19th of April, 2010, the appeal of the appellants was dismissed and the conviction and sentence of the appellants to death by the trial court was affirmed. The appellants aggrieved by the decision of the lower court, filed a further appeal to this court.

In the appellants' brief filed on 24/8/2010, the appellants formulated three issues which are stated as follows -

a. Whether the justices of the Court of Appeal were right in law that there was cogent or corroborative evidence outside the confessional statements that made the confessions of the appellants probable.

b. Whether the Court of Appeal was right in affirming the conviction and sentence of the appellants by the trial court when none of the members of staff of the bank and the policemen on duty were called to identify the appellants as the persons they saw at the scene of crime.

c. Whether the circumstantial evidence in this case was cogent, direct, consistent, unequivocal and irresistibly led to the conclusion that the appellants were among the armed robbers who invaded and robbed the Gateway Bank, Ijebu-Ode on 28/2/2008.

The respondent in the brief filed on 3/2/2011 distilled a single issue from the four grounds of appeal of the appellant as follows -

“Whether considering the confessional statements of the appellants and the circumstantial evidence before the trial court, the trial judge was right in convicting the appellants in the absence of identification of the appellants by the victims of the robbery incident.”

I intend to be guided by the issues raised for determination by the appellants so as to consider all the necessary legal points in the dispensation of the appeal. The appellants requested to argue issues One and Three together as they are interwoven. The appellants in their argument and submission defined and elaborated upon what in the process of establishment of the essential ingredients of a crime is circumstantial evidence. The evidence on record before the lower court failed to establish with any degree of certainty that the appellants were among the armed robbers who invaded the premises of the Gateway Bank Ijebu-Ode on 28/02/2008 and robbed the Bank of its money. The mere fact that the appellants were found to be in possession of ‘Ghana must go’ bags containing part of the money stolen from Gateway Bank Ijebu-Ode on the 28/02/2008 without more is not sufficient to ground conviction in the circumstances of this case. This court must reject the doctrine of recent possession without anything more as sufficient link of the appellants with the robbery incident of 28/02/2008. This court must hold that there should be other circumstances strong enough not only to invoke the presumption covered by Section 148 (a) of the Evidence Act against the appellant but to justify with some degree of certainty that they committed the robbery.

The appellants submitted that the justices of the Court of Appeal were in grave error to affirm the decision of the learned trial judge on circumstantial evidence. Their lordships based their decision on the fact that the ‘Ghana must go’ bags containing parts of the stolen money were found in their possession forgetting however that there was no shred of evidence connecting the appellants with the ammunitions recovered from the Opel car. The appellants drew attention also to the fact that the police guard and civilian guard at the bank were never asked to identify the appellants as the occupants of the Opel car. The appellants contended that both Exhibits ‘A’ and ‘M’ the confessional statements were not tested by the learned trial judge to show that they were in fact true or consistent with other facts proved

by the prosecution. The circumstantial evidence relied on to convict and sentence the appellants by the trial court and which the learned justices of the court below affirmed fell short of the standard required by law. The appellants also challenged Exhibits 'A' and 'M' their confessional statements as they were in their opinion not tested by the learned trial judge to show whether those statements were in fact true or consistent with other facts proved by the prosecution. It is imperative that the court must test the statements by closely examining them in the light of the other evidence available. The judgment of the lower court that the trial court was satisfied that Exhibits 'A' and 'M' were true is perverse. The court is urged to resolve this issue in favour of the appellants. The appellants cited cases *Ukoroh v. State* (1979) 4 SC 167, *Omogodo v. State* (1981) 5 SC 5, *Igboji Abieke & anor v. State* (1975) 9 - 11 SC pg. 97, *Lori v. State* (1980) 8-11 SC 81, *State v. Nafiu Rabi* (1980) 1 NLR pg.4, *Adie v. State* (1980) 1-2 SC pg.116, *Nasiru v. State* (1999) 2 NWLR (pt.589) 87, *State v. Ogbubunjo* (2001) 1 SC (pt.1) pg.90, *Ojegele v. State* (1988) 1 NWLR (pt.71) 414, *Dawa v. State* (1980) 8-11 SC pg.236.

The respondent represented by the learned counsel Akin Osinbajo replied by defining what amounts to circumstantial evidence in line with the case of *Mohammed v. State* (2007) 13 NWLR (pt.1050) pg.186. The respondent went further to quote from the testimony of PW3 before the trial court. He was a member of the police patrol team along Lagos-Benin Expressway who recovered ammunition and a pistol in an accident car at a spot in the vicinity of the Gateway Bank, Ijebu-Ode the scene of the robbery. The patrol team apprehended the appellants with two 'Ghana must go' bags containing money with Gateway Bank wrappers on them around 6.15 am the following morning. They were then on patrol duty along the same road. PW3 challenged the appellants about the money and they claimed ownership of it. They made the confessional statements 'A' and 'M'; which they retracted during the trial. It is the submission of the respondent that the lower courts rightly acted on them as there are strong circumstantial evidences corroborating the two statements.

The respondent stated that the fact that the appellants were eventually arrested with 'Ghana must go' bags containing the stolen money makes it unnecessary to call the two persons that first saw them. The appellants did not enter the banking hall with the other

armed robbers; they stayed in a vehicle outside the bank and this makes their identification unnecessary. The respondent urged this court to dismiss the appeal and affirm the judgment of the Court of Appeal. The respondent cited cases in support of the foregoing submission - Aremu v. State (1991) 7 NWLR (pt.201) pg.1, Ikemson & ors v. State (1989) 3 NWLR (pt.110) pg. 455, R v. Turnball and ors. (1976) 3 All ER pg. 549, Garba v. COP (2007) 16 NWLR (pt. 1060) pg. 378. B

I have carefully considered the submission on both sides of the divide on this issue. On the sequence of events culminating in the robbery incident, the recovery of the rounds of ammunition in an accident vehicle which the appellants and the third man who escaped into the bush on citing the police abandoned on the one hand; and the recovery of the two 'Ghana must go' bags containing the stolen money property of the bank with the bank wrappers as the identification logo, are two different things. They form part of the aggregate of circumstantial evidence meant to ascertain the truth of the confessional statements - Exhibits 'A' and 'M'. The defence of the appellants was total denial of participating in the robbery incident. The appellants also retracted their statements to the police. The trial court had to conduct a trial within trial before admitting them in evidence. They were eventually marked Exhibits 'A' and 'M'. C D E

By virtue of Section 27 (1) of the Evidence Act Cap 112 Laws of the Federation of Nigeria 1990, a confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime. It is an extra-judicial statement made by an accused person to the police containing assertion of admission showing that he participated in the commission of offence for which he stands accused. Once admitting the charge or creating the impression that he committed the offence charged; the statement becomes confessional. When a confessional statement has been proved to have been made voluntarily and it is positive, unequivocal and amounts to an admission of guilt, it is enough to sustain or base the conviction of an accused. It does not matter whether the maker retracted the statement in the course of the trial. Such a retraction does not necessarily make the confession inadmissible. F G H
Egboghonome v. State (1993)

7 NWLR (pt.306) pg. 383, Bature v. State (1994) 1 NWLR (pt.320) pg. 267, Solola v. State (2005) 11 NWLR (pt.937) pg.460, Edhigere v. State (1996) 8 NWLR (pt.464) pg.1, Ihuebeke v. The State (2000) 4 SC (pt.1 pg. 303. Idowu v. State (2000) 7 SC (pt.11) pg.50, Alarape v. State (2001) 14 WRN 1.

B *Generally speaking, a confession made in judicial proceedings is of greater force or value than all other proofs and it can ground a conviction if the court is satisfied with its truth; there is however a duty on the court to test the truth of a confession by examining it in the light of the other credible evidence before the court which test will enable the court to determine whether -*

1. There is anything outside the confession to show that it is true

D **2. It is corroborated**

3. The statements made in it are in fact true as far as they can be tested

4. The prisoner had the opportunity of committing the crime

E **5. The confession is possible**

6. It is consistent with other facts which have been ascertained and which have been proved. R v. Skyes (1913) 18 CR AIP pg.233, Dawa v. State (1980) 8-11 SC 236, Ogejele v. State (1988) 1 NWLR (pt.71) pg.414.

F *The other evidence offered by the prosecution before the trial court outside the evidence from direct eyewitnesses and the confessional statements is circumstantial evidence. Under the criminal legal system, circumstantial evidence is defined as the evidence of surrounding circumstances which by undesigned coincidence is capable of proving a proposition with the accuracy of mathematics. Circumstantial evidence means that there are a number of circumstances which make a complete unbroken chain of evidence, if that is established to the satisfaction of the court, it may well and properly act upon such evidence. Circumstantial evidence is sufficient to ground a conviction only where the inferences drawn from the whole history of the case points strongly to the commission of the crime by the accused.* Mohammed v. State (2007) 13 NWLR

(pt.1050) pg.186, Nwaeze v. State (1996) 2 NWLR (pt.428) pg.1, Akinmoju v. State (2000) 4 SC (pt.1) pg.64, Duruwode v. State (2000) 12 SC (pt.1) pg.1. **In other words, for circumstantial evidence to ground a conviction, it must lead to one conclusion; namely the guilt of the accused person. Where there are other possibilities that others other than the accused had the opportunity of committing the offence with which the accused was charged, such an accused cannot be convicted of the offence.** B
 Ubani v. State (2003) 18 NWLR (pt.851) pg.22. Such circumstantial evidence abounds before the learned judge during the trial of this case. The 1st PW and 2nd PW both officials of the Gateway Bank C
 Ijebu-Ode Branch, gave evidence of how a gang of armed robbers broke into the bank on the 28th of February, 2008. They found their way to the strong room at gun point and carted away N14, 000,000.00 the property of the bank. PW3 a police officer testified D
 that -

*“At about 11.15 pm along Benin/Lagos Express Road behind Federal Government College, Odogbolu very close to Honeywell Petrol Station, we met an accident vehicle on the express road facing Sagamu involving an Opel Omega with Reg. No. AV 80 Epe. E
 We decided to conduct a search on the accident vehicle. When we opened the boot, we discovered a carton containing 356 live cartridges and one Italian made pistol.”*

P9.15 lines 24-25 of the Record at pg.16. PW3 continued F
 his evidence that -

*“A police guard attached to Honey well petrol station and a civilian guard noticed our presence and came to us. He told us that when they heard the sound of the accident they moved towards the area and they saw three men, two of them carrying ‘Ghana must go’ G
 bags on their heads.*

On 1/2/2002 at about 6.15 am while still on patrol along the same road they saw two men carrying a ‘Ghana must go’ bag. They stopped them while the third person on the other side of the road ran into the bush where he abandoned the second bag.” H

The police patrol team recovered the two bags. There was further evidence that -

“We challenged the two people as to where they were coming from and the contents of the bags. They answered that it con-

tained money which belongs to them. The accused persons in the dock are the two people”.

Pg. 16, lines 17 - 20 of the record.

“The appellants were arrested with N3, 777,900.00 being part of the money stolen from Gateway Bank the previous day. At that time the money had Gateway Bank wrappers on them.”

Pg. 16 lines 25-30 of the Record.

The above circumstantial evidence is cogent, direct, unequivocal and compelling enough to arrive at the irresistible conclusion that the appellants were among the robbers who invaded the Gateway Bank Ijebu-Ode on the 28th of February, 2008. The confessional statements of the appellants Exhibits ‘A’ and ‘M’ corroborated by the evidence of PWs revealed that the appellants were apprehended with money stolen from the Gateway Bank, as the money in their respective denominations were in Gateway Bank wrappers. The lower court rightly invoked the doctrine of recent possession under Section 148 (a) of the Evidence Act. In this case the presumption is that the appellants were the robbers as they claimed ownership of the amount in the ‘Ghana must go’ bags recovered from them by the police.

Section 148 (a) of the Evidence Act provides that -

“The court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case and in particular the court may presume (a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen unless he can account for his possession.” Aremu v. State (1991) 17 NWLR (pt.210 pg.1, State v. Nnolim (1994) 4 SCNJ pg.48, Aiyeola v. State (1969) 1 All NLR pg.309.

The statement of the 2nd appellant; Exhibit M reads -

“We removed the money from the car and stood by the roadside, the money was inside a ‘Ghana must go’ bag, while we left the carton of cartridges and small pistol inside the car at about 10 pm.”

The appellant in his confessional statement further claimed that the money in the ‘Ghana must go’ bag, was their own share of the money. There was ample evidence before the lower court to conclude that the appellants participated in the robbery incident at

the Gateway Bank on the 28th of February, 2008. I must remark that the submission of the appellants appears like that of a drowning man who is determined not to face the realities of the moment. The appellants decided to merely scratch on the surface the effect of the available pieces of circumstantial evidence on the confessional statements of the accused. I find the sum total of the argument of the appellants in this appeal very evasive. I resolve this issue in favour of the respondents. B

Issue Two

Whether the Court of Appeal was right in affirming the conviction and sentence of the appellants by the trial court when none of the members of staff of the Bank and the policemen on duty was called to identify the appellants as the persons they saw at the scene of crime. C

In this issue the appellants challenged the failure to identify the appellants by the victims of the robbery incident, policemen on duty when the robbery occurred and custodians of the key to the safe. I must explain that the purpose of an identification parade in all criminal trials is to show that the person charged with the offence actually committed the offence. It is not in every case that an identification parade is necessary. Where the prosecution witness has knowledge of the accused person, identification parade is not necessary. In order to ascribe any values to the evidence of an eyewitness identification of a criminal, the court in guiding against cases of mistaken identity must meticulously consider the following issues- D E F

- 1. Circumstances in which the eyewitness saw the suspect; was it in difficult conditions?*** G
- 2. The length of the time the witness saw the suspect or defendant at a glance or longer observation?***
- 3. The opportunity of close observation.***
- 4. Previous contact between the two parties.***

5. The lighting conditions. Eyisi v. the State (2000) 15 H NWLR (pt.697) pg.553, Okosi v. State (1989) 1 NWLR (pt.100) pg.642, Alonge v. I.G.P. (1959) SCNLR pg.156, Ikemson v. State (1989) 3 NWLR (pt.110) pg. 455, Ukorah v. State (1977) 4 SC pg.167, Ukpabi v. State (2004) 11 NWLR (pt.884) pg.439, Ebri v.

State (2004) 11 NWLR (pt.885) pg.589.

It is trite however that where an accused person by his confession has identified himself, there would be no need for any further identification parade. Archibong v. State (2004) 1 NWLR (pt.855). On the issue of witnesses to call, it is the prerogative of the prosecution to call witnesses relevant to its case. It is also settled law that the prosecution is not bound to call every person that was linked to the scene of crime by physical presence to give evidence of what he saw. Once persons who can testify to the actual commission of crime have done so, it will suffice for the satisfaction of proof beyond reasonable doubt in line with Section 138 of the Evidence Act. This issue is resolved in favour of the respondent.

The Court of Appeal considered the evidence in the record of appeal and thereafter rightly affirmed the conviction and sentence of the appellants for the offence of armed robbery. We have before us in this appeal the concurrent findings of fact of two lower courts which we have no legally justifiable reason to set aside. I therefore dismiss this appeal for lacking in substance and merit. I affirm the conviction and sentence of the appellants by the two lower courts.

ONNOGHEN JSC

I have had the benefit of reading in draft, the lead judgment of my learned brother ADEKEYE, JSC just delivered. I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed. The appeals are based on the concurrent findings of fact by the lower courts.

Appellants who confessed to the crime were arrested by the police with “Ghana Must Go” bags containing money amounting to N3, 977.900:00 wrapped in Gateway Bank Wrappers, the bank that was robbed by armed robbers on the day in question. Also not disputed is the fact that the said sum of money was the share of appellants of the proceeds of the armed robbery. It is clear that the circumstances which would have caused this Court to interfere with the concurrent findings of fact by the lower courts have not been established to exist in the instant case. The law is settled that this Court does not make a practice of interfering with the concurrent findings

of fact by the lower courts except where the finding is demonstrated to the satisfaction of the court to be perverse, etc.

It is for the above reasons and the more detailed reasons contained in the said lead judgment of my learned brother ADEKEYE, JSC, that I too dismiss the appeal and affirm the judgment of the lower court delivered on the 19th day of April, 2010. Appeal dismissed.

MUHAMMAD JSC

The facts of this case have clearly and succinctly been set out by my learned brother, Adekeye, JSC, in her leading judgment just delivered. It was alleged that some, among the gang of armed robbers, on arrival at the Gateway Bank, Ijebu - Ode branch in Ogun State, forcefully gained entry into the Bank, while the appellants who were part of the gang, stayed in a vehicle outside the bank. The armed robbers frightened the staff of the bank, shooting into the air and the walls. They demanded the keys to the strong room from the custodians. The custodians owned up and the armed robbers took them to the strong room from where they carted away the sum of 14 Million Naira. After the incidence was reported to the Police, PW3, a Police Officer attached to Odogbolu Police station was on patrol with his colleagues along Benue Express way at about 11.15 pm on the same day when he saw a vehicle with Registration Number AV 800 EPE which was involved in an accident at a place not far from Federal Government college Odogbolu.

In the vehicle, the Police recovered a carton containing 356 bullets cartridges and one Italian Pistol. They were informed that three men left the vehicle and that two of them carried "*Ghana must go bag*". That at about 6:15 am, around a filling station close to the scene of the accident, the Police, while still on patrol, saw the appellants with the Ghana must go bag. Upon inquiry, the appellants claimed that the money in the bag belonged to them. The appellants were taken to the Police station where the money in Gateway bank wrappers were counted in the presence of the appellants. The money summed up to N3, 777, 900. The appellants volunteered statements to the Police which were subsequently admitted in evidence and marked as exhibits 'A' and 'M'.

During the trial and at the stage of defence testimonies, the appellants denied having been part of the crime charged. At the end of trial, the learned trial judge found the appellants guilty of the offences charged and they were convicted and subsequently sentenced. Appellants' appeal to the court below was unsuccessful. They further
B appealed to this court. In agreeing with my learned brother, Adekeye, JSC, that the appeal lacks merit, it is my observation that the role of circumstantial evidence in a criminal trial is to support or provide more potency or credibility to a piece of evidence, which, even if left
C alone, would sustain the burden of proof of the crime alleged. Exhibits 'A' and 'M' were found to be the confessional statements of the appellants upon which the trial court could have safely convicted the appellants. The issue of the large sums of money recovered from the appellants wrapped in the Bank's money wrappers, and almost within
D few hours after the alleged operation will leave no one in doubt that the appellants who proffered no other tenable reason to justify their access to the sums recovered from them, formed part of the gang that committed the armed robbery alleged. Further, it is a clear revelation of their nefarious acts, that such deadly weapons were recovered
E from them. The recovery of the large sum of money and that of the weapons go to establish that these are facts which form part of same transaction of the armed robbery alleged. Section 7 of the Evidence Act takes such facts to be so closely connected with the fact in
F issue. They are relevant, whether they occurred at the same time and place or at different times and places. And, when a fact becomes relevant to a fact in issue because it throws light on it as a result of its proximity to it in point of time, place or circumstances, the first mentioned fact [armed robbery as in this appeal] is usually said to be
G relevant under section 7 of the Evidence Act. This is what the English law clothes in its doctrine of RES GESTAE. There is no doubt that the trial court, after paying due diligence to its valuation of evidence found the confessional statements of the appellants relevant, voluntary and admissible and were accordingly admitted as Exhibit 'A' and 'M'. The
H law is always very clear on the point that the appellants can be convicted on their own confessional statements alone regardless of the fact that they belatedly sought to retract same at the trial. It is a right step taken further by the learned trial judge taking the confession along with the circumstantial evidence before him. See UCHE V. THE

STATE [2007] 5 NWLR [part 1027] 214, DAGAYA V. THE STATE [2006] 2 SCM 33. I do not, thus, agree with learned counsel for the appellants that the court below was wrong in affirming the decision of the trial court on circumstantial evidence.

On the issue that the prosecution had failed to call some specified persons to give evidence and that it could whittle down the prosecution's case, as argued by learned counsel for the appellants, leaves me with the duty to remind the learned counsel the trite position of the law that it is not the law that prosecution must call all probable witnesses to testify. The law would be satisfied in the process of discharging the burden placed on the prosecution to prove its case beyond reasonable doubt where it calls those witnesses only who are necessary/essential. This has been found by the learned trial judge to be satisfactorily discharged by the prosecution, it will then be placing additional burden on the prosecution by the appellants if the prosecution is to call all persons who are either closely or remotely connected with the happening of the event in question. That, in my view, will promote absurdity.

For this and the fuller reasons of my learned brother, Adekeye, JSC, I, too, found no substance in this appeal and same is hereby dismissed

NGWUTA JSC

I read in advance the lead judgment just delivered by My Lord, Adekeye, JSC and I entirely agree with the profound reasoning and conclusion therein contained. I would like to add a few words by way of contribution. Appellants raised the issue that they were not identified by either the staff of the bank or the Police. They also questioned the quality of the circumstantial evidence relied on by the trial Court and affirmed by the lower Court. By their own ipso dixit the appellants were inside a car, their escape vehicle while their colleagues carried out the actual robbery. Those who saw them leave the accident vehicle had, at that time, no reason to believe that they were criminals running with their loot.

Be that as it may, identification of the appellants is not necessary for their conviction on the facts accepted by the trial Judge. The State did not predicate its case on identification of the appellants as

the armed robbers, rather the case against the appellants rested on circumstantial evidence as well as the confessional statements made by the appellants to the Police. I will deal with the circumstantial evidence first and the extra judicial confession later. Learned Counsel for the appellants explained circumstantial evidence in a negative term, stating that it is not direct evidence from a witness who saw or heard something. Circumstantial evidence differs from direct evidence merely in the logical relation to the facts in issue. While evidence as to the existence of the facts is direct evidence, circumstantial evidence relates to the existence of facts which raise a logical inference as to the existence of the facts in issue. (See *Advanced Law Lexicon Book 2*, page 1673).

It has been held that where circumstantial evidence is deficient it helps appellant to acquittal. See *Joseph Lori v. The State* (1980) 8-11 SC 81; *Igboji Abieke & Anor v. The State* (1975) 9-11 SC 97 at 104. On the other hand, where circumstantial evidence is overwhelming and leads to no other conclusion than the guilt of the accused, it leaves no room for acquittal. See *Edet Obosi v. The State* (1965) NMLR 129; *R v. Tepper* (1952) AC 480 at 489; *Ogwa Nweke Onah v. The State* (1985) 12 SC 59 at 62 and 63. In his brief of argument, learned Counsel for the appellants raised the issue that: *“Apart from the ‘Ghana Must Go’ bags containing parts of the stolen money found in possession of the appellants, no other incriminating evidence was found in their possession.”*

One piece of evidence, direct or circumstantial, if believed by the Court, will be sufficient to warrant conviction of the accused. Circumstantial evidence is often the best evidence. It is undesigned coincidence, which can prove the disputed point with mathematical accuracy. See *Adio v. The State* (1980) 1-2 SC. 116; *Ukorah v. The State* (1977) 4 SC 167. It is not the quantity, but the quality that matters and one piece of circumstantial evidence which is found by the trial Court to be cogent, complete and unequivocal, compelling and irresistible will be sufficient to warrant a conviction

On the facts of this case, learned Counsel for the appellants and the appellants themselves admitted being in possession of “Ghana Must Go” bags containing parts of the money, the proceeds of armed robbery of the Gateway Bank soon after the robbery. The appellants did not explain how they came to have in their possession currency

notes with the wrappers of the Gateway Bank and this coupled with the circumstances of their apprehension points irresistibly to the conclusion that they were the robbers, or received the money from, the robbers. However the surrounding facts lead conclusively to the fact that the appellants robbed the Gateway Bank as charged. Appellants denied having made their confessional statements voluntarily. This is akin to a drowning man clutching at the last available straw in attempt to save his life. The trial Court rightly conducted a trial within trial and found as a fact that the statements were voluntarily made by the appellants.

There was no appeal against this finding of fact by the trial Court to the lower Court. Since the trial Court was satisfied, through trial within trial that the confessions were voluntarily made, the Court could convict based on the confessions without the requirement for corroboration, so long as the Court is satisfied of the truth of the confession. *Kalu & Anor v. King* 14 WACA 30; *Yusuf v. State* (1976) 6 SC 167. Even if corroboration is required the independent witness's evidence, which was not disputed by the appellants, that the appellants had, in their possession "Ghana Must Go" bags containing part of the stolen fund from the Gateway Bank and the Gateway Bank's wrappers on the money, provide sufficient corroboration.

In addition to all I have stated above, the appeal is against the judgment based on the concurrent findings of fact of the two lower Courts. It is an established principle of law that concurrent findings of facts ought not to be disturbed on appeal unless it is established that the findings are perverse or not based on evidence before the court. See *Seatrade v. Awolaju* (2002) 2 SC (pt. 1) 35. The appellants have offered no basis for the Court to interfere with the judgment of the trial court affirmed by the lower court. For the above and the fuller reasons in the lead judgment, I hold that the appeal is devoid of merit.

PETER-ODILI JSC

This is an appeal against the judgment of the Court of Appeal, Ibadan Judicial Division delivered on the 19th of April, 2010 wherein their lordships affirmed the judgment of his lordship M. A. Dipeolu. J., of the High Court of Ogun State holden at Ijebu-Ode

delivered on the 6th day of July, 2004. Hence, the appeal to this court by the Appellants.

Facts: The Appellants at the court of trial were charged with the offences of conspiracy to commit armed robbery and armed robbery contrary to the provisions of the Robbery and Firearms (Special Provisions) Act, 1990 (as amended) by the Tribunals (Certain Consequential Amendments etc) Act, 1999. At the trial, the Prosecution called 5 witnesses whilst the Accused persons/Appellants testified for themselves and after the addresses of counsel, the trial judge on the adjourned date delivered his judgment. He found the Appellants guilty of the offences of conspiracy to commit armed robbery and armed robbery and sentenced both to death. The Appellants appealed to the Court of Appeal which upheld the decision and orders of the trial court, hence the present appeal.

The background facts are that the Appellants were arraigned before the High Court of Ogun State on a two count charge of the offences stated above. The case of the Prosecution is that on 28th February, 2008 a gang of armed robbers came to the Gateway Bank, Ijebu- Ode Branch of Ogun State. Some of the armed robbers forcefully gained entry into the bank, while the Appellants came with them staying in a vehicle outside the bank. The armed robbers frightened the staff of the bank, shooting into the air and the walls and demanded for the custodians of the keys to the strong room. The custodians owned up and the armed robbers took them to the strong room from where they carted away the sum of N14 million (Fourteen Million Naira). The matter was reported to the police immediately. P.W.3, a police officer attached to Odogbolu Police Station was on patrol with his colleagues along the Benin Expressway at about 11.15 pm on the same day when he saw an Opel Omega vehicle with Lagos Registration Number AV 800 EPE which had been involved in an accident behind Federal Government College, Odogbolu, a place not far from Ijebu-Ode. In the vehicle, the police recovered a canon containing 356 bullets cartridges and one Italian pistol. They were informed that three men left the vehicle and that 2 of them carried “Ghana must go bag.” That at about 6.15 a.m. around a filling station close to the scene of the accident, the police while still on the patrol saw the Appellant with the “Ghana must go” bags and upon enquiry the Appellants claimed that the money in the bags belonged

to them. They were taken to the police station where the money in Gateway Bank wrappers was counted in the presence of the Appellants. The money summed up to N3, 777, 900.00. The Appellants volunteered statements to the police after having been duly cautioned, these statements were admitted as Exhibits A and M after the court conducted a trial within trial in respect of each of the statements. B

The Appellants' defence during the trial was an outright denial of the crime and gave evidence for themselves. At the conclusion of the trial, the learned trial judge in his judgment held that the Prosecution had proved beyond reasonable doubt the offences of conspiracy to commit armed robbery and armed robbery. The Appellants were convicted and sentenced accordingly. The court below affirmed what the trial court did and the Appellants have now appealed to this court. The appeal in this court was heard on 29th day of March, 2012 on which day learned counsel for the Appellants adopted their brief settled by Aderibigbe Adedeji. In the brief were formulated three issues for determination which are, viz: C D

(a) Whether the justices of the Court of Appeal were right in law that there was cogent and corroborative evidence outside the confessional statement that made the confessions of the Appellant probable. E

(b) Was the Court of Appeal right in affirming the conviction and sentence of the Appellants by the trial court when none of the members of staff of the bank or the police on duty was called to identify the Appellants as the persons they saw at the scene of crime. F

(c) Whether the circumstantial evidence in this case was cogent, direct, consistent, and unequivocal and irresistibly led to the conclusion that the Appellants were among the armed robbers who invaded and robbed the Gateway Bank, Ijebu-Ode on 28/02/2002. G

In a Respondent's brief settled by Akin Osinbajo, Attorney General of Ogun State filed on 3/2/11. Learned counsel adopted the brief in which was distilled a single issue which is as follows:- Whether considering the confessional statement of the Appellants and the circumstantial evidence before the trial court, the trial judge was right in convicting the Appellants in the absence of identification of the Appellants by the victims of the robbery incident. H

The issue as couched by the Respondent is apt and captures the poser through which the necessary answers would be elicited. In

that single issue were raised the matter of whether the confessional statements and the circumstantial evidence available, the trial court was right to convict and that conviction affirmed by the court below. Learned counsel for the Appellants contended that the learned justices of the Court of Appeal seemed to have overlooked some salient facts in arriving at their conclusion and affirming the conviction and sentence of the Appellants. That those facts are that no evidence was led by the Prosecution to establish that the Opel Car which had an accident and found on the road side by the police belonged to the Appellants or that the Appellants were the actual occupants of the car at the time of the accident or that the weapons in the car belonged to the Appellants. Also that the “Ghana must go” bags containing parts of the stolen money were found in the possession of the Appellants. He stated that there was no evidence to show that the Opel Car was used for the robbery operation nor was there evidence of identification of the Appellants as the occupants of the vehicle at the time of the accident. Also none of the guards and police officer guarding the filling station was called to testify to the Appellants being the occupants of the car at the time of accident. Mr. Adedeji submitted that the mere fact that the Appellants were found to be in possession of the “Ghana must go” bags containing the stolen money in Gateway Bank’s currency wrappers 30 without more is not sufficient to ground a conviction of the Appellants by the trial court. That the circumstantial evidence proffered did not meet the conditions upon which a conviction can be made. He cited: *Omogodo v. State* (1981) 5 S.C. 5; (1981) 5 S.C. (Reprint) 4; *Lori v. State* (1980) 8-11 S.C. 81; (1980) 8-11 S.C. (Reprint) 52; *Idowu v. State* (1998) 9-10 S.C. 1; (1998) 11 NWLR (pt. 574) 354; *Igboji Abieke v. The State* (1975) 9-11 S.C. 97 at 104; (1975) 9-11 S.C. (Reprint) 60; *State v. Nafiu Rabi* (1980) 1-2 S.C. 94; (1980) 1-2 S.C. (Reprint) 61; (1980) 1 NLR 4; *Adie v. State* (1980) 1-2 S.C. 116; (1980) 1-2 S.C. (Reprint) 73; *Nasiru v. State* (1999) 1 S.C. 1; (1999) 2 NWLR (Pt. 559) 87.

For the Appellants were further canvassed that material witnesses were not called to testify and so a doubt was created in the case of the Prosecution which weakened and destroyed the inference that the Appellants were guilty of the offences charged. He cited *Abieke v. The State* (1975) 9-11 SC 97; (1975) 9-11 SC (Reprint) 60.

Responding, learned counsel for the Respondent stated that from the evidence of PW. 3 and the confessional statements of the Appellants, exhibits A and M, the Appellants were arrested with some of the stolen money in the bank's wrappers about twelve hours after the robbery. The law is that when there is evidence that a stolen property is found in possession of a person the presumption is that the person in whose possession the property was found is either the thief or receiver. He referred to *Aremu v. The State* (1991) 7 S.C. (Pt. III) 82; (1991) 7 NWLR (Pt. 201) 1 at 16, Section 149(a) of the Evidence Act. Mr. Osinbajo of counsel said the Appellants were not receivers but the actual armed robbers that they robbed the Gateway Bank, Ijebu-Ode as they claimed ownership of the money when PW. 3 challenged them. That assuming without conceding that the circumstantial evidence in this case alone is not sufficient to warrant the conviction of the Appellants, it has served as a good corroboration to exhibits A and M the confessional statements (if the Appellants. He said that the Appellants can be convicted on their confessional statements alone regardless of the fact that they retracted them at the trial. He cited *Uche v. State* (2007) 5 NWLR (Pt.1027) 214.

For the Respondent was also submitted that it is trite law that corroborative evidence may be direct or circumstantial, corroboration needs not be evidence that the Appellants committed the crime, it is sufficient if it is merely circumstantial evidence. He cited *Dagayya v. State* (2006) 1 S.C. (Pt. II) 1; (2006) 2 SCM 33 at 67. Mr. Osinbajo said it is not in all cases as Appellants' counsel contended that identification parade is required, such as in the case in hand. He cited *Ikemson & Ors. v. State* (1989) 6 S C. (Pt. I) 114; (1989) 3 NWLR (pt. 110) 455. That not calling the victims and policemen on duty at the bank or those at the petrol station was not fatal. He said the necessary meeting of the minds among the Appellants and their colleagues who went into the banking hall were present. He referred to *Garba v. COP* (2007) 16 NWLR (Pt. 1060) 378 at 405. The summary of the submissions of the Appellants' counsel is as stated below and thus:-

1. The circumstantial evidence led before the trial court and relied upon by the learned trial judge in convicting and sentencing the Appellants were not direct, cogent, or consistence enough to irresistibly and unequivocally lead to the guilt of the Appellants That the

Appellants were therefore entitled to an acquittal.

2. That Exhibits “A” and “M” -which are the confessional statements of the Appellants were not tested by trial court to show that they were in fact true and consistent with the other facts pruned by the Prosecution.

B 3. The failure of the Prosecution to call the two custodians of the strong room who in fact saw the armed robbers on the date of the robbery is fatal to the case of the Prosecution.

C 4. The doctrine of recent possession relied upon by the learned justices of the Court of Appeal in affirming the conviction and sentence of the Appellants without more must be rejected by this honourable court.

The positions of the Respondent as put forward by the learned counsel are as follows:-

D 1. That the mere fact that Exhibits A and M were retracted by the Appellants does not mean that the learned trial judge cannot act on same especially as there are strong circumstantial evidence corroborating the said statements

E 2. That identification of the Appellants is unnecessary as there is evidence that the two Appellants stayed outside in the vehicle where the victims could not see them while other members of the gang went into the banking hall.

F 3. That the Appellants were eventually arrested with “Ghana must go bags” makes it unnecessary to call the two persons that first saw them with the Ghana must go bags.

4. That the appellate court rightly considered the evidence contained in the record of appeal and rightly upheld the conviction of the Appellants.

G From the evidence proffered, it is clear the evidence is circumstantial and the follow up question would be what should the court make of it in the light of the offences on which the Appellants were charged? The definition of what circumstantial evidence is can be found in Mohammed v. State (2007) 4 S.C. (Pt. 1) 181; (2007) H 13 NWLR (Pt.1050) 186 at 204; to be:

“Circumstantial evidence is an evidence surrounding circumstances which by undersigned coincidence is capable of proving a proposition with the accuracy of mathematics. Circumstantial evidence means that there are a number of circumstances which make a com-

plete unbroken chain of evidence, if that is established to the satisfaction of the court it may well and properly act upon such evidence."

Earlier by another slant of language, Onu, JSC., had stated circumstantial evidence to be:

"It is evidence of surrounding circumstances which by undesignated coincidence is capable of proving a proposition with the accuracy of mathematics." See The State v. Obubinio (2001) 1 S.C. (Pt. 1) 90. B

Situating the definition of circumstantial evidence to the case in hand, it is necessary to restate some of the testimonies of witnesses and the confessional statements of the Accused persons Exhibits A and M alongside the exhibits gun and cartridges not to talk of the Opel Car allegedly used during the course of the robbery and later accidented and the recovered money. P.W.3, Wahab Fasai, police officer had stated at Page 15 of the record thus: D

"At about 11.15 pm along Benin/Lagos Express Road behind Federal Government College, Odogbolu very close to Honey-Well Petrol Station we met an accident vehicle on the express road facing Sagamu involving an Opel Omega with Reg. No.80 EPE... We decided to conduct search on the accident vehicle. When we opened the boot, we discovered a carton containing 356 live cartridges and one Italian made pistol." E

The P.W.3 had gone further in evidence to say at Page 16:

"A police guard attached to Honey-Well Petrol Station and a civilian guard noticed our presence and came to us. He told us that when they heard the sound of the accident, they moved towards the area and they saw three men, two of them carrying "Ghana must go" bags on their head. We challenged the two people as to where they were coming from and the contents of the bags. They answered that it contained money which belongs to them. The Accused persons in the dock are the two people." F G

In the confessional statement of 1st Appellant in Exhibit A, he stated thus:

"At the bank we were instructed to wait in the car while Folarin and others went into the bank with three guns." H

In Exhibit M, the confessional extra-judicial statement of the 2nd Appellant he stated as follows:

"We removed the money from the car and stood by the road

side, the money was inside a Ghana must go bag, while we left the carton of cartridges and small pistol inside the car at about 10pm. Since me and Rashidi did not know road, they instructed Folarin to take me and Rashidi to Lagos in the snatched car, as we were driving along the express way toward Lagos, all of a sudden the car skidded off the road. The vehicle could not move again. The time was about 10pm and we had to sleep in the bush. Early morning by 6am of 1/3/02 myself and Rashidi had to come to the road with the view of boarding a vehicle to Lagos. All of a sudden a police patrol team just drove by and asked me and Rashidi to stop. It was there they found our own share of the money inside the Ghana must go bag that we were carrying Folarin was coming at a distance behind us with his own share of money he was carrying. On sighting what was happening he quickly ran 'into the bush and escaped.'

Interestingly in their defence at the trial court, the Appellants denied being part of the offences and retracted their statements claiming they were illiterate and could not understand English. This latter aspect, the learned trial judge debunked in her findings when she held that in the course of their testimonies each of the Appellants had answered some questions put to them in English and answered in English. The Appellants posture that material witnesses had not been brought to testify would not avail in view of the pieces of evidence which created a chain viz:

1. The Confessional Statements A and M in which were some facts only from within the personal knowledge of the Accused/Appellants and such as could not have come from the police on their own.

2. Some of the recovered stolen money that is N3,777,900.00 wrapped in the Gateway Bank wrappers.

3. The accidented Opel Omega Car.

4. The weapon and cartridges found inside the boot of the accidented Opel Omega Car.

All the pieces falling in place, it is therefore not essential that some eye-witnesses in the bank were not called. This is particularly so in this instance where by their own admission the Appellants did not enter the banking hall, but were instructed by their leaders to stay in the getaway car and they complied. Therefore, if the eye-witnesses in the bank were called, who would they be identifying since they did not see the participants who were outside. Also important, that part

of the stolen money were found with the Appellants within 12 hours in circumstances which show them not as receivers but as active participants in the robbery and within the common purpose of the other actors thereby showing the conspiracy with which they had all proceeded into the nefarious act. There was no deficiency in the circumstantial evidence rather, the doctrine of recent possession, the clear evidence of the witnesses including the police officers and the other recovered items added to the confessional statements all solidify the evidence and leading to the irresistible conclusion that the Accused/ Appellants were the robbers and had in their possession some of the stolen money. In fact the evidence and its surrounding circumstances have been able to prove the proposition with accurate mathematical certainty without any break in the chain that the Accused and others at large were culprits. No other inference can be drawn except the foregoing. I place reliance on the following cases: *Aremu v. The State* (1991) 7 S.C. (Pt. III) 82; (1991) 7 NWLR (Pt. 201) 1 at 16; *Mohammed v. The State* (2007) 4 S.C. (Pt.) 181; (2007) 13 NWLR (Pt. 1050) 186; *Uche v. State* (2007) 5 NWLR (Pt. 1027) 214; *Dagayya v. The State* (2006) 1 S.C. (Pt. II) 1; (2006) 5 SCM 33.

From the foregoing and the fuller reasons proffered by my learned brother, O. O. Adekeye, JSC in the leading judgment. I also affirm the concurrent findings of the two courts below and dismiss this appeal.

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