

SUPREME COURT OF NIGERIA
FRIDAY 6TH JULY, 2012. SC. 295/2010
CORAM:- F. F. TABAI, M. S. MUNTAKA-COOMASSIE,
J. A. FABIYI, B. RHODES-VIVOUR, O. ARIWOOLA, JJSC

THE STATE APPELLANT
V.
1. USMAN ISAH
2. BELLO RILWANU RESPONDENTS
3. UMARU MUSHEDE

CRIMINAL PROCEDURE - Confession - Conviction - Validity - Where confession is unequivocal and amounts to guilt - Conviction can be made - Irrespective of retraction by accused (H1)

EVIDENCE - “Prove” - Meaning - The word connotes situation where there is evidence before court - On which statement would be tested - And its truthfulness confirmed (H2)

EVIDENCE - Confession - Test - Confession is tested inter alia - To see if there is anything outside confession - To show that it is true (H3)

CRIMINAL PROCEDURE - Confession - Proof - Since the truth of the statements could not be ascertained - Prosecution has failed to prove its case beyond reasonable doubt (H4)

FACTS

Accused/respondents were charged before the High Court of Kaduna State with the offence of armed robbery contrary to section 1(2)(a) of the Robbery & Firearms (Special Provisions) Act Cap. 398 Laws of the Federation of Nigeria 1990. At the trial, prosecution/appellant called two witnesses and tendered seven exhibits which include respondents’ confessional statement. When the statement was about to be tendered, respondents retracted from same.

Nonetheless, the statement was admitted in evidence. Based on the evidence of the two prosecution witnesses and confessional statement of respondents, the learned trial Judge convicted and sen-

tenced respondents to fourteen years imprisonment. Respondents were dissatisfied, hence they appealed to the Court of Appeal, Kaduna Division. The court allowed the appeal. Aggrieved, appellant filed appeal at Supreme Court.

ISSUE FOR DETERMINATION

“Whether the learned Justices of the Court of Appeal were right in discharging and acquitting the respondents on the basis that there was no corroboration to or independent evidence supporting the confessional statements to warrant their conviction”.

HELD (Unanimously dismissing the appeal per

MUNTAKA COOMASSIE JSC)

Confession - Conviction - Validity

1. Where a confessional statement is proved, positive and unequivocal and amounts to an admission of guilt, as in this case, such statement is sufficient to ground the finding of guilt hence a conviction without more can be made. It is therefore immaterial that the accused person retracted from it during the trial.

Can the court then proceed to convict the respondents based on these statements particularly when they have been retracted? I have no doubt in my mind and the law is settled that a free and voluntary confession of guilt made by an accused person, if it is direct, positive and proved is sufficient to warrant the conviction of an accused without any corroborative evidence as long as the court is satisfied of the truth of the confession. (p. 4043 G/4046 A)

EVIDENCE - “Prove” - Meaning

2. The word “prove” connotes a situation where there is evidence before the court on which the statement would be tested and its truthfulness confirmed. But where there is absolutely no evidence before the court ‘to test the statement with the issue of it being proved and the court is satisfied with its correctness does not arise. That is the position in the case at hand. (p. 4046 D)

Confession - Test

3. In testing the correctness of a confessional statement the following test are to be applied:-

i. Is there anything outside the confession to show it is true?

ii. Is it corroborated?

iii. Are there relevant statements of fact made in it, which are most likely true as far as they can be tested?

iv. Was the accused the one who had the opportunity of committing the offence?

v. Is his confession possible?

vi. Is it consistent with other facts which have been ascertained and have been proved? (p. 4046 E)

Confession - Proof

4. Applying the principles enunciated above to the present case, it is crystal clear that these confessional statements have not been proved and as such their correctness or truthfulness could not be ascertained. The prosecution therefore has failed woefully to prove its case beyond reasonable doubt. It is for these reasons that I agree with the decision of the lower court that the prosecution could not prove its case as required.

(p. 4047 A)

NOTABLE POINTS OF INTEREST

RHODES-VIVOUR JSC

1. Eligible witnesses in armed robbery case

In a charge of armed robbery the following vital witnesses are expected to give evidence for the prosecution, and where the prosecution fails in that regard very serious doubts arise as to whether the accused persons really committed the offence:

1. The victim of the armed robbery if still alive;
2. The Police Officers who arrested the accused persons;
3. Evidence of the circumstances in which the accused persons were arrested;
4. Eye witnesses or any witness who should give credible

evidence of the armed robbery.

5. If reliance is placed on circumstantial evidence, it must be compelling and lead to only one conclusion, and that is that the accused persons were responsible for the armed robbery. (p. 4050 B)

B ARIWOOLA JSC

2. When trial within trial is unnecessary

However, where an accused person is merely disputing the correctness of contents of a written statement or that he made no statement at all, it is not necessary to have a trial within a trial.

C (p. 4054 A)

REPRESENTATION

Taiwo E. Taiwo, for the Appellant

D A. Akeredolu [Mrs.] with W. U. Rugegbere, for the 1st Respondent
Ibrahim Idris with Femi Motojesi, for the 2nd Respondent
Nnamons Ekanem with Rosemary Salami [Mrs.], for the 3rd Respondent

E CASES REFERRED TO

Idowu v. The State (2000) 7 SC 50

Edamine v. The State (1996) 3 NWLR (Pt.438) 530

Gbadamosi v. The State (1991) 6 NWLR (Pt. 196) 182

Ubierho v. The State (2005) 5 NWLR (Pt. 919) 644

F UBA Plc v. Okeke (2004) 7 NWLR (Pt. 872) 393

Kraus Thompson Org Ltd v. Unical (2004) 9 NWLR (Pt. 879) 631

Tanko v. The State (2008) 16 NWLR (Pt. 1114) 597

Hassan v. The State (2001) 15 NWLR (Pt. 735) 184

G Akpan v. The State (1990) 7 NWLR (Pt. 160) 101

Kabiru v. A-G Ogun State (2009) 5 NWLR (Pt. 1134) 209

Shande v. The State (2005) 12 NWLR (Pt. 939) 301

Madjamu v. The State (2001) 9 NWLR (Pt.718) 349

Yesufu v. The State (1976) 6 SC 167

H Okegbu v. The State (1984) 8 SC 65

Ohuka v. The State (1988) 7 SC 24

STATUTES REFERRED TO

Robbery & Firearms (Special Provision) Cap. 398 LFN 1990, s.

1(2)(a)

Evidence Act, s. 27(1)(2)

LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC

This appeal involves the question or determination of whether a court of law can convict an accused person based solely on his retracted confessional statement without any independent evidence outside the confessional statement. B

The respondents herein, were the accused persons before the trial court charged with the offences of armed robbery contrary to Section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act Cap. 398 Laws of the Federal Republic of Nigeria 1990. The appellant in proof of the charges called two witnesses and tendered seven (7) exhibits, which include the respondents' confessional statements i.e. Exhibits, 1, 1A, 2, 2A and 5. C

The two witnesses called by the appellant were Investigating Police officers (IPO). PW1 is one CPL. Aminu Hamza, who gave evidence of how the file was transferred from D.P.O Anchau Division with three accused persons, and locally made pistol with two (2) red riffle cartridges. He took the 1st accused's statement and when he was about to tender it the accused denied making the statement, i.e. he retracted and the statement was admitted as exhibits 1 and 1A. He also took the statement of the 3rd accused person and when he sought to tender same, the 3rd accused also denied making the statement, i.e. he also retracted the statement, nonetheless the statement was admitted in evidence as exhibits 2 and 2A. The witness also tendered the locally made pistol and live cartridges as exhibits 3 and 4 respectively. D

Under cross-examination he admitted that apart from recording the accused persons statements he did nothing more. E

PW. 2 , one CPL Anthony Kahuwai, who only took the statement of the 2nd accused person and did nothing more. Based on the evidence of the two witnesses and the confessional statements admitted in the course of the proceedings, the trial court convicted and sentenced the two accused persons to fourteen years (14) imprisonment each. The trial Judge's judgment is contained on pages 45 - 64 of the record. F

The accused/convicted persons were dissatisfied with the judg- G

ment of the trial court, as a result they successfully appealed to the Court of Appeal, Kaduna Division, hereinafter referred to as the lower court. The lower court after hearing the parties unanimously allowed the appeal, set aside the conviction and discharged and acquitted both accused persons.

B In allowing the appeal, the lower court restated some of the principles that are germane to the determination of this appeal. On whether the court can rely solely on a confessional statement to convict an accused person, the lower court held thus on page 138 -139.

C *“It is a long aged principle that a confessional statement may be sufficient to ground a conviction notwithstanding its retraction by the accused. See Idowu v. The State (2000) 2 NWLR (Pt. 680) 48 where the Supreme Court further stated that what the court need to do is to consider both the confession and the evidence in retraction*
D *and decide where the truth lies. A free and voluntary confession of guilt made by an accused person if it is direct and positive is sufficient to warrant his conviction without any corroborative evidence as long as the court is satisfied of the truth of the confession. It must be emphasized here that admissibility of a confessional statement is one*
E *thing, while the weight to be attached to it is a different thing altogether. The nature of weight to be attached to a confessional statement admitted in evidence can only be ascertained after the confessional statement has undergone certain tests”.*

F At page 147, the lower court applied the principles stated above to this case and found thus:-

“It is clear from the record that the said confessional statements of the appellants were not subjected to any scrutiny by the trial court. No witness testified saying that the appellants robbed him
G *either with or without any gun. The Police officer who supposedly arrested them immediately after the incident was not called to give evidence.... I am sorry to state that the criminal charge and the ingredients of the offence of armed robbery preferred against the appellants were not proved beyond reasonable doubt notwithstanding the*
H *existence of the said confessional statements”* per Orji Abadua (JCA).

The appellant was dissatisfied with the unanimous judgment of the lower court and has appealed to this court. Both parties filed and exchanged their briefs of argument. Both briefs were adopted. The appellant in its brief formulated only one issue for determination

distilled from the three (3) grounds of appeal contained in the Notice of Appeal as follows:-

“Whether the learned Justices of the Court of Appeal were right in discharging and acquitting the respondents on the basis that there was no corroboration to or independent evidence supporting the confessional statements to warrant their conviction”. B

The first respondent also formulated one issue for determination of this appeal thus:-

“Whether the lower court was right in discharging and acquitting the respondents on the basis of lack of material and credible evidence from the prosecution”. C

The 2nd respondent toed the lines of the appellant and formulated one issue for the determination of the appeal as follows:-

“Whether the learned Justices of the Court of Appeal were right in discharging and acquitting the respondents based on want of material and reliable evidence sufficient to warrant their convictions”. D

The 3rd respondent is of no exception as he also formulated one single issue for determination in the following terms:-

“Whether the Court of Appeal was right in discharging and acquitting the 3^d respondent on the basis that the prosecution did not prove its case beyond reasonable doubt notwithstanding the 3^d respondent’s alleged confessional statement”. E

At the hearing, the learned counsel for the appellant adopted his brief of argument and urged this court to allow the appeal. The gist of his submissions is that the confessional statements of the respondents are sufficient and reliable evidence upon which the court can base its conviction. He contended that free and voluntary confession of guilt made by an accused person, if it is direct and positive to warrant his conviction without any corroborative evidence as long as the court is satisfied of the truth of the confession, case of Joseph Idowu v. The State (2000) 7 SC 50 at 62, (2000) 12 NWLR (Pt.680) 48 was cited. F G

Where a confessional statement is proved, positive and unequivocal and amounts to an admission of guilt, as in this case, such statement is sufficient to ground the finding of guilt hence a conviction without more can be made. It is therefore immaterial that the accused person retracted from it during the trial. I refer to Nkwuda Edamine v. The State (1996) 3 NWLR H

(Pt.438) p.530 at 537; Ganiyu Gbadamosi & Ors v. The State (1991) 6 NWLR (Pt. 196) 182/202.

It was further contended that the requirement of corroboration is not mandatory since the confessional statement has been admitted and properly proved. Learned counsel then submitted that the offence of armed robbery has been proved beyond reasonable doubt, the ingredients of the offence to wit, that:-

i. there was a robbery or series of robberies;

ii. each robbery was armed robbery and

iii. the accused was one of those that participated in the robbery. The ingredients are all present in this case he concluded.

Learned counsel therefore contended that the lower court was wrong in setting - aside the judgment of the trial court.

Learned counsel to the 1st respondent also adopted his brief of argument at the hearing and urged the Supreme Court to dismiss the appeal. In his brief of argument it was the submission of the 1st respondent that the lower court was perfectly right in its judgment. The trial court erroneously failed to assess the quality of the confessional statements. He cited the case of Ubierho v. The State (2005) 5 NWLR (Pt. 919) 644 in which the approach to be followed in assessing the quality of a confessional statement whether retracted or not are stated. He contended that in this case no shred of corroborative evidence was pleaded before the trial court apart from recording of statement by PW1 and PW2. Learned counsel further contended that the locally made pistol and cartridges tendered were not linked to any of the respondents. No where a witness testified that he was robbed. The victims of the alleged robbery were not called to testify and no explanation was given for their failure to be in court and testify. The police officers who arrested the respondents were not called. It was his contention therefore that the prosecution has failed to prove its case beyond reasonable doubt.

Learned counsel to the 2nd respondent also adopted his brief of argument and urged us to dismiss the appeal. He further submitted that the findings of the lower court which formed the basis of their decision were not challenged in this appeal hence those findings are still valid and subsisting. He cited the cases of U.B.A. Plc. v. Okeke (2004) 7 NWLR (Pt.872) 393 at 410., Kraus Thompson Org; Ltd v. Unical (2004) 9 NWLR (Pt. 879) 631/642 and others. He referred

this court to the fact that only the Hausa version of the 2nd respondent's statement was tendered which was not thumb printed, and since the business of that court is not transacted in Hausa language. The language of that court is English, it was wrong for the trial court to have based its conviction of the 2nd respondent on it.

On the issue of whether the confessional statements need corroboration his submission has been covered by that of the counsel to the 1st respondent. B

Learned counsel to the 3rd respondent also adopted his brief of argument and urged this court to dismiss the appeal. Learned counsel submitted that in a criminal case, the onus is on the prosecution to prove the offence alleged beyond reasonable doubt. Counsel agreed that a court can rely solely on a confessional statement to ground a conviction even when same is retracted. However, it is desirable to have outside the confession some evidence of circumstance no matter how slight, which makes it probable that the confession was true, especially where the accused retracted from the statement, cites *Tanko v. The State* (2008) 16 NWLR (Pt. 1114) 597 at 628; *Hassan v. The State* (2001) 15 NWLR (Pt. 735) 184 at 198. C

All other submissions of the 3rd respondent on this point have been covered by the submissions of the 1st respondent and there would be no need to reproduce them here. D

As I have pointed out earlier, all the parties identified one issue each for determination. These issues are on the same point, namely, whether there is need for corroboration or not, they relate to the same but the issue as formulated by the appellant was clearer and cogent, and as such I will decide this appeal based on the issue formulated by the appellant. E

As shown in the record at the trial, the appellant called two witnesses who only performed the job of taking statement from the accused persons and did nothing more. PW1 stated that he visited the scene of the alleged robbery and did not see anything. Neither complainant nor a victim of the alleged robbery gave evidence of the fact that he was robbed at gun point or identified the respondents as the persons that robbed. Thus outside the confessional statements which were retracted by the respondents, there was no iota of evidence of armed robbery, and that the respondents participated in the robbery. The question that agitates my mind at this stage is that, F

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could the trial court be said to have properly tested these statements in order to determine the weight to be attached to it. It is apparent that there is no evidence upon which these statements could be tested on the record. The only evidence in the record is that of the taking of the respondents' statements. **Can the court then proceed to con-**

vict the respondents based on these statements particularly when they have been retracted? I have no doubt in my mind and the law is settled that a free and voluntary confession of guilt made by an accused person, if it is direct, positive and proved is sufficient to warrant the conviction of an accused without any corroborative evidence as long as the court is satisfied of the truth of the confession. See *Joseph Idowu v. The State* (supra) at p. 48; *Edamine v. The State* (1996) 3 NWLR (Ft. 438) 530/537; *Idowu v. The State* (2000) 12 NWLR (Pt. 680) 48; *D and Akpan v. The State* (1990) 7 NWLR (Pt. 160) 101.

My lords, how is a confessional statement proved in determining whether it is true before the court will rely on it?

The word "prove" connotes a situation where there is evidence before the court on which the statement would be tested and its truthfulness confirmed. But where there is absolutely no evidence before the court 'to test the statement with the issue of it being proved and the court is satisfied with its correctness does not arise. That is the position in the case at hand. In testing the correctness of a confessional statement the following tests are to be applied:-

i. Is there anything outside the confession to show it is true?

ii. Is it corroborated?

iii. Are there relevant statements of fact made in it, which are most likely true as far as they can be tested?

iv. Was the accused the one who had the opportunity of committing the offence?

v. Is his confession possible?

vi. Is it consistent with other facts which have been ascertained and have been proved?

See *Kabiru v. A-G Ogun State* (2009) 5 NWLR (Pt.1134) 209 at 225; *Ubierho v. The State* (2005) 5 NWLR (Pt. 919) 644; *Shande v. The State* (2005) 12 NWLR (Pt.939) 301; *Hassan v. The State* (2001)

15 NWLR (Pt. 735) 184; and Madjamu v. The State (2001) 9 NWLR (Pt. 718) 349.

Applying the principles enunciated above to the present case, it is crystal clear that these confessional statements have not been proved and as such their correctness or truthfulness could not be ascertained. The prosecution therefore has failed woefully to prove its case beyond reasonable doubt. It is for these reasons that I agree with the decision of the lower court that the prosecution could not prove its case as required.

Consequently, I hold that this appeal is lacking in merit it must fail. Same is hereby dismissed by me. The judgment of the lower court is sound and correct, same is affirmed. Appeal dismissed.

FABIYI JSC

This is an appeal against the judgment of the Court of Appeal, Kaduna Division (the court below) delivered on 7th July, 2010 in which the judgment of Adamu, J. delivered on 17th June, 2003 was set aside and the respondents herein were discharged and acquitted.

At the trial court, the respondents were charged jointly for the offence of armed robbery under section 1 (2) (a) of the Robbery and Firearm (Special Provisions) Act. Cap. 398 LFN 1990. The trial court relied on retracted confessional statements of the respondents without any shred of required corroborative evidence to nail them. The conviction was set aside by the court below on the ground that the confessional statements were not corroborated by independent evidence and that the statements were not in consonance with the requirements of the law.

The state has decided to appeal to this court. Briefs of argument were duly filed and exchanged by the parties. The issue for determination of the appeal, as distilled on behalf of the appellants, reads as follows:-

“Whether the learned justices of the Court of Appeal were right in discharging and acquitting the respondents on the basis that there was no corroboration to or independent evidence supporting the confessional statements to warrant their conviction.”

On behalf of each respondent, a similar issue was couched in

different words. I shall not reproduce them so as to conserve energy.

Confession is defined in section 27 (I) of the Evidence Act as an admission made at anytime by a person charged with a crime stating or suggesting the inference that he committed the crime. Section 27 (2) provides that a confessional statement is relevant to proceedings if it is voluntarily made. Such confession must be voluntary, positive and unequivocal before same can be acted upon by the trial court. See: Yesufu v. The State (1976) 6 SC. 167 Okegbu v. The State (1984) 8 SC. 65.

The confessional statements of the respondents were retracted by them during their trial. The offence charged is a serious one. The courts, as a matter of practice, normally require some evidence, however slight in addition to a confessional statement which makes it probable that same reflects the truth. A confessional statement should be adequately tested to ascertain its veracity. See: Ubierho v. The State (2005) 5 NWLR (Pt. 919) 644, Ohuka v. The State (1988) 7 SC 24, (1988) 1 NWLR (Pt. 72) 539. The court below at pages 146 - 147 of the record of appeal found as follows:

"In the instant case, the prosecution did not call any of the victims of the crime nor the police officers who actually investigated the offence - There is no page on the record where the trial court subjected the said confessional statements to any test so as to ascertain their veracity."

The court below felt that a lot of doubt existed in the case and that same should be resolved in favour of the respondents. I too seriously feel that the victims of the offence charged should have been called to clear the air as to what really happened. As well, the officers who investigated the matter should have been called. The prosecution ought not to have placed sole reliance on the bare confessional statements. I am unable to fault the court below for arriving at the conclusion that the offence charged was not proved beyond reasonable doubt as propounded by Lord Sankey L.C. in Woolmington v. D.P.P (1935) AC. 462.

For the above reasons and the fuller ones adumbrated in the judgment of my learned brother - Muntaka- Coomassie, JSC, I too feel that the appeal is devoid of merit and should be dismissed. I order accordingly and affirm the decision of the court below without any hesitation.

RHODES-VIVOUR JSC

I read in draft the leading judgment delivered by my learned brother, Muntaka-Coomassie, JSC. I agree with his lordship's reasoning that the appeal should be dismissed. The respondents were charged under section 1(2) (a) of the Robbery and Firearms (Special Provisions Act) Cap 398 Laws of the Federation of Nigeria. The issue in the trial court had to do with the admissibility of the respondents' confessional statements, and reliance solely on the said statements in convicting the respondents. Only the two Police Officers who obtained the respondents' retracted confessional statements gave evidence for the prosecution. The respondents were sentenced to 14 years imprisonment under section 2(1) of the Robbery and Firearms (Special Provision) Act Cap 398, Laws of the Federation of Nigeria 1990,

The Court of Appeal rightly in my view found the judgment of the High Court flawed. The Court of Appeal observed as follows:

"....In the instant case the prosecution did not call any of the victims of the crime nor the Police Officers who actually investigated the, offence ... It is clear from the record that the said confessional statements of the appellants were not subjected to any scrutiny by the trial court. No witness testified saying that the appellants robbed him either with or without any gun. The Police Officer who supposedly arrested them immediately after the incident was not called to give evidence."

On these observations which show the sad state of the prosecution's case, the Court of Appeal, correctly in my view concluded, that the charge preferred against the respondents were not proved beyond reasonable doubt, notwithstanding the existence of the said confessional statements. The Court of Appeal proceeded to acquit and discharged the respondents.

The respondents were convicted solely on their retracted confessional statements. These are statements which the respondents denied making. The long settled position of the Law is that the court can convict on a retracted confessional statement if satisfied that it was made voluntary. *Mumuni v. Slate* (1975) 6 SC p. 79, *Akpan v. State* (1992) 6 NWLR (Pt. 248) p.439; *Itule v. Queen* (1961) 2 SCNLR p. 183

The underlining consideration is whether the confessional statement was voluntary and true. It follows naturally that it is desirable to have outside the confession some evidence that would make probable that the confession was true. In the absence of any evidence outside the confession it would be unsafe to sustain a conviction as
B there would be grave doubts if the confessions were true.

In a charge of armed robbery the following vital witnesses are expected to give evidence for the prosecution, and where the prosecution fails in that regard very serious doubts arise as to whether
C the accused persons really committed the offence:

1. The victim of the armed robbery if still alive;
2. The Police Officers who arrested the accused persons;
3. Evidence of the circumstances in which the accused persons were arrested;
- D 4. Eye witnesses or any witness who should give credible evidence of the armed robbery.

5. If reliance is placed on circumstantial evidence, it must be compelling and lead to only one conclusion, and that is that the accused persons were responsible for the armed robbery.

E In this case 1, 2, 3 and 4 above were non existent in this case. Only two witnesses gave evidence for the prosecution. They were Policemen whose only role was to obtain confessional statements from the respondents. There was in effect no investigation in the case. The role played by the Police which ought to have been a
F thorough investigation of a robbery case could best be described as administrative or institutional inertia. A dismal effort that leaves much to be desired.

For this, and the more detailed reasoning in the leading judgment, the judgment of the Court of appeal is confirmed.
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ARIWOOLA JSC

This appeal by the State is against the judgment of the Court
H of Appeal, Kaduna Division (herein after called the court below) delivered on the 7th day of July, 2010 in which the judgment of the trial court delivered on the 17th day of June, 2003 was set aside and the respondents herein were discharged and acquitted.

At the trial court in the High Court of Kaduna State the re-

spondents were charged jointly as follows:-

“That you Usman Isa, Bello Rilwanu and Umar Mushade jointly on or about 31st day of August, 1999 at about 6.45 pm attacked and robbed monies, other valuables and bicycle from one Salisu Badamasi and his friends on their way Home from Anchau Market of Kubua Local Government Area. You thereby committed an offence punishable under Section 1(2) (a) of the Robbery and Firearms (Special Provisions) Act Cap. 398 Laws of the Federation of Nigeria.” B

The charge was read to the accused persons (hereinafter referred to as “respondents”) and each one pleaded not guilty. The case proceeded to hearing. The prosecution called two witnesses and closed its case, while the respondents testified for themselves but called no other witness. C

During the trial, the prosecution tendered the alleged confessional statements of the respondents and the admissibility was opposed. The court thereafter overruled the objection to the admissibility of the said statements and same were admitted and marked as exhibits 1, 1A, 2, 2A and 5, 5A respectively. At the end of the trial, the court found each of the respondents guilty of a lesser offence under section 2(1) of the Robbery and Firearms (Special Provisions) Act, Cap. 398 Laws of the Federation of Nigeria, 1990 and sentenced each of them to fourteen (14) years imprisonment. The Respondents were dissatisfied with their conviction and sentence hence appealed to the court below which found the appeal meritorious and allowed same. The State felt dissatisfied with the decision of the court below hence appealed to this court on three grounds of appeal of a notice of appeal dated 2nd August, 2010. D E F

Briefs of argument were later filed and exchanged by parties. The appellant’s brief of argument was filed on 14/8/2010, while the respondents respective briefs of argument were filed on 25/9/2010, 22/9/2010 and 29/9/2010 respectively. G

The appellant formulated the following sole Issue for determination of the appeal by this court.

“Whether the learned justices of the Court of Appeal were right in discharging and acquitting the respondents on the basis that there was no corroboration to or independent evidence supporting the confessional statements to warrant their conviction” H

Each of the three respondents also distilled a sole Issue each

in their respective brief of argument. All the said Issues are materially the same only differently couched or worded. I shall therefore consider the appeal, based on the issue formulated by the appellant.

Generally, and it is trite law that in criminal trials, the guilt of the accused person for the commission of an offence could be established by any or all of the following:

- (a) The confessional statement of the accused person,
- (b) Circumstantial evidence;
- (c) Evidence of an eye witness.

The procedural law of the Evidence Act, in particular. Section 27(2) recognizes the relevance of confessional statements in criminal proceedings if made voluntarily.

It is noteworthy that the court below found as follows:

"In fact, apart from the testimonies of PW1 and PW2, the two police officers who recorded the said confessional statements of the appellants and whose names, ironically did not appear on the proof of Evidence which was filed after they had obviously obtained the statements of the appellants, no other evidence was adduced by the prosecution with which the contents of the said confessional statements could have been tested. The confessional statements made by the appellants were not corroborated by any independent testimony of a witness for the prosecution. Apart from the contents of the said exhibits, there was no iota of evidence before the trial court confirming that any robbery took place and that the robbers were armed and that it was the appellants who actually participated in the robbery or were the robbers. There was no evidence outside the appellants confessional statements which implicated them in this heinous offence. Who identified them as those that robbed Salisu Badamasi and his friends?"

Confession under Section 27(1) of the Evidence Act (supra) is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime. To sustain conviction, the confession must be free, voluntary, direct and positive, whether judicial or extra judicial, provided the court believes it is the truth. Therefore, once an accused person makes a statement under caution, saying or admitting the charge or creating the impression that he committed the offence charged, the statement becomes confessional. See; *Patrick Ikemson & 2 Ors v. The State*

(1989) 3 NWLR (Pt. 110) 455 at 476.

However, any confession made or extracted through violence, threat, promise or any extraneous circumstances suggesting lack of free will is irrelevant and cannot be acted or relied upon at the trial of the accused person. The tests of determining the veracity or otherwise of a confessional statement are: B

- (i) whether there is any evidence outside the confession to show that it is true;
- (ii) whether it is corroborated no matter how slightly;
- (iii) Whether the facts contained therein so far as can be tested C are true;
- (iv) Whether the accused had an opportunity to commit an offence;
- (v) Whether the confession of the accused person was possible and, D
- (vi) Whether the confession was consistent with other facts which have been ascertained and proved. See; *Ubierho v. State* (2005) 2 SC (Pt. 1) 18 at 21-22, (2005) 5 NWLR (Pt. 919) 644; *Nsofor & Anor v. State* (2005) All FWLR (Pt. 242) 397 at 411 - 412, (2004) 18 NWLR (Pt. 905) 292. E

In other words, confession must be voluntary and not obtained by fear of prejudice or hope of advantage exercised or held out by a person in authority. In the same vein, confession must be direct, clear and unambiguous and positive. See; *Niyi Akinmoju v. The State* (2000) 4 SC (Pt. 1) 64 at 77, (2000) 6 NWLR (Pt. 662) 608. In *Joseph Idowu v. The State* (2000) 7 SC (Pt. 11) 50 at 62, (2000) 12 NWLR (Pt. 680) 48, it was held that a free and voluntary confession of guilt made by an accused person, if direct and positive is sufficient to warrant conviction. And the fact that a voluntary, positive and unequivocal confession has been retracted does not necessarily make it inadmissible but before conviction can be found on such retracted confession, some evidence outside the confession which would make it probable that the confession was true should be desirable. See *Grace Akinfe v. The State* (1988) 7 SC (Pt. 11) 131 at 143, (1988) 3 NWLR (Pt. 85) 729; *Asimiyu Alarape & Ors v. The State* (2001) 2 SC 114 at 125, (2001) 5 NWLR (Pt. 705) 79; *Akibu Hassan v. The State* (2001) 7 SC (Pt. 11) 85 at 92 - 93, (2001) 15 NWLR (Pt. 735) 184. F G H

However, where an accused person is merely disputing the correctness of contents of a written statement or that he made no - statement at all, it is not necessary to have a trial within a trial. See Daniel Madjemu v. The State (2001) 5 SC (Pt. 1) 84 at 88, (2001) 9 NWLR (Pt. 718) 349. In Akpa v. State (2007) All FWLR (Pt.351) 1
 B 560 at 1581 .(2007) 2 NWLR (Pt. 1019) 500, the accused objected to the tendering of his statement because it was not made by him and that the signature thereto is not his own. The denial was without an allegation that any of the vitiating factors of confession as in section 28 of Evidence Act was applied to him to extract the statement.
 C It was held that there was no need for a trial within trial that was conducted. The law is trite that a trial within trial is only to be conducted by a trial court, where an accused person alleges that his confessional statement was not made voluntarily. See Ojegele v. State
 D (1988) 1 NWLR (Pt. 71) 414, (1988) 5 SCNJ (Pt. 2) 231.

“There is no page on the record where the trial court subjected the said confessional statements to any test so as to ascertain their veracity. The court, simply, relied on them without ascertaining any corresponding or corroborative evidence.”

E It is also clear from the records, that the prosecution did not call any of the victims of the crime nor the police officers who actually investigated the offence.

There is no doubt and I am of the firm view that the prosecution in this case failed to prove its case, as required, beyond reasonable doubt. Therefore, the decision of the court below is unassailable. It deserves to be affirmed. I had the privilege of reading in draft the lead judgment of my learned brother, Muntaka-Coomassie, J.S.C. Therefore, for the above reasons and the fuller reasons contained in
 F the lead judgment, with which I am in total agreement, I hold that the State’s appeal to this court is un-meritorious and lacking in substance. It is hereby dismissed by me also. The decision of the court below is affirmed whereby the respondents were discharged and acquitted. Appeal dismissed.
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