

SUPREME COURT OF NIGERIA
FRIDAY 12TH APRIL, 2013. SC. 484/2011
**CORAM:- W. S. N. ONNOGHEN, M. S. MUNTAKA-
COOMASSIE, N. S. NGWUTA, O. ARIWOOLA,
M. D. MUHAMMAD, JJSC**

SUNDAY ABIODUN APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Confessional statement - Trial within trial
- Proving that the statement was voluntarily made - Must be done
beyond reasonable doubt - As in every criminal trial (H1)

EVIDENCE - Confession - Evaluation - Decision of trial court in trial
within trial which is on credibility of witnesses - Is not to be interfered
with by appellate court (H2)

ARMED ROBBERY - Ingredients - Proof - Prosecution must prove
that there was a robbery - In which the robbers were armed - And
that accused persons were the robbers (H3)

CRIMINAL PROCEDURE - Confession - Conviction - Validity - Hav-
ing found exhibit H as voluntarily made - Trial court rightly relied on
same in convicting appellant (H4)

FACTS

PW1 who was the Managing Director of a petrol station, was
attacked by three men on the road while he was driving. The rob-
bers beat him up and eventually made away with the sum of N357,
150.00 (being proceeds from sales at the petrol station) he had with
him at the material time. Subsequently, the matter was reported to
the police. Following a tip-off offered by brother to PW1, the police
arrested one of the robbers who confessed to the crime and also
mentioned appellant as one of the armed robbers. Appellant was
thus arrested and he also confessed to the crime.

Appellant and the others were therefore arraigned before the
High Court of Ogun State, Ijebu-Ode on a two count charge of con-

spiracy to commit armed robbery and armed robbery contrary to sections 6(b) and 1(2) (a) of the Robbery & Firearms (Special Provisions) Act, Cap RII LFN 2004. Appellant denied the charge at the trial and objected to the admissibility of his statement marked as exhibit H. After a trial within trial, the court arrived at the decision that exhibit H was voluntarily made. Appellant was therefore convicted and sentenced accordingly. Appellant was dissatisfied. Consequently, he filed appeal at the Court of Appeal, Ibadan Division. The appeal was dismissed. Hence, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

“(a) Whether the trial and indeed the lower court were right in admitting EXHIBIT “H” (the alleged Confessional Statement of the Appellant) in evidence and primarily relying on same for the conviction and sentencing of the Appellant.

(b) Whether the prosecution was able to prove beyond reasonable doubt the ingredients of the offences of conspiracy to commit armed robbery and armed robbery against the Appellant based on the peculiar facts and circumstances of the entire case”

HELD (Unanimously dismissing the appeal per **ONNOGHEN JSC**)

CRIMINAL PROCEDURE - Confessional statement

1. In considering issue No.1, it is very important to note that it is based on the finding of facts by the trial Judge and its affirmation by the lower court. The issue therefore challenges the concurrent finding of facts by the lower courts on the issue of the voluntariness of exhibit ‘H’. Before the trial court admitted exhibit ‘H’, it conducted a trial within trial, as demanded by law, to determine whether the statement was made by appellant and voluntarily too, being a confessional statement. It was at the conclusion of the mini trial and after listening to the witnesses, observing their demeanour and evaluating their testimonies that the trial Judge found the statement to have been voluntarily made and consequently admitted same in evidence and marked it exhibit H.

The standard of proving that the statement was voluntarily

made is that of proof beyond reasonable doubt, like in every criminal trial or proceeding. (p. 1760 G)

EVIDENCE - Confession - Evaluation

2. It is settled law that it is the primary function of the trial court or tribunal to evaluate evidence placed before it, before arriving at a conclusion/decision. It is only where and when the Judge/Court fails to evaluate the evidence or properly that an appellate court can intervene and in itself evaluate or re-evaluate such evidence.

As a general rule therefore, when the question of evaluation of evidence does not involve the credibility of witnesses but against the non-evaluation or improper evaluation of the evidence adduced, an appellate court is in a better position as the trial court to do its own evaluation

I hold the view that a decision reached by a trial court/tribunal in a trial within trial proceeding to determine the issue as to whether a confessional statement is made voluntarily or not, such as the instant issue under discussion, the evaluation of the court involved is based on the credibility of the witnesses who testified at the trial. The court/tribunal is called upon to resolve the matter by believing one party as against the other, after evaluation of the evidence given by the witnesses. The evaluation in such a case is not based on documentary evidence which would have clothed an appellate court, like the Supreme Court for that matter, with the vires to re-evaluate the evidence. Having regards to the state of the applicable law and the relevant facts of this case, it is my considered view that this Court cannot re-evaluate the evidence in the trial within trial so as to arrive at a different conclusion from that reached by the trial Judge and affirmed by the lower court. (p. 1761 G)

ARMED ROBBERY - Ingredients - Proof

3. It is settled law that for the prosecution to succeed in a charge of armed robbery, it must prove beyond reasonable doubt that:

(a) there was a robbery or series of robberies,

(b) the robbers must be armed; and

(c) the accused persons were the ones who committed the robbery.

There is no doubt that PW1 was robbed by three people armed with broken bottles on the date in question and that the armed robbers stabbed PW1 many times and made away with his money and mobile phones. So the fact of the robbery and that the robbers were armed while carrying out the offence have been established. It is immaterial whether the broken bottles used in the armed robbery of PW1 were proved to be beer bottles, as admitted by appellant in exhibit 'H' as the weapon they armed themselves with or any other type of broken bottle.
(p. 1764 B/F)

D CRIMINAL PROCEDURE - Confession - Conviction - Validity

4. I must state that this issue was raised before the lower court which resolved same against appellant. Also to be noted is the fact that I have affirmed the finding by the lower courts that exhibit 'H', which is a confessional statement made by appellant was made voluntarily and that the trial court was in order when it relied on same in convicting appellant. Having found that exhibit 'H' was voluntarily made and properly admitted, the issue becomes whether a court of law can legally rely on same in convicting appellant. The answer to that question is simple and is in the affirmative as the law is trite that the trial court can legally rely on a confessional statement alone in convicting and sentencing an accused person.
(p. 1764 C)

G REPRESENTATION

**B. Dambo Esq. with Mohammed Tukur Esq., for the Appellant
J. K. Omotosho Esq. DDPP, OGUN with Olumuyiwa Ogunsawo Esq.
ACSC, Ogun; Adebawale Adenigbagbe Esq. SC2, Olajumoke
H Oladuyinbo Esq. SC2, and E. Akpe Esq. SC2, for the Respondent**

CASES REFERRED TO

Egboghonome v. State (1993) 7 NWLR (pt. 306) 382

Emeka v. State (2001) FWLR (pt. 66) 682

Akinfe v. State (1988) 3 NWLR (pt. 85) 729

Akpa v. State (2008) 8 SCN 68

Adebayo v. A-G of Ogun State (2008) 5 SCM 1

Alarape v. State (2001) FWLR (pt. 41) 1873

Nwaeboyi v. State (1994) 5 NWLR (pt. 342) 138

Adekanbi v. A-G Western Nigeria (1966) 1 All NLR 47

Ashake v. State (1968) 2 All NLR 198

Ogoala v. State (1991) 2 NWLR (pt. 175) 509

Doma v. Ogiri (1998) 3 NWLR (pt. 541) 246

Abisi v. Ekwaalor (1993) 6 NWLR (pt. 302) 643

Alabi v. State (1993) 7 NWLR (pt. 307) 511

Bozin v. State (1985) 2 NWLR (pt. 8) 465

Dibie v. State (2007) SCM 101

STATUTES REFERRED TO

Robbery & Firearms (Special Provisions) Act Cap RII LFN 2004, ss.

1(2) (a), 6(b)

Evidence Act 2011, s. 29(2)(a)(b)(3)(4)

LEAD JUDGMENT BY ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal, Holden at Ibadan in appeal No.CA/I/127/2010 delivered on 30th November, 2011 in which the court dismissed the appeal of appellant against the decision of the High court of Ogun State, Holden at Ijebu-Ode in charge No.HCJ/5c/2008 delivered on 23rd December, 2009 in which the court convicted and sentenced appellant on a two count charge of conspiracy to commit Armed Robbery and Armed Robbery contrary to section 6(b) and 1(2) (a) of the Robbery and Firearms (Special Provisions) Act, Cap RII Laws of the Federation of Nigeria, 2004.

The facts of the case include the following: On the 7th day of May, 2007 at about 9:30p.m. PW1 who was the Managing Director of FAO Constant Petroleum at Ilese, Ijebu-Ode, Ogun State, closed for the day at the filing station and took the day's proceeds, the sum of N357,150.00 in his car along with one of his staff. While driving along the road he saw a motor cycle with three men coming behind him, which overtook and blocked his vehicle in the front.

The three men attacked PW1 with broken bottles, beat him

up severely and injured him. They escaped with the money and two mobile phones from the vehicle. The staff that was with him was able to escape. The robbers were pursued by good Samaritans who came to the assistance of PW1 without success. PW1 was later informed by his brother that he saw the 1st accused around the filling station earlier that day. The matter was subsequently reported to the police who arrested 1st accused who confessed to the crime and mentioned the name of the appellant as one of the armed robbers.

Appellant was also arrested and he confessed to the crime and gave details of the role he played in the commission of the crime as a result of which they were arraigned for the offence earlier mentioned in this judgment.

At trial appellant denied the charge and objected to the admissibility of the statement made on 12/5/07, which statement was later admitted and marked as exhibit 'H' after a trial within a trial. The trial Judge relied on exhibit 'H' along with other surrounding facts corroborating same in convicting appellant of the offence charged.

Appellant was not satisfied with the decision and appealed to the lower court, which as stated earlier, dismissed the appeal.

Upon a further appeal to this Court, learned Counsel for appellant BIRIYAI DAMBO ESQ in the appellant brief filed on 8/2/12, has submitted the following issues for the determination of the appeal:

“(a) Whether the trial and indeed the lower court were right in admitting EXHIBIT “H” (the alleged Confessional Statement of the Appellant) in evidence and primarily relying on same for the conviction and sentencing of the Appellant.

(b) Whether the prosecution was able to prove beyond reasonable doubt the ingredients of the offences of conspiracy to commit armed robbery and armed robbery against the Appellant based on the peculiar facts and circumstances of the entire case”

The above issues were adopted by learned counsel for respondent, J. K. OMOTOSHO ESQ in the respondent brief of argument filed on 23/3/12.

In arguing issue 1, learned Counsel for appellant submitted that the prosecution did not discharge the burden placed on them by section 29(2) (a)(b) and (3) of the Evidence Act, 2011, to prove beyond reasonable doubt that the confessional statement was not

obtained by oppression or duress or in a manner contrary to the provisions of the section, relying on *Egboghonome v. The State* (1993) 7 NWLR (pt. 306) 382 at 432.

It is the contention of counsel that appellant objected to the admissibility of exhibit 'H' on the ground that he signed the said exhibit under duress; that during the trial within a trial procedure, B
appellant repeated his claim of torture and that he signed the statement under duress.

It is the further submission of counsel that the trial judge did not properly evaluate the evidence before him on the trial within trial before arriving at the decision to admit exhibit H; that the fact that C
there was no blood stains on the document sought to be tendered, is not a basis for determining the admissibility of the document when there is a glaring possibility that the police would have cleaned up the appellant to conceal the fact of torture; that appellant had testified to D
the fact that he was an illiterate who can neither read nor write but PW1 (P. C. Solomon) told the court during trial within trial that appellant volunteered his statement in English Language whereas appellant said it was in Yoruba; that PW1 stated under cross examination E
that appellant volunteered his statement in English and Yoruba languages which he recorded verbatim but no Yoruba version of the statement was tendered in evidence; that failure to tender the Yoruba version has resulted in a miscarriage of justice; that exhibit 'H' was very much at variance with the testimonies of PW1 and PW2, the star F
witnesses of the prosecution and can therefore not be corroborative evidence of exhibit 'H'; that appellant was not seen at the scene nor was any of the items allegedly stolen from the scene recovered from appellant, including the money or part thereof; that since it was the confessional statement of 1st accused that implicated appellant the G
said statement is inadmissible in evidence against appellant being a co-accused without corroboration, relying on *Emeka v. State* (2001) FWLR (pt. 66) 682 at 687; section 29(4) of the Evidence Act, 2011; that the trial Judge ought to have cautioned himself in the circumstances in admitting exhibit 'H', relying on *Akinfe v. State* (1988) 3 H
NWLR (pt. 85) 729 at 748 - 749.

Finally learned Counsel urged the court to resolve the issue in favour of appellant.

On his part, learned Counsel for the respondent submitted

that it is trite law that a trial court can rely solely on the confessional statement of the accused person to convict him - relying on Akpa v. State (2008) 8 SCN 68 at 70; Adebayo v. A-G of Ogun State (2008) 5 SCM 1 at 15; that the issue of admissibility of Exhibit 'H' was raised at the trial which resulted in a trial within a trial as required by law and as a result of which the statement was found to have been voluntarily made and consequently admissible in evidence; that it was in the process of determining the issue of admissibility of the statement that the trial Judge made the observation that there was no blood stain on the document which observation is based on the fact that appellant had alleged that he was severely tortured as a result of which he was covered in his own blood at the time of signing the said statement.

It is the further submission of learned Counsel that exhibit 'H' is corroborated and consistent with the facts of the case as testified to by the prosecution witnesses, relying on Alarape v. The State, (2001) FWLR (pt.41) 1873 at 1893; Nwaeboyi v. State (1994) 5 NWLR (pt. 342) 138 at 150; that the contents of exhibit 'H' can only be within the personal knowledge of appellant as he is the only one who knows the roles he played in the robbery.

On the question of the language in which the statement was made, learned Counsel referred the court to the evidence of P. C. Solomon in which the police officer stated that appellant passed out of Itele High School and that the statement was volunteered and recorded in English Language; that the above explains the statement of the officer under cross examination that the statement had no Yoruba version; that appellant stated that OPC men beat him up and inflicted injuries on him in the absence of the police and urged the court to resolve the issue against the appellant.

In considering issue No.1, it is very important to note that it is based on the finding of facts by the trial Judge and its affirmation by the lower court. The issue therefore challenges the concurrent finding of facts by the lower courts on the issue of the voluntariness of exhibit 'H'. Before the trial court admitted exhibit 'H', it conducted a trial within trial, as demanded by law, to determine whether the statement was made by appellant and voluntarily too, being a confessional statement. It was at the conclusion of the mini trial and after listen-

ing to the witnesses, observing their demeanour and evaluating their testimonies that the trial Judge found the statement to have been voluntarily made and consequently admitted same in evidence and marked it exhibit “H”. See Adekanbi v. A-G Western Nigeria (1966) 1 All NLR 47; Ashake v. The State (1968) 2 All NLR 198; Ogoala v. The State (1991) 2 NWLR (pt.175) 509. **The standard of proving that the statement was voluntarily made is that of proof beyond reasonable doubt, like in every criminal trial or proceeding.** See Obidiozo v. The State (1987) 4 NWLR (pt.67) 748 at 361; R v. Kassi 5 WACA 154.

The trial Judge therefore believed the prosecution witnesses as against the version of the events given by appellant.

What did the trial Judge find at the conclusion of trial within trial? At page 68 of the record, the court stated thus:-

“I have looked at the statement sought to be tendered and the signature credited to the 3rd accused (appellant) then it looks so regular and to all intents and purposes is not the signature of a man who was signing under such traumatic condition, the 3rd accused disclosed. There are also no blood stains on the document sought to be tendered under cross-examination, the 3rd accused agreed on some occasions he does work with Ogoma and this piece of evidence is also contained in the statement sought to be tendered.

This piece of evidence which the 3rd accused confirmed as true, is not a piece of evidence which ordinarily will be within the knowledge of PC. Solomon if the 3rd accused had not given him (Solomon) this information which he wrote down. This being confirmed by the 3rd accused as true, I believe the statement sought to be tendered by PW1 credited to the 3rd accused was taken voluntarily. I overrule the objection raised to its being tendered. I admit it and it is marked EXHIBIT - “H”.”

It is settled law that it is the primary function of the trial court or tribunal to evaluate evidence placed before it, before arriving at a conclusion/decision. It is only where and when the Judge/Court fails to evaluate the evidence or properly that an appellate court can intervene and in itself evaluate or re-evaluate such evidence.

As a general rule therefore, when the question of evaluation of evidence does not involve the credibility of witnesses

but against the non-evaluation or improper evaluation of the evidence adduced, an appellate court is in a better position as the trial court to do its own evaluation. See *Doma v. Ogiri* (1998) 3 NWLR (pt.541) 246 at 267; *Abisi v. Ekwaalor* (1993) 6 NWLR (pt.302) 643 etc.

I hold the view that a decision reached by a trial court/tribunal in a trial within trial proceeding to determine the issue as to whether a confessional statement is made voluntarily or not, such as the instant issue under discussion, the evaluation of the court involved is based on the credibility of the witnesses who testified at the trial. The court/tribunal is called upon to resolve the matter by believing one party as against the other, after evaluation of the evidence given by the witnesses. The evaluation in such a case is not based on documentary evidence which would have clothed an appellate court, like the Supreme Court for that matter, with the vires to re-evaluate the evidence. Having regards to the state of the applicable law and the relevant facts of this case, it is my considered view that this Court cannot re-evaluate the evidence in the trial within trial so as to arrive at a different conclusion from that reached by the trial Judge and affirmed by the lower court.

Secondly, the lower court had confirmed the said finding of fact thereby rendering the finding concurrent. In such a situation it is settled law that this Court does not make a practice of interfering with concurrent findings of fact except in certain special circumstances, such as where the findings have been demonstrated by the appellant to have been perverse, contrary to substantive law or practice, has led to a miscarriage of justice, etc, which have not been shown to exist in this appeal.

The above notwithstanding, it is clear from the contents of exhibit 'H' that it is only appellant who could have had knowledge of what is stated therein as he is the only one who knows the role he played during the armed robbery. In the circumstance I resolve the issue against appellant.

On issue 2, it is the submission of Counsel that the prosecution failed to prove the charge beyond reasonable doubt, relying on the case of *Alabi v. The State* (1993) 7 NWLR (pt. 307) 511 at 513;

Bozin v. The State (1985) 2 NWLR (pt.8) 465; that all the ingredients of armed robbery must be proved as failure to prove one is fatal to the case of the prosecution; that though exhibit 'H' said that all the robbers held bottles, there is no evidence that the broken bottle used in stabbing PW1 during the robbery is beer bottle, neither was any tendered in evidence; that there is no evidence that it was a broken bottle that caused the injuries on PW1 which was treated at the General Hospital the following day of the incident; that the allegation of armed robbery is baseless. B

It is the further contention of counsel that it has not been established that appellant was one of those who committed the offence; that since the 1st and 2nd accused persons who implicated appellant in the robbery in their confessional statements, their respective confessional statements, as co-accused to the appellant are inadmissible against appellant without corroboration, relying on Emeka D v. State (2001) FWLR (pt 66) 682 at 687; that the trial court failed to exercise the required caution in convicting appellant and urged the court to resolve the issue in favour of appellant and allow the appeal. C

On his part, learned Counsel for respondent conceded that the burden is on the prosecution to prove the charge beyond reasonable doubt and that once the proof drowns the presumption of innocence of the accused, the court is entitled to convict, relying on Dibie v. The State (2007) SCM 101 at 105; that conspiracy is an agreement by two or more persons to commit an unlawful act; that appellant made a confessional statement in which he confessed the commission of the offence together with the others; that a confessional statement is the best evidence in a criminal proceeding and once admitted it forms part of the case of the prosecution and can be relied upon by the court in convicting the accused person, that the evidence of PW2 corroborates the confessional statement, exhibit 'H', that conspiracy is inferred from the facts and circumstances of each case, counsel referred the court to pages 33 and 34 of the records where appellant stated how the conspiracy was carried out exactly as stated by PW1; that evidence of a co-accused is admissible against other accused persons, relying on Oyakhire v. The State (2006) 12 SCM (pt.1) 369 at 380 and 381. F G H

It is the further submission of counsel that the offence of armed robbery was proved against the appellant beyond reasonable doubt,

relying on the testimony of PW1 and the confessional statement of appellant; exhibit 'H'; that a substantial part of the stolen money was recovered from 1st accused who upon arrest mentioned appellant as one of those who carried out the robbery with him - 1st accused - see exhibit 'E', and urged the court to resolve the issues against appellant and dismiss the appeal.

It is settled law that for the prosecution to succeed in a charge of armed robbery, it must prove beyond reasonable doubt that:

***(a) there was a robbery or series of robberies,
(b) the robbers must be armed; and
(c) the accused persons were the ones who committed the robbery.***

I must state that this issue was raised before the lower court which resolved same against appellant. Also to be noted is the fact that I have affirmed the finding by the lower courts that exhibit 'H', which is a confessional statement made by appellant was made voluntarily and that the trial court was in order when it relied on same in convicting appellant. Having found that exhibit 'H' was voluntarily made and properly admitted, the issue becomes whether a court of law can legally rely on same in convicting appellant. The answer to that question is simple and is in the affirmative as the law is trite that the trial court can legally rely on a confessional statement alone in convicting and sentencing an accused person.

There is no doubt that PW1 was robbed by three people armed with broken bottles on the date in question and that the armed robbers stabbed PW1 many times and made away with his money and mobile phones. So the fact of the robbery and that the robbers were armed while carrying out the offence have been established. It is immaterial whether the broken bottles used in the armed robbery of PW1 were proved to be beer bottles, as admitted by appellant in exhibit 'H' as the weapon they armed themselves with or any other type of broken bottle.

There is also the confessional statements of the appellant exhibit 'H' and that of 1st accused exhibit 'E' which gave details of the conspiracy and actual robbery of PW1. The lower court in consider-

ing the issue, stated at page 210 of the record, inter alia as follows:

“It is clear from the testimony of PW1... that on 7th May, 2007 he was robbed and in the process suffered stab wounds for which he was treated. The evidence of the PW1 is graphic and categorical in this regard. None of the defence counsel asked question under cross-examination which would suggest that a robbery never took place on the day in question. It also established from the testimony of PW1 that he was stabbed with broken bottle. A bottle is an offensive weapon within the contemplation of the definition of offensive weapon in section II of the Robbery and Firearms (Special Provisions) Act of 2004... The robbery committed was therefore an armed robbery.”

The failure of the prosecution to tender the weapon used is not fatal to the prosecution case. See Fatai Olayinka v. The State 30 NSCQR 149 at 162 - 163...”

I agree with the above opinion of the lower court as same is supported by the evidence on record and can therefore not be faulted.

On the sub-issue as to whether there exists any nexus between appellant and the commission of the offence charged, the lower court had this to say at pages 211 - 212 of the record, inter alia:-

“As to whether appellant participated in the commission of the offence of armed robbery his confessional statement exhibit ‘H’ clearly implicated him. As earlier resolved under issue one exhibit ‘H’ was voluntarily made and so the trial court rightly attached weight to it. It is trite that an accused can be convicted on his confessional statement if properly proved and circumstances make it probable...”

In exhibit “H” appellant gave vivid story of how the robbery was committed and how he took part. From the totality of the evidence adduced in the printed record, I am satisfied that the prosecution has proved beyond reasonable doubt that appellant committed the offence of conspiracy to commit armed robbery and armed robbery.”

I agree completely with the above views of the lower court and adopt same as mine. I therefore find no merit in the issue under consideration which I accordingly resolve against appellant.

In conclusion I find no merit whatsoever in this appeal which is accordingly dismissed by me. Appeal dismissed.

MUNTAKA-COOMASSIE JSC

I have had a privilege of the lead judgment rendered by my learned brother Onnoghen J.S.C, just delivered. I am in complete agreement with his Lordship's reasoning and conclusions which, I respectfully adopt, as mine.

B I do not intend to add anything to this exhaustive judgment. I too agree that the views expressed by the learned Justices of the lower court are acceptable to me. Having agreed with my learned Lord, Onnoghen, JSC. I too dismiss this appeal.

C _____

NGWUTA JSC

I have the privilege of reading in draft the lead judgment just delivered by My Lord, Onnoghen, JSC. I agree with the reasoning D and conclusion. I desire to add a few words on the appellant's confessional statement admitted and marked Exhibit H.

The question of voluntariness or otherwise of Exhibit H was determined at the trial-within-trial conducted by the trial Court when the same became an issue before that Court. It is solely an issue of E fact and the finding of fact that Exhibit H was made voluntarily by the appellant was affirmed by the Court of Appeal.

This court will decline invitation to disturb such concurrent findings of fact of the courts below except where it is established that the finding is perverse. See *Ebba v. Ogodo* (1984) 4 SC 84; *Njoku & F Ors. v. Eme & Ors.* (1993) 5 SC 293 at 306; *Kale v. Coker* (1982) 12 SC 267 at 271. This is not the case in this appeal.

Based on the above and the fuller reasons in the lead judgment, I also dismiss the appeal as devoid of merit. Appeal dismissed.

G _____

ARIWOOLA JSC

I had the opportunity of reading the draft of the lead judgment of my learned brother, Onnoghen, JSC just delivered. I agree H entirely with the reasoning therein and the conclusion arrived thereat. The main issue for determination is whether the trial court was right in admitting the alleged confessional statement of the appellant, (Exhibit H) in evidence and primarily relying on same in convicting and sentencing the appellant which conviction and sentence were affirmed

by the court below. This issue has been admirably treated in the said lead judgment, that I need not repeat the well known principles to guide the courts on the admissibility of the confessional statement of an accused person. I have nothing new to add. The statement was properly admitted and relied on by trial court in convicting and sentencing the appellant. The judgment of the trial court was rightly affirmed by the court below. B

The appeal is therefore clearly unmeritorious and lacking in substance. It is liable to dismissal. Accordingly, it is dismissed by me.

MUHAMMAD JSC

My Learned brother Onnoghen, JSC, had obliged me a preview of his lead judgment just delivered. I agree with the reasoning and conclusion therein that the appeal lacks merit. D

I rely on the facts of the case made bare in the lead judgment to offer a few words of mine by way of emphasis as to why the appeal must be dismissed.

The appellant was convicted by the trial court, Ogun State High Court by its decision of 23rd December, 2009 in charge HCJ/ 5c/2008 for the offences of conspiracy to commit Armed Robbery and Robbery contrary to Section 6 (b) and 1 (2) (a) of the Robbery and Firearms (special provisions) Act Cap R 11 of the laws of the Federation 2004. He was tried along with others. The appellant and the 1st accused all made statements confessing the fact of robbing PW1. Appellant's confessional statement, exhibit "H" was admitted after a trial within-trial was conducted following the objection that same was not voluntarily made by the appellant. F

At the end of trial, appellant was convicted and sentenced as charged. His appeal No.CA/1/127/2010 to the Court of appeal, Ibadan Division was dismissed. He has further appealed to this Court praying that the appeal be determined on the following two issues:- G

(a) Whether the trial and indeed the lower court were right in admitting exhibit "H" (the alleged confessional statement of the appellant) in evidence and primarily relying on same for the conviction and sentencing the appellant. H

(b) Whether the prosecution was able to prove beyond reasonable doubt the ingredients of the offences of conspiracy to com-

mit armed robbery and armed robbery against the appellant base on the peculiar facts of the entire case.

It is instructive to always remember that whether or not an appellant's statement is confessional in the sense that it was either induced or obtained under duress is a question of fact. The trial court has the primary duty of evaluating the facts from which to make the inference as to whether such statements were voluntarily made or not. Unless where the court failed to take full advantage of seeing and observing the witnesses as they testified on the facts necessary for the inference or drew untenable conclusions from the facts the witnesses testified to, the appellate court does not interfere. In the case at hand, appellant's case is made much more Herculean following the affirmation of the trial court's findings of facts on the voluntariness of exhibit "H", the appellant's extra judicial statement. In exhibit "H" the appellant has not only admitted the fact of participating in robbing PW1 but the fact that he did so in the company of others.

I agree with learned respondent's counsel that the trial court is entitled to rely solely on the confessional statement of the appellant to convict him and find counsel's reliance on *Akpan v. State* (2008) 8 SCNJ 68 at 70; *Alarape v. State* (2001) FWLR (Part 41) 1873 at 1893 and *Nwaeboyi v. State* (1994) 5 NWLR (Part 342) 138 at 150 very supportive and apposite.

The evaluation by the trial court of the evidence it received in the course of the trial-within-trial to ascertain the voluntariness of appellant's statement, exhibit "H", and the inference it drew following the exercise at page 68 of the record of appeal is beyond reproach. Little wonder that the court below was in no position to interfere with the findings. In exhibit "H" are facts on PW1 being robbed and that appellant was in company of others when the robbery was committed. These facts are peculiarly within appellant's personal knowledge and lawfully available for the trial court's reliance on same to convict the appellant. The lower court cannot certainly be wrong in its affirmation of such findings. True it is desirable to look for evidence outside exhibit "H" but it is not the law that conviction can only proceed on the necessary availability of evidence outside and in addition to exhibit "H". In the instant case though this extra evidence is not a necessity to ground the conviction of the appellant, yet same

abound making learned appellant counsel's query that appellant's conviction by the trial court was made purely on the basis of exhibit "H" empty. The evidence of PW1, the recovery of part of the loot from appellant's co-accused all go to prove all the ingredients of the two offences the appellant was convicted and sentenced for.

The concurrent findings of the two courts below cannot be tampered with in these circumstances. And it is for these and the further and more elaborate reasons in the lead judgment that I also dismiss the appeal and affirm the judgment of the court below.

C

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H