

**SUPREME COURT OF NIGERIA**  
FRIDAY 24TH MAY, 2013. SC. 434/2011  
**CORAM:- W. S. N. ONNOGHEN, M. S. MUNTAKA-  
COOMASSIE, N. S. NGWUTA, O. ARIWOOLA,  
M. D. MUHAMMAD, JJSC**

AKEEM AGBOOLA ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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ARMED ROBBERY - Ingredients - Proof - Prosecution must prove that there was a robbery - That the robbery was armed robbery - And that accused was the armed robber (H1)

CRIMINAL PROCEDURE - Identification parade - Necessity of - It is conducted inter alia - Where victim does not have prior knowledge of accused - Before commission of the offence (H2)

IDENTIFICATION PARADE - Failure to conduct - The parade is not needed - Since PW1 had opportunity to visually observe appellant - Failure to conduct same - Did not affect appellant's identification to police (H3)

CRIMINAL PROCEDURE - Alibi - Proof - Where accused raises alibi - Prosecution must investigate same - But accused is still bound to give particulars of his whereabouts (H4)

CRIMINAL PROCEDURE - Crime - Proof - Guilt of an accused can be established by his confessional statement - Circumstantial evidence - Or evidence of an eye witness (H5)

CRIMINAL PROCEDURE - Conviction - Based on confession - Conviction may be based on confession - Where the statement is voluntarily positive - And court is satisfied with its truth (H6)

CRIMINAL PROCEDURE - Confession - Retraction - Weight - In determining weight to be attached to retracted confession - Court is to test its truthfulness by examining the statement - In the light of

other available credible evidence (H7)

### **FACTS**

Accused/appellant hired PW1 one Sunday Cornelius (a commercial motorcyclist) to take him from Ijebu-Ode to Sagamu. It was while they were returning to Ijebu-Ode that appellant on the pretence of easing himself, slashed PW1 on the neck and eventually made away with the motorcycle of PW1. With the assistance of other motorcyclists at the area, PW1 was taken to the police station, where the matter was reported.

PW1 was later on taken to hospitals for treatment. Appellant was later arrested in Lagos with the motorcycle. His case was transferred to the State C.I.D. Abeokuta. He was subsequently arraigned before the High Court of Ogun State for armed robbery contrary to section 1(2)(a) of the Robbery & Fire Arms (Special Provisions) Act Cap R. 11, LFN 2004. At the end of trial, the court convicted appellant as charged and sentenced him to death. Appellant in protest lodged an appeal at the Court of Appeal, Ibadan Division. The court affirmed the conviction made by the trial court, but reduced the sentence to life imprisonment. Dissatisfied, appellant filed appeal in Supreme Court.

### **ISSUES FOR DETERMINATION**

1. Whether having resolved issue No. 2 in favour of the appellant, the court below was right in not setting aside the conviction of the appellant.

2. Whether the court below was right in its conclusion that the issue of identification of the appellant by the victim (PW1) is adequate proof by the prosecution that established the guilt of the appellant beyond reasonable doubt.

**HELD** (Unanimously dismissing the appeal per

**ARIWOOLA JSC)**

*ARMED ROBBERY - Ingredients - Proof*

**1. Therefore, for the prosecution to establish the offence of armed robbery, the following are required to be proved:**

**(a) That there was in fact a robbery**

**(b) That the robbery was an armed robbery**

**(c) That the accused person was the armed robber**

(p. 2032 F)

*Identification parade - Necessity of*

**2. Ordinarily, identification parade is said not to be a sine qua non for identification in all cases where there have been a fleeting encounter with the victim of a crime, if there is yet other pieces of evidence leading conclusively to the identity of the perpetrator of the offence. An identification parade would become necessary only in the following situations of visual identification:**

**(a) where the victim did not know the accused person before and his first acquaintance with him is during the commission of the offence;**

**(b) where the victim was confronted by the offender for a very short time; and**

**(c) where the victim, due to time and circumstances, might not have had the full opportunity of observing the features of the accused. (p. 2033 F)**

*IDENTIFICATION PARADE - Failure to conduct*

**3. With the situation on hand, I am not in the slightest doubt in holding that on visual identification, there was no need for identification parade before PW1 can identify the appellant as his attacker on the 26th April, 2007. The failure of the police therefore to conduct identification parade did not affect the way the appellant was identified to the Police thereafter.**

(p. 2034 D)

*Alibi - Proof*

**4. The law is that if an accused person raises unequivocally the issue of alibi, that he was somewhere else other than the locus delicti at the time of the commission of the offence with which he is charged and gives some facts and circumstances of his whereabouts, the prosecution is duty bound to investigate the alibi set up, to verify its truthfulness or otherwise.**

**However, even though no burden is placed on the ac-**

**cused person to prove his alibi but he is not expected to merely state that he was not at the scene of the crime without more. He is duty bound to give the lead and particulars of his whereabouts which will lead the prosecution in their investigation of the alibi.**

- B There is no doubt that the appellant in his statements to the Police at the earliest opportunity did not raise the alibi as a defence. Instead, he unequivocally narrated how he spent the whole day - 26/4/2007 with PW1 between Ijebu Ode and Sagamu. As a result, I have no hesitation in holding that the**  
**C defence of alibi or the appellant's claim of being somewhere else on the day of the alleged crime, in his oral testimony during trial is nothing but an afterthought. If indeed he was not at the scene of the crime but was somewhere else as he claimed,**  
**D he ought to have stated this fact in his statement to the Police. This part of the evidence in defence was rightly disbelieved and discountenanced by the trial court. (pp. 2036 F/2037 C)**

*CRIMINAL PROCEDURE - Crime - Proof*

- E 5. 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;**  
**(b) Circumstantial evidence;**  
**F (c) Evidence of an eye witness. (p. 2037 F)**

*Conviction - Based on confession*

- G 6. The law is trite on the point that a man may be convicted on his own confession alone and there is no law against it. The position of the law is that if a suspect makes a free and voluntary confession in his extra judicial statement to the police, which confession is direct and positive and the court is satisfied with its truth, such confessional statement alone is sufficient to ground and support conviction without corroboration.**  
**H There is certainly no evidence stronger than a person's own admission or confession. Such a confession is admissible. (p. 2038 G)**

*CRIMINAL PROCEDURE - Confession - Retraction - Weight*

**7. However, in determining the weight to be attached to a retracted confessional statement of an accused person, the court is expected to test its truthfulness and veracity by examining the statement in the light of other credible available evidence. This is done by looking into whether:**

- (a) there is anything outside it to show that it is true;
- (b) it is corroborated;
- (c) the accused person had the opportunity of committing the offence;
- (d) the facts stated in it are true as far as can be tested;
- (e) the accused person's confession is possible;
- (f) the confession is consistent with the other facts ascertained and proved at the trial. (p. 2039 B)

## NOTABLE POINTS OF INTEREST

### **ARIWOOLA JSC**

#### ***1. Robbery & Armed robbery – Meaning of***

Robbery generally is the illegal taking of property from the person of another or in the person's presence by violence or intimidation. While armed robbery is robbery committed by a person carrying a dangerous weapon regardless of whether the weapon is revealed or used. (p. 2032 E)

#### ***2. Identification parade – Meaning of***

Generally, identification evidence is evidence tending to show that the person charged with an offence is the same as the person who was seen committing the offence. Therefore, whenever the trial court is confronted with identification evidence, it is expected to ensure and be satisfied that the evidence proves beyond reasonable doubt that the accused before the court was the person who actually committed the offence with which he is charged.

Identification parade, otherwise known as lineup is a police identification procedure in which a criminal suspect and other physically similar persons are shown to the victim or a witness to determine whether the suspect can be identified as the perpetrator of the

crime. (p. 2033 C)

**3. Alibi – Meaning of**

Alibi means, when a person charged with an offence says that he was not at the scene at the time the alleged offence was committed. That, B he was indeed somewhere else and therefore he was not the one who committed the offence.

In other words, alibi simply means “elsewhere”. It is a defence based on the physical impossibility of a defendant’s guilt by placing the C defendant in a location other than the scene of the crime at the relevant time. It is the fact or state of having been elsewhere when an offence was committed. (p. 2036 D)

**4. Confessional statements – Meaning & relevance**

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

Generally, confession is described as a criminal suspect’s oral or written acknowledgment of guilt, often including details about the E crime. In other words, a confession is an acknowledgment in express words, by the accused in a criminal case, of the truth of the main fact charged or of some essential part of it. See Black’s Law Dictionary Ninth Edition at page 338. Under the Evidence Act, 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. However, to sustain conviction on the said statement, the confession must F be free, voluntary, direct and positive, whether judicial or extra-judicial, provided the court believes it is the truth. Therefore, it is the law G that 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. (p. 2037 G)

**H REPRESENTATION**

Dr. Akin Onigbinde with Chief Yomi Aliyu, Richard Baiyeshea, Esq., Stewart David, Esq., Adedeji Adeyemi Esq., for the Appellant J. K. Omotosho Esq., (DDP, Ogun State) with Adenigbagbe Adebowale Esq., SC, Oladoyinbo Olajumoke Esq., for Respondent

**CASES REFERRED TO**

- Yakubu v. Ida (2009) All FWLR (pt. 465) 1833  
Kazeem v. The State (2009) All FWLR (pt. 465) 1749  
Ukwunnenyi v. The State (1989) 4 NWLR (pt. 114) 131  
Dodo v. The State (2001) FWLR (pt. 39) 1388 B  
Adisa v. The State (1991) 1 NWLR (pt. 168) 490  
Omopupa v. The State (2008) All FWLR (pt. 445) 1648  
Ojukwu v. The State (1986) 4 CA (pt. 1) 431  
Bozin v. State (1985) 2 NWLR (pt. 8) 465 C  
Alabi v. State (1993) 7 NWLR (pt. 307) 551  
Olayinka v. State (2007) 9 NWLR (pt. 1040) 561  
Osetola v. The State (2012) 17 NWLR (pt. 1329) 251  
Afolabi v. State (2010) 16 NWLR (pt. 1220) 584  
Ikemson v. State (1989) 1 CLRN 1 D  
Okosi v. The State (1989) 1 CLRN 29  
Aliyu v. State (2007) All FWLR (pt. 388) 1123

**STATUTE REFERRED TO**

Robbery & Fire Arms (Special Provisions) Act Cap R. 11 LFN 2004, E  
s. 1(2)(a)

**BOOK REFERRED TO**

Black's Law Dictionary 9<sup>th</sup> Ed. pp. 84, 1014, 1443, 338 F

**LEAD JUDGMENT BY ARIWOOLA JSC**

This is an appeal against the judgment of the Court of Appeal, Ibadan Division delivered on 20th June, 2011 wherein the conviction of the appellant by the trial High Court was affirmed. G

The appellant had earlier been charged as follows:

*“The accused is charged with one count of the offence of armed robbery in that on or about 26/04/2007 along Sagamu/Ijebu-Ode Expressway near Odogbolu junction in the Ijebu Ode Judicial Division while armed with a knife robbed one Sunday Cornelius of his Jincheng Motorcycle, two Nokia Phones and the sum of Four Thousand Naira, an offence contrary to Section 1(2)(a) of the Robbery and Fire Arms (Special Provisions) Act Cap R. 11, Laws of the Federation of Nigeria, 2004.” H*

The accused, hereinafter referred to as appellant, upon arraignment pleaded not guilty to the charge and the prosecution proceeded to trial. The prosecution called four (4) witnesses while only the appellant testified in defence.

The prosecution's case briefly goes thus - sometime on 26th April, 2007 at the Lagos garage, Ijebu-Ode, the appellant engaged the complainant, Sunday Cornelius (PW1) - a Vulcanizer and commercial Motorcyclist operating at the said Lagos garage in Ijebu-Ode, to carry him from Ijebu-Ode to Sagamu. PW1 was reluctant and initially refused, the reason being that the distance was long, coupled with the fact that his motorcycle was then unregistered, but upon persuasion by one Adeleke Taiwo, PW1 agreed. They then left for Sagamu at about 12 noon.

After the appellant had concluded what he went to Sagamu for, they headed back to Ijebu-Ode at about 7.00 pm. But shortly before Odogbolu junction, the appellant asked PW1 to stop the motorcycle as he wanted to ease himself. The appellant eventually slashed PW1 on his neck with a knife and then made away with the motorcycle of PW1. PW1 managed to run to Odogbolu junction for help. The motorcyclists at the park helped him to Aiyeye Police Station and from there the Police took him to the General Hospital, Aiyede for treatment. He was later referred to the State Hospital, Ijebu-Ode. The appellant was later arrested in Lagos with the motorcycle. On request, the appellant was released to the Police in Odogbolu and was later transferred to State Criminal Investigation Department (CID), Eleweran, Abeokuta.

At the close of the trial, after the trial Judge had carried out the appraisal of the facts and evaluation of the available evidence adduced found the appellant guilty as charged, convicted and sentenced him to death accordingly. Dissatisfied with the judgment of the trial court led to the appellant's appeal to the court below on the amended Notice of Appeal filed on 24/8/2010 containing nine (9) grounds of appeal. The Court of Appeal later found that the guilt of the appellant was established and that the resolution by the trial court that prosecution proved its case beyond reasonable doubt was properly done in securing conviction of the appellant. The court finally affirmed the conviction of the appellant by the trial Court on 30/3/2009 but reduced the sentence from death under Section 1(2)(a) of



the Robbery and Firearms (Special Provisions) Act, Laws of the Federation of Nigeria 2004, to and substituted by a term of imprisonment for life under Section 2(2)(a) of the same Law (supra).

Further dissatisfied, the appellant appealed to this court on a Notice of Appeal filed on 14/7/2011 containing four (4) grounds of appeal with the possibility of filing additional grounds of appeal upon receipt of record of appeal, but none was later filed by the appellant. B

Pursuant to the rules of this Court, parties upon receipt of the record of appeal filed and exchanged briefs of argument. The appellant's brief of argument settled by Dr. Akin Onigbinde was filed on 26/3/2012 while the respondent's brief of argument settled by J.K. Omotosho, Esq. - Deputy Director of Public Prosecution of the Ogun State Ministry of Justice was filed on 29/6/2012. C

From the four grounds of appeal, the appellant distilled the following two (2) issues for determination. Issues for Determination: D

1. Whether having resolved issue No. 2 in favour of the appellant, the court below was right in not setting aside the conviction of the appellant. (Grounds 1, 2 and 3)

2. Whether the court below was right in its conclusion that the issue of identification of the appellant by the victim (PW1) is adequate proof by the prosecution that established the guilt of the appellant beyond reasonable doubt. E

The respondent in its brief of argument also formulated two issues for determination arising from the four grounds of appeal filed by the appellant. Though couched in different words, the said respondent's two issues are the same materially with that of the appellant and the appeal will therefore be determined on the two issues as formulated by the appellant. F

In arguing issue No.1 learned appellant's counsel submitted G that the court of appeal failed to properly resolve issue No.2 in the appeal before it. He referred to the holding of the court below in its resolution of the said issue on page 151 of the record and contended that it fell short of answering the question which issue No.2 posed to the court. The said issue No.2 goes thus - H

*"whether or not the Honourable trial Judge placed reliance on the wrongly admitted evidence in arriving at his decision to convict the appellant".*

He contended further that it was not sufficient for the learned

Justices of the Court below to have held that admitted evidence would go to no issue or that any evidence once rejected by the court cannot be represented to the court or admitted by the court through another witness. The appellant contended that, where a rejected document is represented and was wrongly admitted, would the court be  
 B justified in basing its decision or any part thereof on such evidence? Learned counsel submitted that the question must be answered in the negative, in that the law is that wrongly admitted evidence must be expunged from the record by the trial court or on appeal by an  
 C appellate court. He relied on *Yakubu Vs. Ida* (2009) All FWLR (Pt.465) 1833 at 1848.

Learned counsel submitted that the court below was called upon to exercise the power and make a pronouncement as to whether the trial Judge placed reliance on inadmissible evidence in convicting  
 D the appellant. The lower court failed to state the relevance of the principle and its legal implication to the case in hand.

Learned counsel referred to page 56 of the record of appeal to state that the wrongly admitted evidence, that is Exhibits F, F1 and F2 form part of the basis of the trial Judge's decision. He submitted  
 E further that the Exhibits were the only pieces of documentary evidence which purportedly linked the appellant to the scene of the crime. The documents relate to the motorcycle which the appellant was alleged to have robbed the PW1 on 26/4/2007. This, learned  
 F counsel contended was against the evidence of the appellant that he was not in Ijebu-Ode on the said date. If the evidence relating to Exhibits F, F1 and F2 had been expunged or discountenanced as they should have been, then the trial court would have been left with no other option than to discharge and acquit the appellant.

Learned counsel referred to the evidence of the appellant as  
 G to his whereabouts on or about the date of the robbery as stated on page 30 of the record. He stated that the appellant had denied any connection with the motorcycle to which Exhibits F, F1 and F2 related. He submitted that the failure of the court below to expunge  
 H Exhibits F, F1 and F2 has occasioned a miscarriage of justice to the appellant and this court is urged to so hold. He submitted further that where the guilt of an accused person is in doubt, the attitude of the courts is to resolve the doubt in favour of the accused person and acquit him accordingly, relying on *Kazeem Vs The State* (2009) All

FWLR (Pt.465) 1749 - 1779; Ukwunnenyi Vs The State (1989) 4 NWLR (Pt.114) 131 at 156.

Learned counsel conceded that generally this court will not interfere with the concurring decision of the courts below but submitted that when the findings of facts are either erroneous in substance or will lead to a miscarriage of justice, this court will interfere. He B relied on Dodo & Ors vs The State (2001) FWLR (Pt.39) 1388. He urged the court to resolve the issue in favour of the appellant.

In responding to this issue No.1, the respondent referred to the conditions the prosecution was expected to meet to secure conviction for the offence of armed robbery against the appellant. Learned C Counsel for the respondent contended that in the absence of Exhibits F, F1 and F2 there are other compelling evidence on record upon which the conviction of the appellant for the offence of armed robbery was based. He referred to the findings of the trial court on pages D 54 and 55 of the record of appeal.

Learned counsel contended that the trial court considered the confessional statements of the appellant, Exhibits B, B1, C and C1 and subjected them to the necessary tests as required. The court later found the statements consistent with the testimony of PW1 and other E evidence adduced by the respondent including Exhibit A, the medical report.

It was contended that at the trial Court the appellant did not object to the admissibility of his statements which were duly marked F Exhibits B & B1 and C & C1, learned counsel therefore submitted that the court was right in relying on them to convict the appellant and the court below rightly affirmed the conviction.

On the wrongly admitted documents, learned counsel referred to page 151 of the record wherein the court below referred to the said documents - F, F1 and F2 and concluded that they were indeed G wrongly admitted and therefore any reliance on them will not go to any issue, as there were other pieces of evidence that corroborated the appellant's confessional statement to sustain the conviction. He submitted that it is clear from the record that the appellant was not H convicted on the reliance on the wrongly admitted documents but on the appellant's confessional statements and other corroborating evidence aside from Exhibits F, F1 and F2. He urged the court to resolve the issue against the appellant.

The second issue is whether the court below was right in its conclusion that the issue of identification of the Appellant by the victim, (PW1) is adequate proof by the prosecution that established the guilt of the appellant beyond reasonable doubt.

Learned appellant's counsel submitted that the court below  
 B was in error when it held that identification parade was neither necessary nor a prerequisite to the investigation of the allegation against the appellant. He contended that the appellant was never arrested at the scene of the crime and none of the witnesses that testified against  
 C the appellant knew the appellant before the commission of the crime. He submitted that identification of an accused must be properly ascertained in all instances, except where the accused is caught at the scene and in the process of committing the crime or where the accused confesses to committing the crime. He relied on *Adisa vs. The State* (1991) 1 NWLR (Pt 168) 490 at 509; *Omopupa vs. The State* (2008) All FWLR (Pt 445) 1648 at 1671.  
 D

Learned counsel submitted further that from the totality of the evidence of the prosecution witnesses there was nothing to show or indicate that the victim as well as other witnesses knew the appellant  
 E or identify the appellant that he was the one who carried out the robbery operation.

He contended that a proper identification of the armed robbery suspect is a question which the trial Judge ought to have satisfactorily treated before convicting the appellant. He relied on *Edward Ojukwu vs. The State* (1986) 4 CA (Pt 1) 431. He submitted  
 F that the purported testimony of DW1 at pages 29 - 30 of the record in relation to one Adeleke Taiwo who was never called during trial remains speculative of what he said.

Learned counsel submitted further that the reliance by the court below on only the evidence of PW1 in the identification of the appellant to the crime without more, amounted to a perfunctory performance and urged the Court to so hold. He urged the Court to resolve the second issue in favour of the appellant and set aside the  
 G conviction of the appellant.  
 H

In conclusion, learned counsel urged the court to allow the appeal, discharge and acquit the appellant.

On Issue No.2, learned counsel for the respondent conceded that identification parade is useful and essential whenever there is a

doubt about the power of the witness to recognize accused person or when the identity of the accused person is in dispute. He contended that the instant case is different, in that the identity of the appellant was never in doubt. He stated that the appellant himself in his statements - Exhibits B & B1 and C & C1 admitted to be the one who robbed PW1. Indeed, he stated further that PW1 had no problem on ability or power to recognize the appellant. He therefore submitted that the submission of the appellant on the necessity of identification parade in this case is totally misconceived. B

Learned counsel referred to appellant's confessional statement wherein he stated how he carried out the robbery operation. He contended that with the long confrontation PW1 had with the appellant for about seven (7) hours between 12 noon and 7 pm on the day time but not at night, it cannot be said that PW1 had no opportunity of observing the features of the appellant. C D

It was submitted that because the attack on PW1 by the appellant was after over seven hours they had been together from Ijebu-Ode to Sagamu, it can safely be said that PW1 had known the appellant before he was attacked and robbed by him.

Learned counsel submitted that when an accused person confessed to a crime and the confession is tested and found to be consistent with other facts outside the confession as in the instant case, identification parade is not a necessity. E

On the failure of the prosecution to call as witnesses, Taiwo Adeleke and Suraju whom the appellant claimed to have visited in Sagamu on the day of the incident, learned counsel submitted that where the evidence of one witness cogently and satisfactorily established a point in issue, in the absence of any requiring that such point should be established by two or more witnesses, it is not good to proliferate the number of witnesses in proof of the same point. He submitted further that the duty of the prosecution is to establish the guilt of the appellant beyond reasonable doubt and this could be established on the evidence of one witness. He urged the court to hold that the appellant was properly identified without any need for an identification parade. F G H

He finally urged the court to dismiss the appeal and affirm the judgment of the court below which had affirmed the conviction of the appellant.

I must start by saying that this appeal is interesting and it is of a kind. There is no controversy that the appellant was charged with one count of armed robbery. He was tried and found guilty as charged and sentenced by the trial court. The two issues distilled by the appellant for the determination of his appeal against the decision of the court below which affirmed his conviction are what render the appeal interesting and amazing, to say the least. It is noteworthy that there is no challenge placed on the confessional statements tendered and admitted against the appellant. What the two issues are about is whether the reliance on wrongly admitted inadmissible evidence by the trial court was properly addressed by the court below. And whether the appellant was properly identified as the person who robbed PW1. On these two issues, the appellant would want this court to hold that the wrongly admitted documents ought to have been expunged from the records of the trial court so as not to influence the trial court as alleged to have done in arriving at the decision to convict the appellant. And that failure to hold an identification parade to properly identify the appellant should lead to the setting aside of the conviction of the trial court as affirmed by the court below.

First and foremost, it is pertinent to state what the prosecution is expected to prove to establish an offence of armed robbery.

Robbery generally is the illegal taking of property from the person of another or in the person's presence by violence or intimidation. While armed robbery is robbery committed by a person carrying a dangerous weapon regardless of whether the weapon is revealed or used. See Black's Law Dictionary, Ninth Edition page 1443.

***Therefore, for the prosecution to establish the offence of armed robbery, the following are required to be proved:***

- (a) ***That there was in fact a robbery***
- (b) ***That the robbery was an armed robbery***
- (c) ***That the accused person was the armed robber***

See Bozin Vs. State (1985) 2 NWLR (Pt.8) 465 at 467; Alabi Vs. State (1993) 7 NWLR (Pt. 307) 551; Olayinka Vs. State (2007) 9 NWLR (Pt.1040) 561; (2007) 8 SCM 193; Osetola & Anor vs. The State (2012) 17 NWLR (Pt. 1329) 251 at 275; Afolabi vs. State (2010) 16 NWLR (pt. 1220) 584.

In the instant appeal there was no controversy that there was a robbery incident on the 26th day of April, 2007 and that the rob-

bery was an armed robbery. In other words, it was not being contested that PW1 was robbed of his motor cycle after being wounded by a stab on his neck. The only ingredient the appellant is contesting now on appeal is that he was not the armed robber that robbed PW1 not having been properly identified in an identification parade.

Now, I shall deal with the two Issues raised by the appellant together being interrelated. Firstly, learned counsel for the appellant had argued diligently and vigorously that the appellant could not have been said to be properly identified by PW1 when the Police did not arrange an identification parade for PW1 to have identified the person who robbed him of his motorcycle.

Generally, identification evidence is evidence tending to show that the person charged with an offence is the same as the person who was seen committing the offence. Therefore, whenever the trial court is confronted with identification evidence, it is expected to ensure and be satisfied that the evidence proves beyond reasonable doubt that the accused before the court was the person who actually committed the offence with which he is charged. See Patrick Ikemson Vs State (1989) 1 CLRN 1.

Identification parade, otherwise known as lineup is a police identification procedure in which a criminal suspect and other physically similar persons are shown to the victim or a witness to determine whether the suspect can be identified as the perpetrator of the crime. See Black's Law Dictionary, Ninth Edition page 1014.

**Ordinarily, identification parade is said not to be a sine qua non for identification in all cases where there have been a fleeting encounter with the victim of a crime, if there is yet other pieces of evidence leading conclusively to the identity of the perpetrator of the offence. An identification parade would become necessary only in the following situations of visual identification:**

***(a) where the victim did not know the accused person before and his first acquaintance with him is during the commission of the offence;***

***(b) where the victim was confronted by the offender for a very short time; and***

***(c) where the victim, due to time and circumstances, might not have had the full opportunity of observing the features of***

***the accused.***

See; R Vs Turnbull (1976) 3 All ER 549 or (1977) QB 224 at 228-231, Ikemson vs State (supra).

In the instant case' the appellant and PW1 first came in contact with each other at about noon on the day of the incident - 26th April, 2007. One Adeleke Taiwo, a friend of the appellant, resident in Ijebu-Ode introduced the appellant to PW1 and encouraged him to carry the appellant to Sagamu on his motorcycle. Both the appellant and PW1 were together from Ijebu-Ode, Lagos garage through to Sagamu where the appellant visited some places and people including Suraju his friend. They were returning in the evening at about 7 pm when the incident happened. From the situation described above, it cannot be said that PW1 did not know the appellant before and that the first acquaintance with him was during the commission of the offence. They can be said to have stayed together all day. The circumstance both of them were in, gave PW1 opportunity of observing the features of his attacker.

***With the situation on hand, I am not in the slightest doubt in holding that on visual identification, there was no need for identification parade before PW1 can identify the appellant as his attacker on the 26th April, 2007. The failure of the police therefore to conduct identification parade did not affect the way the appellant was identified to the Police thereafter.*** More importantly, I am of the view that the question that should have been posed by the appellant is, *"whether with the available evidence, the prosecution can be said to have proved the case against the appellant beyond reasonable doubt"*.

During the trial, the prosecution tendered the statements made by the appellant and there was no objection as to the admissibility of the said statements. The grounds of an objection through the counsel to the appellant was that he did not sign the statements but not that he did not make the statements. Indeed, at the point of tendering the statements, learned counsel had this to say:

*"Bakare: - I do not object to the admissibility of the statement but I urge the court not to attack (sic) weight to it as the accused person has denied the signature thereon."*

The court thereafter admitted the said statements and marked them Exhibits B & B1 and C & C1 respectively. The statements were



found to be confessional in nature as they gave clear and vivid description of what transpired between PW1 and the appellant on the day of the incident. The said statement, inter-alia reads thus:

*“On the 26/4/2007 at about 10am Adeleke Taiwo and I went to Lagos garage Ijebu-Ode. I told him that I wanted to go to Sagamu and I will return the same day. I told him to help me look for vehicle to convey me to Sagamu. It was there Adeleke Taiwo stopped one Okada rider for me to carry me to Sagamu and to return me. I then made an arrangement with the Okada rider to come and carry me at 2pm. I asked him how much he wanted to collect and he told me to pay him when he returns. He did not tell me how much to pay. At 2pm the Okada rider came and carried me with his motor cycle (Okada) from Lagos garage Ijebu-Ode to Sagamu.*

*When we got to Sagamu, he carried me to Ita Oba Sagamu, where I visited my friend Suraju. He also carried me to the shop of Suraju at Sabo Sagamu. At about 7pm the Okada rider carried me and we were heading back to Ijebu-Ode. As we were going along the Sagamu/Benin expressway, after passing a filling station, I told the Okada rider that I wanted to defecate and he stopped for me to defecate. I defecated in the bush near the expressway. After I defecated as the Okada rider wanted to climb the motorcycle I brought out a small knife and stabbed him on his neck. As I stabbed him in his neck, the Okada rider started to run along the expressway. I then kicked his motorcycle and rode it to Agbado Kollington in Lagos State...*

*On the 04/05/2007 some Policemen of Alakuko Police Station, Lagos State arrested me at Alagbado junction...*

*I want to say that Adeleke Taiwo did not know anything about how I robbed the motorcycle from its owner. He did not plan with me to steal the motorcycle.”*

However, in his oral testimony in court in defence, the appellant denied any involvement in the alleged robbery. Indeed, he denied that he was ever in Ijebu-Ode or Sagamu. He also denied he ever hired PW1 to carry him from Ijebu-Ode to Sagamu on 26/4/2007 or any other day for that matter. He however admitted that one Taiwo Adeleke who had led the Police to arrest him was his childhood friend whom he often visited in Ijebu-Ode and who whenever he was in Lagos often stayed with him. He also admitted he was a motorcycle operator but also denied that any Jincheng motorcycle

was recovered from him.

There is no doubt, the appellant while testifying in court resiled on his alleged confessional statement. But he clearly admitted that sometime in March, 2007 he visited Adeleke Taiwo and they worked together for about three (3) days before he, the appellant returned  
B to Lagos on or about 15/3/2007.

It is interesting to note also that in his oral testimony, the appellant admitted that he made statement to the Police and when he was asked to sign the statement he demanded that the statement be read  
C over to him. Thereafter he refused to sign but thumb-printed the statement.

As alluded to by the trial Court in its judgment on page 55 by saying in his oral testimony that he was last in Ijebu-Ode on 15/3/2007 and was nowhere near Ijebu-Ode on 26/4/2007 as alleged,  
D the appellant more or less has raised an alibi in his evidence in defence. Alibi means, when a person charged with an offence says that he was not at the scene at the time the alleged offence was committed. That, he was indeed somewhere else and therefore he was not the one who committed the offence. See *Okosi vs. The State* (1989)  
E 1 CLRN 29. In otherwords, alibi simply means “elsewhere”. It is a defence based on the physical impossibility of a defendant’s guilt by placing the defendant in a location other than the scene of the crime at the relevant time. It is the fact or state of having been elsewhere when an offence was committed. See; *Black’s Law Dictionary Ninth*  
F *Edition*, page 84.

***The law is that if an accused person raises unequivocally the issue of alibi, that he was somewhere else other than the locus delicti at the time of the commission of the offence with which he is charged and gives some facts and circumstances of his whereabouts, the prosecution is duty bound to investigate the alibi set up, to verify its truthfulness or otherwise.*** See; *Maikudi Aliyu Vs. State* (2007) All FWLR (Pt 388) 1123  
G at 1141.

***However, even though no burden is placed on the accused person to prove his alibi but he is not expected to merely state that he was not at the scene of the crime without more. He is duty bound to give the lead and particulars of his whereabouts which will lead the prosecution in their investigation***  
H

**of the alibi.** See; Yanor vs. State (1965) 1 All NLR 193; Ozulonye Vs. State (1981) NCR 38 at 50

This Court on the duty on the prosecution to investigate an alibi set up by an accused person reinstated that there is that duty no doubt but opined as follows:

*“The police are however not expected to go on a wild goose chase in order to investigate an alibi. Any accused person setting up alibi as a defence is also duty bound to give to the police at the earliest opportunity, some tangible and useful information relating to the place he was and the persons with whom he also was”* See; Christopher Okosi & Anor Vs. State (supra); Akile Gachi vs. State (1965) NMLR 333 at 335; R. Vs. Patrick Moran (1910) 3 Criminal Appeal Report 25.

***There is no doubt that the appellant in his statements to the Police at the earliest opportunity did not raise the alibi as a defence. Instead, he unequivocally narrated how he spent the whole day - 26/4/2007 with PW1 between Ijebu Ode and Sagamu. As a result, I have no hesitation in holding that the defence of alibi or the appellant’s claim of being somewhere else on the day of the alleged crime, in his oral testimony during trial is nothing but an afterthought. If indeed he was not at the scene of the crime but was somewhere else as he claimed, he ought to have stated this fact in his statement to the Police. This part of the evidence in defence was rightly disbelieved and discountenanced by the trial court.***

***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;***
- (b) Circumstantial evidence;***
- (c) Evidence of an eye witness.***

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

Generally, confession is described as a criminal suspect’s oral or written acknowledgment of guilt, often including details about the crime. In otherwords, a confession is an acknowledgment in express words, by the accused in a criminal case, of the truth of the main fact

charged or of some essential part of it. See Black's Law Dictionary Ninth Edition at page 338. Under the Evidence Act, 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. However, to sustain conviction on the said statement, the confession must  
 B be free, voluntary, direct and positive, whether judicial or extra-judicial, provided the court believes it is the truth. Therefore, it is the law that 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;  
 C Patrick Ikemson & Ors. Vs. The State (supra) The State Vs. Usman Isah & Ors. (2012) 7 SC 93 at 117; (2012) 16 NWLR (Pt. 1327) 613 at 632.

It is noteworthy that the appellant did not state in his oral testimony that he made the statements which were admitted without objection involuntarily. What he denied, as earlier stated was that he did not sign the said statement. He said that he only thumb printed it.

It is equally worthy of note that the trial court found the statements of the appellant which were admitted without objection as  
 E confessional and deserving reliance on by the court.

In his judgment on page 55 of the record of the trial Judge after an appraisal of the statements of the appellant with the oral testimony the court came to the following conclusion -

F *"The account given by the accused in Exhibits B - B1 and C - C1 when the incident was still fresh in his memory is substantially in tandem with the case for the prosecution... the accused person's denial of his signature on Exhibits B and C is an attempt to pull wool over the eyes of the court. I hold that the statements were the voluntary statements of the accused and duly signed by him. I am satisfied that the prosecution has proved beyond reasonable doubt that the accused was the robber who robbed the PW1 of his motorcycle on 26/4/2007."*

H ***The law is trite on the point that a man may be convicted on his own confession alone and there is no law against it. The position of the law is that if a suspect makes a free and voluntary confession in his extra judicial statement to the police, which confession is direct and positive and the court is satisfied with its truth, such confessional statement alone is suffi-***

**cient to ground and support conviction without corroboration.** See; Asimiyu Alarape & Ors. Vs. The State (2001) 5 NWLR (Pt. 705) 79, (2001) 2 SC 114; (2001) LPELR 412 (SC), Ozana Ubierho Vs. The State (2005) 5 NWLR (Pt 919) 644; (2005) 2 SC (Pt. 1) 18, (2005) LPELR 3283 (SC). **There is certainly no evidence stronger than a person's own admission or confession. Such a confession is admissible.** B

**However, in determining the weight to be attached to a retracted confessional statement of an accused person, the court is expected to test its truthfulness and veracity by examining the statement in the light of other credible available evidence. This is done by looking into whether:** C

- (a) **there is anything outside it to show that it is true;**
- (b) **it is corroborated;**
- (c) **the accused person had the opportunity of committing the offence;** D
- (d) **the facts stated in it are true as far as can be tested;**
- (e) **the accused person's confession is possible;**
- (f) **the confession is consistent with the other facts ascertained and proved at the trial.** E

See; Akpan vs. State (2000) 12 NWLR (Pt. 682) 607, Kareem vs. FRN (2002) 8 NWLR (Pt. 770) 664, Osetola vs. State (2012) 17 NWLR (Pt. 1329) 251 at 278.

In plethora of cases of similar facts and circumstances, this court has stated clearly that where an extra judicial confession has been proved to have been made voluntarily and it is positive and unequivocal and amounts to an admission of guilt, such confession will suffice to ground a finding of guilt regardless of the fact that the maker retracted it altogether at the trial. See Egboghonome vs. The State (1993) 7 NWLR (Pt 306) 383; Osetola vs. The State (supra) at 279. F

There is no doubt and it is clear from the record that the trial court applied the above guidelines to the admitted confessional statements of the appellant. The statements were found to have been voluntarily made. It is positive and unequivocal and when married to other facts such as the recovery of the motorcycle from the appellant, the prosecution was rightly held to have proved the case beyond reasonable doubt. H

It is clear from the record at page 56 that the conviction of the

appellant was based on the confessional statements of the appellant, as stated earlier which the trial court found to be voluntary, direct, positive and unequivocal. In otherwords, there is no clear proof on the record that the appellant's conviction was based on the trial court's admission of inadmissible documents which had earlier been rejected  
 B when tendered through another witness. Exhibits F, F1 and F2 were not the basis of conviction of the appellant. It is on record in addition that the unregistered motorcycle of PW1, which was alleged to be snatched and robbed by the appellant was recovered by the Police  
 C from the appellant, though being an article of trade which was being used for commercial purpose was via Ex. E released to PW1 on bond.

It is also clear on the record that the court below considered the effect of the wrongly admitted documents which were marked Exhibits F, F1 and F2 as I said earlier having been rejected when first  
 D tendered through yet another witness. The court below had rightly stated that "once a document has been rejected in evidence, it cannot be made use of and thus has no evidential value". I had said earlier that the trial court did not rely on Exhibits F, F1 & F2 in convicting the appellant. The court below therefore properly addressed  
 E the issue.

In the same vein, the issue of the identity of the appellant was rightly settled by the court below and the concurrent decisions of the two courts below on the issues of confessional statements and the  
 F identity of the appellant are unassailable. Therefore, there not being any perversion or miscarriage of justice in the decisions, this court will not disturb the said findings and conclusions of the two courts below.

In the final analysis, the two issues raised by the appellant are to be and are hereby resolved against the appellant. Accordingly, the  
 G conviction of the appellant by the trial court is affirmed and the decision of the court below in substituting the sentence of death with a term of imprisonment for life is affirmed.

In the circumstance of the appeal, for being devoid of any merit and substance is dismissed. Appeal dismissed.

H

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**ONNOGHEN JSC**

This appeal is against the judgment of the Court of Appeal, Holden at Ibadan in appeal No. CA/I/258/2009 delivered on the

20th day of June, 2011 in which the court dismissed the appeal of appellant and affirmed the decision of the trial High Court convicting and sentencing appellant on a charge of armed robbery contrary to Section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act, Cap RII, Laws of the Federation of Nigeria, 2004. However, the sentence of death imposed on appellant by the trial court was commuted to life imprisonment, under Section 2(2)(II) of the said Act. B

The facts of the case have been stated in detail in the lead judgment of my learned brother ARIWOOLA, JSC just delivered and I therefore have no intention of repeating them herein except as may C be needed to emphasize the point being made.

The main plank of the appeal is the issue of identification of appellant as a participant in the armed robbery incident resulting in this case. This is purely an issue of fact.

It is however settled law that an identification parade is very D useful and essential whenever there is doubt as to the ability of a witness/victim to recognize the suspect/accused who participated in carrying out the crime or where the identity of the said suspect or accused person is in dispute. Where, however there is certainty or no dispute as to the identity of the perpetrator of a crime, then there will E be no need for an identification parade to further identify the offender.

What then are the relevant facts of this case? It is true that appellant was not arrested at the scene of crime but appellant himself F stated unambiguously in his statements to the police that he was present at the scene and did carry out the robbery. It is not in dispute that appellant hired the victim for a trip which lasted for hours during which time there was constant interaction between them. The victim therefore could and did identify appellant as the pillion rider who G hired him and later robbed him of his motor cycle after stabbing him on the neck. In his statements in exhibits B, B1, C and C1, appellant stated clearly how he carried out the robbery operation which facts are corroborated and consistent with the testimonies of PW1, PW2, PW3, PW4 and even the medical report, exhibit A. H

It is settled law that where an accused person confessed to an offence and the confession is found to be consistent with other relevant facts outside the confessional statement, an identification parade become irrelevant and consequently superfluous. In the instant

appeal, appellant identified himself as the person who hired PW1 for the trip and later attacked and robbed PW1 of his motor cycle after inflicting near fatal injuries on PW1.

It is for the above reasons and the more detailed reasons given in the said lead judgment of my learned brother that I too find no merit in the appeal and consequently dismiss same. Appeal dismissed.

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### **MUNTAKA-COOMASSIE JSC**

I have had the privilege of reading in draft the judgment just delivered by my learned brother Ariwoola JSC in this appeal.

I entirely adopt as mine his reasoning and conclusions reached therein and I entirely agree that the main appeal lacks merit and the decision of the lower court in substituting the sentence of death with a term of imprisonment for life is intact and affirmed.

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### **NGWUTA JSC**

I have been privileged to read in draft the lead judgment delivered just now by My Lord, Ariwoola, JSC. I desire to add a few words by way of contribution to the reasoning and conclusion with which I entirely agree.

The extra-judicial statements made by the appellant to the Police during investigation into the crime were admitted without objection and marked Exhibits B and B1 and C and C1. When the statements were tendered in evidence, Bakare, Esq. learned Counsel for the appellant, said:

*"I do not object to the admissibility of the statement but I urge the Court not to attack (sic) (he meant "attach") weight to it as the accused person has denied the signature thereon."* Appellant said he refused to sign because it was not read over to him but he thumb-printed the statement all the same. A thumb impression authenticates a document as much as a signature does. It has been stated that:

*"Exactly what constitutes a 'signature' has never been reduced to a judicial formula, but it has usually been regarded that whatever is intended as a signature is valid signing, no matter how imperfect or unfinished or fantastic or illegible or even false the separate charac-*



*ters or symbols used may be.*”See 33 American State Papers.

The thumb impression of the appellant on his statements was attested to by the Police officer to whom the statement was made and who recorded same. The thumb impression placed by the appellant at the end of his statements to the Police is, in my humble view, a proper authentication of the statement as the same was attested to. See *Nuttan Amol Singh v. Atma Ram* 10 ELR 41 (SC). B

The graphic accounts in the statement of the appellant leave no one in doubt as to the commission of the crime or its perpetrator. From the appellant’s own showing in his confessional statement, the appellant was with his victim from 2pm when he was taken to Oba Sagamu where he visited his friend, Suraju. He was also taken to Suraju’s Shop at Sabo, Sagamu from where they set off for Ijebu-Ode by 7pm. C

It was therefore not a case of brief encounter. The victim had ample time and opportunity to observe the appellant. Moreover, the appellant, by his own statement, the contents of which he did not deny, put himself squarely at the scene of crime at the material time. D

There was therefore no need for identification parade to identify the appellant who had already identified himself with reference to the crime and the scene. E

For the above and the fuller reasons in the lead judgment, I also dismiss the appeal for want of merit.

F

### **MUHAMMAD JSC**

I had a preview of the lead judgment of my learned brother Ariwoola, JSC, with whose reasoning and conclusion that the appeal is devoid of any merit I entirely agree. G

The lead judgment has summarized the facts of the case which brought about the appeal and it serves no purpose to reproduce same here as one concurs purely for the sake of emphasis. Be it however remembered that this is a further appeal against the decision of the trial court, the Ogun State High Court, convicting the appellant for the offence of armed robbery contrary to Section 1(2)(a) of the Robbery and Fire Arms (Special Provisions) Act Cap R.11, Laws of the Federation of Nigeria, 2004. The appellant’s appeal to the court below, the Court of Appeal holden at Ibadan, having been H

found unmeritorious was dismissed. Though appellant's conviction by the trial court was affirmed, the court below however reduced the sentence from death by substituting it with a term of life imprisonment as provided for under Section 2(2)(a) of the law under which the appellant was charged and convicted.

B Appellant's appeal to this Court is founded on the four grounds of appeal he filed on 14th July, 2011. Appellant has distilled two issues for the determination of his appeal thus:-

C *"(1) Whether having resolved issued No. 2 in favour of the appellant the court below was right in not setting aside the conviction of the appellant (Grounds 1, 2 and 3)*

D *(2) Whether the court below was right in its conclusion that the issue of identification of the appellant by the victim (PW1) is adequate proof by the prosecution that established the guilt of the appellant beyond reasonable doubt."*

Two similar issues have been formulated in the respondent's brief for the determination of the appeal. It is unnecessary to reproduce the issues given my preference for the consideration of appellant's issues in the determination of the appeal.

E Under the first issue, learned appellant's counsel contends that failure of the lower court to hold that the trial court's reliance on inadmissible evidence in convicting the appellant is fatal to that conviction is perverse. The trial court's decision in convicting the appellant, learned counsel contends, is substantially founded on exhibits F, F1 and F2 which were wrongly admitted in evidence. If these documents that link appellant to the fact of the robbery against PW1 on 26th April, 2007 are expunged, it is argued, no evidence would be left to sustain appellant's conviction.

G Learned counsel urges that the concurrent findings of the two courts below which turn out to be perverse be set aside. He relies, inter-alia on *Yakubu v. Eda* (2009) ALL FWLR (Part 465) 1833 at 1848 and *Ukwunneyi v. the State* (1989) 4 NWLR (Part 114) 131 at 156.

H Responding, learned respondent's counsel submits that evidence other than exhibits F, F1 and F2 abound on the basis of which appellant's conviction can be sustained. The testimony of PW1 which points irresistibly to the appellant is further strengthened by exhibits A, the medical report in respect of the injury the appellant inflicted

on PW1, and exhibits B, B1, C and C1 appellant's own confessional statements, are cogent enough to justify the concurrence of the two lower courts. Learned counsel who concedes that exhibits F, F1 and F2 have wrongly been admitted however insists that the issue be resolved against the appellant whose conviction squarely rests on evidence other than the documentary evidence appellant suggests his conviction has evolved from. B

Learned respondent's counsel is on a very solid ground that once the decision appealed against rests on such evidence other than the inadmissible evidence that is expunged, the decision must persist because of that very fact. In other words, because the decision appealed against endures notwithstanding the fact that the inadmissible evidence the appellate court is urged to expunge has been so expunged, the appellate court ceases to have the vires of interfering with the well founded decision of the trial court that still draws on evidence on record other than the one rejected and expunged. C D

In the instant case, as rightly conceded by learned respondent's counsel, exhibits F, F1 and F2 being inadmissible must necessarily be expunged. In *Thompson v. Arowolo* (2003) 7 NWLR (Part 818) 163 at 204 - 205. This Court held as follows:- E

*"It is no doubt a settled principle of our law that parties are bound by their pleadings. It is also the duty of counsel to object to inadmissible evidence, but if despite this, evidence is still, through an oversight or otherwise admitted, then it is the duty of the court when it comes to give judgment to treat the inadmissible evidence as if it had never been admitted. The court must also not admit evidence which is contrary to the pleadings of the party who adduced such evidence. And where such evidence escapes the scrutiny of the courts below then an appellate court seized of the case must reject such evidence and decide the case of the appeal on legal evidence."* F G

Learned counsel is further right in his contention that the testimony of PW1, appellant's victim, exhibit "A", the medical report on the injury the appellant inflicted on PW1 as well as exhibits B, B1, C and C1, the confessional statement of the appellant himself, are enough evidence to sustain appellant's conviction for the offence of armed robbery he was charged for. H

It is instructive to note that at no time either at the trial court or the court below had the appellant challenged the voluntariness of

exhibits B and B1 and C and C1 appellant's statement to the police the two courts concurrently and rightly held to be confessional. The statement, an entire admission by the appellant of the commission of the crime he was charged and convicted by the trial court which conviction the lower court in its decision appealed against has affirmed. By virtue of Sections 28 and 29 of the Evidence Act, confessional statements which were voluntarily obtained are admissible and relevant. The principle has thus remained that admitted facts require no further proof. See *Ezemba v. Ibeneme* (2004) 14 NWLR (Part 894) 617 SC, *Nsofor v. State* (2004) 18 NWLR (Pt. 905) 292 SC.

In his confessional statement, the appellant said in part as follows:-

*"On the 26/4/2007 at about 10 am Adeleke Taiwo and I went to Lagos garage Ijebu Ode... It was there Adeleke Taiwo stopped one Okada rider for me to carry to Sagamu and return me. I then made an arrangement with the Okada rider to come and carry me at 2 pm. I asked him how much he wanted to collect and he told me to pay him when he returned... At about 7 pm the okada rider carried me and we were heading back to Ijebu Ode. As we were going along the Sagamu/Benin Expressway, after passing a filling station, I told the Okada rider I wanted to defecate... I defecated in the bush near the expressway. After I defecated as the Okada rider wanted to climb the motorcycle I brought out a small knife and stabbed him on his neck. As I stabbed him in his neck, the Okada rider started to run along the expressway. I then kicked his motorcycle and rode it to Agbado Kollington in Lagos State... On the 04-05-2007 some policemen of Alakuko Police State Lagos State arrested me at Alagbado junction... Adeleke Taiwo did not know anything about how I robbed the motorcycle."*

The trial court at page 55 of the record of appeal said of the foregoing statement of the appellant as contained exhibits B - B1 and C-C1 thus:-

*"The account given by the accused in exhibit B - B1 and C - C1 when the incident was still fresh in his memory is substantially in tandem with the case for the prosecution... I hold that the statements were the voluntary statement of the accused and duly signed by him. I am satisfied that the prosecution has proved beyond reasonable doubt that the accused was the robber who robbed the PW1 of his*

*motorcycle on 26/4/2007.”*

The lower court’s affirmation of the foregoing, learned appellant’s counsel insists, is wrong. I am unable to agree. It is beyond doubt that exhibits B - B1 and C - C1, the relevant part of which has been reproduced supra, is a direct, positive and unequivocal admission by the appellant of all the ingredients of the offence of robbery, see *Bozim v. State* (1985) 2 NWLR (Part 8) 465 at 467 and *Afolalu v. State* (2010) 16 NWLR (Part 1224) 584, for which the two courts find him guilty of. B

In *Patrick Ikemson & Ors v. The State* (1989) 1 CLRN 1 and the *State v. Usman Isah & Ors*, this Court reiterated that conviction founded on the direct, positive, unequivocal and voluntary confessional statement of the accused is sustainable on appeal. By his confessional statement, the appellant has put himself at the scene of crime and made further proof of the offence by the respondent unnecessary. The issue made about his not being reliably identified by PW1 has by the facts contained in exhibits B - B1 and C - C1, become equally unavailing to the appellant. The appellant can no longer be heard to contest the proof by the respondent of the offence he was charged and convicted by the trial court a conviction the lower court affirmed and the appellant urges us to temper with. There can be no better proof of his guilt than his own voluntary confessional statement. C  
D  
E

I am one with the two lower courts below on this and for that and the fuller reasons contained in the lead judgment hereby resolve appellant’s two issues against him and dismiss his unmeritorious appeal. I abide by the consequential orders contained in the lead judgment. F

G

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