

SUPREME COURT OF NIGERIA
FRIDAY 10TH MAY, 2013. SC. 315/2011
CORAM:- I. T. MUHAMMAD, C. M. CHUKWUMA-ENEH,
S. GALADIMA, C. B. OGUNBIYI, S. S. ALAGOA, JJSC

THE STATE APPELLANT
V.
SALISU ISIKA RESPONDENT

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

CRIMINAL PROCEDURE - Defence - Determination of - Court should consider the defence of an accused - No matter how stupid or unreasonable it appears (H2)

CRIMINAL PROCEDURE - Identification - The testimony given by PW3 positively identified respondent as the culprit - And the learned trial Judge rightly drew inference from same (H3)

FACTS

The case for prosecution/appellant is that accused/respondent attacked PW2 one Mutiyat Abdulkareem in the evening hours, injured her in the process and dispossessed her of a mobile phone. PW3 and other policemen who were patrolling the area at the material time went after respondent and finally apprehended him at a nearby house where he was seen hiding under a vehicle. A search was thereupon conducted on respondent, the result of which revealed the items stolen from PW2.

Respondent was consequently arraigned before the High Court of Kwara State, Ilorin for armed robbery charge contrary to section 1(2) of the Robbery & Firearms (Special Provisions) Act Cap. R11 LFN 2004. At the trial, both PW2 and PW3 gave graphic accounts of the incident that led to the identification of respondent as the offender. The learned trial Judge in his judgment, convicted respondent and sentenced him to death by hanging. Aggrieved, respondent appealed to the Court of Appeal, Ilorin. His appeal was allowed

and the judgment of the trial court was set aside. Appellant was displeased with the stance of the Court of Appeal. Hence, it filed appeal at Supreme Court to challenge the judgment of the court.

ISSUES FOR DETERMINATION

i. Whether the lower court was right to have arrived at the conclusion that the learned trial Judge did not give consideration to the defence raised by the Accused/Respondent.

ii. Whether the lower court was right to have held that the prosecution failed to establish the ingredients of the offence of Armed Robbery against the Respondent to warrant his conviction by the trial Court.

HELD (Unanimously allowing the appeal per **ALAGOA JSC**)

ARMED ROBBERY - Ingredients - Proof

1. What are the ingredients or constituents of the offence of Armed Robbery? They are as follows:-

a) That there was a Robbery or series of robberies

b) That the robberies were armed robberies

c) That the accused persons were or some of the people that committed the armed robbery.

To secure conviction of an accused person for the offence of Armed Robbery the prosecution must satisfy the requirements of these ingredients beyond reasonable doubt or fail. It is proof of these ingredients beyond reasonable doubt by the prosecution that constitute the guilt of the accused person. By the same token the conviction of the accused will be upheld if, in the words of Adekeye, JSC in *OLAYINKA AFOLALU v. THE STATE* (supra) the prosecution is able to establish the ingredients of the offence “even on the evidence of a single witness.” (p. 2252 E/H)

CRIMINAL PROCEDURE - Defence - Determination of

2. The Appellant did not cross examine the Respondent on this salient issues which would have assisted the Court to determine the truthfulness of the evidence of the Respondent.

The Respondent gave reasons why he ran or why he took to his heels because he has Indian hemp in his pocket, this piece of evidence and others as enunciated in his evidence was not considered as a reasonable defence for the Respondent. An ordinary Nigerian can take to his heels if he sees a Nigerian policeman throttling a gun at him. This piece of evidence is germane and reasonable and ought to be considered by the lower court. The lower court should have considered the defence raised by the Respondent; it is trite that an accused person's defence should be considered however stupid or unreasonable for whatever it is worth. (p. 2254 D)

CRIMINAL PROCEDURE - Identification

3. In adjudication a Judge takes cognizance not only of all the evidence which he proceeds to evaluate but the demeanour of all the 'dramatis personae' - witnesses, accused etc. It is clear that the Respondent knew the difference between cigarette and Indian hemp. What inference would one be expected reasonably to draw from a Respondent who first said he was in possession of cigarette only to change later to say it was Indian hemp that was in his possession?

I cannot agree more with the learned trial Judge. PW.3 who was part of the patrol team of policemen that picked the Respondent gave graphic details of what happened. Although it was at night that the incident happened, the full glare of the patrol team's vehicle lights were on and so tracing the Respondent to the house and beneath the car where he had taken refuge was not a problem to the patrol team. The man that was apprehended by the police patrol team had in his possession not just a telephone handset but that belonging to PW.2 whom he had only shortly before dispossessed of it. The object used to dispossess PW.2 of her handset was also found in the possession of the Respondent. As if this was not sufficient proof, the man apprehended had gunshot wounds. How then could anyone rationally come to the conclusion that the Respondent was not positively identified? I find merit in the argument of the Appellant and resolve Issue 1 in favour of the Appellant.

The arrest of the Respondent did not take place on a different date from when the incident occurred. There was no loss of time or sequence from the time of the attack on P.W.2 and the arrest of the Respondent. The evidence of P.W.3 which was never contradicted was that as his Patrol team got to the scene where the Respondent was attacking P.W.2, the Respondent on sighting the patrol team fled and the patrol team gave chase, shot him but he managed to escape to a house from where he was arrested. The Respondent and P.W.2 were thereafter taken to the hospital. It is therefore very easy to appreciate the fact that the recognition of the Respondent by PW 2 and the arrest of the Respondent were contemporaneous and there was no time lag between the recognition and the arrest. The argument put forward by the Respondent that P.W.2 only saw the Respondent after the police presented him to her cannot be correct from the evidence adduced.
 (pp. 2259 A/H/2261 H)

NOTABLE POINTS OF INTEREST

ALAGOA JSC

1. Armed robbery – Definition of

At this juncture the question should be asked, “What is Armed Robbery?” “Armed Robbery” for our purpose here will only be looked at from the stand point of the Robbery and Firearms (Special Provisions) Act Cap. R 11, Laws of the Federation of Nigeria, 2004. The simplest breakdown of Armed Robbery is to rob with arms. What then is “Robbery” and what constitutes “arms?” The word “Robbery” under the Act means, “stealing anything and at or immediately before or after the time of stealing it using or threatening to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained.” The word “steal” is encapsulated in the definition of the word “Robbery” under the Act. (p. 2251 C)

2. Arms – Subdivision of

As regards the word “Arms” there is a clear subdivision of that term under the Act into “firearms” and “other offensive weapons.” “Fire-

arms” include the following - cannon, gun, rifle, carbine, machine gun, cap gun, flint lock gun, revolver, pistol, explosive or ammunition or other firearms whether whole or detached pieces.” “Other offensive weapons” under the Act are made to refer to “any article (apart from a firearm) made or adapted for use for causing injury to the person or intended by the person having it for such use by him and it includes an air gun, air pistol, bow and arrow, spear, cutlass, machete, dagger, cudgel, or any piece of wood, metal glass or stone capable of being used as an offensive weapon.” This list of “Arms” which comprise “firearms” and “other offensive weapons” must not be taken as exhaustive. In this day and age there are undoubtedly new contrivances capable of causing hurt or harm which are not covered under the Act. (p. 2252 A)

REPRESENTATION

Kamaldeen Ajibade, Esq. Hon. A-G of Kwara State with O. S. Balogun, Esq. State Counsel Grade 1, Ministry of Justice, Ilorin, Kwara State, for the Appellant

Dr. Akin Onigbinde, Esq. with Richard Baiyegbea Esq., Stewart David, Esq. and Deji Adeyemi, Esq., for the Respondent

CASES REFERRED TO

Aruna v. State (1990) 6 NWLR (pt. 155) 125

Alor v. State (1997) 4 NWLR (pt. 501)

Ameh v. State (1978) 6 - 7 SC 27

Ogundiyin v. State (1991) 3 NWLR (pt. 181) 519

Afolalu v. State (2010) 16 NWLR (pt. 1220) 554

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

Amina v. State (1990) 6 NWLR (pt. 155) 125

Okosi v. A-G Bendel State (1989) 1 NWLR (pt. 100) 642

Nwachukwu v. State (1985) 1 NWLR (pt. 11) 218

Ani v. State (2003) 11 NWLR (pt. 89) 142

Manawa v. State (1987) 3 S.C. 497

Adelenwa v. State (1972) 7 NSCC 591

Ahmed v. State (2001) FWLR (pt. 34) 438

Oguntolu v. State (1996) 2 NWLR (pt. 432) 503

STATUTES REFERRED TO

Robbery & Firearms (Special Provisions) Act Cap. R11 LFN 2004, s. 1(2)
Evidence Act 2011, s. 135(1)(2)

B

LEAD JUDGMENT BY ALAGOA JSC

The Respondent as accused was arraigned before the Ilorin Judicial Division of the High Court of Kwara State of Nigeria on a charge of Armed Robbery contrary to section 1(2) of the Robbery and Firearms (Special Provisions) Act Cap. R 11, Laws of the Federation of Nigeria 2004. He pleaded not guilty and the case went on to be fully heard with the prosecution calling four witnesses and tendering three exhibits. The Respondent gave evidence on his behalf and called no witnesses. Written addresses were submitted and adopted by counsel and in a considered judgment delivered on the 30th June, 2010, Kawu, J. found the Respondent guilty and accordingly convicted and sentenced him to death by hanging.

The prosecutions case was that on the 27th August, 2009 in the evening hours, one Mutiyat Abdulkareem who testified as P.W.2 was coming from her friend's house when at a point along Atiku Road, Adewole Ilorin her phone rang. She answered the call and was conversing with the caller when suddenly the Respondent hit her on the head with a cudgel. P.W.2 Mutiyat Abdulkareem fell on the ground and the Respondent kept hitting her until she was dispossessed of her handset. The police who were on patrol in the area, having earlier got information of the attack on P.W.2 via a distress call raced to the scene and saw P.W.2 Mutiyat Abdulkareem lying on the ground while the Respondent was fleeing the scene. He was shot on the leg by the police but he managed to escape to a nearby house from where he was arrested by the police.

Following the said arrest a search was conducted on his person and the same Nokia handset just stolen from P.W.2 Mutiyat Abdulkareem as well as the cudgel just used in hitting her on the head were recovered by the police. Aggrieved by his conviction and sentence the Respondent appealed to the Court of Appeal Ilorin Division which found merit in the appeal and allowed it while setting aside the judgment of the trial court. This is an appeal by the state against that judgment of the Court of Appeal hereinafter simply re-

ferred to as the lower court.

The Appellant's Notice of Appeal which is contained at pages 108 - 110 of the Record of Appeal consists of two grounds of Appeal.

GROUND 1

The lower Court erred in law when it held that the trial Court did not give any consideration to the defence raised by the Accused/Respondent herein.

When

a) The Learned Trial Judge adequately considered the defence of the Accused/Respondent along with the evidence of the prosecution.

b) There is no duty on the trial court to unearth any defence in order to make a finding on it.

c) It is not mandatory on the trial court to accept the defence raised by the Accused/Respondent.

d) The reasoning of the lower Court was against the spirit and intent of OFORLETE v. THE STATE (2000) 12 NWLR PT.681, 415 AT 435.

GROUND 2

The lower court erred in law when it held that the evidence of the prosecution were not cogent enough to warrant the conviction of the Accused/Respondent.

When

a) The evidence of the prosecution witnesses fixes the Accused/Respondent at the scene of crime.

b) There was no break in space within the commission of the crime and the arrest of the Accused/Respondent.

c) The prosecution established the legal ingredient of the offence of ArmeY Robbery pursuant to Section 1(2) (a) of the Robbery and Firearms Act Cap R 11 Laws of the Federation of Nigeria.

d) Proof beyond reasonable doubt under Section 138 of the Evidence Act does not mean proof beyond every shadow of doubt.

4. RELIEFS SOUGHT FROM THE SUPREME COURT

To allow the appeal by setting aside the Judgment of the lower Court and affirming the judgment of the trial Court.

Distilled from the two grounds of appeal are the following two issues contained in paragraph 3.00 at page 3 of the Appellant's Brief

of Argument dated 7th February, 2012, filed on the 9th February, 2012 and, deemed properly filed on the 13th June, 2012.

i. Whether the lower court was right to have arrived at the conclusion that the learned trial Judge did not give consideration to the defence raised by the Accused/Respondent (Relates to ground B 1).

ii. Whether the lower court was right to have held that the prosecution failed to establish the ingredients of the offence of Armed Robbery against the Respondent to warrant his conviction by the trial Court (Relates to Ground 2).

The Respondent at page 3 of his brief of Argument dated the 9th March, 2012, filed on the 13th March 2012 and deemed properly filed on the 14th February, 2013 adopted the two issues formulated by the Appellant. This appeal came up to be heard on the 14th D February, 2013. Kamaldeen Ajibade, Esq., Hon. Attorney General of Kwara State, appearing with O. S. Balogun, Esq., State Counsel Grade 1, Ministry of Justice, Ilorin, Kwara State adopted and relied on the Appellant's Brief of Argument earlier referred to as Appellants arguments in this appeal and urged us to allow the appeal and set E aside the judgment of the lower court.

Dr. Akin Onigbinde, Esq., who appeared with Richard Baiyeghea, Esq., Stewart David, Esq., and Deji Adeyemi, Esq., for the Respondent also adopted and relied on the Respondents Brief of F Argument earlier referred to and urged this court to dismiss the appeal and affirm the judgment of the lower court. The two issues distilled by the Appellant and adopted by the Respondent are appropriate for the hearing and determination of this appeal and I also adopt them. It is however necessary before delving into the above issues G and discussing them to state that what we are confronted with in this appeal is the offence of armed robbery which is a crime. To this end Section 135 (1) and (2) of the Evidence Act 2011 provide as follows:-

H *"135 (1) - If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal it must be proved beyond reasonable doubt."*

135 (2) - "The burden of proving that any person has been guilty of a crime or wrongful act is, subject to Section 139 of this Act, on the person who asserts it, whether the commission of such act is

or is not directly in issue in the action.”

The purport of this provision is that in an armed robbery case such as this, proof is beyond reasonable doubt. There is a plethora of case law to the effect that such proof beyond reasonable doubt is on the prosecution and it never changes. See ARUNA v. THE STATE (1990) 6 NWLR (PART 155) 125 at 137; ALOR v. THE STATE (1997) 4 NWLR (PART 501); AMEH v. THE STATE (1978) 6 - 7 SC 27; ELIZABETH OGUNDIYAN v. THE STATE (1991) 3 NWLR (PART 181) 519; YONGO v. C.O.P. (1992) 4 SCNJ 113. The list of judicial authorities on this important legal principle is indeed in-exhaustive. B

At this juncture the question should be asked, “What is Armed Robbery?” “Armed Robbery” for our purpose here will only be looked at from the stand point of the Robbery and Firearms (Special Provisions) Act Cap. R 11, Laws of the Federation of Nigeria, 2004. The simplest breakdown of Armed Robbery is to rob with arms. What then is “Robbery” and what constitutes “arms?” The word “Robbery” under the Act means, “stealing anything and at or immediately before or after the time of stealing it using or threatening to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained.” The word “steal” is encapsulated in the definition of the word “Robbery” under the Act. C

The Act goes on to define the word “steal” as - “To take or convert to one’s use or to the use of any other person, anything other than immovable property with any of the following intents:- D

“a) an intent permanently to deprive the owner of the thing of it. E

b) an intent permanently to deprive any person who has any special property in the thing of such property, the term “special property” here including any charge or lien upon the thing in question and right arising from or dependent upon holding possession of the thing in question, whether by the person entitled to such right or by some other person for his benefit. F

c) an intent to use the thing as a pledge or security. H

d) an intent to part with the thing on a condition as to its return which the person taking or converting it may be unable to perform.

e) an intent to deal with the thing in such a manner that it cannot be returned in the condition in which it was at the time of the

taking or conversion.

f) in the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner.”

As regards the word “Arms” there is a clear subdivision of that term under the Act into “firearms” and “other offensive weapons.” “Firearms” include the following - cannon, gun, rifle, carbine, machine gun, cap gun, flint lock gun, revolver, pistol, explosive or ammunition or other firearms whether whole or detached pieces.” “Other offensive weapons” under the Act are made to refer to “any article (apart from a firearm) made or adapted for use for causing injury to the person or intended by the person having it for such use by him and it includes an air gun, air pistol, bow and arrow, spear, cutlass, machete, dagger, cudgel, or any piece of wood, metal glass or stone capable of being used as an offensive weapon.” This list of “Arms” which comprise “firearms” and “other offensive weapons” must not be taken as exhaustive. In this day and age there are undoubtedly new contrivances capable of causing hurt or harm which are not covered under the Act.

I do not however intend to over labour this point since it is not being suggested by the Respondent in argument that what was allegedly used by the Respondent in hitting the Appellant could not possibly have constituted arms under the Act.

What are the ingredients or constituents of the offence of Armed Robbery? They are as follows:-

- a) That there was a Robbery or series of robberies***
- b) That the robberies were armed robberies***
- c) That the accused persons were or some of the people that committed the armed robbery.***

The list of authorities on this legal requirement is inexhaustive. See however the following - AFOLALU v. THE STATE (2010) 16 NWLR (PART 1220) 554; BOZIN v. THE STATE (1985) 2 NWLR (PART 8) 465; AMINA v. THE STATE (1990) 6 NWLR (PART 155) 125; OKOSI v. ATTORNEY GENERAL BENDEL STATE (1989) 1 NWLR (PART 100) 642; NWACHUKWU v. THE STATE (1985) 1 NWLR (PART 11) 218; ANI V. THE STATE (2003) 11 NWLR (PART 89) 142.

To secure conviction of an accused person for the of-

fence of Armed Robbery the prosecution must satisfy the requirements of these ingredients beyond reasonable doubt or fail. It is proof of these ingredients beyond reasonable doubt by the prosecution that constitute the guilt of the accused person. By the same token the conviction of the accused will be upheld if, in the words of Adekeye, JSC in OLAYINKA AFOLALU v. THE STATE (supra) the prosecution is able to establish the ingredients of the offence “even on the evidence of a single witness.” B

With what has been said so far in this write-up as parameters or guidelines, I shall now proceed to consider the issues seriatim. The first issue is whether the lower court was right to have arrived at the conclusion that the learned trial Judge did not give consideration to the defence raised by the Accused/Respondent. This issue is said to relate to Ground 1 in the Notice of Appeal. Appellant in its Brief of Argument made reference to pages 96 - 98 of the Record of Appeal and to the reasoning and finding of the lower court in its resolution of Issue C D

1. There the lower court had said as follows;

“To the issue at hand before a court will consider the accused defence, he must consider same with other available evidence to reach a veritable conclusion. See MANAWA v. THE STATE (1987) 3 S.C. 497 at 304. The evidence of the Respondent and Appellant witnesses in the lower court were considered by the lower court. The summary of the case as enunciated by the lower court goes thus: E F

“The accused in his defence denied the allegation of robbery attack but admitted the following facts - That he was at the scene of crime at the material time not in connection with the commission of the alleged crime but as innocent passerby on his way to sawmill motor garage. That on sighting the police he took to his heels not because he was involved in any armed robbery but because he was in possession of Indian hemp. That after being shot he ran into a nearby house where the police arrested him and the lower court concluded by saying the Appellant’s evidence holds no water.” G H

But I paused a bit and ask that, was the defence in the evidence of the Respondent considered? Let me reproduce and or paraphrase the evidence of the Respondent. He went on thus;

“I am SALIUISIAKA. I live in Lagos. I am a driver. On the 27th

August, 2009 I came from Kishi and a vehicle dropped me at Ologe Ilorin. After I ate food at Ologe I started trekking through Adewole Estate with the aim of going to Gerialimi. My plan was to sleep at Sawmill so that the following morning I could enter vehicle to Lagos. On reaching Adewole Area, I saw a white vehicle packed with police-

B men. I was with cigarette in my pocket. I had passed the police before they stopped me. I did not know that anything happened in the area. They stopped me I refused to stop because of the cigarette in my pocket I discovered that they wanted to kill me so I started running. I ran inside a house and stayed beside a vehicle in the compound.

C The police came and met me in the house. They shot me again that is all what I know about the case... when I woke up I met myself in the General Hospital. I was in the hospital when PW.4 asked me for the things I collected from the woman. I told the policeman I did not collect anything from the woman, the police removed handset from their pocket and alleged that they recovered the handset from me. The police told me that I was drunk when they arrested me and that I did not know what I was doing..."

The Appellant did not cross examine the Respondent on

E **this salient issues which would have assisted the Court to determine the truthfulness of the evidence of the Respondent. The Respondent gave reasons why he ran or why he took to his heels because he has Indian hemp in his pocket, this piece of evidence and others as enunciated in his evidence was not**

F **considered as a reasonable defence for the Respondent. An ordinary Nigerian can take to his heels if he sees a Nigerian policeman throttling a gun at him. This piece of evidence is germane and reasonable and ought to be considered by the**

G **lower court. The lower court should have considered the defence raised by the Respondent; it is trite that an accused person's defence should be considered however stupid or unreasonable for whatever it is worth.** See NSE UDO NIJA v. THE STATE (1993) 3 SENJ. 28, 35; RASALU OLADIPUPO v. THE STATE

H (1993) 6 SENJ. 233, 230 - 247 and ADELENWA v. THE STATE (1972) 7 NSCC 591 and at 594.

I am very assertive and convinced that if the lower court had considered the defence of the Respondent his conclusion could have been "different."

Appellant has submitted in its Brief of Argument that there is nothing in the evidence of the Accused/Respondent referred to by the lower court which the trial court did not avert its mind to in the course of the trial Judge's judgment and the lower court was wrong to have arrived at the conclusion that the defence of the Accused/Respondent was not given adequate consideration. Specific reference was made by Appellant's counsel to page 55 of the Record of Appeal where the learned trial Judge considered the defence raised by the Accused/Respondent before the court - the trial court held that the defence of the Accused/Respondent held no water.

Appellant's Counsel also referred to page 56 of the Records where the learned trial court considered other possible defences open to the Respondent. Appellant's Counsel relied on the case of *MANAWA OGBODU v. THE STATE* (1987) 3 S.C. 497 at page 304 where Obaseki, JSC, put the question succinctly as follows:-

"There is no duty on the court to unearth any defences in order to make a finding on it. It is however the duty of the court to consider all defences implicit in the evidence though not specifically raised."

On the assertion by the lower court that the Accused/Respondent was not cross-examined on the reason why he ran away when he saw the police, Appellant submitted in its brief of argument that that assertion of non cross-examination of the Accused/Respondent was not correct as could be seen at page 40 of the Record of Appeal where the Accused/Respondent was cross-examined on why he took to his heels on seeing the police.

Appellant's Counsel submitted that the evidence of P.W.2, the victim of the armed robbery attack and PW 3, the Policeman who took part in arresting the Accused/Respondent remained unchallenged and unshaken under cross-examination by the Counsel for the Respondent. Appellant's Counsel went on further to say that the evidence of the Accused/Respondent in his defence that he was drunk when he was shot and that it was the police that brought out the handset from their pocket goes to no issue as same was never put to any of the prosecution witnesses under cross-examination to elicit their reaction whether to admit or deny same.

The Respondent has also submitted in his Brief of Argument that a court trying a criminal case must consider all the defences raised

by the accused and all other defences which surfaced in the evidence before the court however slight, weak, foolish, unfounded or minor. Reliance was placed on AHMED v. STATE (2001) FWLR (PART 34) 438 at 468 para. A - B; OGUNTOLU v. STATE (1996) 2 NWLR (PART 432) 503; RASAKI OLADIPUPO v. STATE (1993) 6 SCNJB 233 at 239. Respondent therefore submitted that if the trial court had done so, it would have come to the inevitable conclusion that the Respondent was innocent of the crime for which he was convicted. Respondent further submitted that where doubts have been created as to whether the Respondent committed the offence of Armed Robbery, such doubts should be resolved in favour of the Respondent. Reliance was placed on ANKIWA v. THE STATE (1969) 1 ALL NLR 133; AHMED v. THE STATE (Supra); KAZEEM v. THE STATE (2009) ALL FWLR (PART 465) 1749. The Counsel for the Respondent further submitted in the Respondent's Brief of Argument that the trial court not only disregarded the evidence of the Respondent, but also filled in the blank spaces in the case for the prosecution by holding as follows:-

"There was no break in the chain of events described by the prosecution from the point of the attack of PW.2 to the arrest of the accused." -

when in actual fact, it took the police time to get to the scene of the robbery after they received the distress call, time to locate the victim at the scene/floor at about 9.00 pm; time to look at the area to see if anyone was around, time to go back to the vehicle, put on the head lamp and scan the area. Before the police could go through all of these routines the actual culprit had escaped. It was also submitted on behalf of the Respondent that the fact that the victim was hit from behind meant that she could not have seen her attacker. Counsel for the Respondent restated that a trial court has a duty to consider all the defences presented to it for which proposition he relied on NWANKWO ALA v. THE STATE (2006) ALL FWLR (PART 339) 801 at 818; ADELENWA v. THE STATE (1972) 7 NSCC 591 at 594. Failure to consider all the defences, it was submitted in the Respondent's Brief of Argument, amounted to a denial of the right of fair hearing. Reliance was placed on NEWSWATCH COMMUNICATIONS LTD. v. ATTA (2006) ALL FWLR (PART 318) 580 at 600 paragraph G - H.

It was further submitted for the Respondent in his Brief of Argument that the trial court speculated on what may have happened and courts of law are enjoined not to speculate in arriving at their decisions. Reliance was placed on *IDOWU v. STATE* (1998) 11 NWLR (PART 574) 345 at 363. Counsel, relying on *SHEHU v. THE STATE* (2010) 4 SCM 180 at 197 paragraph H - I; *STEPHEN UKORAN v. THE STATE* (1977) 4 SC 167 at 177 submitted on behalf of the Respondent that it is better for ten guilty men to be set free than for one innocent person to be convicted.

This issue is all about the learned trial judge not giving consideration to the defence put up or raised by the Accused/Respondent but is this correct? Recourse should at this stage be had to page 55 of the Record of Appeal where the learned trial Judge in his judgment gave consideration to the defence raised by the Respondent in these words;

“The accused in his defence denied the allegation of robbery attack but admitted the following facts:-

1) That he was at the scene of the crime at the material time not in connection with the commission of the alleged crime but as an innocent passerby on his way to saw mill motor garage.

2) That on sighting the police he took to his heels not because he was involved in any armed robbery but because he was in possession of Indian hemp.

3) That the police shot him.

4) That after being shot he ran into a nearby house where the police later arrested him.”

This same finding of the learned trial Judge was reproduced at page 5 of the Respondent's Brief of Argument. To this finding of the learned trial Judge Respondent's Counsel submitted at the same page 5 of the Respondent's Brief of Argument, *“that the trial court did not pause to consider the case for the Respondent; the court only glossed over same”*.

The learned trial Judge could not have merely glossed over the defence of the Respondent highlighted above because in the very next sentence at page 55 of the Record of Appeal, he said as follows:-

“Having carefully examined the evidence of the parties in this case I am satisfied that the evidence of the prosecution is more co-

gent, convincing and probable than that of the defence.”

In other words, the learned trial Judge by these words put the evidence of the prosecution on one side of an imaginary scale and the evidence of the defence on the other side of the imaginary scale to ascertain whose evidence was weightier. The learned trial Judge at
 B pages 54 - 55 of the Record of Appeal evaluated the evidence of
 P.W.2 and P.W.3 thus- *“P.W.2 the victim of the alleged robbery attack
 testified that on the 27th day of August, 2009 along Atiku Road,
 Olorunsogo, Ilorin she was receiving a phone call when the accused
 hit her on the head with a heavy object. She fell down and accused
 took her phone. Just at that point the police who were on patrol in
 the area came to the scene and saw the accused fleeing. The police
 shot the accused who managed to escape to a nearby building from
 where he was arrested.”*

D P.W.3 corroborated the evidence of P.W.2 when he testified
 inter alia as follows:

*“On 27/8/2009 at about 2100 hours while on patrol with my
 DPO Supol Idris Abu, we received a distress call from an unknown
 person that one man was attacking a woman along Atiku Road,
 E Adewole Estate Ilorin. Immediately we moved to the scene. We put
 on our vehicle headlamp and saw the accused running away from
 the scene. I shot him in the leg. The accused continued running away.
 He ran to a house belonging to one Mrs. Abdulkareem. We entered
 the house and found the accused lying underneath a Peugeot 504
 F Station Wagon parked in the premises. We picked the accused to-
 gether with the injured woman and put them in our vehicle. We
 searched the accused and found a mobile phone handset belonging
 to the injured woman. We recovered from the accused the wood
 G that he used as weapon on the woman.”*

The finding of the lower court that the Respondent was not
 cross-examined on salient issues of the defence put up by him is not
 correct. A look at page 41 of the Record of Appeal shows that the
 Respondent was extensively cross-examined by the Appellant’s Coun-
 H sel on several aspects of the defence put up by him including his
 reasons for fleeing when he sighted the police. To the question, *“You
 said you had a cigarette in your pocket when you saw the police at
 Adewole and that was why you ran? Is that a crime to carry ciga-
 rette?”* the Respondent answered as follows:-

"I first called cigarette. It was Indian hemp that I was carrying in my pocket."

In adjudication a Judge takes cognizance not only of all the evidence which he proceeds to evaluate but the demeanour of all the 'dramatis personae' - witnesses, accused etc. It is clear that the Respondent knew the difference between cigarette and Indian hemp. What inference would one be expected reasonably to draw from a Respondent who first said he was in possession of cigarette only to change later to say it was Indian hemp that was in his possession?

That the learned trial Judge considered other possible defences of the Respondent aside from reasons why he fled on sighting the police is evident when recourse is had to page 56 of the Record of Appeal where the learned trial Judge said as follows:-

"This brings me to the submission of the learned defence counsel that P.W.2 could not have properly identified the accused as her attacker given her evidence that she was attacked in the dark and from behind. I think this submission overlooks the fact that the circumstances painted by prosecution leaves no doubt that the accused was the culprit."

The learned trial Judge then went on to give reasons why he came to this finding as follows:-

"The story of the prosecution before the court which I believe is that the accused attacked P.W.2 with a cudgel and took her telephone handset. The police who were on patrol in the area and who had earlier got wind of the incident met the accused and P.W.2 at the scene. On sighting the police the accused fled and was shot. He escaped to a nearby building where he was arrested with the cudgel, Nokia telephone handset taken from P.W.2, and evidence of gunshot. Where circumstances show the accused person's involvement in the commission of the offence charged as in the case under consideration, that constitutes a satisfactory proof and evidence of identification. See IKEMSON v. THE STATE (1989) 3 NWLR (PART 110) 455 at 478 - 479"

I cannot agree more with the learned trial Judge. PW.3 who was part of the patrol team of policemen that picked the Respondent gave graphic details of what happened. Although it was at night that the incident happened, the full glare of the

patrol team's vehicle lights were on and so tracing the Respondent to the house and beneath the car where he had taken refuge was not a problem to the patrol team. The man that was apprehended by the police patrol team had in his possession not just a telephone handset but that belonging to P.W.2
 B **whom he had only shortly before dispossessed of it. The object used to dispossess P.W.2 of her handset was also found in the possession of the Respondent. As if this was not sufficient proof, the man apprehended had gunshot wounds. How then**
 C **could anyone rationally come to the conclusion that the Respondent was not positively identified? I find merit in the argument of the Appellant and resolve Issue 1 in favour of the Appellant.**

Issue 2 is, *"Whether the lower court was right to have held that*
 D *the prosecution failed to establish the ingredients of the offence of Armed Robbery against the Respondent to warrant his conviction by the trial court."*

This issue is said to relate to Ground 2. I had earlier in this write-up somewhat extensively and comprehensively I hope, dealt
 E with the ingredients or components of the offence of Armed Robbery and I do not intend to repeat or rehearse them here. From a study of the Briefs of Argument what appears to be in contention in this issue is the identity of the armed robber that attacked and dispossessed P.W.2 of her handset. It is not being contended here that what
 F took place between P.W.2 and her attacker was neither a robbery nor an armed robbery. The evidence of P.W.3 has been stated and restated. It has been submitted in the Respondent's Brief of Argument that the evidence of P.W.3 corroborates the evidence of the Respondent that he (Respondent) was only in the vicinity of the crime and
 G that the police arrested and charged the person they saw in the vicinity and not the robber who robbed P.W.2. That argument is as ridiculous as it is ludicrous. How does one for example explain away the gunshot wound on the Respondent and the fact that the telephone
 H handset of P.W.2 and the cudgel or object used in attacking and dispossessing P.W.2 were found with him?

The Respondent's story is one that had better be told to the marines. It is the story of a drowning man clutching desperately to straw in the hope of staying afloat. Heavy weather appears to have

been made by the Respondent over answers elicited from PW 2 during cross-examination showing that she could not possibly have recognized the Respondent as the person who attacked and robbed her of her telephone handset on the 27th August, 2009. Reference was made to the cross-examination of PW 2 by Mr. Gegele at Page 36 of the Record part of which ran thus:-

“Question: The person that attacked you hit from the back?”

Answer: Yes.

Question: It was at the Hospital that you first recognized the accused?

Answer: No, I recognized him from the day of the incident when he was arrested.”

Emphasis was placed on the underlined words by the Respondent’s Counsel. The interpretation given by the Respondent’s Counsel to this question and answer session is that P.W.2 the victim of the robbery was not in a position to identify her attacker because she was hit from the back and at night. Counsel reasoned that the state of mind of P.W.2 at the time of the attack coupled with the time the incident occurred and the fact that P.W.2 was hit with a hard object from behind would collectively deny her the opportunity of seeing her attacker and she only saw the Respondent after the police presented him to her.

The interpretation given to P.W.2’s answer, *“No I recognized him from the day of the incident when he was arrested”* will depend on one’s understanding of the use of English. At pages 55 - 56 of the Record of Appeal, the learned trial Judge while summing up the evidence of the parties said as follows:

“Having carefully examined the evidence of the parties in this case I am very satisfied that the evidence of the prosecution is more cogent convincing and probable than that of the defence. There was no break in the chain of events described by the prosecution from the point of the attack of P.W.2 to the arrest of the Accused.”

The underlined portion of the learned trial Judge’s summation of the evidence adduced by the parties is apposite here.

The arrest of the Respondent did not take place on a different date from when the incident occurred. There was no loss of time or sequence from the time of the attack on P.W.2 and the arrest of the Respondent. The evidence of P.W.3 which

**was never contradicted was that as his Patrol team got to the scene where the Respondent was attacking P.W.2, the Respondent on sighting the patrol team fled and the patrol team gave chase, shot him but he managed to escape to a house from where he was arrested. The Respondent and P.W.2 were there-
 B after taken to the hospital. It is therefore very easy to appreciate the fact that the recognition of the Respondent by P.W.2 and the arrest of the Respondent were contemporaneous and there was no time lag between the recognition and the arrest.
 C The argument put forward by the Respondent that P.W.2 only saw the Respondent after the police presented him to her cannot be correct from the evidence adduced.** There is in fact nothing on record to show that P.W.2 did not recognize her attacker. At pages 35 - 36 of the Record of Appeal P.W.2 in the course of her
 D examination in chief said as follows:

*"I am Mutiat Abilullureem. I live at Olorunsogo Area, Ilorin. I am a businesswoman. I know the accused person before the court. On the 27th August, 2009, I went to my friend's house called Mummy Mairam along Atiku Road, Olorunsogo Ilorin. I was coming back when
 E my telephone handset rang. I answered it and just a bang on my head. I fell down and my phone dropped. The accused held my set and I was shouting but the accused kept hitting me on the head. I was shouting Ya Allau when the police came. They shot the accused
 F in the leg and he could no longer run properly. He was arrested and I identified both accused and my handset found on him. The police took me and the accused to the hospital..."*

The cross examination of P.W.2 which followed this piece of evidence part of which was earlier visited in this write-up did not
 G destroy the credibility of this witness. From the evidence before the court there is no doubt that it was the Respondent that carried out the armed robbery on the P.W.2 on the 27th August, 2009. The third ingredient or requirement in the offence of Armed Robbery would therefore have been satisfied by the prosecution beyond reasonable
 H doubt. Issue 2 is accordingly resolved also in favour of the Appellant.

As had earlier been determined there was indeed a robbery of P.W.2 on the 27th August, 2009. Not even the Respondent has denied this fact. The said Robbery was also an armed robbery. Again the Respondent has not put up any argument to the contrary. From

available evidence, the object of attack on P.W.2 was variously described as cudgel and wood. In the wording of the Robbery and Firearms (Special Provisions) Act Cap. R 11, Laws of the Federation of Nigeria 2004 while “Wood” and “Cudgel” do not constitute “fire-arms,” those objects fall under what are described under the Act as “other offensive weapons.” B

Thus all the three ingredients that constitute Armed Robbery would appear to me to have been satisfied. Heavy weather has been made of the dictum of Aniagolu, JSC in NWOSU v. THE STATE (1986) 4 NWLR (PART 35) 348 wherein he stated as follows:- C

“A judgment sending a man to the gallows must be seen to be the product of logical thinking based upon admissible evidence in which the facts leading to his conviction are clearly found on logical deduction therefore carefully made. It cannot be allowed to stand if founded upon scraggy reasoning or a perfunctory performance.” D

The learned respected jurist is right. In the present case the learned trial Judge’s reasoning was not scraggy. He took pains to sum up and evaluate the evidence before him. He found reason to discredit and discard the confessional statement allegedly made by the Respondent and found good reason from the evidence before him to convict and sentence the Respondent according to law. The prosecution proved its case beyond reasonable doubt and the Respondent was properly convicted and sentenced by the learned trial Judge. This appeal has merit and is allowed. E

The judgment of the lower court delivered on the 19th July, 2011 discharging and acquitting the Respondent is hereby set aside and the judgment of the High Court delivered on the 30th June, 2010 convicting and sentencing the Respondent to death by hanging is hereby restored and affirmed by me. F

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MUHAMMAD JSC

I have had the opportunity of reading in advance, the judgment of my learned brother, Alagoa, J.S.C., just delivered. I agree with my learned brother that the appeal is full of merit and it should be allowed. I allow the appeal. I set aside the judgment of the court below and restore the trial Court’s decision. I abide by all consequential orders as made in the lead judgment. H

OGUNBIYI JSC

I read in draft the lead judgment just delivered by my brother Alagoa, J.S.C. I agree that the appeal has merit and should be allowed. Just to put in a few words of mine, the appeal is against the judgment of the Court of Appeal, Ilorin Division delivered on the 19th, July, 2011. The respondent herein was arraigned before the Kwara State High Court on a two count charge of Armed Robbery contrary to section 1(2) of the Robbery and Fire Arms Act and he pleaded not guilty to the charge. The case proceeded to trial wherein the appellant called 4 witnesses while the respondent testified in his own defence. At the close of the trial, the Respondent was found guilty of the charge and sentenced to death.

Dissatisfied with the judgment of the trial court, the Respondent appealed to the court of Appeal which set aside his conviction and sentence and he was accordingly discharged and acquitted. The Appellant herein was dissatisfied with the judgment of the lower court, and hence appealed to this court by filing notice and raising two grounds of Appeal.

- The two issues before us are:-
- “(1) *Whether the lower court was right in arriving of the conclusion that the learned trial judge did not give consideration to the defence raised by the accused/respondent.*
 - “(2) *Whether the lower court was right in arriving at a conclusion that the prosecution failed to establish the ingredients of the offence of Armed Robbery against the Respondent to warrant his conviction by the trial court.*”

At pages 9 - 98 of the record, the lower court resolved that the learned trial judge did not give sufficient consideration to the defence raised by the accused/respondent in his oral testimony; note in particular page 97 of the record.

It is settled and on established principle of law per decided authorities that an accused person’s defence, no matter howsoever must as a matter of law be considered by the court. The question however is whether the lower court in the case of hand, was right in concluding that the learned trial judge did not consider the defence raised by the respondent.

It is clear from the record as revealed on the evidence of the

witnesses that the learned trial judge in arriving at the conviction of the accused gave adequate and due consideration to the defence raised by him. The finding by the trial court at pages 55 - 56 of the record is very apt and which I hold cannot be faulted. In other words and specifically of page 55 of the record, for instance, this is what the learned trial judge said on the defence raised by the accused/respondent:-

“The accused in his defence denied the allegation of robbery attack but admitted the following facts:-

(1) That he was at the scene of the crime of the material time not in connection with the commission of the alleged crime but as an innocent passerby on his way to sawmill motor garage.

(2) That on sighting the police he took to his heels not because he was involved in any armed robbery but because he was in possession of Indian hemp.

(3) That the police shot him.

(4) That after being shot he ran into a nearby house where the police later arrested him.

Having carefully examined the evidence of the parties in this case I am very satisfied that the evidence of the prosecution is more cogent, convincing than that of the defence.”

From all indications and the cumulative summary of the facts admitted by the accused/respondent supra, the conclusion cannot be other than that arrived at by the trial court. In other words, it is a matter of common knowledge that a person with criminal intention and who stands the risk of discovery would certainly seek to defend himself from the culpability of that which he is being accused. It is also natural phenomenon that such a person will deny the truth of the reason why he is present at the scene of crime.

With all respect to their Lordships of the Court of Appeal therefore, it is my view that their conclusion arrived at pages 97 - 98 of the record cannot be correct as it did not tally with the evidence and the entire circumstance of the case as presented of the trial court. The prosecution I hold, had discharged the onus placed upon it in proving the accused/respondent guilty as rightly found by the trial court and it was just and proper that the accused was made to face the consequences of his act. To do otherwise, the court would be failing in the discharge of its duty generally to the society and the victim of

the robbery in particular.

It is only just and equitable that the ills perpetrated by man to his fellowman should be checked and avenged for purpose of arresting disorder in the society. The proof is beyond reasonable doubt and not all shadow of doubt; that had been discharged by the prosecution.

My learned brother Alagoa, J.S.C. had adequately dealt with the appeal and with the few words of mine, I also allow the appeal in terms of the lead judgment.

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