

**SUPREME COURT OF NIGERIA**  
FRIDAY 17TH MAY, 2013. SC. 433/2011  
**CORAM:- M. MOHAMMED, J. A. FABIYI, B. RHODES-  
VIVOUR, M. U. PETER-ODILI, K. B. AKA'AH, JJSC**

LATEEF SADIKU ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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CRIMINAL PROCEDURE - Commencement - Power of AG - By Constitution 1999 ss. 174 & 211 - AG Federation & State can institute criminal proceedings - Against any person before any court in Nigeria - Other than a Court Martial (H1)

ARMED ROBBERY - Prosecution - Power of AG State - Robbery & Firearms Act s. 9(2) empowers the AG to institute proceedings - In respect of offences created by the Act (H2)

CONSTITUTIONAL LAW - Existing law - Validity - By Constitution 1999 s. 315 - Robbery & firearms Act became existing law of Ogun State - And is deemed to have been made by the State House of Assembly (H3)

ARMED ROBBERY - Charge - Filing - Time - Robbery & firearms Act ss. 9, 10, 11 & 14 were deleted by Decree 62 - Before appellant was arraigned - Hence he cannot benefit from the repealed sections of the Act (H4)

CRIMINAL PROCEDURE - Arraignment - Fair hearing - Appellant's complaint of breach of fair hearing is without basis - As the charge was read and explained to him - And he was represented by counsel (H5)

IDENTIFICATION PARADE - Necessity - It is essential where identity of accused is in dispute - But is not useful where witness knew accused well - Before the alleged crime was committed (H6)

ARMED ROBBERY - Alibi - Recent possession - E A s. 167(a) was

rightly invoked and alibi rightly rejected - Since appellant was found in the vicinity of the crime - Shortly after the robbery and was also in possession of the stolen items (H7)

### **FACTS**

Accused/appellant was accused of being among three man group of armed robbers who conspired to carry out armed robbery operation during which they carted away money and valuable properties belonging to the victims of their operation. Appellant and his co-accused persons were not only identified as participants in the robbery but also that some of the properties stolen in the act of the robbery, were immediately recovered from them. They were subsequently arrested and arraigned upon the information filed by the Attorney-General of Ogun State, before the Ogun State High Court on a six count charge of Conspiracy to Commit Armed Robbery & Armed Robbery contrary to sections 5(b) and 1(2)(a) of the Robbery and Firearms (Special Provisions) Act 1990. Appellant pleaded not guilty to the charge.

Thereafter, prosecution/respondent called witnesses most of whom were the victims of the robbery in proof of its case. The court relying on the doctrine of recent possession concluded that appellant and one other were the robbers. Appellant and the other were convicted and sentenced to death while the 3<sup>rd</sup> accused was discharged and acquitted. Appellant filed appeal against the judgment. In its judgment, the conviction of appellant under section 1(2)(a) of the Robbery & Firearms (Special Provisions) Act 1990, for which he was sentenced to death was substituted with life imprisonment under section 1(i) of the Act. Aggrieved, appellant lodged appeal in Supreme Court, contending among other things that his arraignment is incompetent, by the reason that same was done upon information filed by a State Attorney-General.

### **ISSUES FOR DETERMINATION**

1. Whether the trial, court has jurisdiction to try the appellant on an information filed by the Attorney - General of Ogun State in respect of an offence under an Act of the National Assembly being an offence exclusively preserved for the Attorney - General of the Federation under section 174 of the Constitution of the Federal Republic of Nigeria (as amended).

2. Whether the information upon which the appellant was tried was not incompetent in view of the failure of the prosecution to file same within the mandatory time frame of 21 days stipulated by sections 9 (3) and 12 (5) of the Armed Robbery and Firearms Act.

3. Whether the irregularities in the taking of the plea of the appellant at his arraignment were not of such fundamental nature as to deny the appellant fair trial and thus render the whole proceedings a nullity.

4. Whether the court below was right in agreeing with the trial court in the circumstances of the case, an identification parade was not necessary, given the fact that the appellant was neither arrested at the scene of crime nor did any of the prosecution witnesses know him before the commission of the crime.

5. Whether the court below was right in holding that the appellant did not provide sufficient particulars to have availed himself of the defence of alibi.

6. Whether given the surrounding circumstances of this case, the court below was right in relying on the doctrine of recent possession in affirming the conviction of the appellant for the offence of Armed Robbery.

**HELD** (Unanimously dismissing the appeal per

**AKA'AH'S JSC)**

*CRIMINAL PROCEDURE - Commencement - Power of AG*

**1. Section 174 of the 1999 Constitution (as amended) empowers the Attorney - General of the Federation to institute and undertake criminal proceedings against any person before any court of law in Nigeria. The section provides as follows:-**

***“174 - (1) The Attorney - General of the Federation shall have power -***

***(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court - martial, in respect of any offence created by or under any act of the National Assembly”.***

**Section 211 of the 1999 Constitution (as amended) con-**

**tains the same provision for the Attorney - General of the State in relation to laws passed by the State House of Assembly and it says:-**

**“211 - (1) The Attorney - General of a State shall have power -**

**B (a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court - martial in respect of any offence created by or under any law of the House of Assembly.” (p. 2529 G)**

**C ARMED ROBBERY - Prosecution - Power of AG State**  
**2. The Robbery and Firearms (Special Provisions) Act, 1990 gives power to the State Attorney - General to institute proceedings in respect of the offences created by the Act. Section 9(2) of the Act specifically provides as follows:**

**D “9(2) Prosecution of offences under this Act shall be instituted by the Attorney - General of the State or where there is no Attorney - General, the Solicitor - General of the State in respect of which the tribunal was constituted or by such**  
**E officer in the Ministry of Justice of that State as the Attorney - General or the Solicitor - General as the case may be, may authorise so to do”. (p. 2530 F)**

**F CONSTITUTIONAL LAW - Existing law - Validity**  
**3. Learned counsel for the appellant appears to be ignorant of the decision in Emelogu’s case because he did not refer to it in his brief of argument; neither did he call for a review of the said decision. By virtue of Section 315 of the 1999 Constitution as amended, Robbery and Firearms (Special provisions) Act, 1990 became an existing law of Ogun State and is deemed to have been made by the State House of Assembly and since it is deemed to be an existing law, it has effect with**  
**G such modifications as may be necessary to bring it into conformity with the provisions of the 1999 Constitution. See:**  
**H Section 315(1) of 1999 Constitution. (p. 2532 A)**

**ARMED ROBBERY - Charge - Filing - Time**  
**4. Learned counsel for the appellant is seeking to nullify the**

**conviction of the appellant on the ground that the information upon which the appellant was tried was incompetent in view of the failure of the prosecution to file same within the mandatory time frame of 7 days stipulated in Sections 9(3) and 12(5) of the Robbery and Firearms (Special Provisions) Act 1990. Secondly that there was irregularity in the taking of the appellant's plea.** B

**These provisions were deleted by the Tribunals (Certain Consequential Amendment etc) Decree No. 62 of 1999 Constitution. Section 1 states:-**

**"1. The enactments specified in the first column of parts I & II of the schedule to this Decree are amended to the extent set out in the second column of those parts of that schedule".** C

**The sections which were deleted are sections 9, 10, 11, 12 and 14 of the Act. These sections were deleted before the appellant was arraigned and so he cannot claim any benefit from the repealed sections of the Act which in the eyes of the law never existed. (p. 2532 C/H)** D

*CRIMINAL PROCEDURE - Arraignment - Fair hearing*

**5. In the proceedings of 15th May, 2002 when the 6 count charge was read and explained to the appellant he pleaded not guilty.**

**The charge was read and explained to the appellant. He pleaded not guilty. I cannot fathom how it can be argued that the appellant who pleaded not guilty to the charge will complain of lack of fair hearing. The appellant was represented by learned counsel who could have taken objection to any unorthodox handling of the case by the prosecution. This complaint is without a basis and it is discountenanced. Issues 1, 2 and 3 are resolved against the appellant. (p. 2533 B/E)** E F G

*IDENTIFICATION PARADE - Necessity*

**6. An identification parade is useful and indeed essential whenever there is a doubt about the power of a witness to recognise an accused person or when the identity of the accused person is in dispute. It is not necessary where the witness knew** H

***or was familiar with the accused or suspect well before the alleged crime was committed.*** (p. 2534 C)

*ARMED ROBBERY - Alibi - Recent possession*

- 7. The appellant confessed to the commission of the crime and not only that he was arrested shortly after the commission of the offence and the stolen goods were found with him. It was therefore unnecessary to conduct an identification parade and also investigate the alibi set up by the appellant. The trial court properly invoked the doctrine of recent possession to fix the appellant with the commission of the offence. The appellant had an explanation to give as to how he came into possession of the stolen items so soon after the robbery was committed.**
- D The plea of alibi though timeously raised was rightly rejected because the appellant was found in the vicinity of the crime shortly after the robbery and not only that he was found in possession of the stolen items. Having been found in possession of the stolen goods, the learned trial Judge was right to invoke section 167(a) Evidence Act to presume that the appellant was either the robber or knew that the goods were stolen when he came into possession.** (pp. 2534 G/2535 B)

**CASES REFERRED TO**

- F** Kajubo vs. State (1988) 1 NWLR (pt. 73) 21  
 Emelogu vs. State (1988) 2 NWLR (pt. 78) 524  
 Orok vs. State (2009) 13 NWLR (pt. 1052) 633  
 Bozin vs. State (1985) 2 NWLR (pt. 8) 465
- G** Adisa vs. State (1991) 1 NWLR (pt. 168) 490  
 Yanor vs. State (1965) NMLR 337  
 Odu v. State (2001) 5 SCNJ 115  
 Eke v. State (2011) 3 NWLR (pt. 123) 589  
 Ochemaje v. State (2008) 6 SC (pt. 11) 1
- H** Udoebre vs. State (2001) 6 SCNJ 54  
 Madagwa vs. State (1988) 5 NWLR (pt. 92) 60  
 Nwachukwu vs. State (1985) 3 NWLR (pt. 11) 218  
 Eze vs. State (1985) 3 NWLR (pt. 13) 429  
 Salami vs. State (1988) 3 NWLR (pt. 85) 671

**STATUTES REFERRED TO**

Robbery & Firearms (Special Provisions) Act 1990, ss. 1(2)(a), 9(2)(3), 12(5)

Constitution of Federal Republic of Nigeria 1999 (as amended), ss. 174(1), 211(1), 315

Evidence Act ss. 148(a), 167(a)

**REPRESENTATION**

Dr. Akin Onigbinde with Richard Baiyeshea, Stewart David and Deji Adeyemi, for the Appellant

B. A. Adebayo DDPP Ogun State with Olumuyiwa Ogunsanwo ACSC, for the Respondent

**LEAD JUDGMENT BY AKA'AHs JSC**

This is an appeal against the judgment of the Court of Appeal, Ibadan Division (hereinafter referred to as the court below) delivered on 12th April, 2011 which upheld the decision of the trial court for Armed Robbery.

The appellant and two others namely Abubakar Mohammed and Idowu Shittu were arraigned before the Ogun state High Court, of a Judicial Division on a six count charge of Conspiracy to Commit Armed Robbery and Armed Robbery contrary to sections 5(b) and 1(2)(a) of the Robbery and Firearms (Special Provisions) Act 1990 as by the Tribunal (Certain Consequential etc) Act, 1999. The appellant pleaded not guilty to the charge. The prosecution called 7 (seven) witnesses to prove its case and each of the accused persons testified in his defence. At the end of the trial, the 1st accused and the appellant (who was the 2nd accused) were convicted and sentenced to death while the 3rd accused was discharged and acquitted. In the Notice of Appeal dated 30th August, 2004 but filed on 3rd September, 2004 the appellant appealed against the judgment of the trial court. He amended the Notice of Appeal twice on 6th October, 2006 and 20th May, 2009. In the judgment of the lower court delivered on 12th, April, 2011, the conviction of the appellant under section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act 1990, as amended by the Tribunal (Certain Consequential Amendments etc) Act 1999 for which he was sentenced to death was substi-

tuted with imprisonment for life under section 1(i). The appellant was dissatisfied and has further appealed to this Court on 9 grounds of appeal. The appellant formulated six issues for determination which read as follows:

1. Whether the trial, court has jurisdiction to try the appellant  
 B on an information filed by the Attorney - General of Ogun State in respect of an offence under an Act of the National Assembly being an offence exclusively preserved for the Attorney - General of the Federation under section 174 of the Constitution of the Federal Republic of Nigeria (as amended). (Ground 1 of the Notice of Appeal)

2. Whether the information upon which the appellant was tried  
 C was not incompetent in view of the failure of the prosecution to file same within the mandatory time frame of 21 days stipulated by sections 9 (3) and 12 (5) of the Armed Robbery and Firearms Act. D (Ground 2 of the Notice of Appeal)

3. Whether the irregularities in the taking of the plea of the appellant at his arraignment were not of such fundamental nature as to deny the appellant fair trial and thus render the whole proceedings a nullity. (Ground 3 of the Notice of Appeal)

4. Whether the court below was right in agreeing with the trial court in the circumstances of the case, an identification parade was not necessary, given the fact that the appellant was neither arrested at the scene of crime nor did any of the prosecution witnesses know him before the commission of the crime. (Ground 4 of the Notice of Appeal)

5. Whether the court below was right in holding that the appellant did not provide sufficient particulars to have availed himself of the defence of alibi. (Grounds 5 and 8 of the Notice of Appeal)

6. Whether given the surrounding circumstances of this case, the court below was right in relying on the doctrine of recent possession in affirming the conviction of the appellant for the offence of Armed Robbery. (Grounds 6, 7 and 9 of the Notice of Appeal)

The respondent adopted the issues formulated by the appellant in the appeal.

If issues 1, 2 and 3 are resolved in favour of the appellant this will result in the nullification of the trial. I therefore intend to take the three issues together and also issues 4 and 5 while issue 6 will be treated separately.



On the first issue learned counsel for the appellant submitted that section 174 of the 1999 Constitution confers the powers on the Attorney - General of the Federation to prosecute offences under any Act of the National Assembly such as the Robbery and Firearms (Special Provisions) Act. He argued that section 9 of the said Act which purports to confer powers on the Attorney - General of the State to prosecute offences under the Act cannot confer such powers that are not allowed by the Constitution since section 174 is not made subject to any other law in force. He contended that sections 9(2) and (3) and 12 of the Robbery and Firearms Act are inconsistent with section 174 of the 1999 Constitution and urged that they be declared invalid to the extent of the inconsistency. He reproduced sections 9(3) and 12(5) of the Act and argued that the respondent did not comply with the time frame of 21 days from the appellant's arrest to file information against him and so lost the prosecutorial powers to file the charges and prosecute the appellant. He submitted that the entire information and trial were a nullity and the trial court did not have the jurisdiction to try the appellant because the investigation was not concluded within 7 days of his arrest; neither was information filed within 7 days of the case file from the Police in accordance with section 9(3) of the Act. He maintained that the trial court's arraignment of the appellant in the proceeding of 15th May, 2002 in which the 6 count charge was read to the appellant together, and he was asked to plead to all the counts at once was not in compliance with the rule set out in *Kajubo vs The State* (1988) 1 NWLR (part 73) 21. He further argued that the community pleading led to a miscarriage of justice because the appellant could not comprehend the entire 6 count charge as he could not understand what allegations he was facing in the information.

***Section 174 of the 1999 Constitution (as amended) empowers the Attorney - General of the Federation to institute and undertake criminal proceedings against any person before any court of law in Nigeria. The section provides as follows:-***

***"174 - (1) The Attorney - General of the Federation shall have power -***

***(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other***

***than a court - martial, in respect of any offence created by or under any act of the National Assembly”.***

**Section 211 of the 1999 Constitution (as amended) contains the same provision for the Attorney - General of the State in relation to laws passed by the State House of Assembly and it says:-**

***“211 - (1) The Attorney - General of a State shall have power -***

***(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court - martial in respect of any offence created by or under any law of the House of Assembly;”***

The contention by the appellant is that sections 174 and 211 have clearly defined the powers of the Attorney - General of the Federation and that of the State respectively and the enactment under which the appellant and the co-accused were charged is a federal enactment or an Act of the National Assembly; consequently the Robbery and Firearms (Special Provisions) Act does not fall within the purview of the powers conferred on a State Attorney - General to purport to file information for the purpose of prosecuting an offender against the Act and section 9(2) of the Robbery and Firearms (Special Provisions) Act which allows the State Attorney - General to prosecute for offences under the Act is inconsistent with the Constitution which is the grundnorm and by virtue of section 9(3) of the said Constitution, it should be declared null and void.

***The Robbery and Firearms (Special Provisions) Act, 1990 gives power to the State Attorney - General to institute proceedings in respect of the offences created by the Act.***

**Section 9(2) of the Act specifically provides as follows:**

***“9(2) Prosecution of offences under this Act shall be instituted by the Attorney - General of the State or where there is no Attorney - General, the Solicitor - General of the State in respect of which the tribunal was constituted or by such officer in the Ministry of Justice of that State as the Attorney - General or the Solicitor - General as the case may be, may authorise so to do”.***

Learned counsel for the appellant is aware of this provision; hence the argument that it is inconsistent with Section 174 of the

Constitution and the call that the said section together with Section 12 of the same Act be declared a nullity.

The constitutionality of the trial of offences under the Robbery and Firearms (Special Provisions) Act being undertaken by a State Attorney - General was settled in *Emelogu vs State* (1988) 2 NWLR (Part 78) 524 (1988) 1 NSCC Vol. 19 page 869 where, a full court was empanelled by the Chief Justice of Nigeria, and the Attorney - General of the Federation was invited to make submissions on the constitutional point. In that case the appellant was charged with, tried and convicted of the offence of armed robbery in the Imo State High Court contrary to Section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act No. 47 of 1970 and was sentenced to death. The appellant appealed to the Court of Appeal, and contended that the offences created under the Robbery and Firearms (Special Provisions) Act No. 47 of 1970 were Federal Offences and that the Attorney - General of Imo State lacked the required competence to institute and prosecute such offences without the express authority of the Federal Attorney - General. The appellant also challenged the applicability of the rules of procedure applicable in Imo State in Criminal cases to the offences created under the Robbery and Firearms (Special Provisions) Act No. 47 of 1970. The appeal was dismissed. On a further appeal to the Supreme Court it was held -

1. That by virtue of the provisions of Section 274(4)(b) of the 1979 Constitution, the Robbery and Firearms (Special Provisions) Act No. 47 of 1970 became an existing law of the State and “Robbery” per se is a residual matter, while the Act as amended was deemed to have been made by the State House of Assembly and in view of this offences under the Robbery and Firearms (Special Provisions) Act No. 47 of 1970 (as amended) are not federal but state offences.

2. That by virtue of Section 191 of the 1979 Constitution, the power to institute the prosecution of criminal cases is vested in the State Attorney - General and because the Robbery and Firearms (Special Provisions) Act No. 47 of 1970 operated as a State Law in so far as Armed Robbery is concerned, the State Attorney - General for Imo State had the locus standi as at the 14th day of July, 1982 and the question of delegation of authority does not arise.

The facts and issues contained in *Emelogu’s* case supra apply mutatis mutandis to the present appeal.

***Learned counsel for the appellant appears to be ignorant of the decision in Emelogu's case because he did not refer to it in his brief of argument; neither did he call for a review of the said decision. By virtue of Section 315 of the 1999 Constitution as amended, Robbery and Firearms (Special provisions) Act, 1990 became an existing law of Ogun State and is deemed to have been made by the State House of Assembly and since it is deemed to be an existing law, it has effect with such modifications as may be necessary to bring it into conformity with the provisions of the 1999 Constitution. See: Section 315(1) of 1999 Constitution.***

***Learned counsel for the appellant is seeking to nullify the conviction of the appellant on the ground that the information upon which the appellant was tried was incompetent in view of the failure of the prosecution to file same within the mandatory time frame of 7 days stipulated in Sections 9(3) and 12(5) of the Robbery and Firearms (Special Provisions) Act 1990. Secondly that there was irregularity in the taking of the appellant's plea.***

It is provided in Sections 9(3) and 12(5) of the Robbery and Firearms (Special Provisions) Act 1990 as follows:-

*"9(3) Prosecutions in respect of any person caught committing an offence under section 1(2) of this Act shall be instituted within seven days after the receipt by the Attorney - General of the State concerned or, where there is no Attorney - General, by the Solicitor General of the State, as the case may be of the file containing the completed police investigation in respect of the offence.*

*12(5) Police investigation into cases relating to any person caught committing an offence under section 1 (2) of this Act shall be concluded not later than seven days after the arrest of the offender and the file containing particulars of such investigation shall be sent to the Attorney - General of the State concerned or, where there is no Attorney - General, to the Solicitor General of the State not later than seven days after the conclusion of investigation".*

***These provisions were deleted by the Tribunals (Certain Consequential Amendment etc) Decree No. 62 of 1999 Constitution. Section 1 states:-***

***"1. The enactments specified in the first column of parts***

***I & II of the schedule to this Decree are amended to the extent set out in the second column of those parts of that schedule”.***

**The sections which were deleted are sections 9, 10, 11, 12 and 14 of the Act. These sections were deleted before the appellant was arraigned and so he cannot claim any benefit from the repealed sections of the Act which in the eyes of the law never existed.**

***In the proceedings of 15th May, 2002 when the 6 count charge was read and explained to the appellant he pleaded not guilty.*** Section 215 of the Criminal Procedure Law of Ogun State provides that -

*“215 The person to be tried upon any charge or information shall be placed before the Court unfettered unless the Court shall see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the Court by the registrar or other officer of the Court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the Court finds that he has not been duly served therewith”.*

**The charge was read and explained to the appellant. He pleaded not guilty. I cannot fathom how it can be argued that the appellant who pleaded not guilty to the charge will complain of lack of fair hearing. The appellant was represented by learned counsel who could have taken objection to any unorthodox handling of the case by the prosecution. This complaint is without a basis and it is discountenanced. Issues 1, 2 and 3 are resolved against the appellant.**

#### ISSUES 4 & 5

These issues deal with identification and alibi. Learned counsel for the appellant submitted that the court below was in error when it agreed with the trial court that identification parade was not necessary, or a prerequisite to the investigation against the appellant. He argued that the appellant was never arrested at the scene of crime nor did any of the witnesses who testified against him state that they knew him before the commission of the crime. He submitted that identification of an accused must be properly ascertained in all in-

stances except where the accused is caught at the scene and in the process of committing the offence or where the accused confesses to committing the crime.

Learned counsel submitted on the plea of alibi that the Justices of the court below came to a wrong conclusion when they held that appellant had failed to discharge his duty of providing sufficient material on his defence of alibi when he stated that he was coming from a naming ceremony from his sister's place when he was attacked and beaten up and then taken to police station. He said this fact was made known to the police at the earliest possible time and it was left for Police to find out if there was a naming ceremony which appellant claimed he attended and whether he was with his sister.

***An identification parade is useful and indeed essential whenever there is a doubt about the power of a witness to recognise an accused person or when the identity of the accused person is in dispute. It is not necessary where the witness knew or was familiar with the accused or suspect well before the alleged crime was committed.*** In *Orok vs The State* (2009) 13 NWLR (part 1052) 633 the court of Appeal enumerated the circumstances under which an identification parade is necessary. They are:-

*“(1) The accused was not arrested at the scene and he denies taking part in the crime; or*

*(2) The victim did not know the accused before the offence; or*

*(3) The victim was confronted by the accused for a very short time; and/or*

*(4) The victim due to time and circumstances must not have had full opportunity of observing the feature of the accused”.*

***The appellant confessed to the commission of the crime and not only that he was arrested shortly after the commission of the offence and the stolen goods were found with him. It was therefore unnecessary to conduct an identification parade and also investigate the alibi set up by the appellant. The trial court properly invoked the doctrine of recent possession to fix the appellant with the commission of the offence. The appellant had an explanation to give as to how he came into possession of the stolen items so soon after the robbery was committed.***

The lower court was right to conclude that -

*“if the object of identification is to test the ability of a witness to pick out from a group the person, given the circumstance of this case, this Court agrees with the submission of the respondent on issue 1 that identification parade was not necessary, or a prerequisite to the investigation of the allegation against the appellant”.* B

**The plea of alibi though timeously raised was rightly rejected because the appellant was found in the vicinity of the crime shortly after the robbery and not only that he was found in possession of the stolen items. Having been found in possession of the stolen goods, the learned trial Judge was right to invoke section 167(a) Evidence Act to presume that the appellant was either the robber or knew that the goods were stolen when he came into possession.** C  
The section stipulates as follows: D

*“167 The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case and in particular the Court may presume E*

*(a) that a man who is in possession of stolen goods after the theft is the thief or has received the goods knowing them to be stolen, unless he can account for his possession”*

The prosecution proved its case beyond reasonable doubt to warrant the conviction of the appellant. His conviction was rightly affirmed by the lower court. F

All the issues raised in the appeal are resolved against the appellant I find that there is no merit in the appeal and it is accordingly dismissed. The substituted sentence of life imprisonment imposed by the lower court on the appellant in place of the death sentence pronounced by the trial Judge is also affirmed. Appeal is dismissed. G

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### MOHAMMED JSC

The Appellant was accused of being among the group of armed robbers who carried out operation and conspired and robbed several victims of their money and valuable properties on 15th February, 1999. The Appellant and two others were charged under Sec- H

tion 5(b) and 1(2)(a) of the Robbery and Firearms (Special Provisions) Act 1990 and pleaded not guilty to the charges. The evidence shows that the Appellant and others were armed with guns and a knife at the time of the robbery. The prosecution called witnesses most of whom were the victims of the robbery. The Appellant and his  
 B co-accused person testified in their defence but called no evidence. The Appellant and his co-accused persons were not only identified as participants in the robbery but also that some of the properties stolen in the act of the robbery, were immediately recovered from the Appellant and his co-accused persons. The Appellant and one of his co-  
 C accused person were found guilty as charged and were sentenced to death in accordance with the law while the 3rd accused was found not guilty and was discharged and acquitted. That was the judgment of the trial Court on 16th August, 2004. On appeal, the conviction of  
 D the Appellant under Section 1(2)(a) of the Robbery Act was set aside and substituted with conviction under Section 1(1) of the Act for which he was sentenced to life imprisonment in place of death sentence. The Appellant is now on a further appeal to Supreme Court.

All the 6 issues arising for determination in this appeal have  
 E been carefully dealt with in the lead judgment of my learned brother Aka'ahs JSC which I have had the opportunity of reading before today and with which I entirely agree, I also find no merit in the appeal which is hereby dismissed. The conviction and reduced sen-  
 F tence of life imprisonment passed on the Appellant by the Court below is hereby further affirmed.

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**FABIYI JSC**

G I have had a preview of the judgment just delivered by learned brother - Aka'ahs, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal is devoid of merit and should be dismissed.

H The appeal is against the judgment of the Court of Appeal, Ibadan Division delivered on 12th April, 2011. The appellant was tried along with two others for the offences of conspiracy and armed robbery. The trial court applied the law to the evidence garnered by him to convict the appellant and sentenced him to death. The appeal to the Court of Appeal was dismissed. The court below however sub-



stituted a sentence of life imprisonment in place of the death sentence pronounced by the trial Judge.

There is the issue touching on the identification of the appellant tacitly raised by his counsel who submitted that only a properly identified accused person can be convicted for an offence, as herein. B He referred to the cases of Bozin v. State (1985) 2 NWLR (Pt.8) 465 and Adisa v. State (1991) 1 NWLR (Pt.168) 490. It must be stressed that identification parade is useful and essential whenever there is a doubt about the power of a witness to recognize the accused person or when the identity of the accused person is in dispute. See: C Omopupa v. The State (2008) All FWLR (Pt.445) 1648.

In this case, the appellant confessed in his statement that he took part in the commission of armed robbery. Confession, no doubt is the best evidence. See: Saburi v. Adebayo v. Attorney-General Ogun State (2008) 7 NWLR (Pt. 1085) 201 at 221-222. Apart from that, D he was found with part of the stolen items, soon after the act of robbery. In this scenario, identification was not necessary. Such would have been superfluous. The cases cited by the counsel to the appellant are not in point. The Court of Appeal got it right when it held as E follows:- *"If the object of identification is to test the ability of a witness to pick out from a group the person, given the circumstance of this case, this court agrees with the submission of the respondent on issue No. 1 that identification parade was not necessary, or a prerequisite to the investigation of the allegation against the appellant."* F

The next serious point canvassed on behalf of the appellant which I wish to touch briefly, relates to appellant's casual plea of alibi. Literally, it means elsewhere. It is the duty of the accused person to furnish the particulars of his whereabouts and those present with him at the material time of the incident. It is then left to the prosecution to G investigate same with a view to disproving it. And failure to investigate may lead to an acquittal of the accused person. See Yanor v. The State (1965) NMLR 337; Odu & Anr. v. The State (2001) 5 SCNJ 115 at 120; (2001) 10 NWLR (Pt. 772) 668. H

In the matter, the appellant told the Police that he was at a naming ceremony with an unnamed sister. Apart from that, no address was given to facilitate the investigation of the alibi which was tacitly put up by him. See: Emmanuel Eke v. The state (2011) 3

NWLR (Pt. 123) 589. It must be emphasized that it is not the business of the prosecution to embark upon a wild goose chase. The court below was right when it found that the defence of alibi cannot avail the appellant. After all, it is not every failure of the Police to investigate an alibi raised by an accused person that is fatal to the prosecution's case. See: Ochemaje v. The State (2008) 6 SC (Pt.11) 1; Udobre v. The State (2001) 6 SCNJ 54.

Let me further touch briefly the doctrine of recent possession relied upon by the trial court and affirmed by the court below in nailing the appellant for the offence of armed robbery. The applicable section 148(a) of the Evidence Act, as at 1999 provides that:

*"The court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural event, human conduct and public and private business in their relation to the facts of the particular case and in particular the court may presume -*

*(a) that a man who is in possession of stolen goods after the theft is the thief or has received the goods knowing them to be stolen unless he can account for his possession."*

From the evidence which was believed by the trial court and affirmed by the court below, the appellant was caught with the robbed items some hours after the robbery incident on the same day. No doubt, the doctrine of recent possession was rightly and properly invoked to convict the appellant of the offences charged. Put bluntly, the doctrine of recent possession caught up with the appellant. And he got enmeshed and could not wriggle out of it. Case law authorities in this respect appear replete; in the main. See R. v. Kwashie (1950) 13 WACA 86; R. v. Sunday Jumbo (1960) LLR 192; R. v. Opara (1961) NWLR 127; Madagwa v. State (1988) 5 NWLR (Pt. 92) 60; Nwachukwu v. State (1985) 3 NWLR (Pt.11) 218; Eze v. State (1985) 3 NWLR (Pt.13) 429 & Salami v. State (1988) 3 NWLR (Pt.85) 671.

For the above reasons and the detailed ones adumbrated in the lead judgment which I hereby adopt, I too feel that the appeal is devoid of merit and should be dismissed. I order accordingly. The appellant should be thankful for the reduced sentence by the court below. I hereby keep my peace.