

SUPREME COURT OF NIGERIA
FRIDAY 14TH JUNE, 2013. SC. 351/2009
**CORAM:- W. S. N. ONNOGHEN, M. S. MUNTAKA-
COOMASSIE, J. A. FABIYI, O. ARIWOOLA,
M. D. MUHAMMAD, JJSC**

VICTOR ESSIEN VICTOR APPELLANT
V.
THE STATE RESPONDENT

APPEALS - Grounds - Issue - Formulation - Where appellant failed to distil issue in respect of any ground - The ground is deemed abandoned - And court is to strike same out (H1)

ARMED ROBBERY - Alibi - Plea - Investigation - As appellant was duly identified and fixed at the crime scene by PW1 and 3 - There was no burden to verify the plea (H2)

EVIDENCE - Conviction - Correctness of - Court can convict on evidence of one witness - If such evidence is credible - And it is believed and accepted by court (H3)

CRIMINAL PROCEDURE - Crime - Proof - Number of witness - Prosecution is not bound to call all witnesses - But only essential witness(s) to prove its case (H4)

FACTS

1st accused/appellant and three others were arraigned before the High Court of Akwa-Ibom State on three count charge of armed robbery contrary to section 1(2) (a) of the Robbery & Firearms (Special Provisions) Cap. 398 Vol. 22 LFN 1990. At the hearing, prosecution/respondent called four witnesses in proof of its case. PW1 one Shedrak Sam who knew appellant and 2nd accused testified of how the armed robbers broke into his house at about 2.30 am and made away with several sums of money. The robbers also stole some other valuable items from the house before they eventually left to attack the neighbouring apartment.

Appellant was later on identified at a spot. He was promptly

arrested and taken to police station, where he made statement to the police (Exhibit 1). 2nd accused was also identified by PW1 as one of the robbers. 2nd accused made a statement to the police (Exhibit 2) and gave clue to the arrest of 3rd and 4th accused, who also made statements to the police (Exhibits 3 & 4, respectively). In his defence, appellant completely denied the allegation and raised a plea of alibi. In his judgment, the trial court found respondent's case proved against appellant and 2nd accused. The court therefore found them guilty as charged and sentenced them to death. Aggrieved, appellant appealed to the Court of Appeal, Calabar Division. The court found no merit in the appeal and thus dismissed same. Appellant still dissatisfied, filed appeal in Supreme Court.

ISSUES FOR DETERMINATION

"Whether the lower court was right in dismissing the defence of alibi raised by the appellant.

Whether from the evidence on record the Court of Appeal was justified in upholding the decision of the trial court that the prosecution had proved the charge of armed robbery against the appellant beyond reasonable doubt"

HELD (Unanimously dismissing the appeal per
MUNTAKA-COOMASSIE JSC)

APPEALS - Grounds - Issue - Formulation

1. The appellant has completely failed to point out any error committed by the lower court in its finding. He has not shown this court where he distilled any issue for determination in respect of his ground No. 1 of the grounds of appeal before the lower court. All the arguments preferred in respect of the issue No. 1 are completely irrelevant to the issue as framed. It is my considered view that the lower court was correct in its finding and I have no reason to interfere. It is a settled principle of law that where an appellant failed to distil any issue for determination in respect of any ground of appeal the ground is deemed to have been abandoned and the court is left with no option than to strike it out. I find no merit in issue No.1 formulated by the appellant and it is resolved against the ap-

pellant. (p. 2773 F)

Alibi - Plea - Investigation

2. It is clear my lords, that pw1, pw3 and pw4 recognized and further identified the appellant as one of the robbers that robbed them. I dare say on a strong authority, that when an accused person is fixed at the scene of the commission of the crime, the plea of alibi fails. In the case at hand, where the appellant was duly identified, recognized and fixed to the commission and the locus of crime by pw1 and pw3 who knew him before the incident, there was no more burden to verify the plea of alibi. (p. 2774 A)

EVIDENCE - Conviction - Correctness of

3. On the issue of the evidence of the pw2 not being corroborated, it is misconception of the law as contended by the appellant that the trial court cannot base the conviction on it. A court is perfectly entitled to convict on the evidence of one witness if his evidence is credible, admissible and it is believed and accepted by the trial court. (p. 2774 C)

CRIMINAL PROCEDURE - Crime - Proof - Number of witness

4. On the issue that the pw1's wife was not called to testify, the appellant has contended that the prosecution ought to have called pw1's wife since she was present at the time of robbery and failure to call her means the prosecution has not proved its case beyond reasonable doubt. It is settled principle of law that the prosecution is not bound to call all witnesses but only essential witness or witnesses to prove its case. Pw1 and pw3 were eye witnesses to the commission of the crime, hence to call pw1's wife as a witness would amount to mere surplusage. It must be pointed out in this judgment that the appellant has not alleged that the ingredients of the offence have not been proved, but rather that the failure to tender the gun used, the broken door and the stolen money has adversely affected the case of the prosecution.

In a criminal case like the one at hand, it is only when an accused person was arrested at the scene of crime that

you can recover gun or things stolen from him. Most often they dispose these things immediately after the commission of the offence in order to avoid suspicion. Hence when there is credible evidence before the court which admissible about the possession of these arms, it would be perfectly right for the court to rely on it. (p. 2774 E)

REPRESENTATION

Chief Orok I. Ironbar, for the Appellant

C Essien E. Udom, for the Respondent

CASES REFERRED TO

Akinlagun v. Oshaboja (2006) 12 NWLR (pt. 993) 60

Ajibade v. Pedro (1992) 5 NWLR (pt. 241) 257

D Ehe v. Ogbonda (2006) 18 NWLR (pt. 1012) 506

Ibrahim v. Mohammed (2003) 6 NWLR (pt. 817) 615

Abdullahi v. State (2008) 17 NWLR (pt. 1115) 203

Ndidi v. State (2007) 13 NWLR (pt. 1052) 633

Olayinka v. State (2009) 9 NWLR (pt. 1040) 561

E Ochemaje v. State (2008) 15 NWLR (pt. 1109) 57

State v. Azeez (2008) 14 NWLR (pt. 1108) 439

Ogbodo v. State (1987) NSCC 429

Akinyemi v. State (1999) 6 NWLR (pt. 607) 449

F Adisa v. State (1991) 1 NWLR (pt. 68) 490

Yanor v. State (1965) NMLR 332

Gachi v. State (1973) 1 NMLR 331

Njovens v. State (1973) 1 NMLR 331

STATUTES REFERRED TO

Robbery & Firearms (Special Provisions) Cap 398 Vol. 22 LFN 1990,
s. 1(2)(a)

Evidence Act, ss. 77(c), 149(d)

LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC

The Appellant and three other persons were arraigned before the High court of Justice, Akwa-Ibom on three (3) count charge of armed robbery contrary to section 1(2) (a) of the Robbery and Firearms (Special Provisions), Cap 398 Vol. 22 Laws of the Federation.

At the hearing the prosecution called four (4) witnesses.

Pw1 was one Shedrak Sam. He knew the 1st and 2nd accused persons. On the 22nd day of June, 2001 while he was sleeping he heard a bang on his door, which made him to wake up and put on the light. The time then was 2.30am. He stated that he saw two men and upon demand he gave them N3,500.00. They demanded for more money and he refused. One of them ransacked the room and discovered where he kept some money. It was the 2nd accused person who took the money and handed it over to the 1st accused.

They also took away his luggage bag, radio and adaptor. He recognised the 1st accused very well as he was living very close to his house. The amount the 2nd accused person collected from his room was N71,000.00 after which they left at about 3.15am. When the day broke, the 1st accused was reported to his father and in the course of reporting him he was sighted at a bar, the witness and his neighbour followed him, and the 1st accused sneaked into a toilet. The witness then found the 1st accused lying on the floor of the toilet. He tried to escape but he was arrested and taken to the police station, where he made statement to the police.

Under cross-examination the witness confirmed that he was robbed on 22/6/2001. He admitted making statement to the police. He stated that the 1st accused and himself were neighbours and that he knew him very well. He stated that 1st accused was arrested in a toilet in his father's compound on 22/6/2001 in company of a policeman. After he was robbed he was locked inside and the thieves went to neighbours room.

Pw2 was one Joseph Benson, a police officer. He knew all the accused persons. On 22/6/2001 he was on morning duty when Pw1 made a complaint at the station that he had arrested one of the thieves who robbed in the early hours of 22/6/2001. He followed him with his team and they met the 1st accused being held at the Pw1's premises. He arrested him and took his statement. The 1st accused's statement was admitted in evidence as Exhibit 1. At the scene of the incidence he saw damaged door and window. He could not execute a search warrant on the 1st accused's father's house because the father said he was not staying in his house. The 2nd accused person was arrested as mentioned by the 1st accused after

which identification parade was conducted on three different occasions.

The 2nd accused person was identified by the Pw1 and neighbours as one of the thieves that robbed him. Thereafter, the 2nd accused made a statement which was admitted as Exhibit 2. It was the 2nd accused that directed him on how he could arrest the remaining accused persons. He directed him to SNOW PEACE HOTEL R. C. C. Road Eket. While in the Hotel, the 2nd accused identified the 4th accused as a member of the gang that robbed the Pw1 on 22/6/2001. He arrested the 4th accused person and he made a statement which was admitted as Exhibit 3. Thereafter the 2nd accused directed him to Idu Road, RCC junction to arrest the 3rd accused person. The 2nd accused took him to a drinking joint where he identified the 3rd accused person as a member of the gang that robbed the Pw1. He was arrested and he made a statement which was admitted as Exhibit 4.

Under cross-examination the witness maintained that with its investigation all the arrested persons participated in the robbery. That all the accused persons communicated to him in English language. The statement of the Pw1 was admitted as Exhibit 5.

Pw3 was Godwin Essien Harrison. He knew the 1st and 2nd accused person. He lives in the same compound with Pw1. On 22/6/2001 at about 3.00 am he had a commotion in his neighbour's room that is Pw1. Later he heard a bang on his door and he opened and the 2nd accused entered into his room and he demanded for money. He came in with a gun which he pointed at him. The 2nd accused person searched his room and since the electric bulb was on he saw cupboard and broke it and searched it. He also collected his traveling bag. He was searching the bag when the witness heard another bang in one of his neighbours door when he could not find any money he entered his neighbour's room. When he turned around he saw the 1st accused person who then joined the 2nd accused in his neighbour's room. The 2nd accused took a pair of cover shoes which he bought for N3, 500.00.

Under cross-examination, he stated that he was not robbed at the same time with Pw1. He heard the commotion in PW1's room. The witness statement to the police was admitted in evidence as Exhibit 8.

Pw4 was one Enobang Jumbo, a carpenter. On 22/6/2001 he was in his house when, at about 3.00 am, he heard his co-tenant Godwin shout 'Jesus' and after a while he heard his neighbour pleading - *"please don't kill me. I have no money"*. Then at about 3.33am he heard a bang on his door which broke open and somebody entered his room with a gun pointed at him. It was the 1st accused person who pointed the gun at him. He then knelt down then the second person entered and he also pointed a gun at him, the second person is the 2nd accused person. The 1st accused then hit and broke the electricity bulb that was in the room and ordered him to sit on the floor. They searched his room and took one N500.00 from his locker. When they asked for more money he told them he did not have, then the 1st accused took a kitchen knife from his table and attempted to stab him but he held the knife and it injured his right palm.

Under cross-examination, the witness maintained that two people entered his room on the night of the incident. He made a statement to the police which was tendered and admitted as Exhibit 7.

Counsel to both parties addressed the court on "no case submission" which was rejected by the trial court, and the accused persons entered their defence.

The 1st accused person gave evidence as Dw1. He did not know why he was in court. He knows the 3rd accused and he did not know other accused persons. He denied being armed with a gun in company of the other accused persons. He also denied robbing Pw1. The evidence of Pw2 is not correct. He stated that he had quarrel with Pw1 concerning electric cable. He stated that those who arrested him took him to Pw1's house where he was beaten because he refused to confess that he robbed Pw1. When he was unconscious, he was then reported to the police. He denied writing any statement i.e. exhibit 1 to the police. The witness completely denied the allegation and stated that on the date in question he was sleeping in his father's house.

After the closure of the defence case, both parties addressed the court. The trial court in its judgment found the accused persons guilty and convicted them for the offence of armed robbery and they were all sentenced to death by hanging or to face firing squad. At page 113 the record, the trial court concludes thus:-

“The evidence of the prosecution witness were not dislodge under the search lights of cross-examination... I find and hold that the prosecution has proved its case beyond reasonable (sic) doubt against the 1st and 2nd accused persons as charged I find them guilty.

Victor Essien Victor and Charles Kingsley Joe, by virtue of section 1 (3) of Armed Robbery and Firearms (special provisions) Act, Cap. 398, vol. 22 Laws of the Federation of Nigeria 1990, you shall either be hanged by the neck until you die or face death by firing squad, as it shall please the government of Akwa-Ibom State to determine.”

The appellant in this case was dissatisfied with the decision of the trial court and has as a result unsuccessfully appealed to the Court of Appeal, Calabar Division, hereinafter called the lower court.

On the 5th day of May, 2009, the lower court dismissed the appeal for lack of merit and affirmed the judgment of the trial court.

The appellant was again dissatisfied with this judgment and has again appealed to this Hon. Court. In accordance with the rules of this court both parties filed and exchanged their respective briefs of argument. The appellant in its brief of argument formulated three (3) issues for determination as follows:-

“1. Whether the court of Appeal was right in holding that the appellant had abandoned ground 1 of his appeal before it.

2. Whether the lower court was right in dismissing the defence of alibi raised by the appellant.

3. Whether from the evidence on record the Court of Appeal was justified in upholding the decision of the trial court that the prosecution had proved the charge of armed robbery against the appellant beyond reasonable doubt”

The respondent in paragraph 2.01 of his brief of argument adopted the issues as formulated by the appellant as the issues arising from the appeal.

At the hearing of this appeal the learned counsel to the appellant adopted his brief of argument and urged this court to allow the appeal.

On issue 1 of the ground of appeal, the learned counsel alleged that issue has been abandoned the Learned trial Judge was said to have erred in law when he treated the statement of the 2nd accused as confessional and implicating the appellant. It was pointed

out that the 2nd accused gave evidence at the trial court as Dw2. It was the contention of the learned counsel that the prosecution placed no material evidence before the trial court to enable it convict the appellant, and this means that the conviction of the appellant was based on the statement of the 2nd accused person. Strangely, the learned counsel turned around to submit that the issue of the confessional statement of the 2nd accused was raised suo motu, and he was not allowed to address on it. B

Issues no II and III were argued together. Learned counsel pointed out that Pw1, Pw3 and Pw4 were parties who accused the appellant of committing robbery, they beat him before inviting the police, no gun was found on him nor any stolen item recovered from him. He contended that the arrest of the appellant was based on the opinion of Pw1. It was further pointed out that the Pw3 did not conduct any investigation and no witness was called to corroborate his evidence. He only relied on the evidence of Pw1, Pw3 and Pw4, he then submitted that the evidence of Pw3 is hearsay contrary to Section 77(c) of the Evidence Act, which says:- C D

“Oral Evidence must in all cases whatever, be direct:

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceive that fact by that sense or in that manner”. E

It was also his contention that the plea of alibi raised by the appellant was not investigated. Learned counsel challenged the evidence of Pw1 and Pw3. It was his contention that if the appellant knew that he was known why should he rob them without wearing mask or hid his identity. It is on this basis that he submitted that the trial court was wrong to have held that the appellant was recognised. Counsel also referred to some statements obtained by the police that were not tendered and submitted that the prosecution deliberately withheld those statements. This has occasioned a miscarriage of justice. F G

Learned counsel to the respondent also adopted his brief of argument at the hearing and urged this court to dismiss the appeal and to affirm the judgment of the lower court. H

On issue 1, it was the contention of the learned counsel that it is difficult, on the basis of the record to easily discern the import of the appellant’s argument. Learned counsel referred to paragraph D3

of the appellant's brief when it was argued and showed that the prosecution placed no material evidence before the trial court and that it only relied heavily on the 2nd accused statement. It was pointed out that the trial court did not rely on the 2nd accused statement in convicting the appellant, but on direct, positive and uncontradicted evidence of the prosecution witnesses. Learned counsel's contention that the issue as formulated and argued is strange to the course of proceedings, judgment of the court of appeal and the grounds of appeal. It was further contended that the lower court was right when it held that the appellant, having failed to distil any issue for determination from ground No. 1 in the Notice of appeal before it, had abandoned same and rightly struck it out. Cites *Akinlagun v. Oshaboja* (2006) 12 NWLR (Pt.993) 60 where it was stated that where no issue is raised in respect of a ground of appeal, the ground of appeal is deemed abandoned and it should be struck out, per *Kalgo, JSC* at P. 8182. Also *Ajibade V. Pedro* (1992) 5 NWLR (Pt. 241 P257, *Ehe V. Ogbonda* (2006) 18 NWLR (Part 1012) 506 at 525 and *Ibrahim v. Mohammed* (2003) 6 NWLR Pt.817) 615.

On issues No. II and III, issue of alibi. It was submitted that the court below was justified in dismissing the plea because the appellant was not entitled to it. That, it is not in all cases where a plea of alibi is made that an investigation must follow where an accused person is fixed at the scene of crime the defence of alibi must fail. Counsel referred to the case of *IDIOK v. THE STATE* (2008) 13 NWLR (Pt.1104) 225 at. "It was stated that once an accused person is fixed at the scene of crime, his defence of alibi must fail". See also *Ani v. State* (2003) II NWLR (pt.830) 142, *Ntani v. State* (1968) NLR 86.

Learned counsel further referred to the evidence of pw1, pw3 and pw4 who recognized the appellant as one of the armed robbers who robbed them. More importantly, when the witness further identified the appellant, and which identification was not challenged, refers to *Abdullahi v. The State* (2008) 17 NWLR (pt.1115) 203.

On the issue of corroboration, it was the contention of the learned counsel, that court can convict an accused person on the evidence of one witness if the evidence is direct, credible and relevant, cites *Ndidi v. State* (2007) 13 NWLR (pt.1052) 633 at p. 661, the Supreme Court per *Tobi JSC* stated that "a court of law can

convict on the evidence of a single or sole witness. The only exception is where the offence or charge statutorily requires corroboration. Armed Robbery is not one of such offences”.

On whether the prosecution has proved the offence of robbery, learned counsel referred to the ingredients of the offence and submitted that all the ingredients have been sufficiently proved. Those are:

- i). There was an armed robbery
- ii). The accused was armed and
- iii). The accused with the arms or arm participated in the robbery which makes it armed robbery. He refers to: Olayinka v. The State (2009) 9 NWLR (Pt.1040) 561 at 582, and Abdullahi v. The State (2008) 17 NWLR (Pt.1115) page 203 at 221.

Mylords, the above are the submissions of the learned counsel to the parties on issue 1 raised by the appellant, the lower court at p 146 of the record held as follows:

“Having carefully perused the record I observed that the appellant did not distil any issue for determination from ground No.1 in the notice and ground of appeal at page 114 of the record.

Where no issue is raised in respect of a ground of appeal it is deemed abandoned and should be struck out. See Akinlagun v. Oshaboje (2006) 12 NWLR (Pt.993) 60 at 82. Eke V. Ogbonla (2006) 18 NWLR (Pt.1012) 506 at 523; Ibrahim v. Mohammed (2003) 6 NWLR (Pt.817) 615. In the circumstance ground No. 1 of the ground of appeal is hereby struck out”.

The appellant has completely failed to point out any error committed by the lower court in its finding. He has not shown this court where he distilled any issue for determination in respect of his ground No. 1 of the grounds of appeal before the lower court. All the arguments preferred in respect of the issue No. 1 are completely irrelevant to the issue as framed. It is my considered view that the lower court was correct in its finding and I have no reason to interfere. It is a settled principle of law that where an appellant failed to distil any issue for determination in respect of any ground of appeal the ground is deemed to have been abandoned and the court is left with no option than to strike it out. I find no merit in issue No.1 formulated by the appellant and it is resolved against the

appellant.

I beg to move to issues No II and III together. ***It is clear my lords, that pw1, pw3 and pw4 recognized and further identified the appellant as one of the robbers that robbed them. I dare say on a strong authority, that when an accused person is fixed at the scene of the commission of the crime, the plea of alibi fails.*** See Idiok v. State (supra), Ochemaje v. State (2008) 15 NWLR (part 1109) 57 at 78. ***In the case at hand, where the appellant was duly identified, recognized and fixed to the commission and the locus of crime by pw1 and pw3 who knew him before the incident, there was no more burden to verify the plea of alibi.*** See The State v. Azeez (2008) 14 NWLR (part 1108) 439.

On the issue of the evidence of the pw2 not being corroborated, it is misconception of the law as contended by the appellant that the trial court cannot base the conviction on it. A court is perfectly entitled to convict on the evidence of one witness if his evidence is credible, admissible and it is believed and accepted by the trial court. See Idiok v. State (supra) at page 240.

Be that as it may, the evidence of pw2 was corroborated by the evidence of pw1, pw3 and pw4.

On the issue that the pw1's wife was not called to testify, the appellant has contended that the prosecution ought to have called pw1's wife since she was present at the time of robbery and failure to call her means the prosecution has not proved its case beyond reasonable doubt. It is settled principle of law that the prosecution is not bound to call all witnesses but only essential witness or witnesses to prove its case. See Ogbodo v. State (1987) NSCC 429 at 437, Akinyemi V. State (1999) 6 NWLR (pt.607) 449. ***Pw1 and pw3 were eye witnesses to the commission of the crime, hence to call pw1's wife as a witness would amount to mere surplusage. It must be pointed out in this judgment that the appellant has not alleged that the ingredients of the offence have not been proved, but rather that the failure to tender the gun used, the broken door and the stolen money has adversely affected the case of the prosecution.***

In a criminal case like the one at hand, it is only when an accused person was arrested at the scene of crime that you can recover gun or things stolen from him. Most often they dispose these things immediately after the commission of the offence in order to avoid suspicion. Hence when there is credible evidence before the court which admissible about the possession of these arms, it would be perfectly right for the court to rely on it. B

On the whole, it is my findings that the appeal is devoid of merits, it fails and is accordingly dismissed. I affirm the judgment of the lower court. C

ONNOGHEN JSC

I have had the benefit of reading in draft the lead judgment of my learned brother, MUNTAKA-COOMASSIE, JSC just delivered. D

I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed. The facts of the case have been detailed out in the lead judgment and I do not therefore intend to repeat them herein except as may be needed to buttress the points being emphasized. E

It is the contention of Counsel for appellant that the lower court was wrong in holding that appellant was not entitled to the defence of alibi. F

I have to say that the defence of alibi, like every other defence known to criminal law, is based on facts the evidence in support of which must be produced by the accused at the trial and believed by the trial judge who heard and watched the demeanour of the accused and/or witness(es) testify. Where the trial Judge does not believe the testimony of the accused and/or his witness(es) on the issue of alibi, that is the end of the matter particularly where the surrounding facts and circumstances support the stance of the trial Judge. G

In the instant case, the evidence of witnesses fixed the appellant at the scene of crime as an active participant in the armed robbery PW1 testifying at page 40 of the record stated inter alia; H

“The 1st accused person was still standing by the door post when the 2nd Accused was searching my house. I was then able to

see the 1st Accused very well. He lives quite near my residence....”

On his part, appellant who testified as DW1 at page 71 of the record admitted, under cross examination of knowing DW1 prior to the incident. He stated, inter alia:

“I had known PW1 before the incident. I had also known PW1’s house before the incident. PW1 owns a shop close to my father’s house.”

It is settled law that once an accused person is fixed at the scene of crime, as in the instant case, his defence of alibi must fail.

The testimony of PW1 was very much believed by the trial Judge which completely aborted the defence of alibi canvassed by appellant.

In a situation such as in this case where an accused is fixed at the scene of crime, the fact that the police/prosecution did not investigate the claim of alibi is very much irrelevant as such an investigation would be a complete waste of time; a worthless exercise. It follows therefore that where an accused is fixed at the scene of crime, which evidence is believed by the trial Judge, no reasonable doubt is created for the benefit of the accused if the police failed and/or neglected to investigate a claim of an alleged alibi put up by the defence/accused person.

It is for the above reasons and the more detailed reasons given in the lead judgment of my learned brother that I too dismiss the appeal for lack of merit. Appeal dismissed.

FABIYI JSC

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

The appellant was arraigned along with three other persons before the High Court of Justice, Akwa-Ibom State on a charge of armed robbery contrary to section 1 (2) (a) of the Robbery and Firearms (Special provisions) Act Cap. 398 Vol. 22, Laws of the Federation of Nigeria (LFN) 1990.

At the trial High Court, the appellant along with the others pleaded not guilty to the counts read to them. The learned trial judge

- Udoh, J. garnered evidence and he was duly addressed by counsel on both sides. On 27th July, 2006, he found the appellant and the 2nd accused guilty. He convicted and sentenced both of them to death by hanging. The 3rd and 4th accused persons were acquitted and discharged. The appellant who was the 1st accused at the trial court appealed to the Court of Appeal which heard same and dismissed it on 25th May, 2009. The appellant has decided to further appeal to this court. B

The appellant placed utmost reliance on his plea of alibi which literally means elsewhere. He maintained that he was not at the locus criminis. He was somewhere else and could not have committed the alleged offence. See: *Adisa v. The State* (1991) 1 NWLR (pt. 68) 490. C

It is for the prosecution to investigate a plea of alibi. It is however the duty of the accused to furnish particulars of same by depicting his whereabouts and those present with him at the material time of the incident. It is then left for the prosecution to investigate the plea of alibi raised. See: *Yanor v. The State* (1965) NMLR 332 and *Gachi v. The State* (1973) 1 NMLR 331. D

The appellant, in his statement to the Police, said he was at No. 32 NCC Road Eket at the material time. But in his sworn statement to the court, he said he was at No. 1 Edoho Street, Eket at the same time. No court of record would believe the double talk by such a slippery person. To employ the words of Ngwuta, JCA (as he then was), the 'appellant has no claim to omnipresence'. E F

Apart from the above salient point, the appellant, as found by the trial court and affirmed by the court below, was fixed by the evidence of PW1 - a direct victim of the armed robbery, to the locus criminis. See: *Patrick Njovens v. The State* (1973) 1 NMLR 331. The plea of alibi as raised by the appellant naturally crumbled. The appellant could not, in the circumstance, be taken seriously in the plea of alibi put up by him. The court below was on a firm stand in this respect. G

Learned counsel to the appellant seriously canvassed the point that the prosecution failed to call the wife of PW1 - a victim, as a witness. He referred to section 149(d) of the applicable Evidence Act. He submitted that the provision of the law should be invoked against the prosecution. It has been variously pronounced by this H

court that the prosecution in criminal cases is not bound to call a host of witnesses to discharge the onus of proof incumbent on it to prove the case beyond reasonable doubt. The stated section of the law has to do with withholding of evidence and not failure to call a particular witness. See: Akalonu v. The State (2002) 6 SCNJ 332; Oduneye v. The State (2001) 2 NWLR (Pt. 697) 311 and Alonge v. Police (1959) SCNLR 203.

Where the prosecution failed to call a particular witness - the wife of PW1, the victim in this case, the appellant was at liberty to call her by taking appropriate steps in that direction. See: Ekpenyong v. The State (1991) 6 NWLR (pt. 2000) 683.

The appellant failed to formulate any issue in respect of ground 1 of the Grounds of Appeal. That ground is deemed as having been abandoned. The Court of Appeal rightly struck it out. The appellant can hardly be noticed in raising a finger of complaint on same. See: Ajibade v. Pedro (1992) 5 NWLR (Pt. 211) 257 and Ibrahim v. Mohammed (2003) 6 NWLR (Pt. 817) 615.

It should be stated in passing that the two courts below made concurrent findings of fact on crucial issues canvassed in the appeal. They have not been shown to be perverse or against the current of plausible evidence on record. This court will not interfere with same. See: Shorumo v. The State (2010) 12 SC (pt.1) 73 at 96; 102, Igwe v. The State (1982) 9 SC 114.

The prosecution proved the guilt of the appellant beyond reasonable doubt. All the essential ingredients of the offence of armed robbery were clearly established. It was idle to have argued to the contrary. See: Alabi v. The State (1993) 7 NWLR (Pt. 301) 511 at 523; Abogede v. The State (1996) 5 NWLR (Pt. 448) 270 at 276.

For the above reasons and the detailed ones adumbrated in the lead judgment, I too, feel that the appeal lacks merit and should be dismissed. I order accordingly and hereby endorse all other consequential orders in the said lead judgment.

H

ARIWOOLA JSC

I had the opportunity of reading in draft the lead judgment of my learned brother, Muntaka-Coomassie, JSC just delivered.

One of the issues raised by the appellant is *“whether the lower*

court was right in dismissing the defence of alibi raised by the appellant."

By the defence of alibi, the accused person seeks to raise a doubt to what might have been a fool proof case of the prosecution by saying that he was somewhere else at the time the crime was alleged to have been committed but not at the scene of crime. B

Therefore, as where he was at the material time is a matter especially within his knowledge, the law requires that for his defence of alibi to avail him and succeed in raising doubt in his favour, he ought to do certain things. Importantly, he ought to raise the defence at the earliest possible opportunity. He ought to in his statement give such details and particulars of his whereabouts that the police can investigate. This is the evidential burden on him in his defence of alibi. See; Esangbedo V. The State (1989) NWLR (pt 113) 57; (1989) LPELR 1163; Akile Gachi & Ors V. The State (1965) NMLR 333 at 335; Abudu V. The State (1985) 1 NWLR (pt.1) 55; Nwabueze v. The State (1988) 4 NWLR (pt.86) 16 at 34. C

It is instructive to note and this court has restated over and over again, that even though it is a duty on the prosecution to investigate an alibi set up by an accused, that he was somewhere else at the time of the alleged crime, the police are not and should not be expected to go on a wild goose chase in order to investigate an alibi. See; Okosi & Ors V. The State (1989) CLRN 29 at 48. Olatinwo v. The State (2013) LPELR 1979. D

With the facts of this case and the overwhelming evidence adduced by the prosecution at the trial of the appellant and others, the defence of alibi was baseless and could not avail the appellant. The evidence of PW1, PW3 and PW4 was direct, positive and sufficient for the proof of the case by the prosecution beyond reasonable doubt, as the trial court found and was affirmed by the court below. E

In the circumstance, for the above reason and the fuller and detail reasoning of my learned brother in the lead judgment, I am in total agreement that the appeal lacks merit and should be dismissed. Accordingly, the appeal is dismissed by me while I affirm the decision of the lower court. F