

SUPREME COURT OF NIGERIA
FRIDAY 7TH JUNE, 2013. SC. 300/2010
**CORAM:- M. MOHAMMED, J. A. FABIYI, B. RHODES-
VIVOUR, M. U. PETER-ODILI, K. B. AKA'AH, JJSC**

SEMIU AFOLABI APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Robbery - Confession - Conviction -
Accused can be convicted solely on his confession - Where same is
direct and properly proved (H1)

ROBBERY & FIREARMS - Robbery - Definition of - By Robbery &
Firearms Act s. 15 - Robbery means stealing - Using or threatening
to use violence to person or property - In order to obtain and retain
the thing stolen (H2)

CRIMINAL PROCEDURE - Identification - Mistake in - Where ac-
cused alleges that there is mistake in his identity - Court must closely
examine the evidence - As weakness discovered therein leads to giv-
ing accused the benefit of doubt (H3)

CRIMINAL PROCEDURE - Identification parade - When irrelevant -
Where accused identified himself with commission of the offence -
Need for the parade is completely ruled out (H4)

CRIMINAL PROCEDURE - Robbery - Sentence - Validity - Appel-
lant suffered no miscarriage of justice - As CA rightly sentenced him
to 21 years imprisonment - As provided under CPA s. 381 (H5)

CRIMINAL PROCEDURE - Conspiracy - Proof - Conspiracy is es-
tablished once it is shown in evidence - That the alleged criminal
design - Is common to all suspects (H6)

FACTS

Accused/appellant was arraigned before the High Court of
Ogun State, Abeokuta on two-count charge of conspiracy to commit

armed robbery and armed robbery contrary to sections 5(a) and 1(2)(a) and punishable under section 1(2)(a) of the Robbery & Firearms (Special Provisions) Act 1990. Prosecution/respondent alleged that appellant while in company of another person (now at large), attacked PW1 with a broken bottle and seized his (PW1's) motorcycle and the sum of N700.00. PW1 promptly raised alarm which attracted another cyclist who assisted in apprehending appellant, while the other person escaped. Appellant was thus arrested with the stolen motorcycle. He made confessional statement in respect of his commission of the offence.

At the trial, respondent tendered the confessional statement of appellant and the stolen motorcycle in evidence. After having considered the defence of appellant, the learned trial Judge found him (appellant) guilty as charged. Hence, appellant was sentenced to death. Not satisfied, appellant appealed to the Court of Appeal, Ibadan Division. The court being of a view that there was no evidence of use of offensive weapon during the crime, allowed the appeal in part by convicting appellant of robbery simpliciter. The sentence was thus reduced to 21 years imprisonment. Still not satisfied, appellant lodged appeal at Supreme Court.

ISSUES FOR DETERMINATION

(i) Whether all the ingredients of robbery simpliciter for which the lower Court convicted the Appellant were present and proved beyond reasonable doubt.

(ii) Whether the lower Court was right in upholding the learned trial Judge's holding that the Appellant made confessional statement relied upon by the said learned trial Judge in convicting him voluntarily.

(iii) Whether the lower Court was right in its holding that identification parade was unnecessary even though the Appellant was never arrested while committing the crime.

(iv) Whether by holding that the term of 21 years sentence imposed on the Appellant should start from the day of conviction and sentence on 28th April, 1999 as opposed to the day of arrest on 9th September 1995, does not result in any miscarriage of justice on the Appellant, moreso when he was never granted bail from the time of his arrest to the time of his conviction.

(v) Whether or not on the evidence on record, the trial Court

was right in convicting the Appellant of the offence of conspiracy and consequently, if the Court below was also right in affirming that conviction.

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

Robbery - Confession - Conviction

1. In other words the law is well settled that where an accused person confesses to the commission of an offence, he can be convicted on his own confession alone once the confession is positive, direct and properly proved and as long as the Court is satisfied, as in the present case, the confession of the Appellant in Exhibits A & A1 to the commission of the offence of robbery as found by the Court below by forcibly seizing the motor cycle of PW1 which was immediately after the act of the robbery, found in his possession, was positive and direct to support the conviction of the Appellant.

The whole basis of the Appellant's complaint in this issue relates to the decision of the trial Court in the trial within trial conducted by that Court at the end of which Exhibit A & A1, was voluntarily made to justify its being admitted in evidence. The case of Cpl. Jona Dawa v. The State (1980) 8 - 11 S.C 235, cited by the learned Counsel to the Appellant, indeed laid down conditions to be satisfied before a confessional statement may be admitted by a trial Court. These conditions include looking outside the statement to see if there is anything to show that it was true; whether: it was corroborated; whether the statement made in it of facts so far as can be tested are true; whether the accused person had the opportunity of committing the offence; whether the confession was possible and whether the confession was consistent with the other facts which have been ascertained and which have been proved before the Court. In the present case, the learned Counsel to the Appellant in his argument appears to have lost track of what happened at the trial Court when the learned trial judge quite rightly in accordance with the law, refused to use the statement of the Appellant admitted as Exhibits C & D on the

ground that the person who acted as interpreter in recording the Appellant's statement, was not called as a witness by the prosecution. The Appellant's confessional statement Exhibit A & A1 were therefore correctly admitted and used as evidence in convicting the Appellant. (pp. 2851 F/2853 E)

Robbery - Definition of

2. In any case the offence of robbery for which the Appellant was convicted is defined at Section 15 of the Robbery and Firearms (Special Provisions) Act, 1990 as follows -

"robbery" means stealing 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 the thing stolen or to prevent or overcome resistance to its being stolen or retained."

With this definition the heavy weather or storm being raised by the learned Appellant's Counsel on the failure of the prosecution to prove the use of offensive weapon of broken bottle and use of pepper on PW1 before the stealing of the motor cycle by the Appellant, is totally irrelevant. What had been clearly proved from the evidence of PW1 in the instant case, is that violence was clearly used in the act of stealing the motor cycle by the Appellant to justify his conviction for the simple offence of robbery as defined under the Act.

(p. 2852 A)

CRIMINAL PROCEDURE - Identification - Mistake in

3. The law is well settled that whenever the case against an accused person depends wholly or substantially on the correctness of his identification and he alleges that the identification was mistaken, the Court must closely examine the evidence so that any real weakness discovered about the evidence of identification, that discovery must lead to giving the accused person the benefit of the doubt. In the case at hand however, the case of conspiracy to commit robbery and robbery itself against the Appellant, does not wholly or substantially depend on the correctness of identification of the Appellant. The circumstances under which the Appellant with

his accomplice committed the offences for which the Appellant was charged, tried and convicted, are such that the question of his identity can hardly arise. The Appellant, accordingly to virtually unchallenged evidence led by the prosecution, was apprehended immediately after forcibly dispossessing PW1 of his motor cycle. The stolen motor cycle was found in possession of the Appellant after his accomplice had escaped. The Appellant in his own confessional statement also admitted the Planning execution of the attack on PW1 to take possession by force of the stolen motor cycle found in possession of the Appellant, the Commission of which act he admitted on his arrest. (p. 2854 H)

CRIMINAL PROCEDURE - Identification parade - When irrelevant

4. It is my view that where an accused person by his own confession had identified himself with the Commission of the act constituting the offence he was charged with, the need for identification parade in such circumstances as happened in the instant case, is completely ruled out. In otherwords where the accused person is linked to the commission of the offence by convincing, cogent and compelling evidence, as was the case in the present case, an identification parade would cease to be a relevant fact.

In the circumstances of this case therefore, where the Appellant was virtually caught red-handed immediately after the commission of an act of robbery and in possession of the stolen property taken away from the owner thereof, the Court below was indeed right in holding that the holding of identification parade to identify the Appellant was unnecessary. (p. 2855 E)

Robbery - Sentence - Validity

5. Having regard to the fact that the Appellant was initially found guilty of conspiracy to commit Armed Robbery and Armed Robbery, for which he was sentenced to death by the trial Court on 28th April, 1999, the fact that the Appellant's appeal having succeeded resulting in his being found guilty of lesser offences of robbery and conspiracy to commit same,

which carry mandatory sentences of 21 years of imprisonment, simply because the Court below merely exercised its discretion to order that the sentences should start to run from the date of conviction of the Appellant by the trial Court in line with Section 381 of Criminal Procedure Act, the complaint of the Appellant of having suffered a miscarriage of justice, is definitely without basis whatsoever. The case of Osayeme v. State (supra) relied upon by the Appellant which deals with exercise of discretion of trial Judge passing a sentence, which this Court regarded as excessive, does not apply in the present case where the 21 years sentence of imprisonment is mandatory under the statute creating the offence. Therefore there was no miscarriage of justice to the Appellant in the sentence passed on him by the Court below to justify the review of the same by this Court. (p. 2856 H)

CRIMINAL PROCEDURE - Conspiracy - Proof

6. The offence of conspiracy is not defined in the Robbery and Firearms (Special Provisions) Act as is the case of the offence of robbery that is defined under Section 15 of the Act. Therefore direct positive evidence of the plot between the conspirators is hardly capable of direct proof. The Courts therefore usually tackle the offence of conspiracy as a matter of inference to be deduced from evidence of criminal acts or inactions of the parties concerned.

As far as the law is concerned therefore, the offence of conspiracy is said to have been established once it is shown in evidence that the criminal design alleged is common to all suspects. In the case at hand, the conviction of the Appellant for conspiracy to commit robbery is traceable to the evidence of PW1, PW2 and the confessional statements of the Appellant Exhibits A & A1. In the evidence of PW1 and PW2 on record, it is quite clear that the Appellant and his accomplice on 9th September, 1995 participated in an act of robbery at which PW1 was dispossessed of his Suzuki motor cycle which was immediately recovered from the Appellant as he tried to escape with the loot of the robbery, in the process of which the Appellant was arrested with the motor cycle while his ac-

complice escaped.

The confessional statement of the Appellant also revealed how the plot to commit the robbery was hatched between the Appellant and his accomplices.

The above confessional statement of the Appellant had not only established the offence of conspiracy against the Appellant but also the offence of robbery committed by him with his accomplices all of whom clearly belong to a gang of robbers who have been engaged in the business of snatching of motor cycles. With these revelations, I say the Court below was on very strong ground in affirming the conviction of the Appellant for the offence of conspiracy to commit robbery.
(pp. 2858 D/2859 F)

REPRESENTATION

Chief Michael Abayomi Bisade Aliyu with Thelma E. Otaigbe (Miss),
for the Appellant
Olayode O. Delano, for the Respondent

CASES REFERRED TO

Otiti v. State (1991) 8 NWLR (pt. 207) 103
R. v. Sykes (1913) 18 CR App. R. 233
Imasuen v. Amissah (1996) 8 NWLR (pt. 457) 460
Akpan v. State (2008) 14 NWLR (pt. 1106) 77
Nwachukwu v. State (2007) 17 NWLR (pt. 1062) 43
Bature v. State (1994) 1 NWLR (pt. 320) 267
Atano v. A-G Bendel State (1988) 2 NWLR (pt. 75) 201
Dawa v. State (1980) 8 - 11 SC 236
Onungwa v. State (1975) NSCC 27
Bozin v. State (1985) 2 NWLR (pt. 8) 465
Archibong v. State (2004) 1 NWLR (pt. 855) 488
Attah v. State (2010) 10 NWLR (pt. 1201) 190
Osayeme v. State (1966) NMLR 388
Owie v. State (1985) 1 NWLR (pt. 3) 470
Oduneye v. State (2001) 2 NWLR (pt. 697) 311

STATUTES REFERRED TO

Robbery & Firearms Special Provisions Act 1990, ss.1(2)(a),5(a),15

Evidence Act, s. 27

Criminal Procedure Act, s. 381

LEAD JUDGMENT BY MOHAMMED JSC

The Appellant in this appeal was arraigned before the High Court of Justice of Ogun state at Abeokuta Judicial Division on, two count charge of, conspiracy to commit armed robbery and armed robbery contrary to Section 5(a) and 1(2)(a)) and punishable under Section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act 1990 as amended by the Tribunal (Certain Consequential Amendment etc.) Act 1999.

On pleading not guilty to the two counts, the prosecution proceeded to prove its case by calling 4 witnesses. In the course of the trial, exhibits comprising the Appellants statement to the Police recorded from him in the course of the investigation of the case and the stolen Suzuki Motor Cycle recovered from the Appellant being the property the subject of the act of armed robbery were tendered and received evidence. At the close of the prosecution case, the learned trial Judge after hearing the Appellant in his defence and the respective addresses of the learned Counsel for the prosecution and the defence, in a well considered judgment delivered on 28th April, 1999, found the Appellant guilty of the two counts charge and convicted the Appellant accordingly. The Appellant was consequently sentenced to death.

Aggrieved by the judgment of the trial Court, the Appellant then appealed to the Ibadan Division of the Court of Appeal which after hearing, the appeal, in its judgment delivered on 25th February, 2010 allowed the appeal in part by substituting the conviction of the Appellant for conspiracy and armed robbery with that of conspiracy and simple robbery under Section 1(1) of the Robbery and Firearms (Special Provisions) Act CAP 398, Laws of the Federation of Nigeria 1990 and sentenced the Appellant to 21 years imprisonment for each of the two counts to run concurrently. Part of the judgment of the Court below and the reasons therefore at pages 108 - 109 of the record reads -

“I do not have any doubt that the prosecution has successfully proved that there was conspiracy to commit the offence of robbery (sic) if not of armed robbery. The learned trial Judge clearly exceeded

his jurisdiction by convicting and sentencing the Appellant for conspiracy to commit Armed Robbery and Armed Robbery having found, inter alia that the prosecution failed to prove the existence of the offensive weapon mentioned in the charge upon which the Appellant had taken his plea. The learned trial judge interestingly found that even if such a weapon existed (bottle mentioned in the charge) it was never used in inflicting injury on PW1 or else PW4 would have been required to take PW1 to the hospital. Where the evidence adduced by the prosecution supports the conviction for a lesser offence than that for which an accused is charged an Appellate Court can convict for such lesser offence.

I find the Appellant not guilty of the offence of conspiracy to commit Armed Robbery and Armed Robbery but guilty of lesser offence of conspiracy to commit Robbery and Robbery.”

The Appellant still not satisfied with the reduction in the gravity of the offences and sentence by the Court of Appeal, is on a further appeal to this Court by his Notice of appeal containing 9 grounds of appeal from which the learned Counsel to the Appellant in the Appellant’s brief of argument identified the following 5 issues for the determination of the appeal.

(i) Whether all the ingredients of robbery simpliciter for which the lower Court convicted the Appellant were present and proved beyond reasonable doubt (grounds 1, 2 and 8).

(ii) Whether the lower Court was right in upholding the learned trial Judge’s holding that the Appellant made confessional statement relied upon by the said learned trial Judge in convicting him voluntarily (grounds 3 and 5).

(iii) Whether the lower Court was right in its holding that identification parade was unnecessary even though the Appellant was never arrested while committing the crime (ground 4).

(iv) Whether by holding that the term of 21 years sentence imposed on the Appellant should start from the day of conviction and sentence on 28th April, 1999 as opposed to the day of arrest on 9th September 1995, does not result in any miscarriage of justice on the Appellant, moreso when he was never granted bail from the time of his arrest to the time of his conviction (ground 7).

(v) Whether the lower court could safely convict the Appellant of the offence of conspiracy from the legally inadmissible confessional

statements allegedly made to PW2 and in Exhibit A and A1 (grounds 5 and 9).

In the Respondent's brief of argument deemed filed on 28th March, 2013, the issues as distilled by the learned Counsel to the Appellant from the grounds of appeal as contained in the Appellant's
B brief of argument, were duly adopted by the learned Counsel to the Respondent.

The case against the Appellant as presented at the trial High Court by the prosecution reveals that on 9th September, 1995 PW1,
C a commercial motor cycle operator while riding his Suzuki Motor Cycle towards Akute was stopped by the Appellant in company of another person. The Appellant and the other person attacked PW1 with a broken bottle and seized the motor-cycle and the sum of N700.00 from PW1. On alarm being raised, another motor cycle
D operator came to the aid of PW1 and chased and stopped the Appellant who was trying to escape with the motor cycle in company of the other person. On being forced to stop, the accompanying person escaped leaving the Appellant with the stolen motor cycle which was consequently recovered from the Appellant and tendered and re-
E ceived as exhibit in the course of the trial.

On the first issue for determining regarding whether or not all the ingredients of the offence of robbery for which the court below convicted the Appellant had been proved beyond reasonable doubt by the prosecution, Learned Appellants Counsel referred to the in-
F gredients of the offence in *Otiti v. State* (1991) 8 N.W.L.R. (Pt.207) 103 at 118 and argued that the prosecution had failed to prove the offence against the Appellant. Counsel maintained that there was no evidence that the Appellant used offensive weapon to snatch the
G motor cycle as the Appellant's alleged confessional statements Exhibits A and A1 have failed the tests laid down in *R. v. Sykes* (1913) 18 CR App. R. 233; that at most having regard to the Court of Appeal decision in *Imasuen v. Amissah* (1996) 8 N.W.L.R. (pt.457) 460 at 461, in the absence of force used in taking away the motor cycle, the
H Appellant may only be convicted of the offence of stealing.

Learned Counsel to the Respondent on the first issue for determination had observed that the question of whether offensive weapon was used in the commission of the offence, had been laid to rest in the judgment of the Court of Appeal which found the Appel-

lant guilty of lesser offences; that the evidence of PW1 had provided sufficient proof of the use of violence in the process of stealing PW1's motor cycle to prove the lesser offence. As for the evidence of conspiracy, learned Counsel referred to the evidence of PW1 who was attacked by the Appellant and another person; that the confessional statement of the Appellant Exhibits A & A1 on the authority Akpan v. State (2008) 14 NWLR (Pt.1106) 77 and Nwachukwu v. State (2007) 17 N.W.L.R. (Pt.1062) 43, also contains enough evidence to support the conviction of the Appellant. B

The question of whether the ingredients of the offence of robbery for which the Court below convicted the Appellant were present and proved beyond reasonable doubt in this case, is quite obvious on the evidence on record. C

The evidence of PW1 whose motor cycle was forcibly seized from him by the Appellant and his accomplice before they were intercepted and forced to stop with the stolen motor cycle found in effective possession of the Appellant almost immediately after the happening of the event of stealing by force, is enough in my own view, to prove all the ingredients of the offence of robbery, of which the Appellant was convicted by the Court of Appeal, Having regard to the evidence contained in the Appellant's confessional statement Exhibits A & A1 admitted in evidence after the holding of trial within trial by the trial court, the conviction of the Appellant of the offence of simple robbery was fully supported by credible evidence in the confessional statement. See Nwachukwu v. The State (2007) 17 NWLR (pt.1062) 43 and Akpan v. The State (2008) 14 NWLR (pt.1106) 77 at 100-101. D E F

In other words the law is well settled that where an accused person confesses to the commission of an offence, he can be convicted on his own confession alone once the confession is positive, direct and properly proved and as long as the Court is satisfied, as in the present case, the confession of the Appellant in Exhibits A & A1 to the commission of the offence of robbery as found by the Court below by forcibly seizing the motor cycle of PW1 which was immediately after the act of the robbery, found in his possession, was positive and direct to support the conviction of the Appellant. See Bature v. The State (1994) 1 NWLR (Pt. 320) 267 and Atano v. Attorney G H

General Bendel State (1988) 2 N.W.L.R. (Pt.75) 201.

In any case the offence of robbery for which the Appellant was convicted is defined at Section 15 of the Robbery and Firearms (Special Provisions) Act, 1990 as follows -

“robbery” means stealing 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 the thing stolen or to prevent or overcome resistance to its being stolen or retained.”

With this definition the heavy weather or storm being raised by the learned Appellant’s Counsel on the failure of the prosecution to prove the use of offensive weapon of broken bottle and use of pepper on PW1 before the stealing of the motor cycle by the Appellant, is totally irrelevant. What had been clearly proved from the evidence of PW1 in the instant case, is that violence was clearly used in the act of stealing the motor cycle by the Appellant to justify his conviction for the simple offence of robbery as defined under the Act.

The second issue is whether the lower Court was right in upholding the learned trial Judge’s holding that the Appellant made the confessional statement relied upon by the said learned trial Judge in convicting him voluntarily.

In support of this issue learned Counsel to the Appellant narrated the Appellants evidence given in the course of trial within trial alleging that he was locked up for two weeks, hanged, macheted on his hands and foot as the result of which the Appellant agreed to incriminate himself... PW3 who recorded the confessional statement denied ever touching the Appellant before the confessional statement was made. The learned trial Judge in exercise of his discretion disbelieved the Appellant and admitted the confessional statement in evidence. Learned Counsel to the Appellant therefore blamed the learned trial Judge for admitting and using the confessional statement in finding the Appellant guilty. Learned Counsel to the Appellant relied on the case of Cpl. Jona Dawa v. The State (1980) 8 - 11 SC 236, to say that the Court below was in error in finding that the required tests for the admission of a confessional statement of an accused person have been met in the present case and urged the Court to resolve this issue in favour of the Appellant.

Learned Counsel to the Respondent is of the view that the complaint of the Appellant on this second issue, appears to be accusing the two Courts below of bias which the learned Counsel urged this Court to ignore. On the alleged contradictions in the confessional statements Exhibits A & A1 and C & D, learned Respondent's Counsel urged the Court to disregard the arguments of the Appellant's Counsel which mostly dwelled on comparing the statements in Exhibits A & A1 with the statements in Exhibits C & D completely forgetting that Exhibits C & D were not used in the judgment of trial Court or the judgment of the Court of Appeal; that the decision of the trial Court that the confessional statement of the Appellant was voluntarily made as affirmed by the Court below, was not perverse. With regard to the argument of the Appellant's Counsel that the oral confession to the agreement between the Appellant and other persons to commit the offence, ought to have been disregarded by the trial Court in the absence of words of caution, the Respondent's Counsel referred to Section 27 of the Evidence Act and the case of Onungwa v. The State (1975) N.S.C .C. 27, to say that there was no such requirement in law and urged the Court to resolve the issue against the Appellant.

The whole basis of the Appellant's complaint in this issue relates to the decision of the trial Court in the trial within trial conducted by that Court at the end of which Exhibit A & A1, was voluntarily made to justify its being admitted in evidence. The case of Cpl. Jona Dawa v. The State (1980) 8 - 11 S.C 235, cited by the learned Counsel to the Appellant, indeed laid down conditions to be satisfied before a confessional statement may be admitted by a trial Court. These conditions include looking outside the statement to see if there is anything to show that it was true; whether it was corroborated; whether the statement made in it of facts so far as can be tested are true; whether the accused person had the opportunity of committing the offence; whether the confession was possible and whether the confession was consistent with the other facts which have been ascertained and which have been proved before the Court. In the present case, the learned Counsel to the Appellant in his argument appears to have lost track of what happened at the trial Court when the learned trial judge

quite rightly in accordance with the law, refused to use the statement of the Appellant admitted as Exhibits C & D on the ground that the person who acted as interpreter in recording the Appellant's statement, was not called as a witness by the prosecution. The Appellant's confessional statement Exhibit B A & A1 were therefore correctly admitted and used as evidence in convicting the Appellant.

The third issue is whether the lower Court was right in holding that the identification parade was unnecessary even though the Appellant was never arrested while committing the crime. The learned Appellant's Counsel citing the case of Bozin v. The State (1985) 2 N.W.L.R. (Pt. 8) 465 at 459, had submitted that the law is well established that the prosecution must prove beyond reasonable doubt that a person accused of armed robbery actually took part in it; that where the identification evidence is poor, the trial court should return a verdict of not guilty. Learned Counsel argued that having regard to the conditions set down by this Court, where identification parade is necessary in the case of Archibong v. The State (2004) 1 N.W.L.R. (Pt.855) 488 at 508, the nature of the evidence adduced by the prosecution in the present case called for identification parade and that the failure to hold one, put the identification of the Appellant in doubt warranting his being given its benefits leading to the setting aside his conviction and sentence.

In his response on this issue learned Counsel to the Respondent contended that with the arrest of the Appellant immediately after the act of the robbery in possession of the motor cycle of PW1 which was tendered in the course of the prosecution, had ruled out any issue of identification of the Appellant in the present case where the Appellant was apprehended in the course of commission of a crime, around the crime with the stolen motor cycle in his custody. Learned Counsel concluded that the confessional statement of the Appellant had also made identification parade in this case quite unnecessary taking into consideration the decision of this Court in Attah v. The State (2010) 10 N.W.L.R. (Pt.1201) 190 at 200.

The law is well settled that whenever the case against an accused person depends wholly or substantially on the correctness of his identification and he alleges that the identification was mistaken, the Court must closely examine the evi-

dence so that any real weakness discovered about the evidence of identification, that discovery must lead to giving the accused person the benefit of the doubt. See Ukpabi v. The State (2004) 11 N.W.L.R. (Pt- 884) 439. In the case at hand however, the case of conspiracy to commit robbery and robbery itself against the Appellant, does not wholly or substantially depend on the correctness of identification of the Appellant. The circumstances under which the Appellant with his accomplice committed the offences for which the Appellant was charged, tried and convicted, are such that the question of his identity can hardly arise. The Appellant, accordingly to virtually unchallenged evidence led by the prosecution, was apprehended immediately after forcibly dispossessing PW1 of his motor cycle. The stolen motor cycle was found in possession of the Appellant after his accomplice had escaped. The Appellant in his own confessional statement also admitted the Planning execution of the attack on PW1 to take possession by force of the stolen motor cycle found in possession of the Appellant, the Commission of which act he admitted on his arrest.

It is my view that where an accused person by his own confession had identified himself with the Commission of the act constituting the offence he was charged with, the need for identification parade in such circumstances as happened in the instant case, is completely ruled out. In other words where the accused person is linked to the commission of the offence by convincing, cogent and compelling evidence, as was the case in the present case, an identification parade would cease to be a relevant fact. See Attah v. The State (2010) 10 NWLR (Pt.1201) 190 at 200.

In the circumstances of this case therefore, where the Appellant was virtually caught red-handed immediately after the commission of an act of robbery and in possession of the stolen property taken away from the owner thereof, the Court below was indeed right in holding that the holding of identification parade to identify the Appellant was unnecessary.

The fourth issue raised by the Appellant is whether any miscarriage of justice resulted in the decision of the Court of Appeal that the sentences of 21 years of imprisonment passed on the Appellant, were

to take effect from the date of his conviction on 28th April, 1999 rather than the date of arrest of the Appellant on 9th September, 1995. Learned Counsel to the Appellant considered the sentences passed on the Appellant as rather excessive as the Court below failed to take into consideration that the Appellant was in custody for 4 years before his conviction. Learned Counsel therefore urged this Court to apply its decision in *Osayeme v. The State* (1966) NMLR 388 at 389, to reduce the sentences passed on the Appellant by the Court below by making the sentences to start running from 9th September, 1995, the date the Appellant was arrested.

For the learned Counsel to the Respondent however, he referred to Section 381 of the Criminal Procedure Act which states that a sentence of imprisonment takes effect from and includes the whole of the day of the date on which it was pronounced; that there is no provision in the law stipulating that a sentence should commence from the date on which the accused was arrested and therefore the Court below was right in its decision that the reduced sentences passed on the Appellant should commence from the day the trial Court pronounced its judgment. With regard to the case of *Osayeme v. State* (supra), cited by the Appellant's Counsel, it is the view of the learned Counsel to the Respondent that it does not apply to the present case.

In this issue under consideration, it is quite plain that the Appellant is not complaining that the sentences of 21 years imprisonment for each of the two counts to run concurrently as passed upon by the Court below are excessive. This is because the sentence for the offence of robbery under Section 1(1) of the Robbery and Firearms (Special Provisions) Act for which the Appellant was found guilty by the Court below in substitution for the sentence of death for Armed Robbery by the trial Court, is mandatory being imprisonment for not less than 21 years. What the Appellant is complaining about is contained in the last order of the Court below in its judgment where that Court said - "*Sentences shall begin to run as from the 28th April, 1999 being the date of conviction and sentence of the Appellant at the High Court of Justice Abeokuta, Ogun State.*"

Having regard to the fact that the Appellant was initially found guilty of conspiracy to commit Armed Robbery and Armed Robbery, for which he was sentenced to death by the trial Court on 28th April, 1999, the fact that the Appellant's

appeal having succeeded resulting in his being found guilty of lesser offences of robbery and conspiracy to commit same, which carry mandatory sentences of 21 years of imprisonment, simply because the Court below merely exercised its discretion to order that the sentences should start to run from the date of conviction of the Appellant by the trial Court in line with Section 381 of Criminal Procedure Act, the complaint of the Appellant of having suffered a miscarriage of justice, is definitely without basis whatsoever. The case of Osayeme v. State (supra) relied upon by the Appellant which deals with exercise of discretion of trial Judge passing a sentence, which this Court regarded as excessive, does not apply in the present case where the 21 years sentence of imprisonment is mandatory under the statute creating the offence. Therefore there was no miscarriage of justice to the Appellant in the sentence passed on him by the Court below to justify the review of the same by this Court.

The fifth and final issue in this appeal is whether the lower Court could safely convict the Appellant of the offence of conspiracy from the legally inadmissible confessional statements allegedly made to PW2 and in Exhibits A & A1. It was the contention of the learned Counsel to the Appellant on this issue, that there was no credible evidence from the witnesses called by the prosecution and the confessional statements of the Appellant to support the Appellants conviction for conspiracy to commit robbery; that the learned trial Judge merely relied on perverse findings, hearsay and contradictory confessional statements of the Appellant, to convict him for conspiracy and therefore called in aid a number of cases including *Owie v. The State* (1985) 1 N.W.L.R. (Pt.3) 470 at 483, to say that the conviction of the Appellant for conspiracy cannot stand and urged this Court to set it aside.

As for the Respondent on this issue, its learned Counsel argued that the issue is misconceived because the question of whether or not the confessional statement of the Appellant Exhibits A & A1 were properly admitted and relied upon as evidence in convicting the Appellant of the offences charged, has been laid to rest under issue number two, which specifically dealt with the confessional statements of the Appellant. On the argument of the Appellant that the

trial Court used proof of evidence filed by the prosecution as part of evidence in convicting the Appellant, learned Counsel pointed out that that argument of the Appellant is misconceived because the evidence contained at pages 7 - 10 of the record of appeal, are the confessional statements of the Appellant duly admitted in evidence.

B The grouse of the Appellant in this last issue originates from the Appellant's ground 9 of the grounds of appeal which states -

"The learned Judges of the lower Court erred in law in using the legally inadmissible confessional statements allegedly made by the Appellant to PW2 and in Exhibits A & A1 to affirm the conviction of the Appellant by the trial Judge for the offence of conspiracy."

C What I have to determine in this issue therefore, is whether or not on the evidence on record, the trial Court was right in convicting the Appellant of the offence of conspiracy and consequently, if the Court below was also right in affirming that convicting.

The offence of conspiracy is not defined in the Robbery and Firearms (Special Provisions) Act as is the case of the offence of robbery that is defined under Section 15 of the Act.

E ***Therefore direct positive evidence of the plot between the conspirators is hardly capable of direct proof. The Courts therefore usually tackle the offence of conspiracy as a matter of inference to be deduced from evidence of criminal acts or inactions of the parties concerned.*** See Oduneye v. The State

F (2001) 2 N.W.L.R. (Pt.697) 311 at 324, where Achike JSC (of blessed memory) said -

"A conviction for conspiracy is not without its inherent difficulties. First the offence of conspiracy is not defined under the Criminal or Penal Code. But, perhaps, more importantly, a successful conviction for conspiracy is one of those offences predicated on circumstantial evidence which is evidence not of fact in issue but of other facts from which the fact in issue can be inferred"

As far as the law is concerned therefore, the offence of conspiracy is said to have been established once it is shown in evidence that the criminal design alleged is common to all suspects. In the case at hand, the conviction of the Appellant for conspiracy to commit robbery is traceable to the evidence of PW1, PW2 and the confessional statements of the Appel-

lant Exhibits A & A1. In the evidence of PW1 and PW2 on record, it is quite clear that the Appellant and his accomplice on 9th September, 1995 participated in an act of robbery at which PW1 was dispossessed of his Suzuki motor cycle which was immediately recovered from the Appellant as he tried to escape with the loot of the robbery, in the process of which the Appellant was arrested with the motor cycle while his accomplice escaped. B

The confessional statement of the Appellant also revealed how the plot to commit the robbery was hatched between the Appellant and his accomplices when he said- C

“On the 9th September, 1995 around 4 pm, myself Tumbosun and Taofik jointly left Lagos State down to Akute to celebrate with one of our friends called Nura. xxxxxx Three of us gone to the party around 5 pm and we did not stay more than one hour at the party before we left. As we are going on the road, Tumbosun and Taofik discussed with me that we will still snatch another motor cycle today. Immediately I heard these, I supported them, because this is not our first time doing such operation. As we are going on the road, we have moved about a kilometre to Nuru party, we saw an Okada driver. We stopped him. D E

Immediately, he stopped, Tumbosun we started beating the driver and Tumbosun used the stick on him to hit, the Okada driver on the head. The Okada driver dropped his Motor cycle and ran away.” F

The above confessional statement of the Appellant had not only established the offence of conspiracy against the Appellant but also the offence of robbery committed by him with his accomplices all of whom clearly belong to a gang of robbers who have been engaged in the business of snatching of motor cycles. With these revelations, I say the Court below was on very strong ground in affirming the conviction of the Appellant for the offence of conspiracy to commit robbery. G

In the result therefore, all the issues raised by the Appellant in his brief of argument having failed, the appeal itself must fail. Accordingly, the appeal is hereby dismissed. The conviction of the Appellant and sentences as substituted by the Court below for the offences of conspiracy to commit robbery and robbery, are hereby affirmed. H

FABIYI JSC

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

The appellant was arraigned on two count charge of conspiracy to commit Armed robbery and Armed robbery contrary to section 5(a) and 1 (2) (a) and punishable under section I (2) (a) of the Robbery and Firearms (Special Provisions) Act 1990 as amended by the Tribunal (Certain Consequential Amendment etc.) Act, 1999.

At the trial court, the use of offensive weapon was not established by the prosecution. The trial judge convicted and sentenced the appellant for Armed robbery. Upon his appeal to the Court of Appeal, the sentence of death by hanging pronounced by the trial court was reduced to 21 years imprisonment for the lesser offence of robbery simpliciter.

The appellant has further decided to appeal to this court. I wish to touch briefly the issue relating to identification of the appellant. His learned counsel felt that identification parade was desirable.

From the evidence which was believed by the trial court and confirmed by the Court of Appeal, the appellant was caught with the robbed motorcycle soon after the incident. This is apart from the fact that he made a clear admission that he committed the offence in his cautioned statement. No doubt, the doctrine of recent possession caught up with the appellant. He got enmeshed and could not wriggle out of same. Arguments made with respect to identity of the appellant were to no avail. See: *Eze v. The State* (1985) 3 NWLR (Pt.13) 429 and *Salami v. The State* (1988) 3 NWLR (Pt.85) 671.

On behalf of the appellant, it was also contended by his counsel that the offence of robbery simpliciter was not established beyond reasonable doubt. This is the usual ploy always embarked upon by appellants with weak or nonexistent solid defence. It is unthinkable that the appellant herein who was found with the robbed motorcycle soon after the incident can still maintain that the lesser offence of robbery simpliciter was not proved beyond reasonable doubt. Since all the ingredients of the offence were clearly established, same was proved beyond reasonable doubt. See: *Alabi v. The State* (1993) 7

NWLR (Pt.307) 511 at 523.

For the above reasons and more especially the detailed reasons set out 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 and abide by the consequential order in the lead judgment. B

RHODES-VIVOUR JSC

My lords, I have had the advantage of reading in draft the leading judgment of my learned brother, Mahmud Mohammed, JSC. I agree with the reasons which he has given for affirming the judgment of the Court of Appeal. I shall comment on: C

- (a) the offence of conspiracy.
- (b) when an identification parade is necessary. D
- (c) the effect of the appellant's confessional statement, and
- (d) the doctrine of recent possession.

The facts are these: On the 9th day of September 1995, PW1, a commercial motorcyclist was riding his motorcycle towards Akute in Ogun State. He was stopped and disposed of his motorcycle by the appellant and another person still at large. A motorcyclist who came passing by on hearing repeated shouts of thief, thief, thief by PW1 chased the appellant and the other person who were trying to get away on PW1's stolen motorcycle. The appellant was apprehended but the other person escaped and was never arrested. E

On these facts the appellant was charged on two counts of conspiracy to commit Armed Robbery and Armed Robbery contrary to Sections 5(a), and 1(2)(a) and punishable under Section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act 1990 as amended by the Tribunal (Certain Consequential Amendment etc.) Act 1999. F

The learned trial judge sentenced the appellant to death by firing squad. This judgment was upset on appeal. The sentence of the Court of Appeal runs as follows: H

Count 1. 21 years imprisonment.

Count 2. 21 years imprisonment.

The sentences are to run concurrently. The sentence was reduced from death to 21 years imprisonment because the Court of

Appeal was not satisfied that the appellant was armed when he committed the offence.

(A) CONSPIRACY

B Conspiracy is established once it becomes clear to the court that the conspirators knew of the existence and the intention or purpose of the conspiracy. Put in another way conspiracy is complete upon an agreement by the conspirators and in most cases conspiracy is inferred or presumed. See, *N. Osuagu v. The State* 2013 1-2 SC (Pt.1) p.37, *Lawson v. State* (1975) 4 S.C. p.115, *Mumuni v. State* C 1975 6 S.C. p.79.

I explained conspiracy in detail in *N. Osuagu v. State* (supra). There would be no need for a detailed explanation all over again as this is a very simple case of conspiracy to steal a motorcycle. Those who conspired to steal PW1's motorcycle are the appellant and the D other person still at large. They are the conspirators. The conspirators agreed to steal PW1's motorcycle and proceeded to actualize their intention. They succeeded in dispossessing him of his motorcycle. The purpose of the conspiracy was achieved and the offence of conspiracy was proved beyond reasonable doubt by credible evidence.

E (B) IDENTIFICATION PARADE

In *R v. Turnbull & Ors* 1976 3 WLR p.445. it was stated that an identification parade would be conducted where:

(a) the victim did not know the accused before the robbery;
F or/and

(b) the Robbery lasted a very short time thereby making it difficult for the victim to observe the features of the accused person. See also *Ikemson & Ors v. State* 1989 2 NSCC Vol.20 p.471

G I would also add that an identification parade ought to be conducted in cases where the accused person is arrested a long time after the Robbery was committed. After PW1 was robbed of his motorcycle the thief/appellant was chased and caught with the motorcycle not too far away from the scene of the crime. Furthermore the appellant confessed to the fact that he stole PW1's motorcycle in his H confessional statement. On these facts an identification parade would not be necessary as there was never any doubt as to who robbed PW1's of his motorcycle. Once again an identification parade is only conducted when the identity, features of the accused person is in doubt and that is not the case in this appeal.

(C) CONFSSIONAL STATEMENT

Section 27(1) of the Evidence Act states that:

A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime. See *Igbinovia v State* 1981 2 SC p.5, *Yusufu v. The State* 1976 6 SC p.167 B

In *Osuagu v. The State* (supra). I said that:

“A confession is a voluntary admission or declaration by a person of his participation in a crime. It becomes a confession when in some way it amounts to an acknowledgment of guilt. A confession must either admit the elements of the offence or all the facts which constitute the offence. Once the court is satisfied with the genuineness of a confession, a conviction can be based entirely on it and such a conviction would not be disturbed by an appellate court.” C

Relevant extracts from the appellant’s confessional statement D which falls within the warm embrace of section 27(1) of the Evidence Act runs thus:

“...As we are going on the road, we moved about a kilometer to Nuru party, we saw an Okada driver; we stopped him, immediately he stopped, (Tunbosun) we started beating the driver and Tunbosun used the stick on him to hit the Okada driver on the head, the Okada driver dropped his motorcycle and ran away. Tunbosun is the one drove the motorcycle while I was with him at back...” E

The above is an admission by the appellant that he in company of Tunbosun robbed PW1 of his motorcycle. The position of the law is that once the court is satisfied that a confession was made voluntary and is true, a conviction would be sustained without corroborative evidence. See *J. Yusufu v. State* 1976 6 SC p.167 F

It is desirable that the court looks for some other evidence G outside the confession which makes it probable that the confession is true. See *Onuoha v. State* 1987 4 NWLR pt.65 p.331.

My lords, the confession to robbery (stealing PW1’s motorcycle) was free and voluntary, consistent and probable as it was corroborated by compelling evidence to wit: the appellant was apprehended with PW1’s motorcycle while trying to escape. This is a fact which shows that the confession is true. H

(D) DOCTRINE OF RECENT POSSESSION

The law on the point is that:

“If a theft has been committed and shortly afterwards the property is found in possession of a person who can give no account of it, it is presumed that he is a thief.” See K. Kwashie v. The King XIII WACA p.86

B PW1’s motorcycle was found with the appellant shortly after he stole it. He confessed to stealing the motorcycle. In the absence of an explanation consistent with innocence the courts below were fully justified in convicting the appellant of the offence of robbery.

C For this and the detailed reasoning in the leading judgment the appeal is dismissed.

PETER-ODILI JSC

I am at one with the judgment just delivered by my learned D brother, Mahmud Mohammed JSC. The reasons that brought about the decision I agree with and shall support with some comments.

This is an appeal against the judgment of Honourable Justice S. O. Sodeke of the High Court of Justice, Ogun State, Abeokuta Judicial Division delivered on the 28th of April, 1999.

E The Appellant was on the 4th of February, 1999 arraigned before the High Court, Abeokuta on a two count charge of conspiracy to commit armed robbery and armed robbery contrary to and punishable under Section 5 (b) and Section 1 (2) (a) of the Robbery and Firearms (special provision) Act 1990 as amended by F the Tribunal (certain consequential Amendment etc) Act 1999.

The Appellant pleaded not guilty to the counts after same were read to him in Yoruba language. The prosecution called 4 witnesses and tendered Exhibits A and A1, B, C and D & D1 which were Accused/Appellant’s statement at the S.C.I.D., Abeokuta, the Stolen G Motorcycle, Accused/Appellant’s statement at Ifo police Station, two other statements of the accused at the same Ifo police Station.

Only the accused person gave testimony in his defence and after addresses of counsel, the trial court delivered its judgment on H 28th April, 1999 and found the Appellant guilty as charged.

The Accused/Appellant dissatisfied with the judgment appealed to the Ibadan Division of the Court of Appeal which court on the 25th day of February, 2010 set aside the conviction and sentence for Armed Robbery passed by the trial judge and found the appellant

guilty on the two counts for the lesser offences of conspiracy to commit robbery and robbery contrary to Section 1 (1) of the Robbery and Firearms (Special provision) Act.

The Court of Appeal proceeded to commute the Appellant's sentence to 21 years imprisonment without option of fine commencing from the date on which the trial court entered judgment on 28th April, 1999. B

Not satisfied with the judgment of the Court of Appeal, the Appellant has come before this Court on appeal.

FACTS BRIEFLY STATED: The facts as presented by prosecution witnesses were that on the 9th September, 1995, PW1 a commercial motorcycle operator while riding his Suzuki motorcycle with registration NO. OD7889K (Exhibit B), towards Akute was stopped by the Appellant and another person. The Appellant and his accomplice attacked PW1 with a broken bottle. Dry pepper was also robbed on the latter's face and he was robbed of his motorcycle and the sum of N700.00. C D

PW1 shouted for help and some people including PW2, another commercial operator came and chased after the Appellant and his accomplice catching up with them. The accomplice escaped and Appellant was apprehended on the PW1's motorcycle which was recovered and tendered as Exhibit B. E

Appellant was initially taken to Ifo Police Station and later the case was transferred to State C.I.D at Elewe-Eran in Abeokuta. Appellant made confessional statements at Ifo police Station and at Abeokuta. F

At the trial, the prosecution tendered the confessional statements. The ones made at SCID Abeokuta were admitted as Exhibit A and A1. The confessional statements were admitted as Exhibits 'A' and 'A1' after a trial within trial when the Appellant challenged same on grounds of having been tortured and compelled to make the statements. G

Exhibits C and D were admitted without any objection from the defence. The learned trial judge placed no reliance on Exhibits C and D because the prosecution did not call the interpreter who took the statement as a witness. The trial judge held that Exhibits C and D were not admissible and attached no weight to them. The court considered Exhibits A and A1 admitted in evidence cautioned himself H

and along with other pieces of evidence convicted the accused/appellant.

On the 14th March 2013 date of hearing, learned counsel for the Appellant, Chief Michael Aliyu adopted the Appellant's Brief of Argument settled by him which was filed on the 8/2/2011.

B In the Brief were raised five issues for determination which are stated hereunder, viz:-

i) Whether all the ingredients of robbery simpliciter for which the Lower court convicted the Appellant were present and proved beyond reasonable doubt.

C ii) Whether the Lower court was right in upholding the learned trial judge's holding that the Appellant made the confessional statement relied upon by the said learned trial judge in convicting him voluntarily.

D iii) Whether the Lower court was right in its holding that identification parade was unnecessary even though the Appellant was never arrested while committing the crime.

E iv) Whether by holding that the term of 21 years sentence imposed on the Appellant should start from the day of conviction and sentence on 28th April, 1999 as opposed to the day of arrest on 9th September, 1995, does not result in any miscarriage of justice on the appellant more so when he was never granted bail from the time of his arrest to the time of conviction.

F v) Whether the Lower court could safely convict the Appellant of the offence of conspiracy from the legally inadmissible confessional statement allegedly made to PW2 in Exhibits A and A1.

G Mr. Olayode O. Delano for the respondent adopted the respondent's Brief of Argument settled by him and filed on 9/11/11 and deemed filed on 28/3/12. He further adopted the issues as crafted by the Appellant which I shall utilize for our purpose in this appeal.

ISSUES 1, 2, & 5:

H These are in respect of whether the ingredients of robbery simpliciter were proved beyond reasonable doubt and the use of the Confessional Statements and to answer it, learned counsel for the Appellant submitted that recourse cannot be had to Exhibits A, A1, C and D the confessional statements made by the appellant. Also that if no bottle, also slapping or dried pepper were used as found by the two Courts below if the Appellant can be safely convicted of the

offence of robbery when there is no evidence of threat or use of violence by the appellant. He stated that there were contradictions between the confessional statements Exhibits A & A1 as against C & D on the matter of the use of the broken bottle. That the court cannot pick and choose which of the two sets of confessional statements to believe. He cited *Onubosu v State* (1974) 9 SC. 1; *R. v. Sykes* (1913) 18 CAR 233; *Dawa v State* (1980) 8 - 11 SC 236. That no stick was tendered by the prosecution and for a stick to be an offensive weapon, the prosecution must show that it is an unusual stick and must be tendered before the court by the prosecution. He cited *Kerenku v. Tiv N. A.* (1965) All NLR 570. B C

Chief Aliyu of counsel further submitted that there was no credible evidence of a threat or use of violence an PW1 as no offensive weapon was proved to be used by the appellant. He referred to *Imasuen v. Amissal* (1969) 8 NWLR (Pt.467) 460 at 461. D

Responding, Mr. Delano of counsel contended that the question of whether or not an offensive weapon was used had been laid to rest at the Court of Appeal and at this point is irrelevant. The primary issue now being whether PW1 was robbed of the motorcycle so as to justify the conviction on the lesser offence of robbery. Learned counsel for the respondent said the evidence of PW1 provided sufficient proof of the use of violence in the process of stealing the motorcycle to anchor the lesser offence of robbery. Also that the offence of conspiracy to commit robbery was proved. E F

It was submitted for the Respondent that the accused/appellant can be found guilty of the lesser charge of robbery and conspiracy based solely on the confessional statements Exhibits A and A1. He relied on *Akpan v State* (2008) 14 NWLR (pt.1106) 77; *Nwachukwu v State* (2007) 17 NWLR (Pt.1062) 43; Section 27 of the Evidence Act. G

The summary of the submissions of counsel either way having been stated above, the question that comes out firstly is whether the finding of the trial judge that there was insufficient evidence that PW1 had been attacked using a broken bottle. However, the court of trial had found that the snatching of the motorcycle from PW1 by the accused/appellant was facilitated with an "offensive weapon" which is the pepper rubbed on the face of PW1 by Appellant and his cohorts. H

The Court of Appeal while accepting the finding that there was

forceful dispossession of PW1 of his motorcycle by the appellant and his colleagues, the use of pepper would not come within the known weapons under the robbery and Firearms Act to bring the offence of Armed Robbery into operation and so kept within the confines of robbery simpliciter. By so doing, the Court below reduced the offence as established to mere robbery upon which that court made a conviction and sentence of 21 years instead of the graver offence of armed robbery for which the trial court to make a sentence of death by firing squared.

The Appellants attack on the finding of the robbery is in my humble view akin to shadow boxing considering the confessional statements of the appellant Exhibits A and A1 which were graphic and stated in clear terms what he and his friends had set out to do.

These extra-judicial statements of the Appellant were sufficient in themselves to found a conviction. The situation is all the more poignant when these statements are taken along corroborative pieces of evidence such as the arrest having been effected within less than an hour of the transaction with the Appellant and others in possession of the stolen motorcycle and the PW1 not in doubt as to who his assailants were. See Akpa v State (2008) 14 NWLR (pt.1106) 77; Nwachukwu v State (2007) 17 NWLR (Pt.1062) 43.

The attempt by the learned counsel for the Appellant to impugn the confessional statements Exhibits A, A1, C and D on the ground that contradictions existed in the contents thereof would remain what it is an attempt, as the contention is not substantiated nor borne out of the record.

The six guiding tests for the acceptance of a statement of an accused as confessional and acceptable as laid down in R v Sykes (1913) 18 CR. App. R. 233 at 233 - 7 adopted in our Nigerian setting in CPL Jona Dawa v State (1980) 8 - 11 SC 236 present, These guides are:-

- (1) *Is there anything outside it to show that it was true?*
- (2) *Is it corroborated?*
- (3) *Are the statements made in it of fact so as far as we can test them as true,*
- (4) *Was the prisoner a man who had the opportunity of committing the murder?*
- (5) *Is his confession possible?*

(6) Is it consistent with other facts which have been ascertained and which have been as in this case proved before us.”

These questions were found by the two Courts below to be answered positively and I see no reason to deviate at this level. Therefore, the issues 1, 2 and 5 are resolved against the Appellant.

ISSUE 3:

This issue raises the question if the Lower Court was right in holding that identification parade was unnecessary considering that the Appellant was not arrested during the commission of the offence.

It was submitted for the Appellant that the prosecution must prove beyond reasonable doubt that the person accused of armed robbery actually took part in it. That the failure of the prosecution to conduct an identification parade was fatal to this case of the prosecution. He placed reliance on *Bozin v State*; *Otti v State* (1993) 4 NWLR (Pt. 290) 675; *Adam v State* (1991) 4 NWLR (Pt.187) 530; *Archibong v State* (2004) 1 NWLR (Pt.855) 488 at 508; *Ikemson v State* (1989) 4 NWLR (Pt.110) 455.

That the finding of the learned trial judge that an identification parade was unnecessary because the event took place at 4 pm was perverse not being supported by any evidence and tantamount to the court making a case for the prosecution. He cited *Daniela v. State* (1991) 8 NWLR (Pt. 212) 715 at 732.

Learned counsel for the Appellant further contended that there was a material contradiction between the evidence of PW2 and PW3 as to where the motorcycle was recovered, whether at the busy bus stop after 8.45 pm or in the nearby bush. That the doubt which this inconsistency evokes should be resolved in favour of the Appellant. He cited *Kalu v Nigerian Army* (2010) 4 NWLR (Pt.1185) 433 at 450; *Shehu v State* (2010) 41 NSCQR (Pt.2) 1280 at 1303.

Learned counsel for the respondent, Mr. Delano said this court should hold that the accused is linked to the offence and no identification problem exist as Appellant was found in possession of the motorcycle, added to this confession were enough to dispel the matter of identification. He cited *Attah v State* (2010) 10 NWLR (Pt.1201) H 190 at 200.

In this matter whereby the Appellant challenges the identification evidence presented by the prosecution, there is no feature upon which the dispute over whether the Appellant was properly identified

or a need for an identification parade first had before proceeding to effect the arrest and charge. The reasons are found in the record since the appellant was apprehended very soon after the commission of the offence, in fact, when trying to get away and the arrest around the scene of crime with the stolen motorcycle in his custody. It brings
 B to the fore, that the appellant was properly linked to the offence by convincing, cogent and compelling evidence which rendered an identification parade unnecessary especially since PW1, the victim was there every inch of the way. The requirement in this Court's decision in *Attah v State (2010) 10 NWLR (Pt.1201) 190* at 200 has been
 C met. The issue herein is resolved against the Appellant.

ISSUE 4:

This issue is as to when the imprisonment term of 21 years imposed on the Appellant should commence, whether from the date
 D of conviction and sentence on 28th April, 1999 as opposed to the day of arrest of 9th September, 1995 since Appellant had not been admitted to bail after the arrest.

Chief Aliyu of counsel said considering the contradictions in the evidence of the prosecution witnesses, the confessional statements
 E and the fact that Appellant was arrested after 8.45 pm at a busy bus stop, the sentence of 21 years of the Lower Court to run from 1999 was excessive as that Court did not consider the 4 years awaiting trial before the judgment. He referred to *Osayeme v State (1966) NMLR 388* at 389.
 F

Reacting, learned counsel for the respondent said there is no provision of the law which stipulates that a sentence should commence from the date on which the accused was arrested even if not granted bail. That the basic principle remains that sentence imposed
 G commences from the date of pronouncement and not date of arrest. He cited Section 381 of the Criminal Procedure Act.

I would quote the salient part of Section 381 of the Criminal Procedure Act which is thus:-

*"381: A sentence of imprisonment takes effect from and in-
 H cludes the whole of the day of the date on which it was pronounced."*

The sentence in this case of 21 years is as stipulated under the Robbery and Firearms Tribunal Act where robbery simpliciter is established as required by law as in this instant case. The sentence is mandatory and does not admit of the discretion of the court to re-

duce or to go backwards as to the commencement of the term of imprisonment in which the period spent awaiting trial up to the judgment day could be factored. No provision in that regard having been made, the strict application of the Robbery and Firearms Tribunal Act and Section 381 of the Criminal Procedure Act becomes operational upon sentence. B

Appellant's counsel citing *Osayeme v State* (1966) NMLR 388 at 389 where the discretion he pushes forward was exercised is not applicable in the case in hand and so cannot be imported so as to change things here. C

From the above and the better reasoning in the lead judgment, I dismiss this appeal while I affirm the decision and sentence as imposed by the Court of Appeal. I abide by the consequential orders as made by my learned brother, Mahmud Mohammed, JSC. D

AKA'AH S JSC

My Lord, Mahmud Mohammed JSC obliged me with a copy of his judgment. He took the issues and resolved them seriatim in an admirable way against the appellant. I completely agree with his reasoning and conclusions that the appeal lacks merit. E

The appellant's complaint under the fourth issue is that the term of 21 years sentence imposed on him resulted in miscarriage of justice more so since he was never granted bail from the time of his arrest to the time of his conviction. He argued that the sentence of 21 years imprisonment imposed on him on 28th April, 1999 should have started running from the date of his arrest on 9th September, 1995 and anchored his submission on the case of *Osayeme vs State* (1966) NMLR 388 at 389 where the appellant who had been in custody for two and half years awaiting trial was found guilty of attempt to murder and sentenced to 15 years imprisonment. His appeal against sentence was allowed and this Court per Onyeama JSC held that there was nothing on the record to show that the trial Judge took into consideration the fact that the appellant had been in custody for 2-1/2 years awaiting trial and made allowance for it. In the circumstances, the court considered the sentence of 15 years imprisonment was excessive and reduced it to 10 years. F G H

The argument by the learned counsel for the appellant ap-

pears formidable and impregnable. However the point must be made that the punishment for robbery simpliciter under section 1(1) of the Robbery and Firearms (Special Provisions) Act Cap. 398 Laws of the Federation of Nigeria 1990 is imprisonment for a minimum of 21 years and the Judge has no discretion to award a lesser sentence.

B The section states in no uncertain terms that-

“1 (1) Any person who commits the offence of robbery shall upon trial and conviction under this Act, be sentenced to imprisonment for not less than twenty-one years”

C Learned counsel for the respondent submitted and quite rightly too that under section 381 of the Criminal Procedure Act, a sentence of imprisonment takes effect from the day on which it is pronounced. Where no discretion regarding sentence is to be exercised, the period of incarceration before the accused is found guilty cannot be taken
D into consideration when sentence is being pronounced.

There is proof beyond reasonable doubt that the appellant used or threatened force to dispossess the complainant of the motor-cycle. And so he was rightly convicted of the robbery. Consequently, no miscarriage of justice has been occasioned by the lower court in
E finding him guilty of the offence and sentencing him to the minimum term of imprisonment which was to commence from the date of his conviction at the trial court. The appeal therefore lacks merit and it is hereby dismissed.

F

G

H