

SUPREME COURT OF NIGERIA
FRIDAY 19TH JULY, 2013. SC. 370/2011
**CORAM:- M. MOHAMMED, M. S. MUNTAKA-
COOMASSIE, N. S. NGWUTA, M. U. PETER-ODILI,
O. ARIWOOLA, JJSC**

TAOFEEK ADELEKE APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Proof - Purpose - It is to the effect that if the essential ingredients of offence have been proved by prosecution - The charge is proved beyond reasonable doubt (H1)

CRIMINAL PROCEDURE - Confession - Conviction - So long as a confession is positive and voluntary - It is enough to found a conviction (H2)

ROBBERY - Proof - Corroborative evidence from PW1 & 2 show that there was a robbery - And that the robbery was not proved to be armed robbery (H3)

FACTS

Before the Ogun State High Court, 1st accused/appellant and 2nd accused were arraigned for the offences of conspiracy to commit armed robbery and armed robbery contrary to sections 5(b) and punishable under section 1(2)(a) and section 1(i) of the Robbery & Firearms (Special Provision) Act Cap. 398 LFN 1990 (as amended). The case for prosecution/respondent is that 2nd accused was a driver to PW1. PW 1 had on a day prior to the day of the robbery, withdrew the sum of N500, 000.00 from a bank. 2nd accused was aware of the withdrawal made by PW1. On that day of the robbery, PW1 had instructed 2nd accused to drive her, her daughter and PW2 from Ibadan to Lagos to transact a business deal with the said cash. In the course of their journey to Lagos a black Mercedes Benz car which drove parallel to them asked 2nd accused to stop and park at the roadside. The occupants of the black car claimed to be policemen.

2nd accused refused to heed the instruction of PW1 that he

should speed off the place rather than parking. As a result of the calculated actions of 2nd accused, occupants of PW1's car were eventually stopped by the occupants of the black Mercedes Benz car. PW1 was thus dispossessed of the N500, 000.00 by the occupants of the Mercedes Benz car who were robbers. 2nd accused co-operated with the robbers during the robbery. PW1 reported the matter to the police. 2nd accused was arrested and his this led to the arrest of appellant. 2nd accused and appellant confessed how they conspired to commit the robbery. They were consequently charged before the court. At the end of trial, the court found them guilty as charged. Appellant and 2nd accused were sentenced to 10 and 21 years imprisonment respectively. Dissatisfied, appellant appealed to the Court of Appeal Ibadan Division. The court dismissed the appeal and affirmed the judgment of the trial court. Aggrieved further, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

“(1) Whether or not the two contradictory extra judicial statements of the appellants are confessional evidence in law upon which the court can convict him.

(2) Whether or not the conviction of the appellant on the basis of an extra judicial statement of a co-accused person is not a misdirection of justice.

(3) Whether the offences of conspiracy to commit robbery and robbery were proved against the appellant.”

HELD (Unanimously dismissing the appeal per

MUNTAKA-COOMASSIE JSC)

CRIMINAL PROCEDURE - Proof - Purpose

1. The purport of proof in all criminal trials is that if the essential ingredients of the offence have been proved by the prosecution, the charge is proved beyond reasonable doubt.

(p. 3101 F)

CRIMINAL PROCEDURE - Confession - Conviction

2. A confessional statement so long as it is free, direct, positive and voluntary is enough to found a conviction.

Exhibits D, E and F are confessions which are sufficient to ground the conviction of the appellant for conspiracy and robbery as found by the trial court and affirmed by the court below. (p. 3103 G)

ROBBERY - Proof

3. In the instant case, therefore enough corroborative evidence from the P.W.1 and P.W.2 to show:-

(1) That there was a robbery and;

(2) That the robbery was not proved to be armed robbery. (p. 3103 H)

NOTABLE POINTS OF INTEREST

PETER-ODILI JSC

1. Robbery – Ingredients

Taking a cue from the matter of the standard of proof, it is to be stated that the offence of robbery is proved properly when the prosecution has established the following ingredients without exception: -

(a) That the accused stole something;

(b) That the thing stolen is in law capable of being stolen;

(c) That the accused threatened to use violence or actually used violence immediately after the time of stealing the thing.

(p. 3111 G)

2. Robbery – Definition of

It is necessary to now state what the definition of Robbery is and in this regard that definition is found under Section 15 (i) of the Robbery and Firearms (Special Provisions) Act Cap. 398 which provide as follows:-

“Robbery means stealing anything and at or immediately before or after the time of stealing it, using or threatening to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance of its being stolen or retained.” (p. 3112 A)

3. Confessional statements – Test

It is now trite law that although the court can convict on the confes-

sional statement alone, the court is however encouraged to subject the statement to a test which are stated hereunder; viz:

1. Is it corroborated?
2. Are the relevant statements made in it of the facts as they can be tested?
- B 3. Was the prisoner one who had the opportunity of committing the crime?
4. Is he/her confession possible?
5. Is the confession consistent with other facts which had been ascertained and have been proved? (p. 3112 F)

4. Conspiracy – Essential element

On the issue of the charge of conspiracy, it is to be reiterated that conspiracy is a meeting of two or more minds in a plan to carry out an unlawful or illegal act which is an offence and just the mere agreement without more is enough. (p. 3113 E)

REPRESENTATION

Adekunle Ojo, Esq., for Appellant
 E Abimbola I. Akeredolu (A. G. Ogun State and J. K Omotosho D.DPP M.OJ Ogun State), for Respondent

CASES REFERRED TO

- Onochukwu v. State (1998) 4 SC 49/57
 F Akpapuna v. Nzeka (1983) All NLR 35
 Kanu v. R. (1952) 14 WACA 30
 R. v. Ume 8 WACA 118
 Ozaki v. State (1990) All NLR 94
 G Alabi v. State (1993) 7 NWLR (pt. 307) 511
 Ibrahim v. State (1991) 5 SC 171
 Obakpolor v. State (2009) 6-7 SC 11
 Bozin v. State (1985) 2 NWLR (pt. 8) 465
 Miller v. Minister of Pensions (1947) 3 All ER 37
 H Ina v. State (2010) 43 WRN 1
 Dibie v. State (2007) SCM 101
 Offi v. State (1991) 8 NWLR (pt. 207) 103
 Ekure v. State (1999) 13 NWLR (pt. 635) 456/469
 Oseni v. State (2012) 4 SCM 150

STATUTES REFERRED TO

Robbery & Firearms (Special Provision) Act (Cap. 398) LFN 1990, ss. 1(2)(a)(i), 5(b)

Evidence Act Cap 112 LFN 1990, ss. 27(2), 138(1)

B

LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC

This is an appeal against the judgment of the Court of Appeal, Ibadan Division hereinafter called the lower court, delivered on the 31st March, 2011. The lower court had affirmed the judgment of the trial court which convicted and sentenced the appellant and one Mumuni Olaoye to 10 and 21 years imprisonment respectively for the offences of conspiracy to commit armed robbery and armed robbery contrary to section 5(b) and punishable under section 1(2) (a) and section 1 (i) of the Robbery and Firearms (Special Provision) Act (Cap. 398) Laws of the Federation of Nigeria 1990 (as amended) by the Tribunal (certain consequential Amendments etc.) Act 1999. C D

The facts of this case as shown in the record are that the 2nd accused person, one Mumuni Olaoye was the driver of P.W.1, Mrs. Monsuratu Moni Babatunde, who was the victim of the crime, and has driven her for three months prior to the present incident, had on 14/3/2002 driven P.W.1 to All State Trust Bank Ibadan where she withdrew the sum of N500, 000.00 which she intended to take to Lagos for business the following day. The 2nd accused person asked P.W.1 for the sum of N5, 000.00 loan which the P.W.1 refused because she had just paid him his salary. The next day that is 15/3/2011 P.W.1, her daughter Temitope, her ward and Morufat Adebayo (P.W.2) left for Lagos driven by the 2nd accused person. P.W.1 instructed him to buy petrol at challenge Ibadan but he refused and insisted that he would buy it elsewhere. He began the journey to Lagos on the fast lane of the Expressway but suddenly changed to the slow lane. When he was asked by the P.W.1 whether there was any problem his response was that there was none. In the course of their journey to Lagos a black Mercedes Benz car which drove parallel to them asked the 2nd accused person to stop and park at the roadside. The occupants of the black car claimed to be policemen. E F G H

P.W.1 suspected that they could not be police men and ordered him not to heed to them but to accelerate further. P.W.1 no-

ticed that the driver did not heed to her instruction, she asked him to vacate the drivers seat so that she would take over the driving herself and speed off from the intruders but he ignored her and parked the car and the other black car also parked some meters away and the occupants of the black car came down with iron rod. P.W.1 again
 B ordered the driver to start the car but he refused. One of the robbers then went to P.W.1 while the other went to the driver, the 2nd accused person, the driver alighted from the vehicle and discussed with the robbers. Thereafter, one of the robbers went to P.W.1 and told
 C her that they were armed robbers. P.W.1 then alighted from the car and the robbers demanded for the money. One of the robbers took the bag from one of the occupants of P.W.1's car, opened it and went back to the driver. He then went back to the P.W.1 and specifically demanded for the bag containing N500, 000.00, and threatened to
 D kill her if she did not bring the bag.

The robber then went into the car and took the bag containing the money, he asked the P.W.1 to lie down and demanded to know whether the N500, 000.00 was complete. The driver also told the P.W.1 and other occupants in the P.W.1's car to lie down because
 E the robbers had guns. The robbers then went into the P.W.1's car to remove the ignition key, when they could not remove it they called the driver who removed it and gave them. The driver then told the P.W.1 to leave everything to God. P.W.1 and other occupants returned to Ibadan and reported at the Police Station, but they were
 F directed to Owode-Egba Police Station. The 2nd accused person, the driver was arrested which led to the arrest of the 1st accused person. After the evidence of the appellant and after the counsel's addresses, the trial court per Shoremi J. (as he then was) held as
 G follows at pages 49-50 of the record:

*"Having gone so far and from the circumstances of the case it is quite clear from the evidence of the 1st and 2nd prosecution witnesses together with unsolicited confession of the 1st and 2nd accused persons that an offence had been committed. The denial of
 H the 1st and 2nd accused persons of their involvement in the crime is an afterthought. At this stage, I intended to go back to the evidence of the witnesses for the prosecution as to style of commission of this crime. There is none of the witnesses who said categorically that any of the accused persons held any gun or dangerous weapon. The*

only next thing to any weapon held came from the 1st prosecution witness who said she saw one of them holding an iron rod when he was two poles away from her. She was not threatened when he came over. Nobody was injured. In fact to me the accused persons and their cohorts were amateurs in the business of robbery.

There is no doubt that there are sufficient evidence to prove commission of intention and the result of the action of those concerned is criminal. The question as to which one of them did what is immaterial. See: Nwali v. The State (1971) 1 NMLR at 78. From the totality of the evidence adduced the offence of conspiracy is proved against the 1st and 2nd accused persons (sic) and I convict them accordingly. I find the 1st and 2nd accused persons guilty of the offence of robbery under section 1 subsection 1 of the robbery and firearms (Special Provision Act) Cap. 398, Laws of the Federation of Nigeria 1990 (as amended)."

On appeal to the Court of Appeal, the lower court affirmed this finding of the trial court as per Alagoa, JCA (as he then was) and held as follows:-

"There can be no doubt that from their confessional statements the 1st and 2nd appellants conspired to rob P.W.1 of N500, 000.00 on the 15th March, 2002. 2nd appellant told the 1st appellant about the withdrawal by P.W.1 of the sum of N500, 000.00 from All States First Bank on the 14th March, 2002. They had discussion with other persons and planned how they were going to carry out the robbery operation. Conspiracy is a separate offence and I am satisfied that the prosecution has proved the case of conspiracy against the 1st and 2nd appellants beyond reasonable doubt. The judgment of the learned trial Judge is certainly not perverse as -

(a) It does not run counter to the evidence

(b) It has (sic) been shown that the trial court took into account matters which it ought to take into account.

(c) It has not occasioned a miscarriage of justice

See: Archibong v. The State (2004) NWLR (Pt. 855) page 488 at 498. Consequently I have no reason to disturb the findings of the learned trial Judge."

The appellant was dissatisfied with this decision and has now appealed to this court. In accordance with the rules of this court both parties filed and exchanged their respective briefs of argument. The

appellant formulated three (3) issues for determination as follows:-

“(1) Whether or not the two contradictory extra judicial statements of the appellants are confessional evidence in law upon which the court can convict him.

(2) Whether or not the conviction of the appellant on the basis of an extra judicial statement of a co-accused person is not a misdirection of justice.

(3) Whether the offences of conspiracy to commit robbery and robbery were proved against the appellant.”

The respondent formulated only one issue for determination in the following terms:-

“Whether from the totality of evidence, the prosecution proved the offence of conspiracy to commit robbery and robbery beyond reasonable doubt against the appellant.”

At the hearing the learned counsel to the appellant referred to Exhibits D and E, the statements made by the appellant and pointed out that they were contradictory, while the former denied his participation in the crime and therefore contended that the statements would not be taken as evidence, as the court is not allowed to chose one and discountenance the other. He therefore urged this court to reject the two set of statements in that the two statements are extra-judicial statement and the court cannot be expected to hold one as true and the other untrue. The case of Onochukwu v. The State (1998) 4 SC 49/57 was cited and Akpapuna v. Nzekwa (1983) All NLR 35. State-
ments made to the police must be fully consistent to be admitted as confessional statement. Cites Kanu v. R (1952) 14 WACA 30 at 32.

On his issue No. 2, it was submitted that the Court of Appeal and the learned trial judge contrary to laid down authorities relied on the statement of the 2nd accused person that he, one Shola, the appellant and others at large robbed P.W.1 and made the statements part of the basis for sustaining the conviction of the appellants. It was further submitted that the statements made to the police by the co-accused person can only be used against him. Refers to section 27(2) of the Evidence Act. Cap 12 L.FN. 1990, R v. Akinpelu Ajani (1936) WACA 3; R v. Ume 8 WACA 118, Ozaki v. State (1990) All NLR 94.

On the issue No. 3, the appellant’s counsel submitted that the lower court erred in law and in fact when it affirmed the judgment of the trial court because the crimes of conspiracy to commit robbery

and robbery were not proved against the appellant. It is the duty of the prosecution to prove the accused person's guilt beyond reasonable doubt and this burden does not shift. He refers to the cases of Alabi v. The State (1993) 7 NWLR (pt. 307) 511; Ibrahim v. The State (1991) 5 SC 171; and section 138 (1) of the Evidence Act. It was the learned counsel's submission that the prosecution did not prove this case beyond reasonable doubt in that the police failed to investigate the plea of alibi raised by the appellant. He referred to Obakpolor v. The State (2009) 6-7 SC 11 and Bozin v. The State (1985) 2 NWLR (Pt. 8) 465. Secondly, it was contended that all the ingredients of the offences were not proved beyond reasonable doubt, particularly counsel pointed out, that none of the prosecution witnesses, evidence stated that they saw appellant at the scene of the crime or that he participated. Thirdly, that P.W.1 did not mention nor identify the appellant before or during the trial, Counsel cited the case of Ani v. The State (supra); and that Exhibits D and E relied on to convict the appellant were contradictory. Counsel therefore urged this court to allow the appeal.

The learned counsel to the respondent submitted in his brief of argument that the law imposes the duty on the prosecution to prove the allegation against the appellant beyond reasonable doubt and not prove beyond a shadow of doubt. The cases of Miller v. Minister of pensions (1947) 3 All ER 37; Moses Ina v. State (2010) 43 WRN 1 at 24 and Dibia v. State (2007) SCM 101 at 118 were referred.

The purport of proof in all criminal trials is that if the essential ingredients of the offence have been proved by the prosecution, the charge is proved beyond reasonable doubt.

Learned counsel cited the case of Henry Offi v. The State (1991) 8 NWLR (Pt. 207) 103 at 118, which spelt out the ingredients of the offence of robbery and contended that all the ingredients of the offence of robbery have been proved. He referred to the evidence of P.W.1 and P.W.2 to the effect that the N500, 000.00 collected by P.W.1 from the bank a day before the incident was part of the robbery/money on the 15th March, 2002. He referred to Exhibit E, a confessional statement made by the appellant which was admitted in evidence without objection. The appellant admitted that they robbed the said N500, 000.00 from P.W.1 and went ahead to explain how

the money was shared. He therefore contended that where an accused person makes a free and voluntary confession which is direct and positive and properly proved, the court may rely on it to convict the accused. He cited the cases of: - Ekure v. The State (1999) 13 NWLR (pt. 635) 456/469; Oseni v. The State (2012) 4 SCM 150. He then pointed out that the trial court and the lower court found Exhibit E corroborated and consistent with the fact in the case and full satisfaction of the test required by law. Learned counsel distinguished the facts in the cases of Otuaha Akpapuna v. Obi Nzeka (supra) and Onochukwu v. The State (1998) 4 SC 49 from the facts of this case. In the former case it was a civil action while in the latter it relates to oral evidence adduced and not statements. In this case the appellant, who earlier denied his involvement in the commission of the crime at the Divisional Police Station, when confronted with the fact at C.I.D then opted to say the truth and did not object to the statement being tendered at the trial. He therefore contended that Exhibits D and E are not tainted evidence.

On the evidence of a co-accused tendered, counsel submitted that statement of a co-accused tendered on oath can serve as an additional corroborative evidence, more so, when the appellant has impliedly adopted the contents of his own statement. He cited the case of Oyakhire v. State (2006) 12 SCM (Pt. 1) 369 at 380 - 381.

On the offence of conspiracy, learned counsel contended that it is difficult to have direct evidence in support of conspiracy. Conspiracy is always inferred from the facts and circumstances of each case. He pointed out that P.W.1 gave vivid evidence of how she was robbed. Exhibit E corroborates this evidence to the number of the robbers and the amount robbed from P.W.1. Exhibit E further explained how the conspiracy was hatched and executed. These were enough to prove conspiracy. He therefore urged this court to dismiss the appeal.

Learned counsel to the appellant has forcefully argued that Exhibits D and E be discountenanced as they were tainted being contradictory in nature. This has made it important to know how these statements were tendered. Exhibit D was tendered through P.W.3, a police officer from Divisional Police Office, Owode Egba, after which the appellant was transferred to C.I.D Elewera for further investigation being a capital offence, which a police Division could

not investigate. The evidence of the witness runs thus:-

“On 25/3/2002, I was on duty at the anti-robbery office when a case of armed robbery was referred to me from Owode-Egba from the P.W.1 together with the accused person. I cautioned and charged the 1st accused with the offence of armed robbery and he volunteered a statement by himself and he signed. A statement was also taken from the 2nd accused person after caution. The statement was obtained in English language. I read it over to him and he said it was correct statement and he signed and I also signed. This is the statement of the 1st accused person made on 25/3/2002. Sought to be tendered. No objection. Statement of the 1st accused person made to the witness on 25/3/2003 is admitted and marked as Exhibit E.”

If the statement submitted by the learned counsel is irrelevant and inadmissible on account of an alleged contradiction with Exhibit D, it is worthy to note that the two exhibits were not made from the same source. While Exhibit D was made at Owode-Egba police Station by the appellant to P.W.1 in order to prepare him for the real investigation, Exhibit E was made when the proper investigation had began. Exhibit E was admitted without objection. The appellant gave a vivid account on how they planned with the 2nd accused person and others at large to rob the P.W.1 of the sum of N500,000.00, she collected on 15/3/2002 and how the money was shared. Exhibits A and F, the statements of the 2nd accused person also corroborated the statement of the appellant Exhibit D. With due respect, where a counsel stands by and allows Exhibits to be tendered smoothly to become evidence without any objection, he cannot be heard to later complain about same. They thus become legally admitted evidence which the court can rely on. See; Bello Shorumo v. The State (2010) 12 SCNJ 109, and Oseni v. The State (2012) 2 SCNJ 215 at 253.

A confessional statement so long as it is free, direct, positive and voluntary is enough to found a conviction. See: Kopa v. The State (1971) 1 All NLR 150; Yusuf v. The State (168) NWLR 119 and R. v. Omokaro (1941) WACA 146.

In the instant case, therefore enough corroborative evidence from the P.W.1 and P.W.2 to show:-

- (1) That there was a robbery and;***
- (2) That the robbery was not proved to be armed robbery.***

Exhibits D, E and F are confessions which are sufficient to ground the conviction of the appellant for conspiracy and robbery as found by the trial court and affirmed by the court below.

I therefore, my lords, find no merit in this particular appeal
B and it is accordingly dismissed.

MOHAMMED JSC

C I have had the opportunity before today of reading the Judgment of my learned brother Muntaka-Coomassie, JSC which had just been delivered. I entirely agree with his reasoning and conclusion in dismissing this appeal as lacking in merit.

The Appellant was tried with one other co-accused person on
D a two count charge of the offences of conspiracy to commit Robbery and robbery itself under Sections 5(b) and 1(2) (a) of the Robbery and Firearms (Special Provisions) Act CAP. 398 Laws of the Federation of Nigeria 1990 as Amended by the Tribunal (certain Consequential Amendments etc.) Act 1999. The Appellant was sentenced
E to ten 10 years imprisonment for the offence of attempt to commit Robbery and twenty-one (21) years for the offence of actual Robbery after having been found guilty of the two (2) offences at the conclusion of the trial in the Judgment of the trial Court given on 14/
F 6/2004. On 31/3/2011, the Appellant's appeal to the Court of Appeal, Ibadan Division was dismissed and his conviction and sentences were affirmed. Still not satisfied, the Appellant is now before this Court on a further final appeal for which he identified three (3) issues in his brief of argument for the determination of the appeal. However, as
G far as the respondent is concerned, there is only one (1) issue for resolution in this appeal, namely -

“Whether from the totality of the Evidence the prosecution proved the offences of conspiracy to commit Robbery and Robbery beyond reasonable doubt.”

H I completely agree with the learned Counsel to the Respondent that indeed this is the only issue calling for determination in this appeal. Taking into consideration the overwhelming evidence on record against the Appellant from the victims of the Robbery coupled with his own confessional statement, the answer to the issue raised in

the Respondent's brief of argument, is certainly in the affirmative. Therefore, for the foregoing reasons and fuller reasons given in the Judgment of my learned brother Muntaka-Commassie, JSC, I also dismiss this appeal and affirm the conviction and sentences passed on the Appellant by the trial Court and affirmed by the Court of Appeal. B

NGWUTA JSC

I read in draft the lead judgment delivered by My Lord, Muntaka-Coomassie, JSC and I agree with the reasoning and conclusion reached. C

The actions and inactions of the appellant on the way to Lagos, as narrated by the victim, PW1, show that he was part of the planning, and the execution of, the arm robbery. Appellant made two statements. In Exhibit D, he denied the charge. In Exhibit E, he appeared to have changed his mind and not only confessed to the crime but gave a detailed account of how the money was shared. D

Appellant, by his actions before and during the robbery, coupled with his confessional statement, convicted himself. In the case of *Ashcraft v. Tennessee* 322 US 143, 161 (1949), it was held: E

"A confession is wholly and incontestably voluntary only if a guilty person gives himself up to the law and becomes his own accuser."

This is what the appellant has done and his confession, being a free and voluntary confession of his guilt, direct, positive and satisfactorily proved, is sufficient to warrant his conviction. See *Kalu & Anor v. King* 14 WACA 30 and *Yusuf v. The State* (1976) 6 SC 167. F

The trial Court satisfied itself, as a matter of fact, of the truth of the confession and this was endorsed by the Court below. This Court cannot, and will not, interfere with the concurrent findings of fact of the two Courts' below; which findings the appellant has not shown to be perverse. See *Ibodo v. Enarofia* (1980) 5-7 SC 42; *Chikwendu v. Mbamali* (1980) 3-4 SC 31. G H

For the above and the fuller reasons in the lead judgment, I find no merit in the appeal and consequently, I also dismiss it and affirm the judgment of the Court below.

PETER-ODILI JSC (CFR)

I am in total agreement with the judgment just delivered by my learned brother, Saifullah Coomassie, JSC. His reasoning properly captured and showing how they led to his decision. For emphasis, I shall make some comments.

This is an appeal against the judgment of the Court of Appeal sitting at Ibadan, Coram: Stanley Shenko Alagoa, Sidi Dauda Bage, Joseph Shagbaor Ikyegh, JJCA. The Lower court had on the 31st day of March, 2011 affirmed the judgment of Ogun State High Court, Abeokuta per G. O. Shoremi J. (as he then was). In that High Court aforesaid, the Appellant and one other were charged with the offences of conspiracy to commit Armed Robbery contrary to Section 5 (b) and punishable under Section 1 (2) (a) and Robbery Contrary to Section 1 (i) of the Robbery and Firearms (Special provisions) Act Cap. 398, Laws of the Federation of Nigeria, 1990 as amended by the Tribunal (certain consequential Amendments Etc.) Act, 1999.

FACTS:

From the evidence adduced by the prosecution, the 2nd accused person was the driver of the PW1, Monsurat Babatunde, for above three months before the 15th day of March, 2002. The 2nd accused person drove the PW1 to All States Bank, Ibadan to collect the sum of five hundred thousand naira (N500, 000.00) which she intended to take to Lagos the following day on business.

The 2nd accused asked PW1 for a loan of five thousand naira (N5, 000.00) which she refused to gave him. On the 15th March, 2002 the PW1, Oyinlola, the daughter named Temitope, her ward and one Morufat Adebayo left for Lagos. They were driven by the 2nd accused. PW1 instructed him to buy petrol at Challenge, Ibadan but he insisted on buying the petrol in Lagos. The 2nd accused began the journey to Lagos on the fast lane of the expressway but suddenly changed to the slow lane and slowed down and when questioned if there was a problem, he said there was none. A black Mercedes benz car came parallel to them and the occupants in the black benz ordered the 2nd accused to park, claiming to be policemen.

In testifying, PW1 said she did not believe the men to be policemen and instructed the driver/2nd accused not to stop but he

disobeyed. Also, she ordered 2nd accused to speed off and enter the petrol Station at Onigari. Again, he refused and then parked. She also stated that she ordered 2nd accused to leave the driver's seat so that she could drive and escape but rather than obey, he asked her to keep her cool. He then parked and the occupants in the Benz car, who had parked some meters away, came out with an iron rod. B

That one of the robbers went to PW1 while the others went to the 2nd accused who alighted from the vehicle and discussed with the robbers. Then, one of the robbers told PW1 that they were robbers and demanded for money. That one of the robbers took the bag from one of the occupants in the car of the PW1 opened it and went back to the appellant. He then went back to PW1 to ask for the bag containing five hundred thousand naira (N500, 000.00) and he ordered for his gun and threatened to waste her life. C

The evidence showed that the robbers then went into the vehicle and took the bag containing the money and ordered PW1 and the others to lie face down. That the robbers then went into the vehicle to remove the ignition key and when they could not, they called on 2nd accused who removed it and gave it to the robbers. 2nd accused then told PW1 to leave everything to God. D E

The robbed party returned to Ibadan where they made a report to the Owode-Egba Police Station and the 2nd accused's arrest led to the arrest of the appellant.

At the trial, the prosecution called four witnesses and tendered six exhibits. The Appellant and the 2nd Accused person gave evidence in their defence. After the addresses of counsel on both sides the trial judge delivered a judgment in favour of the prosecution and convicted the accused persons as charged. He sentenced them to 10 years and 21 years imprisonment on both counts respectively. F G

Dissatisfied, the two accused persons appealed to the Court of Appeal which appellate court dismissed the appeal. Again, not satisfied the Appellant has come before this Court on appeal.

At the hearing on 2nd day of May, 2013, learned counsel for the Appellant, Olakunle Ojo adopted the appellant's Brief of Argument which he settled and filed on 2nd November, 2011. In the Brief were distilled three issues for determination, viz: H

1. Whether or not the two contradictory extra judicial statements of the appellant are confessionary (sic) evidence in law upon

which the Court can convict him.

2. Whether or not the conviction of the Appellant on the basis of an extra judicial Statement of a co-accused person is not misdirection in law which occasioned a miscarriage of justice.

3. Whether the offences of conspiracy to commit Robbery and Robbery were proved against the appellant.

The learned Attorney-General of Ogun State, Mrs. Abimbola Akeredolu adopted the Brief of Argument of the Respondent which was settled by J. K. Omotosho, Deputy Director of Public prosecutions. The Brief was filed on 29/6/12 and deemed filed on 29/11/12 and in it, the Respondent had formulated a single issue as follows:-

Whether from the totality of evidence, the prosecution proved the offences of Conspiracy to commit Robbery and robbery beyond reasonable doubt against the appellant.

This sole issue fully encapsulates the three issues as couched by the Appellant and I am comfortable with it for use in the determination of this appeal.

SOLE ISSUE:

This issue raises the question whether from the totality of evidence the prosecution found the offences of conspiracy to commit Robbery and Robbery against the appellant beyond reasonable doubt.

Arguing the point, learned counsel for the Appellant contended that the two Courts below had held that the two extra judicial statements, Exhibits D and E were confessional. That in keeping with Section 27 (i) of the Evidence Act Cap. 112, Laws of the Federation of Nigeria, 1990, for a statement to be held confessional of a crime it must be direct, positive, voluntary, definite, unequivocal and the trial court has to be satisfied of the truth of the admission made by an accused before making it a basis for conviction. That in this instance, the trial court was wrong to have held the statements as confessions since they were inconsistent or contradictory. Mr. Ojo said the proper attitude of the court should have been a rejection of the two statements. He cited *Onuchukwu v. State* (1998) 4 SC 49; *Otuaha Akpapuma v. Obi Nzeka & Ors* (1983) All NLR 300; *Philip Kanu & Anor v. R* (1952) 14 WACA 30 at 32 - 33; *Maiyaki v. State* (2008) 7 SC 128 etc.

Going on further, Mr. Olakunle Ojo of counsel for the appel-

lant submitted that the statements made to the Police by the co-accused person, Mumuni Olaoye can only be used against him and cannot be used against the co-accused who in this instance is the appellant unless the appellant adopted the statements as his and that is not the situation in this case. He cited *R v. Akinpelu Ajani & Ors* (1936) 3 WACA 3; *R v. Ume* (1942) 8 WACA 118; *Titilayo v. State* (1998) 2 NWLR (Pt. 537) 537; *Ozaki v State* (1990) All NLR 94. B

For the appellant was submitted that it is the duty of the prosecution to prove the accused person's guilt beyond reasonable doubt and which burden does not shift and in this, the prosecution had failed. He referred to the cases of *Ibrahim v. State* (1991) 5 SC 171; *Alabi v. State* (1993) 7 NWLR (Pt. 307) 511; *Uchegbu v. State* (1993) 8 NWLR (pt. 309) 89; section 138 (i) of Evidence Act Cap 112 LFN 1990. C

From the appellant was raised the defence of alibi which learned D counsel said the prosecution had not investigated. He cited *Obakpolor v. The State* (1991) 1 SC (Pt. 1) 35; *Ani & Anor v The State* (2009) 6 - 7 SC (Pt. 111) 1.

That there were circumstantial evidence supporting the alibi and of note is the fact that no gun or weapon was found on the appellant and also the money stolen during the Robbery was not found. For the appellant was contended that such findings of facts are strong circumstantial evidence to support alibi. He cited *Bozin v. State* (1985) 2 NWLR (pt. 8) 465. E

Mr. Ojo, learned counsel for the appellant said all the ingredients of the offence were not proved beyond reasonable doubt. Also, that the prosecution had not established that the accused/appellant was a member of the Robbery gang. Furthermore, that there was a failure of the PW1 who the appellant claimed to be his aunt to mention at the earliest opportunity the name of the appellant as a person seen committing the offence which put a question mark on the case of the prosecution. He relied on *Woolmington v. DPP* (1935) AC 462; *Onubogu v. State* (1974) 9 SC 1; *Nasiru v. State* (1999) 2 NWLR (Pt. 589) 87 etc. F

For the appellant was concluded that it is settled law that there is no onus on the defence to establish the innocence of an accused since the law presumes him innocent. That in the prevailing circumstances, it is the manifestly unreliable and weak quality of the evi- G
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dence adduced by the prosecution in support of the prosecution's case and so the offences were not proved beyond reasonable doubt and appellant entitled to a discharge and acquittal.

Mrs. Akeredolu, learned Attorney General for the Respondent submitted that it must be borne in mind that "proof beyond reasonable doubt" is not the same as "proof beyond a shadow of doubt" or "proof beyond reasonable doubt" is not "proof to the hilt". She cited *Miller v Minister of Pensions* (1947) 3 All ER 37; *Moses Jua v. State* (2010) 43 WRN 1 at 24 - 25; *Ugo v. COP* (1972) 11 SC 37; *Ameh v. State* (1978) 6 - 7 SC 27; *Dibie v. State* (2007) SCM 101 at 118 - 119; Section 15 (i) of the Robbery and Firearms (Special Provisions) Act Cap 398 LFN.

The learned Attorney General referred to the prosecution witnesses' testimonies and the confessional statements including that of the 2nd accused which was admitted after a trial within trial. He relied on *Ekure v. State* (1999) 13 NWLR (Pt. 635) 456 at 469; *Oseni v. The State* (2012) 4 SCM 150 at 165 - 166.

For the respondent, it was further stated that even though the court can convict on a confessional statement alone, the court is however enjoined to subject that statement to a litmus test which the statements herein met which are as follows:-

1. Is it corroborated?
2. Are the relevant statements made in it of the facts as they can be tested?
3. Was the prisoner one who had the opportunity of committing the crime?
4. Is his/her confession possible?
5. Is the confession consistent with other facts which have been ascertained and have been proved?

She cited *Alarape v. State* (2001) FWLR (pt. 41) 1873 at 1893; *Nwaebonyi v. State* (1994) 5 NWLR (pt. 342) 138 at 150.

Mrs. Akeredolu of counsel contended that there are pieces of evidence against the appellant and so the statement of his co-accused tendered on oath can serve as additional corroborative evidence especially when the appellant impliedly adopted the content in his own statement. That this offers an exception to the rule that evidence of a co-accused is admissible only against the maker. He cited *Oyakhire v. The State* (2006) 12 SCM (Pt. 1) 369 at 380 and

381.

Learned counsel for the Respondent said that the fact that the victims of the incident did not recognise the appellant at the scene, mention or identify him before or during the trial is not fatal to the prosecution's case since appellant had admitted committing the crime in Exhibit E, a statement he did not oppose during his trial. B

On the offence of conspiracy, learned counsel for the respondent said there was enough from the circumstances including Exhibit E from which the conspiracy could be inferred on the standard of proof beyond reasonable doubt. She referred to *Kaza v. The State* (2008) 5 SCM 70 at 104 *Uphahar v. The State* (2003) NWLR (Pt. C 816) 230 at 239.

That the free and voluntary confessional statements, Exhibits C, D, E and F of the Appellant and the 2nd Accused also established the offence of conspiracy. D

On the duty imposed by our law on the standard of proof in criminal prosecutions, some salient points must be revisited. Firstly, the proof is beyond reasonable doubt which is not synonymous with proof beyond the shadow of doubt or proof to the hilt. This captures essentially the position of the law and practice in our criminal administration as it is. See *Miller v. Minister of Pensions* (1947) 3 All ER 37 per Denning J; *Moses Jua v. State* (2010) 43 WRN 1, a judgment of this Court. E

The Supreme Court in the case of *Dibie v. State* (2007) SCM F 101 at 118 - 119 stated without equivocation this same position in these words:-

"The moment the proof by the prosecution renders the presumption of innocence on the part of the accused useless and pins him down as the owner of the mens rea or actus reus or both, the prosecution has discharged the burden placed on it by Section 138 (3) of the Evidence Act." G

Taking a cue from the matter of the standard of proof, it is to be stated that the offence of robbery is proved properly when the prosecution has established the following ingredients without exception: - H

- (a) That the accused stole something;
- (b) That the thing stolen is in law capable of being stolen;
- (c) That the accused threatened to use violence or actually

used violence immediately after the time of stealing the thing. See Otti v. State (1991) 8 NWLR (Pt. 207) 103 at 118.

It is necessary to now state what the definition of Robbery is and in this regard that definition is found under Section 15 (i) of the Robbery and Firearms (Special Provisions) Act Cap. 398 which provide as follows:-

“Robbery means stealing anything and at or immediately before or after the time of stealing it, using or threatening to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance of its being stolen or retained.”

Situating this definition with the facts on ground, that is conceptualizing the facts within the relevant legislation. The evidence of PW1 and PW2 is that N500, 000.00 that was collected by PW2 from the bank a day before the incident was part of the money stolen on 15th March, 2001. The appellant in his confessional statement, Exhibit E admitted robbing N500, 000.00 from PW1 and had even explained how the money was shared. Also, the 2nd accused person was seated with PW2 in the bank when she collected the money, N500,000.00 and put the money in the bag by PW1. Also, in evidence was that the 2nd accused person told his brother Akeem and a Sister that he sent one Sola and Akibu to effect the robbery.

The confessional statement of the 2nd accused accepted by the trial Court as voluntarily made and being direct and positive and properly proved can be used to have the confession be the basis of the conviction. See Ekwe v. State (1999) 13 NWLR (pt. 635) 456 at 469.

It is now trite law that although the court can convict on the confessional statement alone, the court is however encouraged to subject the statement to a test which are stated hereunder; viz:

1. Is it corroborated?
2. Are the relevant statements made in it of the facts as they can be tested?
3. Was the prisoner one who had the opportunity of committing the crime?
4. Is he/her confession possible?
5. Is the confession consistent with other facts which had been ascertained and have been proved?

Bearing the above tests in mind, it can be seen that the evidence proffered by PW1 and PW2 are sufficient corroboration for the confessional statement Exhibit E.

The learned counsel for the appellant had made a hue and cry on the appellant having denied his involvement in Exhibit D, a statement he made at the Police Divisional level, his confessional statement, Exhibit E he made thereafter at the State CID level. It has to be said that the confessional statement is not affected by a previous denial when the maker had not raised an objection to it and thus admissible. See *Otuaha Akpapuna & Ors v. Obi Nzeka & Ors* (1983) All NLR 350; Section 28 of the Evidence Act Cap E 14, Laws of the Federation. B
C

On the point raised by the Appellant that the evidence of a co-accused is not admissible against other accused persons is not a general rule that is taken, hook line and sinker without exception. This is because where as in this case, there is a link or nexus from the contents of the statement a co-accused or even his extra-judicial statement with a strong connection from other independent evidence then the exception is accepted as making that general rule aforesaid give way for the reality on ground. I place reliance on the case of *Oyakhire v. The State* (2006) 12 SCM (pt.1) 369 at 380 and 381. D
E

On the issue of the charge of conspiracy, it is to be reiterated that conspiracy is a meeting of two or more minds in a plan to carry out an unlawful or illegal act which is an offence and just the mere agreement without more is enough. See *Kaza v. State* (2008) 5 SCM 70 at 104; *Upahar v. The State* (2003) NWLR (pt. 816) 230 at 239. F

In this instance, there is a lot in the facts and circumstances of the case from which the conspiracy can be inferred. These facts or circumstances or both include the confessional statement, Exhibit E, the evidence of the complainant (PW1) and also the other extra judicial statements, Exhibits C, D, & F of the Appellant and the 2nd accused. G

In a nutshell, there is a lot from which it can easily be said that the question raised here for determination is resolved against the Appellant which in effect is saying that the concurrent findings of the trial court and affirmed by the Court of Appeal are unassailable and cannot be upset or interfered with. H

From the foregoing and the well rendered reasoning in the lead judg-

ment, I dismiss the appeal while I abide the consequential orders made.

ARIWOOLA JSC

B I had the opportunity of reading in draft the lead judgment of my learned brother, Muntaka-Coomassie, JSC just delivered. The appeal is against the judgment of the Court of Appeal; Ibadan Division delivered on the 31st March, 2011 which affirmed the decision of the Ogun State High Court Coram Shoremi, J. (as he then was).

C The appellant had been charged along with one Mumuni Olaoye with the offense of conspiracy to commit armed robbery contrary to Section 5(b) and punishable under Section 1(2) (a) and Section 1(i) of the Robbery and Firearms (Special Provisions) Act, Cap. 398, Laws of the Federation of Nigeria, 1990 (as amended).

The facts of the case has been beautifully stated in the leading judgment. I need not repeat the same. At the conclusion of the trial, the trial court found the appellant and the other guilty and convicted both. They were sentenced to 10 and 21 years imprisonment for conspiracy to commit robbery and robbery. The trial court found that the prosecution did not prove that any of the accused persons was armed to commit the offence of robbery.

F Dissatisfied with the judgment of the trial court led to the appeal to the court below.

On appeal, the court found the statements of the appellant's confessional and came to the conclusion that the offence of conspiracy was established and punishable. They conspired to rob PW1 of her N500,000 on the 15th March, 2002. The court below finally came to the conclusion that the appeal was lacking in merit and dismissed same which led to the instant appeal.

One of the issues raised and distilled from the grounds of appeal filed by the appellant is as follows;

H *"Whether the offences of conspiracy to commit robbery and robbery were proved against the appellant."*

On this issue, learned appellants counsel submitted that the court below erred in law and in fact when it affirmed the judgment of the trial court. He contended that the offence of conspiracy to com-

mit robbery and robbery with which the appellant was charged was not proved by the prosecution beyond reasonable doubt against the appellant.

Learned counsel submitted that the police failed to investigate the plea of alibi raised by the appellant. He contended that none of the prosecution witnesses testified that they saw the appellant at the scene of the crime, participating. He was neither mentioned nor identified before or during the trial. He further contended that the extra judicial statement of the appellant admitted as Exhibits D and E relied on by the court to convict the appellant were contradictory and ought not to have been relied on. He urged the court to allow the appeal.

On this issue of conspiracy, learned counsel to the respondent contended that it is difficult to have a direct evidence in support but is always inferred from the facts and circumstances of each case. He referred to the testimony of PW1 and Exhibit E. He submitted that the said appellant's extra judicial statement is confessional, direct, positive and voluntary enough to found a conviction, relying on *Kopa v. The State* (1971) 1 All NLR 150; *Yusuf v. The State* (1968) NMLR 119, *R. v. Omokaro* (1941) WACA 146.

Conspiracy generally is an agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective, and action or conduct that furthers the agreement. Conspiracy is therefore a separate offence in itself from the crime that is the object of the conspiracy. See, *Black's Law Dictionary*, Ninth Edition P. 351.

Conspiracy may be formed in any of the following ways:

(i) The conspirators may all directly communicate with each other at a particular place and time and enter into an agreement with a common design.

(ii) There may be one person who is the hub around whom the others resolve, like the centre of a circle and the circumference.

(iii) A person may communicate with "A" and "A" with "B", who in turn communicates with another and so on. This is called the chain conspiracy. That is a single conspiracy in which each person is responsible for a distinct act with the overall plan. All participants are interested in the overall scheme and liable for all other participants' acts in furtherance of that scheme.

In order to establish the offence of conspiracy therefore, it is not necessary that the conspirators should know each other. They do not need to know each other so long as they know of the existence and the intention or purpose of the conspiracy. See *Oyediran V. R* (1967) NWLR 122; *Erin v. The State* (1994) 5 NWLR (Pt.346); *Oladejo B v. The State* (1994) 6 NWLR (Pt.348) 101.

However, conspiracy to commit an offence, is quite often inferred from circumstantial evidence. The basis is common intent or purpose. See *Aigbe V. The State* (1976) NMLR 184. It is settled that when once there is such evidence to commit the substantive offence, it does not matter, that any of the conspirators did what. See *Alegba & Ors V. The King* (1950) 19 NLR 129.

In *Francis Tole Lawson & Ors. V. The State* (1975) 1 All NLR 175 at 181-182 the court opined that it is not necessary in order to prove conspiracy that the conspirators should be seen like those who murdered Julius Caesar, to be coming out of the same place at the same door. See *Silas Sule v. The State* (2009) 5 SCM 177; (2009) 17 NWLR (pt.1169) 33.

However, the facts to be relied upon by the court for conviction for conspiracy must be consistent, cogent and must irresistibly lead to the guilt of the accused person. It is settled law that circumstantial evidence is as good and sometimes better than direct evidence. Hence, it is sometimes referred to as the best evidence capable of proving a proposition with the accuracy of mathematics. See *Benson Obiakor & Anor. v. The State* (2002) 10 SCM 117; (2002) 10 NWLR (pt.776) 612; (2002) 6 SC (pt. 11) 33, per Kalgo, JSC.

It is noteworthy that Exhibit E which was admitted without any objection was the extra judicial statement of the appellant. The appellant in the statement gave a narrative account of how the crime was planned along with his conspirators and was hatched to rob PW1 of the sum of N500, 000.00 she had earlier collected in a bank. The Statement of the appellant was however corroborated by the Statements of his co-accused which were also admitted and marked Exhibits A and F.

Ordinarily, a confessional statement is a statement by an accused person charged with an offence stating that he committed the offence. See; Section 27 (i) and (2) of the Evidence Act. The position of the law therefore is that a free and voluntary confession which is

direct and positive and is properly proved by the prosecution is sufficient to sustain a conviction without any corroborative evidence, so long as the court is satisfied with the truth. However, the court is duty bound to test the truth of a confession by carrying out examination on it in the light of the other credible evidence before the court. See *Queen v. Itule* (1961) 2 SCNLR 183, *Solola & Anor v. The State* (2005) 6 SCM 137, (2005) 11 NWLR (pt.937) 460. *Nwaeze v. The State* (1998) 2 NWLR (pt. 438); *Akinmoju v. The State* (2000) 4 SC (Pt.1) 64.

There is no doubt that the confessional statement of the appellant which was admitted as Exhibit E without any objection was properly found to be free, direct, positive and voluntary enough to ground a conviction and it was rightly so found.

For the above reason and the fuller reasoning contained in the lead judgment of my learned brother, Muntaka-Coomassie, JSC, I too found the appeal lacking in merit and substance. It deserves to be dismissed. It is dismissed by me.

The judgment of the court below which affirmed the decision of the trial court is accordingly affirmed.

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