

SUPREME COURT OF NIGERIA
FRIDAY 31ST MAY, 2013. SC. 309/2010
CORAM:- I. T. MUHAMMAD, C. M. CHUKWUMA-ENEH,
S. GALADIMA, M. D. MUHAMMAD,
S. S. ALAGOA, JJSC

LEKAN SHODIYA APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Conspiracy - Proof - Appellant's guilt can be inferred from totality of evidence led by respondent - As the offence is usually proved by inference - Made from acts or inactions of parties concerned (H1)

CRIMINAL PROCEDURE - Confession - Conviction - Can be solely based on confession where the statement is not only voluntary - But also direct and unequivocal as to guilt of accused (H2)

CRIMINAL PROCEDURE - Confession - Corroboration - Where confession is not comprehensive in relation to offence convicted - Existence of evidence outside the statement is necessary - To justify the conviction on appeal (H3)

APPEALS - Criminal procedure - Conviction - Validity - CA rightly affirmed appellant's conviction - As the trial court considered a host of corroborative evidence - From which inference was rightly drawn (H4)

FACTS

Before the High Court of Ogun State, 1st accused/appellant was arraigned along with two others. Out of the six count charge, appellant was only charged in count 1 to wit conspiracy to commit armed robbery contrary to section 5(b) and punishable under section 1(2)(a) of the Robbery and Fire Arms (Special Provisions) Act Cap. 398 LFN 1990. Prosecution/respondent's case against appellant is that the latter had conspired with two other persons to rob the house of PW3 – one Mr. Olusesan Sowunmi. Appellant who was an

apprentice under PW3 had informed the two others of a large sum of money at the residence of PW3. The information according to respondent, led to the armed robbery operation at the said residence.

Following the investigation carried out by PW9 & 10, appellant was arrested and he made confessional statement – Exhibit C2 which led to the arrest of the others who partook in the armed robbery. They were subsequently arraigned before the court. Appellant pleaded not guilty to the charge. At the trial, appellant's statement was admitted in evidence having been held to have been voluntarily made, following the conduct of a trial within trial. Respondent called ten witnesses and tendered four exhibits to prove its case. Appellant and his mother testified on appellant's behalf. At the end of trial, the court found appellant guilty as charged. He was therefore sentenced to death by firing squad. Aggrieved, appellant appealed to the Court of Appeal, Ibadan Division. After hearing the appeal, the court partly allowed same and substituted the death sentence for a term of life imprisonment. Being dissatisfied, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

“1. Has the prosecution, based on the evidence presented before the court, established a case of conspiracy against the appellant and other accused persons?”

2. Was the confessional statement of the appellant which was tendered and admitted as exhibit C2 properly admitted as a voluntary confession upon which a conviction can be based?”

HELD (Unanimously dismissing the appeal per **M. D.**

MUHAMMAD JSC)

CRIMINAL PROCEDURE - Conspiracy - Proof

1. Appellant was tried and convicted for the offence of conspiracy, proof of which offence, this court has held in very many cases, is a matter of inference to be made from the acts or inactions of the parties concerned. The inference the two courts drew from the evidence led by the respondent cannot be faulted.

Appellant's guilt is to be inferred from the totality of the evi-

dence led by the respondent including the convict's statement whether or not same is confessional. By exhibit C2, appellant's own statement to the police, he is shown to have informed the 2nd and 3rd accused persons that PW3 had in his house, some large sum of money. This statement in relation to the statements of the 2nd and 3rd accused, the testimonies of PW1, PW2, PW3, PW4 and PW5, the two courts hold, and rightly too, point inexorably to the guilt of the appellant. (pp. 4569 D/4570 C)

CRIMINAL PROCEDURE - Confession - Conviction

2. Learned appellant's counsel has insisted that exhibit C2, appellant's extra judicial statement, cannot sustain his conviction for the offence of conspiracy. It must be conceded to learned appellant's counsel that conviction made solely on the basis of an appellant's confessional statement survives an appeal where the statement is not only voluntarily obtained but the statement is direct, positive and unequivocal as to the entire ingredients of the offence for which the appellant is convicted as well. In that case nothing outside the statement is required to justify the conviction. (p. 4569 E)

CRIMINAL PROCEDURE - Confession - Corroboration

3. Where, however, the extra judicial statement of the appellant is not that comprehensive or total in relation to the offence the appellant is convicted, the existence of such evidence outside the statement becomes a necessity to justify the persistence of the conviction on appeal. (p. 4569 G)

Criminal procedure - Conviction - Validity

4. In the case at hand learned counsel for the appellant appears to have, however, forgotten that the lower court, in affirming the trial court's conviction has realized that beyond exhibit C2, the trial court has further taken into consideration the act of the appellant of taking the police to the houses of the 2nd and 3rd accused persons in addition to the testimonies of the witnesses called by the respondent. There are also exhibits C and C1 the extra judicial statements of the 2nd and 3rd accused persons as well as their oral testimonies the two

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courts equally and rightly drew from. (p. 4570 A)

REPRESENTATION

O.A. Owolabi, for the Appellant

O.O. Ajose-Adeogun, for the Respondent

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CASES REFERRED TO

Obiasa v. Queen (1962) 2 SCNLR 402

Amachree v. Nigerian Army (2003) 3 NWLR (pt. 807) 256

C Gaji v. Pave (2003) 8 NWLR (pt. 823) 583

Haske v. Queen (1961) 2 SCNLR 90

Haruna v. State (1972) 8/9 SC 174

Kareem v. F.R.N. (No. 2) (2002) 8 NWLR (pt. 770) 664

State v. Ajie (2000) 7 SC (pt. 1) 24

D Bashaya v. State (1998) 5 NWLR (pt. 550) 351

Agbi v. Ogbah (2006) 11 NWLR (pt. 990) 65

Ezeonwu v. Onyechi (1996) 3 NWLR (pt. 438) 499

Babuga v. State (1996) 7 NWLR (pt. 460) 279

Oduneye v. State (2001) 13 WRN 88 SC

E Obiakor v. State (2002) 10 NWLR (pt. 774) 612

STATUTES REFERRED TO

Robbery & Fire Arms (Special Provisions) Act Cap. 398 LFN 1990,
ss. 1(1)(2), 5(b)

F Criminal Code Act LFN 1990, ss. 511, 516

Evidence Act 2011, s. 167(d)

LEAD JUDGMENT BY M. D. MUHAMMAD JSC

G This is an appeal against the judgment of the Court of Appeal sitting at Ibadan, hereinafter referred to as the court below, delivered on the 23rd June 2009, affirming the conviction of the appellant, Lekan Shodiya, by the Ogun State High Court, hereinafter referred to as the trial court, for the offence of conspiracy to commit armed robbery contrary to section 5(b) and punishable under section 1 (2)(a) of the Robbery and Fire Arms (Special Provisions) Act Cap. 398. The court pursuant to section 1 (1) of the Act, however substituted the death sentence passed by trial court for a term of life imprisonment.

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Being dissatisfied by the decision, the appellant has further

appealed to this court on a notice, see pages 189-190 of the record of appeal, containing four grounds.

The brief facts of the case that brought about the appeal; from the record of appeal, are that the appellant was arraigned and tried along with two others before the trial court for conspiracy to commit armed robbery at the residence of Mr. Olusesan Sowunmi, PW3, at Kenta House estate, Idi Aba, Abeokuta. Appellant was charged for the said offence along with two other person and others then still at large. He pleaded not guilty whereupon the respondent called ten witnesses and tendered four exhibits to prove its case against the accused persons. Appellant testified on his own behalf and called his mother who testified further on his behalf.

Respondent's case is that on the 4th of November 1999, at about 11 pm, four men scaled the fence and jumped into the compound of Mr. Olusesan Sowunmi - PW3, at Kenta Housing Estate, Idi-Aba Abeokuta. The men had earlier overpowered PW7 and ordered him to take them to where PW3, his master, was in the compound. Only PW1, PW3's wife, was in the compound. PW3 had gone out at the particular time. The men, armed with guns, subjected PW1 and the other occupants of the premises to all manner of inhuman treatment, took away whatever they could get, including PW3's Mercedes Benz car in which they drove away from the compound after the robbery operation.

On receiving PW3's report of the robbery on the 7th of November 1999, PW8, a police officer, accompanied him to his house from where he recovered a gun carrier bag, exhibit B, two expended cartridges, exhibit B1, four live cartridges, exhibit B2 and a cartridge carrier belt exhibit B3. Following some information they received, PW8 along with other police officers also retrieved PW3's Mercedes Benz car at the Lantoro end of the Elite Road where the robbers had abandoned it. PW9 and PW10 are both police sergeants at the State Criminal Investigation Department, Elewera to which the robbery case was transferred for further investigation. Their investigation led to the arrest of the appellant and the two other accused persons along whom he was tried and convicted.

On his arrest, the respondent further asserts, the appellant made a statement wherein he mentioned the names of those who carried out the robbery in PW3's house on the night of 4th November 1999.

Of those mentioned, PW9 and PW10, with the help of the, appellant who took them to their houses, arrested appellant's co-accused. The two made confessional statements to PW9 and PW10 about the robbery at the house of PW3. The statements of the appellant and his two co-accused persons were admitted in evidence, after a trial-within-trial, the respondent having been held by the trial court to have established the voluntariness of the statements. Exhibit C2, appellant's own statement, asserts the respondent, shows beyond doubt that appellant had informed the other accused persons that PW3 had some money in his house and reached some understanding with the robbers that they carry out the robbery that eventually took place. The very exhibit also reveals how the appellant met with the other accused persons after the armed robbery.

The appellant in his defence conceded that he works with PW3 as an apprentice produce buyer in training; that having been released from his apprenticeship by and with PW3's permission and after washing his boss's car, appellant left PW3's house on 4th November 1999 at about ten o'clock in the morning. At departure, PW1 and PW3 gave the appellant two thousand (N2,000) and one thousand naira (N1,000) respectively, that he proceeded to his mother's house - DW4 to inform her of his release from the apprenticeship and that he was proceeding to Owode - Idi-Iroko to collect money from the people who had bought cocoa from him on credit while he was still under PW3. He slept at Owode, the appellant further told the trial court, when he was unable to find the people he was to collect the sum of nine thousand naira they owed to PW3. The debtors who had no money at the time of appellant's call, pleaded with him to return at a later date before which, however, he was arrested and forced to make exhibit C2, the content of which he asserted were not true. He said he was at DW4's residence on his return from Owode when he was arrested on the 8th November 1999.

The 2nd accused - DW2 told the trial court that the appellant took PW9 and PW10 to his residence on 8th November 1999 where the latter arrested him. He asserted that he was beaten and tortured by PW9 and PW10 before he made exhibit C1. He stated not knowing the appellant before 1998 and that they came into talking terms subsequently. The 3rd accused in testifying at the trial court stated that he was arrested at Eleweran where he went to look for his brother.

He was arrested on 18th November, 1999. He denied ever knowing the appellant before the robbery incident. He insisted under cross-examination that he never conspired with anyone to rob PW3 or any other person at all.

At the end of the trial including addresses of counsel, the trial court found the appellant guilty, pursuant to the only head of charge against him punishable under section 1(2)(a)(i) of the Robbery and Fire Arms (Special Provisions) Act Cap. 398 Laws of the Federation of Nigeria, 1990, as amended by the Tribunal's (Certain Consequential Amendments) e.t.c. Act, 1999 of conspiracy to commit robbery.

The affirmation of the conviction and substitution of the trial court's sentence of death by firing squad for life imprisonment by the court below informs the instant appeal.

In keeping with rules of court, parties have filed and exchanged briefs which, at the hearing of the appeal, they adopted and relied upon as their arguments for or against the appeal.

At page 4 of his brief of argument, deemed filed on 13th April 2011 the appellant has identified the following four issues as having arisen for the determination of his appeal.

"1. Assuming (but not conceding) that exhibit 'C2' was rightly admitted in evidence, whether the trial court and the Court of Appeal attached the proper evidential weight to it bearing in mind the standards set out in Obiasa v. Queen (1962) 2 SCNLR 402 (Ground 2, notice of appeal).

2. Whether the prosecution has proved or established the offence of conspiracy to commit robbery against the appellant (Ground 3, notice of appeal).

3. Whether the entire judgment of the Court of Appeal and the conviction of the appellant for conspiracy to commit robbery can be supported having regard to the evidence before the court (Ground 4, notice of appeal).

4. Whether the Court of Appeal was right in affirming the decision of the learned trial Judge admitting exhibit 'C2' in evidence as a voluntary statement (Ground 1, notice of appeal)."

The respondent's brief, deemed filed on 7th March 2013, at page 5, paragraph 3.1 thereof, contains the following two issues for the determination of the appeal:

"1. Has the prosecution, based on the evidence presented

before the court, established a case of conspiracy against the appellant and other accused persons? (Gd 3)

2. Was the confessional statement of the appellant which was tendered and admitted as exhibit C2 properly admitted as a voluntary confession upon which a conviction can be based? (Gds 1 & 2)”

B Respondent’s two issues clearly subsume appellant’s 3rd and 4th issues which issues are repetitive of the latter’s 1st and 2nd issues. Consideration of respondent’s two issues will in my firm view facilitate the just determination of the appeal.

C Arguing appellant’s 1st, 2nd and 3rd issues jointly, learned counsel for the appellant submits that the court below, in failing to re-evaluate the evidence on record abdicated its responsibility. Had the court discharged that duty it would have found that exhibit C2 stands alone there being absolutely no credible evidence outside it to corroborate D appellant’s statement and/or show that its content is true or possible.

Yet, learned counsel submits, this court, in restating the test outlined in Obiasa v. Queen (1962) 2 SCNLR 402 insists that it is not only desirable but necessary that trial courts look for evidence outside the extra judicial statements of accused persons before relying on them E to convict the accused persons. None of the other accused persons either in their statements, exhibits C and C3, or oral evidence before the court, implicated the appellant. The lower court at page 183 of the record had found that much but yet proceeded to find that given F appellant’s own statement, he knew that some crime was intended.

Again, it is submitted, the testimonies of the witnesses called by the respondent are contradictory and equally incapable of corroborating G appellant’s confessional statement. The court, it is argued has erred in endorsing the trial court’s finding that exhibit C2, appellant’s confessional statement, has provided sufficient and direct evidence of conspiracy. The error is fatal and having caused miscarriage of justice necessitates interference by this court with the decision of the court below.

H It is further argued that the armed robbers, from the evidence on retold, knew each other and PW3’s house and did not require any Information from the appellant. Lastly, appellant had raised an alibi which the respondent failed to investigate and disprove. Had that been done, learned counsel contends, the movement of the appellant as well as the reasons for not sleeping at PW3’s house on

the day of the robbery would have been discovered. Relying on the decision in *Amachree v. Nigerian Army* (2003) 3 NWLR (Pt. 807) 256 at 281, learned counsel urges that since conspiracy purports an agreement formed by two or more persons with the intention of doing an unlawful act, evidence of which agreement does not exist outside exhibit C2, it is only just that the issues be resolved in appellant's favour and the appeal allowed. B

On appellant's 4th issue, learned appellant's counsel questions the lower court's affirmation of the weight the trial court ascribed to exhibit C2. The trial court's decision at pages 58-62 of the record, not only on the voluntariness of exhibit C2, but the weight the court ascribed to the content of the document as hurriedly affirmed by the court below at pages 176-178 of the record being manifestly perverse, argues counsel, should be re-visited by this court. The court below has the jurisdiction to review the entire trial-within-trial conducted by the trial court and differ from the trial court.) At the trial-within-trial, learned counsel submits, the appellant was not cross-examined. The unchallenged evidence he gave must be accepted as the truth which the two courts declined to do. Relying on *Gaji v. Pave* (2003) 8 NWLR (Pt. 823) 583 at 605, and *Haske v. Queen* (1961) 2 SCNLR 90, learned appellant's counsel urges that the issue, too, be resolved against the respondent. The appeal, counsel concludes, should be allowed. C D E

On their 1st issue, learned respondent's counsel submits that appellant is wrong in his contention that the respondent did not prove the offence of conspiracy for which the two found him guilty. Citing section 516 and 511 of the Criminal Code Act, Laws of the Federation, *Amachree v. Nigerian Army* (2003) 3 NWLR (Pt. 807) 256 at 281; *Olusegun Haruna & ors v. The State* (1972) 8/9 SC 174 at 200-201 and *Erim v. State* (1994) 5 NWLR (Pt. 346) 522, learned counsel submits that conspiracy is a matter of inference and there is hardly any direct proof of the agreement between those involved. He submits that appellant had not only made C2, his statement, but also took PW9 and PW10, police officers, to the exact houses where 2nd and 3rd accused persons were arrested. The two accused persons also mentioned the very names of those mentioned by the appellant as those who planned and robbed PW3. The statements of these witnesses whose conviction as affirmed by the lower court is appealed F G H

against, provide a ready corroboration for the appellant's statement on the point. From all the collateral circumstances, submits learned respondent counsel, the involvement in the conspiracy for robbery can be inferred. Counsel asks that the issue be resolved in their favour.

Under their 2nd issue for determination, learned respondent's
 B counsel argues that exhibit C2 was rightly admitted by the trial court after the trial-within-trial it conducted and found that the statement was voluntarily made. Appellant's retraction does not make his statement that was voluntarily given, inadmissible. Again, what weight to
 C ascribe to the statement, it is argued, is primarily the function of the trial court and the court's decision in that regard is only interfered with on appeal if same is perverse. And this, learned counsel argues, has not been shown to be the case. Appellant's statement, which from all the collateral circumstances is voluntary, is alone capable of
 D grounding a conviction. The lower court's affirmation of the trial court's decision, learned respondent's counsel contends: cannot be faulted. In urging us to resolve the issue against the appellant and also dismiss the appeal, learned respondent's counsel relies inter alia on *Kareem v. FR.N. (No. 2) (2002) 8 NWLR (Pt. 770) 664 at 667*; *Akibu Hassan v. The State (2001) 15 NWLR (Pt. 735) 184 at 195* as well as *Obiasa v. Queen* (supra), and *Erim v. State* (supra) two decisions relied upon also by learned appellant's counsel.

The questions appellant by the two issues identified for the determination of the appeal seeks answers to are firstly, whether the
 F lower court is right in affirming the trial court's finding that exh. C2, appellant's statement, is voluntary and secondly, whether respondent has discharged the burden of proof the law places on it to justify the lower court's affirmation of trial court's conviction of appellant.

G The trial court's findings as affirmed by the court below which are crucial to the resolution of the two issues this appeal raises need to be closely examined. After evaluating the evidence before it, the court reasoned at page 111 of the record of appeal thus:

H *"Obviously exhibits "C", "C1" and "C2" above are confessional statements as has been noted earlier above, they have been proved to have been made voluntary (sic) by each of the accused persons. Clearly they are positive direct and unequivocal and each of them amounts to an admission of guilt in my view. In Egboghonome v. The State (1993) 7 NWLR (Pt. 306) 383, it was held that, once an*

extra judicial statement was found to have the qualities enumerated above, it would suffice to ground a finding of guilty regardless of the fact that the maker resiled therefrom, or retracted it altogether at trial. According to the case, such a retraction does not necessarily make the confession inadmissible.”

The court proceeded at page 112 of the record as follows: B

“In the instant case, the learned defence counsel has advanced many reasons why the accused’s statements (exhibits C”, “C1” and “C2”) should not be upheld against them, but most of those reasons are an attempt to re-open the issues already dealt within the trial-within-trial. However, the court is enjoined to test a confession on its truth before upholding it by examining it along other evidence in the case so as to determine the following: C

(1) Whether there is anything outside it to show that it is true;

(2) Whether it is corroborated; D

(3) Whether the facts stated in them are true in so far as can be tested;

(4) Whether the accused’s confession is possible; and

(5) Whether the confession is consistent with other facts which have been ascertained and proved. See: Obiasa v. Queen (1962) 2 SCNLR 402.” E

Further reasoning on the point the court at 112-113 of the record stated thus:

“In applying these tests to the facts of the instant case, one only needs to consider the evidence of PW1, PW2, PW5, PW6 and PW7 and relate them to the statement of the accused (exhibits “C”, “C1” and “C2”). After a deep and sober reflection on the evidence of those witnesses in relation to the statements of the accused persons; I am of the firm view that the confessional statements made by the 1st-3rd accused are substantially and materially corroborated”. F G

The court concluded at 114-115 of the record as follows:

“In the instant case, there is the evidence of conspiracy provided in the statement of the 1st accused (exhibit C2) in respect of how the first armed robbery in the 2nd count was executed; also, there is evidence of conspiracy provided in the statement of the 3^d accused (exhibit C) of how the second armed robbery in the 6th count was executed. On the authority of section 11(1) of the Evidence Act, such evidence is admissible and thus relevant to explain the partici- H

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*pation of the 1st, 2nd and 3^d accused in the conspiracy in the 1st count, and the participation of the 2nd and 3^d accused in the conspiracy in the 4th count respectively ...assuming however for an argument sake that exhibits C and C2 do not provide sufficient direct evidence of conspiracy, the Supreme Court has said that direct evidence of conspiracy is not indispensable and that it is open to the trial court to infer a conspiracy from the fact of doing things towards a common end. See *Paul Onochie v. The Republic (1966) NMLR 307 at 308; (1966) 1 SCNLR 204.* (Italics supplied for emphasis)*

C
 In affirming the foregoing findings of the trial court, the court below at pages 179-180 of the record of appeal opined as follows:

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“What then is the procedure to be adopted by the appellate court when confronted with such finding of the trial Judge? Phipson on Evidence Twelfth Edition at page 798, the 3^d paragraph stated; The question whether a statement is voluntary is for the Judge. This does not make it any the less a question of fact. An appellate court should not disturb a Judge’s finding that a confession was voluntary simply because he has treated the facts before him differently from the way in which similar facts were treated in a reported case. Only if the trial Judge has erred in principle or has made completely wrong assessment of the facts can his decision be disturbed.

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After a very careful examination of the finding of the trial Judge in relation to the confessional statement of the appellant (1st accused), exhibit “C2” as detailly provided to (sic) earlier in this judgment, I have not found where the trial Judge has erred in principle or, has made a completely wrong assessment of the facts to disturb his finding in this case. This court therefore, will not disturb the finding of guilt made against the” appellant on count 1 by the trial Judge.”

G
 The thrust of learned appellant’s counsel’s arguments is that the foregoing concurrent findings of the two courts are wrong and the error entitles this court to interfere by setting them aside and allowing the appeal. Learned counsel simply cannot be right. He must be reminded that evaluation of relevant and material evidence and the ascription of probative value to such evidence are the primary function of the trial court which saw, heard and assessed the witnesses while they gave the evidence. Where the trial court unquestionably evaluates the evidence and justifiably appraises the facts, it is not the business of the appellate court to substitute its own views for

the views of the trial court. See State v. Ajie (2000) 7 SC (Pt. 1) 24; (2000) 11 NWLR (Pt. 678) 434; Bashaya v. State (1998) 5 NWLR (Pt. 550) 351; Agbi v. Ogbah (2006) 11 NWLR (Pt. 990) 65 and Fagbenro v. Arobadi (2006) 7 NWLR (Pt. 978) 172.

Again, it must be restated that though the right of appeal against the concurrent findings of the two lower courts enures to the appellant, he succeeds only if he establishes either that there is insufficient evidence in support of the findings appealed against or such substantial error that is apparent on the record of proceedings which error constitutes a violation of some principle of law or procedure and occasions miscarriage of justice. See Ezeonwu v. Onyechi (1996) 3 NWLR (Pt. 438) 499 SC and Babuga v. State (1996) 7 NWLR (Pt. 460) 279. In the instant appeal, has the appellant satisfied these requirements to justify the interference of this court? I think not.

Appellant was tried and convicted for the offence of conspiracy, proof of which offence, this court has held in very many cases, is a matter of inference to be made from the acts or inactions of the parties concerned. See Oduneye v. The State (2001) 13 WRN 88 SC; (2001) 2 NWLR (Pt. 697) 311; Obiakor v. State (2002) 10 NWLR (Pt. 774) 612 SC and Daboh v. State (1977) 5 SC 197. ***The inference the two courts drew from the evidence led by the respondent cannot be faulted.***

Learned appellant's counsel has insisted that exhibit C2, appellant's extra judicial statement, cannot sustain his conviction for the offence of conspiracy. It must be conceded to learned appellant's counsel that conviction made solely on the basis of an appellant's confessional statement survives an appeal where the statement is not only voluntarily obtained but the statement is direct, positive and unequivocal as to the entire ingredients of the offence for which the appellant is convicted as well. In that case nothing outside the statement is required to justify the conviction. Where, however, the extra judicial statement of the appellant is not that comprehensive or total in relation to the offence the appellant is convicted, the existence of such evidence outside the statement becomes a necessity to justify the persistence of the conviction on appeal. See Obiasa v. Queen (1962) 2 SCNLR 402; Kanu v. R (1952) 14 WACA 30 and Dawa v. Stale (1980) 8-11 SC 236 - all

cases relied upon by the appellant herein.

In the case at hand learned counsel for the appellant appears to have, however, forgotten that the lower court, in affirming the trial court's conviction has realized that beyond exhibit C2, the trial court has further taken into consideration the act of the appellant of taking the police to the houses of the 2nd and 3rd accused persons in addition to the testimonies of the witnesses called by the respondent. There are also exhibits C and C1 the extra judicial statements of the 2nd and 3rd accused persons as well as their oral testimonies the two courts equally and rightly drew from.

Appellant's guilt is to be inferred from the totality of the evidence led by the respondent including the convict's statement whether or not same is confessional. By exhibit C2, appellant's own statement to the police, he is shown to have informed the 2nd and 3rd accused persons that PW3 had in his house, some large sum of money. This statement in relation to the statements of the 2nd and 3rd accused, the testimonies of PW1, PW2, PW3, PW4 and PW5, the two courts hold, and rightly too, point inexorably to the guilt of the appellant.

On the authorities, these concurrent findings that evolved from the evidence on record cannot be interfered with more so when the appellant has neither shown any breach of some law substantive or procedural or the miscarriage of justice the findings occasioned.

In the result the two issues in the appeal are resolved against the appellant and the unmeritorious appeal dismissed. The judgment of the court below is accordingly hereby affirmed.

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I. T. MUHAMMAD JSC

My learned brother, M. D. Muhammad, JSC, afforded me the opportunity to read in advance the judgment just delivered. I agree with his reasoning and conclusion that the appeal lacks merit and it should be dismissed. No specialty shown to warrant my interference with the concurrent decisions of the two lower courts. *Ebba v. Ogodo* (1984) 1 SCNLR 372. I hereby dismiss the appeal and affirm the decision of the court below.

CHUKWUMA-ENEH JSC

I read in draft the lead judgment prepared by my learned brother M. D. Muhammad, JSC in this appeal and having exhaustively dealt with all the issues distilled for determination in the appeal, I have nothing else useful to add. I agree that the appeal should be dismissed. I endorse the orders contained therein.

B

GALADIMA JSC

I have had the advantage of reading in draft the leading judgment delivered by my learned brother, Musa Dattijo Muhammad JSC. I entirely agree with the reasoning therein leading to the conclusion that this appeal lacks merit and that it must be dismissed. My contribution herein is merely for the sake of emphasis.

C

I must note that this appeal is against the concurrent findings of fact by the two lower courts. The law is very well settled, that this court would not interfere to upset concurrent findings of fact except the findings are perverse, or not supported by credible evidence or there was miscarriage of justice or violation of some principles of law or procedure. See the cases of *Nasamu v. The State* (1979) 6 - 9 SC 153; *Sobakin v. The State* (1981) 5 SC at 75; *Adio v. The State* (1986) 2 NWLR (Pt. 24) 581 and *Makun v. F.U.T. Minna* (2011) 46 NSCQR 1035; (2011) 18 NWLR (Pt. 1278) 190.

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Concurrent findings of fact were well established that the confessional statement of the appellant is not only possible but also that there is something outside his confessional statement to establish the truth of it. This confession is consistent with other facts which have been ascertained and proved. I have compared the confessional statement exhibit C, C1 and C2 of the appellant and other accused persons in all material particulars. See *Obiasa v. Queen* (1962) 2 SCNLR 402. Confessional statement of the appellant are positive, direct and unequivocal, each amounts to an admission of guilt. These statements suffice to ground of finding of guilty. The fact that the appellant tried to resile or retract the statements altogether at the trial does not necessarily make the confessional statement less weighty.

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It is from the foregoing and the fuller reasons in the said lead judgment I dismiss this appeal and the judgment of the court below is hereby accordingly affirmed. Appeal dismissed.

ALAGOA JSC

This is an appeal against the judgment of the Court of Appeal Ibadan division which affirmed the judgment of the High Court Abeokuta Ogun State. At the said High Court, the appellant as 1st accused was charged along with two other accused persons. The appellant was charged only in count 1 of the six count charge. That count had to do with conspiracy to commit a felony to wit armed robbery at the residence of his master, PW 3 to whom he was an employee/apprentice. He was found guilty and sentenced to death by firing squad. He appealed to the Court of Appeal which confirmed his conviction but substituted the death sentence imposed on him by the trial High Court to life imprisonment. This is a further appeal to the Supreme Court. He appealed on four grounds out of which he distilled two issues for determination by Supreme Court viz:

1. Has the prosecution based on the evidence presented before the court, established a case of conspiracy against the appellant and other accused persons.
2. Was the confessional statement of the appellant which was tendered as exhibit C2 properly admitted as a voluntary confession upon which a conviction can be based?

While the two other accused persons were charged and convicted with the commission of the actual armed robbery, the appellant was convicted of conspiracy to commit armed robbery. He made a confessional statement which he said was not voluntarily made having allegedly been obtained from the police by torture prompting the trial court to go into a trial-within-trial after which the statement of the appellant was admitted as exhibit C2 by the trial High Court. In exhibit C2 appellant said he had five friends whose names he gave as Kassim; Sampson; Musiliu; Lukman and Isikili who reside at Adatan. He told them therein that his master Sesan had a gun in the house and also some money in the house. The boys then told him they would operate in the house of his master that night being 4th November, 1999 and so he had to leave the house for them. He knew that they were bad boys. The appellant who normally resides with PW3 in his house did not sleep in that house on the night of 4th November, 1999. After the robbery operation PW3 led some policemen (PW9 and PW10) to the appellant's mother's house where he confessed to

knowledge of the robbery and led PW9 and PW10 to the houses of the 2nd and 3rd accused persons who were also arrested and who also made confessional statements (exhibit C1 for 2nd accused and exhibit C for 3rd accused). In Emmanuel Nwaebonyi v. The State (1994) 5 NWLR (Pt. 343) 138; (1994) 5 SCNJ 86 this court per Wali JSC on the weight to be attached to confessional statements of an accused person stated thus. In R v. Sykes (1913) 8 CR App Rep. 233 the leading authority on the weight to be attached to a confessional statement whether or not retracted, followed by the West African Court of Appeal in Kami v. The King (1952) 14 WACA 30 and thereafter by this court in several of its decisions such as Dawa v. The State (1980) 8 - 11 SC 236; The Queen v. Obiasa (1962) 1 All NLR 645 reported as Obiasa v. Queen (1962) 1 SCNLR 402; Obosi v. The State (1965) NMLR 119 and Onochie v. The Republic (1966) NMLR 307. (1966) 1 SCNLR 204 to mention but a few. The following rules were stated in order to decide the weight to be attached to it -

1. Is there anything outside the confession to show that it is true?
2. Is it corroborated?
3. Are there relevant statements made in it of facts true as far as they can be tested?
4. Was the prisoner one who had the opportunity of committing the murder? (where it is a case of murder).
5. Is his confession possible?
6. Is it consistent with other facts which have been ascertained and have been proved? See also Nsofor v. The state (2004) 18 NWLR (Pt. 905) 292, Ojegele v. The State (1988) 1 NWLR (Pt. 71) 414, Nwachukwu v. The State (2007) 17 NWLR (Pt. 1062) 31. A comparison of the confessional statement of the appellant and those of the other accused persons show that they are corroborative of one another in all material particulars. The appellant's step father, himself a policeman who had been privileged to be in the statement room when the appellant's statement was being taken was never brought to testify that appellant's statement was not voluntarily made. There is nothing to show that he was not available to give this piece of evidence to save his step son. Section 167(d) of the Evidence Act, 2011 provides that "*the court may presume the existence of any fact which it deems likely to have happened regard shall be had to the*

common course of natural events, human conduct and public and private business in their relationship to the facts of the particular case and in particular the court may presume that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it."

B This fact in itself shows that the confessional statement of the appellant is not only possible but also that there is something outside the confessional statement to show that it is true. As we said earlier the confession of the appellant is consistent with other facts which have been ascertained. What is the attitude of the Supreme Court to concurrent finding of facts of two lower courts? There is a plethora of case law on this subject matter. In Chief Adenigba Afolayan v. Oba Joshua Ogunrinde & ors (1990) 1 NWLR (Pt. 127) 369, (1990) 2 SC 70, this court per Obaseki, JSC stated that *"this court has said repeatedly that it will not interfere with or set aside and reverse concurrent findings of fact which have not been proved to be perverse or arrived at in violation of some principles of law or procedure."* Onnoghen, JSC in David Chukwuemeka Obiefuna Okoye & anor v. Christopher Obiaso & ors (2010) 8 NWLR (Pt. 1195) 145 lent his voice to this subject matter when he said that *"the law on concurrent findings of facts is very settled. It is that this court does not make it a practice of interfering with the concurrent findings of fact by the lower courts except where there are special circumstances to warrant same, such as where the findings are perverse or not supported by the evidence or there is a wrongful application of substantive or procedural law etc."* This is not the situation in the present matter now on further appeal before us. This appeal is not fraught with any of these shortcomings which could have prompted this court to interfere with the earlier judgments referred to.

G It is for these reasons and the fuller reasons contained in the lead judgment of my learned brother, Musa Dattijo Muhammad, JSC which I had the privilege of reading in draft and which I completely agree with that I too find no merit in this appeal and dismiss it. I also affirm the judgment of the lower court commuting the sentence of death by firing squad passed by the trial court to a sentence of imprisonment for life.