

**SUPREME COURT OF NIGERIA**  
FRIDAY 30TH MAY, 2014. SC. 343/2007  
**CORAM:- W. S. N. ONNOGHEN, J. A. FABIYI,**  
**S. GALADIMA, B. RHODES-VIVOUR,**  
**O. ARIWOOLA, JJSC**

TIRIMISIYU ADEBAYO ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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**ALIBI** - Meaning of - It means accused saying that he was not at the crime scene - At the time the alleged offence was committed - That he was somewhere else and therefore was not the offender (H1)

**ALIBI** - Investigation of - Where accused properly raises the defence and gives particulars of his whereabouts - Prosecution must investigate the alibi - To verify its truthfulness or otherwise (H2)

**ALIBI** - Particulars of - Though accused has no burden to prove his alibi - But he must give particulars of his whereabouts at the earliest opportunity - To lead prosecution in his investigation (H3)

**ARMED ROBBERY** - Identification parade - When not necessary - Appellant having been properly identified by 1<sup>st</sup> accused as one of the perpetrators - The parade is no longer needed - As there is no dispute as to his identity (H4)

**IDENTIFICATION PARADE** - Meaning of - It is police identification procedure in which a criminal suspect and other physically similar persons are shown to witness - To determine whether the suspect can be identified as perpetrator of the crime (H5)

**IDENTIFICATION PARADE** - Necessity of - Is useful whenever there is doubt as to ability of a victim to recognize the suspect - Or where identity of the suspect is in dispute (H6)

**ARMED ROBBERY** - Ingredients - Proof - To secure conviction - Prosecution must prove that there was robbery - Which was armed

robbery - And that accused was the armed robber (H7)

EVIDENCE - Confession - Meaning of - It is admission made at any-time by person charged with a crime - Stating or suggesting the inference that he committed the crime (H8)

CRIMINAL PROCEDURE - Confession - Retraction - Where at trial accused denies statement earlier made to police - He must impeach the said statement by inter alia showing - That he did not in fact make any such statement as presented (H9)

CRIMINAL PROCEDURE - Conviction - Confession - Direct and positive voluntary confession of guilt by accused - Is sufficient to warrant his conviction without corroboration - Provided court is satisfied of the truth (H10)

CRIMINAL PROCEDURE - Confession - Admissibility - Appellant's statement tendered and admitted without objection - Is truly confessional and was legally admitted in evidence by trial court (H11)

### ***FACTS***

Before the High Court of Edo State Benin City, accused/appellant and four others were charged with conspiracy to commit armed robbery and armed robbery contrary to sections 5(b) and 1(2)(a) of the Robbery & Firearms (Special Provisions) Act Cap 398 LFN 1990. Prosecution/respondent's case is that one Monday Eze (originally 1<sup>st</sup> accused and now deceased) along with four others while armed with offensive weapons, robbed PW2 and stole his money in the process. The arrest and confession of the said Monday Eze led to the identification and arrest of appellant and the others for their complicity in the armed robbery incident. All the suspects made statements to the police.

At the trial, respondent called five witnesses in proof of its case. PW5 tendered the confessional statements of appellant as Exhibit B in evidence. Appellant did not object to the admissibility of the exhibit. However, in his oral testimony in court, appellant raised the plea of alibi. He stated that he was away in Lagos toll gate at the time the armed robbery incident took place. At the end of the trial, the

learned trial Judge relying on the confessional statement (Exhibit B) of appellant, found appellant guilty as charged. He was therefore convicted and sentenced to death by hanging. Appellant in dissatisfaction, appealed to the Court of Appeal Benin City. The court dismissed the appeal and affirmed the conviction and sentence passed by the trial court. Again, appellant lodged appeal in Supreme Court in protest.

### **ISSUES FOR DETERMINATION**

1. Whether the lower court committed an error and the error occasioned a serious miscarriage of justice when it held that the identity of the appellant as one of the robbers was not raised as an issue before the trial court and could not therefore be raised before them without leave.

2. Whether on the evidence of the prosecution witnesses and the confessional statements of the appellant and his co-accused, the lower court was in error in not discharging and acquitting the appellant for the offences of conspiracy to commit armed robbery and armed robbery.

**HELD** (Unanimously dismissing the appeal per

**ARIWOOLA JSC)**

*ALIBI - Meaning of*

**1. There is no doubt that the appellant's defence was an alibi in a way. Alibi means when a person charged with an offence says that he was not at the scene of crime at the time the alleged offence was committed. That he was indeed somewhere else and therefore he was not the person who committed the offence.** (p. 1678 D)

*ALIBI - Investigation of*

**2. The law is trite that if an accused person raises unequivocally the issue of alibi, that he was somewhere else other than the locus delicti at the time of the commission of the offence with which he is charged and gives some facts and circumstances of his whereabouts, the prosecution is duty bound to investigate the alibi set up, to verify its truthfulness or other-**

wise.

**As earlier shown in the findings of the trial court, the issue of alibi was not raised by the appellant when it would be possible to be investigated by the police. (p. 1678 F)**

**B ALIBI - Particulars of**

**3. Even though no burden is placed on the accused person to prove his alibi but he is not expected to merely state that he was not at the scene of the crime without more. He owes it a duty to give the lead particular of his whereabouts at the earliest opportunity, which will lead the prosecution in their investigation of the alibi. (p. 1678 H)**

*ARMED ROBBERY - Identification parade - When not necessary*

**D 4. It is clear from the findings of the trial court also that the issue of identity of the appellant was not in dispute or controversy. The court agreed that he was properly identified by the 1st accused who died before the trial began.**

**E There is no doubt that in cases of armed robbery, the identity of an accused person is always in issue but in the instant case, the identity of the appellant was not directly made an issue to have warranted the conduct of an identification parade before the case was charged to court.**

**F It is trite law that an identification parade is not a sine qua non for identification in all cases where there has been a fleeting encounter with the victim of a crime, if there is yet other pieces of evidence leading conclusively to the identity of the perpetrator of the offence.**

**G However, where there is certainty or no dispute as to the identity of the perpetrator of a crime, there will be no need for an identification parade to further identify the offender. (pp. 1679 A/H/1680 C)**

**H IDENTIFICATION PARADE - Meaning of**

**5. What then is an identification parade? It is a police identification procedure in which a criminal suspect and other physically similar persons are shown to the victim or witness to determine whether the suspect can be identified as the perpe-**

**trator or one of the perpetrators of the crime. It is otherwise called and referred to as “line up”.** (p. 1679 G)

*IDENTIFICATION PARADE - Necessity of*

**6. An identification parade only becomes necessary where the victim of the crime did not know the accused before his acquaintance with him during the commission of the offence.** B

**It is also settled law that an identification parade is very essential and useful whenever there is doubt as to the ability of a victim to recognise the suspect who participated in carrying out the crime or where the identity of the said suspect or accused person is in dispute.** (p. 1680 A) C

*ARMED ROBBERY - Ingredients - Proof*

**7. It is already established and the law is clear that for the prosecution to establish and earn conviction for the offence of armed robbery, it will be required to prove the following -** D

**(i) That there was in fact robbery;**

**(ii) That the robbery was an armed robbery; and**

**(iii) That the accused person was the armed robber.** E

(p. 1681 G)

*EVIDENCE - Confession - Meaning of*

**8. A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime and this includes both extra judicial and judicial confessions. It also includes an incriminating admission made that is not direct and positive and short of a full confession.** F

**Confession has also been held to be a criminal suspect’s oral or written acknowledgment of guilt, which often includes details about the crime alleged. In other words, a confession is an acknowledgment in express words by the accused in a criminal case, of the truth of the main fact charged or of some essential part of it.** (p. 1682 D) G H

*CRIMINAL PROCEDURE - Confession - Retraction*

**9. It is trite law, that where an accused person during trial**

**retracts from or denies the extra judicial statement he had earlier made to the police immediately after the event, giving rise to the charge or arraignment against him, he owes it a duty to impeach his said earlier statement.**

**B Generally, during trial, an accused person who desires to impeach his statement is duty bound to establish that his earlier confessional statement cannot be true or correct by showing any of the following:-**

**C (i) That he did not in fact make any such statement as presented; or**

**(ii) That he was not correctly recorded; or**

**(iii) That he was unsettled in mind at the time he made the Statement, or**

**(iv) That he was induced to make the statement.**

**D However, the way an accused person on trial can discharge the burden of establishing any of the above at the tendering of his confessional statement is by calling evidence during a trial within trial. (p. 1684 A)**

**E Conviction - Confession**

**10. The law is settled, that a free and voluntary confession of guilt made by an accused person, if it is direct and positive is sufficient to warrant his conviction without any corroborative evidence as long as the court is satisfied of the truth of the confession. (p. 1684 H)**

**CRIMINAL PROCEDURE - Confession - Admissibility**

**G 11. As earlier stated, the appellant's statement was tendered at and admitted by the trial court without any objection. This goes a long way to give accreditation to the prosecution's case against the appellant.**

**H In the situation above, this court had come to the conclusion that raising a defence to the contents of a confessional statement at the state of defence in the witness box when no objection was raised when tendered was rightly held to be an afterthought. In the instant, the appellant's statement earlier referred was obtained and tendered by the PW5 - the Investigating Police Officer, who was not cross examined on the**

***voluntariness of the statement.***

***The statements of the appellant and that of his co-accused are truly confessional. They were admissible and properly and legally admitted in evidence by the trial court.***

(pp. 1685 C/G/1686 D)

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### **REPRESENTATION**

Victor Opara Esq., for the Appellant

Adewale Atake Esq; with Godwin Omoaka Esq; Izuchukwu Ohajinwa Esq; Arnorld Ushindi; Esq., for the Respondent

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### **CASES REFERRED TO**

State v. Bello (1989) 1 CLRN 370

Bozin v. State (1986) 2 NWLR (pt. 8) 465

Gaji v. Paye (2003) 8 NWLR (pt. 823) 583

Balogun v. AG Ogun State (2002) 6 NWLR (pt. 763) 264

Adebayo v. Adusei (2005) All FWLR (pt. 240) 15

Alarape v. State (2001) FWLR (pt. 41) 1872

Adamu v. State (1991) 4 NWLR (pt. 187) 530

Idowu v. State (2000) 7 SC (pt. 11) 50

Njiokuemen v. Ochei (2004) 15 NWLR (pt. 895) 196

Ogoala v. State (1991) 2 LRCN 66

Kanu v. The King (1952) 14 WACA 30

Oawa v. State (1980) 8-11 SC 236

Nwaebonyi v. State (1994) 5 NWLR (pt. 343) 138

Nwachukwu v. State (2005) 4 LRCN CC 53

Onafowokan v. State (1987) SCNJ 328

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### **STATUTE REFERRED TO**

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

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### **LEAD JUDGMENT BY ARIWOOLA JSC**

This is an appeal against the judgment of the Court of Appeal, Benin Division, delivered on 13th December, 2004 whereby the court below affirmed the conviction and sentence of the appellant by the trial court.

The appellant and four others had been listed on the informa-

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tion paper for prosecution (see page 1 of the record) but only four persons actually stood trial before the High Court of Justice, Edo State of Nigeria, Holden at Benin City. One Monday Eze, who was listed as No. 1 was reported to have died in custody and therefore did not stand trial. Yet, his name was never struck out and remained  
 B until judgment was given by the trial court. Therefore he remained and was referred to throughout the proceedings of the trial court as 1st accused person.

The appellant and three others were charged with and tried  
 C for the following offences -

Statement of Offence: Count 1

Conspiracy punishable under Section 5(b) of the Robbery and Firearms (Special Provisions) Act Cap. 398 of Laws of the Federation of Nigeria, 1990

D Particulars of Offence

Sule Musa (M), Tirimisiyu Adebayo (M), Olufemi Ajayi (M) and Tajudeen Fabiyi (M) on or about the 30th day of November, 1996 at Benin City within the jurisdiction of the Benin Robbery and Firearms Tribunal conspired with one another to commit a felony to  
 E wit: Armed Robbery.

Statement of offence: Count 2

Armed Robbery punishable under Section 1(2)(a) of the Robbery and Firearms (Special provisions) Act Cap 398 of Laws of the Federation of Nigeria 1990.

F Particulars of Offence

Sule Musa (M), Tirimisiyu Adebayo (M), Olufemi Ajayi (M) and Tajudeen Fabiyi (M) on or about the 30th day of November, 1996 at Benin City within the jurisdiction of the Benin Robbery and  
 G Firearms Tribunal robbed one Donatus Osigwe (M) of the sum of N164, 000.00 while armed with knife and other offensive weapons.

The prosecution called five witnesses in proof of the charge against the four accused persons that stood trial. The prosecution's case goes thus-

H On the 30th day of November, 1996 one Monday Eze, (now deceased) as the then 1st accused with four men went to his father's shop at No.12A Mission Road, Benin City in the night. Monday later identified the four men as the appellant herein and three others. When they could not get any money from his father's shop, the men



went into the shop of one Chief McDenson Okenwa (PW2) and stole the sum of N164,000.00. They were said to be armed with Jack knives and other offensive weapon.

Upon the arrest of Monday Eze, (herein after referred to as 1st accused), for the robbery incident, he confessed to the police and mentioned the others with whom he carried out the operation on that day. B

PW1 - Hyginus Eze is the father to 1st accused. The 1st accused took PW1 and a policeman to identify the other four co-accused and they were accordingly arrested. All of the accused persons made statements to the police. These statements were tendered by PW5 - the Investigating Police Officer (IPO) during trial. They were admitted without objection and marked Exhibits A, B, C and D respectively. C

After the prosecution closed its case, each of the four accused D persons testified in their respective defence but called no other witness.

At the conclusion of trial, the trial court found each of the four accused guilty as charged, convicted and sentenced each one of them to death by hanging. E

Being dissatisfied with the judgment led to the appeal jointly to the court below by the four convicts including the instant appellant.

The court below on 13th December, 2004 in its judgment found the appeal lacking in merit and thereby dismissed same. It affirmed the conviction and sentence of the trial court against the appellants. F

Being dissatisfied again with the decision of the court below, the appellant further appealed to this court upon four (4) Grounds of Appeal contained in his Notice of Appeal filed on 5th September, 2008. G

When the appeal came up for hearing on 6th March, 2014, learned counsel for the appellant, Victor Opara, Esq. identified the appellant's brief of argument he had filed on 19th May, 2010 but which was deemed properly filed and served on 26th June, 2013. He adopted and relied on same brief of argument to urge on us to allow the appeal and set aside the Judgment of the court below. H

Mr. Adewale Atake, learned counsel for the State also identified the respondent's brief of argument filed on 19th April, 2013. He adopted and relied on same brief to urge on the court to dismiss the

appeal for want of merit and affirm the judgment of the court below which had earlier affirmed the decision of the trial court.

From the appellant's brief of argument was distilled the following four issues for determination of the appeal.

Issues for Determination

B Issue 1:

Whether the issue of the identity of the appellant and the co-accused persons raised on the appeal before the Court of Appeal did not arise from the proceedings and judgment of the trial court (Court of first instance) and as such could be raised and argued on Appeal without leave first had and obtained.

Issue 2:

D Whether the learned Justices of the Court of Appeal did not err in law and occasion serious miscarriage of justice when they failed to discharge and acquit the appellant of the offence of conspiracy to commit armed robbery and armed robbery by reasoning thus as follows:

E *"On the issue of identification parade not having been conducted by the police when the appellant was not identified by the prosecution witness, it is said somewhere in this judgment that the identity of the appellants was never made an issue before the trial court. This is what trial Judge said in judgment.*

F *"...The 1st accused now deceased did not testify but before the trial, it was he who identified the accused person with whom he said he sent (sic) for the robbery. This led to the arrest of the accused persons who were not identified by any of the prosecution witnesses except PW1 who claimed he went with police and 1st accused to apprehend them..."*

G This simply means that PW1 who went with the deceased to arrest the appellants, along with police identified the appellants as those implicated by Monday Eze (deceased) they cannot recognize the other four persons. They were identified by Monday Eze their gang leader and PW1 with whom the arrest was made. PW3 and H PW4 did not know them before, so why the need for identification parade, identification parade will be necessary if and only if there is doubt in the mind of the witnesses as to whether it was the accused persons or somebody else who committed the offence. No such doubt has been created in the present case.

Issue 3:

Whether the learned Justices of the Court of Appeal did not err in law and occasion serious miscarriage of justice when they held that the prosecution proved beyond reasonable doubt, the two count charge of conspiracy to commit armed robbery, being the case of the prosecution against the appellant and other accused persons? B

Issue 4:

Whether the Court of Appeal did not err in law and occasion serious miscarriage of justice when it reasoned as follows:

*"In the present case the learned trial Judge carefully tested the confessional statement of the appellants with the evidence adduced by the prosecution witnesses and found their confessional statements to be direct and positive on the commission of offence. I have also considered the appellants confessional statements - Exhibits A - D, the evidence of PW1, 3 and 4 appears to corroborate the confessional statements and from the statements of facts made therein, the confession of the appellants is quite probable."* C

In the said appellant's brief of argument, learned counsel stated that the four issues were distilled from the four grounds of appeal respectively. E

In its brief of argument filed on 19/04/2013, the respondent formulated two Issues from the four grounds of appeal filed by the appellant. The said issues are as follows:-

1. Whether the lower court committed an error and the error occasioned a serious miscarriage of justice when it held that the identity of the appellant as one of the robbers was not raised as an issue before the trial court and could not therefore be raised before them without leave. (Ground one) F

2. Whether on the evidence of the prosecution witnesses and the confessional statements of the appellant and his co-accused, the lower court was in error in not discharging and acquitting the appellant for the offences of conspiracy to commit armed robbery and armed robbery. (Grounds 2, 3 and 4) G

In the brief of argument, the appellant argued issue one separately while issues 2, 3 and 4 were argued together. H

As it can be clearly seen above, issue one of the appellant's four issues is in essence the same as issue one of the respondent, while issues 2, 3 and 4 of the appellant are covered by issue No. 2 of

the respondent.

In arguing issue No.1, learned counsel for the appellant referred to couple of paragraphs and pages of the record for the findings of the trial court and that in its judgment the trial court had referred to the submission of the learned counsel for the accused persons in her address that the prosecution failed to prove the charge against the accused persons beyond reasonable doubt. He referred to count 2 of the charge, which is armed robbery and gave the ingredients of the offence which the prosecutor was expected to prove to earn the conviction of the appellant. He relied on *State V. Ademola Bello & Ors* (1989) 1 CLRN 370, *Bozin vs. State* (1986) 2 NWLR (pt.8) 465 at 469.

He submitted that the identity of an accused person is always in issue in cases of armed robbery and that in the instant case the identity of the appellant was in issue before the trial court.

Learned counsel contended that none of the prosecution witnesses identified the appellant as a party to the armed robbery but the fact was not considered by the court below.

Learned counsel conceded that when an appellant intends to raise, canvass and argue an issue for the first time before the Court of Appeal, leave of the court must be sought and obtained. He contended that the court below seemed to suggest that the issue of the identity of the appellant was a non issue at the trial court. But that the issue of the identity of the appellant was the main plank on which the case was fought at the trial court.

He referred to the charge against the appellant as armed robbery and contended that one of the principal ingredients of the offence which must be established by the prosecution is the participation of the accused person in the robbery. Once there is doubt as to the identity of the accused person as the one or one of those who carried out the operation, he submitted that the doubt should be resolved in favour of the appellant.

Learned counsel contended that if the lower court had considered the issue of the identity of the appellant, it is very likely that a verdict of not guilty would have been returned in favour of the appellant. He submitted that the failure of the lower court to consider that material issue occasioned a miscarriage of justice to the detriment of the appellant. He urged the court to resolve the issue in

favour of the appellant.

In handling this issue, learned counsel for the respondent contended that the issue is largely, if not entirely, an academic issue. He stated that the lower court which held that the issue of the identity of the appellant was raised for the first time, before them without leave nonetheless proceeded to consider the arguments on the issue of identity of the appellant and ruled that the appellant was identified by PW1 and that identification parade would only be necessary if there was doubt in the mind of the witnesses. On this ground alone he urged the court to resolve the issue against the appellant.

However, learned counsel contended that assuming without conceding that the lower court was wrong to hold that it was a new issue which required their leave to be raised, it was submitted that no miscarriage of justice was occasioned to the appellant who alleged *“serious miscarriage of justice”*.

Learned counsel quoted, copiously from the judgment of the lower court where the issue of identification of the appellant was considered and resolved.

He referred to the unchallenged evidence of PW5 who was the IPO that investigated the case. He contended that the said testimony of PW5 was not challenged or contradicted under cross examination by the counsel to the appellant. He submitted that the effect of the failure to cross examine a witness upon a particular matter is a tacit acceptance of the truth of the evidence of the witness. He cited *Gaji Vs. Paye* (2003) 8 NWLR (Pt. 823) 583.

Learned counsel submitted further that in the circumstance of this case, an identification parade was not necessary, the appellant having been identified before arrest. He relied on *Balogun Vs. AG. Ogun State* (2002) 6 NWLR (Pt. 763) 264 at 534.

Learned counsel contended that indeed the appellant and the other co-accused persons did not raise the issue of mistaken identity as part of their defence. The issue was not raised in the cross examination of the prosecution witnesses. Learned counsel further contended that even the appellant and others did not raise the issue of mistaken identity in their evidence before the trial court which should have given the foundation for an identification parade.

He submitted that the issue of the appellant’s identity is an issue of fact that ought to be raised through or by witnesses but it was

not so raised. He submitted further that, it was not a matter for counsel's address or argument.

He urged the court to resolve the issue against the appellant.

As I stated earlier, the appellant argued the other three issues together and these are subsume in issue No. 2 of the respondent.

B In his brief of argument, learned appellant's counsel contended that having submitted that it was in issue before the trial court whether the appellant was one of those that robbed the store of PW1 on or about the 30th November, 1996, whether the learned justices of the lower court did not err in law and occasion serious miscarriage of justice when they failed to discharge and acquit the appellant of the offence charged. Learned counsel referred to the testimony of PW1 on the event that took place in his store and the store of PW2 at No. 12A Mission Road, Benin City, Edo State on pages 40 - 45 of the record and that testimonies of PW3 and PW4 on pages 42 - 44 of the record. He however conceded that the learned trial judge had found that the prosecution witnesses had identified the appellant and other accused persons with him based on the fact that the deceased 1st accused had earlier identified the appellant and the others in the presence of PW1. But that yet the trial court was not convinced that the testimony was credible enough to link the appellant and co-accused with the charge. Learned counsel contended that the court below however used the same identification of the appellant with which the trial court was not satisfied as basis to conclude on the complicity of the appellant in the charge. He submitted that it is entirely the responsibility of the trial court to consider the totality of evidence of witnesses in its evaluation of same, relying on *Amos Adebayo V. Kwasi Karikari Adusei & Anor* (2005) All FWLR (pt.240) 15 at 176-177.

Learned counsel contended that as one of the principal issues before the trial court was whether there was any incriminating evidence linking the appellant and other co-accused with the robbery at the shop of PW2, the issue was not whether or not there was a robbery. He submitted that the trial court was not deciding whether there was a robbery incident at the shop of PW2 alone, but whether the appellant and others were the ones that committed the robbery with force of arms.

Learned counsel referred to the findings of the trial court on

the statements made by the appellant and others to the police and how same were admitted without objection and marked as Exhibits, he contended that even though the trial court alluded to the case of *R V. Skyes* (supra) at page 75 line 30 of the record, there was nothing whatsoever in the judgment to suggest that the court applied the test prescribed in the case for the statements accredited to the appellant. He submitted that there was no independent corroborative evidence linking the appellant to the commission of the crime hence there was nothing outside the purported confession to show that it was true. He relied on *Asimiyu Alarape V. The State* (2001) FWLR (pt. 41) 1872, for the test for determining the veracity of confessional statement. B  
C

Learned counsel conceded that a confessional statement is sufficient to ground conviction in a criminal offence relying on *Nwachukwu v. State* (2007) All FWLR (pt. 390) 1380 at 1406. He however contended that only confessional statement which has satisfied all the requirements of the law to be confessional properly so called that can indeed satisfy the burden of proof required of the prosecution to discharge in order to secure a conviction. D

Learned counsel conceded that neither the appellant nor the counsel that defended him raised objection to the voluntariness of the statement when it was being tendered at the trial court. But he contended that the reason why the appellant did not object was because he was not trained in law to know the exact time to raise the issue of involuntariness of the confessional statement. Learned counsel urged the court to bear in mind that this appeal relates to a capital offence that may at the end of the day lead to loss of life hence the principle in *R. v. Skyes* and *Asimiyu Alarape v. The State* (supra) should be adopted meticulously. E  
F  
G

Learned counsel referred to part of the testimony of PW3 and PW4 and submitted that their evidence did not corroborate the retracted statements. Such as to establish the identity of the appellant and other persons charged with him, as those that committed the robbery at the Store of PW2. H

Learned counsel contended that it is the duty of the trial court to evaluate the evidence adduced by parties, make findings and take resolutions but in this case the trial court did not do so. He contended further that, the lower court which could have, pursuant to Section

16 of the Court of Appeal Act, re-evaluated the evidence in the case also failed to do so. He submitted that this occasioned a miscarriage of justice to the detriment of the appellant. He submitted that the lower court merely alluded to the case of *R. v. Skyes* (supra) without actually following the legal principles enunciated therein. Otherwise, B learned counsel felt, the lower court would have found that there is nothing outside the retracted confessional statement linking the appellant to the robbery. He submitted that the non identification of the appellant by the witnesses as one of those that committed the C robbery cast a serious doubt as to the identity of the appellant regarding the robbery incident and the doubt of the appellant. He urged the court to resolve the doubt in favour of the appellant and set aside the decision of the lower court which affirmed the conviction and sentence of the appellant on the two count charge of conspiracy to commit armed robbery and armed robbery. And finally D order the discharge and acquittal of the appellant.

In responding, learned counsel for the respondent contended that issue No. 2 questions the evidence relied on by the two courts below in convicting the appellant for the offences of conspiracy to E commit armed robbery and armed robbery. He referred to the evidence of PW1 - PW5 and the confessional statements of the appellant and his co-convicts as Exhibits A, B, C and D.

He contended further that PW5 who tendered Exhibits A - D F was not cross-examined or challenged on how the statements were obtained from the appellant and others despite the fact that he gave graphic details of the steps he meticulously took in recording and confirming the confessional statements. He referred to the testimony of PW1 who was present when the 1st accused, his son identified the G appellant and others and they were arrested by the police. He contended that the identity of the appellant was therefore not in doubt. He referred to the testimony of the appellant where he did not deny that he was in the house of the 4th accused person (Olufemi Ajayi) where the robbery plan was hatched and from where the gang H proceeded to the operation.

Learned counsel referred to the oral testimony of the 4th accused where he admitted knowing the appellant and 1st and 2nd accused persons. He contended that throughout the proceedings, the appellant did not deny knowing the other accused persons whose



statements PW5 claimed to have confronted the appellant with, without objection. He noted that these statements contain the graphic details of the involvement of the appellant in the said operation.

Learned counsel submitted that under the administration of criminal justice system, the identity of an accused person is not limited to identification parade. It can be established in different ways, such as -

(i) By direct evidence of an eye witness in which case an identification parade may not be necessary;

(ii) Circumstantial evidence where the facts point to the irresistible conclusion that the accused and no other person committed the offence;

(iii) By the admissions of an accused person either in his extra judicial statement or in his evidence in court.

Learned counsel submitted that it is the entire circumstances of a case that determines the type of identification that would be necessary. He cited *Adamu V. State* (1991) 4 NWLR (Pt 187) 530.

Learned counsel contended that the position in which the appellant put himself by not objecting to the admissibility of the confessional statements on the ground of involuntariness is that his grouse to the use of the confessional statement must be severally limited to showing that there is not even the slightest of evidence which shows that the confessional statements have moved the appellant's case outside the issue of identifying him with the crimes because the confessional statement most eloquently identified the appellant with the crimes.

On the effect of the appellant raising objection to his confessional statement after same had been admitted by the trial court without objection and the witness had been discharged, learned counsel cited; *Idowu Vs. The State* (2000) 7 SC (Pt. 11) 50 at 62 - 63. He contended that all that the court was obliged to do which he believed the trial court ably did was to look to see if there were some slight evidence showing that the confession was true. On this, he referred to page 74 of the record of appeal for the findings of the trial court on the testimony of PW1, which the court accepted as providing corroboration for the confessional statement of the appellant to find him guilty as charged. Learned counsel submitted that the failure to cross examine prosecution witnesses on the material facts contained

in the confessional statement is an admission of the facts. He relied on Hon. Kress Njiokuemen v. Eng. Victor Ochei (2004) 15 NWLR (Pt 895) 196 at 226, Ogoala vs. The State (1991) 2 LRCN 66 at 68.

B Learned counsel submitted further that once an accused retracts from his statement after it has been admitted, what is left for the trial court is to consider what weight to attach to it. He relied on Rex Vs. Skyes (supra); Kanu Vs. The King (1952) 14 WACA 30; Oawa V. The State (1980) 8 - 11 SC 236; Nwaebonyi vs. The State (1994) 5 NWLR (pt. 343) 138.

C Learned counsel submitted that the testimony of PW3 and PW4 who were eye witnesses to the crime effectively corroborated the confessional statements - Exhibits A, B, C and D. He stated that all the factors required for testing the truth of the confessional statements were fulfilled. He submitted further that a free and voluntary D confessional statement satisfactorily proved will ground a conviction even without any corroborative evidence. He relied on Nwachukwu V. State (2005) 4 LRCN CC 53 at 75.

E Learned counsel asks whether the learned trial judge satisfied himself that Exhibits A - D were positive, true and probable in attaching weight to it. He submitted that the trial judge did, referring to the court's findings and conclusion at page 76 of the record which were rightly affirmed by the lower court.

F Learned counsel submitted that taking into account the circumstances of this case, the prosecution proved the case against the appellant as charged beyond reasonable doubt. He submitted further that reasonable doubt has been held to mean proof which carry a high degree of probability but not proof beyond every shadow of doubt, relying on Onafowokan v. State (1987) SCNJ 328.

G Learned counsel referred to the charge against the appellant and his co accused and what the prosecution was required to establish to earn conviction for the charge. He referred to the five witnesses called by the prosecution and the documents tendered and admitted including the confessional statements of the appellant to H submit that all the elements of the charge were established. He submitted that from the totality of the evidence led at the trial, the prosecution did prove the charge of conspiracy to commit armed robbery and armed robbery for which the appellant was tried and convicted as required by law.

Learned counsel contended that the findings of fact by the trial court which the lower court rightly affirmed are amply supported by exhibits A - D and the evidence of all the prosecution witnesses. He submitted that not being perverse, this court should not interfere with those findings and conclusions. He cited *Oguonzee v. State* (1998) 4 SC 110 at 121 - 122. He urged the court to resolve the issue against the appellant and in conclusion finally urged the court to dismiss the appeal for want of merit and affirm the judgment of the trial court which was earlier rightly affirmed by the lower court. B

As earlier noted, while the appellant's issue No. 1 is the same as the first issue formulated by the respondent, the appellant's issues 2, 3 and 4 are subsume in the 2nd issue distilled by the respondent for determination of this appeal. Indeed, the appellant has only proliferated issue No. 2 by splitting it into three different issues. Therefore, having been duly formulated from and related to the same grounds of appeal filed by the appellant, my Lords, I am convinced that this appeal will be properly determined with the two issues formulated by the respondent. D

Issue No. 1 –

There is no doubt that the issue of identity of the appellant with the other co-accused was considered by the trial court in its judgment. On the event of 30th November, 1996 which led to the charge preferred against the appellant, the trial judge found as follows - E

*“From the facts of this case the evidence of PW1, PW3 and PW4 confirm that there was stealing from PW2's store on 30/11/96. Some money was removed from the store of PW2 at No. 12A Mission Road, Benin City. Though PW2 was not in the store, PW4 was in the store when he opened the store unknowingly for some persons, as he heard a familiar voice. I believe he saw 1st accused and recognised him. He also saw four others with him. That they were armed and they stole money from the store. I find as a fact on the 30th of November, 1996, five men armed went to the store at No. 12A Mission Road and removed cash from the boy, PW4.”* F G H

Upon the above findings by the trial court it went further to raise the question as to whether the accused persons (the appellant and other co-accused) were those who went to the store.

On record, the prosecution through PW1 led evidence which

showed that 1st accused, now deceased, and son to PW1 had confessed to the crime and implicated the other accused persons. The trial court further found that PW1 testified that he and the police were led by the 1st accused to apprehend 2nd, 3rd and 4th accused persons, the 5th accused had earlier escaped but was also later apprehended and brought to book.

The trial court further found that though the 1st accused now deceased did not testify but that before the trial, he had identified the accused persons including the appellant as the persons with whom he carried out the robbery. And that led to the arrest of the accused persons who were not identified by any of the prosecution witnesses except PW1 who was in company of the police and 1st accused to apprehend them.

In his testimony in court on pages 56 - 58 of the record, the appellant totally denied being present at the scene on 30/11/96 when the alleged robbery was said to have taken place in Benin City. He claimed to have been in Lagos at the toll gate hawking bread.

***There is no doubt that the appellant's defence was an alibi in a way. Alibi means when a person charged with an offence says that he was not at the scene of crime at the time the alleged offence was committed. That he was indeed somewhere else and therefore he was not the person who committed the offence.*** See *Okosi v. The State* (1989) 1 CLRN 29; *Akeem Agboola V. The State* (2013) 8 SCM 157; (2013) 11 NWLR (pt. 1366) 619; (2013) 54 NSCQR (pt. 11) 1162.

***The law is trite that if an accused person raises unequivocally the issue of alibi, that he was somewhere else other than the locus delicti at the time of the commission of the offence with which he is charged and gives some facts and circumstances of his whereabouts, the prosecution is duty bound to investigate the alibi set up, to verify its truthfulness or otherwise.***

***As earlier shown in the findings of the trial court, the issue of alibi was not raised by the appellant when it would be possible to be investigated by the police. Even though no burden is placed on the accused person to prove his alibi but he is not expected to merely state that he was not at the scene of the crime without more. He owes it a duty to give the lead***

***particular of his whereabouts at the earliest opportunity, which will lead the prosecution in their investigation of the alibi.*** See Yanor v. State (1965) 1 ANLR 193; Ozulonye vs. State (1981) NCR 38 at 50.

***It is clear from the findings of the trial court also that the issue of identity of the appellant was not in dispute or controversy. The court agreed that he was properly identified by the 1st accused who died before the trial began.*** B

***There is no doubt that in cases of armed robbery, the identity of an accused person is always in issue but in the instant case, the identity of the appellant was not directly made an issue to have warranted the conduct of an identification parade before the case was charged to court.*** C

The appellant has alleged that the court below committed an error and this occasioned a serious miscarriage of justice when it held that the identity of the appellant as one of the robbers was not raised as an issue before the trial court and therefore could not be raised before the court without leave. D

The learned appellant's counsel has rightly conceded that when an appellant intends to raise, canvass and argue an issue for the first time before the appellate court, leave of the court must be first sought and obtained. He however contended that the issue of identity of the appellant was the main plank on which the appellant's case was fought at the trial court. I must say that I am not in the slightest doubt that the learned appellant's counsel misconceived the issue of identification of an accused person and how it should be resolved. The appellant has contended that the court below ought to have separately considered and resolved the issue of the identity of the appellant and others when there was no identification parade conducted by the police to resolve the identity of the appellants. E F G

***What then is an identification parade? It is a police identification procedure in which a criminal suspect and other physically similar persons are shown to the victim or witness to determine whether the suspect can be identified as the perpetrator or one of the perpetrators of the crime. It is otherwise called and referred to as "line up".*** H

***It is trite law that an identification parade is not a sine qua non for identification in all cases where there has been a***

**fleeing encounter with the victim of a crime, if there is yet other pieces of evidence leading conclusively to the identity of the perpetrator of the offence. An identification parade only becomes necessary where the victim of the crime did not know the accused before his acquaintance with him during the commission of the offence.**

**It is also settled law that an identification parade is very essential and useful whenever there is doubt as to the ability of a victim to recognise the suspect who participated in carrying out the crime or where the identity of the said suspect or accused person is in dispute. However, where there is certainty or no dispute as to the identity of the perpetrator of a crime, there will be no need for an identification parade to further identify the offender.** See: R. v. Turnbull (1976) 3 All ER 549; or (1977) QB 224 at 228 - 231; P. Ikemson v. State (1989) 1 CLRN 1.

In this case, the court below did consider the issue of identification as dealt with by the trial court. It even went as far as quoting what the trial court said on the identity of the appellants. The lower court came to the following conclusion having referred to the findings of the trial court. -

*“This simply means that PW1 who went with the deceased to arrest the appellants, along with police identified the appellants as those implicated by Monday Eze. Both PW3 and PW4 whose shops were broken into testified that they only recognised Monday Eze (deceased), they cannot recognise the other four persons. They were identified by Monday Eze, their gang leader and PW1 with whom the arrest was made. PW3 and PW4 did not know them before, so why the need for identification parade? Identification parade will be necessary if and only if there is doubt in the mind of the witnesses as to whether it was the accused persons or somebody else who committed the offence. No such doubt has been created in the present case.”*

From the above, notwithstanding that the lower court had held that the issue of identification parade was not made an issue for consideration before the trial court, hence cannot be raised before it without leave, the court rightly dealt with the issue of the identity of the appellants. As a result, no error was committed by the lower

court and no miscarriage of justice has been occasioned. The appellant was properly identified as one of the perpetrators of the robbery that took place on 30/11/96.

Accordingly, issue No. 1 is resolved against the appellant.

Issue No. 2 -

This issue attacks the evidence the prosecution relied upon including the statements obtained from the appellant. Learned appellant's counsel contended that the trial court wrongly convicted and sentenced the appellant, hence the lower court ought to have discharged and acquitted the appellant for the offences of conspiracy to commit armed robbery and robbery.

In its judgment, the lower court had held as follows -

*"It is manifest from the judgment of the trial court that the learned trial Judge based his conviction of the appellants on the confessional statement, of the appellants admitted as Exhibits A, B, C and D. The trial court said at pages 74 - 76 of the record thus;*

*"...The statements of the accused persons were tendered Exhibits with no objection concerning their voluntariness but each accused in his evidence in chief contended that they were forced to sign the statement after being tortured.*

*They retracted their statements...*

*In this case at hand, I have carefully perused each of the statements of the accused persons Exhibits A - D and they are direct and positive on the commission of the offence. The evidence of PW3 and PW4 that the four persons came with the 1st accused to rob them at night appears to corroborate the confessional statements. The evidence too that they were armed is corroborated by the evidence of PW3 and PW4... I am satisfied with the truth contained in the confessional statement which confirms the evidence given by the prosecution witnesses..."*

***It is already established and the law is clear that for the prosecution to establish and earn conviction for the offence of armed robbery, it will be required to prove the following -***

***(i) That there was in fact robbery;***

***(ii) That the robbery was an armed robbery; and***

***(iii) That the accused person was the armed robber.*** See:

Bozin Vs. The State (1985) 2 NWLR (Pt. 8) 465 at 467, Alabi V. State (1993) 7 NWLR (Pt. 307) 551; Olayinka vs. State (2007) 4 SC (Pt.

1) 201; (2007) 9 NWLR (Pt. 1040) 561; (2007) 8 SCM 193.

In order to satisfy the above requirements and earn conviction of the appellant, the prosecution called and relied on the testimony of its five witnesses PW1 - PW5 and the statements obtained from the appellant.

B From the testimonies of the prosecution witnesses, and that of the appellant, the trial court found that on 30/11/1996 there was a stealing from PW2's Store at No. 12A Mission Road, Benin City. That PW4 who was in the Store recognised the deceased 1st accused amongst the five men that went to the store. The trial court also  
C found that the said men were armed with dangerous weapons to remove the sum of N130,000.00 from PW4.

As noted above in the judgment of the trial court, the appellant was said to have made a confessional statement which the trial  
D court found to be direct and positive on the involvement of the appellant in the commission of the alleged offence.

***A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime and this includes both extra judicial and judicial confessions. It also includes an incriminating admission made that is not direct and positive and short of a full confession.*** See Section 27(1) of the Evidence Act. ***Confession has also been held to be a criminal suspect's oral or written acknowledgment of guilt, which often includes details about the crime alleged. In other words, a confession is an acknowledgment in express words by the accused in a criminal case, of the truth of the main fact charged or of some essential part of it.*** See: Akpan vs. State (2001) 11 SCM 66; (2001) 15 NWLR (Pt. 737) 745; (2001) 7 SC (Pt. 1) 124; Nwachukwu vs. The State (2002) 12 SCM 143; (2002) 7 SC (Pt. 1) 124; (2002) 11 NSCQR 663; Dare Jimoh Vs. The State (2014) LPELR - 22464 (SC); Onuoha vs. The State (1987) 4 NWLR (Pt. 65) 331.  
E  
F  
G

It is noteworthy that the incident in question took place on 30/  
H 11/1996. The appellant who gave his age then as 23 years made statement to the police on 15/01/1997, inter alia, as follows-

*"I hailed from Ibadan, Oyo State. I was born in Lagos in 1974, to the family of Adebayo. The primary I attended was Ayedere Primary School, Lagos and finished in 1994. That I hawk break at toll*



gate Lagos presently. That I knew Monday Eze through Femi Ajayi in the month of November, ending when I came to Benin City. Tajudeen Fabiyi brought me to Benin City for the first time. I and Tajudeen live in Lagos but I always sleep at Toll Gate where I sell bread. I know Sule Musa alias "Rambo" when I came to Benin City in the month of November, 1996. I stayed with Femi Ajayi when I came to Lagos in the month of November, 1996. Sometime in the month of November, ending, Teren gave Sule the address of Rambo to Tajudeen. I came to Benin City in the company of Tajudeen. On the day of the robbery incident, Tajudeen asked me to follow them out. When we reach (sic) Monday Eze's father's Store, I was asked to stand outside with "Rambo". When I asked Rambo what we were there for, he asked me if Tajudeen did not tell me that we were there to operate. I left them in the Store when I discovered that they wanted to rob in the Store. Femi Ajayi gave me N20.00 to go back to the house. That before we left for the store, Tajudeen was holding a jack knife with key holder. After the robbery operation, Monday Eze gave me the sum of N5,000. But when I grumbled that the money was too small, Rambo later gave me the sum of N3,000.00. That total amount to me was N8,000.00, after the robbery operation, I went back to Lagos in company of Tajudeen Fabiyi...

I was still in Benin City with Tajudeen when Monday Eze and Femi were arrested. I went back to Lagos alone. It was Tajudeen who gave me money to go back to Lagos. I did not know we were going to the store to rob...

I never robbed before. This was the first time I involved myself in robbery operation and I did not know we were going to the store to rob."

There is no doubt that the above is a graphic narration of the event of 30/11/96 and the role played by the appellant in the operation. It is rightly so detailed and true to have been a concoction of the prosecution.

In the appellant's testimony in court under examination in chief, the appellant denied that he made any statement voluntarily to the police. He denied knowing Monday Eze who had identified the appellant to the police as one of those with whom he carried out the robbery operation of 30/11/96. Indeed, the appellant totally denied that he made any statement to the police. That the alleged confes-

sional statement was actually written by the police and he was forced to sign it. This is a complete retraction of the above statement said to have been obtained from the appellant by the police.

***It is trite law, that where an accused person during trial retracts from or denies the extra judicial statement he had earlier made to the police immediately after the event, giving rise to the charge or arraignment against him, he owes it a duty to impeach his said earlier statement.*** See: Nwachukwu vs. The State (2007) 12 SCM (Pt. 2) 447; (2007) 17 NWLR (Pt. 1062) 31 at 69; Hassan V. State (2001) 11 SCM 100; (2001) 35 WRN 175; (2001) 15 NWLR (Pt. 735) 184.

***Generally, during trial, an accused person who desires to impeach his statement is duty bound to establish that his earlier confessional statement cannot be true or correct by showing any of the following:-***

- (i) That he did not in fact make any such statement as presented; or***
- (ii) That he was not correctly recorded; or***
- (iii) That he was unsettled in mind at the time he made the Statement, or***
- (iv) That he was induced to make the statement.*** See Hassan Vs. State (supra) Folorunsho Kazeem V. The State (2009) 29 WRN 43 at 68-69.

***However, the way an accused person on trial can discharge the burden of establishing any of the above at the tendering of his confessional statement is by calling evidence during a trial within trial.*** See: Osetola Vs. Anor Vs The State (2012) 12 SCM (Pt. 2) 347; (2012) 17 NWLR (Pt. 1329) 251; (2012) 50 (2) NSCQR 598.

In the instant, the appellant did not object to the tendering and admissibility of his statement alleged to have been made to the police. As earlier stated, his statement and that of his co-accused when tendered without objection, were admitted and duly marked as Exhibits.

***The law is settled, that a free and voluntary confession of guilt made by an accused person, if it is direct and positive is sufficient to warrant his conviction without any corroborative evidence as long as the court is satisfied of the truth of the***

**confession.** See: Jimoh Yesufu V. The State (2000) 10 WRN 1 at 14.

It is noteworthy that at the trial, the court held as follows:-

*“In this case on hand, I have carefully perused each of the Statement of the accused persons Exhibits A-D and they are direct and positive on the commission of the offence. The evidence of PW3<sup>B</sup> and PW4 that four persons came with the 1st accused to rob them at night appears to corroborate the confessional statements. The evidence too that they were armed is corroborated by the evidence of PW3 and PW4. The retraction made by the accused persons appears<sup>C</sup> to be carefully rehearsed and I do not believe them. I am satisfied with the truth contained in the confessional statement which confirms the evidence given by the prosecution witnesses.”*

**As earlier stated, the appellant’s statement was tendered at and admitted by the trial court without any objection. This goes a long way to give accreditation to the prosecution’s case against the appellant.<sup>D</sup>**

In Asimiyu Alarape & Ors V. The State (2001) 3 SCM 1 at 13 where a similar situation took place, this court observed as follows:-

*“At all events, it ought to be noted that the said statements, were tendered without objection from the defence. None of the prosecution witnesses was cross examined as to their involuntariness. It was not until the prosecution had closed its case and the appellants were testifying in their own defence in the witness box that the issue<sup>E</sup> was belatedly raised. The question of the voluntariness of that statement is tested at the time the statement itself is sought to be tendered in evidence. See: Ikemson Vs. The State (1989) 3 NWLR (Pt. 110) 455 and Okarobu V. The State (1988) 3 NWLR (Pt. 81) 2134.”<sup>F</sup>*

**In the situation above, this court had come to the conclusion that raising a defence to the contents of a confessional statement at the state of defence in the witness box when no objection was raised when tendered was rightly held to be an afterthought. In the instant, the appellant’s statement earlier referred was obtained and tendered by the PW5 - the Investigating Police Officer, who was not cross examined on the voluntariness of the statement.<sup>G</sup>**

I am of the firm view that the trial court was right and correct to be satisfied from the totality of the evidence that the four accused<sup>H</sup>

persons including the appellant led by the 1st accused formed the necessary common intention to prosecute an unlawful purpose when they conspired together and went to the Store at No. 12A Mission Road, Benin City to rob PW4.

On the confession of an accused person, this court had held  
B that the:

*“evidential value of a confession of truth is very great indeed. It is very much sought after by the police investigators and prosecutors. It lightens the burden of prosecution by dispensing with the  
C need to call a host of witnesses. A confession can support a conviction if proved to be made and true. See: Rep. Vs. Chartwood (1980) 1 WLR 874; James Obi Achabua Vs. The State (1976) 12 SC 63 at 68; Jimoh Yesufu Vs. The State (1976) 6 SC 167.”* See: Inusa Saidu Vs. The State (1982) 4 SC 41 at 58-59.

D In Ogoala V. The State (1991) this court per Olatawura, JSC (of blessed memory) stated that *“a confessional statement made by an accused and properly admitted in law is the best guide to the truth of the part taken by an accused”*.

***The statements of the appellant and that of his co-accused are truly confessional. They were admissible and properly  
E and legally admitted in evidence by the trial court.***

From the totality of the evidence adduced by the prosecution including the statement obtained from the appellant which was found to be direct, positive and true, there is no doubt that all the elements  
F of the offence of armed robbery with which the appellant was charged along with others were present and proved. Indeed, the prosecution proved that there was a robbery incident on 30/11/1996 at No. 12A Mission Road, Benin City at the store of PW4. That the robbers including the appellant were armed with dangerous weapons including  
G jack knife. And that the appellant was one of the persons who committed the robbery.

As a result, on the evidence of the prosecution witnesses with the confessional statements of the appellant and his co-accused, upon  
H which the trial court rightly found the appellant guilty, convicted and sentenced for the two count charge, the lower court was in order and properly affirmed the conviction and sentence of the appellant by the trial court.

In the record of appeal, it is clear that the lower court made

concurring findings of fact on the evidence adduced by the prosecution. These findings are unassailable as they are based on sound principles of law. It is settled already that this court will not interfere with the concurring findings of facts of the two courts below except when such findings of fact are shown to be unreasonable or perverse and are not a result of a proper exercise of judicial discretion or there is miscarriage of justice or violation of some principles of law or procedure by the courts. See: Ngilari V. Mothercat Ltd. (1999) 13 NWLR (Pt. 636) 626, (1999) 12 SC (Pt. 11) 1; Agbomeji Vs. Bakare & Ors (1998) 9 NWLR (Pt. 564) 1 (1998) 7 SC (Pt. 1) 10; Ogbobaja V. Amiola (2009) 18 NWLR (Pt. 1172) 45. B  
C

In this case, I cannot see any good reason to interfere with the concurring findings of fact on the evidence adduced by the prosecution. The lower court rightly found that the appellant was rightly convicted based on his confessional statement, corroborated by the testimony of prosecution witnesses. Accordingly, Issue two is resolved against the appellant. D

In the final analysis, and without any further ado, this appeal is adjudged lacking in merit and liable to dismissal. The appeal is hereby dismissed. E

In the circumstance, the conviction and sentence of the appellant by the trial court on 28th day of June, 2001 which was affirmed on the 13th day of December, 2004, is hereby affirmed. F

### **ONNOGHEN JSC**

I have had the benefit of reading in advance the lead Judgment of my learned brother, ARIWOOLA JSC just delivered.

I agree with his reasoning and conclusion that the appeal is without merit whatsoever and should consequently be dismissed. G

I therefore order accordingly.

Appeal dismissed.

### **FABIYI JSC**

I have had a preview of the judgment just delivered by my learned brother - Ariwoola, JSC. I agree with the reasons therein advanced as well as the conclusion that the appeal lacks merit and H

should be dismissed.

The facts of the matter have been clearly set out in the lead judgment. I seek leave to rely mainly on same. The appellant, along with others at the trial court, stood trial on a two count charge of conspiracy to commit armed robbery and armed robbery. The trial court garnered evidence and based mainly on his confession made in Exhibit 'B' the appellant was convicted and sentenced along with others. He appealed to the Court of Appeal which heard same and dismissed it. He has decided to further appeal to this court. The appellant attempted to bank on a plea of alibi which he surreptitiously put up during his oral testimony in court. He denied being present at the scene on 30th November, 1996 when the alleged robbery took place in Benin City. He claimed to be at Lagos toll gate hawking bread. The plea of alibi should have been made at the earliest opportunity with due particulars during investigations by the Police to enable same to be investigated and ascertain its veracity or otherwise. See: *Bello v. Police* (1956) SCNLR 113, *Gachi v. The State* (1973) 1 NMLR 331; *Odu & Anr. v. The State* (2001) 5 SCNJ 115 at 120; (2001) 10 NWLR (Pt. 772) 668.

It is clear that the appellant's plea of alibi, found by the trial court and affirmed by the court below to be an afterthought, rests on a firm ground. They were, no doubt, correct. Further, the evidence on record fixed the appellant at the locus criminis at the material time. Any purported plea of alibi by the appellant fizzles into the thin air. See: *Patrick Njovens v. The State* (1973) 1 NMLR 331.

The trial court relied mainly on the appellant's confessional statement in Exhibit 'B' to nail him. It was found that same was voluntarily made. It is direct and positive with respect to the role played by the appellant during the operation. Confession is the best form of evidence to be relied upon in searching for the truth in a criminal matter, as herein. This is because no rational being will say something negative against his own interest; all things being equal. The confession was rightly relied upon by the trial court and duly affirmed by the court below. See: *Jimoh Yesufu v. The State* (1976) 6 SC 167.

The appellant admitted that his own share of the booty of operation was the sum of N8,000. It appears idle to attempt to deny the obvious. The two courts below made concurrent findings of fact on all crucial points raised in the appeal. Same was not demonstrated to

be perverse. I cannot see my way clear in interfering with same. See: *Igwe v. The State* (1982) 9 SC 174.

As usual, the appellant tried to prop the idea that the offences for which he was charged were not proved beyond reasonable doubt. Same rests on shifting sand. This is because all the essential ingredients of the two courts were clearly established. It was, no doubt, idle to have argued to the contrary. See: *Abogede v. The State* (1996) 5 NWLR (Pt. 448) 270 at 276. B

The above is just like a tip of the iceberg. My learned brother said it all. For all the reasons adumbrated in the lead judgment which I hereby adopt and my views as above expressed in support, I find that the appeal lacks merit. It is hereby dismissed. The judgment of the court below is hereby affirmed. C

### ***GALADIMA JSC***

D

I have read before now, the judgment of my learned brother *ARIWOOLA JSC*, just delivered. I agree with his reasoning leading to the conclusion that this appeal be dismissed.

The fact of this case have been set out in detail in the lead judgment. This appellant and three others were charged, tried, convicted and sentenced at the trial court to death for armed robbery. Dissatisfied, the convicts including the appellant herein, appealed jointly to the Court of Appeal, which dismissed same for lacking in merit. It affirmed the conviction and sentence of the trial court. E  
F

The appellant herein was not satisfied with the decision of the court below, hence his further appeal to this court on 4 Grounds. He distilled 4 issues while the respondent posited only 3 for determination of the appeal. G

In the appellants' brief he argued issue 1 separately, while issues 2, 3 and 4 were argued together.

I have observed that the appellant has unnecessarily proliferated issue No. 2 into three separate issues. The respondent's two issues as formulated are apt and direct to the determination of the appeal. H

This is one case, I think the appellant cannot escape the hangman's noose; not when he has created a niggling doubt in his pieces of defence. Firstly, he confessed on Exhibit 'B' that he had

accompanied the 1st, 2nd and 4th accused persons who were armed with offensive weapons to the scene of crime. The court below affirmed his conviction and sentence on the two count charge of conspiracy to commit armed robbery. In the said Exhibit 'B' appellant confessed that he was given N8,000 as his share, and by his own admission this was the first time he participated in armed robbery.

Learned counsel for the appellant conceded that neither the appellant nor the counsel that defended him raised objection to the voluntariness of the statement when it was tendered at the trial. He contended however, that the reason was because the appellant was not trained in law to know when to raise the issue of involuntariness of his confessional statement. It is on record that PW5 who tendered Exhibit A - D was not cross-examined or challenged on how the statements were obtained from the appellant and others, despite the fact that he set out graphic account of the steps he meticulously took in recording and confirming the confessional statements. Reference was made to the testimony of PW1, who was present when the 1st accused, identified the appellant and others and how they were arrested by the Police. I agree with the learned counsel for the respondent that the identity of the appellant was not in doubt. Appellant did not deny that he was in the house of the 4th accused person, (one Olufemi Ajayi) where the robbery plan was hatched. It was from there the gang proceeded to execute their plan.

The testimony of PW3 and PW4, who were eyewitnesses to the crime effectively corroborated the confessional statements recorded in Exhibit A, B, C and D. Free and voluntary confessional statements will ground a conviction even without any corroborative evidence. See *NWACHUKWU v. STATE* (2005) 4 LRCN 53 AT 75, *HASSAN v. STATE* (2001) 15 NWLR (Pt. 735) 184.

Again, the appellant failed, when he tried to raise the issue of alibi during his oral testimony at the trial court. He denied he was at the scene of the crime at that time the alleged crime was committed. He claimed he was at Lagos Toll Gate, hawking bread when the alleged robbery took place in Benin City. It should be noted that the issue of alibi was not raised by the appellant, so as to give the Investigating Police Officer opportunity to investigate the claim. The law requires the accused person to give a hint and particulars of his whereabouts at the earliest opportunity. See *GACHI v. THE STATE* (1973)



1 NMLR 331; ODU & ANOR v. THE STATE (2001) 5 SCNJ 115 at 120.

The findings of the trial court were based mainly on the appellant's confessional statements effectively corroborated by the testimony of PW1, PW3 and PW4, his co-accused. It is upon this that the court rightly found the appellant guilty, convicted and sentenced him for the two count charge. The lower court also rightly affirmed his conviction and sentence. The two courts made concurrent findings of fact on the evidence adduced by the prosecution. This court will not interfere with those findings of facts of the two lower courts, save when such findings of fact are demonstrated to be unreasonable, or perverse due to improper exercise of judicial discretion, resulting or occasioning miscarriage of justice, or violation of some principles of law or procedure. The appellant has not been able to show any of these shortcomings on the part of the two courts below. I have no cause to disturb the findings.

With the fuller reasons given in the leading judgment, I too, hold that the appeal lacks merit and it is accordingly dismissed. Appeal dismissed.

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### ***RHODES-VIVOUR JSC***

I have had the advantage of reading in draft the leading judgment prepared by my learned brother, Ariwoola, JSC. I agree that this appeal should be dismissed. I gratefully adopt the statement of facts set out in the leading judgment. When a person is arrested for committing an offence and criminal proceedings are looming, such a person becomes an accused person. If he makes a statement, oral or written acknowledging his guilt, that he committed the offence such a statement in law is a confessional statement. The statement must either admit the offence or substantially all the facts which constitute the offence. Confessional statements are only admissible in court against the maker (i.e. the accused person), if it is a voluntary acknowledgment of guilt. There must be a clear admission of guilt. Exhibit B, the appellant's confessional statement revealed that he accompanied the 1st, 2nd, and 4th accused persons, who were armed with offensive weapons to wit: Jack knife, to steal from Monday Eze's father's store. After the Robbery he was given N5,000 and an addi-

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tional sum of N3,000 when he grumbled that his share was too small. Concluding his statement he said:

*“This was the first time I involved (sic) Myself in robbery operation...”*

Exhibit B is a confession that the appellant participated in the armed robbery for which he was charged and convicted. He was paid N8,000 as his share and by his own admission it was the first time he took part in armed robbery.

How was Exhibit B admitted and was it made voluntarily?

A confessional statement voluntarily made is an admission by the maker that he committed the offence. It is the best evidence that the accused person committed the offence since it is his own confession. The fact that there was no objection when the prosecution tendered Exhibit B is conclusive evidence that it was voluntarily made and a conviction solely on it is sound. See: *Yesufu v. State* (1976) 6 SC P. 167, *N. Osuagwu v. State* (2013) 1-2 SC P. 194.

Exhibit B is a free and voluntary confession of guilt made by the appellant. It is direct and positive as to the role and reward of the appellant in the robbery and the fact that the robbery was the first he ever took part in. Exhibit B is in the circumstances a true confessional statement.

Exhibit B, the statement of the appellant was tendered without objection, by the prosecution. No evidence was led by the appellant that Exhibit B was not made voluntarily. It was after the prosecution closed its case during defence testimony that the appellant retracted Exhibit B saying he was forced to sign it after being tortured. The question of voluntariness of a confessional statement is tested at the time the prosecution seeks to tender it, and not after it has been tendered or at the pleasure of the defence. It amounts to an after-thought, a tissue of lies to object to the voluntariness of a statement after having no objection when it was admitted in evidence as an Exhibit. Exhibit B was voluntarily made.

It is desirable in some cases to have some evidence outside the confession, be it corroboration, which would, in effect, remove all doubt and establish the fact that the confession is true. See *Kopa v. State* (1971) 1 All NLR P.150, *Njoku v. State* (1992) 8 NWLR (Pt. 263) P.714, *N. Osuagwu v. State* (supra), *G. Stephen v. State* (2013) 3 SC.

Evidence led by the prosecution witnesses remained unshaken under cross-examination and in one instance there was no cross-examination. The testimony of PW1, PW3 & PW4 was one way. It pointed to the guilt of the appellant. It is affirmative evidence that Exhibit B was true.

It is the practice of this court not to upset the findings of a trial court, that are affirmed by the Court of Appeal except this court is satisfied that the findings are perverse, or cannot be supported by evidence or there is a miscarriage of justice. See *R-Benkay Nig. Ltd. v. Cadbury Nig. Plc.* (2012) 3 SC (Pt. iii) p.169, *ACN v. Lamido & 4 Ors.* (2012) 2 SC (Pt. ii) p. 163.

The reason being that it was the trial court that had the opportunity of seeing the witnesses give evidence. That court was in the best position to form an impression of the witnesses during cross-examination, to observe demeanor and conclude if the witnesses were truthful. Such findings should be respected by this court. The appellant was unable to show before this court that he did not participate in the Robbery for which he was charged and convicted. It follows naturally that concurrent findings of both courts below were not perverse, rather the findings were supported by credible evidence.

Once again I agree with my learned brother that there is no merit in this appeal. Appeal dismissed.

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