

**SUPREME COURT OF NIGERIA**  
FRIDAY 16TH MAY, 2014. SC. 142/2011  
**CORAM:- M. MOHAMMED, J. A. FABIYI,**  
**M. U. PETER-ODILI, M. D. MUHAMMAD,**  
**K. M. O. KEKERE-EKUN, JJSC**

SILAS SULE MOHAMMED ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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ALIBI - Meaning of - Alibi is a defence where accused alleges - That at the time when the offence with which he is charged was committed - He was elsewhere (H1)

ALIBI - Plea of - Time to raise - Accused must raise the defence timeously during interrogation by police - Stating his whereabouts at the material time of the crime (H2)

CRIMINAL PROCEDURE - Conviction - Confession - Court can convict solely on confessional statement of accused - Provided same was given freely and voluntarily - And without equivocation (H3)

CRIMINAL PROCEDURE - Conviction - Validity - Conviction of appellant was not solely on his cautioned statement - But validly supported by clearly established solid circumstantial evidence (H4)

**FACTS**

1<sup>st</sup> accused/appellant and 2<sup>nd</sup> accused were arraigned before the High Court of Kwara State on two counts charge of armed robbery contrary to section 1 of Robbery & Fire Arms Act Cap. 398 LFN 1990 and culpable homicide punishable with death contrary to section 221 of the Penal Code. The case against appellant is that there was a robbery attack at night at Rockfield petrol station in Ilorin, after which the corpse of one of the security guards at the station was discovered at the scene the following morning. The whereabouts of the second guard (i.e. appellant) was unknown at the material time. The robbery incident was reported to the police by the MD of the station. The search for the second guard commenced. Appellant was

not met at the police station at the time the incident was reported. Meanwhile, 2<sup>nd</sup> accused was arrested following a report of house breaking made at the same police station. It was during the interrogation of 2<sup>nd</sup> accused that he confessed to be operating a robbery syndicate. He named appellant as co-syndicate with whom he jointly operated.

2<sup>nd</sup> accused stated that appellant was away to a place in the State at the material time, to dispose off the proceeds realized during a recent robbery operation at Rockfield petrol station where a night guard was killed. Consequent upon 2<sup>nd</sup> accused confession, appellant was apprehended at another police station where he was being detained for a different offence. 2<sup>nd</sup> accused identified appellant from amongst five other crime suspects at police station. In his statement, appellant did not deny the allegation of his involvement in the robbery incident at Rockfield petrol station. At the trial, appellant and 2<sup>nd</sup> accused pleaded not guilty to the two counts charge. The confessional statements of appellant and accused were admitted in evidence after the conduct of a trial within trial. Appellant and the other made contradictory statements in their defence. At the end of trial, the court convicted both of them for lesser offences of robbery and culpable homicide not punishable with death. Aggrieved, appellant appealed to the Court of Appeal Ilorin Division. The court heard and dismissed the appeal. Not yet satisfied, appellant appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

*“(1) Whether the Court of Appeal was right to have upheld the trial court’s discountenancing of the defence of alibi put up by the appellant.*

*(2) Whether the Court of Appeal was right in affirming the conviction and sentence of the appellant by the trial court, which conviction was based solely on the purported confessional statement of the appellant.*

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

*ALIBI - Meaning of*

**1. The appellant placed utmost reliance on his plea of alibi which literally means elsewhere. It is a defence where an ac-**

**cused alleges that at the time when the offence with which he is charged was committed, he was elsewhere.** (p. 1797 G)

*ALIBI - Plea of - Time to raise*

**2. It is the duty of the accused to furnish particulars of the plea of alibi put up by him. He must furnish his whereabouts and those present with him at the material time of the incident. It is then left for the prosecution to disprove same. Failure to investigate may lead to acquittal.**

**It is basic that for the defence of alibi to be sustained, it must be raised timeously at the earliest opportunity; preferably at the interrogation by the police. The onus is always on the accused person to provide the police with information as to where he was when the crime was committed; with whom he was and what he was doing thereat. It is only when the above information is supplied by the accused that the burden shifts on the prosecution to investigate the alibi put up.**

(p. 1797 H)

*Conviction - Confession*

**3. It is trite that a court can convict an accused person solely on his confessional statement in so far as same was given freely and voluntarily and without any shred of equivocation. Where it is well proved, as herein, it will be treated as the best evidence.** (p. 1799 A)

*Conviction - Validity*

**4. As demonstrated above, the conviction of the appellant by the trial court and its affirmation by the court below were not based solely on the cautioned statement of the appellant. It had valid support by clearly established solid circumstantial evidence. The appellant failed to wriggle out of same in his bid to exculpate himself. The trial court was over generous in reducing the offences charged to lesser ones of robbery simpliciter and culpable homicide not punishable with death.**

(p. 1801 E)

**REPRESENTATION**

Kemi Balogun with Austin Udechukwu, for the Appellant  
K. Ajibade Attorney-General Kwara State with J. A. Mumini, DPP  
and M. A. Oniye, ACSC, for the Respondent

**B CASES REFERRED TO**

- Ozaki v. State (1990) 1 NWLR (pt. 124) 92  
Bekwealor v. Obasi (1990) 2 NWLR (pt. 131) 231  
Olufosoye v. Olorunfemi (1989) 1 NWLR (pt. 95) 26  
Onifade v. Olayiwole (1990) 7 NWLR (pt. 161) 130  
C Oguneye v. State (1999) 5 NWLR (pt. 604) 548  
Fatoyinbo v. A-G Western Nigeria (1966) WNLR 4  
Adedeji v. State (1971) All NLR 77  
Njovens v. State (1973) 1 NNLR 76  
D Balogun v. A-G Ogun State (2002) 6 NWLR (pt. 763) 512  
Onuchukwu v. State (1998) 4 SCNJ 36  
Sowemimo v. State (2004) 11 NWLR (pt. 385) 515  
Ukwunenyi v. State (1989) 4 NWLR (pt. 114) 131  
Saidu v. State (1982) 4 SC 41  
E Nwangbomu v. State (1994) 2 NWLR (pt. 327) 380  
Ozaki v. State (1990) 1 NWLR (pt. 124) 92

**STATUTES REFERRED TO**

- Robbery & Fire Arms (Special Provisions) Act Cap. 398 LFN 1990,  
F s. 1  
Penal Code, ss. 221, 224  
Evidence Act Cap. E14 LFN 2004, s. 138(1)

**G BOOK REFERRED TO**

Black's Law Dictionary 8th Edn.

**LEAD JUDGMENT BY FABIYI JSC**

- This an appeal against the judgment of the Court of Appeal,  
H Ilorin Division (the court below) delivered on 25th January, 2011.  
Therein, the judgment of Orilonise, J of the trial High Court of Justice, Ilorin Division, Kwara State of Nigeria, delivered on 14th December, 2006 was affirmed.

The appellant and the 2nd Accused person (Rashidi Lasisi) were

arraigned at the trial court on two counts of armed robbery contrary to section 1 of Robbery and Fire Arms (Special Provisions) Act, Cap. 398 Laws of the Federation of Nigeria and culpable homicide punishable with death for causing the death of one Obioma Nwokocha contrary to section 221 of the Penal Code respectively. The two counts were read and explained to the appellant and the co-accused. They both pleaded not guilty. The trial court garnered evidence and was duly addressed by learned counsel on both sides. The learned trial judge applied the law to the evidence adduced to the best of his ability and thereafter convicted both of them for the lesser offences of robbery and culpable homicide not punishable with death.

The appellant felt unhappy with the judgment of the learned trial judge and appealed to the court below which heard the appeal and dismissed same on 25th January, 2011.

It is apt to depict the facts of the matter leading to this appeal at a reasonable length as captured mainly in the respondent's brief of argument. Between the 9th and the early hours of 10th day of October, 2003, Rockfield petrol station along Fate Road, Ilorin was burgled by robbers.

One of the two night guards in charge of the petrol station by name Obioma Nwokocha was found dead with his hands and legs tied up and injury on his head in the morning of 10th October, 2003. The whereabouts of the second guard - the appellant herein, was not known at that material time.

The Managing Director of the Petrol Station - PW3 reported the incident at 'E' Division Police Station, Kulende, Ilorin in the morning of 10th October, 2003.

PW.3 led Police Officers which included P.W.2 from 'E' Division to the scene of incident where the death of the night guard was confirmed. The search for the whereabouts of the other guard was initiated. PW.3 did not meet the 2nd guard at the 'E' Division police station contrary to the appellant's defence that when they were attacked by robbers, he ran to the same 'E' Division police Station to make a report of the robbery incident but he was detained by the Police.

The search for the appellant continued. Kuta Guard Limited, the employer of the two night guards was contacted. The company according to PW.1 did not know the whereabouts of the appellant. It

obliged the Police with his enlarged photograph for him to be identified if found.

The 2nd accused at the trial court was arrested on 20th October, 2003 sequel to a report of house breaking at the same 'E' Division, police Station, Kulende, Ilorin by P.W.4. The 2nd accused during interrogation confessed to be operating a syndicate. He named the appellant as a co-syndicate member with whom he jointly operated and who was away to Ajase-Ipo, Kwara State at the material time to dispose off the proceeds realized during a recent robbery operation at Rockfield Petrol Station, along Fate Road, Ilorin where a night guard was killed.

The 2nd accused volunteered a statement in respect of same. The Statement was admitted as Exhibit 4 after a trial-within-trial proceeding was conducted. The 2nd accused person led the police to Ajase-Ipo in search of the other syndicate member. At the material time, the appellant was apprehended and in custody of Ajase-Ipo Police Station for another offence. The 2nd accused identified the appellant from among other five accused persons in Police custody at Ajase-Ipo. The appellant did not deny the allegation of his involvement in the robbery incident at Rockfield petrol station. On their way back to Ilorin, the appellant and the 2nd accused were passing the buck for the unexpected death of the other night guard at Rockfield Petrol Station.

The appellant and the 2nd accused later volunteered confessional statements which were admitted as Exhibits 3 and 5 after a trial-within-trial proceedings. After their arrest, the managements of both Kuta Guards Limited and Rockfield petrol station identified the appellant as the other night guard attached to the petrol station and whose whereabouts was not known after the robbery incident. At the point of their arrest, neither of them raised the defence of alibi nor denied the commission of the offence. Both the appellant and 2nd accused person put up the defence of alibi for the first time during their defence at trial.

The prosecution called four witnesses and tendered five exhibits. Each of the two accused persons testified. Their defences contradicted voluntary statements earlier made by them. The learned trial judge did not believe their evidence. In a considered judgment, the trial judge found the appellant and the 2nd accused guilty of

lesser offences of robbery simpliciter contrary to section 1 (1) of robbery and Fire Arms (Special Provisions) Act and culpable homicide not punishable with death contrary to section 224 of the Penal Code. The appellant and the 2nd accused person were accordingly sentenced.

The appellant felt unhappy with the stance of the trial court and appealed to the court below. Four grounds of appeal accompanied the Notice of Appeal. The court below delivered its judgment on 25th February, 2011. The appeal of the appellant was found unmeritorious and consequently dismissed.

The appellant felt dissatisfied with the position taken by the court below and appealed to this court. His Notice of Appeal was attended by four grounds of appeal.

On 27th February, 2014 when the appeal was heard, learned counsel on both sides of the divide, each adopted and relied on briefs of argument filed by them. While the appellant's counsel urged that the appeal be allowed, the respondent's counsel urged that the appeal be dismissed.

On page 5 of the appellant's brief filed on 09-08-2011, the two issues submitted on behalf of the appellant for determination read as follows:-

*"(1) Whether the Court of Appeal was right to have upheld the trial court's discountenancing of the defence of alibi put up by the appellant. (Ground 1)*

*"(2) Whether the Court of Appeal was right in affirming the conviction and sentence of the appellant by the trial court, which conviction was based solely on the purported confessional statement of the appellant. (Grounds 2, 3 & 4)"*

On page 7 of the respondent's brief of argument, the two issues decoded for due determination of the appeal read as follows:-

*"(i) Whether the court below was right when it held that there was no merit in the alibi raised by the appellant and affirmed his conviction by the trial court. (Ground one)*

*(ii) Whether the court below was right to have affirmed the conviction of the appellant for the offences of robbery and culpable homicide not punishable with death. (Grounds 2, 3 & 4)*

Arguing issue 1 which relates to defence of alibi, learned counsel observed that the purport of the defences is that the accused was

elsewhere at the time of the alleged offence. Reliance was placed on the decision in *Ozaki & Anr. v. The State* (1990) 1 NWLR (Pt. 124) 92.

Learned counsel maintained that the appellant raised the defence of alibi in his evidence which the court below discountenanced on the basis that the appellant had made a confessional statement. Learned counsel submitted that the failure of the respondent to lead evidence in rebuttal of the evidence adduced by the appellant as well as the failure of the courts below to properly evaluate the defence of alibi put up by the appellant amount to a violation of his right to fair hearing. The cases of *Bekwealor v. Obasi* (1990) 2 NWLR (Pt. 131) 231 at 260; *Olufosoye v. Olorunfemi* (1989) 1 NWLR (Pt. 95) 26; *Onifade v. Olayiwole* (1990) 7 NWLR (Pt. 161) 130.

Learned counsel further submitted that the effect of a failure by a court to consider a particular defence put forward in a matter is that there has been a failure of justice and the consequence of same is that such judgment ought to be set aside for its violation of the right to a fair hearing.

The case of *Oguneye v. The State* (1999) 5 NWLR (Pt. 604) 548 at 570 was cited. Learned counsel maintained that the failure of the prosecution to provide rebuttal evidence to the appellant's plea of alibi was rather damming to the case of the prosecution. It was stressed that when the defence of alibi is put up, as herein, failure on the part of the prosecution to investigate it may cast some doubt on the probability of the case of the prosecution. The cases of *Fatoyinbo v. A.G Western Nigeria* (1966) WNLR 4 at 6; and *Oyewunmi Adededeji v. The State* (1971) All NLR 77 were cited. As well, it was stressed that the burden is on the prosecution to disprove the defence of alibi; citing the cases of *Njovens v. The State* (1973) 1 NNLR 76; *Segun Balogun v. A.G Ogun State* (2002) 6 NWLR (Pt. 763) 512 at 536.

Learned counsel, on this issue, urged that the decision of the court below should be set aside for failure to dispassionately consider the defence of alibi and the evidence adduced by the appellant in support thereof before dismissing the appellant's appeal.

On behalf of the respondent, learned counsel maintained that the court below was right to have discountenanced the defence of alibi raised for the first time in court by the appellant; and on that score, among other reasons, affirmed the appellant's conviction.

Learned counsel submitted that the defence of alibi is of no assistance to the appellant, having not been raised timeously and in the face of overwhelming evidence showing the contrary to his defence of a plea of alibi. Learned counsel further asserted that the defence must be raised timeously at the earliest opportunity so as to enable the police investigate same. The case of Balogun v. A.G Ogun State (2002) 6 NWLR (Pt. 763) 512 at 536 was cited. B

It was stressed that as the appellant put up his defence of alibi in court, there was no information about the appellant's plea of alibi to be investigated by the police. It was submitted that where there is evidence fixing the accused at the scene of crime, as herein, the defence of alibi is automatically destroyed. Reliance was placed on the decisions in Onuchukwu v. The State (1998) 4 SCNJ 36; Sowemimo v. The State (2004) 11 NWLR (pt. 385) 515, Ukwunenyi v. The State (1989) 4 NWLR (Pt.114) 131 at 155- 156. C D

Learned counsel submitted that with respect to the statement of the appellant, the court can convict him solely on his confessional statement in so far as same was given freely and voluntarily by the appellant; relying on the decisions in Saidu v. The State (1982) 4 SC 41 and Nwangbomu v. The State (1994) 2 NWLR (Pt. 327) 380 at 397. E

Learned counsel urged the court to hold that there is no substance in the alibi raised out of time by the appellant.

He maintained that there were overwhelming pieces of evidence which fixed the appellant at the scene of crime and his active participation in the commission of the offences charged. He maintained that as a matter of fact, the appellant initiated the commission of the crime by inviting the 2nd accused to the petrol Filling Station where he was a night guard. F G

***The appellant placed utmost reliance on his plea of alibi which literally means elsewhere. It is a defence where an accused alleges that at the time when the offence with which he is charged was committed, he was elsewhere.*** See: Ozaki & Anr. v. The State (1990) 1 NWLR (Pt. 124) 92 at 109. H

***It is the duty of the accused to furnish particulars of the plea of alibi put up by him. He must furnish his whereabouts and those present with him at the material time of the incident. It is then left for the prosecution to disprove same. Fail-***

**ure to investigate may lead to acquittal.** See: Yanor v. The State (1965) NMLR 337, Queen v. Turner (1957) WRNLR 34; 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.

**B It is basic that for the defence of alibi to be sustained, it must be raised timeously at the earliest opportunity; preferably at the interrogation by the police. The onus is always on the accused person to provide the police with information as to where he was when the crime was committed; with whom he was and what he was doing thereat. It is only when the above information is supplied by the accused that the burden shifts on the prosecution to investigate the alibi put up.** See: Balogun v. A.G. Ogun State (supra) at 536.

**D** In this matter, the appellant did not put up his defence of alibi until he got to the court. There was no information about his plea of alibi to be investigated by the police.

Even then, in his evidence before the court, the appellant said he ran to 'E' Division, Kulende police Station to report the attack by robbers on Rockfield Petrol Station early on 10-10-2003 and was there detained by the police. P.W.3 the owner of the Petrol Station said when he went there in the morning of 10-10-2003 he did not meet the appellant thereat. It is unthinkable that the same police Station would go about searching for him even to Ajase-Ipo if he was being held by them. In the same vein, the appellant's employer (Kuta Guards) did not know his whereabouts and even assisted in his search by giving the prosecution an enlarged photograph of the appellant. Appellant's voluntary statement - Exhibit 3 and the evidence of the 2nd accused fixed him at the locus criminis. In short, there is a stronger and more cogent evidence which nullified the plea of alibi put up by the appellant. Same automatically collapsed. See: Patrick Njovens v. The State (supra) at 76; Onuchukwu v. The State (supra), Sowemimo v. The State (supra) and Ukwunenyi v. The State (supra) at page 155.

It must be made clear that the court below did not discountenance the appellant's plea of alibi based only on the confessional statement alone but also on other identified credible evidence as well. The appellant's statement was found to be voluntary after a trial-

within-trial was conducted and there is no appeal against the ruling of the trial court on the voluntariness of the confessional statement.

***It is trite that a court can convict an accused person solely on his confessional statement in so far as same was given freely and voluntarily and without any shred of equivocation. Where it is well proved, as herein, it will be treated as the best evidence.*** See: Nwangbomu v. The State (supra) at page 397. B

The court below in affirming the trial court's decision had no difficulty in finding that the plea of alibi of the appellant was totally devoid of any substance. I totally agree with same. I hereby resolve issue 1 against the appellant and in favour of the respondent without any hesitation. C

Arguing issue 2, learned counsel submitted that the prosecution has the burden to prove the offences charged beyond reasonable doubt. Learned counsel referred to section 138 (1) of the Evidence Act, Cap. E14, Laws of the Federation of Nigeria, 2004 and cited the case of Woolmington v. DPP (1935) A.C. 462 and a host of other relevant decided authorities. D

Learned counsel maintained that the guilt of the appellant was not proved beyond reasonable doubt. It was stressed that there is no clear evidence on record relied upon by the courts below apart from the confessional statement of the appellant - Exhibit 3 which was seriously contested. E

Learned counsel stressed that the court below was wrong to have affirmed the conviction and sentence of the appellant by the trial court which conviction was based solely on the confessional statement of the appellant. F

On behalf of the respondent, it was submitted by learned counsel that the court below was right to have affirmed the conviction of the appellant. He stressed that the conviction was affirmed not only based on Exhibit 3, appellant's confessional statement, but also on other circumstantial evidence that are cogent, compelling and convincing as well. He submitted that evidence was led at the trial which established the ingredients of the offence of robbery that took place at Rockfield Petrol Station, Fate Road, Ilorin against the appellant who was proved to have participated in the crime actively. He referred to the evidence adduced by P.W.1, P.W.2, P.W.3 and that of the appellant as well. G  
H

Learned counsel urged the court to disregard minor contradictions pinpointed by the appellant's counsel. He maintained that contradictions that do not go to the substance of the case, as herein, will not affect the case of the prosecution. He cited *Agbo v. The State* (2006) All FWLR (Pt. 309) 1380 at 1393. It should be stressed at this point that contradiction in the evidence of the prosecution that will be fatal must be substantial. Minor contradiction which did not affect the credibility of witnesses may not be fatal. Contradiction must relate to the substance. It must touch on an element of the offence(s) charged. Trivial and miniature contradiction should not vitiate a trial. See: *Ankwa v. The State* (1969) 1 All NLR 133; *Queen v. Iyanda* (1960) SCNLR 595; *Omisade v. Queen* (1964) 1 All NLR 233; *Sele v. The State* (1993) 1 SCNJ 15 at 22-23, (1993) 1 NWLR (Pt. 269) 276.

It should be stated in clear terms that there is no substance in the alleged discrepancy in the time the appellant resumed duty on 9th October, 2003 which the appellant stated was around 20.50 hours and which PW.3 stated as being around 7.00pm. The substance of the matter is that the appellant reported for duty that day and was actually seen at the filling station before the crime was committed. The surmised discrepancy or contradiction has nothing to do with any element of the two offences charged. In any event, the use of such words like 'about' and 'around' express some sort of uncertainty, in respect of time. It is not a serious point to capitalize upon. See: *Akpa v. The State* (2008) 7 MJSC 77 at 90; *Awopejo v. The State* (2000) 6 NWLR (Pt. 659) 1 at 13; *Vee pee Ind. Ltd. v. Cocoa Ind. Ltd.* (2008) 7 MJSC 125 at 140 and *Rex v. Eronim* 14 WACA 366; all cited by respondent's counsel to the point.

Let me now move to the point that should be made with clarity. With respect to the offence of robbery, the evidence of PW.1, PW.2, PW.3 and even that of the appellant confirmed that the mini mart of Rockfield petrol station Fate Road, Ilorin was burgled by robbers in the early hours of 10th October, 2003. There was evidence that the locks of some doors at the petrol station were broken, offices ransacked and valuable items carted away. These facts conclusively proved that indeed, robbery incident took place. The prosecution demonstrated the involvement of the appellant and his cohort in the commission of the crime.

The arrest of the appellant was facilitated by the 2nd accused. Same negate the defence of alibi put up by the appellant. P.W.2, whose evidence was believed by the trial court and affirmed by the court below, stated how the appellant was apprehended at Ajase-Ipo Police Station and how the appellant and his cohort shifted blames for, and regretted the death of the other guard-Obioma Nwokocha during the robbery incident. The appellant's confessional statement - Exhibit 3 confirms same with great detail and precision. No doubt, ingredients of the offence of robbery were clearly established. B

With respect to the offence of culpable homicide, the death of Obioma Nwokocha, the late guard, is not in doubt. C

P.W.1, P.W.2 and P.W.3 confirmed same in their evidence.

It is glaring that the appellant, in his statement, admitted killing the deceased guard after tying his hands and legs and struck him with iron rod on the head. He was found dead in his pool of blood early on 10-10-2003 by the stated witnesses. It was proved that the deceased died and that the appellant and his cohort perpetrated the killing. No doubt, they intended the natural consequence of their act. See: Ahmed v. The State (1999) 7 NWLR (Pt. 612) 641. D

***As demonstrated above, the conviction of the appellant by the trial court and its affirmation by the court below were not based solely on the cautioned statement of the appellant. It had valid support by clearly established solid circumstantial evidence. The appellant failed to wriggle out of same in his bid to exculpate himself. The trial court was over generous in reducing the offences charged to lesser ones of robbery simpliciter and culpable homicide not punishable with death.*** E F

The two courts below made concurrent findings of fact on all crucial issues canvassed in this appeal. They have not been shown to be perverse or against the current of plausible evidence on record. I shall not interfere with same. It is not in the character of this court to so do. See: Shorumo v. The State (2010) 12 SC (Pt. 1) 73 at 96, 102; (2010) 19 NWLR (Pt. 1226) 73; Igwe v. The State (1982) 9 SC 174; Victor v. The State (2013) 12 NWLR (Pt. 1369) 465 at 485. G H

No doubt, the prosecution proved all the essential ingredients of the offences charged beyond reasonable doubt as postulated by Lord Sankey, L. C. in Woolmington v. DPP (supra) 462. All the essential ingredients of the two offences charged were clearly estab-

lished. It was idle to have argued to the contrary. See: *Alabi v. The State* (1993) 7 NWLR (Pt. 307) 511 at 523; *Abogede v. The State* (1996) 5 NWLR (Pt. 448) 270 at 276. I resolve issue 2 against the appellant, as well.

On the whole, I find that the appeal is devoid of merit.

B It is hereby dismissed. The appellant should thank his star for the reduced sentence imposed by the learned trial judge and affirmed by the court below in the prevailing circumstance of this heinous matter. I hereby keep my peace.

C \_\_\_\_\_

### **MOHAMMED JSC**

On 10th October, 2003, there was an armed robbery operation carried out at the premises of the Rock Field Petrol Station in D Ilorin Kwara State. The armed robbery operation led to the killing of the Security Guard of the Petrol Station one Obioma Nwokocha. The evidence on record shows that the Appellant in this appeal also participated in the armed robbery operation. The Appellant's confessional statement recorded by the Police in the course of their investigation which was evidence as Exhibit 4, clearly admitted the participation of the Appellant in the act of the armed robbery and causing the death of the deceased Obioma Nwokocha.

The feeble defence of alibi which the Appellant attempted to raise failed because the evidence on record including his own confessional statement squarely pinned down the Appellant at the scene of the crime.

I have been privileged before today of reading the judgment of my learned brother Fabiyi JSC which has just been delivered. I agree entirely with the reasoning and the conclusion that the appeal lacks merit and ought therefore be dismissed. On the evidence on record, the Appellant must count himself very lucky for having escaped with the conviction for armed robbery and culpable homicide not punishable with death for which the Court below affirmed the sentences of 21 years imprisonment for the offence of armed robbery and 14 years imprisonment for the offence of culpable homicide not punishable with death. Accordingly, I also dismiss the appeal and further affirm the conviction and sentence passed on the Appellant by the trial High Court and affirmed by the Court of Appeal.

**PETER-ODILI JSC**

I am in total agreement with my learned brother, John Afolabi Fabiyi JSC, in the judgment just delivered by him including the reasoning as contained. To register my support I shall make some comments. B

The appellant was the 1st of the two accused persons at the kwara State High Court presided over by Hon. Justice Banji Orilonishe who delivered judgment in respect thereof on the 14th day of December 2006. The two accused persons were tried on charges of armed robbery contrary to Section 1 of the Robbery and Firearms (Special Provisions) Act and culpable homicide punishable with death, contrary to Section 221 of the Penal Code. C

The appellant and the 2nd accused, Rashidi Lasisi were however convicted for the lesser offences of robbery and culpable homicide not punishable with death. Not satisfied he appealed to the Court of Appeal, Ilorin Division or court below for short, which appear was dismissed in a judgment delivered on 25th January, 2011. Again dissatisfied the appellant has come before this court upon four grounds as contained in the Notice of Appeal dated and filed on 15th February, 2011. E

**FACTS BRIEFLY STATED**

It is on record that between the 9th and the early hours of 10th day of October, 2003, Rockfield petrol station, along Fate Road, Ilorin was burgled by robbers. In the morning of 10th October, 2003 one of the two night guards in charge of the petrol station by name Obioma Nwakocha (a. k. a. Baba Ibo) was found dead in his pool of blood, with his hands and legs tied up and injury on his head. The where-about of the second night guard by name Silas Sule Muhammed (the 1st accused at the trial and the appellant herein) was not known at that material time. F G

Evidence was led on record that the Managing Director of the petrol station, Alhaji Muhammed Lawal (PW3 at the trial) reported the robbery incident at "E" Division, Police Station, Kulende, Ilorin in the morning of 10/10/03. The said PW3 led police Officers from "E" Division to the scene, which included Corporal Lawrence Ogunwusi (PW2 at the trial), where the death of the night guard was confirmed and the search for the where about of the guard was commenced. H

It was in evidence that the Managing Director of the petrol station (PW3) did not meet the missing night guard (Silas Sule Mohammed - the appellant) at “E” Division police Station, Kulende, Ilorin, contrary to the defence of the appellant that when they were attacked at the petrol station by four (4) robbers, he ran to the same  
 B “E” Division Police station to make a report of the robbery incidence, but he was detained by the police.

The search for the appellant continued. Kuta Guard limited, the security outfit that employed and posted the two night guards to  
 C Rockfield petrol station was contacted. The Company did not know the whereabouts of the appellant and even obliged the police with his enlarged photograph for him to be identified if found. The Manager of Kuta Guard Limited, one Mr. Calistus Katinga gave evidence at the trial as PW1.

D The 2nd accused at the trial was arrested on 20th October, 2003 sequel to a report of house breaking at the same “E” Division Police Station, Kulende, Ilorin by one Mr. Olusola Adebayo (PW4 at the trial). The 2nd accused was arrested at the scene of that crime, with the use of tear-gar while he was hiding under a big water con-  
 E tainer in the premises of PW4.

It was during interrogation of the 2nd accused for the offence of house breaking that he confessed at “E” Division to be operating a syndicate. The 2nd accused named the appellant, Silas Muhammed,  
 F as co-syndicate with whom he jointly operated and who according to the 2nd accused was away to Ajase-Ipo, Kwara State at the material time, to dispose off the proceeds realized during a recent robbery operation at Rockfield petrol station, along Fate Road, Ilorin where a night guard was killed.

G The 2nd accused volunteered a statement in respect thereof and after the said statement had been tested through the rigour of trial-within-trial proceedings, it was admitted in evidence as Exhibit  
 4.

H Consequent on the 2nd accused person’s confession in Exhibit 4, he led the team of Policemen to Aiase-Ipo, Kwara State in search of his other syndicate. At the material time, the appellant was already apprehended and was in custody of Ajase-Ipo Police Division, again for another offence. The 2nd accused identified the appellant from amongst other five (5) accused persons in Police cus-

tody at Ajase-Ipo and the appellant did not deny the allegation of his involvement in the robbery incident at Rockfield petrol station. Rather, on the way back to Ilorin, the appellant and the 2nd accused were passing buck for the unexpected death of the other night guard (a. k. a Baba Ibo) at Rockfield petrol station.

The appellant and the 2nd accused later volunteered confessional statements which after a trial-within-trial proceeding were admitted as exhibits 3 and 5. B

After their arrest, both the Management of Kuta Guard Limited and Rockfield petrol station identified the appellant as the other night guard attached to the petrol station and whose where about was not known after the robbery incident. C

At the time of arrest none of the two accused persons denied the commission of the offence, nor raised the defence of alibi which they later put up for the first time at the trial in the course of their defence. D

The prosecution called four witnesses and tendered five exhibits while each accused testified in defence of himself and called no other witness. The trial court at the end found the accused persons guilty and sentenced them for homicide not punishable with death contrary to section 223 of the penal Code and also Armed Robbery. E

The appellant dissatisfied appealed to the Court of Appeal or the court below which dismissed the appeal and affirmed the decision and orders of the trial court hence this appeal to the Supreme Court by the appellant who felt aggrieved. F

In keeping with the Rules of the Supreme Court, the parties filed their respective briefs which they accordingly exchanged. On the 27th day of February, 2014 day of hearing, learned counsel for the appellant Mr. Kemi Balogun, adopted the brief settled by Mrs. Abimbola Akeredolu and filed on the 9th day of August, 2011. Two issues for determination were couched and they are as follows: G

1. Whether the court of Appeal was right to have upheld the trial court's discountenancing of the defence of alibi put up by the appellant (Ground 1). H

2. Whether the Court of Appeal was right in affirming the conviction and sentence of the appellant by the trial court which conviction was based solely on the purported confessional statement of the appellant (Ground 2, 3 and 4).

Mr. Kamardeen Ajibade Attorney - General and learned counsel for the respondent in turn adopted the Brief Argument settled by Mr. M. A. Oniye, filed on 30th day of July, 2012 and deemed filed on 7th day of November, 2012. In the Brief were distilled two issues for determination which are thus:

B 1. Whether the court below was right when it held that there was no merit in the alibi raised by the appellant and affirmed his conviction by the trial court. (Ground 1).

C 2. Whether the court below was right to have affirmed the conviction of the appellant for the offences of robbery and culpable homicide not punishable with death, (Grounds 2, 3 and 4).

It seems to me more convenient to use the issues as crafted by the appellant.

#### ISSUE ONE

D The question herein raised has to do with the rightness of the Court of Appeal in upholding the discountenancing of the defence of alibi put up by the appellant at the trial court.

E Learned counsel for the appellant contended that the appellant had raised his alibi in a way to show he was not at the scene of the criminal acts complained of. That the trial court's rejection of the defence is not borne out of the record and the Court of Appeal ought to have rectified the anomaly. That the two courts were wrong to have discountenanced the alibi on the sole basis of the confessional statement made by the appellant. He stated, that the police had F enough information from the appellant to investigate and possibly debunk the alibi raised. He cited *Ozaki & Anor v The State* (1990) 1 NWLR (Pt. 124) 92; *Bala & Anor v COP* (1973) NNLR 26.

G For the appellant was contended that the failure of the respondent to lead evidence in rebuttal of the evidence adduced by the appellant in this case as well as the failure of the courts below to properly evaluate the defence of alibi put up by the appellant amounted to a violation of the appellant's right of fair hearing. He cited *Bekwealor v Obasi* (1990) 2 NWLR (Pt. 131) 231 at 260; H *Olufosoye v Olurunfemi* (1989) 1 NWLR (Pt. 95) 26 etc.

Learned counsel said the failure of the prosecution to investigate the alibi cast some doubt on the probability of the case of the prosecution which should be to the advantage of the appellant.

He referred to *Fatoyinbo v A. G. Western Nigeria* (1966)

WNLR 4 at 6; Oyewunmi Adedeji v. The State (1971) ALL NLR 77.

He went on to say that appellant cannot be accused of not raising the alibi timeously when he was not given the opportunity to raise the defence early as the prosecution was more interested in forcefully extracting a confessional statement from him. He was only able therefore to put across the alibi defence on reaching the safe B haven of the court.

In response, learned counsel for the respondent said it is the law that for the defence of alibi to be sustained, it must be raised timeously and promptly by the accused person. That the onus is al- C ways on the accused person to provide the police with the information of his alibi with the details like where he was when the crime was committed, with whom he was and what he was there for.

That it is then the burden shifts to the prosecution to investi- D gate the alibi. That these processes did not happen in this instance. He cited Balogun v A. G Ogun State (2002) 6 NWLR (Pt. 763) 512 at 536; Onuchukwu v The State (1988) 4 SCNJ 36; Soweimimo v The State (2004) 11 NWLR (Pt. 385) 515 etc.

The appellant herein hangs on the alibi he had put forward to avail him which the respondent is vehemently resisting on the ground E that the conditions for the utilization of the defence of alibi in favour of the appellant. What the Court of Appeal found and stated would be helpful and I will quote for effect and thus per Abdullahi JCA:

*"I am of the considered view that the alibi of the appellant was F totally devoid of any substance in view of his own free and voluntary confessional statement (Exhibit 3) fixing himself at the scene of the crime on the 9th/10th October, 2003 and his active participation in the crime committed thereat. It is to be observed that PW3, the Man-aging Director of the Rockfield Petrol gave evidence contrary to the G claim of the appellant, that he did not meet the appellant at "E" Division on 10/10/2003 when he went to lodge his complaint*

*...It is pertinent to state at this stage that, the onus of raising the defence of alibi rests with an accused person. He must provide the H police with information of his alibi i. e. by giving the police information of where he was when the crime was allegedly committed, with whom he was and what he was there for. Let me also say that it is only when the above information is supplied by an accused person that the burden shifts on the prosecution/police to investigate the*

*alibi. See Balogun v. A.G. Ogun State (2002) 6 NWLR (Pt. 763) 512 - 536.*

*In the case we have in hand, as can be seen from the Records, the appellant did not put up the alibi until he got to court and in the witness box. This being the case, I am of the firm view that there was*  
 B *no information whatsoever about the appellant's purported alibi to be investigated by the police.*

*Again, it is also trite that where there is evidence fixing the accused at the scene of crime like in the case in hand, the defence of*  
 C *alibi is automatically destroyed. See Onuchukwu v The State (1998) 4 SCNJ 36 and Sowemimo v The State (2004) 11 NWLR (Pt. 385) P. 515.*

*It is instructive to state at this stage that, it is now settled beyond dispute that though our courts should not disregard evidence*  
 D *tending to establish the defence of alibi but that defence can be brushed aside where there is more cogent evidence that counter-balances or neutralizes and nullifies a defence of alibi. I am of the firm view that the confessional statement of the appellant fixed him at the*  
 E *scene of the crime. That aside, the testimonies of PW2 and PW3 are stronger, more cogent than the concocted alibi of the appellant and that piece of evidence has indeed counter-balanced, neutralized and nullified the appellant's alibi. See the case of Ukwunnenyi v The State (1989) 4 NWLR (Pt. 114) 131 at 155 - 156."*

*The court below used stronger words to dispatch the defence of the alibi put forward by the appellant and this indeed is backed by the Record and what the law has provided as condition precedent before the defence of alibi can be useful to an accused. In this regard,*  
 F *it has to be restated that it is a cardinal principle of our criminal law that the defence of alibi to be of value, it must be raised timeously and promptly by the accused person. In other words it behoves an*  
 G *accused at the earliest opportunity preferably at the interrogation by the police, a burden or onus on an accused which cannot be shaken off or placed on another. The situation only changes when the ac-*  
 H *cused has made available the above information with details of where he was at the time of incident and with whom with details as to how those persons with whom he was outside the scene of crime could be reached to confirm his assertion.*

*The above done, it has to be reiterated that in spite of the*

accused giving details of his whereabouts at the time of the commission of crime and who could confirm that, if what is on ground from the prosecution fixes the accused at the scene of crime at the relevant time, then the alibi is naturally neutralized or demolished. In the case in hand, the appellant first raised his alibi not at the time of interrogation or even at the time of making his statement but in the witness box as an accused testifying in his defence. A situation that makes it difficult to even take the alibi as a serious defence. As if that was not enough is the fact that appellant claimed to be in police custody for some other incident at the time of the crime in issue and when the incident had occurred the PW3, owner of petrol station had gone to the same police station to make a report in the morning of 10th October, 2003 and did not meet appellant there. Also the same policemen to whom were allegedly holding the appellant in custody went in search of the same appellant. Again the appellant's employer had no knowledge of where the appellant was and had been part of the police search party.

Clearly what has come out is a situation that called for the brushing aside the defence of alibi in the face of stronger and more cogent evidence that counter-balanced and nullified the alibi. That is with the added fact that the alibi was brought forth too late in the day. The conclusion of the two courts below came rightly that the alibi was a non starter and failed as the appellant was well fixed at the scene of crime and at the material time. The cases of *Balogun v A. G. Ogun State* (2002) 6 NWLR (Pt. 765) 512; *Onuchukwu v. The State* (1998) 4 SCNJ 36; *Sowemimo v. State* (2004) 11 NWLR (Pt. 385) 515; *Ukwunnenyi v. The State* (1989) 4 NWLR (Pt. 114) 131 at 155 - 156, have been very helpful.

In the light of the above, the answer to this issue one is positive and against the appellant.

## ISSUE TWO

The question herein asked if the Court of Appeal was right in affirming the conviction and sentence of the appellant by the trial court based solely on the purported confessional statement of the appellant.

Canvassing for the appellant, learned counsel stated that the burden of proving that an accused person committed an offence is on the prosecution and that the standard of the burden of proof

required of the prosecution is proof beyond reasonable doubt. He cited Section 138 (1) of the Evidence Act. That the burden of proving that any person has been guilty of a crime or wrongful act is, subject to the provisions of Section 141 of the Evidence Act, on the person who asserts it, whether the commission of such act is or is not  
 B directly in issue in the suit. He referred to *R. v Eka* (1945) 11 WACA 39; *Woolmington v DPP* (1935) AC 462 etc.

Learned counsel submitted that the confessional statement was not voluntarily given even though the two courts blow held otherwise. That the prosecution was unable to offer an explanation as to  
 C how the appellant came about a broken leg as well as the failure of the prosecution to cross-examine the appellant means that the appellant's evidence in this regard must be accepted as the truth i.e. that the confession was obtained involuntarily. He cited *Daggash v*  
 D *Bulama* (2004) NWLR (Pt. 892) 144 etc.

That the conviction and sentence of the appellant cannot stand based on the involuntarily obtained confessional statement, Exhibit 3. He cited *Edet Offiong Ekpe v. The State* (1994) 9 NWLR (Pt. 368) 263.

In response, learned counsel for the respondent stated that the settled position of law is that courts of law can convict an accused person solely on his confessional statement in so far as the said statement was given freely, voluntarily and equivocally by the accused. He cited *Saidu v State* (1982) 4 SC 41; *Nwangbomu v The State*  
 F (1994) 2 NWLR (Pt. 327) 380 at 397.

It was also submitted that the offence of culpable homicide in respect of the death of the night guard by name Obioma Nwakocha (a.k.a. Baba Ibo) was not in doubt and that the appellant and co-  
 G accused intended the natural consequence of their act when they administered an over-dose of sleeping drugs on the deceased and when he refused to sleep in good time had hit him with a hard object on the skull. He cited *Ahmed v State* (1999) 7 NWLR (Pt. 612) 641.

That the proof in criminal cases is beyond reasonable doubt.  
 H Also that it is not all contradictions that are substantial and material as the law admits of minor ships. He referred to *Bakare v The State* (1987) 1 NWLR (Pt. 52) 579.

For the respondent was also submitted that there is no basis to upset the concurrent findings and conclusion of the two courts be-

low. He relied on *Afolalu v State* (2010) 6 - 7 MJSC 187; *Oludamilola v The State* (2010) 3 MJSC (Pt. 11) 108; *Igwe v The State* (1982) 9 SC 172; *Ogboodu v The State* (1987) 2 NWLR (Pt. 54) 20.

In tackling the issue with the question raised I shall reproduce the said confessional statement of the appellant, admitted after a trial within trial since the appellant in court had alleged the involuntariness of the statement contending that it was produced under torture. B

**"THE STATEMENT OF WIT/ACCUSED**

**"E" DNILORIN STATION KWARA COMMAND**

**NAME: SILAS SULE MOHAMMED**

**TRIBE: NIGERIAN/IGALA**

**AGE: 25 YEARS**

**OCCUPATION: NIGHT GUARD**

**RELIGION: CHRISTIANITY**

**ADDRESS: OPO - MALU AREA, ILORIN**

*I have decided to make a complaint against you before the court, do you wish to make a statement? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and tendered in evidence.*

**RHT OF SULE 22/10/03**

*I of above named and address having been cautioned as above voluntarily elect to say as follows:*

*That I am a native of Ankpa in Ola Maboro Local Government Area of Kogi State. I attended NA primary School Ankpa where I left in Primary 4. It was thereafter I started doing some labourer work, I joined Kuta Security Ltd, Ilorin as security guard sometimes in August, 2003 since then I have been posted to Rockfield Petroleum Ltd opposite former FRSC Office Fate Ilorin as night guard. Two of us including myself and one Obioma a.k.a. Baba Ibo were posted to take care of the filling station between 1800 hrs to 0700 hrs when the staffers would have reported for the day's duty at the filling station. On Thursday, 9th October, 2003 i came to my place of work very late as I resumed about 2050 hrs for duty. Before I resume for duty, I have made an arrangement with one Rasheed Lasisi to come over to the place for an operation to steal things from the filling station. I also gave some tablets including piritons to Obioma the second guard so that he would fall asleep quickly to allow for the operation. Rasheed Lasisi, came to the filling station at about 9.45 pm*

while he met Obioma already sleeping. When it was getting to 12.00 midnight I tighten Obioma's two legs together while Rasheed Lasisi tighten his two hands together and also blind folded him. It was in this process that "Baba - Ibo" Obioma gave up and died after some weapons like planks and iron rod were used to bit him in the head and left him in the pool of his blood. Immediately after this, we went ahead and gained access into the Mini - Mart of the filling station and carted away some valuables while I left the city of Ilorin to Ajase - Ipo, Kwara State with some of them before the police came to the hold where I was arrested on Monday, 13 October, 2003 with some of the stolen items. At Ajase-Ipo, I was arrest and taken to Ajase -Ipo police station and later arraigned to Court on F.I.R. On Monday 20th October, 2003 I was then ordered to be remanded in police custody till Monday 27th October, 2003. On Wednesday, 22nd October, 2003 at about 1125 hrs police from "E" Division, Ilorin came to Ajase-Ipo with Rasheed Lasisi, who later identified me a member of his group. I was later taken to "E" Division Ilorin with Rasheed Lasisi, I agreed that I killed Obioma with Rasheed Lasisi and I felt sorry for the act. *RHT OF Silas Sule Mohammed 22/10/2003"*

The stance of the appellant is that although the trial court held that the confessional statement was voluntarily given which position was affirmed by the court below but that the probability that the appellant was indeed tortured to obtain the said statement is high in view of the unchallenged evidence of the appellant of the injury on the leg he sustained at the time in the course of obtaining that statement which injury the prosecution failed to explain. The assertion further impugning the voluntariness of the confessional statement.

The contrary view of the respondent is that it is settled law that an accused person can be convicted solely on his confessional statement and in this instance the voluntariness of the statement had been satisfactorily ascertained by the trial court in a trial-within-trial. That the latter contesting that voluntariness on ground of torture, broken leg, beating with iron rod etc was not proved by the appellant either at the trial within trial or when he testified in his defence. That the appellant is merely making bogus claims of torture in the course of the obtaining the statement and in another breath, he vehemently held on to the fact that he did not make any statement of alibi. This neither here nor there swinging of the appellant cleared the way for

the confessional statement being positive and direct.

On this matter of the confessional statement, the court below held thus:

*“Let me also state at this juncture that the facts and circumstances of the arrest of the appellant and of taking the statement have indeed provided the needed corroboration of the veracity of the appellant’s statement made to the police. The evidence of PW2 and PW3 negated the appellant’s lie that he was arrested while he ran to the police to report the on-going robbery at Rockfield petrol station. Hence, he had the opportunity or committing the offence and that the confession is true. Similarly, other facts proved by the prosecution witness, such as the Modus Operandi of the robbery were consistent with the confession made in Exhibit 3 by the appellant.”*

*Again, the courts have also held that when an extra judicial confession has been proved to have been made voluntarily by an accused and it is positive and unequivocal, it amounts to an admission of guilt. It will suffice to grant a conviction regardless of the fact that the maker resiled or retracted it at trial. Since such a U-turn does not make the confession inadmissible. See the cases of Alarape v State (2001) 2 SC 114, Ibrahim Bature v. State (1994) 1 SCNJ 19 at 32.”*

*“The point that needs to be made before dropping my pen on this issue is this, that apart from the confessional statement of the appellant, there are other circumstantial evidence that are cogent, credible and unequivocal upon which the trial court also based the conviction of the appellant. The learned trial Judge having considered the totality of the case before him and having had the opportunity of watching the demeanor of the appellant and other witnesses in the case, held at page 85 of the record as follows:”*

*“I found the evidence of both accused very unreliable in the face of its inconsistencies with Exhibits 3, 4, and 5 and I disbelieve it. The evidence of the prosecution witnesses is credible and I found it corroborated by the confessional statement of the accused persons. I believe the evidence of PW2 that on sighting the 1st accused at Ajase-Ipo police station the second accused quickly identified him among four other accused as his accomplice with whom he stole at Rockfield petrol station and killed the night guard and that the 1st accused said*

*nothing. All these pieces of evidence have provided the required corroboration of the confessional statement and have similarly proved that the contents of the confessional statements are true and voluntary.”*

The trial court had admitted the confessional statement, Exhibit 3 and the Court of Appeal agreed and in that relied and acted on it in convicting and/or affirming the conviction of the appellant. On our own part is first, a recourse to the tests laid down in *Nwachukwu v State (2007) ALL FWLR (Pt. 390) 1380 at 1410* on the application of a confessional statement after admission as exhibit. Those tests are as follows:

- i. Whether there are/is circumstance that make (s) it probable that the confession is true and correct.
- ii. Whether the accused person had the opportunity of committing the offence charged.
- iii. Whether the confession is consistent with other facts proved at the trial.
- iv. Whether there are some other corroborative evidence, no matter how slight.

It is indeed now trite that whereas is in this case the confessional statement has been well proved, then it is the best evidence and on its own can be used solely to convict the appellant in the absence of anything else. The proof of the voluntariness of Exhibit 3, the said statement had been effectively done at the trial court borne out of the record based on the appellant’s inability to impugn the process of obtaining it, that apart from his attempt in denying even making any statement. Also from Exhibit 3, the background and some personal facts of the appellant could not have been obtained except by himself. Also to be stated is that what are contained in the confessional statement are supported or tally with the evidence as given by the prosecution witnesses 1, 2, and 3.

Therefore whether on its own simpliciter or corroborated by other pieces of evidence proffered at the trial by witnesses the prosecution was able to discharge the burden of proof beyond reasonable doubt as required under the law. See *Saidu v The State (1982) 4 SC 41*; *Nwangbonu v The State (1994) 2 NWLR (Pt. 327) 380 at 397*; *Oche v The State (2007) 5 NWLR (Pt.1027) 214 at 235*; *Ikpasa v A. G. Bendel State (1981) 9 SC 7*.

It has to be said that the discrepancies which appellant alluded to for which some doubts exist and have to be resolved in favour of the appellant cannot stand as the law has not placed on the prosecution the burden of proof beyond the shadow of doubt, rather what is needed is beyond reasonable doubt. Therefore the contradictions referred to in proof of the ingredients of both armed robbery and culpable homicide against the appellant are neither substantial nor material and so have changed nothing on the rock solid proof made by the prosecution. I rely on *Bakare v The State* (1987) 1 NWLR (Pt. 52) 579; *Agbo v State* (2006) ALL FWLR (Pt. 309) 1380 at 1393. B  
C

It is to be said that this court as one of policy does not disturb concurrent findings of lower courts without very serious reasons such as findings not supported by the evidence or arrived at with perversity as road map or due to a wrong application of law or procedure. Where none of those conditions above exist this court accepts and goes along those finding as in this case where the two courts acted on the confessional statement of the appellant in convicting and affirming as the case may be of the appellant. See *Amachree v Nigerian Army* (2003) 3 NWLR (Pt. 807) 281; *Odua v Federal Republic of Nigeria* (2002) 5 NWLR (Pt. 761) 615; *Alarape v State* (2001) 2 SC 114; *Ibrahim Bature v. State* (1994) 1 SCNJ 19 at 32; *Ogbodu v. The State* (1987) 2 NWLR (Pt. 54) 20; *Igwe v. State* (1982) 9 SC 172. D  
E

I cannot end without querying albeit helplessly the decision of the trial court making a finding and conclusion of the offence of homicide not punishable by death instead of homicide punishable by death as the evidence and proof of the offence clearly and definitely was that of homicide punishable by death. For it is difficult to explain how the appellant and his co-travelers, drugged the deceased, had him tied up and hit him so viciously that he died while the armed robbery was carried out. All the ingredients of homicide punishable by death were in place i.e. the death of the deceased, the implication of injury with the knowledge that there would grievous harm or death as a result, the deceased died as a result of the injuries so inflicted. The conclusion is certainly unfortunate but nothing to do. F  
G  
H

From the foregoing and the better and fuller reasoning of my learned brother, Fabiyi JSC, I too dismiss the appeal as unmeritorious. I affirm the decision of the court below which in turn upheld the

judgment, conviction and sentence of the trial High Court.

### **MUHAMMAD JSC**

B My learned brother Fabiyi JSC obliged me a preview of his  
lead judgment just delivered. I entirely agree with his lordship that  
the appeal is bereft of merit and that same be dismissed.

C The issues raised by the appeal are a recurring decimal in the  
appeals this Court handles. They will continue to be. It must be re-  
stated that the confessional statement of an accused person where  
same is found to be voluntary and unequivocal provides the best  
evidence of the person's guilt. Resiling from the statement does not  
make it unreliable. The court can still admit and convict on a re-  
tracted confession if satisfied that the statement was indeed made by  
D the accused person and the circumstances under which the state-  
ment was made guarantee the credibility of the content of the con-  
fessional statement.

E This Court has, as part of the very principle, insisted that be-  
fore the trial court convicts purely on the basis of a retracted confes-  
sional statement it ensures that some corroborative evidence outside  
the confession abides making the truth in the content of the retracted  
confession probable. See *Ogudo V. The State* (2011) 12 SC (Pt 1)  
71 and *Stephen Haruna V. The Attorney General of the Federation*  
F (2012) 3 SC (Pt IV) 40.

In the instant case appellant's conviction proceeded not only  
on the basis of his extra judicial statement which the two courts below  
concurrently found to be voluntary, direct, positive and unequivocal,  
the judgment of the two courts also considered evidence other than  
G Exhibit 3, appellant's confessional statement, in adjudging him guilty  
of the offences he stood trial for. Exhibit 3 has been, and rightly too,  
considered within the context of the testimonies of PW1, PW2 and  
PW3 whose evidence clearly establishes the appellant's guilt as well.  
It does not, therefore, lie in appellant's mouth to say that his convic-  
H tion cannot persist in view of all these further facts. See *Eke v. The*  
*State* (2011) 1 -2 SC (Pt.11) 219 and *Adeniyi Adekoya v. The State*  
(2012) 3 SC (Pt. 111) 36.

Again, it is appellant's task to raise the defence of alibi tim-  
eously to enable the prosecution disprove same. In the case at hand,

the appellant raised the defence in the course of his oral testimony at the trial court. The two courts are right to reject same. In any event, by the testimony of PW1, PW2 and PW3 as well as appellant's own confessional statement, Exhibit 3, appellant has been fixed to the venue of the offence. Where, as in the instant case, the respondent has adduced cogent evidence of the physical presence of the appellant at the scene of crime it is wishful for the appellant to expect that the respondent does more. In the circumstances, the appellant cannot wriggle out. See *Bashaya V. State* (1998) 4 SCNJ 210 and *Sowemimo & Anor V. The State* (2004) 4 SCM 207.

Lastly, learned appellant counsel has asserted that the lower court has erred in its affirmation of appellant's conviction on the basis of the contradictory evidence led by the respondent. This complaint too is lame and hollow. For contradictions to negate a conviction they must be material and fundamental in the determination of the guilt of the accused person. My examination of the record of appeal, particularly the evidence led by the respondent outside Exhibit 3, does not sustain appellant's complaint. The contradictions, if any, are not of such degree as to justify any doubt in the mind of the trial court and of such a degree that the appellant is entitled to the resolution of the doubt in his favour. See *Ahmed V. The State* (1999) 5 SCNJ 236 and *Jimoh Awopeju & 6 Ors V. The State* (2002) 2 SCM 47. In any event, there is Exhibit 3, appellant's own positive, direct and unequivocal confession which proves all the ingredients of the offences appellant has been convicted for. The lower court cannot, therefore, be faulted for its conclusion on the point.

For the foregoing and more so the fuller reasons contained in the lead judgment I also dismiss the appeal. I affirm the judgment of the lower court and dismiss the appeal.

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### **KEKERE-EKUN JSC**

I have had the privilege of reading in draft the judgment of my learned brother, **FABIYI**, JSC just delivered. I agree that the appeal lacks merit and should be dismissed.

The appellant and one other were charged with robbery contrary to Section 1 of the Robbery and Firearms (Special provisions) Act Cap 398 Laws of the Federation of Nigeria 1990 and culpable

homicide punishable with death contrary to Section 221 of the penal Code.

They both pleaded not guilty to both counts. At the conclusion of the trial, the appellant and his co-accused were found guilty and convicted on both counts. In respect of the second count of culpable homicide, they were found guilty of the lesser offence of culpable homicide not punishable with death contrary to Section 224 of the penal Code. They were sentenced to 21 and 14 years respectively. Dissatisfied with the judgment the appellant appealed to the court below.

The appeal was dismissed. Hence the instant appeal. The facts of the case have been fully set out in the lead judgment. I do not intend to repeat them but will make reference thereto where necessary. Both parties formulated two issues for determination from the four grounds of appeal. Although similar, the issues formulated by the respondent are better articulated and adequately capture the issues in controversy.

The first issue is whether the court below was right when it held that there was no merit in the defence of alibi raised by the appellant and affirmed his conviction by the trial court.

“*Alibi*” is defined in Black’s Law Dictionary, 8th edition as:

“*A defence based on the physical impossibility of a defendant’s guilt by placing the defendant in a location other than the scene of the crime at the relevant time; the fact or state of having been elsewhere when an offence was committed.*”

In the case of: *Ozaki Vs The State* (1990) 1 NWLR (Pt. 124) 92 @ 109 C- G this court, per Obaseki, JSC held thus:

“*What is the meaning of alibi? It is a defence where an accused person alleges that at the time when the offence with which he is charged was committed, he was elsewhere. It is the law that notice of intention to raise it must be given. This is normally done at the first opportunity by a suspect in answer to a charge by the put up, the burden is on the prosecution to investigate it and rebut such evidence in order to prove the case against the accused beyond reasonable doubt. Adedeji Vs. The State (1971) 1 ALL NLR P.75. Failure by the police to investigate and check the reliability of (the) alibi would raise reasonable doubt in the mind of the tribunal and lead to the quashing of a conviction imposed in disregard of this requirement as*

*was done in the case of Onafowokan V. The State (1987) 7 SC; (1987) 3 NWLR (Part 61) page 538...*

*The onus on the prosecution to prove the charge against the accused beyond reasonable doubt never shifts and there is no onus on the accused to prove the alibi beyond that of introducing the evidence of alibi. Bozim Vs The State (supra). Where the accused person gives conflicting stories as to his whereabouts at the material time under consideration, there is no duty to investigate the alibi. In such a case, no alibi is established.*

*The ipse dixit of the accused, i.e. that he was not present is not enough. To raise the defence he must give particulars of his whereabouts at that particular time.*”

It is noteworthy that in the instant case, the alleged defence of alibi was raised during the trial within trial. Learned counsel for the appellant insists that since the appellant had named the police officers who accompanied him to the crime scene, the onus shifted to the prosecution to lead evidence in rebuttal. He submitted that failure to investigate the alibi cast doubt on the prosecution's case, which should have been resolved in his favour. It is contended on behalf of the respondent that the so-called alibi was not raised at the earliest opportunity and that the defence is defeated where there is evidence fixing the accused at the scene. It is also argued that the appellant's confessional statement, Exhibit 3, nullified the alibi. See: *Ukwunnenyi Vs The State (1989) 4 NWLR (Pt. 114) 131 @ 155-156*. He noted that the confessional statement was admitted in evidence after the conduct of a trial within trial and that the appellant did not appeal against the ruling on the voluntariness of the statement. I am inclined to agree with learned counsel for the respondent that the defence of alibi was not raised at the earliest opportunity. It is also correct that the appellant's confessional statement was tested during the trial within trial and found to have been voluntarily made. There is no appeal against the ruling on the trial within trial. The court was therefore entitled to consider the confessional statement along with other evidence led in the case.

It is important to note that a careful examination of the appellant's testimony and his confessional statement reveal that he does not in fact contend that he was elsewhere when the offence was committed. His evidence was to the effect that he was present at the

petrol station when the robbery occurred. That on hearing the robbers, he and the deceased went into hiding but they were discovered. He stated that one of the robbers pulled out a cutlass and he had to run away because he wasn't armed. According to him he went to lodge a report at Kulende Police Station at around 3 am. He  
 B stated that it took about fifteen minutes for the police to get a vehicle to convey them to the scene and that when they got there he saw that the deceased was seriously injured, but still breathing. He stated that he was taken back to the police station and detained there until  
 C the early hours of the 10th of October.

In contrast to this testimony, PW1, the General Manager of the security company that employed the appellant and the deceased testified that he received a telephone call on 10th October 2003 from the Managing Director of Rockfield Petroleum Ltd. that armed rob-  
 D bers had burgled the petrol station's mini mart in the early hours of that day. On getting to the scene he searched for the two security guards who were on duty.

PW1 stated thus at page 36 of the record:

*"I did not know the whereabouts of the second security guard;  
 E Silas Sule Mohammed. The dead body of Obioma Nwakocha was covered with empty cement bags. His body was stained with blood and it was tied with cloth. When i did not see the 1st accused Silas Sule Mohammed. I thought he had probably been abducted. He did  
 F not report to me at the Kuta Guards office. The case was later reported at Kulende Police Station. E, Division and I made available to the Police an enlarged copy of the passport photograph of the 1st accused (to the police).*

*One week after I had given his passport photograph to the  
 G police, the police reported that somebody had been arrested that I should come and identify that person. I went to Kulende Police Station and identified the 1st accused Silas Sule Mohammed who had been arrested by the police".*

From this evidence, it is clear that if the appellant was already  
 H in custody at Kulende Police Station, the police would have recognised him immediately from the passport photograph shown to them by PW1. There would have been no need to start searching for him.

PW 2 at pages 37 and 38 of the record stated as follows:

*“My names are Lawrence Ogunwusi. I live at the Police ‘E’ Division Barracks Kulende, Ilorin. I am a Corporal in the Nigeria Police Force. My force Number is 204238. I am attached to Oke Oyi Police Outpost now. As at 2003 I was attached to ‘E’ Division Nigeria Police, Kulende, Ilorin as an investigator.*

*I know the two accused persons in this case, On 10th October, 2003 at about 07.00 am I was on duty at the Police ‘E’ Division Kulende, Ilorin when one Alhaji Mohammed Lawal, the Managing Director of Rock Field Petroleum Company of Fate Road, Ilorin came and reported that at about 6.30 am on that same date he visited his petrol filling station and discovered that the mini mart attached to the petrol filling station had been broken into from the back. That the hoodlums gained entry into the mini mart from the back and removed some petrochemical products and some edible materials worth about N44,368.00. He said he discovered the lifeless body of his night guard whom he employed through Kuta Guards Company Limited lying in the pool of his own blood. He told me that the two legs and hands of the security guard were tied up and his lifeless body was covered with empty bags of cement.*

*As a result of this report, I visited the petrol filling Station in the company of Mr. Williams Agboroma Deputy Superintendent of police and DPO for Kulende police Station. One Mr. Akinwale Adedoyin the Divisional Crime Officer (DCO) also went with us to petrol filling station.*

*I saw that the mini mart at the petrol filling station had actually been broken into. I saw that hoodlums must have drunk some of the drinkables in the shop and they also ate some of the food items sold in the mini mart. I also saw the lifeless body of the night guard who was known as “Baba Ibo”.*

*The Manager of Kuta Guards Limited later gave the name of the dead security guard as Obioma Nwakocha.”*

According to PW2 the report was made to the Kulende Police Station around 7 am by PW1. If the appellant who allegedly reported the incident at 3 am and was detained thereafter, and was in their custody, they would already have been aware of the incident. There would have been no need to organise a search party to determine what happened to the second security guard i.e. the appellant.

PW3 at pages 65, 66 and 67 of the record stated as follows:

*“My name is Mohammed Lawal. I am a Petroleum Product Marketer and the Managing Director of Rock Field Petrol Station, Fate Road in Ilorin.*

*...The 1st accused was then nowhere to be found. I searched everywhere around the petrol filling station but I did not see the 1st accused.*

*...I identified the 1st accused as the night guard who was on duty with Obioma Nwakocha before the latter was found dead at my filling station. It was at the police station that I first saw the 2nd accused. The 1st accused was not at Kulende Police Station on 10th October, 2002 when I first went to make a report of the robbery in my petrol filling station to the police.*

*...He apologized to me and said it was the devil that pushed him to do what he did. This happened at Kulende Police Station after I had identified the 1st accused as the night guard who was on duty with Obioma Nwakocha on the 9th/10th October, 2003. His apology was oral and not in writing”.*

I agree with the lower court that all these facts along with the appellant’s confessional statement neutralized the so-called defence of alibi. He placed himself at the scene at the time of the offence, His contention that he was at the Police Station was fully debunked by the prosecution witnesses. I therefore agree with my learned brother, FABIYI, JSC that this issue must be and is hereby resolved against the appellant.

With regard to the second issue, I also agree with the lower court that there was evidence outside the confessional statement that corroborated the facts stated therein, especially as to the manner in which the offences were committed. The alleged contradictions/inconsistencies referred to in paras 5.13-5.18 of the appellant’s brief are not material and do not detract from the overwhelming evidence adduced by prosecution upon which the conviction was based.

For these and the comprehensive reasons ably advanced in the lead judgment, I find no merit in the appeal. It is hereby dismissed. The judgment of the lower court upholding the conviction and sentence imposed on the appellant by the trial court is hereby affirmed.