

SUPREME COURT OF NIGERIA
FRIDAY 6TH JUNE, 2014. SC. 260/2009
**CORAM:- I.T. MUHAMMAD, M. S. MUNTAKA-
COOMASSIE, O. ARIWOOLA, M. D. MUHAMMAD,
C. B. OGUNBIYI, JJSC**

OLUFEMI AJAYI APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Identification of accused - Failure to prove
- That accused was the person who committed the offence - Disentitles
trial court from convicting - And appellate court from affirming such
erroneous conviction (H1)

IDENTIFICATION PARADE - Necessity of - It is useful where witness
claims to have seen unfamiliar person - Who escaped from crime
scene - In circumstances that require testing the witnesses' power of
recognition (H2)

CRIMINAL PROCEDURE - Defence - Clarity of - Facts constituting
defence must be apparent from evidence on record - To enable court
consider them - As court does not speculate over defence (H3)

APPEALS - Criminal procedure - Defence - Leave - Appellant re-
quires no leave to raise on appeal - Any defence he is on the face of
record entitled to (H4)

CRIMINAL PROCEDURE - Conviction - Confession - Although it is
desirable that conviction be based on evidence outside confession -
Court can convict solely on voluntary and unequivocal confession
(H5)

CRIMINAL PROCEDURE - Confession - Retraction - Weight such a
confession attracts is enhanced by evidence outside it - Which cor-
roborates it and establishes that accused had - Opportunity of com-
mitting the offence admitted (H6)

APPEALS - Judgment - Correctness of - Having failed to show that CA's decision is perverse - Appellant's appeal cannot be adjudged meritorious - And the same is dismissed (H7)

FACTS

Accused/appellant and some others were arraigned before the High Court of Edo State for conspiracy and armed robbery. The charges are punishable under sections 5(b) and 1(2)(a) of the Robbery and Firearms (special provisions) Act Cap 398 LFN 1990 respectively. From the case presented by prosecution/respondent, appellant conspired with four others to rob one Donatus Osigwe (PW2) of the sum of N164,000.00 while armed with knives and offensive weapons. Appellant was arrested following the information supplied by 1st accused to the Police implicating appellant in the case. Each member of the robbery gang made statements in connection with the crime. 1st accused died in prison custody prior to the commencement of the trial.

At the trial, respondent called five witnesses to prove its case. PW5 tendered the statements of the accused persons which were admitted in evidence without objection. Appellant testified for himself and denied being a member of the gang. He also stated that he did not participate in the robbery incident and that he was tortured by the police to sign his confessional statement (Exhibit C). At the end of trial, the court found appellant and the others guilty as charged based on evidence proffered by respondent. They were convicted and sentenced to death by hanging. Not satisfied, appellant appealed to the Court of Appeal Benin City Division. The court dismissed the appeal and affirmed trial court's decision. Aggrieved further, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

"Issue one: 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.

Issue two: 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 acquit-

ting the appellant for the offences of conspiracy to commit armed robbery and armed robbery.

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

MUHAMMAD JSC)

CRIMINAL PROCEDURE - Identification of accused

1. The subsidiary issue the appellant raised in the course of arguing the appeal needs, however, to be outrightly resolved. It has been submitted that the lower court's failure to determine the issue of appellant's identity is fatal. I agree with learned appellant counsel that failure of the prosecution to establish that an accused was indeed the person who committed the offence disentitles the trial court from convicting and the appellate court from affirming such erroneous conviction. (p. 2353 H)

IDENTIFICATION PARADE - Necessity of

2. An identification parade is only useful where a witness claims to have seen an unfamiliar person who escaped from the scene of crime in circumstances that require putting to test the witnesses' power of recognition based upon the physical features and/or other peculiarities of the person he claims to have seen. It is only when there is real doubt as to who was seen in connection with the offence that an identification parade is conducted. Where the witness(s) clearly recognized the accused, an identification parade would be unnecessary. (p. 2354 D)

CRIMINAL PROCEDURE - Defence - Clarity of

3. Courts do not fish for or speculate over defences available to an accused. The facts which constitute such defences must be apparent enough from the evidence on record to enable the court to consider them. It must, therefore, be reiterated that courts must not, in the absence of evidence of such defence or defences on record, speculate.

My perusal of the entire record of the instant appeal vindicates the lower court's summation that the evidence on

record does not suggest any doubt as to the identity of the appellant in relation to the offences he was convicted for by the trial court to warrant the consideration of any possible defence in his favour.

B Having however failed even at this level to show that the evidence on record has made the slightest suggestion in that regard, appellant's complaint on the point must fail too. It is for that reason that the 1st issue is resolved against the appellant. (p. 2355 B/F)

C APPEALS - Criminal procedure - Defence - Leave

4. It is true that the appellant requires no leave to raise on appeal any defence he is, on the face of the record, entitled to. (p. 2355 E)

D Conviction - Confession

5. Furthermore, I am unable to agree with learned appellant counsel that appellant's conviction by the trial court drawn solely from his confessional statement, Exhibit "C". Had I held otherwise, it is still not the law that the lower court's affirmation of the trial court's decision cannot endure because the conviction had ensued on appellant's confessional statement alone. This Court has, in decisions too numerous to call, stated that though desirable that convictions be based on evidence outside the confessional statement of an accused as well, nothing stops the trial court from convicting an accused solely on his confessional statement that is found to be voluntary, positive and unequivocal.

G It is the law that there cannot be evidence that is stronger than an accused's own direct, positive and unequivocal confessional statement which alone is, on the authorities, sufficient to ground conviction. (pp. 2355 G/2356 F)

H CRIMINAL PROCEDURE - Confession - Retraction

6. In the case at hand, appellant's confessional statement was admitted without objection. It was only during his evidence in chief that he alluded to his being tortured before making the statement. The weight a retracted confessional statement at-

tracts is enhanced by evidence outside it which corroborates the statement and further establishes the fact that the accused had had the opportunity of committing the offence he so admitted. The evidence of PW1 and PW5 which the trial court, in addition to appellant's confessional statement, relied upon in convicting the appellant, readily constitutes such evidence. The lower court's resolve in affirming the trial court's conviction of the appellant on the basis of appellant's confessional statement as well as evidence outside it is beyond reproach. (p. 2356 G)

Judgment - Correctness of

7. Having woefully failed to satisfy this Court that the lower court's decision he appeals against is perverse, appellant's appeal cannot be adjudged meritorious. I so hold and dismiss the appeal. The judgment of the lower court is accordingly hereby affirmed. (p. 2357 C)

REPRESENTATION

Victor Opara, for the Appellant
Adewale Atake with Arnold Ushiadi and Izuchukwu Ohajinwa, for the Respondent

CASES REFERRED TO

Sanmabow v. State (1967) NMLR 314
Alarape v. State (2001) FWLR (pt. 41) 1872
Fari v. Federal Mortgage Finance Ltd (2004) All FWLR (pt. 235) 27
Gaji v. Paye (2003) FWLR (pt. 163)
Balogun v. A-G Ogun State (2002) 6 NWLR (pt. 763) 264
Idowu v. State (2000) 7 SC (pt. 11) 50
Ikemson v. State (1989) 3 NWLR (pt. 110) 455
Afolalu v. State (2010) 5-7 SC (pt. 11) 93
Ugwuanyi v. FRN (2012) 3 SC (pt. 11) 95
Osuagwu v. State (2013) 1-2 SC (pt. 1) 37
Agboola v. State (2013) 5 SCNJ 683
Ndukwe v. State (2009) 7 NWLR (pt. 1139) 43
Nwaturuocha v. State (2011) NCC vol. 6 (2011) 462
Williams v. IGP (1965) NMLR 470

Takide v. State (1968) 1 All NLR 270

STATUTES REFERRED TO

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

LEAD JUDGMENT BY M.D. MUHAMMAD JSC

This is an appeal against the judgment of the Court of Appeal, Benin division affirming the conviction and sentence of the appellant by the Edo State High Court for conspiracy and Armed Robbery punishable under sections 5(b) and 1(2) (a) of the Robbery and Firearms (special provisions) Act Cap 398 of the Laws of the Federation 1990.

The appellant is said to have committed the offences along with four others on or about the 30th day of November 1996 at Benin City within the trial court's jurisdiction. They conspired and robbed one Donatus Osigwe the sum of N164,000.00 while armed with knives and other offensive weapons.

The respondent called five witnesses to make out its case at the trial court. PW1, had reported to the police that his son, the 1st accused, had stolen the sum of N190,000.00 from his shop in Benin City on 16/11/96 and, in company of others, robbed the next shop to his on 30-11-96. 1st accused on his arrest volunteered a statement which led to the arrest of the others including the appellant herein. He also identified the appellant to PW1 and PW5 as a member of his gang that robbed PW2's shop of the sum of N164,000.00 naira. PW3, Ifeanyi Chukwu Eze, was in his father's shop, No 12A Mission Road Benin City, when the robbery gang struck on 30-11-96 around 10pm. 1st accused, PW3's brother, PW3 told the trial court, emerged and accosted another brother of theirs, Chidebere Eze, and one Clifford Umorji from the next store, demanding money from them. Along with four others of his gang, the 1st accused proceeded with Clifford to PW2's store where, according to PW4, they carted away the sum of N130,000.00.

The statements of the five man robbery gang, on being arrested, were recorded by PW5 through whom the statements were tendered and admitted in evidence without objection.

Exhibit "C", which turned out to be confessional, is appellant's

own statement. 1st accused died in prison before the commencement of the trial and conviction of his gang including the appellant at the trial court.

Appellant testified in his own defence. He denied being a member of the robbery gang and or having participated in the particular armed robbery. In his evidence at trial, he told the court that he was tortured and forced to sign Exhibit "C".

At the end of trial and addresses of counsel, the trial court in a considered judgment, having found that the respondent had proved its case beyond reasonable doubt, convicted and sentenced the four accused persons accordingly. The dismissal of their respective appeals by the lower court explains appellant's appeal to this Court on four grounds. The lower court's judgment being appealed against was delivered on 13th December 2004.

At the hearing of the appeal, parties adopted and relied on their briefs which had earlier been filed and exchanged as their respective arguments for and against the appeal. Having abandoned the Notice of preliminary objection filed against the appeal as well as arguments in respect of same by Adewale Atake, learned counsel to the respondent, the processes were accordingly struck out.

The four issues distilled from appellant's four grounds of appeal at paragraph 3 of his brief for the determination of the appeal read:-

"(i) 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 not be raised and argued on Appeal without leave first had and obtained?"

(ii) 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:

'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 his judgment that the identity of the Appellants was never made an issue before the trial Court. This is what the trial Judge said in judgment.

‘...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
B apprehend them...’

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
C 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
D persons or somebody else who committed the offence. No such doubt has been created in the present case.’

(iii) 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
E count Charge of conspiracy to commit armed robbery and armed robbery, being the case of the prosecution against the Appellant and other Accused persons?

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

‘In the present case the Learned Trial Judge carefully tested the Confessional Statements 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
G 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.”

The two issues the respondent formulated at page 9 of its brief
H as arising for the determination of the appeal are:-

“Issue one: 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 be-

for them without leave. (Ground 1)

Issue two: 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)” B

My lords, a perusal of the issues distilled by the appellant reveals not only their inelegance but their inappropriateness. Appellant’s central grudge in the arguments he proffers pertains the lower court’s affirmation of the trial court’s findings that he is guilty of the offences for which he has been convicted in spite of respondent’s failure to prove his participation in the commission of the offences beyond reasonable doubt as required by law. Looking at the complaint from that particular perspective will certainly meet the purpose for which the appeal has been lodged. The appeal, for this overriding reason C will, therefore, be considered by answering the question whether or not the lower court’s decision is sustainable on the basis of the evidence on record. D

Furthermore, the consideration of the subsidiary issue as to whether the lower court’s affirmation of the trial court’s reliance on appellant’s confessional statement to convict him will equally be worth our while. The two perspectives from which the appeal will be determined clearly relate to the grounds in the Notice of appeal. Respondent’s two issues which adequately subsume these concepts E are accordingly preferred. F

In arguing the appeal, learned appellant counsel refers to the finding of the lower court at page 125 lines 14-15 of the record and contends that the finding is perverse. It cannot be right, it is argued, for the court to hold that the identity of the appellant was never an issue at the trial court and having been raised for the first time at the lower court, it was incompetent. G

The trial court, at page 73 lines 23 to 27 of the record, submits learned appellant counsel, has found as a fact that five men were involved in the commission of the offences. The participation the appellant in the commission of the offences, it further submitted, remains an issue for determination all through his trial. The appellant who was never arrested or identified at the scene of crime and has not been connected by any piece of evidence to the commission of H

the offences, it is argued, cannot legally be convicted. Having pleaded not guilty to the charge, it is contended, the respondent had the duty of proving its case against the appellant beyond reasonable doubt. Failure of the lower court to consider the fact that none of the witnesses called by the respondent identified the appellant as a party to the armed robbery, learned counsel further argues, is fatal to the court's decision. The appellant needed no leave of the lower court before he raised the issue. The lower court's non consideration of the issue having occasioned miscarriage of justice, concludes learned appellant's counsel, entitles the appellant to discharge and acquittal.

On the 2nd issue, learned appellant's counsel refers to the lower court's correct statement of the law at page 133 of the record that where an accused person resiles from the confessional statement made by him the law requires that the trial court ensures that corroborative evidence outside the confessional statement exists before the accused is convicted. The lower court's affirmation of the trial court's conviction of the appellant without ensuring that such evidence exists, learned counsel submits, is legally indefensible. The lower court's finding at page 137 lines 1-5 that the trial court had, at page 76 lines 14-25 of the record, fulfilled this requirement, it is thus contended, is not borne out by the evidence on record. Relying on *Sanmabow V. The State* (1967) NMLR 314 and *Asimiyu Alarape V. The State* (2001) FWLR (pt 41) 1872 at 1876, *Hon. Emmanuel Ojo and ors V. Hon. Felix A. Anongo & 9 ors* (2004) ALL FWLR (pt 218) 934 at 948, *Mrs. Rakiya Habu Fari V. Federal Mortgage Finance Ltd* (2004) ALL FWLR (pt 235) 27 and *Isaac Gaji & 2 ors V. Emmanuel D. Paye* (2003) FWLR (Pt 163). Learned appellant counsel submits that the issues on the appeal be resolved against the respondent. He concludes by urging the court to allow the appeal.

Responding, learned respondent counsel submits that it is academic to dwell on the lower court's finding that appellant was raising the issue of appellant's identity for the first time before it and the consequence of doing so without the court's leave. The truth is that, learned counsel submits, the court had, after all, considered and determined the issue. Learned respondent's counsel refers to pages 127 and 133 of the record of appeal and maintains that the lower court is right to have held that an identification parade of the appellant was unnecessary since the unchallenged evidence of PW1 and PW5 had,

in addition to his confessional statement, linked the appellant to the offences for which he was convicted. In any event, the appellant who did not, either at the trial court or at the lower court, raise the defence of mistaken identity cannot successfully complain that the matter was not resolved by the lower court. Relying on *Gaji V. Paye* (2003) 8 NWLR (pt 823) 583 and *Balogun V. Ag Ogun State* (2002) 6 NWLR (pt 763) 264 at 534. Learned respondent counsel urges that we so hold and resolve its first issue against the appellant. B

On its 2nd issue, learned counsel postulates that appellant's other grudge revolves around the evidence the trial court relied upon to convict the appellant and the lower court's affirmation of the findings on the basis of the evidence. It is submitted that the two courts relied on the testimonies of particularly PW1 and PW5 in addition to the confessional statement of the appellant, Exhibit "C". The appellant's retraction of his confession, it is contended, does not make the statement less reliable. The trial court was entitled to rely on the confession having found the evidence of PW1, PW2, PW3 and PW5 corroborative of the content of the confessional statement. Referring to the trial court's evaluation of the evidence led by parties at pages 76-77 of the record, which exercise the lower court endorsed, and the decisions in *Idowu V. The State* (2000) 7 SC (pt 11) 50 at 62-63 and *Ikemson V. The State* (1989) 3 NWLR (pt 110) 455, learned respondent counsel urges the resolution of the issue as well as the appeal against the appellant. C D E

My lords, it appears to me that the principal issue the appeal raises is a very narrow one and it is whether the evidence on record justifies the lower court's affirmation of the trial court's conviction of the appellant. This certainly is a challenge to the concurrent findings of fact by the two courts below which this Court effectuates only where such findings are shown to be manifestly perverse. In the case at hand the appellant succeeds only where he establishes that the findings he attacks were arrived at in violation of some principles of law or procedure and have occasioned injustice. See *Afolalu V. The State* (2010) 5-7 SC (Pt 11) 93, *Ugwuanyi V. FRN* (2012) 3 SC (pt 11) 95 and *Osuagwu V. State* (2013) 1-2 SC (Pt 1) 37. F G H

The subsidiary issue the appellant raised in the course of arguing the appeal needs, however, to be outrightly resolved. It has been submitted that the lower court's failure to deter-

mine the issue of appellant's identity is fatal. I agree with learned appellant counsel that failure of the prosecution to establish that an accused was indeed the person who committed the offence disentitles the trial court from convicting and the appellate court from affirming such erroneous conviction.

^B The principle has been restated by this Court per Ariwoola JSC in *Akeem Agboola V. The State* (2013) 5 SCNJ 683 at 701-702 thus:

"Generally, identification evidence is evidence tending to show that the person charged with an offence is the same as the person who was seen committing the offence. Therefore, whenever the trial court is confronted with identification evidence it is expected to ensure and be satisfied that the evidence proves beyond reasonable doubt that the accused before the court was the person who actually committed the offence with which he is charged. See Patrick Ikemson V. The State (1989) ICLRNI."

^D Learned respondent counsel's reliance on the decision of this Court in *Balogun V. AG Ogun State* (supra), given the facts of the case at hand, however, appears well informed. **An identification parade is only useful where a witness claims to have seen an unfamiliar person who escaped from the scene of crime in circumstances that require putting to test the witnesses' power of recognition based upon the physical features and/or other peculiarities of the person he claims to have seen. It is only when there is real doubt as to who was seen in connection with the offence that an identification parade is conducted. Where the witness(s) clearly recognized the accused, an identification parade would be unnecessary.** See *Ndukwe v. State* (2009) 7 NWLR (Pt. 1139) 43 and *Nwaturuocha v. State* NCC volume 6 (2011) 462.

^F In the instant case, it is not in doubt that 1st accused who acted as a pointer to appellant's house equally identified him to PW1 and the police investigation team that eventually arrested the appellant. PW5, the IPO, is emphatic on the point. Appellant's link with the offences he has been convicted for given the evidence available at trial, particularly Exhibit "C", his confessional statement, is no longer in doubt. These facts have taken the bottom off the appellant's platform.

^H Learned counsel for the appellant is right in his submission that

the trial court is legally required to consider any defence which on the evidence the accused is entitled to and that the lower court cannot be right in its insistence that appellant's identity, the link to the offence for which he was convicted, is a fresh issue the raising and determination of which could only ensue with leave of court. A perusal of the evidence on record however puts learned respondent counsel on a stronger plank as the appellant's connection with the offences for which he has been convicted is no longer in doubt. **Courts do not fish for or speculate over defences available to an accused. The facts which constitute such defences must be apparent enough from the evidence on record to enable the court to consider them. It must, therefore, be reiterated that courts must not, in the absence of evidence of such defence or defences on record, speculate.** See Williams V. Inspector General of Police (1965) NMLR 470, Takide V. State (1968) 1 ALL NLR 270 and Ada V. State (2008) 13 NWLR (Pt 1103) 149; (2008) 34 NSCQR (pt 1) 508.

My perusal of the entire record of the instant appeal vindicates the lower court's summation that the evidence on record does not suggest any doubt as to the identity of the appellant in relation to the offences he was convicted for by the trial court to warrant the consideration of any possible defence in his favour. It is true that the appellant requires no leave to raise on appeal any defence he is, on the face of the record, entitled to. Having however failed even at this level to show that the evidence on record has made the slightest suggestion in that regard, appellant's complaint on the point must fail too. It is for that reason that the 1st issue is resolved against the appellant.

Furthermore, I am unable to agree with learned appellant counsel that appellant's conviction by the trial court drawn solely from his confessional statement, Exhibit "C". Had I held otherwise, it is still not the law that the lower court's affirmation of the trial court's decision cannot endure because the conviction had ensued on appellant's confessional statement alone. This Court has, in decisions too numerous to call, stated that though desirable that convictions be based on evidence outside the confessional statement of an accused as well, noth-

ing stops the trial court from convicting an accused solely on his confessional statement that is found to be voluntary, positive and unequivocal.

In Exhibit “C”, his extra judicial statement, the appellant inter-alia, states thus:-

B *“I know one Monday Eze. Na my friend. I also know Sule Musa: I know Tajū and Tiri through Monday Eze the time he brought them from Lagos... Sometime in the month of Nov. 1996, Monday*
 C *come to my house from Lagos in company of Tiri and Tajū. Na my house them sleep with me that day. The following morning I left*
 D *them in my room go buy cells for battery. At about 9 p.m. of that day my self, Monday Eze, Sule Musa, Tiri and Tajū went for this robbery operation at Mission road, Benin City. When we go to the store my-*
 E *self and Rambo stood outside and Monday Eze, Tiri and Tajū forced themselves into the store armed with two knife. We ransacked the*
 F *store and remove some money. I don’t know the total amount we removed. Na Monday Eze junior brother we met in the store. After the robbery operation, I was given N10,000.00 to buy video player at Ibadan. I travel to Lagos with Monday Eze after the operation.”*

E In addition to the foregoing, there is the evidence of PW1 and PW5. Both stated at the trial court that on his arrest, Monday Eze, the 1st accused who died before trial, whom the appellant in the foregoing admitted he knew and was his friend, confessed to the fact of and appellant’s participation in the robbery. 1st accused, they also
 F stated, took the police to appellant’s house where the latter’s arrest was effected.

It is the law that there cannot be evidence that is stronger than an accused’s own direct, positive and unequivocal
 G **confessional statement which alone is, on the authorities, sufficient to ground conviction.** See *Agboola V. The State* (supra) *Asimiyu Alarape & ors V. The State* (2001) 5 NWLR (Pt 705) 79 and *Ozana Ubierho V. State* (2005) 2 SC (Pt 1) 18. **In the case at hand,**
 H **appellant’s confessional statement was admitted without objection. It was only during his evidence in chief that he alluded to his being tortured before making the statement. The weight a retracted confessional statement attracts is enhanced by evidence outside it which corroborates the statement and further establishes the fact that the accused had had the oppor-**

tunity of committing the offence he so admitted. The evidence of PW1 and PW5 which the trial court, in addition to appellant's confessional statement, relied upon in convicting the appellant, readily constitutes such evidence. The lower court's resolve in affirming the trial court's conviction of the appellant on the basis of appellant's confessional statement as well as evidence outside it is beyond reproach. See Akpan V. State (2000) 12 NWLR (Pt 682) 607 and Osetola V. State (2012) 17 NWLR (pt. 1329) 251 at 278. B

And this resolves the 2nd issue for the determination of the appeal against the appellant as well. **Having woefully failed to satisfy this Court that the lower court's decision he appeals against is perverse, appellant's appeal cannot be adjudged meritorious. I so hold and dismiss the appeal. The judgment of the lower court is accordingly hereby affirmed.** C
D

I. T. MUHAMMAD, JSC

I read before now the judgment of my learned brother, M. D. Muhammad, JSC, just delivered. I am contented with his reasoning and conclusion reached by my learned brother which I adopt as mine. I, too, dismiss the appeal as lacking in merit. E

MUNTAKA-COOMASSIE JSC F

This appeal is against the judgment of the Court of Appeal Benin Division hereinafter called the lower court. The court below affirmed the conviction and sentence of the appellant by the Edo State High Court simply called the trial court. The offences for which the appellant was convicted are conspiracy and Armed Robbery Punishable under Section 5 (b) and (2) (a) of the Robbery and Firearms special provisions) Act cap 398 of the laws of the Federation 1990. G

Prosecution called five witnesses at the trial. At the conclusion of the trial and addresses of counsel the trial court in a considered judgment convicted and sentenced the four accused persons accordingly, having found that the prosecution had proved its case beyond reasonable doubt. H

The appellant being aggrieved by the decision of the trial court

unsuccessfully appealed to the court of Appeal Benin Division.

The appellant appealed to this court and filed and served their briefs of argument. They both adopted their respective briefs of argument before us. The appellant distilled three issues while the prosecutor/respondent argued their issues.

B I was privileged to have read before now the exhaustive lead judgment rendered by my learned brother justice Dattijo JSC, I agree and adopt the reasoning and reasons of my learned brother. Appeal is devoid of any merit. I dismiss same. The judgment of the lower court is correct and accordingly affirmed.

ARIWOOLA JSC

I have had the opportunity of reading in draft the lead judgment of my learned brother, Dattijo Muhammad, JSC, I am in agreement with the reasoning therein and the conclusion arrived thereat. The record is very clear on the point that the conviction and sentence of the appellant by the trial court was based on the confessional statement he made to the police and the testimony of prosecution witnesses. It is note worthy that appellant's said statement which, as quoted inter-alia, in the lead judgment, is a lucid narration of the events before, during and after the robbery operation and the role the appellant played in the operation. The said statement which, when it was tendered in the presence of the appellant at the trial court was not objected, was admitted and marked Exhibit 'C'.

The law is clear, that a man may be convicted on his own statement alone; there is no law against it. However, the law is that if a man makes a free and voluntary confession, which is direct and positive, and such confession is properly proved; the court, may, if it considers it fit, convict him of any crime upon it. See; *Ozana Ubilerho V. The State* (2005) 5 NWLR (pt. 919) 644; (2005) 2 SCM 193; *Rabi Isma'l V. The State* (2011) 10 SCM 35; *Egboghonome V. The State* (1993) 7 NWLR (pt 306) 383 at 411-412.

H In *Emmanuel Nwaebonyi V. The State* (1994) 5 NWLR (Pt. 343) 138 this court held that a court can conveniently convict on extra judicial confession alone, even without any corroborative evidence where the trial Judge accepts the truth of the confession and provided that the accused person voluntarily made the said state-

ment.

In the instant case, even though, as expected, the appellant when testifying in defence denied that he made the statement credited to him as confessional statement. That he was forced or rather tortured by the police to get him to make the statement. In other words, he resiled. This testimony, as rightly described by the learned trial Judge, was an afterthought not having been raised when the statement was tendered and admitted. B

However, the prosecution was able to provide corroborative evidence through its PW3, PW4 and PW5. It is on record that the appellant had earlier been identified by the deceased 1st accused to the police and PW1 which led to his arrest along with other co accused. He was therefore properly convicted and sentenced by the trial court on the two count charge based on his confession and other evidence of the prosecution witnesses. In the same vein, the court below was right in affirming the conviction and sentence. C D

For the above reason, and the fuller reasoning in the lead judgment, I too consider this appeal lacking in merit and liable to dismissal. Accordingly, the appeal is dismissed. E

OGUNBIYI JSC

I read in draft the lead judgment just delivered by my learned brother Dattijo Muhammad, JSC and I agree that the appeal is lacking in merit and should be dismissed. F

The appellant was charged along with four others before High Court Edo State sitting at Benin City on a two count charge of conspiracy to commit armed robbery and armed robbery punishable under the Robbery and Fire Arms (special provisions) Act Cap 398, Laws of the Federation of Nigeria 1990. The charges are punishable under sections 5(b) & 1(2) of the Act respectively. G

The prosecution called 5 witnesses to prove the guilt of 2nd - 5th accused persons. The 1st accused died in prison custody. The defence made a no case submission which was overruled. Each of the accused testified in his own behalf but did not call any evidence. The trial court found the accused guilty as charged and sentenced them to death by hanging. On appeal to the Court of Appeal Benin Division, the appellant's appeal against the judgment of the trial court H

dated 28th June, 2001 was dismissed on the 13th December, 2004.

The appellant was again dissatisfied with the judgment of the Court of Appeal and has now brought this appeal before us.

It is clearly revealed on the record that there was evidence before the trial court that an act of armed robbery was committed on the date in question that is the 30th November, 1996 at No. 12A, Mission road Benin City which same was reported to the Police at the new Benin Police station where it was subsequently transferred to the State C. I. D. A further evidence was also before the trial court that robbers were arrested. The testimonies of 'PW3' and 'PW4' at pages 42, 43 and 44 of the record are in evidence.

The appellant's bone of contention was an absence of identification Parade conducted for purpose of his proper identification. There was also a retraction of the confessional statements Exhibits A, B, C and D. It is also trite however with the settled law that a mere fact of retracting a confessional statement is not a reason for not acting thereon.

With reference made to the evidence of 'PW3' at page 4 in Chief, he was of the view that the four men had knives, daggers on them. His evidence also related copiously to Monday Eze, the 1st accused who acted as a pointer and identified the appellant and all the other accused persons.

'PW4' under cross-examination on page 44 of the record said:-
"one of the armed men pointed a gun at me. I only recognized Monday Eze. I do not know if one of the persons who pointed a gun at me is in court."

The evidence of 'PW3' and 'PW4' were not discredited and the identity of the appellants were never made an issue before the trial court. It is also obvious as shown on the record that both 'PW3' and 'PW4' had their shops broken into and they both recognized Monday Eze (the deceased gang leader).

Apart from the evidence of PW3 and PW4, a stronger relevant pointer against the accused at the trial were their statements Exhibits A, B, C and D wherein each of the accused persons stated that they first entered PW1's store and after thorough ransacking without getting any money they entered the next store (PW2's store) from where they recovered some money.

These statements were consistent with the evidence of PW3

and PW4, who were eye witnesses and therefore effectively corroborated Exhibits A, B, C and D. PW3 and PW4 gave evidence that the five men including the 1st accused (deceased) came to their store while armed with knives and other dangerous weapons. The appellant and his co-accused each said in their statements that they were at the scene of crime that night and that they were five in number and armed with knives. There cannot be a better corroboration of evidence before the trial court. The law is well settled on the governing nature of a confessional statement properly so admitted. See the case of Ogoala V. The State (1991) 2 LRCN 66 at 684, where the learned jurist Olatawura, JSC (of blessed memory) said:-

“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.”

See also the cases of Dawa V. The State (1980) 8 - 11 SC 236; The Queen V. Obiasa (1962) 1 All NLR 651 and Emmanuel Nwaebonyi V. The State (1994) 5 NWLR (Pt 343) 138.

The law is further settled as rightly submitted by the learned counsel for the respondent that a free and voluntary confessional statement, satisfactorily proved will ground a conviction even without any corroborative evidence. See Nwachukwu V. State (2005) 4, LRC NCC page 53 at 75.

From all indications, and contrary to the submission and contention held by the appellant's counsel, the reliance sought to make on an absence of identification parade was merely an afterthought. It cannot in other words withstand in the presence of the proper conviction made on the free and voluntary confessional statements.

On the totality, the prosecution had proved its case beyond all reasonable doubts and with the concurring findings of the two lower courts therefore, the appellant had not shown any reason why the judgment of the Court of Appeal should be interfered with.

With the few words of mine supra and more particularly on the comprehensive reasoning adduced by my learned brother Musa Dattijo Muhammad, JSC on the lead judgment, I also dismiss this appeal in like terms of the lead judgment, for lacking in merit. Appeal is hereby dismissed.