

SUPREME COURT OF NIGERIA
FRIDAY 19TH DECEMBER, 2014. SC. 233/2012
CORAM:- W. S. N. ONNOGHEN, S. GALADIMA,
M. U. PETER-ODILI, O. ARIWOOLA, K. B. AKA'AH, JJSC

OLORUNSHO ALUFOHAI APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Conspiracy - Distinctive nature - Failure to prove substantive offence - Does not make conviction for conspiracy inappropriate - As it is in itself a separate offence (H1)

ARMED ROBBERY - Ingredients - Proof - Prosecution must prove that there was robbery - And that the robbery was armed robbery - And that accused was the armed robber (H2)

IDENTIFICATION PARADE - Purpose of - It is to determine whether suspect can be identified as perpetrator of the crime - And court must ensure that accused is the person - Who actually committed the offence (H3)

CRIMINAL PROCEDURE - Proof - Means of - Guilt of an accused can be established by his confession - Circumstantial evidence - And evidence of eye witness (H4)

CRIMINAL PROCEDURE - Confession - Meaning of - It is admission made at anytime by a person charged with crime - Inferring that he committed the crime (H5)

CRIMINAL PROCEDURE - Confession - Validity of - Where proved to be voluntary and unequivocal - Confession can ground a finding of guilt - Regardless of any retraction from the maker (H6)

APPEALS - Concurrent findings - Proof beyond reasonable doubt - Prosecution discharged the burden on it from evidence adduced - Which rightly led to conviction of appellant - And SC cannot interfere with same (H7)

FACTS

Before the High Court of Edo State, accused/appellant was charged along with one other person with two counts of conspiracy and armed robbery contrary to section 5(b) and punishable under section 1(2)(a) of the Robbery & Firearms (special provisions) Act Cap. 398 LFN 1990. Both of them pleaded not guilty to the two counts. At the trial, five witnesses testified for prosecution/respondent. Appellant testified on oath in defence but called no other witness. Respondent's case is that some armed robbers attacked the home of PW1 in Benin City. PW1 testified that the robbers who were three in number stole some items from her father. In the course of the robbing, the robbers poured acid on the face of PW1. Following the robbery attack, PW1's father and mother (PW3) reported the matter to a police station.

It was at the police station that they met appellant and the other person (being held for another offence). The police was duly informed that appellant and the other were the robbers that attacked PW1 father's house. Appellant and the other were eventually arraigned before the court. Appellant's confessional statements were admitted even though there was a retraction, which led to conduct of a trial within trial. At the end of which, the statements were admitted as voluntarily made and duly corroborated. In its judgment, the court found appellant guilty of conspiracy to commit armed robbery and armed robbery. He was consequently sentenced to death by hanging. Appellant's appeal to the Court of Appeal Benin Division was dismissed. Hence, appellant has appealed to Supreme Court.

ISSUE FOR DETERMINATION

"Whether the Court of Appeal was right in affirming the decision of the trial court holding that the prosecution did prove the guilt of the appellant beyond reasonable doubt."

HELD (Unanimously dismissing the appeal per

ARIWOOLA JSC)

CRIMINAL PROCEDURE - Conspiracy - Distinctive nature

1. Therefore, failure to prove a substantive offence does not

make conviction for conspiracy inappropriate, as it is, in itself a separate and distinct offence, independent of the actual offence conspired to commit. (p. 3768 F)

ARMED ROBBERY - Ingredients - Proof

2. The law is trite and has long been settled, that for the prosecution to establish an offence of armed robbery against a suspect, the followings are required to be proved.

- (i) That there was in fact robbery incident;**
- (ii) That the robbery was an armed robbery; and**
- (iii) That the accused person, in particular, was the armed robber. (p. 3768 G)**

IDENTIFICATION PARADE - Purpose of

3. Generally, identification parade, otherwise known as “line-up” is a police identification procedure in which a criminal suspect and other physically similar persons are shown to the victim or a witness to determine whether the suspect can be identified as the perpetrator of the crime.

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 standing trial.

It is trite law, that identification parade is only necessary whenever there is doubt as to the ability of a victim to recognize the suspect who carried out or participated in carrying out the crime alleged or where the identity of the said suspect or an accused person is in dispute. But where there is certainty or no dispute as to the identity of the perpetrator of a crime, there will be no need for an identification parade to further identify the offender.

In the instant case, there is clear evidence on record that without being prompted, the victims of the alleged armed robbery immediately identified the appellant on being sighted,

couple of hours after the incident. What is more, the properties of the victims that were said to be carted away by the armed robbers were readily found in possession of the appellant. It is interesting to note that, no explanation was given for the alleged stolen electronics that were found in possession of the appellant neither did he claim ownership of same.

I am not in the slightest doubt that the appellant was properly identified by the victims and there was no need for any formal identification parade any longer. (p. 3770 F)

CRIMINAL PROCEDURE - Proof - Means of

4. In criminal trials, the law is that the guilt of an accused person for the commission of the offence charged can be established by any or all of the following:-

- (a) The confessional statement of the accused;**
- (b) Circumstantial evidence;**
- (c) Evidence of an eye witness. (p. 3772 B)**

CRIMINAL PROCEDURE - Confession - Meaning of

5. In the Evidence Act, the procedural law, in particular, Section 27(2) recognizes the relevance of confessional statements in criminal proceedings if such statements are made voluntarily.

A confession is described as a criminal suspect's oral or written acknowledgment of guilt, often including details about the crime.

In other words, a confession is an acknowledgment in express words by the accused in a criminal case, of the truth of the main fact charge or of some essential part of it.

In the Evidence Act, Confession is said to be an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime.

(p. 3772 D)

CRIMINAL PROCEDURE - Confession - Validity of

6. It is clear from the confessional statements of the appellant that he actually participated in the alleged robbery. He had given so much detail of the role he and the others played on

the night of the robbery, that one holds no hesitation in the slightest to agree with the trial court that the retraction from the confessional statement during trial was an afterthought. The statements were correctly admitted as being true and voluntarily made by the appellant at the trial court and the affirmation of the decision by the court below was rightly arrived at. B

It is trite law that where an extra judicial confession has been proved to have been made voluntarily and it is positive and unequivocal and amounts to an admission of guilt, such confession will suffice to ground a finding of guilt regardless of the fact that the maker resiles therefrom or retracted it altogether at the trial. (p. 3772 G) C

APPEALS - Concurrent findings D

7. In the instant case, there was practically nothing left for the prosecution to prove to establish the charge at the trial court. The prosecution proved the charge against the appellant from the evidence adduced both oral and documentary. There was no iota of doubt left in favour of the appellant. E

Upon the preponderance of evidence adduced by the prosecution and the concurrent findings of fact by the court below, which made it affirm the decision of the trial court, this court will not in any way interfere with the findings. The appellant had failed woefully to show that the decision of the court below was perverse in any form or has led to miscarriage of justice. F

In other words, the prosecution in this case discharged the burden on it and proved the case against the appellant beyond reasonable doubt. That rightly led to the conviction of the appellant by the trial court which decision was correctly and properly affirmed by the court below. G

The sole issue in this case is resolved against the appellant. (p. 3773 C) H

NOTABLE POINTS OF INTEREST

ARIWOOLA JSC

1. Conspiracy & substantive charges – Determination of

B It is pertinent and a proper approach to an indictment which contains a charge of conspiracy and a substantive charge to deal with the latter, that is the substantive charge first and then proceed to see how far the conspiracy count has been made out in answer to the fate of the charge of conspiracy. (p. 3768 D)

2. Conspiracy - Meaning of

D Conspiracy is an agreement between two or more persons to do an unlawful act. It is a matter of inference, deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them and which hardly are ever confined to one place. (p. 3768 E)

REPRESENTATION

E Emmanuel Achukwu Esq. with N. Okongwu, Esq., for the Appellant Oluwole O. Iyamu, Solicitor-General, Edo State with P. E. Aziegbem (Mrs.) P. S. Law Reform, R. O. Oaihimire (Mrs.) SSC and M. O. Eruaga (Mrs.) S.C., for the Respondent

CASES REFERRED TO

- F Morka v. State (1998) 2 NWLR (pt. 537) 294
- Ogide v. State (2005) 1 SCNJ 67
- Ndidi v. State (2007) 41 WRN 1
- Ochiba v. State (2001) 17 NWLR (pt. 1277) 638
- Bozin v. State (1998) 1 ACLR 1
- G Magic v. State (1999) 1 LRCN 252
- Adamu v. State (1991) 4 NWLR (pt. 187) 530
- Osetola v. State (2012) 2 SCM (pt. 2) 347
- Balogun v. A-G Ogun State (2002) 4 SCM 23
- Alabi v. State (1993) 7 NWLR (pt. 307) 551
- H Olayinka v. State (2007) 4 SC (pt. 1) 210
- Agboola v. State (2013) 8 SCM 157
- Ikemson v. State (1989) 1 CLRN 1
- Orimoloye v. State (1984) 10 SC 138

Egbohonome v. State (1993) 7 NWLR (pt. 306) 383

STATUTES REFERRED TO

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

Evidence Act 2011 (as amended), ss. 27(1)(2), 135(1)

B

LEAD JUDGMENT BY ARIWOOLA JSC

This is an appeal against the judgment of the Benin Division of the Court of Appeal, delivered on the 23rd day of April, 2012.

C

The appellant had earlier been charged along with one other, called Sunday Ehimiyein with two counts of conspiracy and armed robbery as follows:-

Count 1: That you, Sunday Ehimiyein (M) and Folorunsho Alufohai (M) on or about the 5th day of January, 1998 at Oluku town in the Iguobazuwa Judicial Division triable in the Benin Judicial Division conspired together and one other now at large to commit felony to wit:- armed robbery and thereby committed an offence, contrary to Section 5(b) and punishable under Section 1(2) (a) of the Robbery and Firearms (Special Provisions) Act Cap. 398, Laws of the Federation of Nigeria, 1990.

E

Count II: That you Sunday Ehimiyein (m) and Folorunsho Alufohai (m) and one other now at large on the 5th day of January, 1998 at Oluku Junction in Oluku town in the Iguobazuwa Judicial Division triable in the Benin Judicial Division robbed one Raphael Aggi (m) and Mrs. Helen Aggi (f) of their Video machine, valued at N18,000.00; one video Rewinder valued at N3,000.00 only and one 14" colour Television valued at N23,000.00 and that at the time of robbery, you were armed with offensive weapons to wit: gun, cutlass and acid and thereby committed an offence punishable under Section 1(2) (a) of the Robbery and firearms (Special Provisions) Act Cap 398, of 1990 Laws of the Federation of Nigeria.

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Before the trial court, the two accused persons pleaded not guilty to the two counts. The prosecution called a total of five (5) witnesses in support of the charge. Each of the accused testified on oath in defence but called no other witness. In a considered judgment, the trial court, on the 26th day of September, 2005 found each of the accused persons guilty of the two counts, convicted and

H

sentenced them to death by hanging by the neck until each of them shall be certified dead.

Dissatisfied with the judgment of the trial court, the instant appellant appealed to the court below in the Benin Judicial Division on two grounds.

B The court below found, upon the evidence of PW3 and PW4, that the appellant was properly convicted of the offence charged and dismissed the appeal.

C Being further dissatisfied with the decision of the court below led to the instant appeal upon a sole ground of appeal with a promise to file additional grounds of appeal upon receipt of the record of appeal. But no further ground was filed by the appellant.

D When the matter came up for hearing on 23/10/2014, learned counsel to the appellant adopted and relied on the appellant's brief of argument filed on 27/07/2012 to urge the court to allow the appeal, set aside the conviction of the appellant and the affirmation of same by the court below and to discharge and acquit the appellant.

E On the other hand, learned counsel for the State adopted and relied on their amended respondent's brief of argument to urge the court to hold that the prosecution proved the case on the two counts against the appellant and the co-accused beyond reasonable doubt and urged the court to dismiss the appeal for being unmeritorious.

F The gist of this case briefly is that, one Helen Aggi (PW3) and her late husband - Raphael Aggi were on the 5th day of January, 1998 robbed by the appellant and one Sunday Ehimiyein with another, still at large, while armed. They were dispossessed of their electronics, including one video player and a video Rewinder which were G both tendered, admitted and marked as Exhibits A and B respectively. That in the course of the robbery, acid was poured on PW1's face. While at the police station reporting the incident and making statement to the police, PW4, a policeman arrived the station with the appellant and a co-accused with Exhibits A and B, the properties H of the complainants recently robbed. On sighting the appellant, he was immediately identified to the police with the stolen properties.

It was in evidence on record that prior to the robbery incident, the police had received information that the appellant and others were planning to dispose of some electronics. Based on the infor-

mation, in an ambush laid by the police, the appellant and the co-accused were arrested with the said stolen items. The accused were subsequently charged with and convicted of the two counts against them.

Based on a concurrent finding of facts, the court below found the appeal to be unmeritorious and dismissed same. In the subsequent appeal to this court, the appellant in his brief of argument formulated a sole issue for determination as follows:-

“Whether the Court of Appeal was right in affirming the decision of the trial court holding that the prosecution did prove the guilt of the appellant beyond reasonable doubt.”

In response, the respondent also in its brief of argument distilled a sole issue from the lone ground of appeal filed by the appellant as follows:

“Whether or not the lower court was right in affirming the decision of the trial court convicting the appellant on a two count charge of conspiracy and armed robbery.”

There is no doubt that in the two respective sole issues distilled from the lone ground of appeal filed by the appellant both parties are saying the same thing though slightly couched differently.

In arguing the issue, learned counsel to the appellant referred copiously to the decision of the court below at pages 198-199 and contended that the court was wrong to have held that there was proper identification of the appellant as the person who committed the robbery and that they failed to establish that he was either the thief or the receiver. Learned counsel contended further that in criminal cases, especially armed robbery offence which carry capital punishment, the onus is on the prosecution to prove the guilt of the accused person beyond reasonable doubt. He relied on *Morka v. State* (1998) 2 NWLR (Pt. 537) 294 at 301; Section 135 (1) of the Evidence Act, 2011 (as amended) *Cyriacus Ogide & ors v. The State* (2005) 1 SCNJ 67 at 85-86. He submitted that the onus is static and does not shift.

Learned appellant counsel referred to the testimony of PW1 - one Ige Aggi, daughter of PW3 who testified that she identified the appellant as the one who poured acid on her face for looking at their faces. He contended that the witness did not give testimony as to how she identified the appellant, in particular, as to what type of

clothes the appellant wore and what features on him struck her to identify him as one of the robbers that attacked her family previous night in their house. Learned counsel contended further that from the testimony of PW1 under cross examination to the effect that it was her father on his return from Ekiadolor Police Station that informed her that those who came to their house to rob had been arrested and were at the Police Station, hence she was taken to the Police station to identify the appellant, learned counsel submitted that the testimony of PW1 was an afterthought and should be so held by the court in that, but for the information passed to her by her father she did not by herself identify the appellant as one of the men who had robbed her family.

Learned counsel referred to the testimony of PW2 - one Lucky Natuke, a Police Sergeant No. 149369 and contended that the officer did not mention the appellant in his testimony in court, as he merely tendered the exhibits said to have been recovered in respect of the case. Learned counsel referred to the testimony of PW3 - Mrs. Helen Aggi, the wife of Raphael Aggi that on the day of the incident, her daughter, PW1 had raised alarm that the appellant had poured acid on her face. He contended that PW1 never mentioned in her testimony before the court that it was the appellant who poured acid on her face. Learned counsel contended further that from the testimony of PW3 under cross examination, the only person she could identify any time and any where amongst those who attacked her family was one Emma who was said to be armed with a gun that night of the attack but who had not been arrested.

Learned counsel submitted that the fact that neither PW1 nor PW3 knew the appellant before the day of the incident should have called for proper formal identification of the suspects, by the Police in an identification parade. He relied on *Sunday Ndidi v. The State* (2007) 41 WRN 1 at 15 (2007) 5 SCNJ 274 at 287-288; *Ochiba v. The State* (2001) 17 NWLR (1277) 638 at 694-695.

Learned counsel referred to the testimony of PW4 on the recovery from the appellant and his co-accused of the articles robbed but wondered why the television which was part of the properties said to have been stolen was not recovered also from the appellant and the co-accused as the alleged arrest was said to have been done soon after the robbery incident.

Learned counsel contended that it is the duty of the prosecution to prove the guilt of the appellant beyond reasonable doubt and that it does not lie on the appellant to prove his innocence. He submitted that the prosecution failed to discharge its duty in respect of this case. The prosecution did not prove its case against the appellant beyond reasonable doubt hence he urged the court to allow this appeal, set aside the conviction of the appellant by the trial court and the affirmation of the said conviction and sentence by the court below. He finally urged the court to discharge and acquit the appellant. B

In responding, learned counsel to the respondent submitted that the decision of the court below is not perverse but borne out of the abundant evidence before the court. He referred to the charge of two counts and the law pursuant to which the appellant was charged and tried. He further referred to the evidence adduced by the prosecution on both conspiracy and the armed robbery. He submitted that conspiracy is a matter of inference from certain criminal acts of the parties done in pursuance to an apparent purpose in common intention from them. He submitted further that the offence of conspiracy can even be inferred from the criminal acts of the accused persons as regards the actual commission of the offence of armed robbery. Learned counsel posited that the appellant in the instant case being in possession of the robbed items immediately after the robbery incident and the positive identification of him by the victims is evidence that he actually committed the crime. He referred to the evaluation, by the trial court, of the evidence adduced by the prosecution vis-à-vis the position of the law on conspiracy and its conclusion that the offence of conspiracy was proved beyond reasonable doubt. He submitted that the decision of the trial court was rightly affirmed by the court below and urged the court to hold that the review of the evidence by the trial court was unassailable. C D E F G

On the second count charge of armed robbery, learned counsel referred to the ingredients the prosecution was expected to prove to attain success. He relied on *Bozin v. State* (1998) 1 ACLR 1 at 2; *Magic v. The State* (1999) 1 LRCN 252. H

He took the three ingredients one after the other and discussed them with the evidence adduced by the prosecution before the trial court. He contended that the cumulative evidence of PW1, PW3 and PW4 which was neither contradicted nor controverted dur-

ing cross-examination is that there was robbery incident in the house of PW3 and that the robbers were armed.

On the third ingredient, whether appellant took part in the armed robbery, learned counsel submitted that the evidence of PW1, PW3 and PW4 positively identified appellant as one of the robbers
B that attacked their family and robbed them of Exhibits A and B.

Learned counsel referred to the testimony of PW1 and submitted that her identification of the appellant was based on her personal knowledge of him during the robbery operation.

Learned counsel further referred to the testimony of PW3
C and how she positively identified the appellant as one of those who robbed her family. She also gave vivid description of the role the appellant played during the operation. He submitted that the evidence of PW1, PW3 and PW4 linking the appellant with the commis-
D sion of the crime is clear, positive and compelling. And that the best identification of an accused person in a crime is by the victim or the witness of the crime. Both PW1 and PW3 were victims of the crime of armed robbery.

Learned counsel submitted that the prompt and spontane-
E ous identification of the appellant by PW3 at the Police station where there were many other people is sufficient act of positive identification which does not need any identification parade. He submitted that it is not in every case that an identification parade is necessary to
F identify culprits.

Learned counsel submitted further that the fact that the appellant was in possession of Exhibits A and B within 24 hours of the robbery incident lends credence to the presumption that he was one of the armed robbers who had robbed PW3's family.

Learned counsel referred to the confessional Statements of
G the appellant, admitted as Exhibits F & G wherein the appellant admitted that he did not wear any mask on the night of the robbery, hence he submitted that there was no identity crisis about the true identity of the appellant.

H The respondent submitted that under the Nigeria administration of criminal justice system, the identity of an accused person is not limited to an identification parade but can be established in other different ways. He relied on *Adamu v. State* (1991) 4 NWLR (Pt. 187) 530.

Learned counsel submitted that the appellant failed woefully to discharge the burden on him to move the court to set aside the concurrent findings of fact of the two courts below. The appellant has not shown that the verdict is in any way perverse. He finally urged the court not to disturb the verdict but dismiss the appeal for want of merit and affirm the judgment of the two courts below. B

As stated earlier, the appellant distilled a sole or lone issue from the single ground of appeal he had filed against the judgment of the court below. The respondent also, though couched slightly differently, formulated a sole issue. I like to rather put the issue arising from the sole ground of appeal on pages 203-204 of the record as follows: C

“Whether the court below was right in affirming the decision of the trial court which found the appellant guilty and convicted as charged.” D

First and foremost, it is interesting to note from the submissions of the appellant’s counsel that the main complaint of the appellant was that he was not properly identified by the alleged victims of the robbery incident. In other words, it was contended that the Police ought to have conducted or carried out a formal identification parade to get the victims to identify those who robbed their family on the said 5th January, 1998. I shall come back to the issue of Identification parade anon. E

In the very well considered judgment of the trial court delivered on 26/9/2005, the trial Judge had, inter alia, found and come to the following conclusions. F

“PW1 and PW3 positively identified the 2nd accused person as the armed robber who poured acid on her face when she looked at him and then raised an alarm.” G

I hold that the prosecution has also proved the offence of armed robbery in count 2 of the charge, beyond reasonable (doubt).

Finally and on the totality of the evidence adduced in this case before me, I have come to irresistible and inevitable conclusion that the prosecution has proved the guilt of each of the 1st and 2nd accused persons beyond reasonable doubt pursuant to Section 138(1) of the Evidence Act. H

The 1st and 2nd Accused persons are a bunch of heartless criminals who took delight in torturing and maiming their helpless

victims as shown by the manner in which acid was poured on the face of the PW1 by the 2nd accused person while they (were) armed with guns and offensive weapons to wit: acid and a cutlass.

I believe the credible evidence of the Prosecution in its entirety and I accept it. I disbelieve the evidence of the 1st and 2nd accused persons and consequently reject their testimonies, which I regard as tissues of lies and afterthought. I believe that the accused persons were armed with guns, a cutlass and acid at the time of the armed robbery. I believe that Exhibits A and B were recovered from the 1st and 2nd accused persons by the Police soon after the robbery.

Finally, in the result and in view of the foregoing, the conclusion that I have reached in this case is that I find each of the 1st and 2nd accused persons guilty of the offences of conspiracy to commit armed robbery in count 2 as charged and I hereby convict each of them accordingly.” (Bracket supplied)

It is pertinent and a proper approach to an indictment which contains a charge of conspiracy and a substantive charge to deal with the latter, that is the substantive charge first and then proceed to see how far the conspiracy count has been made out in answer to the fate of the charge of conspiracy. See *Osetola & Anor v. The State* (2012) 2 SCM (Pt. 2) 347; (2012) 17 NWLR (Pt. 1329) 251; (2012) 50 (2) NSCQR 598; (2012) 6 SC (Pt. IV) 148.

Conspiracy is an agreement between two or more persons to do an unlawful act. It is a matter of inference, deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them and which hardly are ever confined to one place. ***Therefore, failure to prove a substantive offence does not make conviction for conspiracy inappropriate, as it is, in itself a separate and distinct offence, independent of the actual offence conspired to commit.*** See *Balogun v. A-G Ogun State* (2002) 4 SCM 23; (2002) 2 SC (Pt. 11) 89; (2002) 2 SCNJ 196.

The law is trite and has long been settled, that for the prosecution to establish an offence of armed robbery against a suspect, the followings are required to be proved.

- (i) ***That there was in fact robbery incident;***
- (ii) ***That the robbery was an armed robbery; and***
- (iii) ***That the accused person, in particular, was the***

armed robber. See *Bozin v. State* (1985) 7 NWLR (Pt. 8) 465 at 467; *Alabi v. State* (1993) 7 NWLR (Pt. 307) 551; *Olayinka v. State* (2007) 4 SC (Pt. 1) 210; (2007) 9 NWLR (Pt. 1040) 561.

To prove and establish the charge against the appellant in this case the prosecution relied on the testimony of PW1, PW3 and PW4 and the confessional statements made by the appellant at two different Police Stations where the matter was treated. B

As clearly shown on the record, the trial court had found in evidence from the PW1 and PW3 - Ige Aggi and Helen Aggi - daughter and mother respectively, who were the victims of the robbery incident, that on the 5th day of January, 1998 the appellant and two others - the 1st accused before the trial court and one Emma who was at large, were armed with guns, cutlass and acid. They attacked their house through the back door which they broke with a wooden mortar which was admitted as Exhibit C. They robbed their victims D of some electronics some of which were admitted as Exhibits A and B with a colour television which was not recovered, being with the Emma who was at large.

The trial court found that PW1 corroborated the testimony of PW3 - her mother, in material particulars. She had narrated the part played by each of the accused, in particular, the appellant who poured acid on the face of PW1 as the armed robbers were escaping with their robbed items. E

At dawn on the following day of the incident, as PW3 and her late husband were at the Ekiadolor Police station to lodge complaint and report the robbery incident, PW4 - Sgt. Ola Jonathan - a Police Officer who investigated the crime came into the Station with the appellant and the co-accused with Exhibits A and B. PW3 and her late husband immediately recognized and identified both men to G the Police as the armed robbers who had robbed their family of Exhibits A and B, the previous night.

It is equally in evidence that PW4 and another Police Officer, one Sunday, who later died, had received information from an informant on 4th January, 1998 that certain persons were planning to rob in the neighbourhood and then dispose off by sale, their robbed electronics. The informant had given detail description of the area being planned to be robbed. The policemen laid ambush in the early hours of the day and succeeded in arresting the appellant and the H

other co-accused with the robbed electronics- Exhibits A & B right in their possession. They were then immediately taken to the Police Station where they were identified by the PW3 and her late husband. Later, PW1 also went to the Police Station at the request of her late father to identify both the appellant and their loot - which are her family properties.

It is on record, that the confessional statements of the appellant were admitted by the trial court, even though there was a retraction, which led to conduct of a trial within trial. At the end, the trial court found that the statements were voluntarily made, hence the objection to the admissibility of the statements was overruled and same were admitted and marked, Exhibits F and H respectively. Exhibit F was the voluntary statement of the appellant made to the police on 6/01/1998, few hours after the robbery operation he was alleged to be part of, at the Ekiadolor Police Station. While Exhibit H was his statement made on 12/01/1998 voluntarily, to the Police at the State CID. The trial court noted in its judgment that the appellant, at the earliest opportunity, had made his statement voluntarily and made a clean breast of the planning and the commission of the offence of armed robbery. The trial court further noted that the appellant and his co-accused had the opportunity of committing the offences with which they were charged. The court finally held that the confessional statements were true and duly corroborated.

Now, on the way the appellant was identified at the Police station. Whether or not the Police ought not to have conducted a formal identification parade. ***Generally, identification parade, otherwise known as "line-up" is a police identification procedure in which a criminal suspect and other physically similar persons are shown to the victim or a witness to determine whether the suspect can be identified as the perpetrator of the crime.*** See *Agboola v. State* (2013) 8 SCM 157; (2013) 11 NWLR (Pt. 1366) 619; (2013) 54 NSCQR (Pt. 11) 1162; (2013) All FWLR (Pt. 704) 139.

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 standing trial. See Patrick Ikemson v. State (1989) 1 CLRN 1; Agboola v. State (supra).

It is trite law, that identification parade is only necessary whenever there is doubt as to the ability of a victim to recognize the suspect who carried out or participated in carrying out the crime alleged or where the identity of the said suspect or an accused person is in dispute. But where there is certainty or no dispute as to the identity of the perpetrator of a crime, there will be no need for an identification parade to further identify the offender.

In the instant case, there is clear evidence on record that without being prompted, the victims of the alleged armed robbery immediately identified the appellant on being sighted, couple of hours after the incident. What is more, the properties of the victims that were said to be carted away by the armed robbers were readily found in possession of the appellant. It is interesting to note that, no explanation was given for the alleged stolen electronics that were found in possession of the appellant neither did he claim ownership of same.

I am not in the slightest doubt that the appellant was properly identified by the victims and there was no need for any formal identification parade any longer. In Mathew Orimoloye v. The State (1984) 10 SC 138, this court in a case almost in all fours had stated as follows:-

“It is not in every case that a parade is necessary to identify culprits. The appellant was identified by PW1 as soon as the latter saw him at the Police Station and even before he was asked to identify him.”

In the same case, this court went further as follows:-

“It is necessary to point out that the spontaneous reaction towards the recognition of the appellant in respect of the offence committed 6 hours earlier is a more acceptable identification of the appellant than a programmed identification.”

In the case on hand, it was clear from the evidence that the victims - PW3 and her late husband did not go to the Police Station for the purpose of identifying the appellant. They merely went to

lodge complaint to the police of the attack on their family. In the result, the appellant was properly identified by PW1 and PW3, hence identification parade was rightly dispensed with by the Police. It was not necessary any longer.

B Furthermore, as earlier noted, the appellant was said to have made statements to the police. These statements upon retraction were tested in a trial within trial but were found to have been made voluntarily. The said statements were found to be positive and unequivocal and amounted to an admission of guilt.

C ***In criminal trials, the law is that the guilt of an accused person for the commission of the offence charged can be established by any or all of the following:-***

(a) ***The confessional statement of the accused;***

(b) ***Circumstantial evidence;***

D (c) ***Evidence of an eye witness.***

In the Evidence Act, the procedural law, in particular, Section 27(2) recognizes the relevance of confessional statements in criminal proceedings if such statements are made voluntarily.

E ***A confession is described as a criminal suspect's oral or written acknowledgment of guilt, often including details about the crime.***

F ***In other words, a confession is an acknowledgment in express words by the accused in a criminal case, of the truth of the main fact charge or of some essential part of it.*** See Agboola v. State (supra).

G ***In the Evidence Act, Confession is said to be an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime.*** See Section 27(1) Evidence Act. Akpan v. State (2001) 7 SC 124; Nwachukwu v. State (2002) 12 SCM 143; (2002) 7 SC (Pt.1) 124.

H ***It is clear from the confessional statements of the appellant that he actually participated in the alleged robbery. He had given so much detail of the role he and the others played on the night of the robbery, that one holds no hesitation in the slightest to agree with the trial court that the retraction from the confessional statement during trial was an afterthought. The statements were correctly admitted as be-***

ing true and voluntarily made by the appellant at the trial court and the affirmation of the decision by the court below was rightly arrived at.

It is trite law that where an extra judicial confession has been proved to have been made voluntarily and it is positive and unequivocal and amounts to an admission of guilt, such confession will suffice to ground a finding of guilt regardless of the fact that the maker resiles therefrom or retracted it altogether at the trial. See Egboghonome v. The State (1993) 7 NWLR (Pt. 306) 383.

In the instant case, there was practically nothing left for the prosecution to prove to establish the charge at the trial court. The prosecution proved the charge against the appellant from the evidence adduced both oral and documentary. There was no iota of doubt left in favour of the appellant.

Upon the preponderance of evidence adduced by the prosecution and the concurrent findings of fact by the court below, which made it affirm the decision of the trial court, this court will not in any way interfere with the findings. The appellant had failed woefully to show that the decision of the court below was perverse in any form or has led to miscarriage of justice.

In other words, the prosecution in this case discharged the burden on it and proved the case against the appellant beyond reasonable doubt. That rightly led to the conviction of the appellant by the trial court which decision was correctly and properly affirmed by the court below.

The sole issue in this case is resolved against the appellant.

Accordingly, for lacking in merit, this appeal is liable to dismissal. It is dismissed. The decision of the court below which affirmed the conviction and sentence of the appellant is hereby affirmed.

ONNOGHEN JSC

I have had the benefit of reading in draft, the lead Judgment of my learned brother ARIWOOLA J.S.C. just delivered.

I agree with his reasoning and conclusion that the appeal lacks

merit and should be dismissed.

I therefore order accordingly. Appeal dismissed.

GALADIMA JSC

B I had a thorough preview of the Lead Judgment of my learned brother, ARIWOOLA JSC, just delivered. I completely agree with the reasoning and conclusion contained therein.

C In this appeal, the appellant had earlier been charged along with one other named Sunday Ehimiyein before the High Court of Edo State of Nigeria with two counts of conspiracy and armed robbery contrary to section 5 (b) and punishable under section 1(2) (a) of the Robbery and Firearms (special provisions) Act Cap.398, Laws of the Federation of Nigeria, 1990. Before the trial court both accused persons pleaded not guilty to the two counts. Five witnesses testified for the prosecution. The accused persons testified on Oath in defence but called no other witness.

E On 26/9/2005, in a considered judgment the trial court found each of the accused persons guilty of the two counts, convicted and sentenced them to death. The appellant herein appealed to the Court of Appeal Benin Division, which dismissed the appeal. He further appealed to this court upon sole ground from which a single Issue was distilled for determination thus.

F *“Whether the Court of Appeal was right in affirming the decision of the trial court holding that the prosecution did prove the guilt of the appellant beyond reasonable doubt.”*

On his part, the respondent’s, sole issue, couched slightly different in the brief of argument, reads thus:

G *“Whether or not the lower court was right in affirming the decision of the trial court convicting the appellant of conspiracy and robbery.”*

H In the appellant’s brief, his learned counsel has argued that the prosecution has failed to prove the guilt of the appellant and the co-accused person beyond reasonable doubt, especially in this case, which carries capital punishment. Reliance was placed on MORKA v. THE STATE (1998) 2 NWLR (Pt. 537) 294 at 301; CYRIASCUS OGIDE & ORS v. THE STATE (2005) 1 SCNJ 67 at 85 and section 135(1) of the Evidence Act, 2011 (as amended).

Referring to the testimony of PW1, daughter of PW3 (Helen Aggi) who identified the appellant as the one who poured acid on her face, learned counsel contended that the witness (PW1) did not give testimony as to how she identified the appellant. That the witness could not identify the type of clothes the appellant had on him on the fateful day or what striking features that could make him easily identifiable. That PW1 gave her testimony based on what she was told and the testimony was unreliable, as an afterthought. That from the testimony of PW3, under cross-examination, it was one Emmanuel at large she could identify amongst those who attacked her family with a gun. Learned counsel referred to the testimony of PW2 - a police sergeant and contended that he merely tendered the exhibits which were recovered in respect of the case. He did not mention the name of the appellant in his testimony. He wondered why proper identification parade was not conducted to formally identify the suspects.

As for the testimony of PW 4, on the recovery of some articles from the appellant and the co-accused, learned counsel has wondered why the television, which was part of the properties said to have been stolen was not recovered from the appellant and the co-accused as their arrest was done soon after the robbery.

It is in view of the foregoing circumstances learned counsel for the appellant has urged us to hold that the prosecutor failed to prove the guilt of the appellant beyond reasonable doubt and ought to have his conviction set aside and discharge him.

Responding, learned counsel to the respondent submitted that decision of the court below was not perverse but dearly arrived at in consideration of abundant evidence from the testimony of the prosecution witnesses. Referring to the evidence adduced by the prosecution on offence of conspiracy and the armed robbery, leveled against the appellant and his co-accused, learned counsel submitted that a person is said to have conspired to commit an offence, when there could be inferences from his criminal acts, regarding the actual commission of the offence; in this case the offence of armed robbery, where the appellant was found in possession of the articles carted away at the scene of robbery. Furthermore, there was positive identification of the appellant by his victims.

On the second count charge of armed robbery, learned coun-

sel has contended that the cumulative evidence of PW1, PW3 and PW 4, was neither contradicted nor controverted during cross-examination. For this reason there was clear evidence of robbery in the house of PW3 and the accused persons were armed.

B In this contribution, I find it particularly necessary to comment on the appellant's complaint that he was not properly identified by the victims of the robbery. He is saying that the police failed to conduct a formal identification parade to identify those who robbed the victims.

C The procedure for a formal identification parade takes the form of lining up the suspect(s). The victim(s) or witness(s) will be physically shown to the victim in order to identify the actual perpetrator of the crime.

D Identification parade is only necessary whenever there is doubt as to the ability of a victim to identify or recognize the suspect who carried out or participated in carrying out the crime alleged or also where the identity of the suspect is in dispute.

E Where the identity of the suspect or an accused is not in dispute but certain, there will be no need for an identification parade to further identify the offender. In this case there is clear evidence on record, without being prompted (as alleged by the appellant) that the victims of the alleged armed robbery without much ado identified the appellant on being cited, a couple of hours after the robbery incident. Furthermore, the properties of the victims that the appellant and his co-accused carted away were found in possession of the appellant. He failed to explain how he came in possession of any of these items.

G I am satisfied that the appellant was properly identified by his victims. There was no need for any formal identification parade any more. See *MATTHEW ORIMOLOYE v. THE STATE* (1984) 10 SC 138. This is what happened. PW3 and her late husband went to the police station to lodge a complaint of the attack on their family. It was there the appellant, without any prompting from anybody, was properly recognized and identified by PW1 and PW3; hence it was no longer necessary for the police to embark on formal identification parade. It was rightly dispensed with. See *KABIR ALMU v. THE STATE* (2009) 4 NCC 266 at 239. *ADAMU v. STATE* (1991) 4 NWLR (Pt. 187) 50.

In the circumstance, the trial judge rightly found, inter alia, on pages 149 - 151 of the record that:

“PW1 and PW3 positively identified the 2nd accused person [appellant herein] as the armed robber who poured acid on her face when she looked at him and then raised alarm”

Furthermore, the confessional statements of the appellant, admitted as Exhibits F and G wherein he admitted that he did not wear any mask on the night of the robbery, shows clearly that there was no identity crisis about his identity. B

On the charge of conspiracy and armed robbery, I find that the findings of the two courts below on this issue is not perverse. It is borne out of abundant evidence before the court. Conspiracy to commit an offence is quite often inferred from circumstantial evidence. It is based on common intent, or purpose. When, once there is such evidence to commit the substantive offence, it is settled that it does not matter what any of the conspirators did. See *AIGHE v. THE STATE* (2009) 4 NCC 456. Bare agreement to commit an offence is sufficient. Appellant in the instant case being found in possession of the items of his victims immediately after the robbery and the positive identification of him by the victims is evidence that he actually committed the crime. Moreover, the evidence of PW4, a police officer is credible. He had received information from an informant that certain persons were planning to rob in the neighbourhood and dispose of the items of the robbed victims. On the tips given by the informant, the police laid ambush in the early hours of the day and they successfully arrested the appellant and his co-accused with the victims' electronics, Exhibits A and B, right in their possession and they were immediately taken to the police station where the appellant voluntarily made confessional statements, even though he later retracted; as a result of which a trial within trial was conducted and the court found that the statements were voluntarily made. C
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I cannot agree more with the learned trial judge in his conclusion on pages 149-151 of the record that:

“I believe the credible evidence of the Prosecution in its entirety and I accept it. I disbelieve the evidence of the 1st and 2nd Accused persons and consequently reject their testimonies, which I regard as tissues of lies and afterthought. I believe that the accused persons were armed with guns, a cutlass and acid at the time of the

armed robbery. I believe that Exhibits 'A' and 'B' were recovered from 1st and 2nd Accused Persons by the Police soon after the robbery.

Finally, in the result and in view of the foregoing, the conclusion that I have reached in this case is that I find each of the 1st and 2nd Accused persons guilty of the offences of conspiracy to commit armed robbery in count 1 and of Armed Robbery in count 2, as charged and I hereby convict each of them accordingly”.

In the light of the foregoing, I hold that the prosecution proved the charge against the appellant beyond reasonable doubt.

The concurrent findings of the court below cannot be disturbed. Having agreed with my learned brother ARIWOOLA, JSC that this appeal is lacking in merit it is liable to be dismissed and accordingly dismissed.

PETER-ODILI JSC

I agree with the judgment just delivered by my learned brother, Olukayode Ariwoola JSC and to show my support, I shall make the following comments.

This is an appeal against the judgment of the Court of Appeal, Benin Division in criminal appeal No. ACB/B/420C/2010 delivered on 23/4/2012 affirming the conviction of the appellant by the trial court.

FACTS

The case as put forward by the prosecution is that Ige Aggi who testified as PW1 lived at Oluku Junction Benin City and was a trader. That on the 5th January 1998 she was at home at night when she heard gun shots and some armed robbers used hard objects to break the door at the back of their house and entered. That the armed robbers stole their TV set and a Video rewinder of her father, Raphael Aggi. PW1 stated further that in the course of the robbing the robbers poured acid on her face and the robbers were three in number. That following the robbery attack, Raphael Aggi went to the police station to make a report and there met the appellant at which he told the police that appellant was one of those who attacked their house. The case was initially investigated by the police at Ekiadolor Police Station before it was transferred to the State CID Benin City

which later arraigned the appellant and another accused person at the magistrate court before being charged on information to the Armed Robbery and Firearms Tribunal, Benin where the matter was tried and concluded with the conviction and sentence of the appellant on 26th September, 2005. The appellant dissatisfied appealed to the Court of Appeal, Benin or court below or lower court for short which in turn affirmed the decision of the trial Tribunal. Again aggrieved, the appellant has come before this court on a one Ground of Appeal.

On the 20/10/2014 date of hearing, learned counsel for the appellant, Emmanuel O. Achukwu adopted their Brief of Argument settled by him and filed on the 27/7/2012. He crafted one issue for determination stated as follows:

Whether the Court of Appeal was right in affirming the decision of the Trial Court holding that the prosecution did prove the guilt of the appellant beyond reasonable doubt.

Learned counsel for the respondent, Mr. Oluwole Iyamu adopted the Brief he settled which was filed on 12/6/14 and deemed filed on 23/10/14. He identified a sole issue which is, viz:

Whether or not the lower court was right in affirming the decision of the trial court convicting the appellant on a two count charge of conspiracy and armed robbery.

The two versions of the issues as formulated in his own way by counsel on the different parts of the divide in effect saying the same thing, the question raised can be taken to be whether the prosecution established the charge against the appellant as required by law.

Arguing therefore from his standpoint, Mr. Achukwu for the appellant stated that the standard of proof in criminal cases including armed robbery for which the appellant was charged is proof beyond reasonable doubt. That that standard cannot be said to have been met when the PW1 could not show how she was able to identify the appellant or the robbers in the night of the robbery. He cited *Morka v. State* (1998) 2 NWLR (Pt. 537) 294 at 301; Section 135 (1) of the Evidence Act 2011 as amended; *Cyriacus Ogide & Ors v. The State* (2005) 1 SCNJ 67 at 85-86.

For the appellant was submitted further that the Supreme Court warned on the need for the court to be careful in convicting

without proper identification in cases where the accused was not previously known to the witness. He referred to *Sunday Ndidi v. The State* (2007) 31 WRN 1 at 1-16 or (2007) 5 SCNJ 274 at 287- 288.

Mr. Achukwu of counsel went on to contend that PW1 was the one who alleged that the robbers who came to rob them in their house poured acid on her face which statement she did not make until her father, Raphael Aggi took her to the police station on telling her that the robbers who attacked their house were arrested. That it was with this prior knowledge that on getting to the police station she identified the appellant as one of those robbers. He made reference to some divergence in the evidence between PW1 and PW3, Helen Aggi who is mother of PW1, a situation that made a formal identification parade necessary. He placed reliance on *Sunday Ndidi v. the State* (2007) 5 SCNJ 274 at 287-288; *Ochiba v. The State* (2011) D 17 NWLR (Pt. 1277) 638 at 694-695.

It was further contended that PW4 in his statement that he recovered one video machine and one video recorder from the appellant and the 1st accused person at the trial court which recovery took place on the morning of the day of the robbery incident of 5/1/98 that is soon after the robbery incident. Learned counsel wondered why the television set which was allegedly stolen along with the items above mentioned were not recovered.

Learned counsel for the appellant stated on that the purported admission of the appellant in the confessional statement cannot be taken as accepted admission of guilt as he denied thumb printing the statement.

In response, the learned Solicitor General of the Edo State Ministry of Justice, Mr. Oluwole Iyamu for the state submitted that the offences of conspiracy to commit armed robbery and armed robbery contrary to S. 5(b) and punishable under section 1 (2)(a) of the Robbery and Firearms (Special Provisions) Act on which the appellant was charged, the law requires the prosecution to prove its case beyond reasonable doubt. He cited S. 135(1) of the Evidence Act (as amended); *Bozin v. The State* (1985) 2 NWLR (Pt. 8) 465; *Bolanle v. The State* (2005) 7 NWLR (Pt. 925) 431; *Njovens v. State* (1973) NWLR (Pt. 24) 648; *Obiakor v. State* (2002) 10 NWLR (Pt. 776) 612.

It was further contended for the respondent that the evi-

dence adduced by the prosecution through its witnesses were sufficient to infer the conspiracy since the common intention was clearly shown.

On the matter of the identity of the appellant, Mr. Iyamu of counsel said PW1 had ample time seeing the appellant during the robbery operation so that appellant's identity was not in doubt to her. Also, that PW3 positively identified the appellant as one of the robbers and also gave vivid description of the role played by him. That the evidence of PW4 corroborated the evidence PW3 and the necessary link of the appellant with the commission of the crime was clear, positive and compelling. He referred to *Christopher Nwosu v. The State* (1998) 1 ACLR 281 at 284; *Alhaji Yinusa Ajiloye & Anor. In Re-Karimu Atada v. State* (1983) 6 SC 1 at 2.

Learned Solicitor General for the respondent went on to state that the fact that the appellant was in possession of Exhibits A and B within 24 hours of the robbery lends credence to the presumption that he is one of the armed robbers who robbed PW3. He relied on *Isiaka Ayorinde v. The State* (1984) 11 SC 44 at 48; S.167 (A) of the Evidence Act as amended.

He also submitted that there was no material contradiction in the evidence of the prosecution witnesses. He cited *Sule Oladejo Asiriye v. The State* (1989) 12 SC 62 at 70.

Mr. Iyamu for the respondent stated on that the learned trial Judge rightly admitted the confessional statement of the appellant as Exhibit F since what the appellant objected to was that he did not thumb print it. He referred to *Godwin Ikpasa v. The State* (1981) 9 SC 30.

He concluded by stating that the concurrent findings of fact and conclusion of the courts below should not be interfered with since they stemmed from what had been provided by law and practice in proof of conspiracy and armed robbery. That the evidence of only one witness is sufficient and the identification of the appellant as participating in the operation unassailable. Also, nothing has been shown to establish a perverse finding by those lower courts. He cited *Adamu v. State* (1991) 4 NWLR (Pt. 187) 530; *Oguonzee v. State* (1998) 4 SC 110 at 124; *Okwe v. Dosa & Ors* (1973) 5 SC 203.

In a nutshell the position of the appellant is that the prosecution did not prove the guilt of the appellant beyond reasonable doubt,

the standard of proof so required by law. The respondent of course disagreed with the stand that the requirement was met.

It needs therefore be stated that the proof required in the two offences charged being conspiracy to commit armed robbery and armed robbery against the appellant is beyond reasonable doubt which connotes a high degree of probability and not that proof that is equated to “proof beyond every shadow of doubt.” This the law has envisaged in view of what is humanly possible and those impossibilities only the Divine can tackle. Therefore, the prosecution is not expected to prove its case with absolute certainty as that is the prerogative of God the Almighty. It is certainly stating the obvious to say that absolute certainty is impossible in any human enterprise including the criminal justice system or administration and so the standard required being that with such a high degree of probability as to be seen as beyond that doubt that can reasonably be available. I placed reliance on *Onafowokan v. State* (1987) SCNJ 328.

What is looked for from the prosecution having been stated above, the next step is to place the facts and circumstances within the domain of that required standard. In that regard, the facts are that PW3 and her husband were on the day in question robbed by persons which they alleged included the appellant while armed. That the assailants broke into the house of PW3 and husband armed with a gun, cutlass and broken bottle, took away their colour television set, video cassette recorder and a video cassette rewinder and made away but the appellant was found with some of these stolen items within 24 hours of the robbery.

PW1, PW2 and PW3 testified on the roles played by the 1st and 2nd accused persons, the appellant being the 2nd accused who poured acid on the face of PW1, daughter of PW2 and PW3. From the evidence the prosecution witnesses PW1, PW2 and PW3 had no difficulty in identifying the appellant as there was evidence that they had time to so identify the faces of their assailants in circumstances which easily dispatched the need for an identification parade as touted by learned counsel for the appellant. See *Christopher Nwosu v. The State* (1998) 1 ACLR 281 at 284.

The positive and direct identification linking the appellant and co-accused with the commission of the crime juxtaposed with appellant being found in possession of the robbed items within 24 hours

put the stamp of guilt on the appellant akin to the situation this court faced in *Alhaji Yinusa Ajiloye & Anor. (Re-Karim Atanda) v. State* (1983) 6 SC 1 at 2.

In the facts eloquently placed before court, it can safely be said that the prosecution established the essential ingredients of the offence of robbery which are:

- (a) That there was robbery
- (b) That the robbers were armed
- (c) That the accused person took part in the armed robbery.

See *Bozin v. State* (1998) 1 ACLR 1 at 2; *Magic v. The State* (1999) 1 LRCN 252.

Furthermore, the appellant had raised an eyebrow on the admissibility of his confessional statements, Exhibit F claiming not to have thumb printed it. The learned trial judge rightly admitted since his resiling did not affect the admissibility but the facts therein were to be considered in the course of the deliberation and this he did placing what was contained in the extra judicial statement alongside the evidence proffered and was in a position therefore to accept the truth of the confession as established. It is from there that the court below had no difficulty in accepting what the trial court did and I see no reason at this level to deviate. See *Godwin Ikpasa v The State* (1981) 9 SC 30; *Oguonzee v. State* (1998) 4 SC 110 at 124.

On the offence of conspiracy there was indeed a surfeit of facts from the criminal acts of the appellant and co-travelers done in pursuance of their common intention from which the offence of conspiracy could be inferred and these inferences are such that the conspiracy can be said to have been proved beyond reasonable doubt.

I have no difficulty in resolving this lone issue against the appellant and in line with the fuller reasoning in the lead judgment I too dismiss this appeal as lacking in merit.

AKA'AH'S JSC

Sunday Ehimiyein and the appellant stood trial with another person now at large on a two count charge of conspiracy to commit armed robbery and armed robbery contrary to section 5(b) and punishable under section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act Cap 398 of 1990 Laws of the Federation of Nige-

ria. The charge read as follows:-

"COUNT 1

That you Sunday Ehimiyein (m) and Folorunsho Alufohai (m) on or the 5th day of January, 1998 at Oluku town in the Iguobazuwa Judicial Division triable in the Benin Judicial Division conspired with one other now at large to commit felony to wit: armed robbery and thereby committed an offence contrary to section 5 (b) and punishable under section 1 (2)(a) of the Robbery and Firearms (Special Provisions) Act Cap 398 of 1990 Laws of the Federation of Nigeria.

COUNT II

That you Sunday Ehimiyein (m) and Folorunsho Alufohai (m) and one other now at large on the 5th day of January, 1998 at Oluku town in the Iguobazuwa Judicial Division triable the Benin Judicial Division robbed one Raphael Aggi (m) of his video machine, one video rewinder and one 14" colour television and at the time of robbery, you were armed with offensive weapon to wit: gun, cutlass and acid and thereby committed an offence punishable under section 1(2)(a) of the Robbery and Firearms (Special provisions) Act Cap 398 of 1990 Laws of the Federation of Nigeria."

The evidence adduced by the prosecution which led to the conviction of the appellant was that, there was a robbery which was carried out in Raphael Aggi's house in the night of 5/1/98. During the robbery operation a video player and recorder belonging to Raphael Aggi were carted away by the thieves. The incident was reported at the Police Station. While Raphael Aggi and his wife Helen Aggi who testified as PW3 were recording their statements, Sgt. Ola Jonathan (PW4) brought the appellant and the 1st accused along with the video player and recorder and PW3 identified the appellant and the 1st accused as the thieves who broke into their house in the night. Their daughter Ige Aggi gave evidence as PW1. She said the accused poured acid on her face. She identified the video player and decoder on which her father had inscribed his names before the robbery. The accused were found guilty of conspiracy to commit armed robbery and armed robbery and were each sentenced to death by hanging on each count. The appellant's appeal to the Court of Appeal was dismissed. This is a further appeal against the decision of the Court of Appeal, Benin. The only issue which the appellant canvassed in the

appeal is whether the Court of Appeal was right in affirming the decision of the trial court holding that the Prosecution did prove the guilt of the appellant beyond reasonable doubt.

The argument of learned Counsel for the appellant is that there was no proper identification of the appellant as the person who committed the robbery. My learned brother, Ariwoola, JSC referred to the judgment of the trial court which believed the evidence of PW1 and PW3. From their evidence, it is clear that the witnesses knew the appellant before the robbery and what is more PW4 apprehended them while they were in possession of the stolen player and recorder less than 24 hours after the commission of the offence which raised the irresistible presumption that they were the robbers. See: In *Re-Karimu Atanda v. The State* (1983) 6 SC 1. The lower court had no reason to interfere with the findings of the learned trial Judge who properly convicted the appellant. I find no redeeming features in this appeal. The lower court was right to dismiss the appeal. I find no merit in the appeal and it is accordingly dismissed. The judgment of the lower court dismissing the appeal is hereby affirmed.

Appeal dismissed.

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