

SUPREME COURT OF NIGERIA
FRIDAY 27TH FEBRUARY, 2015. SC. 82/2012
CORAM:- S. GALADIMA, M. U. PETER-ODILI,
O. ARIWOOLA, J. I. OKORO, C. C. NWEZE, JJSC

OKUNADE KOLAWOLE APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Confession - Corroboration - Exhibits G & H offered corroborative materials - And a consistent picture of the incident - In a way that appellant's statement cannot be doubted (H1)

ARMED ROBBERY - Stolen item - Recent possession - Presumption is that the person in possession is either the thief - Or received the property knowing it to have been stolen (H2)

CRIMINAL PROCEDURE - Confession - Co accused - Weight - Evidence of a co accused is admissible against the other - Where for instance it tallied with the statement of the other (H3)

ARMED ROBBERY - Ingredients - Proof - Prosecution needs to establish that there was robbery - That the robbery was armed robbery - And that appellant took part in the robbery (H4)

ARMED ROBBERY - Medical report - Admissibility - The report having been admitted without objection - And without asking for the presence of the maker - It is late to complain of his absence (H5)

FACTS

Accused/appellant and others were tried at the High Court of Ogun State on a two count charge of conspiracy to commit armed robbery and armed robbery contrary to sections 6(b) and 1(2)(a) of the Robbery and Firearms (Special Provisions) Act CAP RII LFN 2004. Appellant and the others were alleged to have waylaid PW1 (a Managing Director of a petrol station) at about the evening time. From the testimony of PW1, the men attacked him with broken bottles

and eventually made away with the money and mobile phone he had on him. PW1 further stated that he was later informed that appellant was earlier seen around the petrol station on the fateful day.

The case was reported to the police who after investigation arrested one of the robbers. Following the confession of the arrested robber, the others were equally arrested. The mobile phone of PW1 was found on one of the robbers. In his defence, appellant denied the charge and raised objection to the admissibility of his additional confessional statement. A trial within trial was conducted and at the end of which appellant's additional statement was held voluntarily made and admitted in evidence. At the end of the main trial, appellant and the others were convicted as charged. They were sentenced accordingly. Aggrieved, appellant appealed to the Court of Appeal Ibadan Division. The appeal was heard and dismissed. Hence, appellant's further appeal to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the judgment of the Court of Appeal met the requirements of a good appellate judgment?

2. Whether the Court of Appeal was right in relying on Exhibits G and H (alleged confessional Statements of the Appellant's co-accused) as corroborative evidence against the Appellant?

3. Whether the Court of Appeal was right in holding that the trial court rightly attached much weight to Exhibits C, E and F (the alleged confessional statements of the appellant) and convicting the appellant thereon?

4. Whether the Court of Appeal was right in upholding the trial Court's conviction of the Appellant for the offences of conspiracy to commit armed robbery and armed robbery?

HELD (Unanimously dismissing the appeal per **PETER-**

ODILI JSC)

CRIMINAL PROCEDURE - Confession - Corroboration

1. The Lower Court was of the view that outside of the confessional statement of the Appellant Exhibit C are the confessional statements Exhibits G and H of the other accused persons charged and convicted with the Appellant which offered

corroborative materials to the confession of the Appellant. That appellate Court so held, finding that there was a harmonious flow from one statement to the other and offered a consistent picture of the incident in such a way that the Appellant's confession is not only possible but cannot be doubted.

(p. 421 G)

ARMED ROBBERY - Stolen item - Recent possession

2. As if the co-relation between the confessional statements of the Appellant and those proffered by his co-travelers were not enough is the fact of the missing or stolen money being found in the possession of the Appellant soon after the theft under the doctrine of recent possession of stolen property and the presumption that follows that the person in possession is either the thief or received the property knowing it to have been stolen. (p. 422 A)

CRIMINAL PROCEDURE - Confession - Co accused - Weight

3. The learned counsel for the Appellant had made much of the fact that the confessional statement of a co-accused can only be used against the maker and not the other accused. That is a generalization which I dare say is not the completeness of what the law on confessional statements of a co-accused represent. This is because the current policy is that the evidence of a co-accused on oath is admissible against other accused persons as the peculiar circumstances of a particular case may present. In this regard, it would fall in a confessional statement to which there was no opposition when admitted at the point of tendering on oath by the investigating police officer as was the case with Exhibit G, statement of the 2nd accused which tallied with the statement of the Appellant in Exhibits C, E and F. (p. 425 E)

ARMED ROBBERY - Ingredients - Proof

4. In respect of the issue of Armed Robbery, what the prosecution needs to establish are as follows:-

- a. That there was a robbery or series of robberies.**
- b. That the robbery was an armed robbery.**

c. That the Appellant was one of those who took part in the robbery.

In proof of the first and second requirements (a) and (b), the sequence of events as narrated by PW1 from the time of the motorcycle carrying the three men overtook his vehicle, blocked him and the three men rushing down and attacking him with beatings including with a broken bottle, culminating in their making away with his money and two handsets. These facts aligned with the statements made by the Appellant in his confessional statements of Exhibits C, E and F. The mobile phone of the same PW1 was found with the 2nd accused who was arrested from the statement of Appellant mentioning him.

In the matter of the 3rd ingredient which is that Appellant was one of the robbers is the fact that a substantial part of the robbed money was recovered from Appellant. It was the mention by Appellant of the names of 1st and 2nd persons that enabled the police to effect their arrest and upon that arrest the mobile phone of the complainant taken at the time of the said robbery was recovered.

Clearly, there were loads from which the ingredients of the armed robbery were established and the current position of the Appellant difficult to justify. (p. 425 H)

ARMED ROBBERY - Medical report - Admissibility

5. The circumstances operating in Yusuf v. State (supra) are glaringly different from the case in hand. In the Yusuf case, the vital witnesses were not called but in the case in hand, the fact that the particular medical doctor who made Exhibit A, the medical report was not called does not fall in the same category. This is because there is evidence that the victim was treated in a Government Hospital from which the report emanated and which report was admitted without objection and without Appellant asking for the maker to come forth, I guess for cross-examination. To complain at this stage on the medical doctor's non attendance and testifying is too late in the day. Also the medical report is well covered by Section 42 of the Evidence Act as to its admissibility in the absence of the maker. (p. 427 C)

REPRESENTATION

Ikenna Okoli with Miss C. Okpala, for the Appellant
J. K. Omotosho DDPP Ogun State with Miss O. A. Abodunorin, State
Counsel, for the Respondent

B

CASES REFERRED TO

Ikpo v. State (1995) 9 NWLR (pt. 421) 540
Nwaebonyi v. State (1994) 5 NWLR (pt. 343) 138
Akpa v. State (2008) 8 SCM 58
Adebayo v. A.G. Ogun State (2008) 5 SCM 1
Oseni v. State (2012) 4 SCM 150
Dibie v. State (2007) 7 SCM 101
Alarape v. State (2001) FWLR (pt. 41) 1873
Ogba v. Onwuzo (2005) 14 NWLR (pt. 945) 331
Solola v. State (2005) 11 NWLR (pt. 937) 460
Opayemi v. State (1985) 2 NWLR (pt. 5) 101
Yusuf v. State (2007) 1 NWLR (pt. 1020) 94
Aigbadion v. State (2000) 7 NWLR (pt. 666) 685
Kaza v. State (2008) 5 SCM 70
Upahar v. State (2003) 6 NWLR (pt. 81) 230
Oyakhire v. State (2006) 12 SCM (pt. 1) 359

C

D

E

STATUTES REFERRED TO

Robbery & Firearms (Special Provisions) Act Cap. RII LFN 2004, s.
6 (b), 1(2)(a)
Evidence Act 2011, ss. 29(2), 42
Criminal Code Cap 38 LFN 2004, s. 7

F

G

LEAD JUDGMENT BY PETER-ODILI JSC

This is an appeal against the judgment of the Court of Appeal
or Court below sitting in Ibadan. The said judgment was delivered
on the 13th October, 2011 affirming the judgment of the Ogun State
High Court, Ijebu-Ode Judicial Division per C. C. Ogunsanya J. on
the 23rd December, 2009. The Appellant and others were tried on a
two count charge of Conspiracy to commit Armed Robbery and Armed
Robbery contrary to Section 6 (b) and 1 (2) (a) of the Robbery and
Firearms (Special Provisions) Act, CAP R.II, Laws of the Federation

H

of Nigeria, 2004.

STATEMENT OF FACTS:

The case of the prosecution at the trial court was that on the 7/5/07 at about 9.30p.m, the PW1, who was the Managing Director of FAO Constant Petroleum at Ilese, Ijebu-Ode, Ogun State closed
B for the day at the filling station. He took the day's proceeds, the sum of three hundred and fifty-seven thousand, one hundred and fifty naira in his car with one of his staff and while driving along the road, he saw a motorcycle with three men coming behind his vehicle, which
C overtook his car and blocked his vehicle in front.

That the three men rushed down from the motorcycle, attacked him, seriously beating him and with a broken bottle injured him making away with the money and two mobile phones in the vehicle. The staff of the complainant was able to escape while the
D complainant assisted by two people around pursued the robbers without success. That on getting back to the scene of crime, his brother, Leke Osiyemi told him that he saw the Appellant around the filling station that day. The case was later reported to the police who arrested the first accused person and upon the arrest he confessed and
E mentioned the names of the two others who were then arrested.

On the arrest of the second accused person, the mobile phone of the complainant was found on him. The prosecution had called two witnesses.

The case put forward by the defence when Appellant testified
F was a denial of the charge and an objection to the admissibility of the additional statement which he asserted was involuntarily obtained and that the signature looked different from the earlier statement, Exhibit B which he had no objection to. There was a trial within trial
G over the additional statement which the court admitted as Exhibit C and that it was voluntarily made. The Appellant made another confessional statement which was not objected to and was admitted as Exhibit E and another one admitted as Exhibit F. The mother of the Appellant testified for the defence.

H At the end of the trial, the Appellant and the two other accused persons were convicted of the offences of conspiracy to commit armed robbery and armed robbery. Dissatisfied, the Appellant appealed to the Court below which affirmed the judgment of the trial court hence this appeal to the Supreme Court.

Mr. Ikenna Okoli, learned counsel for the Appellant on the 4th day of December, 2014 date of hearing adopted the Appellant's Brief of Argument filed on 26/3/12. In the Brief were raised four issues for determination of the appeal which are thus:-

1. Whether the judgment of the Court of Appeal met the requirements of a good appellate judgment? B
2. Whether the Court of Appeal was right in relying on Exhibits G and H (alleged confessional Statements of the Appellant's co-accused) as corroborative evidence against the Appellant?
3. Whether the Court of Appeal was right in holding that the trial court rightly attached much weight to Exhibits C, E and F (the alleged confessional statements of the appellant) and convicting the appellant thereon? C
4. Whether the Court of Appeal was right in upholding the trial Court's conviction of the Appellant for the offences of conspiracy D to commit armed robbery and armed robbery?

J. K. Omotosho Esq, the Deputy Director of Public Prosecutions for the State adopted the Respondent's Brief filed on 13/6/2012 and in which were crafted two issues for determination, viz:-

1. Whether the learned Justices of the Court of Appeal were right in affirming that the trial court was right in admitting Exhibits C, E and F (the confessional statements of the Appellant) in evidence and attaching evidential weight to them and using same in convicting the Appellant. E
2. Whether the Respondent proved the offences of Conspiracy to commit Armed Robbery and Armed Robbery beyond reasonable doubt against the Appellant? F

The issues as formulated by the Respondent seem to me easier to utilize and I shall use them in the determination of this appeal. G

ISSUE NO. 1:

This calls for the answer whether the Court below was right in affirming that the trial court was right in admitting Exhibits C, E and F in evidence and attaching evidential weight to them in convicting the Appellant. H

Learned counsel for the Appellant referred to Exhibits C, E and F, the alleged confessional statements made by the appellant and Exhibit B, Appellant's first statement where he denied any involvement in the alleged armed robbery. That the Court below ignored

the appellant counsel's submission that the regularity of a signature and not showing off any scars cannot be a proper basis to hold that Exhibit C was voluntary as the signature will normally be procured after a cooling off period between being beaten and intimidated, to signing off a purported voluntary statement and it is not always that there will be a permanent scar from the torture, He cited Section 28 of the Evidence Act 1945 similar to Section 29 (2) of the Evidence Act, 2011. That the Court of Appeal ought to have been more circumspect in affirming the position of the trial court that Exhibit C was voluntarily made.

Learned counsel for the Appellant said the appellant did not bother to object to Exhibits E and F with the wrong admission of Exhibit C. That the Lower Court was wrong to have used the statements of the co-accused, Exhibits G and H as corroboration of the confessional statements of the appellant and the implication is that there was no corroboration of the confessions and so no basis for attaching weight on them. He cited *Ikpo v State* (1995) 9 NWLR (Pt. 421) 540 at 554; *Nwaebonyi v State* (1994) 5 NWLR (Pt. 343) 138 at 150.

Responding, learned counsel for the Respondent said it is well established that a trial court can rely solely on the confessional statement of the accused person to convict him. He cited *Akpa v State* (2008) 8 SCM 58 at 70; *Adebayo v. A.G Ogun State* (2008) 5 SCM 1 at 15; *Oseni v. State* (2012) 4 SCM 150 per Ngwuta, JSC.

It was submitted for the Appellant that the confessional statement Exhibit C was corroborated by the unchallenged fact that the mobile phone of the complainant was recovered from the 2nd Accused person, arrested as a result of the confession of the Appellant. That the mere fact that the Appellant retracted his confession Exhibit B during the trial will not affect or stop the court from relying on it and once the trial court was satisfied as to its truth, it can rely solely on it to ground a conviction. He cited *Dibie v State* (2007) 7 SCM 101.

The summary of the contest between the Appellant and the Respondent is restated by showing that Appellant's point of view is that the Court of Appeal was wrong in relying on Exhibits G and H (alleged confessional statements of the Appellant's co-accused) as corroboration evidence against the Appellant. Also that the Lower

Court was wrong in holding that the trial court rightly attached much weight to Exhibits C, E and F (the alleged confessional statements of the appellant).

For the Respondent is that the conviction of the Appellant on his confessional statements, Exhibits C, E and F, the corroborative facts outside of those confessions being available. Furthermore, that the Court of Appeal was right to affirm the trial court's admitting Exhibits C, E and F and rightly relying on it.

The learned trial judge in his consideration in relation to the confessional statements stated thus:-

"In Exhibit C, the 1st Accused confessed to orchestrating the attack on PW1 and that he was the one who invited one Adewole to bring his Motorcycle and also again invited one Segun both of whom together with him planned the attack on PW1. He explained how the PW1 was crossed on the road and beat him up and they took away the money on him and that they were at the time in possession of a bottle but they never hit PW1 with the bottle and that Jeans Shift recovered inside the uncompleted building is his".

The learned trial judge went on to say thus:-

"In Exhibit E, the 1st Accused stated that he planned the attack on PW1 due to his wickedness towards him and stated that the total money collected from PW1 is N250,150 and a label on the money showed that amount and that he took possession of the money so Adewole and Segun would not spend it and he had the money which was recovered in his possession and at the time of recovery, he had already spent N7,000.00 out of it to get drugs. He denied stealing any handset from PW1 that day and also claimed he did not know the whereabouts of Segun and Adewole.

In Exhibit F, the 1st Accused claimed the PW1 was threatened at the time of the attack on him with a beer bottle and that he organized that PW1 be beaten and claimed he bought beer for all the boys who followed him to attack PW1 including some boys called Kayode and mentioned the names of other persons also apart from 2nd & 3rd Accused persons who took part in attacking PW1. He described again how PW1 Benz vehicle was stopped and blocked and that he stayed at the back of the vehicle while he ordered Segun Kayode, Raimi and Sunday Kehinde to beat PW1 and drag him into the bush and that it was Segun who took the bag in the Car but he

later took the money and spent N7,000 from it. In this statement, the 1st Accused also exonerated one Adeniyi Ahmed, Sunday Folorunsho and Saheed Aluko of any involvement in the robbery but that himself including the 2nd & 3rd Accused person committed the offence”.

On these confessional statements admitted and utilised by the trial Court, the Court of Appeal stated as follows:-

“What is certainly not in doubt for now is that the Appellant raised no objection to the admissibility of Exhibits “E” and “F”. Admissibility was objected to Exhibit “C” on the ground that it was not voluntarily made by the Appellant. It is at this stage that one should concern oneself with what to make out of Exhibit “C” which the Appellant said was not voluntarily made by him. The Court went into the conduct of a trial-within-trial after which Exhibit “C” was admitted as having been voluntarily made. The said Exhibit “C” reads as follows:-

“I am the person who organized the attack because of the way Niyi Oshiyemi the Managing Director usually treat me in the place of work that is why I called my brother who live in Lagos one Adewole to bring his motorcycle and one Segun who live at Ogbere and plan to attack him but only to beat him up whether he will change but when we cross (sic) him on the road, my people whom we went together says we should carry (sic) the money inside the car this is why we carry (sic) the money and the total money we carry was N250,125.00 and even the label of the total money was on the money, it’s the other two boys that beat him and immediately I called the boys to order and we all left the scene with the total. Actually, on that day, we hold a bottle and is mineral bottle but we didn’t him with the bottle at all. The time then was around 09.20pm in the night but the money I collected it and is in our house at Ijebu Ife. Adewole, I know him, I have never heard of any bad past record on him and why I explain to him is not whether Adewole has not being doing so but just to put fair on the mind of the Managing’ Director one Niyi Oshiyomi. The motorcycle we used belong to the said Adewole and is Jincheng motorcycle the Reg/No. I don’t know and pertaining to Segun I know him at Ogbere but where he reside the house I don’t know and since the day of the incident he told me that he will not stay around at all and presently I don’t know where he is. The Jeans shirt recovered in an uncompleted building inside the uncompleted

building. I have never conducted myself in a manner that can cause breach of peace. Okunade Kolawole”.

“It is this statement that the learned trial Judge admitted as Exhibit “C” as having been voluntarily made by the Appellant after a trial-within-trial. If the learned trial Judge was right in its finding, this sole confessional statement - Exhibit “C” would be sufficient to convict the Appellant. See *Nwachukwu v. State* (2008) 4 WRN 1; (2007) 12 SCM (Pt.2) 447 & 455; *Ikemson v State* (1989) 3 NWLR (Pt.110) 455 at 468 - 469; *Adebayo v A. G. of Ogun State* (2008) 5 SCM P.1 at 15; *Akpa v. State* (2008) 8 SCM P.”

The Court Below stated further as follows:-

“He admitted that the names of the 2nd and 3rd accused persons were not contained in the statement which PC Solomon asked him to copy unto the plain sheet of paper. How could the Appellant know the names of the 2nd and 3rd accused persons which were not known to PC Solomon if the Appellant was not part and parcel of the gang to which the 2nd and 3rd accused persons belong? At page 53 of the Record of Appeal, the learned trial Judge in summing up the evidence of the Appellant during the course of the trial within trial stated thus:-

“I have looked at the statement sought to be tendered and it contains the following information, “Adewale lives in Lagos and one Segun Osho lives in Ogbere; the amount of N250, 150; “it was a Juncheg motorcycle which was used for the robbery and a jeans shirt recovered in an uncompleted building, belongs to 1st accused” and came to this conclusion.

These pieces of information which PW1 could not have known not being within his personal knowledge’ which to my mind are information that can only be known to the 1st accused personally.

The learned trial Judge in my estimation was absolutely right. A better evaluation could not have been made”.

The Lower Court was of the view that outside of the confessional statement of the Appellant Exhibit C are the confessional statements Exhibits G and H of the other accused persons charged and convicted with the Appellant which offered corroborative materials to the confession of the Appellant. That appellate Court so held, finding that there was a harmo-

nious flow from one statement to the other and offered a consistent picture of the incident in such a way that the Appellant's confession is not only possible but cannot be doubted.

As if the co-relation between the confessional statements of the Appellant and those proffered by his co-travelers were not enough is the fact of the missing or stolen money being found in the possession of the Appellant soon after the theft under the doctrine of recent possession of stolen property and the presumption that follows that the person in possession is either the thief or received the property knowing it to have been stolen. I refer to the case of *Oseni v. State* (1984) 11 SC 44; *Alarape v The State* (2001) FWLR (Pt.41) 1873; *Nwaebonyi v State* (1994) 5 NWLR (Pt.343). See Section 167 Evidence Act 2011 (As amended) which provides thus:

"167. The court may presume the existence of any fact which it deems likely to have happened, regard being had to the common course of natural events' human conduct and public and private business, in their relationship to the facts of the particular matter, the court may presume that -

(a) A man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession'

ISSUE NO.2:

Whether the Respondent has proved the offences of Conspiracy to commit Armed Robbery and Armed Robbery against the Appellant beyond reasonable doubt.

Learned counsel for the Appellant contended that a good appellate court judgment must contain, inter alia, the submissions made by the counsel for the parties in the appeal which that court is required to consider in reaching its decision which is lacking in the case in hand. He cited *Ogba v. Onwuzo* (2005) 14 NWLR (Pt.945) 331 at 345.

That the confessional statement of an accused is only relevant and admissible against the maker and not against the co-accused, a principle jettisoned in this case when the Court of Appeal utilised Exhibits G and H, confessional statements of the co-accused of the appellant. He relied on *Solola v. State* (2005) 11 NWLR (Pt.937) 460 at 480; Section 27 (3) of the Evidence Act, 1945 (Simi-

lar to Section 29 (4) of Evidence Act, 2011.

It was further submitted for the Appellant that from the evidence adduced before the trial court, PW1 was in company of one of his attendant Agbo Samson when the PW1 was purportedly attacked and robbed but the said Agbo Samson was not called to testify by the prosecution. That the failure to call that vital witness is fatal to the case of the prosecution, a situation which the Court below ought not to have ignored, He cited *Opayemi v State* (1985) 2 NWLR (Pt.5) 101 at 109; *Yusuf v. State* (2007) 1 NWLR (Pt.1020) 94. B

Again submitted for the Appellant is that even though the court can convict solely on confessional statement of an accused, it is desirable to have some evidence outside that confession which would make it possible that the confession was true, a situation absent in this instance. He relied on *Dibie v State* (2007) 9 NWLR (Pt.1038) 30 at 51; *Aigbadion v. State* (2000) 7 NWLR (Pt.666) 685 at 704. C D

Learned counsel stated on for the appellant that the maker of Exhibit A, the medical report of the treatment of PW1 ought to have testified and be cross-examined as to the contents of the documents. That the failure should affect the probative value to be attached to the document. He cited *Omega Bank (Nig.) Plc v. O. B. C. Ltd* (2005) 8 NWLR (Pt.928) 547 at 682; *Buhari v. INEC* (2008) 12 SC (Pt.1) 1 at 123. E

That there was no evidence establishing the agreement by two or more persons to do an unlawful act necessary for the offence of conspiracy. F

For the Respondent, it was contended that from the evidence of PW2, the fact that the complainant's mobile phone was found with the 2nd Accused mentioned and arrested upon the confession of the appellant inter alia corroborate the confessional statements, Exhibits C, E and F of the appellant and shows that there are other evidence outside the confession making the confession possible. G

On the offence of conspiracy, learned counsel for the Respondent said it is difficult to have direct evidence in support of conspiracy and so it is inferred from the facts and circumstances of each case. That the acts of the appellants and co-conspirators as explained in their various confessional statements and stated in the evidence of PW1 were sufficient to infer the offence of conspiracy. He cited *Kaza v The State* (2008) 5 SCM 70 at 104; *Upahar v. The State* (2003) 6 H

NWLR (Pt.81) 230 at 239.

It was submitted for the respondent that the evidence of the co-accused on oath binds the other accused person. He referred to *Oyakhire v The State* (2006) 12 SCM (Pt.1) 359 at 38 - 381.

B That even though it is desirable to have outside the confession some evidence of circumstantial no matter how slight which makes it possible that the confession is possible. That the corroborative evidence may be direct or circumstance so whichever may suffice. He cited *Dagaya v State* (2006) 2 SCM 33 at 67; *Bozin v State* (1985) 2 NWLR (Pt.8) 465.

C For the respondent, it was canvassed that Appellant did not apply for the maker of Exhibit A, the medical report to be called and so cannot at this stage complain on his not being called to testify. He relied on *Nwachukwu v The State* (2003) 7 SC (Pt.11) 124 at 131 - D 132.

On whether or not the judgment of the Court of Appeal met the requirements of a good judgment, learned counsel for the respondent stated that a judgment will not per se be set aside on proof that one or more of the ingredients of a good judgment are missing. E That the judgment can only be jettisoned if it is shown that such omission resulted in a total miscarriage of justice. He cited *A.G. Federation v. Abubakar* (2007) All FWLR (Pt.375) 405 at 457 - 458 or (2007) 4 SC (Pt.11) 62.

F Learned counsel urged that the appeal be dismissed for lacking in merit.

On the matter of conspiracy and the armed robbery offences, the Court of Appeal per Alagoa JCA (as he then was) held:-

G *"On the issue of conspiracy, I had earlier noted that it is a separate and distinct offence from the offence of armed robbery although in most cases both offences are intricately woven together. Conspiracy simply put is the meeting of the minds of the conspirators to perpetrate an unlawful act or a lawful act by unlawful means. Conviction is usually grounded on circumstantial evidence and a trial court may infer conspiracy from facts through which a common purpose is achieved. There is a plethora of case law on this subject matter. See generally the following cases - R. V. Aspinall (1876) 1 QBD 48; Waziri v State (1997) 3 NWLR (Pt. 496) 589; Nwankwoala v. State (2005) all FWLR (Pt.339) 801; Odeneye v. State (2001) 1 SC 1; Patrick*

Njovens v State (1973) 5 SC 17; Upahar v. State (2003) 6 NWLR (Pt.816) 230. When the confessional statements in Exhibits "C", "E", "F", and "H" are comparatively evaluated one is left in no doubt that the Appellant conspired with other persons to perpetrate the offence of armed robbery against PW1 on the day of incident".

The definition of conspiracy is well stated by this court in case of Kaza v The State (2008) 5 SCM 70 at 104 wherein it was held thus:-

"Conspiracy is a meeting of two or more minds to plan to carry out an unlawful or illegal act which is an offence and that bare agreement to commit an offence is sufficient".

See also Upahar v. The State (2003) 6 NWLR (Pt.816) 230 at 230.

It is stating the obvious to say that a difficulty usually exist to get direct evidence in support of conspiracy which is established by inference from the facts and circumstances of each case and the main act of the conspiracy needs not be completed. The complainant, PW1 had testified that he saw three men rush down from a motorcycle and rob him. From Exhibits C, E and F, the confessional statements, the appellant stated how the conspiracy was hatched supporting what PW1 said.

The learned counsel for the Appellant had made much of the fact that the confessional statement of a co-accused can only be used against the maker and not the other accused. That is a generalization which I dare say is not the completeness of what the law on confessional statements of a co-accused represent. This is because the current policy is that the evidence of a co-accused on oath is admissible against other accused persons as the peculiar circumstances of a particular case may present. In this regard, it would fall in a confessional statement to which there was no opposition when admitted at the point of tendering on oath by the investigating police officer as was the case with Exhibit G, statement of the 2nd accused which tallied with the statement of the Appellant in Exhibits C, E and F. In this regard, I would cite the case of Oyakhire v The State (2006) 12 SCM (Pt.1) 369 at 380 - 381.

In respect of the issue of Armed Robbery, what the prosecution needs to establish are as follows:-

a. That there was a robbery or series of robberies.

b. That the robbery was an armed robbery.

c. That the Appellant was one of those who took part in the robbery.

See *Bozin v State* (1985) 2 NWLR (Pt.8) 465; *Alabi v. State* (1973) 7 NWLR (Pt.307) 511 at 523.

In proof of the first and second requirements (a) and (b), the sequence of events as narrated by PW1 from the time of the motorcycle carrying the three men overtook his vehicle, blocked him and the three men rushing down and attacking him with beatings including with a broken bottle, culminating in their making away with his money and two handsets. These facts aligned with the statements made by the Appellant in his confessional statements of Exhibits C, E and F. The mobile phone of the same PW1 was found with the 2nd accused who was arrested from the statement of Appellant mentioning him.

In the matter of the 3rd ingredient which is that Appellant was one of the robbers is the fact that a substantial part of the robbed money was recovered from Appellant. It was the mention by Appellant of the names of 1st and 2nd persons that enabled the police to effect their arrest and upon that arrest the mobile phone of the complainant taken at the time of the said robbery was recovered.

Clearly, there were loads from which the ingredients of the armed robbery were established and the current position of the Appellant difficult to justify.

On the position of the Appellant that a vital witness, that is the maker of Exhibit A, the medical report not called being fatal. That cannot be supported by the evidence available in this instance nor does the case of *Yusuf v State* (2007) 1 NWLR (Pt.1020) 94 apply.

In the case of *Yusuf v. State* (supra), the complainant had stated that she was attacked and when she was attacked, two men came to her assistance and the situation was such that the two men were vital witnesses since their evidence would have been conclusive in support that there was indeed an armed robbery. The trial court thought not but on appeal, the Court of Appeal held thus at page 118:-

“There is no evidence in the record of appeal that attempt to secure the attendance of those vital witnesses by the prosecution was frustrated by certain circumstances. This is a criminal trial. The prosecution is bound to call all material witnesses in order that the whole facts may be put before the court. Although the prosecution need not call a host of witnesses on the same point where there is a vital point in issue and there is a witness whose evidence will settle it one way or the other that witness ought to be called... having played prominent role... ought to have been called as witnesses. Failure to call them is fatal to the prosecution’s case”.

The circumstances operating in Yusuf v. State (supra) are glaringly different from the case in hand. In the Yusuf case, the vital witnesses were not called but in the case in hand, the fact that the particular medical doctor who made Exhibit A, the medical report was not called does not fall in the same category. This is because there is evidence that the victim was treated in a Government Hospital from which the report emanated and which report was admitted without objection and without Appellant asking for the maker to come forth, I guess for cross-examination. To complain at this stage on the medical doctor’s non attendance and testifying is too late in the day. Also the medical report is well covered by Section 42 of the Evidence Act as to its admissibility in the absence of the maker. See the case of Nwachukwu v. State (2003) 7 SC (Pt.II) 124.

In conclusion, there is more than enough from which the trial court and as affirmed by the Court of Appeal could make the decision that the offences of conspiracy to commit armed robbery and the armed robbery itself were proved beyond reasonable doubt. In fact the attempts at the defences pushed around by the Appellant remained what they really were, a beating about the bush which did nothing to enhance the position of the Appellant which his confessional statements alone had settled to his disadvantage.

It is stating the obvious to say that this issue is resolved against the Appellant and taking it with the earlier one, the appeal certainly lacks merit and I do not hesitate in dismissing it.

Appeal is dismissed as I affirm the decision of the Court of Appeal which upheld the Judgment, Conviction and Sentence of the Appellant.

GALADIMA JSC

I have had the privilege of reading in draft the judgment of my learned brother M. U. Peter-Odili JSC, just delivered. I agree with the reasoning leading to the conclusion that this appeal which is lacking in merit should be dismissed.

The summary of facts, discernible from the record of appeal is set out as follows: The appellant herein and two other persons were arraigned on the 17th day of February, 2009 before the High Court of Ogun State, Ijebu-Ode Judicial Division upon a two-count charge of conspiracy to commit Armed Robbery and Armed Robbery contrary to section 6(b) and 1(2) (a) of the Robbery and Fire arms (Special Provisions) Act, Cap R.II, Laws of the Federation of Nigeria, 2004 respectively.

The case for the prosecution at the trial High Court was that one Niyi Oshiyemi the Managing Director of FAO Constant Petroleum Ltd, Ilese Service Station, Ijebu-Ode closed for the day at about 9.30pm. While driving home in his Mercedes Benz 230 car, accompanied by one. Samson Agbe, he had the sum of N357,150 cash being the proceeds of sale for the day. Through the side mirror of his car he saw three men on a motor cycle. They ordered him out of the car, stabbed him with broken bottles, took the said N357,150 and two Nokia mobile phones handsets in the car. Meanwhile, Samson Agbe his staff, who was in the car with him managed to escape. The three men threw away the key of their victim's car and fled.

The motor cycle riders who had mobilized themselves chased the three men without success, On returning to his petrol station, Niyi Oshiyemi was informed by his brother, one Leke Oshiyemi, that he saw the 1st accused (the appellant) around the filling station that day. When the case was reported to the police the appellant was arrested. He confessed and mentioned the names of the second and third accused persons; and they were also arrested. The mobile phone of their victim was found on the second accused person. The appellant in his statements confessed and admitted that he committed the crime.

As a result the appellant and two other persons were arraigned before the trial High Court on a two-count charge as already stated. The appellant testified for himself and called his mother as a witness to testify in his defence. He denied the charge but did not object to

the admissibility of his statement in Exhibit 'B' dated 9/5/2007. He however raised objection to the admissibility of an additional statement obtained on 9/5/2007 from him on the ground that the signature on it appeared different from that on Exhibit 'B' and that it was not voluntarily obtained. In view of this, trial within trial was conducted and the court ruled and admitted Appellants' additional statement, Exhibit 'C'. Appellant's other additional statements admitted in evidence were Exhibits 'E' and 'F'. B

The learned trial judge relying on the confessional statements of the appellant and other corroborative facts, convicted and sentenced the appellant and two others to death. Aggrieved, the appellant appealed to the court of appeal against his conviction and sentence by his Notice of appeal dated 30/2/2009, which was later amended. C

The court of appeal on 6/1/2012 in its judgment dismissed D the appellant's appeal. Further dissatisfied with the judgment he has appealed against the same vide Notice of Appeal dated 1/2/2012 but filed on 2/2/2012, based on six grounds appeal in this court.

On 4/12/2014 when this appeal was heard, learned counsel for the appellant Ikenna Okoli Esq. on his brief filed on 26/3/2012 E adopted same and urged the court to allow the appeal. The four issues distilled for determination of the appeal are as follows:

i. Whether the judgment of the Court of Appeal met the requirements of a good appellate (sic) judgment?

ii. Whether the Court of Appeal was right in relying on Exhibits G and H (alleged confessional statements of the Appellant's co-accused) as corroborative evidence against the Appellant? F

iii. Whether the Court of Appeal was right in holding that the trial court rightly attached much weight to Exhibits C, E and F (the alleged confessional statements of the appellant) and convicting the appellant thereon? G

iv. Whether the Court of Appeal was right in upholding the trial Court's conviction of the appellant for the offences of conspiracy to commit armed robbery and armed robbery? " H

On the other hand in the brief of learned counsel for the Respondent settled by J. K. Omotosho Esq., learned Deputy Directors of Public Publications, Ministry of Justice Ogun State having adopted same he urged the court to dismiss the appeal. The two

issues raised for determination are as follows:

“3.01. *Whether the learned Justices of the Court of Appeal were right in affirming that the trial court was right in admitting Exhibits C, E and F (the confessional statements of the Appellant) in evidence and attaching evidential weight to them and using same in*
 B *convicting Appellant.*

3.02. *Whether the Respondent proved the offences of Conspiracy to commit Armed Robbery and Armed*

Robbery against reasonable doubt against the Appellant?”
 C It would appear to me that the issues set out for the determination of this appeal can be appropriately condensed into single issue, for determination of the appeal. That is whether the respondent has proved the offences of conspiracy to commit Armed Robbery and Armed Robbery beyond reasonable doubt. The proof is not
 D beyond all shadow of doubt. However, once the proof drowns the presumption of innocence of the accused, the court is entitled to convict him; although there could exist some shadows of doubt. It means the prosecution must establish the guilt of the accused person with compelling and conclusive evidence.

E The offence of conspiracy consists not merely in the intention of two or more persons but in the agreement to do an unlawful act or to do a lawful act by unlawful means.

In the instant case the appellant made three confessional statements (Exhibits C, E and F,) wherein he confessed to have conspired
 F with others to rob their victim. A confessional statement is the best evidence in criminal procedure. PW1 the victim gave evidence how three men on the motor cycle suddenly stopped and robbed him on the fateful day. Exhibit G corroborates this claim.

G When the confessional statement in Exhibits ‘C’, E, F, G, and H, are comparatively evaluated one is left in no doubt that the appellant conspired with his co-hurts to perpetrate the offence of armed robbery against PW1. Outside the confessional statement of appellant, Exhibits ‘C’ E, and F, there are confessional statements of other
 H accused, Exhibits ‘G and H’, which are corroborative of Exhibit C, in material particulars as to the time of the incident; the car driven by PW1; that at least two of the accused persons were armed with bottles; that the sum of N250,000.00 was in possession of PW1 at the time of incident which was later snatched away from him when the appellant

and two others intercepted PW1's car on a motor cycle ridden by the appellant.

Appellant's voluntary confession cannot be doubted. For instance, he had assured PC Solomon that he would reveal the names of the 2nd and 3rd accused persons if he would be granted bail. It was the release of the names that led to their arrest and their corroborative statements that eventually led to their conviction. He opened up hoping to be left off the hook or obtain lighter punishment. The Appellant, no doubt, had the opportunity of committing the crime, having been an employee of PW1; he knew his movements and the fact that he kept the proceeds of each day's sales in his car.

Appellants' confession is consistent with the evidence of the prosecution which was not controverted by cross-examination, but further corroborated by the confessional statements of the other accused persons. The fact that he put up a defence of not being armed with a bottle in one of his statements, does not absolve him from guilt of the offence of armed robbery. This is a cock and bull story which must be taken with a pinch of salt. It is incompatible with the prevailing trend in a criminal liability.

Assuming, without so suggesting, that the appellant merely acted as a lookout while the armed robbery operation was being committed, would he have successfully put up a defence of non-participation in the principal offence or robbery? The answer is found in Section 7 of the Criminal Code Cap 38 Laws of the Federation 2004 which provides thus:

"7. When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence and be charged with actually committing it."

(a) Every person who actually does the act or makes the omission which constitutes the offence;

(b) Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;

(c) Every person who aids another person in committing the offence;

(d) Any person who counsels or procures any other person to commit the offence."

In the instant case, it is not in doubt that the appellant was

the person who procured other co-accused persons to carry out the robbery on the night in question considering his statements and the confessional statements of other accused persons.

In the decision of this Court in **GOLDEN DIEBE v. THE STATE** (2007) 1 ALL FWLR (Pt.362) 83 at 114 - 115, the six tests for determining the truth or weight to attach to a confessional statement, as enumerated in some earlier cases are set out as follows:

- (i) Is there anything outside the confession to show that it is true?
- (ii) Is it corroborated?
- (iii) Are the relevant statements of fact made in it true as far as can be tested?
- (iv) Was the accused one who had the opportunity to commit the offence?
- (v) Is the confession possible?
- (vi) Is it consistent with other facts which have been ascertained?

As earlier noted the confessional statements of the appellant, particularly Exhibit C, when subjected to the foregoing six tests for determining the voluntariness of the confession, one is left in no doubt that the prosecution has proved the case of armed robbery against the Appellant beyond reasonable doubt.

From the totality of evidence adduced by the prosecution which includes the confessional statement of the appellant and those of his co-accused persons, I am of the view that the prosecution has proved its case beyond reasonable doubt. Appellants' conviction and sentence in respect of the offences were proper. This appeal, in the circumstances, is bound to fail and accordingly fails. I too dismiss this appeal. The conviction and sentence passed on the appellant are hereby affirmed.

ARIWOOLA JSC

I had the opportunity of reading in draft the leading judgment of my learned brother, Peter-Odili, JSC just delivered. I am in total agreement with the reasoning therein and the conclusion arrived thereat.

There is no doubt, the trial court did a perfect job by convict-

ing and sentencing the appellant for the two count charge of conspiracy to commit armed robbery and the substantive offence of armed robbery. In the same vein, the court below properly affirmed the conviction and sentence of the trial court on the two counts.

This court will not therefore disturb the concurrent findings of facts by the two courts below. B

In particular, on the 2nd count of armed robbery, it is trite law that to obtain conviction, the prosecution must establish three ingredients viz:

(a) That there was indeed a robbery or there were series of robberies. C

(b) That the robbery was an armed robbery, and

(c) That the appellant, in particular, was one of those who carried out the robbery.

See; Bozin Vs. The State (1985) 2 NWLR (Pt.8) 465; Alabi Vs State (1993) NWLR (Pt.307) 551; Olayinka Vs. State (2007) 85 SCM 193; Osetola & ors vs The State (2012) 12 SCM (Pt.2) 347; (2012) 17 NWLR (Pt.329) 251; (2012) 50 (Pt.2) NSCQR 598. D

There is no doubt that the available evidence adduced by the prosecution clearly showed that there was robbery incident and that the operators were armed. Similarly, the fact that the appellant was one of the robbers was clearly established. E

It is on record that upon arrest, substantial part of the loot of the robbery was recovered from the appellant. And interestingly, it was through the confession of the appellant that the other accused persons were arrested and from one of whom part of the loot was also recovered, that is, a mobile telephone hand set. F

In the result, from the available credible evidence, the three ingredients of the main offence of armed robbery were established clearly beyond reasonable doubt against the appellant in particular. The appellant was therefore properly found guilty, convicted and sentenced by the trial court. The affirmation of the conviction and sentence by the Court below was also done according to law. G

In the circumstance, for the above reason and the fuller reasoning in the leading judgment, I hold that this appeal is devoid of merit and deserves to be dismissed. It is dismissed by me. The conviction and sentence passed by the trial court and affirmed by the court below is affirmed by me. H

OKORO JSC

My learned brother Mary Ukaego Peter-Odili, JSC, obliged me a draft copy of the judgment he has just delivered which I read in advance. I agree entirely with his reasoning and conclusion that this
B appeal lacks merit and is only just and proper to dismiss it.

A brief facts leading to this appeal as can be garnered from the record of appeal shows that on 7th May, 2007, at about 9.30 pm, PW1, who was the Managing Director of FAO Constant Petroleum at Ilese, Ijebu-Ode, Ogun State, closed for the day at the filling
C station. He took the day's proceeds, the sum of three hundred and fifty seven thousand, one hundred and fifty naira in his car with one of his staff. While driving along the road, he saw a motor-cycle with three men coming behind his vehicle. The motorcycle overtook his
D car and blocked his vehicle in front.

The three men rushed down from the motor-cycle, attacked the PW1, gave serious beating, injured him with a broken bottle and went away with the money and two mobile phones kept in the vehicle. The PW1 was later assisted by two people who also pursued
E the robbers without success. They returned to the scene of crime where one Leke Oshiyemi, his brother informed him that he saw the appellant around the filling station that day. The matter was reported to the police. The police arrested the first accused person and upon
F his arrest, he confessed and mentioned the names of other two persons who participated with him in the robbery.

Upon the arrest of the second and third accused persons, the mobile phone of the complainant that was one of the items robbed was found on him. The appellant and two others were charged with
G conspiracy to commit armed robbery and armed robbery contrary to Sections 6(b) and 1(2)(a) of the Robbery and Firearms (Special Provisions) Act, Cap R 11 Laws of the Federation of Nigeria, 2004. The learned trial judge found the appellant and others guilty and sentenced them to death.

H Dissatisfied, the appellant appealed to the Court of Appeal which dismissed the appeal and upheld the conviction and sentence of the appellant. The appellant has further appealed to this court. Counsel for the appellant formulated four issues for the determination of this appeal.

The issues are:

1. Whether the judgment of the Court of Appeal met the requirement of a good appellate judgment.
2. Whether the Court of Appeal was right in relying on Exhibits G and H (alleged confessional statements of the appellant's co-accused) as corroborative evidence against the appellant. B
3. Whether the Court of Appeal was right in holding that the trial court rightly attached much weight to Exhibits C, E. and F (the alleged confessional statements of the appellant) and convicting the appellant thereon. C
4. Whether the Court of Appeal was right in upholding the trial court's conviction of the appellant for the offences of conspiracy to commit armed robbery and armed robbery.

The learned counsel for the respondent however adopts issues 3 and 4 of the appellant as the only issues for the determination of this appeal. D

At the trial of the appellant and two others in the High Court, the appellant made three confessional statements viz - Exhibits C, E and F. When Exhibit C was to be tendered, the learned counsel for the appellant raised an objection that it was not voluntarily made. E
Consequent upon this, the learned trial judge conducted a trial-within-trial to ascertain the voluntariness or otherwise of the statement. At the end of the exercise, the said statement was admitted as exhibit C having been satisfied that it was voluntarily made. The other two F
confessional statements - Exhibits E and F, made by the appellant were tendered and admitted without any objection.

It is now trite that a confessional statement is admissible if it is direct and positive and relates to his own acts, knowledge or intention, stating or suggesting the inference that he committed the crime G
charged. In quite a number of cases decided by this court, where on the production of a confessional statement or any statement, it is challenged by the defence on the ground that the accused did not make it at all, such an objection does not go to the admissibility of the statement and the trial court is entitled to admit the confession in H
evidence as a statement the prosecution claims to have obtained from the accused person and thereafter to decide or find as a matter of fact whether or not the accused person in fact made the statement at the conclusion of the trial. See *Godwin Ikpasa V. Bendel State* (1981)

9 SC 7 at 28, *Pele Ogunye V. The State* (1999) 5 NWLR (PT. 604) 518. The position will however be different where the admissibility of a statement is challenged on the ground that it was not made voluntarily. In the later case it will be incumbent on the trial court to call upon the prosecution to establish the voluntariness of the statement by conducting a trial within a trial. See *Gbadamosi & Anor. V. The State* (1992) 11/12 SCNJ 268, *Ojegele V. State* (1988) NWLR (Pt.71) 414.

In the instant appeal, the appellant herein had objected to the tendering of Exhibit C, a confessional statement the prosecution alleged was voluntarily made by him. The learned trial judge did the needful by conducting a trial within trial and came to the conclusion that the statement was voluntarily made by the appellant. Thus, the statement was admitted as Exhibit C. This was accepted and upheld by the court below. The appellant has not placed before this court any materials to hold otherwise. Quite interestingly the appellant also made exhibits E and F which are also confessional statements giving details on how the crime was hatched and executed. These later statements were admitted without any objection. I am at sea as to why the appellant is complaining now. It must be noted that a voluntary confession of guilt, if fully consistent and probable, and is coupled with a clear proof that a crime has been committed by some persons, is usually accepted as satisfactory evidence on which the court can convict. See *Ogoala V. The State* (1991) 2 NWLR (Pt.175) 509.

In my view in this case, the learned trial judge, before admitting the confessional statement (Exhibit C) saw, heard, observed the witnesses, examined the statement, saw corroborative facts, for example, the unchallenged fact that the mobile phone of the complainant was recovered from the 2nd accused person arrested as a result of the confession of the appellant. Where an accused person makes a confessional statement and the facts therein are used to recover items stolen, it will be safe to conclude that he made the statement, his later denial notwithstanding. The reason is that such facts could only have been within the personal knowledge of the accused. I am therefore satisfied that the court below was right in upholding the decision of the learned trial judge who attached weight to exhibits C, E and F in coming to the conclusion that the appellant actually took part in the armed robbery. Exhibit G and H, the confessional statements of the

co-accused persons, for me were not really what were relied upon to convict the appellant. From the totality of evidence adduced at the trial and his confessional statement, the appellant is firmly fixed to the commission of this crime. There is no way of escape for him.

Based on the above reasons and the fuller ones well adumbrated in the lead judgment, I am satisfied to hold that there is no merit in this appeal. I join my learned brother, Mary Ukaego Peter-Odili, JSC to dismiss this appeal. B

Appeal dismissed.

C

NWEZE JSC

My noble Lord, Peter-Odili JSC, availed me of the draft of the leading judgment just delivered now. I agree that this appeal ought to be dismissed for lacking in merit. D

As already indicated in the leading judgment, the complainant's stolen items were found in the appellant's possession soon after the robbery incident complained of. It was, therefore, a clear case for the invocation of the presumption in Section 149 (a) of the Evidence Act [applicable in 2009 when the appellant took his trial], being the Nigerian statutory version of the English doctrine of recent possession, *Eze v. The State* (1985) LPELR -1189 (SC) 11-13, C-C. In my humble view, the Lower Court, rightly, affirmed the judgment of the trial court even on this score alone, *Aremu v State* [1991] 17 NWLR (Pt.210) 1; *State v. Nnolim* (1994) 4 SCNJ 48; *Aiyeola v State* (1969) 1 All NLR 309; *Adesina and Anor v. The State* (2002) LPELR -9722 (SC); *Oseni v. The State* [1984] 11 SC 44. E F

It could not have been otherwise for if a person is found in possession of property, which was property reported to have been recently stolen, with or without violence from another person, it is open to a trial court to convict that person of the offence, *Isibor v. The State* (2002) LPELR -1553 (SC) 22-23, G-C; *R v. Loughlim* 35 CR App.69; *In Re Karimu Atanda v. The State* [1983] 6 SC 1. G

For these, and the more detailed, reasons in the leading judgment, I hereby dismiss this appeal as, wholly, unmeritorious. I abide by the consequential orders in the leading judgment. H