

SUPREME COURT OF NIGERIA
FRIDAY 15TH MAY, 2015. SC. 167/2013
CORAM:- J. A. FABIYI, C. B. OGUNBIYI,
K. M. O. KEKERE-EKUN, J. I. OKORO, C. C. NWEZE, JJSC

ILODIBE UCHE APPELLANT
V.
THE STATE RESPONDENT

EVIDENCE - Contradiction - Weight - Contradiction in evidence of prosecution that will be fatal must be substantial - And must relate to the substance of the matter (H1)

ARMED ROBBERY - Proof - Contradictions - Raised for appellant did not affect credibility of witnesses - Since he was arrested at the crime scene - Hence his involvement in the crime was rightly found (H2)

ALIBI - Plea - Validity - Appellant's failure to raise the defence at earliest time nullifies same - As no burden shifted on the police to investigate (H3)

FACTS

Accused/appellant was charged before the Delta State High Court on a four count charge of conspiracy to commit armed robbery contrary to section 1(2)(a) of the Robbery & Firearms (Special Provisions) Act Cap. R11 vol. 14 LFN 2004, two counts of armed robbery contrary to section 1(2)(a) of the same Act and illegal possession of firearms contrary to section 2(3) also of the same Act. The case against appellant is that he was involved in an armed robbery attack that took place at a shop in Asaba. He was alleged to have stolen the sum of N9,000.00 and a Nokia GSM telephone from his victims at gun point.

At the trial, prosecution/respondent called four witnesses and tendered several exhibits to prove its case against appellant. Appellant testified on his own behalf and called no witness. He also raised the defence of alibi at the trial. After hearing from both sides, the learned trial Judge dismissed the defence raised by appellant and

found him guilty as charged. Appellant was sentenced to death. Dissatisfied, appellant appealed to the Court of Appeal Benin Division. The appeal was found unmeritorious and hence dismissed. Not yet satisfied, appellant has appealed to Supreme Court.

ISSUE FOR DETERMINATION

“Whether the lower Court rightly affirmed the trial court’s decision that the prosecution proved the charges against the appellant beyond reasonable doubt.

HELD (Unanimously dismissing the appeal per FABIYI JSC)

EVIDENCE - Contradiction - Weight

1. It must be stated at this point that contradiction in the evidence of the prosecution that will be fatal must be substantial. Minor or miniature contradiction which did not affect the credibility of witnesses may not be fatal. Contradiction must relate to the substance of the matter. Trivial contradiction should not vitiate a trial. (p. 1738 H)

ARMED ROBBERY - Proof - Contradictions

2. The second area of surmised contradiction raised by the appellant’s counsel is the question of who actually collected the sum of N9,000 from PW1. As found by the court below, three people, including the appellant who pointed a gun at PW1 committed the offence. The issue of who actually collected the money and passed it to whom is irrelevant in view of the ingredients of the offence of armed robbery. It is quite clear that the surmised contradictions pinpointed on behalf of the appellant did not affect the credibility of witnesses in any manner giving the fact that the appellant was arrested at the scene of crime. As well, they did not relate to the substance and/or ingredients of the offence charged. No miscarriage of justice has been demonstrated to warrant a reversal of the judgment of the court below in favour of the appellant. I endorse the position taken by the court below. (p. 1739 D)

ALIBI - Plea - Validity

3. It should be stated clearly at this point that alibi, literally means elsewhere. It is a defence by which an accused person alleges that at the time when the offence with which he was charged was committed,

he was elsewhere. Notice of intention to raise the plea of alibi must be given by the accused at the earliest opportunity preferably at the investigation stage to enable the prosecution investigate same. He must furnish his whereabouts and those with him at the material time of incident. Failure to investigate may lead to acquittal.

As found by the court below, the appellant belatedly raised the defence of alibi for the first time when he gave evidence in his own defence on oath at his trial. He did not raise the defence of alibi at the earliest opportunity to enable the prosecution investigate same. He so acted to his own chagrin. No burden shifted on the police to investigate in the circumstance. The plea of alibi tacitly raised in the open court was to no avail.

The above is still not the end in respect of this issue. The appellant made two confessional statements - Exhibits C and D wherein he admitted all the ingredients of the offence. The evidence adduced by the PW1 and PW2 which corroborate the admissions in Exhibits C and D pinned the appellant to the scene of crime. The so-called plea of alibi put up by the appellant, naturally crashed.

The court below was in order in finding no merit in the issue touching on the plea of alibi tacitly raised by the appellant. I endorse same. (p. 1741 A)

NOTABLE POINTS OF INTEREST

FABIYI JSC

1. Armed robbery – Ingredients of

Let me state it at this point in time that the salient ingredients of the offence of armed robbery which the prosecution must establish to ground conviction are as follows:-

- (a) That there was a robbery or series of robbery incident(s),
- (b) That the robbers were armed, and
- (c) That the accused persons were the ones who committed the robbery. (p. 1737 C)

2. Criminal procedure – Proof – Standard of

It has now become trite that the prosecution has the burden at all times in criminal matters to prove the guilt of the accused person beyond reasonable doubt. This requirement is as provided in Section 135(1) Evidence Act, 2011. (p. 1737 E)

3. Criminal procedure – Reasonable doubt – Weight

Reasonable doubt which will justify an acquittal is a doubt based on reason arising from evidence or lack of it. It is a doubt which a reasonable man/woman might entertain and which is distinct from fanciful or imaginary doubt.

In other words, it is one which would cause a prudent and ordinary person to be cautious and hesitate before acting in matters of importance. (p. 1742 H)

C
REPRESENTATION

E. Ohwovoriole with E. Mudiga-Odje; for the Appellant
C. A. Ajuyah, SAN (Hon. A-G Delta State) with O. F. Enenmo, Deputy Director; P. Nwadinmuya; I. U. Amioku-Eshalomi (Mrs.) PSC and N. B. Emakpor (Mrs.) S. C.; for the Respondent

D
CASES REFERRED TO

State v. Bello (1989) 1 CLRN 370
Bozin v. State (1986) 2 NWLR (pt. 8) 465
Woolmington v. D.P.P. (1935) AC 462
E State v. Oladotun (2011) 10 NWLR (pt. 1256) 572
Yanor v. State (1965) NMLR 387
Ibrahim v. State (1991) 4 NWLR (pt. 186) 399
Yongo v. State (1992) 2 NWLR (pt. 257) 36
F Ejigbadero v. State (1978) 9-10 SC 81
Attah v. State (2010) All FWLR (pt. 540) 1224
Abdullahi v. State (2008) LRCN vol. v 164
Isibor v. State (2002) 4 NWLR (pt. 759) 741
Ogba v. State (1992) 2 NWLR (pt. 222) 164
Nwosu v. State (1986) 4 NWLR (pt. 35) 384
G Ankwa v. State (1969) 1 All NLR 133
Queen v. Iyanda (1960) SCNLR 595

STATUTES REFERRED TO

Robbery & Firearms (Special Provisions) Act Cap. R11 vol. 14 LFN 2004, ss. 1(2)(a), 2(3)
H Evidence Act 2011, s. 135(1)

LEAD JUDGMENT BY FABIYI JSC

This is an appeal against the judgment delivered by the Court of Appeal, Benin Division (the court below) on 21st February, 2013. Therein, the court below affirmed the judgment of the trial High Court which convicted and sentenced the appellant to death for the offences of conspiracy to commit armed robbery, armed robbery and illegal possession of firearms on 30th day of March, 2010.

The appellant was arraigned before the trial High Court on a four count charge of:

(1) Conspiracy to commit armed robbery contrary to Section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act Cap. R11 Volume 14 Laws of the Federation of Nigeria, 2004.

(2) Armed robbery, punishable under Section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act Cap. R11 Volume 14 Laws of Federation of Nigeria, 2004 for robbing victim of the sum of N9,000.00 while armed with locally made pistol.

(3) Armed robbery, punishable under Section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act Cap. R11 Volume 14 Laws of the Federation of Nigeria, 2004 for robbing the victim of a Nokia GSM telephone handset while armed with a locally made pistol.

(4) Illegal possession of Firearms, punishable under Section 2(3) of the Robbery and Firearms (Special Provisions) Act Cap. R11 Volume 14, Laws of the Federation of Nigeria, 2004.

The appellant was alleged to have robbed at gun point, one Ndubuisi Bayem and Awele Bayem of the sum of N9,000.00 and a Nokia GSM telephone at their shop on Isioma Onyeaobi Way, Asaba on the 1st day of December, 2006.

On Monday, 2nd day of March, 2009, the four (4) counts were read and explained to the appellant who pleaded not guilty to each of the counts.

At the trial before Bozimo, CJ, the prosecution called four witnesses and tendered four exhibits admitted as Exhibits A, B, C and D. Exhibit A was a gun with which the appellant was alleged to have committed the offences alleged. Exhibit B relates to four live cartridges alleged to have been found on the appellant when he was arrested. Exhibit C was a statement made by the appellant to PW4. Exhibit D was a statement made by the appellant at the Delta State

C.I.D Asaba.

At the close of the prosecution's case, the appellant testified on his own behalf and raised the defence of alibi. He did not call any other witness.

B The learned trial CJ dutifully garnered evidence and was thereafter addressed by counsel on both sides of the divide. In a considered judgment delivered on 30th March, 2010, the trial court found the appellant guilty. He was thereafter convicted and sentenced to death.

C The appellant felt unhappy with the position taken by the trial court and appealed to the court below. On 21st February, 2013, the appeal was found unmeritorious. The judgment of the trial court was affirmed. As well, the sentence of death by hanging pronounced by the trial court on the appellant was also affirmed by the court below which dismissed the appeal.

D The appellant felt dissatisfied with the judgment of the court below. He has decided to appeal, as of right, to this court. In this court, briefs of argument were filed and exchanged by the parties. On 26th February, 2015 when the appeal was heard, learned counsel E for the appellant adopted and relied on the brief of argument filed on 16th May, 2013. He abandoned issue 1 touching on conspiracy to commit armed robbery and rested the case on issue 2 relating to proof beyond reasonable doubt. He urged that the appeal be allowed.

F The senior counsel for the respondent equally adopted and relied on the brief of argument filed on 18th July, 2013 and urged that the appeal be dismissed.

G He further observed that issue of light or no light at the locus criminis is immaterial as the appellant was caught at the scene of crime. As well, he too, abandoned arguments canvassed by him relating to conspiracy to commit armed robbery and concentrated his armour on issue touching on proof beyond reasonable doubt.

To put the issue canvassed by the appellant in sharp focus, it reads as follows:-

H "Whether the lower Court rightly affirmed the trial court's decision that the prosecution proved the charges against the appellant beyond reasonable doubt. (Grounds 1, 3 and 4)"

On behalf of the respondent, the similar sole issue decoded for a due determination of the appeal reads as follows:- "Whether

the lower Court was wrong in affirming the judgment of the trial court that the prosecution proved the counts on the information beyond reasonable doubt."

Let me state it at this point in time that the salient ingredients of the offence of armed robbery which the prosecution must establish to ground conviction are as follows:- B

(a) That there was a robbery or series of robbery incident(s),

(b) That the robbers were armed, and

(c) That the accused persons were the ones who committed the robbery. See the cases of State v. Adedamola Bello & Ors. (1989) C 1 CLRN 370 and Bozin v. The State (1986) 2 NWLR (Pt.8) 465 at 469.

It has now become trite that the prosecution has the burden at all times in criminal matters to prove the guilt of the accused person beyond reasonable doubt. This requirement is as provided D in Section 135(1) Evidence Act, 2011. The decisions in the cases of Woolmington v. D.P.P. (1935) AC 462 and State v. Oladotun (2011) 10 NWLR (Pt.1256) 572 are directly in point.

On behalf of the appellant, it was submitted that the prosecution failed to prove the ingredients of the offence of armed robbery E beyond reasonable doubt as the prosecution's case was fraught with contradictions on the manner by which the appellant was identified. It was observed that there was contradiction on who collected money from the victim. It was contended that PW1 and PW2 contradicted F themselves on the source of light that enabled them to see the appellant whom they did not know before the date of the alleged robbery incident. While PW1 said the shop where the robbery incident occurred was dimly lit with a lamp, PW2 maintained that the room was dimly lit with a candlestick. Learned counsel asserted that same G cast doubt on their evidence.

Learned counsel submitted that such doubt should be resolved in favour of the appellant. The cases of Yanor v. The State (1965) NMLR 387, Ibrahim v. The State (1991) 4 NWLR (Pt.186) 399 and Yongo v. The State (1992) 2 NWLR (Pt.257) 36 at 57 were H cited in support.

Learned counsel submitted that the court below erred when it failed to set aside the decision of the trial court in the light of the fact that there was a doubt as to the identity of the appellant as the

person who robbed the PW1 and PW2. Learned counsel felt that the court ought not to commit the appellant. In support, he cited the cases of Ejigbadero v. The State (1978) 9-10 SC 81 and Attah v. The State (2010) All FWLR (Pt.540) 1224 at 1246 wherein, this court pronounced that where there are conflicts, discrepancies or contradictions that are material in nature, that go to the root of the substance of the case, the court should not convict.

On behalf of the respondent, it was equally submitted with force that the prosecution has the abiding duty to prove its case beyond reasonable doubt as dictated by the provision of Section 135 of the Evidence Act, 2011. He maintained that the ingredients of the offence of armed robbery must be clearly established. In support, the cases of Abdullahi v. The State (2008) LRCN, (Vol.164) 97 at 113-114; Isibor v. The State (2002) 4 NWLR (Pt.759) 741, Ogba v. The State (1992) 2 NWLR (Pt.222) 164, and Nwosu v. The State (1986) 4 NWLR (Pt.35) 384 were cited.

On the issue of conflict in the evidence of PW1 and PW2 as to whether it was lamp or candle light that illuminated PW2's store on the day of the robbery incident or whether it was the appellant who collected the stolen money from PW1; learned counsel maintained that same was carefully resolved by the court below. It was observed that the lower Court, in affirming the findings of the trial court, held that it was immaterial to the determination of the issue since the appellant was caught red-handed at the scene of crime.

It must be stated at this point that contradiction in the evidence of the prosecution that will be fatal must be substantial. Minor or miniature contradiction which did not affect the credibility of witnesses may not be fatal. Contradiction must relate to the substance of the matter. Trivial contradiction should not vitiate a trial. See Ankwa v. The State (1969) 1 All NLR 133; Queen v. Iyanda (1960) SCNLR 595; Omidade v. Queen (1964) 1 All NLR 233 and Sele v. The State (1993) 1 SCNJ 15 at 22-23 (1993) 1 NWLR (pt. 269) 276.

In putting to rest the point touching on contradiction, the court below at page 125 of the record, rightly found as follows:-

"The appellant's counsel argued that while PW1 stated that the shop was dimly lit by a lamp, PW2 claimed that the shop was lit by a candle. I have read the record of appeal wherein both witnesses agreed that the incident happened at night and that the shop

was dimly lit. In the context of the largely uncontroverted evidence of the prosecution, whether the shop was lit by a candle or a lamp is obviously immaterial. The issue of the appellant's identification would have come in if he escaped the scene and was arrested in another area of town or on another day. His half-hearted retraction of Exhibits C and D cannot avail him in the light of the fact that he was apprehended on the spot with his hand in the cookie jar as it were, whether the shop was well lit or not is of no moment."

The second area of surmised contradiction raised by the appellant's counsel is the question of who actually collected the sum of N9,000 from PW1. As found by the court below, three people, including the appellant who pointed a gun at PW1 committed the offence. The issue of who actually collected the money and passed it to whom is irrelevant in view of the ingredients of the offence of armed robbery. It is quite clear that the surmised contradictions pinpointed on behalf of the appellant did not affect the credibility of witnesses in any manner giving the fact that the appellant was arrested at the scene of crime. As well, they did not relate to the substance and/or ingredients of the offence charged. No miscarriage of justice has been demonstrated to warrant a reversal of the judgment of the court below in favour of the appellant. I endorse the position taken by the court below. See Onubogu v. The State (1974) SC 1; Dibie v. The State (2007) 9 NWLR (Pt.1038) 30.

The next issue which was seriously canvassed by the parties relate to the defence of alibi tacitly raised by the appellant during the trial of the matter.

Learned counsel for the appellant observed that the appellant raised the defence of alibi during his examination in chief at the trial. He furnished details of his whereabouts at the time of the crime; according to counsel. He submitted that once an alibi has been raised, the burden is on the prosecution to investigate and rebut such evidence in order to prove its case beyond reasonable doubt. The cases of Hausa v. The State (1994) 6 NWLR (Pt.350) 281 at 302 and George v. The State (2009) 1 NWLR (Pt.1122) 325 at 344 were cited in support.

Learned counsel maintained that the prosecution did not make any attempt to verify or disprove the appellant's defence of alibi. He cited the cases of Yanor v. The State (supra) and Bozin

v. The State (supra) at page 481 in support. He asserted that the appellant was not cross-examined in respect of his evidence of alibi and that same amounts to an admission by the prosecution that the appellant's defence of alibi is true.

B Learned counsel for the respondent observed that the de-
fence of alibi literally means that the appellant was not at the scene
of crime on the day and time the robbery incident took place. The
defence must be raised at the earliest opportunity, in most cases, in
his extra-judicial statement to the police. Same would give the police
C the opportunity to investigate the alibi. He must be specific as to his
whereabouts and those with him at the material time of incident.
Where the prosecution pins him to the scene of crime, the onus
shifts to the appellant to lead evidence to the contrary. The cases of
Esangbedo v. A-G Ondo State (1989) 4 NWLR (Pt.73) 57; Balogun
v. A-G Ogun State (2002) 94 LRCN 260; Njovens v. The State (1973)
D 5 SC 17 and Odu v. The State (2001) 5 SCNJ 115 at 120 were cited
in support.

E Learned counsel observed that it is the case of the prosecu-
tion which was accepted by the trial court and affirmed by the court
below that the appellant did not tell the police in his extra-judicial
statements - Exhibits C and D that he was arrested by the police
on his way to buy fuel for his generator. Further, the appellant was
apprehended at the scene of crime soon after the robbery incident.
A locally made pistol and four expended cartridges were recovered
F from him at the scene of crime.

Learned counsel for the appellant maintained that the ap-
pellant was not cross-examined on the issue of alibi raised by him
in the open court. He referred to page 47, lines 16-23 of the record
of appeal. He urged the court to affirmed the findings of the lower
Court on this issue.

G It should be stated clearly at this point that alibi, literally means
elsewhere. It is a defence by which an accused person alleges that at
the time when the offence with which he was charged was committed,
he was elsewhere. Notice of intention to raise the plea of alibi must
be given by the accused at the earliest opportunity preferably at the
H investigation stage to enable the prosecution investigate same. He
must furnish his whereabouts and those with him at the material time
of incident. Failure to investigate may lead to acquittal. See Yanor

v. The State (supra), Queen v. Turner (1957) WRNLR 34; Bello v.
Police (1956) SCNLR 113; Gachi v. The State (1973) 1 NMLR 331;
Odu v. The State (supra) at 120; Ozaki v. The State (1990) 1 NWLR
(Pt.124) 92; Adio v. The State (1986) 3 NWLR (Pt.31) 714; Patrick
Njovens v. The State (1973) NMLR 331 and Okoduwa v. The State
B (1988) 2 NWLR (Pt.76) 333.

As found by the court below, the appellant belatedly raised
the defence of alibi for the first time when he gave evidence in his
own defence on oath at his trial. He did not raise the defence of alibi
at the earliest opportunity to enable the prosecution investigate same.
C He so acted to his own chagrin. No burden shifted on the police to
investigate in the circumstance. The plea of alibi tacitly raised in the
open court was to no avail.

The above is still not the end in respect of this issue. The ap-
pellant made two confessional statements - Exhibits C and D wherein D
he admitted all the ingredients of the offence. The evidence adduced
by the PW1 and PW2 which corroborate the admissions in Exhibits
C and D pinned the appellant to the scene of crime. The so-called
plea of alibi put up by the appellant, naturally crashed. See Patrick
Njovens v. The State (supra).
E

The court below was in order in finding no merit in the issue
touching on the plea of alibi tacitly raised by the appellant. I endorse
same.

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

No doubt, the prosecution proved all the essential ingredi-
ents of the offence of armed robbery beyond reasonable doubt. See
Woolmington V DPP (supra) at 462. All the three ingredients of the
offence charged as stated earlier on in this judgment were clearly H
established. It was idle to have argued to the contrary. See Alabi
v. The State (1993) 7 NWLR (Pt.307) 511 at 523, Abogede v. The
State (1996) 5 NWLR (Pt.448) 270 at 276. I resolve the sole issue
canvassed by the parties against the appellant and in favour of the

respondent.

On the whole, I find that the appeal is devoid of merit. It is hereby dismissed. The judgment of the court below delivered on 21st February, 2013 in which the judgment of the trial court delivered on 30th March, 2010 was affirmed is hereby confirmed by me.

B

OGUNBIYI JSC

I read in draft the lead judgment just delivered by my learned brother Fabiyi, JSC. I agree that the appeal is devoid of any merit and should be dismissed. The concurrent findings of the two lower Courts are apt and unassailable.

Just for purpose of emphasis, I wish to restate that the appellant testified on his own behalf at the trial court and raised the defence of alibi. He did not however call any other witness. He was thereupon found guilty as charged and sentenced to death accordingly.

On appeal, the lower Court saw no reason why the judgment of the trial court should be interfered with and hence the dismissal of the appeal lodged before it. The appeal now before us is predicated on one issue only; that is to say whether the prosecution has proved the appellant guilty as charged beyond reasonable doubt.

Reasonable doubt which will justify an acquittal is a doubt based on reason arising from evidence or lack of it. It is a doubt which a reasonable man/woman might entertain and which is distinct from fanciful or imaginary doubt.

In other words, it is one which would cause a prudent and ordinary person to be cautious and hesitate before acting in matters of importance. See *Jua V. State* (2010) 4 NWLR (Pt.1184) P.217 at 243. See also *Olayinka V. State* (2007) 9 NWLR (Pt.1040) P.561 at 586, and *Jibril V. Mil. Admin Kwara State* (2007) 3 NWLR (pt. 1021) p. 357 at 383. It is in no doubt that the onus of proving the accused guilty squarely lies on the prosecution who must ensure that all forms of reasonable doubts are cleared.

One of such doubts raised by the appellant against the prosecution's case relates to a contradiction in the evidence of PW1 and PW2 on the source of light through which the appellant was identified. The law is settled in plethora of authorities that trivial and minor inconsistencies in the witnesses' evidence would not normally have

H

any adverse effect on the generality of the case before the trial court. In the case at hand for instance, the absence of identity alleged on behalf of the appellant is of no moment especially where there is the evidence that the appellant was caught in the act the very moment at the scene of incident. In the circumstance, there is therefore no better evidence required to identify the culprit other than his physical apprehension on the very act complained of. The contradiction on the source of light used at the scene i.e. whether it was a lamp or candle did affect at all the credibility of the witnesses' evidence.

B

On the defence of alibi raised by the accused/appellant, same I hold cannot sustain in this circumstance with the appellant having been caught red handed, He was fixed at the scene of crime and caught on the spot. This has therefore ruled out completely a possible defence of alibi as sought to rely thereon by the appellant.

C

For a defence of alibi to sustain, it must be proved that one is somewhere else when the crime alleged was committed. This is not applicable to the case at hand; the appeal is a mere sham and is totality devoid of any merit. I also dismiss it herewith in terms of the lead judgment of my learned brother Fabiyi, JSC and I so hold.

D

E

KEKERE-EKUN JSC

I have had the privilege of reading in draft the well considered judgment of my learned brother, Fabiyi, JSC just delivered. I agree entirely with the reasoning and conclusion that the appeal lacks merit and should be dismissed.

F

It is trite law that where the commission of a crime is in issue in any criminal proceeding, the prosecution must prove the guilt of the accused beyond reasonable doubt. See Section 135 of the Evidence Act 2011; *Woolmington v. D.P.P* (1935) AC 462; *Esangbedo v. The State* (1989) 4 NWLR (Pt.113) 57; *Udo v. The State* (2006) 15 NWLR (Pt. 1001) 179; *Michael v. The State* (2008) 13 NWLR (Pt.1104) 361.

G

Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. In the case of *Oseni vs The State* (2012) LPELR - SC.14/2011. His Lordship Adekeye, JSC stated thus:

H

"Broadly speaking proof beyond reasonable simply means the prosecution establishing the guilt of the accused person with compel-

ling and conclusive evidence. It means a degree of compulsion which is consistent with a high degree of probability. In the case of *Miller Vs Minister of Pensions* (1947) 2 ER p.372, it was held that proof beyond reasonable doubt does not mean proof beyond all shadow of doubt and if the evidence is strong against a man as to leave only
 B a remote probability in his favour which can be dismissed with the sentence “of course, it is possible but not in the least probable, the case is proved beyond reasonable doubt.” *Baker Vs State* (1987) 1 NWLR (Pt.52) p.579.”

C Similarly, in *Abeke v. The State* (2007) ALL FWLR (Pt.366) 644 @ 659 E-F, Tobi, JSC opined thus:

“Reasonable doubt is founded upon reason which is rational, devoid of sentiment, speculation or parochialism. The doubt should be real and not imaginative. The evidential burden is satisfied if a reasonable man is of the view that from the totality of the evidence
 D before the court, the accused person committed the offence. The proof is not beyond all shadow of doubt. There could be shadows of doubt here and there but when the pendulum tilts towards and in favour of the fact that the accused person committed the offence, a court of law is entitled to convict even though there are shadows of
 E doubt here and there.”

In the instant case, the appellant was arrested at the scene of the crime. Therefore the belated defence of alibi raised for the first time during his evidence in chief in his defence at the trial could not avail
 F him. Furthermore, having been arrested at the scene of the crime, the issue of whether the shop where the armed robbery occurred was lit with a lamp or a candle was immaterial to his identification by the victims as one of the perpetrators of the crime. The weapon used in the commission of the crime was recovered in the vicinity where the appellant threw it while live cartridges were recovered from
 G his person. In light of the overwhelming evidence established by the prosecution, his retraction of his statement, Exhibits C and D at the trial was of no moment.

H The arguments advanced by learned counsel for the appellant in support of the appeal were fanciful and speculative. I have no doubt that a reasonable man, observing the proceedings would be convinced that the prosecution had proved its case against the appellant beyond reasonable doubt.

It is for these and the more detailed reasons ably adumbrated in the lead judgment that I also find no merit in the appeal and dismiss it accordingly, I affirm the judgment of the court below and uphold the appellant’s conviction and sentence as affirmed by the lower Court.

B

 OKORO JSC

I read in advance the judgment of my learned brother, Fabiyi, JSC just delivered. I agree entirely with the reasons adduced and the conclusion that this appeal is devoid of merit and deserves to be dismissed. The sole issue nominated by the parties for the determination of this appeal has been exhaustively and quite efficiently resolved by my learned brother and I do not have anything new to add except to make a few comments in support of the judgment.

D

The appellant herein was arraigned before the High Court of Delta State on a four count charge of conspiracy to commit armed robbery contrary to Section 1(2)(a) of the Robbery & Firearms (Special Provisions) Act Cap. R11, Vol. 14 Laws of the Federation of Nigeria 2004, two counts of Armed Robbery contrary to Section
 E 1(2)(a) of the same Act, and illegal possession of Firearms contrary to Section 2(3) also of the same Act.

The case against the appellant is that he, in company of others, on 1st December, 2006, along Isioma Onyeaobi Way, Asaba, robbed at gun point one Ndubisi Bayen and Awele Bayen of the sum of N9,000.00 and a Nokia GSM phone in their shop. The appellant was arrested at the scene while the other robbers escaped. While the appellant was being dragged by PW1, the appellant threw the gun he was holding into the bush. Police arrived immediately following a
 F distress call made to them. With the help of policemen, they combed the bush and found the gun and some cartridges. It was based on the above facts that the appellant was arraigned. The learned trial Chief Judge did not find it difficult to convict and sentence the appellant to death. The appellant appealed against that conviction and the
 G Court of Appeal affirmed the judgment of the trial court. Appellant has further appealed to this court with one issue for determination. The said issue states:

H

“Whether the lower court rightly affirmed the trial court’s

decision that the prosecution proved the charges against the appellant beyond reasonable doubt.”

The learned counsel for the respondent adopts the same issue though couched differently. The main grouse of the appellant in this appeal is that the respondent did not prove the charge against him beyond reasonable doubt.

It is now trite that in criminal prosecution in this country and indeed, on all Commonwealth countries, the onus is always in the prosecution to prove its case against the accused persons beyond reasonable doubt. I need to re-echo the time honoured decision of Oputa, JSC (of blessed memory) in *Mufutau Bakare V. The State* (1987) 3 SC 1 wherein the distinguished jurist held that proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace this presumption, it was opined, the evidence of the prosecution must prove beyond reasonable doubt that the accused person is guilty of the offence charged. It must be noted that proof beyond reasonable doubt does not mean proof beyond any shadow of doubt. Denning, J. (as he then was) observed in *Miller V. Minister of Pensions* (1947) 2 All E.R. 373 as follows:

“The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong as to leave only a remote possibility in his favour which can be dismissed with the sentence - ‘of course it is possible but not in the least probable’, the case is proved beyond reasonable doubt.” See also *Ogundiyin V. The State* (1991) 3 NWLR (Pt.181) 519, *Alonge V. IGP* (1959) 4 FSC 203, (1959) SCNLR 516, *Williams V. The State* (1992) 10 SCNJ 74, *Yongo V. COP* (1992) 4 SCNJ 113, *Odili V. State* (1977) 4 SC 1.

In the instant appeal, I have no hesitation in pitching my tent with the lower Court which agreed and upheld the decision of the trial court that the prosecution proved its case beyond reasonable doubt. Now, come to think on the facts of this case. The appellant and his co-travelers were found in the shop of the PW1 and PW2. They stole money and phone. The appellant was caught at the scene while the others escaped. The gun the appellant used to threaten his victims was recovered from a nearby bush which he threw the gun into. Police came and met him at the scene including the witnesses.

Tell me, what else does any prosecutor want in order to prove a charge beyond reasonable doubt? These facts were ably marshaled before the learned trial Chief Judge and I am satisfied that she was on a strong wicket when she convicted and sentenced the appellant to death. The court below was also on firma terra when it upheld the said decision. The evidence against the appellant was direct and cogent. It was also given by eye witnesses. Where there is evidence that an accused person was arrested at the scene of crime by persons who witnessed the commission of the crime, a belated defence of alibi will be of no moment. The attempt by the appellant to raise an unsubstantiated alibi at the wrong time did not make any difference. He was properly found guilty and I am fully satisfied that he deserves the sentence passed on him.

It is on the above reasons and the fuller ones adumbrated in the lead judgment that I agree that the court below was right to affirm the decision of the trial court that the prosecution proved the charge of armed robbery against the appellant beyond reasonable doubt. I too, affirm the judgment of the lower Court accordingly.

NWEZE JSC

I had the advantage of reading the draft of the leading judgment which my Lord, Fabiyi, JSC, just delivered now. I endorse the conclusion that this appeal is unmeritorious and should be dismissed. This contribution is limited only to the resolution of the divergent submissions on the issue of the so-called contradictions in the Prosecution’s case.

Counsel for the appellant contended, inter alia, that PW1 and PW2 contradicted themselves on the question whether it was a lamp or candle that lit the store in question on the fateful date. Expectably, respondent’s counsel thought otherwise. The lower Court, on its part, observed thus:

The appellant’s counsel argued that while PW1 stated that the shop was dimly lit by a lamp; PW2 claimed that the shop was lit by a candle. I have read the record of appeal wherein both witnesses agreed that the incident happened at night and that the shop was dimly lit. In the largely uncontroverted evidence of the Prosecution, whether the shop was lit by a candle or a lamp is obviously imma-

rial. The issue of the appellant's identification would have come in if he escaped to another area of the town or on another day ...in the light of the fact that he was apprehended on the spot with his hand in the cookie jar, as it were, whether the shop was well-lit or not is of no moment... [Page 125 of the record]

B This finding is unimpeachable. The word "contradiction", traces its lexical roots to two Latin words, namely, "contra" and "dictum", meaning "to say the opposite" see, *Ikemson v State* [1989] 3 NWLR (Pt.110) 455, 479.

C Hence, testimonies of witnesses can only be said to be contradictory when they give inconsistent accounts of the same event. That explains why the law takes the view that for contradictions in the testimonies of witnesses to vitiate a decision, they must be material and substantial. That is, such contradictions must be so material to the extent that they cast serious doubts on the case presented as a whole by the party on whose behalf the witnesses testify, or as to the reliability of such witnesses, *Enahoro v Queen* (1965) NMLR 265, endorsed in *Ogun v Akinyele* [2004] 18 NWLR (Pt.905) 362, 392; *Emiator v State* [1975] 9-10 SC 112; *Afolalu v. State* [2009] 3 NWLR (Pt.1127) 160.

E This is so because it would be miraculous to find two persons who witnessed an incident giving identical accounts of it when they are called upon to do so at a future date. If that were to happen, such accounts would be treated with suspicion, as it is likely that the witnesses compared notes. In effect, minor variations in testimonies seem to be badges of truth, *Okoziebu v State* [2003] 11 NWLR (Pt.831) 327, 341; *Nasaru v. State* [1999] 6-9 SC 153; *Ikemson v State* (supra). In any event, courts have even taken the view that witnesses may not always speak of the same facts or events with equal and regimented accuracy. *Ogun v Akinyele* [2004] 18 NWLR (Pt.905) 362, 392.

G In all, for contradictions in the evidence of prosecution witnesses to affect a conviction, particularly, in a capital offence, they must raise doubts as to the guilt of the accused, *Nwosisi v State* [1976] 6 SC 109; *Ejigbadero v. State* [1978] 9-10 SC 81; *Kalu v State* [1988] 4 NWLR (Pt.90) 503; *Igbi v. State* [2000] FWLR (Pt.3) 358; [2000] 3 NWLR (Pt.648) 169.

H It is for these, and the more elaborate, reasons in the leading

judgment that I, too, hold that this appeal has no redeemable merit in it. I, accordingly, enter an order dismissing it. I abide by the consequential orders in the leading judgment.

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