

**SUPREME COURT OF NIGERIA**  
FRIDAY 3RD JULY, 2015. SC. 259/2009  
**CORAM:- J. A. FABIYI. O. ARIWOOLA,**  
**M. D. MUHAMMAD, C. B. OGUNBIYI, C. C. NWEZE, JJSC**

TAJUDEEN FABIYI ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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IDENTIFICATION PARADE - Issue - Determination of - Identification of accused is only relevant - Where same is an issue before trial court - Otherwise court is not expected to dwell on it (H1)

CRIMINAL PROCEDURE - Confession - Conviction - Where based solely on confessional statement that is unequivocal - Prevails on appeal in spite of absence of any corroborating evidence (H2)

ARMED ROBBERY - Ingredients - Proof - Beyond appellant's confessional statement - Testimonies of PW1 & 5 establish that there was armed robbery - And that appellant was among the robbers (H3)

***FACTS***

Before the High Court of Edo State, accused/appellant and three others were arraigned for conspiracy and armed robbery punishable under sections 5(b) and 1(2)(a) of the Robbery & Firearms (Special Provisions) Act Cap. 398 LFN 1990. The case as presented by prosecution/respondent is that PW1 made a report to the police that his son (i.e. 1<sup>st</sup> accused) stole a certain amount of money from his shop and subsequently in company of others robbed the shop next to his. Upon his arrest, 1<sup>st</sup> accused confessed to the crime and his testimony led to the arrest of appellant and the others. Their testimonies of ways of operation were recorded by PW5. Exhibit D is appellant's confessional statement.

1<sup>st</sup> accused died in custody prior to the commencement of the trial. At the trial, respondent called five witnesses in support of its case. The statements of the suspects were admitted in evidence without objection. Appellant testified in his own defence. His case was a total denial of the crime. In his testimony, appellant informed the

court that he was tortured and forced to sign Exhibit D. At the conclusion of trial, the court found appellant and the others guilty as charged. Death sentence was therefore passed on each of them. Dissatisfied, appellant appealed to the Court of Appeal Benin City. The appeal was dismissed. Appellant has now appealed to Supreme Court.

**ISSUES FOR DETERMINATION**

*“(i) Whether the lower court committed an error and the error occasioned a serious miscarriage of justice when it held that the identity of the appellant as one of the robbers was not raised as an issue before the trial court and could not therefore be raised before them without leave.*

*“(ii) Whether on the evidence of the prosecution witnesses and the confessional statements of the appellant and his co-accused the lower court was in error in not discharging and acquitting the appellant for the offences of conspiracy to commit armed robbery and armed robbery.*

**HELD** (Unanimously dismissing the appeal per

**MUHAMMAD JSC)**

*IDENTIFICATION PARADE - Issue - Determination of*

**1. It has been submitted that the lower court’s failure to determine the issue of appellant’s identity is fatal. I agree with learned appellant counsel that failure of the prosecution to establish that an accused was indeed the person who committed the offence disentitles the trial court from convicting and the appellate court from affirming such erroneous conviction. It must strongly be emphasized, however, that the identification of an accused becomes relevant only where same is an issue before the trial court. Where, therefore, the court is not confronted with the issue because, on the basis of evidence available to the court, the question has ceased to be relevant, the court will not be expected to dwell needlessly on the issue. The appellate court, in the same vein, will be right to affirm the trial court’s correct refusal to be bothered with the identity of the accused that has been established by evidence before the court.**

**My perusal of the entire record of this appeal vindicates the lower court's finding that the evidence on record does not suggest any doubt as to the identity of the appellant in relation to the offences he is convicted for by the trial court to warrant findings contrary to those he further appeals against. It is true that the appellant requires no leave to raise on appeal any defence he is, on the face of the record, entitled to. Having however failed even at this level to show that the evidence on record has made the slightest suggestion in that regard, appellant's complaint on the point must fail too. It is for the foregoing that the 1st issue is resolved against the appellant. (pp. 2359 D/2360 C)**

*CRIMINAL PROCEDURE - Confession - Conviction*

**2. On their 2nd issue, learned appellant's counsel is also glaringly wrong in his submission that appellant's conviction by the trial court draws solely from his confessional statement, Exhibit "D". Even if it does, it is not for certain, the law that the lower court's affirmation of appellant's conviction can be set aside on that score alone. The correct principle is that once appellant's extra judicial statement is the confessional statement the law allows courts to convict an accused upon. Appellant's conviction and its affirmation by the lower court must persist.**

**This Court has, in a seemingly endless number of decisions, held that though desired that convictions be based on evidence outside the confessional statement of an accused, a conviction based solely on the confessional statement of the accused, where same is direct, positive and unequivocal, does prevail on appeal in spite of the absence of any corroborating evidence.**

**The lower court's affirmation of the trial court's reliance on the confessional statement of the appellant as corroborated in the testimonies of PW1, PW3, PW4 and PW5 cannot, in the face of the principles enunciated by this Court in the foregoing, be wrong. (pp. 2360 F/2362 B)**

*ARMED ROBBERY - Ingredients - Proof*

**3. Finally, appellant’s spirited contention that respondent had not proved its case beyond reasonable doubt, given the evidence on record, cannot be sustained.**

**It is trite that the confessional statement of an accused remains the best proof of what he had done. In the case at hand, beyond appellant’s confessional statement, Exhibit “D”, the testimonies particularly of PW1 and PW5 further establish the fact that there was armed robbery undertaken by the five man gang and that the appellant was a member of the gang. It is equally in evidence that the members of the gang had acted in concert in carrying out the robbery. Both courts are entitled to infer from these facts, which constitute the ingredients of the offences the appellant is convicted for, that the respondent has proved its case against the appellant as required by the law.**

**On the whole, the appellant has failed to show that the concurrent findings of the two courts below are perverse. His appeal must accordingly fail and I hereby adjudge it has. In the result, the appeal is dismissed. (p. 2362 C)**

**NOTABLE POINT OF INTEREST**

**MUHAMMAD JSC**

***1. Appeals – Concurrent findings – Interference***

The principal issue the appeal raises is a very narrow one. The appeal challenges the concurrent findings of fact by the two courts below which this Court allows only where such findings are shown to be manifestly perverse. The appeal succeeds if the appellant establishes that the findings he attacks neither draw from the evidence on record nor are in compliance with known principles of law or procedure and have also occasioned injustice. (p. 2359 B)

**REPRESENTATION**

Victor Opara, for the Appellant  
Adewale Atake with Godwin Omoaka, Arnold Ushiadi and Solomon Babajide, for the Respondent

**CASES REFERRED TO**

- Sanmabow v. State (1967) NMLR 314  
 Alarape v. State (2001) FWLR (pt. 41) 1872  
 Fari v. Federal Mortgage Finance Ltd (2004) All FWLR (pt. 235) 27  
 Gaji v. Paye (2003) FWLR (pt. 163)  
 Idowu v. State (2000) 7 SC (pt. 11) 50 B  
 Ikemson v. State (1989) 3 NWLR (pt. 110) 455  
 Afolalu v. State (2010) 5-7 SC (pt. 11) 93  
 Ugwuanyi v. FRN (2012) 3 SC (pt. 11) 95  
 Osuagwu v. State (2013) 1-2 SC (pt. 1) 37 C  
 Adebayo v. State (2014) 12 NWLR (pt. 1422) 613  
 Agboola v. State (2013) 5 SCNJ 683  
 Ikpasa v. State (1981) 9 SC 7  
 Achabua v. State (1996) 12 SC 63  
 Bozin v. State (1985) 2 NWLR (pt. 8) 455 D  
 Alabi v. State (1993) 7 NWLR (pt. 307) 5

**STATUTE REFERRED TO**

- Robbery & Firearms (Special Provisions) Act Cap. 398 LFN 1990, s. 5(b), 1(2)(a) E

**LEAD JUDGMENT BY MUHAMMAD JSC**

This is an appeal against the judgment of the Court of Appeal, Benin Division affirming the conviction and sentence of the appellant and three others by the Edo State High Court for Conspiracy and Armed Robbery punishable under Sections 5(b) and 1(2)(a) of the Robbery and Firearms (Special Provisions) Act Cap. 398 of the laws of the Federation 1990, committed on or about 30th day of November, 1996 at Benin City within the trial court's jurisdiction. The team had conspired and robbed one Donatus Osigwe of the sum of N164,000.00 while armed with knives and other offensive weapons. F

The respondent called five witnesses to make out its case at the trial court. PW1, had reported to the police that his son, the 1st accused, had stolen the sum of N190,000.00 from his shop in Benin City on 16/11/96 and, in company of others, robbed the next shop to his on 30-11-96. 1st accused on his arrest, volunteered a statement which led to the arrest of the others including the appellant herein. He also identified the appellant to PW1 and PW5 as a mem- H

ber of his gang that robbed PW2's shop of the sum of N164,000.00. PW3, Ifeanyi Chukwu Eze, was in his father's shop, No 12A Mission Road Benin City, when the robbery gang struck on 30-11-96 around 10pm. 1st accused, PW3's brother, PW3 told the trial court, emerged and accosted another brother of theirs, Chidebere Eze, and one  
 B Clifford Umorji from the next store, demanding money from them. Along with four others of his gang, the 1st accused proceeded with Clifford to PW2's store where, according to PW4, they carted away the sum of N130,000.00.

C The statements of the five man robbery gang, on being arrested, were recorded by PW5 through whom the statements were tendered and admitted in evidence without objection. Exhibit "D", which turned out to be confessional, is appellant's own statement. 1st accused died in prison before the commencement of the trial and  
 D conviction of his gang including the appellant at the trial court.

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

E At the end of trial and addresses of counsel, the trial court in a considered judgment, having found that the respondent had proved its case beyond reasonable doubt, convicted and sentenced the four accused persons accordingly. Dissatisfied, the appellant appealed to  
 F the Court of Appeal, Benin Division hereinafter referred to as the lower court, whereat in dismissing the appeal, the court affirmed the trial court's decision.

Still aggrieved, the appellant further appealed to this Court on a Notice filed on 7th July, 2008 containing four grounds against the  
 G lower court's judgment delivered on 13th December, 2004.

At the hearing of the appeal, parties adopted and relied on their briefs, including appellant's reply brief, which had earlier been filed and exchanged, as their respective arguments for and against the appeal. Having abandoned the Notice of Preliminary Objection  
 H filed against the appeal as well as arguments in respect of same by learned counsel to the respondent, the processes were accordingly struck out.

The four issues distilled by the appellant from his four grounds of appeal for the determination of the appeal read:-

*“(i) Whether the issue of the identity of the Appellant and the co-accused persons raised on the Appeal before the Court of Appeal did not arise from the proceedings and Judgment of the Trial Court (Court of first instance) and as such could not be raised and argued on Appeal without leave first had and obtained?”*

*“(ii) Whether the Learned Justices of the Court of Appeal did not err in law and occasion serious miscarriage of justice when they failed to discharge and acquit the Appellant of the offence of Conspiracy to Commit Armed Robbery and Armed Robbery by reasoning thus as follows:*

*‘On the issue of identification parade not having been conducted by the Police when the Appellant was not identified by the prosecution witness, it is said somewhere in his judgment that the identity of the Appellants was never made an issue before the trial Court. This is what the trial Judge said in judgment.*

*‘... The 1st Accused now deceased did not testify but before the trial, it was he who identified the accused person with whom he said he sent (sic) for the robbery. This led to the arrest of the accused persons who were not identified by any of the prosecution witnesses except PW1 who claimed he went with Police and 1st Accused to apprehend them...’*

*This simply means that PW1 who went with the deceased to arrest the Appellants, along with Police identified the Appellants as those implicated by Monday Eze (deceased) they cannot recognize the other four persons. They were identified by Monday Eze their gang leader and PW1 with whom the arrest was made, PW3 and PW4 did not know them before so why the need for identification parade, identification parade will be necessary if and only if there is doubt in the mind of the witnesses as to whether it was the accused persons or somebody else who committed the offence. No such doubt has been created in the present case.’*

*“(iii) Whether the Learned Justices of the Court of Appeal did not err in law and occasion serious miscarriage of justice when they held that the Prosecution proved beyond reasonable doubt, the two count Charge of conspiracy to commit armed robbery and armed robbery, being the case of the Prosecution against the Appellant and other Accused Persons?”*

*“(iv) Whether the Court of Appeal did not err in law and occa-*

sion serious miscarriage of justice when it reasoned as follows:

*In the present case the Learned Trial Judge carefully tested the Confessional Statements of the Appellants with the Evidence adduced by the Prosecution Witnesses and found their Confessional Statements to be direct and positive on the commission of offence. I have also considered the Appellants' Confessional Statements Exhibits A-D, the Evidence of PW1, 3 and 4 appears to corroborate the confessional statements and from the statements of facts made therein, the confession of the Appellants is quite probable."*

The two issues the respondent formulated at page 6 of its brief as arising for the determination of the appeal are:-

*"(i) Whether the lower court committed an error and the error occasioned a serious miscarriage of justice when it held that the identity of the appellant as one of the robbers was not raised as an issue before the trial court and could not therefore be raised before them without leave. (ground 1)*

*(ii) Whether on the evidence of the prosecution witnesses and the confessional statements of the appellant and his co-accused the lower court was in error in not discharging and acquitting the appellant for the offences of conspiracy to commit armed robbery and armed robbery. (grounds 2, 3 and 4)"*

The issues distilled by the appellant, it is observed, are not only verbose and inelegant but also inappropriate. For the determination of the appeal, respondent's two issues which subsume appellant's issues and more pointedly define the latter's grudges are hereby preferred. Resolving the appeal within the purview of respondent's issues will thus be undertaken.

Appellant's principal complaint pertains to the concurrent findings of the lower courts on his guilt in spite of respondent's failure to prove his participation in the commission of the offences beyond reasonable doubt as required by law. An answer to the question whether or not the lower court's decision is sustainable on the basis of the evidence on record will therefore suffice. The subsidiary issue as to whether the lower court is right in its affirmation of the trial court's reliance on appellant's confessional statement, Exhibit "D", to convict him, will be considered as well. The resolve to determine the appeal in this perspective draws from the grounds in appellant's Notice of appeal.



Whereas appellant's 1st issue is argued on its own, the remaining three issues are jointly argued in the appellant's briefs. Appellant's arguments in respect of his 1st issue will therefore be viewed against respondent's 1st issue while the Appellant's joint arguments in respect of his 2nd, 3rd and 4th issues will be considered under respondent's 2nd issue. B

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

The trial court, at page 73 lines 23 to 27 of the record, submits learned appellant counsel, has found as a fact that five men were involved in the commission of the offences. The participation of the appellant in the commission of the offences, it is further submitted, remains an issue for determination all through his trial. The appellant who was never arrested or identified at the scene of crime and has not been connected by any piece of evidence to the commission of the offences, it is argued, cannot legally be convicted. Having pleaded not guilty to the charge, it is contended, the respondent had the duty of proving its case against the appellant beyond reasonable doubt. Failure of the lower court to consider the fact that none of the witnesses called by the respondent identified the appellant as a party to the armed robbery, learned counsel further argues, remains fatal to the court's decision. The appellant needed no leave of the lower court before he raised the issue. The lower court's non-consideration of the issue having occasioned miscarriage of justice, concludes learned appellant's counsel, entitles the appellant to discharge and acquittal. D E F G

On appellant's 2nd, 3rd and 4th issues for determination, respondent's 2nd issue, learned appellant's counsel refers to the lower court's correct statement of the law at page 133 of the record that where an accused person resiles from the confessional statement made by him, the law requires that the trial court ensures that corroborative evidence outside the confessional statement exists before the accused is convicted. The lower court's affirmation of the trial court's conviction of the appellant without ensuring that such evidence exists however, learned counsel submits, is legally indefensible. The lower H

court's finding at page 137 lines 1-5 that the trial court had, at page 76 lines 14-25 of the record fulfilled this requirement, it is thus contended, is not borne out by the evidence on record. Relying on *Sanmabow v. The State* (1967) NMLR 314, *Asimiyu Alarape v. The State* (2001) FWLR (Pt 41) 1872 at 1876, *Mrs. Rakiya Habu Fari v. Federal Mortgage Finance Ltd* (2004) ALL FWLR (Pt 235) 27 and *Isaac Gaji & 2 Ors v. Emmanuel D. Paye* (2003) FWLR (Pt 163). Learned appellant counsel submits that the issues on the appeal be resolved against the respondent. He concludes by urging the court to allow the appeal.

C Responding, learned respondent's counsel submits that it is academic to dwell on the lower court's finding that appellant was raising the issue of appellant's identity for the first time before it and the consequence of doing so without the court's leave. The truth is D that, learned counsel submits, the court had, after all, considered and determined the issue. Learned respondent's counsel refers to pages 127 and 133 of the record of appeal and maintains that the lower court is right to have held that an identification parade of the appellant was unnecessary since the unchallenged evidence of PW1 E and PW5 had, in addition to his confessional statement, linked the appellant to the offences for which he was convicted. In any event, the appellant who did not, either at the trial court or at the lower court, raise the defence of mistaken identity cannot successfully complain that the matter was not resolved by the lower court. Relying on F *Gaji v. Paye* (2003) 8 NWLR (Pt 823) 583 and *Balogun V. Ag Ogun State* (2002) 6 NWLR (Pt.763) 264 at 534. Learned respondent counsel urges that the court resolve its first issue against the appellant.

G On its 2nd issue, learned counsel postulates that appellant's other grudge revolves around the evidence the trial court relied upon to convict the appellant and the lower court's affirmation of the findings on the basis of the evidence. It is submitted that the two courts relied on the testimonies of particularly PW1 and PW5 in addition to H the confessional statement of the appellant, Exhibit "D". The appellant's retraction of his confession, it is contended, does not make the statement less reliable. The trial court was entitled to rely on the confession having found the evidence of PW1, PW2, PW3 and PW5 corroborative of the content of the confessional statement. Referring

to the trial court's evaluation of the evidence led by parties at pages 76-77 of the record, which exercise the lower court endorsed, and the decisions in *Idowu v. The State* (2000) 7 SC (Pt 11) 50 at 62-63 and *Ikemson v. The State* (1989) 3 NWLR (Pt 110) 455, learned respondent's counsel urges the resolution of the issue as well as the appeal against the appellant. B

The principal issue the appeal raises is a very narrow one. The appeal challenges the concurrent findings of fact by the two courts below which this Court allows only where such findings are shown to be manifestly perverse. The appeal succeeds if the appellant establishes that the findings he attacks neither draw from the evidence on record nor are in compliance with known principles of law or procedure and have also occasioned injustice. See *Afolalu v. The State* (2010) 5-7 SC (Pt 11) 93, *Ugwuanyi v. FRN* (2012) 3 SC (Pt 11) 95 and *Osuagwu v. State* (2013) 1-2 SC (Pt 1) 37. C D

***It has been submitted that the lower court's failure to determine the issue of appellant's identity is fatal. I agree with learned appellant counsel that failure of the prosecution to establish that an accused was indeed the person who committed the offence disentitles the trial court from convicting and the appellate court from affirming such erroneous conviction. It must strongly be emphasized, however, that the identification of an accused becomes relevant only where same is an issue before the trial court. Where, therefore, the court is not confronted with the issue because, on the basis of evidence available to the court, the question has ceased to be relevant, the court will not be expected to dwell needlessly on the issue. The appellate court, in the same vein, will be right to affirm the trial court's correct refusal to be bothered with the identity of the accused that has been established by evidence before the court.*** E F G

In revisiting the principle, my lord Ariwoola JSC, in *Adebayo v. State* (2014) 12 NWLR (Pt.1422) 613 at 639-640 stated thus:-

*"It is also settled law that an identification parade is very essential and useful whenever there is doubt as to the ability of a victim to recognize the suspect who participated in carrying out the crime or where the identity of the said suspect or accused person is in dispute. However, where there is certainty or no dispute as to the identity of* H

*the perpetrator of a crime, there will be no need for an identification parade to further identify the offender. See; R v. Turnbull (1976) 3 All ER 549, or (1977) QB 224 at 228 - 231; P. Ikemson v. State (1989) 1 CLRN 1, (1989) 3 NWLR (Pt.110) 455.*" See also Akeem Agboola v. The State (2013) 5 SCNJ 683 at 701-702.

B In the instant case, it is on record that appellant's arrest was effected following his being identified by the 1st Accused to PW1, and PW5. The latter, Police Investigating Officer, is emphatic on the point. Appellant's link with the offences he has been convicted for, given the further evidence in Exhibit "D", his confessional statement, C ceases to be in doubt. These facts remained uncontroverted and fatal to appellant's case.

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

F **On their 2nd issue, learned appellant's counsel is also glaringly wrong in his submission that appellant's conviction by the trial court draws solely from his confessional statement, Exhibit "D". Even if it does, it is not for certain, the law that the lower court's affirmation of appellant's conviction can be set aside on that score alone. The correct principle is that once appellant's extra judicial statement is the confessional statement the law allows courts to convict an accused upon. Appellant's conviction and its affirmation by the lower court must persist.** H

**This Court has, in a seemingly endless number of decisions, held that though desired that convictions be based on evidence outside the confessional statement of an accused, a conviction based solely on the confessional statement of the**

**accused, where same is direct, positive and unequivocal, does prevail on appeal in spite of the absence of any corroborating evidence.** See Ikpassa v. State (1981) 9 SC 7 and Achabua v. State (1996) 12 SC 63.

The question to answer at this juncture relates to the quality of appellant's confessional statement and whether or not in affirming the decision of the trial court, the lower court had ensured that the decision is, in addition to the confessional statement, founded on other pieces of evidence as well.

The decision of the trial court which the lower court affirmed, see page 76 of the record of Appeal, inter-alia reads:-

*"In this case on hand, I have carefully perused each of the statements of the accused persons Exhibit 'A'- 'D' and they are direct and positive on the commission of the offence. The evidence of PW3 and PW4 that four persons came with 1st accused to rob them at night appears to corroborate the confessional statements... The retraction made by the accused persons appears to be carefully rehearsed and I do not believe them. I am satisfied with the truth contained in the confessional statement which confirms the evidence given by the prosecution witnesses."*

The court further opined thus:-

*"In allowing the confessional statements of the accused persons to be tendered without objection to enable the court test for voluntariness and raising the issue during the defence and address state (sic) appear to me to be too late in the day. From the available evidence of PW.5, there is no reason for the court to believe the assertion by the accused persons that they were tortured when this was not taken up when the IPO testified as PW.5."*

In restating the principle on the point, this Court per Obaseki JSC, opined in Jimoh Yesufu v. The State (1976) 6 SC 167 at 173 thus:-

*"There is a long line of judicial authorities (on the effect of confessions and we agree with the statement which establish that in Nigeria, a free and voluntary confession of guilt by a prisoner, whether under examination before a magistrate or otherwise, if it is direct and positive and is duly made and satisfactorily proved, is sufficient to warrant convictions without any corroborative evidence so long as the court is satisfied of the truth of the confession (Edet Obasi v. The*

*State (1965) NMLR 119). But it is desirable to have outside a defendant's confession to the police, some evidence, be it slight of the circumstances which make it probable that the confession was true.*

*Paul Onochie & 7 Others v. The Republic (1966) NMLR 307;*  
 B *R. v. Kanu 14 WACA 30."*

**The lower court's affirmation of the trial court's reliance on the confessional statement of the appellant as corroborated in the testimonies of PW1, PW3, PW4 and PW5 cannot,**  
 C **in the face of the principles enunciated by this Court in the foregoing, be wrong.**

**Finally, appellant's spirited contention that respondent had not proved its case beyond reasonable doubt, given the evidence on record, cannot be sustained.**

D **It is trite that the confessional statement of an accused remains the best proof of what he had done. In the case at hand, beyond appellant's confessional statement, Exhibit "D", the testimonies particularly of PW1 and PW5 further establish the fact that there was armed robbery undertaken by the five**  
 E **man gang and that the appellant was a member of the gang. It is equally in evidence that the members of the gang had acted in concert in carrying out the robbery. Both courts are entitled to infer from these facts, which constitute the ingredients of the offences the appellant is convicted for, that the**  
 F **respondent has proved its case against the appellant as required by the law.** See *Bozin v. State (1985) 2 NWLR (Pt 8) 455 at 469, Alabi v. The State (1993) 7 NWLR (Pt 307) 5 and Olayinka v. State (2007) 9 NWLR (Pt 1040) 561; (2007) 8 SCM 193.*

G **On the whole, the appellant has failed to show that the concurrent findings of the two courts below are perverse. His appeal must accordingly fail and I hereby adjudge it has. In the result, the appeal is dismissed.**

H The lower court's judgment affirming appellant's conviction and sentence by the trial court for Conspiracy and Armed Robbery punishable under Sections 5(b) and 1(2)(a) of the Robbery and Firearms (Special Provisions) Act, CAP. 398 of the Laws of the Federation 1990 is hereby affirmed.

**FABIYA JSC**

I have had a preview of the judgment just delivered by my learned brother - M. D. Muhammad, JSC. I agree with the lucid reasons therein adumbrated to arrive at the conclusion that the appeal lacks merit and should be dismissed.

In support of the comprehensive judgment, I seek leave to chip in a few words of my own. As usual, I shall be brief in so doing. The facts leading to this appeal have been clearly assembled in the lead judgment. I desire to rely on same. B

The appellant was arraigned along with three others before the Edo State High Court for Conspiracy and Armed Robbery punishable under Sections 5(b) and 1(2)(a) of the Robbery and Firearms (Special Provisions) Act, Cap. 398, LFN 1990. C

In sum, the trial High Court relied principally on the appellant's confessional Statement - Exhibit D wherein he made a clean breath admission of the offences charged, as it were, as well as the corroborative evidence adduced by PW1 and PW5 to nail him. The appellant was, thereat, convicted and sentenced accordingly on 26th June, 2001. He appealed to the Court of Appeal which heard same and dismissed it on 13th December, 2004. The appellant felt unhappy and has appealed to this court. D  
E

I wish to restrict my remarks to the crucial and determinant issue (ii) couched on behalf of the respondent which reads as follows:-

*“(ii) Whether on the evidence of the prosecution witnesses and the confessional statements of the appellant and his co-accused the lower court was in error in not discharging and acquitting the appellant for the offences of conspiracy to commit armed robbery and armed robbery.”* F  
G

It is here relevant to reiterate the point that a confessional statement constitutes a clear and cogent proof of an act of the accused person who made it. There is no evidence stronger than a person's own confession. This is so, since no rational being will say a negative thing against his own interest; all things being equal. See *Otoha vs. The State* (1975) 1 SC 55. H

It is now settled law that a free and voluntary confession of guilt made by an accused person, if it is direct and positive, is sufficient to warrant his conviction without any corroborative evidence as

long as the court is satisfied of the truth of the confession. See Jimoh Yesufu vs. The State (1976) 6 SC. 167 at 173; Edet Obasi vs. The State (1965) NMLR 119; Idowu vs. The State (2000) 7 SC. (Pt. 11) 50. But it is desirable to have outside an accused's confession to the police, some evidence, be it slight of the circumstances which make it  
 B probable that the confession was true. See Paul Onochie & Ors. vs. The Republic (1966) NMLR 307; R. v. Kanu 14 WACA 30; Koiki vs. The State (1976) 4 SC. 107 at 111; Ikemson vs. The State (1989) 3 NWLR (Pt.110) 455.

C As manifest in Exhibit D - appellant's confessional statement, he admitted that he took part in the robbery operation along with his cohorts. He stated it pointedly that he used his own share of the loot to wit, 'the sum of N4,000:00 to buy one president Black and White Television and Foam including two pillows'. The trial court consid-  
 D ered the above along with corroborative evidence adduced by PW1 and PW5 which linked the appellant to the operation and nailed him. The court below rightly, in my considered opinion, affirmed same. I have no hesitation in saying that they were right; to have so done.

E It goes without saying that the respondent has proved the case beyond reasonable doubt, as required by the law. See Woolmington vs. DPP (1935) AC 462; and Alabi vs. The State (1993) 7 NWLR (Pt.307) 5.

F My learned brother said it all in the lead judgment. The above is like a tip of the iceberg. For same and of course the detailed reasons adumbrated in the said judgment which I hereby adopt, I too, feel that the appeal is devoid of merit as it has no chance for success. I hereby dismiss it. The judgment of the Court of Appeal which af-  
 G firmed the appellant's conviction and sentence by the trial court is hereby confirmed.

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### ARIWOOLA JSC

H My learned brother, Dattijo Muhammad, JSC obliged me with reading of the draft lead judgment just delivered and I agree entirely with the reasoning therein and the conclusion arrived thereat.

The appellant had been charged along with three others with two counts of conspiracy to commit a felony and armed robbery.



The trial court found them guilty, convicted them and sentenced each one of them to death by hanging.

The appellant was dissatisfied with the judgment hence he appealed to the Court below, Benin Division, which at the end dismissed the appeal having found it devoid of merit. That has led to this further appeal as the appellant was again not satisfied. B

In this appeal, the only issue I like to look at is the issue of the identity of the appellant - whether indeed there was need to have conducted an identification parade by the Police to ascertain the identity of the appellant as one of the alleged accused persons. And therefore whether, since his identity was alleged not proved, the lower court was right in affirming the wrong conviction and sentence by the trial court. C

Learned counsel had contended that the court below was wrong to have held that the issue of identity of the appellant was not made an issue at the trial court hence, having been raised for the first time on appeal before the lower court it was incompetent. He contended further that the failure to consider the issue occasioned miscarriage of justice against the appellant hence he is entitled to acquittal. D

The respondent thought differently on this issue. Learned counsel contended that the trial court considered and determined the issue. He referred to the record of appeal on pages 127 and 133 to conclude that the lower court was indeed right and correct to have discountenanced the requirement of an identification parade in the face of the unchallenged evidence of PW1 and PW5 in addition to the appellant's own confessional statement. E  
F

In any event, learned respondent's counsel contended that since the appellant did not raise as an issue, the defence of mistaken identity, either at the trial court or court below, he cannot now be heard to complain that the issue was not resolved by the lower court. G

On the identity of the appellant with the other co-accused on the event of 30/11/1996 upon which the appellant and others were tried, the trial court found as follows:

*"From the facts of this case, the evidence of PW1, PW3 and PW4 confirm that there was stealing from PW2's Store on 30/11/96. Some money was removed from the store of PW2 at No.12A Mission Road, Benin City. Though PW2 was not in the Store, PW4 was in the Store when he opened the Store unknowingly for some per-*

*sons, as he heard a familiar voice. I believe he saw 1st accused and recognized him. He also saw four others with him. That they were armed and they stole money from the store. I find as a fact that on the 30th of November, 1996, five men armed went to the store at No.12A Mission Road, and removed cash from the boy, PW4.”*

B There is no doubt that in cases of armed robbery, the identity of an accused person is always an issue and failure of the trial court to consider it when properly raised is fatal to the prosecution’s case. However, in the instant case, the identity of the appellant was not directly made an issue to have warranted the conduct of an identification parade before the case would be charged to court.

C An identification parade only becomes necessary for instance, where the victim of the crime did not know the accused person before his acquaintance with him during the commission of the offence. D It is settled law that an identification parade is very essential and useful whenever there is doubt as to the ability of a victim to recognize the suspect who participated in carrying out the crime or where identity of the accused is in dispute. Where there is certainty or no dispute as to the identity of the perpetrator of a crime, there will be no need for an identification parade. See: Tirimisiyu Adebayo Vs. The State E (2014) 12 NWLR (Pt.1422) 613; (2014) 8 SCM 34; (2014) 5-6 SC (Pt.2) 68.

F The court below was therefore right in affirming the decision of the trial court in convicting and sentencing the appellant based on the available evidence including his confessional statement, Exhibit D. There is no evidence of any perversion of the decision and no miscarriage of justice could have arisen.

G For the above reason and the fuller reasoning in the lead judgment of my learned brother, I consider the appeal devoid of merit and liable to dismissal. Accordingly, same is dismissed by me. The judgment of the court below is hereby affirmed which had earlier affirmed the conviction and sentence by the trial court.

H

### OGUNBIYI JSC

I read in draft the lead judgment of my learned brother Dattijo Muhammad, JSC. He has done justice to this appeal and I also adopt his thorough judgment as mine. The appellant’s conviction was based

on his own confessional statement. The lower court endorsed the judgment of the trial court.

The law is very well settled that a concurrent judgment of two lower courts will not ordinarily be interfered with unless the appellant adduces a cogent reason to do so. The appellant in this appeal has not shown that the judgment of the two lower courts were either defective, perverse for not being based on evidence adduced before the trial court or that they occasioned a miscarriage of justice. The onus is on the appellant to discredit the lower court's judgment which he has not succeeded in the appeal before us.

My learned brother has adequately resolved the issues raised in this appeal which is also dismissed by me in terms of his lead judgment.

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D

**NWEZE JSC**

I had the advantage of reading the draft of the leading judgment which my noble Lord, Muhammad, JSC, just delivered now. I agree with the reasoning and conclusion.

This contribution is only limited to the erroneous submission of the appellant's counsel to the effect that the trial court, wrongly, convicted the appellant solely on the confessional statement, Exhibit "D". I, entirely, agree with the leading judgment that the lower court, rightly, affirmed the trial court's conviction of the appellant based on his direct, positive and unequivocal confession.

With respect, I find no substance in the submission of learned counsel. It has long been settled, in a long line of authorities, that a free and voluntary confession of guilt, whether judicial or extra-judicial, if it is direct and positive and, properly, established, is sufficient proof of guilt. As such, it is enough to sustain a conviction so long as the court is satisfied with the truth thereof, *Yusufu v The State* [1976] 6 SC 167, 173; *Okegbu v The State* [1984] 8 SC 65; *Kim v The State* [1992] 4 SCNj 81, 110; [1992] 4 NWLR (Pt. 233) 17; *Ikpo and Anor v. The State* [1995] 2 SCNj 64, 75; [1995] 9 NWLR (Pt.421) 540; *Igago v The State* [1999] 12 SCNj 140; [1999] 6 NWLR (Pt. 608) 568; *Hassan v The State* [2001] 7 SCNj 643; [2001] 7 NSCQR 107, 109; [2001] 15 NWLR (Pt.735) 184; *Olalekan v State* [2002] 4 WRN 146; [2001] 18 NWLR (Pt.746) 793, 824; *Salawu v. State*

(1971) NMLR 249; *Nwachukwu v The State* (2007) LPELR -8075 (SC) 34, 36.

However, outside the confession, it is desirable to have some corroborative evidence, no matter how slight, of circumstances which make it probable that the said confession is true and correct. The reason for this prescription is simple: courts are not, generally, disposed to act on a confession without testing the truth thereof, *Onochie and Ors v The Republic* (1966) NMLR 307; *R v. Sykes* (1913) 8 CAR 233, 236. For the purpose of the test, the court would be expected to consider the question: whether the accused person had the opportunity of committing the offence charged and whether the confession was consistent with other facts which have been ascertained and proved at the trial? *Queen v. Obiasa* (1962) 1 ANLR 65; [1962] 2 SCNLR 402; *Ikpasa v. Attorney-General of Bendel State* [1981] 9 SC 7; *Akpan v The State* [1992] 6 NWLR (Pt.248) 439, 460; [1992] 7 SCNJ 22; *Kanu v The King* (1952) 14 WACA 30; *The Queen v. Obiasa* (1962) 1 All NLR 651; [1962] 1 SCNLR 137; *Obosi v The State* (1965) NMLR 129; *Jafiya Kopa v. The State* (1971) 1 All NLR 150; *Dawa v The State* [1980] 8-11 SC 236; *Ejinima v The State* [1991] 5 LRCN 1640, 1671; *Arthur Onyejekwe v The State* [1992] 4 SCNJ 1, 9; [1992] 3 NWLR (Pt.230) 444; *Aiguoreghian and Anor. v. The State* [2004] 3 NWLR (Pt.860) 367; [2004] 1 SCNJ 65; [2004] 1 SC (Pt.1) 65.

Exhibit “D”, the said confessional statement, clearly, bears the imprint of the manifest involvement of the appellant in the offence charged as evidenced in the television; pillows and foam - all proceeds of the said crime. The testimonies of PW1 and PW5 corroborated these pieces of evidence. The lower court was right, therefore, in affirming the trial court’s findings.

It is for these, and the more detailed, reasons in the leading judgment that I, too, find that this appeal is, wholly, unmeritorious. I, equally, enter an order dismissing it and uphold the lower court’s affirmation of his conviction and sentence by the trial court.

H