

SUPREME COURT OF NIGERIA
FRIDAY 29TH JANUARY, 2016. SC. 483/2013
**CORAM:- I. T. MUHAMMAD, M. S. MUNTAKA-
COOMASSIE, O. RHODES-VIVOUR,
C. B. OGUNBIYI, C. C. NWEZE, JJSC**

SEGUN ADEBIYI APPELLANT
V.
THE STATE RESPONDENT

JUDGMENTS - Perversity - Concurrent findings - SC will interfere where such findings are perverse - As a court's finding is perverse where it took into account - Certain matters which it ought not to have considered (H1)

ALIBI - Defence - Weight - When properly established - The defence has far reaching effect of exculpating accused - From complete criminal responsibility (H2)

ALIBI - Defence - Conditions - Accused must raise alibi at earliest opportunity - Giving particulars of his whereabouts and those with him - As this will enable police to investigate the defence (H3)

ALIBI - Defence - Investigation - As respondent failed to investigate the alibi - Appellant must be discharged and acquitted - For his responsibility for the crime has not been proved beyond reasonable doubt (H4)

IDENTIFICATION PARADE - Necessity of - As the crime occurred at night with victims having short encounter with the armed robbers - Identification parade was imperative (H5)

FACTS

At the High Court of Ogun State, accused/appellant, one other and others at large were arraigned for offences of conspiracy to commit armed robbery and armed robbery. They pleaded not guilty to the charges. The case against appellant and the others is that a robbery operation took place at a house in Ogun State. The tenants

in the house were allegedly robbed of various items of property, money etc. PW2 (Isikilu Jimoh, a driver), a tenant in the house was one of the victims of the robbery. Nobody was arrested at the scene of the robbery. The incident was reported at the Police Station, where PW4 was assigned to investigate the case.

Thereafter, PW2 saw appellant at a motor garage and recognized him as one of the robbers that attacked the house on the fateful day. Following a tip off by PW2, appellant was arrested at a military check point. Appellant denied involvement in the crime. He immediately set up the defence of alibi. However, the police failed to investigate the defence. At the trial, appellant pleaded not guilty. To prove its case, prosecution/respondent called four witnesses. Appellant testified in his own defence. At the end of the trial, and notwithstanding the failure of the police to investigate the defence of alibi, the learned trial Judge convicted and sentenced appellant to death by hanging. Aggrieved, appellant appealed to the Court of Appeal Ibadan Division. The appeal was dismissed and judgment of the trial court upheld. Aggrieved further, appellant appealed to the Supreme Court.

ISSUE FOR DETERMINATION

1. Whether the Court of Appeal was right in holding that the trial court rightly discountenanced the plea of alibi raised by the appellant?

HELD (Unanimously allowing the appeal per **NWEZE JSC**)

APPEALS - Concurrent findings

1. As a general rule, this court does not make it a habit of disturbing the concurrent findings of two lower courts.

However, where as in instant case, there is clear evidence that such concurrent findings are perverse, this court will, readily, interfere.

For this purpose, a court's finding is said to be perverse if, inter alia, it took into account certain matters which it ought not to have considered or where it shut its eyes to the obvious or proved facts etc.

In such a case, this court is bound to interfere and set aside such a decision. (p. 21 E)

ALIBI - Defence - Weight

2. In effect, a successful defence of alibi has a direct bearing on the accused person's responsibility in relation to the alleged offence. This explains why it is not readily conceded with levity to the accused person. This is because, when properly established, it has the far-reaching effect of exculpating the accused person from complete criminal responsibility. It is thus an exculpatory defence. (p. 22 G)

ALIBI - Defence - Conditions

3. As this court explained in *Tajudeed Iliyasu v State* (supra), to be entitled to its beneficent effect, such an accused person must raise it at the earliest opportunity, which would preferably be in his extra-judicial statement. This is to offer the Police an opportunity either to confirm or confute its availability to the accused person.

Above all, the said defence must be unequivocal as to the particulars of the accused person's whereabouts and those present with him.

It is only where such an accused person raised the said defence at the earliest opportunity without any ambiguity that a burden is cast on the Prosecution to investigate it. Failure to investigate the defence of alibi raised in such circumstance, will lead to an acquittal. (p. 23 A)

ALIBI - Defence - Investigation

4. Now, having disclosed the said defence at the earliest time, the burden was on the Prosecution to investigate it, with a view to either confirming or disproving it. It was, thus, insufficient, to assert, without more, as the PW4 did that "our team could not go there to carry (sic) investigation as that is the duty of the Interpol..."

The implication is that, having [by his said defence of alibi] raised a corresponding doubt that he could not have committed the acts which constituted the crime, his responsibility for the crime had not been shown beyond reasonable doubt as the Prosecution failed to erase that doubt

by confuting his alibi. He must, therefore, be acquitted and discharged. (p. 24 B)

IDENTIFICATION PARADE - Necessity of

5. Quite apart from the above exculpatory defence of alibi, there was another serious flaw in the case which the Prosecution presented. As shown above, the alleged victims never saw the accused persons before the alleged incident. What is more, the alleged operation took place at an unholy hour of the night, precisely, at one ante meridian. The encounter of the victims with the armed robbers was very short-lived.

Against this background, I endorse the submission that an identification parade was imperative. Yet, there was none. (p. 24 F)

REPRESENTATION

Ikenna Okoli for the appellant with him; O. Okeke; Uju Mbah Muiyiwa Obanewa for respondent with; Jumoke Usijoh (Mrs.).

CASES REFERRED TO

- Balogun v. A-G Ogun State [2002] 6 NWLR (pt. 763) 512
- Onuchukwu v. State [1998] 4 NWLR (pt 547) 576
- Ogoala v. State [1991] 2 NWLR (pt. 175) 509
- Afolalu v. State [2010] 16 NWLR (pt. 1220) 584
- Udoere v. State [2001] FWLR (pt. 59) 1244
- Onyegbu v. State [1995] 4 SCNJ 275
- Woluchem v. Gudi [1981] 5 SC 291
- Ike v. Ugboaja [1993] 6 NWLR (pt. 301) 539
- Chinwendu v. Mbamali [1980] 3-4 SC 31
- Enang v. Adu [1981] 11-12 SC 25
- Nwadike v. Ibekwe [1987] 4 NWLR (pt. 67) 718
- Igwego v. Ezeugo [1992] 6 NWLR (pt. 249) 561
- Lamai v. Orbih [1980] 5-7 SC 28
- Ogbu v. State [1992] 8 NWLR (pt. 295) 255
- Igago v State [1999] 14 NWLR (pt. 637) 1

LEAD JUDGMENT BY NWEZE JSC

The appellant in this appeal [as the accused person]; one Kwame Wisdom, and others at large, were arraigned at the High Court of Justice, Ogun State. The five counts of the charges laid against them were for the offences of conspiracy to commit felony, to wit, armed robbery and armed robbery of Akeem Kutelu, Isikiiu Jimoh and Felix Nchem. They pleaded not guilty. B

In their spirited attempt to prove the offences as charged, the respondent called four witnesses. Only the appellant and Kwame Wisdom testified in their respective defences. In its judgment of April 2, 2009, the court [hereinafter referred to as “the trial court”] convicted and sentenced the appellant and Kwame Wisdom to death by hanging. C

Their appeal to the Court of Appeal [hereinafter simply called “the lower court”] having been dismissed, the appellant approached this court, via his Notice of Appeal, from which he distilled two issues for the resolution of his complaint against the lower court’s judgment. D

The issues were framed thus:

1. Whether the Court of Appeal was right in holding that the trial court rightly discountenanced the plea of alibi raised by the appellant? E

2. 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? F

On their part the prosecution formulated three issues couched thus:

1. Whether the Court of Appeal rightly discountenanced the plea of alibi raised by the appellant?

2. Whether the Court below rightly held that the offences of conspiracy to commit armed robbery and armed robbery have been proved by the respondent against the appellant beyond reasonable doubt? G

3. Whether the appellant was properly identified in the case? H

My Lords, having regard to the cogency of the defence of alibi, I take the view that only the first issue, which is common to the two briefs, is determinative of this appeal. It will, thus, be adopted in the resolution of this appeal. The reason for this approach will soon

become evident anon. Before then, however, a brief factual background of the case would not be out of place.

FACTUAL BACKGROUND

The Prosecution's allegation was that, at about 1 am on December 29, 2004, there was an armed robbery operation at B Folashade's compound, Owode -Yelwa, Ogun State. The tenants in the said house were allegedly robbed of various items of property, money etc. PW2, [Isikilu Jimoh, a driver], a tenant in the said house, was said to be one of the victims.

C A report of the incident was lodged at the Owode Egbado Police station the following day whereupon, a woman Police Sergeant, Iyabode Adeogun, was detailed to investigate it. She was PW4 at the hearing. No suspect was arrested at the scene. On January 4, 2005, Isikilu Jimoh, one of the alleged victims, saw the appellant; the first D accused person [Kwame Wisdom] and one other person on their way to a garage on Idiriko Road, also, in Owode.

He allegedly recognised them as the people that were involved in the robbery operation. When they boarded a taxi, he [PW2] also boarded another vehicle. He directed the driver to follow the vehicle E they [the appellant and others boarded].

It was at the Military checkpoint that PW2 intimated the Police of what had transpired on December 29, 2004. The appellant and others attempted to escape but they were arrested. The appellant denied the charge. He set up a defence of alibi which was not F investigated at all. That notwithstanding, the trial court convicted and sentenced him. His appeal to the lower court, having failed, he then further appealed to this court.

ARGUMENT ON THE SOLE ISSUE

G APPELLANT'S CONTENTION

When this appeal come up for hearing on November 5, 2015, Ikenna Okoli, learned counsel for the appellant, adopted the appellant's brief of argument which was filed on November 4, 2013. On this issue, he pointed out that the alleged robbery took place at H night at Owode-Yewa town in Ogun State on December 30, 2004.

He explained that the appellant in his statement to the Police at the State C. I. D, Abeokuta, denied taking part in the robbery. He equally, denied being at Owode- Yelwa town on the day of the incident.

He further pointed out that in his said statement he stated that he was in Cotonou, Republic of Benin, where he was residing at the relevant time. In his testimony in court, the appellant averred that he was not at the scene of the alleged crime on the said day and only went to Owode –Yelwa from Cotonou on January 4, 2005, to buy PMS (popularly called, “Petrol”). B

He cited *Balogun v A-G Ogun State* [2002] 6 NWLR (pt 763) 512, 536. He contended that the appellant properly, raised the defence of alibi but the Police did not investigate it, citing *Onuchukwu v. State* [1998] 4 NWLR, (pt 547) 576, 592; *Ogoala v State* [1991] 2 NWLR (pt 175) 509, 521. C

He maintained that the appellant clearly indicated his whereabouts on the date of the alleged robbery; hence the onus was on the Prosecution to challenge the said defence, citing the testimony of PW4 at page 37 of the record. D

Counsel noted that none of the Prosecution’s witnesses in their respective extra judicial statements identified the appellant as one of the armed robbers. What is more, the PW1, in his testimony in court, specifically, stated that it was the first accused person [Kwame Wisdom] that he saw during the robbery operation and not the appellant. E Indeed, in his testimony in court, he did not refer to the appellant at all as one of the robbers.

He further pointed out that the Police did not conduct a proper identification parade during their investigation. Afortiori, none of the Prosecution’s witnesses, the alleged victims, conceded that he was called upon, at any time, to identify the accused persons, citing *Afolalu v State* [2010] 16 NWLR (pt 1220) 584, 616 and other cases. He drew attention to the fact that the appellant was not arrested at the scene of the crime but was rather arrested five days after the date of the alleged crime. F G

Worse still, none of the Prosecution witnesses had ever seen the appellant before. Counsel maintained that, if there was any identification parade, the PW2 would have given the details of such an exercise in his evidence -in- chief. Even then, in cross examination, H he admitted that “no forms were filled in the process,” citing pages 36 - 37 of the record. He therefore urged the court to find that the Police did not conduct any identification parade.

In his submission, the lower court was wrong to hold that the trial court rightly discountenanced the sole plea of alibi.

RESPONDENT'S ARGUMENT

Counsel for the respondent adopted the respondent's brief filed on December 22, 2014, and relied on *Udoere v State* [2001] B FWLR (pt 59) 1244, 1258; *Onyegbu v State* [1995] 4 SCNJ 275, 285 -286 as authorities for his view that the accused, having raised the said defence, had a duty to give details relating to his whereabouts.

C He pointed out that the said defence could be demolished in two instances, namely, where the Prosecution adduces sufficient evidence to fix the accused person at the scene and where there is an eye witness to the commission of the crime, *Omotola v State* [2009] FWLR (pt 468) 3437, 3474.

RESOLUTION OF THE ISSUE

D My Lords, in an appeal such as this, this court need not dissipate its precious time on all the issues framed by the appellants or even the respondent if only one issue is determinative of the appeal apropos the principal agitation of the appellant in his Notice of Appeal. Indeed, it is truly strange that the respondent's counsel opted to E contest the appeal instead of conceding to it upon his perusal of the crucial arguments in the appellant's brief.

Now, the first issue was framed thus:

F Whether the Court of Appeal was right in holding that the trial court rightly discountenanced the plea of alibi raised by the appellant?

G The prosecution's case was that the alleged robbery took place at Owode -Yewa town in Ogun State on December 30, 2004. At the earliest opportunity, that is, when the Police confronted him with this allegation, he promptly told them in writing in his statement that he was in Cotonou, Republic of Benin, where he was residing at the time on that day. He provided detailed particulars as to his whereabouts thereat, page 13 of the record.

H He maintained his story during his defence. Indeed in his evidence in chief, he was emphatic that it was on January 4, 2005 that he traveled from Cotonou, Republic of Benin to Owode to buy petrol. The Prosecution did not confute his story. Rather, the PW4, Sgt. Emmanuel Julius, the Investigating Police Office [IPO] confirmed that the appellant's defence included his alibi which he raised at the

earliest opportunity when they were still investigating the case. Listen to him:

The two accused persons were in custody for that long because we had not concluded investigation. They claimed to live in Igolo which is in Benin Republic; our team could not go there to carry (sic) investigation as that is the duty of the Interpol. We eventually could not investigate this aspect of their statements eventually they were charged to court.

[Page 37 of the record, italics supplied for emphasis]

If, as the PW4 deposed, it was the duty of the Interpol to undertake such cross border defences, was the Interpol intimated of the case and the defence for their follow-up action? No such evidence was offered. In all, therefore, the truth remains that the appellant's defence of alibi: a defence he raised at the earliest opportunity, was not investigated.

This huge lapse in the Prosecution's case notwithstanding, the trial court discountenanced that plea. Surprisingly, the lower court affirmed that approach. Expectedly, the appellant has urged this court to interfere with these concurrent findings by holding that the lower court was wrong in affirming the trial court's approach to the matter.

There is considerable force in this submission. **As a general rule, this court does not make it a habit of disturbing the concurrent findings of two lower courts.** Woluchem v. Gudi [1981] 5 SC 291, 326; Ike v Ugboaja [1993] 6 NWLR (pt. 301) 539, 569; Chinwendu v Mbamali [1980] 3-4 SC 31; Enang v Adu [1981] 11-12 SC 25, 42; Nwadike v Ibekwe [1987] 4 NWLR (pt. 67) 718; Igwego v Ezeugo [1992] 6 NWLR (pt. 249) 561, 576; Lamai v Orbih [1980] 5-7 SC 28.

However, where as in instant case, there is clear evidence that such concurrent findings are perverse, this court will, readily, interfere. Ogbu v. State [1992] 8 NWLR (pt. 295) 255; Igago v State [1999] 14 NWLR (pt. 637) 1; Adeyemi v The State [1991] 1 NWLR (pt. 170) 679; Adeyeye v The State (2013) LPELR -19913 (SC) 46; Akpabo v State [1994] 7 NWLR (pt 359) 635; Ejikeme v Okonkwo [1994] 8 NWLR (pt 362) 266.

For this purpose, a court's finding is said to be perverse if, inter alia, it took into account certain matters which it ought not to have considered or where it shut its eyes to the obvious

or proved facts etc. Baridan v State [1994] 1 NWLR (pt 320) 250, 256; Udengwu v Uzuegbu [2003] 13 NWLR (pt. 836) 136, 152; Atolagbe v. Shorun [1985] 1 NWLR (Pt. 2) 360, 375; Nwosu v Board of Customs 2nd Excise [1988] 5 NWLR (pt. 93) 225.

In such a case, this court is bound to interfere and set aside such a decision. NEPA v Ososenye [2004] 1 SC (pt 1) 159; Newbreed Org. Ltd. v Erhomosele [2006] 5 NWLR (pt 974) 499.

The nuances of the defence of alibi have generated a handful of lambent prose in both juristic and juridical thought. That should not detain us in this judgment. Suffice it to note that, in a criminal trial, when an accused person raises the said defence [of alibi], his assertion comes to this: he was elsewhere; hence, he could not have been at the scene of the crime at the same time. M. Hor, “Burden of Proof in Criminal Trials,” in 4 S. AC. L. J Part 11, 267, 293.

The cases on this point are legion. Only one or two may be cited here: Archibong v State [2006] All FWLR (pt 323) 1747; [2006] 14 NWLR (pt 1000) 349; Onafowokan v State [1987] 3 NWLR (pt 61) 538; Gachi v State [1965] NMLR 334; Nwabueze v Eze [1988] 4 NWLR (pt 80) 16; Akpan v State [2002] 5 SCNJ 301; Ozaki v State [1990] 1 NWLR (pt 124) 92; Akeem Agboola v State [2013] 11 NWLR (pt 1366) 619; Yanor and Anor v State [1965] NMLR 337.

Indeed its roots, from the Latin etymon, “alius” or “other” and “ibi” or “ubi” that is “there” or “where” from whence the English coinage “alibi” derives, exemplifies the character of this defence. It is this etymological derivative that foregrounds the judicial view that, as defence, it [the defence of alibi] seeks to establish that, at all times material to the commission of the offence, the accused person was nowhere near the locus criminis and ordinarily therefore, he could not be expected to be involved in the physical execution of the alleged offence. Ebre v State [2001] 12 NWLR (pt 729) 617, 635.

In effect, a successful defence of alibi has a direct bearing on the accused person’s responsibility in relation to the alleged offence. M. Hor, “Burden of Proof in Criminal Trials,” (supra). **This explains why it is not readily conceded with levity to the accused person. This is because, when properly established, it has the far-reaching effect of exculpating the accused person from complete criminal responsibility.** Ebre v. State [supra] 636.

It is thus an exculpatory defence. Tajudeed Iliyasu v State [2015] EJSC 1.

As this court explained in Tajudeed Iliyasu v State (supra), to be entitled to its beneficent effect, such an accused person must raise it at the earliest opportunity, Hassan v The State [2001] 6 NWLR (pt 709) 286, 305, ***which would preferably be in his extra-judicial statement. This is to offer the Police an opportunity either to confirm or confute its availability to the accused person.*** Ibrahim v The State [1991] 4 NWLR (pt 186) 399; Nwabueze v The State [1988] 3 NWLR (pt 86) 16; Ikemson v The State [1989] 3 NWLR (pt 110) 455. B C

Above all, the said defence must be unequivocal as to the particulars of the accused person's whereabouts and those present with him. Onyegbu v The State [1995] 4 SCNJ 275, 285-286; Ibrahim v State (supra); Balogun v A-G Ogun State [2002] 6 NWLR (pt 763) 512, 535-536; Eke v The State (2011) LPELR-1133 (SC) 16. D

It is only where such an accused person raised the said defence at the earliest opportunity without any ambiguity that a burden is cast on the Prosecution to investigate it. Eyisi v State [2000] 4 NSCQR 60 and to disprove same, Eke v The State (supra). ***Failure to investigate the defence of alibi raised in such circumstance, will lead to an acquittal.*** Yanor v The State (1965) ANLR (Reprint) 199; Bello v. Police [1956] SCNLR 113; Odu and Anor v The State [2001] 5 SCNJ 115, 120; [2001] 10 NWLR (pt. 772) 668. E F

As shown above, at the earliest opportunity, that is, when the Police confronted him with this allegation, the accused person, promptly told them in writing in his statement that he was in Cotonou, Republic of Benin, where he was residing at the time, on that day. He provided detailed particulars as to his whereabouts thereat, page 13 of the record. G

He maintained his story during his defence. Indeed, in his evidence in chief, he was emphatic that it was on January 4, 2005 that he traveled from Cotonou, Republic of Benin to Owode to buy petrol. H

As, already, shown above, the PW4, Sgt Emmanuel Julius, the Investigating Police Office [IPO], confirmed that the appellant's

defence included his alibi which he raised at the earliest opportunity when they were still investigating the case. According to him:

“The two accused persons were in custody for that long because we had not concluded investigation. They claimed to live in Igolo which is in Benin Republic: our team could not go there to carry (sic) investigation as that is the duty of the Interpol. We eventually could not investigate this aspect of their statements eventually they were charged to court.” [page 37 of the record]

Now, having disclosed the said defence at the earliest time, the burden was on the Prosecution to investigate it, Eyisi v State (supra) 595-596 with a view to either confirming or disproving it. Abubakar Ibrahim v State [1991] 3 LRCN 1010; Onyegbu v State [1995] 4 SCNJ 275. It was, thus, insufficient, to assert, without more, as the PW4 did that “our team could not go there to carry (sic) investigation as that is the duty of the Interpol...”

The implication is that, having [by his said defence of alibi] raised a corresponding doubt that he could not have committed the acts which constituted the crime, his responsibility for the crime had not been shown beyond reasonable doubt as the Prosecution failed to erase that doubt by confuting his alibi. He must, therefore, be acquitted and discharged. Ebre v State (supra) at page 636; Onuchukwu v State [1998] 4 NWLR [pt 547] 578, 592.

Quite apart from the above exculpatory defence of alibi, there was another serious flaw in the case which the Prosecution presented. As shown above, the alleged victims never saw the accused persons before the alleged incident. What is more, the alleged operation took place at an unholy hour of the night, precisely, at one ante meridian. The encounter of the victims with the armed robbers was very short-lived.

Against this background, I endorse the submission that an identification parade was imperative. Yet, there was none. Ikemson v State [1989] 3 NWLR (pt 110) 455; Okosi v State [1989] 1 NWLR (pt 100) 642; Chukwu v State [1996] 7 NWLR (pt 463) 686; Eyisi v State [2000] 15 NWLR (pt 691) 555.

As this court held in *Afolalu v. State* [2010] 16 NWLR (pt. 1230) 584, 616-

“Identification parade is not a sine qua non to a conviction for a crime alleged. It is only essential in the following instances:

(a) Where the victim did not know the accused [person] before and the first acquaintance with him was during the commission of the offence;

(b) Where the victim or witness was confronted by the offender for a very short time and

(c) Where the victim, due to time and circumstances, might not have had the full opportunity of observing the features of the accused [person].”

The decisions on this point are, actually, many. Only handful will be cited here, *Ikemson v State* [1989] 3 NWLR (pt 110) 455; *Okosi v State* [1989] 1 NWLR (pt 100) 642; *Khaleel v State* [1997] 8 NWLR (pt 516) 237; *Otti v State* [1993] 4 NWLR (pt 290) 675; *Eyisi v State* [2000] 15 NWLR (pt 691) 555; *Attah v State* [2010] 10 NWLR (pt 1201) 190, 225.

Against the above background, this court is under obligation to interfere with the findings of the lower courts notwithstanding their concurrence, *NEPA v Ososanya* (supra); *Newbreed Org Ltd. v Erhomosele* (supra). Accordingly, I find that this appeal is meritorious and ought to be allowed.

In consequence, I hereby enter an order setting aside the judgment of the lower court which affirmed the decision of trial court. In their place, I order the acquittal and discharge of the appellant. Appeal allowed.

MUHAMMAD, JSC

I read in advance the judgment delivered by my learned brother, Nweze, JSC. I agree with his reasoning and conclusion in allowing the appeal. I, too, allow the appeal and abide by all orders made by my learned brother, Nweze, JSC.

MUNTAKA-COOMASSIE JSC

The accused person, now appellant Mr. Kwame Wisdom and others at large, were arraigned before the High Court of Justice, Ogun State. Five counts-charges were laid against them. For the offences of conspiracy to commit felony, to wit, armed robbery and armed robbery of Akeem Kutelu, Isikilu Jimoh and Felix Nchem. All the accused persons pleaded not guilty to the charges.

In an attempt to prove its case the prosecution called four witnesses. The appellant herein and Kwame Wisdom testified in their respective defences but called no other witness or witnesses. On 2/4/2009, the High Court, now trial court, entered judgment in favour of the prosecution and convicted them and sentenced the appellant and Kwame Wisdom to death by hanging. The appeal by the convicted persons were unsuccessful.

Their appeal was dismissed. The appellant herein appealed to this court on a notice of appeal under which he formulated two issues for the determination of this appeal. The factual background and the two issues were provided by my lord Nweze JSC.

Both parties adopted their respective briefs of argument in which the respondent's counsel adopted the appellant's brief of argument as his own.

My learned brother Nweze JSC allowed me to have a preview of his lead judgment. I entirely agree that the alibi relied upon by the appellant was quite in order.

The prosecution could not adduce credible witness/evidence to fix the accused at the scene. In this appeal there was no direct evidence. I therefore adopt his lordship's reasoning as mine. I too agree that the prosecution failed woefully to dislodge the alibi alleged by the appellant. The appeal though contained concurrent decisions of the two lower courts, contained some merits. All the reasonable doubts are resolved in favour of the appellant. Mr. Segun Adebisi is therefore acquitted and discharged forthwith. Appeal allowed.

H**RHODES-VIVOUR JSC**

The full facts and circumstances of this case have already been set out in the draft leading judgment and need not be repeated. My

learned brother Nweze JSC, in that judgment ordered the acquittal and discharge of the Appellant on the ground that his defence of alibi was not investigated by the Police. I agree with His lordship.

Alibi means elsewhere. The accused person is saying that at the time the offence for which he is charged was committed, he was somewhere else so he could not have committed the offence. It is a matter within the personal knowledge of the accused. After an accused person is arrested he should raise the defence of alibi (if that is his defence) at the earliest opportunity, usually in his statement to the Police. An alibi must be very detailed on the exact whereabouts of the accused person. He could refer to persons that the Police can contact to show that his alibi is true. The onus is thus on the accused person to rely on evidence to support his alibi, and the standard of proof required to establish an alibi is on balance of probabilities. Once an accused person raises the defence of alibi it is the duty of the Police to investigate it to see if it is true. There would be no need to investigate an alibi if there is overwhelming evidence against the accused person. See *Osuagwu v State* (2013) 1-2 SC (Pt. 1) p.37, *Ajayi v State* (2013) 2- 3 SC (Pt.1) p.143, *Aliyu v State* (2013) 6-7 SC (Pt iv) p. 1, *Ozaki v. State* (1990) 1 SC p.109

The alleged Robbery took place at night at Owode Yewa Town in Ogun State on the 30th of December 2004. In his statement made to the Police the Appellant denied taking part in the Robbery and stated that when the Robbery took place he was in Cotonou in the Republic of Benin. The Police did not investigate the alibi and none of the witnesses for the Respondent has seen the Appellant before the date of the Robbery, and an identification parade was not conducted to identify the Appellant properly. Despite these obvious lapses in the Respondent case the trial court convicted the Appellant and the Court of Appeal affirmed the conviction of the Appellant.

The Police could easily have contacted Interpol to investigate the Appellants' alibi. Failure to investigate the Appellant's alibi is fatal to the Respondent case since there is not a shred of evidence linking him with the alleged Robbery. He ought to be given the benefit of the doubt on the balance of probabilities.

This appeal succeeds. The Appellant is entitled to an acquittal and discharge due to the failure of the Police to investigate his alibi.

For this, and the more detailed reasoning and conclusions in the leading judgment the appeal succeeds. Appellant acquitted and discharged.

B **OGUNBIYI JSC**

I had the privilege of reading in draft the lead judgment of my brother, C. C. Nweze, JSC. I agree that the circumstance of the appeal calls for the interference by this court with the judgment of the lower courts.

The two issues raised in this appeal are reproduced in the lead judgment of my learned brother.

In his defence, the appellant is contesting the failure by the lower court in upholding the plea of alibi which appellant submits is D overwhelmingly in his favour.

It is pertinent to state that for the defence of alibi to avail an accused person, the law requires that it is raised timeously and should state the full particulars of the accused's whereabouts at the material time the offence was committed. The information describing the location must be with exact precision so as to allow the police easy investigation for purpose of confirming the claim made by the accused. While the duty is on the accused/appellant to raise such a defence, the investigation as to its truth or otherwise is that of the police. A plea of alibi once proved, serves a complete exoneration of the accused/appellant from the commission of the crime alleged.

It is on record that the robbery in question took place at a place called Owode-Yewa town in Ogun State on 30th December, 2004 at night. The appellant denied being at Owode-Yewa town on G the said date, but said he was in Cotonou, Republic of Benin where he was residing at the material time. Appellant denied being in Nigeria.

PW4, one Emmanuel Julius Sgt. No. 133408 further investigated the case of armed robbery in question and at page 37 of the record of appeal, in his evidence in chief he said:-

H *“They claimed (i.e. the accused persons) to live in Igolo which is in Benin Republic, our team could not go there to carry out investigation as that is the duty of Interpol. We eventually could not investigate.”*

At pages 38 - 39 of the record of appeal, the very day the defence opened its case, the appellant Segun Adebiyi vividly laid a claim to the defence of alibi. He gave evidence in his defence as DW2 and said:-

"I live in Cotonou Benin Republic. I am a motor conductor."

Under cross examination he said:-

"On 30/12/04, I was not in Owode."

On a combined reading of the evidence on record both in the appellant's statement to the police and evidence in court, it is a fact that the defence of alibi was raised by the appellant at the earliest given time. It is not the case of the prosecution that the police were unable to investigate the alibi due to inadequate particulars supplied by the appellant. The contention held by the respondent's counsel on the absence of detailed particularization of the accused's whereabouts and location is of no moment therefore.

The law is well settled that a defence of alibi, no matter how slight should not be discountenanced by a court but should be a subject of investigation; this is moreso especially where the robbery took place at night wherein identity of accused could be difficult. The appellant's testimony in court at pages 38 - 39 is in tandem with his statement made to the police in which he denied taking part in the robbery and being at Owode-Yewa town on the said date. He said:-

"...on the 30/12/2004, I was at Republic of Benin. I did not come to Nigeria at all. I am not a thief. I am not an armed robber."

(Page 13 of the record)

In his further testimony in court, the appellant stated that he only went to Owode from Cotonou on 4th January, 2005 to buy Petrol. The appellant's defence was that he was somewhere else, different and away from the scene of crime when the offence was committed. See the cases of Balogun V. A.G. Ogun State also Onuchukwu V. State (1998) 4 NWLR (Pt 547) 576 at 592.

The revelation made on the record shows that the police was unable to investigate the alibi raised because the Republic of Benin was outside its jurisdiction and it needed the assistance of an Interpol. In other words and contrary to the submission by the respondent's counsel, the reason was not due to insufficiency or otherwise of the particulars of the alibi provided by the appellant.

My brother has considered the appeal comprehensively.

With the few words of mine and particularly on the fuller reasons given by my learned brother in his lead judgment, I also find merit in the appeal and also the appellant is acquitted and discharged accordingly.

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