

SUPREME COURT OF NIGERIA
FRIDAY 29TH JANUARY, 2016. SC. 384/2012
**CORAM:- I. T. MUHAMMAD, M. S. MUNTAKA-
COOMASSIE, O. RHODES-VIVOUR,
C. B. OGUNBIYI, C. C. NWEZE, JJSC**

EMMANUEL EYO APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Proof - Standard of - Is not proof beyond any shadow of doubt - But proof beyond reasonable doubt (H1)

CRIMINAL PROCEDURE - Defence - Reasonable doubt - Where there is genuine doubt in credible defence evidence - The same must be resolved in favour of accused person (H2)

ARMED ROBBERY - Conviction - Correctness of - Trial court was right to have found appellant guilty as charged - As respondent has established all ingredients of the offence beyond reasonable doubt (H3)

FACTS

Before the High Court of Lagos State, accused/appellant and another were arraigned for offences of conspiracy to commit armed robbery and armed robbery. They pleaded not guilty to the charges. At the end of the trial, the learned trial Judge convicted and sentenced appellant to death for the offences charged. The other accused person was found to be under age at the time of the commission of the offence.

He was ordered to be remanded in prison custody at the pleasure of the State Governor. Dissatisfied with the judgment handed to him, appellant appealed to the Court of Appeal, Lagos Division. In its unanimous judgment, the Court held that prosecution/respondent proved its case beyond reasonable doubt. The appeal was therefore dismissed and judgment of the trial Court upheld. Dissatisfied further, appellant has appealed to the Supreme Court.

ISSUE FOR DETERMINATION

“Whether the Court of Appeal was right in affirming the conviction of the appellant for armed robbery and conspiracy to commit armed robbery by the trial court?”

HELD (Unanimously dismissing the appeal per
MUNTAKA-COOMASSIE JSC)

CRIMINAL PROCEDURE - Proof - Standard of

1. I must state here that we should all agree that the standard of proof in criminal trial is not proof beyond any shadow of doubt. To so hold would amount to possibility of many hundreds of cases go un-established. There shall forever be no conviction. Many hundreds of proved criminal cases will thus go Scot free. Which means that in every criminal trial there must be hundred percent absence of doubt which is quite impossible to have. Let us stand by the proof beyond reasonable doubt and “not shadow of doubt”. (p. 48 C)

CRIMINAL PROCEDURE - Defence - Reasonable doubt

2. The law does not look for certainty once the ingredients of a particular criminal offence are established by the prosecution beyond reasonable doubt then the burden becomes that of the accused person to discharge, i.e. to show by credible evidence that he was not guilty. If therefore there is a genuine doubt in credible defence evidence then that doubt must quickly be resolved in favour of the accused person. (p. 48 E) ???

ARMED ROBBERY - Conviction - Correctness of

3. My lords on this issue one by the appellants I sincerely hold that the appellant’s issue cannot stand, the issue is resolved in favour of the respondent. The prosecution has established all the ingredients of the above offences beyond reasonable doubt and the trial court was right to have found the appellant guilty as charged. (p. 48 G)

NOTABLE POINT OF INTEREST

NWEZE JSC

1. Armed robbery – Ingredients of

When our penal statutes incorporated the offence of armed robbery as a species of capital offence in our adversarial criminal justice system, the courts were confronted with the task of enunciating the specific ingredients which must be proved to warrant a conclusion that the prosecution discharged the burden of proving its commission beyond reasonable doubt.

For this purpose, Case law evolved a Trinitarian test which comes to this. The prosecution must prove (a) the factual reality of a robbery; (b) the participation of the accused person in the said robbery operation and (c) that, at the material time when the offence was being committed, he was either armed with firearms or an offensive weapon or that he was in the company of a person who was so armed. (p. 50 H)

REPRESENTATION

Ikenna Okoli, with him, O. Okeke, Mrs. Oju Mbah, for the Appellant
Mrs. E. T. Alakija with him, J. J. Jacob, P. S. C, for the respondent

CASES REFERRED TO

Alabi v. State 12 (1985) 2 NWLR (pt. 8) 465
Bozin v. State (1985) 2 NWLR (pt. 8) 455
Audu v. State (2003) 7 NWLR (pt. 820) 516
Nwankwo v. F. R. N. (2003) 4 NWLR (pt. 809) 1
Alonge v. Inspector General of Police (1959) SCNLR 516
Osayeme v. State (1966) NMLR 399
Igabele v. State (2006) 2 SC (pt. 11) 61
Okosun v. A-G Bendel State (1985) 3 NWLR (pt. 12) 283
Ikemson v. State (1989) 3 NWLR (pt. 1100) 455
Adeosun v. State (2007) 46 WRN 1
FRN v. Usman (2012) LPELR-7878 (SC)
Bassey v. State (2012) LPELR-7813 (SC)
Eke v. State (2011) LPELR-1133 (SC)
Aruma v. State [1990] 9-10 SC 87
Tanka v. State [2009] 1-2 SC (pt 1) 198

STATUTES REFERRED TO

Criminal Code vol. 2 Cap 32 Laws of Lagos State 1994, ss. 402(2), 403(1)

Criminal Procedure Law, Laws of Lagos State 2003, s. 368(3)

B

LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC

The Lagos State High Court, herein referred to as trial court delivered a judgment on 7/12/2007 in which the appellant was convicted and sentenced to death for offences of conspiracy to commit armed robbery and armed robbery. The trial judge A. A, Oyebanji convicted the appellant under Sections 403 (1) and 402 (2) of the Criminal Code Vol. 2 Cap 32, Laws of Lagos State 1994, respectively.

D The 1st accused person, Sunday Omokwale Williams, was found to be under age at the time of the commission of the said offence and ordered that he be remanded in prison custody pending the pleasure of his Excellency the Governor of Lagos State, pursuant to Section 368 (3) of the Criminal Procedure law, Laws of Lagos State 2003 which law provides:-

E *“where an offender who in the opinion of the court had not attained the age of seventeen years at the time the offence was committed is found guilty of a capital offence sentence of death shall not be pronounced or recorded but in lieu thereof the court shall order such person to be detained during the pleasure of the Governor and if so ordered he shall be detained in accordance with the provisions of part 44 notwithstanding anything to the contrary in any written law”.*

G While the 2nd accused person, now appellant was sentenced to death. The trial court held on page 148 as follows:-

H *“Upon a careful consideration of the evidence adduced, having considered the credible and consistent testimony of Pw1, the evidence of the defence being absolutely unreliable, the court has come to the conclusion that the prosecution has proved beyond reasonable doubt, the essential elements of the offence of armed robbery.*

While the 2nd accused person is hereby sentenced to death. May the Lord have mercy on your soul”.

Not being satisfied with the decision of the trial court the convicted accused person appealed to the Court of Appeal, containing

four (4) grounds of appeal. They are hereby reproduced without their particulars: -

“1. The learned trial judge erred in relying on the evidence of Pw1 as cogent and credible and thus holding that the prosecution has proved the essential elements of the offence of conspiracy to commit armed robbery against the two accused persons and based on that convicted the appellant of the offence of conspiracy to commit armed robbery.

2. The learned trial judge erred in holding that the prosecution has proved beyond reasonable doubt the essential elements of the offence of armed robbery and thereby convicted the appellant of armed robbery.

3. The learned trial Judge erred in convicting the appellant of the offence of conspiracy to commit armed robbery and of armed robbery based on evidence which was not cogent, compelling and convincing.

4. That the decision of the High Court is unreasonable and cannot be supported having regard to the evidence.”

The appellant herein distilled two issues for determination of the appeal before the Court of Appeal, now the lower court thus:-

1. Whether the burden placed on the prosecution in establishing the offence of armed robbery against the appellant was satisfactorily discharged in this case?

2. Whether the offence of conspiracy to commit armed robbery was proved against the appellant?

The respondent in turn formulated one single issue for the determination of the appeal.

In unanimous decision of the lower court which was to the effect that the appellant failed to prove that the prosecution does not lead credible evidence to prove their case beyond reasonable doubt. The court below unanimously agreed that the appeal lacked merit and same was dismissed. The lead judgment was delivered by Okoro JCA (as he then was) held on pp 230 - 231 of the record of appeal, thus:

“Having resolved the two issues against the appellant, I am satisfied to hold that this appeal is devoid of merit and is hereby dismissed. I affirm the decision of the Lagos State High Court made

on 7th December, 2007 by Hon. Justice A. A. Oyebanji (Mrs.) wherein the appellant was sentenced to death”.

Ogunwumiju and Dauda Bage, JJCA agreed with the lead judgment”.

The appellant still aggrieved by the above decision of the lower court and he appealed against it, and filed a Notice of Appeal containing six grounds of appeal. The grounds are hereby reproduced without their particulars as follows:-

1. Learned Justices of the Court of Appeal erred in law by holding that upon a perusal of the whole gamut of the record they did not see anything to the contrary that there was a robbery attack on the Pw1 and that his service pistol was stolen from him on the date of the incident.

2. The learned Justices of the Court of Appeal erred in law when they held that they were satisfied that the trial court was right to accept the evidence of Pw1 on the issue that the robbers who attacked Pw1 were armed with offensive weapon to wit: a piece of wood.

3. Learned justices of the Court of Appeal erred in law when they held that the only defence put up by the appellant was that he was at home at the time of the incident.

4. The learned Justices of the Court of Appeal erred in law by affirming the conviction of the appellant for the offence of armed robbery.

5. There was no credible evidence on record that there was an agreement or in that by the appellant with other persons to commit the offence of armed robbery.

6. The decision of the Court of appeal is un-reasonable and cannot be supported having regard to the evidence.

My lords the above are the six (6) grounds of appeal filed by the appellant against the concurrent decision of the court of Appeal now lower court and trial court. Before I delve into the submissions of the learned counsel to the parties I wish to state that the appellant, no doubt, has a difficult hurdle to cross. In my view, it is very difficult or near impossible for an appellant to prove that the two decisions of the two lower courts are perverse. There is a plethora of authorities on this point some of which are:-

“On the attitude of the Supreme Court to concurrent findings of facts by two lower courts. It is clear that Supreme Court will not disturb the concurrent findings of the two lower courts, unless and until they are not supported by credible evidence and have occasioned miscarriage of justice. Shurumo v. State (2010) NWLR (pt. 1226) 73 per Mukhtar JSC, as he then was. I participated in the preparation of this judgment and I agreed with the lead judgment. I held -

“...that I too hold the appeal is devoid of any merit, same is dismissed by me. The decisions of the two lower courts are hereby affirmed”. See also Alh. Ganiyu Martins V. Commissioner of Police (2012) 12 SCNJ 254 where on pages 269 - 270 I held thus:-

“Finally, this is an appeal against the triple decisions of the three lower courts. The attitude of this court against concurrent decisions of lower courts is settled. It is that this court will not interfere with the concurrent findings of the lower courts except there is established miscarriage of Justice or a violation of some principles of law or procedure or the judgment is perverse. I refer to:-

a. National Insurance Corporation of Nigeria v. Power and Industrial engineering Company Ltd (1986) 1 NWLR (pt. 14) 1 at 36.

b. Enang V. Adiu (1981) 11- 12 SC 25 at 42.

c. Nwagwu V. Okonkwo (1987) 3 NWLR (pt. 60) 314 at 325; and

d: Igwego V. Ezeugo (1992) 6 NWLR (pt. 249) 561 at 574.

In the appeal at hand, there is no slightest suggestion that there was any miscarriage of justice or violation of substantive law or of any procedure to warrant any interference with the judgment of the courts below”.

The appellant nonetheless formulated one single issue for determination of the appeal before us. That lone issue is as follows:-

“Whether: the Court of Appeal was right in affirming the conviction of the appellant for armed robbery and conspiracy to commit armed robbery by the trial court?”

Distilled from all the grounds of appeal contained in the Notice of Appeal.

The respondent in turn, formulated one issue as well. The issue says:-

“Whether in the circumstances of this case, the court of Appeal was right in affirming that the respondent had discharged the onus of proof placed on it by law with regard to the conspiracy and armed robbery charges brought against the appellant”.

It is to be further noted that the appellant has filed a reply brief on 7/3/2013 attempting to clarify certain issues arising from the respondent’s brief of argument.

The parties through their respective counsel filed and exchanged their briefs of argument. In the appellant’s brief of argument prepared by Asso. Ikenna Okoli Esq., the following one issue was formulated for determination of the appeal thus:-

“Whether the Court of Appeal was right in affirming the conviction of the Appellant for Armed Robbery”.

On behalf of the respondent Mr. Ade Ipaye A-G formulated one issue for determination in their respondent’s brief of argument filed on 2/2/2013.

One single issue was promulgated thus:-

“Whether in the circumstances of this case, the Court of Appeal was right in affirming that the respondent had discharged the onus of proof placed on it by law with regard to the conspiracy against the appellant”.

The learned appellant’s counsel contended that there were many extenuating circumstances and facts which whittle down the hurried conclusion of the court below that all the essential elements of the offence of armed robbery were established by the prosecution to warrant affirmation of the conviction of the appellant by the trial court. Learned counsel to the appellant contended that the essential ingredients were not established by the prosecution. The ingredients of the offences for the prosecution to prove are well settled. Learned counsel referred to the case of Alabi V. State 12 (1985) 2 NWLR (pt. 8) 465 which decisions stated that *“for the prosecution to succeed in this case there ought to be proved beyond reasonable doubt are:-*

1. That there was a robbery or series of robberies.
 2. That each robbery was an Armed Robbery.
 3. That appellant was one of those who took part in the robberies.”
- Bozin V. State (1985) 2 NWLR (pt. 8) 455.

Learned counsel, after considering all the circumstances of the case submitted that there was no proof beyond reasonable doubt that robbery or series of robberies took place.

It was on record, counsel further stated, that there is no credible evidence that there was an earlier robbery where Chinedu Okoh was robbed. B

Counsel argued further from the record that the alleged robbery of Chinedu Okoh was the 2nd count charge at the trial court which was struck out by the trial court, upon a no case submission, by the appellant and his co-accused at the trial court. C

Learned counsel argued that there is therefore no basis for the court below to hold that there is evidence of an earlier robbery involving Chinedu Okoh based on the record. The following is the decision of the court below in this matter:-

"I have perused the whole gamut of the record and I have not seen anything to the contrary that there was robbery attack on the Pw1 and that his service pistol was stolen from him in the process of that attack on the date of the incident. The Pw1 was consistent both in his evidence in chief and during cross examination that the robbers struggled his service pistol (sic) with him and when his colleagues arrived the scene and fired into the air the robbers. Having overpowered him, snatched his service pistol and ran away. There is also evidence that there was an earlier robbery in which Chinedu Okoh was robbed which report to the police led to this second robbery in which Pw1 was a victim. I have no doubt whatsoever, that the prosecution proved that there was a robbery or series of robbery (sic) on 13th August, 2001 along railway line, under bridge Ikeja in Lagos State. As was held on the issue by the learned trial judge, so do I". (Underlining mine) D E F G

The Court of Appeal (court below) simply endorsed the decision of the trial court strictly based on the unreliable evidence of pw1 without more, concludes the appellants counsel.

All in all, the appellant submitted that there is no proof of the case by the prosecution to warrant convicting the accused person now the appellant. H

He then urged this court to discharge and acquit the appellant as the prosecution failed flatly to establish any ingredient of the offence of conspiracy to commit armed robbery and armed robbery, beyond

???

reasonable doubt. He then urged this court to allow this appeal and to set the appellant free and to acquit him.

The respondent, in turn, identified one single issue for the determination of this appeal thus:-

“Whether in the circumstances of this case, the Court of Appeal was right in affirming that the respondent had discharged the onus of proof placed on it by law with regard to the conspiracy and armed robbery charges brought against the appellant”.

In a nutshell the respondent’s counsel agreed that in all criminal cases it is the duty of the prosecution to prove its case beyond reasonable doubt. ***I must state here that we should all agree that the standard of proof in criminal trial is not proof beyond any shadow of doubt. To so hold would amount to possibility of many hundreds of cases go un-established. There shall forever be no conviction. Many hundreds of proved criminal cases will thus go Scot free. Which means that in every criminal trial there must be hundred percent absence of doubt which is quite impossible to have. Let us stand by the proof beyond reasonable doubt and “not shadow of doubt”.*** I am fortified by the decision of this court in Audu v. The State (2003) 7 NWLR (pt. 820) 516 at 554.

The law does not look for certainty once the ingredients of a particular criminal offence are established by the prosecution beyond reasonable doubt then the burden becomes that of the accused person to discharge, i.e. to show by credible evidence that he was not guilty. If therefore there is a genuine doubt in credible defence evidence then that doubt must quickly be resolved in favour of the accused person. I refer to Nwankwo v. F. R. N. (2003) 4 NWLR (pt 809) 1 at 36 and Alonge V. Inspector General of Police (1959) SCNLR 516 (SC).

My lords on this issue one by the appellants I sincerely hold that the appellant’s issue cannot stand, the issue is resolved in favour of the respondent. The prosecution has established all the ingredients of the above offences beyond reasonable doubt and the trial court was right to have found the appellant guilty as charged.

My noble lords, without much ado I wish to state that I have considered the judgment of the trial court and that of the court below.

I equally analysed closely the two briefs of argument and issues submitted to us for our consideration of this appeal. I also have a thorough analysis of the argument and submissions of both counsel on behalf of their respective clients.

After this tedious exercise I tend to completely agree with the position taken by the respondent's counsel to the effect that when both submissions of the parties are juxtaposed, the submission of the respondent is preferred. It is a fact that the prosecution has proved by credible evidence all the ingredients of the offences charged. That being the case the judgment of the trial court cannot be possibly faulted. The prosecution in most admirable manner established against the appellant all offences charged against him. It is clear that in this appeal there are concurrent decisions of the facts by the two lower courts. This court, in a plethora of decisions, cannot interfere with such decisions unless and until it is proved that the decisions are wrong or perverse. The appeal is devoid of any merit, same is hereby dismissed. The judgment of the court below is therefore upheld and affirmed.

E

MUHAMMAD JSC

I read the judgment just delivered by my learned brother, Coomassie, JSC. I concur.

F

RHODES-VIVOUR JSC

I read in draft, the leading judgment of my learned brother, Muntaka-Coomassie, JSC. I agree with his lordship that the appeal should be dismissed.

Appeal dismissed.

G

OGUNBIYI JSC

The genesis of this appeal and facts leading to same has been reproduced in the lead judgment of my learned brother, Muntaka Coomassie, JSC. I agree with the reasoning and conclusion arrived thereat that the appeal is devoid of any merit and it is accordingly dismissed.

H

For purpose of emphasis however, I wish to say a word or two in support of the judgment. The two issues formulated by the appellant are closely interrelated and will, in my view, be fused into one in terms of the formulation by the respondent's learned counsel as follows:-

B Whether in the circumstances of this case, the Court of Appeal was right in affirming that the respondent had discharged the onus of proof placed on it by law with regard to the Conspiracy and Armed Robbery charges brought against the Appellant?

C A salient significant feature in this appeal is the concurrent nature of the judgment by the two lower courts wherein on 7th December, 2007 the trial court convicted the appellant of the offences charged and sentenced him to death.

The Court of Appeal on 14th May, 2012 also delivered its judgment and dismissed the appellant's appeal and duly affirmed the decision by the trial court.

In the case of *Sanyaolu V. The State*, this court has emphasized again that concurrent findings of the courts below should be respected and given effect once the judgment is supported by the evidence and has not occasioned any miscarriage of justice. See also *Osayeme V. The State* (1966) NMLR 399 and *Igabelle V. The State* (2006) 2 SC (Pt 11) 61.

On the totality, the appellant, I hold, has not shown sufficient reasons to warrant the discretion of this court in setting aside the conviction and sentence of the appellant.

Consequently therefore, I also adopt and subscribe to the lead judgment of my learned brother that the appeal lacks merit and is hereby dismissed. The judgment of the two lower courts is hereby endorsed and affirmed by me.

NWEZE JSC

My Lord, Muntaka-Coomassie, JSC, obliged me with the draft of the leading judgment just delivered now. I agree that this appeal is unmeritorious.

When our penal statutes incorporated the offence of armed robbery as a species of capital offence in our adversarial criminal justice system, the courts were confronted with the task of enunciating

the specific ingredients which must be proved to warrant a conclusion that the prosecution discharged the burden of proving its commission beyond reasonable doubt.

For this purpose, Case law evolved a Trinitarian test which comes to this. The prosecution must prove (a) the factual reality of a robbery; (b) the participation of the accused person in the said robbery operation and (c) that, at the material time when the offence was being committed, he was either armed with firearms or an offensive weapon or that he was in the company of a person who was so armed.

The cases are many. We shall, only, cite one or two here, *Bozin v State* (1985) 2 NWLR (pt 8) 465, 467; *Okosun v A-G Bendel State* (1985) 3 NWLR (pt 12) 283; *Ikemson v State* (1989) 3 NWLR (pt 1100) 455; *Adeosun v State* (2007) 46 WRN 1; *FRN v Usman* (2012) LPELR-7878 (SC); *Bassey v State* (2012) LPELR -7813 (SC); *Eke v State* (2011) LPELR -1133 (SC); *Aruma v State* [1990] 9-10 SC 87; *Aminu Tanka v State* [2009] 1-2 SC (pt 1) 198; *Alabi v State* [1993] 7 NWLR (pt 307) 511.

As demonstrably shown in the leading judgment, the trial court found in favour of the proof of these ingredients: a finding affirmed by the Court of Appeal.

They have thus matured into concurrent findings of two lower courts. That notwithstanding, the appellant did not, as much as, proffer any cogent and compelling reasons for this court's attenuation of these concurrent findings. Accordingly, I shall be loathe to interfere with them, *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.

It is for these, and the more detailed, reasons in the leading judgment that I, too, shall dismiss this appeal as unmeritorious. I will, therefore, affirm the judgment of the lower court.

H