

SUPREME COURT OF NIGERIA
FRIDAY 12TH FEBRUARY, 2016. SC. 83/2012
CORAM:- W. S. N. ONNOGHEN, N. S. NGWUTA, M. U.
PETER-ODILI, O. ARIWOOLA, M. D. MUHAMMAD, JJSC

ADESINA KAYODE APPELLANT
V.
STATE RESPONDENT

APPEALS - Issues - Reframing of - Where issues are clumsy - Court is entitled to reformulate issues - From the competent grounds of appealed filed by appellant (H1)

CHARGES - Conspiracy & substantive charges - Where indictment contains both charges - It is ideal to deal with substantive charge first - And then proceed to see how conspiracy has been made out (H2)

CRIMINAL PROCEDURE - Conspiracy - Distinctive nature - Failure to prove substantive offence - Does not render conviction for conspiracy inappropriate - As it is a separate offence in itself (H3)

APPEALS - Judgment - Mistake - It is not every error that results in an appeal being in favour of appellant - As the error must be substantial - And must have occasioned miscarriage of justice (H4)

CRIMINAL PROCEDURE - Conviction - Confession - Where found to be voluntarily and positively made - Confession is enough to ground a finding of guilt - Despite any retraction from the maker (H5)

ARMED ROBBERY - Ingredients - Proof - To secure conviction for the offence - Prosecution must prove that there was robbery - That the robbery was armed robbery - And that accused was the robber (H6)

CRIMINAL PROCEDURE - Conspiracy - Proof - Conspiracy is agreement to do unlawful act - And it can be proved by inference deduced from certain criminal acts (H7)

CRIMINAL PROCEDURE - Conspiracy - Statement of co accused - Evidence of one accused in absence of other conspirators - Is admissible against such others (H8)

FACTS

Accused/appellant and two others were arraigned before the High Court of Ogun State Ijebu Ode for conspiracy to commit armed robbery and armed robbery. Appellant and the others pleaded not guilty to the charge. The case against appellant and the others is that they attacked and robbed PW1 - Osiyemi Rafiu Niyi, the Managing Director of the FAO Petroleum Filling Station, Ilese via Ijebu-Ode of sums of money being proceeds from the day sale and two telephone handsets. Thereafter, 1st accused was linked with the robbery. The police were invited and 1st accused was arrested. He later confessed to the crime and gave the names of appellant and another as co-accused. Both appellant and the co-accused were arrested. They all confessed to the crime.

At the trial, appellant and the others resiled from their earlier statements made to the police. After the conduct of trial within trial, the trial Court overruled the objection to the admissibility of their statements. Each statement was admitted as Exhibits. At the conclusion of the trial, the Court in its considered judgment found appellant and the others guilty as charged. They were thus convicted and sentenced to death by hanging. Aggrieved, appellant appealed to the Court of Appeal Ibadan Division. The appeal was dismissed and judgment of the trial Court was affirmed. Appellant was still dissatisfied. He has therefore appealed to the Supreme Court.

ISSUES FOR DETERMINATION

Issue 1- Whether the Justices of the Court Appeal were right, in view of the findings of fact and the circumstances of the case, in affirming the conviction and sentence of the appellant by the trial Court.

Issues 2 - Whether the Justices of the Court of Appeal were right in the circumstances of this case, to have endorsed the trial Court's reliance on Exhibits C and G in convicting and sentencing the appellant.

Issue 3 - Whether the Court below was right in affirming that

the prosecution in the circumstance of this case proved the offences of conspiracy to commit armed robbery and armed robbery, against the appellant beyond reasonable doubt as required by law.

HELD

(Unanimously dismissing the appeal per **ARIWOOLA JSC**)

APPEALS - Issues - Reframing of

1. On a careful reading of the issues formulated by the appellant, I am of the view that they are rather nebulous, clumsy and unclear. So also are the three issues distilled by the respondent, which were not even identified with any specific ground of appeal filed by the appellant.

It is already settled, that in a situation like this, the Court is not only obliged but entitled to reframe or reformulate issues from the competent grounds of appeal filed by the appellant for the purpose of clarity and precision and to lead to proper determination of an appeal. (p. 1149 D)

CHARGES - Conspiracy & substantive charges

2. It has been settled that the appropriate thing to do when an indictment contains a charge of conspiracy along with the substantive charge is to deal with the main charge first and then proceed later to see how far the conspiracy count has been made out in answer to the fate of the charge of conspiracy. (p. 1161 B)

CRIMINAL PROCEDURE - Conspiracy - Distinctive nature

3. Generally, conspiracy is an agreement between two or more persons to do an unlawful act.

Therefore, failure to prove a substantive offence does not make conviction for conspiracy inappropriate, as it is a separate and distinct offence, in itself, independent of the actual offence conspired to commit. (p. 1161 C)

Judgment - Mistake

4. There is no doubt that from the record, it was clear that the

only employee of PW1, the victim of the armed robbery attack, was the 1st accused person but not the appellant as erroneously stated in the judgment of the Court below. But it cannot be said, in all sincerity and fairness that the error alone influenced the decision of the Court below to affirm the conviction and sentence of the appellant. It was mainly Exhibit G - which was his confessional statement. I am therefore of the firm view that the mistake or error is not material enough to have caused a miscarriage of justice to lead to the setting aside of the judgment of the Court below. It is already established, that it is not every mistake or error in a judgment that necessarily determines an appeal in favour of an appellant or automatically results in the appeal being allowed. The error or mistake to result in the upturn of a judgment must be substantial and must have occasioned a miscarriage of justice. The appellate Court is bound to interfere once the Court is satisfied that such error has occasioned miscarriage of justice.

In this case, the fact that the appellant was described as the employee of PW1 who was an insider cannot be said to be substantial enough to occasion a miscarriage of justice in the face of other material evidence available on record. The Court below was therefore in order affirming the conviction and sentence of the appellant notwithstanding the slip in the findings on page 209 of the record as the error did not occasion miscarriage of justice. (p. 1163 A)

CRIMINAL PROCEDURE - Conviction - Confession

5. On record, it is clear that in the statement made to the police upon his arrest, Exhibit C was where the 1st accused mentioned the appellant's name among those who joined him to carry out the operation. The arrest of the appellant was sequel to the mention of his name by the 1st accused who initiated the operation. Upon his arrest, the appellant also made Exhibit G which, as the trial Judge found, contains information which were entirely within the personal knowledge of the appellant and was therefore admitted as a voluntarily made statement which he made admission to the operation.

There is no doubt that the trial Court relied on the appellant's confessional statement having been satisfied that it was possible and was made by the appellant voluntarily. Notwithstanding the retraction by the appellant, the trial Court was satisfied, when other pieces of evidence were considered that the confession was proved.

B

It is trite law and already settled in several decided cases by the Court that, where an extra-judicial confession has been proved to have been made voluntarily and it is found positive and unequivocal and amounts to an admission of guilt, such confession will suffice to ground a finding of guilt, regardless of the fact that the maker has retracted at the trial in his evidence on oath in Court.

C

Because the trial Court had done all it was required to do to a retracted extra-judicial statement of a suspect before coming to the conclusion that it was proved by the prosecution as having been made voluntarily, I am of the firm view that the Court below was right to have endorsed the use of the two Exhibits C & G by the trial Court in convicting the appellant and the Court was right to have affirmed the conviction and sentence based on the said Exhibits. Accordingly, this issue is resolved against the appellant. (p. 1165 C)

D

E

ARMED ROBBERY - Ingredients - Proof

6. It is trite law that for the prosecution to establish the offence of armed robbery as required by law, the following must be proved:-

F

(i) That there was in fact robbery;

(ii) That the robbery was an armed robbery; and

G

(iii) That accused person was the armed robber or one of the armed robbers. (p. 1166 F)

CRIMINAL PROCEDURE - Conspiracy - Proof

7. Generally, conspiracy is an agreement between two or more persons to do an unlawful act or to do a lawful act by unlawful means. It is ordinarily a matter of inference, deduced from certain criminal acts of an apparent criminal purpose common between them.

H

In order to secure conviction on a count of conspiracy, the prosecution must establish the elements of agreement to do something which is unlawful or to do something which is lawful but by unlawful means. Conspiracy has been held to be an offence which is difficult to prove by direct evidence as it is often hatched in secrecy, However, circumstantial evidence and inference from certain proved facts are enough to ground conviction for the offence.

It is settled law that the essential ingredient of the offence of conspiracy lies in the bare agreement and association to carry out an unlawful act, which is contrary to or forbidden by law, whether that act be criminal or not and of course whether or not the accused persons had knowledge of its unlawfulness.

From the confessional statement of the appellant and that of the co-accused persons, in particular, the 1st accused person who masterminded the operation, which statements were correctly found to be direct, positive and voluntarily made, by the trial Court, I am of the firm view without an iota of doubt that the prosecution proved the offence of conspiracy against the appellant in accordance with the law. As a result, the conviction and sentence was correctly affirmed by the Court below. Accordingly, the issue is resolved against the appellants. (pp. 1169 A/1170 H)

CRIMINAL PROCEDURE - Conspiracy - Statement of co accused
8. It is the law, that in a trial for conspiracy, evidence of what one accused person says in the absence of the other conspirators is rendered admissible against such others on the basis that if they were all conspirators, what one of them says in furtherance of the conspiracy would be admissible evidence against them, even though it was said in the absence of the other conspirators. This is said to be an exception to the hearsay rule. (p. 1170 D)

REPRESENTATION

Uche Obi, SAN, with A. M. Sanusi, Esq., and S. R. Akinrinlade for the Appellant. A.U. Mustapha, Esq., with O. Ehikoya, Esq for the Respondent

CASES REFERRED TO

- WAEC v. Adeyanju (2008) 7 SCM 173
 Afegbai v. A-G Edo State (2001) 14 NWLR (pt. 733) 425
 Ogundiya v. State (1991) 3 NWLR (pt. 181) 519
 Okoro v. State (1988) 12 SC 191 B
 Latinde v. Lajunfin (1989) 45 SC 59
 Unity Bank Plc. v. Buhari (2008) 2 SCM 193
 Lagga v. Sarhuma (2008) 16 NWLR (pt. 1114) 427
 State v. Aje (2000) 11 NWLR (pt. 678) 434 C
 Nwokodi v. COP (1977) NSCC 127
 Usufu v. State (2007) 1 NWLR (pt. 1020) 94
 Nwabueze v. State (1988) 2 NSCC 389
 Musa v. State (2005) 2 FWLR (pt. 261) 343
 Oyediran v. The Republic (1967) NMLR 122 D
 Ojiofor v. State (2001) 9 NWLR (pt. 718) 371
 Ebeneni v. State (2009) 37 NSCQR (pt. 11) 803

STATUTES REFERRED TO

- Robbery & Firearms (Special Provisions) Act Cap R11 LFN 2004, ss. E
 1(2)(a), 11
 Evidence Act 2011, ss. 135(1), 167(a)

LEAD JUDGMENT BY ARIWOOLA JSC

This is an appeal against the judgment of the Court of Appeal, F
 Ibadan Division delivered on the 12th day of October, 2011, wherein
 the conviction and sentence of the appellant for the offences of conspi-
 racy to commit armed robbery and armed robbery were affirmed.

The appellant and two others had been arraigned and jointly G
 charged before the High Court of Justice of Ogun State sitting in
 Ijebu Ode, with the following offences:

Count I

Conspiracy to commit armed robbery contrary to Section 6(b)
 and punishable under Section 1 (2) (a) of the Robbery and Firearms H
 (Special Provisions) Act, (Cap. R.11), Laws of the Federation of Ni-
 geria, 2004.

Count II

Armed Robbery contrary to Section 1 (2) (a) of the Robbery

and Firearms (Special Provisions) Act, Cap, R11, Law of the Federation of Nigeria, 2004.

The facts of the case are as follows: Upon arraignment, the appellant had pleaded not guilty as the other two co-accused. The prosecution called two witnesses and tendered couple of exhibits including Statements obtained by the police. The appellant testified but called no other separate witness while the others also testified in defence. The 1st accused however called his mother to testify.

The prosecutions case is that sometime on the 7th day of May, 2007, at about 9.30p.m., PW1 - Osiyemi Rafiu Niyi, the Managing Director of the FAO Petroleum Filling Station, Ilese via Ijebu-Ode, closed from work at the Station and drove out a M/Benz 230 car and headed toward the toll gate. He was in the car with one Samson Agbo, one of the Petrol Attendants. He carried with him in the car the total sum of three hundred and fifty seven thousand, one hundred and fifty Naira (N357, 150.00) being the proceeds of that day's sale. As he got to Ilone, a Motorcycle he had noticed through the side mirror coming behind with three men on it overtook him and crossed his car in the front blocking his way. The said men came down and ordered him to come out of the car. He was dragged out of the car, attacked and taken into the nearby bush, where he was stabbed with a broken bottle. The attendant with him in the car escaped and ran away. The three assailants took away the money he had with him and the two telephone handsets. One of them threw his car key away into the bush, and sped off with the motorcycle. PW1 cried for help and people came round to help. Some commercial motorcyclists pursued the assailants but could not get them. One of his brothers Leke Osiyemi later came to the scene of the Incident and mentioned that he had earlier seen the 1st accused, Kolawole Okunade, who was a member of the staff of Petrol Station, around the station.

The attack was reported to the Police. On the next morning of 8th May, 2007 at about 6.30am, PW1 went to the house of the 1st accused to ask him if he had any clue to the attack on him. The 1st accused was not in the house but one Biodun, a senior brother to him assisted to call the 1st accused on phone. The police were invited and arrested the 1st accused in his house. He later confessed to the crime and gave the names of the appellant and another as co-accused. Both the appellant and the co-accused were arrested. The

sum of two hundred and forty three thousand, one hundred and thirty Naira (N243,130.00) was later recovered from 1st accused while one of the handsets-a Nokia was recovered from the appellant. The 1st accused took the police and PW1 to the spot where he had kept his black jacket he wore and used for the operation. The victim was later taken to the State Hospital for treatment. B

In defence, the appellant and the co-accused resiled on their statements earlier made to the police confessing to the crime. After the conduct of trial within trial, the trial Court overruled the objection to the admissibility of their statements. Each statement was admitted as Exhibits. At the conclusion of the trial, the Court in its considered reserved judgment found the accused persons guilty as charged, convicted and sentenced each of them to death by hanging. C

The appellant was dissatisfied with the judgment of the trial Court hence he appealed to the Court of Appeal, Ibadan. The Court below found the appeal unmeritorious and dismissed same leading to the instant further appeal to this Court. D

In the Notice of Appeal filed on 3rd of February, 2012, the appellant raised seven (7) grounds of appeal against the judgment of the Court below. E

When the appeal came up for hearing on 19th November, 2015, the learned counsel for the appellant adopted the appellant's brief and reply brief of argument settled by Uche Obi Esq. (now a Senior Advocate of Nigeria). He relied on the arguments' therein to urge the Court to allow the appeal, set aside the judgment of the Court below, discharge and acquit the appellant of the offences with which he was charged. The appellant's brief of argument and the reply brief of argument to the respondent's brief were filed on 31/7/2012 and 09/12/2014 respectively but both were deemed as properly filed and served on 14/05/2015. F G

The learned counsel for the State referred to the respondent's brief of argument filed on 8/12/2014 but was deemed as properly filed and served on 14/05/2015. He adopted and relied on same to urge the Court to dismiss the appeal and affirm the decision of the Court below, which had earlier affirmed the judgment of the trial Court. H

In the appellant's brief of argument, the appellant had distilled from the seven (7) grounds of appeal, four (4) issues for determina-

tion of the appeal as follows:-

Issues for Determination

B “1. *Whether the findings of fact of the learned Justices of the Court of Appeal and the decision flowing therefrom, affirming the conviction and sentence of the appellant, were not perverse and occasioned a miscarriage of justice to the appellant in the circumstances. (Distilled from ground 4)*

C 2. *Whether learned Justices of the Court of Appeal were right to have affirmed the conviction and death sentence of the appellant for armed robbery when it was clear, from the record, that the prosecution failed to prove a case of armed robbery against the appellant beyond reasonable doubt as required by law. (Distilled from ground 2)*

D 3. *Whether the learned Justices of the Court of Appeal were right to have affirmed the conviction and death sentence of the appellant for conspiracy to commit armed robbery when it was clear from the record, that the prosecution failed to prove a case of conspiracy to commit armed robbery against the appellant beyond reasonable doubt as required by law. (Distilled from ground 3)*

E 4. *Whether the learned Justices of the Court of Appeal were right to have endorsed the heavy reliance on the Exhibits C and G by the trial Court in convicting the appellant. (Distilled from grounds 1 and 6)”*

F In the respondent’s brief of argument duly adopted, based on the grounds of appeal filed with the Notice of Appeal by the appellant, the respondent distilled the following three issues for determination of this appeal:

G Issue 1 - Whether the learned Justices of the Court of Appeal were right in affirming that the trial Court was right in admitting Exhibit G (the confessional Statement of the appellant) in evidence and attaching evidential weight to it and using same in convicting appellant.

H Issue 2 - Whether the respondent proved the offences of conspiracy to commit armed robbery and armed robbery against (sic) reasonable doubt against the appellant.

Issue 3 - Whether a slip of the pen or a clerical error at page 209 lines 8 -16 of the record of appeal inadvertently taken the appellant who was the second accused as the first accused has occa-

sioned miscarriage of justice.

There is no doubt that the appellant's four issues were distilled from five of the seven grounds of appeal filed by the appellant. In other words, the four issues were generated from only grounds 1, 2, 3, 4 and 6 of the grounds of appeal, while no issue has been distilled from grounds 5 and 7. It is trite law that any ground of appeal from which no issue has been distilled is deemed abandoned and no argument on such ground can be countenanced by the Court. They are incompetent. Accordingly, grounds 5 and 7 of the grounds of appeal filed by the appellant having been abandoned are to be discountenanced as no argument can be based on them. Appeal is decided on the issues formulated from the grounds of appeal. See; West African Examination Council (WAEC) V. Omodolapo Yemisi Adeyanju (2008) 7 SCM 173 at 188; (2008) 9 NWLR (pt. 1092) 290; Albert Afegbai v. Attorney General Edo State & Ors (2001) 14 NWLR (Pt. 733) 425 at 451; (2001) 11 SCM 42; Ogundiya V. The State (1991) 3 NWLR (Pt.181) 519 at 532-533. The said two grounds 5 & 7 are accordingly struck out.

On a careful reading of the issues formulated by the appellant, I am of the view that they are rather nebulous, clumsy and unclear. So also are the three issues distilled by the respondent, which were not even identified with any specific ground of appeal filed by the appellant.

It is already settled, that in a situation like this, the Court is not only obliged but entitled to reframe or reformulate issues from the competent grounds of appeal filed by the appellant for the purpose of clarity and precision and to lead to proper determination of an appeal. See Okoro V. The State (1988) 12 SC 191 Latinde & Anor V. Bella Lajunfin (1989) 45 SC 59; (1989) 5 SCNJ 59.

In Unity Bank Plc & Anor V. Edward Buhari (2008) 2 SCM 193 at 240, this Court had stated as follows:

"It is now firmly settled that the purpose of framing issue or issues is to lead to a more judicious and proper determination of an appeal. In other words, the purpose is to narrow the issue or issues in controversy in the interest of accuracy, clarity and brevity."

See also; Musa Sha (Jnr) & Anor V. Da Rev Kwan & 4 Ors (2000) 8 NWLR (Pt.670) 685; (2000) 5 SCNJ 101.

For a better understanding of the issues arising from the competent grounds of the appellant's Notice of Appeal and for clarity, I shall reframe the issues as follows, before I proceed to consider the argument of counsel.

B Issue 1- Whether the Justices of the Court Appeal were right, in view of the findings of fact and the circumstances of the case, in affirming the conviction and sentence of the appellant by the trial Court. (Grounds 2 and 4)

C Issues 2 - Whether the Justices of the Court of Appeal were right in the circumstances of this case, to have endorsed the trial Court's reliance on Exhibits C and G in convicting and sentencing the appellant. (Grounds 1 and 6)

D Issue 3 - Whether the Court below was right in affirming that the prosecution in the circumstance of this case proved the offences of conspiracy to commit armed robbery and armed robbery, against the appellant beyond reasonable doubt as required by law. (Ground 3)

E In arguing the appeal, learned counsel for the appellant took the issues seriatim. On his issue one, he submitted that the findings of fact of the learned justices of the Court of Appeal and the decision flowing therefrom, affirming the conviction and sentence of the appellant, were perverse and occasioned a miscarriage of justice. On situations when the findings of a Court can be said be perverse, he cited *Lagga V. Sarhuma* (2008) 16 NWLR (Pt.1114) 427 at 455, F *State V. Aje* (2000) 11 NWLR (Pt.678) 434 at 449.

G He referred to page 21 lines 8-16 of the judgment which is paragraph 1 on page 209 of the record, he contended that there was no place where the appellant who was 2nd accused at the trial Court was said to be an employee of PW1 and there was also no place where he was said to have been seen hanging around PW1's filling Station. He contended further that the statement of the Court referred to shows that one of the major reasons why the Court affirmed the judgment, conviction and sentence passed on the appellant H by the trial Court was because the Court below believed that the appellant had the opportunity to commit the crime and this belief of the Court below was based on the conclusion reached by that Court that the appellant was an insider.

Learned senior counsel contended that the best and only way

of resolving this issue is for the Court to look at the record as recorded by the trial Court and upon which the Court below sat on appeal, and to see whether there was any evidence that was led before the trial Court that justifies the finding of fact reached by the Court below which led to the conclusion that led to the affirmation of the conviction and sentence of the appellant. He submitted that as there was no such evidence on record, this Court is duty bound to quash the lower Court's affirmation of the conviction and sentence of the appellant. B

Learned Senior counsel referred to pages 42 line 41 to 43 line 2 for the testimony of PW1 speaking about 1st accused person. From the said testimony, learned counsel contended that among the accused persons, only the 1st accused - Kola Okunade was said to be a staff or employee of PW1 but not the appellant. C

Learned Senior counsel submitted that the fact that a Court considered matters that are not before it, in reaching its judgment is so fundamental that it strikes at the very root of that decision and totally vitiates that decision. He relied on *Okafor V. Police* (1963) All NLR 523. He submitted that the Court below had totally ignored the facts and evidence led before the trial Court, before affirming the conviction and sentence of the appellant as its findings and conclusion flowing therefrom are such that no reasonable tribunal could have arrived at, in the light of the evidence before it. D E

He submitted that there cannot be a clearer case of a serious miscarriage of justice than the instant, where the appellant's conviction and sentence were affirmed by the Court below on the mistaken belief that it was affirming the conviction and sentence of another person, that is, the 1st accused before the trial Court -?? Kola Okunade. He further submitted that the appellant was denied fair hearing, as his own appeal was not considered by the Court below. He urged the Court to resolve this issue in favour of the appellant, set aside the decision of the Court below, discharge and acquit the appellant. F G

On the appellant's second issue as formulated from his ground 2, learned Senior counsel submitted that the Court below was terribly in grave error to have affirmed the conviction and sentence of the appellant for armed robbery when it was clear, from the record that the prosecution failed to prove a case of armed robbery against H

the appellant beyond reasonable doubt as required by law.

He referred to the ingredients the prosecution is required to prove in order to establish the offence of armed robbery against an accused person. He submitted that the three requirements must be contemporaneously proved and that failure to establish anyone would be fatal to the prosecution's case and would inexorably lead to a verdict of not guilty. He cited *Nwokodi V. COP (1977) NSCC 127*.

On the first ingredient, learned counsel contended that the prosecution was bound to show that (a) something belonging to the complainant was actually stolen, and (b) at or immediately before or after the time of stealing the thing, actual violence was used or threatened to be used on any person or property in order to obtain or retain the thing stolen or prevent or overcome resistance to its being stolen or retained. He referred to Section 11 of the Robbery and Firearms (Special Provisions) Act Cap 11, Laws of the Federation of Nigeria, 2004.

Learned senior counsel referred to the testimony of PW1 & PW2 on pages 41, 42 and 71 of the record of proceedings, and contended that the testimonies are not enough to satisfy the level of proof required of the prosecution. He stated that there were many questions that were begging to be answered that no reasonable appellate Court could have affirmed that it was established that some things were actually stolen from PW1. He contended that since PW1 did not identify specifically the money allegedly stolen from him, by way of denominations, how many bundles, type of wrapper etc. and DW2's explanation as to how the money found on 1st accused got to him as a loan she (DW2) took from Cooperative Society and Bank (FCMB), the recovery of money from the house of the 1st accused ought not to have invariably led to the conclusion that the money was the one stolen from PW1. He urged the Court to hold that the prosecution failed to establish beyond reasonable doubt that something was stolen from PW1.

On the allegation of use of violence or threat of violence before or after the time of the alleged stealing, he referred to the testimony of PW1 on pages 47 lines 33 to 35 of the record and 43 lines 2 to 4 and 17. And PW2 on page 44 lines 22-24. Learned counsel contended that the prosecution failed to call as a witness, the attendant who was said to be with PW1 in his car when he was attacked.

Neither was part of the broken bottle said to have been used to stab PW1 produced. He submitted that the prosecution did not prove that there was any robbery.

On the requirement to prove that the alleged robbery was an armed robbery, learned counsel submitted that the prosecution was duty bound to prove that when the alleged robbery took place, the accused persons were either armed with any firearms or any offensive weapon or in company with any person so armed or that at or immediately before or after the time of the said robbery, the said offender wounds or uses any personal violence to any person. He submitted that there was not enough evidence from the prosecution to show that the robbery was an armed robbery. He referred to the testimony of PW1 and PW2 and submitted that the testimony was grossly insufficient to warrant a conclusion to affirm the conviction and sentence of the appellant. He urged the Court to hold that the prosecution did not establish that the robbery, if any, was an armed robbery.

On the requirement to prove that the appellant was one of those who took part in the robbery, learned counsel submitted that the prosecution was bound to show either that the appellant and the other accused were arrested at the scene of the crime or that they were properly identified by eye witness.

Learned senior counsel contended that it was not in dispute that the accused persons were not arrested at the scene of the crime. He referred to the testimony of PW1 on pages 43 to 44 and contended that the conviction was based on the testimony and alleged confessional statement of appellant. He submitted that the testimony and statement of PW1 that were relied upon by the Court were grossly insufficient to link the appellant with the robbery.

Learned Senior counsel referred to the holding of the trial Court that the failure of the prosecution to call the only eye witness - Mr. Samson Agbo, was not fatal to their case and held a contrary view, that the failure was fatal in that he is a vital witness who would have thrown more light at the specific identification of the people that attacked them on that day. He contended that there was no evidence on record as to why the witness was not called by the prosecution. He cited *Usufu V. State* (2007) 1 NWLR (Pt.1020) 94. He urged the Court to apply Section 16 (d) of the Evidence Act, 2011 on failure of

the prosecution to call vital evidence that was available but not produced.

He urged the Court to resolve this issue in favour of the appellant and set aside the decision of the Court below that had earlier affirmed that of the trial Court.

B On the third issue, learned counsel submitted that the learned Justices of the Court of Appeal were wrong to have affirmed the conviction and death sentence of the appellant for conspiracy to commit armed robbery when it was clear, from the record that the prosecution failed to prove case of conspiracy to commit armed robbery against the appellant beyond reasonable doubt as required by law. C He referred to Section 135 (1) of the Evidence Act, 2011 and contended that in Nigeria where the question as to whether or not a crime has been committed arises in any case, it has to be proved D beyond reasonable doubt relying on *Stephen Oteki vs. A.G Bendel State* (1986) 7 NWLR (Pt.24) 648. And where it is found that the prosecution failed to discharge that burden, any conviction arrived at in such a case, is normally overturned by this Court. He cited *Nwabueze & Ors V. The State* (1988) 2 NSCC 389 at 395.

E Learned Senior counsel referred to conspiracy as an agreement by two or more persons to do an illegal act or to do a legal act by illegal means, relying on *Obikor V. The State* (2002) 6 SC (Pt.11) 33. He submitted that to prove that the offence of conspiracy has F been committed, the prosecution is not just bound to establish that there was a physical meeting but it also has to prove beyond reasonable doubt, that there was a meeting of the minds of the accused persons. He cited *Musa Vs. The State* (2005) 2 FWLR (Pt.261) 343 at 344, *Oyediran v. The Republic* (1967) NMLR 122 at 128.

G Learned Senior counsel conceded that circumstantial evidence is enough to ground a conviction for conspiracy but he submitted that such circumstantial evidence must be such that must be positive, unequivocal and must lead to the irresistible conclusion that it is the accused that committed the crime. He relied on *Chime Ojiofor v. The H State* (2001) 9 NWLR (Pt.718) 371 at 385; *Ebeneni V. The State* (2009) 37 NSCQR (Pt.11) 803 at 807.

He contended that the trial Court relied heavily on the alleged confessional statements of the accused persons - Exhibits C, E, F, G & H in reaching the conclusion that there was indeed a conspiracy

between the appellant and the other two accused persons to commit armed robbery on PW1. He referred to the alleged confessional statements of the 1st accused, the appellant as 2nd accused and the 3rd accused persons, and contended that there is nothing in the statements that shows that the appellant conspired with the other accused persons. He submitted that what was contained in the said confessional statements is not enough to ground a conviction of the appellant and the other accused for conspiracy to commit armed robbery on PW1 or any other person for that matter. He conceded that at best, it may only go to establish that the appellant and the other accused persons conspired to assault PW1 or at worst to cause him grievous bodily harm. He urged the Court to resolve this issue in favour of the appellant and hold that the offence of conspiracy to commit armed robbery was not proved against the appellant beyond reasonable doubt.

On his issue 4, learned Senior counsel submitted that the learned Justices of the Court of Appeal were manifestly wrong to have endorsed and affirmed the heavy reliance on Exhibits C and G by the trial Court in convicting the appellant.

Learned senior counsel contended that the law as regards denied alleged confessional statement is that upon the denial, a burden is placed on the prosecution to show that the confession was made voluntarily without any inducement, by way of threat of a detriment, if the confession is not made, or a promise of an advantage if the confession is made. He relied on *Ameh V. Queen* an unreported case of this Court, Appeal No.34/1961 decided on 7th April, 1961.

He conceded that a denied confession can be admitted in evidence by a Court and that it can even be the basis of a conviction but he submitted that it ought not to ground a conviction, especially in capital offences, without there being corroboration from other independent pieces of evidence.

Learned senior counsel submitted that an admission or confession is admissible only against the maker. He cited *Enitan v. State* (1986) 3 NWLR (Pt.30) 604; *Ohuka & Ors V. The State* (1988) 2 NSCC 371. He submitted further that when the sworn testimony of a witness before the Court differs from his previous extra-judicial statement to the police, and there is no explanation for the difference, the Court should regard his subsequent testimony before the Court as

unreliable while the previous statement to the police should totally be disregarded as being no evidence upon which the Court can act. He cited *Christopher Onubogu v. The State* (1974) 9 SC 1 at 11; *Nwabueze & Ors vs. The State* (1988) 2 NSSCC 389; *Asanye v. The State* (1991) 1 NSCC 412 at 421.

B He submitted further that it is the law that the availability of a confessional statement does not reduce the burden placed on the prosecution to prove its case beyond reasonable doubt relying on *Shande V. State* (2005) 1 NWLR (Pt.907)

C 218 at 240. He urged the Court to resolve this issue in favour of the appellant and to finally allow the appeal by entering a finding that the prosecution did not prove the case against the appellant beyond reasonable doubt. He urged the Court to discharge and acquit the appellant.

D The learned counsel for the respondent argued the appeal by starting with appellant's confessional statement which was admitted as Exhibit G. He contended that it is the law that a trial Court can rely solely on the confessional statement of an accused person to convict him, relying on *Akpan v. The State* (2008) 8 SCM 68 at 70; *Adebayo v. A.G. Ogun State* (2008) 5 SCM 1 at 15.

Learned counsel referred to the objection raised by the appellant to the admissibility of his alleged confessional statement on the ground that it was not made voluntarily. He referred to the order of trial within trial by the trial judge after which the Court overruled the objection and admitted the said statement of the appellant and marked same as Exhibit G. The Court found that the said statement was made voluntarily. Learned counsel submitted that the trial Court did all that were required to be done before a retracted Statement admitted. He submitted further that the mere fact that the appellant retracted his alleged confessional statement during the trial was not to affect or stop the Court from relying on the confession. The trial Court was satisfied as to its truthfulness and can rely solely on it to ground conviction. He relied on *Dibie V. The State* (2007) 78 SCM H 101.

Learned counsel contended that the trial Court considered the fact that the appellant admitted that himself and the 1st accused person attended the same secondary school, in rejecting his testimony that he was questioned in Yoruba but he did not know what was

recorded for him in English language.

Learned counsel referred to the testimony of PW1 on how he was attacked and he contended that the statement of the appellant in Exhibit G was corroborated by the testimony of PW1. Similarly, learned counsel contended that the fact that one of the mobile phone handsets that were stolen from PW1 was found ringing on the appellant's body also corroborated his confessional statement and made it positive and direct. He submitted that the trial Court rightly admitted the said statement as confession that was possible. And urged the Court to hold that the Court below rightly affirmed the trial Court's reliance on Exhibit G to convict the appellant, having found other facts consistent with and corroborating the confession of the appellant before convicting him on same. B
C

Learned counsel referred to the issue of torture and blood-stain raised by the appellant and the appellant's testimony under examination in-chief in the trial within trial that the injuries on his face and arm were inflicted on him by the men of Odua Peoples Congress (OPC) and that the policemen were not around when the OPC men were beating him. D

Learned counsel contended that the issue of torture by the OPC men is not relevant to the statement obtained by the Police-men. E

Learned counsel submitted that the fact that the appellant resiled or retracted from his confessional statement at the trial will not hinder the Court from relying on the statement to convict him, as such statement is in law part of the evidence adduced by the prosecution. He cited *Egbohonome v. The State* (1993) 9 SCNJ (Pt.1) 29. He urged the Court to resolve the issue against the appellant and hold that the Court below rightly affirmed the decision of the trial Court which admitted appellant's statement as confessional and used same to convict him. F
G

On issue two, learned counsel contended that it is the law that the burden of proof on the prosecution is proof beyond reasonable doubt, but this proof is not one beyond all shadow of doubt. He defined conspiracy and referred to the statement made by the appellant Exhibit G wherein he had confessed to having conspired with other co accused to rob PW1. Also, PW2's testimony on the mobile phone handset, that was found on the appellant which he admitted H

to have stolen from PW1 during the attack on him. He contended that this shows that there were other evidence outside the confession which made the confession possible.

On the offence of conspiracy, learned counsel contended that it is difficult to have direct evidence in support of conspiracy, which is usually inferred from the facts and circumstances of each case. He referred to the testimony of PW1 and Exhibit G and submitted that Exhibit G has shown that the appellant and his co-accused conspired to carry out their attack on PW1. He submitted further that there was enough evidence on ground to enable the trial Court rightly infer the offence of conspiracy.

Learned counsel referred to Exhibit F being the statement made by the 1st accused which was admitted without objection. And the fact that it was indeed the confessional statement of the 1st accused that led to the arrest of the appellant on whom one of the mobile phones which were stolen from PW1 was found. Learned counsel submitted that the confessional statement of 1st accused as a co-accused with the appellant which was admitted on oath without objection is admissible against other co-accused. He relied on *Oyakhire v. The State* (2006) 12 SCM (Pt.1) 369 at 380 & 381.

Learned counsel submitted that a confession of guilt by an accused is sufficient to warrant conviction without corroborative evidence, if it is direct, positive, duly made and satisfactorily proved. He however conceded that it is desirable to have outside the confession, some evidence of circumstances no matter how slight, which makes it probable that the confession is possible. He contended that corroboration needs not be by direct evidence, that the appellant committed the offence, as it is sufficient if it is merely circumstantial, relying on *Dagaya v. The State* (2006) 2 SCM 33 at 67.

On the issue of armed robbery, learned counsel referred to the elements the prosecution required to establish to sustain conviction.

- (i) That there was a robbery or series of robberies;
- (ii) That the robbery was an armed robbery;
- (iii) That the appellant was one of those who took part in the robbery. He cited *Bozin V. State* (1985) 2 NWLR (Pt.8) 465.

On the first and second elements, learned counsel referred to the testimony of PW1, PW2 and Exhibit G, the confessional State-

ment of the appellant. He submitted that the evidence adduced by the prosecution satisfied the first two elements the prosecution was required to prove. He urged the Court to hold that the trial Court rightly found that there was a robbery incident and that it was an armed robbery. And that the Court below was right in affirming such findings. B

On the third ingredient, that the appellant was one of the robbers, learned counsel referred to the prosecution's case, on the arrest of 1st accused upon whose confessional statement the appellant was arrested. The evidence that substantial part of the stolen money was recovered from the 1st accused while one of the robbed mobile phone handsets was found on the appellant. On this evidence, he relied on the proviso to Section 167 (a) of the Evidence Act, 2011. He cited, Yongo v. COP (1990) 5 NWLR (Pt.148) 103 at 176-117; Aremu Vs. State (1991) 7 NWLR (pt. 201)1. He referred to the statement voluntarily made by the appellant wherein he confessed to the crime. D He submitted that the prosecution established before the trial Court, that the appellant was one of the robbers, that robbed PW1.

On the failure of the prosecution to call Agbo Samson, one of the attendants who was in the car with PW1 when he was robbed, E learned counsel contended that, not having played any role in the incident was not a necessary witness and so, failure to call him was not fatal to the prosecution's case. In the same vein, the failure of the prosecution to call the maker of Exhibit A, the medical report of the treatment PW1 received, learned counsel contended was not fatal to F the prosecution's case. He submitted that if the defence had needed the witnesses, they could have asked that they be called. He relied on Nwachukwu V. The State (2003) 7 SC (Pt.11) 124 at 131-132.

On the failure to tender the mobile phone and the broken G bottle used to stab PW1, learned counsel referred to Exhibit 1- the bond upon which both the money and mobile phone were released to PW1, which was admitted without objection. He submitted that failure to tender the weapon used to rob in the instant case is not fatal to the prosecution's case. H

On the issue of identification of the appellant, learned counsel submitted that where an accused person confesses to a crime, the issue of identification parade becomes unnecessary. He relied on Agboola V. State (2013) 8 SCM 157.

On the issue whether the findings of fact of the learned Justices of the Court of Appeal and the decision flowing therefrom, affirming the conviction and sentence of the appellant were perverse and occasioned a miscarriage of justice to the appellant in the circumstance, learned counsel contended that it was a slip of the pen or a clerical error at page 209 lines 8-16 of the record of appeal. He referred to page 118 of the record to show that there were three accused persons that were arraigned, charged and tried for the same offences with the appellant. The three were found guilty as charged, convicted and sentenced to death. Each of the convicts later appealed separately to the Court below. And that the appeal of the 1st accused person was heard and judgment was delivered earlier on 13th October, 2011 by the same Hon. Justice Shenko Alagoa JCA, (as he then was). He contended further that the error being referred to in the judgment now on appeal occurred because the same Hon. Justice Alagoa, JCA (as he then was) who had written the leading judgment of the Court in the appeal of the 1st accused, Okunade Kolawole wrote the leading judgment of the instant appeal of the 2nd accused person. He stated that the said earlier judgment is also now before this Court in appeal No. SC.82/2012. He submitted that the slip or clerical error has not occasioned any miscarriage of justice to the appellant.

Learned counsel referred to pages 205-209 of the record where the Court below thoroughly considered the confessional statement of the appellant Exhibit G, with the corroborative evidence before coming to the conclusion that the appellant was indeed one of the three men that robbed PW1. He submitted that the error in the analysis of the evidence whereby the 2nd accused appellant herein was referred to as 1st accused, occurred accidentally and inadvertently and therefore did not occasion miscarriage of justice to the appellant as to warrant this appeal to be allowed. He submitted further that it is not every error or mistake of a Court that would result in the setting aside of a decision of the Court. He cited *Akomolafe & Anor V. Guardian Press & Ors* (2010) 1 SCM 1 at 10.

Learned counsel urged the Court to discountenance the technical argument of the appellant and dismiss the appeal. He further urged the Court to affirm the decision of the Court below that the trial Court rightly convicted and sentenced the appellant which was

properly affirmed by the Court below.

As earlier stated, the appellant and two others were charged with two counts of conspiracy to commit armed robbery and armed robbery. The three men were tried and convicted as charged. The appellant appealed to the Court below but his appeal was dismissed while his conviction and sentence by the trial Court were affirmed by the Court below leading to the instant appeal. B

It has been settled that the appropriate thing to do when an indictment contains a charge of conspiracy along with the substantive charge is to deal with the main charge first and then proceed later to see how far the conspiracy count has been made out in answer to the fate of the charge of conspiracy. C

Generally, conspiracy is an agreement between two or more persons to do an unlawful act. D

Therefore, failure to prove a substantive offence does not make conviction for conspiracy inappropriate, as it is a separate and distinct offence, in itself, independent of the actual offence conspired to commit. See: Segun Balogun V. Attorney General of Ogun State (2002 4 SCM 23; (2002) 2 SCNJ 196; (2002) 2 SC (Pt.11) 89. Osetola & Anor V. The State (2012) 12 SCM (Pt.2) 347; (2012) 17 NWLR (Pt.1329) 251; (2012) 6 SC (Pt.111) 148 (2012) 50 (2) NSCQR 598. E

On the first issue, the appellant had contended that the findings of the Court below in its judgment which led to the affirmation of the conviction and sentence of the appellant were perverse and led to miscarriage of justice against the appellant. F

There is no doubt that at page 209 of the record of appeal, page 21 lines 8-16 of the judgment, the Court below had stated as follows: G

“Was the appellant one who had the opportunity of committing the offence? The answer to this question must also be in the positive. The appellant had been an employee of PW1 and knew what time he closed for the day. Moreover, information from PW1’s filling Station for sometimes prior to the incident on the 7th May, 2007. As an employee of PW1 he was an insider who had the opportunity to operate which an outsider may not have had” H

The learned counsel had contended that from the above, one

of the reasons why the Court below affirmed the judgment of the trial Court was because the Court believed that the appellant had the opportunity to commit the crime having concluded that he was an insider, being an employee. There is no doubt at all, that the above statements of the Court below were wrong. In other words, it is not
 B the appellant herein, who, as the 2nd accused person before the trial Court, that was to be an employee of PW1. Indeed, it was the 1st accused person that was PW1's employee, working in the Filling Station. The Court below was therefore wrong to have stated in that paragraph of the judgment that the appellant was an employee of
 C PW1 and an insider. But can it be said that, that statement has occasioned a miscarriage of justice in this case? The answer is in the Negative. No! it cannot be said to have occasioned miscarriage of justice.

When the judgment of the Court below is read from behind,
 D in particular, from page 205 of the record but page 17 of the judgment to page 209 of the record but page 21 of the judgment, it is clear that the learned justice meant to address the appellant as 2nd accused. Indeed, it was Exhibit G, which was the admitted confessional statement of the appellant that the Court below considered
 E and found to be truly voluntarily made by the appellant.

In the 2nd paragraph on page 208 of the record in the Judgment of the Court below, the Court opined as follows:

*"Are the statements made in Exhibit G true as can be tested? Here again the answer must be in the positive. The appellant in Exhibit "G" gave graphic details of how the armed robbery attack on PW1 was hatched and precisely executed by him and two others. These accounts were confirmed by the prosecution witnesses and other co accused persons in their own confessional statements. Mention must be made here again to the Nokia handset which PC
 F Solomon in his evidence during the trial within trial stated was handed to him (Solomon) by the appellant who had told him that he (appellant) took the handset - a Nokia from the PW1's car during the armed attack on PW1 on the 7th May, 2007."*
 G

H From the record, in particular, in the judgment of the trial Court on page 142, in paragraph 6 lines 17-19, the Court had found as follows:

"The 1st accused on his part stated that he was ill and was at home having been permitted by PW1 to stay away from work at the

filling Station where he worked for PW1.”

There is no doubt that from the record, it was clear that the only employee of PW1, the victim of the armed robbery attack, was the 1st accused person but not the appellant as erroneously stated in the judgment of the Court below. But it cannot be said, in all sincerity and fairness that the error alone influenced the decision of the Court below to affirm the conviction and sentence of the appellant. It was mainly Exhibit G - which was his confessional statement. I am therefore of the firm view that the mistake or error is not material enough to have caused a miscarriage of justice to lead to the setting aside of the judgment of the Court below. It is already established, that it is not every mistake or error in a judgment that necessarily determines an appeal in favour of an appellant or automatically results in the appeal being allowed. The error or mistake to result in the upturn of a judgment must be substantial and must have occasioned a miscarriage of justice. The appellate Court is bound to interfere once the Court is satisfied that such error has occasioned miscarriage of justice. See; Onajobi V. Olaniyekun (1985) 4 SC (Pt.2) 156 at 168; Osafire & Anor V. Odi & Anor (No.1) (1990) 3 NWLR (Pt.137) 130; (1990) 5 SCNJ 118; Anyanwu v. Mbari (1992) 5 NWLR (Pt.242) 386 at 400; A.G Leventis Nig Ltd v. Christian Akpu (2007) 12 SCM (Pt. 2) 1 at 17.

In this case, the fact that the appellant was described as the employee of PW1 who was an insider cannot be said to be substantial enough to occasion a miscarriage of justice in the face of other material evidence available on record. The Court below was therefore in order affirming the conviction and sentence of the appellant notwithstanding the slip in the findings on page 209 of the record as the error did not occasion miscarriage of justice.

The second issue is whether the Justices of the Court of Appeal were right in the circumstances of the case to have endorsed the trial Court's reliance on Exhibits C and G in convicting and sentencing the appellant.

It is note worthy that Exhibits C and G were the statements made to the Police by the 1st accused and the appellant herein who

was 2nd accused at the trial Court.

PW2 was a Force No.33129 - Police Constable Babalola Solomon, attached to Area Commander's Office formally Atan Divisional Police Headquarters. He was the Investigating Police Officer (IPO) who took the statements of the appellant and the other two
B accused persons who stood trial. Each of them objected to the admissibility of the statements and the trial Court ordered a trial within trial on each of the statements. When the trial Judge later found that the statements were indeed voluntarily made and were direct and
C possible, the objections were overruled and the statements were admitted as Exhibits.

At the close of the trial within trial, on the objection to the admissibility of the statements being sought to be tendered as confessional statement of the 1st accused, the Court had stated, inter alia,
D on pages 53-54 as follows:

*"I have also evaluated the evidence led by both defence and prosecution. While that of the prosecution is straight forward, that of the 1st accused is full of twists and turns from what he would first say and later take a different position. I have also looked at the evidence
E led by Police Constable Solomon this Police officer who was alleged to have beaten the 1st accused with a cutlass. It was while the 1st accused was giving evidence that he introduced that he was beaten with a cutlass. The veracity of PW2 was never impugned.*

*In the light of the above, I am satisfied that this statement sought
F to be tendered was made voluntarily by the 1st accused. The objection made to it being tendered as Exhibit is overruled and the statement is admitted and marked Exhibit C."*

In the same vein, at the close of the trial within trial conducted
G on the objection to the admissibility of the appellant's statement as confessional, the trial judge found as follows:

*"The 2nd accused in his testimony during the trial within trial had stated he was beaten before he signed the statement in question. He however, in his testimony has admitted he did attend Itele High
H School and that he does not know the 1st accused. Also in his evidence on oath, the 2nd accused did not deny what is in the statement that the handset belonging to the complainant was stolen by him while the robbery was going on as Police Constable Solomon's fabrication, These pieces of information contained in the statement*

of 2nd accused in my view are not pieces that were within the personal knowledge of the Investigating Police Officer and hence it could not be concocted. I have also looked at the signature credited to the 2nd Accused on the purported statement. The signatures of the 2nd Accused is regular and the same throughout. The signature did not strike me as the signature of a man who signed after he had been mercilessly beaten and covered in blood. I expected even to see stains of blood on the statement but it contained none at all.

From the above, I am convinced that the statement of the 2nd accused was made voluntarily and I so hold. The objection to it being tendered is overruled and it is admitted and marked Exhibit G.”

On record, it is clear that in the statement made to the police upon his arrest, Exhibit C was where the 1st accused mentioned the appellant’s name among those who joined him to carry out the operation. The arrest of the appellant was sequel to the mention of his name by the 1st accused who initiated the operation. Upon his arrest, the appellant also made Exhibit G which, as the trial Judge found, contains information which were entirely within the personal knowledge of the appellant and was therefore admitted as a voluntarily made statement which he made admission to the operation.

On the statements of the 1st accused and the appellant - Exhibits C and G respectively, the Court below had sought corroboration for the statement of the appellant and found as follows:-

“Is the confession corroborated? Exhibit G, the confessional statement of the appellant was corroborated by Exhibit C the confessional statement of the 1st accused. Indeed, it was on the basis of Exhibit C that the appellant was arrested leading to Exhibit G. Police Constable Solomon had stated that in the course of the trial within trial that the appellant handed over to him a Nokia handset which belonged to PW1. In his evidence in-chief at page 43 of the Records, PW1 confirmed the recovery of one of his two handsets - a Nokia stolen from his car during the armed robbery attack on him on the 7th May, 2007”.

There is no doubt that the trial Court relied on the appellant’s confessional statement having been satisfied that it was possible and was made by the appellant voluntarily. Notwithstanding the retraction by the appellant, the trial Court

was satisfied, when other pieces of evidence were considered that the confession was proved.

It is trite law and already settled in several decided cases by the Court that, where an extra-judicial confession has been proved to have been made voluntarily and it is found positive and unequivocal and amounts to an admission of guilt, such confession will suffice to ground a finding of guilt, regardless of the fact that the maker has retracted at the trial in his evidence on oath in Court. See Egboghonome Vs. The State (1993) 7 NWLR (Pt.306) 383, Osetola & Ors v. The State (Supra).

Because the trial Court had done all it was required to do to a retracted extra-judicial statement of a suspect before coming to the conclusion that it was proved by the prosecution as having been made voluntarily, I am of the firm view that the Court below was right to have endorsed the use of the two Exhibits C & G by the trial Court in convicting the appellant and the Court was right to have affirmed the conviction and sentence based on the said Exhibits. Accordingly, this issue is resolved against the appellant.

Now to the issue whether the Court below was right in affirming that the prosecution in the circumstances of this case proved the offences of conspiracy to commit armed robbery and armed robbery, against the appellant beyond reasonable doubt as required by law.

It is trite law that for the prosecution to establish the offence of armed robbery as required by law, the following must be proved:-

- (i) That there was in fact robbery;**
- (ii) That the robbery was an armed robbery; and**
- (iii) That accused person was the armed robber or one of the armed robbers.**

See; Bozin v. State (1985) 2 NWLR (pt. 8) 465 at 467; Alabi v. State (1993) 7 NWLR (Pt.307) 551; Olayinka Vs. State (2007) 4 SC H (Pt.1) 210; (2007) 9 NWLR (Pt.1040) 561; (2007) 8 SCM 193.

To establish the above requirements, the prosecution relied on the testimony of PW1, PW2 and Exhibits C and G, the confessional statements of the 1st accused and the appellant respectively.

On page 138 of the record, the trial Court had found as fol-

lows:-

“In the present case, the evidence of PW1 as to how he was attacked by three men and robbed is in consonance with all the confessional statements the accused persons have made together with the fact that the material items of the PW1 as contained in his evidence were also mentioned in the statements of the accused persons as having been stolen during the attack on PW1.” B

The trial Court went further as follows:

“The evidence of PW2 also corroborated Exhibit G to the extent that the handset of the PW1 was found in (sic) the 2nd Accused when he was arrested. All these pieces of evidence make Exhibits C, E, F, G and H, the confessions true and also most probable. It is for these reasons I do not believe the cock and bull story of the three Accused persons that it was the police who asked them to name each other as conspirators. Of all the people 1st Accused knew, why was it 2nd and 3rd accused he mentioned. Why was the handset found with 2nd Accused and part of the money found with 1st Accused. The only inference is that they were all working in concert.” C D

When cross examined during the trial by the learned counsel for the 2nd accused, the instant appellant, Mr. Sonuga, the PW2 E stated, inter alia, as follows:

“The 1st accused had mentioned the names of 2nd and 3rd accused as committing the offence with him and two others now at large and so we had to release the Manager of the Petrol Station and others we have arrested. The 2nd accused was arrested where he was hiding near his house, the handset of the complainant was found on him as we tried to call the number of the phone, it was ringing where he was and this led us to 2nd accused and one Ajilete also assisted us.” F G

Before the 2nd accused was arrested, we had been looking for the 2nd accused the night before the vigilante were helping us but the morning he was eventually arrested he had gone to hide upon sighting but the ringing of the complainant’s mobile handset with him gave him away” H

From the record of proceedings inclusive of the above, there is no doubt that the prosecution adduced ample evidence to show that there was in fact a robbery incident on the 7th day of May, 2007 at former Ijebu Ode toll gate in the Ijebu Ode Judicial division. And that

the said robbery was an armed robbery as the men involved were armed with dangerous weapon, such as broken bottle.

Furthermore, from the statements made to the police by the appellant couple with the other material evidence found by the trial Court, there is no iota of doubt that the appellant was one of the men that carried out the attack on PW1 whereby he was robbed with a broken bottle and dispossessed of certain amount of money and telephone handsets.

In its judgment, the Court below had alluded to the confessional statement made by the appellant and described it as follows:-

"In this instance, Exhibit G was not only possible but was actually voluntarily made by the appellant. The evidence of PC Solomon at the trial within trial at pages 56 and 57 of the Record of appeal that he never beat the appellant to extract a confession from him was not demolished by cross examination, neither was the evidence of PC Solomon that the appellant voluntarily handed over to him (PC Solomon) a Nokia handset belonging to PW1 which he (the appellant) stole during the armed attack on PW1 demolished during cross examination. Is Exhibit G consistent with the other facts which had been ascertained and which have been proved? The totality of the Prosecution's case put forward so far is eloquent testimony to the fact that the appellant's confessional statement is consistent with other facts which have been ascertained and proved."

At another place in the judgment of the Court below, it was found that "all the facts and evidence point to the conclusion that Exhibit G was voluntarily made by the appellant" I cannot agree less with the trial Court and Court below on exhibit G being a voluntarily made statement by the appellant. The statement contains so much graphic details of the day to day activities and background of the appellant that only himself could have voluntarily given same but not concocted by anyone to implicate him. I am therefore not in the slightest doubt that the prosecution adduced sufficient evidence to establish the offence of armed robbery against the appellant.

Accordingly, this issue resolved against the appellant.

Now to the charge of conspiracy to commit armed robbery with which the appellant was charged, convicted and sentenced and has appealed to this Court against the affirmation of the Court below.

On this, the trial Court had referred to the confessional statement of the three accused persons that stood trial and were found guilty, convicted and sentenced for the two counts, including conspiracy.

Generally, conspiracy is an agreement between two or more persons to do an unlawful act or to do a lawful act by unlawful means. It is ordinarily a matter of inference, deduced from certain criminal acts of an apparent criminal purpose common between them. See; Folorunsho Alufohai Vs The State (2015) 3 NWLR (Pt.1445) 172; (2015) All FWLR (Pt.765) 198.

In order to secure conviction on a count of conspiracy, the prosecution must establish the elements of agreement to do something which is unlawful or to do something which is lawful but by unlawful means. Conspiracy has been held to be an offence which is difficult to prove by direct evidence as it is often hatched in secrecy, However, circumstantial evidence and inference from certain proved facts are enough to ground conviction for the offence. See Omotola & Ors Vs. The State (2009) 78 NWLR (Pt.1139) 148; (2009) 2-3 SC 7; (2009) LPELR - SC. Obiakor Vs. State (2002) 10 NWLR (Pt.774-776) 612 at 625.

It is interesting to note, as I had earlier alluded to in this judgment, that learned counsel for the appellant on the issue of conspiracy to commit the offence charged, referred to the statements of the appellant made to the Police and that of the co-accused persons in paragraphs 4.80-4.86 and conceded that at best the parties may have conspired to assault PW1 or at worst, cause him grievous bodily harm.

Having read the portions of the confessional statements of the appellant and the co-accused quoted by the appellant's counsel, I consider it apposite to state it here that it was quoted out of context to suit counsel's argument.

On page 12 of the record, the 1st accused had stated, inter alia, as follows:

"I am the person who organized the attacked (sic) because of the way Niyi Oshiyemi, the Managing Director usually treat me in the place of work that is why I called my brother who lives in Lagos, one Adewole to bring his motorcycle and one Segun who live at Ogbere and plan to attack him but only to beat him up whether he will change

but when we cross (sic) him on the road, my people whom we went together says (sic) we should carry the money inside the car, this is how we carry (sic) the money and the total money we carry (sic) was N250,125. And even the label of the total money was on the money, it's the other two boys that beat him."

B On page 23 of the record is the confessional statement of the appellant. He stated, inter alia, as follows:

"I know Kolawole Okunade (1st Accused) of Ijebu Ife. We were childhood friend and attend same school. I also know one Segun who live at Itele for about four five years ago. On the 7/5/2007 around evening time, Segun came to our house at OgbereSegun explain to me that Kolawole Okunade came to him and explain that he was cheated by somebody and he want us to beat that person up."(Brackets supplied)

D It is note worthy that, it is clearly on the record that the Statement made by the 1st accused - Kolawole Okunade led to the arrest of the appellant as one of those with whom he carried out the attack on PW1.

It is the law, that in a trial for conspiracy, evidence of what one accused person says in the absence of the other conspirators is rendered admissible against such others on the basis that if they were all conspirators, what one of them says in furtherance of the conspiracy would be admissible evidence against them, even though it was said in the absence of the other conspirators. This is said to be an exception to the hearsay rule. See; R Vs Luberg & Ors 19 CAR p.133; Wahabi O. Mumumi & Ors Vs The State (1975) 1 All NLR 294; (1975) 6 SC per Irikefe, JSC.

G Upon further reference to the testimony of PW1 and PW2 on the appellant's role in the attack on PW1, in concert or agreement with others the Court below came to the following conclusion -

"The evidence was not demolished by cross examination. The confessional statement of the appellant - Exhibit G is also in harmony with the confessional Statement of Okunade Kolawole (1st accused) a former employee of PW1 who was in fact the mastermind of the robbery attack. It was through his confessional statement Exhibit C, that the appellant was arrested."

It is settled law that the essential ingredient of the of-

fence of conspiracy lies in the bare agreement and association to carry out an unlawful act, which is contrary to or forbidden by law, whether that act be criminal or not and of course whether or not the accused persons had knowledge of its unlawfulness. See; Ikechukwu Okon Vs The State (2014), Clark Vs The State (1986) 4 NWLR (Pt.35) 381. B

From the confessional statement of the appellant and that of the co-accused persons, in particular, the 1st accused person who masterminded the operation, which statements were correctly found to be direct, positive and voluntarily made, by the trial Court, I am of the firm view without an iota of doubt that the prosecution proved the offence of conspiracy against the appellant in accordance with the law. As a result, the conviction and sentence was correctly affirmed by the Court below. Accordingly, the issue is resolved against the appellants. C
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It is interesting to note that this Court already dealt with the appeal of the 1st accused - Okunade Kolawole whose statement to the police led to the arrest of the appellant as a co-accused in the attack on PW1. In that case reported as Okunade Kolawole Vs The State (2015) 1 SCM 195 at 223, in the short but beautiful contribution in support of the leading judgment, My Lord Nweze, JSC clearly states thus:- E

“As already indicated in the leading judgment; the complainant’s stolen items were found in the appellant’s possession soon after the robbery incident complained of. It was therefore, clear case for the invocation of the presumption in Section 149 (a) of the Evidence Act (applicable in 2009 when the appellant took his trial), being the Nigerian Statutory version of the English doctrine of recent possession, Eze Vs The State (1985) LPELR - 1189 (SC) 11-13. In my humble view, the Lower Court, rightly affirmed the judgment of the trial Court even on this score alone, Aremu V. State (1991) 17 NWLR (Pt.200) 1; State Vs Nnolim (1994) 4 SCNJ 48; Aiyoola Vs State (1969) 1 All NLR 309; Adesina & Anor Vs. The State (2002) LPERLR - 9722 (SC) Oseni Vs The State (1984) 11 SC 44. F
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It could not have been otherwise for if a person is found in possession of property, which was properly reported to have been recently stolen, with or without violence from another person, it is open to a trial Court to convict that person of the offence. Isibor Vs.

The State (2002) LPELR - 1553 SC 22-23, G-C; R Vs Loughlin 35 CR App.69; In Re Karimu Attanda Vs. The State (1985) 6 SC.1"

As I had earlier alluded to in this judgment, it is on record that one of the two mobile phone handsets that were stolen from the car of PW1 during the attack on him was found on the appellant. Indeed, a call to the said phone gave him away from his hiding, in a place close to his house when the police were looking for him as the phone was ringing on his body. The trial Court found that no explanation was provided by the appellant for its possession of the said stolen telephone handset.

What more can anybody ask for before coming to the conclusion that the appellant was one of the group that attacked PW1 on the day in question.

In the final analysis, and without any further ado, I hold that this appeal is unmeritorious and deserves to be dismissed. This appeal is hereby dismissed. The judgment of the Court below delivered on 6th January, 2012 which affirmed the conviction and sentence of the appellant by the trial Court is affirmed.

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ONNOGHEN JSC

I have had the benefit of reading in draft, the leading Judgment of my learned brother, ARIWOOLA JSC just delivered.

I agree with his reasoning and conclusion that the appeal is without merit and should be dismissed.

I order accordingly. Appeal dismissed.

G

NGWUTA JSC

I had the privilege of reading in draft the leading judgment just delivered by my learned brother, Ariwoola, JSC and I adopt the reasons advanced for the dismissal of the appeal as unmeritorious.

Consequently, I also dismiss the appeal and endorse the judgment of the Court below which had affirmed the judgment of the trial Court. I affirm the conviction of and the sentence of death passed on, the appellant.

PETER-ODILI JSC

I agree with the judgment and reasoning just delivered by my learned brother, Olukayode Ariwoola JSC and to underscore my support I shall make some remarks.

This is an appeal against the judgment of the Court of Appeal Ibadan Division delivered by their Lordships Shenko Alagoa, Adzira B Gana Mshelia, Modupe Fasanmi JJCA affirming the judgment of the Ogun State High Court, Ijebu Ode delivered by C. C. Ogunsanya J. The Appellant and two others were tried on a two count charge of conspiracy to commit armed robbery and Armed Robbery Contrary C to Section 6(5) (b) and 1 (2) (a) of the Robbery and Firearms (Special Provisions Act, Cap. R.11 Laws of the Federation of Nigeria 2004.

I shall skip the background facts of this appeal since they have been well adumbrated in the leading judgment.

At the hearing on the 19th day of November, 2015, Mr. Uche D Valentine Obi SAN of counsel for the appellant adopted the Brief of Argument of the appellant filed on the 31/1/2012 and deemed filed on the 14/5/15 and a Reply Brief filed on 9/12/2014 and deemed filed on the 14/5/15.

Learned counsel had distilled four issues for determination E which are stated hereunder viz:

1. *“Whether the findings of fact of the learned justices of the Court of Appeal and the decision flowing therefrom, affirming the conviction convicting and sentence of the appellant, were not perverse and occasioned a miscarriage of justice to the appellant in the circumstances? (This is distilled from Ground 4 of the Notice of Appeal.)* F

2. *Whether the learned Justices of Court of Appeal were right to have affirmed the conviction and death sentence of the appellant G for armed robbery when it was clear from the record, that the prosecution failed to prove a case of armed robbery against the appellant beyond reasonable doubt as required by law (This issue is distilled from Ground 2 of the Notice of Appeal).*

3. *Whether the learned Justices of Court of Appeal were right H to have affirmed the conviction and death sentence of the appellant for conspiracy to commit armed robbery when it was clear from the record, that the prosecution failed to prove a case of conspiracy to commit armed robbery against the appellant beyond reasonable*

doubt as required by law (The issue is distilled from Ground 3 of the Notice of Appeal).

4. *Whether the learned Justices of the Court of Appeal were right to have endorsed the heavy reliance on the Exhibit “C” and “G” by the trial Court in convicting the appellant. (Grounds 1 & 6 of the Notice of Appeal.)”*

Learned Counsel for the respondent, A. U. Mustapha Esq. adopted the Brief of the Argument of the respondent settled by J. K. Omotosho Esq. filed on 8/12/14 and deemed filed on 14/5/15. He formulated three issues for determination which are thus:

“1. Whether the learned Justices of the Court of Appeal were right in affirming that the trial Court was right in admitting Exhibit G, the confessional statement of the appellant in evidence and attaching evidential weight to it and using same in convicting the appellant.

2. Whether the respondent proved the offences of conspiracy to commit Armed Robbery and Armed Robbery beyond reasonable doubt against the appellant.

3. Whether a slip of the pen or a clerical error at page 209 lines 8, 16 of the record of appeal inadvertently taken the appellant who was the second accused as the first accused as occasioned miscarriage of justice.

I shall utilize the issues as crafted by the respondent and take issues 1 and 2 together.

ISSUES 1 & 2

These raise the questions on the rightness of the Court of Appeal affirming the Court’s admitting the confessional statement, Exhibit G in evidence and attaching evidential weight to it in convicting the appellant and if the offences of conspiracy to commit Armed robbery and Armed Robbery against the appellant were proved beyond reasonable doubt.

Learned counsel for appellant submitted that from a careful consideration of all that transpired at the trial Court and the affirmation of the findings of fact, that there was miscarriage of justice as the findings were perverse. He cited *Lagga v. Sarhunna* (2008) 16 NWLR (Pt.114) 427 at 455; *State v. Aje* (2000) 11 NWLR (Pt.678) 434 at 449 that there is nothing in the record that justifies the finding as made by the Courts below in the conviction and sentence of appellant and that affirmation thereof. That prosecution had failed to es-

establish the offence of armed robbery against the appellant beyond reasonable doubt. He relied on *Alabi v. State* (1993) 7 NWLR (Pt.307) 511 at 523.

For the appellant, it was contended that upon a careful look at the testimonies of PW1 and PW2 there are many questions begging to be answered that no reasonable trial Court could have held that it was established that something was actually stolen from PW1, that there existed unfilled gaps especially the failure to call eye-witnesses who allegedly saw the attack and so the prosecution could not be said to have established that violence was used or threatened before or after the stealing and so this Court should reverse the findings of such attack as done by the Courts below. That the prosecution had a duty to show that when the alleged robbery took place, the accused persons were either armed with firearms or any offensive weapons or in conspiracy with any persons so armed at or immediately after the time of the robbery to show that the said offender wounded or used any personal violence to any person. He cited Section 1(2)(a) & (b) of the Robbery and Firearms (Special Provisions) Act, Cap R11, Laws of the Federation of Nigeria 2004.

Learned senior counsel for the appellant submitted that the mere fact that PW1 who knew all the accused persons very well did not at the earliest opportunity identify the accused persons as his attackers, then his later identification becomes so unreliable that no reasonable Court can accept it as sufficient proof linking the accused person to the crime. He relied on *Sunday Onuoha & Ors v. The State* (1989) 2 SC (Pt.II) 115 at 121.

On the offence of conspiracy to commit armed robbery, Mr. Uche Valentine Obi SAN said the prosecution is not just bound to establish that there was a physical meeting but also that there was a meeting of the minds of the accused persons to do a legal act by illegal means, all beyond reasonable doubt. He cited *Obiakor v. The State* (2002) 6 SC (Pt.II) 33; *Musa v. The State* (2005) 2 FWLR 343 at 344; *Oyediran v. The Republic* (1967) NMLR 122 at 128 etc.

He went on to contend that though circumstantial evidence is enough to ground a conviction as the Court can draw the necessary inference from the circumstances but such should not be done in such a haste so as to whittle down the demands of the burden and standard of proof and jeopardize the defence otherwise available to

one or more of the group. Also the circumstantial evidence must be such that is positive, unequivocal and must lead to the irresistible conclusion that it is the accused that committed the crime. He cited *Nwankwoala v. The State* (2006) 14 NWLR (Pt.1000) 663; *Chime Ojiofor v. The State* (2001) 9 NWLR (Pt.718) 371 at 385 etc.

B Learned Senior Advocate submitted that the extra judicial statements of the accused persons did not contain any evidence to show that the appellant conspired with the other accused persons to commit armed robbery on PW1 or any other person. He stated on that
C since conspiracy to do one thing is not tantamount to agreement/ conspiracy to do another thing entirely different and since armed robber is not a probable consequence of the unlawful purpose of assault or assault causing grievous bodily harm then proof that the appellant conspired with the other accused persons to beat/assault or
D cause grievous bodily harm to PW1 cannot suffice as proof to commit armed robbery on him as the probable consequences of assault/ causing grievous bodily harm can be the serious injury or resultant death of the person so beaten and not armed robbery. He cited *Ishola v. State* (1972) NSCC 614.

E Mr. Obi SAN submitted that the Court below was wrong to have endorsed and affirmed the heavy reliance on Exhibits C & G by the trial Court in convicting the appellant without confirming the voluntariness of such.

F In response, learned counsel for the respondent, Mr. Mustapha submitted that the confessional statement of the appellant, Exhibit G was admitted after a trial within trial and the learned trial Judge had enough material upon which he based the admission of the confession. Also that the trial Judge had corroborative fact such as the re-
G covered mobile phone from the appellant. That the retraction of the Statement by the appellant would not stop the Court from relying on the said confessional statement once he was satisfied as to its truth. He cited *Dibie v. State* (2007) 7 SCM 101; *Alarape v. The State* (2001) FWLR (Pt.41) 1873 at 1893 etc.

H For the respondent, learned counsel said the appellant made confessional statement, Exhibit 6 wherein he confessed to have conspired with others to rob the victim. That there are other evidence outside the confession which made the confession possible. He cited *Kaza v The State* (2008) 5 SCM 70 or 104.

For the respondent, it was canvassed that conspiracy being difficult to have direct evidence in support but is usually inferred from the facts and circumstances of each case and so in this case there was enough from the various confessional statements and the evidence of PW1 from which the inference of the conspiracy would be made. That the confessional statement of the 1st accused which became Exhibit E, since it was not objected to by the appellant became part of the evidence of the prosecution and so the facts within were corroborative of the evidence against the appellant. That it was from the confession of 1st accused that the appellant was arrested and in his possession was the robbed mobile phone of the PW1. He referred to *Oyakhire v The State* (2006) 12 SCM (Pt.1) 369 at 380 & 381.

In Brief, the standpoint of the appellant is that the respondent had not proved the two counts of conspiracy to commit armed robbery and armed robbery beyond reasonable doubt against the appellant in that the findings of fact and conclusion were perverse and led to a miscarriage of justice against the appellant.

The contrary stance of the respondent is that the case of the prosecution met the standard of proof required and the Lower Court right in holding that the trial Court rightly convicted the appellant on his confessional statement i.e. Exhibit G having found other corroborative facts outside the confession.

It is now stating the obvious that a trial Court can rely solely on the confessional statement of the accused person to convict him. In the case at hand, in the course of the trial when the confessional statement of the appellant was to be tendered and on its being objected to, the learned trial judge after the conduct of a trial within trial to determine the voluntariness or otherwise of the said exhibit and the Court being satisfied that it was voluntarily made and obtained, admitted it as Exhibit G.

In proffering that ruling, the Court had considered the fact that the mobile phone of the complainant which was snatched during the robbery was recovered from the appellant before he made the confessional statement. Also, the trial Court had observed that some facts seen in the said statement were those within the knowledge of the appellant and could not have been planted by another. Of course, the learned trial judge could not have been obstructed from admitting the confessional statement merely because, as the

trial within trial was going on, the appellant decided to resile or retract from making the statement. This therefore in fact, fast forwarded the admission of the statement thereby leaving the matter of the weight to be attached to the end of trial by which time, the corroborative circumstances or pieces of evidence would come in to solidify the confession or otherwise. I rely on *Akpa v State* (2008) 8 SCM 68 at 70; *Adebayo v A. G. of Ogun State* (2008) 5 SCM 1 at 15; *Dibie v The State* (2007) 7 SCM 101.

From the record, there were enough corroborative facts consistent with what the prosecution put forward including the appellant in testifying admitting having attended the same secondary school with the 1st accused, a fact only he and 1st accused would know. Also from the testimony of the PW1 about how the motorcycle with two occupants passed, blocked him and the two occupants robbed him, armed with bottles with which he was stabbed, facts also within Exhibit G. These coupled with the mobile phone robbed from him, collected soon after the robbery from the appellant. The attack by the appellant against that rock solid confessional statement with those corroborative facts outside of the statement seem to me a lame duck attempt to scratch a metal surface with a sponge. See *Alarape v. The State* (2001) FWLR (Pt. 41) 1873 or 1893; *Nwaebonyi v. State* (1994) 5 NWLR (Pt.342) 138 at 150.

It is therefore from the above that one can easily say that the trial Court correctly convicted the appellant based on the confessional statement as a confessional statement is the best evidence in Criminal Prosecution especially as in this case where the statement had strong supporting anchors. See *Nwachukwu v State* (2007) 12 SCM (pt.2) 447 at 455.

On the count of conspiracy which definition has one way or the other come to be a meeting of two or more minds to plan an unlawful or illegal act or to carry out a legal act through illegal means.

The offence is complete by just bare agreement to commit on offence. The offence for which the plan is being effected need not be carried out or completed.

It is because of the uniqueness of conspiracy and the fact that it is near impossible at times to establish it by direct evidence that it is usually proved through inference of the facts and circumstances of each case.

In this instant case, the contents of the confessional statement showed the conspiracy at play, then from the evidence of the complainant, PW1 testifying about the three men who rushed down from the motorcycle acting in concert showing they were of the same mind. Added to those is the confessional statement of the 1st accused from which the appellant was arrested and the stolen item found on him, B all lead to the common purpose agreement of the accused persons. Indeed, there was more than enough from which the trial Court and later affirmed by the Court of Appeal that the conspiracy as an offence committed by the appellant and his co-accused was in existence. I refer to *Kaza v The State* (2000) 5 SCM 70 at 104, *Upahar v The State* (2003) 6 NWLR (Pt.81) 230 at 239: *Oyakhire v The State* (2006) 12 SCM (Pt.1) 369 at 380. C

The strength of the case of the respondent is all the more significant in that the presumption of law under Section 167(a) of the Evidence Act 2011 is operative in that the stolen mobile phone of the complainant was found on the appellant so soon after the robbery incident and no explanation proffered for that. That alone is sufficient for the Court to make the necessary findings of guilt or that appellant was one of the robbers or received the stolen item knowing E it to be stolen. How the appellant hoped to wriggle out of the dicey situation is difficult to conjecture. See *Yongo v COP* (1990) 5 NWLR (Pt.148) 103 at 116 -117; *Aremu v State* (1991) 7 NWLR (Pt.201) 1. D

Indeed, the facts of this case show a cut and dried situation F from which the Court of trial had no room to maneuver except to make the findings it did that appellant was guilty of armed robbery and conspiracy to commit armed robbery. The situation left the Court below no option than to agree and there was nothing perverse in G those findings and no wrong application of the law in display and so I cannot interfere with those concurrent findings of the two Courts below.

From the foregoing and the better reasoning in the leading H judgment, I dismiss the appeal which is unmeritorious. I abide by the consequential orders made.

MUHAMMAD JSC

I read in draft the leading judgment of my learned brother Ariwoola JSC, I agree with his lordship that the appeal lacks merit. I adopt the reasoning outlined in the leading judgment to also dismiss the appeal. I abide by the consequential orders made in the judgment.

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