

SUPREME COURT OF NIGERIA
FRIDAY 18TH MARCH, 2016. SC. 722/2014
CORAM:- W. S. N. ONNOGHEN, C. B. OGUNBIYI,
K. B. AKA'AH, K. M. O. KEKERE-EKUN,
J. I. OKORO, JJSC

ITOMISHOR IKPO APPELLANT
V.
STATE RESPONDENT

CRIMINAL PROCEDURE - Conviction - Confession - Where a confession is positive and satisfactorily proved - It is sufficient without further corroboration - To warrant a conviction (H1)

ARMED ROBBERY - Ingredients - Proof - Prosecution must prove that there was robbery - That the robbery was armed robbery - And that accused was one of the armed robbers (H2)

EVIDENCE - Confession - Retraction - Confession does not become inadmissible merely because of retraction by accused - As the retraction will be considered in determining weight to be attached (H3)

IDENTIFICATION PARADE - Evidence - Evaluation of - Where the defence alleges that identification was mistaken - Court must closely examine the evidence - And in acting on it must view it with caution (H4)

FACTS

By an amended count charge brought by prosecution/respondent at the High Court of Cross River State, appellant and others (at large) at about 12 midnight, were alleged to have on the 31/1/2010 at No. 2 Salvation Street Abakpa Ogoja in Ogoja Judicial Division, while armed with offensive weapons to wit: locally made pistol and cutlass, robbed one Monica Mkpe of a Nokia handset valued at N5, 500.00. It was also respondent's case that appellant was apprehended some months later with the Nokia phone. He allegedly confessed to the crime in his two statements to the police. Exhibit 1 was admitted in evidence after a trial-within-trial.

Appellant's plea was taken on the amended charge and he pleaded not guilty. At the trial, respondent called three witnesses in proof of its case. Four exhibits were tendered in support. Appellant testified in his own defence and called his mother as a witness. He raised a defence of alibi for the first time during his defence. In its judgment, the court convicted appellant as charged and sentenced him to death. Dissatisfied, appellant appealed to the Court of Appeal, Calabar. The appeal was dismissed. Hence, appellant has appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Whether the Court of Appeal was right in holding that the respondent proved the charge of armed robbery against the appellant beyond reasonable doubt.

HELD (Unanimously dismissing the appeal per

KEKERE-EKUN JSC)

CRIMINAL PROCEDURE - Conviction - Confession

1. It is also the law that a free and voluntary confession of guilt by an accused person, if it is direct, positive and satisfactorily proved should occupy the highest place of authenticity when it comes to proof beyond reasonable doubt. A confession alone is sufficient, without further corroboration, to warrant a conviction.

It has been held that there is no evidence stronger than a person's own admission or confession. (p. 2131 B)

ARMED ROBBERY - Ingredients - Proof

2. In order to secure a conviction for the offence of armed robbery contrary to Section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act, LFN 2004, the prosecution must prove the following beyond reasonable doubt:

- 1. That there was a robbery or a series of robberies.**
- 2. That each robbery was an armed robbery.**

3. That the accused was one of those who took part in the armed robberies. (p. 2131 D)

EVIDENCE - Confession - Retraction

3. The complaint against Exhibit 3 was that the signature thereon was not the appellants. It is a settled principle of law that where, in a criminal trial, the accused person denies making a statement sought to be tendered in evidence, such denial does not raise the issue of admissibility. The Court would be at liberty to admit it in evidence. At the conclusion of the case, the learned trial Judge would, in his fact finding capacity, determine whether the accused made the statement or not. Since there was no allegation that the statement was obtained under duress, the Court admitted it in evidence.

The Court below did not find any reason to interfere with this finding. The appellant has failed to satisfy this Court to hold otherwise. I hold that Exhibits 1 and 3 were properly admitted in evidence.

What occurred in the instant case is that the appellant attempted to resile from his confessional statements at the trial. The Court below correctly stated the position of the law that a confessional statement made by an accused person does not become inadmissible merely because he retracted it at the trial. That the retraction would be taken into consideration in determining the weight to be attached thereto.

(p. 2132 G)

Evidence - Evaluation of

4. The law is settled that the question whether an accused person is properly identified as the one who participated in the commission of the criminal act is a question of fact to be considered by the trial Court on the evidence adduced for that purpose. It is also trite that whenever the case against an accused person depends wholly or substantially on the correctness of the identification of the accused, and the defence alleges that the identification was mistaken, the Court must closely examine the evidence and in acting on it must view it with caution, so that any real weakness discovered about it must lead to giving the accused the benefit of the doubt.

In the instant case, I agree with the trial Court and the Court below that there was no dispute as to the identity of the

appellant as being one of the robbers. (p. 2135 A)

NOTABLE POINT OF INTEREST

KEKERE-EKUN JSC

1. Criminal procedure – Standard of proof

^B Where the commission of a crime is in issue in any proceeding, the guilt of the accused must be proved beyond reasonable doubt. See: Section 135 of the Evidence Act 2011;

However, it is trite that proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. See: *Oseni Vs The State* (2012) 5 NWLR (Pt.1293) 351 @ 388 F - G, where it was held by this Court that proof beyond reasonable doubt means the prosecution establishing the guilt of an accused person with compelling and conclusive evidence. It means a degree of compulsion, which is consistent with a high degree of probability. The case of *Miller vs. Minister of Pensions* (1947) 2 ER 372 was cited with approval in *Oseni's* case at page 388 G (supra) to the effect that if the evidence is strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence of course it is possible but not in least probable, the case is proved beyond reasonable doubt. (p. 2130 F)

REPRESENTATION

^F Sonny O. Wogu Esq., with him, Eko Ejembi Eko Esq., for the Appellant

Joseph Abang Esq. Hon. A. G. Cross River State, with him, Peter Bisong (DPP), John Ogban (DDPP) and Fidelis Bisong Esq., for the Respondent

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CASES REFERRED TO

Attah v. State (2010) 10 NWLR (pt. 1201) 190

Oro v. Falade (1995) 5 NWLR (pt. 396) 385

Adepetu v. State (1998) 9 NWLR (pt. 565) 185

^H *Gabriel v. State* (1989) 5 NWLR (pt. 122) 457

Ubani v. State (2003) 18 NWLR (pt. 851) 224

State v. Kura (1975) N.S.C.C. 25

Sowemimo v. State (2004) 11 NWLR (pt. 885) 515

Evisi v. State (2000) 15 NWLR (pt. 691) 555

Onubogu v. State (1974) N.S.C.C. 358

Kareem v. FRN No.2 (2002) 8 NWLR (pt. 770) 664

Olayinka v. State (2007) 30 NSCQR (pt. 1) 149

Nwaebonyi v. State (1994) 23/24 LRCN 163

Shande v. State (2005) 22 NSCQR (pt. 2) 756

Nwachukwu v. State (2007) 31 NSCOR 312

Dibie v. State (2007) 29 NSCOR (pt. 2) 1431

B

STATUTES REFERRED TO

Robbery & Firearms (Special Provisions) Act Cap R11 vol. 14 LFN 2004, s. 1(2)(a)(b)

Evidence Act 2011, s. 135(3)

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LEAD JUDGMENT BY KEKERE-EKUN JSC

This is an appeal against the judgment of the Court of Appeal, Calabar Division, delivered on 27th June 2014, affirming the judgment the High Court of Cross River State sitting at Ogoja, delivered on 26th July 2012 convicting the appellant for armed robbery and imposing a sentence of death on him.

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The appellant was originally charged on 2/6/2011 with two counts of armed robbery contrary to Section 1(2) (a) and (b) of the Robbery and Firearms (Special Provisions) Act, Cap R11, Vol. 14, Laws of the Federation of Nigeria (LFN), 2004. On 25/1/2012, upon an application by the prosecution, the address of the venue where the offence was alleged to have taken place was amended and the second count was struck out. The original count 1 alleged that the offence took place at No. 2 Mbube Street Abakpa, Ogoja, By the amended count, the appellant and others at large, at about 12 midnight, were alleged to have, on the 31/1/2010 at No. 2 Salvation Street, Abakpa Ogoja in Ogoja Judicial Division, while armed with offensive weapons to wit: locally made pistol and cutlass, robbed one Monica Mkpe of a Nokia handset valued at N5,500.00. The appellants plea was taken on the amended charge and he pleaded not guilty.

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At the trial, the prosecution called three witnesses in proof of its case. Four exhibits were tendered and marked Exhibits 1, 2, 3 and 4 respectively. The appellant testified in his own defence and

called his mother as a witness. The prosecution's case was that the appellant and others at large, on the 31/1/2010 went to PW2's residence at No. 2 Salvation Street, Abakpa, Ogoja, at past midnight, where they met the PW2 and her father and another tenant, named Augustine Ogar. The appellant and his gang robbed PW2 of her Nokia B phone, and also robbed PW2's father of the sum of N30,000.00, They also robbed Augustine of N10,000.00. It was the prosecution's case that the appellant was apprehended some months later with PW2's Nokia phone. He allegedly confessed to the crime in his two statements to the police. Exhibit 1 was admitted in evidence after a C trial-within-trial.

On his part, the Appellant testified in his own defence and called his mother as DW2. He raised a defence of alibi, for the first time, during his defence. The trial Court found him guilty, convicted D him as charged and sentenced him to death. Dissatisfied, he appealed to the Court below, which dismissed the appeal. Still dissatisfied the appellant has approached this Court.

In compliance with the rules of this Court, the parties duly filed and exchanged briefs of argument. At the hearing of the appeal on E 21st January, 2016, SONNY O. WOGU ESQ., leading Eko Ejembi Eko Esq. adopted and relied on the appellant's brief filed on 18/11/2014 and urged the Court to allow the appeal. JOSEPH ABANG ESQ., Hon. Attorney General, Cross River State, leading other counsel from the Ministry of Justice, Cross River State, adopted and relied on F the respondent's brief, settled by JOHN O. OGBAN ESQ., which was deemed filed on 3/6/2015, He urged the Court to dismiss the appeal.

From the six grounds of appeal, learned counsel for the appel- G lant formulated a single issue for the determination of the appeal, which was adopted by learned counsel for the respondent. The sole issue is:

Whether the Court of Appeal was right in holding that the H respondent proved the charge of armed robbery against the appel- lant beyond reasonable doubt.

In support of the sole issue, learned counsel for the appellant referred to the ingredients of the offence of armed robbery, which must be proved beyond reasonable doubt by the prosecution, to wit:

(a) That there was a robbery at No. 2 Salvation Street, Abakpa-Ogoja on 31/1/2010;

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

(c) That the appellant took part in the said armed robbery.

He relied on: Attah Vs The State (2010) 10 NWLR (Pt.1201) 190 @ 244 B - D. He submitted that the evidence led by the prosecution was flimsy and that the trial Court relied on inadmissible evidence to convict the appellant. In paragraphs 2.06 and 2.07 at page 12 of his brief, learned counsel gave the following reasons to support his contention that the evidence before the trial Court did not meet the required standard of proof beyond reasonable doubt;

(a) That the so-called petition relied upon by the trial Court was not tendered in evidence before it. However, on the strength of the said document, the trial Court came to the crucial finding that the robbers were not masked and that PW2 recognised the appellant thereby.

(b) The alleged armed robbery took place at night.

(c) There were contradictions as to where the alleged armed robbery actually took place and how many people took part in the robbery.

(d) The sole eyewitness to the alleged armed robbery (PW2) was thoroughly discredited under cross-examination.?

(e) PW2, who claimed she recognised the appellant by his voice, revealed under cross-examination that she had contact with the appellant while in secondary school i.e. several years back.

(f) None of the respondent's witnesses gave evidence that a Nokia handset was recovered from the appellant. PW3 merely gave hearsay evidence of what PW2 allegedly told him.

(g) There was credible evidence of severe beating and intimidation of the appellant before the purported confessional statements were made.

(h) That there was no credible evidence to prove that there was an armed robbery at No.2 Salvation Street, Abakpa-Ogoja on 31/1/2010 or that the appellant took part in the said armed robbery.

Learned counsel referred to page 57 paragraph 3 lines 1- 11 H of the record wherein the trial Court referred to a petition written by PW2, which was shown to her by learned defence counsel but not tendered in evidence, wherein she stated that she recognised the appellant facially and by his voice, He submitted that the said peti-

tion, not having been admitted in evidence, the trial Court was wrong to have relied on it in reaching its conclusion that PW2 positively recognized the appellant, and that the Court below erred in affirming the finding. He submitted that this is a proper case for this Court to interfere with findings not based on legally admissible evidence. See:

B Oro Vs Falade (1995) 5 NWLR (Pt.396) 385 @ 403 A - B.

Learned counsel submitted further that there was no evidence on record to show that a Nokia handset was recovered from the appellant. He contended that the appellant gave credible and unshaken evidence on oath that the said handset was not recovered from him. He submitted that the Lower Court erred in relying on the appellant's confessional statements to conclude that the Nokia handset was recovered from him, He submitted that no witness testified that he retrieved the handset from him when he was apprehended. D He submitted that the Court below was wrong to have affirmed the appellant's conviction simply on the ground that he was found with a handset. He submitted that where the prosecution relies on circumstantial evidence, for such evidence to lead to a conviction, it must point to one possibility only, that is, that the offence was committed E and that it was the accused person who committed it. He cited the cases of: Adepetu Vs The State (1998) 9 NWLR (Pt.565) 185 @ 207 D - E: Gabriel Vs The State (1989) 5 NWLR (Pt.122) 457 @ 463 G - H: Ubani Vs The State (2003) 18 NWLR (Pt.851) 224 @ 241 E. He submitted further that where the evidence led is capable of two F interpretations, one against the accused and one in his favour, the standard of proof beyond reasonable doubt is not met. He referred to: The State Vs Kura (1975) N.S.C.C. 25 @ 28 lines 1 - 5. In his view, the unproved recovery of a handset from the appellant points G to other possibilities., such as the buying of a stolen good, or the receiving of a stolen good as a gift. In the circumstances, he contended that any doubt ought to be resolved in the appellants favour.

Another contention raised by learned counsel for the appellant is that there is substantial contradiction and reasonable doubt as H to the venue of the armed robbery. He submitted that PW2, the only eye witness testified before the Court that the armed robbery took place at her residence, No.2 Salvation Street (as stated in the amended charge), whereas in her statement to the police, Exhibit P2, which was shown to her, she stated that the offence took place at No. 2

Mbube Lane. He submitted that the appellant, as DW1 gave unshaken testimony that the two streets are different and far apart. He submitted that where there are contradictions in the evidence led by the prosecution, the Court is not entitled to pick and choose which version of the evidence to believe, but must reject the evidence in its entirety. See: Sowemimo Vs The State (2004) 11 NWLR (Pt.885) B 515 @ 532 D-H.

On the identification of the appellant, learned counsel submitted that he was not arrested at the scene of the crime and no offensive weapon or any item linking him to the crime was found on him. He submitted that where the case depends wholly or substantially on the correctness of the identification of the accused, which the defence alleges to be mistaken, the Court must closely examine and receive with caution, the evidence alleged, before basing a conviction on it. See: Evisi vs The State (2000) 15 NWLR (Pt.691) 555 @ 587 - 588 H - H. He noted that PW2 testified that she was a University student and that she knew the appellant while she was in secondary school. He noted further that under cross-examination, she revealed that the incident took place six years later. He argued that the Court below was wrong to have affirmed the decision of the trial Court in this regard, when the witness relied only on voice identification, having regard to the fact that, as stated in Eyisi Vs The State (supra), mistakes in recognition of close relatives and friends are sometimes made. He submitted that PW2's testimony under cross-examination revealed material inconsistencies, which ought to have rendered her evidence unreliable, He referred to: Onubogu Vs The State (1974) N.S.C.C. 358. He contended that the prosecution failed to establish beyond reasonable doubt that the appellant was one of those who took part in the alleged robbery and therefore the finding of the trial Court, affirmed by the Court below, is perverse and the appellant is therefore entitled to be acquitted and discharged by this Court.

Learned counsel submitted further that the confessional statements made by the appellant (Exhibits 1 and 3) were wrongly admitted in evidence, having been involuntarily made under duress. He submitted that the admission of the said statements in the face of "established torture and inhuman treatment defeated the purpose of a trial within trial. He argued that having proved the involuntariness

of the statements during the trial within trial, the statements constituted inadmissible evidence, which ought not to have been relied upon to convict the appellant. He submitted that the trial Court failed to use the established yardstick for determining whether a confessional statement was voluntarily made by ascertaining whether there
 B was anything outside the statement to show that it is true. See: *Kareem v. FRN No.2 (2002) 8 NWLR (Pt.770) 664 B -D*. He urged the Court to allow the appeal.

In response to the above submissions, learned counsel for the
 C respondent conceded that the prosecution has the burden of proving all the ingredients of the offence of armed robbery against the appellant beyond reasonable doubt. He referred to: *Olayinka Vs The State (2007) 30 NSCQR (Pt.1) 149*.

With regard to the venue of the offence, learned counsel sub-
 D mitted that in Exhibits 1 and 3, the appellant's confessional statements, the appellant himself confessed that he robbed at Salvation Street Abakpa Ogoja at the house of PW2 on the night of the incident. He submitted further that PW1 and PW3, the two investigating police officers in the case, visited only one place, the scene of the
 E armed robbery and met two of the victims who made statements to them confirming that they were robbed at the house visited by the said officers.

On the identification of the appellant, learned counsel referred
 F to PW2's evidence in chief wherein she stated how she was able to recognise the appellant by his voice. He noted that under cross-examination, PW1 (the IPO at Ogoja Police Station) stated that in the petition they received, it was stated that the robbers were unmasked and that PW2 recognised the appellant. He noted further that in
 G Exhibits 1 and 3, the appellant identified himself as one of the robbers and stated therein that he held a knife, which he used to beat the victims and also named other members of his gang. He also pointed out that in Exhibit 3, the appellant stated PW2's name and admitted that they (he and his gang) robbed her of her handset (Ex-
 H hibit 4), which was recovered from him by the police. He submitted that the items enumerated by the appellant tally with the items alleged to have been stolen from the victims.

As to whether the robbery was an armed robbery he submitted that the confessional statements are consistent with PW2s evi-

dence that the robbers were armed with sticks, knives and a shot gun. He observed that in Exhibit 3, the appellant stated that they were armed with machete and wood. He submitted that a knife, stick, machete and wood are all offensive weapons within the meaning of Section 11 of the Robbery and Firearms (Special provisions) Act, noting that certain objects become offensive weapons by the purpose for which they are used. He asserted that the charge of armed robbery was established against appellant beyond reasonable doubt. B

With regard to the admission of the confessional statements, Exhibits 1 and 3, learned counsel submitted that Exhibit 1, which the appellant alleged was obtained under duress, was rightly admitted in evidence after a trial within trial was conducted. He noted that the appellant did not deny the fact that he was taken before a superior police officer after making the statement nor did he inform the said officer that he was tortured before making the statement. He submitted that the claim that he was tortured was debunked under cross-examination and further that the scars he showed as evidence of torture were not related to the date he made the statement. He submitted that the evidence of DW2 (appellant's mother) that she witnessed the torture was also discredited. D E

With regard to Exhibit 3, he submitted that the appellant denied that the signature thereon was his. He submitted that on the authority of *Egboghonome Vs The State* (1993) 13 LRCN (Pt.A) 761 @ 296, the trial Court admitted the statement in evidence. He observed that the facts contained in Exhibit 3 are quite similar to the facts contained in Exhibit 1 even though the statements were made to different Police officers on different dates and at different Police Stations. He submitted that a free and voluntary confession, if positive, direct and properly proved, is sufficient, without further corroboration, to warrant a conviction. He relied on: *Nwaebonyi Vs The State* (1994) 23/24 LRCN 163 @ 186; *Shande Vs The State* (2005) 22 NSCQR (Pt.2) 756 @ 765 - 766. He submitted that a confessional statement does not become inadmissible merely because an accused person denies that he made it. He submitted that in the instant case, the trial Court went further to test the truth of the confessional statements in line with the decision of this Court in: *Nwachukwu Vs The State* (2007) 31 NSCOR 312 and rightly came to the conclusion that the appellant committed the offence charged. F G H

He submitted that the information provided by the appellant in the said statements could only be known by someone who was at the scene of the robbery. He submitted that a person who did not participate in the robbery, no matter how much he was tortured, would not be able to supply details of the crime, which tally with the evidence of the witnesses.

On the identification of the appellant as one of the robbers, learned counsel submitted that there was never any doubt as to his identity. He submitted that under cross-examination, PW2 gave a detailed account of how she knew the appellant during her secondary school days and that she recognised his voice. He referred to the evidence of PW1 wherein he stated that in PW2's petition to the Police, she stated that the robbers were not masked and that she recognised the appellant. He also referred to Exhibits 1 and 3 and the appellant's account of his participation in the robbery and what he received from the proceeds of the robbery. He submitted that by referring to PW2 by name in Exhibit 3, it confirmed the evidence of PW2 that they knew each other before the incident. Learned counsel submitted that proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt. He submitted that once the proof drowns the presumption of innocence of the accused, the Court is entitled to convict him. He referred to: Section 135 (3) of the Evidence Act, 2011 and *Dibie vs. The State* (2007) 29 NSCOR (Pt.2) 1431 @ 1462. He urged the Court to dismiss the appeal.

Where the commission of a crime is in issue in any proceeding, the guilt of the accused must be proved beyond reasonable doubt. See: Section 135 of the Evidence Act 2011; *Woolmington Vs D.P.P.* (1935) AC 462; *Esangbedo Vs The State* (1989) 4 NWLR (Pt.113) 57; *Udo Vs The State* (2006) 15 NWLR (Pt.1001) 179; *Michael vs. The State* (2008) 13 NWLR (Pt.1104) 361.

However, it is trite that proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. See: *Oseni Vs The State* (2012) 5 NWLR (Pt.1293) 351 @ 388 F - G, where it was held by this Court that proof beyond reasonable doubt means the prosecution establishing the guilt of an accused person with compelling and conclusive evidence. It means a degree of compulsion, which is consistent with a high degree of probability. The case of *Miller vs. Minister of Pensions* (1947) 2 ER 372 was cited with approval in

Oseni's case at page 388 G (supra) to the effect that if the evidence is strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence of course it is possible but not in least probable, the case is proved beyond reasonable doubt. See also: Bakare vs The State (1987) 1 NWLR (Pt.52) 579.

It is also the law that a free and voluntary confession of guilt by an accused person, if it is direct, positive and satisfactorily proved should occupy the highest place of authenticity when it comes to proof beyond reasonable doubt. A confession alone is sufficient, without further corroboration, to warrant a conviction. See: Adio v. The State (1986) 2 NWLR (Pt.24) 581; The State vs. Jimoh Salawu (2011) 18 NWLR (Pt.1279) 883 @ 920 - 921 G - A; LPELR-9351 (SC); Akinmoju v. The State (2000) 4 SCNJ 179; Kanu vs. The State (1952) 14 WACA 30; Ekpenyong Vs State (1991) 6 NWLR (pt. 200) 683. ***It has been held that there is no evidence stronger than a person's own admission or confession.***

In order to secure a conviction for the offence of armed robbery contrary to Section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act, LFN 2004, the prosecution must prove the following beyond reasonable doubt:

- 1. That there was a robbery or a series of robberies.***
- 2. That each robbery was an armed robbery.***
- 3. That the accused was one of those who took part in the armed robberies.***

See: Bozin vs The State (1985) 2 NWLR (Pt.8) 465; Suberu vs. The State (2010) 8 NWLR (Pt.1197) 586; Ani vs. The State (2003) 11 NWLR (Pt.830) 145; Attah vs. The State (2010) 10 NWLR (Pt.1201) 190 @ 244 B - D; Olayinka Vs The State (2007) 9 NWLR (Pt.1040) 561.

In determining whether there was a robbery on the night of 31st January, 2010 and whether it was an armed robbery, the trial Court relied on the evidence of PW2, the victim of the robbery, and PWs 1 and 3, the Investigating Police Officers at Ogoja Police Station and C.I.D. Calabar respectively and the confessional statements, Exhibits 1 and 3 made by the appellant. Very heavy weather has been made of the admissibility of Exhibits 1 and 3. It is therefore necessary to consider their evidential value before proceeding further. At the

time Exhibit 1 was tendered, an objection was raised by the appellant's counsel on the ground that it was not voluntarily made. The trial Court conducted a trial within trial. PW1 testified that he recorded Exhibit 1 at Area Command Headquarters, C.I.D, Ogoja on 8/6/2010. He narrated how, on 1/2/2010, PW2 and one Augustine came to the Area Command with a petition stating that they were victims of an armed robbery; how he was assigned to the case and accompanied the complainants to the scene of the crime and to the appellants house; how the appellant fled upon sighting them but was arrested the following day by the Divisional Police, Ogoja in connection with a different offence; how the appellant was sent to him and he rearrested him; how the appellant made a confessional statement and was taken before a superior police officer before whom he confirmed same and signed it.

In his defence in the trial within trial, the appellant contended that he was tortured to make the statement. He showed the Court some scars, which he alleged were the result of the beating he received. His mother who testified as DW2 testified that she witnessed her son being tortured. All the witnesses were thoroughly cross-examined. After giving careful consideration to the evidence led, the Court discountenanced the evidence of the appellant's mother, as she admitted under cross-examination that she was not present when the appellant made any statement to the police. The Court also held that there was no medical evidence as to the age of the scars the appellant showed to the Court so as to determine whether they coincided with the time the statement was made. The Court also noted that the appellant confirmed to the Superior police officer that he made the statement voluntarily and duly signed same. In light of these findings, the Court concluded that the statement was voluntarily made and admitted it in evidence. The Court below held that the statement was rightly admitted in evidence. I entirely agree.

The complaint against Exhibit 3 was that the signature thereon was not the appellants. It is a settled principle of law that where, in a criminal trial, the accused person denies making a statement sought to be tendered in evidence, such denial does not raise the issue of admissibility. The Court would be at liberty to admit it in evidence. At the conclusion of the case, the learned trial Judge would, in his fact finding capacity, de-

termine whether the accused made the statement or not. See: The State Vs Salawu (2011) 18 NWLR (Pt.1279) 883 @ 905 -906 G -A; Dawa & Anor v. The State (1980) N.S.C.C. 334 @ 345; Ogunye vs. The State (1999) 5 NWLR (Pt.604) 548 @ 570. **Since there was no allegation that the statement was obtained under duress, the Court admitted it in evidence** and found at page 49 of the record: B

“Exhibit 3 has the same contents as Exhibit 1, which I had, through trial within trial proceedings, held that accused person made voluntarily.

There is similarity between the accused person’s signature on page one of Exhibit 1 above [the] date and the signature on Exhibit 3, above date, thereon. Even the “2010” in the dates written on page one of the two Exhibits have similar handwriting features. C

For the above reasons. I find and hold that Exhibit 3 was signed by the accused person and I will make use of Exhibit 3 in this judgment.” D

The Court below did not find any reason to interfere with this finding. The appellant has failed to satisfy this Court to hold otherwise. I hold that Exhibits 1 and 3 were properly admitted in evidence. E

What occurred in the instant case is that the appellant attempted to resile from his confessional statements at the trial. The Court below correctly stated the position of the law that a confessional statement made by an accused person does not become inadmissible merely because he retracted it at the trial. That the retraction would be taken into consideration in determining the weight to be attached thereto. The Court relied on; Dibia Vs The State (2007) 9 NWLR (Pt.1038) 30, Oche Vs The State (2007) 5 NWLR (Pt.1027) 214; Ukpong vs. Queen No.1 (1961) SCNLR 53. F

I return to the ingredients of the offence, to wit: that there was a robbery, that it was an armed robbery and that the appellant was one of those who participated in the armed robbery. The Court below at pages 131 - 132 of the record held: H

“In proving that there was an armed robbery, the PW2 testified saying so, PW2 said that the appellant with others armed with a gun, knife and sticks, and robbed them at No, 2 Salvation Street. The

appellant in his confessional statements stated that he had a knife and that he was beating his victims with the knife. He agreed beating the father of PW2 before relieving him of his N30,000,00. Also the appellant came for the robbery with his other robbers with gun, knives and sticks. This was also corroborated by PW2, During the robbery,
 B PW2 was robbed of her Nokia handset.

Once prosecution proves the above ingredients beyond reasonable doubt, failure to tender the offensive weapon cannot result in the acquittal of the accused person because of the possibility of
 C doing away with the offensive weapon after the commission of the offence, in order to exculpate himself from criminal liability. *Olayinka vs The State (supra)*; *Okosi vs Attorney General Bendel State (supra)*.

The prosecution had proved that the appellant was one of the
 D robbers who came to rob them. PW2 had recognised him by his voice and his face, as she knew him since her secondary school days. The appellant also placed himself at the scene of the robbery when he stated in his confessional statement that he had a knife and beat the father of PW2 with it before stealing his N30,000.00.

E There was positive identification of the appellant by the PW2, The appellant (sic) counsel had argued that PW2 could not have identified the appellant positively, That the last time PW2 saw him and heard his voice was over six years ago.”

F At page 133, the Court below held further:

“In the instant case, the PW2 positively identified the appellant by face and by his voice, Appellant was known to her before the robbery. The appellant also placed himself at the scene and this was corroborated by the appellant himself. *Ojukwu v. The State (2002) 4*
 G *NWLR (Pt. 780) 189.*”

I agree with the Court below that having regard to the evidence of PW1 and PW2, which was corroborated by the facts as stated in Exhibits 1 and 3 by the appellant, the prosecution did prove beyond reasonable doubt that there was a robbery on the day in
 H question and that it was an armed robbery.

Learned counsel for the appellant has argued strongly that the trial Court and the Court below were wrong to have relied on the petition written to the Police by PW2, which was not in evidence before the trial Court, to determine that PW2 recognised the appel-

lant visually and by his voice. ***The law is settled that the question whether an accused person is properly identified as the one who participated in the commission of the criminal act is a question of fact to be considered by the trial Court on the evidence adduced for that purpose.*** See: Ukpabi Vs The State (2004) 11 NWLR (Pt.884) 439. ***It is also trite that whenever the case against an accused person depends wholly or substantially on the correctness of the identification of the accused, and the defence alleges that the identification was mistaken, the Court must closely examine the evidence and in acting on it must view it with caution, so that any real weakness discovered about it must lead to giving the accused the benefit of the doubt.*** See: Ukpabi Vs The State (supra): R V. Turnbull (1976) 3 All ER 549; Abudu Vs The State (1985) 1 NWLR (Pt.1) 55 @ 61 -62; Mbenu Vs The State (1988) 3 NWLR (Pt.84) 515 @ 528.

In the instant case, I agree with the trial Court and the Court below that there was no dispute as to the identity of the appellant as being one of the robbers. At page 55 of the record, the trial court held as follows:

“During examination in Chief. PW2 said, I know accused person, I recognised the voice of the accused person during the robbery. Before the incident, when I was in secondary school, I had a friend who was going out with the accused person. I used to meet the accused person in that my friend’s house whenever I went to her house,”

During cross-examination, PW1, the Ogoja IPO said:

“The petition said they were without masks and she recognised the accused.”

“She” there refers to PW2.

Earlier in the cross-examination of PW1 this is what happened about the petition:

“I work with Area Command, Ogoja. We only investigate cases based on petitions, complaints or information. We received a petition. This is the petition we received.”

Adeshi: “I don’t want to tender the petition because that is not my duty.”

The “Adeshi” above is counsel for the accused person, He was responding to my call that the petition be tendered since it was in Court.”

His Lordship continued at page 56:

“On Exhibits 1 and 3, the accused person identified himself as one of the robbers. He went on to say that he held a knife for the robbery with which he beat the victims. He gave the names of his co-robbers. On Exhibit 3 the accused person said they robbed Exhibit 4 from PW2 and that the Police recovered Exhibit 4 from him (the accused), Accused there gave the name of PW2 as Monica, confirming what PW2 said that they had known themselves before the incident, Accused stated his share of the loot from the robbery incident (N30,000.00) from Monica’s father, N10,000.00 and two telephone handsets from Monica’s neighbor and Monica’s telephone handset) to be N10,000.00 and Monica’s telephone handset. That was Exhibit 4 recovered from the accused person. All these items enumerated by the accused person tally with the items alleged by the victims as stolen from them during the robbery at Salvation Street, Abakpa-Ogoja. On Exhibit 1 accused person said he ran away from Ogoja to Lagos when he heard the Police were looking for him over the robbery incident at Salvation Street, Abakpa-Ogoja and returned to Ogoja on 15/5/2010, yet, after five months he had Exhibit 4 PW2’s telephone handset on him and it was recovered from his person when he was arrested in June 2010 (see date on Exhibits 1 and 3).”

After a review of the findings of the trial Court, the Court below held at pages 132 - 133 of the record inter alia as follows:

“It is not in every case that identification parade is necessary, where the prosecution witness had knowledge of the accused person before the crime was committed, identification parade was not necessary. *Archibong Vs The State* (2004) 1 NWLR (Pt.855) 488; *Aladu v. The State* (1998) 8 NWLR (Pt.563) 618; *Igbi vs. The State* (2000) 2 SC. 67.

...In the instant case, the PW2 positively identified the appellant by face and by his voice. Appellant was known to her before the robbery. The appellant has placed himself at the scene and this was corroborated by the appellant himself. *Ojukwu Vs The State* (2002) 4 NWLR (Pt.780) 189.”

From the excerpts of the judgments of the trial Court and the Court below reproduced above, it is quite evident that the petition written by PW2 to the Police was not the sole basis for the trial Court’s finding that the appellant was positively identified by PW2 or for the

affirmation of same by the Court below. Both Courts considered all the surrounding circumstances, including the admissions contained in the appellant's confessional statements, particularly the fact that he mentioned PW2 by name thereby corroborating the evidence of PW2 that they knew each other before the incident. Her evidence in this regard was not impugned under cross-examination. Furthermore, the appellant's statements were clear, positive and unequivocal as to the role he played in the armed robbery. The Court below, rightly in my view, upheld the trial Court's findings in this regard.

Learned counsel for the appellant has also contended that there was inconsistency regarding the address at which the robbery took place and that the evidence in respect thereof ought to be discountenanced as unreliable. The basis for his complaint is that the charge originally read that the incident took place at No. 2 Mbube Lane but was later amended to read No. 2 Salvation Street and that PW2 in her statement to the Police gave her address as No. 2 Mbube Lane. The trial Court addressed this issue at pages 51 and 52 of the record as follows:

"Because this issue cropped up during the trial, I put a question to the IPO from State CID, Calabar, who testified as Pw3 on 20/2/2012, and he responded as follows:

"I visited the scene of crime. Only No. 2 was written on the property I visited as the scene of crime. There was no name of street or Road attached to it.

Before I put that question to the witness, he had said that he believed Mbube Lane and Salvation Street are the same road because Pw2 was using them interchangeably while referring to the scene of crime, during cross-examination. The witness said the name of Mbube Lane was changed to Salvation Street although he did not know when that happened. He also said that at the time Pw2 made Exhibit 2 to him the street had two names, Mbube Lane or Salvation Street.

PW1, the IPO from Area Command, Ogoja where the case was reported and initially investigated, said he visited the scene of crime at Salvation Street, Abakpa/Ogoja and that it was a flat with students living there. I believe that even if the house had no address at all, any description which enables its identification, like PWS 1 and 3 did would suffice for our purpose here."

Affirming the above finding, the Court below at pages 133 - 134 of the record held thus:

“The learned counsel for the appellant has argued very strenuously that the supposed venue of the robbery was in doubt. To this I say that the scene was not in doubt at all. The appellant had in his statement said that he, in the company of other robbers went to No. 2 Salvation Street, Abakpa-Ogoja Local Government Area. He also stated that they robbed the residents of their valuables whilst they were sleeping outside. This information can only be known to somebody who was at the scene of the robbery at No. 2 Salvation Street, The details of the names of other robbers and where they had robbed was given by the appellant himself.

The two Investigating Police Officers, PW1 and PW3, who investigated the robbery at Ogoja and Calabar both visited the scene of robbery. Both said they went to No. 2 Salvation Street Abakpa Ogoja. The PW2 - Monica Nkpe said the appellant with others robbed them of their properties at No. 2 Salvation Street, Abakpa-Ogoja. There was no discordant tune in this piece of evidence and no discrepancy in their evidence. There is no doubt as to the venue of this robbery.”

The views of the trial Court and the Court below are unassailable and in full accord with the evidence before the Court, I agree with the Court below, which affirmed the decision of the trial Court, that there was no doubt as to the venue of the robbery or of the appellant’s participation therein, I also agree with the Court below that the trial Court did not rely solely on Exhibits 1 and 3 in convicting the appellant, but considered other credible evidence outside the statements, as enjoined by this Court in a plethora of authorities, which tended to show conclusively that there was a robbery at No. 2 Salvation Street, Abakpa-Ogoja on 31/1/2010, that it was an armed robbery and that the appellant was one of those who participated in the said armed robbery. See: Oseni vs. The State (supra) @ 387 D - F; Udofoia Vs The State (1984) 12 SC 139; Dawa Vs The State (1980) 8 - 11 SC 236; Ojegele Vs The State (1988) 1 NWLR (Pt.71) 414. I agree entirely with the Court below that the prosecution established its case against the appellant beyond reasonable doubt and was right in affirming his conviction and sentence by the trial Court. The appellant has not shown that the findings are perverse.

In light of all that has been said above, I find this appeal to be devoid of merit. It is accordingly dismissed. The judgment of the Court of Appeal, Calabar Division delivered on 27th June 2014 affirming the judgment of the High Court of Cross River State sitting at Ogoja delivered on 26th July 2012 convicting the appellant of armed robbery and sentencing him to death is hereby affirmed.

B

ONNOGHEN JSC

I have had the benefit of reading in draft, the lead Judgment of my learned brother KEKERE-EKUN J.S C. just delivered.

C

I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed

The sole issue for determination, as formulated by learned counsel for appellant, SONNY O. WOGUESQ., in the appellant brief filed on 18/11/14 as follows:-

D

“Whether the Court of Appeal were right in holding that the respondent proved the charge of armed robbery against the appellant beyond reasonable doubt?”

It is clear from the issue reproduced supra that the complaint is on the concurrent findings of fact by the Lower Courts on the ingredients of the offence charged.

E

In the instant case, the trial Court believed the testimony of the prosecution witnesses after evaluating the evidence before it and making its findings. Apart from the testimony of the prosecution witnesses, it is on record that appellant made two confessional statements before two different police officers in which he admitted committing the offence -See Exhibits 1 and 3. It is also in evidence that during the robbery, a Nokia phone belonging to PW2 was taken by the robbers which phone was later recovered by the police from appellant. The phone is Exhibit 4.

F

G

It is now settled law that a confessional statement is the best evidence to prove a charge or offence charged and that an accused/appellant can be convicted solely on his confessional statement. In the instant case, the confessional of appellant as contained in Exhibits 1 and 3 are corroborated by Exhibit 4, the recovered Nokia phone, belonging to the victim of the robbery, PW2 which was stolen during the robbery incident in question.

H

The Lower Court reviewed the totality of the evidence on record and came to the same conclusion as the trial Judge and consequently dismissed the appeal. It is my considered view that the Lower Court was right in so doing.

It is settled law that this Court, the Supreme Court of Nigeria, does not make a practice of interfering with the concurrent findings of fact by the Lower Courts except in exceptional cases such as where the findings have been demonstrated to be perverse, manifestly wrong etc, which appellant has failed to demonstrate as applicable to the facts of this case.

In the circumstance I find no reason for this Court to interfere with the concurrent findings of fact having regard to the facts on record, and consequently dismiss the appeal as lacking in merit.

Appeal dismissed.

D

OGUNBIYI JSC

I read in draft the lead judgment of my learned brother Kekere-Ekun, JSC. I agree that the appeal is devoid of any merit and should be dismissed.

This is a final appeal by the appellant against the judgment of the Court of Appeal, Calabar Division, wherein the Court dismissed the appeal of the appellant, affirmed his conviction and Sentence by the trial Court.

By an information dated 1st March, 2011 the appellant was charged with the offence of armed robbery contrary to Section 1(2)(a) and (b) of the Robbery and Fire Arms Act (Special Provisions) Act Cap R11 Vol.14 Laws of the Federation of Nigeria 2004. The appellant and others at large on the 31st day of January, 2010 at No. 2 Mbube Lane, Abakpo Ogoja while armed with offensive weapons robbed one Monica Mkpe of a Nokia hand set valued at N5,500,00 (Five Thousand Five Hundred and Fifty Naira) and the sum of N30,000.00 (Thirty Thousand Naira).

At the trial, prosecution called three witnesses: the IPO as PW1: the victim Monica Mkpe as PW2: and Sgt Anthony Idoko, to whom the case was referred later, as PW3. The four exhibits tendered by the respondent are:- Appellants 1st and 2nd confessional statements as Exhibits 1 and 3: PW2s statement -Exhibit 2 and the Nokia hand-

set -Exhibit 4.

The crucial finding by the trial Court and affirmed by the Lower Court was that:- the robbers were not masked and by reason, PW2 was able to recognize the appellant.

The sole issue raised for the determination of this appeal is:-

Whether the Court of Appeal was right in holding that the respondent proved the charge of armed robbery against the appellant beyond reasonable doubt. B

In this case, PW2 recognized the appellant by face and voice. The appellant made two confessional statements - Exhibits 1 and 3 which were confirmed before a superior police officer and endorsed by him. There is also the Nokia handset recovered from appellant which was robbed from PW2 during the armed robbery operation. C

The appellant's counsel had argued that the PW2 could not have identified the appellant positively; that the last time PW2 saw and heard the appellant was over six years past. D

It is not in every case that identification parade is necessary, where the prosecution witness had knowledge of the accused person before the crime was committed. See the cases of Archibong V. State (2004) 1 NWLR (Pt.855) P488; Aladu V. State (1998) 1 NWLR (Pt.563) P9.618 and Igbi V. State (2000) 2 SC P67. E

PW2 had recognized appellant by his voice and his face, because she had known him since her secondary school days. The appellant also placed himself at the scene of the robbery when he stated in his confessional statement that he participated in robbery at Salvation Street, Abakpa Ogoja L.G.A. at the house of PW2. The appellant confessed further that the instrument they used robbing the residents were: *"stick and (sic) knife and I used knife beating them."* F

All the items enumerated by the appellant tallied with the items alleged by the victim as stolen from them during the robbery at No. 2 Salvation Street, Abokpo - Ogoja. PW2 in her evidence testified that the appellant and the other robbers were armed with gun, knives and sticks. This is in conformity with the confession made by the appellant in his statement wherein he said thus:- G

"I have engaged myself in robbery three good times and this one makes the fourth time. And in each occasion, I operated with three different groups,... On the 31st January 2010, it was myself and two others Ada others name unknown and Niemtem other name H

unknown, that went and robbed at Salvation Street Abokpo Ogoja L.G.A. We robbed the resident of the compound we attacked (sic) the following valuables three handset and the sum of thirty thousand Naira only N30,000.00 while they were sleeping outside. ...and the money we robbed was shared among ourselves the sum of Ten thousand Naira each person and equally the handset too was shared among ourselves. If is true that my hands work is robbery.”

A free and voluntary confession alone is sufficient without further corroboration to warrant conviction. See Mustapha Mohammed V. State (2007) 30 NSCWR (Pt.1) P364. Also S.29(1) of the Evidence Act which states that a voluntary confession by an accused person is evidence against him at his trial for the offence confessed. This Section does not strictly require any direct or circumstantial evidence to corroborate the confession before conviction can be solely based on it. See Nwongbonu V. The State (1994) 23/24 LRCN Page 163 and Shande V. State (2005) 22 NSCQR (Pt.2) p.756 where it was held by this Court thus:-

“A written confession of an accused person is relevant and should not be discarded or ignored simply because - the accused person had later retracted it or resiled from that voluntary statement. Once a confessional statement is proved to have been made voluntarily, as in this instant case, and it is direct, positive, unequivocal and clearly amounts to an admission of guilt, it can still ground a conviction regardless of the fact that the maker resiled there from or retracted the same completely at trial, as such retraction does not make it inadmissible or that the trial Court should act on it.” Per Ejigunmi, JSC (of blessed memory).

The two investigating police officers PW1 and PW3 both said they went to No.2 Salvation Street Abokpo - Ogoja. PW2 - Monica Nkepe also said the appellant with others robbed them of their properties at No. 2 Salvation Street, Abakpo -Ogoja. The said evidence are both not in controversy and thus confirming the venue of the robbery.

It is in evidence per the appellant’s confessional statement also that they shared their loot of the robbery and the handsets were shared among them; that his share was N10,000.00 and a handset. The said handset was retrieved from appellant when he was apprehended and arrested. The Nokia handset retrieved from the appel-

lant was the one robbed from PW2. The appellant was certainly placed at the scene of the robbery from all the circumstances of the case.

My learned brother Kekere-Ekun, JSC has dealt exhaustively with the issue raised in this appeal. I agree with the comprehensive reasoning and conclusion arrived at, that the appeal is devoid of any merit and I also dismiss same in terms of the lead judgment and abide by all the orders made therein. B

AKA'AH'S JSC

I read in draft the judgment of my learned brother, Kekere-Ekun JSC and I entirely agree that the appeal lacks merit and should be dismissed. C

The two Lower Courts made concurrent findings of fact and came to the conclusion that the offence of armed robbery was proved beyond reasonable doubt against the appellant. There is nothing perverse in the said findings and this Court cannot interfere with them. D

PW2 knew the appellant before the robbery took place and in Exhibits 1 and 3, the appellant admitted he was one of the robbers and also confessed that part of his share of the loot was the Nokia handset. Notwithstanding the fact that he tried to resile from Exhibit 3 and alleged that he did not make Exhibit 1 voluntarily, the contents of the two exhibits are the same; so the consideration is whether the appellant had the opportunity to commit the robbery. One of the corroborative pieces of evidence which pointed to the appellant's participation in the robbery is the recovery of PW2's Nokia handset (Exhibit 4) which was one of the stolen items. Learned counsel for the appellant argued that there was no evidence on record to show that the Nokia handset was recovered from him (appellant) and the Lower Court was wrong in relying on the appellant's confessional statements to conclude that the Nokia handset was recovered from him. He contended that the unproved recovery of the handset pointed to other possibilities such as the buying of the stolen item or receiving it as a gift. E F G H

Although the appellant was not arrested at the scene of the crime or immediately after the robbery. PW1, Cpl. Arieka Monday stated that when the robbery took place, PW2 lodged a complaint and when the police went to arrest the appellant, he ran away but on

2/6/2010, the Police arrested the appellant for a different crime. And PW3, Sgt. Anthony Idoko stated that it was on 9/6/2010 that a case of armed robbery was transferred from Ogoja Area Command and was referred to him for investigation. The file was transferred along with the accused and the Nokia handset. PW2 had complained that
 B the night of 31/1/2010, a five man gang of robbers attacked her and her father and robbed them of the sum of N30,000.00 and a Nokia handset. She saw the appellant fiddling with the handset and alerted the police and this led to his arrest and the recovery of the handset
 C from him. The handset was then tendered and admitted as Exhibit 4 without objection. On being cross examined, PW3 said that Exhibit 4 was recovered from the accused (appellant) when he was arrested and when writing his statement he admitted that the Nokia handset was one of the items they took during the robbery. By this admission,
 D the appellant eliminated other possibilities that could have existed to explain the circumstances of his coming in contact with the phone.

It was rightly submitted by learned counsel for the respondent that a free and voluntary confession, if positive, direct and properly proved, is sufficient, without further corroboration to warrant a conviction. See *Nwaebonyi v. State* (1994) 5 NWLR (Pt.343) 138. *Shande v. State* (2005) 12 NWLR (Pt.939) 301.

The trial Court tested the confessional statements with the evidence which the prosecution gave and found that the confessions were true and convicted the appellant accordingly. The Lower Court
 F had no reason to interfere with the judgment, I cannot find any reason either to upturn the findings and conviction of the appellant by the two Lower Courts. It is for these reasons and the fuller reasons contained in the judgment of my learned brother, Kekere - Ekun
 G JSC that I dismiss the appeal. Appeal is dismissed.

OKORO JSC

I read in advance the judgment of my learned brother, Kekere-
 H Ekun, JSC just delivered. I agree with the reasons advanced to reach the conclusion that this appeal is devoid of any scintilla of merit and deserves an order of dismissal.

The record shows that the appellant herein was tried, found guilty and sentenced to death in respect of a robbery incident which

took place on 31st January, 2010 at No. 2 Salvation Street, Ogoja in Cross River State. The PW2, one Monica Mkpè, a victim of the robbery and former school mate of the appellant was able to recognize the appellant both through his voice and face as one of the robbers who invaded their residence on the fateful night. A petition which was not admitted into evidence led to the arrest of the appellant. A B Nokia phone belonging to the PW2 which was one of the items stolen by the robbers was recovered from the appellant. As I said, the learned trial judge found the appellant guilty and sentenced him to death.

An appeal to the Court of Appeal was adjudged unmeritorious C and was dismissed. The appellant has further appealed to this Court via a notice of appeal filed on 21st July, 2014. There are six grounds of appeal in the said notice of appeal but the appellant's counsel has distilled just one issue for the determination of this appeal. The said D issue states:

"Whether the Court of Appeal was right in holding that the respondent proved the charge of armed robbery against the appellant beyond reasonable doubt."

The learned counsel for the respondent also distilled the same E issue for determination.

To prove the charge against the appellant, the prosecution called three witnesses i.e. two police officers as PW1 and PW3 and PW2, one of the victims of the crime. The prosecution also tendered four F exhibits including Exhibits 1 and 3 - the two confessional statements made by the appellant at Ogoja and Calabar police stations respectively. Exhibit 4 was the PW2's phone recovered from the appellant.

Apart from the evidence of PW2 who, not only witnessed the incident but also a victim, the appellant made two confessional statements G admitting that he committed the offence. And at the trial, he alleged that his confessional statements were obtained under duress. The learned trial judge conducted a trial-within-trial after which the statements were adjudged voluntarily made and admitted into evidence. The Court below accepted the statements to be voluntary. It H is trite that this Court will not disturb the findings of facts of two Court below unless there is manifest error which leads to some miscarriage of justice or a violation of some principle of law or procedure. See ADAKU AMADI V. EDWARD N. NWOSU (1992) 6 SCNJ. 59,

OGUNDIYAN V. THE STATE (1991) 3 NWLR (Pt.181) 519, IYARO V. THE STATE (1988) 1 NWLR (Pt.69) 256. In the instant appeal, I have no reason to disturb the above findings.

Yes, the appellant made two confessional statements, one in Ogoja where the offence took place and in Calabar the State Capital.

B In both statements, he admitted the offence and gave details on how the booty of the operation was shared. According to the statement, the appellant received N10,000.00 and a hand set which, incidentally, belonged to PW2. Let me state here that it is not a general rule that a confession made by an accused relieves the prosecution of its
C duty of proving its case beyond reasonable doubt. Rather, for a confession to form the basis of a conviction, it has to be shown to be free, voluntary, positive and shown to be true. The learned trial judge made considerable effort to test the veracity of those confessional
D statements. The Court below agreed. I also agree on their voluntariness. Even on the said statements alone, the appellant could still have been convicted. It is a long standing and tested principle of law that an accused person can be convicted on his confessional statement alone where the confession is consistent with other ascertained
E facts which have been proved. See AKPAN v. THE STATE (1992) 7 SCNJ. 22, NTAHA v. STATE (1972) 4 SC 1, JOSEPH OKORO ABASI V. THE STATE (1992) NWLR (PT.260) 383, (1992) LPELR - 20 (SC), OGOALA V. STATE (1991) 2 NWLR (Pt.175) 509

F The appellant was not convicted based on his confessional statement alone, even though I would have accepted his conviction if it was based only on the said confessional statement. He was also convicted based on the evidence of PW2. Apart from the fact that PW2 identified him as one of the robbers, the handset belonging to PW2
G which was stolen on that night was recovered from the appellant. It is my view that the evidence adduced clearly fixed the appellant with the armed robbery attack on the PW2 and her family members on the night of 31st January, 2010. I agree that the Court below was right to uphold his conviction and sentence.

H In view of the above reasons and the more elaborate ones in the lead judgment, I agree that this appeal lacks merit and I also dismiss same. Appeal Dismissed.