SUPREME COURT OF NIGERIA

FRIDAY 20TH MAY, 2016. SC. 440/2011

CORAM:- W. S. N. ONNOGHEN, C. B. OGUNBIYI, K. B. AKA'AHS, K. M. O. KEKERE-EKUN, C. C. NWEZE, JJSC

ISIKILU OLANIPEKUN ..... APPELLANT

V.

STATE ..... RESPONDENT

EVIDENCE - Confession - Recording of - Statements by accused should be recorded in the language in which they were made - So as to ensure correctness and accuracy of the statements (H1)

EVIDENCE - Confession - Recorded in colloquial English - Statement recorded in pidgin English - Does not require translation into proper English - And can be recorded in proper English (H2)

EVIDENCE - Confession - Admission - Objection - As Exhibit D was admitted without objection - It is the weight to be attached to it - That will engage the minds of trial court and appellate courts (H3)

CRIMINAL PROCEDURE - Confession - Conviction - Provided that a confessional statement is direct and voluntary - It is enough to support a conviction (H4)

ARMED ROBBERY - Ingredient - Proof - Once it is established that the offence took place - The ingredient of the offence to be proved is to show - That accused was the robber or one of the robbers (H5)

IDENTIFICATION PARADE - Conduct of - When unnecessary - As Exhibit D was found to be free and PW2 properly identified appellant - Identity of appellant was not in doubt (H6)

FACTS

Before the High Court of Ogun State, accused/appellant and three others were charged for the offence of conspiracy to commit armed robbery and armed robbery contrary to sections 5(b) and 1(2)(a) of the Robbery and Firearms (Special Provisions) Act Cap.

38 vol. XXII Laws of the Federation of Nigeria 1990. Appellant pleaded not guilty to the charge. The case against appellant as presented by prosecution/respondent is that appellant and the others while being armed with dangerous weapons, broke into the apartment of PW2 (one Evan. Ogunremi) and demanded for money. After the robbery operation, PW2 discovered that the sum of N800.00, one Nokia and Sagem handsets were missing. Some days later, 1st accused approached PW1 to buy one of the stolen handsets. PW1 became suspicious of the action of appellant. He therefore arranged for the eventual arrest of 1st accused.

On being arrested, 1st accused made some statements to the Police and this led to the arrest of the other three accused persons and the recovery of two locally made single barrel shot guns in an uncompleted building. According to the Police IPO (Insp. Ogbonna – PW4), he cautioned 4th accused in pidgin English before recording his statement in pidgin English. He read it over to him and he thumb printed. 4th accused was later taken to a superior Police Officer where he (4th accused) confirmed the statement. The statement was tendered in evidence without any objection and was admitted as Exhibit "D". Several exhibits were admitted in evidence. Each of the accused gave evidence in his defense. At the end of the trial, the Court convicted and sentenced them to death on the count of armed robbery but stayed sentence on the 1st count of conspiracy. Aggrieved, appellant appealed to the Ibadan Division of the Court of Appeal. The appeal was dismissed. Appellant has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the Court of Appeal was right to have affirmed the decision of the trial Court which was based on extraneous evidence in finding Exhibit "D" was true in total disregard of the Supreme Court's decisions in plethora of authorities etc OKOH v. STATE (2014) LPELR 22589 (SC), (2014) 8 NWLR (Pt.1410) 502; DEMO OSENI v. STATE (2012) 5 NWLR (Pt.1293) 351?

2. Whether there was any reliable evidence in proof of the identity of the Appellant to support the Court's decision that the prosecution proved the offence of armed robbery against the Appellant beyond reasonable doubt?

HELD (Unanimously dismissing the appeal per ***AKA'AHS JSC***)

EVIDENCE - Confession - Recording of

1. Statements should be, wherever practicable, recorded in the language in which they are made. This is a practical wisdom directed to avoid technical arguments which could be raised. It is not an invariable practice but one to ensure the correctness and accuracy of the statements made by accused persons. (p. 2691 H)

EVIDENCE - Confession - Recorded in colloquial English

2. It is erroneous for anyone to assume that people who communicate in pidgin English do not understand proper or Queen's English especially in Nigeria. The use of pidgin English allows for free expression without minding the grammar which is usually employed in the proper English. Consequently, a statement which was said to have been recorded in pidgin does not require translation into proper English and any statement made in pidgin can be recorded in proper English. Exhibit "D" therefore cannot be treated as secondary evidence. It is primary evidence. (p. 2692 A)

EVIDENCE - Confession - Admission - Objection

3. Under cross-examination, he denied ever seeing any of the accused persons. The appellant alleged that he was tortured and money extorted from him before he signed the statement. Objection ought to have been taken at the time Exhibit "D" was being tendered so that a trial within trial could be ordered in order to determine the voluntariness of Exhibit "D". See: Section 29(2) Evidence Act 2011; Since the statement was admitted without objection, it is weight to be attached to the said Exhibit that would engage the minds of the trial Court and the appellate Courts. (p. 2692 F)

CRIMINAL PROCEDURE - Confession - Conviction

4. In Oseni v. State supra, this Court in considering the question whether the trial Court can convict on uncorroborated

confessional statement held that even without corroboration, a confession is sufficient to support a conviction so long as the Court is satisfied of its truth. This is based on the principle that a confessional statement so long as it is free, direct, positive and voluntary is enough to ground a conviction.

B ***The Court below considered the evidence adduced and found that there was corroboration of Exhibit "D". Each of the accused in his statement mentioned the names of the members of the robbery gang. In the case of the appellant, beside himself, the names of the other members were Lukman Olufeko***

C ***alias "Ajakaye", Ahmed Idowu, Akeem and Bayo. In his own statement, the 1st accused, Lukman Olufeko stated that on 17/8/2002 Bayo and Lekan met him in Lagos where they invited him to a robbery operation in Abeokuta. After the rob-***

D ***bery operation, he was given N6,000.00 and two handsets which he tried to dispose of on 19/8/2002. He met Bola Alausa, the 1st Prosecution Witness and tried to sell the phones to him. 1st PW became suspicious when the 1st accused could not produce the receipts for the phones. He later got in touch***

E ***with 2nd PW, Evangelist Oluseye Ogunremi, the victim of the robbery incident. It was after the 1st accused was arrested that he made his statement that led to the arrest of the other accused and the recovery of the guns. The appellant in his statement mentioned that he stole two guns that use cartridges***

F ***from the Alhaji in Ilado village and they have used the guns five times. He also said it was Lukman that took away the Phones. The recovered phones and guns provided the necessary corroboration to the statements made by all the accused***

G ***which confirmed the confession that they belonged to the same robbery gang and it was this gang that carried out the robbery on 18/8/2002. 2nd PW stated he could recognise those who carried out the robbery since they did not wear masks and even though the robbery took place at about 3.30 am, there***

H ***was light and he had seen the accused before the date of the robbery. Under Section 29(1) Evidence Act 2011, a confession made by a defendant may be given in evidence against him.*** (p. 2693 H)

ARMED ROBBERY - Ingredient - Proof

5. Once it has been established that the offence of robbery has taken place and it was armed robbery, the ingredient of the offence left is to prove that the accused was the robber or one of the robbers. (p. 2695 H)

IDENTIFICATION PARADE - Conduct of - When unnecessary

6. The identity of the accused becomes of paramount importance and where he is not apprehended at the scene of crime or soon after the commission of the crime, there is usually the need to conduct an identification parade especially where the victim did not know the accused prior to the robbery incident. In the instant appeal, the trial Court found that Exhibit "D" was true and therefore convicted the appellant based on it. The identity of appellant as one of the robbers was therefore not in doubt. Furthermore, PW2 testified that the robbers were not masked and there was light and it was the appellant who hit him with an iron and ordered him to lie down with his face facing the floor. It will be antithetical to require an identification parade to be conducted for PW2 to pick out the appellant after he had confessed to participating in the robbery. This issue is equally resolved against the appellant. (p. 2696 A/F)

REPRESENTATION

A. Kazeem with him, O. Bolarinwa, for the Appellant
W. Y. Mamman with him, Hajara Halilu (Mrs.), Hadiza U. A. Attah (Mrs.), Blessing Anazodo (Miss), A. M. Usman and Olafunso Ogunniyi, for the Respondent

CASES REFERRED TO

Modupe v. State (1988) 4 NWLR (pt. 87) 130
Labiyi v. Anretiola (1992) 8 NWLR (pt. 258) 139
Bakare v. L.S.C.S.C. (1992) 8 NWLR (pt. 262) 641
Olaiya v. State (2010) 3 NWLR (pt. 1181) 423
Okoh v. State (2014) LPELR 22589 (SC)
Oseni v. State (2012) 5 NWLR (pt. 1293) 351
Queen v. Zakwakwa of Yoro (1960) 1 N.S.C.C. 8

Nwali v. State (1991) 3 NWLR (pt. 182) 653
Olalekan v. State (2001) 18 NWLR (pt. 746) 793
Durugo v. State (1992) 7 NWLR (pt. 255) 430
Madjemu v. State (2011) 5 SCNJ 31
Obidozor v. State (1987) 4 NWLR (pt. 67) 48
Owie v. State (1985) 4 SC 1
Ogudo v. State (2011) 12 SC (pt. 1) 71
Kopa v. State (1971) All NLR 150

STATUTES REFERRED TO

Robbery & Firearms (Special Provisions) Act Cap. 38 Vol. XXII LFN 1990, ss. 1(2)(a), 5(b)
Constitution of the Federal Republic of Nigeria (as amended), s. 36(6)
Evidence Act 2011, s. 29(1)

LEAD JUDGMENT BY AKA'AHS JSC

This is an appeal against the decision of the Court of Appeal, Ibadan Judicial Division which affirmed the decision of the High Court of Justice, Ogun State wherein the appellant was sentenced to death by hanging for alleged conspiracy and armed robbery contrary to Sections 5(b) and 1(2)(a) of the Robbery and Firearms (Special Provisions) Act Cap.38 Vol. XXII Laws of the Federation 1990.

The appellant was the 4th accused person who was arraigned with 3 others for the offence of conspiracy and armed robbery at the High Court of Justice, Ogun State. The robbery incidence took place at Ewi's compound, Oke-Efon area of Abeokuta in Ogun State on 18th August, 2002 but the appellant was arrested on 3rd September 2002. The prosecution's case was that on 18th August, 2002 at about 3.30 am, the appellant in company of three others armed with guns and cutlasses broke into the apartment of Evangelist Oluseye Ogunremi who testified as PW2 and demanded for money. In the course of the robbery operation, the appellant hit PW2 with an iron on the head and subsequently ordered him to lie with his face down on the floor. After the robbery operation, PW2 discovered that the sum of N800.00 and a Nokia and Sagem handsets were missing. On 19th August, 2002 the 1st accused went to PW1 and tried to dispose of the handsets to him. PW1's suspicion was aroused when the 1st accused could not produce the purchase receipts for the handsets and he arranged

for the arrest of the 1st accused when he received information of the robbery that took place on 18/8/2002. The 1st accused on being arrested made some statements to the Police and this led to the arrest of the other three accused persons and the recovery of two locally made single barrel shot guns in an uncompleted building. According to Inspector Titus Ogbonna who gave evidence as PW4, he cautioned the 4th accused on 15/9/2002 in pidgin English before recording his statement in Pidgin English. He read it over to him and he thumb printed. He said the statement was confessional and so he took the 4th accused to a superior Police Officer where he (4th accused) confirmed the statement. The statement was tendered in evidence without any objection and was admitted as Exhibit "D". Altogether, nine witnesses testified for the prosecution and were cross-examined. Several exhibits were admitted in evidence. Each of the accused gave evidence in his defence before learned counsel for the parties addressed the Court. Judgment was delivered on 21st June, 2005. The learned trial Judge held that the prosecution proved its case against the accused persons beyond reasonable doubt and therefore sentenced each of them to death by hanging for the offence of armed robbery but stayed the sentence on the 1st count which is for conspiracy.

The appellant appealed to the Court of Appeal, Ibadan but the appeal was dismissed on 29/11/2010. This is a further appeal to the Supreme Court. The Notice of Appeal containing two grounds was filed on 24/12/2010. An amended Notice containing four grounds of appeal was filed on 2/11/2012. Learned counsel filed Amended Briefs of argument. The appellant's amended Brief was filed on 29/1/2015 while that of the Respondent was filed on 9/3/2015. Both amended briefs were deemed filed on 3/3/2016, the same date the appeal was argued. The appellant formulated two issues from Grounds 1 and 2 of the Amended Notice of Appeal. The Respondent equally raised two issues for determination. Since no issues were distilled from Grounds 3 and the Amended Notice, they are deemed abandoned and are accordingly struck out. See: Modupe v. State (1988) 4 NWLR (pt.87) 130; Labiyi v. Anretiola (1992) 8 NWLR (Pt.258) 139: Bakare v. L.S.C.S.C. (1992) 8 NWLR (Pt. 262) 641: Olaiya v. State (2010) 3 NWLR (Pt. 1181) 423.

The issues formulated by the appellant from Grounds 1 and 2

respectively of the Amended Notice of Appeal are:-

1. Whether the Court of Appeal was right to have affirmed the decision of the trial Court which was based on extraneous evidence in finding Exhibit "D" was true in total disregard of the Supreme Court's decisions in plethora of authorities etc OKOH v. STATE (2014) LPELR 22589 (SC), (2014) 8 NWLR (Pt.1410) 502; DEMO OSENI v. STATE (2012) 5 NWLR (Pt.1293) 351?

2. Whether there was any reliable evidence in proof of the identity of the Appellant to support the Court's decision that the prosecution proved the offence of armed robbery against the Appellant beyond reasonable doubt?

The same issues were raised in the respondent's brief. In his brief of argument, learned counsel for the appellant referred to the judgment of the learned trial Judge where he relied on the alleged confessional statements of the accused and the fact that it was the accused persons who took the Police to where the guns were recovered to find that despite the denial by the accused of the authenticity of the said confessional statements, they were true and thus found them guilty of the robbery charge. At the Court of Appeal, the search light was centred on the veracity of Exhibit "D" in finding the appellant guilty. Learned counsel for the appellant referred to the evidence in chief as well as the cross-examination of PW4 and submitted that having established that Exhibit "D" was made in pidgin English and recorded in pidgin English, the prosecution ought to have tendered the said statement and not Exhibit "D" which authorship is shrouded in great doubt as there is no evidence before the Court that Exhibit "D" was translated from pidgin English to proper English. He concluded that the failure of the respondent to make available to the Court the appellant's statement denied the appellant of his constitutional right to fair hearing.

Learned counsel for the respondent submitted that both the trial Court and the Court below appraised and properly evaluated all the evidence adduced before arriving at a conclusion and urged this Court not to disturb the concurrent findings of facts of the two lower Courts since there is no miscarriage of justice which has been occasioned.

The veracity of Exhibits 'D" was never raised in the trial Court. In the Court of Appeal, the issue of the statement being recorded in

pidgin English was considered as a fabrication and the statement recorded from the appellant was never tendered in Court. Apart from PW4 who stated that he recorded Exhibit "D" pidgin English and read same over to the appellant, there is nothing to show that it was translated into another language - English the official language of the Court and it does not matter that the statement was said to have been recorded in pidgin English.

The issue of fair hearing would have arisen if the appellant did not understand English at all and the statement had to be recorded in the language he speaks or understands and later translated into English. See: Section 36(6) of Constitution of the Federal Republic of Nigeria (as amended). I am not unaware of the decisions in Queen v. Zakwakwa of Yoro (1960) 1 N.S.C.C. 8 and Nwali v. State (1991) 3 NWLR (Pt.182) 653. The two cases stress the importance of getting the original statement and the translations and those who did the translations produced in Court for purposes of comparison and testing the veracity of the translated versions. Thus in Queen v. Zakwakwa of Yoro supra, the conviction of the appellant was based on his statement recorded in Mumuye and later translated by different people into Hausa and English. His conviction was set aside because the person/s who translated the statement from Mumuye to Hausa and from Hausa to English was/were not called to be cross-examined. In Nwali v. State supra however, where the accused's statement was recorded in Ibo language and translated into English and both versions of the statement (Ibo and English) were tendered in evidence, the Supreme Court held that the Court of Appeal could rely on the English version of the statement since the appellant did not disown the statement in English as not being the correct version of what he said was recorded in Ibo and the correctness of the statement in Ibo was not an issue. Since both the Ibo and English versions of the statement tendered in the High Court as exhibits were before the Court of Appeal and the medium of communication is English coupled with the fact that none of the Justices who sat over the matter in the Court of Appeal was Ibo, it was needless to place the original statement recorded in Ibo before the panel.

Statements should be, wherever practicable, recorded in the language in which they are made. This is a practical wisdom directed to avoid technical arguments which could be

raised. It is not an invariable practice but one to ensure the correctness and accuracy of the statements made by accused persons. See Olalekan v. State (2001) 18 NWLR (pt. 746) 793.

It is erroneous for anyone to assume that people who communicate in pidgin English do not understand proper or Queen's English especially in Nigeria. The use of pidgin English allows for free expression without minding the grammar which is usually employed in the proper English. Consequently, a statement which was said to have been recorded in pidgin does not require translation into proper English and any statement made in pidgin can be recorded in proper English. Exhibit "D" therefore cannot be treated as secondary evidence. It is primary evidence.

The appellant testified in his own defence. Earlier, two other accused namely Lukman Olufeko, was the 1st accused testified as DW1; also the 2nd accused, Idowu Okanlawon testified and was mistakenly labeled DW1 instead of DW2. The 4th accused ought to be DW3. In the judgment, the 3rd accused, Akeem Jimoh was said to have testified but the record does not reflect his evidence. In his evidence in chief, the appellant said he was arrested at Ijaiye in Abeokuta on 3/9/2002. He continued his evidence thus:-

"The IPO hit me with a club on the head. I made a statement which I refused. I was handcuffed and hanged to a ceiling fan. He used a plier to remove two of my teeth. I thumb printed the statement. I was asked to bring N5,000.00. My mother brought the money but it was not enough and the Police went to collect my property - such as television, fan, radio and stabilizer".

Under cross-examination, he denied ever seeing any of the accused persons. The appellant alleged that he was tortured and money extorted from him before he signed the statement. Objection ought to have been taken at the time Exhibit "D" was being tendered so that a trial within trial could be ordered in order to determine the voluntariness of Exhibit "D". See: Section 29(2) Evidence Act 2011; Durugo v. State (1992) 7 NWLR (Pt.255) 430. ***Since the statement was admitted without objection, it is weight to be attached to the said Exhibit that would engage the minds of the trial Court and the appellate Courts.*** See: Madjemu v. State (2011) 5 SCNJ 31: Obidozor v.

State (1987) 4 NWLR Pt.67 48; Owie v. State (1985) 4 SC 1; Ogudo v. State (2011) 12 SC (pt. 1) 71.

On 22/4/2005, when the appellant and the other accused persons took their plea, the appellant was represented by counsel, P. C. Iwu. The charge was read to the appellant in English and Yoruba and he pleaded not guilty. There was no complaint by the learned counsel that the appellant was an illiterate. On 18/4/2005 when the appellant testified, he did not say which statement he was forced to thumb print and it was the same learned counsel who led him in evidence in chief. It is therefore a matter of conjecture for learned counsel to submit in his address that the appellant was a complete illiterate.

Learned counsel for the appellant submitted that the Court of Appeal was wrong to have affirmed the decision of the trial Court which was based on extraneous evidence in finding that Exhibit "D" was true in total disregard of the Supreme Court's decision in Okoh v. State 2014 8 NWLR (Pt. 1410) 502 and Demo Oseni v. State (2012) 5 NWLR (Pt. 1293) 351. The two cases dealt with the admissibility of the confessional statement which has been retracted and whether the Court can convict on such a statement. Mohammed JSC (as he then was) summed up the position of the law very succinctly in his concurring judgment in Okoh v. State supra when he said at page 531:-

"The law is well settled that an accused can be safely convicted on his retracted confessional statement if the trial Court was satisfied that the accused made that statement and as to the circumstances which gave credibility to the contents of the confession. It is however, desirable that before a conviction can be properly based on such retracted confessional statement, there should be some corroborative evidence outside the confession which would make it probable that the confession was true. See: Otufale v. The State (1968) NMLR 261 at 265 - 266 and Uluebeka v. The State (2000) 7 NWLR (Pt.665) 404".

In Oseni v. State supra, this Court in considering the question whether the trial Court can convict on uncorroborated confessional statement held that even without corroboration, a confession is sufficient to support a conviction so long as the Court is satisfied of its truth. This is based on the

principle that a confessional statement so long as it is free, direct, positive and voluntary is enough to ground a conviction. See: R. v. Omokaro (1941) 7 WACA 146; Yusuf v. State (1965) NMLR 119 and Kopa v. The State (1971) All NLR 150.

In the instant appeal, the learned trial Judge found the accused guilty of the two counts in the charge based on the fact that the confession was true. This is what the Court said at page 41 of the record:-

"The totality of this evidence in my view is that all the accused persons made confessional statements and I accept the confessional statement (sic) as true. Their denial notwithstanding having regard to other facts emanating from the accused persons and the circumstances of the case".

The Court below considered the evidence adduced and found that there was corroboration of Exhibit "D". Each of the accused in his statement mentioned the names of the members of the robbery gang. In the case of the appellant, beside himself, the names of the other members were Lukman Olufeko alias "Ajakaye", Ahmed Idowu, Akeem and Bayo. In his own statement, the 1st accused, Lukman Olufeko stated that on 17/8/2002 Bayo and Lekan met him in Lagos where they invited him to a robbery operation in Abeokuta. After the robbery operation, he was given N6,000.00 and two handsets which he tried to dispose of on 19/8/2002. He met Bola Alausa, the 1st Prosecution Witness and tried to sell the phones to him. 1st PW became suspicious when the 1st accused could not produce the receipts for the phones. He later got in touch with 2nd PW, Evangelist Oluseye Ogunremi, the victim of the robbery incident. It was after the 1st accused was arrested and made his statement that led to the arrest of the other accused and the recovery of the guns. The appellant in his statement mentioned that he stole two guns that use cartridges from the Alhaji in Ilado village and they have used the guns five times. He also said it was Lukman that took away the Phones. The recovered phones and guns provided the necessary corroboration to the statements made by all the accused which confirmed the confession that they belonged to the same robbery gang and it was this gang that carried out the robbery

on 18/8/2002. 2nd PW stated he could recognise those who carried out the robbery since they did not wear masks and even though the robbery took place at about 3.30 am, there was light and he had seen the accused before the date of the robbery. Under Section 29(1) Evidence Act 2011, a confession made by a defendant may be given in evidence against him.

Learned counsel for the respondent submitted that in the determination of any case before it, the trial Court must look at all the evidence adduced and/or tendered before it vis-à-vis the facts of the case in reaching its conclusion. He maintained that the Court below analysed all the bits and pieces of evidence of the case along with the statement of the appellant before arriving at its decision.

Exhibit "D" was corroborated in all material particulars and the confession was true. The conviction of the appellant was therefore not predicated only on the confessional statements of the other co-accused persons. It was a culmination of the adoption by the appellant that he belonged to the gang of robbers which included the 1st, 2nd and 3rd accused and the corroboration of Exhibits "D" by Exhibits A, C and C1. The 1st issue is resolved against the appellant.

Issue 2 deals with the identity of the appellant. Learned counsel for the appellant pointed out that in his evidence, PW2 did not have any relationship or meeting with the appellant prior to the alleged incidence since he did not give any description of the appellant prior to his testimony in Court and that it was dock identification that was used in respect of the appellant. He then argued that the alleged robbery incidence occurred on 18/8/2002 but the dock identification of the appellant took place June 2005 - a period of about 4 years after the robbery. He submitted that the recollection of the witness is most likely to be fraught with mistakes in view of the length of time between the incidence and the dock identification of the appellant. He said that the burden of proving that the accused was the robber or one of the robbers is easily discharged when the accused is caught at the scene of the crime or shortly thereafter.

Once it has been established that the offence of robbery has taken place and it was armed robbery, the ingredient of the offence left is to prove that the accused was the robber or one of the robbers. See: Bozin v. The State (1983) 3 NWLR (Pt.8)

465. Okosi v. A-G Bendel State (1989) 1 NWLR (Pt. 100) 642 and Ikemson v. State (1997) 1 NWLR (Pt. 481) 355.

The identity of the accused becomes of paramount importance and where he is not apprehended at the scene of crime or soon after the commission of the crime, there is usually the need to conduct an identification parade especially where the victim did not know the accused prior to the robbery incident. The Court of Appeal stated the circumstances under which an identification Parade is necessary in Ndidi v. State (2007) 13 NWLR Pt. 1052 633 which was approved by this Court in Sadiku v. State (2013) 11 NWLR (Pt.1364) 191 at 213 where I said:-

"An identification parade is useful and indeed essential whenever there is a doubt about the power of a witness to recognise an accused person or when the identity of the accused person is in dispute. It is not necessary where the witness knew or was familiar with the accused or suspect well before the alleged crime was committed... the circumstances under which an identification parade is necessary ... are:-

(1) The accused was not arrested at the scene and he denies taking part in the crime; or

(2) The victim did nor know the accused before the offence; or

(3) The victim was confronted by the accused for a very short time; and/or

(4) The victim due to time and circumstances must not have had full opportunity of observing the features of the accused."

In the instant appeal, the trial Court found that Exhibit "D" was true and therefore convicted the appellant based on it. The identity of appellant as one of the robbers was therefore not in doubt. Furthermore, PW2 testified that the robbers were not masked and there was light and it was the appellant who hit him with an iron and ordered him to lie down with his face facing the floor. It will be antithetical to require an identification parade to be conducted for PW2 to pick out the appellant after he had confessed to participating in the robbery. This issue is equally resolved against the appellant.

Having resolved the issues against the appellant, I find that there is no merit in the appeal and it is accordingly dismissed. I fur-

ther affirm the conviction and sentence passed on the appellant by the Court of Appeal, Ibadan in its judgment in CA/I/31C/2006 delivered on 29/11/2010 which dismissed the appeal of the appellant against his conviction for armed robbery to which he was sentenced to death by hanging in charge No. AB/14R/2003 on 21/6/2005 by the High Court of Ogun State. Appeal dismissed.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead Judgment of my learned brother. AKA'AHS, JSC just delivered.

I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed. My learned brother has exhaustively dealt with the main and relevant issues in the appeal. The language in which the confessional statement of appellant was recorded has not been proved not to be the language of the Court. There is therefore no evidence on record that the confessional statement of appellant exhibit D which was admitted without objection is a translation of a statement made by appellant in a language other than English Language.

I hold the considered view that pidgin English is English language whether spoken or written down. To me, the distinction sought to be drawn between pidgin English and English is that of half a dozen and six. In any event, appellant never told the Court that he volunteered his statement, exhibit 'D' in pidgin English.

It is for the above reasons and the more detailed reasons given in the said lead Judgment of my learned brother that I too find no merit in the appeal which is accordingly dismissed. Appeal dismissed.

OGUNBIYI JSC

I read in draft the lead Judgment just delivered by my learned brother Aka'ahs, JSC. I agree that the appeal is devoid of any merit and should be dismissed.

The appeal challenges the decision of the Court of Appeal, Ibadan Judicial Division which affirmed the judgment of the trial High Court, Ogun State. The appellant herein was sentenced to death by hanging for conspiracy and armed robbery contrary to Section 5(b)

and 1(2)(a) of the Robbery and Firearms (Special Provision) Act.

The document Exhibit D was confessional and it was central to the conviction of the appellant. It was admitted at the trial without any objection. It is potent evidence in the hand of the prosecution for proving the accused guilty. The law is settled that there is no evidence stronger than a person's own admission or confession. See the cases of Adebayo v. A - G Ogun State (2008) 7 NWLR (pt.1085) 201 at 221; Usman v. The State (2011) 3 NWLR (pt. 1233) 1 at 11 and Oseni v. The State (2012) 5 NWLR (pt.1293) 351 at 387.

It is the appellant's complaint that the lower Court wrongly endorsed the trial Court's judgment which was founded on Exhibit D. Judicial authorities have shown that a mere denial by an accused person that he did not make any statement to the police does not ipso facto render such statement inadmissible in evidence. See Alarape v. The State (2001) 14 WRN 1 at 20: Kareem v. FRN (2001) 49 WRN 97 at 111.

However, the Court as a matter of law cannot also act on a confessional statement without first applying the test for determining its veracity and correctness. In other words, the Court is to seek any other evidence however slight, or circumstance which make it probable that the confession is true. The tests laid down in the case of R v. Sykes (1913) 1 Cr. App. 233 has been applied in numerous cases including Nwaebonyi v. The State (1994) 5 NWLR (Pt. 343) 138 and Akinmoju v. The State (2004) 4 SC (pt. 1) 64 at 81.

In other words, the Court in the circumstance is to examine the statement in the light of the following other credible evidence before it by inquiring into whether:-

1). There is anything outside the confession to show that it is true.

2). It is corroborated.

3). The facts stated in the confession are true as far as can be tested.

4). The accused person had the opportunity of committing the offence.

5). The accused person's confession is possible.

6). The confession is consistent with the other facts ascertained and proved.

For all intents and purposes, the facts contained in the state-

ments of all the accused persons put together reveal that the document Exhibit D was rightly accredited to the appellant as confessional. The corroboration is overwhelming in view of the veracity and correctness.

My learned brother has dealt adequately with the two issues raised in this appeal. With the few words of mine and more particularly on the comprehensive reasoning and conclusion arrived at by learned brother Aka'ahs JSC therefore, I also dismiss the appeal in the same terms as the lead judgment.

The concurrent judgments of the two lower Courts are hereby affirmed. The conviction and sentence of the appellant for armed robbery to which he was condemned to death by hanging is also affirmed by me.

KEKERE-EKUN JSC

I have had the benefit of reading in draft the judgment of my learned brother, AKA'AHS JSC just delivered. I agree entirety with his reasoning and conclusion that the appeal lack merit and deserves to be dismissed.

It is settled law that an accused person can be convicted solely on the basis of his confessional statement if the statement is found to be free, voluntarily made, direct and positive with reference to the offence charged. See: Adio v. The State (1986) 2 NWLR (pt. 24) 581: Mohammed V. The State (2007) 11 NWLR (Pt. 1045) 303: Okoh Vs The State (2014) 2-3 SC 184.

The retraction of a confessional statement will not render the statement inadmissible. The only duty on the Court in such circumstance is to see if there is any evidence outside the statement that makes the confession probable. See: Salawu Vs The State (1971) NWLR 249 @ 252: Aremu Vs The State (1991) 7 NWLR (Pt. 201) 1 @ 15 G-H; Nwachukwu Vs The State (2007) 17 NWLR (Pt. 1062) 3l @ 69 H; Blessing Vs F.R.N. (2015) 13 NWLR (Pt. 1475) 1.

In the instant case, not only was Exhibit D admitted without objection, there was ample evidence outside it that made its content probable. For instance, in Exhibit D the appellant listed his gang members, which included the 1st, 2nd and 3rd accused. The 1st accused equally mentioned the appellant as a member of his gang in

his own statement. In Exhibit D, the appellant stated that he procured guns for the group from one Alhaji at a village called Ilado along Idiaba/Ajobo road. PW4, one of the Investigating Police Officers testified that he interrogated the said Alhaji who confirmed that two of his guns were stolen. The circumstances of the arrest of the 1st accused after arousing the suspicion of PW1 when he was unable to produce the receipt for the phones he wanted to sell to him and the paltry sum at which he wanted to sell them, lend further credence to the narration in Exhibit D. In his statement, the appellant stated that it was the 1st accused who took away the phones snatched during the robbery. PW1 corroborated this fact by stating that it was the 1st accused who brought the phones to him for sale.

These are just a few of the facts outside Exhibit D that satisfied the two lower Courts of the appellant's participation in the commission of the offence. The appellant has failed to advance any reasons to warrant interference by this Court in the concurrent findings of the two lower Courts.

It is for these and the more detailed reasons advanced in the lead judgment that I find the appeal to be devoid of merit. It is accordingly dismissed, I affirm the judgment of the Court of Appeal, Ibadan delivered on 29/11/2010, which affirmed the appellant's conviction and sentence by the High Court of Ogun State by its judgment delivered on 21/6/2005.

NWEZE JSC

I had the opportunity of reading the draft of the leading judgement which my noble Lord, Aka'ahs JSC, just delivered now. This contribution is limited only to the submission of the appellant's counsel with respect to this Court's decisions in Okoh v. The State (2014) 8 NWLR (pt 1410) 502 and Oseni v. The State (2012) 5 NWLR (pt 1293) 351. He would appear to be under the illusion that an accused person's retraction of his confessional statement would impair its admissibility. With respect, that is incorrect.

As has been settled in a long line of cases, a retraction or denial of a confessional statement does not affect its admissibility, R. v. Sapele and Anor (1952) 2 FSC 74; R v Itule (1961) All NLR 462; Ikpasa v The State [1981] 9 SC 7; Akpan v State (1992) LPELR - 381 (SC)

36; Osakwe v. State [1994] 2 SCNJ 57; Nwangbonu v. The State [1994] 2 NWLR (pt 327) 380; Bature v State [1994] 1 NWLR (pt.320) 267; Eragna and Ors v The AG, Bendel (1994) LPELR - (SC) 30; Idowu v. State [1996] 11 NWLR (pt 574) 354; Silas Sule v. State (2009) LPELR -3125 (SC) 28-30, G-B; FRN v. Iweka (2011) LPELR - 9350 (SC) 53; Oseni v. The State (2012) LPELR -7833 (SC) 22-23.

As a corollary, our Courts have enunciated the obligation of a Court of trial in such a situation. It comes to this: it has to consider whether there is anything outside the confession which may vindicate its veracity; whether it is corroborated in any way; whether its contents, if tested, could be true; whether the defendant had the opportunity of committing the alleged offence; whether the confession is possible and the consistency of the said confession with other facts that have been established, Osetola and Anor v. The State (2012) LPELR -9348 (SC) 32-33, G-D; Kareem v FRN [2002] 7 SCM 73, Akpan v. The State (2001) 11 SCM 66; R. v. Sykes (1913) 8 C. A. R. 233, 236; Kanu v. The King (1952) 14 WACA 30; The Queen v. Obiasa (1962) 1 All NLR 651; [1962] 1 SCNLR 137; Obosi v. The State (1965) NMLR 129; Onochie and Ors v. The Republic (1966) NMLR 307, Jafiya Kopa v. The State (1971) 1 All NLR 150, Dawa v. The State [1980] 8 -11 SC 236; Ejinima v. The State (1991) 5 LRCN 1640, 1677; Arthur Onyejekwe v. The State (1992) 4 SCNJ 1, 9; [1992] 3 NWLR (Pt. 230) 444; Aiguoreghian and Anor. v. The State (2004) 3 NWLR (pt. 860) 367; [2004] 1 SCNJ 65; (2004) 1 SC (pt.1) 65.

As demonstrably shown in the leading judgment, the trial Court, as affirmed by the lower Court, factored these considerations into its decision before concluding that his denial of the confessional statement notwithstanding, other facts emanating from the accused person and the circumstances of the case were consistent with his said confession. It is for these and the more elaborate reasons in the leading judgment that I too, shall dismiss this appeal. I abide by the consequential orders in the leading judgment.