

SUPREME COURT OF NIGERIA
FRIDAY 24TH JUNE, 2016. SC. 46/2011
CORAM:- M. MOHAMMED, S. GALADIMA, C. B.
OGUNBIYI, K. M. O. KEKERE-EKUN, J. I. OKORO, JJSC

NIRAN AZEEZ LAWAL APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Proof - Onus of - Is on prosecution to establish guilt of accused beyond reasonable doubt - And accused is not to prove his innocence before court (H1)

CRIMINAL PROCEDURE - Doubt - Entitlement to - For accused to be entitled to the benefit of doubt - It must be a genuine one - Arising from some evidence before court (H2)

ROBBERY - Attempted robbery - Ingredients - For an act to constitute the offence - Accused must with intent to steal - Assault the victim in order to obtain the thing intended to be stolen (H3)

EVIDENCE - Admissibility - Appellant's statement having not been retracted - Remains admissible evidence - Which trial court rightly acted upon (H4)

EVIDENCE - Confession - Validity of - Once court is satisfied with its truth - Confessional statement is sufficient to ground a conviction without corroboration (H5)

EVIDENCE - Evaluation - Learned trial Judge carefully considered the defence of appellant - Before arriving at his final decision on the matter (H6)

FACTS

Accused/appellant was arraigned before the High Court of Ogun State, for the offence of conspiracy to commit robbery and attempted armed robbery contrary to sections 5 (b) and 2 (2) (b) of the Robbery and Firearms (Special Provision) Act (Cap 398) LFN

1990, respectively. Appellant pleaded not guilty to the charge. At the trial, prosecution/respondent's case is that appellant and his friend conspired and attempted to rob PW1 of his motorcycle with arms. However, their evil mission was foiled by presence of passers-by. Appellant in his defence, denied the charge.

The court heard submissions on behalf of both sides. At the end of trial, the learned trial Judge convicted appellant and sentenced him to five years imprisonment for conspiracy to commit robbery and to life imprisonment for attempted armed robbery. Dissatisfied, appellant approached the Court of Appeal Ibadan Division on appeal. The Court heard the appeal and in its judgment, altered appellant's conviction to a lesser offence of attempted robbery as against attempted armed robbery and set-aside the sentencing by substituting it with a sentence of 14 (fourteen) years imprisonment to run from the time of appellant's arrest. Still dissatisfied, appellant appealed to the Supreme Court, challenging his conviction and sentence by the Court of appeal.

ISSUES FOR DETERMINATION

"1. Whether the learned Justices of the Court of Appeal were right when they upheld the decision of the trial Court that the prosecution proved a case of attempted robbery against the appellant beyond reasonable doubt particularly in the light of the evidence adduced.

2. Whether the learned justices of the Court of Appeal were right when they held that the trial Court properly evaluated the evidence before the Court and duly considered the defence put up by the appellant."

HELD (Unanimously dismissing the appeal per **OKORO JSC**)

CRIMINAL PROCEDURE - Proof - Onus of

1. In criminal proceeding, the onus is always on the prosecution to establish the guilt of the accused beyond reasonable doubt and the prosecution will readily achieve this result by ensuring that all the necessary and vital ingredients of the charge or charges are proved by evidence. As was pointed out by learned counsel to both parties in this case, by Section

36 (5), under our system of criminal justice, an accused person is presumed innocent until he is proved guilty. There is therefore no question of an accused person proving his innocence before a Court of law. The duty is on the prosecution to prove the charge against an accused person beyond reasonable doubt. (p. 3070 G)

CRIMINAL PROCEDURE - Doubt - Entitlement to - Condition

2. May I state here that while it is true that in a criminal case the onus is on the prosecution throughout to establish the guilt of the accused person beyond all reasonable doubt, though not beyond any shadow of doubt, for an accused person to be entitled to the benefit of doubt, the doubt must be genuine and reasonable one arising from some evidence before the Court. (p. 3071 B)

ROBBERY - Attempted robbery - Ingredients

3. Under Section 2(1) of the Robbery and Firearms Act (supra), in order for an act to constitute attempted robbery, the accused person must with intent to steal, assault the victim or use or threaten to use actual violence in order to obtain the thing intended to be stolen. As to what constitutes an attempt, this Court in *Ozigbo V. COP* (1976) 2 SC 67 held that the act must be immediately connected with the commission of the particular offence charged and must be something more than the mere preparation for the commission of the offence.

In the instant case, evidence shows that the appellant and his co-accused beat up the PW1, whether with the butt of a gun as stated by the PW1 or with a stick as confessed by the appellant in Exhibit D (his statement to the police), the intention, to my mind, was to subdue and demobilize the PW1 in order to facilitate the commission of the crime to wit: the theft of the motor-cycle. But for the appearance of the elderly man and others, which made the appellant and his friend to abandon their nefarious activity, the offence of armed robbery or robbery would have been completed. The learned trial judge accepted the version of the PW1 which is in tandem with Exhibit D.

The appellant and his co-accused actually attempted to steal the motor cycle. There is no doubt about that, his later denial notwithstanding. (pp. 3071 F/3072 B)

EVIDENCE - Admissibility

4. The above statement of the appellant agrees substantially with the evidence of PW1. From the record, the appellant did not retract the said statement.

It remained admissible evidence throughout the trial and I agree with the Court below that the learned trial judge was right to act on it. (p. 3073 D)

EVIDENCE - Confession - Validity of

5. Now, coming to the issue of corroboration and the principle in R. V. Sykes (supra), I need to state clearly that so long as the Court is satisfied with its truth, a confessional statement alone is sufficient to ground and support a conviction without corroboration. The u-turn made by the appellant in this case is of no moment. It is now trite that once the Court is satisfied, as the trial Court was in this case, that the statement is free, voluntarily made, unambiguous, direct and positive, it can convict on it. (p. 3074 A)

EVIDENCE - Evaluation

6. The appellant had alleged that the evidence led was not properly evaluated and that his defence was not considered. If the learned trial judge did not consider the defence of the appellant, how did he come to the conclusion that it was an afterthought? The Court below held the same view when it upheld the decision of the trial High Court on the said issue. I agree with the Court below that the learned trial judge carefully evaluated the evidence and considered the belated defence of the appellant before reaching its final decision on the matter. (p. 3075 A)

NOTABLE POINT OF INTEREST

OKORO JSC

1. Confessional statement – Test of

The above proposition notwithstanding, it is however desirable to have outside the confession some evidence of circumstances no matter how slight which make it probable that the confession was true.

The six tests enunciated in *R. V. Sykes* (supra) are as follows:-

- “1. *Is there anything outside it to show that it is true?* B
2. *Is it corroborated?*
3. *Are the statements made in it of fact, true as far as they can be tested?*
4. *Was the prisoner one who had the opportunity of committing the offence?* C
5. *Is his confession possible?*
- Is it consistent with other facts which have been ascertained and which have been proved?”* (p. 3074 D)

REPRESENTATION

Olakunle Agbebi, Esq., for the Appellant
M. Mordi, Esq. with him, Mrs. O. Aliu and Kehinde Olona, Esq., for the Respondent

CASES REFERRED TO

- Idemudia v. State (1999) 7 NWLR (pt. 610) 202
Esangbedo v. State (1989) 4 NWLR (pt. 113) 57
Nwosu v. State (1998) 8 NWLR (pt. 562) 433
D.P.P. v. Stonehouse (1978) A. C. 55
Reg. v. Eagleton (1855) Dears C. C. 505 F
Ozigbo v. C.O.P. (1976) 2 SC 67
Iden v. State (1994) 8 NWLR (pt. 365) 719
R. v. Sykes (1913) 8 CR. App. R.233
Kanu v. R. 14 WACA 30 G
Dawa v. State (1980) 8 - 11 SC 236
State v. Gwangwan (2015) LPELR - 248 37 (SC)
Dimlong v. Dimlong (1998) 2 NWLR (pt. 538) 381
Onyenye v. State (2012) LPELR - 7866
Okoh v. State (2014) LPELR - 22589 (SC) H
Oladejo v. State (1987) 3 NWLR (pt. 61) 364

STATUTES REFERRED TO

Robbery & Firearms (Special Provisions) Act Cap. 398 LFN 1990,

ss. 2(2) (b), 5(b)

Constitution of the Federal Republic of Nigeria (as amended), s. 36(5)
Evidence Act Cap. 112 LFN 1990, s. 138(1)

LEAD JUDGMENT BY OKORO JSC

B This is an appeal against the judgment of the Court of Appeal
sitting at Ibadan delivered on 24th November, 2010 wherein the
Court below upheld the conviction and sentence of the appellant by
the Ogun State High Court sitting at Ijebu-Ode. The trial High Court
in its judgment of 12th October, 2005, convicted and sentenced the
C appellant herein to five years imprisonment for the offence of conspiracy to commit robbery and to life imprisonment for the offence of attempted armed robbery contrary to Section 5 (b) and 2 (2) (b) of the Robbery and Firearms (Special Provisions) Act Cap. 398 Laws
D of the Federation of Nigeria 1990 (as amended) respectively.

At the Court of Appeal, the appellant's conviction and sentence were however altered to a lesser offence of attempted robbery (as against attempted armed robbery) and the sentence was substituted with a sentence of fourteen (14) years imprisonment to run
E from the time of the appellant's arrest on 7th March, 2003.

A synopsis of the facts leading to this appeal will suffice. The evidence of the respondent as deduced from the record shows that the PW1, one Segun Kehinde, was at all material times a commercial motor-cyclist at Ikenne in Ogun State. He plied his motor-cycle on
F the 7th March, 2003 looking for passengers. The appellant and his friend, one Ahmed Olatidoye paid him the sum of N100.00 to transport them from Ikenne to Aiyeye.

They commenced the journey. At a stage, the appellant complained that his pair of shoes had fallen. The PW1 turned back to the
G spot for him to pick up the shoes. However, as soon as the PW1 stopped the motor-cycle, the appellant's friend punched him in the face. Both of them started to beat the PW1. He fell off his motor-cycle. The appellant and his friend struggled to snatch the motor-
H cycle from the PW1. In the course of the struggle, the PW1 switched off the engine of his motor-cycle.

Discovering the PW1's said success, the appellant pulled out a pistol hidden inside his shirt. He aimed it and on the PW1 to fire but it failed to fire. His friend urged him to hit the pistol butt on the PW1's

head. He complied. The effect pushed the PW1 near to unconsciousness. They dragged him to a bush by the road side. The appellant continued to pound the pistol butt on his head. The pistol butt gave way and broke into two pieces before he stopped.

It was the prosecution's further evidence that PW1's attempt to raise alarm was frustrated by the gagged condition he was subjected to by the appellant and his friend. An elderly man eventually came by the scene. Some other persons also emerged near the scene because of the little shout he was able to make. The appellant's friend saw them. He stopped struggling to start the engine of the motorcycle. He abandoned it and fled with the appellant. They carried the broken pistol along with them.

The PW1 struggled out of the bush. Some motorists assisted him to the hospital. His small bag containing the sum of N800.00 disappeared. He discovered that appellant and his friend fled with it. His description of their physical features to the sympathizers led to their arrest on the same day. He later left the hospital to the police station. There he identified the appellant and his friend as his attackers. The police recorded his statement.

The PW2, a police sergeant at Odogbolu Police Station investigated the case. The voluntary statements of the appellant to him were admitted in evidence without objection as Exhibits B and D. He visited the scene of incident with the appellant, the PW1 and many other persons on 10th, March, 2003. They searched the scene of the incident but nothing was recovered.

The PW3, a police corporal attached to the anti robbery section of the State C.I.D. Elewera, Abeokuta, continued with the investigation of the case. He recorded the statement of the appellant. The PW3 treated the statement as confessional. He took it to his superior officer, Assistant Superintendent of Police (ASP) Lukor Agbor, who endorsed it. The statement was admitted in evidence after a trial-within-trial as Exhibit F. He visited the scene of crime on 19th March, 2003. The appellant, the PW1 and an inspector of police called Olusegun Olusade accompanied him. They searched the scene again and the butt of the shot gun was recovered on the scene. It was admitted in evidence as Exhibit L.

The appellant's version of the facts is that he accompanied his friend to Ikenne-Remo on 7th March, 2003. They were on a visit to

one brother Ibukun Gbadebo. They left his house at about 1.00pm to return to Aiyepe. The PW1 carried them on his motor-cycle at Ikenne for the journey. He accepted the negotiated fare of N100.00 for the trip.

It is his story that in the course of the journey, the PW1 asked them to add N20.00 to the fare to make for the effect of their heavy weight on the motor-cycle. They argued with him for sometime. The appellant and his friend refused to increase the fare for the PW1, reminding him of the earlier agreed sum of N100.00 for the trip. The PW1 then demanded for the N100.00. They told him that payment would be made at Aiyepe. They continued the journey. Just about three poles to their destination, the PW1 stopped the motor-cycle. He insisted on payment of the fare. The appellant paid him the agreed fare of N100.00. He insisted on N120.00. They refused to yield ground.

According to the appellant the PW1 boasted that he would use his O.P.C. status to deal with them. They started to move away. The PW1 held the appellant on the collar of his shirt. That the PW1 hit the appellant on the chest with first blows. The appellant retaliated like-wise. It became a fight. An old man pushing his bicycle towards Aiyepe saw them. He stopped and stepped in to separate the fight. They succeeded in stopping the fight. The elderly man heard all of them to know the cause of the fight. He reprimanded the PW1 for demanding the extra fare of N20.00. He advised them to depart in peace. He left. The PW1 rode towards Aiyepe. They continued on foot in the same direction. Some policemen, followed by the PW1 arrested them on the way.

The appellant confirmed the two visits to the scene of crime given in the evidence of PW1 and PW3. He denied assaulting and robbing the PW1. He ended his evidence by denying the respondent's case.

As earlier stated, the learned trial judge found as a fact that the respondent proved its case against the appellant beyond reasonable doubt. He convicted him of conspiracy to commit armed robbery and of attempted armed robbery. The Lower Court however reduced the offence and sentence from attempted armed robbery and life imprisonment to attempted robbery and 14 (fourteen) years imprisonment respectively. Not still satisfied with the said judgment, the

appellant has further appealed to this Court.

Notice of appeal was filed on the 21st day of December, 2010. Three grounds of appeal are contained therein. Parties filed and exchanged briefs. On the 7th April, 2016 when this appeal was heard, learned counsel for the appellant, Olakunle Agbebi Esq., adopted appellant's brief settled by him. The said brief settled by him contains two issues distilled from the three grounds of appeal alluded to above. The two issues are as follows:-

"1. Whether the learned Justices of the Court of Appeal were right when they upheld the decision of the trial Court that the prosecution proved a case of attempted robbery against the appellant beyond reasonable doubt particularly in the light of the evidence adduced."

2. Whether the learned justices of the Court of Appeal were right when they held that the trial Court properly evaluated the evidence before the Court and duly considered the defence put up by the appellant."

Also, the learned counsel for the respondent, Mark Mordi, Esq., in the brief settled by D. D. Kelli Esq., has adopted the two issues formulated by the appellant. I shall in the circumstance determine this appeal based on the said two issues.

In this appeal, the learned counsel for the appellant argued issues one and two together. In the main, he opines that by Section 36 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), an accused person is presumed innocent until he is proved guilty and that by Section 138 (1) of the Evidence Act Cap. 112, the standard of proof is that beyond reasonable doubt. According to him, the burden of proof is on the prosecution. He relies on the following cases. *Idemudia v. The State* (1999) 7 NWLR (Pt.610) 202 at 215, *Esangbedo v. State* (1989) 4 NWLR (Pt.113) 57, *Nwosu v. State* (1998) 8 NWLR (Pt.562) 433.

On what constitutes an attempt to commit an offence, learned counsel referred to the cases of *D.P.P. v. Stonehouse* (1978) A. C. 55, *Reg. V. Eagleton* (1855) Dears C. C. 505, *Ozigbo v. C.O.P.* (1976) 2 SC 67, and *Iden V. State* (1994) 8 NWLR (Pt.365) 719 amongst others. He submitted that the proof required must be as to the inescapable inference from the available evidence that the actions of the appellant can bear no other meaning except that he would have

been guilty of the main offence if he had not been stopped by some involuntary act.

It is his further submission that the Court of Appeal was wrong to have agreed with the Trial Court that only the testimony of PW1 was to be believed. He argued that heated arguments over transport fares have often been known to lead to the exchange of blows throughout Nigeria, so it is not impossible. According to him, if the learned Trial Judge was to rightly hold that the prosecution had succeeded in proving the offence of attempted robbery against the appellant in the instant case, then, it would have been necessary for the prosecution to have proved that there was no equivocation as to the exact interpretation to give the overt acts that occurred on the Ikenne-Aiyeye Road. That the learned Trial Judge ought to have gone on to ensure that from the evidence adduced by the prosecution, any equivocation as to whether the overt acts were an altercation resulting from an attempt by PW1 to extort money.

On the issue of evaluation of evidence, learned counsel submitted that the learned trial Judge did not evaluate the evidence given at the trial and the Court of Appeal was wrong to have held otherwise. That the trial Court failed to consider the defence available to the appellant particularly in the light of appellant's oral evidence in Court during the trial. He argued that merely branding the evidence of the appellant as "an afterthought" was not sufficient.

The appellant's counsel submitted again that the trial Court failed to closely scrutinize the prosecution's case to establish if indeed they had disproved the defence put forward by the appellant both in his statements and in his testimony during the trial. It is his view that the Court below failed to consider this fact.

Finally, he submitted that the confessional statement of the appellant was not subjected to the test laid down in *R. V. Sykes* (1913) 8 CR. App. R.233, *Kanu v. R.* 14 WACA 30 and *Dawa v. State* (1980) 8 - 11 SC 236. He urged the Court to resolve the two issues in favour of the appellant and allow the appeal.

In response, the learned counsel for the respondent concedes the submission that criminal cases must be proved beyond reasonable doubt but opines that it is not proof beyond all shadow of doubt, relying on *The State v. Gwangwan* (2015) LPELR - 248 37 (SC) at Pp 46-47 Paras A-C, *Dimlong V. Dimlong* (1998) 2 NWLR (Pt.538)

381 at 178.

It is his contention that there is no ground of appeal which relates to the argument in the case of *R. V. Sykes* (supra). He opines that the basis of the appellant's argument regarding reliance on the confessional statement as contained at Paragraphs 6.40 - 6.51 of his brief of argument is the Lower Courts alleged failure to correctly apply the test enunciated in *R. V. Sykes* (supra) and not the inadmissibility of the confessional statement for its involuntariness or a failure to conduct a trial-within-trial. That there is no ground of appeal which bears relevance to the application of the test in *R. V. Sykes*. It is his further submission that the test is wholly inapplicable to this case as there is no appeal against the finding of the Lower Court that the appellant did not retract his confessional statement (Exhibit D.)

According to learned counsel, the test in *R. V. Sykes* (supra) is applicable in instances where an accused person retracts a confessional statement earlier made and not where the voluntariness of the confessional statement is the issue in contest. That the Court can convict solely on a confessional statement without any corroborative evidence, relying on *Obasi Onyenye V. The State* (2012) LPELR - 7866, *Okoh V. The State* (2014) LPELR - 22589 (SC).

Learned counsel further submitted that Exhibit D was tendered and admitted in evidence and the appellant who had the opportunity to either retract same or object to its voluntariness, accepted that it be admitted in evidence without any objection. He submitted further that the evidence of PW1 is sufficient corroboration in law and adequately satisfies the test in *R. V. Sykes* (supra) to render Exhibit D credible and reliable in assuming that corroboration is necessary. He cites and relies on the cases of *Federal Republic of Nigeria V. Faith Iwaka* (2011) LPELR - 9350 (SC), *Adekunle Oluwafemi Alo V. The State* (2015) LPELR 2440 (SC).

In his further argument, learned counsel submitted that the evidence of PW1 is credible and that no legal justification has been offered to warrant this Court interfering with the concurrent findings of the two Courts below. It is his submission that the fact that an aspect of a witness' evidence is rejected does not make the entire evidence unreliable. Thus, the failure to produce the gun or the butt of it did not discredit the evidence of PW1, relying on the case of *Okputu-Obiode & Ors V. The State* (1970) All NLR 36.

Learned counsel submitted further that appellant failed to appeal against the findings of the Courts below that his defence relating to fare was introduced only at the defence stage in Court and as such it was an afterthought. Moreso, he submitted that the inconsistency in the appellant's oral testimony and Exhibit D would not negative the appellant's conviction in the face of the PW1's clear and unchallenged evidence. That it will not be in the interest of justice to allow a man who has confessed to his crime to walk out of Court a free man simply because he had changed his mind, referring to the case of Oladejo V. State (1987) 3 NWLR (Pt 61) 364 at 427.

On the attempt by the appellant to impugn the credibility of Exhibit D, he submitted that it is not possible as there is no ground of appeal against the findings.

On the second issue, learned counsel submitted that this appeal is against the judgment of the lower Court and not that of the trial Court. Listing 8 points, counsel posits that the Court below clearly showed that the trial Court effectively evaluated the evidence before it. It is his further submission that the judgment of the Lower Court shows clearly that the question regarding the mental element of the offence was specifically isolated and dealt with by the Lower Court.

On the point regarding the failure to resolve the equivocation raised in the defence of the appellant, he submitted that it was addressed on pages 19 - 22 of the judgment of the lower Court.

On the whole, he urged the Court to resolve the two issues against the appellant and dismiss the appeal.

The resolution of the two issues argued above turns on the preference by the learned trial judge as upheld by the Court below of the version of evidence given by the PW1 and the reliance on Exhibit D, the confessional statement of the appellant. The appellant had queried in the first issue whether the prosecution proved the charge beyond reasonable doubt. ***In criminal proceeding, the onus is always on the prosecution to establish the guilt of the accused beyond reasonable doubt and the prosecution will readily achieve this result by ensuring that all the necessary and vital ingredients of the charge or charges are proved by evidence. As was pointed out by learned counsel to both parties in this case, by Section 36 (5), under our system of criminal justice, an accused person is presumed innocent until he***

is proved guilty. There is therefore no question of an accused person proving his innocence before a Court of law. The duty is on the prosecution to prove the charge against an accused person beyond reasonable doubt. See Williams V. The State (1992) LPELR-3492 (SC), (1992) 10 SCNJ 74, Sebastian Yongo V. Commissioner of Police (1992) LPELR -3528 (SC), (1992) 4 SCNJ 113, B Ogundiyin V. The State (1991) LPELR - 2333 (SC), (1991) 3 NWLR (pt. 181) 519.

May I state here that while it is true that in a criminal case the onus is on the prosecution throughout to establish the guilt of the accused person beyond all reasonable doubt, though not beyond any shadow of doubt, for an accused person to be entitled to the benefit of doubt, the doubt must be genuine and reasonable one arising from some evidence before the Court. See State V. Gwangwan (2015) LPELR - 24837 D (SC), The State V. Aibangbe (1988) LPELR - 3208 (SC), (1988) NWLR (pt. 84) 548.

The appellant herein, though charged alongside another, with conspiracy to commit armed robbery and armed robbery, was found guilty of conspiracy and attempted armed robbery punishable under E Section 2 (2) of the Robbery and Firearms (Special Provisions) Act, Cap. 398, Laws of the Federation of Nigeria, 1990 (as amended). Appellant was sentenced to life imprisonment. The Lower Court however reduced the punishment to 14 years imprisonment having held F that the appellant ought to have been found guilty of a lesser offence of attempted robbery only, punishable under Section 2 (1) of the same Act.

Under Section 2(1) of the Robbery and Firearms Act (supra), in order for an act to constitute attempted robbery, the accused person must with intent to steal, assault the victim or use or threaten to use actual violence in order to obtain the thing intended to be stolen. As to what constitutes an attempt, this Court in Ozigbo V. COP (1976) 2 SC 67 held that the act must be immediately connected with the commission of the particular offence charged and must be something more than the mere preparation for the commission of the offence. In H Ibrahim V. The State (1995) 3 NWLR (pt. 381) 35 at 45, this Court, per Pats-Acholonu, JSC stated in respect of the offence of attempt

that:

“The actus reus necessary to constitute an attempt is complete if the prisoner does an act which is a step towards the commission of the specific crime which is immediately and not mere remotely connected with the commission of it and the doing of which cannot reasonably be regarded as having any other purpose than the commission of a specific crime.”

In the instant case, evidence shows that the appellant and his co-accused beat up the PW1, whether with the butt of a gun as stated by the PW1 or with a stick as confessed by the appellant in Exhibit D (his statement to the police), the intention, to my mind, was to subdue and demobilize the PW1 in order to facilitate the commission of the crime to wit: the theft of the motor-cycle. But for the appearance of the elderly man and others, which made the appellant and his friend to abandon their nefarious activity, the offence of armed robbery or robbery would have been completed. The learned trial judge accepted the version of the PW1 which is in tandem with Exhibit D.

The appellant and his co-accused actually attempted to steal the motor cycle. There is no doubt about that, his later denial notwithstanding.

In Exhibit D, the confessional statement of the appellant, this is what he said:-

“In addition to the statement I made to the police before, I want to say that I came to Aiyeye from Ikorodu to steal a motor-cycle and I planned with my friend Ahmed Olatidoye on how we can do it, I came to Aiyeye on the 04/3/2003 and stayed with my friend Ahmed Olatidoye M. On the 07/3/2003, my friend Ahmed Olatidoye and myself went to Ikenne Remo and on getting to Ikenne Remo we chartered a motor-cyclist to carry us to Aiyeye. The motorcyclist charged us the sum of N100.00k. At about 4pm. The man carried us on his motor-cycle and headed to Aiyeye and on the way to Aiyeye I dropped my sandal from my leg on the road and I told the motor-cyclist that I wanted to take my sandal that fell off my leg and the man turned back to enable me take the sandal from the road. Immediately the man stopped his motor-cycle we ordered him to surrender his motor-cycle and he struggled it with us, we started to beat

him. I hit the man on his head with a big stick which I picked on the ground and he fell down and Ahmed Olatidoye removed the ignition key of the motor-cycle during the struggling. We later overpowered the man and left him in the bush beside the road. Ahmed Olatidoye kicked the motor-cycle and it did not start and I also tried but it did not start. When we realized that the motor-cycle did not start, we abandoned the motor-cycle and ran towards Aiyepe road. Some people were passing while we were struggling with the man to steal his motor-cycle. As we were running along the Aiyepe road, a white car parked beside us and some policemen in mufti get us arrested and took us to the police station. When we were searched at the station, a bunch of charm was seen on the body of Ahmed Olatidoye M. Ahmed Olatidoye would have been ridding the motor-cycle for commercial purpose at Aiyepe if we had succeeded. I did not hold a gun which I hit on the head of the motor-cyclist; it was a stick which I picked on the ground that I hit on the head of the man. I never steal a motor-cycle before, this is the first time I took part in stealing a motor-cycle, AZEEZ LAWAL 10/3/003.”

The above statement of the appellant agrees substantially with the evidence of PW1. From the record, the appellant did not retract the said statement.

It remained admissible evidence throughout the trial and I agree with the Court below that the learned trial judge was right to act on it. Speaking about Exhibit D, the Court below has this to say on pages 136 and 141 of the record:

“Exhibit D, the confessional statement of the appellant to the police at Odogbolu was admitted in evidence without objection. It was made on 10th March, 2003, about three days after the incident. PW2 recorded it. He was not cross-examination to show it was involuntarily made. The appellant did not disown it in his evidence. ...Exhibit D was not retracted by the appellant. He did not refer to it in his evidence.”

It is rather curious that the appellant raised the issue of disagreement over transport fare for the first time in his defence in Court. This much the Court below held that the appellant’s introduction of that line of defence for the first time at the defence stage of the case was rightly held by the trial Court as an afterthought. I agree. It is my view that if this fact was available at the onset, the appellant would

have stated same earlier than he did. That defence was indeed an afterthought. Both the trial Court and the Court below were right to so hold.

Now, coming to the issue of corroboration and the principle in R. V. Sykes (supra), I need to state clearly that so long as the Court is satisfied with its truth, a confessional statement alone is sufficient to ground and support a conviction without corroboration. The u-turn made by the appellant in this case is of no moment. See Federal Republic of Nigeria V. Faith Iweka (2011) LPELR - 9350 (SC), Abacha V. The State (1996) 3 NWLR (pt. 438) 530 at 533, Egboghonome V. State (1993) 7 NWLR (Pt.367) 373. **It is now trite that once the Court is satisfied, as the trial Court was in this case, that the statement is free, voluntarily made, unambiguous, direct and positive, it can convict on it.** See Dawa V. State (1990) 8 - 11 S.C. 236 at 267, Jimoh Yesufu V. State (1976) 6 SC.16.7 at 173. The above proposition notwithstanding, it is however desirable to have outside the confession some evidence of circumstances no matter how slight which make it probable that the confession was true. See Hassan V. The State (2001) 15 NWLR (pt. 735) 184, Effiong v. The State (1998) 8 NWLR (pt. 562) 362, Onochie & Ors V. The Republic (1966) NMLR 307.

The six tests enunciated in R. V. Sykes (supra) are as follows:-

- “1. Is there anything outside it to show that it is true?”
 2. Is it corroborated?
 3. Are the statements made in it of fact, true as far as they can be tested?
 4. Was the prisoner one who had the opportunity of committing the offence?
 5. Is his confession possible?
- Is it consistent with other facts which have been ascertained and which have been proved?”*

If one applies the above tests to the facts of this case, it is clearly seen that the evidence led by the prosecution against the appellant agrees with Exhibit D, the confessional statement of the appellant excepting that whereas PW1 said that the appellant used the butt of a gun to hit him, the appellant said in Exhibit D that he used a stick. For me, it does not make any difference, whether it was the butt of a gun or a stick that was used to beat the PW1, the desired effect was

the same i.e. to intimidate and drive fear into the PW1 to facilitate the stealing of the motor-cycle. So whether the learned trial judge openly applied the test or not, it does not make any difference since he was satisfied that the confessional statement of the appellant was true.

The appellant had alleged that the evidence led was not properly evaluated and that his defence was not considered. If the learned trial judge did not consider the defence of the appellant, how did he come to the conclusion that it was an afterthought? The Court below held the same view when it upheld the decision of the trial High Court on the said issue. I agree with the Court below that the learned trial judge carefully evaluated the evidence and considered the belated defence of the appellant before reaching its final decision on the matter.

There is no ground of appeal which challenged the action of the Court below in deleting the use of stick from the statement of the appellant, (Exhibit D). As a corollary, there is no issue to that effect. That being the case, I shall not say more on it since the said decision has not been properly challenged.

On the whole, it is my decision that the Court below was right in holding that the learned trial judge was right to hold that the prosecution proved its case beyond reasonable doubt. The Court below was also right to hold that the trial Court appropriately evaluated the evidence led at the trial including the consideration of the defence of the appellant.

Accordingly, I uphold the conviction of the appellant of the offence of attempted robbery contrary to Section 2 (1) of the Robbery & Firearms Act (supra) as reduced by the Court below. I also affirm the sentence of 14 (fourteen) years imprisonment imposed on the appellant. There is no appeal against the commencement date of the sentence and I shall leave it at 7th March, 2003 as decided by the Court below.

Appeal is hereby dismissed.

H

MOHAMMED CJN

This appeal is against the Judgment of the Court of Appeal, Ibadan Division delivered on 24th November, 2010 in which that

Court affirmed the Judgment of the trial High Court of Justice of Ogun State sitting at Ijebu-Ode convicting the Appellant of the offences of conspiracy to commit armed robbery and an attempt to commit the offence of armed robbery for which the Appellant was sentenced to life imprisonment. The appeal against his conviction
 B and sentence at the Court of Appeal succeeded in part when the Appellant's sentence of life imprisonment was reduced to fourteen 14 years imprisonment. The Appellant is now on a further appeal to this Court against his conviction and sentence. From the three 3
 C grounds of appeal filed on behalf of the Appellant, his learned Counsel identified 2 issues in the Appellant's brief of argument which were adopted by the Respondent in the Respondent's brief of argument.

From the evidence of the eye witnesses to the events surrounding the circumstances of the attempted robbery called by the prosecution in proof of their case against the Appellant, I am of the firm
 D view that the case against the Appellant had been proved beyond reasonable doubt to support his conviction. I am therefore in complete agreement with my learned brother Okoro, JSC, in his lead Judgment that this appeal ought to be dismissed for lack of merit. I
 E accordingly dismiss this appeal and further affirm the Appellant's conviction and sentence as reduced by the Court of Appeal.

GALADIMA JSC

F I have been obliged a copy of the lead judgment of my learned brother OKORO, JSC, just delivered. I agree with him that this appeal lacks merit and ought to be dismissed. I hereby make a few comments in support.

G The judgment of the Court of Appeal sitting at Ibadan delivered on 24th November, 2010 altered the conviction and sentence of the appellant by the trial High Court of Ogun State, sitting at Ijebu-Ode, from life imprisonment to a lesser offence of attempted robbery (as against attempted armed robbery). On the 12th October,
 H 2005 the trial High Court convicted and sentenced the appellant to 5 years imprisonment for the offence of conspiracy to commit robbery and to life imprisonment for the offence of attempted armed robbery contrary to Sections 5 (b) and 2 (2) (b) of the Robbery and Fire-Arms (Special provisions) Act Cap.398, Laws of the Federation

of Nigeria 1990 (as amended) respectively.

However, as I have stated, at the Court below, the conviction and sentence of the appellant was altered to attempted robbery and the appellant was sentenced to 14 years imprisonment which was to run from the time of his arrest on 7th March, 2003.

The background facts leading to this appeal have been set out in the most graphic details in the lead judgment, needless repeating same. B

In criminal trial it is the duty of the prosecution to prove the case against the accused person beyond reasonable doubt, but it is not proof beyond all shadow of doubt. C

Exhibit 'D' is the confessional statement of the appellant. The Court can convict solely on a confessional statement without any corroborative evidence of PW1. His evidence was sufficient corroboration in law. This adequately satisfies the test in *R v. Skyes* (1913) 8 CR. APP. R. 233. This aside, the evidence of PW1 and other eye witnesses are credible and no legal justification has been proffered to warrant this Court to interfere with the concurrent findings of the Court where the findings are not supported by evidence or due to an inaccurate application of the law or procedure. See *CHINWENDU v. MBAMALI* (1980) 3-4 SC P40 *IGWEGO v. EZEUGO* (1992) 6 NWLR (Pt. 249) 561. D

It is my humble view that nothing has been advanced by learned counsel for the appellant to persuade me to reverse the judgment of the Court below. F

I therefore dismiss the appeal for the reasons contained in the lead judgment of my learned brother OKORO JSC.

OGUNBIYI JSC

I read in draft the lead judgment of my brother Okoro, JSC just delivered. I agree in toto that the appeal lacks merit and should be dismissed. G

The law is well settled and trite that it is not open to this Court to ordinarily disturb the concurring findings of two Lower Courts except it is shown to have occasioned a miscarriage of justice or have been perversely reached. See *Onyejekwu v. The State* (1992) 3 NWLR (Pt. 220) 444 also *Posu v. The State* (2011) ALL FWLR (Pt. 565) H

The High Court Ogun State convicted and sentenced the appellant herein to five years imprisonment for the offence of conspiracy to commit robbery and to life imprisonment for the offence of attempted armed robbery contrary to Sections 5 (b) and 2 (2) (b) of the Robbery and Firearms (Special Provision) Act (Cap 398), Laws of the Federation of Nigeria, 1990 (as amended) (the Act), respectively.

The Lower Court sitting in Ibadan, Oyo State altered the appellant's conviction to a lesser offence of attempted robbery as against attempted armed robbery and set-aside the sentencing by substituting it with a sentence of 14 (fourteen) years imprisonment to run from the time of the appellant's arrest on 7th March, 2003.

The appellant now before us is challenging the conviction and sentence by the Court of appeal, and hence his notice of appeal dated 14th December, 2010 containing three grounds of appeal and is praying this Court to set aside the conviction and sentence imposed on him by entering a verdict of acquittal and discharge.

The appellant's appeal therefore, relates to the conviction and sentence in respect of the offence of attempted armed robbery as the grounds of appeal are tied specifically to the offence and conviction for armed robbery.

It is paramount to state in this appeal that Exhibit D which was unchallenged, was never retracted by the appellant; who did not also object to the voluntariness of the statement to warrant a trial within trial. The appellant did admit it in evidence without any objection. At page 136 of the Record of Appeal the Lower Court made a specific finding on the document and said thus:-

"Exhibit D, the confessional statement of the appellant to the police at Odogbolu, was admitted in evidence without objection." It was made on 10.3.2003, about three days after the incident. The PW2 recorded it. He was not cross examined to show it was involuntarily made. ***The appellant did not disown it in his evidence.*** "Emphasis is mine.

The foregoing specific finding by the lower Court was not appealed against.

The contents of Exhibit D, the confessional statement made by the appellant were reproduced in my brother's lead judgment. It was

clearly a confession of an attempted robbery. It also corresponds with the accepted evidence of the Pw1 in material particular; both the substance of Exhibit D and the PW1's evidence agreed on the use of violence without firearms or offensive weapon on the PW1 by the appellant and his friend before they dispossessed him of his motor cycle. B

The appellant cannot be seen to retract his statement at this time. It is enough to convict him on his own confession as the best evidence against him (appellant).

The judgments of the two lower Courts are concurrent and no reason has been advanced by the appellant as to why the conviction and sentence should be disturbed. C

For this reason and particularly on the comprehensive reason given by my learned brother Okoro, JSC, I also dismiss this appeal and abide by the order made therein the lead judgment. D

KEKERE-EKUN JSC

I have had the benefit of reading before now the judgment of my learned brother, OKORO, JSC just delivered. He has exhaustively considered and ably resolved the issues in contention in this appeal. I agree with the reasoning and conclusion that the appeal lacks merit and ought to be dismissed. E

The two issues distilled by the appellant for the determination of this appeal, which were argued together, are: F

"1. Whether the learned Justices of the Court of Appeal were right when they upheld the decision of the trial Court that the prosecution proved a case of attempted robbery against the appellant beyond reasonable doubt particularly in the light of the evidence adduced. G

2. Whether the learned Justices of the Court of Appeal were right when they held that the trial Court properly evaluated the evidence before the Court and duly considered the defence put up by the appellant." H

My learned brother has given a detailed summary of the facts that gave rise to this appeal. I need not repeat the exercise here.

My brief comments in support of the lead judgment are in respect of the appellant's contention that there was equivocation (i.e.

ambiguity) as to proof of his intention in assaulting PW1, which the lower Courts failed to address, to ascertain which of the two versions of what transpired on the day of the incident was more probable. Learned counsel for the appellant was of the view that the learned trial judge and the Court below ought to have carefully examined
 B the evidence to ensure that there was no equivocation as to the interpretation to be given to the overt acts that occurred on the Ikene-Aiyeye Road, Ogun State on the fateful day.

It must be reiterated that in any proceeding where the commission of a crime is in issue, the onus is on the prosecution to establish the guilt of the accused beyond reasonable doubt. The burden remains on the prosecution throughout and never shifts. See Section 135 (1) of the Evidence Act, 2011; *Woolmington v. D.P.P* (1935) AC 462; *Esangbedo v. The State* (1989) 4 NWLR (Pt. 113) 57; *Udo v. The State* (2006) 15 NWLR (Pt. 1001) 179; *Michael v. The State* (2008) 13 NWLR (Pt. 1104) 361. It is also trite that proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. See *Oseni v. The State* (2012) 5 NWLR (Pt. 1239) 351 @ 388 F-G.

It is equally well settled that a free and voluntary confession of guilt by an accused person if direct, positive and satisfactorily proved, is sufficient without corroboration to warrant a conviction, as there is no stronger evidence than a man's confession. See: *Adio v. The State* (1986) 2 NWLR (Pt. 24) 581; *State v. Salawu* (2011) 18 NWLR (Pt. 1279) 883 @ 920 G-A; *Ekpenyong v. State* (1991) 6 (Pt. 200) 683.

In the instant case PW1 gave credible evidence as to what transpired on the day of the incident when the appellant and his co-accused tried to rob him of his motorcycle. His evidence was clear, unequivocal and unshaken under cross-examination. The learned trial Judge, who had the opportunity of seeing and hearing the witness and observing his demeanor in Court found him to be a credible witness.

In addition to this was Exhibit D, the appellant's confessional statement, which tallied in all material particulars with the evidence of PW1, except as regards the weapon used to hit PW1 in the attempt to steal his motorcycle.

Where, then, does the equivocation arise? It is contended by learned counsel for the appellant that the version of events narrated

by the appellant during this testimony in Court to the effect that what transpired was an altercation between the him and PW1 over the transport fare and not an attempted armed robbery, raised some doubt as to whether the necessary intent (*mens rea*) to commit the offence of attempted robbery was established by the prosecution. It is also contended that the trial Court did not forensically X-ray the evidence in this regard. I do not agree. Not only did the appellant's version of events come up for the first time during his defence at the trial, PW1 was never cross-examined on it. B

The Court below at pages 143-146 of the record thoroughly reviewed the alleged issue of equivocation and resolved it against the appellant. It is also noteworthy that Exhibit D was admitted in evidence without objection. C

I am of the candid view that there was no equivocation in this case. The prosecution established its case against the appellant through credible and reliable evidence and the Court below was right to affirm the judgment of the trial Court. D

For these and the more detailed reasons comprehensively set out in the lead judgment, I also find the appeal to be devoid of merit. It is hereby dismissed. E

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