

SUPREME COURT OF NIGERIA
FRIDAY 24TH JUNE, 2016. SC. 838/2014
CORAM:- M. MOHAMMED CJN, S. GALADIMA, C. B.
OGUNBIYI, K. M. O. KEKERE-EKUN, J. I. OKORO, JJSC

BELLO OKASHETU APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Proof - Means of - Prosecution must by credible evidence prove ingredients of the offence against accused - Through direct evidence - Circumstantial evidence - And confession (H1)

CRIMINAL PROCEDURE - Conspiracy - Proof - Prosecution is to prove agreement of two or more persons - To do an illegal act - Or legal act by an illegal means (H2)

CRIMINAL PROCEDURE - Kidnapping - Ingredients - Proof of - Prosecution must prove that victim was taken away by accused against his consent - And without lawful excuse (H3)

CRIMINAL PROCEDURE - Illegal possession of firearms - Proof - Prosecution must inter alia prove that accused was found in possession of firearms - And that he had no licence to possess same (H4)

EVIDENCE - Confession - Validity - Where confession is direct and positive - And court is satisfied of its truth - The same is sufficient to sustain conviction (H5)

EVIDENCE - Confession - Retraction - Mere denial by accused does not render confession inadmissible - Although court cannot act on confession - Without testing the veracity and correctness of same (H6)

EVIDENCE - Confession - Attestation by superior police officer - The tradition is not part of Judge's rule - But a rule of practice developed by police - To give credence to confessional statement of ac-

3084 Okashetu v. State (2016) 6 KLR (pt. 388) 3083; (2016) 15
cused (H7)

EVIDENCE - Contradiction - Weight - For contradiction to count - It must be substantial to main issue in question - Before it could create some doubt in the mind of court (H8)

FACTS

At the High Court of Delta State Asaba, accused/appellant was arraigned on a five count charge of conspiracy to commit armed robbery, armed robbery, conspiracy to commit kidnapping, kidnapping and illegal possession of firearms. Appellant pleaded not guilty to all the five head of counts. Trial commenced in the matter and at the end, the trial court discharged and acquitted appellant on the counts of conspiracy to commit armed robbery and armed robbery but convicted him on the other three counts of conspiracy to commit kidnapping, kidnapping and illegal possession of firearms.

Appellant was therefore sentenced to three terms of imprisonment to run concurrently for the offence of conspiracy to kidnap, kidnapping and unlawful possession of firearms. Appellant was not satisfied with the judgment of the trial Court. Hence, he appealed to the Court of Appeal Benin Division. The Court affirmed the decision of the trial Court on the appellant's confessional statement (Exhibit A) which contained the ingredients of the offences charged. Still dissatisfied, appellant appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Whether the Lower Court rightly affirmed the trial Court's decision that the prosecution proved the charges of conspiracy to commit kidnapping, kidnapping and illegal possession of firearms against the appellant beyond reasonable doubt.

HELD (Unanimously dismissing the appeal per
OGUNBIYI JSC)

CRIMINAL PROCEDURE - Proof - Means of

1. The law is trite and well settled by placing the burden upon the prosecution to prove the charge(s) against the accused beyond reasonable doubt. There are three ways or methods of proving the guilt of an accused person. See Section 135 of

the Evidence Act, 2011. A proof beyond reasonable doubt has been interpreted to mean that the prosecution must by credible evidence prove the ingredients of the offence for which the accused person is facing trial.

The three methods of evidential proof could either be by:-

- (a) Direct evidence of witnesses;**
- (b) Circumstantial evidence; and**
- (c) By reliance on a confessional statement of an accused person voluntarily made. (p. 3095 C)**

CRIMINAL PROCEDURE - Conspiracy - Proof

2. The offence of conspiracy requires that there should be the meeting of the minds of the accused persons with a common intention and purpose to commit a particular offence.

It is trite law that all the prosecution needs to prove under this count is the agreement of two or more persons to do or cause to be done an illegal act or legal act by an illegal means. This is done either by direct evidence or inference from illegal act of the accused persons. (p. 3096 B)

CRIMINAL PROCEDURE - Kidnapping - Ingredients - Proof

3. (b) The Offence of Kidnapping:-

In order for the prosecution to succeed under this count it has to prove the following facts beyond reasonable doubt.

(i) That the victim was seized, and taken away by the accused person.

(ii) That the victim was taken away against his consent.

(iii) That the victim was taken away without lawful excuse.

The offence of kidnapping is complete when the victim is carried away against his wish. (p. 3096 F)

CRIMINAL PROCEDURE - Illegal possession of firearms - Proof

4. (c) The Offence of Illegal Possession of Firearm:-

The evidence of the PW2 and PW3 is that the appellant was found in possession of a gun and ammunitions.

In order to prove the offence of illegal possession of

firearms the law requires the prosecution to establish the following ingredients:

- (i) That the accused was found in possession of firearms.**
- (ii) That the firearms were within the meaning of the Act.**
- (iii) That the accused had no license to possess the fire-**

B arms.

There is evidence on record which the trial Court believed that the appellant was arrested with a gun, two magazines and 29 rounds of ammunitions. The appellant in his confessional statement admitted the facts that the gun and ammunitions were recovered from the car he was driving. He however denied ownership of the firearms. See the evidence of PW2 and PW3 at pages 33-42 of the records of appeal.

There is no dispute that the AK 50 Riffle, cartridges and 29 rounds of ammunitions fall within the definition of firearms under Section II of the Robbery and Firearms Act. (p. 3097 B)

EVIDENCE - Confession - Validity

5. Exhibit A, which is the confessional statement of the accused/appellant, is central therefore to the prosecution case. The document is potent evidence in the hand of the prosecution for proving the charge.

The law is settled that there is no evidence stronger than a person's own admission or confession.

The law is also well settled that a free and voluntary confessional statement of an accused person alone is sufficient to sustain his conviction where such voluntary confession of guilt is proved to be direct and positive and the Court is also satisfied as to its truth. (p. 3099 C)

EVIDENCE - Confession - Retraction

6. Judicial authorities are well grounded that a mere denial by an accused person that he did not make a statement as it is in the case at hand, does not ipso facto render such statement inadmissible in evidence.

However, the corollary is also true that a Court cannot 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 circumstances which make it probable that the confession is true. The tests laid down in the case of R V. Sykes (1913) 1 Cr. App. R.233 has been applied in numerous cases. From the foregoing authorities supra, the Court in this circumstance is to examine the statement Exhibit 'A' in the light of the following other credible evidence before it by inquiring into whether:- B

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. C

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

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

6. The confession is consistent with the other facts ascertained and proved. (p. 3099 H)

EVIDENCE - Confession

7. In the case of Egboghonome V. State (1993) 7 NWLR (Pt 306) 385 this Court reasoned that while it is not the law for a Superior Police Officer to attest the statement of an accused, it only gives credence to the confessional statement and may strengthen the case of the accused. The tradition is a rule of practice developed by the police. It is not part of the judge's rule. E
F

Following from the foregoing conclusion, it is apparent that the practice accords wisdom in serious cases of felony especially where the appellant's conviction hangs on the balance of his own confession alone and if it is made to a junior police officer. The regimental nature and rigidity put on the practice will not necessarily hold in the absence of compliance so as not to subject the statement to suspicion. G

(p. 3102 D) H

EVIDENCE - Contradiction - Weight

8. The cumulative summary of the foregoing is to the effect that for contradiction to sustain, it must be substantial or fun-

damental to the main issue in question before it could create some doubt in the mind of the Court.

The seeming contradiction alleged in the case before us is of no moment as rightly held by the learned justices of the Lower Court. In other words the argument by the appellant's counsel would have had substance if the discrepancy is material to the determination of the case and the prosecution fails to proffer explanations as to why the discrepancy exists.

The inconsistency in the make of the riffle has been explained by prosecution and accepted by the trial Court. The principle of law that any inconsistency or contradiction in the case of the prosecution be resolved in favour of an accused person does not arise therefore in the situation at hand. The Lower Courts also did not consider the contradictions referred by the appellant as material. (p. 3104 D)

REPRESENTATION

E. Ohwovoriole, Esq. with him, P. O. Dafinghor, for the Appellant
 E O. F. Enenmo, Esq. - Director Civil Service Unit Ministry of Justice, Delta State with him, C. O. Agbagwu, Esq. - Assistant Director, for the Respondent

CASES REFERRED TO

- F Chianugo v. State (2002) 2 NWLR (pt. 750) 225
- Ogudo v. State (2011) LPELR 860 (SC) 27
- Hausa v. State (1994) 6 NWLR (pt. 350) 281
- Aruna v. State (1990) 6 NWLR (pt. 155) SC 125
- G Egbohonome v. The State (1993) 7 NWLR (pt. 306) 385
- Basil v. Fajebe (2001) 86 LRCN 1438
- Stephen v. State (2013) vol. 223 LRCN (pt. 2) 215
- Ogunzee v. State (1998) 58 LRCN 3512
- Edamine v. State (1996) 3 NWLR (pt. 58) 530
- H Emeka v. State (2001) 32 WRN 37
- Okudo v. State (2011) 3 NWLR (pt. 1234) 209
- Atuma v. State (2006) All NLR (pt. 318) 671
- Njovens v. State (1998) 1 ACLR 225
- State v. Oladotun (2011) vol. 199 LRCN 66

STATUTE REFERRED TO

Evidence Act 2011, s. 135(1)(2)

LEAD JUDGMENT BY OGUNBIYI JSC

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This is an appeal against the judgment of the Court of Appeal, Benin Judicial Division delivered on 9th day of December, 2014. The Lower Court affirmed the judgment of the trial High Court, Asaba, (Delta State) which convicted and sentenced the appellant to three terms of imprisonment to run concurrently for the offence of conspiracy to kidnap, kidnapping and unlawful possession of firearms.

C

The appellant was arraigned before the trial Court on a five - count charge of conspiracy to commit armed robbery, armed robbery, conspiracy to commit kidnapping, kidnapping and illegal possession of firearms. The particulars of the charge are stated below:-

D

COUNT I:

BELLO OKASHETU (m) and others now at large on or about the 8th day of March, 2011 along Illah Road within Asaba Judicial Division conspired amongst yourselves to commit felony to wit: Armed Robbery.

COUNT II:

BELLO OKASHETU (m) and others now at large on or about the 8th day of March, 2012 along Illah Road within Asaba Judicial Division robbed of Mr. Galvagni Renzo (m) of his two Laptops value unknown, one International Passport, one Zenith Bank Cheque booklet, two Hard drive discs, and two Flash drive disc, while armed with a gun.

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COUNT III:

BELLO OKASHETU (m) and others now at large about the 8th day of March, 2012 along Illah Road within Asaba Judicial Division conspired amongst yourselves to commit felony to wit: Kidnapping.

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COUNT IV:

BELLO OKASHETU (m) and others now at large on or about the 8th day of March, 2012 along Illah Road within Asaba Judicial Division kidnapped one Mr. Galvagni Renzo (m) to unknown destination, in a manner as to prevent any person entitled to have access

H

to him from discovering the place where he was imprisoned.

COUNT V:

BELLO OKASHETU (m) and others now of large on or about the 8th day of March, 2012 along Illah Road within Asaba Judicial Division unlawfully had in your possession of AK 50 Riffle, two Magazines and twenty nine rounds of live ammunition.

The accused/appellant pleaded not guilty to all the five head of counts. At the conclusion of the hearing, the trial Court discharged and acquitted the appellant on the counts of conspiracy to commit armed robbery and armed robbery but convicted him on the other three counts of conspiracy to commit kidnapping, kidnapping and illegal possession of firearms.

On appeal to the Court of Appeal, the appellant's appeal was dismissed. The pivot of the Lower Court's decision was its affirmation of the trial Court's finding that Exhibit 'A' a confessional statement attributed to the appellant was indeed made by him (appellant) and that the ingredients of the offences charged were contained therein. The appellant was dissatisfied with the Judgment of the Lower Court and hence filed his notice of appeal now before this Court and containing three grounds of appeal, on the 15th day of December, 2014.

In compliance with the rules of Court, briefs were filed and exchanged between parties. The appellant's brief of argument was settled by one Ekemejero Ohwovoriele Esq. and filed on the 30th January, 2015. There was also a reply brief and a list of additional authorities filed on behalf of the appellant on the 19/2/2015 and 14/4/2016 respectively. On behalf of the respondent however, the brief of argument was settled by one O. F. Enenmo on the 18th February, 2015.

The matter in this appeal came up for hearing on the 7th April, 2016 and counsel for the parties were both in Court.

They adopted and relied on their respective briefs of arguments. While the learned counsel for the appellant urged the Court to allow the appeal, a dismissal of same was contemplated on behalf of the respondent.

The lone issue formulated by the appellant's counsel is reproduced hereunder as follows:-

Whether the Lower Court rightly affirmed the trial Court's decision that the prosecution proved the charges of conspiracy to

commit kidnapping, kidnapping and illegal possession of firearms against the appellant beyond reasonable doubt.

The law is trite and well settled that in a criminal trial, the onus is always on the prosecution to prove its case beyond reasonable doubt and the accused is not expected to prove his innocence. See Section 135(1) and (2) of the Evidence Act, 2011 also the case *Chianugo V. State* (2002) 2 NWLR (Pt. 750) 225 at 236. It is the contention of the counsel for the appellant that the prosecution has failed to prove the charges against the appellant beyond reasonable doubt in this case. This, counsel argues, because the case presented against his client was quite doubtful; that PW1 who was the alleged victim did not identify the appellant to the police as an offender with regard to any of the offences alleged. The counsel relates copiously to the evidence given by all the witnesses viz: PW1, PW2, PW3 and the one also by the appellant himself.

It is the contention of the appellant's counsel that the Lower Court was in error when it held that Exhibit 'A' was made by the appellant despite the evidence on record pointing to the fact that the appellant did not make a statement; that the issue of whether PW3 endorsed the alleged confessional statement is of utmost importance; that a reading of the evidence adduced by PW3 in fact supports the appellant's stand that he is not the maker of the confessional statement; that it was untenable and out of place for PW3 to say that he forgot to endorse or counter-sign the statement because the case was handed over to him by 3p.m; that the endorsement of a confessional statement by the police officer who claims to have recorded the statement is one of the basic fundamentals of a valid statement. Reference was made to the case of *Ogudo V. State* (2011) LPELR 860 (SC) at P27 a decision of this court. It is the counsel's submission vehemently also that there is nothing to show that PW3 recorded the statement he claimed was confessed to him by the appellant; that having failed the test of a valid statement, the document should not have attracted any weight; that the absence of attestation in the circumstances of the instant case is further confirmation of the appellant's evidence that he is not the maker of Exhibit 'A'; that reliance on Exhibit 'A' to convict the appellant for the offences charged will occasion a miscarriage of Justice against him. It is the counsel's further submission that the prosecution's case before the Lower Court was

riddled with material doubts which ought to be resolved in favour of the appellant; that one of such doubts had to do with the identity of the appellant as an offender, that given the fact that the prosecution's case was hinged on evidence of identification rendered by PW2 which was not cogent, counsel highlights that the Lower Court should have
 B treated his evidence with great caution given the fact that PW1, the victim, himself did not identify the appellant as one of the kidnappers.

C Counsel cites the case of *Hausa V. State* (1994) 6 NWLR (Pt 350) 281 or 322; that in a charge of conspiracy, the prosecution has the burden to prove not only the inchoate or rudimentary nature of the offence but also the meeting of the minds of the accused persons with a common intention and purpose to commit a particular offence.

D On the appellant's conviction for the offence of illegal possession of firearms, learned counsel submits relentlessly that the Lower Court was also wrong in affirming the trial Court's judgment. This, counsel contends because the appellant denied being found in possession of any firearms, either gun or ammunition; that the tendering
 E of an AK 50 instead of AK 47 said to have been recovered from the appellant is not a mere discrepancy about the name of the gun but instead a material variance in the evidence adduced; that PW2 and PW3, although they both gave evidence in respect of AK 47, PW3, a police officer who testified that he knows the difference between an
 F AK 47 and AK 50 gun, however tendered an AK 50; that Exhibit 'E', the police investigation report also confirms that "*one AK 47 No. 0117747 with two magazines containing 29 rounds of live ammunition were recovered from him.*" It is the learned counsel's submission
 G therefore that Exhibit 'E' and the evidence of the prosecution witnesses on the type of gun recovered were contradictory and at variance with the charge laid against the appellant. Consequently, therefore, that the prosecution cannot be held to have proved beyond reasonable doubt that the gun admitted in evidence during the trial
 H was recovered from the appellant; that the accused person in the circumstance is entitled to an acquittal. Counsel cites in support, the case of *Aruna V. State* (1990) 6 NWLR (Pt.155) SC 125 at 134- 135 and 136.

In summary the appellant's counsel urged against conviction

and sentence of the appellant for the following reasons:-

a) that PW1, the alleged victim did not identify the appellant as an offender with regard to any of the offences alleged.

b) that the endorsement of a confessional statement by the police officer who claims to have recorded the statement is one of the basic fundamentals of a valid statement and that without such endorsement the document ought not have attracted any weight. B

c) that the non-attestation of Exhibit 'A' is fatal to the prosecution's claim that the appellant is the maker of Exhibit 'A'.

d) that the prosecution's case was riddled with material doubts which ought to be resolved in favour of the appellant. C

e) that the evidence of the prosecution witnesses did not establish the identity of the appellant as one of the alleged persons who kidnapped PW1.

f) that there is nothing from the evidence on record to show that the appellant agreed with other persons to commit or in fact commit the alleged crimes of conspiracy to commit kidnapping and kidnapping. D

g) that the evidence of the prosecution witnesses on the charge of illegal possession of firearms was contradictory and at variance with the charge laid against the appellant. E

Counsel in the result urged that the Court should in the circumstance acquit and discharge the appellant for the reason that the prosecution did not prove the charges of conspiracy to commit kidnapping, kidnapping and illegal possession of firearms against the appellant beyond reasonable doubt. F

On behalf of the respondent, the lone issue raised by the appellant was adopted and the counsel submitted thereon in response to the appellant. It is the case of the respondent that the Lower Court was right in law when it affirmed the judgment of the trial Court; that the confessional statement of the appellant was put in evidence by the prosecution through the investigation Police Officer, (PW3), Sergeant Charles Fakunle; that at the stage when the prosecution sought to tender the appellant's statement, the appellant's counsel raised an objection that he is not the maker of the statement. The Court admitted the statement in evidence as Exhibit 'A'; that at the trial Court PW3 gave reasons why he did not counter-sign the statement of the appellant as the recorder and that the absence of evidence on record G H

alluding to the fact that it was not the PW3 who recorded the statement, the appellant cannot now make it an issue before this Court; that it is not the law that a confessional statement must be attested to by a Superior Police Officer before the Court can rely thereon. Counsel cites in support, the case of *Egbohonome V. The State* (1993) 7 B NWLR (pt 306) 385; that the practice of taking offenders before Superior Police Officers for attestation is a rule of practice developed by the police, and it is not part of the Judges' Rule; that the Lower Court rightly stated the position of the law while relying on the confessional statement of the appellant in convicting him.

C On the issue of whether the prosecution proved that the appellant was among the people who kidnapped the PW1, the counsel maintains that the evidence of PW2 and PW3, have pinned successfully, the appellant to the scene of crime; that their evidence was also D not challenged at the Lower Court by the appellant.

On the controversy surrounding Exhibit 'B', counsel submits that the inconsistency was put to rest when the PW3 told the Court that it was an oversight on the part of the police when they stated in the investigation report that it was an AK 47 instead of AK 50 which E was recovered and tendered in Court; that the contradiction in the make of the rifle has been explained by the prosecution and accepted also by the trial Court; that the principle of law that any inconsistency or contradiction in the case of the prosecution be resolved in favour of an accused person is subject to two conditions:

F (a) the inconsistency must be material to the determination of the case; and

(b) there is no explanation from the prosecution regarding the inconsistency or material contradiction. Counsel cites the cases of G *Onubuogu V. State* (1998) 1 ACLR; and *Igbo V. State* (1975) 11 SC 129.

The learned counsel in summary has urged before us that in the circumstance, the Court should affirm the judgment of the two Lower Courts for the following two reasons:-

H (a) There is evidence on record on which the Lower Court affirmed the judgment of the trial Court.

(b) The appellant did not in his briefs of arguments show that the findings of the Lower Courts were perverse or offend any known principles of law; that the appeal should as a consequence be dis-

missed.

In reply to the respondent's brief of argument the learned counsel for the appellant reiterates that the trial judge failed to make proper use of the opportunity of seeing, hearing and observing the witnesses and accordingly drew wrong conclusions of facts thereby rendering them perverse findings; that this Court can intervene in the concurrent findings to give necessary consequence to the evidence on record. In support, Counsel cites the case of Basil V. Fajebe (2001) 86 LRCN 1438 at 1452 and 1454; that the appeal should in the circumstance be allowed.

The law is trite and well settled by placing the burden upon the prosecution to prove the charge(s) against the accused beyond reasonable doubt. There are three ways or methods of proving the guilt of an accused person. See Section 135 of the Evidence Act, 2011. A proof beyond reasonable doubt has been interpreted to mean that the prosecution must by credible evidence prove the ingredients of the offence for which the accused person is facing trial.

The three methods of evidential proof could either be by:-

(a) ***Direct evidence of witnesses;***
 (b) ***Circumstantial evidence; and***
 (c) ***By reliance on a confessional statement of an accused person voluntarily made.*** See the cases of Stephen V. The State (2013) Vol. 223 LRCN (Pt.2) 215; Ogunzee V. State (1998) 58 LRCN P.3512 at 3551; Edamine V. State (1996) 3 NWLR (Pt. 58) 530 at 531; Emeka V. The State (2001) 32 WRN 37 at 49; and Okudo V. The State (2011) 3 NWLR (Pt 1234) 209 at 236D.

The issue for determination will be compartmentalized into three segments for ease of reference as well as for purpose of analyzing the requirements, on the prosecution to succeed against the appellant as follows:- (a) the offence of conspiracy to commit kidnapping; (b) the offence of kidnapping and (c) the offence of illegal possession of firearms.

(a) The Offence of conspiracy to commit Kidnapping:-

It is the submission on behalf of the appellant that the said offence was not proved beyond reasonable doubt; that the prosecution failed to prove the existence of the consensus of criminal design

or agreement between two or more persons to do or omit to do an act which is criminal in nature which must be proved beyond reasonable doubt. See the case of Atuma V. State (2006) All NLR (Pt 318) 671 at 684 and also the case of Njovens V. State (1998) 1 ACLR 225 at Pg. 264 for the definition of conspiracy.

B *The offence of conspiracy requires that there should be the meeting of the minds of the accused persons with a common intention and purpose to commit a particular offence.*

See Gbadamosi & Ors V. State (1991) 6 NWLR (Pt.196) 182. Appellant's counsel reiterates that there is no evidence on record to support such a charge against his client.

C *It is trite law that all the prosecution needs to prove under this count is the agreement of two or more persons to do or cause to be done an illegal act or legal act by an illegal means. This is done either by direct evidence or inference from illegal act of the accused persons.* See the dictum of Coker, JSC in Njovens V. State (supra) where he had this to say at pages 263-264:-

"The gist of the offence of conspiracy is the meeting of the minds of the conspirators. This is hardly capable of direct proof for the offence of conspiracy is complete by the agreement to do the act or make the omission complained about. Hence conspiracy is a matter of inference from certain criminal acts of the parties done in common between them and in proof of conspiracy the act or omissions of any of the conspirators in furtherance of the common design may be and very often are given in evidence against others of the conspirators."

(b) The Offence of Kidnapping:-

G *In order for the prosecution to succeed under this count it has to prove the following facts beyond reasonable doubt.*

(i) *That the victim was seized, and taken away by the accused person.*

(ii) *That the victim was taken away against his consent.*

H (iii) *That the victim was taken away without lawful excuse.*

The offence of kidnapping is complete when the victim is carried away against his wish. See the case of R V. CORT (2004) 4 All ER 137. PW1 was the victim and in his evidence at pages 26-33

of the records of appeal, he testified that he was abducted close to his hotel by two boys who forcefully put him in his car and drove off while the appellant followed behind with the car they came in.

PW2 also in his evidence testified that he apprehended the appellant with the assistance of policemen soon after the incident.

(c) The Offence of Illegal Possession of Firearm:-

The evidence of the PW2 and PW3 is that the appellant was found in possession of a gun and ammunitions.

In order to prove the offence of illegal possession of firearms the law requires the prosecution to establish the following ingredients:

(i) That the accused was found in possession of firearms.

(ii) That the firearms were within the meaning of the Act.

(iii) That the accused had no license to possess the firearms. See the case of State V. Oladotun (2011) Vol.199 LRCN 66.

There is evidence on record which the trial Court believed that the appellant was arrested with a gun, two magazines and 29 rounds of ammunitions. The appellant in his confessional statement admitted the facts that the gun and ammunitions were recovered from the car he was driving. He however denied ownership of the firearms. See the evidence of PW2 and PW3 at pages 33-42 of the records of appeal.

There is no dispute that the AK 50 Riffle, cartridges and 29 rounds of ammunitions fall within the definition of firearms under Section II of the Robbery and Firearms Act.

In convicting the appellant for this offence, the trial Court held at page 103 of the record and said:-

“The definition of firearms which include ‘gun’ and ammunition has earlier been stated in this judgment. Having regards to the fact that the prosecution witnesses testified to the fact that the accused was in possession of a gun which fact is corroborated by the accused person in Exhibit ‘A’, the inconsistencies as to the make of the gun by the prosecution witnesses has not raised a doubt in the mind of this Court that the accused was in possession of a gun and ammunitions on the date of the incidence. The accused person has no licence to possess the said firearm.

The Court finds in respect of count V that the prosecution has proved the count against the accused person beyond reasonable

doubt.”

The appellant’s counsel in his brief of argument has not challenged the principles of law on which the trial Court convicted the appellant on the three counts aforementioned.

His quarrel however is with the fact that the victim of the kidnap PW1 did not identify the appellant as one of the people that kidnapped him. He also argues that the identification of the appellant who was not an eye witness to the kidnap of PW1 was defective. There is evidence before the Court which was believed that the appellant was caught soon after the offence was committed. After his arrest he made a statement to the police admitting the facts of this case as presented by the prosecution through the three prosecution witnesses PW1-PW3. Although there was no direct identification of the appellant at the scene of the crime by the prosecution witnesses, the appellant by his confessional statement identified himself at the scene of the crime. The decision of the trial judge which was readily endorsed by the Lower Court is in tandem with the decision of this Court in *Ikemson V. State* (1998) 1 ACLR 80 par 40 at P.104 where Oputa, JSC (of blessed memory) said thus:

“*The 3rd accused - the 2nd appellant in this Court needed no further identification. By his confession, he identified himself.*”

The fact that the appellant was arrested soon after the crime was committed and his confessional statement admitting complicity in the crime has completely destroyed any doubt that may arise as to his identity and involvement in the crime.

In reacting to the facts presented by the prosecution this was what the trial judge had to say:-

“*Upon a thorough consideration of the facts before me, the Court is satisfied that the prosecution has proved counts III, IV and V against the accused person beyond reasonable doubt and has failed to prove counts I and II of the charge against the accused person beyond reasonable doubt...*

I find the accused person guilty in counts III, IV and V of the charge and convict him accordingly on each of the said counts.”

In agreeing with the trial Court, the Lower Court placed reliance on the confessional statement of the appellant Exhibit ‘A’ and also on the evidence of the three prosecution witnesses PW1, PW2 and PW3. The confessional statement of the appellant was put in

evidence by the prosecution through the Investigation Police Officer (PW3), Sergeant Charles Fakunle. At the stage when the prosecution sought to tender the document, the appellant's counsel raised an objection that he is not the maker of same. The Court however admitted the statement in evidence as Exhibit 'A'. The learned trial Court judge, in placing reliance on the statement Exhibit 'A' for the conviction of the appellant, subjected same to the veracity test as laid down in the case of *Oselola V. The State* (2012) All FWLR (Pt. 649) 1020 at 1040 wherein the Court is enjoined to test the quality and fruitfulness of a statement resiled by examining same in the light of other credible available evidence. B C

Exhibit A, which is the confessional statement of the accused/appellant, is central therefore to the prosecution case. The document is potent evidence in the hand of the prosecution for proving the charge. D

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 (1233) 1 at 11 and *Oseni V. The State* (2012) 5 NWLR (Pt.1293) 351 at 387. ***The law is also well settled that a free and voluntary confessional statement of an accused person alone is sufficient to sustain his conviction where such voluntary confession of guilt is proved to be direct and positive and the Court is also satisfied as to its truth.*** See the cases of: *Yesufu V. The State* (1976) 6 SC 167 at 173; *Idowu V. The State* (2000) 7 SC (Pt 11) 50 at 62-63; *Dibie V. The State* (2007) 9 NWLR (Pt 1038) 30 at 51 and *Egboghonome V. The State* (1993) 7 NWLR (Pt 306) 385. E F

The Lower Court relied on the confessional statement Exhibit 'A' which it held to have corroborated the direct evidence of the PW1 - PW3 in convicting the appellant. The learned counsel for the appellant in his submission has consistently objected to the statement Exhibit 'A' and submits therefore that the Lower Court should not have accorded any weight and value to same since the appellant stated that he did not make the statement. The said confessional statement and the weight to be attached thereto are significant considerations in the determination of this appeal. G H

Judicial authorities are well grounded that a mere de-

nial by an accused person that he did not make a statement as it is in the case at hand, 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; Eliot V. The State (1993) 5 SCN 5 65; Obisi v. Chief of Naval Staff (2002) 19 WRN 25 at 38- 39. An accused person can still be convicted on the basis of such retracted confessional Statement. See Hassan V. The State (2001) 7 SC (Pt 11) 85 at 93.

However, the corollary is also true that a Court cannot 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 circumstances which make it probable that the confession is true. The tests laid down in the case of R V. Sykes (1913) 1 Cr. App. R.233 has been applied in numerous cases including Nwaebonyi V. The State (1994) 5 NWLR (Pt 343) 138; Akinmoju V. The State (2004) 4 5C (Pt. 1) 64 at 81; Ubierho V. The State (2005) 7 MJSC 168 at 188-189 and Oseni V. The State (supra) at 387. **From the foregoing authorities supra, the Court in this circumstance is to examine the statement Exhibit 'A' 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.**

The trial Court duly applied the requisite tests (supra) to ascertain the veracity of the confessional statement Exhibit 'A' and with due reference to the oral evidence adduced before it, a confirming support was found in the testimony of PW2. This was the deduction made by the trial Court thereon at page 100 of the record wherein it held thus:-

“On the weight to be attached to the statement of the accused person, the accused person denied ever making any statement to the police. A close look at Exhibit ‘A’, reveals that the accused person is from Edo State, he is not married, he is a Christian and he got admitted into secondary school in the year 2004.

These facts were admitted by the accused person under cross-examination.

There is no evidence before this Court to show that the accused person knew PW3 the Investigating Police Officer before the incidence. PW3 is therefore not in a position to know these details about the accused person unless the accused person told him. I am in total agreement with the submission of counsel to the state, that the fact that these bio-data of the accused person are also contained in Exhibit ‘A’ shows that the accused person made Exhibit ‘A’ and the Court should ascribe probative value to Exhibit ‘A’. I so hold.”

In its judgment at page 164 of the record of appeal, the Lower Court agreed with the view held by the trial Court *supra* and in the same vein also endorsed same and said:-

“Having equally considered the evidence on Record I cannot but agree with the Lower Court that Exhibit ‘A’ is a confessional statement made by the appellant. I am consequently not enamored by the contention of the appellant’s counsel that the confessional statement, Exhibit ‘A’ is ‘weightless’. The issues raised by the appellant’s counsel as to whether the appellant was arrested by PW3 or whether PW3 failed to countersign the statement do not affect the requisite tests duly applied by the Lower Court.”

For all intents and purposes, I have no reason to depart from the concurrent findings by the two Lower Courts. This I say because it is obvious that the facts relating to appellant’s bio-data as contained in Exhibit ‘A’ are such that the appellant only was equipped with the knowledge and non other. PW3, no matter his level of ingenuity, he could not possibly have invented the facts supplied by the appellant.

The learned counsel for the appellant faulted the Lower Court in its findings relating Exhibit ‘A’ and also on the failure of PW3 to countersign the statement and relates to the decision of this Court in the case of Ogudo V. The State (2011) 1 PELR 860 (SC). It is pertinent to say that the Lower Court agrees in total with the trial Court that the bio-data of the appellant contained in Exhibit ‘A’ is conclu-

sive proof that the content was certainly supplied by the appellant himself to the PW3 who recorded some. The case of Ogudo V. The State cited by the appellant counsel (supra) in the circumstance cannot be in support of their case as rightly submitted by the Respondent's counsel. The reason for such conclusion I hold, is not farfetched.

B This is in view of the fact that neither the evidence of Pw3 that he recorded the statement of the appellant nor the reasons given by him for not countersigning the statement Exhibit 'A', was challenged at the Lower Court. At page 41 lines 15-18 of the record for instance, the witness PW3 had this to say:- *"I did not countersign the statement of the accused person, it was an omission on my part because the case was handed over to me at 3p.m, then the Ugbolu movement, so I forgot to countersign the statement."*

C There is no evidence on the record alluding to the fact that it was not the PW3 who recorded the appellant's statement; consequently, the appellant cannot now make an issue out of the point before this Court. The conclusions arrived at by the two Lower Courts have not been shown to be perverse and I also endorse same.

D Furthermore and ***in the case of Egboghonome V. State (1993) 7 NWLR (Pt 306) 385 this Court reasoned that while it is not the law for a Superior Police Officer to attest the statement of an accused, it only gives credence to the confessional statement and may strengthen the case of the accused. The tradition is a rule of practice developed by the police. It is not part of the judge's rule.*** In the foregoing case of Egboghonome (supra) (2001) 2 ACLR 267 at 295 it was held that:-

E *"the practice of taking accused persons, who confessed to the commission of serious offences, before superior police officers for confirmation of the voluntariness of the confession, is not required by any rule of law or procedure."*

G *The practice was developed by the police and has been highly commended by this Court as it ensures fair play and justice to the accused. However, failure to call the attesting officer as a witness will not per se be fatal to a conviction; R V. Nwigboke (1959) SC NLR 248, (1959) 5 FSC 101."*

H ***Following from the foregoing conclusion, it is apparent that the practice accords wisdom in serious cases of felony especially where the appellant's conviction hangs on the bal-***

ance of his own confession alone and if it is made to a junior police officer. The regimental nature and rigidity put on the practice will not necessarily hold in the absence of compliance so as not to subject the statement to suspicion.

Also in *Nwigboke & Ors v. The Queen* (1959) N.S.C.C. 81, Mbanefo, F.J., while making reference to this practice held thus at page 82 and said:-

“The practice is not provided in our law or in any standing orders for the Nigerian Police or in the English Judges Rules which has been followed without qualification by the Courts of this Country.”

As rightly submitted on behalf of the respondent, the authorities cited by the appellant’s counsel in that behalf are not supportive to their case. The appellant has not in any way faulted the Lower Court’s reliance on his (appellant’s) confessional statement Exhibit A in convicting him.

On the controversy surrounding Exhibit ‘B’ the appellant challenges his conviction for the offence of illegal possession of firearms contending that the evidence of the prosecution witnesses on the type of gun that was recovered from the appellant, whether AK 47 or AK 50 was contradictory.

By the testimony of PW2, it was clearly established that a firearm, by whatever make known (AK 47 or AK 50), was found in possession of the appellant. At page 50 of the record, the witness upon recall did identify the Exhibits B, C1 - C29, Exh. D1 and D2, all the Exhibits tendered inclusive of the gun Exh. B and the ammunitions (bullets), Exh C - C29. The witness PW2 was not shaken in his evidence under cross-examination.

At page 51 of the record of appeal for instance the witness had this to say:-

“When I saw the gun the 1st time, I did not know the name because I am not a professional, it was when we go (sic) to the station, police said this is AK 50 or so.

When we recovered the gun, the magazine was fixed to the gun. It was when we got to the station that the police uncoupled it.”

There is also no evidence on the record that the appellant has a licence to possess the firearms. The fact of possession is copiously corroborated by the accused person in his statement Exhibit ‘A’. The

trial Court in its reasoning at pages 102-103 of the record found in favour of the prosecution which was held to have proved count V beyond reasonable doubt against the accused/appellant. The said view arrived at was also conclusively endorsed by the Lower Court which had this to say at page 175.

B *"I restate that the three ingredients have been established by the evidence adduced by the prosecution. The foofaraw (sic) being made as to the discrepancy in the name of the gun is of no moment in the face of the positive identification by the PW2 that Exhibit B is the gun recovered from the appellant. Whether that gun is an AK 47 or AK 50 is not material since in any event it will still be a firearm recovered from the appellant and which he had no licence to possess. Furthermore, I reiterate that the appellant has not contested the fact that the magazine and ammunition recovered from him, Exhibits C1-C29 and D1 and D2, are firearms which he did not have a licence to possess. These also form part in Count V."*

The cumulative summary of the foregoing is to the effect that for contradiction to sustain, it must be substantial or fundamental to the main issue in question before it could create some doubt in the mind of the Court.

See Afolabi V. The State (2010) All FWLR (Pt 538) Pg.812 at 820. ***The seeming contradiction alleged in the case before us is of no moment as rightly held by the learned justices of the Lower Court. In other words the argument by the appellant's counsel would have had substance if the discrepancy is material to the determination of the case and the prosecution fails to proffer explanations as to why the discrepancy exists.*** See the cases of Onubuogu V. State (1998) 1 ACLR 67; Igbo V. State (1975) 11 SC 129.

The inconsistency in the make of the rifle has been explained by prosecution and accepted by the trial Court. The principle of law that any inconsistency or contradiction in the case of the prosecution be resolved in favour of an accused person does not arise therefore in the situation at hand. The Lower Courts also did not consider the contradictions referred by the appellant as material. It is trite that the Supreme Court cannot interfere with the findings of the Lower Courts except where the findings are perverse or not in line with laid down principles of

law. The appellant has not shown in his brief of argument that the findings of the Lower Courts are perverse. The Court cannot in the circumstance therefore interfere with the findings of the trial Court as affirmed by the Lower Court. The issue is hereby resolved against the appellant and in favour of the respondent.

In the result, this Court is enjoined to affirm the judgment of the two Lower Courts on the following grounds:-

a) There is evidence on record on which the Lower Court affirmed the judgment of the trial Court.

b) The appellant did not in his brief of argument show that the findings of the Lower Courts are either perverse or offend any known principles of law.

The appeal is, in the circumstance devoid of any merit and dismissed. The concurrent judgments of the two Lower Courts are hereby affirmed and the conviction and sentence of the appellant for the offences of conspiracy to commit kidnapping, kidnapping and illegal possession of firearms are affirmed. In other words, on account of Count III the appellant is hereby sentenced to five (5) years imprisonment I.H.L. on account of Count IV, the appellant is sentenced to seven (7) years imprisonment I.H.L and on account of Count V, the appellant is also sentenced to ten (10) years imprisonment I.H.L. without an option of fine.

The sentences in counts IV and V only shall run concurrently.

MOHAMMED CJN

I have had the opportunity before today of reading in draft the lead Judgment of my learned brother Ogunbiyi, JSC, which has just been delivered. I entirely agree with it that the appeal lacks merit and ought to fail.

The Appellant was tried and convicted of the offences of conspiracy to commit kidnapping, kidnapping and illegal possession of firearms by the High Court of Justice No 5 at Asaba, Delta State and sentenced to five 5 years, seven 7 years and ten 10 years imprisonment respectively for the three 3 offences the Appellant was convicted.

Aggrieved with his conviction and sentence, the Appellant appealed to the Benin Division of the Court of Appeal where his appeal

was heard and dismissed by that Court in its Judgment delivered on 9th December, 2014. The Appellant is now on a further and final appeal against this affirmation of his conviction and sentence by the Court of Appeal raising only one issue in the Appellant's brief of argument for the determination of the appeal. The same sole issue was adopted in the brief of argument filed by the Respondent. The sole issue reads-

"Whether the Lower Court's decision that the Prosecution proved the charges of conspiracy to commit kidnapping, kidnapping and illegal possession of firearms against the appellant beyond reasonable doubt."

The law is well settled that in a criminal trial, the onus is on the prosecution to prove its case beyond reasonable doubt and that the accused person being tried is not expected to prove his innocence having regard to the provision of Section 135(1) and (2) of the Evidence Act, 2011 and the case of *CHIANUGO VS THE STATE* (2002) 2 NWLR (Pt. 750) 225 at 236. It is also the law that whenever doubts arise in the course of trial in the case of the prosecution, such doubts are resolved in favour of the accused person being tried. See *NDIDI VS THE STATE* (2007) 13 NWLR (Pt. 1052) 633.

In the case at hand, I entirely agree with my learned brother Ogunbiyi, JSC., in the way and manner the sole issue identified by the parties for the determination of this appeal was ably considered and resolved. The overwhelming evidence called by the prosecution including the confessional statement of the Appellant and the items of firearms found in illegal possession of the Appellant, have clearly established the conviction of the appellant of the offences for which he was found guilty. Therefore, it also my own view that there is no merit at all in this appeal which is hereby dismissed by me. The conviction and sentences passed on the Appellant by the trial High Court and affirmed on appeal by the Court below, are hereby further affirmed.

H

GALADIMA JSC

I had the privilege of reading in draft the lead judgment of my learned brother OGUNBIYI, JSC just delivered. I entirely agree with the reasons leading to the conclusion that this appeal lacks merit and

ought to be dismissed.

The lone issue formulated by the Appellant's counsel which the Respondent's counsel adopted reads as follows:-

"Whether the Lower Court rightly affirmed the trial Court's decision that the prosecution proved the charges of conspiracy to commit kidnapping, kidnapping and illegal possession of firearms against the appellant beyond reasonable doubt." B

Before the trial High Court Asaba, Delta State, the Appellant was arraigned on a five-count charge of conspiracy to commit armed robbery, armed robbery, conspiracy to commit kidnapping (sic, kidnapping) and unlawful possession of firearms. At the conclusion of the trial, he was discharged and acquitted on the counts of conspiracy to commit armed robbery and armed robbery but found guilty and convicted on the other three counts of conspiracy to commit kidnapping, (sic, kidnapping) and illegal possession of firearms. D

Appellant's conviction and sentence was affirmed by the Court of Appeal, Benin Division. This further appeal is as a result of the appellant's dissatisfaction with the decision of that Court. The main complain of the Appellant is that he was not identified by PW1, the victim of the kidnap on the 8th March, 2012. But the evidence of PW2 clearly linked the Appellant directly with the offence. The Court below rightly found that the Appellant having been arrested while trying to escape on foot as he abandoned the car he snatched from PW1, has no reasonable excuse to complain that he was not properly identified. F

Identification of the accused means series of facts and circumstances for which a witness or witnesses associate an accused person with the commission of the offence charged. See ARCHIBONG v STATE (2006) LPELR, 537, STATE v. AIGBANSE (1988) 3 NWLR (Pt. 84) 549; ANYANWU v STATE (1986) 5 NWLR (Pt.43) 612. G

Moreover, the Appellant made a confessional statement Exhibit A which the two Courts below found weighty and worthy of consideration in the conviction and sentencing of the Appellant. I do not have reason to interfere with the concurrent finding of the two Courts below. H

In the light of the foregoing and the detail and fuller reasons set out in the lead judgment, I hereby dismiss this appeal and abide by all the consequential orders made in the lead judgment. Appeal

KEKERE-EKUN JSC

I have had a preview of the well considered judgment of my
B learned brother, OGUNBIYI, JSC just delivered. His Lordship has
meticulously considered and ably resolved the sole issue for determi-
nation in this appeal. I agree with the reasoning and conclusion that
the appeal lacks merit and deserves to be dismissed.

C In support of the judgment, I wish to add a few words. This
appeal is against the judgment of the Court of Appeal, Benin Division
delivered on 9/12/2014 affirming the judgment of the High Court of
Delta State sitting at Asaba delivered on 23/6/2013 convicting and
sentencing the appellant to various terms of imprisonment for con-
D spiracy to kidnap, kidnapping and illegal possession of firearms. Be-
ing dissatisfied with the judgment of the Court below, the appellant
has further appealed to this Court.

The sole issue for determination in this appeal is:

E Whether the Lower Court rightly affirmed the trial Court's
decision that the prosecution proved the charges against him beyond
reasonable doubt.

As rightly stated in the lead judgment, in discharging its burden
of proving the guilt of an accused person beyond reasonable doubt
as enjoined by Section 135 (1) of the Evidence Act, 2011, the
F prosecution may rely on:

- (1) Direct evidence of witnesses;
 - (2) Circumstantial evidence; and/or
 - (3) By admissions and confessions of the very people accused
- G of the crime, See: *Adio vs The State* (1986) 5 SC 194 @ 219-220;
Emeka vs The State (2002) 14 NWLR (Pt. 734) 666; *Olabode Abirifon*
Vs The State (2013) 13 NWLR (Pt.1372) 587@ 596 F-G.

It is also well settled that a confessional statement made by an
accused person, if voluntarily made is the best guide to the truth of
H the part played by him in the commission of the offence. If it is direct,
positive and satisfactorily proved, it is sufficient to warrant a convic-
tion whether retracted or not. See: *State vs Salawu* (2011) 18 NWLR
(Pt.1279) 883 @ 913 C - F; *Egboghonome Vs State* (1993) 7 NWLR
(Pt. 306) 383, *Olabode Abirifon Vs State* (2013) 13 NWLR (Pt.1372)

The appellant has raised several issues in this appeal which have been fully captured in the lead judgment. Suffice it to say that Exhibit A, the appellant's confessional statement is elaborate, direct, positive and unequivocal as to the appellant's participation in the commission of the offences with which he was charged. The evidence of PW1, the victim of the crime and PW2, the person who assisted in apprehending the appellant when he fled from the vehicle used in kidnapping PW1 after it broke down, corroborate the contents of Exhibit A in every material particular. Although the appellant retracted the statement at the trial, the law is that the retraction of an extrajudicial statement at the trial will not render it inadmissible. Rather the Court will take all the surrounding facts and circumstances into account in determining the weight to be attached to it. See: *Dibie Vs The State* (2007) 9 NWLR (Pt.1038) 30; *Oche vs The State* (2007) 5 NWLR (Pt. 1027) 214. The trial Court did just that in the instant case and came to the inevitable conclusion that Exhibit A is the voluntary confession of the appellant and that having regard to the narration of events contained therein along with the credible evidence given by PW1, PW2 and PW3, the prosecution had proved its case beyond reasonable doubt in respect of counts III, IV and V of the charge.

The Lower Court agreed entirely with these findings. The findings have not been shown to be perverse. This Court is always loathe to disturb concurrent findings of fact by two Lower Courts unless there are compelling reasons to do so. See: *Olabode Abirifon Vs State* (supra); *Ojibah Vs Ojibah* (1991) 5 NWLR (Pt.191) 296; *Adeleke Vs Aserifa* (1990) 3 NWLR (Pt.136) 94; *Akeredolu Vs Akinremi* (No.3) (1989) 3 NWLR (Pt. 108) 164.

There are no such compelling reasons in this case.

For these and the more comprehensive reasons well articulated in the lead judgment, I find no merit in this appeal. It is accordingly dismissed.

I abide by the consequential orders made in the lead judgment.

OKORO JSC

I had the advantage of reading in draft the lead Judgment of

my learned brother, Clara Bata Ogunbiyi, JSC just delivered which I totally agree with the reasons advanced to reach the conclusion that this appeal lacks merit and ought to be dismissed. My learned brother has effectively and quite admirably resolved the lone issue formulated for the determination of this appeal. I shall make a few comments in support.

The record of appeal shows that on 8th day of March, 2012, the PW1, Galvagni Remzo, an Italian National, working with Davnotch Nigeria Limited arrived for work in his office at about 6.45 am. As he alighted from his vehicle, he was accosted by some persons who tried to abduct him. He raised an alarm and the said persons scampered away after dispossessing him of some valuables. He thereafter went to lodge an oral report at the Police Station, where he was joined by PW2.

Afterwards, he returned home to freshen up. Upon arrival at his residence, he was waylaid by some persons who abducted him and drove him away in his Toyota Hilux vehicle. At a stage, which the vehicle slowed down to make a turn, he was able to jump out from the vehicle and escaped. Meanwhile, the PW2 who had seen a vehicle that looked like the vehicle described by the PW1 at the Police Station gave chase to the vehicle and the driver of the vehicle who later turned out to be the appellant and one of the kidnappers was apprehended after the vehicle had an accident and he tried to escape on foot. A gun and some ammunitions were recovered from the appellant.

At the trial High Court, appellant was convicted of the offence of conspiracy to commit kidnapping, kidnapping and illegal possession of firearms. Though he was also charged with armed robbery, he was found not guilty in that one. An appeal to the Court of Appeal was dismissed. On a further appeal to this Court, only one issue is nominated for determination. It states:

“Whether the Lower Court rightly affirmed the trial Court’s decision that the prosecution proved the charges of conspiracy to commit kidnapping, kidnapping and illegal possession of firearms against the appellant beyond reasonable doubt.”

Both parties have proffered arguments for and against as is usually done. One of the grouse of the appellant is that the PW1, the alleged victim of the offence did not identify the appellant as an of-

fender with regard to any of the offences with which he was charged.

Generally, there are three ways the prosecution uses to prove its case. First, by direct evidence of witnesses. Secondly, by circumstantial evidence. And thirdly, by admissions and confessions of the accused person or persons. See *Ogunzee V. The State* (1998) 58 LRCN 3512 at 3551. In the instant case, the prosecution used the three methods positively to prove its case against the appellant. Evidence led shows that three kidnappers went to kidnap the appellant. They came in a grey colour Honda car. Two of the kidnappers abducted the PW1 and sped away in PW1's car. The 3rd kidnapper drove the Honda car away. PW2 followed the Honda car. The Honda car had an accident. The 3rd kidnapper abandoned the car and tried to escape on foot. He was arrested there. An AK50 gun, two magazines and 29 rounds of ammunitions were recovered from the car. The driver of that Honda car is the appellant. This evidence is clear, direct and overwhelming that the appellant should not complain at all, much more so for the fact that he made a confessional statement which is Exhibit A in this case.

The complaint of the appellant is that he was not identified by PW1. What about the evidence of PW2 which clearly linked him directly with the offence?

In *Archibong V. State* (2006) LPELR - 537 (SC) this Court stated concerning identification as follows:

"Identification in this connection means a whole series of facts and circumstances for which a witness or witnesses associate an accused with the commission of the offences charged. It may consist of or include evidence in the form of finger prints, hand writing, voice, identification parade, photographs identity or the recollection of the features of the culprit who saw him in the act of commission of a crime or a combination of two or more of these." (pp 16-17, Paras F-A). See also *State V. Aigbanbee* (1988) 3 NWLR (Pt. 84) 549, *Anyanwu v State* (1986) 5 NWLR (Pt. 43) 612.

I agree with the Court below that the appellant, having been arrested while escaping with the vehicle used in the abduction business, has no reasonable complaint that was not properly identified.

The appellant also raised issues concerning his statement to the police i.e. Exhibit A. On this, the Lower Court said:

"Having equally considered the evidence on record, I cannot

but agree with the Lower Court that Exhibit A is a confessional statement made by the appellant. I am consequently not enamoured by the contention of the appellant's counsel that the confessional statement Exhibit A is "weightless". The issues raised by the appellant's counsel as to whether the appellant was arrested by the PW3 or whether PW3 failed to countersign the statement do not affect the requisite tests duly applied by the lower Court."

The two courts below have found as a fact that Exhibit A is the confessional statement of the appellant. It is now well settled that the Supreme Court will not disturb the concurrent findings of fact of two Courts below unless there is manifest error which leads to some miscarriage of justice, or a violation of some principle of law or procedure. See *Amadi V. Nwosu* (1992) 6 SCNJ 59, *Onwujuba V. Obieniu* (1991) 4 NWLR (Pt.188) 16, *Ogundipe V. Awe* (1988) 1 NWLR (pt. 88) 188. In this case, the appellant has failed to show why the concurrent findings of the two Lower Courts on the issue of Exhibit A, the confessional statement should be tampered with.

Based on the above and the fuller reasons espoused in the lead judgment, I agree that this appeal is unmeritorious. It is hereby dismissed by me also. I adopt and abide by all the consequential orders made in the lead judgment.

Appeal Dismissed.

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