

SUPREME COURT OF NIGERIA
FRIDAY 1ST JULY, 2016. SC. 524/2014
CORAM:- S. GALADIMA, M. U. PETER-ODILI, K. B.
AKA'HS, K. M. O. KEKERE-EKUN, J. I. OKORO, JJSC

SHINA AKINRINLOLA APPELLANT
V.
THE STATE RESPONDENT

EVIDENCE - Confession - Where voluntary, consistent and probable - Court will accept it as a satisfactory evidence to convict upon (H1)

CRIMINAL PROCEDURE - Confession - In which appellant stated his share of the armed robbery booty - Is not capable of two interpretations - As alleged by appellant's counsel (H2)

CONVICTION - Confession - Solola case on double interpretation - Does not apply - Where conviction is not solely based on the confessional statement (H3)

CRIMINAL PROCEDURE - Confession - Corroboration - Veracity of a confession is tested inter alia - By whether it is possible - And consistent with other established facts (H4)

CONVICTION - Confession - Corroboration - Though desirable and is available in this case - A satisfactory confessional statement alone is sufficient to ground conviction (H5)

CRIMINAL PROCEDURE - Identification - Definition of - Can be circumstantial - Best form of is the prompt identification by the victim - Or those that witnessed the crime (H6)

ARMED ROBBERY - Identification - Of appellant by victims - That were not shaken under cross examination - Cannot be discredited - By counsel's speculation on absence of electricity (H7)

CRIMINAL PROCEDURE - Identification evidence - Must satisfy the

3240 Akinrinlola v. State (2016) 7 KLR (pt. 389) 3239; (2016)
courts - That accused committed the offence - As happened in this
case (H8)

ARMED ROBBERY - Proof - Onus is on prosecution - To establish
guilt of accused beyond reasonable doubt - By showing inter alia -
That he was one of the armed robbers (H9)

ARMED ROBBERY - Proof - Where there are several evidence -
Including appellant's confession to the crime - Prosecution has proved
it's cased beyond reasonable doubt (H10)

FACTS

Before the Ondo State High Court sitting at Akure, appellant
was charged with the offences of conspiracy and armed robbery.
Prosecution alleged that while armed with guns and other dangerous
weapons, appellant robbed one Ndubisi Agatha, Director of a Su-
permarket, of properties and cash valued at about N440,000.00. in
January 2004, while a team of detectives were investigating a rob-
bery case at Araromi, the appellant and one other confessed to a
previous case of robbery which happened at NAO Supermarket on
the 11th December, 2003.

The case of the defence in respect of the appellant is that he
was a victim of police random arrest at Araromi where he was waiting
to take a bike. About seven of them were arrested. Appellant states
that his statement - Exhibit B1 was not confessional. He also denied
in open Court his participation in the robbery. At the close of evi-
dence and addresses of counsel, the learned trial judge found the
appellant guilty of conspiracy and armed robbery. He sentenced him
to death accordingly. Appellant's appeal to the Court of Appeal was
dismissed. Still dissatisfied, appellant has further appealed to the Su-
preme Court raising 3 issues.

ISSUES FOR DETERMINATION

*“(1) Whether the prosecution discharged the burden of prov-
ing that Exhibit B1 - the alleged confessional statement was corrob-
orated or confirmed as true in line with a plethora of Supreme Court
authorities?”*

*(2) Whether there was any reliable evidence in proof of the
identity of the appellant as committing the offence in view of the*

material contradicting evidence of PW1, PW2, PW3 and PW4 in respect of the identification?

(3) In view of the evidence before the Court, whether the Court of appeal was correct to have held that the prosecution proved the case of armed robbery against the appellant beyond reasonable doubt?"

HELD (Unanimously dismissing the appeal per lead judgment of **OKORO JSC**)

EVIDENCE - Confession

1. By Section 28 of the Evidence Act 2011, a confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. Thus a voluntary confession of guilt, if fully consistent and probable and is coupled with a clear proof that a crime has been committed by some persons, is usually accepted as satisfactory evidence on which the Court can convict. For the avoidance of doubt, a trial Court can only rely on a confessional statement where the said statement is shown to be direct, positive, unequivocal and voluntarily made. (p. 3251 C)

CRIMINAL PROCEDURE - Confession

2. My Lords, may I at this stage ask this question, i.e. is the statement made by the appellant - Exhibit B1 capable of two interpretations? I ask the question because this Court had, in *Solola & Anor v. The State* (supra), stated as follows:-

"Before a confessional statement could result in the conviction of an accused, it must be unequivocal in the sense that it leads to the guilt of the maker. Where a so-called confessional statement is capable of two interpretations in the realm of guilt and non guilt, or wayward, a trial judge will not convict the accused but give him the benefit of doubt". per Tobi, JSC (at page 39, paras C-E).

My assessment of Exhibit B1 which accords with the views of the two Courts below is that it leads to one interpretation only, that is to say, that the appellant confessed that he not only took part in the armed robbery which took place at NAO

Supermarket, but he also took part in the sharing of the booty. The appellant listed the items and cash given to him which were the product of the attack at the supermarket. He even said he did not take part in any other robbery except the one at NAO Supermarket. There is certainly no other interpretation than that. (p. 3253 G)

CONVICTION - Confession

3. One issue I need to clarify is that for the view expressed by Tobi, JSC in *Solola & Anor v. The State* (supra) to apply, it must be shown that it is the statement of the accused alone that is to be relied upon to convict the accused. In the instant case, the conviction of the appellant was not based on Exhibit B1 alone. Evidence of the prosecution witnesses clearly showed that the appellant was one of the robbers who attacked NAO Supermarket. PW1 at page 41 of the record states that:

“On the night of December, 11 2003, the 2 armed persons came into NAO supermarket and they asked us to lie down and they are (sic) with gun. They stole our wrist watches, wines, rings, ear rings and they took all the money that we made that day. I can’t remember the amount but the money was much. Yes I can identify the 2 armed robbers that came to our shop on that day. The 2 accused persons are the ones. I am sure because I know them. I know them because they were not wearing masks when they came to our shop on that date”
The learned trial judge relied on both the confessional statement of the appellant and the evidence of the prosecution witness to convict the appellant. This was upheld by the Court below. (p. 3254 E)

CRIMINAL PROCEDURE - Confession - Corroboration

4. The other major argument in this issue is that there was nothing outside the confessional statement to corroborate it. I am aware that this Court has decided in a plethora of cases that it is desirable to have outside a confession, some evidence of the circumstances which make it probable that the confession is true.

The Courts have over the years laid down conditions

to test the veracity of a confessional statement as follows:-

- 1. Is there anything outside the confession which shows that it may be true?**
- 2. Is it corroborated in anyway?**
- 3. Are the relevant statements of fact made in it most likely true as far as they can be tested?** B
- 4. Did the accused have the opportunity of committing the offence?**
- 5. Is the confession possible?**
- 6. Is the alleged confession consistent with other facts which have been ascertained and established?** C (p. 3255 A)

CONVICTION - Confession - Corroboration

5. A cursory look at the above conditions vis-à-vis confessional statement of the appellant will show clearly that the said statement - Exhibit B1 falls within those conditions. He was at the scene, he shared the booty and he also said he took part. So what else? This Court has even held 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. D E

From all I have said above, it is crystal clear that the Court below was right to affirm that Exhibit B1 the confessional statement of the appellant is true and was appropriately corroborated by the evidence of the prosecution witnesses. As it turns out, this issue is resolved against the appellant. F (p. 3255 F)

CRIMINAL PROCEDURE - Identification - Definition of

6. Simply put, identification is the process of showing, proving or recognizing who or what somebody or something is and in relation to a criminal trial, it more often than not, relates to the identification of an accused person or persons who took part in the commission of an offence. An accused person may be identified directly either by the victim of the crime or by witnesses who were at the scene of crime. An accused person can also be identified by circumstantial evidence. For instance, where an accused person is found in possession of items stolen from a shop shortly after the shop G H

was burgled. Moreso a person found running away from a murder scene with blood stained knife or machete may be so linked with the commission of the offence until it is proved otherwise. However, the best form of identification is the prompt one by the victim or people who saw the crime committed. (p. 3257 E)

ARMED ROBBERY - Identification

7. In the instant case, the appellant was identified by PW1 and PW2 who were victims of the armed robbery attack. Learned counsel for the appellant had argued that in view of the epileptic nature of electricity supply in this country, the two Courts below ought to have taken judicial notice of it and hold that there was no light that night for PW1 and PW2 to have seen the robbers. The said argument, to say the least, is speculative and this Court does not act on speculation. The PW1 and PW2 said they saw the robbers including the appellant because they were not masked. In *Adeyemi v. The State* (1991) LPELR - 168 (SC), this Court held that where a witness who gave evidence of visual identification was not cross examined or shaken under cross-examination, nothing stops a trial judge from accepting his evidence. There is no indication that the learned counsel for the appellant was able to shake the PW1 and PW2 under cross examination in this respect. It is too late in the day to make such submission. (p. 3258 C)

CRIMINAL PROCEDURE - Identification evidence

8. I need to emphasize that in matters of identification, the trial Court and indeed all Courts must be satisfied that the evidence of identification proves beyond reasonable doubt that the accused before the Court was the person who actually committed the offence charged.

The evidence of identity of the appellant was described by the learned trial judge as “uncontroverted” and “unchallenged”. Since the appellant did not challenge the evidence at the trial Court, he is deemed to have admitted the said evidence. Identification depends on the mental ability and perception of individuals. The fact that Mr. A cannot recognize

somebody he saw together with Mr. B, does not mean that Mr. B cannot also recognize the said person. Their mental ability and perception are not the same.

Although the PW1 and PW2 clearly identified the appellant as the armed robbers who attacked them at NAO Supermarket in the night of 11th December, 2003, there was indeed no need for any identification parade. The reason is that the appellant in his statement to the police - Exhibit B1 had identified himself when he said:

“... I have not gone out to rob with Ola, John and Majata (m) before now unless one at the NAO Supermarket on that day, Majata (m) gave me one women wrist watch”

As was held in Adeyemi v. State (supra), it is fallacious to think that the only identification of an accused person acceptable when an issue of identification is raised is an orchestrated identification parade. An accused person who has made a confessional statement which is accepted by the Court has indeed identified himself. To talk about any further identification is, to say the least, superfluous. It is my view that the Court below was right when it held that the learned trial judge was on a strong wicket that the appellant was properly identified as one of the robbers who struck at NAO Supermarket Akure on the night of 11th December, 2003. Accordingly, this issue does not avail the appellant. Issue 2 is thus resolved against the appellant. (p. 3259 A)

ARMED ROBBERY - Proof - Onus is on prosecution

9. Let me state categorically that in criminal proceedings, the onus is always on the prosecution to establish the guilt of the accused beyond reasonable doubt. 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.

In order to succeed in a charge of armed robbery as in this case, the prosecution must prove beyond reasonable doubt the following ingredient:

- 1. That there was robbery or a series of robberies.**
- 2. That each robbery was an armed robbery, and**
- 3. That the appellant (accused) was the robber or one**

**of those who took part in the armed robbery.
It is to be noted that all the above ingredients must be proved beyond reasonable doubt before a conviction can be sustained.**
(p. 3261 D)

B *ARMED ROBBERY - Proof*

10. All these evidence point irresistibly to the fact that the prosecution proved its case against the appellant beyond reasonable doubt.

C **The Court below in its judgment stated the position as follows:-**

“With the confession of the appellant as contained in Exhibit B1, added to the testimonies of the PW1, PW2, PW3 and PW4, it cannot be removed from the prosecution the fact that the prosecution has indeed proved the necessary ingredients of the offence of armed robbery against the appellant” (See page 223 of the record)

Just as the two Court below, I have no doubt in my mind at all that the prosecution proved the case of armed robbery against the appellant beyond reasonable doubt. Accordingly, issue 3 does not avail the appellant and is thus resolved against him.

On the whole, having resolved the three issues against the appellant, all that remains to be said is that there is no merit in this appeal and it is accordingly dismissed. (p. 3262 E)

REPRESENTATION

A. Kazeem Esq. with O. Bolarinwa Esq., for Appellant
G L. F. Anga Esq., with Raymond Ofagbor Esq., for Respondent

CASES REFERRED TO

Alarape v. The State (2001) LPELR - 412 (SC)
Bature v. State (1994) 1 NWLR (pt. 320) 267 at 283 - 284
H Adio v. The State (2005) 4 ACLR, 296 at 310
Nwaebonyi v. The State (1994) 5 NWLR (pt.343) 138 at 150
Ogoala v. The State (1991) 2 NWLR (pt. 175) 509
Solola v. The State (supra)
Hassan v. The State (2001) 15 NWLR (pt. 735) 184

Alarape v. State (2001) 5 NWLR (pt. 705) 79

Afolabi v. The State (2010) LPELR - 197 (SC)

Adamu v. State (1991) 4 NWLR (Pt. 187) 530

Adeyemi v. State (1991) 2 NWLR (pt. 170) 679

R v. Turubull and Ors (1976) 3 ALL ER 549

IKEMSON v. STATE (1989) 6 SC (Pt.5) 114

B

KOLAWOLE v. STATE (2015) EJSC (Vol. 13) 40 at 62

Nwaebonyi v. The State (1994) 5 NWLR (Pt.138) 150

Egboghonome vs. The State (1993) 7 NWLR (Pt. 306) 383

C

STATUTES REFERRED TO

Robbery and Firearms (Special provisions) Act Cap. 398 Vol. XXII

Laws the Federation 1990, ss. 5(b) and 1(2)(a)

Evidence Act 2011 s. 28

Constitution of the Federal Republic of Nigeria (as amended) s. 36 (5)

D

Evidence Act s. 27 (2)

LEAD JUDGMENT BY OKORO JSC

This is an appeal against the judgment of the Court of Appeal, Akure Judicial Division which affirmed the decision of the High Court of Ondo State, sitting at Akure wherein the appellant was convicted of the offences of conspiracy and armed robbery, and sentenced to death by hanging contrary to Section 5(b) and 1(2)(a) of the Robbery and Firearms (Special provisions) Act Cap. 398 Vol. XXII Laws the Federation 1990, respectively.

F

The facts leading to this appeal as can be garnered from the record of appeal shows that the appellant on or about the 11th of December, 2003 at about 9.00 pm at No. 126 Oba Adesina Road. Akure popularly known as NAO Supermarket in the Akure judicial Division, while armed with guns and other dangerous weapons did rob one Ndubuisi Agatha (the Director of NAO Supermarket) of properties and cash valued at about Four Hundred and Forty Thousand Naira (N440,000.00) only.

H

The record further shows that in January 2004, while a team of detectives were investigating a robbery case at Araromi, the appellant and one other confessed to a previous case of robbery which happened at NAO Supermarket on the 11th December, 2003.

The case of the defence in respect of the appellant is that he was a victim of police random arrest at Araromi where he was waiting to take a bike. About seven of them were arrested. Appellant states that his statement - Exhibit B1 was not confessional. He also denied in open Court his participation in the robbery. At the close of evidence and addresses of counsel, the learned trial judge delivered judgment on 2nd November, 2010 and found the appellant guilty of conspiracy and armed robbery and thereby sentenced him to death accordingly.

Being dissatisfied with the judgment of the trial Court, the appellant appealed to the Court below which dismissed the appeal in a judgment delivered on 25th, June, 2014. The appellant has further appealed to this Court. Notice of appeal was filed on the 11th July, 2014 with three grounds of appeal.

On 28th, April, 2016 when this appeal was heard, both parties adopted their respective briefs which they had filed and exchanged. In the appellant's brief settled by Adeniji Kazeem Esq., and filed on 20th October, 2014, three issues have been distilled for the determination of this appeal. The issues are as follows:-

'(1) Whether the prosecution discharged the burden of proving that Exhibit B1 - the alleged confessional statement was corroborated or confirmed as true in line with a plethora of Supreme Court authorities?

(2) Whether there was any reliable evidence in proof of the identity of the appellant as committing the offence in view of the material contradicting evidence of PW1, PW2, PW3 and PW4 in respect of the identification?

(3) In view of the evidence before the Court, whether the Court of appeal was correct to have held that the prosecution proved the case of armed robbery against the appellant beyond reasonable doubt?"

Also, in the brief settled by G.A Olowoporoku, Esq, Director Legal Research, Ministry of Justice, Akure on behalf of the respondent, similar issues distilled by the appellant are formulated though couched differently in the following words:-

"(1) Whether the learned justices of the Court of Appeal were right in affirming the conviction and sentence of death imposed on the appellant (solely on the appellant's confessional statement) in

the light of evidence before the Court.

(2) Whether the procedure adopted for identifying the appellant as one of those who committed armed robbery at NAO Supermarket on 11th December, 2003 is valid in law?

(3) Whether the learned justices of the Court of Appeal were right in holding that the prosecution proved its case beyond reasonable doubt at the trial Court.”

I shall in the circumstance determine this appeal based on the three issues submitted by the parties herein without necessarily preferring the issues as couched by any of the parties, all pointing to the same direction with the same import. I need to mention that the appellant filed and adopted a reply brief on 21/8/15 which shall be given adequate treatment where necessary.

On the first issue, the learned counsel for the appellant after stating the ingredients of the offence of armed robbery as decided in the case of Adekoya v. The State (2012) LPELR - 7815 (SC) and also stating that a confessional statement must be direct, clear, precise and unequivocal, submitted that an assiduous or careful look at Exhibit B1 will clearly reveal that it is not direct, positive or unequivocal and thus does not qualify as a confessional statement. As regards the statement of the appellant in Exhibit B1 that he “suddenly saw John (m) Ola (m) and Majata (m) coming out from NAO Supermarket along Stadium Road, Akure” on the night of the robbery attack, learned counsel submitted that the use of the word “suddenly” shows that he was not part of the robbery incident. Also that the use of the word “they” refers to a group distinct from the appellant in contradistinction to the word ‘we’ which refers to a person and the rest of a group that includes the person.

Learned counsel submitted that Exhibit B1 cannot conclusively support the Courts’ inference and conclusion that the appellant admitted committing the offence of armed robbery on 11th December, 2003 at NAO Supermarket, Akure. It is his view that the statement is capable of two interpretations and should be resolved in favour of the appellant relying on the case of Solola & Anor v. The State (2005) LPELR 3101 (SC).

Submitting further, learned counsel opined that given the questionable, doubtful and ambitious nature of Exhibit B1, the prosecution failed to proffer other evidence to support the charge of armed

robbery against the appellant. It is his view that the prosecution must produce independent evidence to corroborate the alleged confessional statement before it can be used to convict the appellant. He submitted that the appellant failed to do this. He relies on the cases of Asimiyu Alarape & Ors v. The State (2001) LPELR - 412 (SC) Bature v. State (1994) 1 NWLR (pt. 320) 267 at 283 - 284, Ogudo v. State (2011) 18 NWLR (pt. 1278) 1 at 32, Ike v. The State (2001) LPELR - 1480 (SC).

It is the stand of learned counsel that the evidence of PW1 and PW2 did not corroborate Exhibit B1. He urged the Court to resolve this issue in favour of the appellant.

In response, the learned counsel for the respondent submitted that the learned justices of the Court of Appeal were right in affirming the conviction and sentence of the appellant in the light of Exhibit B1 - the confessional statement of the appellant. According to him, once a statement is in compliance with the law and rules governing the method for taking it and it is tendered and admitted as an exhibit, then it is good evidence and no amount of retraction will vitiate its admission as a voluntary statement, relying on the cases of Ikemson v. State (1998) 1 ACLR 80 at 92 Paragraphs 15-20, Nwachukwu v. State (2004) 17 NWLR (pt. 902).

Submitting further, learned counsel for the respondent opined that where a confessional statement is voluntary, free, direct and positive, it can be relied upon, without more, to convict an accused person. He cites the cases of Adio & Anor v. The State (2005) 4 ACLR, 296 at 310 Tegwonor v. The State (2008) 1 NWLR (pt. 1069) 630 at 654. He submitted that Exhibit B1 is direct, unequivocal and voluntarily made and satisfies the provisions of the Evidence Act, 2011.

Learned counsel agrees that it is desirable to have some evidence outside the confessional statement in view of the test recommended in the case of Nwaebonyi v. The State (1994) 5 NWLR (pt.343) 138 at 150 and Alarape v. The State (2001) 5 NWLR (pt. 705) 79. It is his argument that in the instant case, the evidence of PW1, PW2, PW3 and PW4 were evidence outside the confessional statement which linked the appellant to the commissioning of the crime.

It was further submitted that contrary to the appellant's submission that Exhibit B1 is capable of two interpretations, it is positive,

direct and satisfies the requirement of the law. Referring to the statement, learned counsel submitted that only one meaning is attributable to Exhibit B1.

On the alleged contradiction between the evidence of PW1 and Exhibit B1, Learned counsel submitted that it is not material, relying on the case of *Dibie & Ors v. The State* (2008) 6 ACLR 329. B He urged the Court to resolve this issue against the appellant.

In the appellant's reply brief learned counsel submitted relying on the case *Dankidi v. State* (2014) LPELR - 23812 (CA) that a piece of evidence that is supposed to corroborate another evidence must not be at loggerheads with the evidence it intends to confirm. C He urged the Court to reject the submission that the evidence of PW1, PW2 and PW3 and PW4 corroborated Exhibit B1.

By Section 28 of the Evidence Act 2011, a confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. Thus a voluntary confession of guilt, if fully consistent and probable and is coupled with a clear proof that a crime has been committed by some persons, is usually accepted as satisfactory evidence on which the Court can convict. For the avoidance of doubt, a trial Court can only rely on a confessional statement where the said statement is shown to be direct, positive, unequivocal and voluntarily made. See *Ogoala v. The State* (1991) 2 NWLR (pt. 175) 509, *Akpan v. State* (1992) 7 SCNJ 22, *Yusufu v. State* (1976) 6 SC 167, *Obasi v. State* (1965) NMLR 129, *Jafiya Kopa v. The State* (1971) 7 NSCC 166. D E F

In the instant case, the main plank of appellant's complaint on this issue is that the content of the statement i.e. Exhibit B1 does not show that the appellant committed the offence. In circumstance therefore, it is expedient to reproduce the said statement in this judgment for case of reference. It states: G

"I Sina Akinrinlola (m) having been duly cautioned in English language that I am not obliged to say anything unless I wish to do so, but whatever I say will be taken down in writing and may be given in evidence.

Signed

Sina Akinrinlola

I wish to state as follows: I am a native of Akure. I attended

Ireakari Community Primary School, Akure and passed out in 1991. Later proceeded to St. Dominic High School, Ikesina park, Akure in the year 1992 and stopped at JSS III in 1995. My father is called Akinrinlola and he died in 1995. My mother is called Dada and she is living in the house where I also lived. On leaving school, I went to

B *learn the school. I went to learn Building material at old garage under one Ola. I spent one year with him before I got my own shop where I was selling cement at Oke-Ijebu street, Akure but I stopped selling cement when I got case with chief Justice Falodun. I fought his driver who had a broken leg. The incident happened January 2003.*

C *It was sometimes in November 2003 that i got to know Akeem (m) at Old garage. He used to come to drink there. I also got to know one Gbenga (m) at the beer parlour. Also one Sunday John and Daniel (m) it was on December, 2003 that myself, Sina, Gbenga (m) Sun-*

D *day (m) Daniel with Ola (m) that we went to Araromi street, Akure in the midnight and robbed a man. It was Gbenga (m) that took us to the man and Gbenga knows him well. We collected money there but I don't know the amount because it was Gbenga that handled the money we also took from the place some electronic gadgets which*

E *have already been recovered from us by the police. And after about a week later I went to stadium junction Akure around 9'0 clock in evening. I saw one boy called Okoh with a M/Benz car and I was playing with him when I suddenly saw John Olu (m) and Mojola (m) coming out from NAO supermarket along Stadium road, Akure. As I*

F *saw them I knew that they come to operate and I went away with them. We went in the stadium car park where they dropped down the items which they collected from the NAO Supermarket. Among the items dropped on the ground one are some wrist watches, one*

G *handset, two bottles of wine. They gave me four thousand naira (4,000.00) out of the money they collected from the supermarket with a wrist watch which is now recovered from my hand. I left them at the place and I did not know how they go about the rest items. But I know that they will sell them. I saw a toy gun which is black and long*

H *with Ola on that day. It was from John (m) Ola (m) and Majata (m) that I know Okoli. I have not gone out to rob with Ola, John and Majata (m) before now unless this one at NAO Supermarket on that day, Majata (m) gave me one woman wrist watch while John gave me the one I mentioned above. I did not know the woman they*

collected from the supermarket. Majata is a native of Idanre and he can be found at Idanre. I don't know how we can found Ola (m) because is not from Akure and I don't know his town. John is now in cell with me. That Araromi place where we robbed, I was shared with only one thousand nine hundred naira (N1,900.00) and one VCD Player. The VCD Player is now with the police here. And after about a week to that of NAO Supermarket, myself- Sina and Gbenga also went to Araromi Street Akure in the night and robbed a house where we collected two handsets and some amount of money. It was Gbenga (m) that handled the money. He later gave me #2,500.00 as my share and one of the Handsets. I have dropped my own Handset to the police now. It was on the 26th December, 2003 at PZ area that I was arrested by the police at SARS here. They took Gbenga (m) along with them who pointed me out to them. The woman wrist-watch given to me by Majata (m) have been sold out by me at the rate of N600.00 to Hausa man under Oba Adesida Bridge, Akure. I cannot be able to identify the Hausa man if I see him again. That is all.

Signed 23/1/2004 Sinna Akinrinlola."

There is no doubt that from the above statement of the appellant which is Exhibit B1, although the appellant used the words "they" and "them" and that he "suddenly" saw the other robbers come out from NAO Supermarket, he went ahead to also state in the same statement as follows:

"I have not gone out to rob with Ola, John and Majsta before now unless this one at the NAO Supermarket on that day."

The learned counsel for the appellant argued that Exhibit B1 is capable of two interpretations: one being that he did not take part and the other that he took part. He cited the case of Solola & Anor. v. The State (supra) to urge that the Court ought to reject the said statement and should not rely on it.

My Lords, may I at this stage ask this question, i.e. is the statement made by the appellant - Exhibit B1 capable of two interpretations? I ask the question because this Court had, in Solola & Anor v. The State (supra), stated as follows:-

"Before a confessional statement could result in the conviction of an accused, it must be unequivocal in the sense that it leads to the guilt of the maker. Where a so-called con-

fessional statement is capable of two interpretations in the realm of guilt and non guilt, or wayward, a trial judge will not convict the accused but give him the benefit of doubt". per Tobi, JSC (at page 39, paras C-E).

B My assessment of Exhibit B1 which accords with the
C views of the two Courts below is that it leads to one interpretation only, that is to say, that the appellant confessed that he not only took part in the armed robbery which took place at NAO Supermarket, but he also took part in the sharing of the
C booty. The appellant listed the items and cash given to him which were the product of the attack at the supermarket. He even said he did not take part in any other robbery except the one at NAO Supermarket. There is certainly no other interpretation than that.

D One may ask, was it a coincidence that immediately the robbers came out of the Supermarket, the appellant met them and they came together to share the items stolen from the Supermarket? It must be noted that the robbery took place at 9.00 pm. So, what was the appellant doing there?

E One issue I need to clarify is that for the view expressed by Tobi, JSC in Solola & Anor v. The State (supra) to apply, it must be shown that it is the statement of the accused alone that is to be relied upon to convict the accused. In the instant case, the conviction of the appellant was not based on Exhibit
F B1 alone. Evidence of the prosecution witnesses clearly showed that the appellant was one of the robbers who attacked NAO Supermarket. PW1 at page 41 of the record states that:

G *"On the night of December, 11 2003, the 2 armed persons came into NAO supermarket and they asked us to lie down and they are (sic) with gun. They stole our wrist watches, wines, rings, ear rings and they took all the money that we made that day. I can't remember the amount but the money was much. Yes I can identify the 2 armed robbers that came to*
H *our shop on that day. The 2 accused persons are the ones. I am sure because I know them. I know them because they were not wearing masks when they came to our shop on that date"*

The learned trial judge relied on both the confessional statement of the appellant and the evidence of the prosecu-

tion witness to convict the appellant. This was upheld by the Court below.

The other major argument in this issue is that there was nothing outside the confessional statement to corroborate it. I am aware that this Court has decided in a plethora of cases that it is desirable to have outside a confession, some evidence of the circumstances which make it probable that the confession is true. See Hassan v. The State (2001) 15 NWLR (pt. 735) 184, Onochie & 7 Ors v. The Republic (1985) NWLR 307, Kanu & Ors v. The King (1952) 14 WACA 30, Edhigere v. State (1996) 8 NWLR (pt. 464) 1, Effiong v. State (1998) 8 NWLR (PT. 562) 362. B
C

The Courts have over the years laid down conditions to test the veracity of a confessional statement as follows:-

- 1. Is there anything outside the confession which shows that it may be true?**
- 2. Is it corroborated in anyway?**
- 3. Are the relevant statements of fact made in it most likely true as far as they can be tested?**
- 4. Did the accused have the opportunity of committing the offence?**
- 5. Is the confession possible?**
- 6. Is the alleged confession consistent with other facts which have been ascertained and established?** D
E

See R. v. Sykes CAR 233, Nwaebonyi v. The State (1994) 5 NWLR (pt. 343) 138 at 150. F

A cursory look at the above conditions vis-a-vis confessional statement of the appellant will show clearly that the said statement - Exhibit B1 falls within those conditions. He was at the scene, he shared the booty and he also said he took part. So what else? This Court has even held 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. See Alarape v. State (2001) 5 NWLR (pt. 705) 79, Oseni v. State (2012) LPELR - 7833 (SC) Yahaya v. The State (1986) 12 SC 282 at 290, The State v. Salawu (2011) LPELR - 8252 (SC), Nsofor v. The State (2004) 18 NWLR (pt. 905) 292. G
H

From all I have said above, it is crystal clear that the

Court below was right to affirm that Exhibit B1 the confessional statement of the appellant is true and was appropriately corroborated by the evidence of the prosecution witnesses. As it turns out, this issue is resolved against the appellant.

B On the second issue which has to do with the identification of the appellant, the learned counsel for the appellant submitted that juxtaposing the facts of the instant case with settled authorities, the method/procedure for identifying the appellant was totally wrong, incorrect and thus there was no reliable evidence confirming the identity of the appellant as the person who committed the crime. According to him, if the two Courts below had properly conceived the Supreme Court's decision in *Ikemson v. The State* (supra) and other relevant authorities on this point, they would have concluded that an identification parade procedure was a sine quo non and more potent in determining the identity of appellant. That all the ingredients which would necessitate the holding of an identification parade were present in the instant case. He relies on the cases of *Afolabi v. The State* (2010) LPELR - 197 (SC) *Sadiki v The State* (2013) LPELR - 20588 (SC).

F It was further submitted that since the robbery took place at night, there was no evidence that there was light in the supermarket. Also, that the Court ought to have taken notice of epileptic power supply in this country and hold that there was no light when the thieves struck. He cited the case of *Ndidi v. The State* (2007) 13 NWLR (pt. 1052) 651. He further submitted that there are no distinguishing mark, no physical features of the appellant communicated to the police by the PW1 and PW2.

G Learned counsel opined that it is without doubt that there was no previous relationship between the PW1, PW2 and the appellant. And based on this fact, the purported identification of the appellant is replete with material doubts which ought to be resolved in favour of the appellant. The following case were further cited to buttress his submissions. They are *Bozin v. The State* (1985) LPELR - 799 (SC), *Casesikarie v. State* (2012) LPELR - 15533 (SC) and *Alabi v. The State* (1993) 7 NWLR (pt. 307) 511.

Learned counsel then urged the Court to resolve this issue in favour of the appellant.

Responding to the 2nd issue, learned counsel for the respondent submitted that there was proper identification of the appellant as one of those who committed armed robbery at NAO Supermarket, Akure on 11th December, 2003. Referring to the evidence of PW1 and PW2, learned counsel submitted further that based on same and the identification parade carried out at the shop before the trial of the appellant, it is beyond doubt that the appellant was properly identified as one of the robbers. Citing the case of Ikemson v. The State (supra) learned counsel submitted that any of the conditions laid down therein on identification would do in view of the fact that PW1 and PW2 testified that the robbers were barefaced thus affording them the opportunity to observe and take in the faces of their attackers.

Apart from identification of the appellant by PW1 and PW2, Learned counsel submitted that the appellant identified himself in Exhibit B1 that he attacked NAO Supermarket on the night in question. Thus, by his confession he had identified himself, he opined, citing and relying yet again of the case of Ikemson v. The State (supra). He urged the Court to resolve the second issue against the appellant.

Simply put, identification is the process of showing, proving or recognizing who or what somebody or something is and in relation to a criminal trial, it more often than not, relates to the identification of an accused person or persons who took part in the commission of an offence. An accused person may be identified directly either by the victim of the crime or by witnesses who were at the scene of crime. An accused person can also be identified by circumstantial evidence. For instance, where an accused person is found in possession of items stolen from a shop shortly after the shop was burgled. Moreso a person found running away from a murder scene with blood stained knife or machete may be so linked with the commission of the offence until it is proved otherwise. However, the best form of identification is the prompt one by the victim or people who saw the crime committed. See Adamu v. State (1991) 4 NWLR (Pt. 187) 530.

Now considering the proper mode of identification in matters of this nature, this Court stated clearly in Adamu v. State (supra)

as follows:-

“The entire circumstances of a case determine the type of identification necessary. In some cases when there is more of suspicion rather than some concrete evidence against an accused person, an identification parade may be necessary whereby the accused person is lined up among other persons or even suspects and the victim or witness is asked to identify the culprit. But such method is not necessary if the victim of the crime or a witness thereof promptly identifies the criminal without prodding as has happened in this case.”

See Adamu v. State (1991) LPELR - 73 (SC) at page 9, Paragraphs C-E See also Okosi v. State (1989) 1 NWLR (pt. 100) 642, 656, Mbenu v. State (1988) 3 NWLR (pt.84) 615, 628.

In the instant case, the appellant was identified by PW1 and PW2 who were victims of the armed robbery attack.

Learned counsel for the appellant had argued that in view of the epileptic nature of electricity supply in this country, the two Courts below ought to have taken judicial notice of it and hold that there was no light that night for PW1 and PW2 to have seen the robbers. The said argument, to say the least, is speculative and this Court does not act on speculation. The PW1 and PW2 said they saw the robbers including the appellant because they were not masked. In Adeyemi v. The State (1991) LPELR - 168 (SC), this Court held that where a witness who gave evidence of visual identification was not cross examined or shaken under cross-examination, nothing stops a trial judge from accepting his evidence. There is no indication that the learned counsel for the appellant was able to shake the PW1 and PW2 under cross examination in this respect. It is too late in the day to make such submission.

Both the learned counsel for the appellant and the respondent referred this Court to the principles governing proper identification as enunciated in Ikemson v. State (supra) which include the following:

“1. The description of the accused given to the police shortly after the commission of the offence.

2. The opportunity the victim had of observing the accused and

3. What features of the accused noted by the victim and com-

municated to the police.”

I need to emphasize that in matters of identification, the trial Court and indeed all Courts must be satisfied that the evidence of identification proves beyond reasonable doubt that the accused before the Court was the person who actually committed the offence charged. In the instant case, the learned trial judge held as follows at P.118 of the record:-

“In the case at hand, PW1 and PW2 stated unequivocally, their ability to identify the 2 accused persons when they were brought to their shop by the police.”

This piece of evidence was also corroborated by the evidence of PW3 who under oath testified that the accused persons were taken to the shop where they demonstrated to the team the parts they took during the robbery incidence and that the 1st accused person was caught wearing one of the wrist watches tendered as Exhibit P3"

The learned trial Judge went further to state on page 116 of the record on issue of identification that:

“It is uncontroverted and unchallenged evidence of PW1 and PW2 that on the night of the alleged robbery, they were able to identify the robbers. They were able to identify the robbers because they were not masked as their faces were opened and they saw their faces when they rushed in”

The evidence of identity of the appellant was described by the learned trial judge as “uncontroverted” and “unchallenged”. Since the appellant did not challenge the evidence at the trial Court, he is deemed to have admitted the said evidence. Identification depends on the mental ability and perception of individuals. The fact that Mr. A cannot recognize somebody he saw together with Mr. B, does not mean that Mr. B cannot also recognize the said person. Their mental ability and perception are not the same. See Adeyemi v. State (1991) 2 NWLR (pt. 170) 679.

Although the PW1 and PW2 clearly identified the appellant as the armed robbers who attacked them at NAO Supermarket in the night of 11th December, 2003, there was indeed no need for any identification parade. The reason is that the appellant in his statement to the police - Exhibit B1 had identified himself when he said:

“... I have not gone out to rob with Ola, John and Majata (m) before now unless one at the NAO Supermarket on that day, Majata (m) gave me one women wrist watch”

As was held in Adeyemi v. State (supra), it is fallacious to think that the only identification of an accused person acceptable when an issue of identification is raised is an orchestrated identification parade. An accused person who has made a confessional statement which is accepted by the Court has indeed identified himself. To talk about any further identification is, to say the least, superfluous. It is my view that the Court below was right when it held that the learned trial judge was on a strong wicket that the appellant was properly identified as one of the robbers who struck at NAO Supermarket Akure on the night of 11th December, 2003. Accordingly, this issue does not avail the appellant. Issue 2 is thus resolved against the appellant.

The third issue is whether the Court below was correct to have held that the prosecution proved the case of armed robbery against the appellant beyond reasonable doubt. In his argument the learned counsel for the appellant reiterated and repeated his earlier arguments on the confessional statement of the appellant. He strongly urges that the Courts below ought not to have relied on the said statement to convict the appellant.

The other submission relates to the decision of the trial Court on page 119 of the record which, inter-alia states:

“The oral testimony of the 2nd accused person on the circumstances leading to their arrest contrary to their confessional statements is not convincing to this Court Outside these testimonies, both accused persons did not call any other witness to corroborate, confirm or affirm their testimonies in this regard.”

Based on the above finding of the learned trial judge, learned counsel submitted on Paragraph 13:10 of their brief that the Court placed on the appellant the burden of proving his innocence, contrary to the provision of Section 36 (5) of the Constitution of the Federal Republic of Nigeria (as amended). He then went ahead to cite the cases of the State v. Isiaka (2013) LPELR - 20521 (SC), STATE V. OGBUBUNJI (2001) LPELR - 3223 (SC) and Alabi v. The State (supra). He then urged the Court to resolve the issue in favour

of the appellant.

Learned counsel for the respondent submitted that the learned justices of the Court of Appeal were right in holding that the prosecution proved its case beyond reasonable doubt. He further submitted that Exhibit B1 which was admitted in evidence is part of the case of the prosecution and the Court is bound to consider its probative value. Learned counsel argued further that the evidence of PW1 and PW2 which rightly corroborate Exhibit B1 shows that the learned trial judge properly and rightly placed evidential weight on Exhibit B1 in holding that the offence of armed robbery against the appellant was proved beyond reasonable doubt. Moreso, that the evidence of PW1 and PW2 were never challenged or controverted and as such the two Courts below were right to rely on them, relying on *Omeregbe v. Lawani* (1980) 3 - 4 (REPRINT) 70 AT 76. He urged the Court to resolve this issue against the appellant.

Let me state categorically that in criminal proceedings, the onus is always on the prosecution to establish the guilt of the accused beyond reasonable doubt. 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. See *Sebastian S. Yongo & Anor v. COP* (1992) LPELR 3528 (SC), (1992) 4 SCNJ 113, *Uche Williams v. The State* (1992) LPELR- 3492 (SC), (1992) 10 SCNJ, 74, *Babuga v. The State* (1996) 7 NWLR (Pt. 460) 279 *Onubogu v. The State* (1974) 9 SC 1 at 40.

In order to succeed in a charge of armed robbery as in this case, the prosecution must prove beyond reasonable doubt the following ingredient:

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

It is to be noted that all the above ingredients must be proved beyond reasonable doubt before a conviction can be sustained. See *Ogudo v. The State* (2011) LPELR- 860 (SC), *Bozin v. The State* (1985) 2 NWLR (Pt. 8) 465, *The State v. Olashehu Salawu* (2011) LPELR -8252 (SC), *Amina v. State* (1990) 6 NWLR (pt. 155) 125.

In the instant case, the appellant's counsel repeated his argu-

ment in issue 1 in respect of the confessional statement of the appellant. Both the learned trial judge and the Court of Appeal upheld the said statement i.e. Exhibit B1 as the confessional statement of the appellant. I had earlier in this judgment put a stamp of finality on the said statement as a voluntary confessional statement of the appellant.

B In the said statement, the appellant admitted committing the offence. I do not think it is necessary to repeat the exercise here.

C The other argument relates to the view of the trial Court that the oral testimony of the appellant in connection with his arrest was contrary to his confessional statement. Contrary to the argument of learned counsel for the appellant, the position taken by the trial Court did not in my opinion amount to placing the burden of proof on the appellant. Far from it. Therefore, the argument on the issue is of no moment.

D Now, considering the evidence led against the appellant in this case, much have been said in issue one relating to the uncontradicted and uncontroverted evidence of PW1 and PW2 that armed robbery took place at NAO Supermarket, Akure on 11th December, 2003 at about 9.00 pm. The items and cash stolen are well documented. The appellant made a confessional statement in which he affirmed that he took part in the robbery as I had earlier reproduced in this judgment. Again, he stated that he saw a gun used. PW1 and PW2 also said they saw a gun. Issue of identification of the appellant came up in issue 2 which I had just addressed. **All these evidence point irresistibly to the fact that the prosecution proved its case against the appellant beyond reasonable doubt.**

F **The Court below in its judgment stated the position as follows:-**

G ***“With the confession of the appellant as contained in Exhibit B1, added to the testimonies of the PW1, PW2, PW3 and PW4, it cannot be removed from the prosecution the fact that the prosecution has indeed proved the necessary ingredients of the offence of armed robbery against the appellant”***
H **(See page 223 of the record)**

Just as the two Court below, I have no doubt in my mind at all that the prosecution proved the case of armed robbery against the appellant beyond reasonable doubt. Accordingly, issue 3 does not avail the appellant and is thus resolved

against him.

On the whole, having resolved the three issues against the appellant, all that remains to be said is that there is no merit in this appeal and it is accordingly dismissed. I affirm the judgment of the Court of Appeal delivered on 25th June, 2014 which upheld the conviction and sentence of the appellant to death for the offence of armed robbery by the High Court of Ondo State. B

Appeal dismissed.

GALADIMA JSC

This appeal is against the judgment of the Court of Appeal Akure Division, delivered on the 25th June, 2014 which affirmed the decision of the High Court of Ondo State sitting at Akure which convicted and sentenced the Appellant to death for the offences of conspiracy and armed robbery contrary to Section 5 (b) and 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act Cap. 398 Vol. XXII, Laws of the Federation 1990. D

The fact of this case has been set out in details by brother OKORO, JSC. I agree with him entirely that the appeal brought by the Appellant herein to this Court lacks merit and ought to be dismissed. I only need to add a few words of mine for emphasis. E

The case of the prosecution was that the Appellant on 11/2/2003 at about 9.00 pm at No. 126 Oba Adesida Road, Akure, popularly known as NAO Supermarket, while armed with guns and other dangerous weapons robbed one Ndubusi Agatha of properties and cash valued at about N440,000.00 (Four Hundred and Forty Thousand Naira). While a team of detectives were investigating the robbery case at Araromi Town sometime in January, 2014, the Appellant confessed to a previous case of robbery which happened at the same NAO Supermarket on 11/12/2003. F G

On their part, the case put up by the Appellant was that he was a victim of police random arrest at Araromi where he was about to take a bike. He contended that his statements Exhibit 'B2' was not voluntary. He denied in open Court participating in the robbery. H

The trial Court found that Appellant guilty of conspiracy and armed robbery and sentence him to death. His appeal to the Court below was dismissed as I have earlier stated.

The learned trial Judge held at page 117 lines 2 - 20 of the record of appeal thus:-

“They (PW1 and PW2) specifically and with precision mentioned the items stolen by the robbers and gave a clear and consistent analysis of how the robbery was carried out. In the view of this Court, contrary to the assertion of counsel to the 2nd accused person, both witnesses had the opportunity of close observation even in their frightened stage. There is no evidence before this Court that the vision in the shop at the time of the robbery was blurred as to distort their visibility at the time of the robbery. The oral testimony of PW1 and PW2 corroborates the confessional statements in Exhibits BA and B2. The circumstances and the length of time within which PW1 and PW2 saw the subjects is enough to identify the perpetrators. It is also argument of counsel to the accused persons that it was only the two accused persons that were brought to the shop of the accused persons for identification as to render faulty the identification for the accused persons as perpetrators of the crime. I have considered the totality of the evidence adduced in this regard. It is the position of our law that identification parade is not a sine qua non in all cases where there was brief encounter with the victim. The locus classicus on the issue of identification is the English case of R v. Turnbull & Ors. (1976) 3 ALL ER 549 - a decision of the Court of Appeal (England) Criminal Provision. Presided over by Lord Widgery CJ”. See page 117 line 2 - 20 of the Record of Appeal.

The Court below held at page 218 - 219 thus -

“To my mind, the whole essence of conducting an identification exercise is to ensure that the person arraigned before the Court is the Person to be charged with the offence in issues. In Ikemson v. State (supra), the principles governing proper identification were enumerated by the Supreme Court to include:

(a) The description of the accused given to the police shortly after the commission of the offence;

(b) The opportunity the victim had of observing the accused;

(c) what features of the accused noted by the victim and communicated to the police.”

In affirming the decision of the trial High Court, the Court below concluded at page 224 of the record of appeal thus:

“An undeniable and consistent fact in the pieces of evidence as led by both the prosecution and the appellant is that a gun, which is an offensive weapon was used to carry out the robbery. Each of a gang of robbers need not be armed for the offence of robbery to succeed.

With the confession of the appellant as contained in Exhibit B ‘B1’, added to the testimonies of the PW1, PW2, PW3, it cannot be removed from the prosecution the fact that it has indeed proved the necessary ingredients of the offence of armed robbery against the appellant. Issue 3 (three) is therefore resolved against the appellant and in favour of the respondent.

The result of all that I have said above is that this appeal is without merit. It is therefore dismissed while the conviction and sentence of Hon. Justice O. Akintan-Osadebay of the High Court of Ondo State sitting at Akure and delivered 2nd November, 2010 in charge nos: AK/3C/2006 is hereby upheld.”

In this case, both PW1 and PW2 testified that their assailants were barefaced. This afforded them the opportunity to closely observe the faces of their assailants. In the circumstance of this case the learned trial Judge considered the totality of the evidence adduced in regard to the identification of the Appellant and his co-assailants and came to the right conclusion thus:

“It is the position of our law that identification parade is not a sine quo non in all cases where there was a brief encounter with the victim. The locus classicus on the issue of identification in the English case of R v. Turubull and Ors (1976) 3 ALL ER 549 - a decision of the Court of Appeal (England) Criminal Division presided over by Lord Widgery CJ. The Supreme Court in the cases of IKEMSON v. STATE (1989) 6 SC (Pt.5) 114 gave approval to the decision of Lord Widgery CJ.”

On the issue of confessional statement of the Appellant the Court below held that:

“...this confessional statement of the accused person did not only support the inference that the accused person committed armed robbery. He admitted that he was involved in the offence. Once an accused makes a statement under caution as in the instant case, saying or admitting that he committed the offence, the statement becomes relevant to the proceeding by virtue of Section 27 (2) of the

Evidence Act. See the case SHANDE v. STATE 2005 NWLR (Pt. 907) 218 at page 238 Paragraphs B - D.”

Contrary to the submission of learned counsel for the Appellant in Paragraphs 5.9.1-5.9.9 of his brief that Exhibit ‘B’ is not direct, positive or unequivocal and does not qualify as confessional statement. I am of the firm view that Exhibit ‘B’ is a confessional statement which has satisfied the requirement of the law. It is positive, unequivocal and direct.

In KOLAWOLE v. STATE (2015) EJSC (Vol. 13) 40 at 62 in my contribution to the leading judgment of my learned brother OKORO, JSC, I had this to say:-

“In the instant case, the appellant made three confessional statements (Exhibits C, E and I), wherein, he confessed to have conspired with others to rob their victim. A confessional statement is the best evidence in criminal procedure. PW1, the victim gave evidence how three men on the motorcycle, suddenly stopped and robbed him on the fateful day. Exhibit ‘G’ corroborates this claim.”

In this case, the evidence of PW1 and PW2 is materially consistent with Appellant confessional statement, Exhibit B and can be said to corroborate Exhibit ‘B’. Moreso, that their evidence were never challenged or controverted. The two Courts below therefore were right to rely on them.

In the light of my brief contribution and the more detailed reasons in the leading judgment, I hereby dismiss this appeal as wholly unmeritorious. It is dismissed.

The judgment of the Court below which affirmed the conviction and sentence of the Appellant is further upheld.

G

PETER-ODILI JSC

I am in agreement with the judgment just delivered by my learned brother, John Inyang Okoro, JSC and to underscore my support, I shall make some remarks.

This is an appeal challenging the decision of the Court of Appeal, Akure Division which affirmed the judgment of the High Court, Akure Ondo State wherein Appellant was sentenced to death by hanging for alleged conspiracy and armed robbery offence contrary to Section 5 (b) and 1 (2) (a) of the Robbery and Firearms

(Special Provisions) Act Caps 38 Vol. XXII Laws of Federation, 1990.

The facts leading to this appeal are well captured in the lead judgment and there is no need repeating them herein.

Mr. A. Kazeem, learned counsel for the Appellant on the 28/4/16 adopted the Appellant's Brief of Argument filed on the 20/10/04 and a Reply Brief filed on 21/8/15, deemed filed on 21/10/15. B
The Appellant formulated three issues for determination which are thus:-

(a) Whether the prosecution discharged the burden of proving that Exhibit B1 the alleged confessional statement was corroborated or confirmed as true in line with a plethora of Supreme Court authorities? C

(b) Whether there was any reliable evidence in proof of the identity of the Appellant as committing the offence in view of the material contradictory evidence of PW1, PW2, PW3 and PW4 in respect of the identification? D

(c) In view of the evidence before the Court, whether the Court of Appeal was correct to have held that the prosecution proved the case of armed robbery against the Appellant beyond reasonable doubt? E

For the Respondent, L. F. Anga of counsel adopted the Brief of Argument settled by G. A. Olowoporoku, Director Legal Research, Ministry of Justice, Ondo State, which was filed on 16/7/2015 and deemed filed on the 21/10/15. Three issues were crafted by the Respondent which are thus:- F

(i) Whether the learned Justices of the Court of Appeal were right in affirming the conviction and sentence of death imposed on the Appellant solely on the Appellant's Confessional Statement in the light of evidence before the Court? G

(ii) Whether the procedure adopted for identifying the Appellant as one of those who committed armed robbery at NAO Supermarket on 11th December, 2003 is valid in law?

(iii) Whether the learned Justices of the Court of Appeal were right in holding that the prosecution proved its case beyond reasonable doubt at the trial Court. H

It seems to me that the answer to Issue 3 of the Appellant would settle all the nagging issues including Issues 1 and 2 from either side and so, I shall get on to that.

ISSUE 3:

In view of the evidence before the Court, whether the Court of Appeal was correct to have held that the prosecution proved the case of armed robbery against the Appellant beyond reasonable doubt.

In canvassing the view point of the Appellant, learned counsel, Adeniji Kazeem Esq. contended that the appeal should be allowed because of the following reasons:-

1. Exhibit 'B1' which was primarily relied on by the trial Court in convicting the Appellant is equivocal, indirect and not positive and thus cannot be regarded as a confessional statement as found by the Courts Below.

2. That the prosecution did not proffer any other evidence outside Exhibit 'B1' to discharge the burden of proving that the Appellant committed the offence.

3. The prosecution failed to discharge the burden of proving that Exhibit 'B1' was corroborated, see *Adekoya v The State* (2012) LPELR - 7815 (SC); *Abasi v State* (1992) 8 NWLR (Pt. 260) 383 at 404; *Bature v State* (1994) 1 NWLR (Pt. 320) 257 at 283-284; *Adisa v State* (1991) 1 NWLR (PT. 168) 490; *Anyanwu v State* (1996) 5 NWLR (Pt. 43) 612.

4. There are material doubts in respect of the identifying evidence relied by the Courts in convicting the Appellant. See *Oladipupo v The State* (1993) LPELR - 2549 (SC).

5. The trial Court wrongfully placed the burden of proof on the Appellant.

The converse position of the Respondent are thus:-

1. That it is deducible that the Court of Appeal was right in holding that the Respondent proved the offence of conspiracy and armed robbery against the Appellant beyond reasonable doubt.

2. That the Court of Appeal was right in holding that the trial Court rightly attached much weight to Exhibit 'B1' (the confessional statements of the Appellant) and to convict the Appellant thereon.

3. That the Court of Appeal was right in affirming that the Appellant was properly identified as one of those who committed armed robbery at NAO Super market on 11th December, 2003.

4. The Court Below was right in affirming the judgment of the trial Court which convicted the Appellant of the offence of conspiracy and armed robbery and accordingly sentenced him to death

by hanging.

He cited *Ikemson v State* (1998) 1 ACLR 80 at 92; *Nwachukwu v State* (2004) 17 NWLR (Pt. 904) 273, *Alarape v State* (2001) 5 NWLR (Pt. 705) 79; *Dibie & Ors v The State* (2008) 6 ACLR at 329; *Egboghonome v The State* (1993) 9 NWLR page 383; *Bozin v The State* (1985) 2 4. NWLR 465 at 469; *Omomorebe v Lawani* B 3-4 SC 70 at 76,

Learned counsel on either side are at one on what principles guide the tendering, admission and use of a confessional statement, the area of divergence is that the instant case while the Appellant contends that the Statement, Exhibit 'B1' is not direct, positive and unequivocal and so does not so qualify as a confessional statement and therefore cannot be utilized to ground a conviction. The Respondent differs stating that Exhibit 'B1' is a proper confessional statement and that there are even evidence outside of it from the testimonies of PW1, PW2, Pw3 and PW4 corroboration thereof.

I shall quote the relevant portion of the Statement, Exhibit 'B1' for clarity and it is thus:-

"....I suddenly saw John (m), Ola (m), and Majata (m) coming out from NAO Supermarket along stadium road, Akure. As I saw them, I knew that they came to operate and I went away with them. We went to the stadium car park where they dropped down the items which they collected from the NAO Supermarket.

Among the items dropped on the ground, are some wrist watches, one handset, two bottles of wine. They gave me four thousand naira (N4,000.00) out of the money they collected from the supermarket with a wrist watch which is now recovered from my hand, I left them at the place and I did not know how they got about the rest items, But I know that they will sell them. I saw a toy gun which is black and long with Ola on that day. It was from John (m), Ola (m) and Majata (m) that I know Okoli (m). I have not gone out to rob with Ola, John and Majata (m) before now unless this one at the NAO Supermarket on that day, Majata (m) gave me one woman wrist watch while John (m) gave me the one I mentioned above".

The learned trial Judge had this to say at pages 116 and 117 of the Record as follows:-

"From the totality of the evidence before this Court, aside the confessional statements of the accused persons admitted as Ex-

hibits 'B1' and 'B2', what other facts in evidence corroborate the facts in issue, to ground a conviction of the accused persons for the offences as charged? In answer to this, the Court shall fall back on the testimony of the witnesses. It is the uncontroverted and unchallenged evidence of PW1 and PW2 that on the night of the alleged robbery, they were able to identify the robbers because they were not masked as their faces were open and they saw their faces when they rushed in..... The specifically and with precision mentioned the items stolen by the robbers and gave a clear and consistent analysis of how the robbery was carried out..... The oral testimonies of PW1 and PW2 corroborate the confessional statements in Exhibit 'B1 and 'B2'. The circumstances and the length of time within which the PW1 and PW2 saw the subjects is enough to identify the perpetrators".

The Court of Appeal at pages 209 and 211 stated as follows:-

"Exhibit 'B1' was admitted as a voluntary confessional statement consequent upon the trial within trial conducted by the learned trial judge. Relevant portions of Exhibit 'B1' which I feel necessary to reproduce read as follows:

"... It was on December, 2003 that myself Sina, Gbenga, Sunday, Daniel with Ola that we went to Araromi Street, Akure in the Midnight and robbed a man. It was Gbenga that took us to the Man and Gbenga knows him well. We collected money there but I do not know the amount because it was Gbenga that handled the money. We also took from the place some electronic gadgets which have already been recovered from us by the police. After about a week later, I went to stadium junction, Akure around 9 O'clock in the evening,... I suddenly saw John, Ola and Majata coming out from NAO Supermarket along Stadium road, Akure.

As I saw them, I knew that they came to operate and I went away with them. We went to the stadium car park where they dropped down items which they collected from the NAO Supermarket. Among the items dropped on the ground one some wrist watches, one handset, two bottles of wine. They gave me four thousand naira (N4,000.00) out of the money they collected from the Supermarket with a wrist watch which is now recovered from my hand..., I saw a toy gun which is black and long with Ola on that day,... I have not gone out to rob with Ola. John and Majata before now unless this

one at the NAO Supermarket on that day. Majata gave me one woman wrist watch, while John gave me the one I mentioned above,..” aside from Exhibit ‘B1’ being Confessional Statement of the offence, the PW1 and PW2 testified that they were at the NAO supermarket at the time it was robbed by the Appellant in company of some others. They said that items which include cash, jewelry, wrist watch and wine were removed from the shop in the course of the robbery. This piece of evidence is in tandem with the confession of the Appellant to the effect that they robbed the shop of such items as wrist watch, wine etc”.

The Lower Court held further that:-

“.... This confessional statement of the accused person did not only support the inference that the accused person committed armed robbery. He admitted that he was involved in the offence. Once an accused make a statement under caution as in the instant case, saying or admitting that he committed the offence, the statement becomes relevant to the proceedings by virtue of Section 27 (2) of the Evidence Act. See the case SHANDE v STATE 2005 1 NWLR (Pt. 907) 218 at P238 para. B - D”.

Having shown the said Statement as quoted above and what the two Courts below did with it, the question now nagging the mind is if this Court agrees with those concurrent findings? It is well settled that once a statement is in compliance with the law and rules governing the method for taking it and it is tendered and admitted as an exhibit, then, it is good evidence and even if later retracted, the retraction will not vitiate its admission as a voluntary statement. In this case, the Appellant had contested the voluntariness of the confession and the learned trial judge set in motion a trial within trial at the end of it that Court ruled the voluntariness of the Statement was not in doubt and thereby admitted it as Exhibit ‘B1’.

This Court had in many cases spanning a long time handed down the conditions to examine the truth of a confessional statement and in the example of Emmanuel Nwaebonyi v. The State (1994) 5 NWLR (Pt.138) 150, the Supreme Court stated:-

That to test the veracity of a confessional statement, the following should be evident:-

1. Is there anything outside the confession which shows that it may be true?

2. Is it corroborated in anyway?

3. Are the relevant statement of facts made in it most likely true as far as they can be tested?

4. Did the accused have the opportunity of committing the offence?

B 5. Is the confession possible?

6. Is the alleged confession consistent with other facts which have been ascertained and established?

C Along the same line of thought, this Court stated in *Alarape v. The State* (2001) 5 NWLR (pt. 705) 79, that the test in determining the veracity of a confessional statement is to seek any other evidence even if slight, of circumstances which make it probable that the confession is true.

D From the evidence of PW1 and PW2, PW3 and PW4, the Courts below had no doubt that the Appellant had the opportunity to commit the crime he confessed to and the minor discrepancies as to whether the Appellant and his group had one gun or more guns did not detract from the substance of the fact of the armed robbery operation carried out by the Appellant at NAO Supermarket at the stated time and date therefore meeting the requirement of the test of whether or not the confessional statement was true. See *Dibie & Ors v The State* (2008) 6 ACLR at 329; *Jerry Ikuepenikan v. The State* (2011) 1 NWLR (Pt.1229) 449; *Akpa v The State* (2008) 6 ACLR 514 at 518.

F On the matter of whether or not the evidence of identification proved beyond reasonable doubt that the Appellant was the person who actually committed the offence of armed robbery charged. The learned trial judge said he was satisfied on the identification from the evidence proffered by PW1 and PW2 who were not equivocal on their ability to identify two of the accused persons when they were brought to their shop after arrest. That this identification of the robbers was made easy since they were not masked at the time of the operation and they mentioned the items stolen from the shop, one of which a wristwatch was worn by one of the accused at time of his arrest. The several pieces of evidence of the witnesses tallying with the confessional statement of the Appellant, the trial Court had no difficulty in reaching his conclusion not only that the identification of the robbers were not doubtful but that the statement was effectively

corroborated See Ikemson v State (1989) 3 NWLR (Pt.110) 455 @ 478.

The Court of Appeal had no problem accepting what the trial Court found and concluded upon and considering all that I see no way out of going along those findings and affirming that indeed that the prosecution proved the charge of armed robbery beyond reasonable doubt this because the confessional statement Exhibit 'B1' sailing through the veracity test apart from being positive and direct with the corroborating pieces of evidence outside of itself which lent weight to the statement of the Appellant. The conclusion therefore is that there was a robbery, which robbery was an armed one and the Appellant was one of those who took part in the armed robbery. See Egboghonome v The State (1993) 9 NWLR page 383; Bozin v The State (1985) 2 NWLR 465 at 469; Adekoya v The State (2012) LPELR-7815; Nwachukwu v State (2004) 17 NWLR (Pt. 902) 273; Alarape v State (2001) 5 NWLR (Pt.705) 79.

From the above and the better reasoned lead judgment, I see no merit in this appeal and I hereby dismiss it. I abide by the consequential orders made.

E

AKA' AHS JSC

The appellant in this appeal was tried and convicted with the appellant in SC. 524/ 2014 and sentenced to death for the offence of armed robbery. They all stood trial before the Ondo State High Court, Akure in charge No. AK/3c2006. The appellant made a confessional statement which was admitted in evidence as Exhibit B1 after a trial within trial was conducted. The learned trial Judge found that the oral testimonies of PW1 and PW2 corroborated the confessional statements in Exhibits B1 and B2 and also found that the circumstances and the length of time within which the PW1 and PW2 saw the subjects is enough to identify the perpetrators.

I read in draft the judgment of my learned brother Okoro, JSC dismissing the appeal. I agree with his reasons for judgment and I also dismiss the appeal. The appeal is accordingly dismissed.

KEKERE-EKUN JSC

I have had the benefit of reading in draft the judgment of my learned brother, JOHN INYANG OKORO, JSC just delivered. His Lordship has exhaustively considered and ably resolved all the issues submitted to us for determination in this appeal. I agree with the reasoning and conclusion that the appeal is devoid of merit and should be dismissed.

My comments are in support of the lead judgment and for emphasis, The law is by now well settled that a confessional statement made by an accused person, if voluntary, direct, positive and satisfactorily proved is sufficient to ground a conviction, even in the absence of corroborative evidence. See: *Egboghonome vs. The State* (1993) 7 NWLR (Pt. 306) 383; *State vs Salawu* (2011) 18 NWLR (Pt.1279) 883 @ 913 C - F; *Olabode Abirifon vs. The State* (2013) 13 NWLR (Pt.1372) 587 @ 600 A-C. A confessional statement, if properly proved is the best evidence of the part played by the accused person in the commission of the offence.

Notwithstanding the fact that an accused person can be convicted on the strength of his confessional statement alone, the Courts have always taken the precaution of considering other evidence outside the confession that makes the confession likely to be true. See: *R. vs. Sykes* (1913) 8 Cr. App. R - 233; *Nwaebonyi vs. The State* (1994) 5 NWLR (Pt.138) 150; *Ojegele vs. The State* (1988) 1 NWLR (Pt. 71) 414.

In the instant case, the confessional statement of the appellant, Exhibit B1 was admitted in evidence after a trial within trial was conducted to test its voluntariness, The trial Court was satisfied that the appellant made the statement voluntarily.

In the said statement the appellant not only narrated how he and his co-accused shared the proceeds of the crime, he also placed himself at the scene when he stated therein at page 8 of the record:

"..... I saw a toy gun which is black and long with Ola on that day.

..... I have not gone out to rob with Ola, John and Majala before now unless this one at NAO supermarket on that day." (Emphasis mine)

In spite of this unequivocal and damning confession, the trial Court and the Court below considered other credible evidence

outside Exhibit B1, such as the evidence of PW1 and PW2 before coming to the conclusion that the prosecution had proved its case beyond reasonable doubt, There was evidence before the Court from PWs 1, 2, 3 & 4 that in the course of the investigation, the appellant and his co-accused were taken back to the scene of crime where they demonstrated the role each played on the day.

B

The appellant's account in Exhibit B1 of some of the items stolen was corroborated by PW1 and PW2.

Having placed himself at the scene of crime by his confession in Exhibit B1, and having regard to the corroborative testimony of the prosecution witnesses, which was found to be credible, both lower Courts were correct in holding that the prosecution had proved its case beyond reasonable doubt.

C

Learned counsel for the appellant made very heavy weather of the proper identification of the appellant in the circumstances of this case. From the totality of the evidence in this case, I am satisfied that there was no doubt at all about the appellant's participation in the commission of the offence.

D

For these and the more comprehensive reasons well adumbrated in the lead judgment, I also find no merit in the appeal. I dismiss it accordingly and affirm the judgment of the Court below.

E

Appeal dismissed.

F

G

H