

SUPREME COURT OF NIGERIA
FRIDAY 1ST JULY, 2016. SC. 383/2014
CORAM:- I. T. MUHAMMAD, N. S. NGWUTA,
K. B. AKA'AH, C. C. NWEZE, A. SANUSI, JJSC

NELSON FRIDAY APPELLANT
V.
THE STATE RESPONDENT

ARMED ROBBERY - Proof - Identification - Failure to call the housemaid is not fatal - As PW1 positively identified appellant as one of the robbers (H1)

ARMED ROBBERY - Conspiracy - Proof - From evidence adduced - It can be inferred that appellant and others agreed to commit the crime - As their presence at the crime scene is not a coincidence (H2)

EVIDENCE - Contradiction - Weight - Contradiction is fatal where it goes to the substance of a case - As minor contradictions cannot vitiate prosecution's case (H3)

ARMED ROBBERY - Toy gun - Possession of - The gun having been found in appellant's possession - He is bound to prove the ownership of same (H4)

FACTS

Accused/appellant and two others were arraigned before the High Court of Ondo State Akure, on a two count charge of conspiracy to commit armed robbery and armed robbery contrary to sections 6(b) and 1(2)(a), respectively, of the Robbery and Firearms (Special Provisions) Act Cap R11 vol. 14 LFN 2004. Appellant pleaded not guilty to the counts. The case against appellant and the others is that while being armed, they invaded the premises of a judicial officer and carted away certain sum of money and properties belonging to the officer and his household.

It was equally alleged that appellant and his co-accused inflicted various degrees of injury on the Judge and members of his household. Some of the accused persons were alleged to have raped

the family's housemaid. To prove its case, prosecution/respondent called four witnesses, while appellant testified for himself but called no other witness. At the conclusion of the trial, the learned trial Judge found each accused guilty as charged on each count of the charge and sentenced each to death by hanging. Dissatisfied with the decision of the Court, appellant appealed to the Court of Appeal Akure Division. The Court dismissed the appeal. Following the dismissal of his appeal and still not being satisfied, appellant approached the Supreme Court on appeal.

ISSUES FOR DETERMINATION

“(i) Whether the lower Court was right in affirming the decision of the learned trial Judge that the prosecution led credible evidence of identification of the appellant as one of the armed robbers that attacked PW1 and PW2.

“(ii) Whether having regard to the circumstances and from the totality of the evidence on record, the lower Court was right in upholding the decision of the trial Court that the prosecution proved the offences of conspiracy to rob and armed robbery against the appellant beyond reasonable doubt.”

HELD (Unanimously dismissing the appeal per

NGWUTA JSC)

ARMED ROBBERY - Proof - Identification

1. Learned Counsel for the appellant made a heavy weather of the fact that the housemaid was not called. But the fact that the housemaid was not called to say that she identified the three accused persons cannot by itself water down the evidence of what the PW1 saw and heard. PW1 did not say that the housemaid or anyone else informed him of the identification by the housemaid in which case it would have been hearsay and inadmissible to establish the truth of what was said. PW1 gave a more direct evidence of positive identification of the appellant.

The 3rd accused person consistently referred to by the PW1 is the appellant. Under cross-examination, the PW1 maintained that the 3rd accused person, i.e. appellant, was one of those who attacked his family.

I am satisfied that there was sufficient evidence before the trial Court identifying the appellant as one of the armed robbers who attacked the house of PW1 as alleged. The conditions for his proper identification were complied with. In the circumstances, the Court below was right to have affirmed the finding of fact that appellant was one of the armed robbers who robbed PW1 and his family on 1/2/2008 by 8pm. Appellant has not demonstrated any perversity in the concurrent finding of fact (that appellant was one of the robbers) by the Court below nor did he show that there was no sufficient evidence to support the finding. There are therefore no grounds for this Court to disturb the finding. The issue is resolved against the appellant. (p. 3304 A)

ARMED ROBBERY - Conspiracy - Proof

2. Conspiracy is an agreement by two or more persons to do or cause to be done an illegal act or a legal act by illegal means. In Stephen's Digest of the Criminal Law, it is defined as "When two or more persons agree to commit any crime, they are guilty of conspiracy whether the crime is committed or not." It is not necessary to complete the offence that any one thing should be done beyond the agreement or in furtherance of the agreement.

The gist of the offence of conspiracy is the meeting of the minds of the conspirators. It is not easily capable of proof for conspirators hardly invite people to witness their assent. It is a matter of inference from certain criminal acts of the people concerned. There must be the criminal intent of two or more people, the execution of which will result in the actual crime.

From the facts adduced in the trial Court which that Court accepted and which were affirmed by the Court below appellant and his co-accused did not meet in the house of PW1 on the date and hour in question by chance. They did not converge on the premises of PW1 by coincidence. It is irresistible that the appellant and his co-accused conceived and agreed on the plan to rob the house of the PW1 and this is a separate crime from the substantive offence of armed robbery. It is the egg, as it were, from which the offence of armed robbery ger-

minated. (p. 3305 C)

EVIDENCE - Contradiction - Weight

3. As to the alleged contradiction emphasised by the appellant's Counsel, a contradiction, if any, is fatal only when it goes to the substance of the case and there is no such contradiction in the case at hand. Minor and inconsequential contradictions which do not seriously relate to the ingredients of the offence charged cannot vitiate the prosecution's case against the appellant. (p. 3306 E)

ARMED ROBBERY - Toy gun - Possession of

4. Learned Counsel for the appellant argued, repeatedly, that the appellant, upon discovery of the toy gun in the house where he slept informed the police that it belonged to one of his cousin, Enete. This by itself is not sufficient to identify any person as the cousin of the appellant and the owner of the toy gun, Exhibit B. The ownership of the toy gun as claimed by the appellant is a matter peculiarly within his own knowledge. He is bound to prove it and that failure enhances the case against him. (p. 3306 G)

REPRESENTATION

Ayo Asala, Esq. with O. N. Idogun Esq. and A. E. Alagun Esq., for the Appellant
S. A. Adegoke (Mrs.) DDPP, Ministry of Justice Ondo State with her Tunde Babalola Esq., for the Respondent

CASES REFERRED TO

Ochiba v. State (2012) All FWLR (Pt. 508) 849
R. v. Turnbull (1976) 3 All ER 549
Ekpo v. State (2001) FWLR (pt. 55) 454
Ogude v. State (2012) All FWRL (pt. 629) 1111-1131
Emenagor v. State (2010) All FWLR (2010) (pt. 511) 884
Usufu v. State (2008) A FWLR (pt. 405) 1731
Ogunzee v. State (1998) 5 NWLR (pt. 551)
Aruna v. State (1990) 6 NWLR (pt. 155) 125
Njovens v. State (1973) 5 SC (Reprint) 12

Ndukwe v. State (2009) 23 SC (pt. 11) 35

Nwabueze v. State (1985) 7 SC (pt. 11) 157

Gachi v. State (1995) NMLR 333

Otti v. State (1991) 6 NWLR (pt. 207) 103

State v. Usman (2007) 5 ACLR 34

Offorlette v. State (2000) FWLR (pt. 12) 2081-2102

B

STATUTE REFERRED TO

Robbery & Firearms Act Cap R11 vol. 14 LFN 2004, ss. 1 (2)(a), 6(b)

C

BOOK REFERRED TO

Black's Law Dictionary, 7th Ed. p. 573

LEAD JUDGMENT BY NGWUTA JSC

D

Appellant and two others were arraigned on a two count charge of conspiracy to commit armed robbery and armed robbery contrary to Sections 6 (b) and 1 (2) (a), respectively, of the Robbery and Firearms (Special Provisions Act Cap R 11 Vol. 14; Laws of the Federal Republic of Nigeria 2004). The charge was laid before the High Court of Justice of Ondo State, Akure Judicial Division. Appellant was the 3rd accused person.

The prosecution alleged that appellant and his co-accused persons invaded the premises of Hon. Justice Williams Akin Akintoroye on the 1st day of February, 2008. They were armed and robbed the Judge of the sum of N14,000.00, two laptop computers, and other valuables belonging to the Judge and his household.

F

It was alleged that the appellant and his co-accused inflicted various degrees of injury on the Judge and members of his household. Some of the accused persons were alleged to have raped the family's housemaid. Appellant and his co-accused pleaded not guilty to each count of the charge.

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At the trial, the prosecution called four witnesses and rested its case. Appellant testified for himself but called no other witness. The learned trial Judge found each accused guilty as charged on each count of the charge and sentenced each to death by hanging on 16th August, 2012.

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Appellant was aggrieved and he appealed to the Court of Ap-

peal, Akure Division. Owoade, JCA, with whom Denton-West and Jombo-Ofo, JCA, agreed, dismissed the appellant's appeal on the 16th day of May, 2014.

Still aggrieved, appellant filed a notice containing six grounds of appeal to this Court on 12th June 2014. Learned Counsel for the parties filed and exchanged briefs of argument.

From the two grounds of appeal, learned Counsel for the Appellant formulated the following two issues for the Court to resolve:

“(i) *Whether the lower Court was right in affirming the decision of the learned trial Judge that the prosecution led credible evidence of identification of the appellant as one of the armed robbers that attacked PW1 and PW2.*

“(ii) *Whether having regard to the circumstances and from the totality of the evidence on record, the lower Court was right in upholding the decision of the trial Court that the prosecution proved the offences of conspiracy to rob and armed robbery against the appellant beyond reasonable doubt.*”

On his part, learned Counsel for the respondent adopted, in his brief of argument, the two issues presented by the appellant.

In his submission on issue one, learned Counsel for the appellant relied on *Ochiba v. State* (2012) ALL FWLR {Pt. 508} 849 at 871 and *R v. Turnbull* (1976) 3 ALL ER 549 for conditions that guide the Courts against cases of mistaken identity in criminal cases. He argued that the Court should carefully consider the following:

“(a) *The circumstances in which the eye witnesses saw the suspect - whether it was in difficult conditions.*

“(b) *The length of time the witness saw the suspect or defendant, whether in a glance or longer observation.*

“(c) *The opportunity of close observation.*

“(d) *Previous contact before the two parties; and*

“(e) *The lighting conditions.*”

From the above, he concluded that the lower Court was in error when it affirmed the decision of the learned trial Judge that the prosecution led credible evidence of identification of the appellant as one of the armed robbers who attacked PW1 and PW2.

For learned Counsel, it was a case of mistaken identity. He noted with concern that of the four victims of the robbery incident the prosecution called only two - PW1 and PW2. He referred to the

evidence of PW1 that “The four people who came into my room were unmasked, so I was able to see them, see their faces clearly.”

He referred to PW1’s evidence when cross-examined, that “I did not actually see the 3rd accused person (Nelson Friday) {appellant} in my house at the time of the incident” and submitted that appellant could not have been one of the four people the PW1 saw B in his room.

Learned Counsel urged the Court to disregard the evidence of PW1 that his house girl identified the appellant at an identification parade as the house girl was not called to give evidence of the identification parade at which she was alleged to have identified the appellant. He characterized the evidence of PW1 relating to identification of appellant by the house girl who was not called as hearsay. He relied on Ekpo v. State (2001) FWLR (pt. 55) 454 at 464- 465. He said that no reason was given for failure to call the house girl. C D

He said that there is a presumption that the evidence of the house girl if called would have been unfavourable to the prosecution’s case. He relied on Ogude v. State (2012) All FWLR (pt. 629) pages 1111-1131. He said that the investigating police officers - PW3 and PW4 - did not give evidence of any identification parade and that the evidence cannot be given by the PW1 who by his own account, did not participate in the identification parade. E

Learned Counsel impugned the finding of the trial Court, affirmed by the Court below that PW2 identified the appellant as one of the armed robbers who attacked them. He referred to what he called contradiction in the evidence of PW1 and PW2 in that while the PW1 said he saw all the four armed robbers which did not include the appellant, the PW2 said the appellant was one of the four armed robbers. F G

He faulted the evidence of PW2 on the ground that he, PW2, did not know the appellant before the armed robbery incident and did not identify the appellant to the police at the earliest opportunity. He said PW2 was ordered to lie down and was not in a position to identify any of the armed robbers. H

He said it was wrong for the Court to rely on the evidence of identification of the appellant by the PW2 who saw the appellant for the first time. He relied on Emenagor v. State (2010) All FWLR (2010) (pt.511) 884 at 944. He urged the Court to hold that the evidence

of identification of the appellant by the prosecution is unreliable, and created a serious doubt that ought to be resolved in favour of the appellant. He urged the Court to resolve issue one against the respondent and in favour of the appellant.

In issue two, learned Counsel submitted that in order to succeed in a charge of conspiracy as laid, the prosecution must prove:

“(a) That there was an agreement or confederacy between the convict and others to commit the offence of robbery.

(b) That in furtherance of the agreement or confederacy, the accused took part in the commission of the offence of robbery or series of robberies

(c) that the robberies or each of robbery (sic) was an armed robbery.”

He relied on *Usufu v. State* (2008) A FWLR (Pt.405) 1731. He contended that the issue at the trial was whether there was robbery and if so whether the appellant was involved in it. He said that the totality of the evidence did not establish any of the ingredients of the offence charged. He referred to the evidence before the trial Court and submitted that the facts as found by the trial Court and affirmed by the Court below was not supported by evidence on record.

Learned Counsel conceded that this Court will not ordinarily interfere with concurrent findings of fact by the trial Court and the Court below but argued that in the case at hand the findings are:

“(a) perverse;
(b) not supported by evidence, and
(c) reached as a result of a wrong application of principles of law or procedure.”

He relied on *Oguonzee v. State* (1998) 5 NWLR (Pt. 551) and *Aruna v. State* (1990) 6 NWLR (Pt.155) 125.

He submitted further that the evidence led at the trial was at variance with the charge in that though PW1 said that the robbers took away a toy gun the particulars of the charge did not include a toy gun. He added that the toy gun, Exhibit B, greatly influenced the mind of the trial Judge in his judgment.

Further, he submitted that though the PW1 said the robbers hit him with a stick, the charge stated that the robbers were armed with “gun, cutlasses” and not stick. He contended that having regards to the variance between the charge and the evidence, the pros-

ecution has failed to prove its case against the appellant for which he invoked *Raymond Nwokedi v. Commissioner of Police* (1977) All NLR page 11 and *Aruna v. State* (1990) 6 NWLR {Pt. 155} 125 and 135 paras H-A.

Learned Counsel for the appellant repeated many times the points he made, after which he urged the Court to resolve issue two in favour of the appellant. He concluded by urging the Court to allow the appeal, set aside the decision of the Court below and “discharge and acquit” the appellant for the following reasons:

“i) Crucial findings upon which the learned trial Judge convicted the appellant and subsequently affirmed by the lower Court were not supported by the totality of the evidence on record. For instance, the findings that Exhibit B taken from the room was one of the items stolen from the house of PW1 and the findings that PW1 mentioned the toy gun as one of the items stolen from him in his extra judicial statement to the police are perverse.

ii) PW2 admitted during cross-examination that the appellant was among the four (4) armed robbers that attacked him.

iii) There are material contradictions in the evidence of the prosecution’s witnesses as to whether the appellant was among the armed robbers and also as to whether Exhibit B was among the items stolen from the house of PW1.

iv) The house help whom PW1 said identified the appellant during identification parade was not called to give evidence by the prosecution.

v) PW2 did not identify or give description of the appellant at the earliest opportunity being the next day when PW2 said he accompanied the police to the residence of the appellant.

vi) There was no evidence from the prosecution that PW2 made statement to the police where he identified or disclosed the appellant to the police.

vii) The prosecution did not carry out any identification parade for PW2 to identify the appellant.”

On the other hand, learned Counsel for the respondent, on issue one, submitted that the lower Court was right in affirming the decision of the learned trial Judge by relying on the evidence of identification/recognition of the appellant by PW1 and PW2 to hold that the prosecution proved the charges against the appellant beyond

reasonable doubt. He said that the plea of alibi by the appellant was successfully demolished by the evidence of PW2, adding that the witnesses described the roles played by the appellant and the first accused in the robbery.

On the demolition of the defence of alibi he relied on Patrick Njovens v. State (1973) 5 SC (Reprint) 12, Ndukwe v. State (2009) 23 SC (Pt. 11) 35 at 36, Nwabueze & ors v. State (1985) 7 SC (Pt. 11) 157 and Gachi & ors v. The State (1995) NMLR 333 at 335.

Learned Counsel conceded the factors listed by the appellant as guiding the Court in the evaluation of eye witness identification of an accused person. He argued that factors (a)-(c) are proved and on (d) he relied on Henry Otti v. State (1991) 6 NWLR (Pt. 207) 103 at 106 Ratio 3 in his submission that previous contact between the parties is not necessary in all cases.

On factors on the lighting condition, he contended that the trial Court found as a fact that:

“...there was generator light illuminating the entire premises including the rooms in the house. Three robbers were not masked, so all their victims saw the faces as they unleashed terror and horror on their defenseless victims. All these pieces of evidence put together will no doubt prove the participation of the three accused persons in the robbery attack at PW1’s house and on his person and on members of his family.”

He said that the appellant did not cross-examine the PW1 on the lighting condition and on the authority of State v. Usman (2007) 5 ACLR 34 at 41, he urged the Court to accept the unchallenged evidence on the lighting condition at the time of robbery. On the failure of the prosecution to call the house girl or the wife of PW1, he submitted that the prosecution is not bound to call a host of witnesses. He relied on Henry Otti v. State (supra).

Learned Counsel argued that the evidence of PW2, which was not shaken in cross-examination, established the identity of appellant as one of the armed robbers who attacked the house of PW1. He urged the Court to rely on the concurrent findings of identification of the appellant and resolve issue one against the appellant.

In issue 2, learned Counsel for the respondent conceded what must be proved to sustain a charge of conspiracy to commit armed robbery and armed robbery as listed by learned Counsel for appel-

lant. He submitted that all the ingredients were proved and it was established that the appellant was one of the armed robbers. Learned Counsel urged the Court to rely on the concurrent findings of facts by the two Courts below as the findings were not perverse and were based on credible evidence before the trial Court. He argued that there was no variation between the charge and Exhibit B. B

He said that PW1 mentioned Exhibit B in his statement and PW3 said he recovered Exhibit B from the house occupied by the appellant. He noted that the appellant who claimed Exhibit B belonged to his cousin, Enete, did not call his said cousin to substantiate his story. He said that evidence of PW1 that Exhibit B belonged to his son was unchallenged and urged the Court to deem it as admitted. C
He relied on *Offorlette v. The State* (2000) FWLR (Pt. 12) 2081-2102.

He said that the recovery of Exhibit B is a circumstantial evidence pointing irresistibly and unequivocally to the guilt of the appellant as there was no co-existing circumstances to weaken the inference of appellant's participation in the armed robbery. He relied on *Akinmoju v. Atete* (2000) 4 SC (Pt. 1) 64. D

Learned Counsel referred to the findings of the trial Court on Exhibit B which was affirmed by the Court below and argued that the Court cannot interfere since finding is neither perverse nor unsupported by evidence. He added that the omission of the toy gun in particulars of Count 2 of the charge is not fatal to the case of the prosecution. He referred to Section 13 of Act and said that the definition of "offensive weapon" includes "any piece of wood" and urged the Court to so hold. E F

He said that the omission of the stick, i.e. baton, used in the attack is of no moment as "etc." means "And other things and indicates additional unspecific items in a series." He relied on *Black's Law Dictionary*, 7th Edition page 573. He contended that the particulars of the charge satisfied Section 152 (1) and (4) of the Criminal Procedure Law of Ondo State. He argued that contrary to the submissions of learned Counsel for the appellant there was no material contradiction in the evidence led by the prosecution and that the case for the defence was adequately considered by the trial Court. He urged the Court to resolve issue two against the appellant. G H

In summary, he urged the Court to dismiss the appeal and

affirm the judgment of the Court below for the following reasons:

“1. PW1 and PW2’s evidence of identification of appellant as one of the armed robbers is of high significance, resolute, genuine and mostly reliable.

(ii) It is not the law that all robbed items from a victim must be stated in the particulars of the charge so far that sufficient notice of other items robbed was given to him in particulars of the charge.

iii) In the instant case, the recovery of the toy gun from the appellant is in consonance with the charge of armed robbery against him and others and it has been sufficiently proved.

iv) The evidence of PW2 that during the robbery, he identified the appellant and the first accused as among the people who came to their house to attack them.

v) There is no contradiction in the evidence of prosecution witnesses on vital issues that the toy gun, Exhibit B, relied on by the trial Court and upheld by the lower Court to convict the appellant was robbed from the house of PW1.

vi) The Courts below properly evaluated the totality of the evidence especially the defense put up by the appellant. There is no evidence suggesting any substantive defence from the available evidence on record.”

He urged the Court to dismiss the appeal as totally lacking in merit.

Issue one is on the identification of the appellant as one of the armed robbers that attacked PW1 and PW2. How this issue is resolved depends entirely on the evidence of PW1 and PW2 who gave eyewitness account of the robbery. Generally, the crucial question is not whether or not the crime charged was committed. It is who committed the crime. See *Ndidi v. The State* (2007) 5 SC 175. In this case, it is beyond dispute that the crime of armed robbery was committed as alleged by the prosecution.

Was the appellant identified as one of the armed robbers? In answering the question posed (supra) I will seek guidance against mistaken identity in the following factors:

(1) The circumstances in which the eye-witness saw the appellant.

(2) The length of time the eye-witness saw the appellant.

(3) the lighting conditions under which the eye-witness saw

the

(4) The opportunity of close observation of the appellant by the eye-witness.

(5) Previous contact between the eye-witness and the appellant. See *Ndidi v. The State* (supra).

1. From the evidence of PW1 and PW2, the armed robbers met them in their rooms. The armed robbers had contact with the eye-witnesses within the confines of their rooms. Both the PW1 and PW2 swore that the armed robbers were not masked.

2. This was not a brief encounter of the armed robbers with their victims. There was time enough for the robbers to tie the hands of the PW1, his wife and PW2 behind their backs before demanding for their belongings.

3. There was undisputed evidence that though there was power outage at about 8 pm when the robbery took place there was light provided by the PW1's generator.

4. The armed robbers took time to hurt the PW1, tie the hands of PW1, PW2 and the wife of PW1 behind their backs. There is no evidence that the robbers blinded their victims. The PW1 and PW2 had ample opportunity to observe the robbers who did not appear to be in a hurry as they, three of them, allegedly raped the PW1's housemaid.

5. There was no evidence of previous contact between the PW1 or PW2 and the appellant who was the third accused.

However, in view of issues 1- 4 above, the non-previous contact of the witnesses with the appellant pales into insignificance. Under the circumstances above, did the PW1 and PW2 or either of them identify the appellant as one of the armed robbers?

I will start with the evidence of PW1. PW1 said four people came into his room. They were unmasked so he was able to see their faces. He conceded, under cross-examination, that *"I did not actually see the third accused person (Nelson Friday) in my house at the time of the incident."*

In my view, the evidence of the PW1 cannot be relied on to establish the identity of the appellant as one of the armed robbers. However, the identification parade was conducted in the presence of PW1. He said that the three accused person which included the appellant formed part of the nine-man identification parade. He said:

“My housemaid who was a victim of their indecent assault easily identified the three accused persons.”

Learned Counsel for the appellant made a heavy weather of the fact that the housemaid was not called. But the fact that the housemaid was not called to say that she identified the three accused persons cannot by itself water down the evidence of what the PW1 saw and heard. PW1 did not say that the housemaid or anyone else informed him of the identification by the housemaid in which case it would have been hearsay and inadmissible to establish the truth of what was said. PW1 gave a more direct evidence of positive identification of the appellant.

He said, inter alia:

“The two other accused persons (1st and 3rd) ordered me to tie (sic) down. The two accused persons (1st and 3rd) tied our hands to our backs and started demanding for our belongings... We discovered that the female house help had been raped by the 1st and 3rd accused persons. While I was in my room as aforesaid the 1st and 3rd accused persons went and brought my father and my mother into my room with their hands still tied to their backs. The 1st and 3rd accused persons later left us... in my room and they went out.”

The 3rd accused person consistently referred to by the PW1 is the appellant. Under cross-examination, the PW1 maintained that the 3rd accused person, i.e. appellant, was one of those who attacked his family.

I am satisfied that there was sufficient evidence before the trial Court identifying the appellant as one of the armed robbers who attacked the house of PW1 as alleged. The conditions for his proper identification were complied with. See Mbenu v. The State (1988) 3 NWLR (Pt. 841) 615, Abadu v. The State (1985) 1 SC 222.

In the circumstances, the Court below was right to have affirmed the finding of fact that appellant was one of the armed robbers who robbed PW1 and his family on 1/2/2008 by 8pm. Appellant has not demonstrated any perversity in the concurrent finding of fact (that appellant was one of the robbers) by the Court below nor did he show that there was no sufficient evidence to support the finding. See Njoku & Ors v. Eme & Ors

(1973) 5 SC 293 at 306, Kalu v. Coker (1982) 12 SC 252 at 271, Ibanga v. Usanga (1982) 5 SC 103. **There are therefore no grounds for this Court to disturb the finding. The issue is resolved against the appellant.**

In issue 2, appellant questions the proof of conspiracy to commit armed robbery and armed robbery. This is a double-barreled issue: B

(1) Whether conspiracy to commit armed robbery was proved; and

(2) Whether armed robbery was proved.

Conspiracy is an agreement by two or more persons to do or cause to be done an illegal act or a legal act by illegal means. In Stephen's Digest of the Criminal Law, it is defined as "When two or more persons agree to commit any crime, they are guilty of conspiracy whether the crime is committed or not." It is not necessary to complete the offence that any one thing should be done beyond the agreement or in furtherance of the agreement. See R. v. A Spinall 2 QBD (1876-77) page 45 at pages 58-59. C D

The gist of the offence of conspiracy is the meeting of the minds of the conspirators. It is not easily capable of proof for conspirators hardly invite people to witness their assent. It is a matter of inference from certain criminal acts of the people concerned. See Njovens v. State (1973) 5 SC 17 at 9-90. **There must be the criminal intent of two or more people, the execution of which will result in the actual crime.** E F

From the facts adduced in the trial Court which that Court accepted and which were affirmed by the Court below appellant and his co-accused did not meet in the house of PW1 on the date and hour in question by chance. They did not converge on the premises of PW1 by coincidence. It is irresistible that the appellant and his co-accused conceived and agreed on the plan to rob the house of the PW1 and this is a separate crime from the substantive offence of armed robbery. It is the egg, as it were, from which the offence of armed robbery germinated. G H

Armed robbery: It has been sufficiently established by unchallenged evidence that armed robbery took place as charged. The ap-

pellant and his co-conspirators were properly identified at the scene. Learned Counsel for the appellant contended that it was unnatural, improbable and against ordinary course of human behaviour for the appellant to rob within a neighbourhood where he could be identified and still remain in the place.

B He relied on *Olayinka v. State* {2007} All FWLR (Pt.373) 163 at 178 where this Court held, inter alia:

C *“Furthermore, it is not probable that the robbers who robbed the PW3 and the couple in the car would wait at the scene and even approach the self-same vehicle they had only a short while earlier robbed.”*

With profound respect to learned Counsel, the facts of the case he relied on are different from the facts of the present case.

D Appellant, unlike in the case relied on, were not at the scene. Appellants in the case relied on approached the vehicle they had robbed. On the contrary, there is no evidence that the appellant went near the house he and his gang robbed. Armed robbery is inhuman behaviour and what is more unnatural and improbable is the fact that during the operation appellant was not masked. The robbery E was carried out with impunity as the appellant and his gang deliberately dared the law.

As to the alleged contradiction emphasised by the appellant’s Counsel, a contradiction, if any, is fatal only when it goes to the substance of the case and there is no such contradiction in the case at hand. See *Yaki v. State* (2008) A FWLR (Pt. 440) 618 at 6114 SC. ***Minor and inconsequential contradictions which do not seriously relate to the ingredients of the offence charged cannot vitiate the prosecution’s case against the appellant.*** See *Enahoro v. Queen* (1965) NMLR 265, *Emiator v. State* (1975) 9 - 11 SC 107, *Nasiru v. State* (1999) 1 SC 1.

H ***Learned Counsel for the appellant argued, repeatedly, that the appellant, upon discovery of the toy gun in the house where he slept informed the police that it belonged to one of his cousin, Enete. This by itself is not sufficient to identify any person as the cousin of the appellant and the owner of the toy gun, Exhibit B. The ownership of the toy gun as claimed by the appellant is a matter peculiarly within his own knowledge. He is bound to prove it and that failure enhances the case against***

him.

I agree with the learned Counsel for the respondent that contrary to the argument of learned Counsel for the appellant, the case of conspiracy to commit armed robbery, as well as the substantive case of armed robbery were proved against the appellant. I resolve issue two against the appellant.

Having resolved the two issues against the appellant, I have come to the conclusion that the appeal is devoid of merit. It is hereby dismissed. I affirm the decision of the Court below which had affirmed the decision of the trial Court.

Appeal dismissed.

MUHAMMAD JSC

I read in advance the judgment of my learned brother Ngwuta, JSC. I am in agreement with him in his reasoning and conclusion which I adopt. I dismiss the appeal as it lacks merit. I abide by all orders made in the lead judgment.

AKA'AH'S JSC

The appellant in this appeal was the 3rd accused in charge No. HOD/5C/2008 wherein he was arraigned with Benjamin Friday and Mathew Thomas on a two count charge of conspiracy to commit armed robbery and the commission of armed robbery. All the accused were found guilty of the two offences and convicted accordingly. They were all sentenced to death by hanging for robbery. No sentence was pronounced for the offence of conspiracy. Their appeal to the Court of Appeal was unsuccessful, This is a further appeal to this Court. I read the draft of the judgment of my learned brother Ngwuta, JSC dismissing the appeal. I wrote the lead judgment in the sister case in appeal No.SC.383/2014 - BENJAMIN FRIDAY V. THE STATE also dismissing the appeal. I adopt my reasoning and conclusion in SC.383/2014 as well as the reasons adumbrated by my learned brother, Ngwuta, JSC dismissing this appeal. Appeal dismissed.

NWEZE JSC

My Lord, Ngwuta, JSC, obliged me with the draft of the leading judgment just delivered now. I am entirely in agreement with the reasoning and conclusion therein.

B Although, this is an appeal against the concurrent findings of the two lower Courts, learned counsel for the appellant could not advance any reason why this Court should interfere with them either on the question of the identification evidence, the proof of the offence of conspiracy or the substance of the offence of armed robbery. Accordingly, I endorse the conclusion that this Court should C not disturb these indisputable concurrent findings.

It is no longer opened to any debate that this Court can only disturb such findings if they are shown to be either perverse, *Braimah v Abasi and Anor* (1998) LPELR -801 (SC); *Ometa v. Nuna* (1935) D II NLR 18; *Okonkwo v. Okagbue* (1994) 9 NWLR (pt. 368) 301; unsupported by the evidence before the trial Court; were reached as a result of a wrong approach to the evidence or a wrong application of the principles of substantive law or procedure, *Enang v Adu* [1981] 11-12 SC 25, 42; *Nwadike v. Ibekwe* (1987) 4 NWLR (Pt. 67) 718; E *Igwego v. Ezeugo* [1992] 6 NWLR (Pt. 249) 561, 576; *Lamal v. Orbih* [1980] 5-7 SC 28; *Woluchen v. Gudi* (1981) SC 291, 326; *Ike v. Ugboaja* (1993) 6 NWLR (Pt. 301) 539, 569; *Chinwendu v. Mbamali* (1980) 3-4 SC 31 etc. These, the appellant, woefully, failed to demonstrate. F

It is for these, and the more detailed, reasons in the leading judgment that I, too, shall dismiss this appeal. I abide by the consequential orders in the leading judgment.

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SANUSI JSC

I had a preview of the judgment delivered by my learned brother, Nwali Sylvester Ngwuta JSC, I entirely agree with his reasoning and the conclusion he reached that this appeal is merit-less.

H From the evidence adduced in the case at the trial Court, I also hold the view that the identity of the appellant was not in doubt. The trial Court was therefore correct in its finding that the appellant was part of the team of robbers who robbed the complainant on the day of the robbery i.e. 1/2/2008. Evidence adduced by the prosecution/

respondent at the trial Court, had in my view, established all the ingredients of the offence of armed robbery, contrary to Section 1(3) of the Robbery and Firearms (Special Provision) Act.

It is trite that concurrent findings of two lower Courts shall not ordinarily be interfered with or disturbed, except where such findings are perverse or there is a wrong application of law. None of these exceptions exists in this instant appeal, hence interference with the findings of the lower Court do not arise. B

Thus, in the light of what I posited above and for the detailed reasoning and the conclusion reached by my noble Lord. I also see no merit in the appeal and it is hereby dismissed by me. I affirm the decision of the Court below which affirmed the conviction and sentence handed down on the appellant by the trial Court. C

Appeal dismissed.

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