

SUPREME COURT OF NIGERIA
FRIDAY 9TH DECEMBER, 2016. SC. 379/2011
CORAM:- I. T. MUHAMMAD, N. S. NGWUTA,
O. ARIWOOLA, J. I. OKORO, A. SANUSI, JJSC

IFEANYICHUKWU AKWUOBI APPELLANT
V.
THE STATE RESPONDENT

CHARGES - Framing of - Leave - Trial Court has discretion to grant or refuse leave to frame charge - And where a party feels the discretion is wrongfully exercised - There is right to appeal on that (H1)

EVIDENCE - Miscarriage of justice - Proof - Appellant failed to show how he was affected - By the allegation that trial Court wrongfully exercised its discretion - With the inclusion of PW1's statement (H2)

EVIDENCE - Confession - Retraction - Mere denial of making statement by accused - Is not sufficient ground on which to reject its admissibility in evidence (H3)

CRIMINAL PROCEDURE - Defence - Consideration of - The issue of signature ought to have been determined as part of accused defence - As defence must be considered no matter how stupid it is (H4)

CRIMINAL PROCEDURE - Conspiracy - Proof - The offence can be established from inference from surrounding circumstances - And it is immaterial that conspirators do not know each other (H5)

EVIDENCE - Confession - Validity of - Where a statement is voluntary and positive - It can ground a conviction - Provided that trial Court is satisfied with the truth therein (H6)

ARMED ROBBERY - Ingredients - Proof - Prosecution must prove that there was robbery - That the robbers were armed - And that accused was one of the robbers (H7)

ARMED ROBBERY - Proof - From the evidence of ammunitions used at the robbery operation - And confession of appellant - Respondent has proved its case of armed robbery against appellant (H8)

EVIDENCE - Single witness - Credibility of - A single credible witness can establish a case beyond reasonable doubt - Save where he is an accomplice - Which requires a corroboration of his testimony (H9)

APPEALS - Criminal procedure - Language of Court - Appellant cannot be heard to complain of language used in trial - When such complaint was never raised from trial Court to SC (H10)

FACTS

Accused/appellant was arraigned before the High Court of Benue State on a two-count charge of conspiracy to commit armed robbery and armed robbery contrary to sections 5(6) and 1(2)(a) of the Robbery & Firearms (Special Provisions) Act Cap 398 LFN 1990. When the charges were read and explained to appellant, he pleaded not guilty to each of the counts. The case against appellant is that while he was in the company of three others (now at large) and one other person (now deceased) and being armed with guns, he attacked and shot one Boniface Chigbo Okeke (a driver of 911 lorry) and other passengers and robbed them of a hand bag, money and other valuables along Ugbokolo Area in Ogbadibo Local Government Area of Benue State.

At the commencement of the hearing, prosecution/respondent called one witness – PW1 (Investigating Police Officer) in proof of its case. Appellant testified for himself as DW1 and called no other witness. After the various addresses by counsel to the parties, the Court in its considered judgment convicted and sentenced appellant to death accordingly. Aggrieved, appellant appealed to the Court of Appeal Makurdi. The Court heard and dismissed the appeal. Hence, appellant has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether or not the learned Justices of the Court of Appeal Makurdi judicial division were right in affirming the decision of

the trial Court in using and relying on the evidence of PW1 (Sgt Peter Abum) and the exhibits tendered through him in convicting and sentencing the appellant to death?

2. Whether the prosecution proved its case against the Appellant beyond reasonable doubt as required by law warranting the Court below to affirm the judgment of the trial Court in view of the nature and quality of evidence adduced by the prosecution, the procedural irregularities and the apparent infraction of the appellant's constitutional rights.

3. Whether or not the Court of Appeal is bound by its earlier decision hinged upon a Supreme Court in any issue and whether its refusal to take into account authorities submitted to it before arriving at its decision, is not a denial of a right of fair hearing.

4. Whether or not the whole trial of the Appellant in a language he does not speak nor understand was in breach of his right to fair hearing.

HELD (Unanimously dismissing the appeal per

SANUSI JSC)

CHARGES - Framing of - Leave

1. In the first place, a trial Court always has the discretion to grant or refuse leave to prosecution to frame a charge against an accused person. Where a party feels that a trial Court wrongfully exercised its discretion in granting or withholding such leave, that party which feels aggrieved by such wrongful exercise of discretion has the right to appeal on that. In this instant case the present appellant failed to appeal against such exercise of discretion by the trial Court. (p. 3995 H)

EVIDENCE - Miscarriage of justice - Proof

2. As I posited above, the appellant did not appeal against the alleged wrongful exercise of discretion by the trial Court in granting the leave to the prosecution/respondent to prefer charge against the appellant. Even then, although the appellant stated that such wrongful exercise of discretion occasioned miscarriage of justice to him, he did not state in what

way or manner such omission to include PW1's statement caused him such miscarriage of justice, bearing in mind the fact that information was given to him that PW1 was going to testify on the role he played in the investigation of the case. It is therefore my view, that this Court would not in this circumstance expunge the evidence of PW1 from the Record or set aside the lower Court's affirmation of trial Court's decision. I therefore resolve this issue against the present appellant.
(p. 3996 D)

EVIDENCE - Confession - Retraction

3. The second issue raised by the appellant relates to proof of the case against him by the prosecution now respondent. In this instance appeal, there is a confessional statement made by the appellant voluntarily which was tendered and admitted in evidence at the trial and marked Exhibit 4. Although the appellant denied making such statement or signing same, the trial Court rightfully in my view, did not bother to conduct a trial within trial since the appellant did not say that he made it under duress, torture, promise or any influence. This is because mere denial of making or signing a confessional statement by accused persons is not sufficient ground on which to reject its admissibility in evidence when properly tendered. Also where an accused person merely disputes the correctness of a confessional statement or states that he made no statement at all, it is not necessary to conduct a trial within trial. (p. 3996 G)

CRIMINAL PROCEDURE - Defence - Consideration of

4. I therefore agree with the findings of the learned trial judge that the issue of signature on the statement came at the 23rd hour of the Day. However, since the issue was raised by him when giving evidence in his defence, the trial Court ought to have considered it as part of his defence and form its opinion on whatever that piece of defence was worth as it rightly did in the circumstance of this case where it expressed its opinion on same which was also endorsed rightly too, by the lower

Court. Since such findings of both lower Courts are not perverse, I do not see the justification to disturb or interfere with it.

It is trite law, that however stupid a defence in criminal matter might be, it must be considered. (p. 3997 E)

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CRIMINAL PROCEDURE - Conspiracy - Proof

5. It must be stressed here, that where persons are charged with criminal conspiracy, the elements of conspiracy as disclosed in the charge must be proved and it must be established against the person or persons so charged that he or they have engaged in it. However, it must be noted that it is not always easy to prove the actual agreement. The Court can however infer the agreement from the surrounding circumstance of each given case and from those inferred circumstances; it can safely presume the conspiracy.

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Again, it is well settled law that conspiracy may exist between persons who even had never or known or seen each other or had corresponded or communicated with each other. In criminal conspiracy, it is not always necessary that the co-conspirators must know each other or that the accused persons concerned had concocted the plan or modality of the execution of the subject matter of the plan or charge nor that they should have originated and organised it. If a conspiracy is planned and a person joins it at a later stage, he is equally qualified as the original conspirators.

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As I said supra, the offence of conspiracy can be inferred from the facts and surrounding circumstances of a given case. I will also add that the conduct of the accused and/or his co accused/conspirators often go a long way to suggest or establish that there had been implied or explicit agreement amongst them to commit a criminal offence or offences. Inferences can always be drawn by the trial Court to conclude that the offence of criminal conspiracy has been committed.

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(p. 3998 D)

EVIDENCE - Confession - Validity of

6. I am aware that the only witness called by the prosecution is PW1 who took part in the investigation of the case. It was through him that the accused/appellants statement was tendered in evidence and marked as Exhibit 4. It was a confessional statement that was tendered and admitted without any objection from the defence as it was voluntarily made by him. It is settled law, that where a statement is a free and voluntary confession, once it is direct and positive it can even ground a conviction once the trial Court is satisfied with the truth of that confession. (p. 3999 C)

ARMED ROBBERY - Ingredients - Proof

7. The law is settled that offence of armed robbery can be established by proof of the under listed elements, namely.

- (a) That there was a robbery or series of robberies.**
- (b) Each or any of the robbers was armed at the time of the robbery operation.**
- (c) That the accused was one of the robbers or had taken part in robbery operation.** (p. 4001 D)

ARMED ROBBERY - Proof

8. Examining or appraising the said statement, it brings to light, that there was armed robbery committed. It is immaterial that no eye witness was called to testify. Evidence abound also that during the robbery operation, gun and some items were recovered. Also recovered were some expanded and live ammunitions. That clearly suggests that arms (gun) were used during the operation. The statement of the appellant also confirms the recovery of some items belonging to the victims of the armed robbery. All these items were tendered in evidence during the trial and were admitted without objection from the defence. On the involvement of the appellant, the latter clearly fixed himself at the scene of the robbery when he admitted or confessed in his voluntary statement (Exh 4) which was admitted at the trial. To my mind therefore, the prosecution now respondent had also proved its case of armed robbery against the appellant and had rightly found him fully of

committing both offences and convicted him as charged.
(p. 4002 A)

EVIDENCE - Single witness - Credibility of

9. The learned counsel for the appellant also complained that only one witness was called by the prosecution in proof of its case against the appellant. The point must be stressed here, that a single credible witness can establish a case beyond reasonable doubt, unless of course, such a witness is an accomplice, in which case his testimony would require corroboration. (p. 4002 D) B
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Criminal procedure - Language of Court

10. As I observed above, in this instant case, neither the appellant nor the present counsel who appeared for him raised the issue that the appellant did not understand the language the trial Court was conducting its proceeding or ask the Court to provide him with an interpreter. The proceedings therefore continued without any complaint until during the appeal. To my mind, the appellant can not be heard complaining now, that miscarriage of justice was occasioned him without even explaining in which way or manner such miscarriage of justice was occasioned to appellant when throughout the proceedings, right from the trial Court to this Court, the present learned defence counsel defended him. (p. 4004 G) D
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REPRESENTATION

P. H. Ogbole with Boniface Bassey, Okwudili Abanum, C. C. Ihearindueme and Omoadon Imobighe (Miss), for the Appellant G
Dr. J. Y Musa with Agada Elachi, Eko Ejembi Eko and Victor Jorshenge, for the Respondent

CASES REFERRED TO

Kadawa v. Kano N.A. (1968) NLR 319 H
Garuba v. State (1997) 3 SCNJ 68
Gboko v. State (2007) 17 NWLR (pt. 1063) 271
Gaji v. State (1975) NWLR 98

Okwesi v. State (1995) NWLR 119

Ezenge v. State (1999) 14 NWLR (pt. 637) 1

Madejemesi v. State (2001) 5 SCNJ 59

Okoya v. Santilli (1994) 4 NWLR (pt. 338) 256

Onage v. Miche (1961) 2 SCNLR 101

B Kim v. State (1992) 4 NWLR (pt. 233) 17

Laoye v State (1985) 2 NWLR (pt. 10) 832

Daboh v. State (1977) All NLR 148

Ajayi v. Omokoro (1941) 7 WACA 146

C
STATUTES & RULES REFERRED TO

Robbery & Firearms (Special Provisions) Act Cap 398 LFN 1990, ss. 1(2)(a), 5(6)

Criminal Procedure Code, s. 185

D Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 36(6)(c)

Criminal Procedure Rules, O. 3 r. 2 (a)(b)

LEAD JUDGMENT BY SANUSI JSC

E This appeal is against the judgment of the Court of Appeal, Makurdi division (the lower Court) delivered on 5th of July 2011 which affirmed the conviction and sentence of the appellant on offences of conspiracy to commit armed robbery and of armed robbery. The appellant as an accused person, was arraigned before the
F High Court of Benue State (trial Court) on the two counts charge reproduced Below:-

COUNT ONE

G *“That you IFEANYICHKWU AKWUOBI on or about the 1st day of April, 2003 at about 0230hrs along Ugbokolo Local Government Area(sic) of Benue State within the jurisdiction of this Honourable Court agreed with three others (now at large) and one other now deceased to do an illegal act to wit, commit armed robbery in a 911 lorry with Registration No. XD 259 FGG which was done in pursu-*
H *ance of the agreement, and you thereby committed an offence punishable under Section 5(6) of the Robbery and Firearms (Special Provisions) Act Cap 398 Laws of the Federation of Nigeria 1990.”*

COUNT TWO

“That you IFEANYICHUKWU AKWUOBI on or about the 1st day of April, 2003 at about 0230 hours along Ugbokolo Area in Ogbadibo Local Government Area of Benue State within the jurisdiction of this Honourable Court, in the company of three others (now at large) and one other person, that you attacked and shot on the leg one Boniface Chigbo Okeke, a driver of 911 lorry with Registration No. XD 259 FG and other passengers and robbed them of a hand bag, money and other valuables while armed with guns and you thereby committed an offence punishable under Section 1(2) (a) of the Robbery and Firearms (Special Provisions) Act Cap 398 Laws of the Federation of Nigeria 1990.”

When the charges were read and explained to the accused/appellant he pleaded not guilty to each of the counts. Thereafter, hearing commenced in earnest. The prosecution now respondent, in proof of its case at the trial Court called one witness (PW1) who was the Investigating Police Officer who took over the investigation in the case before the appellant was arraigned in Court. After the testimony of the sole witness called by the prosecution, the latter closed its case.

The defence thereupon opened its case wherein the accused/appellant testified for his defence as DW1 without calling any other witness of course, after his ‘No Case Submission’ was refused or rejected.

Then after addresses of counsel to the parties were filed, submitted and adopted, the trial Court delivered its considered judgment on the 23rd of March, 2003 convicted the accused on both counts and sentenced him to death

Obviously aggrieved by the judgment of the trial Court, the appellant herein, appealed to the Court of Appeal (the lower or Court below). In keeping with the rules and practice in this Court, parties filed and exchanged their briefs of argument. The appellant’s brief of argument settled by his senior counsel J. S. Okutepa now SAN was filed on 8th May 2013 He also filed Appellant’s Reply Brief on 11th March 2014 upon being served with Respondent’s brief of argument, the learned respondent’s counsel also filed her brief of argument on behalf of the respondent on 29th January 2014.

In the appellant’s brief of argument, four issues were proposed for the determination of the appeal which are reproduced

below:-

- “1. Whether or not the learned Justices of the Court of Appeal Makurdi judicial division were right in affirming the decision of the trial Court in using and relying on the evidence of PW1 (Sgt Peter Abum) and the exhibits tendered through him in convicting and sentencing the appellant to death? (Distilled from Ground 6)
2. Whether the prosecution proved its case against the Appellant beyond reasonable doubt as required by law warranting the Court below to affirm the judgment of the trial Court in view of the nature and quality of evidence adduced by the prosecution, the procedural irregularities and the apparent infraction of the appellant’s constitutional rights. (Distilled from Grounds 1, 2, 3 & 4)
3. Whether or not the Court of Appeal is bound by its earlier decision hinged upon a Supreme Court in any issue and whether its refusal to take into account authorities submitted to it before arriving at its decision, is not a denial of a right of fair hearing. (Distilled from Ground 5); and
4. Whether or not the whole trial of the Appellant in a language he does not speak nor understand was in breach of his right to fair hearing. (Distilled from Ground 7)”

On its part, the respondent in its Brief of argument filed on 29/1/ 2014, simply adopted the four issues for determination raised in the Appellant’s brief of argument. This being the position, it will only be fair to be guided by the four issues for determination proposed by the appellant as extensively reproduced above. In treating this appeal, and I will approach the issues serially,

ISSUE NO. 1

Issue no.1 relates to placing reliance on evidence of PW1 (Sgt Peter Abum) and exhibit tendered through him.

The learned counsel to the Appellant argued that the evidence of PW1 was not part of the proof of evidence attached to application for leave to prefer a charge and that both the trial Court and the Court below were wrong to have relied on the evidence of PW1 to convict the Appellant. He submitted that the judgment occasioned miscarriage of justice as the Appellant did not have the opportunity of knowing prior to the trial, what he would meet in Court. He stated that the written statement of the said PW1 was not attached to

the proof of evidence though listed as one of the prosecution witnesses. He referred to the case of GBOKO V STATE (2007) 17 NWLR (pt.1063) pg.272 at 305 Parag B-E where the written statement of PW5 a witness therein was not contained in the proof of evidence and it was consequently expunged.

He also referred to the case of OHWOVORIOLE v FRN B (2003) 2 NWLR (pt.803) 176 at 189 to buttress his arguments. He submitted that once the evidence of PW1 was found not to have been contained in or being part of the Proof of Evidence, same should be discountenanced by the Court. He prayed the Court to expunge the said evidence of PW1 from the record and set aside the decision of the lower Court which had affirmed the decision of the trial Court. C He urged the Court to resolve this issue in favour of the Appellant.

ISSUE NO.2

Issue No.2 relates to whether the prosecution proved its case D beyond reasonable doubt. He adopted his argument on issue No.1 supra and added that the evidence of PW1 and the exhibits tendered against him go to no issue.

On the count of conspiracy, he submitted that the learned trial judge read Exhibit 4 in non-objective and non dispassionate E manner. He referred to page 123 (lines 1-3) of the Record where the Court held that the Exhibit 4 was the voluntary confessional statement of the Appellant. He contended that the Appellant having denied making and signing Exhibit 4, the proper thing for the trial Court to do was to admit and decide in a way that such denial avails the F accused person. He submitted that the Court cannot conduct 'trial within trial' as this is only done when the voluntariness of making of the statement is an issue. He stated that the onus is on the prosecution to prove that the said signature belongs to him where signing of a document becomes an issue. He referred to the case of ADENLE V G OLUDE (2002) 18 NWLR (pt.199) p.413 at 430 on how to ascertain authenticity of the signature alleged to be forged. He then argued that none of the above was done by the prosecution or by the Court of first instance and that yet the Court below affirmed the decision of H the trial Court. He submitted that the said confessional statement was not proved to be that of the Appellant. He remarked further, that it was one Paul Attah and not PW1 who recorded the statement of the

Appellant, and Paul Attah was not called as a witness and that PW1 was not at the scene of the crime. He argued that even if the two Courts were right to rely on Exhibit 4, he submitted that the accused being in the midst of those he was traveling with and no more, could not have been said to have committed the offence of conspiracy as there was no where it was proved that there was meeting of minds between him and his co-travelers. He argued that Exhibit 4 standing alone without more, cannot ground a charge of conspiracy based on the followings:-

(i) The conduct of the Appellant when the lorry he was traveling in stopped and some three persons ran away does not suggest a conduct of a person in conspiracy.

(ii) He was not beaten up by the non (passengers) in the lorry who had the opportunity to observe the conduct of the Appellant when others ran away.

(iii) The prosecution did not produce any evidence to show that when other were robbing, the Appellant did any act suggesting encouragement to commit the offence.

(iv) There was nothing incriminating found on the Appellant to suggest he conspired with other persons.

Learned senior counsel argued further that none of the victims of the purported robbery testified in the case and none of their written statements was admitted in evidence.

He therefore argued that the non production of direct evidence from the victims of the crime and the IPO who visited the scene and allegedly recovered the exhibits, is fatal to the case of prosecution. He prayed the Court to hold that the Appellant is not guilty of the offence of conspiracy.

On the offence of armed robbery, he argued that the victims of the alleged robbery are material witnesses to prove that there was armed robbery and that the failure of the prosecution to call the victims is fatal to its case. He remarked that Exhibit 4 requires corroboration itself and cannot therefore be used to corroborate another set of evidence. He referred to the Case of KADAWA V KANO N.A (1968) NLR 319. He contended that the police officer who allegedly recovered Exhibits 2, 2A and 3 was not called to testify and that rendered the evidence of PW1 as hearsay.

He submitted further, that the prosecution did not prove the two counts contained in the charge and that the trial Court ought not to have convicted and sentenced the Appellant to death. He urged the Court to resolve this issue in favour of the Appellant.

ISSUE NO.3

Issue No.3 pertains to the binding nature of the Court of Appeal decision by its earlier decisions on this, he submitted that the Court of Appeal must follow its decision hinged on a Supreme Court decision that has not been reversed by the Supreme Court. He submitted that the two additional authorities submitted to it, ought to have been taken into consideration before it affirmed the decision of the trial Court. These are *GARUBA v STATE* (1997) 3 SCNJ 68 at 86-87 and *GBOKO v STATE* (2007) 17 NWLR (pt.1063) 271 at 304. He prayed the Court to resolve the issue in favour of the Appellant.

ISSUE No.4

Issue No.4 queries the conduct of the trial in the language the accused claimed he did not understand. Learned counsel argued that the trial of the Appellant in English language which he did not understand and without an interpreter breached his right to fair hearing. He stated that it is on record that the Appellant speaks and understands pidgin English. He equally stated that all the proceedings were conducted in English language when the Appellant has testified that he does not know how to read, write or speak the English language. He therefore submitted that fair hearing is a constitutional right which cannot be waived by parties. He referred to the case of *OLLIFEAGBA v ABDULKAREEM* (2009) 18 NWLR (pt.1173) p.384 at 464. He argued that the mere fact that the Appellant speaks pidgin English does not mean that he can speak and understand the English language which would have required for him to be provided with the services of an interpreter. He urged the Court to resolve this issue in favour of the Appellant and set aside the conviction and sentence,

As I stated above, the Respondent adopted the 4 issues formulated by the Appellant.

On issue no.1, the learned counsel to the Respondent submitted that the contention of the appellant that the evidence of PW1 was not part of the proof of evidence attached to the application to

prefer a charge is totally misconceived and untenable.

On the contrary, the respondent's counsel argued that the application to prefer a charge contained the following:-

- (a) Copy of the charge
- (b) Names of witness
- (c) Proof of evidence

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And that statement of the proposed witness statement were also made part of the application namely:-

- (1) Boniface Chigbo Okeke
- (2) Ejiofor Nwankwo
- (3) Paul Attah

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In the case of Sgt. Paul Attah, he stated that it was indicated that his statement is not attached but that he will give evidence as to the role he played in the course of investigation. He then argued that the material presented by the prosecution in support of the application complied with requirement of Section 185 (b) CPC and that the trial judge rightly exercised his discretion to grant the leave. He argued that the Appellant should have appealed against the granting of the leave if he was not satisfied all along. He referred to the case of OHWOVORIOLE v FRN (supra) on which the Appellant heavily relied and argued that the Appellant in that case appealed against the wrongful exercise of the trial Court's discretion in granting the leave unlike in this instance. He submitted that Section 185 CPC and Order 3 Rule 2 (a) and (b) of the Criminal Procedure Rules does not require that statement of witnesses must in all cases form part of the materials to be attached to an application for leave to prefer a charge. He referred to case of GAJI v STATE (1975) NWLR 98 at pg.112 where the Supreme Court held thus:-

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It is open at that stage of the accused persons to be invited into the scene and moreover to be supplied with copies of the statements of potential witnesses.

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He submitted that the appeal was allowed in that case not because of absence of statement of witnesses but simply because the material presented by the prosecution for leave did not disclose any evidence linking the Appellant with the offence charged. He submitted that in the instant case, the evidence of PW1 based on materials annexed to the application were sufficient evidence to convict the

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Appellant. He then urged the Court to resolve this issue in favour of the Respondent. The learned respondents counsel referred to the contention of the Appellant to the effect that, the written statement of PW1 not being part of the proof of evidence attached to the application together with the exhibits tendered through him go to no issue. He adopted his argument on issue no.2. B

ISSUE NO.2

On this issue he urged this Court to discountenance the Appellant's contention and hold that the two Courts below were perfectly entitled to use and act on the evidence of PW1. On the contention of the Appellant that the two lower Courts were erroneous as to what a Court should do when an accused person denies making and signing a confessional statement, he submitted that the Appellant did not object to the admission of the said statement and that his contention is not tenable. He argued further, that the issue of Appellant not signing Exhibit 4 was not brought up during cross examination and that the denial came up when the Appellant was giving his evidence in his defence. He submitted that at the trial Court and the Court below when the issue came up for the first time at the stage defence had concluded that it was not timely raised and therefore an after thought (page 83 line 4-6) of the record. On the contention of the Appellant being an illiterate, he argued that this was not made an issue during cross examination of PW1, he submitted that the issue was strictly whether the Appellant actually signed Exhibit 4 and not whether he went to school or not. He then submitted that the Appellant's argument to the contrary is therefore misconceived. He argued that the case of ADENLE (*supra*) relied on by the Appellant is not applicable. On the contention of the Appellant that there was no proof of meeting of minds between the Appellant and his co-travelers, he submitted that the offence of conspiracy was proved by surrounding circumstances leading to the commission of instant offences. He argued that the record showed that the Appellant had always admired the life style of his co- travelers and that they planned the robbery operation on the day the Appellant calls "one day". He submitted further, that the charge of conspiracy has been proved against the Appellant. On non-production of the victims of the crime to testify, he argued that a case can be proved based on evidence of a lone C D E F G H

witness. He urged the Court to dismiss the Appellant's contention and the entire appeal on this ground.

On count 2 of Armed Robbery and the contention that Exhibit 4 needs further corroboration, he submitted that the argument is misleading as the evidence which requires corroboration is that which on the face of it, seems to have a kind of believable substance but which need some other facts to be fully believed.

On the contention that there was no proof that Exhibits 1, 1A, 2 and 2A were recovered from the scene of the crime, he submitted that there is enough evidence to prove that they were recovered from the scene of the crime. He referred to Exhibit 4 where DW1 talked about two locally made pistols that were found on Emna Onwuba, one of the gang members who he was traveling with. He argued that the Appellant raised no objection at the time of tendering these exhibits but did so at the address stage through his counsel which is against the laid down practice that permits Counsel's Address to deal only with evidence before the Court. He urged the Court to discountenance the Appellant's submission on this ground.

On issue 3, whether the Court of Appeal is bound by its earlier decision hinged on Supreme Court decision. He referred to the contention of the Appellant that the lower Court refused to take into account the two additional authorities submitted to it by the Appellant before it affirmed the judgment, he submitted that the Court took account of the additional authorities where it stated at pages 168- 169 of the record in lines 1- 2,

"I do not see the relevance of the additional authorities. I do not see them to be of any meaningful assistance in the circumstance of this case."

He then submitted that the lower Court really took into account, the two authorities but rightly found them to be irrelevant. He urged the Court to resolve this issue in favour of the Respondent.

On issue no. 4 which relates to the language used in conducting the trial, the Appellant contended that the entire trial was conducted in a language he did not speak or understand. He submitted that where an accused person is represented by counsel, failure to provide him with an interpreter as required by Section 36(6) (c) of the 1999 Constitution as amended and Section 242 of the CPC will

not vitiate the proceeding or constitute a ground to set aside the trial unless the failure has led to a miscarriage of justice. He referred to the case of *QUEEN v EGUABOR* (1962)1 ALL NLR 28 when it held thus:-

“The right of an accused person to have without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence conferred by Section 21 (5) (e) of the Constitution of the Federation 1960 cannot be invoked on appeal by an appellant who was represented by counsel at the trial as a ground for setting aside a conviction unless he claimed the right at the proper time was denied it.”

He argued that the Appellant in this case was represented by counsel throughout the trial and he fully participated in the trial without raising any such objection. He argued further, that the Appellant has not shown that the procedure has occasioned miscarriage of justice. He urged the Court to discountenance the Appellant’s argument on this issue and to dismiss the appeal and affirm the conviction and sentence of the Appellant.

The Appellant’s Reply brief is a re-argument of what is contained in his brief of argument. It was mere effort to fine-tune or re-argue his appeal that is not the purport of filing a Reply brief by counsel.

On the first issue, the grouse of the appellant is that the evidence of PW1 who was the sole witness called for the prosecution in proof of its case, was not part of the proof of evidence attached to the prosecution application to obtain leave of the trial Court to frame charge against the appellant. For that reason, the appellant’s counsel is of the view that both the trial Court and the lower Court were wrong to have relied on the evidence of PW1 to convict the appellant because with that lapse, miscarriage of justice was occasioned to him since he did not have the opportunity to know the charge or allegation he would meet or face at the trial Court upon his being arraigned before it. He also argued that PW1’s written statement was not attached to the Proof of Evidence.

In the first place, a trial Court always has the discretion to grant or refuse leave to prosecution to frame a charge against an accused person. Where a party feels that a trial

Court wrongfully exercised its discretion in granting or withholding such leave, that party which feels aggrieved by such wrongful exercise of discretion has the right to appeal on that. In this instant case the present appellant failed to appeal against such exercise of discretion by the trial Court.

B Now on the complaint of the appellant mentioned supra, the application to obtain leave to prefer charge against the appellant made before the trial Court, there is indication that Sgt. Paul Attah's statement was really not attached but that he will testify simply on the role
C he played as a police officer who took part in the investigation of the appellant's case. Moreover, looking at the provisions of Section 185 of the Criminal Procedure Code, it has not been stated that the inclusion of statement of witness is always a prerequisite or must be part of the documents that must be attached to Proof of Evidence in all
D cases.

As I posited above, the appellant did not appeal against the alleged wrongful exercise of discretion by the trial Court in granting the leave to the prosecution/respondent to prefer charge against the appellant. Even then, although the appellant stated that
E ***such wrongful exercise of discretion occasioned miscarriage of justice to him, he did not state in what way or manner such omission to include PW1's statement caused him such miscarriage of justice, bearing in mind the fact that information***
F ***was given to him that PW1 was going to testify on the role he played in the investigation of the case. It is therefore my view, that this Court would not in this circumstance expunge the evidence of PW1 from the Record or set aside the lower Court's***
G ***affirmation of trial Court's decision. I therefore resolve this issue against the present appellant.***

The second issue raised by the appellant relates to proof of the case against him by the prosecution now respondent. In this instance appeal, there is a confessional statement made
H ***by the appellant voluntarily which was tendered and admitted in evidence at the trial and marked Exhibit 4. Although the appellant denied making such statement or signing same, the trial Court rightfully in my view, did not bother to conduct a***

trial within trial since the appellant did not say that he made it under duress, torture, promise or any influence. This is because mere denial of making or signing a confessional statement by accused persons is not sufficient ground on which to reject its admissibility in evidence when properly tendered.

See Okwesi vs. State (1995) NWLR 119; Ezenge vs. The State (1999) 14 NWLR (pt.637) 1. ***Also where an accused person merely disputes the correctness of a confessional statement or states that he made no statement at all, it is not necessary to conduct a trial within trial.*** See Madejemesi v The State (2001) 5 SCNJ 59. B
C

Again it is pertinent to note that as shown by the record of appeal, the appellant's denial of signing the statement was not raised at the time his confessional statement was tendered in evidence but was merely raised by him while he was testifying in his defence as rightly observed by the two lower Courts. See page 83 lines 4 to 6 of the Record. Similarly, on the issue of illiteracy on the part of the appellant raised by the latter, that issue was also not raised on the cross-examination of PW1. It was raised on the contention whether the appellant was actively the one who signed Exhibit 4, but rather not whether the appellant went to school. This therefore made the issue of the denial of signing the statement a non-issue. D
E

I therefore agree with the findings of the learned trial judge that the issue of signature on the statement came at the 23rd hour of the Day. However, since the issue was raised by him when giving evidence in his defence, the trial Court ought to have considered it as part of his defence and form its opinion on whatever that piece of defence was worth as it rightly did in the circumstance of this case where it expressed its opinion on same which was also endorsed rightly too, by the lower Court. Since such findings of both lower Courts are not perverse, I do not see the justification to disturb or interfere with it. See International Messengers (Nigeria) Ltd v. Pegofor Industries Limited (2005) 15 NWLR (pt.947)1; Okoya vs. Santelli (1994) 4 NWLR (pt.338) 256; Onage & Ors v Miche & Ors (1961)2 SCNLR 101. ***It is trite law, that however stupid a defence in criminal matter might be, it must be considered.*** See Kim v. The State F
G
H

3998 Akwuobi v. State (2016) 9-12 KLR Sanusi JSC
(1992) 4 NWLR (pt.233) 17; Laoye v State (1985) 2 NWLR (pt.10)
832.

On the offence of conspiracy which was the first count the appellant stood charged with, the latter submitted that that offence was not proved against him because the prosecution/respondent failed to prove meeting of minds between him and his co-travelers or that they planned to commit the armed robbery on that day or on the day the appellant called “One day” in his statement. He argued that Exhibit 4, standing alone could not ground a charge of conspiracy. He added that the prosecution did not lead any evidence to suggest his conduct to support or show any agreement reached between him and the co-travelers, co-accused or co-conspirators. On his part, the learned respondent’s counsel opined that the offence of conspiracy could be inferred from the surrounding circumstance. It is his contention also, that the appellant planned the operation on the day he referred to in his statement as “one day”. He also added that an offence of armed robbery can be proved from the evidence of one witness only.

It must be stressed here, that where persons are charged with criminal conspiracy, the elements of conspiracy as disclosed in the charge must be proved and it must be established against the person or persons so charged that he or they have engaged in it. However, it must be noted that it is not always easy to prove the actual agreement. The Court can however infer the agreement from the surrounding circumstance of each given case and from those inferred circumstances; it can safely presume the conspiracy. See Gregory Godwin Daboh & Anor v. The State (1977) All NLR 148; (1977) LPELR 904.

Again, it is well settled law that conspiracy may exist between persons who even had never or known or seen each other or had corresponded or communicated with each other. In criminal conspiracy, it is not always necessary that the co-conspirators must know each other or that the accused persons concerned had concocted the plan or modality of the execution of the subject matter of the plan or charge nor that they should have originated and organised it. If a conspiracy

is planned and a person joins it at a later stage, he is equally qualified as the original conspirators. See *R vs. Summonds* (1969) 1 QB 685.

As I said supra, the offence of conspiracy can be inferred from the facts and surrounding circumstances of a given case. I will also add that the conduct of the accused and/or his co accused/conspirators often go a long way to suggest or establish that there had been implied or explicit agreement amongst them to commit a criminal offence or offences. Inferences can always be drawn by the trial Court to conclude that the offence of criminal conspiracy has been committed.

I am aware that the only witness called by the prosecution is PW1 who took part in the investigation of the case. It was through him that the accused/appellants statement was tendered in evidence and marked as Exhibit 4. It was a confessional statement that was tendered and admitted without any objection from the defence as it was voluntarily made by him. It is settled law, that where a statement is a free and voluntary confession, once it is direct and positive it can even ground a conviction once the trial Court is satisfied with the truth of that confession. See *Ajayi vs. Omokoro* (1941) 7 WACA 146, *R vs. Sykes* (1913) 8 CAR 233 @ 236. Although the appellant made an effort to retract his confessional statement (Exh 4) when giving his defence, that is of no moment since he did not do so at the time when it was tendered in evidence. The appellant's defence that he did not make it or sign it is belated since it was already admitted in evidence. Such denial or disowning could therefore only be considered as part of his defence by the trial Court in its judgment when considering the entire evidence and the surrounding circumstances of the case. It is my view that the trial Court in its judgment painstakingly and ably did so rightly too, and the Court below's endorsement of same is faultless.

Another grouse of the learned silk for the appellant with regard to the commission of the offence of criminal conspiracy was also that there was no evidence of proof of minds of the alleged co-conspirators and therefore the offence of criminal conspiracy was not proved by the surrounding circumstances leading to the commission

of the instant offence. Now, let us look at part of the record and see whether surrounding circumstances exist to justify the trial Court to draw any kind of inference or inferences vis a vis the testimony of the lone prosecution witness i.e. PW1.

Part of Exhibit 4 reads thus-

B *"I stayed at Oyingbo in Lagos. — There I use to see Epicie and KC. They look (sic) neat and eat (sic) better food — and so much admired them. - so one day, they called me and told me that I will follow them to Enugu to help them carry their handbag for them. I told them that I have no transport money but they said that they will transport me. My own was to carry their handbag and follow them. So we boarded a luxurious bus from Lagos to Onitsha. We then entered another vehicle from Onitsha to Nineth Mile. At Nineth Mile, we met with one Emma Onwuka — he called Epicie and KC to one side and they discussed — and when they came back they said that we should go — when Onwuka came, he was holding something in a black leather bag in his armpit —. We entered one 911 from Nineth Mile to Lafia, Nassarawa State — On reaching somewhere near Otukpo, Emma Onwuka climbed through the driver's side from the back and held the driver and ordered that the driver should stopped (sic.) This time I saw Emman Onwuka with two locally made pistol (sic) — Emma brought out the second pistol and fired the driver (sic) the driver increased speed though he was staggering till he finally stopped at the police check point — he started shouting armed robbers!! Armed robber!! At this juncture, Epicie, KC and Onwuka jumped down and ran into the bush —, This is my first time to go out for a robbery operation —"*

And somewhere in the said accused's/appellant's confessional statement Exh 4, the appellant had this to say:-

"This is my first time to go out for a robbery operation"

It is worthy of note that the learned counsel for the appellant who incidentally was the same counsel who defended the appellant right from the two lower Courts to this Court, urged the lower Court to expunge the appellant's confessional statement Exh.4. This is bizarre because when the said statement was tendered at the trial Court, below is what he stated as shown on the record. The learned defence counsel in response to the question whether he had any objection

for the admission of the said statement i.e. Exhibit 4, he stated thus-

"I have no objection to the admission of the two guns, the expanded and unexpanded cartridges. I equally have no objection to the admission of the statement of the accused person."

Then one wonders why the defence counsel Mr. Okutepa now SAN is shifting ground or his stand. I hold that from the circumstances surrounding this case especially the contents of Exh.4, I have no hesitation in holding that the trial Court was right in inferring that the offence of criminal conspiracy was established against the appellant, as rightly found, by the learned trial judge and affirmed by the lower Court.

Again, the appellant's counsel frowned at the prosecution's failure to call the victims of the crimes to testify and the reliance on the evidence of lone witness called by the prosecution to prove its case against the appellant. However, before I comment on that, my Lords, please permit me to digress a little to consider the evidence adduced by the prosecution in proof of the offence of armed robbery against the appellant.

The law is settled that offence of armed robbery can be established by proof of the under listed elements, namely.

(a) That there was a robbery or series of robberies.

(b) Each or any of the robbers was armed at the time of the robbery operation.

(c) That the accused was one of the robbers or had taken part in robbery operation. See Bozin vs. the State (1985)2 NWLR (pt.8)465 at 467, Sorbor vs. The State (2001) FWLR (pt.78)10 77 at 1100.

It is true that the prosecution/respondent did not call any eye witness. Only the PW1 the IPO, was called to testify and through him several exhibits were tendered in evidence such as the confessional statement of the appellant and the gun recovered at the scene of the crime all of which were tendered in evidence without objection from the defence. Exhibit 4 is the vital evidence on which the case led by the prosecution revolves. There is no gainsaying, that Exh 4 is direct and positive and as I said above, the trial Court was correct in relying on that statement in order to convict the two appellants of both charges.

Examining or appraising the said statement, it brings to light, that there was armed robbery committed. It is immaterial that no eye witness was called to testify. Evidence abound also that during the robbery operation, gun and some items were recovered. Also recovered were some expanded and live B ammunitions. That clearly suggests that arms (gun) were used during the operation. The statement of the appellant also confirms the recovery of some items belonging to the victims of the armed robbery. All these items were tendered in evidence C during the trial and were admitted without objection from the defence. On the involvement of the appellant, the latter clearly fixed himself at the scene of the robbery when he admitted or confessed in his voluntary statement (Exh 4) which was admitted at the trial. To my mind therefore, the prosecution now D respondent had also proved its case of armed robbery against the appellant and had rightly found him fully of committing both offences and convicted him as charged.

The learned counsel for the appellant also complained that only one witness was called by the prosecution in proof E of its case against the appellant. The point must be stressed here, that a single credible witness can establish a case beyond reasonable doubt, unless of course, such a witness is an accomplice, in which case his testimony would require corroboration. See Grace Abraham Akpabio & 2 Ors vs. The State F (1994) LPELR 369. Similarly, a free and voluntary confession of guilt of an accused in his voluntary confessional statement which is direct and positive can also ground a conviction so long as the Court is satisfied with the truth of such a confession. See Ikpo v. State (1995) G 9 NWLR (Pt.421)540 @ 554 D-E. In fact in this instant case, the learned trial judge did apply the test in R vs. Sykes (supra). It also rightly held that the evidence was duly corroborated.

The 2nd issue for the determination is therefore resolved against the appellant.

H Issue No.3 relates to alleged failure or refusal of the lower Court to follow its decision hinged on a Supreme Court decision which has not been reversed by the Supreme Court as contained in the List of Additional Authorities he submitted to it. I think the sub-

mission of the learned appellant's counsel is misconceived. This is because, the lower Court at pages 168 to 169 of the Record, it had this to say:-

"I do not see the relevance of the additional authorities. I do not see them to be of any meaningful assistance in the circumstance of this case." B

This clearly shows that the lower Court had considered the decided authorities the appellant cited and relied on in his List of Additional Authorities and found them to be of no relevance or assistance. C

It will therefore not be correct to say that the lower Court did not refer or advert its mind to them. This issue is therefore also resolved against the appellant. D

This now brings me to the forth and last issue for determination which has to do with the language used in conducting the entire proceedings by the trial Court. The learned appellant's counsel is contending that the trial Court failed to provide an interpreter to the appellant during the conduct of the proceedings in contravention of Section 36(6) of the Constitution of the Federal Republic of Nigeria 1999 as amended and the provisions of Section 242 of Criminal Procedure Code which according to him, vitiates the proceedings and therefore would lead to the setting aside of the entire trial of the appellant as it occasioned him miscarriage of justice. He relied on the authority of *Queen vs. Eguabor* (1962)1 All NLR 128. E

In the first place, it is noted by me from pages 26 to 27 of the Record that when the hearing in the case commenced by taking the plea of the Accused/Appellant, he was represented by the same counsel who represented him all through, from the trial Court up to this apex Court. When his plea was to be taken, the same counsel did not complain to the trial Court that his client did not understand English language i.e. the language of the trial Court and also did not request on his behalf, the use of an interpreter. In the case of *Queen vs. Eguabor* [1962]1 All NLR it was held thus:- F

"The right of an accused person to have without payment the assistance of an interpreter if he can not understand the language used at the trial of the offence conferred by Section 21 (5) (e) of the Constitution of the Federation 1960 can not be invoked on appeal by an appellant who was represented by counsel at the trial as a H

ground of setting aside a conviction unless he claimed the right at the proper time..."

Similarly, in the case of Sabina Chikaodi Madu vs The State (2012)15 NWLR (pt.1324) 405 LPELR 7867 this Court which was decided under the Criminal Procedure Law applicable to the Southern part of Nigeria but while interpreting the provision of Section 36(6) of the 1999 Constitution as amended had this to say-

"It is the duty of the appellant and counsel to raise the issue before the trial Court that she did not understand the language being spoken by the prosecution witnesses. If after such objection was raised the Court overruled it and yet proceeded with the case, the story would have been different. Not having stated that an objection or complaint was raised or made, it is safe in my view, to assume that the Appellant had no cause to complain. See Frances Durwode v The State (2000) 82 LRCN 3038 at 3065; (2007) FWLR (pt 36)950 at 971-972 in which case this Court opine (sic) as follows:- "In the realm of criminal justice, it is the cardinal principle of our criminal jurisprudence that it is the duty of the accused or his counsel acting on his behalf to bring to the notice of the Court the fact that he does not understand the language in which the trial is conducted otherwise it will be assumed that he has no cause of complain." See also Adeniji v State FWLR (pt. 57)809-817. Earlier this Court per Adio JSC (of blessed memory) in Mallam Madu vs The State (1997) 1 NWLR (pt.482)306 at 402 had stated thus: "The fact that or founding that the appellant the accused does not understand the Language which the trial Court is been conducted is a fact well known to the accused and it is for him or his counsel to take the step of bringing it to the notice the Court at the earliest opportunity or soon as the situation has arisen. If he does not claim the right at the proper time he may not be able to have a valid complaint afterwards for example on appeal."

As I observed above, in this instant case, neither the appellant nor the present counsel who appeared for him raised the issue that the appellant did not understand the language the trial Court was conducting its proceeding or ask the Court to provide him with an interpreter. The proceedings therefore continued without any complaint until during the appeal. To my mind, the appellant can not be heard complaining now,

that miscarriage of justice was occasioned him without even explaining in which way or manner such miscarriage of justice was occasioned to appellant when throughout the proceedings, right from the trial Court to this Court, the present learned defence counsel defended him. This issue also lacks substance and is resolved against the appellant. B

Finally, I am of the firm view that the trial Court had properly and painstakingly evaluated the evidence adduced in the case especially Exhibit 4 and it had also considered the surrounding circumstances of the case before concluding that the appellant did commit the offences he was charged with and ultimately convicted him as charged. C

The lower Court had also after duly considering the trial Court's judgment, rightly arrived at the correct finding that the decision of the trial Court is faultless, flawless before finally affirming same. D In view of the concurrent findings of the two lower Courts, I find no reason to interfere or disturb such concurrent findings of the two lower Courts which, to my mind, are not perverse. See *Adaku Amadi v Edward N. Nwosu* (1992) NWLR (pt. 241)273; or (1992)6 SCNJ 59; *Kenneth Ogoala vs The State* (1991) 2 NWLR (Pt.176) 509 or (1991) 3 SCNJ 81; *Ojo Ogbemudia Ebiolor v Felecia Osayande* (1992) 7 SCNI 217 or (1991] NWLR (pt.249) 824. E

In the result, having resolved all the four issues against the appellant, I hold the view that this appeal is devoid of any merit. F

It deserves to be and is hereby dismissed. The judgment of the lower Court affirming the decision of the trial Court is hereby affirmed. Appeal dismissed.

MUHAMMAD JSC

I had the advantage of reading the judgment of my learned brother Sanusi, JSC. I am in agreement with him that the appeal lacks merit and it should be dismissed. I dismiss the appeal. I abide by orders made in the lead judgment. G

NGWUTA JSC

I have read in drafts the lead judgment of my learned brother, Amiru Sanusi, JSC. H

I agree with his reasoning and conclusion that the appeal lacks merit and ought to be dismissed. I accordingly dismiss the appeal and abide by the consequential orders made in the judgment. Appeal dismissed.

B **ARIWOOLA JSC**

My learned brother, Amiru Sanusi, JSC obliged me with the draft of his lead judgment just delivered. I agree entirely with the reasoning therein and the conclusion that the appeal lacks merit and deserves to be dismissed.

C The appellant was arraigned before the High Court of Benue State (hereby called ‘trial Court’) holden at Makurdi on a two count charge of conspiracy to commit armed robbery and armed robbery. At the conclusion of the trial, its considered judgment, the appellant D was found guilty, convicted as charged and sentenced to death.

The appellant was dissatisfied with the judgment of the trial Court, hence he appealed to the Makurdi Division of the Court of Appeal, herein after referred to as the Court below. The appeal was eventually dismissed based on the concurrent findings of the two E lower Courts. That has led to the instant appeal against the decision of the Makurdi division of the Court below.

It is interesting to note that the appellant made a confessional statement which when tendered in his presence and his counsel did not object to its admissibility. The trial Court then admitted the said F statement and marked it as Exhibit 4.

It is trite law and already settled that a free and voluntary confession of guilt by an accused person, if direct and positive, duly made and satisfactorily proved before the trial Court, is alone sufficient to warrant a conviction, even if there is no corroborative G evidence. Therefore, a conviction based on such a confessional statement will not be quashed on appeal, merely because it is based entirely on the evidence of confession by the appellant. What is important is that the Court must be satisfied with the fact and circumstance H in which the confession was made. See; R Vs Ajayi Omokaro (1941) 7 WACA 146; Anthony Ejinima Vs. The State (1991) 6 NWLR (Pt.200) 627, (1991) 7 SCNJ 318 ; (1991) 7 SC (Pt 11) 1.

As I stated earlier, the appellant was charged with conspiracy

to commit an offence of armed robbery and armed with some others at large. It is trite law that for the prosecution to establish the offence of armed robbery, it must ensure that the followings are proved to the satisfaction of the Court.

- (a) That there was in fact a robbery;
- (b) That the robbery was an armed robbery, that is that the robbers or at least one of them are armed;
- (c) That the accused person was the armed robber or one of armed robbers. See *Bozin Vs. State* (1985)2 NWLR (pt. 8)465 at 467; *Alabi Vs. State* (1993) 7 NWLR (PT. 307) 551; *Olayinka Vs. State* (2007)4 SC (pt.1) 710;(2007) 9 NWLR (PT. 1040) 561; (2007) 8 SCM 193.

Generally, and it has long been established that, in order to prove the guilt of an accused person, the prosecution has to do either or all of the following ways:-

- (a) By evidence of eye witness(es);
- (b) By confessional statement of the accused person;
- (c) By circumstantial evidence. See *Adekoya Vs. The State* (2012) 6SCM 58; *Mbang Vs. The State* (2012) 10 SCM 31; *The State Vs. Isah & Ors* (2010) 12 SCM (PT. 2) 425.

However, by whatever means the prosecutor employs to prove the guilt of an accused person, the law requires that the guilt must be established clearly and beyond any reasonable doubt.

From the record of appeal, the Statement attributed and credited to the appellant which was admitted without any objection is on Pages 9 to 14 of the record. This statement of the appellant has been quoted by my learned brother in the lead judgment and I need not reproduce same here again.

Confession under Section 27(1) of the Evidence Act is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime. For a statement to be confessional, it must be free, voluntary, direct and positive. Whether judicial or extra judicial and the Court must believe, it is the truth. In other words, once an accused person makes a statement under caution admitting the charge or creating the impression that he committed the offence charged, his statement becomes confessional and it is admissible. See; *Patrick Ikemson & Ors Vs. The*

State (1989) 6 SC (Pt.41) 114; The State Vs. Usman Isah & Ors (2012) 12 SCM (Pt.2) 425.

B In Joseph Idowu Vs. The State (2007) 7 SC (Pt.11) S0 at 62, it was held and rightly too, that a free and voluntary confession of guilt made by an accused person, If direct and positive is sufficient to warrant conviction without more.

C In the Instant case, there no doubt that the statement credited to the appellant was freely and voluntarily made. It is also direct and positive. No wonder then that neither the appellant nor his counsel both of whom were in Court when the statement was tendered, objected any form. The trial Court was therefore right to rely on the said statement and other exhibits clearly admitted by reference in the statement by the appellant convicting him. The sentence was also correctly handed down. My lords, I must state that the attempt by D the appellant to retract or deny the making of the Statement only when he was testifying cannot hold water. It has been held that the fact that a voluntary, positive and unequivocal confession is retracted does not necessarily make it inadmissible. Indeed, as rightly found by the trial Court and Court below, the story or facts stated in the E appellant's statement Exhibit 4 and his oral testimony are similar. His retraction was therefore an afterthought.

F For the above brief comments and the detail and fuller reasoning of my learned brother in the lead judgment. I hold that the appeal is unmeritorious and deserve to be dismissed. Accordingly, I hereby dismiss the appeal and affirm the judgment of the Court below which had affirmed the conviction and sentence of the appellant.

OKORO JSC

G I read in draft the lead judgment of my learned brother AMIRU SANUSI, JSC, just delivered.

H I am in agreement with the reasons advanced and the conclusion reached therein that the appeal lacks merit and ought to be dismissed. I adopt the said lead judgment as mine. I also dismiss the appeal. I abide by the consequential orders made therein.