

SUPREME COURT OF NIGERIA

FRIDAY 16TH DECEMBER, 2016. SC. 551/2013

**CORAM:- I. T. MUHAMMAD, M. U. PETER-ODILI, K. B.
AKA'AH, K. M. O. KEKERE-EKUN, J. I. OKORO, JJSC**

OKECHUKWU MARAIRE APPELLANT
V.
THE STATE RESPONDENT

APPEALS - Criminal procedure - Brief of appeal - Additional grounds
- May be filed and argued in a brief - But it must be regularized - Or
be deemed incompetent as in this case (H1)

CRIMINAL PROCEDURE - Armed robbery trial - Commencement
of - Mode as provided by statutes and the Constitution - Is by summary
trial procedure - That is by preferring a charge (H2)

APPEALS - Hearing - Jurisdiction - Supreme Court lacks jurisdiction
to hear appellant's complaints in issue 1 - As it relates to the decision
of the trial Court (H3)

FACTS

Before the High Court of Edo State Benin City, accused/
appellant and three others were arraigned on a two count charge of
conspiracy to commit armed robbery and armed robbery contrary
to section 1(2)(a) of the Armed Robbery & Firearms (Special Provi-
sions) Act Cap. 398 LFN 1990. They pleaded not guilty to the charge.
The allegation against appellant and the others according to the tes-
timony of PW3 Thomas Iyere (a night guard at a Filling Station in
Benin City) is that some men illegally entered the premises and ac-
costed him on the fateful night. The men ransack the premises while
they carried out armed robbery operations. One of the robbers held
him down with a gun through out the duration of the armed robbery.

After the operations, he freed himself and went on to nar-
rate the ugly incident to some policemen on duty in the nearby pre-
mises. Appellant and the others were arrested in connection with the
crime. Appellant made a voluntary confessional statement. At the

trial, prosecution/respondent called seven witnesses in proof of its case. PW1 (MD of the Filling Station) testified of how his office was burgled. PW2 (Admin Manager) and PW4 (Cashier) both testified as to how they found the strong room vandalized. In his defense, appellant denied having knowledge of the crime. At the conclusion of trial, the Court acquitted and discharged appellant and his co-acused of the offence of conspiracy charged in count 1 but convicted and sentenced them both to death by hanging on the charge of armed robbery in Count 2. Being dissatisfied, appellant appealed to the Court of Appeal Benin Division. The appeal was dismissed. The dismissal prompted appellant to file appeal to the Supreme Court.

ISSUES FOR DETERMINATION

Whether the Court of Appeal was right in law to have upheld the trial Court's assumption of jurisdiction in this case.

Whether the decision of the Court of Appeal in upholding the judgment of the High Court is borne out by the evidence before the trial Court.

HELD (Unanimously dismissing the appeal per

KEKERE-EKUN JSC)

APPEALS - Additional grounds - Filing

1. Before going into the merits of the appeal, I deem it necessary to have a further look at the additional grounds of appeal incorporated in the appellant's brief. Order 6 Rule 5(1)(c) of the Rules of this Court provided as follows: If leave to file and argue additional grounds of appeal is to be sought at the hearing of the appeal, it may be so indicated in the brief and the proposed additional grounds shall be stated and argued in the brief under the appropriate issue or issues arising in the appeal. Provided that any fees payable under Order 2 Rule 13 shall be paid to the Registrar of this Court at the time of filling the brief.

In the instant case, I have carefully examined the Court's record and have been unable to find any application to regularize the additional grounds of appeal contained in the appellant's brief. As noted earlier, learned counsel for the

appellant, though duly served with hearing notice, was absent at the hearing of the appeal. There was therefore no application at the hearing for leave to argue the additional grounds of appeal. I therefore hold that issues (b) and (c) of the additional grounds of appeal are incompetent. They are hereby struck out. Issues 2 and 4 distilled from the incompetent grounds of appeal are also incompetent and accordingly struck out. (p. 4476 E)

CRIMINAL PROCEDURE - Commencement of - Mode

2. The effect of the various provisions reproduced above, as held by the Court below, is that they all recognize the fact that the filing of an information is not the only method by which criminal trials may be instituted. It is correct, as submitted by learned counsel for the respondent, that where a statute provides for a particular mode of doing something, that method and no other must be adopted.

In the instant case, since Section 4 of Decree 62 of 1999 has been saved by Section 315 of the 1999 Constitution (as amended), it is an existing law, which provides that all Criminal Proceedings before the Court shall be tried summarily. This includes proceedings under Section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act Cap. 398 LFN 1990. Section 33 of the Federal High Court Act also makes specific provision for the summary trial of Criminal Matters.

There is therefore no doubt at all that the mode of instituting Criminal Proceedings before the High Court for the offence of armed robbery is by summary trial procedure i.e. by preferring a charge, as was done in this case. (p. 4481 H)

APPEALS - Hearing - Jurisdiction

3. With due respect to learned counsel, the feeble attempt could not repair the damage. The power of the Supreme Court to hear appeals is conferred on it by Section 233 (1) of the 1999 Constitution (as amended), which provides as follows:

“233 (1) The Supreme Court shall have jurisdiction, to the exclusion of any other Court of law in Nigeria to hear

appeals from the Court of Appeal.”

From the above constitutional provision, it is clear that the Supreme Court has no jurisdiction to hear appeals directly from the High Court.

It is my considered view that the above stated grounds of appeal refer to the judgment of the High Court, as the duty to evaluate and consider the weight of evidence is principally that of the trial Court that had the opportunity of seeing and hearing the witnesses and observing their demeanour and not the Court of Appeal. This view is confirmed by the thrust of learned counsel’s submissions against the judgment of the trial Court. Furthermore, the grounds of appeal contain no particulars and therefore do not specify which aspects of the findings of the Court of Appeal are being challenged.

Learned counsel’s submissions in respect of issue 1 are devoted solely to attacking the decision of the trial Court. This Court lacks the jurisdiction to look into those complaints. These are concurrent findings of fact by the two lower Courts, which have not been shown to be perverse. This issue must therefore be resolved against the appellant.
(pp. 4486 G/4487 C)

NOTABLE POINT OF INTEREST

KEKERE-EKUN JSC

1. Judicial bias - Counsel to desist from vicious attack against the Judge

Before concluding this judgment, I deem it necessary to comment on the manner in which learned counsel for the appellant, CHIEF OSAHENI UZAMERE, castigated and lambasted the learned trial judge throughout his brief of argument.

Significantly, there was no ground of appeal before the lower Court alleging a breach of the appellant’s right to fair hearing on grounds of bias, which could even be the subject of an appeal before this Court. I agree with learned counsel for the respondent that the vicious attack on the competence and integrity of the learned trial judge is uncalled for. We belong to a learned profession where decorum and etiquette are the rules we live by.

The allegation that the learned trial judge was “fine-tuning” the case of one of the parties, that he became an investigator and the aspersions cast on his competence/intelligence are completely unwarranted and unbecoming of a legal practitioner worth his salt. Learned counsel for the appellant should be well-guided.
(p. 4487 F/4488 A/E)

B

REPRESENTATION

No representation, for the Appellant
OLUWOLE IYANWU ESQ., Solicitor-General, Ministry of Justice, Edo State, with him, R.O. Ohimeire (Mrs.) (SSC) and M.O Eruaga (Miss) (SSC), for the Respondent

C

CASES REFERRED TO

- Gaji v. Paye (2003) 8 NWLR (pt. 823) 583 D
Obiakor v. State (2002) 10 NWLR (pt. 776) 612
Omomeji v. Kolawole (2008) 14 NWLR (pt. 1106) 180
Agbiti v. Nigerian Navy (2011) 4 NWLR (pt. 1236) 175
Madukolu v. Nkemdilim (1962) 1 All NLR 587
A.G. Lagos State v. Dosunmu (1989) 3 NWLR (pt. 111) 552 E
MacFoy v. U.A.C (1962) AC 152
Aoko vs Fagbemi (1961) ALL NLR 100
Tanko v. State (2009) 1-2 MJSN 209
Din v. A.G Federation (1988) 4 NWLR (pt. 87) 147
Abokuyanro v. State (2012) 2 NWLR (pt. 1285) 530 F
Ajayi v. Adebisi (2012) All FWLR (pt. 634) 1
Gambari v. Ibrahim (2012) All FWLR (pt. 644) 29
Ayorinde v. Sogunro (2012) 11 NWLR (pt. 1312) 460
Abeke v. State (2007) 9 NWLR (pt. 1040) 411 G

STATUTES & RULES REFERRED TO

- Armed Robbery & Firearms (Special Provisions) Act Cap. 398 LFN 1990, s. 1(2)(a)
Criminal Procedure Law Cap. 49 vol. II Laws of Edo State, ss. 331, H 337
Constitution of the Federal Republic of Nigeria 1999, s. 315
Federal High Court Act, s. 33

High Court Laws of Edo State, s. 12

Supreme Court Rules 1999 (as amended), O. 6 r. 5(1)(c)

LEAD JUDGMENT BY KEKERE-EKUN JSC

On 21/11/2002, the appellant and three others were charged
B before the High Court of Edo State, sitting at Benin City (the trial
Court) on a two-count charge of conspiracy and armed robbery as
follows:

COUNT 1

C That you Jude Maduka Obi, Okechukwu Maraïre Osamede
Abbey and Francis Ehebbholo, on or about the 25th day of March
1999 at Buvel Filling Station No. 222 Muritala Muhammed Way Benin
City in the Benin Judicial Division, conspired with each other to com-
mit a felony to wit: Armed Robbery and thereby committed an of-
D fence punishable under Section 1(2) (a) of the Armed Robbery and
Firearms (Special Provisions) Act Cap. 398 Law of the Federation of
Nigeria, 1990.

COUNT 2

E That you Jude Maduka Obi, Okechukwu Maraïre Osamede
Abbey and others now at large on or about the 25th day of March
1999 at Buvel Filling Station, No. 222 Muritala Muhammed Way
Benin City in the Benin Judicial Division robbed the sum of seven
hundred and sixty-four thousand four hundred and thirty eight naira,
F eighty three kobo (N764,438.83), Four hundred Dutch (sic) Mark
(400 Dutch (sic) Mark), sixty-four US dollars (64 US Dollars), Fifty
British Pounds Sterling cash (50 British Pounds Sterling) and coral
beads of assorted forms valued at one hundred and fifty thousand
naira (N150,000) properties of Prince Clement Okoeguale and at
G the same time of the robbery were armed with a gun and thereby
committed an offence punishable under Section 1(2)(a) of the Rob-
bery and Firearms (Special Provisions) Act Cap, 398 Laws of the
Federation of Nigeria, 1990.

H At the arraignment the appellant was the 2nd accused. All
the accused persons pleaded not guilty to the charges against them.
Unfortunately, the 1st accused, Jude Maduka Obi, died in prison
custody. The prosecution withdrew the charges against the deceased
and amended the charge. The remaining three persons, including

the appellant pleaded not guilty to the amended charge. The appellant then became the 1st accused. The 4th accused, Francis Ehebholo, who was charged on the count of conspiracy only, was discharged on a successful no-case submission, leaving only two accused standing trial- the appellant and one Osamede Abbey.

The prosecution called seven witnesses in proof of its case. B
The facts as presented by the prosecution are as follows:

PW3, Thomas Iyere was a night guard at Buvel Filling Station, Muritala Muhammed Way, Benin City. He resumed work at about 7p.m on 24/3/1999. After all workers closed for the day around C
8p.m he was alone in the premises. At about 2a.m in the early hours of the morning of 25/3/1999 he heard some noise suggesting that the gate had been shaken. He went to investigate and saw two persons, who had already entered the premises, walking towards him. He asked of their mission but they did not respond. Sensing danger, D
he tried to escape to the nearby premises of New Nigerian Bank, which usually has a police presence. Unknown to him, there were other hoodlums in the premises. Two other men grabbed him by the collar and dragged him to the mechanic section on the premises. According to his testimony, they tore his shirt and used part of it to E
bind his hands and legs. They advised him to remain quiet, as he was not the one they were after. A gun was pointed at him to ensure he understood their command. The person in possession of the gun stood over him while others went to carry out the operation. From F
where he was held he could hear noises indicating that metal protectors were being cut. The sound came from the main office block. After about an hour, the person guarding him left. He managed to free himself from his constraints and ran to the nearby New Nigerian Bank and narrated his experience to the policeman on duty. He also G
called the Managing Director of the Filling Station and narrated his experience. The first to arrive on the scene was Queen Igah (the office cashier- PW4)

PW1, Clement Kennedy Okoegwale, the Managing Director of the company received the news of the incident while away in the H
United States of America. He returned as soon as he could and arrived on 27/3/1999. He described what he saw thus:

a. the gate to his office had been sliced open with an electric

saw;

b. the door leading to the strong room housing the safe (in the cashier's office) was destroyed; it had been sliced open with a cutting machine but the robbers were unable to force it open;

B c. the safe in his office however was damaged and forced open. Various amounts of local and foreign currency and coral beads were found to have been stolen.

PW2, the Admin Manager and PW4, the cashier, both testified as to how they found the strong room vandalized, safes opened and money carted away. PW5, attached to the Federal Special Anti-
C Robbery Squad, Force C.I.D. Annex, Adeniji Adele, Lagos, was a member of the team assigned to investigate the case. The case was transferred to them from Benin pursuant to a petition written to the Assistant Inspector General of Police 'D' Department, Force C.I.D
D Abuja. The case file was handed over to him along with the first and second accused persons (the now deceased 1st accused and the appellant) from State C.I.D. Benin City. He visited the scene and testified as to what he observed and also mentioned the exhibits handed over to him. It was his testimony that the appellant volunteered a
E confessional statement, which he recorded and countersigned after the appellant confirmed that he made it voluntarily. An objection was taken to its admissibility on grounds of involuntariness. It was admitted in evidence after a trial within trial as Exhibit P1. PW6 is the
F Superior Police Officer before whom the appellant was taken to confirm his confessional statement. The attestation form was admitted in evidence as Exhibit P4. PW7, a process server attached to the State C.I.D legal section, tendered copies of signals sent to one Sgt. Patasi Sam to compel his attendance before the Court.

G In his defence, the appellant denied any knowledge of the crime. At the conclusion of trial, in a considered judgment delivered on 16/6/2006 the learned trial judge acquitted and discharged the appellant and his co-accused of the offence of conspiracy charged in count 1 but convicted and sentenced them both to death by hanging
H on the charge of armed robbery in Count 2. Being dissatisfied with this decision, the appellant appealed to the Court of Appeal Benin Division. The appeal was dismissed on 16/6/2013. The appellant is still dissatisfied and has further appealed to this Court. The original

notice of appeal at pages 409-410 of the record contains two grounds of appeal.

In compliance with the rules of this Court, the parties filed and exchanged their respective briefs of argument. At the hearing of the appeal on 29th September, 2016, learned counsel for the Appellant was absent. The Court was satisfied from its record that he had been duly notified of the hearing date. The appellant having filed a brief of argument on 21/11/2013 settled by CHIEF OSAHENI UZAMERE of counsel, the provisions of Order 6 Rule 8 (6) of the Rules of this Court were invoked and the appellant was deemed to have argued the appeal. OLUYOLE IYAMUESQ., Solicitor General, Ministry of Justice, Edo State, leading R.O. OAIHIMEIRE (MRS.) (S.S.C) and M.O ERUAGA (MISS) (S.S.C), adopted and relied on the respondent's brief, which was deemed filed on 22/4/2015. He urged the Court to dismiss the appeal.

I observed that the appellant in Paragraph 4 at page 2 of his brief purported to seek leave to file additional grounds of appeal. Paragraph 4 reads thus:

LEAVE TO FILE AND ARGUE ADDITIONAL GROUNDS OF APPEAL/PURSUANT TO ORDER 6 RULE 5 (1)(C) OF THE SUPREME COURT RULES AS AMENDED IN 1999.”

The additional grounds of appeal are set out in Paragraph 5. I reproduced them below shorn of their particulars:

(a) The learned Justices of the Court below (Court of Appeal) erred in law to have upheld the High Court's assumption of jurisdiction in the case.

(b) The learned Justices of the Court of Appeal were wrong in law when they upheld the trial Court's admission in evidence, (SIC) the faulty flawed confessional statement of the Appellant.

(c) The learned Justices of the Court of Appeal were wrong in upholding the perverted evaluation of evidence by the learned trial Judge.

From the two original and three additional grounds of appeal, the appellant formulated 4 issues for determination as follows:

1. Whether the decision of the Court of Appeal in upholding the judgment of the High Court is borne out by the evidence before the trial Court. (Grounds 1 & 2 of the original grounds of appeal)

2. Whether the Court of Appeal was right in upholding the findings/evaluation of facts by the High Court in so far as such evaluation was perverse. (Ground (C) of the additional grounds of appeal).

B 3. Whether the Court of Appeal was right in law to have upheld the trial Court's assumption of jurisdiction in a matter it did not possess the requisite jurisdiction to hear. (Ground (a) of the additional grounds of appeal)

C 4. Whether the Court of Appeal was right in upholding the trial Court's admission in evidence of the fatally flawed confessional statement of the appellant. (Ground (b) of the additional grounds of appeal)

The respondent, on its part, formulated 2 issues for determination thus:

D 1. Whether on the evidence of the prosecution witnesses and confessional statements of the appellant and his co-accused, the lower Court was in error in not discharging and acquitting the appellant for the offence of armed robbery.

E 2. Whether the proper mode for the commencement of trial for the offence of armed robbery in the High Court is by filing information or a charge?

F ***Before going into the merits of the appeal, I deem it necessary to have a further look at the additional grounds of appeal incorporated in the appellant's brief. Order 6 Rule 5(1)(c) of the Rules of this Court provided as follows:***

G ***If leave to file and argue additional grounds of appeal is to be sought at the hearing of the appeal, it may be so indicated in the brief and the proposed additional grounds shall be stated and argued in the brief under the appropriate issue or issues arising in the appeal. Provided that any fees payable under Order 2 Rule 13 shall be paid to the Registrar of this Court at the time of filling the brief.***

H ***In the instant case, I have carefully examined the Court's record and have been unable to find any application to regularize the additional grounds of appeal contained in the appellant's brief. As noted earlier, learned counsel for the appellant, though duly served with hearing notice, was absent***

at the hearing of the appeal. There was therefore no application at the hearing for leave to argue the additional grounds of appeal. I therefore hold that issues (b) and (c) of the additional grounds of appeal are incompetent. They are hereby struck out. Issues 2 and 4 distilled from the incompetent grounds of appeal are also incompetent and accordingly struck out.

Ground (a) of the additional grounds of appeal raises the issue of jurisdiction. The law is trite that the issue of jurisdiction can be raised at any time and even for the first time before the Apex Court. It is equally well settled that leave is not required to raise the issue of jurisdiction. See: Gaji Vs Paye (2003) 8 NWLR (Pt. 823) 583; Obiakor Vs State (2002) 10 NWLR (Pt. 776) 612; Omomeji Vs. Kolawole (2008) 14 NWLR (Pt. 1106) 180; Agbiti Vs. Nigerian Navy (2011) 4 NWLR (Pt. 1236) 175. I hold that Ground (a) is therefore competent. Issue 3 formulated from the said ground is also incompetent.

Based on the above observation, I am of the view that the issues relevant to the just determination of this appeal are the appellant's issues 1 and 3, which are substantially similar to the two issues formulated by the respondent. Issue 1 is distilled from grounds 1 and 2 of the original notice of appeal while 3 is distilled from additional ground (a). I adopt the appellant's issues 1 and 3 for the resolution of this appeal, with a slight rephrasing of issue 3 and re-numbering it as issue 2. Issue 2 raises the fundamental issue of the jurisdiction of the trial Court to have entertained the case ab initio. Prudence therefore dictates that this issue should be considered first. Issue 1 will be determined thereafter if the need arises.

Issue 2

Whether the Court of Appeal was right in law to have upheld the trial Court's assumption of jurisdiction in this case.

Learned counsel for the appellant submitted that the trial Court lacked jurisdiction to hear the case ab initio, for failure of the prosecution to file an information and seek the consent of the learned trial judge to prefer the charges against the appellant. He submitted that the appellant was wrongly tried upon a charge sheet used in the Magistrate's Court for the trial of misdemeanors under the summary trial procedure. He submitted that the correct procedure for initiating

a Criminal trial at the High Court is as contained in Section 331 of the Criminal Procedure Law (C.PL) Cap. 49 Vol. II Laws of now Defunct Bendel State 1976 applicable to Edo State. He submitted that failure to fulfil a condition precedent to the exercise of jurisdiction by the trial Court renders the trial a nullity. He relied on *Madukolu vs Nkemdilim* (1962) 1 ALL NLR 587 @ 595; *A.G. Lagos State v. Dosunmu* (1989) 3 NWLR (Pt. 111) 552 @ 557-558; *MacFoy vs U.A.C* (1962) AC 152 and several other authorities in support of his submission. He argued that non-compliance with Section 337 of the CPL vitiates the entire proceedings.

Arguing further, he submitted that the word summary appearing in the Robbery and Firearms (Special Provisions) Act Cap 398 LFN 1990 cannot be imported into Section 4 of the Tribunal's (Certain Consequential Amendment, e.t.c) Decree No. 62 of 1999, as was done by the learned trial Judge.

Section 4 provides:

"4. All Criminal proceedings brought before the Court relating to a matter for which the Court has jurisdiction under this Decree shall be tried summarily in accordance with Section 33 of the Federal High Court Act and rules of procedure made under the Act or under the equivalent section of the relevant High Court Law of the State concerned and rules of procedure made under that Law."

He assumed that the section of the Federal High Court Law referred to above enjoins the Court to conduct Criminal Proceedings subsequently in accordance with the provisions of the Criminal Procedure Act. He contended that Section 4 of the Decree must be read in conjunction with Section 337 of the CPL of Bendel State as applicable to Edo State.

Learned counsel went further to contend that the charges against the appellant were brought under the defunct Decree and that the appellant was therefore tried under a non-existent law.

He relied on *Aoko vs Fagbemi* (1961) ALL NLR 100. He urged the Court to resolve this issue in the appellant's favour.

Before considering the respondent's submission on this issue, it is pertinent to note that there is no appeal before this Court on the issue as to whether the appellant was charged under a non-existent law. The only particular of error under the additional ground

(a), from which this issue was distilled is as follows:

“Particulars of Error

It was clear that the appellant herein (accused in the High Court) was not properly arraigned. Offences of felony are triable in the High Court on information and not by a charge sheet (summary trial) as was done in the case which is a felony- armed robbery.” B

The submission as to the law under which the appellant was charged therefore go to no issue and are accordingly discounted.

In response to the submission of learned counsel for the appellant, the learned Solicitor General submitted on behalf of the respondent, that the proper mode for the commencement of trial for the offence of armed robbery at the High Court is by way of a charge and not by way of information. He submitted that by the virtue of Section 4 of the Tribunals (Certain Consequential Amendments, etc) Decree No. 62 of 1999 (now Act and henceforth referred to as Decree 62) and Part II of the Schedule thereto, which Act was saved by Section 315 of the 1999 Constitution, the High Court is vested with jurisdiction to hear and determine armed robbery cases summarily. C

He reproduced Section 4 of Decree 62, Section 33 of the Federal High Court (FHC) Act and Section 12 of the High Court Law of Bendel State 1976, applicable to Edo State. He submitted that by the clear wordings of Section 315(1) of the Constitution, Section 4 Decree 62 and Section 33 of the FHC Act is the existing law on arraignment in respect of armed robbery cases. D E F

He submitted that reliance on Section 337 of the CPL is misconceived, as the Section merely prescribes the form an Information should take where the need to file an information arises. He submitted further that the CPL is a residual law while the appellant was charged, tried and convicted under Section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act Cap. 398 LFN 1990. In the circumstance he argued that there was no basis for a combined reading of Section 4 of Decree 62 with Section 337 of the CPL. G

He submitted further, relying on *Aminu Tanko vs The State* (2009) 1-2 MJSN 209 @ D-F and *Din vs A.G Federation* (1988) 4 NWLR (Pt. 87) 147 @ 186, that where the law creating an offence specifies the mode for the trial of offences created thereunder that H

mode applies to the exclusion of the general mode of commencement of trial of offences in the Court. He maintained that the charge of armed robbery for which the appellant and his co-accused were tried and convicted was properly laid in accordance with the provision of the enabling law.

B The Act creating the offences with which the appellant and his co-accused were charged is the Robbery and Firearms (Special Provisions) Act Cap. 398 LFN 1990, specifically Section 1(2)(a) thereof, which provides:

C 1. Any person who commits robbery shall upon trial and conviction under this Act, be sentenced to imprisonment for not less than 21 years.

(2) If-

D (a) any offender mentioned in Sub-section (1) of this section is armed with any firearms or offensive weapon or is in company with any person so armed, the offender shall be liable upon conviction under this Act to be sentenced to death.

Section 2(1) of Decree 62 provides:

E 2 (1) The Federal High Court or the High Court of a State, as the case may be, shall have jurisdiction to try the offences created under the enactments specified in the Schedule to this decree.

F Part II of the Schedule thereto lists the Robbery and Firearms (Special Provisions) Decree 1984 (as contained in Cap. 398 LFN 1990) as one of such enactments. Section 4 of Decree 62 reproduced earlier provides that all Criminal Proceedings brought before the Court relating to a matter in which the Court has jurisdiction shall be tried summarily in accordance with Section 33 of the FHC Act and rules of procedure or under the equivalent section of the relevant High Court Law of the State concerned and under the rules of procedure made under that law.

As rightly submitted by Learned counsel for the respondent, Decree 62 of 1999 is saved as an existing law by virtue of Section 315 of the 1999 Constitution (as amended).

H Section 33 of the Federal High Court Act provides:

“(1) Subject to the provisions of this section, criminal proceedings before the Court shall be conducted substantially in accordance with the provisions of the Criminal Procedure Act and the

provisions of that Act shall, with such modifications as may be necessary to bring it in conformity with the provisions of this Act, have effect in respect of matters falling within the jurisdiction of the Court.

(2) Notwithstanding the generality of Subsection (1) of this section, all Criminal Causes or Matters before the Court shall be tried summarily.” (Emphasis mine) B

Learned counsel for the appellant has argued this issue on the premise that summary trial procedure is only applicable to the Magistrates Courts or other inferior Courts. This view is misconceived. The reason can be found, firstly, in Sections 2 (1) and 4 of Decree 62 and Section 33 of the Federal High Court Act (supra), which provide for summary trial in Criminal Proceedings before the High Court. Another reason is to be found in Section 277 of the C.P.L as rightly observed in Ogunwumiju, JCA’S concurring opinion in the Court below. Section 277 of the C.P.L. of Bendel State 1976, applicable to Edo State provides: C

“277: The provisions of this part shall apply to offences triable summarily, that is to say;

(a) to all trials in the High Court other than information; and

(b) to all trials in the High Court in respect of offences for which it is provided that a trial can be had in the High Court otherwise than on information and for which no special procedure is provided; and E

(c) to all trials in any Magistrate’s Court to the extent of the jurisdiction of the magistrate adjudicating; and F

(d) for all offences declared by any written law to be triable summarily or on summary conviction or in a summary manner by a magistrate.”

Section 12 of the High Court Law of the Defunct Bendel State, 1976 applicable in Edo State provides that the jurisdiction of the High Court shall be exercised in the manner G

(i) Provided by the High Court Law;

(ii) The Criminal Procedure Law; and

(iii) Any other Act of Parliament or written law or by such Rules and Orders of Court as may be made pursuant to this law or Act. H

The effect of the various provisions reproduced above,

as held by the Court below, is that they all recognize the fact that the filing of an information is not the only method by which criminal trials may be instituted. It is correct, as submitted by learned counsel for the respondent, that where a statute provides for a particular mode of doing something, that method and no other must be adopted. See: *Tanko Vs The State* (Supra); *Din Vs. A.G. Federation* (supra); *N.S.I.T.F.M.B. Vs. Klifco Nig. Ltd.* (2010) 13 NWLR (Pt.1211) 307.

In the instant case, since Section 4 of Decree 62 of 1999 has been saved by Section 315 of the 1999 Constitution (as amended), it is an existing law, which provides that all Criminal Proceedings before the Court shall be tried summarily. This includes proceedings under Section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act Cap. 398 LFN 1990. Section 33 of the Federal High Court Act also makes specific provision for the summary trial of Criminal Matters.

There is therefore no doubt at all that the mode of instituting Criminal Proceedings before the High Court for the offence of armed robbery is by summary trial procedure i.e. by preferring a charge, as was done in this case.

Learned counsel for the appellant has failed to show that the finding of the Court below is perverse. No cogent legal argument has been advanced to warrant interference by this Court in the finding of the Court below. Indeed I observe that learned counsel for the appellant merely reproduced mutatis mutandis the argument contained in Paragraph 4 of his brief of argument filed before the lower Court at pages 306 - 308 of the record. He failed to point out the specific findings of the Court below which he did not agree with. Consequently, this issue is resolved against the appellant.

Issue 1

Whether the decision of the Court of Appeal in upholding the judgment of the High Court is borne out by the evidence before the trial Court.

In arguing this issue, learned counsel for the appellant submitted that an appellate Court would not ordinarily interfere with the findings of fact by the trial Court unless the findings are perverse, not supported by evidence, or have led to a miscarriage of justice or

practice has not been followed or complied with. He relied on Abokuyanro Vs The State (2012) 2 NWLR (Pt.1285) 530; Ajayi Vs Adebisi (2012) ALL FWLR (Pt.634) 1; Gambari Vs Ibrahim (2012) ALL FWLR (Pt.644) 29; Ayorinde Vs Sogunro (2012) 11 NWLR (Pt.1312) 460, among others. The argument in support of the issue commence at page 8, last paragraph. From the last paragraph of page 8 through to page 12, learned counsel for the appellant did not challenge specific aspects of the judgment, which is the subject of appeal before us, but made several attacks against the judgment of the trial Court.

Under the heading “Wrong Evaluation” in the final paragraph on page 12 of his brief, learned counsel advanced arguments in respect of issue 2 predicated on Ground (b) of the additional grounds of appeal, which has already been struck out for being incompetent. Again, the submissions are wholly attacking the judgment of the trial Court rather than the Judgment of the Court of Appeal. In this instance also, learned counsel has merely lifted the argument in his brief of argument before the lower Court.

In reply to the submissions of learned counsel for the appellant, learned counsel for the respondent observed that learned counsel failed to particularize the alleged wrong evaluation of evidence or perverse findings by the Courts below or any special circumstance that occasioned a miscarriage of justice. He observed further that a substantial portion of the appellant’s brief is devoted to launching attacks on the trial Judge. Relying on the case of Enekwe Vs I.M.B. Nig Ltd. & 2 Ors (2006) 19 NWLR (Pt.1013) 146 @ 1739, he urged the Court to take a serious view of the vicious attack by learned counsel on the competence and integrity of the learned trial Judge. He also relied on the case of Bolanle Abeke vs. The State (2007) 9 NWLR (Pt 1040) 411 @ 432 B - E.

Learned counsel in Paragraphs 4.7 - 4.14 at pages 8 - 14 of the respondent’s brief addressed the issue of the admissibility of the appellant’s confessional statement Exhibit P1. I commend the industry of learned counsel. However, the submissions must be discounted, the issue upon which they are predicated having been struck out by me earlier in this judgment.

From Paragraphs 4.15 - 4.22, learned counsel sought to show

why the concurrent findings of the two lower Courts should be upheld, the prosecution having, in his view fully discharged the burden of establishing the appellants guilt beyond reasonable doubt. Again, notwithstanding the industry and knowledge exhibited by learned counsel in his brief, the submissions go to no issue, as learned counsel
B
for the appellant failed to properly challenge the judgment of the Court below but instead expended all his energy on attacking the judgment of the trial Court.

Due to the importance of the wrong approach adopted by
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learned counsel for the appellant to this appeal, I shall reproduce in extenso some portions of his brief of argument at pages 8-11 thereof.

He submitted as follows:

A careful study of the decision of the trial learned judge which was upheld by the Court below, i.e. Court of Appeal reveals that
D
learned trial judge speculated throughout his judgment. He filled in the gaping gaps in the prosecution's case which as pointed out earlier in this brief is unacceptable on the authority of *Nsofor v. State* (supra). The important question that begs for an answer in these proceedings is: was the learned trial judge right to have engaged in utter
E
speculation in his evaluation of the evidence before him? On page 272 of the printed records, the learned trial judge observed:

"Now to an all important question, (who) were these people [or persons or some of them] (who invaded Buvel on 25/3/99 at 2am). [now] described as conspirators?" The learned trial Judge then
F
indicated he would proffer an answer to the question he himself raised after due evaluation of the evidence. Instead the learned trial judge, with utmost respect, relapsed into sheer speculation.

Hear him:

*"I must recall that the incident occurred on 25/3/99 while
G
PW1 was away in United States and from his unchallenged evidence, by 27/3/99, he was already back in his office I infer from the foregoing facts that things were still fresh for PW1 to observe as he said he did."*

H
He continued:

"Now, if the evidence of PW3, Thomas Iyere, to the effect that he heard the cutting of protectors at the Administrative Building on the fateful night is considered along side with those of PW1, PW2

and PW4 as to the states they found the offices, and that certain properties were carted away, it comes to this that the robbers armed with a gun and *PERHAPS* some other dangerous implements ripped the offices open and carted away such properties and in the process dangled a threat over the head of PW3 with the use of a gun.”

We have capitalized the words “IF” and “*PERHAPS*” in the above observation by the learned trial judge to highlight the very tentative and tenuous nature of his evaluation. B

These two words connote doubt and the law is that whenever there is any doubt, it should be always resolved in favour of the accused. See the case of *Longe v. Inspector General of Police* (1959) 4 FSC 203. Instead of a dispassionate evaluation of the evidence before him, the learned trial Judge was always in the habit of fine-tuning the prosecution’s case for it. Instead of attempting to evaluate the evidence before him, he kept referring to this and that did accord with reason. Indeed the learned trial judge became an investigator and not an adjudicator. C

He was always invoking common sense instead of invoking the law. The learned trial Judge relapsed into speculation again when on page 280 of the printed record, he began to invoke common sense in what is strictly a legal matter. It does not require too much intelligence to be aware that in 2013, Nigeria Police had become Nigerians greatest tormentors in all the ramifications of that word. Thus, the learned trial Judge ought to have taken judicial notice of the fact that the police in Nigeria would force any one in their net to confess to crimes they did not commit and if they fail to do so, would threaten them with death. This method of extracting confessions from suspects is known as hanging in police circles. And that is what happened in this case. D

Very instructively, the learned trial judge intoned thus at page 280 of printed record. E

“My careful examination of each of Exhibits P1 and P3 (confessional statements of the accused persons) respectively, shows that each of the documents more than anything else contains matters that *COMMON SENSE* will lead one to the conclusion that they emanated from the accused peculiar knowledge and that it is most improbable if not outright impossibility that the accused persons have F

been compelled to voice them out.”

The importation of common sense into what is strictly legal, that is, the probative value ascribable to a piece of evidence is patently wrong. The speculations and resort to common sense (perhaps the Judge’s) led to grave miscarriage of justice. A Court of law is enjoined at all times to stick to the evidence before it and not to go out of its way to fish out evidence which will tidy up the evidence of any party...

It is our final submission on this point that the judge’s demeanor and/or attitude throughout the trial leaves much to be desired. One needs to read very comprehensively and closely the entire proceedings. The learned trial judge was either lashing out at defence counsel or simply cursing them. He abused defence counsel roundly and at every turn, lost his temper on the flimsiest of excuses. His entire attitude suggests bias. He scoffed at defence counsel’s right to raise any type of objection and, of course, threw out every application by the defence with such impatience as to leave everyone wondering whether this was justice. The learned trial justice’s handling of this case is enough to vitiate his entire judgment. Certainly the attitude adopted by the learned trial judge does not meet the standard set by the Court of Appeal as per Adenji JCA at pp 266 - 267 in the case of NICON v. Nze (2004) 15 NWLR (pt.896) 245 250, R5.”

He tried to save the situation with the following paragraph at page 12 of his brief:

“My Lords, we respectfully wish to point out that it is not the decision of the learned trial judge perverse as it is, that is being appealed against in this Court. This Court does not, as a matter of law, hear appeals from a High Court or indeed a Court of first instance. This appeal is against the Court of Appeal’s upholding of the perverse findings of the High Court.”

With due respect to learned counsel, the feeble attempt could not repair the damage. The power of the Supreme Court to hear appeals is conferred on it by Section 233 (1) of the 1999 Constitution (as amended), which provides as follows:

“233 (1) The Supreme Court shall have jurisdiction, to the exclusion of any other Court of law in Nigeria to hear appeals from the Court of Appeal.”

From the above constitutional provision, it is clear that the Supreme Court has no jurisdiction to hear appeals directly from the High Court. See: Guobadia vs The State (2004) 6 NWLR (Pt.869) 360; Harriman vs Harriman (1987) 3 NWLR (pt.60) 244; Usman Vs Garke (2003) 14 NWLR (Pt.840) 261.

The two original grounds of appeal upon which issue 1 is predicated read thus:

1. The judgment of the Court below is against the weight of evidence before the Court.

2. The Court below did not properly evaluate the evidence before it.

It is my considered view that the above stated grounds of appeal refer to the judgment of the High Court, as the duty to evaluate and consider the weight of evidence is principally that of the trial Court that had the opportunity of seeing and hearing the witnesses and observing their demeanour and not the Court of Appeal. This view is confirmed by the thrust of learned counsel's submissions against the judgment of the trial Court. Furthermore, the grounds of appeal contain no particulars and therefore do not specify which aspects of the findings of the Court of Appeal are being challenged.

Learned counsel's submissions in respect of issue 1 are devoted solely to attacking the decision of the trial Court. This Court lacks the jurisdiction to look into those complaints. These are concurrent findings of fact by the two lower Courts, which have not been shown to be perverse. This issue must therefore be resolved against the appellant.

Before concluding this judgment, I deem it necessary to comment on the manner in which learned counsel for the appellant, CHIEF OSAHENI UZAMERE, castigated and lambasted the learned trial judge throughout his brief of argument. He submitted inter alia:

"the learned trial judge was always in the habit of fine-tuning the prosecution's case for it";

"the learned trial judge became an investigator and not an adjudicator";

"it does not require much intelligence to be aware that in 2013, Nigeria Police had become 'Nigerians greatest tormentors'";

“his entire attitude suggests bias”;

“the judge’s demeanor and /or attitude throughout the trial leaves much to be desired.”

Significantly, there was no ground of appeal before the lower Court alleging a breach of the appellant’s right to fair hearing on grounds of bias, which could even be the subject of an appeal before this Court. I agree with learned counsel for the respondent that the vicious attack on the competence and integrity of the learned trial judge is uncalled for. We belong to a learned profession where decorum and etiquette are the rules we live by. In the case of *Enekwe vs I.M.B. Nig. Ltd. (2006) 19 NWLR (Pt. 1013) 146 @ 194 E-F*, His Lordship Tobi, JSC stated inter alia:

“Judges have no forum to defend themselves in the judicial process for positions they take in their judgments. They cannot speak one more word outside their judgments in defence of the positions they have taken. Let parties be slow in pouring venom on them. It is a serious attack on a judge to say that he introduced in the case new matters that were not before the Court. So much is involved as so much could be read into or out of the allegation.”

The allegation that the learned trial judge was “fine-tuning” the case of one of the parties, that he became an investigator and the aspersions cast on his competence/intelligence are completely unwarranted and unbecoming of a legal practitioner worth his salt. Learned counsel for the appellant should be well-guided.

On the whole, I find no merit in this appeal. It is accordingly dismissed. The judgment of the Court of Appeal, Benin Division delivered on 16/5/2013, affirming the conviction and death sentence imposed on the appellant for armed robbery by the High Court of Edo State, holden at Benin on 16/6/2006 is hereby affirmed. Appeal dismissed.

MUHAMMAD JSC

My learned brother, Kekere-Ekun, JSC, afforded me with a copy of her leading Judgment just delivered. I adopt My Lord’s reasoning and conclusion. I hereby dismiss the appeal.

I adopt orders made in the lead judgment.

PETER-ODILI JSC

I agree totally with the judgment just delivered by my learned brother, Kudirat Kekere-Ekun, JSC and in support of the reasoning, I shall make some comments.

This is an appeal against the judgment of the Court of Appeal, Benin Division given on the 16th day of May, 2013 which appeal was against the judgment of the High Court of Benin City, Edo State given by R. I. Amaize J. on the 16/06/2006 which convicted the accused person for armed robbery and sentenced him to death by hanging.

The full facts of the case are well captured in the lead judgment and there is no point repeating them here unless there is necessity for referring to snippets thereof.

On the 29th September, 2016 date of hearing, in spite of service being properly effected on the Appellant/Counsel, there was no appearance and so the Court took the Appellant's Brief of Argument settled by Chief Osaheni Uzamere and filed on 21/11/2013 as argued. In the said Brief of Argument were formulated four issues for determination which are as follows:-

ISSUE ONE (GROUNDS 1& 2 OF ORIGINAL GROUNDS OF APPEAL)

Whether the decision of the Court of Appeal in upholding the judgment of the High Court is borne out by the evidence before the trial Court.

ISSUE TWO (GROUND (C) OF ADDITIONAL GROUNDS OF APPEAL)

Whether the Court of Appeal was right in upholding the findings/evaluation of facts by the High Court in so far as such evaluation was perverse.

ISSUE THREE (GROUND (a) OF ADDITIONAL GROUNDS OF APPEAL)

Whether the Court of Appeal was right in law to have upheld the trial Court's assumption of jurisdiction in a matter it did not possess the requisite jurisdiction to hear.

ISSUE FOUR (GROUND (b) OF ADDITIONAL GROUNDS OF APPEAL)

Whether the Court of Appeal was right in upholding the trial Court's admission in evidence of the totally flawed confessional statement of the Appellant.

Mr. Oluwole Iyamu of counsel for the Respondent adopted its Brief of Argument filed on the 22/10/2014 and in it he crafted two issues for determination which are as follows:-

"1. WHETHER ON THE EVIDENCE OF THE PROSECUTION WITNESS AND THE CONFESSIONAL STATEMENTS OF THE APPELLANT AND HIS CO-ACCUSED, THE LOWER COURT WAS IN ERROR IN NOT DISCHARGING AND ACQUITTING THE APPELLANT FOR THE OFFENCE OF ARMED ROBBERY (GROUNDS 1 AND 2 OF THE ORIGINAL GROUNDS OF APPEAL AND (b) OF THE ADDITIONAL GROUNDS OF APPEAL)."

(Couched as Appellant's Issues 1,2 and 4 in his brief).

2. WHETHER THE PROPER MODE FOR THE COMMENCEMENT OF TRIAL FOR THE OFFENCE OF ARMED ROBBERY IN THE HIGH COURT IS BY FILING INFORMATION OR A CHARGE? (GROUND (a) OF THE ADDITIONAL GROUNDS OF APPEAL)." (Couched as Appellant's Issue 3 in his brief).

For ease of reference, I shall make use of the issues as identified by the Appellant.

ISSUES 1, 2, 3 & 4:

These are the questions whether the decision of the Court of Appeal in upholding the judgment of the trial High Court is borne out by the evidence before the trial Court and if the Court below was right to uphold the findings/evaluation of facts by the Court of first instance. The admission of confessional statement and the jurisdiction of the trial High Court.

Learned Counsel for the Appellant, Chief Uzamere contended that the evaluation of the confessional statement was perverse since the statement was convoluted and riddled with discrepancies. He cited *Otukpo v John & Anor (2012) 212 LRCN 141 at 151*.

That the findings being so biased call for the interference by this Court. He cited the case of *Abokokuyanro v. The State (2012) 2 NWLR (Pt.1285) 530 at 538; Ajayi v Adebisi (2012) All FWLR (Pt.634) 1 at 4*.

It was submitted for the Appellant that the decision of the

trial Court stemmed from speculation and not facts substantiated. He referred to *Longe v IGP* (1959) 4 FSC 203 etc; *A.G. Federation v Fafunwa-Onikoyi* (2006) 18 NWLR (Pt.1010) 51 at 55, *NICON v Nze* (2004) 15 NWLR (Pt. 896) 245 at 249 etc.

Mr. Oluwole Iyamu of counsel for the Respondent submitted that the learned counsel for the Appellant did not specify the wrong evaluation of evidence of the trial Court, the perverse findings of fact or any special circumstance whatsoever that occasioned a miscarriage of justice in this case. B

That the attack on the trial judge by learned counsel for the Appellant should be depreciated and frowned upon. He cited *Enekwe v IMB of Nigeria Ltd & 2 Ors* (2006) 19 NWLR (Pt.1013) 146 at 173; *Bolanle Abeke v State* (2007) 9 NWLR (Pt. 1040) 411 at 432. C

That the learned trial judge rightly admitted the Appellant's confessional statement, Exhibit P1 after a trial within trial. He relied on Section 27 of Evidence Act; *Uchenna Nwachukwu v State* (2002) 12 NWLR (Pt. 782) 543 etc. D

For the respondent, it was contended that from the evidence of the prosecution witnesses and Exhibit P1 and P3, the ingredients of the offence charged were established. He relied on *Nwachukwu v State* (1985) 11 NWLR (Pt. II) 218; *Adeyemi v. State* (1991) 1 NWLR (Pt. 170) 679. E

The stand of the appellant is that the trial Court speculated on the confessional statement of the appellant and evidence of PW3. That the findings and evaluation of the facts by the High Court was perverse and therefore faulty. F

The respondent took an opposing stance contending that the lower Court rightly affirmed the learned trial Judge's admission of Exhibits P1 and PW3 after the trial Judge's satisfied himself that the confessional statements were made by the appellant and his co-accused and found that they were voluntary, true, probable and positive to grant the convictions. That the lower Court rightly affirmed the trial Judge's evaluation of evidence and upheld the convictions of the appellant and his co-accused. G H

On the confessional statement which voluntariness was challenged by the appellant, it is to be noted that with that challenge, the learned trial judge conducted a trial within trial, taking therein the evidence of Sgt. Bssey Iket, the Investigation Police Officer, PW1 who

obtained the statement at the end of which taking alongside what the Accused/Appellant had pushed forward came to the conclusion that the voluntariness of the statement was without question and the next action was the admission of the statement as exhibit P1. thus, the learned trial Judge accepted that at the time the statement was made
 B and attested the appellant was remorseful. I place reliance on *Igbinovia v. State* (1991) NSCC 63; *Gaji v. Paye* (2003) 8 NWLR (pt. 823) 583.

In reaching its decision on the confessional statement, I shall
 C quote verbatim excerpts from the Ruling of the trial Court at pages 127 and 128 thus:-

*“...it is inconceivable, to say the least, PW1 could have all by himself lifted the accused from the floor where he had laid and placed him on the tables as alleged, just as it could have been inconceivable
 D that he single-handedly tied the accused like a ram. In consideration of the view just expressed coupled with the fact that between PW1 and the accused has a personal interest to serve that could have motivated him to lie and PW2 lacking such interest and hence no inducement to lie, I prefer the story of PW1 and reject totally that of
 E the accused....”*

*Learned counsel also talked of doubts being created.... I am unable to appreciate such doubt which at best is imaginary. I also refer to the evidence of matchet cut on the accused’s chest. I reject it
 F as well on the ground that if the accused was folded two legs and two hands backwards and hung as he also alleged, it could not have been the case that he was cut on the chest. I therefore totally reject it as a ruse evidence of infliction of matchet cut, more so that I find no basis for such act to have been perpetuated.”*

It is with those words of the learned trial Judge that the learned
 G counsel for the appellant had landed hard on the trial Judge accusing him of speculation, perversion of evaluation of evidence. This attack on the learned trial Judge is clearly uncalled for, baseless and decried and it is necessary to point out the way for learned counsel for the
 H appellant in the case of:- **MATTHEW OKECHUKWU ENEKWE V. INTERNATIONAL MERCHANT BANK OF NIGERIA LTD & 2 ORS** (2006) 19 NWLR (PT. 1013) 146 AT 173 PARA. G, Tobi JSC held thus:-

“A Judge has the right in our adjectival law to use particular

words or phrases which, in his opinion, are germane to his evaluation of the facts of the case. In so far as he does that in line with the evidence before him, it will be unfair for counsel to castigate him or accuse him...”

At page 174 Tobi JSC further stated:-

“Judge have no forum to defend themselves in the judicial process for positions they take in their judgments. They cannot speak one more word outside their judgments in defence of the positions they have taken. Let parties be slow in pouring venom on them. It is a serious attack on a judge to say that he introduced in the case, new matters which were not before the Court. So much is involved as so much could be read into or out of the allegation. I will stop here, hoping that counsel will have some sympathy for judges, their partners in the smooth and successful administration of justice. It is only when Judges and counsel are in some form of “romance” that their joint partnership in the crusade for building the best justice system will be achieved in our legal system.”

What is important in the testing for the admissibility of a confessional statement, that litmus test is that it was made freely, voluntarily, the truth of the contents evident, its passivity and probability and in all, this I am minded to move along Section 27 of the Evidence Act and the case of Uchenna Nwaachukwu v. State (2002) 12 NWLR (PT. 782) 543.

Then comes the six way test embedded in the case of: In Rex v. Sykes (1913) 8 C.A.R. 233 (Followed by the West African Court of Appeal in Kanu v. The King (1952) 14 WACA 30 and thereafter by the Supreme Court in several of its decision) the following rules were stated in order to decide the weight to be attached to a confessional statement whether or not retracted:-

1. Is there anything outside the confession to show that it is true?
2. Is it corroborated?
3. Are the relevant statements made in it of facts and true as far as that can be tested?
4. Was the prisoner one who had the opportunity of committing the offence?
5. Is his confession possible?

6. Is it consistent with other facts which have been ascertained and have been proved? See also *Oawa v. The State* (1980) 8-11 SC 236, *The Queen v. Obiasa* (1962) 1 All NLR 6512 and *Emmanuel Nwaebonyi v. The State* (1994) 5 NWLR (Pt. 343) 138.

The question that had to be answered by the learned trial Judge and would be received by the Court below, after which the Supreme Court is whether that age old test in *R v. Skyes* (supra) had been applied and if the answer was positive and on what basis is that answer procured. In defending the application of the test, apart from the confessional statement meeting the other conditions, the corroboration was provided but the evidence of the PW3 who was an eye-witness.

The findings of the learned trial Judge in regard to the confession statement and the evaluation of that statement with the evidence proffered as affirmed by the Court below are such that there is nothing perverse and no miscarriage of justice or wrong application of law and so this Court has no business interfering with those findings. I find strength in the case of *Iguh JSC in Oguonzee v. State* (1998) 4 SC 110.

"Before I turn to the treatment of the above findings of fact by the Court of Appeal, I think I need re-emphasize that where facts in issue, whether in a criminal or civil proceedings are accepted or believed by the trial Court, will not ordinarily interfere with such findings of fact made by a trial Judge which are supported by evidence simply because there is some other evidence in contradiction of the findings or that if the same facts were before the appellant Court, it would not have come to the same decision as the trial Judge. See Ike v. Ayoola, supra; Ogbero Egri v. Uperi (1974) 1 NMLR 22; Ogundulu & Ors v. Philips & Ors (1973) NMLR 267 etc. This, as already stated, is because findings of fact made by trial Court are matters peculiarly within its exclusive jurisdiction and they are presumed to be correct unless and until an appellant satisfactorily proves that they are wrong. Such trial Courts saw the witnesses and heard them testify and unless the findings are perverse and unsupported by credible evidence, the Court of Appeal will not interfere with them. See Adelumola v The State (1988) 1 NWLR (Pt. 73) 683. An appellate Court may however interfere with such findings in circumstances such as where the trial

Court did not make a proper use of the opportunity of seeing and hearing the witnesses at the trial or where it drew wrong conclusions from accepted credible evidence or took an erroneous view of the evidence adduced before it or its findings of fact are perverse in the sense that they did not flow from the evidence accepted by it. See Okpiri v Jonah (1961) 1 SCNLR 174; (1961) 1 All NLR 102 at 104-5; Maja v Stocco (1968) 1 All NLR 141 at 149; Woluchem v Gudi (1981) 5 SC 291 at 295-6 and 326-9.”

In the matter of whether or not the High Court of Edo State had jurisdiction to try the matter in view of its being Armed Robbery which came under a Federal Decree. For the Appellant, the Benin High Court lacked the vires which the Respondent rejects contending that by virtue of Section 4 of the Tribunals (Certain Consequential Amendment) Decree No. 62 of 1999, now Act and Part II of the Schedule thereto which Act was saved by Section 315 of the 1999 Constitution of the Federal Republic, the State High Court is vested which jurisdiction to hear and determine armed robbery offences.

I shall quote verbatim the said provisions of Section 4 of the Act as follows:-

SECTION 4 OF DECREE 62:

“All criminal proceedings brought before the Court relating to a matter for which the Court has jurisdiction under this Act, shall be tried summarily in accordance with the Section 33 of the Federal High Court Act and rules of procedure made under that Act or under the equivalent section of the relevant High Court Law of the State concerned and rules of procedure made under that Law.”

Section 33 of the Federal High Court Act relates to criminal proceedings before the Court and it provides thus:-

(1) Subject to the provisions of this section, criminal proceedings before the Court shall be conducted substantially in accordance with the provisions of the Criminal Procedure Act, and the provisions of that Act shall with such modifications as may be necessary to bring it into conformity with the provisions of the Act, have effect in respect of all matters falling within the jurisdiction of the Court

(2) Notwithstanding the generality of Subsection (1) of this Section, all criminal causes or matters before the Court shall be tried

summarily. (Emphasis Supplied).

Section 12 of the High Court Law of the Defunct Bendel State, 1976 applicable in Edo State provides that the jurisdiction vested in the High Court shall be exercised:-

- B (i) *In the manner provided by the High Court Law itself,*
(ii) *The Criminal Procedure Law and*
(iii) *Any other Act of Parliament or written Law or by such Rules and Orders of Court as may be made pursuant to this Law or Act.* (Emphasis supplied).

C Indeed, the Appellant came from a wrong angle in expecting that the Appellant charged under Section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act Cap 398 Laws of the Federation of Nigeria 1990 would have the procedure to be applied being that of Section 337 of the Bendel State Criminal Procedure Law. This
D is because the Act under which the Appellant was charged has specified the mode of trial and therefore the general mode of commencement of trial of other offences is excluding. I place reliance in the case of *Aminu Kano v State* (2009) 1-2 MJSN 209 at 237; *Joseph Din v. A.G. Federation* (1988) 4 NWLR (Pt. 87) 147 at 186.

E From the above and fuller reasoning in the lead judgment, I see nothing in sight from which I can go against the concurrent findings of the two Courts below. Therefore, I too resolve all the issues against the Appellant and I dismiss the appeal as I abide by the consequential orders made.
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AKA'AH S JSC

I read before now the judgment just delivered by my learned
G brother, Kekere-Ekun JSC. I agree that there is no merit in the appeal and it should be dismissed. I accordingly dismiss same.

The procedure of summary trial of the appellant for the offence of armed robbery is sanctioned by Section 4 of the Tribunal's (Certain Consequential Amendments etc) Decree No. 62 of 1999
H which states:-

"4 All criminal proceedings brought before the Court relating to a matter for which the Court has jurisdiction under this decree shall be tried summarily in accordance with Section 33 of the Federal

High Court Act and rules of procedure made under the Act or under the equivalent section of the relevant High Court Law of the State concerned and rules of procedure made under the Law.”

This section read along with Section 12 of the High Court of Defunct Bendel State 1976 applicable of Edo State 1976 applicable to Edo State and Section 277 Criminal Procedure Law of Bendel State 1976 empower the High Court to try the offence of armed robbery summarily. B

In evaluating the evidence adduced the Court below was satisfied with the exercise undertaken by the trial Court when it found at page 388 of the record as follows:- C

“...this Court is satisfied that the trial Court had evaluated effectively the evidence before it against the appellant. There is no reason before this Court to disturb its decision that the prosecution proved its case beyond reasonable doubt it.” D

Learned counsel for the appellant could not point out that the findings made by the trial judge and affirmed by the Court below were perverse.

There is therefore no merit in the appeal and it is accordingly dismissed. The judgment of the Court below in CA/B77A/2009 delivered on 16/5/2013 which affirmed the judgment of the Edo State High Court is further affirmed by me. E

OKORO JSC

I read in draft the lead judgment of my learned brother Kudirat M. O. Kekere-Ekun, JSC, just delivered. F

I am in agreement with the reasons advanced and the conclusion reached therein that this 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. G

H