

SUPREME COURT OF NIGERIA
FRIDAY 13TH JANUARY, 2017. SC. 262/2011
CORAM:- M. U. PETER-ODILI, O. ARIWOOLA, M.
MUHAMMAD, C. B. OGUNBIYI, K. B. AKA'AH, S.
JJSC

ABIODUN ADEKOYA APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Proof - Standard of - Is beyond reasonable doubt - And once essential ingredients of offence is established - Court is enabled to convict the accused (H1)

ARMED ROBBERY - Proof - Ingredients - Prosecution must prove that there was robbery - That the robbery was with arms - And that accused was the armed robber or one of the robbers (H2)

ARMED ROBBERY - Proof - Mens rea - Armed robbery and conspiracy to commit armed robbery are not such offences - For which mens rea has to be established (H3)

IDENTIFICATION PARADE - Proof - Conditions - To prove identity of accused - Circumstances in which eye witness saw accused - And length of time the witness saw accused - Must be considered (H4)

EVIDENCE - Blood relation - Weight - Mere fact that a witness is a blood relation of the victim - Does not translate without more to being a tainted witness (H5)

CRIMINAL PROCEDURE - Conspiracy - Proof - Conspiracy is an offence that is often deduced or inferred from the acts of the parties - And not usually by direct evidence of the meeting of the minds (H6)

FACTS

Before the High Court of Ogun State, accused/appellant was arraigned for the offence of conspiracy to commit armed robbery and armed robbery contrary to sections 6(b) and 1(2) of the Robbery and Firearms (Special Provisions) Act (Cap R. 11) Laws of the Federation of Nigeria 2004, respectively. He pleaded not guilty to the charge. Prosecution/respondent's case is that on the 11th of February, 2005 at about 2pm, two armed robbers had attacked Mrs. Cecilia Olufunke Onanuga (PW4) and her two daughters at their residence at 176 Luba Eruwon Road, Ijebu-Ode, Ogun State. In the course of the robbery, the sum of N39,000.00, three Nokia Handsets, a Sagem X5 handset and a still photograph camera were stolen from them.

Three days later, appellant was caught at Oke-Aje market by PW4 - one of the victims of the robbery and thus appellant was arrested. At the trial, respondent called six witnesses to testify on its behalf. Appellant testified in his own defence and denied the charge stating that though he was at the crime scene, that he was there accompanying his friend to collect his debt and a fight ensued and as things were getting out of hand, he left the scene. Appellant called no witness. At the end of the trial, the Court convicted appellant as charged and sentenced him to death by hanging. Aggrieved, appellant appealed to the Court of Appeal Ibadan Division. The Court dismissed the appeal and affirmed the judgment of the trial Court. Further aggrieved appellant appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Whether the learned justices of the Court of Appeal were right in upholding the decision of the learned trial Judge that the prosecution proved a case of conspiracy and armed robbery against the appellant beyond reasonable doubt?

HELD (Unanimously dismissing the appeal per **PE-**

TER-ODILI JSC)

CRIMINAL PROCEDURE - Proof - Standard of

1. It is to be reiterated that in criminal matters such as the one we are faced with the standard of proof is beyond reasonable doubt. This is a principle that is fundamental and sacrosanct and in establishing that required standard of proof, all the essential elements or ingredients must be proved on that standard. This is because the ingredients are cumulative and none should be found lacking before the Proof beyond reasonable doubt is said to have been met. Therefore once all those vital ingredients are established altogether beyond reasonable doubt, the Court is enabled to convict the accused. (p. 48 A)

ARMED ROBBERY - Proof - Ingredients

2. Getting specifically into the offence of armed robbery on which the appellant was charged, the essential elements thereof are

- a. That there was a robbery or series of robberies**
- b. That the robbery was with arms.**
- c. That the accused person was the armed robber or one of the armed robbers. (p. 48 E)**

ARMED ROBBERY - Proof - Mens rea

3. The appellant had attacked the Prosecution for not establishing the mens rea or criminal intent in the offence charged, which failure learned counsel posited was fatal in the expected proof of the offence as the actus reus cannot go alone in the absence of the mens rea.

That stand of the appellant is not a watertight position in all criminal offences. This is so in that while the presumption of mens rea or evil intention or knowledge of the wrongfulness of an act, is an essential ingredient in every offence, the presumption is subject to be displaced either by the words of the Statute creating the offence, or by the subject matter with which it deals, and

both must be considered. In context, armed robbery and conspiracy to commit armed robbery are not such offences for which mens rea or evil intention has to be established as the specific ingredients of armed robbery have been prescribed in Sections 401 and 402 of the Criminal Code Act. (p. 48 F)

IDENTIFICATION PARADE - Proof - Conditions

4. In the guide as reiterated in Ndidi v State (2007) 5 SCNJ 274 at 286-287 the Supreme Court had stated that in proving identity of an accused, the following must be taken into consideration:

a. Circumstances in which the eye-witness saw the accused:

b. The length of time the witness saw the accused;

c. The light conditions;

d. The opportunity of close observation:

e. The previous contact between the parties. (p. 51 B)

EVIDENCE - Blood relation - Weight

5. Learned counsel for the appellant had sought to discredit the testimony on the ground that PW4 was a tainted witness. In that regard, I would have to say that the mere fact that a witness is a blood relation of the victim does not translate without more to being a tainted witness. (p. 51 G)

CRIMINAL PROCEDURE - Conspiracy - Proof

6. In respect to the offence of conspiracy, while the appellant is of the view that it was proved, the respondent disagrees. For a fact, conspiracy is an offence that is often deduced or inferred from the acts of the parties and not usually by direct evidence of the meeting of the minds. The reason being simply, that discussions and agreements to do an illegal act or carry out a legal act by illegal

means are transactions in secret and normally shrouded from those not part of the deal.

Taking that matter on how conspiracy is established in the realm of what transpired in this case from the evidence of the prosecution witnesses and the confessional statements of the accused/appellant, Exhibits H, A, B, and C, placing them alongside the woolly defence put up by the appellant, the trial Court and as affirmed by the Court of Appeal had no difficulty in reaching the concurrent findings that the standard of proof beyond reasonable doubt had been met. What is expected of the prosecution is proof beyond reasonable doubt and not beyond a shadow or an iota of doubt. (p. 53 B/G)

REPRESENTATION

Olakunle Agbebi for the Appellant

L. Fubara Anga with Miss Rebecca Ebokpo for the Respondent

CASES REFERRED TO

Babalola v. State (1989) 4 NWLR (pt. 115) 264

Daniels v. State (1991) 8 NWLR (pt. 212) 715

State v. Ogbubanjo (2001) 1 SCNJ 102

Nwosu v. State (1998) 8 NWLR (pt. 562) 433

Ankwa v. State (1969) All NLR 129

Okonji v. State (1987) NSCC 291

Musa v. State (2012) 3 NWLR (pt. 1286) 99

Bello v. State (2012) 8 NWLR (pt. 1301) 237

Oforlete v. State (2000) FWLR (pt. 12) 2081

Nwaturuocha v. State (2011) 2-3 SC (pt. 1) 1115

Igwego v. Ezengo (1992) 6 NWLR (pt. 249) 561

Enong v. Adu (1981) 11-12 SC 25

Adefarasin v. Dakyeh (2007) 11 NWLR (pt. 1044) 89

Olayinka v. State (2007) 9 NWLR (pt. 1040) 56

Alabi v. State (1993) 7 NWLR (pt. 307)

STATUTES REFERRED TO

Robbery & Firearms (Special Provisions) Act (Cap R. 11) LFN 2004, ss. 1(2), 6(b)

Constitution of the Federal Republic of Nigeria 1999, s. 36(5)

Evidence Act, s. 138(2)(3)

Criminal Code Act, ss. 401, 502

B

LEAD JUDGMENT BY PETER-ODILI JSC

This is an appeal against the judgment of the Court of Appeal Ibadan Division Coram: K.M.O. Kekere-Ekun JCA (as she then was), M. Fasanmi and I. S. Ikyegh JJCA with Modupe Fasanmi JCA delivering the lead judgment on 23rd November, 2011. The appellant had been charged, arraigned, tried and convicted by the trial Court per N. I. Agbelu J. on a two count charge of conspiracy to commit armed robbery and armed robbery contrary to Sections 6(b) and 1(2) of the Robbery and Firearms (Special Provisions) Act (Cap R. 11) Laws of the Federation of Nigeria, 2004. The Court of Appeal or Court below or lower Court upheld the decision of the trial Court.

FACTS BRIEFLY STATED

The case of the prosecution at the trial Court was that on the 11th day of February, 2005 at about 2pm, two armed robbers had attacked Mrs. Cecilia Olufunke Onanuga (PW4) and her two daughters at their residence at 176 Luba Eruwon Road, Ijebu-Ode. In the course of the robbery incident, the sum of N39,000, three Nokia Handsets, a Sagem X5 handset and a still photograph camera had been stolen from them. Three days later the appellant was caught at Oke-Aje market by PW4, one of the victims of the robbery and appellant was then arrested.

The prosecution had called six witnesses. The appellant testified in his own defence and denied the charge stating that though he was at the scene, that he was there accompanying his friend Sakiru to collect his debt and a fight ensued and as things were getting out of hand, the appellant left the scene. He did not call any witness. At the end the trial Court convicted the appellant of the two counts charge of conspiracy and armed robbery respectively and sentenced him to death by hanging.

Dissatisfied with the verdict appellant approached the Court below which affirmed what the trial Court did. Further aggrieved the appellant has come before the Supreme Court on a sole ground of appeal.

Olakunle Agbebi Esq., learned counsel for the appellant on the 20th day of October, 2016 date of hearing adopted the appellant's brief filed on 28/9/2011 and deemed filed on the 22/5/2013. In it were crafted two issues which are thus:

1. Whether the learned justices of the Court of Appeal were right in holding that the trial Court rightly held that prosecution established all the ingredients of the offence of armed robbery in this case?

2. Whether the learned justices of the Court of Appeal were right in upholding the decision of the learned trial Judge that the prosecution proved a case of conspiracy and armed robbery against the appellant beyond reasonable doubt.

Lawrence Fubara Anga of counsel for the respondent adopted the brief of respondent filed on 8/5/15 and deemed filed on the 14/10/15 in which was formulated a single issue being:

Whether learned justices of the Court of Appeal were right in upholding the decision of the trial Court to the effect that the prosecution had proved the charges against the appellant beyond reasonable doubt.

The issues as crafted by the appellant on a one ground appeal cannot be utilized and it is even worse that each is seeking an answer to the same question which in effect is the same as the sole issue raised by the respondent. The Issue No 1 of the appellant is hereby struck out as two issues cannot emanate from a single ground of appeal.

I shall make use of Issue 2 of the appellant as a sole issue in the determination of this appeal.

SOLE ISSUE

Whether the learned justices of the Court of Appeal were right in upholding the decision of the learned trial Judge that the prosecution proved a case of conspiracy and armed robbery against the appellant beyond reasonable doubt.

Learned counsel for the appellant contended that to prove criminal charges such as those in the case in hand, the prosecution must establish the intention of the appellant to commit the wrongful act and wrongful act itself together. He cited *Babalola v. The State* (1989) 4 NWLR (Pt. 115) 264 at 292.

B That the prosecution was expected to prove that the incident was a robbery, an armed robbery and the appellant the robber. That the defence that what transpired was a fight over a debt was not debunked by the prosecution.

C For the appellant it was submitted that the trial judge ought to have evaluated the evidence of PW1 and PW4 and to have treated same as the evidence of tainted witnesses with a purpose to serve other than the ends of justice. That the testimony about machete cuts to the head and the neck was not pointed out by the
D prosecution.

It was further contended that there was need to prove that the presence of the appellant at the scene of crime is obviated by the admission of the appellant that he was in the premises when
E the fight incident occurred and even if appellant is taken as a liar, it is not evidence of culpability of the offence of robbery. He cited *Daniels v State* (1991) 8 NWLR (Pt. 212) 715 at 732; *State v. Ogbubanjo* (2001) 1 SCNJ 102. Section 36(5) of the Constitution: Section 138(2) and (3) of the Evidence Act, *Nwosu v State*
F (1998) 8 NWLR (Pt. 562) 433 - 444.

That reasonable doubt exist as to the guilt of the appellant which must be resolved in favour of the appellant. He cited *Abu Ankwa v. The State* (1969) ALL NLR 129; *Okonji v The State*
G (1987) NSCC 291 at 302.

Learned counsel for the respondent submitted that the ingredients of armed robbery are clearly stipulated in Sections 401 and 502 of the Criminal Code Act and so the respondent had no responsibility to prove the mens rea of the appellant in order to
H discharge its burden of proof and to discountenance the arguments of the appellant in this regard. That the respondent succeeded in proving all the ingredients of the offences at the trial Court. That barely 48 hours after the incident PW4 positively identified the

accused person and pointed him out for arrest.

On the issue of whether a witness is tainted or not is not a function of counsel's address but rather a matter to be gleaned from the available facts and evidence before the Court. He cited *Musa v State* (2012) 3 NWLR (Pt. 1286) 99; *Bello v State* (2012) 8 NWLR (Pt. 1301) 237. B

Learned counsel for the respondent said learned counsel for the appellant had put up a defence of justification of appellant's presence at the scene of crime but interestingly the defence was not put up before the Court. That even at the trial the appellant C failed to cross-examine PW1 and PW4 on the issue of the debt and non-involvement of the appellant in the armed robbery incident. He referred to *Oforlete v State* (2000) FWLR (Pt.12) 2081 at 2099.

He contended that proof beyond reasonable doubt is not D proof beyond all reasonable doubt and the prosecution had carried out the burden effectively. He cited *Nwaturuocha v State* (2011) 2-3 SC (PT. 1) 1115. That the trial Court had the sole responsibility to observe the demeanour of the witnesses and the accused E during the trial and to reach a determination as to the weight to attach to the said testimonies and that the trial Court did so in the instant case and there is no basis for the Court below to interfere since the trial Court did not err or misdirect itself in law he relied on *Igwego v. Ezengo* (1992) 6 NWLR (Pt 249) 561; *Enong v Adu* F (1981) 11 - 12 SC 25; *Adefarasin v Dakyeh* (2007) 11 NWLR (Pt. 1044) 89 etc.

In brief, the case put forward by the appellant is that the Supreme Court is urged to discharge and acquit the appellant because the judgment of the trial Court was perverse and occasioned G a grave miscarriage of justice and the Court below erred in upholding the trial Court's decision as the ingredients of the offences of conspiracy and armed robbery were not established. That the Prosecution failed to prove the key element of violence on PW1 or H that the assault on PW1 was done by the appellant.

On the other hand being the stance of the respondent is that the role of the appellate Court is not to re-open the dispute and to

try the case as if it were de novo but rather it is to oversee, superintend and to review the way the dispute and the issues arising thereon were tried to see whether the trial Court used the correct procedure and/or arrived at the right and proper decision.

It is to be reiterated that in criminal matters such as the one we are faced with the standard of proof is beyond reasonable doubt. This is a principle that is fundamental and sacrosanct and in establishing that required standard of proof, all the essential elements or ingredients must be proved on that standard. This is because the ingredients are cumulative and none should be found lacking before the Proof beyond reasonable doubt is said to have been met. Therefore once all those vital ingredients are established altogether beyond reasonable doubt, the Court is enabled to convict the accused.

I place reliance on Fatai Olayinka v State (2007) 9 NWLR (Pt. 1040) 56; Alabi v State (1993) 7 NWLR Pt 307; Bello v State (2007) 10 NWLR (Pt. 1043) 546; Oseni v State (2012) 2 SC (Pt. 11) 51.

Getting specifically into the offence of armed robbery on which the appellant was charged, the essential elements thereof are

- a. That there was a robbery or series of robberies***
- b. That the robbery was with arms.***
- c. That the accused person was the armed robber or one of the armed robbers.***

See Bello v State supra; Alabi v State (supra).

The appellant had attacked the Prosecution for not establishing the mens rea or criminal intent in the offence charged, which failure learned counsel posited was fatal in the expected proof of the offence as the actus reus cannot go alone in the absence of the mens rea.

That stand of the appellant is not a watertight position in all criminal offences. This is so in that while the presumption of mens rea or evil intention or knowledge of the wrongfulness of an act, is an essential ingredient

in every offence, the presumption is subject to be displaced either by the words of the Statute creating the offence, or by the subject matter with which it deals, and both must be considered. In context, armed robbery and conspiracy to commit armed robbery are not such offences for which mens rea or evil intention has to be established as the specific ingredients of armed robbery have been prescribed in Sections 401 and 402 of the Criminal Code Act. See Sherras v De Rutzen (1895) I.Q.B 918; Amofa v R (1952) 14 WACA 238.

In the quest to establishing the essential elements of the offences of armed robbery and conspiracy to commit armed robbery respectively the respondent provided the evidence of PW1 and PW4 who stated thus:

At page 23 lines 25 - 28. PW1 had this to say:

"While still in the sitting room, I saw the accused and one other. The accused was holding a cutlass while the other one was with a gun. I shouted on seeing them. However the accused macheted me on my head"

PW4 at page 30 lines 10 - 18 had this to say:

"Myself and my sister were in the dining room and we heard the shout of our mother. Immediately, both of us went to the sitting room and we saw two boys. These two boys were armed robbers. One of them was short while the other was tall person. The short boy was holding a gun while the tall boy was holding a cutlass. The tall boy cut my mother with the cutlass he was holding on her head. The accused was the tall boy holding the cutlass."

On the evidence of the witnesses, I shall go back to the Record at pages 28 - 33:

Under cross examination PW1 stated thus:

"Although, I fell down after the machete cut on my head, I was still conscious. The accused Partner was the one who ransacked my bedroom while the accused went to my husband's bedroom. However, the accused partner did not attack me during the incident."

At page 68 lines 28, the learned trial Judge held as follows:

"I believe her evidence more importantly as to the actual person between the accused and his Partner who wounded her and who went to her husband's bedroom (PW2) and removed the sum of N39,000.00 therein. Her evidence is credible and cogent. I find and hold that the accused was one of the two hoodlums that participated in the robbery attack at PW1's residence on 11/2/2005."

PW4 on the matter of identification stated as follows:

"Myself and my sister were in the dining room and we heard the shout of our mother. Immediately, both of us went to the sitting room and we saw two boys... One of them was short while the other was a tall person. The short boy was holding a gun while the tall boy was holding a cutlass. The tall boy cut my mother with the cutlass he was holding on her head. The accused was the tall boy holding the cutlass and told us to go into our mother's room. He led us to her room. By this time, the accused was in the sitting room and we heard our mother shouting hence both of us went back to the sitting room. On getting there, we saw the accused holding the neck of our mother she removed the scarf which the accused used as a mask. It was at this stage that I was able to see his face and the shape of his head. We pleaded with him but he dragged my mother into her room and both of us followed. The following Sunday which was 13/2/2005 while we were coming back from the church, I saw the accused at Iwade in Oke-Aje Market, Ijebu-Ode. He was eating and I told my father that one of the boys that robbed us was the one eating. The accused was wearing the same clothes he put on when they came to our house on Friday. It was a short knicker with a T-shirt with red and black colour... my father stopped Mr. Ayankoya and told him my story regarding the identification of the accused at Oke-Aje. Mr. Ayankoya followed us back to the Oke-Aje Market in his own car. At Oke-Aje market, the accused was seen in front of a pool house and I pointed him to Mr. Ayankoya".

Under cross-examination she had this to say:

"I saw the accused when he cut my mother's head with a cutlass he was holding. The incident took about one and a half

hours, the incident was not hurriedly done... I identified the accused by his face and the shape of his head. I made a statement to the Police when the robbery took Place”.

The Court of Appeal had this to say that in view of the circumstances of the case that there was no need for an identification parade as the evidence of PW1 and PW4 in particular was overwhelming and cogent enough to show that the appellant was one of armed robbers that robbed PW1 at her residence on 11/2/2005. ***In the guide as reiterated in Ndidi v State (2007) 5 SCNJ 274 at 286-287 the Supreme Court had stated that in proving identity of an accused, the following must be taken into consideration:***

- a. Circumstances in which the eye-witness saw the accused:***
- b. The length of time the witness saw the accused;***
- c. The light conditions:***
- d. The opportunity of close observation:***
- e. The previous contact between the parties.***

Having that road map in mind and taken along what occurred in the matter in hand, it was barely 48 hours after the incident of the accused/appellant that PW4 positively identified him for arrest and had stated that the assailants took their time during the robbery and had spent over one and half hours. Also in the matter of the light conditions, it was daytime and around 2pm in the afternoon. Again PW4 had stated thus: *“At the sitting room I saw the accused holding the neck of my mother. She removed the scarf the accused used to cover his face. This gave me the opportunity of seeing his face.”*

The evidence of PW4 was not contradicted during cross examination.

Learned Counsel for the appellant had sought to discredit the testimony on the ground that PW4 was a tainted witness. In that regard, I would have to say that the mere fact that a witness is a blood relation of the victim does not translate without more to being a tainted witness. See *Musa v State (2012) 3 NWLR (Pt. 1286) 99: Ben v*

State (2006) 12 SCM (Pt. 2) 71 at 88.

The finding of the Court below dispatching the contention of PW4 being a tainted witness is quoted below:

“On the submission of the appellant counsel that PW4 should be treated as a tainted witness and that the Court should have been more circumspect. There is no doubt that PW4 is a 13 year old school girl of tender age. Before her testimony, the Court put some questions to her as to the implication of giving false evidence on oath, her educational background, why she was in Court and the nature of the offence with which the appellant was charged. She gave answers to them before she testified on oath. See page 29 of the record. It was after this that the Court remarked thus: “She is an intelligent school girl. I am therefore satisfied that her evidence is credible and cogent which can be relied upon by the Court.” What is more, the identification evidence of the appellant was neither controverted nor shaken under cross examination.” See Page 154 of the Record.

I am at one with learned counsel for the respondent on the matter raised by counsel for the appellant that PW4 being a minor of 13 years of age was subject to supervision and control of PW1. The position of the appellant is not borne out of the record on what transpired during her testimony as she was subjected to rigorous cross-examination by the defence and remained unshaken and did not deviate from her testimony. That apart from the Court of trial complying with Sections 155 (i) and 183 (i) of the Evidence Act relating to the evidence of a child as she had been thoroughly examined by the trial Court before testifying.

In respect to the defence put up by the appellant of a debt recovery gone bad. I am inclined to accept the submission of the respondent that the police investigated the allegation and found it untrue. This is all the more acceptable since the defence did not see any need to cross-examine the prosecution witnesses along the line of the debt recovery.

On the matter of Exhibit D i.e. the cutlass or machete used by the appellant on PW1, the appellant sought to have the exhibit discountenanced as there was no forensic analysis on the weapon

and that its utilization by the trial Court has occasioned a miscarriage of justice. That posture cannot fly in the light of other connecting pieces of evidence which made that exhibit authentic, cogent and reliable. I rely on *Gbadamosi v State* (1991) 6 NWLR (Pt. 196) 182 at 192.

In respect to the offence of conspiracy, while the appellant is of the view that it was proved, the respondent disagrees. For a fact, conspiracy is an offence that is often deduced or inferred from the acts of the parties and not usually by direct evidence of the meeting of the minds. The reason being simply, that discussions and agreements to do an illegal act or carry out a legal act by illegal means are transactions in secret and normally shrouded from those not part of the deal. The dictum of this Court per Adekeye JSC in *Onyenye v State* (2012) 15 NWLR (Pt. 1324) 586, P9. 36 - 37 is useful:

*“In effect, conspiracy can be inferred from the acts of doing things towards a common end where there is no direct evidence in support of an agreement between the accused persons. The conspirators need not know themselves and need not have agreed to commit the offence at the same time. The Courts tackle the offence of conspiracy as a matter of inference to be deduced from certain criminal acts or inactions of the parties concerned. *Oduneye v The State* (2001) 12 NWLR 88; *Obiakor v The State* (2002) 10 NWLR Pt. 776, Pg. 612 *Daboh v The State* (1977) 5 SC 197; *Ubierho v The State* (2005) 1 NWLR (Pt. 919) Pg. 644; *Muonwem v Queen* (1963) 2 SC, NLR Pg. 172 *Gbadamosi v The State* (1981) 2 NWLR Pt. 196 Pg. 182 Section 6 of the Robbery and Firearms Act classifies an absent accused like the appellant as a principal offender and shall be liable to be proceeded against and punished accordingly under the Act.”*

Taking that matter on how conspiracy is established in the realm of what transpired in this case from the evidence of the prosecution witnesses and the confessional statements of the accused/appellant, Exhibits H, A, B, and C, placing them alongside the woolly defence

put up by the appellant, the trial Court and as affirmed by the Court of Appeal had no difficulty in reaching the concurrent findings that the standard of proof beyond reasonable doubt had been met. What is expected of the prosecution is proof beyond reasonable doubt and not beyond a shadow or an iota of doubt. I call in aid the case of; Nwaturuocha v State (2011) 2 - 3 SC (Pt. 1) 111524, the Supreme Court held as follows:

"I shall again state it that Proof beyond reasonable doubt as evolved by Lord Sankey. L. C. in Woolmington v DPP (1935) AC 485 is not proof to the hilt as stated by Denning. J. (as he then was), in Miller v Minister of Pensions (1947) 3 ALL ER 373. It is not proof beyond all iota of doubt as stated by Uwais CJN in Nasiru v The State (1999) 2 NWLR (Pt. 589) 87 at 98.

One thing that is certain is that where all the essential ingredients of the offence charged have been proved or established by the prosecution, as done in this matter, the charge is proved beyond reasonable doubt. See Alabi v. The State (1993) 7 NWLR (Pt. 307) 511 at 523. Proof beyond reasonable doubt should not be stretched beyond reasonable limit, otherwise it will cleave."

The concurrent findings of the two Courts below are that there was a robbery, it was an armed robbery and the appellant was one of the two robbers. Also the two Courts accepted the extra-judicial statements of the appellant, Exhibits H, A, B. and C as confessional statements, the later retraction by the appellant notwithstanding in the light of the facts before the trial Court. Also found by the two lower Courts was that the offence of conspiracy had been firmly established from the circumstances discerned from evidence before Court. The question at this point would be to what shall I place reliance on to disturb, alter, reverse or set aside these findings? I see no such anchor in sight as I rely on what the appellate Courts including the Supreme Court had enjoined over the years to go along those findings concurrently made. See Nwaturuocha v State (supra), the Court, per Rhodes-Vivour JSC, held as follows:

"Proof beyond reasonable doubt does not mean proof be-

yond all doubt or all shadow of doubt. It simply means establishing the guilt of the accused person with compelling and conclusive evidence. A degree of compulsion which is consistent with a high degree of probability. This Court will not interfere with concurrent findings of the trial Court and the Court of Appeal on issues of fact except where the findings are perverse, or there is established a miscarriage of justice or a violation of principles of law or procedure....

In my view the trial Court carefully considered and evaluated the evidence in the case and have come to the correct decision, confirmed by the Court of Appeal that the case against the appellant has been proved beyond reasonable doubt. The defence of alibi fades into insignificance in the light of clear evidence to the contrary. This is a clear case of Robbery with nothing worth urging in favour of the appellant. For this and the much fuller reasoning in the leading judgment, I dismiss the appeal. The judgment of the Court of Appeal dismissing the appeal is hereby affirmed."

In *Abokokuyaro v State* (2012) 2 NWLR (Pt. 1285) 462 at 475, the Supreme Court held as follows:

"An appellate Court will not interfere with the findings of the trial Court unless the findings are perverse, not supported by evidence and has led to miscarriage of justice or any principle of law or procedure have not been followed or complied with."

In the light of the foregoing I am satisfied that the prosecution has carried out the burden laid upon it by law to prove the essential ingredients of the offences of conspiracy to commit armed robbery and armed robbery beyond reasonable doubt and so this appeal lacking in merit is hereby dismissed.

I affirm the decision of the Court of Appeal, Ibadan Division in its affirmation of the conviction and sentence to death by hanging on the appellant.

ARIWOOLA JSC

I had the privilege of reading in draft the lead judgment of my learned brother Peter-Odili, JSC just delivered. I agree with the

reasoning therein and the conclusion arrived thereat. The appeal is devoid of any merit and lacking in substance. Accordingly, I too will dismiss the appeal.

Appeal is dismissed and I affirm the judgment of the Court below which had earlier affirmed that of the trial Court.

MUHAMMAD JSC

I read in draft the lead judgment of my learned brother Ukaego Peter-Odili JSC just delivered. I agree with his lordship's conclusion therein that the appeal lacks merit. I dismiss same and abide by the consequential orders made therein.

OGUNBIYI JSC

The conviction and sentence of the appellant was concurrent by the two lower Courts. The law is trite and well settled on the appellant who must show cause why the concurrent findings should be disturbed. The evidence adduced by the prosecution's six witnesses confirmed that there was an armed robbery on the 11th of February, 2005 at 176 Luba - Eruwon Road, Ijebu Ode as alleged. The evidence of PW1, PW2 and PW4 specifically revealed that the robbers who invaded their home were armed with gun and cutlass. It is also overwhelming on their evidence that the appellant was one of the armed robbers that robbed PW1 and the children on the 11th day of February, 2005. The specific role played by the appellant in the armed robbery incident was stated by PW1 and PW4 (as the victims) in their evidence at pages 23 and 30 of the record respectively. PW4 was unshaken in her evidence under Cross-examination. The reason justifying appellant's presence at the scene of the crime could not be believed because he had failed to call those he mentioned to testify to his defence.

It is also pertinent to restate that PW1 and PW4 were very clear in their testimony on the identification of the appellant. PW1 for instance was certain that the appellant macheted her on the head and ordered her two daughters to go into the dining room

while he collected some money and handsets from her oldest daughter. PW1 had enough opportunity to identify the appellant as she interacted with him. PW4 was also very vivid in her identification of the appellant while testifying in chief and under cross-examination this was what she said:-

"I saw the accused when he cut my mother's head with a cutlass he was holding. The incident took about one and half hours, the incident was not hurriedly done... I identified the accused by his face and the shape of his head ... I made statement to the police when the robbery took place."

In the case of Ndidi v. The State (2007) 13 NWLR page 633 at 651 the Courts are instructed on what to take into account for purpose of identification of a criminal. See also the cases of The State v. Salisu & Anor (1974) 4 NWLR page 400 at 404 - 405, Anyanwu v. The State (1986) 5 NWLR Part 43 at 612, Igbi v. The State (2000) 3 NWLR (Pt. 648) 169.

PW4 was smart and spontaneous in her identification of the appellant three days after the robbery incident, A formal identification parade is therefore not necessary. See Matthew Orimoloye vs. The State (1984) 10 SC Page 138 at 143. See also Okori v. The State (1989) 1 NWLR (Pt.100) at 642, Ikemson v. The State (1989) 3 NWLR (Pt. 110) at 414 and Ibrahim v. The State (1991) 4 NWLR (Pt.186) P.399 at 414.

With the few words of mine and more particularly on the fuller reasons and conclusion arrived at by my learned brother Peter-Odili JSC, I adopt his judgment as mine and dismiss the appeal also as it lacks merit. The Concurrent Judgments of the two lower Courts are hereby affirmed by me.

AKA' AHS JSC

I had a preview of the judgment of my learned brother, Peter-Odili dismissing the appeal. There was overwhelming evidence by PW1, PW2 and PW4 implicating the appellant in the robbery which was carried out at No. 176 Eruwon Road, Ile-Oluko, Ijebu-Ode. PW1, a Primary School Teacher who was a victim of the

robbery gave a vivid account of the robbery which occurred in broad day light at about 2p.m. on 11/2/2005. She recounted the ordeal she suffered in the hands of the appellant who macheted her on the head. She recounted how the appellant removed her head scarf and used it to mask his face but she succeeded in taking off the scarf from him and thereby was able to see him clearly. Two days later while they were returning from Church, PW4 who is one of her daughters sighted the appellant at Oke-Aje market in front of Iwade Community Bank and this led to the arrest of the appellant. PW4 who recognised the appellant shortly after the robbery incident gave her account of the robbery as follows:-

"I remember 11/2/2005, it was a Friday at 2.00 p.m. My mother came to pick us at School, myself and my sister with her car. She drove the car to our house and parked the car inside the house. We packed the food stuffs my mother bought inside the house. Myself and my sister were inside the dining room and we heard the shout of our mother. Immediately, both of us went to the sitting room and we saw two boys. These two boys were armed robbers. One of them was short while the other was a tall person. The short boy was holding a gun while the tall boy was holding a cutlass. The tall boy cut my mother with the cutlass he was holding on her head. The accused was the tall boy holding the cutlass and told us to go into our mother's room. He led us to her room. However while we were been (sic) led to our mother's room. I picked up my sister's GSM phone and while we were in our mother's room my sister told me to call my father. I called him and my sister said Ole, thief. By this time the accused was in the sitting room and we heard our mother shouting hence both of us went back to the sitting room. On getting there, we saw the accused holding the neck of our mother. While the accused was holding the neck of our mother, she removed the scarf which the accused used as a mask. It was at this stage that I was able to see his face and the shape of his head.."

On the following Sunday which was 13/2/2005 while we were coming back from the Church, I saw the accused at Iwade in Oke-Aje market in Ijebu-Ode. He was eating and I told my father

that one of the two boys that robbed us was the one eating. The accused was wearing the same clothes he was wearing when they came to our house on Friday. It was a short knicker with a T-shirt with red and black colour”.

When PW4 was cross-examined, she maintained that she saw the accused when he cut her mother’s head with the cutlass he was holding and that the incident took about one and half hours. She also maintained that she identified the accused by his face and the shape of his head. B

The appellant testified in person and stated that he accompanied his friend Sakiru to Luba Area where he went to collect money from a customer. While Sakiru entered the house, he was waiting outside on the motorcycle they drove to the customer’s house. After waiting for five minutes he went into the house and found Sakiru fighting with a woman and when he asked Sakiru why he had to fight with the woman before collecting his money, the woman alleged that Sakiru had wounded her on the neck and maltreated her. He advised Sakiru that he should not fight with the woman to collect his money but Sakiru did not heed the advice. E He thereafter left the compound while Sakiru was still fighting with the woman. D

The trial Court found the appellant guilty based on the evidence of PW1 and PW4. The Court of Appeal made a concurrent finding of fact on the evidence of these two witnesses. In the Lead judgment of Fasanmi JCA she stated at page 151 of the records:- F

“From the evidence given, PW1 had enough opportunity to identify the appellant from the interaction she had with him. At page 68 lines 28-33 of the record, the learned trial judge rightly held as follows: G

‘I believe her evidence more importantly as the actual person between the accused and his partner who wounded her and who went to her husband’s bedroom (PW2) and remove (sic) a sum of N39,000.00 therein. Her evidence is credible and cogent. I find and hold that the accused was one of the two hoodlums that participated in the robbery attack at PW1’s residence on 11/2/2005”. PW4 gave a more damnable evidence of identification against the H

accused in her testimony before the Court”.

On the evidence adduced by the prosecution and the defence put up by the appellant, the lower Court had this to say at pages 153-154 of the record:

B *“The defence by the appellant that he followed one Sakiru to PW1’s residence to collect a debt owed to him and that altercation took place between PW1 and one Sakiru who remains at large is of no moment. The offence was committed in broad daylight. PW4 said she saw his face and the shape of his head when her*
C *mother removed his mask. The time lag which the accused and the partner spent with both PW1 and PW4 was over one and half hours. She described the mode of dressing of the accused on the day of the incident and that he put on the same clothes when she*
D *identified him at Oke-Aje market. PW4 gave a vivid account of how the appellant robbed on the day in question. I find and hold that there can be no mistaken identity of the appellant by PW4”.*

The two lower Courts’ findings of facts cannot be disturbed and the appellant has not adduced any reason for these findings to be interfered with by this Court. There is clear evidence that PW1
E was robbed in her residence on 11/2/2005 in broad daylight and the appellant was identified by PW1 and PW4 as the person who macheted PW1 on the head during the course of the robbery. There
F is therefore nothing in this appeal that goes in favour of the appellant.

The appeal therefore lacks merit and hereby dismissed. It is on account of what I have said and the more detailed reasons contained in the judgment of my learned brother, Peter-Odili JSC
G that I found no merit in the appeal.

Appeal is accordingly dismissed.

H