

In the Supreme Court of Nigeria

On Friday, the 1st day of June 2012

Before their Lordships

Walter Samuel Nkanu Onnoghen Justice, Supreme Court
Ibrahim Tanko Muhammad Justice, Supreme Court
Olufunlola Oyelola Adekeye Justice, Supreme Court
Mary Ukaego Peter-Odili Justice, Supreme Court
Olukayode Ariwoola Justice, Supreme Court

SC.306/2010

Between

Obasi Onyenye Appellant

And

The State Respondent

Judgment of the Court

Delivered by

Mary Ukaego Peter-Odili. JSC

The Appellant was before the Oyo State High Court sitting in Ibadan originally charged with 6 (Six) others with the offences of conspiracy contrary to Section 5 (b) and punishable under Section 1 (2)(a) of the Robbery and Firearms (Special Provisions) Act Cap. 398 Vol. XXII, Laws of the Federation of Nigeria 1990 as Amended; Armed Robbery contrary to and punishable under Section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act, Cap.398 Volume XXII, Laws of the Federation of Nigeria, 1990 as Amended. Sheltering an Armed Robber contrary to Section 5 (b) and punishable under Section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act Cap 398 Vol. XXII, Laws of the Federation of Nigeria 1990 as Amended. 7 (Seven) counts in all but the appellant is related to only 1 - 6 of the Courts contained in the information.

For better clarity I shall recast the counts as they appeared in the Court of trial; viz:-

1. Statement of Offence

Conspiracy to commit felony to wit: Armed Robbery contrary to Section 5 (b) and punishable under Section 1 (2) (a) of the Robbery and Firearms (special Provisions) Act Cap.398 Vol. XXII, Laws of the Federation of Nigeria 1990 as Amended.

Particulars of Offence

Francis Oguegbu 'M', Ifeanyi Mojekwu 'M', Chukwudi Okeke 'M', Obinna John 'M', Obasi Onyenye 'M', Okechukwu Nwesi 'M', on or about the 7th day of May, 2003 at Idi-Ayunre, along Ibadan - Ijebu-Ode Road, Ibadan, in the Ibadan Judicial Division did conspire together to rob Saudatu Yusuf, Bayo Owusu, Adedapo Busayo, Asuquo Jackson and Hammed Lawal of their valuable property.

2. Statement of Offence

Armed Robbery, Contrary to and Punishable under Section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act, Cap. 398; Volume XXII, Laws of the Federation of Nigeria, 1990 as Amended.

Particulars of Offence

Francis Oguegbu 'M', Ifeanyi Mojekwu 'M', Chukwudi Okeke 'M', Obinna John 'M', Obasi Onyenye 'M', Okechukwu Nwesi 'M', on or about 7th day of May, 2003 at Idi-Ayunre along Ibadan-Ijebu- Ode Road, Ibadan in the Ibadan Judicial Division whilst armed with fire-arms and offensive weapons to wit: Guns robbed one Saudatu Yusuf of his five hundred thousand naira only (₦500,000.00).

3. Statement of Offence

Armed robbery Contrary to and punishable under Section 1(2) (a) of the Robbery and Fire-arms (Special Provisions) Act, Cap.398 Vol. XXII, Laws of the Federation of Nigeria 1990, as Amended.

Particular of Offence

Francis Oguegbu 'M', Ifeanyi Mojekwu 'M', Chukwudi Okeke 'M', Obinna John 'M', Obasi Onyenye 'M', Okechukwu Nwesi 'M', on or about the 7th day of May, 2003 at Idi-Ayunre along Ibadan- Ijebu-Ode Road, Ibadan in the Ibadan Judicial Division whilst armed with fire-arms and offensive weapons to wit: guns, robbed one Bayo Owusu of his one hundred and eighty thousand naira (₦180,000.00).

4. Statement of Offence

Armed Robbery Contrary to and punishable under Section 1 (2) (a) of the Robbery and Fire-arms (Special Provisions) Act, Cap.398 Vol. XXII, Laws of the Federation of Nigeria 1990, as Amended.

Particulars of Offence

Francis Oguegbu 'M', Ifeanyi Mojekwu 'M', Chukwudi Okeke 'M', Obinna John 'M', Obasi Onyenye 'M', Okechukwu Nwesi 'M', on or about the 7th day of May, 2003 at Idi-Ayunre along Ibadan-Ijebu-Ode Road, Ibadan in the Ibadan Judicial Division whilst armed with fire-arms and offensive weapons to wit: Guns robbed one Adebayo Busayo of his three hundred and seven thousand naira (₦307,000.00).

5. Statement of Offence

Armed Robbery Contrary to and punishable under Section 1 (2) (a) of the Robbery and Fire-arms (Special Provisions) Act, Cap.398 Vol. XXII, Laws of the Federation of Nigeria 19901 as Amended.

Particulars of Offence

Francis Oguegbu 'M', Ifeanyi Mojekwu 'M', Chukwudi Okeke 'M', Obinna John 'M', Obasi Onyenye 'M', Okechukwu Nwesi 'M', on or about the 7th day of May, 2003 at Idi-Ayunre along Ibadan-Ijebu-Ode Road, Ibadan in the Ibadan Judicial Division whilst armed with fire-arms and offensive weapons to wit: Guns robbed one Asuquo Jackson of his thirty thousand naira (₦30,000.00).

6. Statement of Offence

Armed Robbery Contrary to and punishable under Section 1 (2) (a) of the Robbery and Fire-arms (Special Provisions) Act, Cap.398 Vol. XXII, Laws of the Federation of Nigeria 1990, as Amended.

Particulars of Offence

Francis Oguegbu 'M', Ifeanyi Mojekwu 'M', Chukwudi Okeke 'M', Obinna John 'M', Obasi Onyenye 'M', Okechukwu Nwesi 'M', on or about the 7th day of May, 2003 at Idi-Ayunre along Ibadan-Ijebu-Ode Road, Ibadan in the Ibadan Judicial Division whilst armed with fire-arms and offensive weapons to wit: Guns robbed one Hammed Lawal of his four hundred thousand naira (₦400,000.00).

7. Statement of Offence

Sheltering armed Robber Contrary to Section 5 (b) and punishable under Section 1 (2) (a) of the Robbery and Fire-arms (Special Provisions) Act, Cap.398 Vol. XXII, Laws of the Federation of Nigeria, 1990 as Amended.

The prosecution lined up 18 (eighteen) witnesses and the proofs of evidence are contained on pages 6 to 27 of the Record.

The Statement of the Accused Persons including that of the Appellant are on pages 28 - 41 of the Record.

The Appellant made only two statements and are contained on pages 36 - 37 of the Record.

The consent of the Judge for the preferment of a Criminal Information against the accused persons including the Appellant is to be found on page 42 of the Record.

On the 13th day of April, 2005 on the application of the prosecution, the names of the 1st, 2nd, and 3rd accused were struck of the Information.

Pursuant to the striking out of the names of the 1st, 2nd, and 3rd accused persons from the Information, the appellant became the 2nd accused thereafter even though he was sometimes referred to as the 3rd accused in the record of proceedings.

Trial of the accused persons including the Appellant commenced at the High Court Coram: Honourable Justice E. Esan on the 13th day of April, 2005 and the plea of the accused persons is on pages 44 - 45 of the Record.

The Prosecution called 7 (seven) witnesses in all and tendered Exhibits A, B & B1, C, D, E and F; signal from Iyaganku Police to State CID Statement of the accused persons including the Appellants and a kionko motorcycle with Reg. OY4571 respectively.

At the close of the case for the prosecution, a no-case submission was made on behalf of the accused persons including the Appellant.

In a considered ruling on the 28th day of July, 2005, the learned trial judge dismissed the no-case submission made on behalf of the accused persons including the Appellant save the 4th accused whom the learned trial judge discharged under Section 286 of the Criminal Procedure Law. The accused persons were thereafter called upon to enter into their defence.

The defence of the accused persons is on pages 69 - 72 of the Record. The defence of the Appellant as 2nd Accused is on pages 70 - 71 of the Record.

At the close of the case for the Defence, the prosecution effected a minor amendment to the Information and plea of the accused persons were accordingly taken again.

The addresses of counsel on behalf of the accused persons and the address of the prosecuting counsel are on pages 75 - 80.

In a considered judgment, the trial Court convicted and sentenced the accused persons including the Appellant on counts 1, 2, 3, 4 and 6 according.

The Appellant who was the 2nd accused before the High Court filed 5 (five) grounds of appeal to the Court of Appeal, Ibadan Division as follows:-

(i) The learned trial Judge erred in law when he held as follows”-

“In the instant case, the confessional statements of the accused persons are corroborated by testimony of witnesses for the prosecution which confirmed that a luxury bus was robbed on 7/5/2003. That the 1st accused bought two motorcycles as shown by the receipt Exhibit ‘F’ for the sum of ₦160, 000.00 out of his own share of the robbery proceeds. The 2nd and 3rd accused admitted selling drugged pure water to the passengers and sharing in part of the stolen money”

and which findings weighed heavily in the mind of the learned trial Judge in convicting the Appellant.

Particulars

- (a) The purported confessional statement of the appellant did not satisfy any of the conditions laid down in *R. v Sykes (1913) 8 C.A.R. 233* and approved by the Supreme Court in *Jona Dawa & Anor v The State (1980) 8 - 10 SC 236 at 267*.
- (b) The purported confessional statement of the appellant did not admit clearly and unequivocally of robbing a G.U.O. Bus on the 7th of May, 2003.
- (c) An admission of selling drugged pure water is not synonymous with robbing while armed with firearms or any offensive weapon within the meaning of Section 1 (2) (a) of the Robbery and firearms (Special Provisions) Act.
- (d) The said confessional statement was retracted during trial.
- (e) There were no other credible pieces of evidence to corroborate the said confessional statement.
- (f) The learned trial Judge in the absence of direct evidence relied on circumstantial evidence which fell far below the standard required in coming to the conclusion.

(ii) The learned trial Judge erred in law when in finding the accused guilty of the offence charged she held as follows:-

“I am therefore of the firm view that apart from the Confessional Statements of the accused persons which could without more be relied upon in convicting them, other pieces of evidence as stated above corroborate their Confessional Statements and irresistibly point to the guilt of the three accused persons.”

Particulars

- (a) The said Confessional Statement of the appellant did not satisfy the conditions laid down in *R.v Sykes (1913) C.A.R. 233* and approved by the Supreme Court in *Jona Dawa & Anor v The State (1980) 8 - 10 SC 236 at 267*.
- (b) The said Confessional Statement of the appellant did not agree clearly and unequivocally that the appellant committed the offence he is charged with.
- (c) There were no other credible pieces of evidence to corroborate the said Confessional Statement.
- (d) The said Confessional Statement was retracted during trial in Court.
- (e) The learned trial Judge in the absence of direct evidence relied on circumstantial evidence which fell far below the standard required in coming to the conclusion.

(iii) The learned trial Judge erred in law when he held as follows:-

“It is therefore my Judgment that the 1st accused Obinna John, the 2nd accused Obasi Onyeye and the 3rd accused Okechukwu Nwesi on or about the 7th day of May, 2003 whilst armed with firearms and offensive weapons took part in robbing Saudat Yusuf, Sayo adewusu (sic) Adedapo Busayo and Hammed Lawal of their valuable properties. The prosecution has proved Count 2, 3, 4 and 6 beyond reasonable doubt. Each accused is found guilty and accordingly convicted in Counts 2, 3, 4 and 6 respectively.”

Particulars

- (a) There was before the court no single proof that the appellant or any of the accused persons was armed with firearms or offensive weapons.
- (b) The evidence before the Court was that the Appellant was in fact not present at the scene of the crime.
- (c) The learned trial Judge in the absence of direct evidence relied heavily on circumstantial evidence which fell far below the standard required.
- (d) The learned trial Judge relied on the statement of the appellant which she erroneously held to be confessional.

(iv) The learned trial Judge erred in law in finding the accused persons guilty of the offence of conspiracy as charged when there was no cogent evidence directly or inferentially establishing a common or mutual criminal purpose.

Particulars

- (a) An agreement to drug pure water to sell to the passengers of the luxury bus in order to make them fall asleep in their journey is not synonymous with an agreement to commit armed robbery.
 - (b) None of the purported confessional statements confessed to being armed with firearms or any offensive weapon and no concrete evidence of the use of firearms or any offensive weapon was adduced by the prosecution during trial.
- (v) The learned trial Judge erred in law in relying on circumstantial evidence which fell far below the standard required in convicting the appellant.

The appellant before the Court of Appeal sought for and was granted extension of time within which to file the Appellant's Brief of argument on the 21st January, 2008.

Appellant's Brief of argument before the Court of Appeal which was deemed properly filed is on page 108 of the Record.

Respondent's Brief of Argument before the Court of Appeal was also filed. The Appeal was heard, considered and determined and the Court below delivering its judgment on the 17th day of December, 2009 dismissed the appeal wherefore the Appellant filed a Notice of Appeal of two grounds before this Court.

On the 8th day of March 2012 date of hearing, the appellant's counsel, Kolawole Esan adopted the Brief of Argument of the appellant settled by himself and filed on 31/8/10 in which were couched two issues for determination as follows:-

- (i) Whether Exhibit 'C' which authorship was not settled by the learned trial Judge in her judgment was direct, positive, duly made and satisfactorily proved and whether the statement in fact incriminate the Appellant to warrant conviction by the learned trial judge and a dismissal of the appellant's appeal by the learned Justices of the Court of Appeal.
- (ii) Whether Exhibit 'C' which authorship was not settled by the trial Court but relied upon as a confessional statement and confirmed as such by the learned Justices of the Court of Appeal met the required standard to confirm the Judgment of the trial court and whether the learned Justices of the Court of Appeal did not err in law in not distinguishing between retraction and authorship of Exhibit 'C'.

Learned counsel for the Respondent, Mr. Adebayo adopted the Brief of Argument on behalf of the Respondent settled by O. A. Ladapo Esq. and filed on 17/9/10. The Respondent had formulated a single issue as follows:-

Whether the learned justices of appeal were right in holding that Exhibit "C" is a Confessional Statement admitting the charge of conspiracy to commit armed robbery and armed robbery and rightly relied on same to confirm the conviction of the appellant.

Mr. Esan, learned counsel for the Appellant submitted that Exhibit 'C' held to be a Confessional Statement of the appellant was not direct, positive, duly made, satisfactorily proved to warrant a confirmation in the judgment of the two Courts below. That Exhibit 'C' did not incriminate the appellant and had not met the required standard of a confessional statement. He cited *Daniels v. State (1991) 8 NWLR (Part 211) 715 at 730; Gbadamosi v. State (1992) 9 NWLR (Part. 266) 465 at 479.*

He stated that it is the law that a free and voluntary confessional statement alone properly taken, tendered and admitted and which passes the six tests in *R. v Sykes (1913) 18 C.A.R. 233* approved and applied in *Dawa v State (1980) 8 - 11 SC 236* is sufficient to ground a conviction. That the Exhibit 'C' in this instance has not met those conditions to merit the conviction of the appellant upon it.

For the appellant was contended that the Court of Appeal failed to observe, that the trial Court could not have been referring to Exhibit 'C' said to have been made by the Appellant when the trial judge held that the Exhibit was admitted after a trial within trial. That the Court below ought to have viewed Exhibit 'C' as a document shrouded in mystery and it being a document of fundamental basis upon which the trial court found the conviction and sentence of the appellant. That the Court below ought to have found that Exhibit 'C' was unreliable to ground the conviction of the appellant. He cited *Nwosu v The State (1986) 4 NWLR (Part. 35) 348 at 359; Hycienth Egbe v The King (1950) 13 WACA 105 at 106.*

Learned counsel for the Respondent submitted that a confessional statement as Exhibit 'C' is the statement of the accused/appellant which states or suggests that he committed the alleged offences that it is not necessary that the statement be a verbatim report of what transpired or for all ingredients of the alleged offences to be present in the confessional statement.

Mr. Adebayo of counsel for the Respondent contended that the learned trial judge sought external facts in corroboration of the statement of the appellant and his other co-accused which he got. He cited *Alarape & Ors v The State (2001) 5 NWLR (Part. 705) Part.79 at 88 & 99; R v Sykes (1913) 8 CAR 233 at 236.*

That in order to establish the offence of armed robbery which is covered in counts 2, 3, 4 and 6 the prosecution must lead evidence to prove the following ingredients:

1. That there must have been a robbery or a series of robberies.
2. That each robbery was an armed robbery.
3. That the accused was one of those who took part in the robbery or robberies.

That the prosecution adequately proved those ingredients. He referred to *Bozin v The State (1985) 2 NWLR (Part.8) 465.*

Mr. Adebayo went on to state that the test of the appellant's liability under Section 8 of the Criminal Code Law is whether the act complained of is a probable consequence of the prosecution of their joint intention to carry out an unlawful act and that it is

irrelevant who actually held the gun, because once one of them was in possession of a gun, his hand is deemed to be the hand of all of them. He cited *Alarape v The State (2001) 5 NWLR (Part. 705) 79*.

He said by virtue of Section 6 (a) and (b) of the Robbery and Firearms Act the presence of a co-accused at the scene of the crime is irrelevant once such co-accused conspired with, aided, abetted and or counseled others who were present at the scene. Also that the charge of conspiracy is complete once there is a meeting of the mind of two or more persons on an agreement to carry out an unlawful act and this could be established from the conversation of the accused persons or their conduct. He referred to *Obiakor v The State (2002) 10 NWLR (Part.775) 612 at 628*; *Gbadamosi v The State (1991) 6 NWLR (Part. 196) 182 at 204*.

For the Respondent was contended in conclusion that criminal charges as the case in hand can be proved in any of the following ways or by a combination of them that is:

- (1) By the direct evidence of an eye witness.
- (2) By circumstantial evidence
- (3) By a confessional statement.

He cited *Igabele v The State (2006) 2 SC (Part. 11) 61 at 79*. That in this case a combination of these three types of evidence were placed before the trial court, used by the trial court in arriving at its decision and affirmed by the Court of Appeal. That it is submitted that this Court will not normally disturb concurrent findings of facts which have been accepted and relied on by the two lower courts, except such concurrent findings are found to be perverse or a violation of some principle of law or practice which leads to a miscarriage of justice. He cited *Abdullahi v The State (1985) 1 NWLR (Part. 3) 523 at 529*.

The basis of the contest between the parties in this appeal are captured briefly as follows:-

The Appellant's points of view are that the learned justices of the Court of Appeal failed to observe that Exhibit 'C' relied solely and heavily upon by the trial judge did not satisfy the conditions laid down in the case of *R v. Skyes 8 C.A.R. 233* and approved by the Supreme Court in *Jona Dawa & Anor v State (1980) 8 - 11 SC 236 at 267*. Also that the justices of the Court below failed to observe that Exhibit 'C' relied upon by the trial judge did not agree clearly and unequivocally that the appellant committed the offence.

The Appellant further held the view that when he as accused denied the authorship of Exhibit 'C', the trial judge still had a duty to determine whether or not the accused made the statement at the end of the trial which failure rendered Exhibit 'C' a mystery. Also that the Court below ought to have determined the misconception by the trial judge that Exhibit 'C' was admitted after a trial within trial which was not the case and thereby a miscarriage of justice ensued.

The stance of the Respondent on the other hand is that Exhibit 'C', the extra judicial statement of the Appellant being a confessional statement the trial judge was right to use it along with other corroborative pieces of evidence in convicting the Appellant which decision the Court of Appeal was right in upholding.

The single issue crafted by the Respondent captures the dispute properly and fully and I do not hesitate in utilizing it in the determination of this appeal.

Single Issue:

Whether the learned justices of the Court of Appeal were right in holding that Exhibit 'C' is a Confessional Statement admitting the charge of conspiracy to commit armed robbery and armed robbery and rightly relied on same to confirm the conviction of the Appellant.

The learned counsel for the Appellant proceeded from the point that the admission in Exhibit 'C' by the appellant that he drugged the pure water which he sold to the passengers did not cover the main transaction of the armed robbery that followed. That the situation was such that it could be taken that the tests upon which a confessional statement alone could be used to ground a conviction had not been made out. The tests as stated in *R v. Skyes (1913) 18 C.A.R. 233* which were approved and followed in *Dawa v State (1980) 8 - 11 SC 236* are as follows:-

- (a) Is there anything outside it to show that it is true?
- (b) Is it corroborated?
- (c) Are the Statements made in it of fact, true as far as they can be tested?

- (d) Was the prisoner one who had the opportunity of committing the offence?
- (e) Is his confession possible?
- (f) Is it consistent with other facts which have been ascertained and which have been proved?

As a re-cap of what transpired at the trial Court, PW7 Sergeant Olarinmoye Oladepo testified that he investigated the allegation of the offences aforesaid against the Appellant and others. That he had recorded the statement of the Appellant who had signed and which statement was tendered by PW7 and admitted as Exhibit 'C' without objection. It was after the tendering that learned counsel for the Appellant set out to challenge the authorship of that statement.

It seems to me needful to quote the material part of Exhibit 'C', viz:-

"It is true that I, and three others namely Obinna John, Okechukwu and Onyekachi jointly went to luxurious bus to sell the pure water which we have already drugged and sell it to the passenger so that they can sleep in the vehicle to enable us robbed (sic) them of their money and properties. After selling the pure water that has already been drugged (sic) to the passengers, one Obinna John, Onyekachi and Okechukwu jointly followed the vehicle to Onitsha but when they came back, the second day, I was not given any share which brought about disagreement and fight among ourselves."

The definition of a Confession as provided for in Section 27 (1) and 2 of the Evidence Act are as follows:-

- "27 (1) A confession is an admission made at anytime by a person charged with a crime, stating or suggesting the inference that he committed that crime.
- (2) Confessions, if voluntary, are deemed to be relevant facts as against the persons who make them only,"

From this definition in Section 27 (1), (2) of the Evidence Act it can be seen and clearly too and positioned side by side with the tests stated in *R v. Skyes (supra)* and followed by this Court in *Dawa v State (supra)*, that the confessional statement Exhibit 'C' has been shown to be true, corroborated; the appellant having the opportunity of committing the offence and the possibility of the confession alongside the other facts, part of the full illegal transaction. It was therefore not necessary for the appellant to have further participated in the ongoing process as the luxurious bus went on the journey and the robbery fully implemented.

It is evident that the conclusion could be reached from the confession placed side by side with other facts that came out which presumptions are that the appellant was in the full picture of what was in the offing, took part at the inception, put in place the facilitating process which was to get the passengers asleep and make it easier for the other participants in the unlawful act to carry out the dastardly operation. The fact that he did not go along the drive and carry out any further activity changed nothing as the appellant's status had been established as he was part and parcel of the entire deal without even being physically present at the time the robbery proper was carried out. Indeed Exhibit 'C' provided an established and proven fact that there was a flow from the appellant and the co-accused. See *Alarape & Ors v State (2001) 5 NWLR (Part. 705) 79 at 98 - 99*.

The essential ingredients of the offence of armed robbery as stated in counts 2, 3, 4 and 6 were adequately established in that there was a robbery within the definition of the offence and the accused/appellant was one of those who took part. The evidence as proffered by PW1, PW4, PW5 and PW6 showed that there was a robbery incident on the 7th of May, 2003 in a G.O.U. Luxury bus at Idi Ayunre, Ibadan after the bus had taken off from the park at Mokola, Ibadan which date and incident tallied with the details in Exhibit 'C'.

There was enough from which the trial Court could deduce that there was a common intention formed amongst the accused persons including the appellant, which common intention he had set the ball rolling in the drugged water he made available to the hapless passengers in the quest to make the operation easier for his colleagues. It therefore did not matter that appellant did not carry a gun or any weapon or was not present at the time the robbery was carried out as Section 7 and 8 of the Criminal Code Law saw to that. This is reinforced by Section 6 (a) and (b) of the Robbery and Firearms Act which provide that the presence of a co-accused at the scene of crime is irrelevant once such co-accused conspired with, aided, abetted and or counseled others who were present at the scene. The section provided unequivocally that such an absent co-accused shall be deemed to be guilty of the offence as a principal offender and shall be liable to be proceeded against and punished accordingly under the Act.

On the issue of the offence of conspiracy, there is a surfeit of evidence linking the appellant with the others borne out plainly by his own role in the entire transaction. The meeting of the minds was present and emphasized in this instance by the part played by the appellant. Plainly there was direct evidence in this case, circumstantial evidence and the damning confessional statement. All these the trial court found and the Court of Appeal had nothing upon which it could upset those findings which that Court below upheld. See *Obiakor v State (2002) 10 NWLR (Part. 776) 612 at 628*; *Gbadamosi v State (1991) 6 NWLR (Part.196) 182 at 204*; *Igbele v State (2006) 2 SC (Part.11) 61 at 79*; *Abdullahi v State (1985) 1 NWIR (Part.3) 523at 529*.

The concurrent findings of the two Courts below are unassailable and the mistake of the trial judge in stating that the Confessional Statement, Exhibit 'C' was admitted after a trial within trial was a mere human error which neither occasioned a miscarriage of justice nor changed the fact that the appellant made the statement and voluntarily too. There was no need, in fact the issue did not come up as to the voluntariness or otherwise of the statement which would have mandated the trial within trial procedure. Therefore such an issue not arising the error in stating that a trial within trial took place which did not was of no moment and did not improve the case of the appellant.

Definitely there is no basis for a different finding at this stage and the only conclusion is that the concurrent findings, judgments, conviction and sentence stand. This appeal lacking in merit is dismissed.

Judgment delivered by
Walter Samuel Nkanu Onnoghen. JSC

I have had the benefit of reading in draft the lead judgment of my learned brother Peter-Odili, J.S.C just delivered.

I agree with his reasoning and conclusion that the appeal is without merit and should be dismissed.

My learned brother has exhaustively dealt with the issue calling for determination in this appeal leaving me with nothing useful to contribute without repeating the facts and principles of law applicable thereto.

I accordingly dismissed the appeal for lack of merit.

Judgment delivered by
Ibrahim Tanko Muhammad. JSC

I read in advance the judgment of my learned brother Odili, JSC. I agree that the appeal completely lacks merit and it should be dismissed. Both the trial court and the court below are in agreement that Exh. C is a confessional statement in which the appellant admitted the acts of conspiracy and the commission of the offence of armed robbery. An excerpt from Exh. C states:

“It is true that I, and three others namely Obinna John, Okechukwu and Onyekachi jointly went to luxurious bus to sell the pure water which we have already drugged and sell it to the passenger so that they can sleep in the vehicle to enable us robbed (sic) them of their money and properties. After selling the pure water that has already been drugged (sic) to the passengers, one Obinna John, Onyekachi and Okechukwu jointly followed the vehicle to Onitsha but when they came back, the second day, I was not given any share which brought about disagreement and fight among ourselves.”

I think that is what amounts to a confession in law. If that is so, section 27(2) of the Evidence Act is very clear and unambiguous that if made voluntarily, confessions are deemed to be relevant facts against the person who makes them. Imagine where a person, without any coercion, duress, threat or promise of a favour, voluntarily states that:

- (a) he participated in the robbery of a luxurious bus on a specific date (7/5/03),
- (b) he knew the co-accused persons even before the date of the crime of robbery,
- (c) he and the other co-accused 'pretended' to be selling 'pure water' to the passengers at the motor park,
- (d) he complained that he was not given his share of the loot by his co-accused which resulted in disagreement and fight amongst them.

Then, what else will anyone require in further proof of the said crime? It is not in all cases that confession must be corroborated. Just not too long ago, this court stated in the case of *Olabode v. State (2009) 11 NWLR (Part.1152) 254* that:

“It is settled law that a confessional statement made by an accused person and properly admitted in law is the best guide to the truth of the role played by him and upon which alone the court can convict.”

See further: *Ogoala v. State (1991) 2 NWLR (Part.175) 509 at 1. 534.*

In view of the above and the findings of the trial court (pages 88-89 of the record of appeal) where the learned trial judge sought external facts corroborating the statement of the appellant and his co-accused, which was affirmed by the court below, it is only pretentious of the learned counsel for the appellant to submit, as he did (page 8 of his brief of argument) that exhibit 'C'

in fact did not incriminate the appellant and as such did not meet the required standard of a confessional statement to warrant the conviction of the appellant. I find it difficult to be influenced by such a submission.

I support the lead judgment of my learned brother Odili, JSC in coming to the inevitable conclusion that the appeal lacks merit. I accordingly dismiss the appeal and affirm the concurrent judgment of the two courts below.

Judgment delivered by
Olufunlola Oyelola Adekeye. JSC

The judgment of my learned brother Mary U. Peter-Odili JSC which she has just rendered was read by me in draft. I agree with her in the reasoning and the conclusion she arrived at in dismissing this appeal. The appellant was charged with six: others with the offences of:-

- (a) Conspiracy to commit armed robbery contrary to section 5 (b) and punishable under Section 1(4) (9) of the Robbery and Firearms Special Provisions Act Cap. 398 Vol. XXII Laws of the Federation of Nigeria 1990 as amended.
- (b) Armed robbery contrary to and punishable under section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act Cap. 398 Volume XXII Laws of the Federation 1990.
- (c) Sheltering Armed Robbers contrary to Section 5 (b) and punishable under Section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act Cap. 398 Vol. XXII Laws of the Federation 1990 as amended.

Six out of the seven counts of the offences filed by the prosecution related to the appellant. The accused persons before the trial court were convicted on counts 1,2,3,4 and 6. The 2nd accused now appellant was aggrieved by the decision of the trial court, he filed an appeal against same. The Court of Appeal Ibadan dismissed the appeal on 17/12/09. The appellant filed a further appeal to this court. The appeal was heard on 8/3/ 12 based on the briefs of the parties. The appellant raised issues for determination as follows:-

- i. Whether Exhibits C which authorship was not settled by the learned trial judge in her judgment was direct, positive, duly made and satisfactorily proved and whether the statement of fact incriminated the appellant to warrant conviction by the learned trial judge and a dismissal of the Appellant's appeal by the learned Justices of the Court of Appeal.
- ii. Whether Exhibits C which authorship was not settled by the trial court but relied upon as a confessional statement and confirmed as such by the learned Justices of the Court of Appeal met the required standard to affirm the judgment of the trial court and whether the learned Justices of the Court of Appeal did not err in Law in not distinguishing between the retraction and authorship of Exhibit C.

The respondent distilled a single issue as follows:-

“Whether the learned Justices of the Court of Appeal were right in holding that Exhibit C is a confessional statement admitting the charge of conspiracy to commit armed robbery and armed robbery and rightly relied on same to affirm the conviction of the appellant.

After argument of the issues the appellant urged this court to set aside the decision of the lower court and enter the verdict of discharged and acquitted for the following reasons:-

- a) The learned Justices of the Court of Appeal failed to observe that Exhibit C relied solely and heavily upon by the trial judge did not satisfy the conditions laid down in *R vs. Skyes (1913) 18 CR AIP page 233* and approved by the Supreme Court in *Jona Dawa and Anor vs. The State (1980) 8-11 SC. Page. 236*.
- b) The learned Justices of the Court of Appeal failed to observe that Exhibits C relied upon by the trial judge did not agree clearly and unequivocally that the appellant committed the offence.
- c) The learned Justices of the Court of Appeal failed to hold that where a trial judge admits a confessional statement where authorship is denied as in the circumstances of Exhibit 1, the trial Judge still had a duty to determine whether or not the accused made the statement at the end of trial which duty the learned trial judge failed to perform thereby shrouding Exhibit C in mystery.

- d) The learned Justices of the Court of Appeal failed to hold that the learned trial judge had a total misconception of the circumstances of the admission of Exhibit C when she said that it was admitted after a trial within trial and which said misconception occasioned a miscarriage of justice in the circumstances.

The respondent on the other hand urged this Court to hold that Exhibit C the extra judicial statement of the appellant is a confessional statement that the learned trial judge was right in using the statement along with other pieces of evidence in convicting the appellant and the lower court rightly upheld that decision.

It is apparent on gleaning through the argument and submission of the parties that the issue raised in this appeal is straight forward and within narrow limit. Counts 2,3,4 and 6 relate to the offence of armed robbery. The essential elements of the offence of armed robbery which the prosecution has the burden to prove beyond reason doubt in accordance with Section 138 (1) of the Evidence Act are:-

- (1) That there must have been a robbery or series of robberies.
- (2) That each robbery was an armed robbery.
- (3) That the accused was one of those who took part in the robbery or robberies while with arm or arms.

Bozin vs. The State (1985) 2 NWLR, (Part 8) page. 465; Olayinka vs. The State (2007) 9 NWLR, (Part 1040) page. 561; Okosi vs. A-G Bendel State (1989)1 NWLR, (Par 100) page. 642

There was ample evidence before the trial court to convict the appellant and others involved in perpetrating the offence of armed robbery and also for conspiracy to commit robbery.

The learned trial judge held in her judgment that:-

“In the instant case, the confessional statements of the accused persons are corroborated by testimony of witnesses for the prosecution which confirmed that a luxurious bus was robbed on 2/5/2003, that the accused bought two motorcycles as shown by the receipt Exhibit F for the sum of ₦160,000 out of his own share of the robbery proceeds. The 2nd and 3rd accused admitted selling drugged pure water to the passengers and sharing in part of the stolen money”.

The learned trial judge went further to hold that:-

“I am therefore of the firm view that apart from the confessional statements of the accused persons which could without more be relied upon in convicting them, other pieces of evidence as stated above corroborate their confessional statements and irresistibly point to the guilt of the three accused persons”.

The relevant part of the confessional statement Exhibit C reads as follows:-

“It is true that I and three others namely Obinna John, Okechukwu and Onyekachi jointly went to luxurious bus to sell pure water which we have already drugged and sell it to the passengers so that they can sleep in the vehicle to enable us rob them of their money and properties. After selling the pure water that has already been drugged to the passengers, Obinna John, Onyekachi and Okechukwu jointly followed the vehicle to Onitsha but when they came back, the second day, I was not given any share which brought about disagreement and fight among ourselves”.

There was ample evidence on record from the appellant and prosecution witnesses 1, 4, 5 and 6 to establish evidence of common intention to commit the crime. This is an important ingredient of the offence of conspiracy. Section 8 of the Criminal Code Cap. 38 Laws of Oyo State 2000 defined Common intention. The test of the presence of Common intention under Section 8 of the Criminal Code Law of Oyo State is whether the act complained of is a probable consequence of the prosecution of their joint intention to carry out an unlawful act and that it is irrelevant who actually held the gun because once one of them was in possession of a gun, his hand is deemed to be the hand of all of them. See *Alarape v The State (2001) 5 NWLR Part 705, page. 79*

Exhibit C strongly established that the armed robbery operation commenced from the stage where drugged pure water was sold in sachet to unsuspecting bus passengers at the motor park and came to its peak at the point where the passengers were deprived of their valuables at gun point. 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) 13 NWLR 88; Obiakor v The State (2002) 10 NWLR (Part 776) page. 612; Daboh v. The State (1977) 5 SC 197; Ubierho v The State (2005) 1 NWLR, (Part 919) page. 644; Muonwem v Queen (1963) 2 SC, NLR, page. 172 Gbadamosi v The State (1981) 2 NWLR, (Part 196) page. 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. The two lower courts found the offence of conspiracy proved against the appellant. The foregoing provides the platform to look into Exhibit C the confessional statement made by him to the police in the process of investigation and later produced and accepted in evidence by the trial court. The appellant challenged the probative value of exhibit C. A confessional statement is defined in Section 27 (1) and (2) of the Evidence Act as follows:-

Section 27 (1)

“A confession is an admission made at anytime by a person charged with a crime stating or suggesting the inference that he committed that crime”.

- (2) Confessions, if voluntary are deemed to be relevant facts as against the persons who make them only.
- (3) Where more persons than one are charged jointly with a criminal offence and a confession made by one of such persons in the presence of one or more of the other persons so charged is given in evidence the court or a jury where the trial is one with a jury shall not take such statement into consideration as against any such other persons in whose presence it was made unless he adopted the said statement by words or conduct”.

The courts have decided that a free and voluntary confession which is direct and positive and properly proved is sufficient to sustain a conviction without any corroborative evidence so long as the court is satisfied with its truth. There is however a duty on the court to test the truth of a confession by examining it in the light of the other credible evidence before the court.

Solola v The State (2005) 11 NWLR (Part 937) page 460; Nwaeze v The State (1996) 2 NWLR (Part 428) page. 1; Akinmoju v The State 2000 4 SC (Part 1) page 64; Ikemson v The State (1989) 3 NWLR (Part 110) page 455; Yesufu v The State (1976) 6 SC 167

The trial court considered other pieces of credible evidence available before her particularly from the prosecution witnesses in testing the truth of the confessional statement of the appellant.

It is also of vital importance and a legal yardstick that no statement by an accused is admissible in evidence against him unless it is shown that it was a voluntary statement. If a confessional statement is made involuntarily, it would not be admitted unless there is a trial within trial. It has now become a matter of routine for an accused to retract a confessional statement in the course of trial. The court has adopted two reactions in the circumstances as follows:-

- (a) Where the accused has clearly expressed his ordeal in the process of obtaining the statement accredited to him in effect that it was obtained by force, tricks or undue influence or any non-recognizable legal ways, there would be need for a trial within trial.
- (b) Where the accused retracted his confessional statement on the ground that it was not read to him before he signed it or that he never made it at all the requirement of a trial within trial is not applicable.

In any of the above circumstance a conviction can be based on a confession alone. There is however a need to test the truth of the confession in the light of other credible evidence before the court. Such tests in search of the truth are:-

- (1) Whether there is anything outside the confession to show that it is true.
- (2) Whether it is corroborated.
- (3) Whether the statement made in it are in fact true as far as they can be tested.
- (4) Whether the accused had the opportunity of committing the crime.
- (5) Whether the confession is possible.
- (6) Whether it is consistent with other facts which have been ascertained and which have been proved.

R v. Skyes (1913) 8 CAR pg. 233; Alarape vs. the State (2001) 5 NWLR, (Part 705) page. 79; Jona Dawa & Anor vs. The State (1980) SC 236, page. 267

The pieces of evidence before the court to establish the offence of armed robbery can clearly be grouped into three namely:-

- (a) By the direct evidence of an eyewitness
- (b) By circumstantial evidence
- (c) By a confessional statement

The direct evidence was from the victims of the armed robbery, the confessional statement Exhibit C was that of the appellant. The gap between both is filled by circumstantial evidence. I am in favour of accepting circumstantial evidence as I believe strongly that a witness may lie and statements may be contested, but circumstance will never lie, they remain true, constant and stable.

The appellant contended that the learned trial judge in the judgment indicated that a trial within trial was held over the issue of the confessional statement and by so doing erred as no such trial was conducted. I must remark that it is not every error in a case that will result in an appeal being allowed. It is only when the error is substantial in that it has occasioned a miscarriage of justice then an appellate court is bound to interfere.

Nwaeze v The State (1996) 2 NWLR, Part. 428, page. 1

The lower court rightly affirmed the judgment of the trial court in the decision handed down on 17/12/2009. I find the concurrent findings of fact of the two lower courts impeccable.

With fuller reasons given in the lead judgment of my learned brother Mary U. Peter-Odili JSC, I also dismiss the appeal for lacking in substance. The conviction and sentence of the appellant is affirmed.

Judgment delivered by
Olukayode Ariwoola. JSC

I have had the opportunity of reading in draft the judgment just delivered by my learned brother, Peter-Odili, JSC, in this appeal. I am in complete agreement with the reasoning and conclusion that the appeal is devoid of merit and substance. The appellant was properly convicted and sentenced. Accordingly, I also dismiss the appeal and affirm the conviction and sentence passed on the appellant by the trial court which was confirmed by the court below.

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with him
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