In the Supreme Court of Nigeria

On Friday, the 23rd day of March 2012

Before their Lordships

Walter Samuel Nkanu Onnoghen	.....	Justice Supreme Court
Ibrahim Tanko Muhammad	.....	Justice Supreme Court
Olufunlola Oyelola Adekeye	.....	Justice Supreme Court
Bode Rhodes-Vivour	.....	Justice Supreme Court
Mary Ukaego Perter-Odili	.....	Justice Supreme Court

SC. 43/2011

Between

Adeniyi Adekoya ..... Appellant

And

The State ..... Respondent

Judgment of the Court
Delivered by
Mary Ukaego Peter-Odili. JSC

This is an appeal against the decision of the Court of Appeal, Ibadan Judicial Division delivered on the 18th day of November, 2010 wherein their Lordships dismissed the appeal of the appellant and affirmed his conviction and sentenced to death for the charge of conspiracy to commit armed robbery and armed robbery, contrary Section 5 (b) and 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act 1990 as amended by the Tribunal (Certain Consequential Amendments, etc) Act 1999.

The Appellant being dissatisfied with the judgment has appealed against same by his Notice of Appeal dated 10th day of December 2010 and filed on the 10th day of December, 2010 on three grounds. A background to this appeal is as follows:-

The appellant pleaded not guilty to the two count charge and the case proceeded to trial. The prosecution called a total of five witnesses while the appellant called two witnesses. Exhibits were tendered and admitted in evidence.

The prosecution's witnesses evidence is to the effect that on the 8th day of November, 1999 at about 8 pm, the appellant and one other person boarded PW1's motorcycle and on their way, the appellant and his co-passenger attacked PW1 and made away with PW1's motorcycle, money and clothes. That the incident was reported to the Police. That the following day, PW3 informed them that some motorcycle mirrors were brought to him in his shop for him to buy. That on getting to PW3's shop, PW1 saw those that attacked him and robbed him whereby the appellant was arrested and taken to the Police Station. That before reporting the matter to the Police, they visited the scene of the Crime and recovered some money and a knife.

PW4 as one of the investigating Police Officers in the matter testified that he visited the scene of the crime and recovered PW1's identification shirt, a red pullover and the registration mark of PW1's motorcycle.

The defence is to the effect that the Appellant knew nothing about the crime that he came to be in possession of the two side mirrors when his alleged partner in crime came to him to help him sell the two side mirrors and indeed, to act as an interpreter between him and the buyer, the seller being an Ibo boy who did not understand Yoruba language which the buyer speaks.

On the 26/1/12 date of hearing, learned counsel for the Appellant adopted their Brief of Argument filed on 16/3/2011 and settled by Adewunmi Ogunsanya Esq. In the Brief were crafted two issues for determination which are as follows:-

1. Whether having regard to the facts in this case, Exhibit "E" qualifies as a confessional statement to warrant the conviction and sentence of the Appellant as was affirmed by the Court of Appeal.

2. Whether having regard to the evidence in this case, the Court of Appeal was right in affirming the decision that the prosecution proved the offences

In the Respondent's Brief settled by Akin Osinbajo, the Honourable Attorney General of Ogun State and which Brief was filed on 12/5/2011, respondent adopted the issues as couched by the Appellant.

The two issues are best taken together.

Learned counsel for the Appellant submitted that the prosecution during trial tendered the Appellant's alleged extra-judicial statement to the Police through PW5 which was admitted in evidence as Exhibit E and that the conviction and sentence of the Appellant were based on that exhibit. He stated that on appeal to the Court below, counsel for the Appellant argued in the main that in view of the contradictions in Exhibit "E" and the fact that it failed to meet the six tests for the determination of the veracity of the truth of a confessional statement, Exhibit "E" lacks the requisite probative value to warrant the conviction and sentence of the Appellant. He said the Court of Appeal disagreed with that submission. Mr. Ogunsanya of counsel for the Appellant contended that the extra-judicial statement of the Appellant fell short of a confessional statement as envisaged by Section 27 (2) of the Evidence Act and as has been judicially interpreted in a long line of cases. He cited *Obiasa v State (1962) 2 SCNLR 402; Dawa v State (1980) 8 -11 SC (Part 236).*

For the Appellant, it was further canvassed that for a confessional statement to warrant the conviction of an accused, it must pass all the six tests viz:-

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 true as can be tested.

4. Was the prisoner one who has the opportunity of committing the crime?

5. Is his confession probable?

6. Is it consistent with other facts which have been ascertained and have been proved?

He stated on that anything short of the foregoing tests produces a valueless confessional statement. He referred to *Emmanuel Nwaebonyi v State (1994) 5 NWLR (Part 343) 138 at 150; R. v Skyes (1913) 8 CAR 233.*

Learned counsel for the Appellant went on to say that a cursory look at the salient parts of Exhibit "E" shows that in one breath, Exhibit "E" says that the Appellant did not know the contents of the bag with the Ibo boy. Thus, creating the impression that the Appellant did not know what the Ibo boy was up to. That in another breath Exhibit "E" creates the impression that the Appellant clearly was aware of the plan to snatch the motorcycle. Therefore that Exhibit "E" can never be said to be consistent and true. That the scenario has shown doubt as to what Appellant actually confessed to in Exhibit "E" and that doubt should be resolved in favour of the accused person. He referred to *Nasamu v State (1979) 6 SC 153.*

Mr. Ogunsanya contended that it is an established principle of law that the onus is always on the prosecution to prove the guilt of an accused person beyond reasonable doubt. The implication being that the prosecution must prove beyond reasonable doubt the essential ingredients of the offence charged. That in this instance which is a charge for conspiracy to commit armed robbery and armed robbery, the essential ingredients as laid down by judicial authorities are as follows:-

1. That there was robbery.

2. That the robbery was an armed robbery, and

3. That the accused was the robber or one of the robbers.

He cited *Alepan v State (19990) 7 NWLR (Part 160) 101; Alabi v State (1993) 7 NWLR (Part 307) 511; Bozin v State (1983) 3 NWLR (Part 8) 465; Ogba v State (1992) 2 NWLR (Part 222) 164; Ikemson v State (1997) 1 NWLR (Part 481) 355; Nwosu v State (1986) 4 NWLR (Part 35) 348.*

Learned counsel for the Appellant stated that from the evidence it is reasonable to conclude that the Appellant did not know how the so called Ibo boy came about the two side mirrors, especially since the account given by the Appellant was un-contradicted and unchallenged and ought to be believed. That Section 148 (a) of the Evidence which provides for the presumption that a person in possession of stolen goods soon after the theft is either the thief or has received the goods has received the goods knowing them to be stolen did not apply to this case. That in the final analysis the prosecution failed woefully to prove the charge against the Appellant beyond reasonable doubt. He cited *Ibrahim v State (1995) 3 NWLR (Part 381) 35 at 47.*

He stated on that the Respondent as prosecution tendered two statements made by the Appellant as Exhibit "B" and "E". Exhibit 'E' was admitted after a trial within trial was conducted to determine its voluntariness while Exhibit 'B' was admitted

without any objection by the defence. That from the totality of the observation of the Court below and the position arrived at there is no doubt that the Court below fully gave consideration to the six tests enunciated in *R v Skyes (1913) 8 Court of Appeal Reports 233; Obiasa v State (1962) 2 SCNLR 402.*

It was also submitted for the Respondent that there is no basis for any comparison of Exhibit B and E in view of the fact that the learned trial Judge expunged Exhibit B and placed no reliance on it before arriving at his Judgment which means that in the mind of the court Exhibit B never existed. That the content of Exhibit E was only within the knowledge of the Appellant because only he knew the role played by him and his partner in the incident. He said it is a misconception to hold that the Appellant admitted ownership of the curved knife during what is tagged interrogation, questions and answer session by the Appellant.

The learned Attorney General of Ogun State, Mr. Osinbajo contended that any contradiction that may have arisen from the evidence of the prosecution was not fatal. He cited *Archibong v The State (2006) 5 SCNJ 2022 at 2035.*

He stated that though it is the law that burden of proof on the prosecution is proof beyond reasonable doubt, that this proof is not beyond any shadow of doubt and once the proof drowns the presumption of innocence of the accused, the Court is entitled to convict him although there could exist shadows of doubt. That the confessional statement Exhibit E and the testimony of PW1 had satisfied the burden of proof required of prosecution to discharge in order to secure conviction. He referred to *Didie v The State (2007) 7 SCM 101 at 105.*

The summary of the submission above show that the standpoint of the Appellant is that the confessional statement cannot be a basis for his convictions on the two counts of the charge, there being no corroboration and that the statement was not fairly obtained. Also that there were contradictions in the evidence of the prosecution/respondent making it impossible for a conclusion that the offences of conspiracy and armed robbery as charged had been proved beyond reasonable doubt.

The position of the Respondent of course was different in that the view is that the Confessional Statement was regularly and voluntarily obtained in keeping with the earlier ruling of the trial court after a trial within trial on the voluntariness of that statement, Exhibit E. The respondent also took the point that there was enough corroborative evidence in support of the confessional statement thereby meeting the requirements that make it possible to convict upon that confession. Of note are the identification of the accused/appellant by the PW1, eye witness and the possession of the robbery items so soon thereafter specifically, day after the robbery. That the concurrent finding of the two Courts below be affirmed as representing the correct state of affairs.

I would hereunder quote the salient part of the judgment of the Court of Appeal for a better understanding and appreciation of the findings and conclusion reached therein which for the basis of the present appeal.

It is thus:-

> "Proof beyond reasonable doubt by the prosecution is thus a *sine qua non* to the conviction and sentence of an accused person in all criminal trials. With this criterion constantly in mind, I now propose to deal with the ingredients of the offence with which the Accused/Appellant is charged. The Appellant is charged with the offences of conspiracy to commit armed robbery and armed robbery. I shall firstly deal with the issue of armed robbery. There are three ingredients that go to make up the offence of armed robbery and they are as follows:-
>
> (a) That there was a robbery or series of robberies;
>
> (b) That the robberies were armed robberies;
>
> (c) That the accused persons were, or are some of the people who committed the armed robbery.
>
> See *Bozin v The State (1985) 2 NWLR (Part 8); Okosi v Attorney General of Bendel State (1989) 1 NWLR (Part 100) 642.*
>
> With respect to (a) above there is no doubt from the totality of the evidence of the prosecution witnesses more especially PW1, PW and PW3; the Confessional Statement of the Accused/Appellant, Exhibit "E" that there was a robbery on the 8th November 1999. It is instructive at this stage to say that under Section 15 (1) of the Robbery and Fire Arm (Special Provisions) Act Cap 398, robbery is stealing anything and, at or immediately before or after the time of stealing it using or threatening to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent resistance to its being stolen or retained.
>
> Ingredient (b) would also have been satisfied given the fact that the robbers were armed. On what constitutes "arms" Section 15 (1) of the Robbery and Fire Arm (Special Provisions) Act highlighted above defines "arms" as any offensive weapon which includes inter alia cutlass, axe and machete (in which category knife belongs) used by robbers. It is in

evidence that a knife (Exhibit "D") which the Accused/Appellant admitted to belong to him in his statement, Exhibit "E" was the offensive weapon used in snatching PW1's motorcycle on the day of the incident.

Ingredient (c) would also have been satisfied given the fact that the Accused/Appellant was arrested and he made a confessional statement, Exhibit "E" the facts therein having been corroborated by the evidence of all the prosecution witnesses especially PW1 who positively identified him as one of the two people who robbed him of his motorcycle. The evidence of PW2 and PW3 are also in harmony with that of PW1 and the confessional statement, Exhibit "E" which has earlier been seen satisfied each of the six tests for the verification of the confessional statements of accused persons.

Appellant's counsel has drawn the attention of this Court to contradictions in the prosecution's evidence as to the actual scene of the robbery operation. The paramount issue here is whether the contradictions are material. It is trite that an appellate court will only set aside the finding of a lower court on alleged contradictions in the evidence of the prosecution if such contradictions are material. See *Archibong v The State (2006) 5 SCNJ 2022 at 2035; (2006) 14 NWLR (Part 1000) 349*. I do not think any inconsistency as to the actual scene of the robbery operation is material enough to disturb the finding of the learned trial Judge who upon proper evaluation of the rest of the material evidence adduced has come to the finding that an armed robbery had been committed and that the Accused/Appellant was the robber or one of the robbers.

As to Conspiracy, there is ample un-contradicted evidence that the Accused/Appellant in company with other persons had approached PW3, a vulcanizer in an attempt to get him to buy the two missing mirrors which had been traced as belonging to the motorcycle ridden by PW1 which was snatched by the Accused/Appellant and his co-passenger who had both boarded PW1's commercial cycle on the day of the incident. PW3 gave graphic details of how some persons had approached him to buy the said mirrors. Unknown to the Accused/Appellant and his partners in crime, PW3's customer had informed him earlier that PW1's motorcycle which had been snatched the day before had been recovered without the two side mirrors of the motorcycle.

Later that day the Accused/Appellant had in company with others approached PW3 to buy the two mirrors. PW3 had thereupon contacted PW2 who owns the motorcycle. PW2 had gone with PW1 to PW3's shop and identified not just the two mirrors as belonging to the motorcycle but also the Accused/Appellant and another who were perpetrators of the armed robbery attack on PW1. Conspiracy has been held in a number of judicial authorities to mean the meeting of the minds of the conspirators. It consists of the intention of two or more persons to do an unlawful act or a lawful act by unlawful means and conviction is usually based on circumstantial evidence. See *Patrick Njovens v The State (1973) 5 SC 17; Upahar v The State (2003) 6 NWLR (Part 816) 230 at 239.* In the present case the evidence is far more direct than circumstantial as the evidence of PW1, PW2, PW3 and the confessional Statement of the Accused/Appellant point to the fact that the Accused/Appellant had conspired with others to snatch PW1's motorcycle on the day of the incident but luck was to run out on them. I find the charges of conspiracy to commit armed robbery and armed robbery proved and as such have no reason to disturb the finding of the learned trial Judge convicting the Appellant and sentencing him to death. The Appeal therefore lacks merit and it dismissed and judgment of the Lower Court is hereby affirmed."

Those findings and conclusion are akin to those of the learned trial judge at the Court of first instance thereby situating a matter of concurrent findings of the two courts. What now arises at this point and at this forum is whose point of view is acceptable. Differently stated would be, whether or not the concurrent findings and conclusions of the Courts below represent what happened and if the ingredients of the offences of conspiracy and armed robbery have been established as required by law, that is, beyond reasonable doubt.

It is now no longer a matter for debate on the issue that a trial Court can rely solely on the Confessional Statement of the accused to convict him. There is nothing else but the confessional statement however in the instant case apart from the Confessional Statement, Exhibit E admitted after trial within trial are parts of the robbed items recovered within 24 hours. As if that was not enough was the proper identification of the accused/appellant and his colleagues in possession of those items attempting to sell them and this identification made by the robbery victim. Again at the crime scene from the description given by the PW1, victim of incident were recovered knife belonging to the accused. It is therefore difficult to accept as material the minor inconsistency as to whether the incident took place along Erunwon Road as stated by the PW1, eye witness or as stated by PW2 that it took place close to Erunwon Road while the accused/appellant said the incident happened on getting to Erunwon round about. Clearly from the description of the scene of crime whether the evidence of the prosecution witnesses or the accused/appellant the indisputable fact is that the incident took place on the road leading to Erunwon Town. Plainly these minor differences of description are insignificant and it is right that the learned trial judge chose to ignore them and had his focus on the material evidence. I place reliance in *Akpa v State (2008) 8 SCM 68; Nwachukwu v State (2007) 12 SCM (Part 2) 447; R v Skyes (1913) 8 CR. APP 233; Obiasa v State (1962) 2 SCNLR 402; Archibong v The State (2006) 5 SCNJ 2022 at 2035; Didie v The State (2007) 7 SCM 101.*

The learned counsel for the Appellant had vehemently posited that the tests for determining the veracity of a confessional statement had not been met in this instance to warrant a conviction. That the tests exist are not in dispute and they are as follows:-

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 true as can be tested?

4. Was the prisoner one who has the opportunity of committing the crime?

5. Is his confession probable?

6. Is it consistent with other facts which had been ascertained and have been proved

These six tests above stated must be met in accordance with Section 27 (2) of Evidence Act otherwise the confessional statement would lack value or be worthless. In this case at hand from the totality of the evidence the Statement under review has met those requirements and the Court of trial was right in accepting its veracity and placing weight on it. I refer to *Obiasa v State (1962) 2 SCNLR 402; Dawa v State (1980) 8 - 11 SC (Part 236); Emmanuel Nwaebonyi v State (1994) 5 NWLR (Part 343) 138 at 150; Nasamu v State (1979) 6 SC 153.*

On whether or not the standard of proof being proof beyond reasonable doubt in establishing the offences of conspiracy and armed robbery had been effected, I would call to mind Section 148 (a) of the Evidence Act which provides as follows:-

> "The Court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for this possession."

Bearing that statutory provision in mind the account given by the Appellant on his being in possession of the two side mirrors from the stolen motorcycle 24 hours after the robbery did not flow with the reality of the total evidence available. That fact lent credence to the position of the respondent rather than see the exculpation from blame of the appellant and partners. Taken alongside the tested Confessional Statement, Exhibit E, the identification of the Appellant by the PW1 as one of his assailants within 24 hours, the scene which was substantially stated by prosecution and tallied with that of the Accused/Appellant and the report of the investigation of the police witnesses. Indeed there is just more than enough upon which it can safely be said the proof of the offences has been made beyond all reasonable doubt.

The attempt by the Appellant to impugn the evidence made available by the prosecution remained a non-starter. Therefore it is easy to go along with the one way traffic of the concurrent findings and conclusions of the two Courts below that indeed the accused committed the offences of conspiracy to commit armed robbery contrary to Section 5 (b) and 1 (2) (a) of the Robbery and Fire arms (Special Provisions) Act 1990 as Amended by the Tribunal (Certain Consequential Amendments, Etc) Act 1999.

This appeal is dismissed. I affirm the decision of the Court of Appeal in its affirmation of the conviction and sentence to death for the charges above stated as made by the trial High Court.

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, JSC just delivered.

I agree with his reasoning and conclusion that the appeal is devoid of merit and should be dismissed.

I accordingly dismiss the appeal.

Judgment Delivered By
Ibrahim Tanko Muhammad. JSC

Editor's Note

His Lordship concurred

Judgment Delivered by
Olufunlola Oyelola Adekeye. JSC

I had read in draft the judgment just delivered by my learned brothel M. Peter-Odili JSC. This is an appeal against the judgment of the Court of Appeal, Ibadan delivered on the 1st of November 2010. In the judgment the learned Justices of the Court of Appeal dismissed the appeal of the appellant and affirmed his conviction and sentence to death. The appellant was arraigned before the High Court of Ogun State, Ijebu-Ode Judicial Division on a two count charge of conspiracy to commit Armed Robbery and Armed Robbery contrary to Sections 1 (2) (a) and 5 (b) of the Robbery and Firearms [Special Provision] Act 1999. At the close of trial an address of counsel, the appellant was found guilty as charged and sentenced to death.

Being aggrieved by the judgment of the Court of Appeal, the appellant filed another appeal to this court.

At the hearing of this appeal in this court, the appellant relied on the two issues formulated for determination which are: -

a. Whether having regard to the facts of in this case, Exhibit E qualifies as a confessional statement to warrant the conviction and sentence of the appellant as was affirmed by the Court of Appeal.

b. Whether having regard to the evidence in this case, the Court Appeal was right in affirming the decision that the prosecution proves the offence of conspiracy to commit armed robbery and arm robbery beyond reasonable doubt.

The respondent adopted these two issues formulated by the appellant as issues arising for determination in this appeal.

The bone of contention of the appellant in this appeal was that the two extra-judicial statements credited to him and tendered at the trial before the High Court through PW5 as Exhibits B and E, particularly Exhibit E lacked the requisite probative value to warrant the conviction and sentence of the appellant. The confessional statement Exhibit E failed to pass the six tests of a confessional statement as envisaged in Section 27 (2) of the Evidence Act, as pronounced by the courts in cases like *R v Skyes (1913) 8 CR. Appeal Report pg.233; Obiaru v State (1962) 2 SCNLR page 402; Dawa v State (1980) 8-11 SC page 236. Emmanuel Nnakenyi v State (1994) 5 NWLR (Part 343) page 138 at 150.*

Exhibit B was expunged during judgment while Exhibit E was contradictory and the document cannot be said to be direct, positive and unequivocal to ground the conviction of the appellant. The prosecution failed to prove the charge of conspiracy to commit the offence of robbery and the essential ingredients of the offence of robbery, beyond reasonable doubt.

The court below failed to take into consideration and scrutinise certain material facts which if added together was bound to create doubt in the case of the prosecution. The failure has occasioned miscarriage of justice to the appellant.

In the case of *Nwosu v State (1988) 4 NWLR (Part 35) page 348 at page 359*, Aniagolu JSC emphasised that-

> "A judgment which sent a man to the gallows and awaits the hangman to execute him at any single minute must be punctuated by logical thinking based on cogent and admissible evidence in which the facts leading to his conviction are clearly found and legal inference carefully drawn. It can hardly be allowed to stand if founded on scraggy reasoning or performance."

The appellant pleaded that his appeal be allowed and that he be discharged and acquitted in the foregoing circumstance.

The respondent replied that a trial court can rely solely on the confessional statement of an accused to convict him going by cases such as *Akpa v State (2008) 8 SCM page 68 at page 70; Nwachukwu v State (2007) 12 SCM (Part 2) page 447 at page 454.*

Prosecution tendered two statements made by the accused appellant as Exhibits B and E. Exhibit B was admitted after a trial within trial was conducted to determine its voluntariness; while Exhibit E was admitted without any objection. Exhibit E was expunged during judgment. The court below from their conclusion fully gave consideration to the six tests enunciated in *R v Skyes (1913) 8 Criminal Appeal Report at page 233* and followed in *Obiara v State (1962) 2 SCNLR page 402.*

The lower court considered Exhibit E *vis-a-vis* other available evidence as testified by the prosecution to prove the offence of armed robbery. The trial court and later affirmed by the lower court, found relying on the evidence of PW1, PW2 and PW3 that there was a robbery. Exhibit D a knife which the appellant admitted belonged to him was the offensive weapon used. The evidence of PW2 and PW3 about the incident was in unison with the evidence of PW1 and the confessional statement of the accused/appellant Exhibit E.

The inconsistency about the actual scene of the robbery operation is not material enough to disturb the finding of the trial court. As it was, the conclusion from the sum total of the evidence showed the venue of crime as along Erunwon Road. The statement Exhibit E and the testimony of PW1 who was the victim of the armed robbery had satisfied the proof required to be discharged by the prosecution in order to secure conviction of the appellant. There is the concurrent finding of fact of the two lower courts now before this court. This court is urged to uphold the conviction of the appellant and dismiss the appeal for lacking in merit.

The fundamental aspect of burden of proof in criminal trials is the presumption of innocence in favour of an accused. It is entrenched in Section 36 (5) of the 1999 Constitution that "Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty"

The Evidence Act Section 138 (1) Laws of the Federation 2004 however stipulate that:

> "If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt"

Under our criminal law, it is not the duty of an accused to prove his innocence. The standard of proof in a criminal trial is proof beyond reasonable doubt. Which demands that it is not enough for the prosecution to suspect a person of having committed a criminal offence. There must be evidence which identified the person accused with the offence. The consequences of presumption of innocence in favour of an accused person are that the burden placed on the prosecution to prove the guilt of an accused person beyond reasonable doubt must be satisfied.

Any slightest doubt raised by an accused shall lead the court to resolve this doubt in favour of an accused. *Igabele v State (2006) 6 NWLR (Part 975) page 100; Agbo v State (2006) 6 NWLR (Part 977) page 545; Aighadion v State (2000) 4 SC (Part 1) page 15*

The appellant complained that the confessional statement Exhibit E relied on by the two lower courts to convict and sentence him did not pass the six tests for adopting a confession by a court. Exhibit E was full of material contradictions which had deprived it of any probative value. The lower courts were in error to have convicted him relying on Exhibit E.

It is trite on the issue of burden of proof that where an accused in his statement to the police admitted committing the crime, the prosecution is not relieved of the burden; any failure to discharge this burden renders the benefit of doubt in favour of the accused. *Igabele v State (2006) 6 NWLR (Part 975) page 100*

The offence for which the appellant was charged, convicted and sentence to death before the trial court was conspiracy to commit armed robbery.

The essential ingredients of the offence of armed robbery established by numerous decided authorities of this court are-

1. That there was a robbery.

2. That it was an armed robbery.

3. That the accused was the robber or one of the robbers.

All the above must be proved beyond reasonable doubt before a conviction is sustained. Proof beyond reasonable doubt entails the prosecution producing evidence to justify the charge. It is immaterial in whichever form stealing/theft of anything was executed by an accused person, once the act involved extortion by force or infusing fear of instant death or hurt, it would amount to robbery. See *Kerenku v Tiv Native Authority (1965) ALNR page 141; Bozin v State (1983) 3 NWLR (Part 8) page 465; Ogba v State (1992) 2 NWLR (Part 222) page164; Ikemson v State (1997) 1 NWLR (Part481) page 355; Olayinka v State (2007) 9 NWLR (Part 1040) page 561; Okosi v A-G Bendel State (1989) 1 NWLR (Part 100) page 642.*

The guilt of an accused person can be proved by

a. Confessional statement.

b. Evidence of eyewitness of a crime.

c. Circumstantial evidence.

The prosecution in this case relied on the confessional statement made by the appellant Exhibit E and the evidence of five witnesses. PW1 was the victim of the armed robbery and the appellant and another person referred to as Ibo boy were the two passengers who hired his motorcycle and he conveyed them as passengers when they turned round to attack him. They snatched

the motorcycle and made away with it. The knife tendered as Exhibit D was seen at the scene of the armed robbery. The appellant claimed ownership of the knife in his confessional statement Exhibit E. PW2 as the owner of the motorcycle got information about the robbery and was involved in the search for the motorcycle almost immediately. The motorcycle was recovered abandoned without the side mirrors. The side mirrors were found on the appellant and the other passenger of PW1 now at large when they both came to PW3's shed to get rid of them through sale to interested buyers. PW3 was a vulcaniser by profession. The passenger now at large absconded on coming face to face with PW1 and PW2 who were at the workshop to trace the motorcycle's side mirrors. PW1 readily identified both of them as the passengers who attacked him and made away with PW2's motorcycle.

By virtue of Section 27 (1) and (2) of the Evidence Act, a confession statement is a statement by an accused person charged with an offence stating that he committed the offence. The position of the law is 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 the 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. *Queen v Itule (1961) 2 SCNLR page 183; Solola v State (2005) 11 NWLR (Part 937) page 460; Nwaeze v State (1996) 2 NWLR (Part 428) page 1; Akinmoju v State (2000) 4SC (Part 1) page 64.*

On gleaning through the judgment of the lower court, I have no doubt in my mind that from the findings of fact, the court tested the truth of Exhibit E in the circumstance of the evidence of the witnesses before the court. The usual questions to ask are-

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 true as far as they can be tested?

4. Did the accused person have the opportunity of committing the offence charged?

5. Is the confession possible?

6. Is the confession consistent with other facts which have been ascertained and have been proved?

See *R v Skyes (1913) 8 CR App page 223; Kanu & Anor. v King (1952) 14 WACA 30; Mbonu v State (1988) 3 NWLR (Part 84) page 615; Stephen v State (1986) 5 NWLR (pt.46) page 978; Obiasu v State (1942) 2 SCNLR 402.*

A denial or retraction of a confessional statement is a matter to be taken into consideration to decide what weight could be attached to it. See *Dibie v State (2007) (Part 1038) page 30; Ukpong v Queen (No1) (1961) 1 SCNLR page 53.*

The appellant held that Exhibit E was contradictory, not direct, not positive, not unequivocal so as to base his conviction on it. It is trite law that it is not every discrepancy or contradiction or any form of inconsistency the will affect the substance of a criminal charge which has been proved with credible and unchallenged evidence. The contradiction or inconsistency which will upturn a decision must be of such magnitude that it would go to the root of the evidence of a witness and must be fatal to the case of the party relying on it. See *Abogede v State (1996) 5 NWLR (Part 448) pg.270; Ishola v State (1978) 9-10 SC page 81; Omisade v Queen (1964) 1 All NLR page 233; Ogoala v State (1991) 2 NWLR (Part 175) page 509.*

The prosecution mentioned that the knife Exhibit D was the offensive weapon used. The appellant admitted that the knife belonged to him in Exhibit E. Evidence of PW1 was in harmony with the contents of Exhibit E in all material particulars.

In general, the question of whether an article is made for the use causing injury to a person is a question of fact for the court to determine. Some items which are not proved to be made to cause injury but which can be rendered offensive and be used to cause injury to another are; a kitchen knife, machete, catapult, water pistol, a spanner or a heeled shoe, walking stick and an umbrella. See *Rapier (1979) 70 CR. App. Report 17; Southwell v Chadwick (1986) 85 CR. App. Report 235; Williamson (1977) 67 CR. App. Report page 35.*

Exhibit D, the knife carried by the appellant to the scene of robbery falls into the group of ordinary articles turned weapon of crime.

Finally, this appeal is against the concurrent findings of the two lower courts which this court has no exceptional circumstances to interfere with. *Omisade v State (1976) 11 SC 75; Egbe v State (1982) 9 SC 74.*

With fuller reasons given in the lead judgment of my learned brother M. Peter-Odili, JSC I also dismiss the appeal and affirm the conviction and sentence of the appellant.

Judgment Delivered By
Bode Rhodes-Vivour. JSC

I agree that this appeal should be dismissed for the reasons in the leading judgment prepared by my learned brother, Peter-Odili JSC. I venture to make a brief comment on the judgment. PW1 makes a living riding a motorcycle as a taxi (in local parlance he rides an Okada).

On the 8th of November 1999 he picked up two men. Both of them attacked him with a knife and dispossessed him of his motorcycle, money and cloths. The next day he and his master recovered the motorcycle and saw those who robbed him the day before trying to sell the side mirrors of his motorcycle. The appellant was one of them. The appellant was arrested after being easily identified by PW1 as one of those who robbed him the day before. One man with those trying to sell the side mirrors escaped.

The appellant was convicted on his confessional statement. The long settled position of the law is that a court may convict on accused person on his extra judicial confession provided it is voluntary and consistent with evidence in court. See *Queen v Obiasa (1962) 2 SCNLR page 402; Ejinima v State (1991) 6 NWLR (Part 200) page 627; Akpan v State (1992) 6 NWLR (Part 248) p. 439.*

It is desirable, though that outside the confession there is some evidence which would easily make it probable that the confession is true. See *Onuoha v State (1987) 4 NWLR (Part 65) page 331; Kopa v State (1971) 1All NLR page 150*

There are some facts in the respondent's evidence which amount to corroboration or vital evidence outside the confession which makes the confession probable. The victim of the armed robbery, PW1 easily indentified the appellant the day after the robbery at Ahmeds Shop. The appellant was caught in the act trying to sell the side mirror of the Motorcycle he stole the previous day. The confession to armed robbery was free and voluntary and it is consistent and probable,

This confessional statement was corroborated by testimony of prosecution witnesses which shows that the confession is true.

The learned trial judge was right to convict the appellant on his confessional statement and other evidence before him. The confessional statement was consistent with the facts of the case.

It is long settled that this court rarely interferes with findings of fact by the trial court that have been confirmed by the Court of Appeal. This is so because findings of facts are only established after cross-examination, detailed examination of exhibits and a comprehensive assessment of the testimony of witnesses by the trial judge. But concurrent findings would be set aside by this court if there have been exceptional circumstances such as the findings are found to be perverse, or unsupportable by evidence or there has been miscarriage of justice or violation of some principle of procedure. See *Cameroon Airline v Otutuizu (2011) 1-2 SC (Part 111) page 200; Ogbu v State (1992) 8 NWLR (Part 259) page 255; Igago v State (1999) 14 NWLR (Part 637) page l*

The contents of the appellant's confessional statement and compelling evidence outside it earlier alluded to establish the fact that the appellant was one of the persons who conspired to steal and did steal PW1's motorcycle while armed with a knife. These facts are not perverse. They are the truth. For this and more particularly the detailed reasoning in the leading judgment delivered by my learned brother Peter-Odili, JSC, I would dismiss this appeal.

Counsel

Adewunmi Ogunsanya *with him* Mahmud Adesina	……	For the Appellant
Akin Osinbajo *with him* Olumuyiwa Ogunsanwo *(ACSC) Ministry of Justice Ogun State.* A. Sadiq	……	For the Respondent