

Conviction Solely on Confessional Statement of a Defendant - Propriety of

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 31st Day of March, 2023

Before Their Lordships
Musa Dattijo Muhammad
Chima Centus Nweze
Uwani Musa Abba-Aji
Mohammed Lawal Garba
Helen Moronkeji Ogunwumiju

Justices, Supreme Court

SC.1577C/2019

Between

THE STATE ----- APPELLANT

And

MUHAMMADU IBRAHIM -----RESPONDENT

(Lead judgement delivered by Honourable Helen Moronkeji Ogunwumiju, JSC)

Facts

On the 24th May 2011, a robbery incident occurred at Illela Village, Safana Local Government Area of Katsina State. The robbers attacked and robbed one Mrs. Sa'adatu Abubakar. They also shot and injured others while at it. The angry villagers apprehended and killed three of the armed robbers while one of the robbers escaped. The next day, the Respondent, who was in Safana Town for the purpose of meeting with his business partner, was accosted by the villagers. They accused him of being one of the robbers, arrested him and took him to the Police Station. The Respondent was consequently charged before the trial court for the offences of criminal conspiracy and armed robbery punishable under Section 6(b) and 1(2) (b) of the Robbery and Firearms Act, Cap. R 11, Laws of the Federation of Nigeria, 2004.

At the trial, 8 witnesses testified for the Prosecution and fourteen exhibits were tendered by the Prosecution witnesses. The Respondent raised an objection to the voluntaries of the confessional statements sought to be tendered by the Appellant, leading to the conduct of trial-within-trial. The trial court however, ruled against the Respondent and admitted the statements (Exhibit 13A & B). The Respondent testified as the sole witness in his defence, but he did not tender exhibit. In its judgement, the trial court held that the ingredients of the offence of conspiracy and armed robbery against the Respondent were fully proved beyond reasonable doubt as required by law. The Respondent was thereby sentenced to death by hanging.

Dissatisfied with the judgement of the trial court, the Respondent appealed to the Court of Appeal, which court allowed the appeal and set aside the conviction of the Respondent. He was acquitted and discharged. The Appellant has thus, appealed the decision of the Court of Appeal to the Supreme Court on two grounds.

Issue for Determination

In its determination of the appeal, the Supreme Court adopted the sole issue raised by the Respondent, thus:

Whether the Court of Appeal was justified in setting aside the decision of the trial court which convicted the Respondent of the offences of conspiracy to commit robbery and armed robbery?

Arguments

Arguing the appeal, counsel for the Appellant argued that considering either of Exhibit 13A and 13B or Exhibit 14A and 14B which are the confessional statements of the Respondent, the lower court ought to have affirmed the conviction of the Respondent. Counsel argued that aside the Respondent identifying himself as one of the robbers, the Respondent also identified other accomplices including the deceased corpses at the Police Station. Counsel contended that identification of an accused person is not necessary where the accused person in his confessional statement identifies himself - **ASIMI v STATE (2016) 12 NWLR Pt. 1527 Pg. 414 at 432 Paras A-C**. He submitted further that the Respondent had identified himself as one of the armed robbers in all his extrajudicial statements which were admitted before the trial court as exhibits. PW7 gave credible evidence which was never

contradicted against the Respondent, corroborating the two confessional statements and that the evidence of PW7 cannot be regarded as hearsay evidence because the confession of the Respondent was made at the Police Station in the presence of PW7.

On the issue of conspiracy, Counsel relied on the case of **AKOGWU v STATE (2018) 3 NWLR Pt. 1605 Pg. 137 at 160 Paras A-B** to argue that there is no need for express agreement before a common intention can be shown in conspiracy. PW1 and PW2 did not know the Respondent and did not identify him among the robbers because it is on record that he remained outside the house and not among those that entered the house. Counsel submitted that the Respondent's act of staying outside with some of the robbers armed cannot exonerate him.

Responding to the submissions, counsel for the Respondent argued that from the testimonies of all the Appellant's witnesses given at the trial court, none of the witnesses seemed to have given an affirmative answer regarding the identification of the Respondent at the scene of the robbery incident. Counsel argued that the evidence of PW7 is hearsay evidence and cannot be described as compelling in establishing the guilt of the Respondent in this case as he was not even present at the time of the arrest of the Respondent; therefore, the evidence of PW7 is speculative - **ORISA v STATE (2018) LPELR - 43896 (SC)**. Counsel submitted that the Court below, having carefully considered the evidence on record, was right to hold that there was no reason for the trial court to have rejected the cogent evidence of involuntariness of the confessional statement made by the Respondent during the trial-within-trial. Counsel argued that there was no independent evidence establishing the truth of the facts contained in Exhibit 14 and no independent evidence to corroborate the offences of conspiracy and armed robbery. He relied on **STATE v USMAN ISAH (2012) 7SC Pt. III Pg. 93**, in respect of his submissions on this point. Counsel concluded that though the court can convict a Defendant on his retracted confessional statement, there should be some other independent evidence which corroborates the facts in the confessional statement.

Court's Judgement and Rationale

Deciding the appeal, the apex court stated that the salient question in this appeal is whether the trial court was right in convicting the Respondent when there was no direct eye witness evidence implicating or linking the Respondent to the offence before, during or after the robbery incident.

The Supreme Court reiterated the trite principle of law that to prove the offence of conspiracy to commit armed robbery; the prosecution must establish the following ingredients beyond reasonable doubt – (a) that there was an agreement between the Defendant and others to commit armed robbery; (b) that in furtherance of that agreement, the Defendant took part in the commission of the armed robbery or series of robberies; (c) that the robbery or each of the robberies was an armed robbery. Furthermore, the prosecution must prove beyond reasonable doubt that: (a) that there was a robbery; (b) that the robbers were armed with offensive weapons as at the time of the robbery; (c) that the Defendant participated in the robbery. In this case, the record of proceedings revealed that all of the eight witnesses of the prosecution i.e., PW1 – PW8 at the trial court did not identify the Respondent at the scene of the robbery incident. PW 6 (Sergeant Rufai Sule), the Investigating Police Officer testified on record that he was not a witness to any incident where the Respondent identified the corpses of the three robbery suspects nor did he know whether the Respondent was found with weapons when he was arrested.

Their Lordships agreed that indeed a robbery incident occurred at Illela village, Safana Local Government Area of Katsina State on 24/05/2011. However what is in doubt is whether the Respondent was one of the armed robbers. Although Exhibits 13A & 13B and Exhibits 14A & 14B were admitted as evidence by the trial court after a trial-within-trial was conducted, *before the court can convict solely on a confessional statement of a Defendant, the court must ensure that all legal requirements were satisfied in obtaining the statement - TOPE v. STATE (2019) LPELR-47837(SC) (Pp. 12 paras. A)*. On this point, the Supreme Court affirmed the findings of the lower court that the trial court did not give adequate reason for the rejection of the Appellant's complaints of the involuntariness of the statement. Though the trial court cannot be faulted for admitting the confessional statement, however, the weight which it attached to the confessional statement of the Respondent is against the principles of law. The Supreme Court relied on its earlier

decision in the case of **LASISI v. STATE (2013) LPELR-20183(SC) Pp. 51-52 paras. F**, where it held that *A Judge is expected to pose the following questions for himself when faced with the weight to be attached to confessional statement in that circumstance. (i) Is there anything outside the confession to show that it is true? (ii) Is it corroborated? (iii) Are the relevant statements made in it of facts, true as far as they can be tested? (iv) Was the prisoner one who had the opportunity of committing the murder?*

In this instance, the prosecution failed to prove any agreement between the Appellant and the robbers to commit armed robbery. It also failed to prove an essential constitutive ingredient of the offence of armed robbery - that the Appellant was one of the armed robbers. The identification of the Appellant as one of the robbers was based largely on hearsay evidence, and such is inadmissible. The apex court agreed with the reasoning of the court below that *in a case like the present, it is always better to err on the side of caution and exercise restraint in sending a man to the gallows, unless it is patent that he, beyond all reasonable doubt, committed the crime* - **BOZIN v STATE (1985) 7 SC Pg. 276 at 280**.

The apex court held further that *it is against settled principles of law to go ahead and convict a Defendant based on his confessional statement alone where there is no other tangible evidence linking him to the commission of the offence. Corroborative evidence is of great necessity and in this case*. The Respondent is a victim of the long arm of the law by reason of Police Officers who fail to carry out diligent investigation especially in matters where the life of a person is hanging by a thread. It is a trite and sacred principle of law that the onus is on the prosecution to prove the guilt of an accused person beyond reasonable doubt. the Appellant failed to discharge this burden and therefore, the judgement of the trial court was in error.

Having resolved the sole issue in the appeal against the Appellant, their Lordships unanimously dismissed the appeal and affirmed the judgement of the Court of Appeal. The Respondent was acquitted and discharged.

Appeal Dismissed.

Representation

Abdur-Rahman Umar Esq. (DPP Katsina State) for the Appellant.
Habeed A. Oredola, Esq. with Temitope Saliu Esq. and Jennifer Adole for the Respondent.

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