

On When Identification Parade Will Be Necessary Before Conviction

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 8th Day of March, 2024

Before Their Lordships

Kudirat Motonmori Olatokunbo Kekere-Ekun
Mohammed Lawal Garba
Helen Moronkeji Ogunwumiju
Adamu Jauro
Tijjani Abubakar
Justices, Supreme Court

SC./CR/918/2016

Between

THE STATE

APPELLANT

AND

USMAN SHEHU

RESPONDENT

(Lead judgement delivered by Honourable Tijjani Abubakar, JSC)

Facts

In December 2007, the Respondent (as 2nd accused person) and a gang of armed robbers, were alleged to have robbed a commercial bus along Jebba/Bode Sa'adu Road in Kwara State. A certain Bode Samson was robbed along with other passengers in the bus of his mobile phone. About a month after the incident, a certain Bunu Jaja (1st accused person) took the stolen handset to a certain Oloye Ajayi (PW 5) to assist him with purchase of sim card and recharge the handset.

PW 5, upon checking the phone, discovered that there was a sim in it. He removed the sim and dialed some numbers on it. One of the contacts confirmed that he knows the owner of the sim and that he was robbed of his phone earlier. Upon hearing this, PW 5 sent someone to inform the Police, who came and arrested the 1st accused person in PW 5's shop. The 1st accused person informed the Police that he bought the phone from one Hassan. The police sent for the owner of the phone (PW 3) and the driver of the bus (PW 4); while they led the 1st accused person to arrest the said Hassan. Immediately Hassan saw the Police, he opened fire and attempted to run away. He was shot together with another accused person and they both died instantly. The Respondent was arrested and taken to the police station. Following his arrest, the Respondent denied knowledge of the offence with which he was arrested and pleaded *alibi*.

The Respondent was charged alongside the 1st accused person before the High Court of Justice, Kwara State, for offences of conspiracy to commit armed robbery and armed robbery contrary to Section 1(2) of the Armed Robbery and Firearms (Special Provisions) Act, Cap 398, Laws of the Federation of Nigeria, 1990. Upon arraignment, the Respondent pleaded not guilty to both counts of the charge and trial commenced thereafter. The Appellant called six witnesses and tendered exhibit A to F, while the Respondent testified on his own behalf and called no other witness. In his statement to the police and his testimony at the trial, he said he lived in Lagos at a place called Alabarago. He claimed to be a motorcyclist in Lagos and that he only came to Kosa Village where he was arrested on a visit to his father some five days before his arrest. He claimed that he was not arrested in the company of the other accused but at a restaurant.

The trial court delivered judgement and found the Respondent guilty of armed robbery. The Respondent was therefore convicted and sentenced to death by hanging. Displeased with the decision of the trial court, the Respondent appealed to the Court of Appeal. The lower court, in its judgement, allowed the appeal and set aside the conviction and sentence. The Appellant, miffed by the decision of the Court of Appeal, appealed to the Supreme Court.

Issue for Determination

The apex court adopted a sole issue for determination of the appeal, to wit:

Whether the lower court was wrong in setting aside the conviction and sentence of the Respondent for the offence of conspiracy and armed robbery contrary to Section 97 of the Penal Code and Section 1(2) of the Armed Robbery and Fire Arms (special provision) Act Cap 398 Laws of the Federation of Nigeria 1990 for failure of the prosecution to establish the identity of the Respondent as one of those who participated in the robbery incident in question.

Arguments

Counsel for the Appellant cited the case of **IFEDAYO v STATE (2018) 4 SC (PT. VI) 103 AT 120** to emphasize that there is need for identification parade where there is controversy as to the identity of the accused person. Counsel urged the court to examine the evidence of PW3, PW4, PW5 and PW1 which is in relation to the circumstances leading to the arrest of the Respondent. He submitted that the testimonies of these witnesses were not controverted nor were they shaken under cross-examination. He added that PW1 under cross examination testified that the Respondent was arrested after a gun battle along with one Hassan who was accosted by the police after the 1st accused person was arrested with a stolen handset. Counsel argued that the circumstances of the arrest of the Respondent and the way his *alibi* was discredited show that there is sufficient evidence to sustain the conviction of the Respondent.

Arguing further, counsel submitted that the kernel of the judgement of the lower court in setting aside the conviction of the Respondent was the failure of the trial court to conduct an identification parade, and argued that the decision of the lower court was in error because PW3 in his evidence which was corroborated by the evidence of PW4 disclosed that the Respondent was one of the persons who stopped their vehicles on their way to Ilorin while armed with guns. Counsel argued that there must be doubt as to who was seen in connection with the offence to require an identification parade and taking into consideration the totality of the circumstances of the case, it was more probable that the witnesses had ample opportunity to see and observe the features of the Respondent sufficiently to be able to identify him.

In response, counsel for the Respondent argued that there was no serious contention that the robbery took place as shown from the records of appeal, the dispute is whether the Appellant is one of those who robbed or took part in the robbery since he was not arrested at the venue or scene of the robbery. Counsel submitted that the identity of the Respondent is one of the basic requirements of

an offence of armed robbery which the prosecution is obliged to prove before the conviction of the Respondent can be secured and the burden can only be discharged if the prosecution proves beyond reasonable doubt that the Respondent took part in the commission of the alleged offence. He contended that the evidence of PW3 and PW4 were insufficient in law to fix the Respondent as one of those who participated in the robbery because they claimed to have seen the Respondent at the scene of crime, but they did not testify that they know the Respondent before the robbery incident. Counsel insisted that none of the witnesses gave evidence of how or what features of the Respondent they remember or identified. According to counsel, the only conclusion that can be drawn is that PW3 and PW4 were lying down facing the ground during the duration of the attack and therefore, they did not have the opportunity to observe the Respondent.

Counsel argued further that the Respondent timeously raised *alibi*; that he was in Lagos at the material time. He therefore, urged the court to resolve the sole issue in favour of the Respondent and dismiss the appeal.

Court's Judgement and Rationale

Resolving the sole issue, the Supreme Court agreed with the lower court, that from the record of appeal, none of the witnesses had the opportunity to identify the Respondent at the time the incident occurred.

Their Lordships noted that in the instant appeal, there was no certainty as to whether the Respondent was among those who took part in robbing PW3 and PW4 on that day. And it was not legally safe to say that the prosecution had proved its case against the Respondent beyond reasonable doubt, especially with the Appellant's *doubtful and disjointed evidence dotted with visible and apparent inconsistencies*. It is the law that *where the court entertains any doubt, it must be resolved in the accused person's favour* – **FRN v MOHAMMED ABUBAKAR (2019) LPELR-46533(SC) at 22**. The Supreme Court held that *while an identification parade is not sine qua non in every case, the facts and circumstances of each case will determine whether it ought to be conducted or not. An identification parade is necessary where: (a) The victim did not know the accused previously and his first acquaintance with him was during the commission of the offence; (b) The victim or witness was confronted by the offender for a short time; (c) The victim due to time*

and circumstances might not have had the opportunity of observing the features of the accused – UDOH v THE STATE (2023) LPELR-59741(SC) at 15-16.

The Supreme Court held that there are certain features in this case which made the conduct of an identification parade necessary. The Respondent was not arrested at the scene of the crime; he was arrested more than a month after the commission of the offence. Neither PW 3 nor PW 4 testified that they knew the robbers before that date nor did they describe any feature which stood out to them at the earliest opportunity. PW 3 and PW 4 were invited to the Police station where the Respondent was arrested and brought along with two dead bodies. They already knew why they were invited to the Police station and the arrival of the accused person with the dead bodies was suggestive that they were the culprits – **ADISA v THE STATE (1991) 1 NWLR (PT. 168) 490 AT 507**. Thus, it is unsafe to convict on the evidence of the prosecution without an identification parade.

The court also highlighted that the Respondent raised the defence of *alibi*, claiming that he was not at the scene of the robbery as at the time the robbery took place. The Supreme Court reiterated its position in the case of **STATE V. ABDULLAHI ALIYU (2022) LPELR-59477(SC)** wherein it held that “*The general position of the law is that where an alibi is not investigated, it goes to the root of the case of the prosecution because doubt is thrown on the identity of the perpetrator of the crime who may not be the Defendant in the dock.*” Their Lordships held that failure of the Police to investigate the *alibi* raised by the Respondent at the earliest opportunity, was fatal to their case as the Respondent could not have participated in the robbery that took place along Jebba Road if he was in Lagos at the material time.

Ultimately, the court proceeded to resolve the sole issue for determination in favour of the Respondent and against the Appellant.

Appeal dismissed.

Femi Atteh, SAN with Mohammed Ahmed, Esq. for the Appellant.

Mas'ud M. Alabelewe, Esq. with Dauda Yau Aliyu, Esq. for the Respondent.

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