

***Use of Arms or Offensive Weapon – Whether Necessary to Ground Conviction
for Armed Robbery***

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 2nd Day of December, 2022

Before Their Lordships
Musa Dattijo Muhammad
Chima Centus Nweze
Uwani Musa Abba Aji
Mohammed Lawal Garba
Helen Moronkeji Ogunwumiju
Justices, Supreme Court

SC/845c/2019

Between

ABIOLA OYEYEMI

APPELLANT

And

THE STATE

RESPONDENT

(Lead judgement delivered by Honourable Chima Centus Nweze, JSC)

Facts

On the 8th day of April, 2015, at about 8:00pm, a three-man gang, armed with guns came on a motor cycle and attacked one Dosunmu Stephen, a DSS Officer on his way home from a government rally at Abusoro Area, Ijoka Road, Akure and robbed him of his mobile phones.

PW1 was attacked by three persons who alighted from a motorcycle and took positions, one in front of PW1's car, one at the back while the third person who

was masked went to the side windscreen and ordered PW1 to turn off the ignition of the car, handover the car key and phone to him. PW1 told the masked robber who had a gun pointed at him that there was money in the trunk of his car and he would give them the money if only his life could be spared. The masked robber pushed PW1 to the trunk of the car to get the money. On getting there, PW1 while pretending to bring out the money, brought out his service rifle and shot the masked robber, while the robber in front of the car ran away. PW1 shot the Appellant at the back while trying to run away and he fell from the motorcycle with the gun he was holding. With the aid of some security agents, the masked robber was taken to the mortuary while the Appellant was taken to the hospital.

At the trial, the Prosecution called two witnesses and tendered Exhibits in proof of its case. The Appellant as the Defendant, testified on his own behalf and called one other witness who was more of a character witness than a witness of the crime. The trial court, in its judgement, found the Appellant guilty of the offence of armed robbery. He was convicted and sentenced to death.

Dissatisfied with the verdict, the Appellant appealed to the Court of Appeal, which court affirmed the conviction and sentence. Further aggrieved, the Appellant appealed to the Supreme Court.

Issue for Determination

The sole issue considered by the apex court in its determination of the appeal was:

Whether the Court of Appeal was right in upholding the judgement of the trial court that the Respondent proved its case of armed robbery against the Appellant beyond reasonable doubt.

Arguments

On the sole issue, counsel for the Appellant contended that the conviction and sentence of the Appellant, affirmed by the Court of Appeal, is not premised on the evidence contained in the printed record of appeal. He drew the attention of the appellate court to the findings of the lower court in the record of appeal, in

support of his submission. Counsel posited that the lower court affirmed the judgement of the trial court based on the fact that the Appellant fired a gun shot at PW1 and the presence of the Appellant with the other two guys at the scene of crime. He argued further that from the printed record, there is no iota of evidence which supports the findings that the Appellant fired a gunshot at the victim. He added that PW1's testimony, did not, at any point, give credence to the fact that the Appellant shot a gun fire either at the victim or any person, though he held a gun. He reasoned that the lower court lacked the power to read into the printed record what is not contained therein. In his submission, the findings of the lower court in this regard, are perverse. He therefore invited the court to interfere with the said findings, relying on **OLUFEAGBA & ORS v ABDURAHEEM & ORS (2009) LPELR - 2613 (SC) 1, 23; F-B**. Counsel contended that the third ingredient of the offence of armed robbery – that the Appellant was one of the robbers – which the trial court held to have been established, by the testimonies of PW1, is against the evidence on record before the court. He argued that by Exhibit D, which was tendered by PW2, the Appellant was not the owner of the motorcycle which he rode on the day in question. He was merely asked to convey the deceased to the scene, and he was not holding a gun as alleged by PW1. Counsel submitted that the mere presence of the Appellant at the scene of the crime is not proof that he committed the offence of armed robbery - **YAKUBU MOHAMMED AND ANOR v THE STATE (1980) ALL NLR 138**.

Responding, counsel argued on behalf of the Respondent that at the lower court, the Appellant had conceded that the Prosecution had established two of the three ingredients necessary to convict the Appellant. He added that the lower court had highlighted this fact in the Record of Appeal. He submitted further that the Appellant stated in his Examination-in-Chief that he conveyed Dare Oluwateru, (Soldier), to the scene of the crime as a commercial motorcyclist. He, the Appellant, claimed that Bishop, (the deceased person), did not tell him he was going to rob. Under cross-examination, the Appellant also re-affirmed being at the scene of the crime. He further pointed out that the Appellant's testimony corroborated PW1 and PW2's testimonies before the lower court. Thus, the presence of the Appellant at the scene, where PW1 was robbed on April 8, 2015, is not in doubt; further, the Appellant was armed. The Appellant, at the trial court did not contradict the evidence led by the Respondent as to his presence at the scene of the crime where he sustained a gunshot injury, as well as evidence that two locally made guns were recovered at the crime scene. The Appellant, in the learned counsel's submission, has not shown that the above findings of the lower court are perverse. Counsel submitted further that the Prosecution, at the

trial court, had established and proved the ingredients of armed robbery to warrant the conviction of the Appellant; the Respondent need not further prove the intention of the Appellant alone at the scene of the crime and that he held a gun. Counsel posited further that it was apparent from the face of Exhibit D, that the Appellant knew the deceased person very well and they worked in concert. Hence, the Appellant cannot turn around and say that he did not have any intention of committing the crime while present at the scene of crime. Relying on the decision in **UMAR v THE STATE (2014) LPELR 23190 (SC)**, he urged the court to uphold the concurrent decision of the lower courts.

Court's Judgement and Rationale

Deciding the sole issue, the Supreme Court reiterated the attitude of the Supreme Court not to interfere with concurrent findings of facts by the trial court and Court of Appeal, unless such findings are shown to be perverse, erroneous or have occasioned a miscarriage of justice – **SHOLA v STATE (2020) 8 NWLR (Pt. 1727) 530**. Elucidating on the meaning of the word “perverse”, the Supreme Court referred to various English, legal texts and decided authorities to explain when lawyers can adequately have recourse to the time-worn phrase – “the decision of the lower court is perverse”.

Scrutinising the evidence on record before it, the Supreme Court affirmed the position that the testimony and credibility of PW1 remained unshaken throughout cross-examination as he was able to clearly identify the Appellant as one of the robbers at the scene of crime, who was armed with a gun. The testimony of Appellant as to his presence at the scene of crime (though he alleged conveying another party there as a commercial motorcyclist), corroborated the testimonies of the prosecution witnesses.

The Supreme Court held that the argument put forward on behalf of the Appellant that there is no evidence before the court that the Appellant shot a gun fire at PW1, stemmed from ignorance, as the issue of who shot amongst the robbers is not material. *The essential ingredient of the offence of armed robbery by the provisions of Section 1(2) of the Robbery and Firearms (Special Provisions) Act, inter alia, is simply that, at the time of the robbery, the accused was carrying arms or in company of any person carrying such arms or any*

offensive weapons as defined by law. Whether there was shooting or not or whether the Appellant carried the gun, triggered the shot or even if it was not shot at all, is immaterial. The material fact is the holding of such arms in such a way as to cause violence or instil fear of injury on the victim, against him or his property and for that reason he (the victim) surrendered such property for fearing that he will be injured. Therefore, whether the gun was real or not, loaded with bullets or not loaded, fired a shot with or not shot at all, the offence was armed robbery - BOBORINDE v STATE (2013) LPELR-21896 (SC).

In this case, the testimonies show, unequivocally, that the Appellant was at the scene of the crime when the robbery took place and had a gun on him. The objective behind the use or display of a gun by the robbers was to intimidate or scare the victim, PW1, to surrender his properties by force. That objective was accomplished when PW1, for fear of being killed, began begging the masked robber and after having surrendered the car key and phones to them, informed the masked robber of the location of the money at the trunk of the car. The essential ingredients required to be established to prove the offence of armed robbery beyond reasonable doubt, as outlined in several cases, were found established by the Respondent beyond reasonable doubt – **AFOLALU v STATE (2016) 16 NWLR (Pt. 1220) 584**. Given the foregoing, the Supreme Court held that the Appellant was unable to convince the Supreme Court to set aside the concurrent findings of the lower courts.

Appeal dismissed; Conviction and Sentence Affirmed.

Representation

Musiban A. Adetunbi, SAN with M.O. Folorunsho, Esq for the Appellant.

Shehu J. Abdullahi, Esq. for the Respondent.

Reported by Optimum Publishers Limited

Publishers of the Nigerian Monthly Law Reports (NMLR)

(An affiliate of Babalakin & Co.)