

Objection to a Confessional Statement – Effect of Failure to Raise Timeously

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 21st Day of February, 2025

Before Their Lordships
Adamu Jauro
Moore Aseimo Abraham Adumein
Habees Adewale O. Abiru
Jamilu Yammama Tukur
Abubakar Sadiq Umar
Justices, Supreme Court

SC. 1416/2019

BETWEEN

EMMANUEL AMEH

APPELLANT

AND

THE PEOPLE OF LAGOS STATE

RESPONDENT

(Lead judgement delivered by Honourable Abubakar Sadiq Umar, JSC)

Facts

The case against the Appellant was that on 27th June 2007, the Appellant and his confederates, under the pretense of rendering taxi-cab services, pounced on PW1 (Esther Osimen), beat her, and dispossessed her of her rings and cash before dumping her on the expressway. They fled with the taxi but soon had an accident with the car. The police recovered the cab and took the Appellant to the hospital. Unknown to the assailants, PW1's phone had dropped into the cab. When PW1 later called the line, the police answered, enabling her to recount her ordeal. She identified the Appellant's co-accused as one of the attackers, who in turn led police to arrest the Appellant.

The Appellant, alongside another accused person, were charged before the Ikeja Judicial Division of the High Court of Lagos State on a two-count charge of conspiracy to commit armed robbery and armed robbery. In proof of its case, the Respondent called three witnesses, including the victim - PW1, and tendered exhibits, including the Appellant's confessional statements admitted as Exhibits E-E1. The Appellant testified for himself but called no witness. On 14th March 2013, the trial court convicted the Appellant of the lesser offences of conspiracy to commit robbery and robbery simpliciter, having found that the use of arms was not proved. The Appellant was thereby sentenced to twenty-one (21) years imprisonment.

The Appellant's appeal to the Court of Appeal was dismissed on 20th May 2016, with the lower Court affirming the trial court's findings. Dissatisfied, the Appellant further appealed to the Supreme Court.

Issue for Determination

The Appellant raised three issues for determination of the appeal, while the Respondent formulated a sole issue. The apex court adopted the sole issue of the Respondent as encompassing for determination of the appeal, thus:

Whether the Court of Appeal was right to have affirmed the decision of the trial court that the Prosecution proved its case against the Appellant beyond reasonable doubt?

Arguments

Counsel for the Appellant argued that there was doubt as to the ability of PW1 to recognize the Appellant and contended that given that the alleged offence occurred between 10:00-11:00 p.m., at a poorly lit bus stop, and within the dimly lit interior of the vehicle, those circumstances must have impaired PW1's ability to accurately identify her assailants. Counsel contended further that the identification process was compromised, and an identification parade ought to have taken place. He argued that the circumstances described raised reasonable doubt regarding the Appellant's involvement in the alleged crimes. Counsel submitted further that inconsistencies existed between the testimonies of PW1 and PW2. Whereas PW1 claimed she called her lost phone and a police officer answered, PW2 stated the call was made by PW1's father. Counsel submitted that this contradiction undermined the credibility of the prosecution's witnesses and urged the Court to resolve the doubt in favour of the Appellant. Finally, counsel argued that the Appellant had denied making the confessional statements admitted in evidence (Exhibit

E-E1) and as such, the lower courts ought to have sought corroborative independent evidence as the trial court was in error relying on the unreliable account of PW1 as corroborative evidence. He urged the Supreme Court to resolve the issue in favor of the Appellant.

In response, counsel for the Respondent raised a 'preliminary point' with complaints bordering on incompetence of ground 3 of the Appellant's Notice of Appeal. On the substance, the Respondent's counsel submitted that the trial judge properly and thoroughly evaluated the evidence at trial before coming to the right decision and this was affirmed by the Court of Appeal. Regarding the Appellant's argument for conduct of an identification parade, counsel for the Respondent referred to the evidence on record wherein the Respondent stated that she recognized the Appellant because she looked at the Appellant's face out of her habit of looking at people's face when taking public transport and was further aided by the street light when the Appellant and his confederates dropped her along the street. In conclusion, counsel urged the court to adopt its practice of not interfering with concurrent findings of lower courts and accordingly dismiss the appeal.

Court's Judgement and Rationale

First, the Supreme Court addressed the preliminary point raised by the Respondent, holding that *where a Respondent to an appeal is desirous of challenging the competence of an appeal, or of any ground or issue thereof, the proper avenue to do so is to file either a preliminary objection directed against the appeal to terminate the appeal in limine, or a Notice of Motion directed against a ground or an issue alleged to be afflicted with the incompetence. There is no room for a Respondent to make a Preliminary Point or a Preliminary Observation short of a duly ventilated Preliminary Objection in the appeal.* Having failed to comply with the known or recognized mode of challenging competence of an appeal or any part thereof, the Supreme Court accordingly discountenanced the preliminary point for its failure to comply with the appellate practice and procedure.

On the substance, the apex court examined the offence and ingredients of robbery which are that (i) there was indeed a robbery or series of robbery; (ii) the robbery was carried out with the threat or actual use of violence on the victim; (iii) that items of the victim which were capable in law of being stolen were stolen and (iv) the accused person was the robber or one of the robbers. Their Lordships noted that only the fourth element was in dispute i.e. the identification of the Appellant as one of the robbers. In resolving this issue, the court held that the circumstances of the arrest of the Appellant, coupled with

the eyewitness account of PW1 dispelled any conclusion that the Appellant was not one of the robbers who attacked PW1. As such, the contention that the police officers ought to have conducted an identification parade because the Appellant was not arrested at the scene of the crime was misguided. Similarly, for the contention regarding the contradiction between the testimony of PW1 and PW2, the Supreme Court found that neither of the testimonies invalidated the fact that PW1's phone was found inside the car that the Appellant was arrested - just a short while after PW1 was robbed. As such, Their Lordships held that the alleged contradiction did not materially alter the prosecution's case. For a contradiction to affect the case of the prosecution, it must be one that touches on one of the elements of the offence charged.

Regarding the Appellant's argument that he had denied making the confessional statement admitted in evidence, the Supreme Court held that the Appellant neither raised the issue of involuntariness nor denial of the statement when it was tendered by the Respondent. *The law has now crystallised that the appropriate avenue to raise any complaint about an extra-judicial statement is at the point of tendering it, whether the complaint is about involuntariness or outright denial of the statement.* On this note, the Supreme Court held that *"although the denial of a statement when raised at the point of tendering will not be taken as an objection to the admission of the statement and will not warrant a trial-within-trial or any form of ruling at all, but will be on record and a foundation for the accused person to give further evidence about his connection or lack of same with the statement in his examination in chief during his defence. Otherwise, the accused person will be deemed to have accepted making the statement voluntarily."* - **OLUGBEMI v STATE (2023) LPELR-60331(SC)**. The Appellant in this case failed to raise the objection timeously. Their Lordships held further that the Appellant's confessional statement alone was unequivocal and cogent enough to ground the conviction of the Appellant.

Consequently, the court resolved the issue for determination against the Appellant and in favour of the Respondent.

Appeal dismissed.

Representation

Dr. Emeka Akabogu for the Appellant.

Ibrahim Lawal Esq. for the Respondent.

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