**MICHAEL ORI**

**V.**

**THE STATE**

IN THE COURT OF APPEAL OF NIGERIA

ON TUESDAY, THE 10TH DAY OF MARCH, 2020

CA/OW/188C/2015

**LEX (2020) – CA/OW/188C/2015**

**OTHER CITATIONS**

3PLR/2020/30 (CA)

(2020) LPELR-49554 (CA)

**BEFORE THEIR LORDSHIPS**

AYOBODE OLUJIMI LOKULO-SODIPE, JCA

ITA GEORGE MBABA, JCA

IBRAHIM ALI ANDENYANGTSO, JCA

**BETWEEN**

MICHAEL ORI - Appellant(s)

AND

THE STATE - Respondent(s)

**ORIGINATING COURT**

HIGH COURT OF JUSTICE, OWERRI JUDICIAL DIVISION [Hon. Justice A.O.H. Ukachukwu Presiding]

**REPRESENTATION**

P.C. Onuoha - For Appellant

AND

Respondent not represented by Counsel. - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

CRIMINAL LAW AND PROCEDURE - OFFENCE OF ARMED ROBBERY:- Elements of – Duty of prosecution to prove each of these elements beyond reasonable doubt to sustain a conviction for the offence of armed robbery

CRIMINAL LAW AND PROCEDURE - DEFENCE/PLEA OF ALIBI: Nature and essence of - Instance where the defence of alibi will not avail an accused person – When an accused person would be required to give evidence of his alibi

CRIMINAL LAW AND PROCEDURE - DEFENCE/PLEA OF ALIBI: Failure of the Police to investigate an alibi - Whether fatal to the case of the prosecution in all circumstances

CRIMINAL LAW AND PROCEDURE - GUILT OF AN ACCUSED PERSON:- Allegation of the commission of a criminal offence – How may be proved beyond reasonable doubt by the prosecution against an accused person – Principle that the prosecution may prove the guilt of an accused person by the confessional statement of that accused person, by circumstantial evidence or by the evidence of eye witnesses of the crime – Whether lack of an eye-witness is fatal

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE - PROOF BEYOND REASONABLE DOUBT: Meaning/nature of proof beyond reasonable doubt – Distinction between plausible/fanciful possibilities and a high degree of cogency, consistent with an equally high degree of probability – Duty on defence when prosecution satisfies the standard of proof

EVIDENCE - CONFESSIONAL STATEMENT: Meaning of – Basis of under the Evidence Act – Admissibility – What determines – Whether a confessional statement which an accused person denies making at the point of its being tendered, is admissible in evidence despite the denial

EVIDENCE - CONFESSIONAL STATEMENT:- Plea of non est factum – Proper way of pleading same – Rule that counsel is not competent to give evidence from the bar – Need for the accused as witness to make a positive denial of such a statement

EVIDENCE - CONFESSIONAL STATEMENT:- Plea of non est factum – Distinction between a plea of non est factum and "retraction" or "resiling from" a statement -

EVIDENCE:- Primary role of a trial court in the evaluation of evidence – Attitude of an appellate court to an invitation to substitute its evaluation for that of the trial court

WORD AND PHRASES:- “Plea of non est factum” – "retraction" or "resiling from" – Meaning of - Distinction between a plea of non est factum and "retraction" or "resiling from" a statement

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Appellant was the 3rd accused person in Charge No. HOW/ART/21/99 whereunder the Appellant and 3 others were charged with the offence of armed robbery contrary to Section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act, Cap. 398, Laws of Federation of Nigeria, 1990. In the particulars of offence, the Appellant and the 3 other accused persons and other still at large - while armed with firearms - were alleged to have robbed one John Nwokeocha and his passengers of one Mercedes Benz 911 Lorry with Registration No. AE 281 and money totaling N260,715.00, on 17/3/1998 at Mgbee along OrluUrualla-Akaokwa Road in Orlu Judicial Division. The charge was read over to the accused persons including the Appellant on 10/8/1999, and each of them pleaded not guilty thereto.

The prosecution called 6 witnesses in proof of its case against the Appellant and the other accused persons. The Appellant and each of the other accused persons, testified in their own behalf, and called no witness.

In its judgment, the trial court noted that the 1st accused person in the charge before it, namely John Okorie confessed to the crime and that the other accused persons (Appellant inclusive) in their evidence denied the charge. The Court found the prosecution to have proved its case against the Appellant and 2 of the other accused persons but not in respect of the 4th accused person. Hence, the Court convicted the Appellant and 2 of the other accused persons of the offence preferred against them and sentenced the Appellant and 2 of the other accused persons to death as mandated by the law under which they were charged. The 4th accused person in the charge having been found not guilty, was acquitted and discharged.

DECISION(S) APPEALED AGAINST

“In the result, I find the 1st accused John Okorie, 2nd accused Samuel Akpa and 3rd accused Michael Ori guilty of armed robbery contrary to Section 1(2)(a) of the Robbery and Firearms Special Provision Act 1990 as charged. I find the 4th accused Onu Njoku not guilty. He is acquitted and discharged.”

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

“(1) Whether the trial Judge was right in relying on Exhibits "E”, and “J" in convicting the appellant despite the exculpatory evidence given in favour of the appellant by the 1st accused person, John Okore.

(2) Whether the appellant was a party to the offence and whether the defence of alibi does not avail him.

(3) Whether the extra-judicial statements of the appellant i.e. Exhibits "G”, “L”, “M” and “N" qualify as confessional statements and whether the trial Court was right in relying on same to convict the appellant.”

*BY RESPONDENTS*

“i. Whether the prosecution by admissible evidence proved the offence of armed robbery against the Appellant beyond reasonable doubt?

ii. Whether the defence of alibi as raised by the Appellant during his address in Court can be available in law for the benefit of the Appellant?”

*AS ADOPTED BY COURT*

*“*The issues formulated by the Respondent are broad enough to accommodate those formulated by the Appellant. Accordingly, the appeal will be resolved on the issues formulated by the Respondent even though the issues formulated by the Appellant will be considered under the two issues formulated by the Respondent, as considered appropriate.”

DECSION OF COURT OF APPEAL

“Flowing from all that has been said is that the three issues formulated for the determination of the instant appeal by the Appellant are resolved against him; while the two issues formulated by the Respondent are resolved in its favour.”

**MAIN JUDGMENT**

AYOBODE OLUJIMI LOKULO-SODIPE, J.C.A.: (Delivering the Leading Judgment):

The appeal is against the judgment delivered on 20/6/2005, by the High Court of Justice, Owerri Judicial Division, presided over by Hon. Justice A.O.H. Ukachukwu (hereafter to be simply referred to as “the Lower Court” and “learned trial Judge” respectively).

The Appellant was the 3rd accused person in Charge No. HOW/ART/21/99. In the said charge, the Appellant and 3 others were charged with the offence of armed robbery contrary to Section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act, Cap. 398, Laws of Federation of Nigeria, 1990 (hereafter to be simply referred to as “Cap. 398”). In the particulars of offence, the Appellant and the 3 other accused persons and other still at large; while armed with firearms were alleged to have robbed one John Nwokeocha and his passengers of one Mercedes Benz 911 Lorry with Registration No. AE 281 and money totaling N260,715.00, on 17/3/1998 at Mgbee along OrluUrualla-Akaokwa Road in Orlu Judicial Division. The charge was read over to the accused persons including the Appellant on 10/8/1999, and each of them pleaded not guilty thereto. The prosecution called 6 witnesses in the proof of its case against the Appellant and the other accused persons. The Appellant and each of the other accused persons, testified in their own behalf, and called no other witness. In its judgment, the Lower Court noted that the 1st accused person in the charge before it, namely John Okorie confessed to the crime and that the other accused persons (Appellant inclusive) in their evidence denied the charge. The judgment of the Lower Court spans pages 243-283 of the records of appeal. Therein, after an extensive review of the evidence placed before it, and evaluation of the oral evidence adduced by the prosecution and the accused persons as well as the statements made to the Police by the Appellant and other accused persons respectively, the Lower Court in the judgment appealed against, found the prosecution to have proved its case against the Appellant and 2 of the other accused persons beyond reasonable doubt. The said Court did not find the prosecution to have done this, in respect of the 4th accused person. Hence, the lower Court convicted the Appellant and 2 of the other accused persons of the offence preferred against them; and duly sentenced each of the Appellant and 2 of the other accused persons to death as mandated by the law under which they were charged. The 4th accused person in the charge having been found not guilty, was acquitted and discharged.

Dwelling specifically on the case of the prosecution as it relates to the Appellant on pages 275-281 of the records of appeal, the Lower Court stated: -

“Finally the 3rd accused denied any involvement in the robbery.

As in the case of the 1st and 2nd accused he did not call any witness, not any of who travelled with him to the market. For his address his counsel formulated two issues for determination by this Court. These are:

Firstly - whether he was one of those who took part in the robbery and whether the defence of alibi does not avail him.

Secondly - whether the extra judicial statement of the 3rd accused i.e. Exhibits G,L,M and N qualify as confessional statement.

Since either of the issues determines the guilt or otherwise of the 3rd accused, I shall consider them together.

Before that, let me state that the statements of the 3rd accused i.e. D.W.3 made on 17/3/98, 20/3/98, 24/3/98 and 7/5/98 were admitted in evidence as Exhibits G, L, M and N followed the ruling of this Court on 15th October, 1999 in a trial within trial by which the objection of counsel to the admission of the statement made 17th March, 1998 was over ruled. I am bound by that ruling. As part of his defence of alibi, the D.W.3 told this Court that he traveled to Lafia market in the morning of 17th March, 1998 and returned to Orlu between the hours of 11am and 12:00 noon of the same day. Apart from the fact that he could not call or mention as his witness any of the traders in whose company he traveled, I consider it impossible of a vehicle - a transport Mercedes 911 Lorry to travel to Lafia from Orlu and return within the time stated considering the state of the roads movement of the vehicle and time in the market by all traders.

In his evidence, he mentioned the conductor of the vehicle in which he allegedly travelled and as against calling him as a witness he rather gave the Court the impression that the said conductor and his brothers gave him out to the Police Warden who arrested and took him to the Police Station Orlu where their older brother and owner of the Lorry-Dennis was (sic) already posted and discussing with the Police.

The question might be asked why the plan to involve him? That calls up the issue of his arrest.

As against the evidence of the P.W.4 Nicholas Okonkwo that he arrested him, and that of the Police that he was arrested by the villagers the (3rd accused) D.W.3 insisted that he was arrested by the police traffic warden. The question may again be asked - what does the police or traffic warden lose by accepting that they arrested the 3rd accused even if outside (sic: scene of) the crime and further what does the P.W.4 gain by claiming a feat performed by the police after he earned the credit of arresting the 1st accused.

Iroabuchi Okereke testified in this case as the P.W.3. He testified as to his escape into the bush and later return to watch the robbers as well as the operation loss of his N62,000.00 (Sixty two Thousand Naira) to the robber. He did not mention the D.W.3 or claim any part he played in his arrest. The question might again be asked what does he lose by openly assisting the police to effect his arrest if he saw him at the scene and/or was certain he was one of those that robbed them.

The D.W.3 testified that he was yet to off load his goods from the lorry before he left to see the captured robbers.

Since he had nobody in mind as likely to have been arrested one would ask to know why the hurry to behold the robbers even at the risk of abandoning his goods in the vehicle.

If the story of the D.W.3 is believed my view is that it emanated from an agitated mind. But I do not believe the story. I rather believe the account of the arrest of the (3rd accused) D.W.3 as given by the P.W.4 Nicholas Okonkwo. My answer to the 2nd issues therefore is that the extra judicial statements of the D.W.3 i.e. Exhibits G,L,M and N qualified as confessional statements.

I also hold as part of issue number one that the defence of alibi did not avail him.

I accept the evidence of the P.W.4 as the true account of the arrest of the D.W.3 i.e. 3rd accused. I also hold that the statements of the D.W.3 Exhibits G,L,M and N corroborated in material details the statements of Joseph Anoke made 17th and 15th March, 1998 - Exhibits E and J respectively.

I do not accept the 1st accused attempt to exclude him from participation in the robbery ....”

Suffice it to say, that having also considered the case of the 4th accused person, the Lower Court concluded its judgment thus: -

“In the result, I find the 1st accused John Okorie, 2nd accused Samuel Akpa and 3rd accused Michael Ori guilty of armed robbery contrary to Section 1(2)(a) of the Robbery and Firearms Special Provision Act 1990 as charged. I find the 4th accused Onu Njoku not guilty. He is acquitted and discharged.”

Being dissatisfied with the judgment of the Lower Court convicting him of the offence of armed robbery and sentencing him to death therefor, the Appellant initiated the instant appeal by lodging at the registry of the said Court, a notice of appeal dated 19/4/2013 and filed on the same date, pursuant to the leave of this Court, granted on 11/4/2013, extending the time within which the Appellant, was to appeal.

The notice of appeal contains 4 grounds of appeal. The grounds therein, shorn of their respective particulars read:-

“GROUNDS OF APPEAL

GROUND 1

ERROR IN LAW

The trial High Court erred in law when it convicted the appellant despite the exculpatory evidence made in favour of the appellant by DW1 i.e. 1st accused person, John Okorie.

GROUND 2

ERROR IN LAW

The trial Court erred in law when it admitted and placed reliance on the statement of Joseph Anoke (the trapped armed robbery suspect) i.e. Exhibit E in convicting the appellant.

GROUND 3

ERROR IN LAW

The High Court of Imo State erred in law when it held that the defence of alibi did not avail the appellant i.e. Michael Ori.

GROUND 4

The verdict is unreasonable unwarranted and unsupportable having regard to the evidence led at the trial.”

The reliefs which the Appellant seeks from this Court as contained in the notice of appeal are:

(i) an order allowing the appeal and setting aside the conviction and sentence of the Appellant as per the judgment of the Lower Court delivered on 20/6/2005;and

(ii) an order discharging and acquitting the Appellant.

The appeal was entertained on 27/1/2020, with learned counsel, P.C. Onuoha adopting the amended Appellant’s brief of argument dated 21/12/2015, and filed on 20/9/2019, but deemed as properly filed on 23/9/2019, in urging the Court to allow the same.

Though the Respondent was served with the amended brief of argument of the Appellant on 20/9/2019, and hearing notice in respect of the date fixed for the appeal (i.e. 27/1/2020) on 9/12/2019, the Respondent was not represented by counsel in Court at the hearing of the appeal on 27/1/2020. However, as the Respondent had earlier filed a brief of argument in the appeal, it was deemed as having been duly argued by the Respondent on the said brief. The Respondent’s brief of argument in question is dated 12/2/2018, and filed on 20/2/2018, but deemed to have been properly filed and served on 22/2/2018.

In his amended brief of argument, the Appellant distilled for the determination of the appeal, the following issues: -

“(1) Whether the trial Judge was right in relying on Exhibits "E”, and “J" in convicting the appellant despite the exculpatory evidence given in favour of the appellant by the 1st accused person, John Okore.

(2) Whether the appellant was a party to the offence and whether the defence of alibi does not avail him.

(3) Whether the extra-judicial statements of the appellant i.e. Exhibits "G”, “L”, “M” and “N" qualify as confessional statements and whether the trial Court was right in relying on same to convict the appellant.”

The issues which the Respondent formulated for the determination of the appeal, in its brief of argument are: -

“i. Whether the prosecution by admissible evidence proved the offence of armed robbery against the Appellant beyond reasonable doubt?

ii. Whether the defence of alibi as raised by the Appellant during his address in Court can be available in law for the benefit of the Appellant?”

The issues formulated by the Respondent are broad enough to accommodate those formulated by the Appellant. Accordingly, the appeal will be resolved on the issues formulated by the Respondent even though the issues formulated by the Appellant will be considered under the two issues formulated by the Respondent, as considered appropriate.

APPELLANT’S ISSUES 1 AND 3:

The Appellant argued his issues 1 and 3, together. These two issues in my considered view simply raise the question as to whether the Lower Court acted on admissible evidence in convicting the Appellant. The issues therefore will be considered together with issue 1, as formulated by the Respondent.

Dwelling on these issues, the Appellant submitted that it was wrong for the Lower Court to have relied on Exhibits "E” and “J”, as well as Exhibits “G, L, M and N", in convicting him. The portion of the judgment of the Lower Court the Appellant relied upon in this regard reads: -

"I also hold that the statements of DW3, i.e.Exhibits "G, L, M and N" corroborated in material details the statements of Joseph Anoke made on 17/3/98 - i.e. Exhibits "E and J" respectively."

It is the stance of the Appellant that firstly, Exhibits "E and J" are confessional statements of Joseph Anoke wherein he admitted the offence and implicated him (Appellant); while Exhibits "G, L, M, and N" are his 1st, 2nd, 3rd and 4th statements. The Appellant submitted that it is trite that where an accused person makes a confessional statement implicating a co-accused, the confession is only evidence against the accused person that made it and not evidence against his co-accused unless such co-accused adopts the confessional statement in question by word or conduct. That if an accused person however goes into the witness box and testifies on oath and repeats what he told the police in his statement, then his sworn evidence becomes evidence in the case for all purposes, even if it is against his co-accused. That in the instant case, the maker of Exhibits “E” and “J” never testified in Court as he died before the commencement of trial. It is the stance of the Appellant that it was therefore an error in law for the Lower Court to have convicted him on the statement of another accused person to the Police. That this is more so as the maker of Exhibits "E & J", was not subjected to cross-examination to test the veracity of his statements. The Appellant submitted that in the circumstances, Exhibits "G, L, M and N, which are his statements cannot be corroborated by Exhibits "E and J", (sic) as was wrongly held by the Lower Court. This Court was urged to expunge Exhibits "E and J" because S. 29(4) of the Evidence Act, forbids the use of such statements.

Also, the Appellant having re-produced the holding of the Lower Court that: -

“I do not accept the 1st accused attempt to exclude him (the appellant) from participating in the robbery" submitted that the position of the Lower Court in this regard was wrong. It is the stance of the Appellant that there was sufficient evidence exculpating him from participation in the robbery. This is because (i) the 1st accused (John Okore) who confessed to the offence in Exhibits "F and K", told the lower Court during the trial within trial conducted in the case that Michael Ori (the Appellant) was not a member of their gang and (ii) also reiterated his position in this respect during the substantive trial while testifying as DW1. That DW1 admitted committing the offence with which he was charged and still told the lower Court that nobody in their gang was known as and called Michael Ori (i.e. Appellant). Furthermore, that both John Okore (1st accused) and Okechukwu Ori who died before the trial, stated that the Appellant was not a member of their gang. That in Exhibit "G" (i.e. Appellant’s 1st statement) he told the police timeously that he traveled to Lafia in Nasarawa State on the date of the offence i.e. 17/3/98, and was not a party to the robbery.

That aside from this, it was mandatory for the Lower Court to have made a specific finding as to whether a confessional statement was actually made by an accused person before holding that the statement was retracted or before putting them into any use in convicting him (Appellant). This is because, he (Appellant) raised the plea on non est factum as he denied ever making Exhibits "L, M and N" and maintained that they were written by the Police and brought to him to sign at gun-point. That the Lower Court in the circumstances was under a duty to have made a specific finding as to whether he (Appellant) actually made the confessional statements ascribed to him before holding that the said statements were retracted or before putting them into any use in convicting him (Appellant). It is the stance of the Appellant that the Lower Court did not do this in respect of Exhibits "L, M, and N" before using them in convicting him.

This Court was urged by the Appellant to resolve his issues 1 and 3 in his favour.

Dwelling on these issues which in my considered view are subsumed in its issue 1, the Respondent having stated and set out the elements of the offence of armed robbery, submitted that the prosecution proved its case against the Appellant beyond reasonable doubt. That it did this by the evidence accepted by the Lower Court. That this is more so as there was no reasonable doubt from the Appellant. The Respondent submitted to the effect that a trial Court is permitted by law to infer from the facts proved and other facts whatever is necessary to complete the element of guilt or establish innocence. That this is what the Lower Court did in the instant case. Hence, that apart from the acceptance of the confessional statements of the Appellant, the direct evidence of the PW4, regarding the involvement of the Appellant in the crime with which he was charged and which was accepted by the Lower Court, justified the adoption by the said Court of the involvement of the Appellant in the crime and therefore a true account as reflected in Exhibits “G”, “L”, “M”, (i.e. confessional statement made by the Appellant). That the facts therein were corroborated by the extra judicial statements of one Joseph Anoke (one of the suspects in the crime who died before arraignment). Reference was made to Exhibits “E” and “J”.

Posing the question as to the circumstances under which a trial Court can convict an accused based on his confessional statement(s), the Respondent gave the answer that this can be done upon a free and voluntary confessional statement once it is direct and positive, and satisfactorily proved before the trial Court. That such confessional statement alone, is sufficient to sustain conviction, even if there is no corroborative evidence. That a conviction based on a confessional statement that is properly proved, will not be quashed on appeal merely because it is based entirely on the evidence of confession by the Appellant. That what is important is for the trial Court to be satisfied. It is the stance of the Respondent that in the instant case, a trial within trial was conducted to determine voluntariness of the extra judicial statements of the Appellant and that the Lower Court ruled that they were voluntarily made and duly admitted them in evidence and marked them Exhibits “G”, “L”, “M”, and “N”. Having also catalogued other pieces of evidence in the case, it is the stance of the Respondent that the lower Court had before it sufficient corroborative evidence of the fact that the Appellant was one of the armed robbers even without the extra judicial statements of Joseph Anoke admitted in evidence as Exhibits “E” and “J”. In the circumstances, the Respondent further submitted that the Lower Court was right in finding the Appellant guilty of committing the offence as charged. This is not only because it was based on his (Appellant’s) confessional statements, marked Exhibits “G”, “L”, “M” and “N”(whether or not corroborated by any other evidence) but as they were free and voluntary confessions of guilt by the Appellant and direct and positive, and duly made and satisfactorily proved before the said Court by the prosecution witnesses. That what is important is that the Court must be satisfied and this was the position in the instant case. The Court was urged to resolve Appellant’s issues 1 and 3 as well as the first part of Appellant’s issue 2 against him.

APPELLANT’S ISSUE 2:

Dwelling on this issue, it is the stance of the Appellant that the Lower Court was wrong when it held that the defence of alibi did not avail him. The Appellant predicated his stance in this regard, on the fact that although he raised a defence of alibi at the earliest opportunity, the police did not discharge the burden of investigating the said alibi. That though on pages 264-265 of the records of appeal, the prosecution adduced evidence that its witness investigated his (Appellant’s) alibi and found that he did not attend the market on the date of the robbery as he claimed or at all within the week, because the said witness did not see what he (Appellant) bought from the market, there is however no evidence on record as to how the alibi was investigated. That in any event, the 1st accused who confessed to the offence told the lower Court that he (Appellant) was not a member of their gang and that nothing connected him with the robbery. The Appellant also attacked the statement made by the Lower Court regarding the impossibility of a transport 911 lorry - to travel to Lafia from Orlu and return within the time stated considering the state of the roads, movement of the vehicle and time in the market by all traders", in demonstrating that the defence of alibi availed him.

Stating to the effect that he sufficiently raised the defence of alibi, the Appellant submitted that the prosecution did not adduce evidence in disproving the same. That the Lower Court ought not to have rejected his (Appellant’s) defence of alibi given the fact that the prosecution adduced no evidence to show that the said alibi was investigated not to talk of disproving the same.

This Court was urged to resolve this issue in favour of the Appellant.

Dwelling on the aspect of Appellant’s issue 2 as it relates to the defence of alibi, the Respondent submitted that from the clear facts stated by the Appellant in his confessional statements, i.e. Exhibits “G, “L”, “M”. and “N”, in whatever form one looks them, and when read together with Section 7 of the Criminal Code Act, the only reasonable conclusion one can arrive at in law, is that the Appellant was a party to that armed robbery incident in respect of which he was convicted.

Stating that it is indeed true that the Appellant to be entitled to the beneficent effect of the defence of alibi, the Respondent submitted that he must however raise it at the earliest opportunity; preferably be in his extra-judicial statement. That this is to afford the police an opportunity either to confirm or confute its availability. The Respondent also submitted that such defence of alibi, must be unequivocal as to the particulars of the Appellant’s whereabouts and those present with him. It is the stance of the Respondent that the Appellant raised his defence of alibi during his evidence in Court with some particulars that would have, if raised in his extra judicial statement(s) to the police, led the prosecution to investigate the same. In other words, that the defence of alibi was not available to the Appellant.

The Respondent submitted that the Appellant knew that he was making a mockery of the defence of alibi in this case; hence, none of the individuals the Appellants claimed were with him and who were mentioned in his evidence before the Lower Court, was called by him as a witness in support of his defence of alibi. The Respondent submitted to the effect that in any case, the settled position of the law is that it is not enough for an accused to raise the defence of alibi at the stage of trial. He must give adequate particulars of his whereabouts at the time of the commission of the offence to assist the police to make a meaningful investigation of the alibi. Therefore, that the mere allegation by the Appellant that he was not at the scene is not enough. That in the instant case, the lower Court was left with only the way and manner the Appellant was arrested. That this was unchallenged and that this justified the finding of the said Court in respect of the guilt of the said Appellant. It is the stance of the Respondent that the evidence adduced by the prosecution, regarding how PW4 used the gang’s “criminal-family-slangs” was sufficient evidence that fixed the Appellant at the scene of the crime and that this not only logically but physically demolished the Appellant’s plea of alibi. In concluding, the Respondent urged this Court to dismiss the instant appeal and affirm the judgment of the lower Court.

The Respondent indeed rightly stated the elements of the offence of armed robbery in its brief of argument. They are essentially –

(i) that there was a robbery or series of robberies;

(ii) that each of the robbery was an armed robbery; and

(iii) that the accused person was one of the persons that took part in the robbery.

The prosecution is enjoined by law to prove each of these elements beyond reasonable doubt to sustain a conviction for the offence of armed robbery. See the old cases of BOZIN V. THE STATE (1985) 2 NWLR (Pt. 8) 455; and IKEMSON V. THE STATE (1989) NWLR (Pt.110) 455; and amongst many others, the recent cases of PEDRO V. STATE (2018) LPELR-44460 (SC) and GIKI V. STATE (2018) LPELR-43604(SC).

The Respondent is also correct in respect of its position as to how an allegation of the commission of a criminal offence may be proved beyond reasonable doubt by the prosecution against an accused person. This is because, the position of the law till date remains that the prosecution may prove the guilt of an accused person by the confessional statement of that accused person, by circumstantial evidence or by the evidence of eye witnesses of the crime. That the prosecution does not always need an eye witness account to succeed in proving its case against an accused person if the charge can otherwise by proved. See amongst others the cases of IGABELE V. THE STATE (2006) 6 N.W.L.R. (PT. 975) 100 and UDOR V. THE STATE (2014) LPELR-23064(SC).

I am of the considered view that it is in the knowledge of the position which the law ascribes to a confessional statement that the Appellant in the instant appeal, is challenging the use to which the lower Court put his statements to the Police (and particularly those he claimed the principle of non est factum applied to); and his stance regarding the wrongful reliance on the said statements by the lower Court to convict him.

In my considered view, the arguments which the Appellant has weaved around his statements admitted and marked Exhibits “L”, “M”, “N” bring to the fore the questions as to when a confessional statement can be said to have been properly admitted in evidence in the course of a trial as such, and once so admitted whether the Court must close its eyes to the same, because the maker has retracted the same in the course of his evidence before the trial Court.

Confession and its making are matters provided for under the Evidence Act. The law is clear from decided cases as to what a confessional statement is. Going by Section 28 of the Evidence Act, a confessional statement is a statement made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime. Such a statement is admissible if it is direct and positive and relates to his own acts, knowledge or intention, stating or suggesting the inference that he committed the crime charged. See amongst many others the cases of AKPAN V STATE (1992) 7 SCNJ 22 and AZABADA V. THE STATE (2014) LPELR-23017(SC). This is why a statement made to the Police by an accused person in the course of Police investigation into a crime that is the subject matter of a charge before a Court and in which an accused person had admitted or suggested the inference that he committed the offence, is always relevant and will be admitted where the accused person does not deny the making of the statement voluntarily; and/or where he denies making the statement at all. In a situation where an accused does not deny making a statement alleged by the prosecution to be confessional, but claims not to have made it voluntarily, then the requirement of the law is that such a statement is not admissible in evidence against the accused person unless it is shown by the prosecution that it was a voluntary statement. This must be done by the Court embarking on a trial within trial. This is to enable the trial Judge determine whether or not the prosecution has established that the statement containing the confession was made voluntarily; and to the extent that the Judge is so satisfied, the same will be admitted in evidence and duly marked as an exhibit tendered by the prosecution. See GBADAMOSI V. THE STATE (1992) NWLR (Pt. 266)465 and STATE V. IBRAHIM (2019) LPELR-47548(SC). Similarly, it is the settled position of the law that a confessional statement which an accused person denies making at the point of its being tendered, is admissible in evidence despite the denial. See the cases of IKEMSON V. THE STATE (supra), AWOPEJU V. THE STATE (2002) 3 MJSC 141 and AMOS V. STATE (2018) LPELR-44694(SC).

Having regard to the submissions of the Appellant highlighted hereinbefore, I am of the considered view that he is not challenging the correctness of the admission in evidence of Exhibits “L”, “M” and “N” because he did not make them voluntarily. In the same vein, the Appellant by excluding Exhibit “G”, in my considered view would appear to be saying that the principle of non est factum is not applicable to the said Exhibit. I have hereinbefore reproduced a portion of the judgment of the Lower Court that deals with the statements of the Appellant admitted in evidence in the instant case. The portion reads: -

“Before that, let me state that the statements of the 3rd accused i.e. D.W.3 made on 17/3/98, 20/3/98, 24/3/98 and 7/5/98 were admitted in evidence as Exhibits G, L, M and N followed the ruling of this Court on 15th October, 1999 in a trial within trial by which the objection of counsel to the admission of the statement made 17th March, 1998 was over ruled. I am bound by that ruling.”

I cannot but observe that it is not very clear to me, whether what the Lower Court in the portion of its judgment reproduced above, was saying is that all the other statements made by the Appellant including the one he made on 17/3/1998, were admitted after a trial within trial was conducted to determine their admissibility respectively; or whether what the said Court was saying,was that it admitted all the other statements made by the Appellant, as it was bound by its ruling made in respect of the statement of the Appellant on 15/10/1999, in relation to the one made on 17/3/1998, and which was admitted in evidence and marked as Exhibit “G”, on 15/10/1999. I however have not seen any ruling of the Lower Court delivered on 15/10/1999, in the records of appeal. The originals of the Exhibits in this case being also untraceable by the Exhibit Keeper of this Court, there is nothing by which I can solve the puzzle I have identified. Happily, the Appellant who has raised the issue of non est factum has not tied his submissions thereon to Exhibit “G”, i.e. the first statement which he made to the Police on 17/3/1998, and in respect of which a trial within trial was conducted. Indeed, the Appellant relied on the said Exhibit on page 7 of his amended brief of argument to his own advantage by relying on it as his statement in which he gave the Police his alibi.

Also having regard to the notes of proceedings on pages 110-111, of the records of appeal, it becomes undisputable that it was the three statements of the Appellant recorded by PW6, an IPO in the case from State CID, Anti Robbery Section Owerri, that were admitted as Exhibits “L” “M” and “N”. See pages 105 and 110-111 of the records of appeal. I am of the considered opinion or view, that this would appear to be the only reason why the Appellant being conscious of the fact that he cannot properly rely on the principle of non est factum in respect of his statement that was admitted in evidence and marked as Exhibit “G” after a trial within trial, that he related his submissions on the said principle to Exhibits “L”“M” and “N”.

However, I cannot but say that the principle of non est factum would appear not to avail the Appellant in the instant case given the illuminating manner in which the Supreme Court enunciated the principle in the case of AIGUOREGHIAN V. THE STATE (2004) 3 MJSC 71, relied on by the Appellant. It was stated thus: -

Be it noted that it is trite that when a document is sought to be tendered and is objected to by counsel, what counsel objecting does at that stage is no more than a submission on the admissibility of the statement. Thus, as the issue of non-est factum is a matter of fact, the challenge of such a statement is more properly done when the accused or any other witness of his impugns the statement as not being that of the accused from the witness box. I agree with learned counsel for 2nd Appellant therefore that as counsel is not competent to give evidence from the bar and the challenge of a confessional statement on grounds of non-est factum is a matter of fact, the challenge is appropriately made when the accused as witness denies the making of such a statement.

As I had cause to observe in Nwangbomu v. State (1994) 2 NWLR (Pt. 327) 380, a case identical to the one in hand:

"...Now the voluntary statement of the Appellant which was confessional in nature was received in the proceedings giving rise to this appeal as Exhibits B and B1 and these are part of the prosecution’s case. See Anofi Opayemi v. The State (1985) 2 NWLR (Pt. 5) 101. The Appellant for his defence in rendering his testimony in Court, admitted he never said what was recorded. He thereby sought to retract the statement rather than its involuntariness that was in issue."

In view of the appropriate attack of the Appellants of the statement (Exhibits “A” and C) as not being their deeds, it was incumbent on the Courts below to have made a finding on whether the said statements were actually made by the Appellants before holding that the statements were retracted or before putting them into any use in convicting the Appellants.

It is noteworthy to stress that the terms "retraction" "resile from" have been used interchangeably in most decisions with the pleas of non-est factum. This is misleading since a statement must first be shown to have been made before it can be said to have been retracted by its maker for where the very making of the statement is in issue, the retraction cannot arise at that stage. It is in this wise that I agree that where an accused person sets up a defence of non-est factum in relation to a confessional statement what he has done is not a retraction but a denial of the making of the statement.

No finding was made by the two Courts below on the issue of fact as to whether the Appellants made the statements. The application therefore of the rule in Oladejo v. The State (1987) 3 NWLR (Pt. 61) 419 and Asanya v. The State (1991) 3 NWLR (Pt. 480) 422, two cases that have been overruled, was therefore prejudicial to the Appellants whose conviction ought not to be allowed to stand. See Egboghonome v. The State (1993) 7 NWLR (Pt. 306) 383. What it boils down to is that had the testimony of the 2nd Appellant and his extra-judicial statement (Exhibit C) not been treated as unreliable, the 2nd Appellant would have been absolved of the offence of murder of the deceased based on his defence of alibi which was not investigated. Furthermore, the evidence of PW2 who himself was a victim of the same attack, ought not to have been viewed with as much confidence as the Trial Court below did, it being the evidence of a victim.”

I have expressed the view that the principle of non est factum cannot avail the Appellant when under examination in chief he stated on page 170 of the record thus: -

“I deny the offence as alleged. Following my arrest and charge, I made a total of 4 statements on 17.03/98, 20/03/98, 24/03/98 and 07/05/98.

I do not rely on them as part of my defence because they were not voluntarily made. The fact is as ff (sic)

Similarly, under cross-examination, he stated on page 189 of the records of appeal thus: -

“It is true that I allegedly made four statements to the Police but I denied them as I made them under duress. In my statements, I started (sic) how I was arrested but what was recorded was not what I said in full. I emphasized that I made the statements under torture. It wasn’t all I stated that were recorded. That was why I petitioned the inspector General against the Police.”

See many other pages of the records of appeal after this (i.e. page 189), wherein the Appellant disclosed his reason for “disowning” his statements admitted as confessional statements.

It is in my considered view, obvious from what was stated above, that the reliance by the Appellant on the principle of non est factum, in respect of his statements recorded by PW6 and which statements he did not oppose at the point of their being tendered, but only to disclose in his evidence that he did so, because he did not consider the said statements as having been voluntarily made, shows that the strategy adopted by the Appellant, is one that has now gone bad. I have before now referred to the pages of the records of appeal, containing the statements made by the Appellant to the Police. It is obvious therefrom, that in each of the statements the Appellant disclosed himself as being privy to the robbery in question; at least as one of the planners and also as having acted as a pointer. The statements made by the Appellant, therefore were rightly found by the Lower Court to be confessional statements and upon which the lower Court could have rightly acted; and indeed, rightly acted upon by the said Court in convicting the Appellant for the offence of armed robbery with which he was charged. This is more so, in the light of the evidence of PW4 as to how the Appellant came to be apprehended and which the lower Court believed, and which I cannot find any basis for faulting the same. This is more so as a trial Judge is the sole determinant of facts and law at the trial stage. See the old case of ABDULLAHI V. THE STATE (1985) LPELR-29(SC), (1985) NWLR (Pt. 3) 523, wherein the Supreme Court stated thus: -

"It has been established by several authorities that a Court of Appeal must approach the findings of fact of a Trial Court with extreme caution. This is because a Court of Appeal has not had the advantage which the trial judge has enjoyed of seeing the witnesses and watching their demeanour. A Court of Appeal would only disturb the findings of fact of a trial Court where it is satisfied that the trial Court has made no use of such an advantage. If the trial judge has evaluated the evidence before him, it is not for the Court of Appeal to re-evaluate the same evidence and come to its own decision.”

Indeed, I cannot but say that it is clear from the judgment of the Lower Court that it never found corroboration for the statement of the Appellant in the statement of the deceased suspect - Anoke. The Lower Court only commented to the effect that the confessional statements of the Appellant corroborated that of the said deceased suspect. I am of the considered view that there is a world of difference, in the two situations. Suffice it to say that as the Lower Court in its judgment relied on many facts apart from the alleged corroboration it was wrongly said to have found for the statements of the Appellant in the statement of the deceased Anoke, rendering the confessional statements of the Appellant to be probable, its reliance on the same, is eminently correct. Flowing from all that has been said before now, is that I cannot but find the lower Court to be correct in accepting and treating the statements of the Appellant as confessional statements and in relying on them in convicting the Appellant.

This is more so as the Appellant did not introduce any reasonable doubt into the prima facie case established against him, by the evidence adduced by the prosecution.

The question as to whether an accused person has introduced reasonable doubt in a criminal charge as established against him by the evidence led by the prosecution, is always a fact for resolution in a criminal trial. This, being the position, there is no dearth of authorities in respect of terms like “beyond reasonable doubt” and “reasonable doubt”. One of the cases in which the meaning of the terms was considered is the old case of BAKARE V.THE STATE (1987) 3 S.C 1. Therein, the Supreme Court dwelling on “proof beyond reasonable doubt” vis-a-vis “reasonable doubt” stated thus: -

“In his Brief, which was too brief to be of much use, learned counsel for the Appellant submitted that "there is only one issue for determination in this appeal; viz "whether or not the prosecution had proved its case beyond every reasonable doubt". From the particulars of error/misdirection (supporting this ground of appeal) which were further elaborated in the Brief, it is obvious that there is here a thorough misconception of the requirement that the prosecution should prove its case beyond reasonable doubt.

Proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace this presumption, the evidence of the prosecution must prove beyond reasonable doubt, not beyond the shadow of any doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure including the administration of criminal justice. Proof beyond reasonable doubt means just what it says. It does not admit of plausible and fanciful possibilities but it does admit of a high degree of cogency, consistent with an equally high degree of probability. As Denning, J. (as he then was) observed in Miller v. Minister of Pensions (1947) 2 All. E.R. 373: -

"The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong as to leave only a remote possibility in his favour which can be dismissed with the sentence - of course it is possible but not in the least probable the case is proved beyond reasonable doubt".... Also it has to be noted that there is no burden on the prosecution to prove its case beyond all doubt. No. The burden is to prove its case beyond reasonable doubt with emphasis on reasonable. Not all doubts are reasonable. Reasonable doubt will automatically exclude unreasonable doubt, fanciful doubt, imaginary doubt and speculative doubt - a doubt not borne out by the facts and surrounding circumstances of the case.

Another sense in which the expression "Proof beyond Reasonable Doubt" is used refers to the shifting of the onus of proof as stipulated by Section 137(1) Evidence Act Cap 62 of 1958: -

"137(1) If the commission of a crime by a party to any proceedings directly in issue... it must be proved beyond reasonable doubt."

But if the prosecution proves the commission of a crime beyond reasonable doubt then the burden of proving reasonable doubt is shifted onto the accused - see Section 137(3) of Cap 62 of 1958. What does this subsection mean in relation to the case now on appeal? It means this. At the close of the prosecution case the Court had heard 9 witnesses testified. If the prosecution witnesses were believed and there was nothing urged in defence, no fair 'minded jury can return any verdict except that of guilty. In other words the prosecution established this case beyond reasonable doubt. The onus then shifted to the defence to adduce evidence capable of creating some reasonable doubt in the mind of the trial Judge. The primary onus of establishing the guilt of the Appellant was still on the prosecution and this does and did not shift. What does shift is the secondary onus or the onus of adducing some evidence which may render the prosecution case improbable and therefore unlikely to be true and thereby create a reasonable doubt:- R. v. Harry Lazarus Lobell (1957) 41 C.R. App. R. 100 at p.104 per Goddard L.C.J...

“Evidence that is not accepted cannot possibly create a doubt in the mind of a fair minded jury. If the defence account of the incident is disbelieved then that is the end of the story and there will then be no evidence on which to consider the existence of a reasonable doubt. The Court of Appeal was right in holding that the case was proved beyond reasonable doubt...”

See also the cases of UCHE V. THE STATE (2015) LPELR-24693(SC) and ANKPEGHER V. STATE (2018) LPELR-43906(SC), and many others which decide nothing different from what the same Court did on the issue of “proof beyond reasonable doubt” and “reasonable doubt” in the Bakare case (supra).

Having read and highlighted the submissions of the parties in this appeal, it is obvious that the reasonable doubt the Appellant sought to introduce into the case of the prosecution, is that he could not have been arrested in connection with the robbery in respect of which he was charged, because he was not within or at the area or scene of the robbery incident of 17/3/1998 as he was somewhere else and whereat he was arrested. That in the circumstances he could not be rightly found to be one of the robbers that escaped into the bush shortly after the robbery in question. Undoubtedly, this is a defence of alibi. I do not believe that the consideration of this defence requires a re-statement of the position of the law in respect of the meaning of alibi and all its nitty-gritty. I however consider it pertinent to say that it is settled in law, that non-investigation of alibi where it was given to the Police at the earliest opportunity by the accused person, cannot ipso facto result in the finding of such alibi as established or to have a destructive effect on the case of the prosecution. This in my considered view was the position of the Supreme Court in the old case of HAUSA V THE STATE (1994) 6 NWLR (Pt. 350) 281 wherein it was said: -

“It appears to me that none of these issues called for wholesale re-evaluation of the evidence adduced at the trial of the Appellant. Although the defence of alibi was not investigated by the police it is clear from the testimonies of P.W.2 and P.W.3 that the Appellant was seen and identified as the assailant of the deceased.

... As both P.W.2 and P.W.3 were believed by the learned trial Judge, the defence of alibi set up by the Appellant becomes untenable, even though the police failed to investigate it. The absence of the investigation is not in the circumstances of this case fatal to the case of the prosecution “ See ...

In the case of Ntam v. State (1968) NMLR 86, which is similar to the present case, Brett, J.S.C. stated as follows:

“There are occasions on which a failure to check an alibi may cause doubt on the reliability of the case for the prosecution, but in a case such as this in here the appellants were identified by three eyewitnesses there was a straight issue of credibility and we are notable to say that the Judge’s findings of fact were unreasonable and cannot be supported having regard to the evidence.”

Moreover, in Njovens & Ors. v. State, (1973) 5 S.C. 17, Coker J.S.C. made the following observation at p. 65 thereof:

“There is nothing extraordinary or esoteric in a plea of alibi. Such a plea postulates that the accused person could have been at a scene of the crime and only inferentially that he was not there. Even if it is the duty of the prosecution to check on a statement of alibi by an accused person and disprove the alibi or attempt to do so, there is no inflexible and/or invariable way of doing this of the prosecution adduced sufficient and accepted evidence to fix the person at the scene of the crime at the material time. Surely, his alibi is thereby logically and physically demolished.” (emphasis mine).

Therefore, these authorities clearly established that the failure to investigate the defence of alibi set up by the Appellant in the present case is not fatal to the case for the prosecution since the testimonies of P.W.2 and P.W.3 who were eyewitnesses had been accepted and believed by the learned trial Judge...”

I know of no decided case that has put on ground the principle that the non-investigation of alibi supplied by an accused person as a suspect to the Police by the Police to whom it is given, without more renders the case of the prosecution unreliable.

The Appellant in any case, testified in respect of his alibi. The question therefore is, whether the Appellant by the evidence he adduced before the lower Court established his alibi which by law he is required to do on a balance of probability and not beyond reasonable doubt. It is to be noted that the Lower Court in evaluating the evidence in the instant case in relation to the alibi of the Appellant observed to the effect that persons with whom the Appellant claimed to be with, shortly before the time of his arrest or those that were with him prior to his arrest, were not called by him as witnesses. I am of the considered view that a defence of alibi except where it is that a person was alone by himself and never interacted with any known or identifiable person, cannot be said to be proved on the mere ipse dixit of the person setting up the defence. It is my considered view, that common sense in fact dictates that a person who claimed to be with other persons at a different location from where a crime he is charged with is alleged to have happened, owes himself the duty to call if not all the persons he claimed to have been with, he should at least call one of them. The Appellant would appear to believe that whatever he says in Court must be accepted as gospel truth. Likewise, the Appellant would appear to believe that the fact that the 1st accused person testified that he (Appellant) was not a member of his gang sufficiently proved his alibi. He is wrong. The Appellant in my considered view never gave any worthwhile evidence in support of his alibi and it would surely have been a case of a perverse finding, if the lower Court found the Appellant to have established his alibi given the evidence of PW4 on pages 71-75 of the records of appeal. At pages 72-73, the witness is recorded as having testified thus: -

“... While there, I saw the 1st accused running. I pursued him and caught him and dispossessed him of a pistol he was holding. I gave him a matchet cut on the right leg when he attempted to shoot me with the pistol. The pistol I recovered from him is stainless white. I handed over the pistol and the 1st accused to the Police. When I caught him he informed me there was another left in the bush. He also gave me the call sign of “Oyi” “Oyi” and that once I so shouted, he would think that it was he that I called. That was their call sign. On entry into the bush I called as was directed and the 3rd accused replied. When he saw me and realised that I was not his member he took to his heels. I then pursued and caught him. When I came back with him to the scene where the vehicle fell down we lifted the vehicle and found one double barrel gun. ...

I went to the Police Station. It was there that I handed over the 3rd accused. That was at Orlu Police Station.”

Against the backdrop of all that has been said in relation to alibi, I am of the considered view that it becomes apparent that given the evidence of PW4, which the lower Court believed (and which I cannot but observe was not challenged with any measure of success), that whatever alibi the Appellant set up in his statements, particularly the first of the statements, (which he heavily relied on in the instant appeal), must crumble. The Appellant therefore, cannot be said to have introduced any reasonable doubt into the case of the prosecution by his evidence regarding his alibi which the lower Court did not believe and indeed, could not have believed given its (Lower Court) acceptance of the evidence of PW4.

Flowing from all that has been said is that the three issues formulated for the determination of the instant appeal by the Appellant are resolved against him; while the two issues formulated by the Respondent are resolved in its favour.

In the final analysis, the instant appeal fails and must be dismissed and is hereby dismissed. The prosecution in my considered view clearly proved its case against the Appellants beyond reasonable doubt. Accordingly, the judgment delivered by the Lower Court, convicting the Appellant of the offence of armed robbery and sentencing him to death therefore, is affirmed.

**ITA GEORGE MBABA, J.C.A.:**

I agree with the reasoning and conclusions of my learned brother, A.O. Lokulo-Sodipe JCA, in the lead judgment, that this Appeal lacks merit. I too dismiss it.

**IBRAHIM ALI ANDENYANGTSO, J.C.A.:**

I have the privilege of reading in draft the judgment just delivered by my Noble Lord A. O Lokulo-Sodipe, JCA. I agree with his reasoning and conclusion that this appeal lacks merit. The facts of the case, and arguments of Counsel on both sides, have been succinctly captured in the lead judgment. I can only emphasize that the Appellant has made a mountain of the plea of alibi, which in law has certain requirements to be satisfied before the Court in order for the Appellant to reap the benefit thereof. The Appellant by law is expected to provide enough particulars, and this, very timeously, for the Police to investigate. Where the Appellant made a blanket statement that he was not at the scene of crime without more, he cannot have the benefit of that defence enured to him.

In the instant case, the Appellant alleged that he was in Lafia in Nasarawa State at the time of commission of the crime.

This, the trial Judge found incredible and disbelieved same. It is not the law that once a defence of an alibi is set up, then it becomes sacrosanct and must of necessity absolve the Appellant of culpability in a criminal trial. It has been held by the Supreme Court in the case of NJOVENS & ORS VS. STATE (1975) 5 S.C 17 PER COKER J.S.C AT PAGE 65 that:

“There is nothing extraordinary or esoteric in a plea of alibi. Such a plea postulates that the accused person could have been at the scene of the crime and only inferentially that he was not there. Even if it is the duty of the prosecution to check on a statement of alibi by an accused person and disprove the alibi or attempt to do so, there is no inflexible and/or invariable way of doing this if the prosecution adduced sufficient and accepted evidence to fix the person at the scene of the crime at the material time.”

In other word, the word “ALIBI” is not a magic wand.

In the instant case, the evidence as found and accepted by the trial Court is overwhelming. See the evidence of PW4 at pages 71 -75 of the Record of Appeal.

Based on the above and fuller reasons advanced by my Noble Lord Lokulo-Sodipe JCA, I find no merit in this appeal and same is hereby dismissed. The judgment of the trial Court is hereby affirmed by me.