**BAYOMI BAKARE**

**V.**

**THE STATE**

IN THE COURT OF APPEAL OF NIGERIA

ON THURSDAY, THE 13TH DAY OF JULY, 2017

CA/IB/206C/2015

**LEX (2017) - CA/IB/206C/2015**

**OTHER CITATIONS**

2PLR/2017/5 (CA)

(2017) LPELR-42772 (CA)

**BEFORE THEIR LORDSHIPS**

MODUPE FASANMI J.C.A

CHINWE EUGENIA IYIZOBA J.C.A

HARUNA SIMON TSAMMANI J.C.A

**BETWEEN**

ABAYOMI BAKARE - Appellant(s)

AND

THE STATE - Respondent(s)

**ORIGINATING COURT**

OGUN STATE HIGH COURT OF JUSTICE IN THE OTA JUDICIAL DIVISION (N. I. Agbelu, J., Presiding)

**REPRESENTATION/LAWYERS**

D. A. AWOSIKA. Esq with him, M. I. OMOJOLA, Esq - For Appellant(s)

OLUDAYO OSUNFISAN (D.P.P, Ogun State) with R. B. KADIRI (A.D.P.P, Ogun State) - For Respondent(s)

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

CRIMINAL LAW AND PROCEDURE:- Offence of armed robbery - How proved.

CRIMINAL LAW AND PROCEDURE:- Offence of conspiracy - Nature of - How determined - What the prosecution needs to prove to substantiate a charge of conspiracy to commit armed robbery.

CRIMINAL LAW AND PROCEDURE:- Offence of conspiracy - Whether separate and distinct from the actual commission of a criminal offence.

**PRACTICE AND PROCEDURE ISSUES**

APPEAL:– Issues of determination – proliferation of issues distilled from a single ground of appeal - Whether a bar to the hearing of an appeal on the merit

APPEAL:- Finding(s)/decision(s) of trial court not appealed against - Effect of – Proper treatment of by appellate court - Whether would be discountenanced.

EVIDENCE:- Burden of proof/standard of proof in criminal cases - Burden on the prosecution - Effect of failure to discharge same

EVIDENCE:- Confessional statement – Conditions that must be satisfied before a confessional statement can be used to convict an accused person – Uncorroborated confessional statement – Whether can be enough to ground a conviction

EVIDENCE:- Evidence of co-accused person – Nature of - Whether would constitute evidence against a co-accused.

EVIDENCE:- Identification evidence – Purpose of - Guiding principles for a proper identification parade – What a trial court must consider.

JUDGMENT AND ORDER:- Reason(s) for judgment – Duty of trial court supply reasons for its decision - Basis and justification for – Reason for disbelieving a witness or preferring one evidence/witness over any another – Absence of – Implication for decision based thereon

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Appellant and three others were tried and convicted for the offences of conspiracy to commit armed robbery and for the commission of armed robbery, which are offences punishable under Sections 6(a) and 1(2) (a) of the Robbery and Firearms (Special Provisions) Act, Cap. R.11, Laws of the Federation of Nigeria, 2004. The Appellant and the co-accused were said to have on or about the 29th day of March, 2009 at Onibudo Phase II, No.13, Ikire Street, Ajuwon conspired and robbed one Cecilia Akinsanya of an Omatek Laptop, Ankara Fabrics and the sum of 6,000.00.

In proof of their case against the Appellant and his co-accused persons, the prosecution called six witnesses who testified as the PW1, PW2, PW3, PW4, PW5 and PW6 respectively. Each of the accused persons testified in defence, with the Appellant who was the 4th accused person, testifying as the DW4. The prosecution also tendered the Extra-Judicial Statements of the Appellant, which were admitted as Exhibits “D” and “L” respectively. At the close of evidence, learned counsel filed and exchanged Final Written Addresses; and in a judgment delivered on the 14th day of July, 2015, the learned trial Judge found the two charges against the Appellant and the co-accused as proved and proceeded to sentence each of them to be hanged by the neck until they die. Dissatisfied, the Appellant appealed.

DECISION(S) APPEALED AGAINST

in a judgment delivered on the 14th day of July, 2015, the learned trial Judge found the two charges against the Appellant and the co-accused as proved and proceeded to sentence each of them to be hanged by the neck until they die, hence the appeal by the Appellants.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

“1. Whether the Appellant was proved beyond reasonable doubt by the evidence adduced by the prosecution as one of the members of the gang that actually committed the offence of armed robbery at the house of the Complainant (Akinsanya Cecilia)   
[Grounds 1, 3, 4 & 5].

“2. Whether on the evidence before the learned trial Judge, the essentials of the offence of conspiracy to commit armed robbery was (sic) established against the Appellant herein [Grounds 2 & 4].”

*BY RESPONDENTS*

“Whether the evidence before the trial Court sufficiently linked the Appellant to the offences charged to warrant his conviction.”

*AS ADOPTED BY COURT*

[The Court adopted the Issues presented by the Parties]

DECISION OF SUPREME COURT

1. A charge of armed robbery, nay any other criminal offence may be proved by any of the following ways: (i) Direct or eye witness evidence; (ii) Confession Statement or evidence. (iii) Circumstantial evidence. All the elements of the offence must be proved beyond reasonable doubt; and the offence may be proved by one or a combination of any two or all of the above stated means of proving crime.

2. Evidence of identity is that which shows or tends to show that the person charged with the commission of an offence, is the same person who committed the offence. The question whether an accused person has been properly identified as the one who committed the offence or was a party to the commission of the offence charged is a question of fact to be determined by the trial Court on the evidence adduced by the prosecution for that purpose.

3. For the purpose of identity of an accused person, the prosecution must lead evidence showing the following:

(a) The description of the accused person given to the police by the witness after the commission of the offence;

(b) The opportunity the victim had for observing the accused; and

(c) The features the victim gave of the accused person which marks him out from other persons.

4. The Confessional Statement of an accused person is not binding on a co-accused, except the statement was adopted by the co-accused. See Section 29(4) of the Evidence Act, 2011. This is because, where an accused person makes a Confessional Statement to the police as to his participation or culpability in the crime charged, he is not confessing for his co-accused. This confession is only evidence against him and not against the co-accused persons.

5. Instant case, the Appellant retracted his Confessional Statement at the trial. The law is that the fact that the accused person has retracted his Confessional Statement does not mean that the Court cannot act on it to convict him. But before the Court can convict on such retracted Confessional Statement, the Court should evaluate the totality of the evidence adduced at the trial, so as to see whether there is [are] some other evidence outside the confession to show that the confession is true. In the evaluation of the evidence of confession, the trial Court is enjoined to test the truth of the confession by answering the following questions:

(a) Is there anything outside the confession to show that it is true?

(b) Is the confession corroborated?

(c) Are the statements made in it of facts, so far as can be ascertained, true?

(d) Was the accused a person who had the opportunity of committing the offence?

(e) Is the confession possible?

(f) Is the confession consistent with other facts which have been ascertained?

It is however not the law that in all cases the Confessional Statement must be corroborated before the trial Court can convict on it. Thus, once the Confessional Statement is direct, positive, unequivocal and duly proved, the trial Court can lawfully and conveniently convict on it without the need for any corroborative evidence.

6. Apart from the retracted Confessional Statement of the Appellant, there is no other evidence on record which link the Appellant with the act of robbery. No one could identify as one of the suspects of the crime. No identification parade was conducted. Appellant was not arrested at the scene of the crime, and none of the stolen items was recovered from him. Furthermore, the statements of the other accused persons cannot be used as corroboration of the extra-judicial statement of the Appellant, because they were not made on oath and by Section 29(4) of the Evidence Act, 2011, such Statements are only binding on the makers. There is nothing to show that those statements were made in the presence of the Appellant and that he adopted same, either in words or conduct. See

7. Therefore, the prosecution did not discharge the burden reposed on it to prove that the Appellant is one of the persons that robbed the PW1, beyond reasonable doubt. It therefore means that the learned trial Judge erred when he found the Appellant guilty of the offence of armed robbery.

8. Conspiracy is an agreement between two or more persons to do an unlawful act or to do a lawful act by unlawful means. The gist of conspiracy is the meeting of the minds of the conspirators. Generally, it is the state of the mind of the persons that is in issue in proof of conspiracy, so the fact of conspiracy is generally incubated in secret and so it is not always easy to determine the fact of conspiracy. This is because, no man, even the devil, except God knows the heart of a man. Therefore, conspiracy is a matter of inference, deducible from the acts done by the conspirators towards the execution of the act for which the conspiracy was formed.

9. To prove the offence of conspiracy to commit armed robbery, there must be evidence of the following facts:

(a) That there was an agreement between the prisoner and others to convict an offence;

(b) That in furtherance of the agreement, the accused took part in the commission of the offence;

(c) That the offence for which the agreement was formed is armed robbery.

10. There is no evidence on record linking the Appellant with the armed robbery incident in the house of the PW1. The Appellant was in no way linked with any agreement with the other accused persons to commit armed robbery. The trial Judge erred when he convicted the Appellant for the crime of conspiracy to commit armed robbery.

**MAIN JUDGMENT**

HARUNA SIMON TSAMMANI, J.C.A. (DELIVERING THE LEADING JUDGMENT):

This is an appeal against the judgment of the Ogun State High Court of Justice in the Ota Judicial Division, delivered by N. I. Agbelu, J in Suit No: HCT/7R/2010, on the 14th day of July, 2015.

The Appellant and three others were tried and convicted for the offences of conspiracy to commit armed robbery and for the commission of armed robbery, which are offences punishable under Sections 6(a) and 1(2) (a) of the Robbery and Firearms (Special Provisions) Act, Cap. R.11, Laws of the Federation of Nigeria, 2004. The Appellant and the co-accused were said to have on or about the 29th day of March, 2009 at Onibudo Phase II, No.13, Ikire Street, Ajuwon conspired and robbed one Cecilia Akinsanya of an Omatek Laptop, Ankara Fabrics and the sum of 6,000.00.

The case of the prosecution against the Appellant and the three others at the trial Court was succinctly stated by the Director of Public Prosecutions, Ogun State Ministry of Justice, of learned counsel for the Respondent as follows:

“The case for the prosecution at the trial Court was that on 29/3/2009 at about 12.45a.m, Mrs. Akinsanya, PW1 while sleeping observed rays of torch light on her face. She woke up and discovered the accused persons armed with knife and cutlasses were already in her room. PW1 was asked the whereabout of her daughter. She was asked to cooperate by giving them money. One of the armed robbers attempted to rape her but had a rethink after she pleaded with him. Her wardrobe was ransacked and a sum of N6,000.00 was stolen from her bag. During the robbery operation the PW1 was able to see the faces of the accused persons, particularly the face of the 2nd accused person. The 2nd accused person was a neighbor whom the PW1 had seen the previous day in the same attire the 2nd accused had on during the robbery attack. The armed men also made away with the PW1’s Omatek Laptop. As soon as the accused persons departed, the PW1 woke her neighbours and informed them of the robbery attack. She also informed them that the 2nd accused was among the robbers with the assistance of the 2nd accused person’s father, the 2nd accused and the other accused persons (including the Appellant) were arrested. A case of conspiracy to commit armed robbery and armed robbery was incidented against the Appellant and his co-accused persons. This led to the trial of the Appellant and others, all of who were subsequently convicted of the offences of conspiracy to commit armed robbery and armed robbery.”

In proof of their case against the Appellant and his co-accused persons, the prosecution called six witnesses who testified as the PW1, PW2, PW3, PW4, PW5 and PW6 respectively. Each of the accused persons testified in defence, with the Appellant who was the 4th accused person, testifying as the DW4. The prosecution also tendered the Extra-Judicial Statements of the Appellant, which were admitted as Exhibits “D” and “L” respectively. At the close of evidence, learned counsel filed and exchanged Final Written Addresses; and in a judgment delivered on the 14th day of July, 2015, the learned trial Judge found the two charges against the Appellant and the co-accused as proved and proceeded to sentence each of them to be hanged by the neck until they die. Naturally, the Appellant is piqued by his conviction and has therefore appealed to this Court.

The Original Notice of Appeal which is at pages 103 - 106 of the Record of Appeal was dated the 13/8/2015 and filed on the 17/8/2015. Same was however amended vide Motion on Notice filed on the 20/9/16 and granted on the 14/2/2017. The Amended Notice of Appeal is that dated the 19/9/2016 and filed on the 20/9/2016 but deemed filed on the 14/2/2017. It consists of five (5) Grounds of Appeal. The parties complied with the Rules of this Court by filing Briefs of Arguments.

The Appellant’s Brief of Arguments was dated the 07/9/2016 and filed on the 20/9/2016. Two issues were formulated therein for determination as follows

1. Whether the Appellant was proved beyond reasonable doubt by the evidence adduced by the prosecution as one of the members of the gang that actually committed the offence of armed robbery at the house of the Complainant (Akinsanya Cecilia)   
[Grounds 1, 3, 4 & 5].

2. Whether on the evidence before the learned trial Judge, the essentials of the offence of conspiracy to commit armed robbery was (sic) established against the Appellant herein [Grounds 2 & 4].

The respondent’s Brief of Arguments was dated and filed on the 10/3/2017 but deemed filed on the 07/6/2017. Therein, the Respondent distilled only one issue for determination as follows:

Whether the evidence before the trial Court sufficiently linked the Appellant to the offences charged to warrant his conviction.

Before I proceed, let me comment on the issues formulated by the Appellant. I note that both issues distilled by the Appellant are said to be rooted also on Ground 4. It is the established law on formulation of issues, that a party is not allowed to formulate more than one issue from one Ground of Appeal. To do that would amount to proliferation of issues. While one issue may be formulated from more than one Ground of Appeal, the law does not allow one Ground of Appeal to support more than one issue. See Leedo Presidential Hotel Ltd v. B.O.N. Ltd (1993) 1 NWLR (pt.269) p.334; Afrotech Services (Nig.) Ltd v. M.I.A. & Sons Ltd (2000) 15 NWLR (pt.692) p.730 and Ehuwa v. O.S.I.E.C. (2006) 18 N.W.L.R (pt.1012) p.544**.** Where more than one issue are distilled from a single Ground of Appeal, such issues are considered incompetent and should be ignored. See Alhaji Roimi Akanji Yusuf & Ors v. Alhaji Akindipe & Ors (2000) 8 NWLR (pt.669) p.376. In the instant case, both issues formulated by the Appellant are said to be distilled also, from Ground 4. However, considering that this is a criminal case wherein the life of a citizen is at stake, I would proceed to determine the appeal on the issues as framed, since the Grounds of Appeal and the issues formulated are not per se invalid. See Eke v. Ogbonda (2006) 18 NWLR (pt.1012) p.506 at 524 per Muhammed, JSC (as he then was).

Now, on issue one (1), learned counsel for the Appellant cited the case of Afolalu v. State (2010) 16 NWLR (pt.1220) p.584 to contend that, the resolution of this issue hinges on the 3rd element or ingredient of armed robbery, i.e. whether the Accused/Appellant was one of those who took part in the armed robbery. Learned Counsel then contended that the learned trial Judge had graphically set out the ingredients of armed robbery as follows:

(a) That there was a robbery or series of robberies;

(b) That the robbers were armed with firearms or offensive weapons; or in company of persons who were so armed, and

(c) That the accused person was among the robbers.

The cases of Olayinka v. The State (2007) 13 NWLR (pt.1040) p.561 and Ikemson v. The State (1989) 3 NWLR (pt.110) p.455 were cited in support. Learned Counsel then submitted that the learned trial Judge rightly found that there was a robbery in the house of the PW1 and that the robbers were armed. It was then also submitted that the 1st and 2nd ingredients of the offence of armed robbery had therefore been established. It is on the 3rd ingredient, that learned counsel contends the learned trial Judge erred, when he held that all the essential ingredients of robbery had been proved by the prosecution.

Learned Counsel for the Appellant went on to submit that the testimony of the PW1 on the identity of the Appellant is incoherent as to the presence of the Appellant at the scene of crime. He then cited the case of Chukwu v. State (1996) 7 NWLR (pt.463) p.686 at 702 to further contend that, nowhere in the testimony of PW1 did she say that she recognized the Appellant as one of the robbers that robbed her. That, PW1 mentioned only the name of one Shina, whom she said she had known prior to the incident because he lives close to her house. That there is nowhere the PW1 mentioned the Appellant and therefore it is safe to conclude the identity of the Appellant as one of the robbers was not proved. Learned Counsel then referred to the appraisal of the evidence of identity by the trial Court at page 93 lines 16 - 27 of the records to further submit that, from the finding of the trial Court, nowhere was it found that PW1 related the involvement of the Appellant in the robbery incident.

It was further contended by learned counsel for the Appellant that, there was no identification parade conducted by the police so as to enable the PW1 confirm the identity of the Appellant. He then cited the case of Alabi v. State (1993) 7 NWLR (pt.307) p.511 at 533 to submit that for the prosecution to secure a conviction, the identity of the accused must be established by credible evidence beyond reasonable doubt. It was then submitted that, notwithstanding the defect in the testimony of PW1 as it affects the Appellant, the learned trial Judge still proceeded to convict him. That in any case, no other witness gave evidence linking the Appellant with the commission of the offence, rather, the learned trial Judge relied on the Extra-Judicial Statement of the 2nd accused person as corroborative of the Extra-Judicial Statement of the Appellant, to find that the identity of the Appellant had been established. That there are substantial facts on record which create serious doubt on the identity of the Appellant as one of the robbers who robbed the PW1 on the 29/3/2009. That, those facts include:

(a) That PW1 stated in Cross-Examination that she only recognized the 2nd accused person (Shina) as a person she knew prior to the incident;

(b) That the incident happened at night and there was no light in her room, so PW1 could not see;

(c) That it is inconceivable that PW1 could identify the features of the robber who pointed a torchlight on her face;

(d) That throughout the proceedings, none of the prosecution witnesses gave evidence linking the Appellant to the commission of the crime; and

(e) That the Laptop computer allegedly stolen from the PW1 was not sold to PW2 by the Appellant and none of the stolen items was traced to the Appellant.The case of Ndukwe v. The State (2009) 7 NWLR (pt.1139) p.43 was then cited to submit that the learned trial Judge erred in not adverting his mind to those facts in evaluating the evidence on the identity of the Appellant.

It is also the contention of learned counsel for the Appellant, that failure of the police to conduct an identification parade is fatal to the prosecution’s case, in the absence of clear evidence pointing to the Appellant as one of the persons who robbed PW1. The case of Nwaturuocha v. The State (2011) LPELR - 8119 was then cited to submit that the conditions for requiring the conduct of an identification parade were present in this case, as the PW1 did not know the Appellant prior to the incident and the robbery took place at night in the PW1s room when there was no light.

On the Extra-Judicial Statements of the Appellant which were tendered and admitted as Exhibits D and L, learned counsel for the Appellant submitted that the learned trial Judge only relied on Exhibit L in the summation of the evidence without taking into consideration Exhibit D. That in Exhibit D, the Appellant denied any involvement in the offence, and that it was in Exhibit L that the Appellant was said to have confessed to committing the offences. The case of Ele v. State (2006) LPELR 11649 (CA) was then cited to submit that, in view of Exhibit D, the learned trial Judge ought to have been circumspect in relying on Exhibit L in convicting the Appellant. It was also contended that the learned trial Judge fell into grave error when he accepted Exhibit L without regard to Exhibit D because, it is not in doubt that Exhibits D and L are self-contradictory, which contradiction ought to have been resolved in favour of the Appellant. The cases of Solola v. State (2005) 11 NWLR (pt.937) p.460 and State v. Kura (1975) 2 S.C. (Reprint) p.76were also cited in support.

Learned Counsel for the Appellant went on to submit that, the Appellant having resiled from Exhibit L (a Confessional Statement), the learned trial Judge should have looked for other evidence on record outside Exhibit L which corroborates Exhibit L. That the guiding tests recommended to determine the truth of Exhibit L have been laid down in the cases of Rabiu v. The State (2010) 10 NWLR (pt.1201) p.127 at 161 162; Shande v. The State (2005) 1 NWLR (pt.907) p.208 at 240 241 and R. v. Sykes (1913) 1 C.A.R. p.233. That there was no evidence to corroborate the Confessional Statement of the Appellant. That the PW1 who was the victim of the offence did not say that he identified the Appellant, and the items allegedly stolen from the PW1 were not traced to the Appellant. Furthermore, that the trial Court erred in relying on the Confessional Statements of the co-accused as corroboration of the alleged Confessional Statement of the Appellant. The cases of Amala v. The State (2004) 12 NWLR (pt.888) p.520 at 552 and Gabriel v. The State (2010) 6 NWLR (pt.1190) p.280 at 334 paragraph Gwere thus cited to submit that the learned trial Judge was wrong to have relied on the Confessional Statements of the other accused person as corroboration of Exhibit L. We were accordingly urged to resolve this issue in favour of the Appellant.

In response, learned D.P.P; Ogun State for the Respondent contended that, the prosecution can prove the guilt of an accused person through, (a) the evidence of an eye witness; (b) a Confessional Statement, and (c) circumstantial evidence. The case of Yakubu v. State (2014) LPELR - 24180 (CA) was cited in support. That, there is overwhelming evidence to prove that the Appellant was one of the men that robbed PW1 on the 29/3/2009. That, in any case, the PW1 was not Cross-Examined on her testimony to the effect that the Appellant and three others entered her apartment armed with knife and cutlasses and that she got to know the Appellant during the robbery attack. The case of Oforlette v. State (2000) FWLR (pt.12) p.2081 at 2098 - 2099 paragraphs H /A was then cited to submit that, it is the law that, where the adversary fails to Cross-Examine a witness upon a particular matter, the Court is bound to accept such evidence as the truth.

Learned Counsel for the Respondent went on to submit that, in Exhibit “L”, the Appellant stated that he carried the PW1’s Laptop during the robbery and dropped it in a bush and returned to carry it. That he gave the Laptop to one Peter to sell for him on the pretext that it was his (Appellant’s) brother who wanted to sell it. That, the recovery of the Laptop from PW2, to whom the said Peter had sold same is circumstantial evidence which corroborated the Confessional Statement of the Appellant that he is one of the persons that robbed PW1. The case of Adie v. The State (1980) LPELR - 176 (SC) was then cited to submit the unbroken chain of evidence on how the Laptop left the house of the PW1 and ended up with PW2 is sufficient circumstantial evidence linking the Appellant with the robbery charged.

It was further contended by the learned counsel for the Respondent that the Appellant had confessed in Exhibit “L” that, he and other accused persons robbed the PW1 on 29/3/2009. The cases of Musa v. State (2012) 3 NWLR (pt.1286) p.59 at 94 paragraphs E/F and Abdu v. The State (2014) LPELR - 2256 (CA) were then cited to submit that, once a voluntary Confessional Statement is admitted in evidence, the prosecution’s job is almost done, because the confession ends the need to prove the guilt of the accused. It was then contended that, Exhibit “L” is positive, direct and freely made by the Appellant. Learned Counsel however noted that the Appellant had resiled from Exhibit “L” and led evidence which was inconsistent with Exhibit “L”. The case of Hassan v. The State (2001) LPELR - 1358 (SC) was also cited to submit that a Confessional Statement is not rendered inadmissible by the retraction or denial of same by the accused persons, unless the accused leads sufficient evidence to explain the inconsistency between his earlier Confessional Statement to the police and his oral testimony in Court. That in the instant case, the Appellant did not offer any explanation to the trial Court for the inconsistency; and therefore the learned trial Judge was right in concluding that the Appellant was not a truthful witness.

The case of Kareem v. The F.R.N. (2002) LPELR - 1664 (SC) was further cited to submit that, in the instant case, the learned trial Judge tested the truth of the Confessional Statement. That, in Exhibit “L”, the Appellant stated that he sold the stolen Laptop to one Peter; and that PW2 from whom the Laptop was recovered testified that he bought it from Peter. That he also stated in Exhibit L that after the robbery, he and his colleagues were arrested together around 2.00a.m, and which fact was corroborated by PW3 relating to the arrest of the Appellant. We were accordingly urged to hold that the evidence adduced by the prosecution sufficiently linked the Appellant with the crime; and to resolve this issue against the Appellant.

Now, by Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended):

Every person who is charged with criminal offence shall be presumed to be innocent until he is proved guilty

Provided that nothing in this Section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

By the above stated provision of the Constitution therefore, the burden has been laid fully on the prosecution to prove the guilt of the accused person. This burden, called the ultimate burden is on the prosecution in a criminal trial throughout the trial, as it is the prosecution that will fail if no evidence is called in prove of the charge. That burden is static and does not shift. See Sections 131(1) & (2) and 132 of the Evidence Act, 2011. See also Sabi v. State (2011) 14 NWLR (pt.1268) p.421; Osuagwu v. State (2012) 5 NWLR (pt.1347) p.360; The State v. Fatai Azeez & Ors (2008) 4 S.C. p.188; Kabiru v. A.G; Ogun State (2009) 5 NWLR (pt.1134) p.209 and Ike v. the State (2010) 16 NWLR (pt.1218) p.132. The burden cast on the prosecution must be discharged beyond reasonable doubt. Proof beyond reasonable doubt does not mean proof to the hilt or proof beyond shadow of doubt. It only means proof that dispels with fanciful possibilities that having nothing to do with the exercise of the trial Court’s judicial and judicious discretion. As stated by Tobi, JSC (of blessed memory) in the case of Jua v. State (2010) 4 NWLR (pt.1184) p.217:

“Reasonable doubt which will justify an acquittal is a doubt based on reason arising from evidence or lack of it. It is a doubt which a reasonable man or woman might entertain. It is not fanciful doubt; it is not an imaginary doubt. It is a doubt as would cause prudent men to hesitate before acting in matters of importance to themselves.”

In that respect, it is of importance that a Court trying any criminal case, especially serious crimes like armed robbery which carries the ultimate penalty known to our law, must ensure that the totality of the evidence adduced before it, does not leave any reasonable doubt that the accused committed the offence, before proceeding to convict. Thus, where an essential element of the offence has not been established or the evidence adduced in respect thereof has created a reasonable doubt as to the culpability of the accused, the trial Court has the Constitutional duty to acquit the accused. See Adeoye Aliu v. The State (2014) LPELR - 23253 (CA); Agbo v. State (2006) 6 NWLR (pt.977) p.545; Igabele v. State (2006) 6 NWLR (pt.975) p.100 and Nwaturuocha v. The State (2011) 6 NWLR (pt.1242) p.770. My Lord, Galadima, JSC further elucidated on the issue in the case of Posu & Anor v. The State(2011) LPELR - 1969 (SC) when he stated that:

The law is quite clear on the requirement of proof beyond reasonable doubt to secure conviction for any criminal offence by virtue of Section 138(1) of the Evidence Act, Cap.112 of the Laws of the Federation 1990, applicable at the time of the trial of the Appellants. Therefore, if on the entire evidence adduced before a trial Court, the Court is left with no doubt the offence was committed by accused person, that burden of proof beyond reasonable doubt is discharged and the conviction of the accused person will be upheld, even if it is the credible evidence of a single witness. On the other hand, where the Court considers the totality of the evidence, and a reasonable doubt is created, the prosecution would have failed in its duty to discharge the burden of proof which the law vests upon it, thereby entitling the accused person the benefit of the doubt resulting in his discharge and acquittal.

It therefore remains settled that, the burden reposed on the prosecution is to adduce credible evidence to proof every element or ingredient of the offence charged; including disprove of any defence that may be set up by the accused. Accordingly where one of the essential ingredients of the offence charged is not proved, or the evidence adduced in prove thereof has been so discredited in Cross-Examination that no reasonable Court or Tribunal would convict on it, the case has not been proved beyond reasonable doubt, and the accused will be entitled to an acquittal. Se Ewo & Ors v. Ani & Ors (2004) 3 NWLR (pt.861) p.610; Garba v. State (2011) 14 NWLR (pt.1266) p.98; Obi v. State (2013) 5 NWLR (pt.1346) p.68; Babatunde v. State (2014) 2 NWLR (pt.1391) p.298; Ogunbayo v. The State (2007) 8 NWLR (pt.1035) p.157 and Esangbedo v. The State (1989) NWLR (pt.113) p.57. See also Demo Oseni v. The State (2012) LPELR - 7833 (SC); Obasi Onyenye v. The State (2012) LPELR - 7866 (SC) and Semiu Afolabi v. The State (2010) LPELR - 363 (SC).

In the instant case the Appellant, along with others, was charged, tried and convicted for the offence of conspiracy to commit armed robbery; and for committing armed robbery. What concerns us now, in this issue, is to determine, whether the learned trial Judge was right in convicting the Appellant of the offence of armed robbery charged. It has been held in a multitude of judicial authorities that, for the prosecution to secure a conviction for armed robbery, the prosecution must adduce credible evidence in proof of the following facts beyond reasonable doubt:

(a) That there has been either a robbery or series of robberies;

(b) That the robbery or each of the robberies was an armed robbery; and

(c) That the accused or prisoner was either the robber or one of those who took part in the robbery or series of robberies.

It is also the law that a charge of armed robbery, nay any other criminal offence may be proved by any of the following ways:

(i) Direct or eye witness evidence;

(ii) Confession Statement or evidence.

(iii) Circumstantial evidence.

As stated earlier, all the stated elements of the offence must be proved beyond reasonable doubt; and the offence may be proved by one or a combination of any two or all of the above stated means of prove. See Igri v. The State (2010) 7 W.R.N. p.1 at 47; Emeka v. The State (2010) 1 W.R.N. p.41 at 64; Adeosun v. The State (2007) 46 W.R.N. p.1 at 72; Alabi v. State (1993) 7 NWLR (pt.307) p.511 and Tanko v. State (2008) 18 NWLR (pt.1114) p.591.

Now, in arguing this appeal, learned counsel submitted (by conceding) that the first two ingredients of the offence of armed robbery had been proved beyond reasonable doubt. That by this appeal, the Appellant is challenging the finding of the trial Court that, he (Appellant) was properly identified beyond reasonable doubt as one of the persons that robbed PW1 while armed with offensive weapon(s) on the 29/3/2009. There is therefore no appeal against the findings of the trial Court, on the facts that, there was a robbery in the house of the PW1 on the 29/3/2009, and that the robbers were armed at the time of the robbery. Those facts are therefore deemed established and therefore remains binding, valid and conclusive. See Alakija v. Abdulai (1998) 6 NWLR (pt.552) p.1 at 24 and Awote v. Owodunni (1987) NWLR (pt.57) p.366. Our duty now is to determine whether the trial Court rightly made findings that fixed or linked the Appellant with the armed robbery incident in the house of the PW1 on the 29/3/2009.

Now, the evidence of identity is that which shows or tends to show that the person charged with the commission of an offence, is the same person who committed the offence. The question whether an accused person has been properly identified as the one who committed the offence or was a party to the commission of the offence charged is a question of fact to be determined by the trial Court on the evidence adduced by the prosecution for that purpose. See Udukwu v. The State (2009) NWLR (pt.1139) p.43. Thus, where the identity of an accused person as a participant in the crime charged is in issue, a trial Court is enjoined to warn itself and be cautious, and meticulous in the examination of the evidence adduced, so as to see whether there are weaknesses in the evidence, capable of engendering any allegation that the accused was sufficiently identified by the witnesses at the time of the commission of the offence charged. This is more desirable where the offence charged is armed robbery, as in this case, where the penalty is the highest known to our law; which is death. See Archibong v. State (2006) 5 S.C. p.1 and Tanko v. State (2006) 18 NWLR (pt.114) p.591. It therefore follows that, where the issue of identity of an accused person has been put in issue, it is necessary that the evidence adduced is concrete, cogent and convincing, pointing beyond reasonable doubt that the accused has been properly linked with the commission of the offence.

It is also settled law that, the identity of an accused person will not be in doubt if there is evidence before the Court showing that, a witness who was an eye witness had the opportunity to identify the accused person at the time the offence was committed. An eye witness, who claims to have identified the accused person at the time of the commission of the offence, must be able to report to the police of his observation of the accused, detailing his physical feature, the clothes he wore, his mannerism or his voice etc. Those facts must be divulged to the police immediately after the commission of the offence. It is the description of the accused to the police that would enable them organise an identification parade in the manner required by law. Thus, for the purpose of identity of an accused person, the prosecution must lead evidence showing the following:

(a) The description of the accused person given to the police by the witness after the commission of the offence;

(b) The opportunity the victim had for observing the accused; and

(c) The features the victim gave of the accused person which marks him out from other persons.

See Okosi v. The State (1989) 1 NWLR (pt.100) p.645 and Ojukwu v. State (2002) 4 NWLR (pt.756) p.80. Generally, an identification will be required or necessary where the victim did not know the accused prior to the incident and was confronted by the offender for a very short time; and on which time and circumstances, he (victim) ought not have had full opportunity of observing the features of the accused. See Alabi v. The State (1993) 7 NWLR (pt.307) p.511; Otti v. State (1993) 4 NWLR (pt.290) p.675; Tirimisiyu Adebayo v. The State (2014) LPELR - 22988 (SC) and Akeem Agboola v. The State (2013) LPELR - Ebenehi v. State (2008) 10 NWLR (pt.1096) p.596; Afolalu v. State (2010) 16 NWLR (pt.1220) p.584 and Attah v. State (2010) 10 NWLR (pt.1201) p.190. It is the duty of the trial Court to evaluate the evidence adduced by the prosecution, so as to see whether the evidence adduced links the accused with the commission of the offence beyond reasonable doubt.

In the determination of the issue of identity, the learned trial Judge held at page 93 of the Record of Appeal as follows:

On the 3rd ingredient, as to whether the Accused were the robbers or among the robbers that committed the robbery of 29-3-09, it is part of the evidence of PW1 that she recognized the 2nd Accused as among the Hoodlums who attacked her in her house. She testified that the 2nd Accused was her neighbor who lives opposite her residential house with his mother. It was as a result of her complaint against the 2nd Accused that he was arrested with other 1st, 3rd and 4th and later admitted the offence. The evidence of PW1 as to how the robbery incident took place in her residential building was cogent, credible and reliable more particularly when the evidence was not discredited or challenged by the defence.

That is all the learned trial Judge had to say about the identity of the robbers that allegedly robbed the PW1. Apart from the mention of the 2nd accused, the PW1 did not say that she identified or recognized the Appellant as one of the persons that robbed her on the 29/3/2009. Indeed, no identification parade was conducted for the purpose of identifying the remaining suspects to the robbery, apart from the 2nd Accused whom the PW1 said she recognized. It would appear that the learned trial Judge relied on the fact that the Appellant was arrested in company of the 2nd Accused. It also appears to me that the learned trial Judge relied on the Extra-Judicial Statement of the 2nd Accused person to find that the identity of the Appellant had been established.

It is however the law that, the Confessional Statement of an accused person is not binding on a co-accused, except the statement was adopted by the co-accused. See Section 29(4) of the Evidence Act, 2011. This is because, where an accused person makes a Confessional Statement to the police as to his participation or culpability in the crime charged, he is not confessing for his co-accused. Therefore, his confession is only evidence against him and not against the co-accused persons. See Aikhadueki v. State (2013) LPELR - 20806 (SC); Ozaki v. State (1990) 1 NWLR (pt.124) p.92; Kaza v. State (1994) 5 NWLR (pt.344) p.269 at 288, and The State v. James Gwangwan (2015) LPELR - 24837 (SC). It therefore means that the Confessional Statement of the 2nd Accused could not be used as evidence against the Appellant. No aspect of the testimony of the PW1 linked the Appellant with the act of robbery for which he was convicted.

It would appear also that the learned trial Judge relied on the Extra-Judicial Statements of the Appellant to convict. The Appellant had made two Extra-Judicial Statements in the course of the police investigation. The first statement made by the Appellant was made on the 1/4/09, about two days after the arrest of the Appellant. It was made at the Ajuwon Police Station. By that Statement, the Appellant denied any involvement in the robbery on the PW1. The statement is in evidence as Exhibit “D”. The 2nd Statement which the trial Court found to be confessional was made at the State CID Office, Abeokuta; on the 20/5/2009 which is about 22 days after the robbery incident and twenty days after his arrest. It is in evidence as Exhibit “L”. It would appear therefore that, the trial Court having found Exhibit “D” as not being confessional, did not take it into consideration in the evaluation of the evidence adduced against the Appellant. The learned trial Judge therefore relied on Exhibit ”L” which he found to be confessional in finding the guilt of the Appellant.

It should be noted that, the law as settled is that a Court can convict solely on the Confessional Statement of an accused person. In other words, a Confessional Statement which is freely made by the accused; and is direct, positive and duly proved can ground a conviction in law. See Odime v. State (2007) 3 S.C. (pt.1) p.176; Edamine v. State(1996) 3 NWLR (pt.438) p.530 at 541; Akpa v. State (2007) 2 NWLR (pt.1019) p.500 and Yusuf v. The State (2012) LPELR - 7878 (CA). However in the instant case, the Appellant retracted his Confessional Statement at the trial. The law is that the fact that the accused person has retracted his Confessional Statement does not mean that the Court cannot act on it to convict him. But before the Court can convict on such retracted Confessional Statement, the Court should evaluate the totality of the evidence adduced at the trial, so as to see whether there is [are] some other evidence outside the confession to show that the confession is true. See Idowu v. The State (2000) FWLR (pt.16) p.2672 at 2703**.** Thus, in the evaluation of the evidence of confession, the trial Court is enjoined to test the truth of the confession by answering the following questions:

(a) Is there anything outside the confession to show that it is true?

(b) Is the confession corroborated?

(c) Are the statements made in it of facts, so far as can be ascertained, true?

(d) Was the accused a person who had the opportunity of committing the offence?

(e) Is the confession possible?

(f) Is the confession consistent with other facts which have been ascertained?

It is however not the law that in all cases the Confessional Statement must be corroborated before the trial Court can convict on it. Thus, once the Confessional Statement is direct, positive, unequivocal and duly proved, the trial Court can lawfully and conveniently convict on it without the need for any corroborative evidence. SeeUbierho v. State (2005) 5 NWLR (pt.919) p.644; Isa v. State (2007) 12 NWLR (pt.905) p.292; Nwachukwu v. State (2007) All FWLR (pt.390) p.1380 at 1410 and Shazali v. State (1988) NWLR (pt.93) p.163.

In the evaluation of the Confessional Statement of the Appellant, the learned trial Judge held at page 98 lines 11 - 20 of the Record of Appeal as follows:

“It is pertinent to note that the various Statements of the Accused persons had been held to have been made by them. These statements were Confessional Statements. By Section 27(1), a Confessional Statement is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime.

In law, where a Confessional Statement has been proved to have been made voluntarily and it is positive, unequivocal and amounts to an admission of guilt it is enough to sustain a conviction of an Accused. It does not matter whether the maker retracted the statement in the course of the trial. Such a retraction does not make the confession inadmissible.”

After correctly stating the law as above, the learned trial Judge went on to propound, again correctly, that:

“However, as earlier stated in this judgment all the Accused persons have retracted their Confessional Statements and denied the knowledge of the offence in their various testimonies in Court. However, the fact that an accused person resiled or retracted his Confessional Statement at the trial will not prevent the Court from relying on the Confessional Statements to convict him since such Confessional Statement forms part of the evidence adduced by the prosecution.”

Applying the six tests to determine the truth or otherwise of the Appellant’s Confession in view of the retraction of it by the Appellant, the learned trial Judge found and held at page 101 of the records, as affects the Appellant as follows:

“The 2nd Accused stated that he was coming from his block-making business when he was arrested despite his entreaties to the Police to verify his claim about his movement while the 3rd and 4th Accused persons gave similar stories. However, from their Confessional Statements it has been shown that the evidence given by the Accused persons is an after-thought designed to deceive the Court. All the Accused persons are not truthful witnesses thus their testimony in Court are tissue (sic) of lies to hoodwink the Court. The evidence of all the Accused persons is not reliable and consists of cleverly woven lies to deceive the Court. I therefore reject their defence and hold that all the Accused persons committed the armed robbery offence which happened on 29-03/09 at PW1s house. The prosecution has therefore discharged the burden of proving its case beyond reasonable doubt against all the accused, and I so hold.”

It is the trite law that the decision of a Court must not be arbitrary, but anchored on sound reasoning and conclusion. That is why the law insists that, every finding of a Court or Tribunal must be based on reason by the Judge applying his judicial mind. A judgment of a Court must therefore give a full and dispassionate consideration of the issues properly raised before it. That is why Karibi-Whyte, JSC in the case of Agbanelo v. UBN Ltd (2000) 7 NWLR (pt.666) p.534 at 537 said:

It is elementary and essential ingredient of the judicial function that reasons are to be given for decision. It is more the case where appeals lie from the decision. In any case, the reasons for decisions enable the determination on appeal whether the decision was merely intuitive and arbitrary or whether it is consistent with established applicable principles. If judgments were to be delivered without supporting reasons it will be an invitation to arbitrariness, a rule of merely tossing the coin and the likelihood to result in judicial anarchy.

It is therefore settled that a Court of law, both trial and appellate, must give reasons for any finding of fact or decision. If it comes to believe or disbelieve of a witness, the Court must give reason for believing or disbelieving the witness. See Major Bello M. Magaji v. The Nigerian Army (2008) All FWLR (pt.420) p.603; Iloabachie v. Iloabachie (2005) 9 NWLR (pt.930) p.362; Idakwo v. Nigerian Army (2004) 2 NWLR (pt.857) p.249; Abacha v. Fawehinmi (2002) FWLR (pt.4) p.568 and Williams v. Voluntary Funds Society (1982) 1-2 S.C. p.145. See also Okoro v. State (1998) NWLR (pt.584) p.181, Alhaji (Dr.) Aliyu Akwe Doma & Anor v. I.N.E.C. & Ors (2012) LPELR - 7822 (SC) and Uwegba v. A-G; Bendel State (1986) 1 NWLR (pt.16) p.303. In that respect, to merely recap the testimony of a witness or that of an accused person and then conclude that such witness is or is not, a witness of truth will not suffice.

In the instant case, the learned trial Judge did not give any reason, at all, for his finding and conclusion that the accused persons, including the Appellant, are “not truthful witnesses”, and that the evidence they gave in Court is not reliable and consists of cleverly woven lies to deceive the Court. The learned trial Judge who had earlier correctly stated the law on retracted Confessional Statements, failed woefully to evaluate the evidence, so as to test the truthfulness of the Confessional Statements of the Appellant. If the learned trial Judge had dispassionately evaluated the totality of the evidence adduced before him, he would have come to the conclusion that the Confessional Statement of the Appellant (Exhibit “L”) did not conclusively link the Appellant with the commission of the offence for which he was convicted.

It is my finding from the evidence on record, that apart from the retracted Confessional Statement of the Appellant, there is no other evidence on record which link the Appellant with the act of robbery in the house of the PW1. The PW1 who was attacked in her room and in her house, did not say that she was able to identify the Appellant as one of the robbers in the course of the robbery. She never told the Police that she could recognize any of the features of the Appellant, as a result, no identification parade was conducted. Furthermore, the Appellant was not arrested at the scene of the crime, and none of the stolen items was recovered from him. The said Peter whom the PW2 testified that sold the Laptop to him was never called to testify. The PW2 who bought the Laptop only mentioned the name of Peter, but never said that the Appellant was involved in the sale of the Laptop to him. Furthermore, the statements of the other accused persons cannot be used as corroboration of the extra-judicial statement of the Appellant, because they were not made on oath and by Section 29(4) of the Evidence Act, 2011, such Statements are only binding on the makers. There is nothing to show that those statements were made in the presence of the Appellant and that he adopted same, either in words or conduct. See Alo v. State (2015) S.C.N.J. p.405 at 449 and State v. Onyeukwu (2004) 22 L.R.C.W. p.5245 at 5267.

From the above stated findings, it is my view, which I hold, that the prosecution did not discharge the burden reposed on it to prove that the Appellant is one of the persons that robbed the PW1, beyond reasonable doubt. There is no other iota of evidence, outside the confession of the Appellant (Exhibit “L”), which linked the Appellant with the offence for which he was convicted. It therefore means that the learned trial Judge erred when he found the Appellant guilty of the offence of armed robbery in the house of the PW1 on the 29/03/2009. This issue, issue one (1), is therefore resolved in favour of the Appellant.

On the second (2nd) issue, learned counsel for the Appellant contended that the resolution of this issue, which issue borders on the charge of conspiracy, depends on the evidence of the prosecution in issue one, above. He then cited the cases of Oyakhire v. State (2005) 15 NWLR (pt.947) p.159 at 160 and Oduneye v. State (2000) 2 NWLR (pt.697) p.311 at 324 / 325 to define conspiracy as an agreement between two or more persons to do an unlawful act or a lawful act by unlawful means. That the prosecution was therefore required to prove that there was an agreement or confederacy between the Appellant and others to commit the offence, and that in furtherance of the agreement or confederacy, the Appellant took part in the commission of the robbery charged. It was also contended that, the learned trial Judge took into consideration the Confessional Statements of the Appellant and the testimonies of PW1 and PW2 in finding that the prosecution has proved the offence of conspiracy against the Appellant.

Learned Counsel for the Appellant then submitted that, conspiracy is a matter of inference which is often derived from the facts of a particular case. That, in the instant case, the prosecution led no material evidence to establish that there was an agreement between the Appellant and the other accused persons to commit the offence of armed robbery. That, there is no clear evidence led by the prosecution which links the Appellant with the charge of conspiracy; and that nowhere did the PW1 give an account of a planned and premeditated common intention between the Appellant and his co-accused persons to commit robbery, since the PW1 did not recognize or identify the Appellant as one of her attackers in the night of the incident. We were accordingly urged to hold that, from the testimonies before the trial Court, there is no evidence upon which to infer the guilt of the Appellant on the charge of conspiracy; and to resolve this issue in favour of the Appellant.

In response, learned D.P.P. for the Respondent cited the case of Bright v. State (2012) 8 NWLR (pt.1302) p.297 at 320 paragraphs E - F, to submit that, proof of conspiracy is generally a matter of inference to be drawn from the facts or evidence adduced at the trial. That, the offence of conspiracy is complete upon meeting of the minds, and that to complete the offence, it is not necessary that any act should be done beyond the agreement. Learned D.P.P. then submitted that, the collateral circumstances and Exhibit “L” constitute facts from which the ingredients of conspiracy could be inferred. We were then urged to hold that the prosecution proved its case beyond reasonable doubt.

After defining what conspiracy is, the learned trial Judge held at page 101 lines 25 / 33 of the Record of Appeal as follows:

Usually the evidence of the commission of the substantive offence is suggestive of conspiracy. It is very clear from the various Confessional Statements of the Accused both at the Ajuwon Police Station and the State C.I.D coupled with the evidence of PW1 and PW2 that all the Accused persons agreed together to carry out the armed robbery incident which happened on 29-03-2009 at PW1 house. The offence of conspiracy is complete as soon as two or more persons agree to carry their intention into effect. Consequently, I find that the offence of conspiracy to commit the offence of armed robbery has been proved by the prosecution against the accused persons beyond reasonable doubt.

As rightly stated by the learned trial Judge, conspiracy is an agreement between two or more persons to do an unlawful act or to do a lawful act by unlawful means. The gist of conspiracy is the meeting of the minds of the conspirators. Generally, it is the state of the mind of the persons that is in issue in proof of conspiracy, so the fact of conspiracy is generally incubated in secret and so it is not always easy to determine the fact of conspiracy. This is because, no man, even the devil, except God knows the heart of a man. That being so, the Courts in their wisdom decided that, the fact of conspiracy is a matter of inference, deducible from the acts done by the conspirators towards the execution of the act for which the conspiracy was formed. See Nwosu v. State (2004) 15 NWLR (pt.897) p.466; Oduneye v. State (2001) 2 NWLR (pt.697) p.311; Njovens & Ors v. The State (1973) N.S.C.C. p.280; Gabriel v. The State (2010) 6 NWLR (pt.1190) p.280 and State v. Sule (2009) 17 NWLR (pt.1169) p.33. In the case of Fatai Busari v. The State (2015) LPELR - 24279 (SC) Muntaka-Coomassie, JSC said:

“Conspiracy is an agreement of two or more persons to do an act which is an offence to agree to. Evidence of direct plot between conspirators is hardly capable of proof. The bottom line of the offence is the meeting of the minds of the conspirators to commit an offence and meeting of the minds need not be physical. Offence of conspiracy can be inferred by what each person does or does not do in furtherance of the offence of conspiracy.”

That being so, to proof the offence of conspiracy to commit armed robbery, as in the instant case, there must be evidence to proof the following facts:

(a) That there was an agreement between the prisoner and others to convict an offence;

(b) That in furtherance of the agreement, the accused took part in the commission of the offence;

(c) That the offence for which the agreement was formed is armed robbery.

See the following cases, Usufu v. State (2007) 3 NWLR (pt.1020) p.74; Colman Momoh v. The State (2015) LPELR - 25412 (CA); Sunday Adeyemo v. The State (2010) LPELR - 3622(CA)per Kekere-Ekun, JCA (as he then was) andThe State v. Olashehu Salawu (2011) LPELR - 8252(SC).

It should be noted that the offences of conspiracy to commit armed robbery and armed robbery are two separate and distinct offences. Consequently, while an accused person may be acquitted of armed robbery but still be convicted of conspiracy to commit armed robbery. However, there must be an independent evidence placed before the Court to establish the charge of conspiracy. See Akano & Ors v. A.G; Bendel State (1988) 2 NWLR (pt.201) p.232; Amabee v. Nigerian Army (2003) 3 NWLR (pt.807) p.256 at 281; Nwankwoala v. State (2006) All FWLR (pt.339) p.801 and Upahar v. State (2003) 6 NWLR (pt.816) p.230. In the instant case, I had found earlier on in the course of this judgment that there is no evidence on record linking the Appellant with the armed robbery incident in the house of the PW1. In its judgment, the trial Court did not allude to any other evidence, direct or circumstantial, which independently established the involvement of the Appellant in the robbery charged. The Appellant was in no way linked with any agreement with the other accused persons to commit armed robbery. I have no doubt in my mind that the conviction of the Appellant for conspiracy to commit armed robbery is patently perverse. I therefore hold that the learned trial Judge erred greviously when he convicted the Appellant for the crime of conspiracy to commit armed robbery. This issue, issue two, is therefore resolved also in favour of the Appellant.

The two issues raised for determination in this Appeal having been resolved in favour of the Appellant, it is obvious that this appeal is meritorious. It is accordingly allowed. Consequently, the conviction and sentenced meted on the Appellant by the judgment delivered on the 14th day of July, 2015 in Suit No: HCT/7R/2010 is hereby set aside. The Appellant is hereby acquitted and discharged.

**MODUPE FASANMI, J.C.A.:**

I have the privilege of reading before now the draft of the lead judgment of my learned brother Haruna Simon Tsemmani, JCA. I entirely agree with all his reasons and conclusions as ably set out in the judgment.

**CHINWE EUGENIA IYIZOBA, J.C.A.:**

I read before now the judgment just delivered by my learned brother, HARUNA SIMON TSAMMANI JCA. He has dealt exhaustively with the issues in the appeal. I agree with his reasoning and conclusions. I abide by the consequential orders of my learned brother in the Judgment.