**ADEYEMI**

**V.**

**THE STATE**

SUPREME COURT OF NIGERIA

SC. 209/2014

FRIDAY, 30 JUNE 2017

**LEX (2017) - SC. 209/2014**

**OTHER CITATIONS**

3PLR/2017/26 (SC)

**BEFORE THEIR LORDHSIP**

IBRAHIM TANKO MUHAMMAD JSC (Presided)

MARY U. PETER-ODILI JSC (Read the Lead Judgment)

OLUKAYODE ARIWOOLA JSC

KUMAI BAYANG AKA’AHS JSC

AMINA ADAMU AUGIE JSC

**BETWEEN**

IBRAHIM ADEYEMI

AND

THE STATE

**ORIGINATING COURT**

COURT OF APPEAL, ILORIN DIVISION (Judgment of the court of 27 February 2014)

**REPRESENTATION/LAWYERS**

J. A. AKINOLA - For the Appellant.

TAIYE ONIYIDE - For the Respondent

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

CRIMINAL LAW AND PROCEDURE - ALIBI - Defence of - Rationale for – Effect of when raised timeously – Duty on police and prosecution when an accused raises same as a defence.

CRIMINAL LAW AND PROCEDURE - ARMED ROBBERY:– Proof of – Standard of Proof required - Ingredients the prosecution must establish - Section 1(2) of the Robbery and Firearms Act, Cap. R11, Laws of the Federation of Nigeria, 2004 in review

CRIMINAL LAW AND PROCEDURE – CONSPIRACY:- Offence of - How proved – Duty of prosecution thereto

CRIMINAL LAW AND PROCEDURE - CRIMINAL CONSPIRACY:- Offence of - Ingredient the prosecution must establish to prove criminal conspiracy to commit armed robbery - Section 6(b) of the Robbery and Firearms Act, Cap. R11, Laws of the Federation of Nigeria, 2004 in review.

**PRACTICE AND PROCEDURE ISSUES**

APPEAL - FINDINGS OF LOWER COURTS:- Where concurrent – Attitude of Supreme Court to invitation to interfere therewith

INTERPRETATION OF STATUTE - ROBBERY AND FIREARMS ACT, CAP. R11, LAWS OF THE FEDERATION OF NIGERIA, 2004, SECTION 1(2) – Proper construction and application of

INTERPRETATION OF STATUTE - ROBBERY AND FIREARMS ACT, CAP. R11, LAWS OF THE FEDERATION OF NIGERIA, 2004, SECTION 6(B) – Proper construction and application of

WORDS AND PHRASES - ‘ALIBI’ - Meaning of.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant was jointly charged with others for the offence of conspiracy to commit armed robbery and for armed robbery punishable under the Robbery land Firearms (Special Provisions) Act, Laws of Federation of Nigeria, 2004.

After full trial, the learned trial judge held that the Prosecution/Respondent had proved the offences of conspiracy and armed robbery against the appellant beyond reasonable doubt and proceeded to sentence the latter to death by hanging.

The appellant appealed to the Court of Appeal. His appeal was dismissed. Dissatisfied, the appellant appealed to the Supreme Court.

**DECISION(S) APPEALED AGAINST**

The Court of Appeal, Ilorin Division affirmed the trial Court’s judgment holding that the Prosecution discharged its burden of proof relevant to the offences charged as required under the law.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT:*

1. Whether the learned justices of the Court of Appeal were right when they held that the offences of conspiracy and armed robbery had been proved against the appellant beyond reasonable doubt.

2. Whether the learned justices of the Court of Appeal were right when they held that the evidence of PW2 was neither rebutted nor denied by the appellant.

*BY RESPONDENTS*

[The Respondent adopted the issues framed by the Appellant].

*AS ADOPTED BY COURT*

[The Court adopted the issues presented by the Appellant]

DECISION OF SUPREME COURT

1. The appellant put across his alibi of being elsewhere at the time of the commission of the offence, specifically, of being in police custody at the material time, for the first time not at the time of his arrest for the incident in question but during his testimony in defence. At that time it had became too late and of no effect. An alibi is to be raised at the earliest opportunity because the prosecution needs to investigate it before presentation of their case in court. Therefore, the accused/appellant’s raising of the alibi at a late stage is akin to a still-birth.

2. The judgment appealed against it is the concurrent findings and conclusion of the two courts below against which a case of perverseness or a wrong application of the law has not been made out by the appellant. This court or any appellate court for that matter does not disturb concurrent findings of courts below except in very rare instances of infraction in the application of the law or miscarriage of justice.

3. The appellant proffered nothing at the Supreme Court or at the two courts below which could cast a doubt, no matter how slight, on the discharging of the burden of proof by the prosecution.

**MAIN JUDGEMENT**

**PETER-ODILI JSC** (Delivering the Lead Judgment):

This is an appeal against the judgment of the Court of Appeal also referred to as court below or lower court in a judgment delivered by the Ilorin Division of the court, coram: Hussein Mukhtar, Isaiah O. Akeju and Uchechukwu Onyenenam JJCA dated 27 February 2014, which lead judgment was delivered by Hussein Mukhtar JCA. The court below affirmed the trial court’s conviction and sentence of the accused/appellant to death by hanging, for the offences of criminal conspiracy and armed robbery punishable under sections 6(8) and 1(2) of the Robbery and Firearms Act, Cap. R11, Laws of the Federation of Nigeria, 2004.

Facts briefly stated:

The appellant was jointly charged with one Olabisi Olakunle as follows:

Count one:

That you Ibrahim Adeyemi and Olabisi Olakunle together with Olaniyi and Taiye (at large) on or about 13 October 2011 at Ojomo Estate Offa Garage Ilorin; Kwara State within the jurisdiction of this honourable court conspired to commit an illegal act to wit: while armed with guns, robbed one Adegbenle Olawale and you thereby committed an offence punishable under section 6(8) of the Robbery land Firearms (Special Provisions) Act, Laws of Federation of Nigeria, 2004.

Count two:

That you Ibrahim Adeyemi and Olabisi Olajunle together with Olaniyi and Taiye (at large) on or about 13 October 2011 at Ojomo Estate Offa Garage Ilorin, Kwara State within the jurisdiction of this honourable court, while armed with guns, robbed one Adegbele Olawale and you thereby committed an offence punishable under section 1(2) of the Robbery and Firearms (Special Provision) Act, Cap. R11, Laws of the Federation of Nigeria, 2004.

Count three:

That you Ibrahim Adeyemi and Olabisi Olakunle together with Olaniyi and Taiye (at large) on or about 13 October 2011 at Pipeline Road, Ilorin, Kwara State, within the jurisdiction of this honourable court conspired to commit an illegal act; to wit: while armed with guns, robbed one Mrs. Bunmi Afolayan and you thereby committed an offence punishable under section 6(b) of the Robbery and Firearms (Special Provision) Act, Laws of the Federation of Nigeria, 2004. The respondent called five witnesses at the trial while the appellant testified alone in his defence. After full trial, the learned trial judge held that the respondent had proved the offences of conspiracy and armed robbery against the appellant beyond reasonable doubt and proceeded to sentence the latter to death by hanging.

The appeal to the court below was dismissed and further dissatisfied, the appellant has come before the Supreme Court. On 13 April 2017, date of hearing, learned counsel for the appellant, Chief J. A. Akinola adopted his brief of argument filed on 6 May 2014 in which he raised two issues for determination of the appeal which are as follows:

1. Whether the learned justices of the Court of Appeal were right when they held that the offences of conspiracy and armed robbery had been proved against the appellant beyond reasonable doubt.

2. Whether the learned justices of the Court of Appeal were right when they held that the evidence of PW2 was neither rebutted nor denied by the appellant.

Taiye Oniyide Esq., of counsel for the respondent adopted the brief of argument filed on 29 March 2017 and deemed filed on 13 April 2017. He also adopted the issues as crafted by the appellant which I shall also use as they seem good enough in the determination of this appeal.

Issue No. 1:

Whether the learned justices of the Court of Appeal were right when, they held that the offences of conspiracy and armed robbery had been proved against the appellant beyond reasonable doubt. Learned counsel for the appellant contended that the prosecution failed to prove the ingredients of the offence beyond reasonable doubt, as all the three ingredients had not been established. He cited section 1(2) of the Robbery and Firearms Act, Cap. R11, L.F.N., 2004; Eke v. The State (2011) All FWLR (Pt. 566) 430, (2011) 3 NWLR (Pt. 1235) 589; Bello v. The State (2007) All FWLR (Pt. 396) 702, (2007) 10 NWLR (Pt. 1043) 564; Amadi v. State (1993) 8 NWLR (Pt. 314) 644 at 663 - 664.

That the requirement in the proof is that the three ingredients must be concurrently proved against the accused in order to ground a conviction but in this instance two of the ingredients were not proved and so the prescription of the law had not been met. He cited Paul Onyia v. The State (2006) 11 NWLR (Pt. 991) 267; section 135 of the Evidence Act, 2011; section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria.

In respect to the charge of conspiracy, learned counsel for the appellant stated that to sustain the charge, the prosecution must prove the elements of the offence which are:

(a) an agreement by two or more persons to execute an agreed act;

(b) that the agreed act is unlawful.

He cited Aituma v. State (2006) All FWLR (Pt. 318) 671, (2006) 10 NWLR (Pt. 989) 452. Chief Akinlola of counsel for the appellant submitted that where there is no evidence in proof of the essential elements of a substantive offence of armed robbery, the charge of conspiracy is also devoid of proof as was in this case and so the conspiracy charge would fail.

Learned counsel for the respondent, Taiye Oniyide Esq. contended that for the offence of conspiracy, it is not mandatory for the prosecution to establish that the conspirators met before carrying out their nefarious activities or the crime in question. That to sustain the offence of conspiracy, all that the prosecution needs do is provide circumstances from which an inference of the meeting of the minds of the accused persons can be deduced or inferred. He referred to section 6(b) of the Robbery and Firearms Act, Cap. R11, Laws of the Federation of Nigeria, 2004; State v. Salawu (2010) All FWLR (Pt. 614) 1 at 26; Adekunle v. The State (1989) 12 SCNJ 184; Nwosu v. State (2004) All FWLR (Pt. 218) 916; Iwuneve v. The State (2000) 5 NWLR (Pt. 658) 550 at 560 - 561; Osondu v. F.R.N. (2000) 12 NWLR (Pt. 682) 483 at 501 - 502.

That in respect to the offence of armed robbery, that the prosecution established that there was a robbery which was an armed robbery and the accused persons took part. Learned counsel, cited Okudo v. The State (2011) 3 NWLR (Pt. 1234) 209 at 233; State v. Salawu (2012) All FWLR (Pt. 614) 1 at 34. In the matter of the offence of criminal conspiracy levelled against the appellant, it is to be reiterated that to sustain the charge which is pursuant to section 6(b) of the Robbery and Firearms Act, Cap. R11, Laws of the Federation of Nigeria, 2004, the prosecution has the bounden duty to establish the following essential elements which are thus:-

(i) An agreement between two or more persons to do or cause to be done, some illegal act or some act which is not illegal by illegal means.

(ii) Where the agreement is other than an agreement to commit an offence, that some acts besides the agreement was done by one or more of the parties in furtherance of the argument.

(iii) Specifically, that each of the accused individually participated in the conspiracy. See State v. Salawu (2010) All FWLR (Pt. 614) 1 at page 29; Adekunle v. The State (1989) 12 SCNJ 184, (1989) 5 NWLR (Pt. 125) 505; Nwosu v. The State (2004) All FWLR (Pt. 218) 916, (2004) 15 NWLR (Pt. 897) 466 at 486.

Of note in the duty to establish the offence of conspiracy is the fact that the prosecution is not expected to prove that the conspirators met before carrying out their activities which are seen as criminal, rather the offence of conspiracy is sustained by the prosecution leading evidence from which the court can discern or infer the criminal acts of the accused person done in pursuance of the apparent criminal purpose common between or among the conspirators. Again, to be said is that to establish conspiracy, all that is expected of the prosecution is to prove the inchoate or rudimentary nature of the offence and the inference from which the meeting of the minds of the accused persons, nor is it necessary to establish that the conspirators had been in any direct communication one with the other or others as the case may be. There is no hard and fast rule as to how to infer conspiracy, as even the mere evidence of complicity is sufficient. I place reliance on Iwuneve v. The State (2000) 5 NWLR (Pt. 658) 550 at 560 - 561; Osondu v. F.R.N. (2000) 12 NWLR (Pt. 682) 483 at 501 - 502.

In the instant case, the learned trial judge built the inference or deduction of the conspiracy or meeting of the minds from the evidence of the PW2, Mrs. Victoria Bunmi Afolayan regarding the way and manner the appellant and his co-accused, Olabisi Olakunle robbed her. This the learned trial judge did in a community reading of the evidence of PW2 and the confessional statement of the appellant admitted in evidence after a thorough trial-within-trial. For clarity, I shall quote excerpts of the above mentioned materials as found by the court of trial viz:-

“PW2 is one Mrs. Victoria Sunmi Afolayan. She lives at No. 6, Afolabi Oyinloye Street, Off Pipe line Ilorin. She stated she knows the two accused persons very well. That on 13 October 2011, she received a call from her daughter coming from Kano that she should come and pick her at Oko-Olowo. She went and picked her daughter. She stated when they got to the junction of the house and branched to their street, she noticed a car coming behind them. She averred that she told her daughter it must be her father coming behind them. She stated when they got to the gate of the house; she hooted the horn so that the gate would be opened, there was no response probably because of the generator that was on. She recalled she noticed the car was parked behind them. She further stated she told her daughter to go and knock at the gate. Her daughter had not gotten to the gate when she was ordered back to the car. Herself was ordered to come down from the vehicle and was ordered to show him the security of the vehicle by one of the accused. She told him the vehicle has no security. He brought out a gun pointing at her, threatening to shoot her. She assured him there was no security in the car. She was told to come out of the car and she obliged. It was then the second accused person pulled her ears to remove the ear ring. She assisted him to remove it. He cut the neck lace, the wrist watch and equally removed her ear ring. The witness further testified that her daughter was told to lie on the floor and her ear ring and her handbag were collected from her. The witness stated it was the 1st accused that collected the handbag and ear ring of her daughter. They told them not to shout or else they would shoot. The accused persons got into the car and drove off. She stated there were two people in the other car. She recalled that they started shouting and banging the gate so that those inside would open the gate for them. It was then her husband came out with the other children. She narrated what happened and they went to ‘A’ Division Police station to report. The Police told them to go, they would act on the report. She stated that at about 12.00 noon on the following day, her husband received a call and the person on the other end was asking about his particulars. As the husband was receiving the call, he beckoned to her to come. Her husband confirmed he was the Otunba Afolayan and lives in No. 6. The person who called introduced himself as a Police Officer and told the husband the car was recovered at Ibadan. The person was able to call them because of the teller found in the vehicle. They took off to Ibadan and as soon as they alighted they saw the accused persons on the floor. The 2nd accused person started begging her and was crying. The Police said she should write statement with her daughter but she told them her daughter was not around but she wrote her statement. Her car was released on bond by exhibit 2 and was returned to her, the sum of N32,000.00 (thirty-two thousand naira) and 3 phones. The witness stated that the car was parked outside the court and the court was moved on prosecution to sight the car. The court went and saw the car on bond by exhibit 2 outside”.

The extra-judicial statement of the appellant admitted as exhibit AA1, as considered by the learned trial judge is restated hereunder thus:

“At this point, myself and Olabisi now joined Mr. Marshall in his car. So as we were going, we met another Toyota Camry with registration No. LAGOS EM 737 FST trying to enter one compound, so Mr. Marshall blocked the vehicle and Taiye with Olabisi came down and at gun point, collected the car key from the woman who was driving the car and gave me the key to drive. I did not know what other things that were collected from the woman. Marshall then asked me to drive to take the Toyota Camry to Ijebu-Ode, that he will come the following day to collect it from me...

We met about N32,000.00 (thirty-two thousand naira) in the Toyota Camry with my remaining money making about N36,000.00 (thirty-six thousand naira). Along Ibadan - Ijebu-Ode road we were intercepted by Highway Patrol team. They requested for the car particulars which I gave them. But when they saw the woman handbag and some phones belonging to the owner of the first Camry and the one we are taking to Ijebu-Ode from there, they suspected us and took us to one Police station...”

On this matter of inference and the near impossibility of direct evidence being available with which the offence of conspiracy can be established, this court as in numerous occasions stated the guideline and I shall refer to Onyeye v. The State (2012) 15 NWLR (Pt.1324) 586 wherein it was held as follows:

“Conspiracy can be inferred from the acts of doing things towards a common end where there is no direct evidence in support of an agreement between the accused persons. The conspirators need not know themselves and need not have agreed to commit the offence at the same time. The courts tackle the offence of conspiracy as a matter of inference to be adduced from certain criminal acts or inactions of the parties”.

Clearly, the learned trial judge had more than enough from which he could, and did in fact infer that the conspiracy had been established as required by law and the Court of Appeal correctly affirmed same with regard to the offence of armed robbery for which the appellant was charged, it is to be said that to sustain the offence contrary to section 1(2) of the Armed Robbery and Firearms Act, Cap. R.11, Laws of the Federation of Nigeria, 2004, the prosecution has to establish the following:

1. That there was a robbery.

2. That the robbery was an armed robbery, and

3. That the accused person took part in the robbery.

I rely on the cases of Okudo v. The State (2011) 3 NWLR (Pt. 1324) 209 at 233; State v. Salawu (2012) All FWLR (Pt. 614) 1 at 34.

In this case at hand, again the narration of PW2, Mrs. Victoria Bunmi Afolayan is germane, as in it is seen that the way and manner she was robbed with all the details, in such a way that the prosecution can be said to have established the essential ingredients of the offence beyond reasonable doubt. For emphasis in that evidence, the PW2 stated how one of the accused brought out a gun pointed at her, ordering PW2 to come out of the car. Then the other accused pulled her ears to remove the earrings which she helped in removing, while he cut her necklace and took away her wrist watch and wedding ring. Again the fact of the two accused persons including the appellant ordering PW2’s daughter to lie on the floor while appellant collected her earring and handbag. From the above evidence, it is manifest that there was a robbery, an armed robbery at that and the appellant participated in it. Therefore, all the three essential ingredients required under section 1(2) of the Robbery and Firearms Act, Cap. R.11, Laws of the Federation of Nigeria, 2004 have been met.

Issue No. 2

Whether the learned justices of the Court of Appeal were right when they held that the evidence of PW2 was neither rebutted nor denied by the appellant? Learned counsel for the appellant contended that the appellant had clearly stated that he was arrested on the 10 October 2011 at Ibadan and been in police custody from the said date and past 13 October 2011, which is the date the alleged robbery took place but the police failed to investigate the said alibi which is fatal to the prosecution’s case. He cited Nnunukwe v. State (2003) 14 NWLR (Pt. 840) 219; Azeez v. State (2005) 8 NWLR (Pt. 927) 312, (2006) All FWLR (Pt. 337) 485. That the failure of the police to rebut or confirm the alibi produced a doubt which should be resolved in favour of the accused/appellant. He cited Yau v. State (2005) 5 NWLR (Pt. 917) 1; Namsoh v. State (1993) 5 NWLR (Pt. 292) 129.

For the respondent, it was submitted that the appellant did not raise the alibi timeously to enable the police to investigate in rebuttal or affirmation. That bringing up the alibi at the defence stage went to no issue and so the trial court and later the court below were right to consider the alibi as untrue. He cited Udobre v. State (2001) FWLR (Pt. 59) 1244 at 1258 - 1259. It is not surprising that the learned trial judge dismissed the alibi raised by the appellant, considering that the appellant put across that defence of being elsewhere at the time of the commission of the offence as a defence that did not hold water. This is because the appellant brought up this story of being in police custody at the material time for the first time not at the time of his arrest for the incident in question now but during his testimony in defence by which time it had became too late and of no effect. The reason is that an alibi is to be raised at the earliest opportunity because of the role the prosecution has to play in it after the accused has furnished the prosecution with the details of his where about at the relevant time. It is with those particulars that the prosecution would then set about investigating the alibi to produce one or the other result that is either the alibi affirmed or debunked. Therefore, the accused/appellant in this case raising the alibi at this late stage, the effect is akin to a still-birth and the alibi so raised comes to naught. See Udobre v. The State (2001) FWLR (Pt. 59) 1244 at 1258 - 1259.

Indeed, there is no peg on which the court can hang an interference with the concurrent findings and conclusion of the two courts below which are founded on sound evaluation of the evidence before the trial court nor was there any taint of perverseness or a wrong application of the law. This court or any appellate court for that matter does not disturb concurrent findings of courts below just for the heck of it but has to do so in very rare instances of infraction in the application of the law or miscarriage of justice which are clearly absent in this matter. Again to be said is that nothing the appellant has proffered now or at the two courts below could a doubt, no matter how slight, be inferred from which it can be stated that the prosecution had not proved its case beyond reasonable doubt.

From the foregoing, I have no hesitation in stating that the two issues raised have been resolved against the appellant. The appeal lacks merit and I dismiss it as I uphold the judgment of the Court of Appeal in its affirmation of the decision, conviction and sentences meted to the appellant.

**MUHAMMAD JSC:**

I had read before now, the judgment just delivered by my learned brother, Odili JSC. I agree with him that the appeal is devoid of merit. I, too, dismiss the appeal. I abide by orders made in the lead judgment.

**ARIWOOLA JSC:**

I had the privilege of reading in draft, the lead judgment of my learned brother, Peter-Odili JSC just delivered. I am in total agreement with the reasoning therein and conclusion arrived thereat that the appeal lacks merit and it deserves to be dismissed.

Accordingly, the appeal is dismissed by me while the judgment of the court below which had earlier affirmed the decision of the trial court is affirmed.

Appeal dismissed.

**AKA’AHS JSC:**

I was privileged to read in draft, the judgement of my learned brother, Peter-Odili JSC dismissing the appeal as lacking in merit. I wholly agree with the reasoning and conclusion arrived at in the leading judgement.

The appellant and three other accused persons were charged before the Kwara State High Court, Ilorin with two counts each of conspiracy to commit an illegal act and robbery. The accused were alleged to have been armed with guns and robbed Adegbenle Olawale at Ojomo Estate Offa Garage, Ilorin and Mrs. Bunmi Afolayan at Pipeline Road Ilorin. The two robberies took place on 13 October 2011. The 3rd and 4th accused namely; Olaniyi (aka Marshal) and Taiye were said to be at large and the prosecution proceeded against the appellant and Olabisi Olakunle, who was the 2nd accused. The prosecution called three witnesses to testify. PW3, Sgt. Monday Ogidigbo was the investigator and he recorded the statements of the accused persons. When he sought to tender the statements, the accused objected and a mini-trial was conducted.

The appellant and the second accused testified as DW1 and DW2 during the trial-within-trial. In the ruling delivered on 4 March 2013, the learned trial judge overruled the objection and admitted the appellant’s statement as exhibit AA1 and that of the 2nd accused as exhibit AA2 respectively.

The appellant testified as DW1 while the 2nd accused also testified as DW2. Several exhibits which included two Toyota Camry Cars with registration Nos. Oyo AE 868 AWJ and Lagos EM 737 EST that were taken from their owners at gun point were recovered and registered with the exhibit keeper, Cpl. Opalowa Yakubu, who testified as PW1. The Toyota Camry with registration No. Lagos EM 737 EST was intercepted by a team of patrol men. The appellant and the 2nd accused were inside the car when they were intercepted by the patrol. Other items including the sum of N32,000.00 (thirty-two thousand naira) were recovered in the car. PW3 testified that he received a signal message that the Toyota Camry with registration No. Oyo AE 868 AJW was trailed to a residence at Apotoo Area Ibadan but the two occupants escaped and the car was taken to the SARS Office in Ibadan.

On the conclusion of evidence by the prosecution and the defence, the learned trial judge found that the offences of criminal conspiracy and armed robbery were established against the two accused persons beyond reasonable doubt. On the issue of alibi raised, he held that the defence must raise it at the earliest opportunity and it was not raised in exhibits AA1 and AA2. He thereafter convicted and sentenced the accused to death by hanging. The appellant appealed to the Court of Appeal, Ilorin and it was dismissed. He thereafter appealed to this Court.

One of the issues the appellant raised in this appeal is that he raised the defence of alibi which was not investigated by the police. Where the evidence is overwhelming, as in this case, where the appellant was found with some of the robbed items soon after the robbery and did not offer a reasonable explanation as to how he came in contact with the item robbed, the alibi will not avail him and the trial court can invoke section 167, Evidence Act to presume either he is the robber or knew that the item he was found with was a robbed item.

See: Fatai Olayinka v. The State (2007) NWLR (Pt. 1040) 561; Benson Ukwunnenyi v. The State (1989) NWLR (Pt. 114) 131; Egboghonome v. C.O.P. (1993) 7 NWLR (Pt. 306) 383; Michael Hausa v. State (1994) 6 NWLR (Pt. 350) 281. PW2, Mrs. Victoria Bunmi Afolayan testified that her car was taken on 13 October 2011. Around 12 noon the following day, her husband received a call from someone in Ibadan who identified himself as a police officer informing him the car had been found. She and her husband left for Ibadan and on reaching Eleyele Police Station she met the two accused persons on the floor and when the 2nd accused sighted her, he started begging her and crying. Some of the items including the car were released to her on bond.

Apart from the fact that the alibi was not raised timeously, the stolen vehicle was recovered the next day and the appellant and 2nd accused had to explain how they came by the vehicle. The reaction of the 2nd accused when he saw her is indicative of the fact that he was one of the robbers who robbed PW2. And as PW3 testified, on receiving the complaints of the robberies from Adegbenle Olawale and PW2 he sent out signals on the two robberies which led the Police in Ibadan to intercept the appellant and the 2nd accused on the same day of the robbery. On the next day, 14 October 2011, PW2 travelled to Ibadan to recover the car.

There is therefore overwhelming evidence linking the appellant and the 2nd accused with the robbery. The prosecution therefore proved the offence against the appellant and the 2nd accused beyond reasonable doubt. They were convicted and sentenced on clear evidence. The lower court returned the right verdict in dismissing the appeal. It is for this reason and the more detailed reasons in the judgement of my learned brother, Peter-Odili JSC that I too found the appeal unmeritorious and accordingly dismiss it. Appeal is dismissed and the conviction and sentence of death passed on the appellant by the High Court and affirmed by the Court of Appeal is further affirmed by me.

**AUGIE JSC:**

I had a preview of the lead judgment delivered by my learned brother, Peter-Odili JSC, and I agree with him that this appeal lacks merit. He dealt decisively with the issues canvassed in the appeal and I will only add a few words to underscore the points of law he made.

The appellant was tried and convicted for criminal conspiracy and armed robbery. He contends that in upholding the judgment of the trial Court, “the Court of Appeal has not done justice to this case”.

Thus, he urged this Court “in the spirit of justice and fairness”, to set aside the decision of the Court of Appeal because there was no evidence that he conspired to or actually committed the alleged crime; that none of the ingredients to prove armed robbery was established before the court; and that the defence of alibi he raised created doubts as to his guilt, which ought to have been resolved in his favour. Alibi is latin for “elsewhere”. It also means “the fact or state of having been elsewhere when an offence was committed” -Black’s Law Dictionary, 8th Ed., Shehu v. State (2010) All FWLR (Pt. 523) 1841, (2010) 8 NWLR (Pt. 1195) 112; Dagayya v. State (2006) All FWLR (Pt. 308) 1212, (2006) 7 NWLR (Pt. 980) 637; Ochemaje v. State (2008) All FWLR (Pt. 435) 1661, (2008) 15 NWLR (Pt. 1109) 57 SC. It is settled that once a defence of alibi is properly raised by an accused during the investigations, it is the duty of the Police to investigate it and the duty of the prosecution to disprove it - see Adebiyi v. State (2016) 8 NWLR (Pt. 1515) 456.

However, for the defence of alibi to be worthy of investigation, it must be precise and specific in terms of the place that the accused was and the person or persons he was with and possibly what he was doing there at the material time - See Shehu v. State and Ochemaje v. State and Adebiyi v. State wherein this Court, per Nweze JSC, stated the position of the law as follows:

“When an accused person raises the said defence (of alibi), his assertion comes to this: he was elsewhere; hence he could not have been at the scene of the crime at the same time. A successful defence of alibi has a direct bearing on the accused person’s responsibility in relation to the alleged offence. This explains why it is not, readily, conceded with levity to the accused. This is because, when properly established, it has the far-reaching effect of exculpating the accused from complete criminal responsibility. To be entitled to its beneficent effect; such an accused must raise it at the earliest opportunity, which would, preferably, be in his extra-judicial statement. This is to offer the police an opportunity either to confirm or confute its availability to the accused person. Above all, the said defence must be unequivocal as to the particulars of the accused person’s whereabouts and those present with him. It is only where such an accused person raised the defence at the earliest opportunity without any ambiguity, that a burden is cast on the prosecution to investigate it and to disprove same. Failure to investigate the defence of alibi raised in such circumstance, will lead to an acquittal.

See also Ochemaje v. State, wherein Tobi JSC, observed -

“It is not the law that the police should be involved in a wild goose chase for the whereabouts of the accused person at the time the crime was committed. No. That is not the function or role of the police. The accused must give specific particulars of where he was at the time of the material time to enable the police move straight to that place to carry out the investigation required by law. Investigation is not a necessity if the evidence unequivocally points to the guilt of the accused person, either in the evidence of the witnesses or under cross-examination of the accused or his witness.”

In this case, the two lower courts found as a fact that the appellant raised his defence of being elsewhere at the time of the crime for the first time at the trial, therefore, the defence of alibi cannot avail him. I am also satisfied that there was sufficient evidence adduced by prosecution to justify the verdict of guilt, and ground the appellant’s conviction and sentence to death for conspiracy and armed robbery. It follows, therefore, that the “spirit of justice and fairness” invoked by the appellant, cannot come to his assistance in this court. He has not shown that the decision appealed against is perverse or has occasioned miscarriage of justice; therefore, this court cannot disturb the concurrent findings of the lower courts or intervene in any way - see Ogoala v. The State (1991) 2 NWLR (Pt. 175) 506 SC.

It is for this and the other reasons in the lead judgment that

I also dismiss the appeal and affirm the decision of the court below.

Appeal dismissed