IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY THE 20TH DAY OF FEBRUARY, 2026

BEFORE THEIR LORDSHIPS:-

JOHN INYANG OKORO	**JUSTICE, SUPREME COURT**
JUMMAI HANNATU SANKEY	**JUSTICE, SUPREME COURT**
OBANDE FESTUS OGBUINYA	**JUSTICE, SUPREME COURT**
STEPHEN JONAH ADAH	**JUSTICE, SUPREME COURT**
ABUBAKAR SADIQ UMAR	**JUSTICE, SUPREME COURT**

SC/63/2016

BETWEEN:

ABDULSALAM SULEIMAN - - - - APPELLANTS

V.

THE STATE - - - - - - - RESPONDENT

JUDGEMENT

DELIVERED BY OBANDE FESTUS OGBUINYA, JSC

This appeal queries the rightness of the decision of the Court of Appeal, Kaduna Division (hereunder addressed as "the lower court"), *coram judice:* I. O. Akeju, O. A Adepofe – Okojie and A. A. Wambai, JJCA, in Appeal No. CA/K/252/C/2013, delivered on the 10th June, 2015. In its decision, the lower court affirmed the judgment of the High Court of Katsina State (the trial court), in Charge No. KTH/4C/2010,

delivered on the 3rd June, 2011, wherein Sanusi Tukur, J. convicted and sentenced the appellant to death.

A resumé of the material facts of the case, which transformed into this appeal, are hostile to verbosity and complexity. On or about the 31st May, 2009, at Dinkawa Village in Tukanawa Quarters in Charanchi Local Government Area of Katsina State, one Alhaji Ibrahim Abubakar, the deceased, at about 11:00pm, closed his shop for the day. He gathered the money from the proceeds of the day's sales and put in the boot of his car and left for his home. The deceased younger brother, Shafi'a Abubakar, later followed him behind. In the front of the deceased house, Shafi'a Abubakar, saw some people flashing torchlights. One Muhammad Jamilu Mustapha was attracted to the ugly scene by the shouts thereat. When both of them accosted them, they informed them that they were thieves and would shoot them if they approached them. The thieves were beating the deceased and blood was gushing out from his body. When the deceased attempted to run away, he hit his head on the wall and fell down. People later came out to find that the boot of his car was open and the money therein removed. They took the deceased to the hospital, but he died before reaching the hospital. About a month later, the appellant was arrested following an information received by the police. The appellant implicated one Ibrahim Abdullahi who was arrested too. After due investigation, they were arraigned before the trial court on a 2 – count charge of culpable homicide

punishable with death and armed robbery contrary to the provisions of sections 221 (b) of the Penal Code and 1 (2) (b) of the Robbery and Firearms (Special Provisions) Act, Cap R11, Laws of the Federation of Nigeria (LFN), 2004 respectively. They pleaded not guilty to the two counts of the information. The trial court later struck out the count on culpable homicide to avoid double convictions.

Following the plea of not guilty, the trial court had a full dress determination of the case. In proof of the charge, the respondent fielded seven witnesses, PW1 – PW7, and tendered five exhibits. In defence of the charge, the accused persons testified in persons as DW1 and DW2. After the closure of evidence, the parties, through their respective counsel, addressed the trial court in a manner allowed by law. In a considered judgment, delivered on the 3rd June, 2011, documented between pages 45 – 55 of the record, the trial court found them guilty of armed robbery, convicted and sentenced them to death.

The appellant was dissatisfied with the judgement. Hence, he launched an appeal before the lower court. The appeal was heard. In a considered unanimous judgment, delivered on the 10th June, 2015, reflected between pages 145 – 174 of the record, the lower court dismissed the appeal.

The appellant was further peeved by the decision. Consequently, on the 6th July, 2015, he lodged a 4 – ground notice of appeal before

this court which is lying between pages 176 – 178 of the record. Subsequently, the appellant, with the leave of court, filed a 4 – ground amended notice of appeal wherein he prayed this court for:

> **(a) An ORDER setting aside the conviction and sentence of the Appellant.**
> **(b) AN ORDER discharging and acquitting the Appellant.**

Thereafter, the parties, through their counsel, filed and exchanged their respective briefs of argument in line with the procedure regulating the hearing of criminal appeals in this court. The appeal was entertained on the 27th November, 2025.

During its hearing, learned counsel for the appellant, D. J. Gusen, Esq., adopted the appellant's amended brief of argument and the appellant's reply brief, both filed on the 21st November, 2025 and deemed properly filed on the 27th November, 2025, as representing his arguments for the appeal. He urged the court to allow it. Similarly, learned counsel for the respondent, Dr. Mbanefo Ikwegbue, Esq., adopted the respondent's brief of argument, filed on the 14th December, 2022 and deemed properly filed on the 27th November, 2025, as constituting his submissions against the appeal. He urged the court to dismiss it.

In the appellant's amended brief of argument, learned counsel distilled two issues for determination, to wit:

i. **Whether the lower Appellate Court was right in its findings on page 169 of the Record of Appeal wherein it held "… the statement of the Appellant, from the cogent evidence of PW4, was voluntary, positive and properly proved, taken together with the evidence of the prosecution witnesses and coupled with the theft of the money, which the other Appellant admitted receiving a part of, has rendered the case of the prosecutor against the Appellant proved beyond reasonable doubt.**

ii. **Whether the lower Appellate Court was right in its findings that there was no failure by the trial court in its evaluation of the defence raised by the Appellant.**

Admirably, learned respondent's counsel adopted the two issues for determination as crafted by the learned appellant's counsel.

A careful scrutiny of the two issues shows that the issue one, which suffers from lack of precision, is subsumed under issue two. For this reason, I will handle the appeal on the basis of the issue two. In effect, the parties have a solitary issue for the determination in this appeal.

Arguments on the issue:

Appellant's submissions:

Learned appellant's counsel enumerated the ingredients of armed robbery as noted in ***Kidor v. State*** (2005) 15 NWLR (Pt. 947) 146; ***Igele v. State*** (2006) NWLR (Pt. 975) 100; ***Nwomukoro v. State*** (1995) 1 NWLR (Pt. 372) 435; ***Oyakhire v. State*** (2005) 15 NWLR (Pt. 947) 164; ***Oseni v. State*** (2012) 5 NWLR (Pt. 1293) 219; ***Agba v. State*** (1992) 2 NWLR (Pt. 222) 104. He listed the methods of proof of commission of crime. He relied on ***Emeka v. State*** (2001) FWLR (Pt. 66) 682. He submitted that there was no circumstantial evidence to support the decision of the lower court. He cited ***Opara v. State*** (2006) 9 NWLR (Pt. 986) 518. He conceded that a court can convict on a confession freely given. He asserted that the appellant retracted his confession and there was no evidence outside it to support it to warrant his conviction thereon. He referred ***Otufale v. State*** (2008) 15 NWLR (Pt. 1111) 593; ***Effiong v. State*** (1998) 8 NWLR (Pt. 562) 632; ***Ubierho v. State*** (2005) 5 NWLR (Pt. 919) 648; ***Oseni v. State*** (supra). He insisted that the confession in exhibits 2 (a) and (b) did not pass the six tests required of a retracted confession. He claimed that there were doubts which ought to be resolved in favour of the appellant. He referred to ***Abdullahi v. State*** (2008) All FWLR (Pt. 432) 1047. He reasoned that the informant that led to the arrest of the appellant was a vital witness and the failure

to call him was fatal to the respondent's case. He relied on ***State v. Ajie*** (2000) FWLR (Pt. 16) 283.

Learned counsel contended that a court must consider a defence of an accused person whether it is raised or not and matter how weak it is. He relied on ***Uwaekweghinya v. State*** (2005) 9 NWLR (Pt. 930) 227. He asserted that the lower courts were wrong when they failed to seriously consider and evaluate the defence of *alibi* raised by the appellant. He described the act as a failure to perform their vital duty to the appellant and it resulted in miscarriage of justice to the appellant. He cited ***Opayemi v. State*** (1985) 2 NWLR (Pt. 5) 101. He took the view that the lower court had a duty to reevaluate the appellant's defence of *alibi* in order to obviate a miscarriage of justice. He referred to ***Nguma v. Imo State*** (2017) 7 NWLR (Pt. 1405) 119. He conceded that the appellant failed to properly cross-examine the respondent's witnesses. He noted, in the alternative, that the lower court was wrong to rely on the decision of this court on ***Oforlefe v. State*** (2000) 12 NWLR (Pt. 681) 415 on the consequence of failure to cross-examine a witness. He took the view that the respondent must succeed on the strength of its case and not on the weakness of the appellant's defence. He maintained that the lower court wrongly relied on the appellant's confession on exhibit 2 (a) and (b) which was not corroborated by other exhibits and testimonies of witnesses.

Respondent's contentions

Learned counsel submitted that the respondent used three methods of proving commission of offence in various degrees to prove the charge. He described the evidence of PW5 and PW6 as those unchallenged eye witnesses evidence and the lower court was right to rely on them. He relied on ***Amadi v. Nwose*** (1992) 5 NWLR (Pt. 24) 273. He observed that there was enough circumstantial evidence of proof of the crime against the appellant. He cited ***Peter v. State*** (1997) 12 NWLR (Pt. 531) 1. He stated that the lower court was right to rely on exhibit 2 (a) and (b) as a confession could be written or oral and a court can rely on as a proof of armed robbery. He referred to ***Agemu v. State*** (1992) 7 NWLR (Pt. 256) 749; ***Yusufu v. State*** (1976) NSCC 307; ***Achubua v. State*** (1976) (sic – no citation) 714. He opined that the evidence of PW5 and PW6 corroborated exhibit 2 (a) and (b) in satisfaction of the six tests. He relied on ***Rabiu v. State*** (2010) 10 NWLR (sic – no part).

Learned counsel argued that the lower court considered the appellant's defences – denial and retraction of exhibit 2 (a) and (b). He noted that the lower court rightly described the appellant's defence of *alibi* as an after thought as it was not raised at the earliest possible time to enable the respondent investigate it. He cited ***John v. State*** (2001) 12 SCNJ 718; ***Oyebu v. State*** (1995) 4 NWLR (Pt. 391) 510: ***Eke v. State*** (2011) 5 SCNJ 57. He posited that the concurrent findings of the

lower court on the guilt of the appellant should not be disturbed, because the findings were not perverse or caused a miscarriage of justice. He referred to ***Woluchem v. Gudi*** (1981) SSC (sic) 291; ***Adeye v. Adesanya*** (2001) 6 NWLR (Pt. 708).

Resolution of the issue.

A clinical examination of the incompatible dazzling submissions of the feuding parties reveals the marrow of the solo issue. It is circumscribed within a narrow compass. It chastises the propriety *vel non* of the lower court's affirmation of the appellant's conviction by the trial court. It has bred binary limbs. I will attend to them seriatim. The first limb interrogates the legality of the lower court's confirmatory finding that the respondent proved beyond reasonable doubt the charge, armed robbery, pressed against the appellant, *et alia,* on the footing of his confessional statement.

By way prefatory observations, the law is firmly established, beyond the peradventure of doubt, that the burden of proof of a crime rests squarely on the shoulder of the prosecution. The standard of proof is one beyond reasonable doubt, *id est,* presentation of evidence, oral or documentary, that establish the necessary ingredients of an offence. The reason is firmly planted in the sacrosanct provision of section 36(5) of the Constitution, as amended, which donates to an accused person the right of presumption of innocence until he is proved guilty.

Where, however, the prosecution discharges the *onus probandi* (burden of proof) beyond reasonable doubt against a perpetrator of a crime to the satisfaction of the court, on basis of tested, scrutinised and credible evidence, then the onus, in deserving circumstances, will shift to an accused person to perforate the presumption of guilt or cast a reasonable doubt on the case of the prosecution by dint of preponderance of evidence or balance of probabilities, see section 135 of the Evidence Act, 2011; ***Akinmogu v. State*** (2000) 6 NWLR (Pt. 662) 608; ***Adepetuv. State*** (1998) NWLR (Pt. 565) 185; ***Adeniji v. The State*** (2001) FWLR (Pt. 57) 809; ***Arogundade v. State*** (2009) NWLR (Pt. 136) 165; ***Ezeuko v. State*** (supra) ***Eyo v. State*** (2016) NWLR (Pt. 1510) 183; ***Abokokuyanro v. State*** (2016) 9 NWLR (Pt. 1518) 520; ***Nwodu v. State*** (2019) 3 NWLR (Pt. 1659) 228; ***Oyem v. FRN*** (2019) 11 NWLR (Pt. 1683); ***Ezani v. FRN*** (2019) 12 NWLR (Pt. 1686) 221. In the instant case, which mothered the appeal, the respondent was the prosecution which owned the primary bounden obligation of proof of the offence preferred against the appellant who enjoyed the presumption of innocence bequeathed to him by the benevolent provision of section 36(5) of the Constitution, as amended, the *fons et origo* of our laws.

It is apropos, at this juncture, to comb out, from the warehouse of the case law, the significance and hallmarks of the offence preferred against the appellant and his confederate. It is the foul crime of armed robbery. In the legal sphere, robbery means stealing anything and, at

or immediately before or after the time of stealing it, using or threatening to use actual violence to any person or property in order to obtain or retain the things stolen or to prevent or overcome resistance to its being stolen or retained. Where the robbery is accompanied by the use of an offensive weapon, which causes or attempts to cause any person's death or hurt or unlawful restraint or fear, it graduates to an armed robbery, see ***The State v. Yamusissilka*** (1974) 6 SC 53 at 62; ***Ebeinwe v. State*** (2011) 7 NWLR (Pt. 1246) 402; ***Ikaria v. State*** (2014) 1 NWLR (Pt. 1389) 639; ***Bassey v. State*** (2012) 12 NWLR (Pt. 1314) 209; ***Agbo v. State*** (2025)10 NWLR (Pt. 1995)1.

For the prosecution to secure a conviction for an offence of armed robbery, the law requires it to prove beyond reasonable doubt, that: there was robbery or series of robberies; each robbery was an armed robbery and the accused person was one of those who took part in the armed robbery, see ***Afolabi v. State*** (2010) 16 NWLR (Pt. 1220) 584; ***Eke v. State*** (2011) 3 NWLR (Pt. 1235) 589; ***Nwaturocha v. State*** (2011) 6 NWLR (Pt. 1242) 170; ***Abdullahi v. State*** (2008) 17 NWLR (Pt. 115) 203; ***Attah v. State*** (2010) 10 NWLR (Pt. 1201) 190; ***Okiemute v. State*** (2016) 15 NWLR (Pt. 1535) 297; ***Sale v. State*** (2016) 3 NWLR (Pt. 14499) 392; ***Ayo v. State*** (2016) 7 NWLR (Pt. 1510) 183; ***Kayode v. State*** (2016) 7 NWLR (Pt. 1511) 199; ***Smart v. State*** (2016) 9 NWLR (Pt. 1518) 447; ***Ikpo v. State*** (2016) 10 NWLR (Pt. 1521) 501; ***Ogogorie v. State*** (2016) 12 NWLR (Pt. 1527) 468;

State v. Ajayi (2016) 14 NWLR (Pt. 1532) 196; ***Osuagwu v. State*** (2016) 16 NWLR (Pt. 1537) 31; ***Akwuobi v. State*** (2017) NWLR (2017) 2 NWLR (Pt.1550) 421; ***State v. Ekanem*** (2017) 4 NWLR (Pt. 1554) 85; ***FRN v. Barminas*** (2017) 15 NWLR (Pt. 1588) 177; ***Eze v. FRN*** (2017) 15 NWLR (Pt. 1589) 433; ***Agugua v. State*** (2017) 10 NWLR (Pt. 1573) 254; ***Thomas v. State*** (2017) 9 NWLR (Pt. 1570) 230; ***Amadi v. A.-G., Imo State*** (2017) 11 NWLR (1575) 92; ***Adelani v. State*** (2018) 5 NWLR (Pt. 1611) 18; ***Lawali v. State*** (2019) 4 NWLR (Pt. 1663) 457.

Now, the appellant's foremost *coup de main* against the lower court's decision, decipherable from his sterling arguments, is that the ingredients of the offence, armed robbery, catalogued above, were not established beyond reasonable doubt by the respondent, on account of weak-need confession, as to justify the its confirmatory decision. Thus, the casus belli *inter parties* orbits around the strength of the appellant's confessional statement *vis-à-vis* his conviction for armed robbery. In other words, the pith of the appellant's nursed grievance is that his confession failed to prove the ingredients of the offence.

In hunting for a dispassionate solution to this seemingly thorny limb, which is the nucleus of the appeal, it is important to consult the record, the bedrock of the appeal, and harvest the reasoning/finding of the lower court, *verbatim ac litteratim,* whence it is domiciled quietly therein. At the *terminus ad quem* of the lower court's decision, which is in heat of extermination and expunction, precisely at pages 168 and

169 of the record, the lower court, per O. A. Adefope – Okojie, JCA, after the necessary legal exposition, declared:

> **From the totality of the evidence before the trial court I find that the confession of the Appellant was properly established. The recovery of a blood-stained stick on the premises, following a visit to the house, I hold, rendered the confession probable of the attack by him and others of the deceased. The admission by the Appellant that money was taken from the trunk of the deceased's car out of which the sum of N30,000 was given to him, was in conformity, I hold, with the evidence of PW5 and PW6 that money of the deceased was removed from the trunk of his car. The Appellant has given no facts or raised any alibi as to where he was on the day in question, different from the scene of the incident. He has called no witness to prove the impossibility of the case against him.**
>
> **The statement of the Appellant, from the cogent evidence of PW4, was voluntary, positive and properly proved, taken together with the evidence of the prosecution witnesses and coupled with the theft of the**

money, which the other Appellant admitted receiving a part of, has rendered the case of the prosecution against the Appellant proved beyond reasonable doubt. The Appellant accordingly hold, was duly and properly convicted and sentenced by the lower Court for the offence of armed robbery.

It is gleanable from the record, the touchstone of the appeal, that the appellant made a statement to the police in course of investigation of the case**.** His extra-judicial statement to the police was tendered through PW4. Curiously, the appellant did not greet its admission with any grain of objection on ground of its involuntariness which would have necessitated a *voire dire* proceeding before the trial court. In consequence, it was *intra vires* the power of the trial court to receive it in evidence. The English version of that statement was admitted as exhibit 2(b). English language is the *lingua franca* of the court in our *corpus juris.* It was/is a confessional statement that houses a confession.

Nota bene, the law, in its wisdom and magnanimity, allots to the prosecution triad avenues to prove ingredients of an offence. They are through: a confessional statement or circumstantial evidence or evidence of eye witnesses, see ***Igri v. State*** (2012) 16 NWLR (Pt. 1327) 522; ***Oguno v. State*** (2013) 15 (Pt. 1376) 1; ***Ibrahim v. State*** (2014) 3

NWLR (Pt. 1394) 305; ***Ogedengbe v. State*** (2014) 12 NWLR (Pt. 1421) 338; ***Umar v. State*** 13 NWLR (Pt. 1425) 497; ***Itu v. State*** (2016) 5 NWLR (Pt. 1505)443; ***Ude v. State*** (2016) 14 NWLR (Pt. 1531) 122;***Okashetu*** v. State(2016) 15 NWLR (Pt. 1534) 126; ***Igbikis v. State*** (2017)11 NWLR Pt. 1575) 126; ***Itodo v. State*** (2020) 1 NWLR (Pt. 1704) 1.

By virtue of section 28 of the Evidence Act, a confession denotes an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that offence. Given the provision of section 29 (2) 0f the Evidence Act, 2011, once a confession is relevant, the heartbeat of admissibility, it is admissible against an accused person who made it save it is excluded by any of legal vices and in the manner decreed therein. In the wide hemisphere of criminal law, when an accused person makes a statement to any law enforcement agency, *exempli gratia* the police, such a pre-trial statement, on being tendered before a court of law, deserts the evidential territory of the defence, even though authored by an accused person, and migrates to the evidential armoury of the prosecution. In other words, an accused person loses ownership and possession of an extra-judicial statement, once it passes the litmus of admissibility and admitted by a court of law, and is inherited by the prosecution, see ***Egboghonome v. State*** (1993) 7 NWLR (Pt. 306) 385; ***Musa v. State*** (2013) 9 NWLR (Pt. 1359) 214; ***Ikumonihan v. State*** (2018) 14 NWLR

(Pt. 1640) 456; ***Ayinde v. State*** (2018) 17 NWLR (Pt. 1647) 140; ***Ifedayo v. State*** (2019) 3 NWLR (Pt. 1659) 265; ***Mohammed v. State*** (2019) 6 NWLR (Pt. 1668) 203; ***State v. Ibrahim*** (2019) 8 NWLR (Pt. 1674) 294; ***State v. Buhari*** (2019) 10 NWLR (Pt. 1681) 583; ***State v. Shonto*** (2019) 12 NWLR (Pt. 1686) 255. This hallowed principle of criminal law applies, *mutatis mutandis,* to the fate of the appellant's extra-judicial statement which was received in evidence and marked exhibit 2(b). It flows, on account of the evidential transfiguration, that the content of exhibit 2(b) became part and parcel of the evidential arsenal available in the hands of the respondent, the prosecution, to be used as a judicial sword against the defence, the appellant herein.

Let me place on record, perforce, that the law, in order to banish injustice from its underserved throne in the temple of justice, donates concurrent jurisdiction to this court and the lower courts on evaluation of documentary evidence, see ***Ezeuko v. State*** (2016) 6 NWLR (Pt. 15-09) 529; ***FRN V. Sanni*** (2014) 16 NWLR (Pt. 1433) 299; ***Atoyebi*** **v. FRN** (2018) 5 NWLR (Pt. 1612) 350; ***Bako v. IGP*** (2025) 16 NWLR (Pt. 2012) 591. I am, therefore, showered with right to tap from the vineyard of this co-extensive jurisdiction, bequeathed to this court by law, *vis-à-vis* the interpretation of appellant's confessional statement, exhibit 2(b), without any iota of insult to the law.

Having been armed strong in law, I have given a microscopic examination to the appellant's confessional statement, exhibit 2(b), which the lower court chronicled in its decision between pages 162 – 164 of the record, with the finery of a toothcomb. Exultantly, it is rebellious to woolliness and ambiguity. As already noted, there was no once of protestation at the time of tendering the document, exhibit 2(b). That denotes that it was voluntary: made freely at the volition of the appellant. In the firmament of criminal law, a confessional statement admitted in evidence without objection by the defence carries some legal implications. It signifies that its owner made it voluntarily, agrees with everything in the statement and attests to the truth of the role he played in the commission of the alleged crime. In the same vein, the exhibit 2(b) discloses an express content thereby making it positive. At once, it bears direct relationship with the commission of the alleged offence of armed robbery. In effect, it has satisfied the necessary requirements of confession that a court of law can solely rely on in convicting an accused person.

It admits of no argument that the appellant made an undiluted admission in the confessional statement, exhibit 2(b), which constituted telling evidence on the proof of the crime against him. Therein, the appellant volunteered to the police that whilst some members of the nefarious gang, armed with pistol and matchet, attacked the deceased, "we were posted to guard route liking (sic) to the house should in case

someone is coming to assist the victim" with sticks. In essence, the appellant, *et alia,* was assigned the role of an armed sentry with stick, with an assignment to guard and shield his associates – in – crime and ward off any assistance from outside. Lest it is for gotten, the club held by the appellant, stick, a piece of word par excellence, falls squarely within perimeter of offensive weapons as decreed and proscribed by the provision of section 11 of the Robbery and Firearms (Special Provisions) Act supra. Indubitably, by the appellant's own volition, as recorded in exhibit 2(b), he was in the company of those recidivists who were bearing pistol and matchet in the prosecution of the dastardly crime and *de jure* come under the canopy of provision of section 2(b) of the Robbery and Firearms (Special Provisions) Act supra. It is needless to observe that pistol, used by his cohorts to cow and hold the deceased *in terrorem,* is a quintessence of lethal instruments which sits a top of the pyramid of firearms in the Act supra. Thus, the appellant's own "division of labour", according to his words in exhibit 2(b), was that of a watchman and a "generalissimo" who policed the due execution of the robbery operation and safety of his accomplices. The appellant conceded in his confession that he received N30,000 as the spoils germinating from the armed robbery operation. In sum, by virtue of the clear admission in exhibit 2(b), the appellant confirmed that he was a *particeps criminis vis-à-vis* the robbery incident of the 31st May, 2009 which victimised the deceased to his early grave.

In the expansive landscape of criminal jurisprudence, the kingly position of confession in the colony of evidence cannot be over-emphasised. Under our procedural law, a confession has been categorised as the best and strongest evidence, stronger than that of an eye witness, see ***Smart v. State*** (2016) 9 NWLR (Pt. 1518) 447; ***Asuquo v. State*** (2016) 14 NWLR (Pt. 532) 309; ***Dibia v. State*** (2017) 12 NWLR (Pt. 1579) 196; ***FRN v. Barminas*** (2017) 15 NWLR (Pt. 1588) 177; ***Akpan v. State*** (2008) 14 NWLR (Pt. 1106) 72. By the same token, the law grants to the court the unbridled licence to solely rely and base conviction on a free, compelling, graphic, direct, voluntary, unequivocal, cogent and positive confession, see ***Sule v. State*** (2009) 17 NWLR (Pt. 1169) 33; ***Omogu v. FRN*** (2008) 9 NWLR (Pt. 1055) 381; ***Shalla v. State*** (2007) 18 NWLR (Pt. 1168) 240; ***Dibia v. State*** (2017) 12 NWLR (Pt. 1579) 196; ***Egharevba v. State*** (2016) 8 NWLR (Pt. 1515) 433; ***Oko v. State*** (2016) 10 NWLR (Pt. 1521) 455; ***Lawal v. State*** (2016) 14 NWLR (Pt. 1531) 67; ***Akinrinlola v. State*** (2016) 16 NWLR (Pt. 1537) 73**;** ***Awuobi v. State*** (2017) 2 NWLR (Pt. 1550) 421; ***Kolo v. COP*** (2017) 9 NWLR (Pt. 1569) 118; ***FRN v. Barminas*** (2017) 15 NWLR (Pt. 1588) 177; ***John v. State*** (2017) 16 NWLR (Pt. 1591) 304; ***Agagua v. State*** (2017) 10 NWLR (Pt. 1573) 254; ***Ajiboye v. FRN*** (2018) 13 NWLR (Pt. 1637) 430; ***Umar v. FRN*** (2019) 3 NWLR (Pt. 1660) 549; ***Lorapuu v. State*** (2020) 1 NWLR

(Pt. 1706) 391; ***Ori v. State*** (2022) 5 NWLR (Pt. 1824) 441. ***Ekpemegbere v. State*** (2024) 4 NWLR (Pt. 1928) 203.

It cannot be gainsaid that by a confession, an accused person surrenders himself to the law and becomes his own accuser, see ***Adeleke v. State*** (2013) 16 NWLR (Pt. 1381) 556. It stems from this Olympian status of a confession that the appellant's confessional statement, exhibit 2(b), a *pessimi exempli* of self-incrimination, emasculates his inviolable right to presumption of innocence, which is entrenched in section 36(5) of the 1999 Constitution, as amended. For the sake of *ex abundanti cautela,* the exhibit 2(b) castrates the efficacy of the appellant's agitation on want of proof of his identity in the commission of the crime. It is a case of self-identification par excellence. In law, the issue of identity, be it through identification parade, vaporises into the thin air in collision with a confession, see ***Nomayo v. State*** (2018) LPELR – 44729 (SC). At once, the confession, as manifests in the exhibit 2(b) punctures and exposes the poverty of the appellant's fuss on the failure to call a vital witness- the informant who fed the police with the information that led to his arrest.

Flowing from this extensive legal digestion of confession, conducted in consonance with the law, the lower court's confirmatory finding, that the respondent proved the charge beyond reasonable doubt against the appellant on the premises of his confession, is in total alignment with the basic tenets of criminal jurisprudence. It will

tantamount to idolising judicial sacrilege to tinker with a finding that has not disclosed any atom of enmity with the letters and spirit of the law. *Per contra,* I endorse, *in solidum,* the immaculate finding of the lower court.

That takes me to the treatment of the appellant's grouse under the umbrella of the second limb. The plank of the limb is staked on lack of consideration of the appellant's defence of *alibi.* It quarrels with the legality of the lower court's affirmation of the trial court's neglect to consider the defence of *alibi* which the appellant allegedly invented to douse the allegation of armed robbery hurled against him, *et alia.*

For a better appreciation of the thorny limb, there is a crying need to x-ray the essential elements of the defence of *alibi*. In the realm of etymology, *alibi,* like most legal terminologies, traces its lexical paternity to the Latin language. It is an amalgam of *alius* (other) and *ibi/ubi* (there/where). Its English version signifies "elsewhere." An accused who wishes to take shelter under the defence is expected to raise it timeously, at the earliest opportunity of his contact with the law enforcement officers, with the necessary particulars of his whereabouts and those with him on the day of the incident. Thereafter, it behooves the prosecution to investigate the *alibi* and affirm or disprove it. It is deflated by any contrary evidence that fixes the appellant at the scene of the crime. If it is disproved, the defence. Where it is successful, it is complete defence that earns an accused person an acquittal and

discharge of the alleged offence, see ***Attah v. State*** (2010) 10 NWLR (Pt. 1201) 190; ***Sunday v. State*** (2010) 18 NWLR (Pt. 1224) 223; ***Nwaturuocha v. State*** (2011) 6 NWLR (Pt. 1242) 170; ***Agboola v. State*** (2013) 1 NWLR (Pt. 1366) 619; ***Victor v. State*** (2013) 12 NWLR (Pt. 1369) 465; ***Egwumi v. State*** (supra); ***Ayam v. State*** (2013) 15 NWLR (Pt. 1376) 34; ***Ikaria v. State*** (2014) 1 NWLR (Pt. 1389) 639; ***Thomas v. State*** (2017) 9 NWLR (Pt. 1570) 230; ***Wisdom v. State*** (2017) 14 NWLR (Pt. 1586) 446; ***Agu v. State*** (supra); ***Adelani v. State*** (2018) 5 NWLR (Pt. 1611) 18; ***Adegbite v. State*** (2018) 5 NWLR (Pt. 1612) 183; ***State v. Isah*** (2019) 1 NWLR (Pt. 1652) 139; ***Sale v. State*** (2020) 1 NWLR (Pt. 1705) 205; ***Bako v. IGP*** (2025) 16 NWLR (Pt. 2012) 591.

In due fidelity to the expectation of the law, I have revisited the record – the keystone of the appeal. My port of call is still in the residence of the lower court's decision, sought to impugned and ostracised from the legal district, which colonies pages 145 – 174 of the record. Therein, I will, for its importance, pluck out the reasoning/finding of the lower court on the knotty limb, which is wrapped at page 153, lines 3 – 15 of the record. It reads:

> **Thus, it is for the accused person to raise the defence of alibi at the earliest possible time, during investigation and to give evidence thereof, before the**

duty of the police kicks in to investigate the defence.

In the instant case, the appellant, in his statement to the police raised no defence of alibi or any other defence, but admitted the offence. He also failed to raise this defence in his evidence in Court.

Indeed had he so done at trial, the same would be considered, by the authority of *Eke v. State* supra, as a mere afterthought and not to be taken seriously.

In addition to this is the fact he called no witness in proof of this defence. Having done none of these things, there was no duty placed on the prosecution or the Court, I hold, to investigate a non existent defence. There was thus no failure by the lower Court in its evaluate of the defence raised by the Appellant.

As already noted, the inelastic posture of the law, in the days of the yore, is that it is incumbent on an accused person to raise the defence of *alibi* timeously – at the earliest opportunity of his first confrontation with law enforcement officers. The reason for this is not far-fetched. It is to equip the officers of the particular agency with the

opportunity to investigate the veracity or otherwise of the defence. The appropriate forum for an accused to invoke such a defence is in his statement to officers of the law enforcement agency. It is usually the first contact point between an accused person and law enforcement agency. I have, in pacification of the law, given an indepth study to the appellant's statement to the police, exhibit 2(b), displayed between pages 162 – 164 of the record. I have burrowed through it with merciless scrutiny. It is comprehension – friendly even for the laity. Incidentally, I am unable to locate, even with the telescopic lens and prying eagle-eye of the apex court, where the appellant raised the defence of *alibi, id est,* that he was outside the town or scene of crime. Contrariwise, therein, on his own volition, he fixed his presence at the *locus in quo* with his principal mission to abort any attempt to neutralise the full prosecution of the robbery operation. Thus, the appellant starved the police of any facts that would compel them to investigate his claimed defence of *alibi.* In the absence of volunteering facts on *alibi,* the police had nothing to investigate. In that wise, the defence became an orphan as the pre-trial statement which ought to have birthed it was made barren by the appellant's costly faux pas in raising it. The spiral effect is not moot. There was no tinge of evidence on record to warrant determination by the trial court, a *fortiori* the lower court.

This point cries for further emphasis. The cardinal principle of law, which pervades the premises of criminal law, that the courts sitting on

every rung of the judicial ladder, must consider every defence mounted by an accused person, notwithstanding its weakness or potency, is not at large. It has a ceiling. It is *ultra vires* the power of a court of law to consider a defence, which may inure to the benefit of an accused person, when the record does not in any manner disclose such a defence. In other words, a court of law, nay, an appellate court does not enjoy the imprimatur of the law to go about shopping/fishing for defence(s) outside the precints of the evidence on the record which binds the court and the parties willy nilly. By the same token, a court has no blessing of the law, on the footing *quo warranto,* to fabricate a defence for an accused person where none is raised by him or revealed by the record. A court of law is not a blacksmith that manufactures defences, which are strangers to a case, for an accused person. To do otherwise will constitutes a serious *coup de grace* to the ageless principle of law that a court is not clothed with any right to travel outside the province of binding record. Such will smell of worshipping a speculation/conjecture which has no iota of accommodation in law. The net effect is this. The lower court's confirmation of the non-consideration of the appellant's pseudo-defence of *alibi* was not offensive to the law as to magnet any reprobation from this court. On the contrary, I endorse it in toto.

In any event, the appellant's confessional statement, exhibits 2(b), passim, still haunts and lurks in the shadow of the phantom defence of

alibi. It will be recalled that therein, the appellant made an unfiltered admission of his presence at the *locus criminis* on the dark day of 31st May, 2009 – the fateful day of commission of the heinous crime of armed robbery. In the eyes of the law, such a fixture demolishes and disables the defence of *alibi* and renders it lame. It cannot fly, see ***Onuchukwu v. State*** (1998) 4 NWLR (Pt. 547) 576; ***Balogun v. A-G., Ogun State*** (2002) 6 NWLR (Pt. 763) 512; ***Idemudia v. State*** (2015) 17 NWLR (Pt. 1488) 375. In the face of these existential and terminal blights against the phoney defence of *alibi,* the lower courts endorsement of the trial court's non-consideration it was not, in the least, a defilement of the criminal law, substantive or adjectival. There was no defence of *alibi* which merited consideration for the benefit of the appellant. The lower court acted *ex debito justitae* when it did not credit him with a phantom defence of *alibi*. I accord it a wholesale affirmation.

My noble Lords, for the sake of completeness, the appellant branded the decision of the lower court on the point as an infliction of a miscarriage of justice against his case. In the legal parlance, a miscarriage of justice, which has become an overworked guest in adjudication, connotes "A grossly unfair outcome in judicial proceedings as when a defendant is convicted despite lack of evidence on an essential element of crime," see ***Adeyemi v. State*** (2014) 13 NWLR (Pt. 1423) 132; ***Itu v. State*** (2016) 5 NWLR (Pt. 1506) 446; ***Gazzali v***

State (2019) 4 NWLR (Pt. 1661) 98; ***Bako v. IGP*** (2025) 16 NWLR (Pt. 2012) 591.

Having regard to the foregoing juridical survey invested in the lower court's decision supra, it does not, in the least, fracture any of tenets of miscarriage of justice. The appellant's conviction for the offence of armed robbery preferred against him, *et alia,* and its total confirmation by the lower court were anchored on compelling, concrete and telling evidence against him on the essential ingredients of the offence. The defence of *alibi,* which he appellant erected, paraded and brandished menacingly to castrate the case of the respondent, was mired in the quicksand of non – existent defence and *ipso facto* unavailable to him to harness from the ambit of criminal jurisprudence. In all, all the diatribes, which the appellant rained against the lower court's decision, peter out into the dense fog of insignificance and impotent to stigmatise it with an infestation of a miscarriage of justice against him.

Flowing from the foregoing legal anatomy of the defence of *alibi*, the lower court's affirmatory decision is in due allegiance to the dictate of law. I, therefore, dishonour the appellant's salivating invitation to this court to crucify and sacrifice the decision of the lower court on the underserved altar of improper/perfunctory evaluation of evidence for want of legal justification. In the end, I have no choice than to resolve the singular issue against the appellant and in favour of the respondent,

On the whole, having resolved the sole issue for determination against the appellant, the destiny of this appeal is obvious. It is destitute of any morsel of merit and deserves the reserved penalty of dismissal. Consequently, I dismiss the appeal. Accordingly, the lower court's decision, in CA/K/252/C/2013, delivered on the 10th June, 2015, which upheld the trial court's decision, in Charge No KTH/4C/2010, delivered on the 3rd June, 2011, is, hereby, affirmed in its entirety.

OBANDE FESTUS OGBUINYA,
JUSTICE, SUPREME COURT.

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