Okeke

vs

S (CA/E/371C/2012)[2016] NGCA 37 (21 January 2016)

In the Court of Appeal

Holden at Port Harcourt

Between

Appellant

AFAM OKEKE

and

Respondent

THE STATE

Judgement

(DELIVERED BY HELEN MORONKEJI OGUNWUMIJU, JCA)

This is an appeal against the judgment of the High Court of Anambra State delivered by Hon. Justice Peter J. Umeadi on 21/2/2012, wherein His Lordship convicted the Appellant for armed robbery and sentenced him to death by hanging or firing squad. The facts that led to this appeal are as follows:

The Appellant was arraigned before the trial Court on information and proof of evidence containing a five count charge. The Appellant pleaded not guilty to the charge. To prove its case, the Prosecution called 5 witnesses at trial. P.W.1 gave evidence that the Appellant in the company of others had robbed at gunpoint, P.W.1 of her vehicle and other valuables on their way to Nkpor through Ugwunabankpa Road, Inland town, Onitsha, after which P.W.1 went to the Police Station and gave a statement. P.W.2 gave evidence that she knew the Appellant very well and she was in the company of P.W.1 and others in P.W.1's vehicle when the Appellant and some other people riding on motorcycles blocked their path and forced the passengers out of the car. The passengers fled into a nearby slaughter market, while the

1. robbers collected the car, robbed P.W.2 of her Samsung handset and made off with the car. P.W.2 said she was very familiar with the Appellant as she had seen him on several occasions. P.W.3 is a Sergeant attached to the Anti Robbery Squad Inland Town Police Station Onitsha. The Complainant's matter was referred to him for investigation. P.W.3 stated that in the course of his investigation, no suspects were identified nor were any arrests made. At the end of his investigation, P.W.3 wrote a report. P.W. 4 is a Superintendent of police, serving with the Special Anti Robbery Squad (SARS). He got to know the Complainant in this case through a petition she wrote alleging that she was robbed at gun point by a group of four men riding on motorcycles, and that she had complained to the Police who were doing little about it, the Complainant named the Appellant in the petition. P.W.4 in a team of 7 men investigated the Petition and arrested the Appellant in a bush known to be the home of notorious criminals during the course of their investigation. P.W. 4 called P.W.1 to the SARS office where P.W.1 sighted the Appellant and identified him as one of the men that robbed

2. her. P.W.4 then took additional statements from her and other witnesses. P.W.4 stated that the Appellant denied the allegations but admitted that he was a drug dealer. P.W.5 testified that she was not at the scene of the

crime but her friend (P.W.2) told her of the incident and that she had seen a man on a motorcycle a day before the incident riding behind the said jeep. She knew him as one of the robbers very well and would point him out when she saw him. The Appellant was pointed out to the P.W.5, the next day as one of the armed robbers and P.W.5 told her friend she had seen the Appellant riding on a motorcycle behind a black Honda jeep. P.W.5 said the Appellant came into her shop one day and when he left, a man came asking questions about him. The man told her that the Appellant was always going into her shop. She would tell everyone. P.W.5 swore that she called the Appellant and asked him about it and gave him advice. P.W.5 said the Appellant confided in her that he had stolen for which the police wanted him.

?Appellant also testified for himself that he is a panel beater and was arrested on the 11/7/08. On that day, he had prepared to go into the bush on
3. his motorcycle where he went to guard his land when he was hit by a red sports car belonging to members of the SARS squad. He was arrested by these men and taken to SARS unit Awkuzu. Appellant swore that he was handcuffed, tortured and asked to confess his crimes and say where he had kept the vehicle. Appellant confessed to selling and using hard drugs but denied that he had ever stolen anything. Appellant testified that on 11/7/08, the IPO took him out of the cell and pointed him out to PW1 who nodded her head and he was returned to his cell. That P.W. 5 never gave him any advice but he knew her as a woman who sells medicine in a chemist shop. Appellant said he had no knowledge the Police was looking for him until he was arrested on 11/7/08. The trial judge convicted him of armed robbery and sentenced him to death accordingly.

Dissatisfied with the judgment of the trial Court, the Appellant initiated this appeal. Appellant filed a notice of appeal on 6/3/12 containing four grounds of appeal and transmitted Records on 22/1/12. Appellant's brief was filed on 19/4/13, deemed filed on 10/2/15. Amended notice of appeal was filed on 24/9/13 with 5 grounds of appeal
4 and transmitted on 25/9/13, deemed filed on 3/7/14. Appellant's reply brief was filed on 21/4/15. Respondent's brief was filed on 10/3/15.

In the Appellant's brief settled by John Oguejiofor Esq, six issues were identified for determination as follows:

1. Whether exhibit B was forged for the purpose of this case, and if affirmatively so, whether this Court has power to expunge it from the evidence in this case.
2. Whether exhibits C, J and H have valid probative value which the trial Court could rely on without more to corroborate exhibit B
3. Whether the entire additional evidence filed on 3/11/2009 by the Respondent comprising exhibits A, D and E were not forged to bolster the case of the Respondent against the Appellant.
4. Whether by the circumstance of this case, there was the need for an identification parade to have been conducted by police.
5. Whether there were any material contradictions in the evidence of the prosecution
6. Whether the trial Court properly evaluated the evidence before it.

In the Respondent's brief settled by P.N. Ofomo Esq, the six issues identified by Appellant's counsel were adopted with modifications as issues for determination thus:

51. Whether exhibit B was forged for the purpose of this case.
2. Whether exhibits C, J and H do not have the probative value which the trial Court accorded to them.
3. Whether the entire additional evidence filed on 3/11/2009 by the respondent comprising exhibits A, D, E were forged to bolster the case of the Respondent against the Appellant.
4. Whether by the circumstances of this case there was a need for identification parade to have been conducted by the police.
5. Whether there were material contradictions in the evidence of prosecuting witnesses.
6. Whether the trial Court failed to properly evaluate the evidence before it which made the prosecution fall to prove her case beyond reasonable doubt.

After careful perusal of the issues proffered by both parties, I will crystallise the issues as follows:

1. Whether Exh B, Exh C, Exh J, Exh H were admissible and credible in view of material contradictions in the case of the prosecution witnesses.

2. Whether there was correct and admissible identification of the Appellant by the Complainant.

ISSUE ONE
Whether Exh B, Exh C, Exh J and Exh H were admissible and credible in view of material contradictions in the case of the prosecution witnesses.

Appellant's counsel submitted that Exh B was made after the arrest of the Appellant and after Appellant had made Exh K on 11/7/08, since P.W. 1 stated during cross examination that she went to SARS a day or two after 11/7/08. Counsel posited that since there is uncertainty as to when Exh B was made, it is very likely the Prosecution forged and backdated Exh B through PW1 after seeing Appellant's statement. Appellant's counsel submitted further that the uncertainty should be resolved in favour of the Appellant. Counsel submitted that it is only legally admissible evidence that a Court of law can validly use to determine legal issues before it and there is no discretion for a Court to act on evidence made inadmissible by express statutory provision. He cited Engr. Agbi & Anor v.Chief Ogbeh & Ors (2003) FWLR (Pt. 169) 1245 at. 1271. Counsel submitted that by the Evidence Act, forged documents are inadmissible and consent of parties or even no objection to it does not make it admissible in criminal trials. He cited (2001) 4 S.C (Pt. 1) 84 at 90.

Counsel submitted further that an Appellate Court has a duty to reject such inadmissible evidence that has been admitted with no objection. He cited Tangale Traditional Council v. Alhaji Fawu & Anor (2002) FWLR (Pt. 117) 1137 at 1167.

Counsel argued that a document or deposition made after a case has been initiated is inadmissible. Counsel cited Onuh & Ors v. Ide & Ors (2002) FWLR (Pt. 94) 66 at 83. Counsel urged this Court to expunge Exh B from the evidence before it.

Appellant's counsel argued that exhibits C, J and H do not have evidential value to the extent attached to them by the trial Court as corroborating Exh B since both were made more than 70 days after the crime was committed.

Counsel submitted that a witness who fails to report and give to the police the details he knows concerning an offence at the earliest opportunity

preferring to give it later will not be regarded as a serious witness and a Court of law must be careful in accepting his evidence unless a satisfactory explanation is given for the delay. He cited Sunday Anyanwu v. The State (1986) 5 NWLR (Pt. 43) 612, Ani v State (2007) All FWLR (pt. 482) 1044 at 1064; Ndidi v. State (2007) All FWLR (Pt. 381) 1617 at 1650; 8 Abdullahi v. State (2008) All FWLR (Pt. 432) 1047.

Appellant's counsel argued that Exh C and J cannot validly corroborate Ex B without more, and Exh H being compiled on the basis of Exh C and Exh J is not an independent piece of evidence, hence is insufficient to corroborate Exh B, C and J.

Appellant's counsel contended that Exh A, D and E were forged by the Prosecution to bolster its case against the Appellant, since they were not filed along with the initial proof of evidence nor were they mentioned until 6/11/09, when the Defence mentioned to the Court while moving the motion for the bail of the Appellant that the robbery incident was reported to the Police in July instead of May that it was alleged to have happened.

Counsel contended further that there is no clear evidence that Exh D was issued from the Police Station on 4/5/08. Exh E was dated 5/5/08 and the trial Court after rejecting Exh A as being forged, listed Exh D and E as part of the documents to rely on even after P.W.2 told the Court on 21/4/10 that they never went back to the station on 5/5/08.

Counsel posited that there are material contradictions in the evidence of the Prosecution witnesses and other witnesses who could have shed more light on these were not called forth. Counsel cited Okhuaboro v. Chief Aigbe (2002) FWLR (Pt. 116) 869 at 916. Counsel submitted that where there are contradictions in the evidence of a prosecution witness, a trial judge must reject all the evidence because it is not allowed to pick and choose which evidence to believe. Counsel cited Ogbu v. State (2003) FWLR (Pt. 147) 1102 at 1118.

Appellant's counsel submitted that the entire evidence before the Lower Court was not properly evaluated thereby causing grave miscarriage of justice and that the trial Court lowered the standard of proof in a criminal

trial from proof beyond reasonable doubt to that of preponderance of evidence.

In the Appellant's reply brief, Appellant's counsel submitted that a party presenting a document before a Court is presumed to be telling the Court that the document is genuine and authentic, has passed all requirements of law for its admissibility. Thus the Court should use the document in his favour as part of his case and S. 34(1)(a) of the Evidence Act has made provisions guiding weight to be attached to any statement rendered admissible.

Counsel submitted that once the origin of a document is doubtful, a Court cannot rely on it to find for a party. He cited Dughum v. Andzenga (2007) All FWLR (Pt. 385) 499 at 524; Garuba v. Kwara Investment Co. Ltd (2005) All FWLR (Pt. 252) 469 at 479. Counsel further submitted that the burden is on the party who tenders a document to prove its genuineness or authenticity before the Court can rely on it. He cited Offodile v. Onejime (2012) All FWLR (Pt. 608) 946 at 966; Ndidi v. State (2007) All FWLR (Pt. 381) 1617 at 1650; Ani v. State (2009) All FWLR (Pt. 482) 1044 at 1064.

Counsel submitted further that Ex C alone is not enough to ground the charge against the Appellant. Respondent's counsel argued that the Court did not rely on only Exh B in reaching its judgment but Exh B & C and that the failure of PW1 to remember the exact date she made Exh B cannot render it a forged document nor can it vitiate any finding of the Court based on the said Exh B. He cited Sele v. The State (1993) 1 SCNJ 15 at 22.

Counsel submitted that the trial judge held on Page 119 of the Record that the statement of PW1 on 15/7/08 and 11/7/08 are enough to ground the charge against Appellant.

Counsel submitted further that the contention of the Appellant that Exh C, J and H do not have evidential value is borne out of the misconception of facts. Counsel submitted that it was the petition of PW1 in May 2008 that spurred PW4 and his team to set up a surveillance which eventually led to the arrest of the Appellant. PW2 and PW5 only made their statements after Appellant made his statement n 11/7/08.

Counsel contended that there is no special order by which an investigating officer can record the statement of parties whose case he is investigating. Counsel submitted that the Prosecution had given a satisfactory explanation for the delay in making Exh C, J and H on page 81 of the Record. He cited Sunday Anyanwu v. State (1986) 5 NWLR (Pt. 43) 612; Ani v. State (2009) All FWLR (Pt. 481) 1044 at 1064. Counsel submitted that Exh C was admitted in evidence at the instance the Appellant he cited Nwachukwu v. State (2002 FWLR (Pt. 123) 312 at 335.

Respondent's counsel argued that the Lower Court did not base its conclusions on Exh A, D and E but on H, the report of PW4 who was the investigation Police Officer who investigated the case, nor did the trial judge use Exh A, D and E to corroborate any part of the Prosecution's case. Counsel submitted that the inability of PW1 to remember the exact date she made Exh B is not a material contradiction and PW5 did not give evidence of a particular brand of car but rather said it was either a Toyota or Honda Jeep and that there are no material contradictions in the testimonies of Prosecution witnesses. Counsel submitted that minor details omitted due to lapse of time cannot amount to material contradiction to be fatal to prosecution's case must go to the substance of the case and not be of minor nature. Counsel cited Sele v. State (1993) 1 SCNJ 15 at 22.

Counsel submitted that the trial Court based its findings on Exh C and not just Exh B and that PW1 and PW2 forwarded their petition in May and even the reports started in May and not in July when their statements were made.

Respondent's submitted that Exh B is not inadmissible evidence as failure of PW1 to remember the date it was made cannot affect its admissibility but may rather affect the weight to be attached to it.

Resolution
In cases of armed robbery, there are three essential ingredients to be proved by the prosecution. They are set out below:
a. That there was robbery
b. That the robber or robbers were armed with offensive weapons
c. That the accused person(s) was the robber or one of the robbers.

In this case, there is no argument that there was a robbery or that it was an armed robbery. The only question remaining is whether the Appellant was one of the armed robbers. Let me briefly restate the facts of this case.

On 4/5/08, a group of men possessing dangerous weapons stole a Toyota Highlander Jeep and other valuables from PW1 and some of her friends who were in the vehicle with her. On the same day, PW1 and the other victims went to the Police station but only PW1 gave a statement to the police in which she claimed she could not identify any of the armed robbers. The next day PW2 met with PW5 and told her of the incident. On 12/5/08, PW1 wrote a petition complaining about the incident to the Commissioner of Police and stated that one of the occupants of the car knew one of the armed robbers whom she names as Afam Okeke - the Appellant in this case. PW5 allegedly told P.W.2 that she had seen the Appellant riding a motorcycle behind the stolen car the day before the incident. On the 11/7/08, more than two months later, PW1 made a statement (Exh B) to the SARS Awkuzu and PW2 made (Exh C) on 15/7/08, in respect of the incident. PW1 got the opportunity to meet the Appellant on the 11/7/08 when she went to make her statement at SARS Awkuzu after the Appellant was arrested. PW1 identified the Appellant as one of the armed robbers by nodding her head when the Appellant was shown to her in handcuffs. PW2 in her statement to SARS and in Court said that she could identify the accused person as he lived near her in Umusiome village. PW5 also corroborated the testimony of PW2. PW3 is the I.P.O attached to the Anti Robbery Squad Inland Town Police Station Onitsha who was put in charge of the case of car snatching reported by the Complainant. The Exhibits on Record are as follows: Exh A is the alleged statement of PW1 made to the police at Inland Town Police Station Onitsha on 4/5/08 which was expunged by the Trial Court for being a forged document. Exh B is the statement of P.W.1 to SARS Awkuzu on 11/7/08. Exh C is the statement of P.W.2 to SARS Awkuzu on 15/7/08. Exh D is the medical form issued to PW1 as a result of the bruises she had on her leg when she came to report the case of car snatching on 4/5/08. Exh E is a letter addressed to the Anambra State Broadcasting Service on 5/5/08 from the Police station regarding the car snatching for dissemination, broadcast of the information of the missing vehicle. Exh F is the investigation report dated 8/5/08 compiled as a result of the PW1's complaint at the Inland Police Station. Exh H is the Police interim report

dated 6/8/08, signed by ASP Peter Amadi- PW4. Exh J is the statement of PW5 made to the police on 22/7/08 at SARS Awkuzu. Exh K is the statement made by the Appellant to the police at SARS Awkuzu on 11/7/08.There are copious allegations against the Appellant. The questions on my mind however remain, why did PW2 not give a statement to the Police on 4/5/08 when the PW1 gave hers. Why was a proper identification parade not carried out? Why did it take 3 months for the prosecution witnesses to be sure of the Appellant's identity? On page 76 of the record, P.W.2 alleged that she told the DCO that she knew the Appellant very well and she knew it was important to give as much detail as she knew about the incident but did not give any statement to that effect. PW2 also admitted that she was with PW1 at the station when she gave her statement, and she knew and could recognise the Appellant if she saw him. Not even after she went home that day and PW5 allegedly pointed out the Appellant did she go back to report.

P.W.2 claimed she went back in May to write a statement to SARS but the one on Record is dated 15/07/08 and she admitted on page 78 of the Record during cross examination that she did not make any other statement. Furthermore, during cross examination on 9/11/09, she admitted that she told the DCO at the Inland Police Station that she knew the identity of the Appellant. Also, under cross examination she admitted that she did not reveal on 21/4/10 the identity of the armed robber since she was asked to go home and rest, and she did not know if P.W1 revealed the identity of any suspect on 4/5/08.

One would expect that she would want to give this information at the earliest opportunity. It is surprising to me that she did not give the information to the police at the earliest opportunity. PW2 did not even go back within the month. She went back 72 days later to give the information. I am of the firm view that P.W.1 and P.W.2 did not recognise the Appellant at the time the offence was committed but claimed to identify him as their assailant months later, as a result of the discussion of PW2 with PW5.

Armed with a name of a possible suspect, the Police set about their subjective investigation. No satisfactory explanation has been given for PW1 and PW2's lapses in memory. Witnesses have the duty to tell the

police as much as they know of a crime at the earliest opportunity in order to be seen as witnesses of truth and a Court of law must be careful in accepting delayed evidence when no satisfactory explanation is given. See Ani v. State (2002) 5 S.C;(2002) 10 NWLR (Pt. 776) 644; (2002) LPELR-489 SC Ndidi v. State (2005) 17 NWLR (Pt. 953) 17; (2005) LPELR-7550 CA.

The extra judicial statement of a witness in a criminal trial is inadmissible as evidence for either side. The admissible evidence is the evidence on oath in open Court by the witness which is subject to cross examination by the adverse party. The only time when an extra judicial statement of a witness is admissible is where a party seeks to use it to contradict the evidence of a witness already given on oath. The defence witnesses will ask for the statement and give reasons to the Court for doing so. On production by the Prosecution, the defence counsel must seek to tender it and refer to specific passages which contradict the evidence of the witness. After it has been admitted in evidence, the specific portions of the statement of the witness made to the Police must be shown to the witness to read out or counsel may read it out to the witness. The witness must be given an opportunity to explain the contradiction. Failure by the witness to explain the contradiction in the evidence on oath of the witness and the contents of the extra judicial statement can then be used to make an issue during defence counsel's address. See S. 232 and 233 of the Evidence Act 2011 . The Court is not allowed to pick and choose between the two statements. See State v. Fatai Azeez & Ors (2003) 4 SCNJ 325; Igenti v. State (2013) LPELR-2086 (CA). At page 125-126 of the Record, the learned trial judge held thus:

"PW4 testified how not finding the efforts at Inland Town Police Station helpful, he began his own separate investigation which led to the arrest of the accused person on 11/7/08. The interim police report as in Exh F has nothing much to offer. PW4 compiled a fuller report which was admitted as Exh H. I have earlier held that an identification parade was not necessary in this case since PW2 knew the accused person before the day of the alleged robbery. Apart from the fact that evidence of PW5 corroborated that of PW2, it also introduced evidence of character of accused person. This evidence was contained in the Statements made to the Police by PW2 and PW5, admitted in evidence as Exhs C and J

respectively. An attempt by PW2 to give the evidence was successfully objected to as being hearsay evidence. However, the evidence of PW5 in Exh. J as follows and I quote from Exh J inter alia "Sometime in January 2008 as the same Ugwunabankpa Inland Town Onitsha, he wanted to snatch a Honda Car property of my friend called Ifeoma Chibundu but when he noticed that I was inside the car he allowed us to go and snatched the vehicle behind us. I know that he is a notorious armed robber and a cocaine dealer. He has been coming to my shop to buy something, almost everybody in Umusiome knows him as an armed robber and we are all afraid of him." The learned counsel for the defence did not cross examine PW5 on this issue. I think that the above evidence of character and past conduct weighs heavily against the accused person."

It is clear that the learned trial judge erroneously relied on the extra judicial statement of PW5 in Exh J to convict the Appellant. This is in clear violent disregard of S. 82 of the Evidence Act which provides as follows:
(1) Except as provided in this Section, evidence of the fact that a defendant is of bad character is inadmissible in criminal proceeding.
2) The fact that a defendant is of bad character is admissible-
a. When the bad character of the defendant is a fact in issue; or
b. When the defendant has given evidence of his good character
3) A defendant may be asked questions to show that he is of bad character in the circumstances mentioned in paragraph c of the provision to Section 180.
4) Whenever evidence of bad character is admissible, evidence of a previous conviction is also admissible.
5) In cases where Subsection 4 of this Section applies, the Court shall only admit evidence of previous convictions which are related in substance to the offence charged.
6). Evidence of a previous conviction shall be proved in accordance with Part XIII
See Kunle Shonubi v. People of Lagos (2015) LPELR-24807 (CA).

Where a witness in a criminal trial made a prior extra judicial statement materially inconsistent with his evidence on oath, the trial judge is not permitted to pick and choose which evidence to believe and must disbelieve both and put no probative value on either. For the rule to be

activated by the defence, during the cross examination of the witness, the defence counsel is obliged to demand a copy of the said extra judicial statement from the prosecution which should be part of the proofs of evidence. The material portion of the extra judicial statement would then be put to the witness to give him the opportunity to explain, the extra judicial statement should then be tendered and admitted as evidence. The point should then be made an issue during defence counsel's address. See S. 232 & 233 of the Evidence Act 2011 .

ISSUE TWO
Whether there was correct and admissible identification of the Appellant by the Complainant. Appellant's counsel submitted that since P.W.1 gave evidence that she did not know the Appellant before the incident and the robbery was carried out without delay, there was a need for an identification parade. Counsel submitted further that since P.W.1 and P.W.2 did not identify appellant to the Police immediately the offence was committed, nor disclose any outstanding features of any of the armed robbers, nor did they participate in the arrest, neither was P.W.2 who allegedly knew the Appellant before the incident present at the SARS unit when P.W.1 allegedly identified the Appellant, there was a need for an identification parade. Especially since P.W.2 did not declare that she knew the Appellant until she got to the police station and only communicated the said knowledge to the DCO alone. Counsel cited Bozin v. State (1983) 7 SC 450.

Counsel submitted that the trial Court erred in law by dismissing the accounts of the Appellant as to how he was brought out of the cell by the police and identified by a head nod. Counsel submitted further that the conditions that make identification parade a sine qua non were clearly stated in Ikemson v. State (1989) 1 CRN 1 & 3. Counsel insisted that none of those conditions exist in the present case, and the trial Court erred when it held that the authority does not apply to this case.

Respondent's counsel argued that there was no need for special explanation of the features of the Appellant since the Appellant was specifically named in the petition.

Counsel argued further that each of the Prosecution witnesses gave unequivocal accounts of how they came to know the Appellant and there is no need for an identification parade since the Appellant was well known to PW2 and PW5. He cited Archibong v. State (2008) Vol 6 Law Reports of Courts of Nigeria Criminal Case 306 at 326. Respondent's counsel submitted that there was no need for an identification parade since the PW1 recognised the Appellant on sight at the Police Station.

Resolution
Let us examine the nature of identification parade and when it is deemed necessary. An identification parade is the process by which an accused person is identified out of a number of people with identical features as the accused person, by a witness. It was defined in Alabi v. State (1993) 7 NWLR (Pt.307) Pg. 511 at 527 per Onu, J.S.C as follows:
"Identification parade means a group of persons of identical size and common physical features assembled by the police from whom a witness identifies a suspect or suspects unaided and untutored."
Needless to say, the identity of an accused person must be established by credible evidence beyond reasonable doubt in accordance with Section 135 (1) of the Evidence Act .
It is well settled that it is not in all criminal matters that identification parade is necessary. There are certain circumstances where identification parade would not only be needless, but would be a complete waste of time. However, there are also circumstances where conducting an identification parade is essential to the prosecution's case. There are several judicial authorities on this point. In Aliyu v. State (2007) ALL FWLR Pt. 388 Pg. 1123 at Pg. 1147, this Court per Ariwoola JCA (as he then was) held as follows:

"An identification parade is not sine qua non to a conviction for a crime alleged, it is essential in the following instances - a. where the victim did not know the accused before and his first acquaintance with him was during the commission of the offence.

b. where the victim or witness was confronted by the offender for a very short time.
c. where the victim due to time and circumstance might not have had full opportunity of observing the features of the accused. See R v.

Turnbull (1976) 3 ALL ER 549, (1977) QB 224; Ikemson v. State (1989) 1 CLRN 1."

Also, in Balogun v. A-G. Ogun State (2002) 6 NWLR (Pt.763), Pg. 512 at 534, the Supreme Court per Uwaifo JSC held thus:
"An identification parade will be useful when a witness claims to have seen an unfamiliar person who escaped from a crime scene in circumstances which require putting to test the witness's power of recognition based upon the physical features and/or other peculiarities of the person he claims to have seen. There must be real doubts as to who the witness claims he saw in connection with the offence to require identification parade."
See also Ukpabi v. State (2004) 11 NWLR Pt. 884 Pg. 439; Ebiri v. State (2004) 11 NWLR Pt. 885 Pg. 589; Sunday Ndidi v. The State (2007) All FWLR Pt. 381Pg. 1617; Archibong v. The State (2006) 14 NWLR Pt.1000 Pg. 349; Ogoala v. The State (1991) 2 NWLR Pt.175 Pg. 509.
Thus, an identification parade would be necessary where the accused was not arrested at the scene of the crime; the witness did not know the accused before; witness was confronted with the accused for a short time, the witness, because of the peculiar circumstances did not have the opportunity to see fully the features of the accused.

The proper procedure in identification parade is to shield the accused from members of the public before the identification parade is conducted. See Jerome Akpan & Ors v. The State (2002) 12 NWLR Pt. 780 Pg. 189. The usual way to conduct identification parade is to put the accused with other persons for the witness to pick. The police are not entitled to assist the identification of an accused person or suspect under arrest by bringing out the accused in handcuffs. See Waidi Ajibade v. The State (1987) 1 NWLR Pt. 48 Pg. 205. Identification parade would not be properly conducted when the witness is asked leading questions like "Is this the person?" or when a police officer nods in the direction of the accused person. Since the Appellant was identified by PW1 at the police station where he was taken after being arrested for the crime PW1 complained of, there was no identification parade. The identification parade must be considered with the description of the accused person given to the police shortly after the offence was committed which should have been given by PW2 who

allegedly knew the Appellant well immediately after the offence was committed. See Isibor v. The State (2002) 4 NWLR Pt. 758 Pg. 741.

The judge must be cautious and carefully examine identification evidence before acting on it. The parade must meet certain standards to be credible and acceptable. Where the identification parade is improper, the accused must be given the benefit of the doubt. See Ojukwu & Ors v. State (2002) 4 NWLR Pt. 756 Pg. 80. None of the best practice parameters for judging a proper, credible and fair identification parade was utilised in this case.

Counsel to the Respondent had contended that identification parade is not necessary where on the whole evidence the accused person was positively identified and where the identification is spontaneous and natural.

The object of an identification parade is to make sure that a witness can positively and clearly identify the accused person. It is to make sure that no mistake is made in the identification of an accused person. See Abusu v. State (1985) 1 NWLR (Pt. 1) 5 Sc where the Supreme Court relied on the decision in R v. Turnbull (1976) 3 WLR 28 445, as follows:
"Recognition may be more reliable than identification of a stranger; but when the witness is purporting to recognize someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made. All these matters go to the quality of the identification evidence. If the quality of the evidence is good and remains good at the close of the accused person's case, the danger of mistaken identification is lessened but the poorer the quality, the greater the danger."

On the 4th of May, 2008, the day of the armed robbery incident, PW1 reported the armed robbery incident at Awka Police Station and also made a statement, but she did not indicate in her statement nor did she inform the police that she could identify any of the culprits, in fact she stated that she could not. Apart from PW5 who claimed to know the Appellant before and pointed him out to PW2 as the criminal they were looking for, after which PW2 'recognised' the Appellant, no other victim could identify the Appellant as one of the Armed robbers. The incident took place in the daytime on 4/5/08, P.W.2 gave her first statement to the police on 15/7/08 over two months after the incident. No attempt was made by the police to

conduct an identification parade in which the Appellant and persons with similar physical characteristics would stand together and the witnesses would be called to positively identify the culprit from among them. That is the minimum standard required to satisfy the best practice in relation to identification parade. Nothing of the sort was done in this case. P.W.1 had actually seen the Appellant brought out in handcuffs before she identified him at the police station.

It is my humble but firm view that the identification of the Appellant by PW1 and PW2 as one of the armed robbers who dispossessed PW1 and other victims of her car and other valuables was improper and should have created reasonable doubt in the mind of the trial judge. It is trite that where there is doubt in a criminal matter, the doubt should be resolved in favour of the accused. In Ahmed v. The State (1999) 7 NWLR Pt. 612 Pg. 641 at Pg. 673, the Supreme Court held as follows:
"It is a cardinal principle in criminal proceedings that the burden of proving a fact which if proved would lead to the conviction of the accused is on the prosecution who should prove such fact beyond reasonable doubt. In criminal cases, any doubt, as to the guilt of the accused arising from the contradictions in the prosecution's evidence of vital issues must be resolved in favour of the accused."

A man may be convicted on the evidence of a single witness. However such evidence must be credible and cogent. In The State v. Aibangbe (1988) 3 NWLR Pt. 84 Pg. 548 the Supreme Court held per Craig, JSC at page 592 as follows:
"...it is just as well to state that there is no law or rule of practice specifying that a man may not be convicted on the evidence of a single witness...What is important is that the evidence given must be credible and be of such quality and cogency that a Court would safely rely on it in coming to a decision in a case. Thus, if such evidence has been thoroughly discredited under cross-examination or is otherwise open to doubt in the light of other supporting evidence then, it would be wrong to rely on it in convicting the accused person."

As earlier stated, I am convinced that the trial Court based its decision to convict the Appellant for armed robbery on the evidence of PW2 and PW5 which I have already stated are weak and unreliable. With the

greatest respect, I do not think that the trial Court gave due consideration to the totality of evidence before it. I am of the view that the evidence before the trial Court was not enough to ground a conviction for the offence of armed robbery.

Even if we believe that P.W.5 saw a man riding on a motorcycle behind a jeep, there is no certainty that that man was the Appellant and that he subsequently committed armed robbery. There is also nothing that says that a person riding behind a stolen car is aware that that vehicle is about to be stolen. Suspicion no matter how strong cannot amount to evidence beyond reasonable doubt. See Isah v. State (2007) NWLR (Pt.1049) 582; Onah v. State (1985) 3 NWLR (Pt.12) 236; Omolara Bajulaiye v. The State (2012) LPELR-7995 (CA); Oguno & Anor v. The State (2013)LPELR-20623 (SC).

There is also no doubt of the evidence of bad character of the Appellant. The Appellant himself testified that he was a narcotics dealer, but he is not on trial for that. The punishment should fit the crime and as far as the crime of armed robbery is concerned, I am not convinced that the Appellant is indeed one of the people who committed the crime against the complainant.

In the circumstances, the Appeal is allowed. The conviction of the Appellant is set aside. I enter a verdict of acquittal and he is hereby discharged. The judgment of the Anambra State High Court delivered by Hon. Justice Peter N. Umeadi in charge no.0/14c/2009 is hereby set aside. Appeal Allowed.

MASSOUD ABDULRAHMAN, JCA: I have had the opportunity of reading while in draft, the lead judgment just delivered by my learned brother, Justice Helen Moronkeji Ogunwumiju, JCA. I entirely agree with the lucid reasoning and conclusion reached therein to the resonating and gainful effects, that the instant appeal has abundant and manifest merits. Additionally, that it should be allowed. In the given premise, I also allow the appeal and set aside the decision of the Lower Court, inclusive of the conviction and sentence imposed on the appellant herein. A verdict of discharge and acquittal is thereby entered in respect of the appellant.

MISITURA OMODERE BOLAJI-YUSUFF, J.C.A. : I had read the draft of the judgment just delivered by my Learned brother, HELEN MORONKEJI OGUNWUMIJU JCA, I agree with his reasoning and conclusions. I agree that the appeal has merit and is accordingly allowed. I abide by all the orders made therein.

Counsel

APPEARANCES
John Oguejiofor with him, J.O.C. Onyiorah for Appellant
P.N. Ofoma Principal State Counsel Anambra State for Respondent