

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP:           HON. JUSTICE S.E. ALADETOYINBO  
COURT CLERK:                    M.S. USMAN & OTHERS  
COURT NUMBER:                 HIGH COURT SIX (6)  
DATE:                                27<sup>TH</sup> NOVEMBER, 2014**

**BETWEEN:**

**ATTORNEY GENERAL OF THE FEDERATION    -    COMPLAINANT**

**AND**

**MOSES EDE OGBONNA & OTHERS               -    ACCUSED PERSONS**

**J U D G M E N T**

The three accused persons were arraigned before this court on the 13<sup>th</sup> Day of December 2006 on a six count charge of Armed Robbery punishable under Section 1(2) (b) of the Robbery and Firearms (Special Provisions) Act Cap 398, Laws of the Federation of Nigeria 1990.

The name of the prosecutor who arraigned the accused person was Ibrahim Bako from the Legal Department of Force Headquarters Abuja.

After the arraignment of the accused before this court on the 15<sup>th</sup> Day of December 2006, Bako Ibrahim refused to come back to court to prosecute this matter, the matter was adjourned for seven times to enable Bako Ibrahim come to court to prosecute this matter but

surprisingly he never came back. The court therefore wrote to the Federal Attorney General of the Federation to take over this case, it was on the 23<sup>rd</sup> Day of January 2008 that the Federal Attorney General sent a State Counsel to the court to take over the matter from the Police, these offences of armed robberies were committed sometimes in 2005 and 2004. The police used one year to investigate the matter after the arraignment, the police abandoned the case for two years in this court while the accused persons were remanded in prison custody. It is a wrong policy for an institution like the Police to be given power to investigate and at the sometimes prosecute offences that carries death penalty, that is too much power in one hand.

Upon the arrival of the State counsel from the Federal Ministry of Justice, the charges against the three accused were amended to seven counts.

From the evidence before the court there were four different robberies that took place, the 1<sup>st</sup> robbery occurred on the 15<sup>th</sup> Day of August 2005 of which DW1 was the victim, he was robbed of his 1998 Honda Accord at gun point by three armed robbers but was only able to identify positively the 1<sup>st</sup> accused person as one of the armed robbers, he claimed he cannot identify the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons as two of those who robbed him of his 1998 Honda Accord on the 15<sup>th</sup> Day of August 2005. The 2<sup>nd</sup> robbery took place on the 27<sup>th</sup> Day of February 2006 at about 8:00 p.m. of which PW2

was the victim. PW2 identified the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused persons as three out of four armed robbers that robbed him on the 27<sup>th</sup> Day of February 2006. The evidence of the 3<sup>rd</sup> and 4<sup>th</sup> robberies came through one of the Investigating Police Officer A.S.P. Sam David who gave evidence as PW4; the victims of the 3<sup>rd</sup> and 4<sup>th</sup> robberies were not called to give evidence, PW4 claimed 2<sup>nd</sup> accused Prince Eze along with Ifeanyi who is at large robbed one Suleiman Wada at Wuse Zone 5 and made away with Mercedes Benz E 320 Reg. No. AE 426 TNC, the 2<sup>nd</sup> accused and Ifeanyi who is at large was involved in an accident with the said Mercedes Benz along Suleja – Kaduna Road, they were arrested but both of them escaped from lawful custody, only for the 2<sup>nd</sup> accused to be re-arrested by FCT Police Command along with the 1<sup>st</sup> and 3<sup>rd</sup> accused persons. The date and time of the robbery were not mentioned by PW4. The 4<sup>th</sup> robbery was equally mentioned by PW3. A.S.P. Sam David in evidence, the victim was not called, the Peugeot 406 Saloon Reg. No. AG 03 DAN was recovered from one Hamza Yakubu who claimed to have purchased same from 1<sup>st</sup> accused person at a cost of N400,000.00. The Registration Number of Peugeot 406 Saloon which is the subject of robbery in count one and two of the charge is different from the Registration Number of Peugeot 406 Saloon which was tendered in evidence as Exhibit 002 and alleged to have been recovered from Hamza Yakubu who bought from 1<sup>st</sup> accused. The owner of the Peugeot 406 saloon who is the victim of the robbery was not called to give evidence.

Four prosecution witnesses gave evidence for the prosecution while the three accused persons gave evidence for their own defence. Apart from the statement of the accused persons which was admitted as Exhibit B1, B2 and B3, the following vehicles were admitted in evidence as follows:

1. Acura Registration No. B257 ABC Abuja Navy Blue recovered from 2<sup>nd</sup> accused person admitted as Exhibit OO1.
2. Peugeot 406 Registration No. AG 03 DAH Kogi State Green in colour admitted in evidence as Exhibit 002.
3. Accidented Honda Accord with No. Registration Number Blue in colour which was alleged to have been recovered from the person who bought from the 2<sup>nd</sup> accused person admitted as Exhibit 003.

The court will summarize the evidence of the four prosecution witnesses.

**PW1 – His name is Yakubu Kofarmata** a victim of armed robbery that occurred on the 15<sup>th</sup> Day of August 2005. He went to see a female friend at Paraku Crescent Wuse II. He parked his car on the main road and entered the house of the female friend. On his coming back, the female friend escorted him to where he parked his car, as he was about to start his engine, one armed robber came and pointed gun at his head, while another armed robber went to his female friend. The female friend shouted "JESUS CHRIST" and ran away. PW1 was ordered to move into the back seat of the car

along with two armed robbers while another armed robber entered into the driver seat and drove the car away. PW1 was now sitting between two armed robbers at the back of the seat; the only one of the armed robbers which he can identify is the 1<sup>st</sup> accused which he claimed was sitting at his right hand side at the back seat of the car. PW1 was ordered to remove all his clothes at gun point, he removed his clothes remaining his boxer, when he refused to remove his boxer, the 1<sup>st</sup> accused whom he can only recognize spoke Ibo language to the other two while the other two equally replied in Ibo language but PW1 did not understand Ibo language. On reaching Econumical Centre PW1 was dropped from the car, he was able to recognize or identify the 1<sup>st</sup> accused because of his deformity in the eyes and because he was the only one that came out from the car when he was dropped from the car trying to give him money to be used to enter taxi, at that point in time, the 1<sup>st</sup> accused was standing very close to him. PW1 later went to Wuse Police Station to report the matter where he was directed to go to Utako Police Station; he made statement at Utako Police Station about the robbery and submitted the photocopy of the title document of the car. PW1 was able to identify the 1<sup>st</sup> accused among two other persons in an identification parade; the two other persons are not the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons.

**PW2 – Habib Dokochi** told the court that on the 27<sup>th</sup> Day of February 2006 at about 8:00 p.m. he was driving from Banex Plaza to Paraku Crescent, Wuse II Abuja, he was about parking his car when he saw

one Honda Acura dark blue colour parked beside his car, 3<sup>rd</sup> accused person came out from the car and pointed gun at him, 3<sup>rd</sup> accused person ordered him to get inside the car but he refused to obey, 3<sup>rd</sup> accused then punched him and he punched the 3<sup>rd</sup> accused, two other gangs of armed robbers later joined holding their guns, PW2 claimed the 1<sup>st</sup> accused was one of the two that later joined while the remaining one is not standing trial; the 4<sup>th</sup> armed robber was inside the Acura and never came down. PW2 suspected the 2<sup>nd</sup> accused to be the 4<sup>th</sup> armed robber but he was not sure the three armed robbers later succeeded in getting the car key from him. Three of them entered. PW2 car and drove away, PW2 later wrote statement at Utako Police Station about the incident; he was invited to Life Camp Police Station where he identified the 3<sup>rd</sup> accused as one of the armed robbers. He was later taken to Wuse Police Station where he identified the 1<sup>st</sup> accused person as one of the armed robbers. He was further taken to Asokoro Police Station where the 2<sup>nd</sup> accused was brought out from the cell, he told the police that he was not sure whether he 2<sup>nd</sup> accused was among the armed robbers, the three accused persons later told the police in the presence of PW2 that PW2's car was sold to one DR. Hamza in Okene, DR Hamza was later arrested and brought to Abuja. He denied ever receiving any car from the accused persons. PW2 alleged that the robbery took place in the night where there were fluorescent light which enabled PW2 to identify the 1<sup>st</sup> and 3<sup>rd</sup> accused persons. PW2's car that was stolen

was a new Honda Accord End of Discussion which was not registered and same was never recovered.

**PW3 – Sergeant Simeon Obagwu** took the confessional statements of the 1<sup>st</sup> and 3<sup>rd</sup> accused persons. After realizing that the two statements are confessional he took the 1<sup>st</sup> and 3<sup>rd</sup> accused to his superior officer A.S.P. Omini Ubi where they confirmed making the statement. The superior officer Omini Ubi then endorsed the two statements.

The 1<sup>st</sup> statement made by the 3<sup>rd</sup> accused was removed from the case diary before the case diary was sent to Federal Ministry of Justice; the order made by the court to the Police to produce the said statement was never obeyed or carried out. It was PW3 who took the statement that was missing. Sergeant Sunday Kanto gave evidence as PW3 in the trial-within-trial, he recorded the statement of the 2<sup>nd</sup> accused person.

**PW4 – A.S.P. Sam David** tendered the three vehicles in evidence as Exhibit 001, 002 and 003 respectively. PW3 was one of the Police that investigated this matter, he claimed that 2<sup>nd</sup> accused and one Ifeanyi who is at large robbed one Suleiman Wada at Wuse Zone 5 and made away with his Mercedes Benz E320 Reg. No AE 426 TNC, the time and date of the robbery was not mentioned but the 2<sup>nd</sup> accused and Ifeanyi were involved in an accident on their way to Kaduna to sell the vehicle; they were arrested by the Police, they escaped from lawful custody only for the 2<sup>nd</sup> accused to be re-

arrested by FCT Police Command along with the 1<sup>st</sup> and 3<sup>rd</sup> accused persons. The Mercedes Benz was never tendered in evidence neither was the owner of the vehicle Suleiman Wada called upon to give evidence, PW4 further told the court that one Peugeot 406 Saloon Reg. No AG 03 DAH Kogi State, green in colour admitted as Exhibit 002 was snatched from the owner at gun point and same was recovered from Hamza Yakubu who claimed to have bought same from the 1<sup>st</sup> accused. PW4 cannot remember the owner of the vehicle who was not called to give evidence in this case neither was Hamza Yakubu who received same as stolen good was called to give evidence. Exhibit 002 has different Registration Number from Peugeot 406 Saloon alleged to have been snatched from Wisdom Okey in count one and two of the charge. These are the four witnesses who gave evidence for the prosecution before the prosecution closed their case.

The three accused persons gave evidence for their own defence. The 1<sup>st</sup> accused person gave evidence as DW1, he told the court that himself, 2<sup>nd</sup> and 3<sup>rd</sup> accused along with two other female friends were coming from the Club, he claimed not to have met the 3<sup>rd</sup> accused person before their arrest, the 2<sup>nd</sup> accused was driving the and carried the 3<sup>rd</sup> accused from the club, he also claimed not to know the owner of the Honda Acura driven by the 2<sup>nd</sup> accused persons. On getting to Utako Police checking point they were arrested by the Police and taken to Utako Police Station, the officer-in-charge of SARS was invited to Utako Police Station. On his arrival,



he saw the 1<sup>st</sup> accused and told him that they were looking for one-eyed man, after two days the 1<sup>st</sup> accused was taken to Wuse Police Station, then to FCT Police Command Area 8, where he was interrogated. DW1 claimed that the Police did not recover any stolen vehicle belonging to PW1 and PW2 from his possession; he also claimed not to admit committing the offence of armed robbery to the police. He claimed to know the 2<sup>nd</sup> accused five years prior to their arrest by the Police and that they live in the same house.

The 2<sup>nd</sup> accused gave evidence as DW2, his name is Prince Eze. He told the court that on the 23<sup>rd</sup> Day of March 2006, he went to popular club by name BLAKES along with the 1<sup>st</sup> accused person, he went with Blue Honda Acura Reg. No B 257 ABC; they were coming back from the club by 4:00 a.m. – 5:00 a.m. and on reaching Utako Police checking point he was arrested along with four occupants of the car which include the 1<sup>st</sup> and 3<sup>rd</sup> accused persons along with other two female friends, they were taken to Utako Police Station he was later transferred to SARS FCT Command, including Maitama Police Station, he was not aware of where the other four occupants are kept. DW2 claimed not to know DR. Hamza and never informed the Police that he sold vehicle to people, he claimed that only his vehicle was taken from him by the Police. DW2 admitted knowing the 1<sup>st</sup> accused person and that they live together at Lugbe.

The 3<sup>rd</sup> accused person Stanley Obiezue gave evidence as DW3. He claimed to be a student of Marketing at the School of Science and

Technology Enugu State. He went to BLAKES alone and sat in a round table of six people which include the 2<sup>nd</sup> accused person, when the 2<sup>nd</sup> accused person was leaving the BLAKES, he pleaded with him to help him to Utako with his car where he resides with his relation. On reaching Utako Police checking point, all the occupants of the car were arrested by the Police and taken to Utako Police Station. DW3 showed his student identify card to the police, he was later transferred to C.I.D. FCT Police Command, he was later kept in Gwarinpa Police Station before he was taken to SARS, he denied knowing DR Hamza and also denied participating in any armed robbery.

After the accused person closed their defence, the prosecutor filed final written address and the counsel to the 1<sup>st</sup> and 2<sup>nd</sup> accused persons filed his final written address including the counsel to the 3<sup>rd</sup> accused person.

The court had gone through the evidence of the prosecution including the 7 count charge, the court had also gone through the evidence of the three accused persons including the written addresses filed by the prosecution and defence counsel, the duty of the court at this point is to find out from the evidence before the court whether the prosecutor had established the ingredients of armed robbery against each of the accused person; to that effect the court hereby states the ingredients of the offence of Armed

Robbery as held in the Supreme Court case of AJAYI v STATE 2014 9 NCC 257 at 175 where K.B. Aka'ahs, JSC stated as follows:-

***"The ingredients needed to prove the offence of armed robbery are:***

- (1) That there was a robbery.***
  - (2) That the robbery was armed robbery and***
  - (3) That the accused was the robber or one of the robbers.***
- See ALABI v STATE (1993) 7 NWLR (Part 307) 511, GOLDIE DIBIE v STATE (2007) 9 NWLR (Pt 1038) 30.***

See also the case of OLOWOYO v STATE (2012) 17 NWLR 9Pt 346) where the ingredients of armed robbery are stated as follows:

***"The elements that must be established in proof of armed robbery charge are:***

- (a) That there was robbery or a series of robberies.***
- (b) That such robbery was an armed robbery***
- (c) That the accused was one of those who took part in the armed robbery".***

The case Olowoyo (Supra) equally defined armed robbery as follows:

***"Armed Robbery means stealing plus violence used or threatened"***

Going by the above cases, the person who was robbed with gun becomes a vital witness, if the person who was robbed at gun point was not called to give evidence, the conclusion of the court is that, the case of armed robbery had not been made out against the accused person.

- (a) In count one of the charge, the three accused persons were alleged to have been armed with offensive weapons conspired among themselves and snatched at gun point a Peugeot 406 Saloon model from Mr. Wisdom Okey, the Registration Number of the vehicle is AU 372 GWA which is different from the Registration Number of the Peugeot 406 Saloon tendered in evidence before this court as Exhibit 002. The victim of the robbery Wisdom Okey was never called to give evidence to sustain the 1<sup>st</sup> count. The victim of crime for the offence of armed robbery is a vital witness. See STATE v ISAH 2012 16 NWLR Pt 613 where the Supreme Court held as follows:

***“In a charge of armed robbery, the following vital witnesses are expected to give evidence for the prosecution and where the prosecution fails in that regard very serious doubts would arise as to whether the accused persons really committed the offence:***

- (a) The victim of the armed robbery, if still alive.***  
***(b) The Police officers who arrested the accused persons.***

- (c) *Evidence of the circumstances in which the accused persons were arrested*
- (d) *Eye witness or any witness who should give credible evidence of the armed robbery*
- (e) *If reliance is placed on circumstantial evidence , it must be compelling and lead to only one conclusion and that is that the accused persons were responsible for the armed robbery”*

In the 1<sup>st</sup> count the victim of the robbery who is also the only eye witness Wisdom Okey did not give evidence, it is the evidence of the victim that can be used to determine whether conspiracy for armed robbery took place for count one, the prosecution has failed woefully to establish the ingredients of conspiracy for armed robbery contrary to Section 96 of Penal Code in Count one because of the absence of evidence of vital witness Wisdom Okey. See ADEBIYI v UMAR (2012) 9 NWLR 279 where the court of Appeal held as follows:

***“Although in criminal cases, the prosecution has the discretion to call whichever witness it considers necessary to prove the offence charged, its failure to call every vital witness whose evidence may determine the case one way or the other will be fatal to the case”***

Count One relates to conspiracy to rob the owner of the Peugeot 406 Saloon, Wisdom Okey, conspiracy between three accused persons, in other words the three accused persons were alleged to

have conspired together contrary to Section 90 of Penal Code and committed armed robbery, while Count No. 2 relate to armed robbery itself, since the victim of the armed robbery did not give evidence, the conclusion is that there is no armed robbery that took place on the 18<sup>th</sup> of November 2005 as stated in Count No. 2. The victim of the armed robbery is the only eye witness to the robbery, absence of the evidence of the victim of the armed robbery and absence of the evidence of the only eye witness who was the victim make count one and two too weak, the three accused persons are discharged and acquitted for count one of the charge which is conspiracy while the three accused persons are also discharged and acquitted in Count No. 2 for the offence of armed robbery punishable under Section 1(2) (a) of the Robbery and Firearms (Special Provision) Act Cap 398. Count No. 3 relates to possession of firearms without lawful permit or valid license, for the prosecution to sustain Count No. 3 of the charge, they have to establish that the illegal firearms were found in possession of the three accused persons and the illegal firearms recovered in possession of the accused persons must be tendered in court, there is no evidence that the accused persons were found in possession of illegal firearms, and nothing of such were tendered before this court, for this reason the three accused persons are discharged and acquitted on Count No. 3.

Count No. 4, the three accused persons were alleged to have robbed one M.O. Suleiman of Honda Accord 1999/2000 Model,

Black colour on the 18<sup>th</sup> Day of March 2006, at gun point. The said M.O. Suleiman who was the victim of the armed robbery and the only eye witness to the said robbery was not called by the prosecution to give evidence, one of the ingredients that must be established by the prosecutor for the offence of armed robbery is that armed robbery took place on the said 18<sup>th</sup> Day of March 2006. Since the only eye witness was not called to give evidence, the prosecutor failed to establish that armed robbery took place on the 18<sup>th</sup> Day of March 2006, the three accused persons are hereby discharged and acquitted on Count No. 4.

The confessional statement made by the three accused person relate to the armed robbery committed on the 27<sup>th</sup> Day of February 2006, the said confessional statements have nothing to do with Counts No. 1, 2, 3, 4, 5 and 6 of the Charge. The confessional statement of the three accused persons Exhibit B1, B2 and B3 relate only to Count No. 7.

Count No. 5 relate to the armed robbery committed on the 15<sup>th</sup> Day of August 2005, the victim of the armed robbery and one of the eye witnesses Yakubu Kofarmata gave evidence as PW1, his Honda Accord was snatched from him at gun point at Paraku Crescent Wuse II Abuja, there were three armed robbers who robbed PW1 at gun point, the court considered the witness PW1 as a witness of truth. He emphatically told the court that he can only recognize the 1<sup>st</sup> accused Moses Ede Ogbonna as one of the armed robbers that

snatched his car at gun point on the 15<sup>th</sup> Day of August 2005, he did not identify the 2<sup>nd</sup> and 3<sup>rd</sup> accused as two of the robbers that robbed him of his car on the 15<sup>th</sup> Day of August 2005, PW1 gave cogent reasons why he was able to identify the 1<sup>st</sup> accused:

- (1) That the 1<sup>st</sup> accused has eye deformity.
- (2) At the point the armed robbers dropped PW1 which was Economical Centre, only the 1<sup>st</sup> accused person came out of the car trying to give him money to enter taxi, at that point in time PW1 claimed that the 1<sup>st</sup> accused was standing very close to him.

The confessional statements of the three accused persons does not relate to armed robbery committed against PW1 in Count No. 5, the prosecutor was wrong to have charged the 2<sup>nd</sup> and 3<sup>rd</sup> accused along with the 1<sup>st</sup> accused in Count No. 5 when only the 1<sup>st</sup> accused was positively identified by PW1, the victim and one of the eye witnesses of the armed robbery that took place on the 15<sup>th</sup> Day of August 2005, no other witness gave evidence that 2<sup>nd</sup> and 3<sup>rd</sup> accused persons participated in the armed robbery that took place on the 15<sup>th</sup> Day of August 2005 as stated in Count No. 5. PW1 said that the 1<sup>st</sup> accused pointed gun at his head during the robbery, PW1 further identified the 1<sup>st</sup> accused among three other people in an identification parade, the prosecutor had established the offence of armed robbery against the 1<sup>st</sup> accused person as stated in Count No. 5, PW1 gave evidence to the effect that his Honda



Accord was snatched at gun point, he identified the 1<sup>st</sup> accused as one of the armed robbers, the fact that the gun used for the robbery was not recovered and the fact that the vehicle was not recovered did not mean that the prosecution had not established their case. See OLAYINKA v STATE (2007) 9 NWLR (Pt 1040) 56 or ABIODUN v STATE (2012) 7 NWLR (Pt 1299) Pg 394 where the court held as follows:

***“The failure of the prosecution to tender the weapon used in committing a crime is not fatal to the prosecution case”***

The 1<sup>st</sup> accused person is hereby convicted on Count No. 5 of the charge, which is an offence of armed robbery contrary to and punishable under Section 1(2) (a) of the Robbery and Firearms (Special Provisions) Act Cap 398, Laws of the Federation of Nigeria 1990. The 2<sup>nd</sup> and 3<sup>rd</sup> accused persons are discharged and acquitted on Count 5 because PW1 did not identify them as the two of the armed robbers at ***locus criminis***. See NORATURUOCHA v STATE (2011) 6 NWLR (Pt 1242) Pg 170 where the Supreme Court held as follows:

***“In most cases of robbery proper identification of the real culprit is very vital identification evidence is that which tends to show that the person charged is the same person seen at the locus criminis”***

Count No. 6 relate to the three accused persons robbing one Aisha Monguno of Honda Accord 1998 Saloon Model on the 16<sup>th</sup> Day of

February 2006, at Utako District near Zankli Hospital Abuja. Aisha Monguno was robbed of the Honda Accord at gun point. The said Aisha Monguno did not give evidence in this case as she was not called as a witness. No other person gave evidence in this court that robbery took place on the 16<sup>th</sup> Day of February 2006, the conclusion of this court is that there was no robbery that took place on the 16<sup>th</sup> Day of February 2006, the three accused persons are discharged and acquitted on Count No. 6.

Count No. 7 relate to the armed robbery that took place on the 27<sup>th</sup> Day of February 2006, the victim of the robbery and the only eye witness is Habib Dokochi who gave evidence as PW2. There were four armed robbers that robbed him of his Honda Accord End of Discussion at gun point at Paraku Crescent Wuse II, Abuja. The confessional statement of the three accused persons Exhibits B1, B2 and B3 relate to Count No. 7, the 3<sup>rd</sup> accused person made an earlier statement before making Exhibit B3 which is an additional statement. Sergeant Simeon Obagwu who gave evidence as PW3 obtained the earlier statement made by the 3<sup>rd</sup> accused, he claimed that the said statement was taken from the Police Case Diary of this case, the court made an order to all the I.P.O.s that investigated this case to produce the said statement but all to no avail; it is very surprising that statement of an accused person would deliberately be removed from Police Case Diary before the prosecution of this case, the police did not give any reason why the statement of the 3<sup>rd</sup> accused was removed from the case diary, the

offence for which the 3<sup>rd</sup> accused person including the 1<sup>st</sup> and 2<sup>nd</sup> accused persons were charged carries death penalty, it is therefore shocking to this court, why police institution would deliberately remove statement made by accused in the police case diary; although the court conducted a trial-within-trial before the confessional statements of the three accused persons. Exhibit B1, B2 and B3 were admitted in evidence, the act of police removing statement of 3<sup>rd</sup> accused from case diary would make this court very cautious about the weight to be attached on Exhibits B1, B2 and B3. See *AGANMONYI v A.G. BENDEL STATE* (1987) 1 NWLR Pt 47 Page 26 at 28 where the Supreme Court held as follows:

***“A Confessional Statement of an accused person will be taken to be true if there is enough material in evidence led at the trial which corroborate the contents of the confessional statement”.***

Any act of the Police during or after investigation which constitute a miscarriage of justice, such as removing statement of accused person from case diary to deprive the court from seeing same, the result of such an act may lead to discharge and acquittal of not only the 3<sup>rd</sup> accused person but also the 1<sup>st</sup> and 2<sup>nd</sup> accused who were charged together with the 3<sup>rd</sup> accused person. See *ADEBAYO RASAKI v STATE* (2014) 10 NCC 1 Page 5 where the Court of Appeal held as follows:

***“Now, the law is settled that since the offence of armed robbery is a very serious or heinous crime, and penalty prescribed***

***therefore is the ultimate one which is death, trial courts are enjoined to exercise utmost judicial care and caution before convicting thereon".***

The PW2 whose name is Habib Dokochi was the victim and the only eye witness to the armed robbery that took place on the 27<sup>th</sup> Day of February 2006, which is the subject matter of Count 7 and which is the last count.

When PW2 commenced his evidence, he claimed to know the three accused persons; Honda Acura was used to block PW2's car when he was about to be robbed, PW2 said he suspected that 2<sup>nd</sup> accused person was the person driving the car then, although the 2<sup>nd</sup> accused did not come out of the car.

When PW2 was invited to Asokoro Police Station to identify the 2<sup>nd</sup> accused person, he claimed not to be sure whether the 2<sup>nd</sup> accused was among the robbers that robbed him of his vehicle and further claimed that he cannot clearly identify 2<sup>nd</sup> accused as one of the armed robbers that robbed him of his vehicle on the 27<sup>th</sup> Day of February 2006.

The evidence of PW1 was very cogent and straight forward. He claimed that he can only identify the 1<sup>st</sup> accused. He said he does not know the 2<sup>nd</sup> and 3<sup>rd</sup> accused, the evidence of PW2 to the effect that he knows the three accused persons, he cannot identify the 2<sup>nd</sup> accused or that he is not sure whether the 2<sup>nd</sup> accused was one of

the armed robbers that robbed him created doubt in the mind of the court as to whether all the three accused persons were properly identified by PW2, this kind of evidence coming from PW2 cannot sustain charge of armed robbery that carries death penalty. It is either PW2 identify the accused persons that robbed him or not, this court will be reluctant to use the evidence of PW2 to sentence the three accused to death, the court has given reasons why it will not attach any weight to the confessional statements of the accused persons, the court has given reasons also why the evidence of PW2 will not be accepted to sentence the three accused to death on Count No. 7. The three accused persons are discharged and acquitted on Count No. 7.

The only person convicted is the 1<sup>st</sup> accused person and he is convicted on Count No. 5, the mandatory sentence is death penalty. See *AMOSHIMA v STATE* (2011) 14 NWLR (Pt 1268) P. 530 where the Supreme Court held as follows:

***“Where a statement prescribes a mandatory sentence in clear terms as in Section 1(2) of the Robbery and Firearms (Special Provisions) Act, the courts are without jurisdiction to impose anything less than the mandatory sentence as no discretion exists to be exercised in the matter. The sentence must be pronounced without any reservation; it is the duty imposed by***

*the law on the authority of the above case were can be no allocutus”*

**(Sgd)**  
**Hon. Justice S.E. Aladetoyinbo**  
**(Presiding Judge)**  
**27/11/2914**

3<sup>rd</sup> Accused Counsel – We are grateful to the court for the judgment. My client breathes the air of freedom sought for the past 8 years; it is what he deserves.

**(Sgd)**  
**Hon. Justice S.E. Aladetoyinbo**  
**(Presiding Judge)**  
**27/11/2014**