KAREEM OLATINWO v. THE STATE
CITATION: (2013) LPELR-19979(SC)

In The Supreme Court of Nigeria
On Friday, the 15th day of February, 2013
Suit No: SC.260/2011

Before Their Lordships

MUHAMMAD SAIFULLAHI MUNTAKA COOMASSIE	Justice of the Supreme Court
SULAIMAN GALADIMA	Justice of the Supreme Court
NWALI SYLVESTER NGWUTA	Justice of the Supreme Court
OLUKAYODE ARIWOOLA	Justice of the Supreme Court
KUMAI BAYANG AKA'AHS	Justice of the Supreme Court

Between

KAREEM OLATINWO **Appellant**

And

THE STATE **Respondent**

RATIO DECIDENDI

1 **WORDS AND PHRASES - "ALIBI":** Defintion

of the word "alibi"

"What does "alibi" mean? "Alibi simply means "elsewhere". That is, a defence based on the physical impossibility of a defendant's guilt by placing the defendant in a location other than the scene of the crime at the relevant time. The fact or state of having been elsewhere when an offence was committed. See; Black's Law Dictionary, Ninth Edition, page 84. In other words, "alibi" means when a person charged with an offence says :- "I was not at the scene at the time the alleged offence was committed. I was somewhere else, therefore, I was not the one who committed the offence." See; Christopher Okosi & Ors Vs. The State (1989) CLRN 29 at 48 per Oputa, JSC. Generally, if an accused person raises unequivocally a defence of alibi, that is, that he was somewhere else other than the locus delicti at the time of the commission of the offence with which he is charged and gives some facts and circumstances of his whereabout, the prosecution is duty bound to investigate that alibi set up, to verify its truthfulness or otherwise. See; Maikudi Alivu Vs State (2007) All FWLR (Pt.388) 1123 at 1141." Per ARIWOOLA, J.S.C - read in context

2 **CRIMINAL LAW AND PROCEDURE - ARMED ROBBERY:** Essential ingridients needed in order to prove the offence of armed robbery

"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 vs State (1993) 7 NWLR." (Parr 307) 5 II; Goldie Dibie vs State (2007) 9 NWLR (Part 1038) 30." Per AKA'AHS, J.S.C - read in context

3 **CRIMINAL LAW AND PROCEDURE - DEFENCE OF ALIBI:** Whether every failure to investigate an alibi by the police goes to the root of the case for the prosecution

"It is settled law that it is not every failure by the Police to investigate an alibi by an accused person that is fatal to the case of the prosecution. In Patrick Njovens & 8 Ors vs The State (1973) 5 SC 12 at 47 where the defence of the appellant was based on alibi, this Court held: "There is nothing extraordinary or esoteric in a plea of alibi. Such a plea postulates that the accused person could not have been at the scene of crime and only inferentially that he was not there. Even if it is the duty of the prosecution to check on a statement of alibi by an accused person and disprove the alibi or attempt to do so, there is a flexible and verifiable way of doing this. If the prosecution adduces sufficient evidence to fix the person at the scene of the crime at the material time, surely his alibi is thereby

logically and physically demolished" See: Archibong vs State (2006) 14 NWLR (Part 1000) 349." Per AKA'AHS, J.S.C - read in context

4 **CRIMINAL LAW AND PROCEDURE - DEFENCE OF ALIBI:** Whether an accused person is duty bound to give the police at the earliest possible time the particulars of his alibi

"In Okosi & Ors Vs. State (supra) this court on the duty on the prosecution to investigate an alibi set up by an accused person reinstated that, indeed there is that duty, but opined as follows: "The police are however not expected to go on a wild goose chase in order to investigate an alibi. Any accused person setting up alibi as a defence is also duty bound to give to the police at the earliest opportunity some tangible and useful information relating to the place he was and the persons with whom he also was." See also, Akile Gachi Vs State (1965) NMLR 333 at 335, R Vs. Patrick Moran (1910) 3 Criminal Appeal Report 25. In Eugene Ibe Vs. The State (1992) NWLR (Pt.244) 642, (1992) LPELR 1386. This court per Wali, JSC opined as follows: "Although the prosecution has a duty to investigate the defence of alibi where it is raised by an accused person, the law does not impose a duty on them to call as witness or witnesses those interviewed in that regard where they consider such evidence very

weak or worthless as against the much stronger evidence that fixes the accused at the scene of the crime. Both PW2 and PW4 gave credible and unshaken evidence that they saw the appellant participating in the armed robbery and whom they claimed to have known before the incident. This fixed the appellant beyond any reasonable doubt, at the scene of the crime. After all the duty is on the accused to prove his alibi on the preponderance of probability. See also; Yanor & Anor Vs. The State (1965) NMLR 337 Nwosisi Vs. The State (1976) 6 SC 109." Per ARIWOOLA, J.S.C - read in context

5 **INTERPRETATION OF STATUTE - SECTION 210 OF THE EVIDENCE ACT:** Interpretation of section 210(c) of the Evidence Act as it relates to ways the credibility of a witness may be impeached

"Section 210 (c) Evidence Act provides that: "The credit of a witness may be impeached in the following ways by any party other than the party calling him or with the consent of the court by the party who calls him - (c) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted" see: Ozaki vs State (1999) 1 NWLR (part 124) 92 Fatayi Olayinka v. State (2007) 9 NWLR (Part 1040) 56." Per AKA'AHS, J.S.C - read in context

6 **INTERPRETATION OF STATUTE - SECTION 4 OF THE POLICE ACT:** Interpretation of section 4 of the Police Act as it relates to the functions of the police

"Section 4 of the Police Act stipulates that - "The Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property..." Per AKA'AHS, J.S.C - read in context

7 **CRIMINAL LAW AND PROCEDURE - STANDARD OF PROOF:** On whom lies the onus of proof in criminal cases to prove the guilt of the accused person;and the standard of such proof

"In criminal cases the onus is on the prosecution to prove the guilt of the accused person. See Ume v. The State (1973) 25 SC 9; Saidu v. The State (1982) 4 SC 41; Dr. Oduneye v. The State (2001) 5 NSCQR 1 at 46. The standard of proof is beyond reasonable doubt. See Obue v. The State (1976) 2 SC 141. But proof beyond reasonable doubt is not proof to a mathematical certainty. It is not proof beyond every shadow of doubt. If the evidence against the accused is so strong as to leave to only a remote probability in his favour which can be dismissed as though possible but not in

the least probable then proof beyond reasonable doubt has been attained. See Ilori v. The State (1990) 8-11 SC 99; Multer v. Minister of Pensions (1947) 2 All ER 372 at 373; Onyejekwe v. The State (2000) FWLR 971." Per NGWUTA, J.S.C - read in context

KUMAI BAYANG AKA'AHS, J.S.C. (Delivering the Leading Judgment): The appellant who was the 1st accused person and three others were convicted by the Oyo State High Court sitting in Ibadan on 28/6/2002 and sentenced to death by hanging on charges of conspiracy to commit armed robbery and armed robbery contrary to sections 5(b) and, 1(2) of the Robbery and Firearms (Special Provisions) Act cap 398 Vol. xxii Laws of the Federation of Nigeria 1990. They appealed to the Court of Appeal, Ibadan Division which was dismissed on 30/3/2011. This is a further appeal from that decision. The Notice of Appeal containing five grounds of appeal was filed on 29/4/2011 from which two issues were formulated namely:-

1. Whether the prosecution proved its case beyond reasonable doubt; and
2. Whether the Court below was not in error when it affirmed the judgment of the Trial Court that the defence of alibi did not avail the appellant.

The respondent also formulated two issues which are similar in content. They read thus:

1. Whether the Court of Appeal was right in affirming

the findings of the Trial Court that the prosecution had proved the guilt of the appellant beyond reasonable doubt.
2. Whether the Court of Appeal was right in affirming the findings of the conclusions of the Trial Court that the defence of alibi did not avail the appellant.
Learned counsel for the appellant contended that before an accused person can be convicted of a criminal offence, especially murder, the prosecution must prove its case beyond reasonable doubt by virtue of Sections 138 Evidence Act and Section 36 (5) of the 1999 Constitution (as amended). He cited the following cases in support: Orji vs State (2008) vol. 6 MJSC 169 at 172; Aruna vs State (1990) 6 NWLR (pan 155) 125; Alonge vs I.G.P. (1959) SCNLR 516; Ayub-Khan vs State (1991) 2 NWLR (Part 172) 127 at 133-134; I.G.P. vs Oguntade (1971) 2 ALL NLR II, Akinfe vs State (1998) 3 NWLR (Part 85) 729.
He said that proof beyond reasonable doubt means that every ingredient of the office has been established namely:-
(i) That there was a robbery
(ii) That the robbery was an armed robbery; &
(iii) That the accused was the robber or one of the robbers. He submitted by citing Alabi vs State (1993) 7 NWLR (Part 307) 511, that if there is a failure to establish one element of the offence, then there is a failure to prove the case beyond reasonable doubt. He analysed the evidence of PW1, PW2, PW3, PW4 and PW5 and submitted that a critical examination of the record reveals that the appellant did not

participate or conspire with any other person in the alleged robbery that took place on 19th May, 1999. He maintained that from the evidence given by PWL, PW2, PW3 and PW4 the police had decided on the appellant's fate before being charged to court. He contended that the case was a fabrication as can be deduced from the totality of the evidence elicited by the prosecution witnesses and relied on Abeke Onofowokan vs State (1987) 7 SCNJ 233 at 254 as defined by Oputa JSC. He also submitted that the evidence of PW1 - PW4 that they saw the 1st accused during the robbery contradicts their written statements to the effect that they did not see him and this is fundamental and a core issue as to whether the appellant actually participated in the robbery. He also submitted that where evidence for the prosecution contradicts itself, it must be resolved in favour of the accused and also where there are circumstances which create doubts in the mind of the court such doubts ought to be resolved in favour of the accused person as was decided in Bozin vs State (1985) 2 NWLR (Part 8) 465 at 467 and Peter vs. State (1997) 3 NWLR (Part 496) 629.It was pointed out that the alleged stolen goods and money were not tendered in evidence at the trial court and the respondent failed to give a reasonable explanation for the non-production of the stolen items. He argued that since the appellant was not caught red-handed nor seen at the scene of the crime, his appeal is distinguishable from the case of Oluwatoba vs The State (1985) 1 NSCC 306 at 307 where the Court held that the car that was stolen was not

material since the accused was caught red-handed immediately after the commission of the offence.
On the issue of alibi, learned counsel submitted that once an alibi is raised, the burden is on the prosecution to investigate and rebut such evidence in order to prove its case beyond reasonable doubt and placed reliance on Almu vs State (2009) 4 - 5 SC (Part II) 33; Adedeji vs The State (1971) ALL NLR 75; Eze vs The State (1976) 1 SC 125; Bashaya vs The State (1998) 5 NWLR (Part 550) 351; Omotola vs The State (2009) ALL FWLR (Part 464) 1490. He said that the alibi raised by the appellant was never investigated and submitted that where an accused person has raised a defence of alibi and clearly stated his whereabouts before the trial commences and the prosecution fails to take any steps to verify or disprove it, the Court will be right to hold that the prosecution has failed to prove its case beyond reasonable doubt. He argued that the defence of alibi was not properly considered by both the Trial Court and the court below and this Court has jurisdiction to intervene and or re-appraise the case of alibi afresh in order to prevent a miscarriage of justice. The following cases were relied upon for this submission: Amusa Opoola Adio & Anor vs The State (1986) 2 NWLR (Part 24) 581; Oguonzee vs State (1998) 4 SC 110; (1998) 5 NWLR (Part 551) 521 at 540; Maje vs Stoceo (1968) 1 ANLR 141 AT 149; Woluchem vs Gudi (1981) 5 SC 291 at 295; Shehu vs State (2010) 22 WRN 1 at 9 and Oludamilola vs State (2010) 15 WRN 1 at 3. He urged this Court to discharge and acquit the appellant based on the following reasons:

(a) That the ingredients of the offence of robbery were not proved by the prosecution beyond reasonable doubt as required by law
(b) Critical examination of the record of appeal reveals that the appellant did not participate in the alleged robbery
(c) The defence of alibi raised by the appellant was not investigated by the police
(d) Both the Trial Court and the lower court failed to properly consider the said defence of alibi.
In dealing with Issue 1, learned counsel for the respondent referred to pages 5-15 of the records and submitted that nowhere in the prosecution witnesses' statements to the police did any of them state that they did not see the appellant at the scene of the robbery and there were no contradictions in the statements of the witnesses vis-a-vis their evidence on oath. He said PW5 was consistent in his statement at the Police Station and evidence on oath to the effect that he could identify the 2nd appellant at the scene of the crime on the night that the robbery took place; so also PW2 in his evidence in chief and under cross-examination. He submitted that the evidence of these two witnesses was enough to convict the appellant provided the court believed their evidence and placed reliance on Ogidi vs The State (2003) 9 NWLR (Part 824) 1 at page 7. He contended that by placing reliance on Baby Egbeyomi vs State (2000) 4 NWLR (Part 654) that failure of the respondent to produce the goods and money stolen from the victims of the armed robbery during trial was not fatal to the respondent's case. He further

submitted that from the totality of the evidence in the record of proceedings the Trial Court was right in finding that the appellant and others were those who robbed PW1-PW4 in their respective houses on the night of 18th/19th, 1999 and this finding was affirmed by the court below. He further argued that since the Trial Court traced the evidence of PW1-PW5 and found that their evidence scaled through the rigours of cross-examination, it was not necessary to produce the properties and money stolen during the robbery.

Turning to Issue 2, learned counsel submitted that the two lower courts rightly rejected the defence of alibi and therefore urged this court to dismiss the appeal.

The arguments of learned counsel for the appellant on the issue of the prosecution's failure to prove the ingredients of the offence in the main relate to the fact that it was the appellant who first directed his son to lodge a complaint with the Police that a robbery had taken place in his house on 18th/19th May, 1999 and after the said robbery, the house was set ablaze. Instead of the Police apprehending the culprits whom the said son identified as the 1st - 4th PWS, the Police turned round to accuse him, his son and two others as the perpetrators of the robbery.

Section 4 of the Police Act stipulates that -

"The Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property..."

Apart from the power vested in the Police for the

prevention and detection of crime and the apprehension of offenders, I am not aware of any law which stipulates the order in which investigations are to be carried out. The appellant is indirectly saying that since his son was the first to lodge the complaint, the Police should not look in any other direction to fish out the suspected robbers but towards the 1st- 4th PWS who also lodged a complaint that they too were robbed in the night of 18th/19th May, 1999 and identified the appellant and his son as some of the robbers that carried out the operation. In other words he is invoking the principle of 'first in time takes precedence' to be applied in the investigation of the robbery. I am afraid I cannot go along with the appellant in this rather bizarre submission. Criminal investigations are carried out by the Police based on information at the disposal of the Force and the investigator uses his own discretion to determine how to go about the work. Often times the perpetrator of a crime may be the first to report the commission of the crime in the hope that he could divert the attention of the Police away from himself. A person who is the first to report a case to the Police could well turn out to be the prime suspect in the case and it will perfectly be within the powers of the Police to investigate and arraign him for prosecution. The Police had every reason to ignore the complaint lodged by the appellant's son since it was a known fact in the neighbourhood that the family of the appellant were deviants as the appellant admitted in his statement made on 23/5/99 and given in evidence as Exhibit A

that he had previously been a thief and only stopped stealing in 1992. The appellant identified the cutlass as his own.
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 vs State (1993) 7 NWLR (Parr 307) 5 II; Goldie Dibie vs State (2007) 9 NWLR (Part 1038) 30. There is no dispute that there was a robbery on the night of 18th/19th May 1999. The appellant sent his son to lodge a complaint with the police that his father's house was raided on 18th/19th May 1999 and the occupants were dispossessed of their money and other properties before the house was set ablaze. Similarly the 1st - 4th PWS had gone to lodge a similar complaint and in the process saw the 1st appellant in the Police Station. So the police had to find out between the two groups who the robbers were and concluded after investigation that it was the appellant, his son and other members of their family that undertook the robbery operation. The second ingredient is whether the robbery was armed robbery. PW1 stated in his evidence that on 19/5/1999 thieves entered his house around 1a.m. that it was the 2nd accused who first entered the house while the 1st, 3rd and 4th accused followed after him. He said the 5th accused who was released at SARS held one gun. The accused went to his apprentice by name Godfrey and matcheted him on the head and palm. The said

Godfrey was taken to the hospital for treatment and he died three weeks later. He said the thieves left the cutlass they used on Godfrey on the bed of PW1's wife and when the 1st accused was confronted with the cutlass he identified it as his own- PW2 also testified that the robbers broke into his house around 2a.m. on 19/5/99 and they had a cutlass and a gun which they pointed at him. He said they were armed with gun, cutlass and hammer. The robbers locked them up in one of the rooms but neighbours later came and released them. They then went to Iyana Offa Police Station to report the robbery where they met the 2nd accused. It was 2nd accused who first reported to the police that PW2 and others robbed them but the Police rejected that complaint and told him that he was the thief instead. PW3 was visited by the robbers around 3.am on 19/5/99. He was asked to lie face down. One of the robbers pointed a gun at him while the other held a cutlass. He too was locked up with his family in a room but was later rescued by the neighbours. PW4 stated in evidence that about 3:30 a.m. on 19/5/99 he heard the shout of 'open your door' 'open your daughter'. His wife then went to open the door while he stood in the room watching to see those who would enter and he saw Sina, that is 2nd accused and Bukola who was holding a gun. When he wanted to have a glance at the others, he was hit with a cutlass on the forehead. PW5 who is a night guard stated he knew the accused persons very well and they were the people who carried out the robbery on 19/5/99. His evidence went thus:

"I was on duty on that day and I was patrolling Olubonku, Idi Osan, Olose and Orogun villages. While on patrol when I get (sic) to Olabonku village by about 2:30 am. I heard the shout of 'O.C. Sergeant and Corporal' and I heard a bang on 1st PW's door, I then went to wake up the residents of other villages to alert the residents that robbers were around. I woke up the residents and they followed me to Orogun village where 1st PW's has his house. There was moonlight at the time of the incident and I could then see the robbers very well. When I saw them I started to blow my whistle. When I blew my whistle, I heard them say that I should be prevented from interfering. The moonlight exposed the robbers for me to see clearly, on that day I saw 2nd accused 3rd accused, 1st accused, 4th accused, Bukky who has absconded. Those are the ones I could recognize that day. We then chased the robbers, myself, my brothers and relations 5th PW. We chased them to 1st accused's house from where they escaped through the back door. We then returned to the houses which were burgled where we found hammer from PW5's house, cap and cutlass from PW1's house. The 4th PW did not join us in chasing the robbers because he was busy taking care of the man who was matcheted in PW1's house. The following morning 1st PW and myself then went to 1st accused house to confront him with the objects found, on our way to his house we met him and when we asked him about the owner of the cutlass, he replied that he is the owner. We asked him about the cap, and he said the cap is owned by 2nd accused, his son".

The 1st -5th PWs were one in stating that the robbers were armed with a gun and cutlass. Not only that the 1st accused admitted that the cutlass belonged to him, he sought to explain that it was when the robbers came to rob him that they also stole his cutlass. These pieces of evidence highlighted above show clearly that the robbery was armed robbery.

In considering the evidence called by the prosecution the learned trial judge found that each of the prosecution witnesses who are all residents of villages in Oke-Omi community Olodo Area, Ibadan gave an eye witness account of how the robbery incident took place. And dealing with the second ingredient of the offence, the learned trial judge said at pages 121- 122 of the records:

"As to the second ingredient there is evidence by 1st - 4th PWS that the robbers who raided their villages on the night of 18th/19th May 1999 were armed with offensive weapons like cutlass, hammer, gun etc. As a matter of fact the 1st PW gave evidence of how the robbers left behind a cutlass in his house after they had inflicted matchet injuries on apprentice, one Godfrey who lived in the some house with him and the man died three weeks thereafter. There was also the evidence by PW2 of how the robbers broke into his house on that day with cutlass, hammer and gun. PW4 Fagbure even saw one Bukola carrying a gun after he had sighted Sina the 2nd accused person..."

The prosecution established beyond any reasonable doubt that the robbers were armed with offensive weapons.

The last ingredient is that the accused was the robber or one of the robbers. Again I refer to the evidence of the prosecution witnesses 1, 2 and 4. PW1 said:

"I know 1st accused, 2nd accused, 3rd accused and 4th accused persons. We all live in the same area Oke Omi. The thieves entered and went to my wife's room. She was beaten by the thieves. I saw Sina the accused person while beating my wife and my wife had to say 'Alhaji Sina and you are beating me' I saw the 2nd accused when he entered my house..... it was the 2nd accused who first entered the house while the others that is 1st, 3rd and 4th followed him".

PW2 also testified that he knew the 1st, 2nd, 3rd and 4th accused. In his evidence he stated:

"At about 2.am in (sic) that day, six robbers including the four before the court came to attack me in my house. The six of them entered my house and asked me to bring out whatever I had with me. They broke into my house with cutlass and gun when they pointed the gun to me I handed over to them the N400 I had with me. They were armed with gun, cutlass and hammer."

PW4 testified thus:

"I know all the accused persons, on 19/5/99 at about 3.30a.m I heard the shout of 'open your door' 'open your door'. My wife then went to open the door while I stood up in the room watching those who would enter, then I saw Sina, that is the 2nd accused (who is identified in the door by the witness and also Bukola who held gun while the 2nd accused was

holding a gun when I wanted to have a glance at the others I was hit with a cutlass on the forehead".
The evidence showed clearly that the appellant who was the 1st accused at the trial was positively identified as one of those who participated in the robbery of 19/5/99.
Learned counsel for the appellant has described the evidence adduced by the prosecution as a fabrication pointing out that there are contradictions and discrepancies between the written statements of PW1-PW4 and their evidence in court and this has been further buttressed by the non production of stolen items. Learned counsel may only use statements of witnesses obtained during investigation for the purposes of cross - examination to contradict the sworn evidence given by the witness in open court. Section 210 (c) Evidence Act provides that:
"The credit of a witness may be impeached in the following ways by any party other than the party calling him or with the consent of the court by the party who calls him -
(c) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted"
see: Ozaki vs State (1999) 1 NWLR (part 124) 92 Fatayi Olayinka v. State (2007) 9 NWLR (Part 1040) 561. None of the prosecution witnesses was confronted with the fact that the evidence they gave contradicted the statements they made to the Police. If such suggestions had been put to the witnesses under cross-examination which they denied, learned

counsel could then apply either to tender the statements or invite the trial judge to order the production of the case diary for his inspection to enable him ascertain if there are discrepancies between the evidence and the statements made during investigation. In Gaji vs The State (1975) 1 ANLR 268 the defence applied for the production of the statements made to the police by prosecution witnesses but the applications were opposed by the prosecution contending that no foundation was laid for the compulsory production of those statements. The learned trial judge refused the applications because section 122 Criminal Procedure Code prohibits the production, but he did not deal with the objection as to the absence of foundation. On appeal, this Court held that the Trial Court has a discretionary power to order the production of any documents including such statement, if such production is necessary in the interest of justice. As I have observed the submission of learned counsel for the appellant was made without any basis since no statements of the witnesses were ever produced by counsel in cross - examination to contradict the witnesses. The submissions of counsel in the brief can never take the place of evidence.

The learned trial judge reviewed the evidence of the prosecution witnesses and made the following finding concerning the case of the 1st accused/appellant:

".....having regard to the discrepancies in the testimonies as to what happened on the night of 18th/19th May 1999 and having put the evidence of alibi against the evidence led by the prosecution, I

am of the view that the alibi of both the 1st and 2nd accused persons has been effectively demolished".

The appellant relied heavily on a plea of alibi. His counsel has argued that since he was not caught red-handed immediately after the commission of the offence and he set up the defence of alibi which was not investigated the appeal should be allowed and the conviction of the Trial Court affirmed by the lower court should be set aside.

The evidence given by the prosecution witnesses coupled with the admission by the appellant that the cutlass recovered at the scene of the crime was his effectively dislodged the plea of alibi.

It is settled law that it is not every failure by the Police to investigate an alibi by an accused person that is fatal to the case of the prosecution. In Patrick Njovens & 8 Ors vs The State (1973) 5 SC 12 at 47 where the defence of the appellant was based on alibi, this Court held:

"There is nothing extraordinary or esoteric in a plea of alibi. Such a plea postulates that the accused person could not have been at the scene of crime and only inferentially that he was not there. Even if it is the duty of the prosecution to check on a statement of alibi by an accused person and disprove the alibi or attempt to do so, there is a flexible and verifiable way of doing this. If the prosecution adduces sufficient evidence to fix the person at the scene of the crime at the material time, surely his alibi is thereby logically and physically demolished"

See: Archibong vs State (2006) 14 NWLR (Part 1000) 349.

The evidence led by PW1, PW2, PW3 and PW4 is direct that they knew the appellant before the fateful day. Apart from stating that the appellant was among the gang who forcefully entered PW1's house, the appellant's cutlass was found at the scene of the crime and since nemesis seemed to have caught up with him, he admitted that the cutlass was his. All that the learned counsel is saying is that since the stolen items were not found, the appellant cannot be said to have participated in the commission of the offence of armed robbery. If this was the position of the law, then nobody will be convicted of a criminal offence because all that is needed is for the accused to dispose of the stolen items and he will come off clean of the commission of the offence. Happily this is not the state of the law. The learned trial judge meticulously considered all the evidence called by the Prosecution and arrived at the inevitable conclusion that the offence of armed robbery had been committed and the appellant was one of those that carried out the operation.

The Court of Appeal also reviewed the evidence and affirmed the decision of the Trial Court and dismissed the appeal. This Court has no reason to disturb the concurrent findings of fact made by the two lower courts. The law was properly applied.

What is left to be considered in this appeal is whether conspiracy was proved. The learned trial judge after citing the case of Haruna vs The State (1972) 8 - 9 SC 174 on what constitutes conspiracy held that the crime of conspiracy is complete at the moment two or more agree to do an illegal act.

Direct evidence of the agreement or communication to do the illegal act is not necessary. He said the evidence adduced by the prosecution shows that the 1st- 4th PWs whose names are mentioned in counts 2 - 5 and who are victims of the armed robbery incident saw the accused persons around 2.am. on the 19/5/99 in their respective houses armed with offensive weapons. The robbery took place at the villages within the Oke-Omi community Olodo Area Ibadan where all the 1st-4th PWs live and concluded thus:

"It can't be reasonably argued that the four accused persons were in that area on that same day and time by coincidence. The meeting must certainly have been pre-arranged. Direct evidence is not indispensable to establish conspiracy. It can be proved circumstantially. In the instant case I am of the opinion that relevant pieces of evidence exist for the necessary inference to be drawn".

The lower court in its judgment after reviewing the evidence adduced by the prosecution asked the question:

"Were these acts of the 1st and 2nd appellants independent of one another or was there a conspiracy?"

In answering the question he relied on the definition of conspiracy in Black's Law Dictionary 8ft Edition at page 329 which says:-

'An agreement by two or more persons to commit an unlawful act coupled with an intent to achieve the agreement's objective".

The court proceeded to hold that:

"...there is no doubt that there was a meeting of the minds of the 1st and 2nd appellants to commit armed robbery with the use of gun, cutlass and hammer which are firearms and offensive weapons within the meaning of the Robbery and Firearms (Special provisions) Act".

On the whole I find that the learned trial judge duly considered all the ingredients of the offence as well as the plea of alibi and arrived at the correct decision that the prosecution proved its case beyond reasonable doubt and the appellant was properly convicted.

The lower court also reviewed the evidence of the trial judge and came to the right conclusion that the appeal lacked merit. I too find that the further appeal to this Court is totally devoid of merit and it is accordingly dismissed. I further affirm the conviction and sentence passed on the appellant by the learned trial judge.

M. S. MUNTAKA-COOMASSIE, J.S.C.: I have the privilege of reading in draft the lead judgment read by my learned brother Aka'ahs JSC. I agree with his reasoning and conclusion that the appeal lacks merit. Accordingly, I also dismiss this appeal. I abide by all consequential orders made. I too further affirm the conviction and sentence passed on the appellant by the trial judge which was confirmed by the lower court.

NWALI SYLVESTER NGWUTA, J.S.C.: I have had the opportunity of considering the exhaustive reasons prepared by My Lord Aka'ahs, JSC in the lead judgment and lam in complete agreement with the views which he expressed. I desire to add only a few brief observations.

The perpetrator is usually the first person to know of the crime. He is therefore in a position to be the first to lodge a report to the Police with the intention of deflecting attention from himself and directing same to his victims. This in my view is what happened in this case.

It is a clever ploy to misdirect the Police and as demonstrated in the lead judgment, Police investigation of reported crimes is not a case employed at the whims and caprices of those who make complaints, not even the first in time to make a report of a perceived crime against perceived perpetrators.

The duties of the Police as spelt out in Section 4 of the Police Act include apprehension of offenders and an offender is no less so for the mere fact that he was the first to lodge a report to the Police.

In his address, learned Counsel for the appellant characterised the evidence of the prosecution witnesses against his client as fabrication. Counsel's address, no matter how erudite, is not substitute for hard evidence of fact established or admitted before the Court. Learned Counsel had the opportunity to impeach the credit of any of the witnesses but he failed or neglected to do so. See s.237 of the Evidence Act 2011.

In criminal cases the onus is on the prosecution to prove the guilt of the accused person. See Ume v. The State (1973) 25 SC 9; Saidu v. The State (1982) 4 SC 41; Dr. Oduneye v. The State (2001) 5 NSCQR 1 at 46.

The standard of proof is beyond reasonable doubt. See Obue v. The State (1976) 2 SC 141. But proof beyond reasonable doubt is not proof to a mathematical certainty. It is not proof beyond every shadow of doubt. If the evidence against the accused is so strong as to leave to only a remote probability in his favour which can be dismissed as though possible but not in the least probable then proof beyond reasonable doubt has been attained. See Ilori v. The State (1990) 8-11 SC 99; Multer v. Minister of Pensions (1947) 2 All ER 372 at 373; Onyejekwe v. The State (2000) FWLR 971.

Whatever perceived contradictions learned Counsel detected in the testimony of the witnesses, the fact remains that the crime of armed robbery was proved against the appellant beyond all reasonable doubt. See s.135(1) of the Evidence Act 2011.

For the above and the fuller reasons in the lead judgment, I also dismiss the appeal as devoid of merit.

OLU ARIWOOLA, J.S.C.: I had the opportunity of reading the draft of the lead judgment prepared and just read by my learned brother, Aka'ahs, JSC.

The appellant was one of the four persons charged with the offences of conspiracy to commit armed

robbery and armed robbery contrary to Sections 5(b) and 1(2) of the Robbery and Firearms (Special Provisions) Act Cap.398, Vol. XXII Law of the Federation of Nigeria, 1990. They were found guilty, convicted and each sentenced to death by hanging on 28th June, 2002. Their appeal to the Court of Appeal, Ibadan Division was on 30th March, 2011 dismissed, leading to the further appeal to this court by the instant appellant.

The two issues formulated by the appellant who was the 1st accused person before the Trial Court, are inter-related. They are: Whether the prosecution proved its case beyond reasonable doubt and whether the court below, was in error when it affirmed the judgment of the trial court that the defence of alibi did not avail the appellant.

The appellant had contended, inter alia, that since he was not caught in the act or at the scene of the crime, the court should have held that the prosecution did not prove its case as it should, beyond reasonable doubt.

On the alibi said to have been raised by the appellant, learned counsel submitted that it was the duty of the prosecution to investigate and rebut the alibi in order to establish the case beyond reasonable doubt as they should. He relied on Almu Vs The State (2009) 4-SC (Pt.11) 37; Adedeii Vs The State (1971) All NLR 75, Eze Vs. The State (1976) 1 SC 125; Bashaya Vs. The State (1998) 5 NWLR (Pt.550) 351; Omotola Vs. The State (1009) All FWLR (Pt. 464) 1490. It was contended that the alibi raised was not investigated by the prosecution hence the court

should have held that the prosecution failed to prove its case beyond reasonable doubt. It was submitted that the court below wrongly affirmed the decision of the trial court.

In the evidence adduced by the prosecution, it is clear that the prosecution had every reason to ignore the complaint lodged by the appellant's son to the police, that his father's house was robbed and set ablaze thereafter by the robbers. The appellant and three others were very well known to the prosecution witnesses and the victims of the robbery incident. They were neighbours. Indeed, in his statement to the police which was admitted and marked Exhibit A, the appellant had confessed to be a thief before but only stopped stealing in 1992. It is interesting to note also that the appellant identified the cutlass recovered at the scene of crime, as his own.

It is the law, that to establish the offence of armed robbery the following essential ingredients must be proved.

(i) That there was a robbery;

(ii) That the robbery was armed robbery and

(iii) That the accused person was the robber or one of the robbers.

The proof the prosecution is expected to establish in a charge of armed robbery is proof beyond reasonable doubt. However, there is no doubt that proof of a criminal case beyond reasonable doubt is not a proof beyond any shadow of doubt.

See; Bozin vs. The state (1985) 2 NWLR (Pt.8) 465 at 467; Alabi Vs. The State (1993) 7 NWLR (Pt.307) 551; Fatai Olayinka Vs The State (2007) 9 NWLR

(Pt.1040) 561, (2007) 6 SC (Pt.1) 210, (2007) LPELR 2580; Olayinka Afolabi Vs The State (2010) 16 NWLR (Pt.1220) 584 (2010) LPELR 197; Emmanuel Eke vs The State (2011) 3 NWLR (Pt.....) 589, (2011) LPELR 1183; Lukmon Osetola Vs The State (2012) 50(2) NSCQR 598.

There is no doubt that in the instant case there was a robbery incident as claimed by both the victims and the appellant on the night of 18th/19th May, 1999. It was also established that the robbers were armed with various dangerous weapons to carry out their nefarious act. Finally, the appellant and others in the crime were clearly and without iota of doubt, identified amongst the armed robbers.

Curiously, the appellant had put forward a defence of alibi. What does "alibi" mean? "Alibi simply means "elsewhere". That is, a defence based on the physical impossibility of a defendant's guilt by placing the defendant in a location other than the scene of the crime at the relevant time. The fact or state of having been elsewhere when an offence was committed. See; Black's Law Dictionary, Ninth Edition, page 84. In other words, "alibi" means when a person charged with an offence says :-

"I was not at the scene at the time the alleged offence was committed. I was somewhere else, therefore, I was not the one who committed the offence."

See; Christopher Okosi & Ors Vs. The State (1989) CLRN 29 at 48 per Oputa, JSC.

Generally, if an accused person raises unequivocally a defence of alibi, that is, that he was somewhere

else other than the locus delicti at the time of the commission of the offence with which he is charged and gives some facts and circumstances of his whereabout, the prosecution is duty bound to investigate that alibi set up, to verify its truthfulness or otherwise. See; Maikudi Alivu Vs State (2007) All FWLR (Pt.388) 1123 at 1141.

In Okosi & Ors Vs. State (supra) this court on the duty on the prosecution to investigate an alibi set up by an accused person reinstated that, indeed there is that duty, but opined as follows:
"The police are however not expected to go on a wild goose chase in order to investigate an alibi. Any accused person setting up alibi as a defence is also duty bound to give to the police at the earliest opportunity some tangible and useful information relating to the place he was and the persons with whom he also was."
See also, Akile Gachi Vs State (1965) NMLR 333 at 335, R Vs. Patrick Moran (1910) 3 Criminal Appeal Report 25.
In Eugene Ibe Vs. The State (1992) NWLR (Pt.244) 642, (1992) LPELR 1386. This court per Wali, JSC opined as follows:
"Although the prosecution has a duty to investigate the defence of alibi where it is raised by an accused person, the law does not impose a duty on them to call as witness or witnesses those interviewed in that regard where they consider such evidence very weak or worthless as against the much stronger evidence that fixes the accused at the scene of the crime. Both

PW2 and PW4 gave credible and unshaken evidence that they saw the appellant participating in the armed robbery and whom they claimed to have known before the incident. This fixed the appellant beyond any reasonable doubt, at the scene of the crime. After all the duty is on the accused to prove his alibi on the preponderance of probability.

See also; Yanor & Anor Vs. The State (1965) NMLR 337 Nwosisi Vs. The State (1976) 6 SC 109.

In the instant case, the appellant was also very well known to the prosecution witnesses before the robbery incident. The appellant was therefore properly identified to the police as one of the armed robbers who carried out the robbery incident of the night of 18th/19th May, 1999.

There is therefore no doubt that the prosecution through the evidence of PW1-PW4 proved beyond reasonable doubt, the offence of armed robbery with which the appellant was charged. He was properly convicted and sentenced by the trial court.

Furthermore, the defence of alibi put forward by the appellant was so feeble to avail the appellant to debunk his involvement in the armed robbery. Accordingly, the court below properly affirmed the decision of the Trial Court. There is no reason whatsoever to disturb the concurrent findings of the two lower courts.

For the above reason and the fuller reasons adumbrated in the lead judgment, I am in total agreement with the conclusion that the appeal is devoid of merit. It should be dismissed. Accordingly, I dismiss the appeal.

The judgment of the Trial Court was properly affirmed by the court below and I hereby further affirm same.

"EDITOR'S NOTE- JUDGMENT NOT YET PARAGRAPHED AS THE CONTRIBUTION FROM SULAIMAN GALADIMA J.S.C WAS UNAVAILABLE AT PRESS TIME. PARAGRAPHED VERSION OF THE JUDGMENT WILL BE PUBLISHED AND AUTOMATICALLY UPDATED AS SOON AS THE OUTSTANDING CONTRIBUTION IS RECEIVED.

Appearances

Adewunmi Ogunsanya with Mahmud Adesina.	**For Appellant**
M. O. Adebayo - Attorney General Oyo State with S. O. Adeoye, Esq. (DPP Oyo State M. O. J.) and Soji Olowolafe, Esq.	**For Respondent**