

A CRITICAL EXAMINATION OF ALIBI RIGHTS IN NIGERIA AND THE UNITED STATES OF AMERICA*

Abstract

This research undertakes a critical examination of alibi rights in Nigeria and the United States of America, with a focus on the legal frameworks, judicial interpretations, and practical applications in both jurisdictions. The study explores the concept of alibi, its significance in criminal proceedings. A comparative analysis of the Nigerian and American legal systems reveals both similarities and differences in the treatment of alibi rights, including the burden of proof, disclosure requirements, and the role of the defense and prosecution. An apt component of criminal law and jurisprudence is the fact that globally, an accused person or defendant as the case may be is often availed the opportunity to be heard and table either before a judge or jury his defences in his bid to be discharged or acquitted. One of such defences is alibi. As one of the oldest and widely invoked defence in criminal cases, this paper seeks to dissect the defence in a view to understanding how it is invoked, sustained and upheld under our Nigerian legal system and jurisprudence and that of the United States of America. Ultimately, this research aims to contribute to the improvement of criminal justice systems in Nigeria and the United States by highlighting best practices, proposing reforms, and promoting a more robust protection of alibi rights. The research adopted doctoral method through the review of primary and secondary sources of materials. The research identifies challenges and limitations in the exercise of alibi rights in both countries, such as inadequate legal representation, lack of access to forensic evidence, and judicial biases. The study also examines the implications of these challenges on the accused's right to a fair trial and the pursuit of justice. It was based on the foregoing that recommendations were made.

Keywords: Critical Examination, Alibi, Rights, Nigeria, United States, America.

1. Introduction

Very importantly, the word alibi derives its origin from the Latin words *alius* meaning other *ibi* or *ubi* meaning there or and where and when conjunct means in or at another place. Similarly, this has been the reason why it is also called the 'defence of elsewhere.' Alibi is a defence based on information that a defendant was not at the scene of the crime when the crime occurred, that he was somewhere else and could not be the person who committed the crime.¹ A component part of sustaining the defence of alibi is the presence of credible witnesses to give account of the presence of a defendant at the spot he claims he was rather than the scene of crime. From time immemorial, cases have been decided and precedent followed and maintained on the defence of alibi that illustrations of the workability of alibi from decided cases will best introduce this defence. As far back as 1973, the Supreme Court of Nigeria has had cause to elucidate on alibi in the case of *Njovens and others v. the State*.² In the case under reference, the 2nd and 4th defendants I.E Y.L Bello and Chief Samuel Taiwo Oredein respectively pleaded the defence of alibi to the armed robbery charge filed against them. While the 2nd defendant postulates that he was at the material time with which the 2nd count is concerned at the police station in Ibadan, the 4th defendant pleaded that at the material time with which the 2nd count is concerned he was in his hometown Ogere in the western State and not Ilorin in Kwara State where the offence was said to have been committed. The above denial by the two defendants gives a graphic picture of the defence of alibi although the defence was rejected by the Court.

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¹<https://www.criminaldefenselawyer.com> accessed on 12 May, 2024 @12pm.

²(1973) 5 SC 12.

The legal defence of **alibi** means that an accused has asserted that he was somewhere else when the crime he is accused of took place. He was present elsewhere and that it would be exceptionally unrealistic for him to have been able to reach that specific place where the offence has taken place.³ As one of the most common defences raised in criminal cases, if believed by the judge or jury, it provides a strong criminal defence and helps the assertion of actual innocence. However, just as it is a powerful defence that completely acquits an accused of his guilt, the defence of alibi may also rise or fall depending on the facts placed in the dispute.⁴ It is safe to say that alibi derives its root in Nigeria from common law. Similarly, it is almost impossible to find the plea of alibi codified in any criminal legislation as other defences. However, one may deduce that the Evidence Act 2011 attempted to establish the defence when it provided the proof of every facts and facts in issue connected to time and place thereof.⁵

Having introduced the defence of alibi, it is now pertinent for us to consider its legal definitions, components, acceptability by the court and its sustainability as a defence in and out of Nigeria especially the United States of America.

2. Definitions and Nature of Alibi

Black's Law Dictionary⁶ defines alibi as: 'A defence based on the physical impossibility of an accused's guilt by placing the accused in a location other than the scene of the crime at the relevant time.' Simply put, alibi, means any of the following "I didn't do it, I am innocent." Or "I couldn't have done that because I wasn't even there." I could not have been in two different places at once. In *Awopejo & Ors v. The State*⁷, it was stated that the word 'alibi' means 'elsewhere' in same manner, the Supreme Court succinctly defined alibi as 'not at the scene of the crime.'⁸ The motive behind the plea of alibi is to raise a doubt in the mind of the judge as to whether the accused was present or not at the place of the offence at that time when the offence took place. It only creates doubt.

A plea of Alibi is most usually demonstrated by evidence. An accused pleading the defence of alibi must be ready to produce evidence to back his claim. Such evidence could be in form of witnesses, close circuit television and photographs, store receipts and other piece of evidence relevant to sustaining his plea. However, having these pieces of evidence does not automatically mean the prosecutor will fail in sustaining the charges against the accused or that the accused would be discharged or acquitted by the court. Hence, it has become trite that it is for an accused person to call evidence of facts which must be peculiarly within his own knowledge; and if the prosecution lead sufficient accepted evidence to fix an accused person at the scene of the crime at the material time, a plea of alibi, which postulates that the accused person could not have been at the scene of the crime and only inferentially that he was not there, is thereby logically and physically demolished.

3. Alibi and Time

A plea of *alibi* must be raised at the earliest opportunity to enable the prosecution to investigate the truth of the defence. In other words, it must be raised during police investigation. This assertion received

³*Jimoh Ishola v. The State* (1978) 6 SC 93.

⁴Isaac Ogbah, "Defence of Alibi", Legal Jurisprudence Limited (2017) p. 2.

⁵Section 4-6 of the Evidence Act 2011.

⁶BA Garner, *Black's Law Dictionary* (9th edition: USA: St. Pau Minn, (2009) p. 84.

⁷(2000) LPELR-6857 (CA).

⁸*Eke v. the State* (2011) LPELR – 1133 (SC); *Adebayo v. State* (2015) EJSC (Vol.4) 60; *Mohammed v. State* (2015) EJSC (Vol. 3) 97; *Sadiku v. State* (2015) EJSC (Vol. 7) 17.

judicial confirmation in the case of *Ebgeretamu v. The State*⁹ wherein per Ogunwumiju, JCA as she then was, held thus:

For the defence to exculpate the accused, it must be raised in accordance with certain rules. For the defence of alibi to be properly raised, it must be raised at the earliest opportunity when an accused person is confronted by the police with the commission of an offence so that the police will be in a position to check the alibi.

The Court of Appeal in *Okesozo v. Total Nigeria Plc*¹⁰ reiterated the law in this regard when it held thus: ‘...a successful alibi is sustained where it is made at the earliest opportunity available to the defendant (hereinafter referred to as the appellant) and not an afterthought as the Appellant had done in this case.’

The above does not imply that alibi cannot be brought up by the accused at trial for the first time. It only shows that it may be of little or no assistance to him at that stage.

4. Alibi and Standard of Proof

The standard of proof in criminal law is beyond reasonable doubt.¹¹ The onus lies on the prosecution to prove that the accused committed the crime he is being accused of without doubt. This is the highest standard in criminal procedure law in all climes. Therefore, it means the evidence against the accused is so strong that there is no logical explanation other than the fact that the accused committed the offence. More so, the fact that an accused rely on alibi does not obviate the burden of proof placed by law on the prosecution.

5. Alibi and Burden of Proof

The general principle in criminal law is that ‘he who alleges, or asserts must proof.’¹² However, once alibi is raised, the onus of proof shifts to the accused as the facts constituting his defence of alibi are facts basically within his knowledge. This burden of proof is associated with the Latin maxim *semper necessitas probandi incumbit ei qui agit* which means the necessity of proof always lies with the person who lays charges.¹³ In *Ndukwe v. The State*¹⁴, the Supreme Court stated the law in this regard wherein it held that ‘it must always be borne in mind that the onus is on the accused person, to establish on the balance of probabilities, the plea of alibi raised by him.’

Furthermore, in the proof of his absence at the scene of the crime, the accused person must for his own good furnish particulars of his whereabouts at the time and must adduce strong evidence to support his claims to enable the courts to determine the proper weight to attach to the defence. However, once an alibi has been raised, the burden is on the prosecution to investigate and rebut such evidence.¹⁵

6. Strength and Weakness of Alibi (Credibility Of Witnesses)

If an alibi defence is based on witness testimony, the credibility of the witness can strengthen or weaken the plea dramatically. The judge or jury deciding whether the accused is guilty needs to believe and trust the witness who is testifying that the accused was not at the scene of the crime. The accused friends and family members can testify about an alibi, but the judge or jury may wonder if these people would

⁹(2014) LPELR – 22615 (CA).

¹⁰(2010) LPELR – 4716 (CA).

¹¹ Evidence Act 2011, Section 135.

¹² Evidence Act 2011, Section 132.

¹³ Evidence Act 2011, Section 140 for the exceptions to the general rule.

¹⁴(2009) LPELR-1979 (SC)

¹⁵*Opayemi v. The State* (1965) 2 NWLR (Pt.5) 101, *Bozin v. The State* (1985) 2 NWLR (Pt.1) 465; *Ani & Anor v. The State* (2009) LPELR-488 (SC).

twist the truth to favour the accused. This could weaken the alibi defence although it does not mean the defence should abandon it for this singular reason except off course it is proven that such witnesses summoned or testifying are tainted witnesses. A witness who does not know or is not close to the accused can strengthen an alibi defence. Testimony from more than one person about an accused's alibi also can strengthen an alibi defence. *As stated above, corroboration* of alibis through witness testimony, receipts, photos, surveillance video, or other evidence can make an alibi defence much more likely to be successful.

7. Salient Features on Doctrine of Alibi¹⁶

1. Burden to prove plea of alibi is on the accused which is to be proved in accordance with law.
2. Statement in support of plea of alibi would not be relevant and admissible for inferring innocence of accused.
3. Plea of alibi is the weakest type of plea and cannot be given any weight unless same is proved from very cogent, convincing and plausible evidence.
4. Setting up a false plea of alibi does not lead to an inference of guilt but at the same time, it can be a confirmatory circumstance to prove the guilt.
5. Plea of alibi can only be examined during trial and not at bail stage. Affidavit of relative to support this plea cannot discredit the whole evidence on record. Such plea can be investigated by the trial court at the trial.
6. Bail can be granted in a case of capital charge on the plea of alibi if peculiar facts and circumstances of that case so justify¹⁷.
7. In appropriate cases, where a strong and authentic plea of alibi is raised without loss of time, superior courts can extend concession of bail to the accused.
8. In *Khalid Javid v. State*¹⁸, *Malik Noor Ahmed v. State*¹⁹, bail was allowed on the plea of alibi.
9. When an accused admits that he was not present at the place of occurrence by taking the plea of alibi, he cannot rely on any other criminal defence thereon.
10. Plea of alibi taken by accused that he was admitted in hospital and remained under treatment, was not acceptable because that was considered an after thought, as said plea of alibi was not taken by accused during investigation;²⁰
11. It is not every failure by the police to investigate the plea of alibi that would be fatal to the case of the prosecution;²¹
12. Though our courts should not disregard evidence tending to establish the defence of alibi, but that defence can be brushed aside where there is more cogent evidence that counter- balances or neutralizes and nullifies a defence of alibi. Despite the accused giving details of his whereabouts at the time of the commission of crime and who could confirm that, if what is on ground from the prosecution fixes the accused at the scene of crime at the relevant time, then the alibi is naturally neutralized or demolished;²² and
13. Where the accused person gives conflicting stories as to his whereabouts at the material time under consideration, there is no duty on the prosecution to investigate the alibi and in such a case, no alibi is established.²³

¹⁶ Isaac Ogbah, Op. Cit page 177-179

¹⁷ Ajmal Khan PLD (1998) S.C 97

¹⁸ PLD 1978 SC 256.

¹⁹ PLDB 1993 SC 500.

²⁰ *Shah Nawaz v. State* (2008) YLR 2449

²¹ *Olatinwo v. State* (2013) Vol. 22 LRCN 1; (2015) EJSC (Vol. 11) 165

²² *Balogun v. Attorney General, Ogun State* (2002) 6 NWLR (Pt. 547) 576.

²³ *Ozaki v. State* (1990) 1 NWLR (Pt. 124) 92

Furthermore, it is important to note that alibi is a general defence that can be raised in a variety of criminal offences and trials, it is not in all cases and particularly all offences that the Defence can be raised especially with the advancement in technology where the physical presence of a person at the scene of an offence does not necessarily matter in the commission of a crime. Thus, A may in connection with B who is based in Spain conspire to defraud and indeed defraud C who may be resident in Nigeria.

8. Alibi in the United States of America

Alibi as a defence is common to many jurisdictions and the United States of America is not exempted. It should be noted that each state in the US is regulated by its own state laws of crime, consequently, various established court in each state are similarly charged with the judicial power of interpreting laws. Litany of cases suggests that the courts in the US have consistently decided on the defence of alibi.²⁴

A cool and calm perusal of case laws and other secondary sources of laws points and posits that the defence of alibi in Nigeria connects in all similar ways with defence of alibi in the US. Thus, it is safe to conclude that the principles enunciated above in this seminar can be and is hereby adopted *mutatis mutandis* in discussing of alibi in the US. Be that as it may, it is important to note that most in two-third of exoneration cases in the US, the innocent defendant offered an alibi which was rejected by the fact finder.²⁵ While it may be not so challenging for the judge in Nigeria to make logical and reasonable deductions and conclusions from the facts presented by the defendants in raising a plea of alibi, same may not be the case of the judge and jury in the US, reason being that the composition of the jury is influenced by various factors and ultimately introduces various jurisprudential schools of thoughts which may pose severe challenge in the final determination of the cases, defences and decisions arrived at. Hence, under the American Legal System where the jury system is used, if the jury or judge does not believe the alibi defence, the prosecution must still prove all elements of the crime beyond reasonable doubt. In addition to proving that the accused was at the scene of the crime, the evidence in the case must prove all other elements of the crime.

9. Conclusion and Recommendations

In conclusion, comparative criminal law can be said to be one of the fundamental areas of criminal jurisprudence as it has given us the opportunity to juxtapose the position of laws in different jurisdiction. This is apt because a comparison of laws is influential to the process of law making and adjudication. For instance, the revisitation and/or review of cases decided by courts of law is to large extent influenced by the jurisprudence of other jurisdiction and how such jurisprudence worked positively in a society with similar norms like ours. Alibi as a plea or defence in criminal litigation falls within this class of jurisprudence and has been sufficiently detailed which likely recommendations to assist either jurisprudence in advancing their legal system. Being a defence peculiar to certain offences, it is suggested that from the laid down principles derived from case laws, the legislature should attempt to codify those principles in a criminal justice system. This is because by so doing the wide discretionary power placed on the shoulder of the judge or jury in the evaluation of facts will be made more concise.

As it is in other jurisdiction where alibi has influenced decision on bail, it is opined that in a bid to decongest the prisons, Nigerian judiciary should look into how an introduction of these innovation in other clans can be adopted in Nigeria without altering the already existing principles of bail.

However, Nigeria authorities should enhance investigation techniques and thorough verification of alibis and also to enhance access to quality legal representation should be ensured for all defendants in Nigeria.

²⁴ *Lee v. Kemna*, 534 U.S. 362 (2002); *State v. Johnson*, 221 Iowa 8, 21, 267 N.W 91 (1936); *Johnson v. Bennett* 393 U.S. 253 (1968).

²⁵<https://www.shouselaw.com> accessed on 13th May, 2024@ 6am