

SUPREME COURT OF NIGERIA

14TH MAY, SC.106/1990

**CORAM:- M. L. UWAIS, S. KAWU, S. M. A. BELGORE,
O.OLATAWURA, M. E. OGUNDARE, JJSC**

SOLOMON EHOT APPELLANT
V.
THE STATE RESPONDENT

EVIDENCE -Medical report - maker out of the country - whether admissible.

CRIMINAL LAW - Murder - conviction by trial court - whether proved beyond reasonable doubt.

CRIMINAL PROCEDURE -Voluntariness of confessional statement
-when trial within trial is necessary

MURDER -Cause of death - how proved identification of corpse - whether sufficient.

FACTS

The Appellant was charged before the cross River State High Court with murder. In his confessional statement to the police, Appellant admitted stabbing the deceased because he believed the deceased was responsible for the death of his mother and sister through witchcraft. Body of the deceased was identified by a prosecution witness to the Doctor that did the post mortem examination. The Doctor issued a medical report (exhibit) in which cause of death was specified.

During the trial, defence counsel objected to the admission of Appellant's statement to police as not being made by him or that it was made under duress. The trial Judge ruled that the statement was made by Appellant and admitted it as exhibit. The medical certificate was also admitted as exhibit, though the doctor that made it was out of the country on course. The trial court convicted the Appellant and sentenced him to death by hanging.

On appeal to the Court of Appeal, Appellant's Counsel had nothing

to urge in his favour. The conviction was upheld by that court. On further appeal to the Supreme Court, the Court had to determine whether the prosecution established Appellant's guilt beyond reasonable doubt. Counsel urged that self - defence and or provocation availed the Appellant.

HELD (Unanimously dismissing the appeal)

1. The medical officer's report admitted in evidence as Exhibit 1 without calling the Doctor that made it because he was out of the country on course, is envisaged by S. 41 (1) (a) of Evidence Act. And the defence never requested for the presence of the said medical officer for cross-examination. (p.69)
2. A medical officer in the service of the state for the purposes of undertaking post - mortem examinations is a pathologist and his certificate is sufficient evidence of the facts stated therein, (p.69)
3. The medical certificate clearly showed the cause of death was due to shock arising from haemorrhage. There was no other internal injury that could have contributed to the death of the deceased. (p. 69)
4. The testimony of a prosecution witness that he identified the corpse to the Medical officer before the post-mortem examination was performed was ample evidence of the corpse being identified to the medical officer. (p. 69)
5. An accused person confronted in court by the prosecution that he made a statement voluntarily must make his stand clear. (p. 70)
6. Where an accused person denies making the voluntary statement the court will rule after submission by both parties and where admitted, its weight will be considered in the final decision. But where the accused contends that the state

60 EHOT V. THE STATE (1993) 5 KLR 58; (1993) 4 NWLR
ment was made due to some duress, undue influence, etc,
the court should conduct trial within trial to determine the
voluntariness of the statement. (p.70)

7. In the present case, though the Appellant denied making the statement, the defence never made any move to insist that the statement was involuntarily made but seemed contented with the ruling on whether the Appellant made the statement at all. (p. 70)
8. The position adopted at the trial was that the Appellant never made the statement. This being adequately ruled upon, the issue of voluntariness was no longer pursued, hence there was no need for trial within trial. (p.70)
9. The issue of self defence which was nowhere raised at the trial court nor on appeal could only be considered if from available evidence, that defence availed the accused so that the court will advert to it. (p.70)
10. The sum total of the defence evidence certainly raises no issue of self-defence or provocation. As such, the trial court did not have anything to mitigate in what the prosecution offered against the appellant. (p.72)
11. The Appellant in his voluntary statement confessed to the stabbing of the deceased and gave a cogent reason for it. There is no other cause of his death apart from loss of blood (haemorrhage) due to the stabbing. (p.72)

PER OLATAWURA JSC “Whether the prosecution has proved its case beyond reasonable doubt. In support of this, the learned counsel cited about 28 authorities. No doubt one should praise learned counsel for his industry and research but unfortunately some of these authorities are neither related to the issue raised nor were they based on the evidence before the Court. The basis for submissions is or should be on the evidence before the court or the absence of it, but it is unhelpful to the court to cite irrelevant authorities.”(P 73)

PER OGUNDARE JSC “The learned trial Judge did not conduct a

trial within trial before admitting the statement in evidence as he was expected to do where the issue of voluntariness was being challenged. I think the learned trial Judge should have taken the precaution of adopting that procedure. As he failed to do this, and as the admissibility of the statement was objected to on the ground of its not having been made voluntarily, must hold that the statement was wrongly admitted in evidence and should be expunged from the record” (P 91)

REPRESENTATION

Bankole Aluko Esq., Olajide Bello, for the Appellant
Akon B. Ikpeme (Mrs.), Acting Director of Public Prosecutions, Ministry of Justice, Cross River State, for the Respondent

CASES REFERRED TO

1. Kato dan Adamu v. Kano N.A. (1956)1 FSC 25
2. R. v. Igwe (1960) 6, FSC 55
3. Ikpassa v. A. G. Bendel State (1981) 9 SC 7
4. Obidiozo v. The State (1987) 4 NWLR (pt 67) 748
5. Kada v. The State (1991) 8 NWLR (pt 208) 136
6. Bakare v. The State (1982)
7. Itule v. The State (1961) 2 SCNM93
8. Crabriel v. The State (1989) 5 NWLR (pt 122) 457
9. R. v. Lawrence (1932) 11 NLR 6
10. Okogbue v. C.O.P. (1965) NMLR 232
11. R.V. Mofor(1943) 10 WACA251
12. Omegodo v. The State (1981) 5 SC 5
13. Abieke & anor v. The State (1975) 9-11 SC 97
14. R. v. Namari(1951) 20 NLR 6
15. Johnson v. The State (unreported) SC. 559/65
16. Engineering Enter. of Niger Contractor Co. v. A.G. Kaduna State (1987) 2 NWLR 381
17. Olowosago v. Adebajo (1988) 4 NWLR 275
18. Okpala v. Ibeme (1989) 2 NWLR 208
19. Eze v. Fed. Republic of Nigeria (1987) 1 NWLR (pt 51) 506
20. Western Steet Works Ltd & anor v. Iron & Steel Workers

- Union of Nigeria & anor (1987) 1 NWLR (pt 49) 284 61.
 21. Bakuri v. The State (1965) NMLR 163
 22. Ozo v. the State (1971) 1 ALL NLR 111
 23. Bawashi v. The State (1976) 6 SC 259
 24. Omomiju v. The State (1978 11 SC 259
 5 25. Lori v. The State (1980) 8-11 SC 81
 26. Obogo v. The Stated 972) SC 39
 27. Essien v. The State(1984)3 SC 14
 28. Uyo v. A.g. bendel State (1986) 2 SC 1
 29. R. v. Kassi 5 WACA 154
 10 30 Gbadamosi&anor v.the State (1992)9 NWLR (pt.266) 465

STATUTES & RULES

1. Criminal Code Law of Cross River Stated S. 319
 15 2. Evidence Act S. 41 (1) (a)
 3. Supreme Court Rules1985 O.6 r. 5 (3)
 4 Criminal Justice (Misc. Prov.) Law No. 4 1973 of Cross River
 State S. 5(1)
 5. Penal Code S. 221 (a)
 20

LEAD JUDGMENT BY BELGORE JSC

The appellant, Solomon Ehot was tried for murder of one
 Dickson Ejah at Akpet Village, Akamkpa, Cross River State, on the
 25 4th day of December, 1977.The medical report on the Corpse of
 Dickson Ejah indicated a deep wound on his upper arm led to severe
 loss of blood and as a result he died of hemorrhage.The wound was
 caused by the appellant who at the burial of his sister, suddenly stabbed
 the deceased on the hand. He died not long after due to severe loss
 30 of blood. Some of the witnesses who were near the scene had to
 wrestle with the appellant to disarm him of the pen-knife, the weapon
 of the murder. On hearing that the victim of the stabbing had died,
 the appellant fled the village for Abak where he was subsequently
 arrested. The appellant made a voluntary statement to the police
 35 which he at the hearing denied ever making.Learned trial Judge on
 considering the objection raised to the voluntary statement on sub-
 mission that the appellant never made the statement, ruled the state-
 ment was admissible because it was his belief the appellant made it.
 No further issue was made of this statement again except now in this

court. The High Court trial ended in his conviction for murder under S.319 (1) Criminal Code Law of Cross River State and he was sentenced to death by hanging. He appealed to the Court of Appeal, Enugu Division where his counsel in a well articulated Brief of Argument concluded as follows:

5

"With respect, the appellant's counsel will re-iterate that on facts and in law he has nothing to urge in favour of this appeal. The conviction of the appellant by the learned trial Judge of Calabar High Court was therefore in order. There is no need to add other grounds of appeal in the circumstances."

10

Learned state counsel for the respondent in that appeal agreed with the appellant's counsel. The Court of Appeal in reserved judgment found no reason to disturb the decision of the trial court and dismissed the appeal.

15

On appeal to this court, the appellant filed amended Notice of Appeal and with leave of Court, grounds of appeal on issues not raised in the court below. Thus we have the following grounds of appeal:

20

GROUND S OF APPEAL

1. The Court below erred in law/on the facts in supporting the trial Court's conclusion that the offence of murder charged was proved "Beyond reasonable doubt" against the Appellant, when there was either no evidence (and/or alternatively, no sufficient evidence) in proof of some of the vital and statutory constituent elements of the offence of murder to justify the said adverse conclusion.

25

Particulars of Error

30

(As to "Cause of Death"/ "Identification of the Body of the Victim")

(a) (i) The medical evidence upon which the prosecution purported to rely in proof of the cause of death, and of the identity of the body of the alleged victim is of little or no probative value as to those facts, in that neither did its alleged maker give evidence in Court, nor do his said "Post Mortem report" and an alleged "Forensic Report" [if any] form a part of the Record of proceedings upon which the Appellant's conviction is sought to be affirmed.

35

(ii) *The other evidence adduced by the prosecution in attempted proof of the cause of death, and of the identity of the victim, is tenuous and/or speculative.*

(iii). *Having regard to the combined/separate premises of (i) and/or (ii) above, and on the available evidence, the court below was in no position to confirm either that the person to whom references were made in court was the very victim alleged to have been killed, or (if his identity was sufficiently proved), that the Appellant's act directly "could have caused", or that the Appellant's act "directly" (or "substantially") did cause the victim's death, to the exclusion of all other causes.*

(iv). *In the absence of the required proof of identity of the victim, and in the absence of proof of death as a result (either direct or substantial) of the Appellant's act, the only verdict which the court below could safely have entered was one of an acquittal in the Appellant's favour.*

[As to "Intent to kill"]
(b) (i). *Upon a dispassionate view of the totality of the evidence (i.e. both prosecution and defense) adduced, the inherently implicit finding that the Appellant either "desired", (or alternatively) "had reasonable foresight" either that the death of, (or grievous bodily harm to), the victim was the likely or probable result of his act) if any, must be the subject of some doubt, and the support given by the Court of Appeal to that finding ought therefore to be disturbed.*

2. *The Court of Appeal erred/misdirected themselves both in law, and on the facts when they held "inter alia" as follows:*

"..... it seems to me that there was ample and strong circumstantial evidence from P.W.1, P.W.3 and P.W.4 from which it could be inferred that it was the Appellant who stabbed the deceased....."
and,
"on the whole, it seems clear that the Appellant was rightly convicted ... (on his confessional statement) ... which was amply corroborated by other evidence on record". (underlines supplied)

Particulars of Error/Misdirection
[Of Law]

(a) (i). The fact that the Appellant "stabbed" the victim, (albeit never in issue), falls far short of comprising proof of the constituent elements of the offence of murder charged, which fact (by the judgment below complained about herein) it seeks/purports to establish. 5

[On The Facts]

(b) (i). All the evidence on the printed record upon which the conviction by the trial court is founded is "circumstantial evidence", and the Court of Appeal ought to have found that the entire evidence is not of such a cogent, unequivocal and compelling nature as to point irresistibly to the conclusion that the Appellant's act caused to have been killed. 10 15

3. The Court of Appeal erred in law in giving support to the Appellant's conviction by the trial court in so far as it was based (either wholly, or in part) on various confessions/admissions said to have been conceded by him in an extra-judicial statement which he made to the police(as further alleged). 20

Particulars of error of Law 25

(i). During trial, objection was taken to the reception of the said statement in evidence not only on the ground that the Appellant never made it, but on the additional (or alternative) grounds "inter alia" that it was not made in voluntary circumstances,(if made by him at all). 30

(ii). The relevant decisions of the trial court (i.e. by its ruling dated 4-3-82, and its judgment dated 1-6-82) made no attempt to address these vital alternative issues, which error is also manifest upon the face of the judgment of the court below. 35

(iii). In the absence of any opinion of the court below on the effect

that the failure by the trial court to hold the usual "trial-within-trial" would have had on the admissibility of the statement, there is justifiable doubt as to the conclusion they may have reached on the point.

- 5 *(iv). Having regard to the above premises, and as the contents of the said statement constitute the primary reason for the Appellant's conviction, the doubt referred to in (iii) above must be resolved in favour of the Appellant's acquittal.*
- 10 4. *The court below erred in law by perpetuating the failure of the trial court to give any consideration whatsoever either to plea of "self defense" expressly raised by the Appellant, (this being a complete answer to the offence of murder charged), or to any other defense*
- 15 *which may have been available to him, which error has occasioned a grave miscarriage of justice.*

Particulars of Error:

- 20 *(i). The plea of "self-Defense" was not only expressly raised by the defendant in his evidence in court, but satisfactorily so raised (having regard to the onus and standard of proof required of him by law).*
- 25 *(ii). The prosecution failed to elicit any evidence (either in cross examination of the Appellant's said evidence in discharge of the legal and evidentiary burden that had clearly shifted to them in law.*
- 30 *(iii). Neither court below considered the issue, by the reason of which both courts below abdicated their judicial duty to consider all defenses open to the Appellant, he being a person confronted with murder charge.*
- 35 *(iv). Neither court below directed itself as to whether the Appellant's said evidence of "self defense", when examined in combination with the other matters raised by him as contained in his extra-judicial statement [if adjudged admissible] constitute circumstances that justify an enquiry into whether the defense of "provocation" was disclosed.*

(v) *Had the Court below considered the whole evidence on these issues, they may have been convinced of the innocence of the accused, or may have been left in doubt as to whether he was acting in self-defense, or may have found an issue of "provocation" (in the combined circumstances described above).* 5

(vi) *By reason of the said omissions of the Court below, there is considerable doubt as to what verdict would have been arrived at by both courts below after due enquiry which doubt must be resolved in favour of the accused.* 10

5. The decisions of both Courts below are unwarranted, unreasonable, and cannot be supported, having regard to the evidence." 15

As elaborate as the grounds of appeal are, it is noteworthy that only one issue is formulated for determination in the appellant's Brief of Argument as follows:

"Whether or not the prosecution established this, appellant's guilt beyond reasonable doubt at trial (as required by law)." 20

The justice of this appeal demands dwelling not only on the issue formulated in the Brief but also adverting fully to the grounds of appeal. But before doing this, it is pertinent that the facts of this case be summarized. One Mary, sister of the appellant, died and her corpse was taken to the village square for the funeral rites. The appellant, Solomon Ehot, was among the gathering at the square, so also was the deceased, Dickson Ejah. Suddenly the appellant attacked Dickson Ejah with a knife. Some of the men around, after some struggle, overpowered the appellant and recovered the knife from him; the knife was still dripping with blood. The deceased was taken into the house with a trail of his blood from the square leading into the room. He later died. The stab wound was on his left upper arm at the lateral aspect. The P.W.1, Sunday Ejah, a brother of the deceased, identified the body to the medical officer, Dr. Koofreh who performed the post-mortem examination. The medical officer issued a report, Exhibit 1, which was tendered because he was out of the country on course. Had he been present, his report would hardly be needed except to 25 30 35

refresh his memory. The death occurred on 4th December, 1977 and it was only on 5th December, 1977 at about 11.45 a.m. that the doctor performed the post mortem examination. His report says as follows:

*"Middle-aged man (with) 1/c stab wound (on the left) It up-
per arm lateral aspect. Body and feet covered with dried blood. Cloth-
ing and towel tourniquet blood soaked. No abnormalities were dis-
covered in the internal organs.*

*I certify the cause of death in my opinion to be olegamic
shock secondary to hemorrhage."*

The defense never requested for the presence of the medical officer for Cross-examination on his certificate and on the face of the certi-
cate the cause of death is clearly stated. This report of the medical
officer is the certificate envisaged by Medical officer in the service of a
state for the purposes of undertaking post-mortem examinations is a
pathologist and his certificate is sufficient evidence of the facts stated
therein. The proviso to S.41(1) (a) of Evidence Act availed the ap-
pellant at the trial court but advantage of it was never taken there nor
in the Court of Appeal. Exhibit 1 clearly showed the cause of death
was due to shock arising from hemorrhage. There was no other in-
ternal injury that could have contributed to the deceased's death.
Sunday Ojah, P.W.1, testified that he identified the corpse to the
medical officer before the post-mortem examination was performed.
This case is far different from Kato Dan Adamu v. Kano N.A. (1956)
1 FSC 25; (1956) SCNLR 65 cited by learned counsel for appellant
as there was ample evidence of the corpse being identified to the
medical officer and medical officer's certificate, Exhibit 1, is very clear
as to the nature of injuries found and the actual cause of death. The
submission by learned counsel that the body was not found is not
supported by any evidence; rather what is clearly shown on the record
is that the body of the deceased was identified to the medical officer
and it was examined and reported upon.

The next question is: who stabbed the deceased? The
evidence before the trial court is very clear. There was commotion in
the village square, the deceased was stabbed and he was covered in
blood and the appellant held a knife dripping with blood and this

was wrestled from him. He made a statement voluntarily to the police which was objected to at the trial court as "not having been made by the appellant or that it was not voluntarily made". Learned trial Judge ruled on the first head of objection that the appellant really made the statement. The defense apparently abandoned the stand that the statement (Exhibit 4) was not voluntarily made. The statement reads as follows:

"I Solomon Ehot freely elects as follows: It was on 3rd day of December, 1976 that my mother died and again on 3rd day of December, 1977 my junior sister named Mary Ehot died too, as a result of that I went to Dickson Ojah a deceased now to tell me the reason why my sister should die the same day my mother died because he have already promised me that he is going to finish the whole of our family. As I went to him, he told me that he is not coming. I left his house with annoyance for my house, to come out again with a pen knife where I met him at our village square there I stabbed him with the pain knife on his left upper hand. As I wanted to go back to my house some people came and hold me and take the knife away from me, I entered my house and collected my shirt and left to report myself to police at Akpat central. As I was running to the Police Station, two boys from my village was running after me to catch me. As they catch me they take me back to the village. As I understood that Dickson is dead because of the stab I stabbed him, I left the village for Abak to report to my brother who is at Abak. What happened to me on 4th day of December, 1977. As I was reporting to him, the people in the yard heard it and reported to police at Abak and they came and arrested me. The knife I was shown by Cpl. Maxwell Okafor of D.C.I.C. Akamkpa was the knife I used in stabbing Dickson Ojah to death. The reason why I stabbed Dickson Ojah to death was that he was cause of my mother's death and my sister own too. I know he is the cause of my mother and sisters death because he has already promised me that he is going to finish the whole of our family by means of witchcraft. As my sister died again the same date my mother died last year, I remember what he told me as a result of that I was annoyed that is why I stabbed him but I don't know he shall die because of that stab wound I gave him on his left up hand. I did not message any body to message my sister anything as she alleged."

The issue of voluntariness was therefore abandoned. The appellant went on in his evidence on oath to deny making the statement. An accused person, confronted in court by the prosecution that he made a statement voluntarily, must make his stand clear. Either that he did
 5 not make the statement in which case the court will rule after submission by both parties, or that it was not voluntarily made due to some duress, undue influence, coercion or some promises of temporal nature etc. In the former case the court may admit the statement in evidence and will assess its weight in the final decision; in the latter
 10 case, the voluntariness must be tried by what is commonly called "trial within trial" and if found to have been made voluntarily, it is admitted in evidence; if not it is rejected as evidence. In the present case the defense never made any move to insist that the statement was involuntarily made but seemed contented with the ruling on
 15 whether the appellant made the statement at all. In a long line of cases this court has explained this position and an accused person alleging that he did not make a statement should not be under an illusion that non est factum amounts to involuntariness. (R v. Igwe (1960) 5 FSC 55; (1960) SCNLR 158 Godwin Ikpassa v. Bendel State
 20 (1981) 9 Sc. 7, 28; Obidiozo & Ors. v. The State (1987) 4 NWLR (Pt. 67) 748, 761). The position taken at the trial by defense was mainly that the appellant never made the statement. This was adequately ruled upon by the court and the issue of voluntariness was
 25 no longer pursued. Thus there was no need for trial within trial as issue of voluntariness was no longer before the trial court.

As for issue of self-defense, there was nowhere it was raised at trial court, nor was it on appeal. The matter of self-defense could be considered only if from available evidence that defense avails the
 30 accused person so that the court will advert to it. In his evidence on oath he alluded to a fight with the deceased but that he did not observe any injury on him and that he saw the deceased had a knife on him. Whereas in his confessional statement he clearly stated his motive for the savage attack with a knife on the deceased. His mother
 35 died on 3rd day of December 1976, exactly a year later, on 3rd day of December, 1977, and his sister, Mary, died too. For him the coincidence of dates was not an accident, there must be some unusual forces behind it and the deceased must be the one controlling those forces. That was why he decided to do something about it and

he therefore stabbed him. In his own words he said:

"The knife I was shown by Cpl. Maxwell Okafor (PW.5) of D.C.I.C. Akamkpa was the knife I used in stabbing Dickson Ojah to death. The reason why I stabbed Dickson Ojah to death was that he was the cause (sic cause) of my mother's death and my sister own too. I know he is the course (sic cause) of my mother's and sister's death because he have (sic) already promised me that he is going to finish the whole of our family by means of witchcraft. As my sister died again the same date my mother died last year, I remember what he told me as a result of that I was annoyed that is why I stabbed but I don't know he shall die because of that stab wound I gave him on his left up hand (sic). "

The sum total to the defense evidence certainly raises no issue of self-defense or provocation. The court of trial surely did not have anything to mitigate what the prosecution offered against the appellant.

The appellant, by his voluntary statement confessed to the stabbing of the deceased and gave a cogent reason for it. The deceased by medical evidence had blood all over his body, and by the evidence of witnesses at the scene so much blood was lost by him that a trail of his blood ran from the village square to where he was carried to and where he finally died. To stab with a knife is a dangerous thing and there is no other cause of his death apart from loss of blood (hemorrhage) due to the stabbing. There is nothing favourable to the appellant in his voluntary statement and in the prosecution's evidence and it is not on all fours with decisions in *Kada v. The State* (1991) 8NWLR (Pt.208) 134, 150; *Bakare v. The State* (1987) 1 NWLR (Pt. 52) 579, 590, 591; *Itule v. The State* (1961) 2 SCNLR 183, 187.

Learned counsel raised in his brief of argument a matter which though he never made an issue deserves some comment. As he put it:

"It is trite law that in its attempt to establish the cause of death in a murder trial, the prosecution is put to its election as to which of the known options [i.e. medical evidence, or by compelling circumstantial evidence) it will pursue".....

"Having so elected, their case on the issue must either suc-

ceed or fail on such evidence, and such evidence alone, since both the law and public policy restrain them strictly from going back on their election".

With respect, I cannot find the relevance of the above statement. The prosecution's case is that the appellant stabbed the deceased whereby deceased lost so much blood that finally caused his death. That was the gist of all their evidence. There was evidence of stabbing and loss of blood, and then the medical evidence showed the cause of death. Clearly the prosecution showed it was the act of the appellant that led to the death of the deceased. It is only where there was no direct medical evidence that circumstances that lead irrevocably to the death of the deceased can be relied upon to decide the issue of whether the act of the accused had anything to do with the death. This case is straightforward enough that no circumstantial evidence had to be sought as to the cause of death as distinct from who was responsible for what caused the death. The case of *Gabriel v. The State* (1989) 5 NWLR (Pt. 122) 457,467 has no relevance here.

In sum total, I find no merit in this appeal and it is accordingly dismissed. The decision of the Court of Appeal which upheld the judgment of trial court is hereby affirmed.

UWAIS JSC

I have had the advantage of reading in draft the judgment readby my learned brother Belgore, J.S.C. There is no doubt that this appeal lacks merit. Accordingly, I agree with the said judgment and I too hereby dismiss the appeal. I affirm the decision of the Court of Appeal.

KAWU JSC

I have had the advantage of reading in draft, the lead judgment of my learned brother. Belgore. J.S.C. which has just been delivered. I am in complete agreement with his reasoning and also with his conclusion that there is no merit whatsoever in this appeal. There was overwhelming evidence that without any provocation whatsoever, the appellant stabbed the deceased to death. In my view,

on the evidence adduced at the trial, the learned trial Judge was right in coming to the conclusion that a case of murder was conclusively established against the appellant. The appellant's conviction was therefore proper and the Court of Appeal was also right in affirming his conviction and the sentence of death passed on him. I see no merit in the appeal and it is accordingly dismissed. The appellant's conviction and the sentence of death passed on him are hereby affirmed.

OLATAWURA JSC

I had the advantage of reading in draft the judgment of my learned brother Belgore. J.S.C. just delivered. I agree with his reasoning and conclusions. This appeal lacks merit and it should be dismissed.

The facts of the case have been stated graphically in the judgment of my learned brother Belgore. J.S.C. These facts should not be repeated again, but I will in the course of this short contribution refer to the evidence of the appellant, 3rd and 4th prosecution witness. The brief filed has also been and rightly criticized in the judgment of my learned brother Ogundare, J.S.C. The oral submission before us has rightly dealt with the only issue raised in the appellant's brief and reply of 26 pages to be: whether the prosecution has proved its case beyond reasonable doubt. In support of this, the learned counsel cited about 28 authorities. No doubt one should praise learned counsel for his industry and research but unfortunately some of these authorities are neither related to the issue raised nor were they based on the evidence before the Court. The basis for submissions is or should be on the evidence before the court or the absence of it, but it is unhelpful to the court to cite irrelevant authorities. In treating the evidence of the prosecution witnesses before the court the learned trial Judge Usoro, J. (as he then was) said:

"Finally from the evidence before the court, I am of the opinion that the accused was lying in his evidence in court. Apart from the 2 P.W. who wanted to withhold certain facts from the court when he gave evidence and later told the court the truth after he had been treated as hostile witness by the prosecution, I accept the evidence of the other witnesses for the prosecution as being true, and I also accept what 2 P.W. said later in his evidence....."

.....
and that I have come to my conclusion that the prosecution had proved its case against the accused beyond all reasonable doubt, and I find the accused guilty of murdering one Dickson Ojah on 2:12:77 (sic: 4.12.77)."

5 Notwithstanding the brief filed on behalf of the appellant in the court below as a result of his appeal to that court to the effect that nothing could be urged in favour of the appellant, that court in a well-considered judgment dealt meticulously with every conceivable defense and
 10 points of law and consequently confirmed the judgment of the trial court.

On what did the learned counsel base the only issue which is covered by his five grounds of appeal already reproduced in both the lead judgment and the judgment of Ogundare, J.S.C.? These
 15 are:

1. *That there was no single eye witness who was believed.*
2. *Intent to kill cannot be presumed from the nature of the wounds.*
3. *There was no medical evidence in the case and more so the*
 20 *absence of medical report.*

If learned counsel appreciates that appeal to this court is based on the judgment of the Court of Appeal, then a careful reading of the
 25 judgment of Oguntade, J.C.A. who delivered the lead judgment showed a meticulous analysis of these points.
 Oguntade, J.C.A. said:

"Now, it is a settled principle of law that in order to get conviction in a
 30 *criminal case, the prosecution must prove the guilt of (he accused beyond reasonable doubt. See R v. Basil Ranger Lawrence (1932) 11 NLR 6 at 7 and Michael Okogbue v. Commissioner of Police (1965) NMLR 232. Implicit in that principle is the duty on the prosecution to establish by evidence all the essential ingredients of the offence. See*
 35 *R v. Sam Mofor (1943) to WACA 251. In a case of murder, the prosecution must show that it was the act of the accused that caused the death of the deceased. See Omogodo v. The State (1981) 5 S.C.5 and Igboji Abieke & Anor v. The State (1975) 9-11 S.C. 97,104. It must also be shown that in doing the act that caused the death of the*

deceased, the accused has one of the intents specified under section 316 of the Criminal Code. See R v. Namari (1951) 20 NLR 6".

Later on in the judgment the learned Justice continued thus:

"I am therefore satisfied that it was the voluntary act of the appellant⁵ that caused the death of the deceased."

There was ample evidence to support these conclusions.

It is true there are slight variations or minor differences in the evidence of 1st, 3rd and 4th P.W., but these are definitely not enough to regard their evidence unreliable: *Johson v. The State* (unreported) SC. 559/65 of 15th April, 1966. 10

The 1st P.W. said he was attracted to the scene when people shouted that the accused had stabbed the deceased, he ran to the scene and saw blood stains on the ground. He concluded his evidence under cross-examination thus: 15

"..... I followed the blood stains to the house of the deceased where I saw him lying and called on him but he did not answer and there was no movement." 20

The 3rd P.W. said he was also attracted to the scene as a result of shouts. He said further:

"When I got to the compound I saw the deceased body was covered with blood... I ran there and I saw two people struggling with the accused holding him. Then I joined them to hold the accused, and we got the knife that the accused was holding from him and handed it over to one Egbai Ofom to keep. I took the accused to his father's house and the deceased breathed his last." (My emphasis). 25 30

4th P.W. was Egbai Ofom who was attracted to the scene as a result of a shout to the effect that the accused had stabbed the deceased. He said: 35

"I went to the scene and saw two people trying to arrest the accused and I joined them. We finally got hold of the accused and took the knife from the accused."

Under cross-examination 4th P.W. said:

"It was at a market square that I took the knife from the accused. I saw blood on the knife. When I took the knife from the accused, I reported the matter to the police." (My emphasis)

In his own evidence the appellant denied knowledge of the incident and concluded his evidence in-chief by saying:

"It was three days after the death of the deceased I was arrested at Abak. I heard about the death of the deceased while I was at Abak."

Under cross-examination the appellant said:

"It was 5 P.W. (i.e. Police) "he told me at Abak Police Station that my brother, the deceased died. He told me my brother whom I fought with died. Before I went to Abak, there was misunderstanding between me and the deceased. There was a quarrel with (sic) me and the deceased when he pushed me out of the house and I did not know that he had a knife with him and people separated us. I saw no wound or injury on him when we were separated."

No wonder, and I agree, that the learned trial Judge said that the appellant lied in his evidence in court.

Once the learned trial Judge is satisfied beyond reasonable doubt that on the evidence offered by the prosecution that the accused and no one else committed the offence, the Judge is entitled to find him guilty. 3rd and 4th P.Ws. were eye witnesses. They were believed by the learned trial Judge. The assessment of their credibility which was confirmed by the Court of Appeal has not been successfully impugned.

On the issue of intent to kill, learned counsel for the appellant referred to a passage in the Statement of the appellant where he said:

"I was annoyed that is why stabbed him but I don't know he shall die because of that stab wound I give him on his left up hand ...". (My emphasis).

Thereafter learned counsel submitted "*that this statement expresses no intention to, kill or to cause grievous bodily harm; at least (it is further submitted), it expresses an intention to instill fear and dread in the beneficiary of the attack*" (My emphasis). There was evidence that the appellant used a KNIFE to stab the deceased. There can be no greater manifestation of intention to kill or cause grievous bodily harm than the use of a knife in stabbing the deceased. Death has resulted as a result of the wound. Nobody will in the circumstances and facts rightly accepted by the trial court and confirmed by the lower court regard the knife used as a toy. The act of the appellant was deliberate and intentional. There was no justification in law for the act. The victim died virtually on the spot. It is proper and also within the right of the Judge in the circumstances of this case to infer the cause of death notwithstanding there was no medical evidence. No doubt evidence of cause of death is desirable but not indispensable: Kato Dan Adamu v. Kana Native Authority (1956) 1 F.S.C. 25-26; (1956) SCNLR 65.

I now come to a very disappointing development which hitherto was unknown in this court: the frequent absence and the casual attitude of state counsel from the Ministry of Justice in some states of the Federation. Murder is one of the serious crimes in our Criminal Code. No accused person in a murder trial is allowed to defend himself/herself. The state wants to ensure that everything necessary is done that no innocent life is lost and to avoid a miscarriage of justice. To this end those accused of this heinous offence are assigned counsel to defend them. Where an accused is found guilty at the trial court, representation continues up to this court. Consequently no execution of those found guilty can take place until the judgment of this court is known. Some states have persistently failed to send state counsel to argue the appeals. It is a disrespect to this court. The Attorney-General of each State has a bounden duty to ensure that this court being a court of last resort is not left without the assistance of very senior officers from the Ministry of Justice. This disturbing trend of abandoning the constitutional duty of assisting this court must now stop. The interest of the public in criminal trials must not be ignored. The casual attitude of coming to court at will is also unacceptable to this court. Life and liberty of the citizens are precious. This appeal, like so many before it, was argued without the assistance of officers from the Ministry of Justice. It is for these reasons and the fuller reasons in the judgment of my learned brother Belgore J.S.C. that I will also dismiss the appeal.

OGUNDARE JSC

I have had the advantage of a preview of the judgment of
 5 my learned brother, Belgore, J.S.C. just delivered. I agree with him
 that this appeal is totally lacking in merit and should, therefore, be
 dismissed. I only wish to add a few words of my own on the propriety
 of the issues raised in the Appellant's Brief.

10 My learned brother has, in his judgment, set out the facts; it
 is unnecessary for me to go over them again.

The Appellant's Brief has raised, once again, the issue of what
 15 constitutes a proper format of an appellant's brief. In his judgment in
 Engineering Enterprise of Niger Contractor Co. of Nigeria v. Attor-
 ney-General of Kaduna State (1987) 2 NWLR (Pt. 57) 381, 396-
 397, Eso, J.S.C. set it out thus:

20 *"Brief writing is now ten years old, and learned counsel who seek
 audience in the Supreme Court or even in the Court of Appeal should
 by now be fully versed in the art. An excellent book on the subject
 has been produced by a learned Justice of the Court of Appeal -*
 25 *Nnaemeka-Agu. J.C.A. titled. 'Brief Writing for the Court of Appeal
 And The Supreme Court,' and anyone who has read that book should
 be knowledgeable enough to write a good Brief for this Court. But
 even then, and apart from this, many learned counsel have pro-
 30 duced in this court such excellent Briefs, in so many celebrated cases
 that all a counsel has to do is to read one or the other of those very
 many excellent productions. Without being exhaustive, I shall refer
 to a few, very few indeed for the guidance of counsel -*

1. Otuaha Akpakpuna v. Obi Nzeka II SC. 85/82;
- 35 2. Chief Imam Y.P.O. Shodeinde v. The Registered Trustees of
 the Ahmadiya Movement in Islam SC. 64/82;

3. *Bronik Motors Ltd. v. Wema Bank Ltd.* (1983) 1 SCNLR 296
4. *Paul Unongo v. Aper Aku* (1983) 2 SCNLR 332
5. *Oloyo v. Alegbe* (1983) 2 SCNLR 35
6. *Transbridge Co. Ltd. v. Survey International Ltd.* (1986) 4 NWLR (Pt.37) 576
7. *A.M.O.Akinsanya v. U.B.A.Ltd* (1986) 4 NWLR (Pt.35) 273 5
8. *Attorney-General of Bendel State v. U.B.A. Ltd.* (1986) 4 NWLR (Pt.37) 547
9. *Ezekiel Emenimaya &Ors. v.Okorji* (1987) 3NWLR (Pt.39) 6
10. *Ibiyemi Oduye v. Nigeria Airways Ltd.* (1987) 2NWLR (Pt.55)126 10

There is nothing in Brief writing that anyone intends to learn that could not be found in these cases and many more. Learned counsel in the Briefs state -

- (a) *Introduction (which sets out background);* 15
- (b) *Issues in the Court of Appeal;*
- (c) *Issues for determination in this Court;*
- (d) *Arguments and references to in-depth authorities pro and con on the issues;*
- (e) *Conclusion specifying the reasons why this Court should find for the Appellant or for the Respondent as the case may be;* 20
- (f) *Authorities to be relied upon in course of arguments.*

Briefs are meant to assist in the administration of justice by making the work of both counsel and court simpler once the matter has got to the oral hearing stage. It is to promote justice. Sometimes in the course of writing a brief the learned counsel involved in the case sees the futility of his course. The courts gain immense assistance from excellent briefs when it gets to the stage of the court undertaking research into the matter before it." 25

And in *Olowosago v. Adebajo* (1988) 4 NWLR (Pt. 88) 275, 283 Karibi-Whyte J .S.C. observed thus;

"It is necessary to emphasize the purpose of formulating issues for determination in briefs. Like pleadings to litigation between the parties, the issues formulated are intended to accentuate the real issues for determination before the court. The grounds of appeal allege the complaints of errors of law, fact or mixed law and fact against the judgment appealed against. The issues for determination accentuate 35

the issues in the grounds of appeal relevant to the determination of the appeal in the light of the grounds of errors alleged. Hence the issues for determination cannot and should not be at large, but must fall within the purview of the grounds of appeal filed."

I like to refer to yet another dictum of another justice of this
5 court. In *Okpala v. Ibeme* (1989) 2 NWLR (Pt. 102) 208 at 219-220, Nnaemeka-Agu, J.S.C. had this

"Before I deal with the main issues canvassed in this appeal, I would like to make certain observations on the 'issues for disaffiliation' framed for this appeal. The learned counsel for the appellants,
10 *Senator Anah, formulated two issues which he described as the main issue and a subsidiary issue."* These two issues were worded thus:

"4.1 The main issue for determination in this appeal is whether the
15 *plaintiffs/appellants failed in toto in the High Court to prove their case. If they did, the proper order should be a dismissal but if not, a non-suit should have been retained by the Court of Appeal.*

4.2 The subsidiary issue is whether the non-compliance with OXL VIII
20 *R.I of the High Court Rules of Eastern Nigeria by the trial Judge by not inviting the counsel to address him on the appropriate order to be made vitiates the proper order of non suit which he made."*

25 With greatest respect, these issues could have been more elegantly worded. Also, the learned counsel for the appellants later framed another 'issue' in his 'supplementary Brief' dated the 6th of March, 1987. This runs thus:

30 '2.1 Whether the applicants can show that there is an arguable appeal.'

Quite apart from the fact that there does not appear be any authority for filing any supplementary brief on 9th March, 1987, when the last date authorized by the rules for filing the appellants'
35 brief was 5th February. 1987, there is no provision in the rules for filing a supplementary brief without leave of Court. What is provided for is a reply brief, where necessary (see Order 6 rule 5(3) of the Supreme Court Rules, 1985). Even so, where it is necessary, it should

be limited to answering any new points arising from the respondents' brief. No fresh issue for determination need be included.

The 'issues for determination' as framed in respondents' brief was not free from faults either. Three 'issues' were set out, namely:

'4.1 Whether the appellants established ownership to the land in dispute referred to by them in ANINWEKE on the evidence brought by them to entitled them to a declaration of title to the said land.

4.2 Whether the order of Non-suit entered by Umezinwa, J. without inviting counsel to the parties to address him on the propriety of the relief which was not asked for by any of the parties was a proper exercise of judicial discretion.

4.3 Whether the Court of Appeal was right in dismissing the appellants' case in the light of the evidence led and findings of fact made by the learned trial Judge'.

It can be seen that the first issue did not relate to the grounds of appeal filed while the second wrongly relates to the judgment of the High Court, rather than that of the Court of Appeal appealed from. I should repeat what my learned brother, Obaseki J.S.C said in respect of the respondent's brief in *Jonah Onyebuchi Eze v. Federal Republic of Nigeria* (1987) 1 NWLR (Pt. 51) 506, at p. 521-522:

'The respondent is not the appellant and has filed no cross-appeal. It must therefore formulate issues for determination in the appeal, with reference to the grounds filed.'

This Court has said a number of times that the 'issues for determination' is a very serious part of a brief and ought to be carefully got up. It should not be framed in the abstract but in concrete terms, arising from and related to the grounds of appeal filed which represent the questions in controversy in the particular appeal. See *Western Steel Workers Ltd. & Anor. V. Iron & Steel Workers Union of Nigeria & Anor.* (1987) 1 NWLR (Pt. 49) 284, at p. 304."

These are weighty pronouncements on the issue of brief-writing. Has there been compliance with the requirements of a good brief in Appellant's Brief before us? Regrettably, I must say that, to

some extent, the answer must be in the negative.

In the amended Notice of Appeal filed on 7/6/91, the following grounds of appeal are relied on:

5 "1. The Court below erred in law/on the facts in supporting
the trial Court's conclusion that the offence of murder charged was
proved 'beyond reasonable doubt' against the Appellant, when there
was either no evidence, (and/or alternatively, no sufficient evidence)
10 in proof of some of the vital and statutory constituent elements of the
offence of murder justify the said adverse conclusion.

Particulars of Error

(As to 'Cause of Death' 'Identification of the Body of the Victim')

15 *(a) (i) The medical evidence upon which the prosecution purported
to rely in proof of the cause of death, and of the identity of the body
of the alleged victim is of little or no probative value as to those facts,
in that neither did its alleged maker give evidence in court, nor do his
said 'Post Mortem Report' and an alleged 'Forensic Report' (if any)
20 form a part of the Record of Proceedings upon which the Appellant's
conviction is sought to be affirmed.*

25 *(ii) The other evidence adduced by the prosecution in attempted
proof of the cause of death, and of the identity of the victim, is tenuous
and/or speculative.*

30 *(iii) Having regard to the combined/separate premises of (i) and/or
(ii) above, and on the available evidence, the court below was in no
position to confirm either that the person to whom references were
made in court was the very victim alleged to have been killed, or (if
his identity was sufficiently proved), that the Appellant's act directly
'could have caused', or that the Appellant's act 'directly' (or 'substan-
tially) did cause the victim's death, to the exclusion of all other causes.*

35 *(iv) In the absence of the required proof of identity of the victim, and
in absence of proof of death as a result (either direct, or substantial)
of all the appellant's act, the only verdict which the court below could*

safely have entered was one of an acquittal in the Appellant's favour.

(As to "Intent to Kill")

(b) (i). Upon a dispassionate view of the totality of the evidence (i.e. both prosecution and defense) adduced, the inherently implicit finding that the Appellant either "desired", (or alternatively) "had reasonable foresight" either that the death of, (or grievous body harm to), the victim was the likely or probable result of his act (if any) must be the subject of some doubt, and the support given by the court of Appeal to that finding ought therefore to be disturbed

(2) The Court of Appeal erred/misdirected themselves both in law, and on the facts when they held 'inter alia' as follows:

'.....it seems to me that there was ample and strong circumstantial evidence from P.W.1, P.W.3 and P.W.4 from which it could be inferred that it was the Appellant who stabbed the deceased..... and'

'on the whole, it seems clear that the Appellant was rightly convicted(on his confessional statement)....which was amply corroborated by other evidence on record.

Particulars of error/misdirection

(of Law)

(a)(i) The fact that the appellant 'stabbed' the victim, (albeit never in issue), falls far short of comprising proof of the constituent elements of the offence of murder charged, which fact (by the judgment below complained about herein) it seeks/purports to establish

(on the facts)

(b) (i) All the evidence on the printed record upon which the conviction by the trial court is founded is 'circumstantial evidence', and the Court of Appeal ought to have found that the entire evidence is not

of such a cogent, unequivocal and compelling nature as to point irresistibly to the conclusion that the Appellant's act caused death of any person alleged to have been killed.

(3) The court of Appeal erred in law in giving support to the Appellant's conviction by the trial court in so far as it was based (either wholly, or in part) on various confessions/admissions said to have been conceded by him in an extra-judicial statement which he made to the police (as further alleged).

Particulars of Error of Law

(i) During trial, objection was taken to the reception of the said statement in evidence not only on the ground that the Appellant never made it, but on the additional (or alternative) grounds 'inter alia' that it was not made in voluntary circumstances. (If made by him at all).

(ii) The relevant decisions of the trial court (i.e. by its ruling dated 4-3-82, and its judgment dated 1-6-82) made no attempt to address these vital alternative issues, which error is also manifest upon the face of the judgment of the court below

(iii) In the absence of any opinion of the court below on the effect that the failure by the trial court to hold the usual 'trial-within-trial' would have had on the admissibility of the statement, there is justifiable doubt as to the conclusion they may have reached on the point.

(iv) Having regard to the above premises, and as the contents of the said statement constitute the primary reason for the Appellant's conviction, the doubt referred to in (iii) above must be resolved in favour of the Appellant's acquittal.

(4) The Court below erred in law by perpetuating the failure of the trial court to give any consideration whatsoever either to the plea of 'Self-Defense' expressly raised by the Appellant, (this being a complete answer to the offence of murder charged), or to any other defense which may have been available to him, which error has occasioned a grave miscarriage of justice.

Particulars of Error

(i) The plea of 'Self-Defense' was not only expressly raised by the Defendant in his evidence in court, but satisfactorily so raised (having regard to the onus and standard of proof required of him by law).

(ii) The prosecution failed to elicit any evidence (either in cross-examination of the Appellant, or by the evidence of their own witnesses to negative or rebut the Appellant's said evidence in discharge of the legal and evidentiary burden that had clearly shifted to them in law.

(iii) Neither court below considered the issue, by reason of which both courts below abdicated their judicial duty to consider all defenses open to the Appellant, he being a person confronted with a murder charge.

(iv). Neither court below directed itself as to whether the Appellant's said evidence of 'Self-defense', when examined in combination with the other matters raised by him as contained in his extra-judicial statement (if adjudged admissible) constitute circumstances that justify an enquiry into whether the defense of 'provocation' was disclosed.

(v) Had the court below considered the whole evidence on these issues, they may have been convinced of the innocence of the accused or may have been left in doubt as to whether he was acting in self-defense, or may have found an issue of 'provocation' (in the combined circumstances described above).

(vi). By reason of the said omissions of the court below, there is considerable doubt as to what verdict would have been arrived at by both courts below after due enquiry, which doubt must be resolved in favour of the accused.

(5) The decisions of both courts below are unwarranted, unreasonable, and cannot be supported, having regard to the evidence."

Grounds 1 - 4 are, in my humble view, variants of ground 5. Not surprisingly, therefore, learned counsel for the appellant in paragraph 2 of his written Brief wrote as here under:

"2 ONE QUESTION FOR DETERMINATION

2.0 1. Although the Appellant's counsel has sought to accentuate the several areas of his dissatisfaction with the verdict of the court below by filing a 'Notice of Appeal' dated 7th June, 1991 which sets forth 5 separate 'Grounds of Appeal', 4 of which further accommodate numerous particulars, it is humbly submitted that the primary question with which this Honourable Court should be concerned during its determination of this appeal may be formulated as follows:

10 *'Whether or not the prosecution established this Appellant's guilt 'beyond reasonable doubt' at trial (as required by law)'.*

In arguing this only question, learned counsel proceeded to raise various issues of law such as proof of cause of death, inadmissibility of appellant's statement to the police which was tendered and admitted at the trial as an exhibit and consideration of other defenses available to the appellant. As these issues are not the basis of the grounds of appeal, they cannot be argued before this court without leave. These issues were never raised in the court below and the judgment of that court was never addressed to them except in so far as they were relevant to determine the only issue of complaint to the Court of Appeal, that is, the general ground that the judgment of the trial High Court was "unjust, unwarranted and cannot be supported having regard to the evidence of the prosecution witnesses." Even this complaint was abandoned at the Court of Appeal where counsel for the appellant submitted he had nothing to urge in appellant's favour.

With respect to the present learned counsel for the appellant, what he should have done in this court, on his discovering that he needed to raise all the issues of law contained in his Brief, would be to seek leave of this court to raise points not raised the in court below. On obtaining such leave, he would then proceed to formulate grounds of appeal covering them and then properly argue them in his brief after having formulated issues on them. This he did not do. Those issues not arising out of the judgment of the court below are not available to the appellant in this court without leave. They ought, therefore, not to be countenanced. The fact that this is a murder case does not take it out of the rules of court, which rules learned counsel appearing in such cases, must adhere to and comply with.

Notwithstanding what I have said above, I may, perhaps, comment briefly on one or two issues raised in the Appellant's Brief and decided upon by my learned brother in his lead judgment. The first relates to the cause of death. True enough the medical doctor, Dr. Koofreh, who performed a post mortem examination on the corpse of the deceased, was not available at the trial to give evidence; he was reported to be out of Nigeria at the time of the trial. His medical report was. However, tendered and admitted in evidence as Exhibit 1 pursuant to section 42 (1) (a) of the Evidence Act and section 5 (1) of the Criminal Justice (Miscellaneous Provisions) Law No.4 of 1973 of Cross-River State of Nigeria. The admissibility of this document is not being questioned in this appeal. What appellant's counsel contends is that the report does not amount to much in proving cause of death. With profound respect to learned counsel, I do not share his view. Exhibit 1 shows that death was due to shock secondary to hemorrhage. The medical officer had reported in Exhibit 1 that there was a stab wound and that the body and feet were covered with dried blood. There were no abnormalities discovered in the internal organs. In my respectful view, Exhibit 1 sufficiently proves the cause of death of the deceased.

It is not in all cases that there must be medical evidence of cause of death. In the case in hand, there was overwhelming circumstantial evidence from which it could be inferred that the deceased was in a good state of health at the time of the assault on him at the village square. Consequent on his being stabbed, he bled to death. In my respectful view, in the absence of any contrary evidence of any other cause, it is safe to hold that the death of the deceased was caused by the violent and brutal stab wound inflicted on him. This is so because the assault on the deceased was so proximate to his death that one would need a strong contrary evidence of any other cause of death, to hold otherwise. This view has been held in a number of cases - See: Bakuri v. The State (1965) NMLR 163. 164, where the appellant was convicted of the offence of culpable homicide contrary to section 221 (a) Penal Code and sentenced to death. The facts showed that he had killed his father, whose wine he had drunk, when he was still under the influence of drink. It appeared the father reprimanded him for drinking his (father's) wine. The appellant took objection to the reprimand, took out his knife and stabbed his father on

the abdomen. The father died almost instantaneously. On appeal to this Court, Ademola, C.J.N. delivering the judgment of this Court held:

"It was argued before the learned trial Judge that cause of death was not proved. We are in agreement with his views that in cases of this nature where a man was attacked with a lethal weapon and died on the spot, it is hardly necessary to prove the cause of death; it can properly be inferred that the wound inflicted caused death."

See also *Ozo v. The State* (1971) 1 All NLR 111; *Bwashi v. The State* (1972) 6 SC. 93; *Omonuju v. The State* (1976) 11 SC 259, *Lori v. The State* (1980) 8-11 SC. 81; *Adamu v. Kano Native Authority* (1956) SCNLR 65; (1956) 1 FSC 25; *Obogo v. The State* (1972) SC 39; *Essien v. The State* (1984) 3 SC. 14; *Eric Uyo v. Attorney-General Bendel State* (1986) 1 NWLR (Pt.17) 418; (1986) 2 SC. 1, 34. Thus, even if Exhibit 1 was excluded and the medical officer who performed the post-mortem examination on the deceased did not give evidence, there was enough circumstantial evidence to justify the inference that it was the stab wound inflicted on the deceased that caused his death.

On the totality of the evidence before the trial court, it is, in my respectful view, safe to conclude that it was the appellant who inflicted the stab wound on the deceased. As shown by the forensic laboratory's report, Exhibit 2, there were human blood stains on the knife, Exhibit 3B, recovered from the appellant at the scene of the assault on the deceased. Indeed on the evidence of witnesses for the prosecution, when the knife was taken from the appellant it was dripping in blood. I am satisfied that on the evidence of the 1st, 3rd and 4th prosecution witnesses it was rightly held that the appellant was the person who inflicted the stab wound on Dickson Ojah on the fateful day.

The second issue deals with the admissibility of appellant's confessional statement made to the police. When the investigating police officer, Maxwell Okafor (Sgt. No. 1543) first gave evidence, he tendered the statement for identification and was so admitted and marked "ID2". When he testified a second time, following the inability of the prosecution to call Mr. G.V. Enwere, ASP (the superior police officer who endorsed the appellant's statement) to testify at the

trial because he had been dismissed from the Police Force and his whereabouts were unknown, he sought to tender the appellant's alleged confessional statement in evidence. Dr. Eyo, learned counsel for the appellant at the trial, objected to the admissibility of the statement on the grounds:

"Firstly the statement was not made by the accused person. Secondly, even if it were, it was not voluntary. Thirdly as a confessional statement the necessary elements to satisfy it as such have not been established. There is no explanation to show that the Superior Police Officer to confirm the statement in court. There is nothing to show that the statement had been confirmed by a superior police officer." 5 10

Without calling on learned counsel for the prosecution to reply, the learned trial Judge ruled:

"The objection is overruled for the reason given by the prosecution that the Senior Police Officer could not be traced since he was dismissed from the force, and the accused statement which was marked ID.2 is now admitted in evidence and marked Exhibit 4" 15

As learned counsel for the appellant, Mr. Aluko, has rightly observed in his Brief, the objection to the admissibility of appellant's statement to the police was based on two grounds, that is to say: 20

1. That appellant did not make it; and
2. That if it was made by him, he did not make it voluntarily. Learned counsel submitted that the admission in evidence of the said statement without "a trial within trial" violated the established practice and that the statement was, therefore wrongly admitted. 25

Was Exhibit 4 rightly admitted? It is a well established practice of the courts laid down in a long line of cases that where an objection is taken to the admissibility of an accused person's confessional statement made extra judicially on the ground that it was never made by the accused, the statement is nonetheless admitted in evidence at the stage it is tendered and the question whether he made it or not is a matter to be decided by the learned trial Judge at the conclusion of the trial - See *Queen v. Igwe* (1960) 5 FSC 55; (1960) SCNLR 158; *Ikpasa v. Attorney-General, Bendel State* (1981) 9 S.C. 7; where Sir Udoma, delivering the lead judgment of this court said at page 28 of the Report: 30 35

"My lords, it is a well established practice in this country that whereon the production of a confession it is challenged on the ground that an accused person did not make it at all, the question of whether he made it or not is a matter to be decided at the conclusion of the trial by the learned trial Judge himself. Whatever objection may be made
 5 by counsel in such circumstances does not affect the admissibility of the statement and therefore it should be admitted in evidence as the issue of voluntariness or otherwise of the statement does not arise for consideration and decision. See *Queen v. Igwe* (1960) 5 FSC 55; (1960) SCNLR 158"

10 Where the objection to admissibility is based on the ground that the statement was not made voluntarily, there has to be a "trial within trial" to determine the question of voluntariness and it is only where this is proved by the prosecution beyond reasonable doubt
 15 that the statement is admitted in evidence. Otherwise, it must be rejected - See: *Uche Obidiozo v. The State* (1987) 4 NWLR (Pt.67) 748, 761; *R. v. Kassi* 5 WACA 154; *Queen v. Igwe* (supra); *Gbadamosi & Anor. The State* (1992) 9 NWLR (Pt.266) 465.

20 In *Ikpassa v. Attorney-General, Bendel State* (supra), Sir Udoma drew a distinction between the two grounds when at pages 28-29, he said:

"In this country where criminal trials are usually held by a Judge sitting alone without a jury, a distinction is usually drawn as regards
 25 practice and procedure in relation to the admissibility of a confession in evidence of trial proceedings between a confession objected to on the ground that it was not made at all by an accused person, in which case such a confession may be said to have been retracted; and a confession objected to on the ground that it was not voluntary in that
 30 although an accused person agreed to have made the confession, his complaint would be that he was forced or induced to make it.

 In the latter case, what is attacked is the admissibility in evidence of the confession and therefore a trial within a trial must be held, the confession having been challenged on voir dire so as to
 35 determine whether or not the confession was voluntary. If at the end of such trial, the court comes to the conclusion that the confession was not voluntary, then it is not admissible in evidence, and the court should so rule.

In the former case, where the confession is wholly retracted, the question as to whether or not the confession is admissible in evidence does not arise for decision at all. The trial Judge is entitled to admit the confession in evidence as something which had occurred in the course of the investigation conducted by the Police into the case; and thereafter to decide or find a matter of fact at the conclusion of the case as to whether or not, in all the circumstances, the accused person did make the statement as alleged by the Police."

What had happened in this case? The defense took the rather unusual course of impugning the appellant's statement to the police on the two grounds discussed above. The learned trial Judge did not conduct a trial within trial before admitting the statement in evidence as he was expected to do where the issue of voluntariness was being challenged. I think the learned trial Judge should have taken the precaution of adopting that procedure. As he failed to do this, and as the admissibility of the statement was objected to on the ground of its not having been made voluntarily. I must hold that the statement was wrongly admitted in evidence and should be expunged from the record - See: Gbadamosi & Anor v. The State (supra). I am not unaware that in his evidence at the trial, the appellant did not testify to the fact that he was forced or otherwise into making Exhibit 4. But that is not the stage for him to raise the issue of voluntariness. Having raised it at the appropriate stage and the learned trial Judge not having taken the steps he ought to take at that stage the failure to now raise it in his evidence cannot be held against the appellant. His denial, in his evidence, of making it falls in line with the procedure enunciated in Queen V. Igwe (supra) and other similar cases.

The wrongful admission of Exhibit 4 is not enough to warrant setting aside the decision of the courts below if there was enough other evidence to sustain the verdict of guilty entered in this case. From the conclusion I have earlier reached that it was the appellant who stabbed the deceased and which resulted in the latter's death. I must conclude that he was rightly convicted. A man is presumed to intend the natural consequences of his act. By stabbing the deceased, he must have intended to kill him or to cause him grievous bodily harm. And whichever the intention he would be guilty of murder as charged.

On the only ground of appeal - the general ground - that is available to the appellant in this appeal, I am satisfied that the court below after a thorough and painstaking review of the evidence led at the trial, came to the right decision when it dismissed appellant's appeal to it. I too dismiss the further appeal to this court as completely
5 devoid of any merit. I affirm the judgment of the court below.

10

15

20

25

30

35