

**SUPREME COURT OF NIGERIA**  
3RD JUNE, 1994. SC. 212/1993  
**CORAM:- M. L. UWAIS, O. OLATAWURA, E. O.**  
**OGWUEGBU, S. U. ONU, Y. O. ADIO, JJSC.**

MUSA UMARU KASA ..... APPELLANT

V.

THE STATE ..... RESPONDENT

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**CRIMINAL PROCEDURE** - *Statement of accused - Admitted in evidence - Where accused did not testify and the statement is not confessional - Whether the contents can be treated as proved.*

**CULPABLE HOMICIDE** - *Conviction of the two accused persons - Acquittal of 2nd accused by the Court of Appeal - Appellant's conviction based on his confessional statements and available circumstantial evidence - Whether sustainable,*

**EVIDENCE** - *Confessional statements - SS. 6 and 7 of the Evidence Act - Appellant's statements in Exhibits B1 and C1 - Whether they are confessional.*

**EVIDENCE** - *Corroboration - Threat to kill the deceased - Held to be a corroboration to some extent of Appellant's confessional statements.*

**EVIDENCE** - *Statement of an accused Exh. A1 - Though not confessional under s. 27 of the Evidence Act - Deemed admissible on grounds of relevancy - Contents thereof cannot be considered to be true - Without accused giving evidence to that effect*

**EVIDENCE** - *Blood stained clothe Exh. H - Where there was no forensic report to confirm that the blood was that of the deceased - Whether the exhibit proved anything that will be considered corroborative.*

**FACTS**

The Appellant together with another accused person were charged with culpable homicide punishable with death before the High Court of Sokoto State sitting at Gusau. They murdered one Hajiya Arita, a food seller. P.W. 1,

mother of the deceased, found her lying dead on her back and exclaimed that the Appellant had fulfilled his threat to kill the deceased. The Police arrested the Appellant who volunteered statements on three separate occasions, Exhibits A1, B1, and C1. The second accused volunteered only one statement. The investigating police officer collected blood stained materials from the two accused persons' houses and the house of the deceased, but no blood test was conducted. Counsel rested defence case on that of the prosecution.

The trial court found the accused persons guilty as charged on circumstantial evidence and confessional statement of the Appellant. On appeal to the Court of Appeal, 2nd accused was acquitted and discharged as that court found that the circumstantial evidence against him was unsatisfactory. Appellant was found to have been rightly convicted on his confession and his appeal was dismissed. The Appellant has further appealed to the Supreme Court to determine whether the extra judicial statements exhibits A1-C1 upon which the Appellant's conviction was based can be regarded as confessional in nature. And whether it is proper to employ the same discredited evidence in convicting the Appellant whereas 2nd accused was acquitted.

**HELD** (Unanimously dismissing the appeal)

1. Applying the provisions of sections 6 and 27 of the Evidence Act, there is no difficulty in coming to the conclusion rightly reached by the Court of Appeal, that the Appellant's statements in Exhibits B1 and C1 are confessional statements since they suggest by implication, that the Appellant took part in the crime committed. (P. 97 L 26)
2. The statements in Exhibits B1 and C1 have been corroborated to some extent by the evidence of P.W. 1 who said that the Appellant had at one time threatened that he would kill the deceased and the fact that the deceased had been murdered on the night referred to in the statements (P. 98 L 3)
3. Exhibit A1 falls under the category of a statement made by an accused person which though not confessional under s.27 of the Evidence Act is nonetheless admissible on grounds of relevancy. Though Exhibit A1 is admissible in evidence its contents cannot be considered by court to be taken in the absence of the accused giving evidence to prove the contents. (P. 98 L 23)
4. Although Exhibit A1 was admitted without any challenge to its voluntariness, the Appellant did not testify having rested his case on that of the prosecution. Therefore, that statement (Exh. A1) not being a confessional statement, its

contents cannot be treated as proved. (P. 99 L 32)

5. The discovery of Exhibit H in the Appellant's house has not proved anything that can be considered as corroborative evidence in the absence of a forensic report which confirms that the stain on the shirt (Exh. H) was human blood and that it was the deceased person's blood that stained the shirt. The investigation in that regard had not been conducted by the Police to its logical conclusion. Therefore, the Court of Appeal misdirected itself in holding that Exhibit H could corroborate the Appellant's confessional statements. However, this is neither here nor there since there are other pieces of material evidence that corroborate the confession. (P. 100 L 14)

## **NOTABLE POINTS OF INTEREST**

### **UWAIS JSC**

#### ***Hearsay is inadmissible at common law***

1. At common law, it is a fundamental rule of evidence that hearsay evidence is inadmissible. (See also section 77 of the Evidence Act, Cap 112). Former statements of any person whether or not he is a witness in the proceedings, may not be given in evidence if the purpose is to tender the statements as evidence of the truth of the matters asserted in them. (P. 96 L 37)

#### ***Admissibility of a confession - Exception to the hearsay rule***

2. However, there are exceptions to the rule in criminal proceedings, which are both statutory and at common law. Section 27(2) of the Evidence Act, Cap.112 constitutes one of such statutory exceptions since it renders a confession relevant against the maker and thereby makes it admissible in the proceedings. It follows, therefore, that once an accused person makes a statement under caution saying or admitting that he committed the offence with which he is charged or creating the impression that he committed the offence charged, the statement becomes confessional. And being confessional, it becomes relevant to the proceedings by virtue of section 27 subsection (2) of the Evidence Act. (p. L .(P. 97 L 4)

#### ***Conviction may not be based on every confessional statement***

3. It is not, however, every confessional statement which has been admitted in evidence that can be relied upon by the court to convict the maker of the statement. There are occasions when no eye-witnesses are available to prove

a case. The only evidence available may well be the confessional statement of the accused person. In such instance, it becomes desirable for the court to be very cautious in convicting the accused of the offence charged merely on his confession. Hence the desirability to have, outside the confession, some material evidence, be it slight, of circumstances which make it probable that the confession is true. (P. 97 L 31)

### **ADIO JSC**

#### ***When prosecution evidence against accused persons are not interwoven***

4. The law is that where two or more persons are charged with the same offence and the evidence led by the prosecution against all of them was interwoven, if one of them is discharged and acquitted then the other or others must be discharged and acquitted. In this case, the evidence led by the prosecution against the appellant and the 2nd accused was not interwoven. (P. (P. 101 L 18)

#### ***Allegations against co-accused***

5. Though the appellant alleged certain things against the 2nd accused in some of the statements made by him, the allegations could not constitute evidence against the 2nd accused because allegations in a statement made by one accused against a co-accused will not constitute evidence against the co-accused unless the co-accused has adopted the statement by words or conduct. (P. 101 L 34)

#### ***Confirmation of confessional statement before superior Police Officer***

6. If, on the other hand, the statement contains a confession by the accused that he was the one who committed the crime, the fact that the accused is not taken before a superior Police Officer, to confirm that he made the statement and that it is voluntary will not let the statement cease to be a confessional statement. Indeed, confirmation before a superior Police Officer may be dispensed with and a confessional statement may be accepted without it being confirmed before a superior Police Officer if there is no suspicion. (P. 102 L 21)

#### ***Reliance on contents of non-confessional statement***

7. Further, if it is found that a statement has been wrongly admitted as a confessional statement, it can, if it has no other defect, be admitted as an ordinary statement and its contents relied upon to sustain a conviction. (P. (P. 102 L 29)

**No appeal against a finding - Implications**

8. The learned trial Judge made a specific finding that the appellant was not forced to the scene of the incident. The finding subsists as the appellant did not appeal against it to the court below or to this court. A finding of fact not  
 5 appealed against stands admitted and undisputed. (P. 103 L

**REPRESENTATION:**

J.B. Daudu with C. Nwonu and F. Daudu (Mrs) for the Appellant.  
 A.K. Umar (Mrs) Solicitor General Kebbi State, for the Respondent.

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**CASES REFERRED TO**

- R.v. Sykes 8 Cr. App. R. 233 at pp. 236-239
- Kanu v. The King 14 WACA 30
- Dawa v. State (1980)2 NCR 38 at p.50
- 15 Ikemson v. The State (1989)3 N.W.L.R. (Part 110) 455 at p. 480
- Gbadamosi v. State (1992) 9 N.W.L.R. (Part 266) 46 at p. 40
- Subramaniam v. Public Prosecutor (1956) 1 W.L.R. 965 at p. 969
- R. v. Mclean (1968) 52 Cr. App. R.80
- Ozaki v. State (1990) 1 N.W.L.R. (Part 124) 92 at p. 113
- 20 R. v. Willis (1960) 1 W.L.R. 55 at p. 58
- Mawaz Khan & Anor v. R. (1967) 1 All E.R. 80 at p. 81
- R. v. Chapman (1969) 2 W.L.R. 1004
- Sanusi v. State (1984)10 S.C. 166
- Adelumola v. State (1988) 1 NWLR (Part 73) 683 at p. 693
- 25 Onah v. The State (1985) 3 N.W.L.R. (Part 12) 236 at p. 242
- Ishola v. State (1969) N.M.L.R. 259
- Akinfe v. State (1988) 3 N.W.L.R. (Part 85) 729 at p. 745
- R. v. Awip (1957) 2 F.S.C. 24
- R. v. Nwigboke (1959) 4 F.S.C. 101
- 30 Adejumo v. Ayantegbe (1989) 3 N.W.L.R. (Pt. 110) 417

**STATUTES & RULES REFERRED TO**

- Penal Code ss. 221, 79, 80
- 35 Evidence Act Cap 112 Laws of the Federation of Nigeria 1990 ss. 27, 6
- Criminal Procedure (Statement to Police Officers) Rules,
- Cap 30 Laws Northern Nigeria, 1963. 3 & 4

**LEAD JUDGMENT BY UWAIJSJC**

On July 23rd, 1987 the appellant together with another accused person were convicted of culpable homicide punishable with death by the High Court of Sokoto State sitting at Gausau (Abikpo, J.) The charge against them reads as follows:-

*“That you Umaru Musa Kasa (sic) and you Babangida Gimba alias Jariri Kura on 27/11/86 at about 0430 hours at Mahuta in Zuru Local Government within the Gusau Judicial Division did commit culpable homicide punishable with death in that you together with two other persons now at large, caused the death of one Hajiya Arita by beating her with lethal weapons with the intention of killing her and thereby committed an offence punishable under section 221 of the Penal Code.”*

The facts of the case, which are not in dispute, may be stated as follows: The deceased - Hajiya Arita, was a food seller by occupation. Her mother (P.W.1) used to go to the deceased's house every morning to assist the deceased in selling food. When P.W.1 went to the house of the deceased at about 7.30 a.m. in the morning of the day in question, she found the door leading to the house, which consisted of a parlour and a bedroom, opened. The curtain on the door to the bedroom was hanging. She entered the parlour and moved the curtain. She saw blood all over the bedroom while the deceased was lying dead on her back. P.W.1 then exclaimed that the 1st accused had fulfilled his threat to kill the deceased. She invited a man called Mamman (P.W.2) to come to the house to see what had happened. This he did. Soon after P.W.2 proceeded to the house of the Village Head of Mahuta to report of the incident to the Village Head (P.W.3). The Village Head went to the house of the deceased and saw her corpse. He sent P.W.2 to the Nigeria Police Station at Mahuta to lodge a complaint. Three policemen went to the house of the deceased and saw her body. A report was sent to Zuru Divisional Crime Branch by the policemen. As a result Cpt. Joseph Urogbo (P.W.7) was instructed to investigate the case. P.W.7 went to Mahuta in a landrover. He collected the corpse of the deceased and took it to the General Hospital at Zuru for post-mortem examination.

In the course of investigation P.W.7 arrested the appellant and the 2nd accused on information received. The appellant volunteered statements to the police on three separate occasions. The statements were taken down in writing and were put in evidence at the trial as Exhibits A1, B1 and C1. The 2nd accused volunteered only one statement.

Two days later after the arrest of the accused persons and taking them to Zuru. P.W.7 returned to Mahuta on 29/11/86 to continue with his investigation. He visited the house of the appellant where he found a shirt that was  
5 allegedly blood stained - (Exhibit H).

He collected the shirt together with a pair of shorts. He next went to the house of the deceased where he saw a pillow case that was stained with blood. He tore a piece, with blood stain on, from the pillow case (Exhibit J).

P.W.7 also went to Tungan Gomo where the 2nd accused person  
10 lived. He searched the house of the 2nd accused person and found a pair of trousers hidden under a bundle of guinea corn stalks (Exhibit F). The trousers were allegedly blood stained.

At the conclusion of the prosecution case, counsel for the appellant and the 2nd accused at the trial, indicated that they would not testify nor call  
15 any witness. The counsel rested the defence case on the case for the prosecution.

In a considered judgment, the learned trial Judge made the following remarks:-

*"Because I am going to hold that the circumstantial evidence in  
20 this case point to the guilt of the 1st accused and 2nd accused, I am holding further that the two accused persons in concept (sic concert) with two (others) at large murdered the deceased (in) the presence of the 1st accused whether it was he who was striking the deadly blow on the deceased or merely a bystander gave the 2nd accused and the two some (sic) at large the  
25 encouragement to go ahead and kill and rob the deceased. In his 2nd additional statement, which the 1st accused admitted is a confessional statement, he admitted receiving two bundles of cloth as his share of the booty ..... In the instant case, I see evidence against the two accused persons both direct and circumstantial. I find some evidence too, in the main circumstantial, coming from the statements of the 1st  
30 accused against the two persons at large. And I find no evidence against anyone else outside those four persons especially (sic) the two accused persons before me....."*

*I agree with learned defence counsel that none of the eight prosecution witnesses in this case was any eye witness. But the 1st accused  
35 admitted in his three statements being present at the scene and although his confessional statement in law can rebound (sic rebound) like boomerang (sic) against himself alone. The circumstantial evidence against (sic him) by his aunt 1st prosecution witness and the circumstantial evidence against*

the 2nd accused from at least the 4th, 5th and 7th prosecution witnesses are overwhelming.” (parenthesis are mine).

With regard to the Exhibits which P.W.7 said he recovered from the houses of the appellant and the 2nd accused person and that they contained 5 blood stains, the learned trial Judge stated thus:-

“The P.W.7 the I.P.O. stated before me that he recovered shirt and drawers (shorts) from the house of the 1st accused and that the two wearing materials were stained with blood. The 1st accused agreed that the clothes belong to him and when asked about the existence of the blood stain on the cloths (sic) by the 7th P.W. the 1st accused would not or could not explain it. 10 And in the house of the 2nd accused the 7th P.W. stated here that he recovered a pair of trousers torn at the bottom line and that pair of trousers Exhibit F have some blood stain on it (sic). And when the 7th P.W. questioned the 2nd accused how the blood stain got to the trousers he could not 15 explain it. Exhibits shirt (sic) shirt trousers and piece of cloth cut off from the pillow of the deceased are stains of human blood and when the accused persons would not explain the existence of blood stain on their wearing materials to the I.P.O. during investigation and when the defence would not raise a hand of protest against the ownership of the blood stained wearing 20 materials in this court before the said materials were admitted into evidence as Exhibits. I do not require any scientist to substantiate before me that those stains are blood stain and that they are human blood. (italicising and parenthesis mine).

The learned trial Judge convicted the appellant and the 2nd accused 25 person as charged and sentenced them to death. They appealed from the decision to the Court of Appeal.

The lower court found that there was no satisfactory evidence that the blood stains on the trousers of the 2nd accused had been scientifically proved to be human blood; and no reason was given for the failure of the prosecution to examine the so called blood scientifically. It, therefore, came to 30 the conclusion that the circumstantial evidence against the 2nd accused was unsatisfactory. Consequently, it set aside his conviction and he was acquitted and discharged. The appellant on the other hand, was found by the Court to have been rightly convicted by the trial court on his confession. His appeal 35 was dismissed and the conviction and sentence confirmed. Hence his appeal to this Court.

Two issues have been propounded in the appellant’s brief of argu-



ment for our determination. They read as follows:-

“1. Whether the extra-judicial statements Exhibits A1-C1 upon which the appellants conviction and its affirmation were based by the High Court and Court of Appeal can be regarded as confessional in nature in the light  
5 of Section 27 of the Evidence Act and if answered negatively, whether the appellants conviction based as it were on these statements could possibly stand, in the fact of clear omission and or inadvertence to ensure that the necessary legal safeguards were applied to the said statement.

2. Whether it is proper in law to employ the same discredited evidence (in this instance, weak circumstantial evidence of blood stained shirts)  
10 upon which the acquittal of the 2nd appellant in the Court of Appeal was based, to affirm in another breath, the conviction of the appellant herein. by using that discredited piece of evidence as corroboration for the purported confessional statements?”

15 The respondent’s brief of argument also contains two issues for determination.

They read:-

“1. Whether Exhibits B1 and C1 are confessional statements sufficient to justify conviction of the appellant/accused of the offence of culpable  
20 homicide punishable with death.

2. Whether Exhibit ‘H’ (blood stained shirt) was an independent piece of evidence to corroborate Exhibit B1 and C1 in the circumstances of this case. “

The argument in the appellant’s brief in respect of his issue No.1 as  
25 well as the oral submission of Mr. audu, learned counsel for the appellant, are to the effect that of the three statements (Exhibits A1, B1 and C1) made by the appellant to the Police only Exhibit B1 was considered by the Police to be confessional statement because it was only in respect of that statement that the appellant was taken to a Superior Police Officer for the statement to be  
30 endorsed by the Superior Police Officer. That since the learned trial Judge concluded as follows:-

“In effect the 1st accused admitted the offence especially the 3rd statement which the prosecution say is a confessional one in the sense that it is in the statement Exhibit C and C1 that he admitted receiving his own  
35 share of the property of his aunt that they robbed.”

The appellant complained before the Court of Appeal that by the tests laid down by R. v. Sykes 8 Cr. App R 233 at Pp. 236-239 and Kanu v. The King (1952) 14 WACA 30, none of the statements made by the appellant (Exhibits A1, B1 and C1) could be considered to be confessional statement

under section 27 of the Evidence Act. Learned counsel said that his submission to that effect was not satisfactorily considered by the Court of Appeal (Achike, Oduwole and Mahmud. J.J .CA.) which instead attached more weight to the voluntariness of the statements, which was not the issue. He argued that all the 3 statements do not qualify as confessional statements as they are more in consonance with denials than admissions. He canvassed that apart from the sharing of the deceased's property, no inference can be made from the statements that the appellant had confessed to the commission of the offence charged. In the appellant's brief an exercise has been carried out in order to show that none of the 3 statements made by the appellant stands the tests laid down by *R v. Skyes* (supra), *Kanu v. King* (supra) and *Dawa v. State* (1980) 8-11 SC 236 (1980) 2 NCR 38 at p. 50 for a statement to be considered as confessional.

When the Court called the attention of learned counsel for the appellant to the Provisions of sections 79 and 80 of the Penal Code, he submitted that the appellant is not liable for the joint acts of the persons he mentioned in his statement (Exhibit C1) because there was no evidence that they went to the scene of the crime with common intention. He argued that the appellant had no knowledge that the deceased would be killed. He submitted that section 79 envisages that there has to be common intention or knowledge before the appellant can be considered to have been implicated.

In reply, it is submitted, in the respondent's brief of argument, that the lower courts were right in considering Exhibits B1 and C1 as Confessional statements in accordance with the provisions of section 27 of the Evidence Act. Cap. 112 of the Laws of the Federation of Nigeria 1000. Mrs. Umar, learned Solicitor-General, for the respondent argued that the Exhibits not only supplied details as to who killed the deceased and where she was killed but also why she was killed and what part of the booty was given to the appellant. She said that Exhibit A1 is a statement on how the crime in question was hatched; Exhibit B1 shows that the appellant and others went to the scene of the crime where the intention contained in Exhibit A1 was accomplished and Exhibit C1 shows that after the commission of the crime the property of the deceased was looted and shared by the culprits as booty. It also shows what the appellant did with his share of the booty. She submitted that the appellant was guilty of the offence charged since he was present at the scene of the crime and had been shown to have common intention with other perpetrators of the crime. She cited in support of the submission the case of *Ikemson v. State* (1989) 3 NWLR (Pt.110) 455 at p. 480 and sections 79 and 80 of the Penal Code. Learned Solicitor-General canvassed further that even if Exhibits A1, B1 and C1 are not confessional in nature, they can be acted upon as ordinary statements bind-

ing on the appellant in order to establish his guilt. She relied on the case of Gbadamosi v. State (1992) 9 NWLR (Pt.266) 465 at pg.480 to buttress the submission.

5 In considering whether the statements made by the appellant were confessional in nature, the Court of Appeal (Per Achike. J.C.A.) stated as follows:-

“There is no gainsaying the fact that the learned trial Judge admitted Exhibits B1 and C1 as confessional statements, ex-facie, there is no doubt Exhibits B1 and C1 contain assertion in their showing that 1st appellant, in concert with others, participated in the offence of murder of the deceased. They are, therefore, ex-facie confessional statements. It is in evidence that 1st appellant was taken along with Exhibit C1 (sic) to a superior police officer for endorsement of Exhibit C1 after it had been read over to the 1st appellant. It may be further noted that Exhibits B1 and C1 were admitted 15 without opposition.”

I think it is pertinent at this stage to reproduce Exhibits A1, B1 and C1 unedited I will do so by omitting the words of caution which had been administered by the police in respect of each statement in accordance with the provisions of Rules 3 and 4 of the Schedule to The Criminal Procedure (State- 20 ment to Police Officers) Rules Cap. 30 of the Laws of Northern Nigeria, 1963 which is applicable to this case. Exhibit A1 reads thus:-

“On Monday 24/11/86 at about 1800hrs. Hajiya Arita was fighting with Jariri Kura because Jariri Kura said that Hajiya Arita calling him a thief. I then went to the place and when I came there. I told them to stop 25 fighting. Jariri then told me why I am telling him to stop fighting when Hajiya is calling him a thief, then I went on my own way. On Monday 24/11/86 at about 2000 hrs Jariri met me at Harlot quarters. Then Jariri called on me to come and when I came to him he told me that unless he killed Hajiya Arita. I told him that what he is doing is not good. As I was about to go, then 30 Jariri asked me if I have money and I told him that I have no money and he told me to come let him buy me some drink and I told him that I do not drink. I then went on my own way when I went to my house, on Tuesday 25/11/86 at about 1400 hrs Jariri saw me inside Mahuta market and he greeted me and I answered him and I left. On Thursday, 27/11/86 at about 0400 hrs Jariri 35 then came, he followed through the road near our house, then dogs started barking and followed him it was then Jariri said let him kill the dogs and by the time I was in my house and I was hearing what he was saying by then. Later in the morning at about 08800 hrs of that Thursday then Chiabo told

me that Hajiya Arita has been killed. On Friday, 28/11/86 at about 1000 hrs I was inside Mahuta market when the Junior brother of Hajiya Arita came to me and they called me to come, then I came to them. it was then they got hold of me saying that I am the one who will mention the people who killed Hajiya Arita if I suffered. When they got hold of me they brought me to the Police State of Mahuta by the time I was arrested, I then said that they should go and arrest Jariri Kura because I heard when he said that he will kill Hajiya Arita. When Jariri Kura was arrested he told me that I am very lucky otherwise he would kill me. That is all”

Exhibit B1 states as follows:

On Thursday 27/11/86 at about 0300 hrs Jariri and two others whom I did not know their names because they called me to come and we go. I then asked them where are we going then Jariri said I should just come out we go. I told them that I am not coming out, then Jariri told me that a knife and I told them okay let us go when I came out I followed them when we came to house of Hajiya Arita, Jariri Kura then climbed over the wall of the house of Hajiya Arita when he entered inside the compound he opened the door of the parlour, Jariri told one of the strangers he called Boroboro to place me at the front we entered inside the house of Hajiya Arita when we entered inside the parlour. I told them that I will not enter inside the room Jariri told one of the strangers to guard me with the knife then Jariri Kura and Boroboro whom I did not know entered inside the room of Hajiya Arita with knives in their hands when they entered inside Hajiya Arita's room they started beating her when they have finished with Hajiya Arita they came out of the room. when they came out they told me that if they hear anything from any person, they will kill me I told them that I will not tell anybody then they left and I went to my house and slept. On that same morning of Thursday 27/11/86 at about 0730 hours it was discovered that Hajiya Arita have been killed. I did not do anything but I kept silent though I did not beat Hajiya Arita, yet I was there and I know everything. That is all.”

And Exhibit C1 reads:-

“On Thursday, 27/11/86 at about 0300hrs, Jariri Kura and two person came to me in my house when they met in my house, they told me that I should come in that we should get some property? They told me one person's house and I asked them which or whose house? Jariri told me that I should come out and let us go. I told them that I am not going anywhere. They told

me that if I did not come out, they will kill me. It was then I came out and followed them we followed the road going when we came to the house of Hajiya Arita and then we went to the house of Hajiya Arita. Then Jariri Kura  
5 climbed over the wall used in fencing Hajiya Arita 's house. When he entered inside the compound, then Jariri opened the door of the parlour of Hajiya Arita house, and we entered inside the parlour of Hajiya Arita house, and we entered inside the parlour. As we were in the parlour, I told them that I will not enter inside Hajiya Arita's room. Then Jariri told one person to wait and  
10 guard me to prevent me from running away and revealing their secret.

Jariri and one person then entered inside the room of Hajiya Arita, then they killed her with knife. When they had killed her, they packed her property. When they have packed her property, they gave me two bundles of  
15 cloths inside the property that they have packed when they have given me two bundles of cloth, Jariri told me not to tell anybody. Among the two persons whom I did not know, one of them said to me that if I tell anybody, I am the one to be arrested. I then said that I will not inform anybody in the morning I wanted to talk but I am afraid, so the two bundles of clothes that  
20 I was given, I went and hid them on that same Thursday in the evening I brought the two bundles of the clothes to Zuru and gave them to one Dan Mallam and he gave me the sum of 27.00k and I told him to keep them for me till I come back I then entered a vehicle and returned to Mahuta on Friday 28/11/86 at about 1000 hrs at Mahuta I was arrested and brought to Mahuta  
25 Police post I was then told that I am the one who killed Hajiya Arita, and I said that I am not the one who killed her and I was asked to tell those I knew that killed her. I told them that only one person among those who killed her and they asked me who is he and I told them that Jariri Kuta only I knew among them. It was then they left to Tunga Gomo and got Jariri Kura ar-  
30 rested. Jariri Kura know the other two persons I did not know them but if I see them I can identify them this Boroboro at Mahuta this Boroboro Alhaji Danjuma was not with us by the time Hajiya was killed the shirt with stains of blood found in my room is my own. That is all."

35      Now before considering whether these statements are confessional and therefore admissible, it is necessary to advert to the relevant principle of evidence law which applies to the admission of a statement in general.

At common law, it is a fundamental rule of evidence that hearsay evidence is inadmissible. (See also section 77 of the Evidence Act, Cap. 112).

Former statements of any person whether or not he is a witness in the proceedings, may not be given in evidence if the purpose is to tender the statement as evidence of the truth of the matters asserted in them - see the Privy Council decision in *Subramaniam v. Public Prosecutor* (1956) 1 WLR 965 at p. 969 and *R. v. Mclean* (1968) 52 Cr. App. R. 80. However, there are exceptions to the rule in criminal proceedings, which are both statutory and at common law. Section 27(2) of the Evidence Act Cap. 112 constitutes one of such statutory exceptions since it renders a confession relevant against the maker and thereby make it admissible in the proceedings. 5

Confession has been defined by section 27 subsection (1) of the Evidence Act to be as follows:- 10

*“(1) A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.”*

It follows, therefore that once an accused makes a statement under caution saying or admitting that he committed the offence with which he is charged or creating the impression that he committed the offence charged, the statement becomes confessional. And being confessional, it becomes relevant to the proceedings by virtue of section 27 subsection (2) of the Evidence Act, which provides:- 15 20

*“(2) Confessions, if voluntary, are deemed to be relevant facts as against the persons who makes them only.”*

By section 6 of the Evidence Act Cap. 112-

*“6. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant: and of no others”* 25

Applying the above provisions of section 6 and 27 of the Evidence Act. Cap. 112. I have no difficulty in coming to the conclusion, which the Court of Appeal rightly reached that the statements made by the appellant in Exhibits B1 and C1 are confessional statements since they suggest, by implication, that the appellant took part in the crime committed. 30

It is not, however, every confessional statement which has been admitted in evidence that can be relied upon by the court to convict the maker of the statement. There are occasions when no eye-witnesses are available to prove a case. The only evidence available may well be the confessional statement of the accused person. In such instance, it becomes desirable for the court to be very cautious in convicting the accused of the offence charged merely on his confession. Hence the desirability to have, outside the confession. some material evidence, be it slight, of circumstances which make it 35

probable that the confession is true. This is the reason for laying down the test in *R v. Skyes* (supra) which was followed in *Kanu v. King* (supra) by the West African Court of Appeal and in *Dawa's case* (supra) by this Court.

There is, no doubt that the statements in Exhibits B1 and C1 have  
 5 been corroborated to some extent by the evidence of P.W.1 who said that the appellant had at one time threatened that he would kill the deceased and the fact that the deceased had been murdered on the night referred to in the statements. The appellant had said, in his defence, in both Exhibits B1 and C1 that he accompanied the others under a threat of death. It is a matter of fact  
 10 whether to believe him. Both lower courts did not believe that he acted in concert with the other persons under such fear. There is, indeed, reason for them not to believe the allegation because the appellant willingly shared in the booty of the crime and made effort to conceal and dispose of the loot.

By section 79 of the Penal Code:-

15 *"When a criminal act is done by several persons in furtherance of the common intention of all. each of such persons is liable for that act in the same manner as if it were done by him alone."*

It is clear from Exhibit C1 that when the appellant together with the 2nd accused and the two others at large left the house of the appellant at 3.00  
 20 am on 27/11/86 they did so with the intention of going to commit theft or robbery and possibly with the use of force. They went to the house of the deceased and she was killed in furtherance of their common intention to deprive her of her property.

I think, it is apposite to add that a statement made by an accused  
 25 person, which is not confessional in accordance with the provisions of section 27 of the Evidence Act, is nonetheless admissible on grounds of relevancy. Exhibit A1 falls under this category. Even though admissible in evidence, its contents cannot be considered by court to be true in the absence of the accused person giving evidence to prove the contents - See *Ozaki v. State* (1990)1 NWLR (Pt.124) 92 at p. 113. In other words, there is a distinction  
 30 between tendering the statement as proof of the fact that it was made and tendering the statement as proof of the truth of its contents. This distinction was clearly stated in the Privy Council decision in *Subramaia v. Public Prosecutor* (1956) 1 WLR 965 at p. 970 where Lord Parker. CJ stated as follows:-

35 *"In ruling out peremptorily the evidence of conversation between the terrorists and the appellant the trial Judge was in error. Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the*

*statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The fact that the statement was made quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made.”* 5

See also R v. Willis (1960) 1 WLR 55 at p. 58; Mawaz Khan & Anor v. R (1967) 1 All ER 80 at p.81; R. v. Chapman (1969) 2 WLR 1004 and Sanusi v. State (1984) 10 S.C. 166 where this court followed the decision in Subramanian’s case (supra). Oputa J.S.C. stated as follows on p. 198 thereof:-

*“The police during their investigation into any criminal offence usually obtain statements from accused persons. These statements are usually also tendered by the investigating police officer who recorded the statement as part of the prosecution’s case. The question now is - At that stage what is the statement being tendered as? Does the statement at that stage constitute proof and if yes. proof of what? A review of the authorities will confirm that at best the prosecution will tender the statement of an accused person as a Res - as something the Investigating Police Officer obtained during his investigation. It is then open to the trial court to consider that statement (along with other available evidence) accepting or rejecting it before coming to a decision. In Subramanian v. Public Prosecutor (1956) 1 WLR 965 at p. 970 the necessary distinction was drawn between tendering an accused person’s statement as proof of the fact that it was made and tendering same as proof of the truth. It is my humble view that when the prosecution tenders the statement of an accused person they tender same only as proof that a statement was made, and not as proof of the truth of its contents. And that is why it is open to the accused to deny or confirm and affirm the said statement or else to admit the making of it but attack it on grounds of it not being voluntarily made.”* 10 15 20 25

Although Exhibit A1, in this case was admitted without its being made voluntarily challenged the appellant did not testify, having rested his case on the prosecution case. Therefore the statement not being a confessional statement, its contents cannot be treated as proved. It could also have been used to test the consistency and credibility of the accused person had he testified - Adelumola v. State (1988) 1 NWLR (Pt.73) 683 at p. 693. 30

I now turn to the second issue for determination formulated in the 35



appellant's brief. In testing the veracity of the appellant's statement in Exhibits B1 and C1 the Court of Appeal made the following observation (per Achike J.C.A.)

5      *"The discovery of Exhibit "H" corroborates the confession and lends credibility to its truth. Although there was no eye-witness to the commission of the offence there was ample circumstantial evidence in support of the dastardy offence."*

Learned counsel for the appellant has argued that the shirt (Exh. H) found in the appellant's room which was alleged to contain blood stain cannot  
10      constitute a corroboration to the confessional statements made by the appellant in the absence of scientific evidence that the stain on the shirt was human blood and if so, the same blood group as that of the deceased's. He cited in support of the submission the following cases - Onah v. State (1985) 3 NWLR (Pt.12) 236 at p. 242; Ishola v. State (1969) ....NMLR 259 and Akinfe v. State  
15      (1988) 3 NWLR (Pt. 85) 729 at p.745. In my opinion the argument is well founded. The discovery of Exhibit "H" in the appellant's house has not proved anything that can be considered as corroborative evidence in the absence of a forensic report which confirms that the stain on the shirt was human blood and not only that but also that it was the deceased's blood that stained the  
20      shirt. The investigation in that regard had not been conducted by the Police to its logical conclusion. See Onah v. State (supra) at p. 242 A-B. Therefore the Court of Appeal had misdirected itself in coming to the conclusion that Exhibit "H" constituted evidence which would corroborate the confessional statements made by the appellant. However, this is neither here nor there, since  
25      there are other pieces of material evidence, which I have already pointed out earlier in this judgment that corroborate the confession.

Finally, the two issues formulated by the respondent need not be considered separately from those of the appellant because the points which have been raised therein have been dealt with in the foregoing.

30      In the result, the appeal has failed. It is accordingly, hereby dismissed. The decision of the Court of Appeal affirming that of the trial court, is hereby confirmed.

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### OGWUEGBUJSC

I have read in draft the judgment read by my learned brother Uwais, J.S.C. and I am in agreement with his reasoning and conclusion. I would also for the reasons stated, dismiss this appeal.

The conduct of the appellant was not that of one who had no knowledge of the crime. He had full knowledge of it and participated in it. I accordingly dismiss the appeal.

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#### ONU JSC

Having been privileged to read before now the judgment of my learned brother Uwais, J.S.C. just read. I entirely agree with his reasoning and conclusions that this appeal be dismissed. I adopt the same as mine and I have nothing further to add thereto.

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#### ADIO JSC

I have had the advantage of reading in draft, the judgment just read by my learned brother, Uwais, J.S.C., and I agree that the appeal has failed. I too dismiss the appeal and confirm the decision of the Court of Appeal affirming the decision of the learned trial Judge.

The full facts of the case have been set out in the lead judgment of my learned brother, Uwais, J.S.C. and I adopt them. The contention that the discharge and acquittal of the 2nd accused by the court below should automatically lead to the discharge and acquittal of the appellant cannot be sustained. The law is that where two or more persons are charged with the same offence and the evidence led by the prosecution against all of them was interwoven, if one of them is discharged and acquitted then the other or others must be discharged and acquitted. See *Ikemson v. State* (1989) 3 NWLR (Pt.110) 455. In this case, the evidence led by the prosecution against the appellant and the 2nd accused was not interwoven. The 2nd accused did not incriminate himself in any statement to the police whereas the appellant made several statements to the police and some of the things stated by him therein incriminated the appellant. In the case of the 2nd accused, the court below held, rightly in my view that what constituted the basis of his conviction (blood stained cloth) could not be sustained as nobody could say whether the stain on the cloth was human blood and if so, whether it was the blood of the deceased, without the cloth being sent to the forensic laboratory for examination and report. In the case of the appellant, even if one disregarded the evidence of the cloth having something which appeared to be blood stain. there was still ample evidence which linked the appellant with the commission of the crime. Though the appellant alleged certain things against the 2nd accused in some of the statements made by him, the allegations could not constitute evidence against the 2nd accused because allegations in a state-

ment made by one accused against a co-accused will not constitute evidence against the co-accused unless the co-accused has adopted the statement by words or conduct. See section 27(3) of the Evidence Act: and *Ozaki v. The State* (1990) 1 NWLR (Pt.124) 92. In this particular case, the 2nd accused did not adopt, by words or conduct, any of the statements made by the appellant.

The learned counsel for the appellant argued at length both in the appellant's brief and in his oral submissions on the question whether all or some of the statements made to the police by the appellant were confessional. I do not think that there was any need for the controversy. What is material, for the purpose of determining whether a statement is confessional, is what is stated by an accused in the statement and not necessarily the fact that the accused has been taken before a superior police officer to confirm that the statement is his statement and that it is voluntary. Section 27(1) of the Evidence Act defines a confession as an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. Therefore, if a statement made by an accused does not contain an admission made by the accused stating or suggesting the inference that the accused committed the crime for which he is charged, it cannot legally or properly be regarded as a confessional statement even if the accused is taken to a superior police officer to confirm that he made the statement and that it is voluntary. If, on the other hand, the statement contains a confession by the accused that he was the one who committed the crime, the fact that the accused is not taken before a superior police officer to confirm that he made the statement and that it is voluntary will not let the statement cease to be a confessional statement. Indeed, confirmation before a superior police officer may be dispensed with and a confessional statement may be accepted without it being confirmed before a superior police officer if there is no suspicion, See *R. v. Nwigboke* (1959) 4 FSC 101; (1959) SCNLR 248; and *R v. Awip* (1957) SCNLR 307 (1957) 2 FSC 24. Further, if it is found that a statement has been wrongly admitted as a confessional statement, it can, if it has no other defect be admitted as an ordinary statement and its contents relied upon to sustain a conviction. See *Gbadamosi v. The State* (1992) 9 NWLR (Pt.266) 465. In this case, the classification of all or some of the statements made by the appellant to the police as confessional statements was not decisive on the question whether or not the appellant committed the alleged offence. What formed the grounds for his being found guilty of the offence were the contents of the statement, that is, the incriminating things which the appellant said in the statements. The appellant narrated how some people asked him to follow them

to go and look for money. He followed them and when they got to the house of the deceased one of them climbed the wall of the fence. They all went into the house, Some of them including the appellant stayed in the parlour while the others went into the bedroom of the deceased and killed her. They brought out her goods and gave some to the appellant which the appellant sold and pocketed the purchase price, The learned trial Judge made a specific finding that the appellant was not forced to the scene of the incident. The finding subsists as the appellant did not appeal against it to the court below or to this court. A finding of fact not appealed against stands admitted and undisputed. See Adejumo v. Ayantegbe (1989) 3 NWLR (Pt. 110) 417, The reasonable conclusion is that the appellant voluntarily and willfully participated in the commission of the crime. There was no threat made to him and he was not under duress.

It is for the foregoing reasons and for the detailed reasons given by my learned brother, Uwais, J.S.C., in the lead judgment that I agree that the

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### OLATAWURAJSC

Also agreed with the lead judgment.

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