

SUPREME COURT OF NIGERIA
27TH MAY, 1994. SC. 19/1993.
CORAM:- S. M. A. BELGORE, A. B. WALI,
I. L. KUTIGI, E. O. OGWUEGBU, A. I. IGUH, JJSC.

EMMANUEL N. NWAEBONYI APPELLANT

V

THE STATE RESPONDENT

APPEALS - Concurrent findings - Murder - lower courts' acceptance of the truth of the confessional statement - Leading to concurrent conviction of appellant - Whether justified.

CRIMINAL LAW - Murder - Conviction of appellant based on his confessional statement - Whether proper - Whether persecution proved its case beyond reasonable doubt.

CRIMINAL PROCEDURE - Retraction of confessional statement - Murder - Where there is evidence linking appellant to the crime - admissibility and credibility of the retracted confession mil not be affected.

EVIDENCE - Voluntariness of confessional statement - Murder - Whether there is evidence in proof of the Voluntariness of the confession.

EVIDENCE - Motive and opportunity - Murder- Where available evidence show appellant had motive and opportunity to commit the crime - And appellant is connected to the commission of the offence - Conviction will not be quashed.

FACTS

The Appellant was charged with the offence of murder before the High Court, Abakaliki. He pleaded no guilty to the charge. The deceased, Nwaji Nkwagu (Mrs.) was married to the P. W. 1. There were allegations of the Appellant making love advances to the deceased who refused and reported the matter to her husband. Towards clearing his name, the Appellant who denied the allegation, took an oath to the effect that if the allegation was true let him not have any living child. Appellant later got married. Three children given birth to by his wife all died shortly after birth. Appellant approached the

P. W. 1 for annulment of the oath, brought wine which they drank together. Thereafter, Appellant's wife's 4th child died after birth and he decided to take revenge.

Appellant went to P. W. 1's house whilst he and other neighbours were away to the market, matcheted his wife and two children to death and set the house on fire, after which he escaped. That was sometime in 1980. About five years later the Appellant was arrested at Enugu. He made a confessional statement, Exhibit AA1 admitting the crime. During the trial, Appellant denied making the statement and said he did not commit the offence. The trial court found the Appellant guilty and sentenced him to death by hanging. His appeal to the Court of Appeal was dismissed. Appellant has further appealed to the Supreme Court to determine whether he was rightly convicted on his confessional statement alone and whether the prosecution has proved its case beyond reasonable doubt.

HELD (unanimously dismissing the appeal)

1. As regards the voluntariness of Exhibit A, A1 (Appellants' confessional statement) a perusal through the evidence on the issue satisfactorily shows that it was voluntarily made by the Appellant. (P. 49 L 22)
2. Available pieces of evidence, direct and circumstantial, show that the Appellant had the motive and opportunity to commit the offence and also connected him with its commission. And the retraction of the confessional statement (Exh. AA1) by the Appellant in no way affected its admissibility and credibility. (P. 51 L 14)
3. Having accepted the truth of the confession contained in Exhibit AA1 the trial court was perfectly justified in finding the appellant guilty of the charge. The Court of Appeal was also right in affirming the conviction and sentence on the evidence accepted and evaluated by the trial Judge. The provision of S. 137 of the Evidence Act (proof beyond reasonable doubt) was fully satisfied and complied with. (P. 51 L 26)
4. The concurrent findings of fact made by the two lower courts are conclusive and fully answered the issues of law raised in this appeal. They are justified, could not be faulted and there is no reason to interfere with them. (P. 51L33)

NOTABLE POINTS OF INTEREST

WALIJSC

1. Weight to be attached to a confessional statement

In REX v. SKYES (1913) 8 CR. APPL RPT 233 the leading authority on the weight to be attached to a confessional statement whether or not retracted, the following rules were stated in order to decide the weight to be attached to it -

1. Is there anything outside the confession to show that it is true?
2. Is it corroborated?
3. Are the relevant statements made in it of facts, true as far as they can be tested.
4. Was the prisoner one who had the opportunity of committing the murder
5. Is his confession possible?
6. Is it consistent with other facts which have been ascertained and have been proved? (P. 50 L)

2. Accused person can be convicted on his free and voluntary statement alone

Even without these corroborative evidence, decisions of this court abound to show that a trial court can convict an accused person on his free and voluntary statement alone. (P. 51 L 19)

OGWUEGBUJSC

3. Evidence of motive - Whether of any use

In this case evidence of motive was also available. However, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as criminal responsibility is concerned. Proof of motive on the part for an accused on a charge of murder is not a sine qua non for his conviction for an offence but if evidence of motive is available as in this case - the evidence of the enmity of the appellant towards P. W. 1 resulting from the oath taking, it is not only a relevant fact but is also admissible under Sec 9(1) of the Evidence Act. (P. 55 L 30)

IGUHJSC

4. Voluntary confession may sustain conviction without other corroborative evidence

There can be no doubt that a free and voluntary confession of guilt, whether judicial or extra-judicial, if it is direct and positive and properly established is sufficient proof of guilt and is enough to sustain a conviction without other corroborative evidence so long as the court is satisfied with the truth of such

a confession. (P. 58 L 31)

5. *Confessional statement - Desirability of corroborative evidence*

Accordingly a conviction will not be quashed merely because it is based entirely upon evidence of the confession of the accused person. It is however desirable to have outside an accused person's confession, some corroborative evidence, no matter how slight, of circumstance which make it probable that the confession is true and correct as the courts are not generally disposed to act on a confession without testing the truth thereof (P. 59 L 7)

6. *Practice of confirming confessional statement before a superior police officer*

"As indicated above, Exhibit A, A1 was duly confirmed before a superior police officer, P. W. 5. However a free and voluntary confessional statement need not be confirmed before a superior police officer to be properly proved or admissible in evidence. This has been said not to constitute the requirement of any law in force in Nigeria. Such confirmation of a confessional statement before a superior police officer simply makes proof of its voluntariness much more easier than otherwise and the practice has infact been commended, quite rightly in my view, in a number of cases." (P. 59 L 15)

20 **REPRESENTATION:**

N. Biodun Dabiri Esq. for the Appellant.
P.C. Akubailo D.P.P Ministry of Justice Enugu for the Respondent.

CASES REFERRED TO

- 25 Onyejekwu v. The State (1992) 4 S.C. 1
- Rex v. Skyes (1913) 8 CR. Appl Rpt 233
- Kanu v. The King 14 WACA 233
- Dawa v. The State (1980) 8 -11 SC. 236
- The Queen v. Obiasa (1962) 1 All NLR 651
- 30 Obosi v. The State (1965) NMLR 119
- Onochie v. The Republic (1966) NMLR 307
- Yesufu v. The State (1976) 6 SC. 167
- R.v. Kanu 14 WACA 20
- Egbohoonome v. The State (1993) 7 NWLR (Pt. 306) 382
- 35 The Queen v. Mboho (1964) NMLR 49
- Jimoh Ishola v. The State (1978) 9-10 SC. 181 at 104 - 105
- R v. Ball (1911) A.C. 47 (H.L.) at 68
- Ugwumba v. The State (1993) 5. NWLR (Pt. 296) 660 at 671
- Osayame v. The State (1966) NMLR 388

Sanyaolu v. The State (1976) 6 SC 37	
Nwachukwu v. The State (1986) 2 NWLR (Pt. 25) 765	
Onuoha v. The State (1988) 3 NWLR (Pt. 83) 460	
Wankey v. The State (1993) 5 NWLR (Pt. 295) at 552	
R.V. Ajayi Omokaro (141) WACA 149	
Phili Kalu and Anor. v. King (1952) 14 WACA 30	5
Jafiya Kopa v. The State (1971) 1 All NLR 150	
James Obi Achabua v. The State (1976) 12 SC. 63	
Paul Onochie and Ors v. The Republic (1966) NMLR 307	
Chungwon Kiru v. The State (1992) 4 NWLR (Pt. 233) 17	
R.V. Omerewure Sapale (1957) 2 FSC 24	10
Nwigboke and Ors. v. R. (1959) 4 FSC 101	
Ejinima v. The State (1991) 5 LRCN 1640 at 1671	
Arthur Onyejekwu v. The State (1992) 4 SCNJ 1 at 9	

<u>STATUTES REFERRED TO</u>	15
Evidence Act ss. 27, 137, 9(1) Criminal Code s.319(1)	

LEAD JUDGMENT BY WALI JSC **20**

The appellant, Emmanuel Nwibo Nwaebonyi was arraigned before the High Court Abakaliki in Abakaliki Judicial Division, charged with the following offence -

“OFFENCE: Murder contrary to Section 319(1) C.C **25**
Particulars of Offence

Emmanuel Nwibo Nwaebonyi alias Amasiri Nwaebonyi on or about 28th day of July, 1980 at Ndiogbaga Inyimagu Izzi in Abakaliki Judicial Division murdered Nwaji Nkwagu.”

He pleaded not guilty to the charge. The prosecution thereafter called a total number of 9 witnesses to prove the charge. At the close of the prosecution’s case the appellant gave evidence in his own defence but called no other witness. **30**

The learned trial Judge, Offiah J. considered the evidence adduced and found the appellant guilty as charged and sentenced him to death by hanging. **35**

In exercise of his constitutional right, the appellant appealed to the Court of Appeal Enugu Division and in a judgment of that court delivered by Oguntade J.J.C.A. (concurred to by both Awogu and Akintan, J.C.A.), the

appellant was dismissed, confirming the conviction and sentence on the appeal by the trial court.

Before I consider the appellant's appeal in this court, I consider it pertinent to give a resume of the prosecution's case, leading to the appellant's conviction, as follows:-

5 P.W.1 and the deceased were married under native law and custom. The appellant was making sexual advances to the deceased which she always rebuffed. When P.W.1 got to know of these immoral advances, he challenged the appellant which the latter denied. The near relations of both the appellant and P.W.1 intervened to settle the issue in a customary way. As a result the
10 appellant was to take an oath in support of his denial that if the accusations against him were true, he would not have a living child. The appellant took the oath.

After the oath, the appellant's wife (P.W.9) became pregnant on three occasions and each of the three children died shortly after birth. The appel-
15 lant approached P.W.1 so that the effect of the oath he had taken might be neutralised. P.W.1 agreed and the appellant brought some wine to neutralise the effect of the oath, which the appellant and P.W.1 drank together. Thereafter, the appellant's wife got pregnant again and delivered a baby which again died after birth.

20 The appellant decided to take a revenge on P.W.1. So on 28-7-80 which was a market day and when P.W.1 and other fellow villagers were away to the market the appellant sneaked into P.W.1's house, matcheted his wife and their two children to death and set the house on fire, after which he escaped. He was not arrested until on 24-11-85 when he was identified to
25 P.W.3, Sgt. Gabriel at Ugwogo Nike market square Enugu who immediately arrested him and brought him back to Iziogo where he was charged and cautioned in Ibo language as a result of which he made a statement confessing the offence.

In this Court, two grounds of appeal were filed from which the fol-
30 lowing two issues were raised -

“(a) Whether the appellant was rightly convicted solely on his confessional statement Exh. “A”.

(b) Whether the prosecution has proved its case beyond reasonable doubt as required under S. 137 of the Evidence Act.”

35 Learned counsel for the appellant, N. Abiodun Dabiri Esq, dealt with the two issues together. He referred to some decided cases and submitted that the appellant was rightly convicted on Exh. A, his voluntary confessional statement alone and that there was enough corroborative evidence to Exhibit A. He particularly referred to the evidence of P.W.1, P.W.6 and P.W.7 in that

regard. He said the concurrent findings of both the trial court and the Court of Appeal are fully supported by unassailable evidence and could therefore not be faulted. He urged the court to dismiss the appeal.

In reply to the appellant's brief P.C. Akubuilu, DPP, Enugu State and learned counsel for the respondent filed, with leave of the court as he was out of time, the respondent's brief in which he adopted the two formulated issues in the appellant's brief. And after reviewing the appellant's case and the issues raised, he referred to some decisions of this court and urged us to dismiss the appellant's case for want of merit.

Since this is a murder case, I intend to treat the issues formulated notwithstanding the submissions of learned counsel on both sides to the effect that they have nothing to urge in favour of the appellant. I shall deal with the two issues seriatim.

Issue 1 deals with Exhibit AA 1, the confessional statement made by the appellant in Ibo and then translated into English language.

Section 27(1) of the Evidence Act defines confession as follows -

"27(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 the crime."

Subsection (2) of S. 27 goes on to state that -

"Confessions, if voluntary are deemed to be relevant facts as against the persons who made them only."

As regards the voluntariness of Exh. AA, I have myself perused though the evidence on the issue and I am satisfied that it was voluntarily made by the appellant. This was confirmed by the evidence of P.W.3 Sgt. Gabriel Nnaji, who arrested the appellant and on the same day, cautioned him in Igbo language and recorded the same in the language made. It was thereafter translated into English. The Ibo version was admitted in evidence as Exh. A while its English translation was admitted as Exh. A. 1. The appellant was taken before P.W.5, Daniel Obedon, a Deputy Superintendent of Police before whom P.W.4 Sgt. Daniel Nwode read the Ibo version to the appellant and which he (the appellant) confirmed its correctness by thumb-printing it. The trial Judge, after reviewing the evidence of P.W.3, P.W.4 and P.W.5 concluded -

"I must say that I believe the evidence of Obedon P.W.5 and Daniel Nwode. I am satisfied beyond doubt and find that it was the accused who made Exh. A and that he made it voluntarily."

In affirming the above finding of facts, the Court of Appeal commented thus:-

"It was never said that P.W.3 did not speak the language in which

the appellant made his statement. It seems to me that bringing in P.W.4 to interpret the statement of the appellant to him before P.W.5 was if anything a remarkable act of fairness to the appellant. It placed the appellant in a better position to deny the voluntariness of the statement if he had previously been induced to make it.

The same may be said of the argument that a period of two weeks elapsed before the appellant was brought before P.W.5 to confirm or deny that he made Exh. A; there is no time limit for bringing an accused before a superior police officer to confirm or deny the voluntariness of a written statement credited to him and I do not think that a period of two weeks was unreasonably long. It is in fact my view an advantage to an accused that the period between making a statement and the confirmation or denial of the voluntariness of the statement is long for it allows the accused enough time to reflect more about the implications of the confession alleged to have flowed from his lips."

These findings of fact by both the trial court and the Court of Appeal are fully supported by the credible evidence reviewed and accepted. They are on firm ground and are unimpeachable. See *Onyejekwe v. The State* (1992) 4 S.C. 1; (1992) 3 NWLR (Pt.230) 444.

In *Rex v. Sykes* (1913) 8 CR. Appl Rpt. 233 the leading authority on the weight to be attached to a confessional statement whether or not retracted, followed by the West African Court of Appeal in *Kanu v. The King* (1952) 14 WACA 30 and thereafter by this Court in several of its decisions such as, *Dawa v. The State* (1980) 8 -11 SC 236; *The Queen v. Obiasa* (1962) 1 All NLR 651; (1962) 1 SCNLR 137; *Obosi v. The State* (1965) NMLR 129 and *Onochie v. The Republic* (1966) NMLR 307 to mention but a few, the following rules were stated in order to decide the weight to be attached to it -

1. Is there anything outside the confession to show that it is true?
2. Is it corroborated?
3. Are the relevant statements made in it of facts, true as far as they can be tested?
4. Was the prisoner one who had the opportunity of committing the murder?
5. Is his confession possible?
6. Is it consistent with other facts which have been ascertained and have been proved?

The evidence of P.W.1, P.W.3, P.W.7 and Exh. AA1 established beyond any shadow of doubt that the appellant had both the motive and capability of committing the crime he was charged with and convicted. There is

evidence outside Exh. AA1 both direct and circumstantial that goes to show that its contents were true. P.W.1 gave evidence of the suspicious immoral sexual advances by the appellant to the deceased, wife of P.W.1. This culminated in the appellant performing a traditional oath which resulted in the death of 4 children born to him all at their infancy. The story narrated by the appellant in Exh. A as regards his approach to P.W.1 to forgive him for his immoral sexual approach to the deceased and the bringing of some wine of P.W.1 to celebrate and reverse the effect of the oath was corroborated by the evidence of P.W.1. Immediately after the brutal killing of the deceased and her two children, the appellant fled the village and was arrested by P.W. 3 at Ugwogo market, Enugu. This was about 5 1/2 years after the incident. It was then that the police had the opportunity of cautioning the appellant and he volunteered Exh. AA1. The evidence given by P.W.7 described the wounds on deceased that caused her death. This is consistent with the type and nature of wounds mentioned by the appellant in Exh. AA1. These pieces of evidence, direct and circumstantial show that the appellant had the motive and opportunity to commit the offence and also connected him with its commission. The retraction of Exh. AA1 by the appellant in no way affected its admissibility and credibility.

Even without these corroborative evidence, decisions of this court abound to show that a trial court can convict an accused person on his free and voluntary statement alone. See *Queen v. Obiasa* (1962) 1 All NLR 691; (1962) 1 SCNLR 137; *Yesufu v. The State* (1976) 6 SC. 167; *R v. Kanu* (1952) 14 WACA 30 and *Onochie v. The Republic* (1966) NMLR 307; *Obosi v. The State* (1965) NMLR 129 and *Egboghonome v. The State* (1993) 7 NWLR (Pt.306) 383.

Having accepted the truth of the confession contained in Exh. AA1 the learned trial Judge was perfectly justified in finding the appellant guilty of the charge against him and the Court of Appeal was also right in affirming the conviction and sentence on the evidence accepted and evaluated by the trial Judge. The provisions of Section 137 of the Evidence Act was fully satisfied and complied with.

I agree with learned counsel on both sides that there is nothing they could urge in favour of the appellant. The concurrent findings of fact made by the trial court and the Court of Appeal are of the utmost relevance in answering the two issues raised in this appeal; they are conclusive and fully answered the issues of law raised in this appeal. They are justified and could not be faulted and I see no reason to interfere with them. See *Onyejekwe v. The State* (1992) 4 SC 1 (1992) 3 NWLR (Pt.230) and *Mbele v. The State* (1990) 4 NWLR (Pt.145) 484.

The appeal lacks merit and it is accordingly dismissed. The conviction and sentence passed on the appellant by the trial court and affirmed by the Court of of Appeal are hereby confirmed.

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BELGORE JSC

I had read in advance the judgment of my learned brother, Wali. J.S.C. with which I am in full agreement. As both parties to this appeal have nothing to urge in favour of the appellant, I also adopt the reasons in the judgment as mine in dismissing this appeal.

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KUTIGI JSC

I have read before now the judgment just delivered by my learned brother Wali. J.S.C. I agree with his conclusions that the appeal lacks merit and ought to be dismissed. The evidence against the appellant is over whelming. The appeal is accordingly dismissed.

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OGWUEGBU JSC

I have had the privilege of reading the judgment of my learned brother Wali. J.S.C. in this appeal, I agree that it lacks merit and ought to be dismissed. I also dismiss it.

The following issues were identified in the appellant's brief of argument as arising for determination in the appeal:-

25

"1. Whether the appellant was rightly convicted solely on his confessional statement Exhibit "A".

2. Whether the prosecution has proved its case beyond reasonable doubt as required under S.137 of the Evidence Act".

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The learned counsel for the appellant advanced no argument in support of the appeal. He submitted in his written brief that the appellant was rightly convicted and he had nothing to urge the court in favour of the appeal.

Having regard to the gravity of the offence and the sentence imposed, it is the duty of this court as a court of last resort to examine the issues raised in order to find out if any error had been committed by the courts below.

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The offence was committed on 28th July, 1980 at Inyimagu Izzi in the Abakaliki Judicial Division of the former High Court of Anambra State (now

Enugu State). The P.W.1 reported the Judicial Division of the former High Court of Anambra State (now Enugu State). The P.W.1 reported the incident to the Iziogo Police and made a statement (Exhibit “B”) on 28/7/80. In the statement, he said that he suspected the appellant.

After the offence, the appellant disappeared. He was arrested on 24/11/85 in a market in Ugwogo Nike Enugu in the former Anambra State and brought back to Iziogo. He volunteered a statement in Igbo (Exhibit A) which was translated into English - Exhibit “A1”

This was on 28/11/85.

Part of Exhibit “A” reads:

“As it happened was that in 1976 Nkwagu Okpe caught me and asked me to swear an oath. He alleged that I sexed his wife, by then I have not married. I went and sworn (sic) at about 0700 hrs. date not known.....

Later I married, my wife took in and later delivered but the child died the next day. Nkwagu Okpe was laughing at me saying that he cannot be alive seeing me bearing a child. So my wife took in the second time, delivered, the child died again. I then went to a fortune teller who told me that Nkwagu Okpe is responsible for the death of my children. The fortune teller is one Ofoke Okanga (m) of Ndiagbaga Obasi. I later reported the matter to our Councillor Chief Nwalioji Nwite who adviced (sic) me to invite the Amagu people being the elders in Izzi to go to Nkwagu Okpe’s house to amend the oath i.e to council (sic) it.

.....

But Nkwagu Okpe refused coming for the amendment of the oath: Nwalioji adviced (sic) me again to buy wine and beg him. I bought 4 gallons of wine, 2 bottles of big stout and went to his house still he refused.....

The name of my wife then is Nwamgbom Amasiri now another person is marrying her, the name of her husband now is Nworie Otigidiba or Samuel. On 28/7/80 in the morning my father in law by name Egede Nwamgbom (late) came and told me that my wife delivered again and the child had died again. I went to my in-laws place to see for myself

I was highly provoked and I went straight to Nwagu Okpe’s house where I met three persons, i.e. the wife and two children and killed them with matchet and also set fire to three building (sic) in his compound and destroyed them. I left immediately for Benin City for a short time I returned to Ugwogo Nike Enugu in Jan. 1981. I threw the matchet into Enyim river after the incident.”

The statement was recorded by P.W.3 (Police Sgt. Gabriel Nnaji). The appellant thumb impressed the Igbo version - Exhibit” A”. The appellant was

taken to P.W.5 (Daniel Obadan) a Deputy Superintendent of Police attached to Iziogo Police Post on 6/12/85 together with Exhibits A and A1. The English version - Exhibit "A" was read over to the appellant by P.W.5 and this was
 5 interpreted to the appellant in Ibo by Police Constable Daniel Nwode (P.W.4). The appellant confirmed that he made the statement voluntarily. P.W.5 endorsed Exhibit A. P.W.4 also signed Exhibit A1 as the interpreter.

At the trial P.W.3 sought to tender Exhibits "A" "A1". The appellant's counsel objected to their admissibility on the ground that they were not read
 10 over to the appellant. The learned trial Judge overruled the objection. He held that the statement was admissible since it was not being attacked on the ground that it was not made voluntarily.

At the trial, the appellant retracted his extra-judicial statement - Exhibits A1. He denied making Exhibits AA1. He admitted knowing P.W.1 (Nkwagu
 15 Okpe) - the husband of the deceased and stated that he had no dispute with him. He denied swearing any oath. He denied being married to Nwangbom Samuel Otigidiba (P.W.9). He also denied killing the deceased.

The P.W.1 Nkwagu Okpe stated as follows in Exhibit "B":-

*"Today the 28th day of July, 1980 as I was in the market "Iziogo
 20 market" one Nwuda Nwankpuma (m) of same address, met me in the market and reported to me that my three dwelling house were set on fire by unknown person. I immediately suspected one Amasiri Nwebonyi Njoku (m) of Ndiogbaga Obashi Inyimagu Izzi whom I am having misunderstanding with, since about five years past.*

*The misunderstanding I have with the suspect..... was that about
 25 five years ago, my wife by name Nwaji Nkwagu (f) who is now deceased was a girl and the suspect chased her for sex after I had married her. She came and reported to me that the suspect all the time chases her for sex. I consulted the suspect and questioned him in respect of the report. The suspect denied
 30 that he has never done so. I asked the suspect to take native oath if he is sincere that he has never chased my wife. He agreed to take oath. Later, I asked the suspect (sic) not to take the oath, because he may take the oath with shamefulness and the result of the oath may lead him into trouble or favour. He refused and insisted that he must take oath to clear suspicions.
 35 Then he was allowed to take the oath. He took the oath in the presence of the following, Nwuguru Njoku (m) Iziogo Nwosi (m) and Nwoga Nwoke (m) all related to the suspect.....Also my second wife was present on the date of the oath which has taken about five years. The suspect stated in the oath. If he has ever chased my wife let him not bear any child on earth. The oath was*

accepted and everybody disappeared. Since the five years when the wife of the suspect by name Nwangbom Amasiri (f) delivers a child, the child dyes (sic). On the month of March this year 1980, the suspect warned me that if his child dyes (sic) again that he will kill me with machet. On 28/7/80, the child of the suspect died again.....”

The evidence of P.W.1 on oath substantially confirmed his statement 5 in Exhibit “B”. In addition, the witness testified that the appellant brought some wine to reverse the effect of the oath alleging that he took the oath out of shame and they drank the wine. The wife of the appellant was pregnant again and gave birth to a baby. He testified that the incident of killing his wife and burning his houses took place a day after the death of the child of the 10 appellant.

The trial court held that the appellant made Exhibit A A1. He found that the appellant made Exhibits A A1 voluntarily and that there was also overwhelming evidence to corroborate the statement. He concluded that it was a deliberate act of murder motivated by some deep rooted suspicion held 15 by the appellant that P.W.1 was responsible for the death of the children. The court below found that the contents of Exhibit A were true and that it amounted to a confession which is direct and positive.

Exhibit A A1 having been proved to be positive, direct and made voluntarily, a court can convict on it. The fact that the appellant resiled from it 20 does not necessarily render it inadmissible: Egboghonome v. The State (1993) 7 NWLR (Pt.306) 383 and R. v. Kanu (1952) 14 WACA 30. The general rule is that a free and voluntary confession satisfactorily proved is sufficient proof of guilt without corroborative evidence, though the whole evidence should 25 be weighed with the view of seeing whether they are incompatible with facts stated by the accused in the statement: The Queen v. Mboho (1964) NMLR 49 and The Queen v. Obiasa (1962) All NLR. 645 (Reprint) (1962) 1 SCNLR 137. In this case the truth of the confession was positive and the evidence relied upon by the learned trial Judge were compatible with the facts stated in Exhibit 30 AA1.

In this case evidence of motive was also available. However, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as criminal responsibility is concerned. Proof of motive on the part of an accused on a charge of murder is not a sine qua non 35 for his conviction for an offence but if evidence of motive is available as in this case - the evidence of the enmity of the appellant towards P.W.1 resulting from the oath taking it is not only a relevant fact but is also admissible under Section 9(1) of the Evidence Act: Jimoh Ishola v. The State (1978) 9-10 S.C. 181 at 104-105 and R. v. Ball (1911) A.C. 47 (H.L.) at 68.

The court of trial was right in convicting the appellant of the offence of murder with which he was charged and the Court of Appeal was also right in dismissing his appeal. The prosecution proved its case beyond reasonable
5 doubt. For the fuller reasons given by my learned brother Wali, J.S.C. and for the fact that the appeal lacks merit. I also dismiss it.

The decisions of the courts below are hereby affirmed. The sentence of death passed on the appellant is confirmed.

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IGUHJSC

I have had the privilege of reading, in advance, the lead judgment of my learned brother, Wali, J.S.C. just delivered and I fully agree with him that this appeal lacks merit and should be dismissed. I however wish to make the
15 following contribution by way of emphasis only.

This appeal is against the judgment of the Court of Appeal, Enugu Division delivered on the 30th day of April, 1992. That court in a unanimous decision had dismissed the appeal of the appellant and affirmed the conviction and death sentence passed on him by the High Court of the former Anambra
20 State of Nigeria, holden at Abakaliki for the murder of one Nwaji Nkwagu on or about the 28th day of July, 1980. Being dissatisfied with this judgment, the appellant has now further appealed to this court.

The facts of the case have been fully set out in the lead judgment of my learned brother and no useful purpose will be served by my repeating them
25 all over again. It suffices to state that on the fateful date of the murder the deceased with her two children were discovered burnt in their house at Ndiogbaga, Inyimagu Izzi in the Abakaliki Judicial Division. Apparently their assailant had before setting their house on fire given them severe but savage matchet cuts on their heads. According to P.W.7. Dr. Chukwudi Egbonu who
30 performed post mortem examination on the deceased. Nwaji Nkwagu her body was charred with a deep matchet cut on the forehead which fractured the skull bone. The cause of death in his opinion was brain damage from traumatic head injury with associated water and salt imbalance. He explained that the associated water and salt imbalance was traceable to the fact that the deceased was
35 burnt after receiving the matchet cut. Her two children were also matcheted and they, too, died and were burnt in the conflagration.

It must be pointed out that the prosecution at the trial led cogent evidence of malice against the appellant. The appellant who went into hiding immediately after the commission of the offence was subsequently arrested

charged and cautioned by the investigating police officer, Sgt. Gabriel Nnaji to whom he volunteered the statement Exhibit A, A1. Exhibit A, A1 is a clear confessional statement. In it, the appellant recounted how each of his four children died shortly after birth and how he consulted a fortune teller who advised him that the deceased's husband was responsible for these deaths of his children. He concluded his statement as follows:-

".....I was highly provoked. I went straight to Nkwagu Okpe's house where I met three persons, that is the wife and two children and killed them with matchet and also set fire to three buildings in his compound and destroyed them. I left immediately to Benin City for a short time. I returned to Ugwuogo Nike Enugu in January 1981. I threw the matchet into Enyim River after the incident. Finish all I know about this case."

It ought to be noted that the appellant along with Exhibit A, A1 was subsequently taken by P.W.3 to a superior police officer, Daniel Obedon before whom the appellant admitted that the statement was his voluntary statement. He also confirmed that he did not make it under any duress threat or promise and that the contents are correct and true.

The issues for determination in this appeal as formulated by both parties are as follows:-

"(i) Whether the appellant was rightly convicted solely on his confessional statement. Exhibit A. A1.

(ii) Was the Court of Appeal right in holding that the case against the appellant was proved beyond reasonable doubt as required by law"

I propose to examine these two issues together.

It ought to be stressed that the learned trial Judge after a careful assessment and evaluation of the appellant's confessional statement, Exhibit A, A1 found it to be his free and voluntary statement. Said the learned, trial Judge:-

"The accused has denied making the statement. I do not believe him. Exh. A was in the first place admitted without objection. The accused was taken before a superior police officer, Mr. Obadan. The accused admitted under cross-examination, having been taken before a superior police officer. The accused had the opportunity to refute the allegations. He again before Mr. Obadan admitted having made the statement voluntarily. I must say that I believe the evidence of Obadan P.W.5 and Daniel Nwode. I am satisfied beyond doubt and find that it was the accused who made Exh. A and that he made it voluntarily. There is also in my view overwhelming evidence to corroborate the statement. In the first place, the accused was arrested at Ugwuogo Nike as he asserted in Exh. A. He swore to an oath as alleged by

P.W.1 the complainant. He lost about 4 children and had to go back to P.W.1 in order to appease him. Three houses were set ablaze as confirmed by the complainant whose wife and 2 children were killed. The accused dealt with all these issues in his statement, Exh. A."

The Court of Appeal was ad idem with the trial court on this issue of Exhibit A, A1 when, in its lead judgment per Oguntade, J.C.A., to which Awogu and Akintan, JJ.C.A. concurred in which it was stated as follows:-

"All these matters of fact were stated by the appellant in his statement Exhibit 'A'. He stated that he took an oath; that his four children died shortly after birth; that he went to beg P.W.1 so that evil effect of the oath on him could be removed or neutralized; that he went to the house of P.W.1 on 18/7/80 where he killed the deceased and her two children with a machet; and finally that he set P.W.1's three houses on fire. All the facts stated in Exhibit 'A' were on matters which had been ascertained and satisfactorily proved."

There are therefore concurrent findings of fact by both the trial court and the Court of Appeal to the effect that the said appellant's statement to the police is his voluntary statement, that it was not made under any duress, threat or promise and that the contents are correct and true.

This court will not normally interfere with the above findings particularly where there is sufficient evidence in support thereof unless they are shown to be perverse or patently erroneous or that they were arrived at as a result of a wrong approach to the evidence or that there is established a miscarriage of justice or a violation of some principles of law or procedure in those findings. See *Ugumba v. The State* (1993) 5 NWLR (Pt.296) 660 at 671; *Osayeme v. The State* (1966) NMLR 388; *Sanyaolu v. The State* (1976) 5 S.C. 37; *Nwachukwu v. The State* (1986) 2 NWLR (Pt.25) 765; *Onuoha v. The State* (1988) 3 NWLR (Pt.83) 460; and *Wankey v. The State* (1993) 5 NWLR (Pt.295) 542 at 552. In the present case, the said findings are fully supported by accepted evidence before the court. There is absolutely no reason why this court should interfere with these findings of fact and I must in the circumstance accept them as fully established.

There can be no doubt that a free and voluntary confession of guilt, whether judicial or extra-judicial, if it is direct and positive and properly established is sufficient proof of guilt and is enough to sustain a conviction without other corroborative evidence so long as the court is satisfied with the truth of such a confession. See *R. v. Sykes* (1913) 8 C.A.R. 233 at 236; *R. v. Ajayi Omokaro* (1941) 7 WACA 146; *Philip Kanu and another v. King* (1952) 14 WACA 30; *Jafiya Kopa v. The State* (1971) 1 All NLR 150; and *James Obi Achabua v. The State* (1976) 12 S.C. 63 at 68-69. As I have had occasion to state in the past, a

confession that is both well and satisfactorily proved and established to be true is one of the best evidence that can be produced to justify a conviction. An accused person may therefore be rightly convicted on his own voluntary and true confession of guilt without more as the law fully supports such a course of action. See too *Edet Obosi v. The State* (1965) NMLR 119; *Jimoh Yesufu v. The State* (1976) 6 S.C. 167 at 173; *Paul Onochie and others v. The Republic* (1966) NMLR 307; and *Queen v. Obiasa* (1962) 1 All NLR 651; (1962) 1 SCNLR 137. Accordingly a conviction will not be quashed merely because it is based entirely upon evidence of the confession of the accused person. It is however desirable to have outside an accused person's confession, some corroborative evidence, no matter how slight, of circumstances which make it probable that the confession is true and correct as the courts are not generally disposed to act on a confession without testing the truth thereof. See *Paul Onochie and others v. The Republic*; *Jafiya Kopa v. The State*; and *R. v. Sykes*, supra.

As indicated above, Exhibit A, A1 was duly confirmed before a superior police officer, P.W.5. However a free and voluntary confessional statement need not be confirmed before a superior police officer to be properly proved or admissible in evidence. This has been said not to constitute the requirement of any law in force in Nigeria. Such confirmation of a confessional statement before a superior police officer simply makes proof of its voluntariness much more easier than otherwise and the practice has in fact been commended, quite rightly in my view, in a number of cases. See *Chungwon Kim v. The State* (1992)4 NWLR (Pt.233) 17; *R. v. Omerewure Sapele* (1957) 2 FSC 24; and *Nwigboke and others v. R.* (1959) 4 FSC 101; (1959) SCNLR 248.

It must be observed in all fairness to the appellant that he subsequently retracted Exhibit A, A1 at the trial. The trial court however disbelieved him on the point. This notwithstanding, the law on the issue of a retracted confession is that although the court can still admit and convict on such retracted confession if it is satisfied that the accused voluntarily made the statement and that there are circumstances which give credibility to the contents thereof, yet it is desirable that before a conviction can be properly based on such retracted confession, there ought to be some corroborative evidence outside the confession which makes it probable that the confession is true. See *Ejinima v. The State* (1991) 5 LRCN 1640 at 1671; and *Arthur Onyejekwe v. The State* (1992) 4 SCNJ 1 at 9; (1992) 3 NWLR (Pt.230) 444.

In the instant case, there is abundant evidence of motive for the killing as testified to by the prosecution witnesses which supports the confession. The murder was perpetrated about a day after the death of the fourth

child of the appellant. Although proof of motive on the part of an accused person on a charge of murder is not a sine qua non his conviction for the offence, yet if such evidence is available it is not only a relevant fact but goes in appropriate cases to strengthen the prosecution's case. See *Jimoh Ishola v. The State* (1978) 9 -10 S.C. 81 at 104-105. There is also overwhelming evidence
5 from the prosecution witnesses in corroboration of the appellant's confessional statement, Exhibit A, A1. These corroborative evidence are fully set out in the judgments of the trial court and the court below with which I find myself in total agreement.

I have assiduously searched for any possible defence that may be
10 open to the appellant without success. On the accepted facts of the case, this is a most primitive and barbarous case of murder. I am wholly satisfied that the trial court was fully justified in convicting the appellant for the murder of the said Nwaji Nkwogu. I am also in entire agreement with the decision of the lower court in dismissing the appeal against the appellant's conviction.

15 This appeal is without merit and it is hereby dismissed. The judgment of the trial court as affirmed by the Court of Appeal is hereby further affirmed.

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