

**SUPREME COURT OF NIGERIA**  
11TH FEBRUARY, 1994. SC. 308/1990  
**CORAM:- S. M. A. BELGORE, A. B. WALI,**  
**E. O. OGWUEGBU, S. U. ONU, A. I. IGUH, JJSC.**

JOHN EBAGUA & OTHERS  
IN RE: GABRIEL OSAKWE ..... APPELLANT

V.

THE ATTORNEY-GENERAL,  
BENDEL STATE ..... RESPONDENT

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**EVIDENCE** - Admissibility - positive and unambiguous confession of accused - resiled from during trial - whether the confession is rendered inadmissible

**CRIMINAL LAW & PROCEDURE** - Confession - extra judicial confession by accused - positive and unambiguous - whether inadmissible - merely because it was resiled from

**CRIMINAL LAW & PROCEDURE** - Corroboration - confessional statement of accused - is corroboration compulsory - circumstances under which conviction can be based on the confession alone

**CRIMINAL PROCEDURE** - Confession by an accused - allegation of torture three years after the confession was admitted in evidence - held to be an after thought

**MURDER** - Extra judicial confession by accused - resiled from during trial - whether conviction based mainly on the confession - is proper

***FACTS***

The Appellant (5th accused) and four other accused persons were arraigned before the former Bendel State High Court, Abudu for conspiracy and murder of a girl, Anna Nun. The Appellant made a confessional statement to the Police Exhibit 6, stating that he and the other accused persons were paid N1,000.00 by the 4th accused to murder the deceased for refusing to make love with 4th accused who gave her N100.00. The Appellant merely said he did not make exhibit 6 at the time it was tendered. Three years after, he set up a case of torture as what made him sign the said exhibit 6, whilst testifying. The evidence of four of the prosecution's witnesses were compatible with Appellant's confessional statement.

The trial court found the whole accused persons guilty as charged and sentenced them to death. They appealed to the Court of Appeal. A jail break led to their escape but Appellant alone latter surrendered himself. The Court of Appeal dismissed the Appellant's appeal after the hearing. Appellant has further appealed to the Supreme Court which had to determine whether the Appellant's conviction based mainly on this confessional statement from which he resiled at trial, is valid.

***HELD*** (unanimously dismissing the appeal)

1. A court may convict an accused person on his extra-judicial confession that is positive and unambiguous, proved to have been voluntarily made, and the fact that the accused resiled from such confession does not necessarily render it inadmissible. (p.84 L20)

2. From the record of proceedings, there is no doubt that the accused person's confessional statement (exhibit 6) was properly admitted in evidence. The law is that the court can still admit and convict on a confessional statement which the accused retracted from if satisfied:

(a) that the accused person made the statement, and

(b) there are circumstances which give credence to the contents of the confession.

And retracted confession should desirably be corroborated, even if slightly. (p.85 L6)

3. There is no doubt that exhibit 6 (accused person's confessional statement) was free, voluntary, direct and positive. Taking the whole evidence

together including those of four of the prosecution's witnesses they are compatible with the facts stated in the said exhibit 6. (p.86 L21)

4. There is no law which says that a man may not be convicted his own confession alone, and Exhibit 6 having been properly proved in law requires no corroboration to found the Appellant's conviction. (p.86 L32)

5. The Appellant's allegation of torture made more than three years after he extra-judicial confession is an after thought. The Appellant was rightly convicted and there is no reason to disturb the decision of the courts below. (p.86 L21)

PER IGUH JSC *"But it must be stated that it is not the law that a free and voluntary confessional statement must be confirmed before a superior police officer to be properly proved or admissible. Confirmation of confessional statements before a superior police officer has however been commended by this court in a number of cases."* (p.104 L12)

### **REPRESENTATION**

Chief A. O. Akpedeye, for the Appellant

O.S. Uwuigbe (Mrs.) Principal Legal Officer Ministry of Justice Benin-City,  
for the Respondent

### **CASES REFERRED TO**

1. Lori v. The State (1980) 8-11 SC. 86
2. Mariagbe v. The State (1977) SC. 47 at 52
3. Omisade & Ors. v. R. (1964) N.M.L.R. 67
4. Enahoro v. R. (1965) 1 All N.L.R. 125
5. Ukut & Ors. v. The State (1965) 1 All N.L.R. 306
6. Bello v. The State (1966) 1 All N.L.R. 223
7. Ikemson & Ors. v. The State (1989) 3 N.W.L.R. (pt. 110) 455 at 473
8. R. v. Hull (1961) All N.L.R. 462
9. R. v. Sykes (1913) G. App. R 233.
10. Queen v. Hule (1961/62) 2 N.S.C. C. 221
11. R. v. Kami 14 W.A.C.A. 30, Kim
12. Kim v. The State (1992) 4 N.W.L.R. (pt. 233) 17
13. Akinfe v. The State (1988) 3 N.W.L.R. (pt. 85) 729
14. Ejnima V. The State (1991) 6 N.W.L.R. (pt. 220) 627
15. Egboghonome v. The State (1993) 7 N.W.L.R. (pt. 306) 382

16. Kanu & Anor. v. The King 14 W.A.CA. 30
17. The Queen v. Obiasa (1962) All N.JLR. (pt. 11) 645
18. The Queen v. Mboho (1964) M.L.R. 49
19. Oladejo v. The State (1987) 3 SC 207 at 224
- 5 20. R. v. Itule (1961) All NLR 426
21. R. v. Sullivan (1987) 16 COX 347
22. Adekanbi v. A.G. Western Nigeria (1966) 1 All NLR 47
23. Dawa v. The State (1980) 8-11 SC. 236
24. Mumuni & Ors. v. The State (1975) 6 SC. 79
- 10 25. Nwosu v. The State (1986) 4 NWLR (pt. 186) 428
26. Yanya v. The State (1986) 12 SC. 282
27. Yesufu v. The State (1970) 6 SC 167
28. Obosi v. The State (1965) NMLR 119
29. Ntaha v. The State (1982) 4 SC. 1
- 15 30. R. v. Omokaro (1941) 7 W.A.CA. 146

### **LEAD JUDGMENT BY OGWUEGBU JSC**

The appellant (Gabriel Osakwe) was arraigned with four others in  
20 the High Court of Justice of the former Bendel State in Abudu Judicial  
Division holden at Abudu on a two count information alleging conspiracy  
and murder of one Anna Nun on 29th November, 1984.

The case proceeded to trial and at the end, all the accused per-  
sons were found guilty on both counts and each was sentenced to death by  
25 hanging. Each of them appealed against the decision to the Court of Ap-  
peal, Benin Judicial Division.

While the appeal was pending in the Court of Appeal, that court  
was informed that the five convicts escaped from Benin Prisons where they  
were held in custody following a jail break on 25th May, 1989. As a result,  
30 the appeal was adjourned sine die. The appellant herein (Gabriel Osakwe)  
later surrendered himself to the prison authorities. His appeal was subse-  
quently heard by the Court of Appeal which dismissed it on 26th October,  
1990. Not satisfied with the decision of the court below, he appealed to this  
court.

35 The facts of this case are briefly as follows.

On 29th November, 1984 at about 5 p.m. Anna Nun (deceased)  
left Abudu for a village called Iyekeze to collect grounded cassava. When  
she did not return at 7 p.m., her brother, Martin Ite (PW.1) went in search  
of her. On a farm road near the Church of God Mission, Abudu, he found

her basin, the garri she was carrying and the cloth she had on.

He shouted her name and not getting any response, he raised an alarm which attracted many people. They searched for her and when they could not find her, P.W.1 reported at the Police Station, Abudu, The police asked him to come back after twenty four hours.

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He continued to search for her the next day and found her corpse in a cassava farm near the Church of God Mission. According to this witness, she was naked, wore a blouse and blood was coming out from her private part.

He reported to the police who went to the scene with him. The corpse was conveyed to Abudu General Hospital where a post mortem examination was conducted.

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The 1st accused (John Ebagua) was arrested by Police Sergeant Gboye (P.W.2) on 7th December, 1984 following an information he received. He charged him with the murder of Ann Nun. After cautioning him he volunteered a statement Exhibit '1'. On 10:12:84 the 1st accused volunteered another statement under caution - Exhibit "2".

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In Exhibit "2", the 1st accused implicated the other four accused persons of complicity in the murder. They were arrested as a result. The appellant herein is the 5th accused at the trial in the High Court and the appellant whose appeal had been heard and dismissed by the court below.

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The appellant volunteered a statement to the police. It was admitted in evidence as 'Exhibit 6'. The learned trial Judge found that this statement was made voluntarily and that it was confessional. Relying on this exhibit and other circumstantial evidence, the appellant was found guilty by the learned trial judge.

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As I stated earlier, the appellant was dissatisfied with the decision of the court below. He filed two original grounds of appeal. This court on 18:6:92 granted the appellant leave to file and argue two additional grounds of appeal.

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From the grounds of appeal, the following two issues for determination are formulated at page 2 of the appellant's brief. They read:-

*"1. Whether the Court of Appeal was justified in affirming the decision of the trial court which convicted the appellant for conspiracy to murder and for murder mainly on an alleged confessional statement of the appellant from which the appellant resiled at the trial and when there is no other complete substantial evidence from which the guilt of the appellant*

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could be inferred.

2. *Whether the Court of Appeal was right in affirming the decision of the trial court which convicted the appellant for conspiracy for (sic) murder and for murder mainly on the alleged confessional statement of the appellant when the alleged confessional statement was (sic) proved to*  
 5 *have been made by the appellant voluntarily."*

On his own part, the respondent submitted the following issues as arising for determination in the appeal:

- "1. Whether the Justices of the Court of Appeal were right in affirming the decision of the trial court which convicted the appellant for*  
 10 *conspiracy to commit murder and for murder based on the confessional statement which appellant retracted.*

*2. Whether it was necessary to determine the voluntariness of the confessional statement made by the appellant."*

- 15 I am of the view that issues raised by both parties in their respective briefs of argument are basically the same and which ever set is adopted will produce the same result.

At the hearing of the appeal both learned counsel were absent but filed their respective briefs of argument. The court acting under Order 6  
 20 Rule 8(6) of the Rules of the court treated the appeal as having been argued on the briefs of argument.

It was the contention of the appellant's counsel in his brief that the court below affirmed the decision of the trial court based mainly on the alleged confessional statement of the appellant without appreciating that  
 25 the alleged extra-judicial statement from which the appellant resiled in his testimony during the trial ought not have been the basis of his conviction in the circumstances of the case.

He submitted that where a witness including an accused person is shown to have made a statement which is inconsistent and/or in conflict  
 30 with his evidence, the previous statement is not only to be disregarded, the evidence of such a witness is also to be regarded as unreliable and do not form any basis for a decision. He referred us to the case of *Saka Oladejo v. The State* (1987) 3 S.C. 207 at 224.

Learned counsel further stated that there is no independent eye  
 35 witness to the alleged killing of Anna Nun, the alleged confessional statements of the other accused persons which were all denied at the trial do not constitute admissible evidence against the appellant and after disregarding the alleged confessional statement of the appellant and his testimony at the trial, there is no circumstantial evidence proffered by the prosecution

which is cogent to establish the guilt of the appellant. He cited the cases of Joseph Lori v. The State (1980) 8 -11 S.C 86 and Okoro Mariagbe v. The State (1977) 3 SC. 47 at 52 in support of his contention.

In arguing issue two, counsel said that the only evidence led by the prosecution in proof of the alleged confessional statement was the evidence of P.W.2 and P.W.4. He submitted that the alleged extra-judicial statement of the appellant was not made voluntarily; that for a confessional statement to be voluntary, it must be made positively, freely and without fear, favour or threat.

It was his contention that the appellant denied making the statement at the trial; that he was brutalised and for fear of further beating, he signed the papers given him by the police without knowing the content of the document and the court ought to have treated the appellant's statement ('Exhibit 6') with great caution more so, when there is no independent evidence to corroborate it.

He submitted that where two or more persons are incriminated by an accomplice, the corroboration as to each must be considered separately. He referred to S.177 (1) of the Evidence Act, Cap. 62, Laws of the Federation of Nigeria, the case of Omisade & ors. v. R. (1964) NMLR 67, Enahoro v. R. (1965) 1 All NLR 125. Ukut & ors. v. The State (1956) 1 All NLR 306 and Bello v. The State (1966) 1 All NLR 223. We were urged to allow the appeal.

In reply to issue one, the learned Principal Legal Officer appearing for the respondent submitted in her brief of argument that the trial judge rightly relied and acted on the confessional statement ("Exhibit 6") even though the appellant retracted it while giving evidence at the trial. She cited the case of Ikemson & ors. v. The State (1989) 3 NWLR (Pt.100) 455 at 473 and R v. Hull (1961) All NLR 462.

She stated that "Exhibit 6" is corroborated by the evidence of P.W.1, P.W.2 and P.W.5 and referred us to R v. Sykes (1913) App. R. 233.

As to issue two, she stated that it was not necessary to determine the voluntariness of the appellant's confessional statement merely because the appellant said that he did not make it. She referred the court to the record of appeal to show that neither the appellant nor his counsel raised any objection as to the voluntariness of the statement when the statement was being tendered and that the appellant only alleged that he was badly beaten when he was giving evidence in his own defence.

Learned counsel further said that the test of voluntariness is tested

at the stage when the confessional statement is being tendered. She referred to the case of Ikemson & ors. v. The State (supra) at pages 465-468. She urged the court to dismiss the appeal because the confessional statement was properly admitted in evidence and rightly acted upon and that the allegation made by the appellant was an afterthought.

5 The question raised in issue one is that the conviction of the appellant should not be allowed to stand because:-

(1) it was based on an extra-judicial statement which he retracted at the trial;

(2) the absence of an independent eye witness to the alleged killing;

(3) the alleged confessional statements of the co-accused were all denied at the trial and

(4) the absence of circumstantial evidence proffered by the prosecution which is cogent, complete and irresistible.

15 The contention of the learned counsel for the appellant is anchored on the principle of law stated in *Asanva v. The State* (1991) 3 NWLR (Pt.180) 422 that once an accused person at the trial resiles on his voluntary statement to the police during investigation, both statements should be disregarded and deemed unreliable.

20 The above principle of law has no application to a confession made by an accused person. A court may convict an accused person on his extra-judicial confession which has been proved to have been voluntarily made and is positive and unambiguous. The fact that the accused resiled from it does not necessarily render it inadmissible. See *Queen v. Hule* (1961/25 62) 2 N.S.C.C. 221; *R v. Kanu* 14 W.A.C.A. 30; *Kim v. The State* (1992) 4 NWLR (Pt.233) 17, *Akinfe v. The State* (1988) 3 NWLR (Pt.85) 729, *Ejinima v. The State* (1991) 6 NWLR (Pt.200) 627 and more recently *Egboghonome v. The State* (1993) 7 NWLR (Pt.306) 382.

30 The appellant in "Exhibit 6" which is the statement he made to the police on arrest made an admission of the offences charged. He narrated the part played by each and everyone of them. He was taken to P.W.4 - a superior police officer. He read and explained "Exhibit 6" to the appellant who admitted making it voluntarily to the P.W.2. The appellant signed "Exhibit 6" before P.W.4 who countersigned it.

35 P.W.4 further completed a confessional statement form for the appellant "Exhibit 11". P.W.4 put the questions in the form to the appellant. His answers were inserted in the form which he endorsed and P.W.4 countersigned it.



When P.W.2 sought to tender the statement of the appellant at the trial, all that the appellant said as recorded by the learned trial judge was:

*"Accused said that he did not make the statement". The statement was thereafter admitted as "Exhibit 6". "Exhibit II" was also admitted in evidence without any objection.*

*From the above narrative, there is no doubt that "Exhibit 6," was properly admitted in evidence. The law is that the court can still admit and convict on a confessional statement which the accused person retracted from if satisfied:*

- (1) that the accused person made the statement, and
- (2) there are circumstances which give credence to the contents of the confession.

It is also desirable if the confession is subsequently retracted as in this case, that there should be some corroboration, even if slight.

The appellant in "Exhibit 6" narrated how the 4th accused invited him, the 1st, 2nd and 3rd accused persons to his house on 29/11/84 and gave them the assignment to kill a Kwale girl (Anna Nun) who took one hundred naira from him and failed to make love to him. They were given the sum of one thousand naira for the purpose which was kept by the 2nd accused.

The appellant continued:

*"We drank one big bottle of Ogogoro which Owun bought for us in his house before we left for the operation....."*

*At about 4 p.m. of that 29:11:84, four of us namely:- John Ebagua, William Enabulele, Kingsley Ekhase and myself left to Ugbidi Road, Abude and hide inside the bush waiting for the lady. Owun was in the house waiting for result and did not go with us. At about 6.30p.m. of 29:11:84, William Enabulele alerted us in the bush that the woman was coming. We all came out from the bush and John Ebagua held the woman. John Ebagua gave the woman a blow on her eye and fell her down with her load.*

*.....*  
*Four of us dragged her enter the cassava farm and John Ebagua turned the woman's neck and she died immediately. After the death of the woman, John Ebagua sex her and William Enabulele removed hair from the private part and head of the woman. He wrap it with a white paper and gave it to Owun when we arrived Owun's house."*

On 30:11:84, Dr. John Bosah a medical officer attached to Kwale General Hospital but formerly of the General Hospital, Abudu performed the post mortem examination on the corpse. He testified, as P.W.5. He said

in part:

*"The body was in a state of rigor mortis - stiff. The neck was bruised and swollen, crusted blood in the nose and mouth, sub conjunctiva haemorrhage - bleeding in the eye ball. The face was bloated up. Further examination showed bruising of the vagina and a shallow laceration of the*  
 5 *posterior vaginal wall. The internal organs were normal. The cause of death was asphyxia -lack of oxygen. By the signs found on the body it could be caused by strangulation."*

The appellant testified in his own defence on 6:4:88. He stated that he did not sign "Exhibit 6" and that he did so under duress in order to  
 10 save his dear life. He stated that he was tortured and during the torture the police brought almost four to five papers to him to sign and he signed the papers in fear.

The claim by the appellant that he made "Exhibit 6" under duress was made for the first time on 6:4:88 when he was testifying and this was  
 15 over three years from the time he made the extra-judicial confession. This statement was satisfactorily proved by P.W.2 (the investigating police sergeant) and P.W.4 (Edward Emodi Chima - the superior police officer) before whom "Exhibit 6" was read over to the appellant and "Exhibit 11" the confessional form completed, signed and endorsed.

20 I have no doubt that "Exhibit 6" was free and voluntary. It is equally direct and positive. Taking the whole evidence together including those of P.W.1, P.W.2, P.W.4 (the superior police officer) and P.W.5 (the medical officer who performed the autopsy) they are compatible with the facts stated in "Exhibit 6". See Kanu & Anor v. The King 14 W.A.C.A. 30, The Queen  
 25 v. Obiasa (1962) All NLR 645 and The Queen v. Mboho (1964) NMLR 49.

If the appellant had at the time "Exhibit 6" was sought to be tendered claimed that it was obtained under duress or torture, there would have been a trial within trial to determine whether it was voluntary or not. That was not the case here.

30 There is no law which says that a man may not be convicted on his own confession alone. "Exhibit 6" having been properly proved in law requires no corroboration to found the conviction of the appellant. The learned trial Judge enquired carefully into the circumstances in which "Exhibit 6" was made one of them being the taking of the appellant to a  
 35 superior police officer who read over "Exhibit 6" to the appellant before "Exhibit 6" was completed, signed and endorsed. He was satisfied of its genuineness. See Walter Sykes (1913) 8 Ca. App. R. 233 and Rex v. Omokaro 7 WACA. 146.

The contention of the learned counsel for the appellant in his brief of argument that where a witness including an accused makes a statement which is inconsistent and or in conflict with his evidence in court, such evidence is to be treated as not reliable while the statement is not regarded as evidence upon which the court can act does not apply to extra-judicial confessions. See *Egboghonome v. The State* (1993) 7 NWLR (Pt.306) 383. 5

Issue two has been fully covered in the consideration of the first issue for determination. However, the question of voluntariness of a confessional statement is tested at the time the statement is sought to be tendered: *Ikemson v. The State* (1989) 3 NWLR (Pt.110) 455. 10

The allegation of torture made by the appellant more than three years after the extra-judicial confession is in my opinion an after thought. The appellant was rightly convicted and I see no reason to disturb the decision of the courts below.

The appeal fails and is dismissed. I affirm the judgment of the courts below and the sentence of death passed on the appellant. 15

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**BELGORE JSC** 20

I have read and discussed in advance the judgment of my learned brother, Ogwuegbu, J.S.C. with which I am in full agreement. As I have nothing more to add to it I adopt the reasoning and conclusion in the judgment as mine in dismissing this appeal. 25

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**WALI JSC**

I have read in advance a copy of the lead judgment of my learned brother, Ogwuegbu, J.S.C., with which I agree. I however wish to make the following contribution by way of emphasis. 30

This is a murder case in which the appellant, along with four others (now at large) were tried in the High Court of the then Bendel State, Abudu Judicial Division and found guilty of:- 35

1. Murder of Anna Nun, and
2. Conspiracy to murder Anna Nun.

All the five were accordingly convicted and sentenced to death by hanging.

Following their conviction and sentence, all the five accused persons promptly filed separate notices of appeal. While they were awaiting the hearing of the appeal and being kept in the Benin City Prison, there was a jail break in which all the five appellants escaped. This was in April 1989.

5 In September, 1989, the present appellant reported himself to the police at Abraka. He was re-arrested and taken back to the Benin City Prison. He is therefore the only appellant whose appeal was heard and considered by the Court of Appeal, Benin Division. The appeal was found  
10 to be unmeritorious and was accordingly dismissed.

The appellant has now appealed to this court.

Two original grounds of appeal and with the leave of this court, two additional grounds were filed.

15 The facts of the case are as stated in the evidence of P.W.1 and which are as follows:-

*"I remember 29/11/84. On that day at about 5 p.m. my sister Ana went to Iyekeze village to carry grounded cassava. At about 7 p.m. she did not return. I went for her there. On my way there I found on the farm road  
20 her basin and the garri she was carrying and the cloth she had on. I called her name but there was no response. It was a farm road close to Church of God Mission. I raised an alarm and many people ran to me. Myself and the people searched for her but we could not find her. I reported the matter to Abudu Police Station. The police asked me to report back after 24 hours.  
25 On the next day 30/11/84 I looked for her again. I found her corpse in a cassava farm near Church of God Mission Abudu. She was naked and dead. She had a blouse. Blood was rushing from her private part. There was foam from her mouth. I went back to the police to report. Two police went with me to the scene. The police got a photographer to take the  
30 picture. The corpse was conveyed to Abudu General Hospital."*

Parties to the appeal filed an exchanged briefs of arguments. On the date the appeal came up for hearing, none of the parties appeared in court and since there was proof that they were aware of the hearing date of the appeal, in line with Order 6 rule 8(6) of the Supreme Court Rules 1985,  
35 it was treated as having been argued.

In the appellant's brief, the following two issues were formulated:-

*"1. Whether the Court of Appeal was justified in affirming the decision of the trial court which convicted the appellant for conspiracy to murder and for murder mainly on an alleged confessional statement of the*

*appellant from which the appellant resiled at the trial and when there is no other complete substantial evidence from which the guilt of the appellant could be inferred.*

*2. Whether the Court of Appeal was right in affirming the decision of the trial court which convicted the appellant for conspiracy for murder and for murder mainly on the alleged confessional statement of the appellant when the alleged confessional statement was not proved to have been made by the appellant voluntarily."*

The respondent also raised in his brief, the following two issues:-

*"1. Whether the Justices of the Court of Appeal were right in affirming the decision of the trial court which convicted the appellant for conspiracy to commit murder and for murder based on the confessional statement which appellant retracted.*

*2. Whether it was necessary to determine the voluntariness of the confessional statement made by appellant."*

The respondent's two issues are covered by the appellant's two issues.

In issue 1, it was the contention of learned counsel for the appellant that the Court of Appeal was wrong in affirming the decision of the trial court that was solely based on the alleged extra-judicial confessional statement from which the appellant resiled. He submitted that where a retracted statement of a witness, including an accused person is in conflict with his evidence, the previous statement is not only to be disregarded, but also the evidence of such a witness is rendered unreliable. It is his further submission that if both the appellant's extra-judicial statement and his evidence in court are disregarded, there is no other evidence, whether direct or circumstantial, to sustain the conviction. In support of these arguments, learned counsel referred to and relied on the cases of *Saka Oladejo v. The State* (1987); 3 S.C. 207 at 224; (1987) 3 NWLR (Pt.61) 419; *Joseph Lori v. The State* (1980) 8-11 S.C. 86; and *Okoro Mariagbe v. The State* (1977) 3 S.C. 47 at 52 in urging the court to sustain his submissions.

On the second issue, learned counsel submitted that the alleged extra-judicial statement was not voluntarily made by the appellant as he was brutalised and put in fear to sign whatever papers were presented to him by the police. He said the trial court should have exercised extra caution before admitting the retracted confessional statement of the appellant in evidence as Exh. 6 and relying solely on the same to convict the appellant, particularly when the same was retracted and there was no other corroborative evidence to confirm its truthfulness. In support, learned counsel

cited Section 177(1)(2) of the Evidence Act, Cap.62 Laws of the Federation of Nigeria, Omisade v. R. (1964) 1 All NLR 233; Enahoro v. R. (1965) 1 All NLR 125; Nkut v. R. (1965) 1 All NLR 306; and Bello v. R. (1966) 1 All NLR 223. He urged the court to allow the appeal by quashing the conviction and sentence and set the appellant free.

5 In reply to issue 1, learned counsel for the respondent submitted that the trial Judge rightly relied and acted on Exh. 6, the extra-judicial confessional statement, notwithstanding his retraction of the same. He contended that a confessional statement of an accused person should not  
10 be disregarded simply because it is retracted. In support of the submission, learned counsel cited and relied on the following decided cases: Ikemson & Ors. v. The State (1989) 3 NWLR (Pt.110) 455 at 473; R. v. Itule (1961) 1 All NLR 426; and R. v. Skyes (1913) CAR 233.

15 On issue 2, it was the counsel's submission that it was not necessary to determine the voluntariness of the appellant's confessional statement merely because he retracted it while giving evidence. Learned counsel said that the records show that neither the appellant nor his counsel raised any objection that Exh. 6, the confessional statement, was made under  
20 duress when it was tendered and admitted in evidence. He referred to Ikemson v. The State (supra) particularly pages 468-469 in support. He contended that a free and voluntary confession of guilt of a prisoner, if it is direct and positive and is duly made and satisfactorily proved is sufficient to warrant a conviction without any corroborative evidence. He however added that  
25 Exh. 6 was corroborated by the evidence of P.W.1, P.W.2 and P.W.5 and cited R. v. Sullivan (1987) 16 COX 347 to buttress his submissions. He described the allegations of threats and beatings of the appellant made later against the police as mere after thought and urged us to dismiss the appeal.

30 I shall deal with the two issues together. The pertinent issue for determination in this appeal is whether despite the retraction by the appellant of Exh. 6, the trial court's reliance on it to convict the appellant can be sustained.

In his brief, learned counsel for the appellant commenting on re-  
35 traction of extra-judicial confessional statement of an accused person, stated thus:-

*"The law is that where a witness including an accused person is shown to have made a statement which is inconsistent and or in conflict*

*with his evidence, the previous statement is not only to be disregarded, the evidence of such a witness is also to be regarded as unreliable and do not form any basis for a decision."*

This statement is part of a judicial pronouncement made in *Oladejo v. The State* (supra) lifted and relied on by learned counsel. But before discussing the statement above, I shall deal with the issue of voluntariness or otherwise of Exh.6.

It is trite law that it is the duty of the prosecution to prove beyond reasonable doubt the voluntariness of an extra-judicial confessional statement credited to an accused person standing trial for the crime confessed. See *Adekanbi v. A.-G., Western Nigeria* (1966) 1 All NLR 47. This proof is required when the voluntariness is challenged under the conditions stated in Section 28 of the Evidence Act. These are:-

1. Inducement, or
2. Threat, or
3. Promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient to give the accused person grounds reasonable to assume that by making the statement, he would gain any advantage or avoid any evil of a temporal nature.

The time to raise an objection on all or any of these grounds is when the prosecution, through its witness and forming part of its case, seeks to put in evidence the extra-judicial confession. The disputed statement (now Exh.6) was made on 10/12/84. It was tendered in evidence through P.W.2, Sgt. Joachim Gboye on 27/7/87. The only objection raised against it is as narrated on page 13 line 22 reads thus:-

Accused said he did not make it."

This is nothing more than a retraction of the statement which was made by the appellant about two and half years after its making. There is abundance of authorities that retraction of or resiling from an extra-judicial confessional statement is not a ground on which a trial court will conduct a trial-within-trial to determine its voluntariness. See *Jona Dawa v. The State* (1980) 8-11 SC. 236. The voluntariness of Exh. 6 was not called into question and the learned trial Judge was perfectly right in admitting it in evidence as part of the prosecution's case: See *Ikemson & 2 Ors. v. The State* (1989) 3 NWLR (Pt.110) 455; *R. v. Itule* (1961) All NLR 481; *Mumuni & Ors. v. The State* (1975) 6 SC. 79; *Nwosu v. The State* (1986) 4 NWLR (Pt.186) 428.

I shall now return to the issue on whether the learned trial Judge was right in relying on Exh. 6, the retracted statement of the appellant to find him guilty of the crime he was charged with.

5 Is the statement of law made by this court in Oladejo's case and applicable to extra-judicial confession made by an accused person and later retracted at the trial, still a good law? My answer to the above will be in the negative having regard to the latest decision by a full panel of 7 Justices of this court (only one dissenting) which over-ruled the statement  
10 of law in Oladejo v. The State (supra). See Egboghonome v. The State (1993) 7 NWLR (Pt.306) 383. In that case, this court reviewed the decision on retraction of confessional statement in the two celebrated cases of Asanya v. The State and Oladejo v. The State (supra) and Bello, the learned Chief Justice of Nigeria, in his lead judgment on pages 418 and 419 as follows:-

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*"Having regard to the plethora of the authorities on the matter, I am now convinced that the decision of the court in Oladejo's case was made per incuriam and the court erred in law in adopting it in Asanya's case.*

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*The learned amici and counsel have urged the court to depart from and over-rule the decisions in the said two cases because they were not only made per incuriam but also their continuous operation will perpetuate substantial miscarriage of justice.*

25

*It is trite law that this will depart from or overrule its previous decision if the decision was made per incuriam or its application to future cases will perpetuate injustice: Odi v. Osafire (supra); Asanya v. State (supra) and the other authorities cited therein. It is obvious that the decisions in Oladejo and Asanya were undoubtedly a departure from the long established principle laid down in Udo v. State since 1964 and the several decisions of this court thereafter that inconsistency does not apply to retracted extra-judicial confession of an accused person. The application of the rule in R. v. Golder to retracted confessions will tantamount to overruling by implication all the relevant decisions of this court from Udo v. State in  
30 1964 to Kim v. State in 1992.*

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*In my considered view, grave miscarriage of justice would also be occasioned by the extension. It may perpetuate injustices to the society as murderers would be at large simply because after a second thought, they have retracted their confessions. It would also negate the provision of sec-*



tion 27 of the Evidence Act which reads:-

*'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.*

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

*Moreover, the extension would occasion grave injustice to the accused as it would result to depriving him of the right to due consideration of his defence: Opayemi v. State (supra) and Ajudahun v. State (1991) 9 NWLR (Pt.213) 33.*

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*I am now convinced by the forceful submissions of amici curiae that Uwaifo, J.C.A. correctly stated the law. He was right that the decision of this court in Oladejo's case was a departure from the long established principle relating to consideration of confession and its retraction. Confession and testimony of the accused person shall be evaluated and assessed by the trial Judge together with the totality of the evidence in order to reach a just decision. For the foregoing reasons, I conclude that the decisions in Oladejo and Asanya should be overruled and are overruled. Accordingly, the trial court was right to rely on the confession of the appellant in convicting him of murder. The Court of Appeal was also right in affirming that the trial Judge was entitled to act on the confession."*

In the light of the decision in Egboghonome v. The State (supra) I shall now proceed to consider whether the learned trial Judge was right in relying on Exh. 6 to find the appellant guilty.

There is no eye-witness to the incident of the premeditated and brutal killing of the deceased. PW.1 gave evidence of how he traced the deceased's body and its condition in a cassava farm near Church of God Mission, Abudu. It was PW.1 that reported the incident to the police in Abudu and later identified the corpse to PW.5 who conducted an autopsy on the body and certified her dead in his evidence as due to "asphyxia - lack of oxygen. By the signs found on the body it could be caused by strangulation". In his evidence PW.5 described the wound he saw on the deceased as follows:-

*"The neck was bruised and swollen, crusted blood in the nose and mouth, sub-conjunctival haemorrhage - bleeding in the eye ball. The face was bloated up. Further examination showed bruising of the vagina wall. The internal organs were normal."*

In Exh. 6, the appellant admitted conspiring with the 4 others now at large, to the conspiracy and murder of the deceased. He said:-

"On 29/11/84 at about 3 p.m. Owun (m) invited four of us to his house, namely (1) William Enabulele (2) John Ebagua (m) (3) Kingsley Ekhasse and myself. On reaching Owun's house at Abudu, Owun told us  
 5 that he gave one Kwale girl name unknown the sum of N100.00 for love, but the woman failed him. He brought out N1,000.00 cash from his house and told us that he want the girl to be killed so that we can divide the money. Owun gave the N1000.00 to William Enabulele as the senior man for the job. John Ebagua told Owun that we will succeed and that we will  
 10 soon come back. Owun show us the girl as she was going to market area to grand cassava. The money was not shared and William Enabulele kept the N1,000.00 We drank one big bottle of ogogoro which Owun bought for us in his house before we left for the operation. I did not go to my house at all and nobody went with me to my house. At about 4 p.m. of that 29/11/84,  
 15 four of us namely:- John Ebagua, William Enabulele, Kingsley Ekhasse and myself left to Ugbidi Road Abudu and hide inside the bush waiting for the lady. Owun was in the house waiting for result and did not go with us. At about 6.30 p.m. of 29/11/84, William Enabulele alerted us in the bush that the woman was coming. We all came out from the bush and John Ebagua  
 20 held the woman. John Ebagua gave the woman a blow on her eye while William Enabulele held the two woman's leg and fell her down with her load. As the woman was shouting Kingsley Ekhasse covered her mouth so that nobody will hear the voice. Four of us dragged her enter the cassava farm and John Ebagua turned the woman's neck and she died immedi-  
 25 ately. After the death of the woman, John Ebagua sex her and William Enabulele removed hair from the private part and head of the woman. He wrap it with a white paper and gave it to Owun when we arrived Owun's house. I did not take part in sexing the woman because I was on the road waiting whether people will pass the road or not. William Enabulele also  
 30 removed the finger-nail of the woman and gave it to Owun. On arriving Owun's house at about 8 p.m. of that 29/11/84, we told him that we succeeded in killing the woman."

The learned trial Judge examined these pieces of evidence together with that of P.W.2, P.W.3 and the appellant's and made the following finding:-

"The confessional statement was direct and positive, duly made and satisfactorily proved. It satisfied all the tests enunciated in *R. v. Kanu (1952) 14 WACA 30*. It was evidence against the maker and not his

*accomplices."*

The learned trial Judge remarked that:-

*"Fifth accused was always the central figure in the conspiracy and murder. Fifth accused had no defence."*

x x x x x

A free and voluntary confession of guilt of a prisoner if it is direct and positive and is duly made and satisfactorily proved, is sufficient to warrant a conviction without any corroborative evidence. *R. v. Sullivan* (1887) 16 COX 347; *R. v. Sykes* (1913) CAR 233."

Although the learned trial Judge was perfectly right in returning a verdict of guilty on the 5th appellant on Exh. 6 alone without specifically stating the evidence that corroborated Exh. 6 I find such corroboration in the evidence of P.W.1, P.W.5, P.Ws 2 and 4. It shows that the offence was committed in the manner stated in Exh. 6 and that the appellant had opportunity of committing the heinous crime. See *Kanu & Anor. v. R.* 14 WACA 30; and *R. v. Obiasa* (1962) 2 SCNLR 402. Even without any corroborative evidence to Exh. 6, the conviction can be sustained since the learned trial Judge found that Exh. 6 was free, voluntary and positive. See *Yanya v. The State* (1986) 12 S.C. 282; *Yesufu v. The State* (1976) 6 S.C. 167; *Obosi v. The State* (1965) NMLR 119; and *Ntaha v. The State* (1982) 4 S.C. 1.

Finally, the findings and conclusions of the Court of Appeal in the lead judgment of Salami, J.C.A. (concurrent to by both Uche Omo, J.C.A. (as he then was) and Mustapher, J.C.A.) that:-

"On the statement of the fifth accused, Exhibit 6, the learned trial Judge summarised the evidence of the appellant thus:-

*"On 9th December, 1984 he the fifth accused was arrested by the Police. He was brutalised by the police and was forced to sign Exhibit 6 under duress in order to save his life."*

And the court concluded thus on the same, Exhibit 6:-

*"The confessional statement was direct and positive, duly made and satisfactorily proved. It satisfies all the tests enunciated in R. v. Kanu (1952) 14 WACA 30. It was evidence against the maker and not his accomplices."*

The learned trial Judge having concluded as he did on the admissibility of Exhibit 6 in his judgment the point is closed and no longer free for debate. In this regard, the dicta of Brett, Ag. C.J.F. in the case of *Queen v. Itule* (1961) All NLR 462 is very worthy of note. At page 465 of the report

the learned Acting Chief Justice of the Federation said:-

*"A confession does not become inadmissible merely because the accused person denied having made it, and in this respect a confession contained in a statement made to the police by a person under arrest is not to be treated differently from any other confession: R. v. Philip Kanu & Anor. 14 WACA 30. The fact that the appellant took the earliest opportunity to deny having made the statement may lend weight to his denial: R. v. Sapele & Anor. 2 F.S.C. 24 but it is not itself a reason for ignoring the statement. "*

The second P.W. gave account of how the appellant volunteered the statement to him. He also testified to the effect that he considered the statement to be confessional as a result he took the appellant along with the said statement to a superior police office fourth P.W. to enable the appellant confirm to the superior police officer the voluntariness or otherwise of the statement. The second P.W. further gave evidence of how the appellant, in the presence of the witness, confirmed to the fourth P.W. that he (appellant) freely made the statement. The fourth P.W. corroborated this aspect of the second P.W.'s evidence including the completion of the confessional statement form, Exhibit 11, to which the officer and the appellant appended their respective signatures. The appellant was led to the superior police officer solely to afford him an opportunity to admit or deny the voluntaries of the statement at the earliest opportunity.

He let the opportunity slip off. He failed, at the material time, to distance himself from the statement nor did he allege that he was compelled to sign an already prepared statement. The appellant waited for more than three years before he breathed a word of his torture to anyone. He confirmed under cross-examination that he was releasing his tales of woe for the first time in court. It is equally doubtful that a person who received such an extensive injuries as described by the appellant would not seek medical assistance. But appellant said he did not ask for one. The steps taken by second and fourth P.W.s to establish the voluntariness of the statement is in strict compliance with the principle laid down by the Supreme Court in *Obue v. The State* (1976) 2 S.C. 141, 152 and 153.

I think the learned trial Judge was entitled to make use of the statement as he did in his judgment."

His Judgment is very sound and cannot be faulted. I agree with it. The appeal lacks merit and it is accordingly dismissed. The conviction and sentence of the appellant are confirmed.

**ONU JSC**

Having been privileged before now to read in draft from the lead judgment of my learned brother Ogwuegbu, J.S.C. just delivered. I am in complete agreement with him that this appeal fails and it is accordingly dismissed by me. I will however add a few words of mine hereunder in expatiation.

The brief facts of the case in its cold-blooded contraption and execution are that on 26th November, 1984 at Abudu, the appellant along with his four co-accused agreed with a man called Owun as his (Owun's) hired assassins for pay of one thousand Naira (N1,000.00) in order that they would kill Anna Nun (hereinafter called the deceased) for refusing Owun's sexual advances to her. In consequence, the appellant conspired with the four others with whom he agreed to wait by the road side in order to waylay the deceased in Abudu while she was going to grind cassava at 6.00 p.m. They did as they agreed by waylaying her, had sexual intercourse with her after killing her and removed parts of her body which they then took to their hirer. Upon arrest, the appellant and his co-accused persons made confession statements (Exhibit 6 is appellant's) which he however later retracted, alleging that he was severely beaten and thereafter forced to sign certain documents, the contents of which he did not know. The prosecution called five witnesses in support of its case and after the defence, in which the appellant testified alone for himself, the trial court (per Gbemudu. J.) in a well considered judgment convicted and sentenced him to death on 31st May, 1988 on the 1st count for murder. It is further shown that the appellant, while awaiting the hearing of his appeal and still in detention at the Benin City Prison with his four co-convicts, was involved in a jail break in April, 1989, only to report himself back to the prison authorities in September of the same year to face his appeal. The court below after hearing the appellant's appeal, dismissed it and affirmed the decision of the trial court on 26th October, 1990, basing it mainly on the confessional statement (Exhibit 6). It is against that decision that the appellant has now further appealed to this court premised on a Notice of Appeal containing two original grounds. Leave was later sought and granted for the appellant to file and argue two additional grounds.

Briefs were eventually filed and exchanged by the parties in accordance with the rules of court. The issues submitted on behalf of the appellant for determination distilled from the two additional grounds are:

1. Whether the Court of Appeal was justified in affirming the decision of the trial court which convicted the appellant for the conspiracy to murder and for murder mainly on an alleged confessional statement from which the appellant resiled at the trial and when there is no other complete  
5 substantial evidence from which the guilt of the appellant could be inferred.

2. Whether the Court of Appeal was right in affirming the decision of the trial court which convicted the appellant for conspiracy for murder and for murder mainly on the alleged Confessional Statement of the appellant  
10 when the alleged Confessional Statement was (Sic) proved to have been made by the appellant voluntarily?

The respondent submitted two issues identical to those of the appellant for our determination; hence I will consider the issues submitted on  
15 behalf of the appellant for purpose of this appeal which we heard on 25th November, 1993 in the absence of parties reserved judgment until today. I will consider the two issues herein together as they clearly overlap.

***Issues 1 and 2:***

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The learned counsel for the appellant has contended on appellant's behalf that the court below affirmed the decision of the trial court which convicted the appellant of the offence of conspiracy to murder and for murder based mainly on Exhibit 6 without appreciating that the alleged  
25 extra judicial statement of the appellant from which the appellant resiled during the trial ought not to have been the basis for convicting him in the circumstances of the case. The law, he argued, is that where a witness including as accused is shown to have made a statement which is inconsistent and or in conflict with his evidence, the previous statement is not only  
30 to be disregarded, the evidence of such a witness is also to be regarded as unreliable so as not to form any basis for a decision vide *Saka Oladejo v. The State* (1987) 3 NWLR (Pt.61) 419. It was further contended that the court below would have come to a different decision if it had considered the purport of that case.

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It was also contended on appellant's behalf that as there was no independent witness of the alleged killing of Anna Nun the confessional statements of the other co-accused, which were all denied during the trial do not constitute admissible evidence against the appellant. It was finally

submitted that after disregarding the alleged extra-judicial statement of the appellant (Exhibit 6 hereof) and his testimony during the trial, the circumstantial evidence upon which the prosecution must rely to succeed to prove its case beyond reasonable doubt must be cogent, complete and irresistible and must not admit of other possibilities as was decided by the Supreme Court in Joseph Lori v. The State (1980) 8-11 SC. 81 and Okoro Mariagbe v. The State (1977) 3 SCAJ at 52.

It is well to begin by stressing firstly, that a confessional statement will not be rejected because an accused person denied making it. See R. v. Agagariga Itule (1961) 1 All NLR 462. When on the 27th of July, 1987, P.M.2 Sergeant Joachim Gboye, tendered the voluntary statement of the appellant (then 5th accused) it was recorded at page 13 of the Record, line 22

*"Accused said he did not make the statement."* 15

Whereupon, the statement was received by the trial court and marked Exhibit 6. This effect means that there was no need for trial within trial. See Ehot v. The State (1993) SCNJ 65 as there was nothing left to suggest that the statement was involuntarily made. Indeed, it is clear from the records that neither the appellant nor his counsel raised any objection when Exhibit 6 was tendered as a statement that it was made under duress. What in fact transpired in this case, was that the appellant only alleged while testifying in his own defence at the trial, that he was badly beaten. In the not-too-dissimilar case of Patrick Ikemson & Ors v. The State (1989) 3 NWLR (Pt.110) 455 where one of the issues was whether the trial court was right to have relied on the extra judicial statements of the appellants as evidence against them at the trial, it was there held by this court, dismissing the appellant's appeal, inter alia at pass 468-469 that

*"It was contended that the confessional statements of the appellants were not voluntarily made. This was a most misconceived complaint. Each statement was tendered in evidence at the trial without objection by counsel representing the appellants. It was at the point of tendering the statement that the question of voluntaries would have been tested."* 30

Secondly, since Exhibit 6 is by its very tenor and purport a confessional statement, it was at the point of tendering it that the question of its voluntaries would have been tested. Since this was not done by a challenge to its voluntariness or that it was obtained by a force or under duress, the contention in relation thereto is clearly misconceived. 35

The appellant's contention on the principle of law that where a witness including an accused is shown to have made a statement which is inconsistent and/or is in conflict with his evidence the previous statement is not only to be disregarded, the evidence of such a witness is also to be regarded as unreliable vide Saka Oladejo' case (supra), is no longer good law.

This court having overruled the latter case as well as Asanya v. The State (1993)3 NWLR (Pt.180) 422 in its recent decision of Stanley Idgun Egboghomome v. The State (1993) 7 NWLR (Pt.306) 383 the law now is that evidence obtained through a confession if direct and positive as well as duly made and satisfactorily proved, is enough to secure a conviction. Thus in Ikemson v. The State (supra), the dictum of Karibi-Whyte, JSC at page 473 to the effect that-

15 *"It has always been held that where the statement of accused made before the trial is inconsistent with his testimony at the trial the court should reject both as unreliable. R.E. Ukpog (1961) 1 All NLR.25. This is however not the same with the evidence obtained through confession"*  
20 (Italics is mine for emphasis)

Was re-echoed by Olatawura, J.S.C, in Egboghomome's case (supra) at page 435 when he asserted:

25 "Following Oladejo's case (supra) our decision in Asanya's case (supra) to the effect that:

*"Where a witness makes a statement which is inconsistent with his testimony such testimony is to be treated as not reliable while the statement is not regarded as evidence upon which the court can act*  
30 *should not apply to confessional statements. It will be an escape route freely taken by an accused person without any hindrance to escape from justice. It will not be in the interest of the society to allow a man who has confessed to his crime to walk out of court free man simply because he had*  
35 *a change of mind; the trial will be a mockery ...."*

In the instant case where the allegation later made by the appellant is to the effect that Exhibit 6 was involuntarily made or that force was used to elicit it, it is no more than an afterthought. It is pertinent to add that a free and voluntary confession of guilt by a prisoner such as disclosed



by Exhibit 6, if it is direct and positive and when duly made and satisfactorily proved, is sufficient to warrant a conviction without any corroborative evidence. See *R. v. Sullivan* (1887) 16 Cox 347; *R. v. Sykes* C.A.R. 233 and *R. v. Obiasa* (1962) 1 All NLR.651.

The appellant's confession in Exhibit 6 having, moreover, been corroborated by the evidence of P.W.1, P.W.2 and P.W.5, the test laid down in the above cases was satisfied. Besides, there was complete circumstantial evidence from which the guilt of the appellant could be inferred. For instance, what the appellant said in Exhibit 6 (See pages 100 and 101 of the Record) regarding the conspiracy to murder and murder of the deceased contrived by him and his co-convicts and later executed at the back of their hirer, Owun, at Abudu on 29th November, 1984, tallied with the evidence of P.W.1 (Martin Ite) at page 6 of the Record to the effect that following the disappearance of the deceased (his sister) on the fateful day and the abandonment of the search for her due to night fall, a search party was organised the following day, 30/11/84, leading to the discovery of her naked corpse with named parts of her body removed. Similarly, is the evidence of P.W.2, D.S.P. Edward Emordi Chima, who stated that he took the voluntary confessional statement of the appellant (Exhibit 6). Also the evidence of Doctor John Bosah, who said that he carried out the post mortem examination on the bruised parts as well as showing the cause of death to be due to asphyxia resulting from strangulation. The pieces of evidence so cogently, compellingly and conclusively dovetail into one another and so point to one and only conclusion that the appellants and his co-convicts killed the deceased and that the offences are proved with accuracy of mathematics.

It is for the reasons set out above and the fuller ones contained in the lead judgment of my learned brother, Ogwuegbu, J.S.C. that I dismiss this appeal as lacking in merit. I accordingly dismiss this appeal and affirm the conviction and sentence of death passed on the appellant.

### **IGUH JSC**

I have had the privilege of preview, in fact, of the lead judgment just delivered by my learned brother, Ogwuegbu, J.S.C., and I am in full agreement with him that this appeal lacks merit and should be dismissed.

The appellant, along with four others, were arraigned before the then Bendel State High Court, now the Edo State High Court of Justice,

holden at Abudu with the offences of conspiracy to murder and the murder of one Ann Nun at Abudu on or about the 29th day of November, 1984 contrary to section 324 and 319 (1) of the Criminal Code, Cap, 48 Volume II, Laws of the Bendel State of Nigeria, 1976 respectively. All five accused persons were at the conclusions of their trial found guilty as charge and  
5 were accordingly sentenced to death by hanging. The appellant, who was the fifth accused at the trial, being dissatisfied with the judgment of the trial court, appealed to the Court of Appeal which on the 26th day of October, 1990 dismissed his appeal. He has now further appealed to this court being dissatisfied with the judgment of the Court of Appeal which affirmed his  
10 conviction and sentence by the trial court.

The appellant after he was arrested by the police for the offences charged was duly cautioned and made the detailed statement, exhibit 6. Exhibit 6 is a clear confessional statement. The learned trial judge, relying  
15 on this statement together with some other corroborative evidence before the court found the appellant guilty as charged and convicted him accordingly.

The brief facts of this case as contained in exhibit 6 are that on the  
20 29th day of November, 1984, one Owun, the 4th accused person, invited the appellant along with the 1st, 2nd and 3rd accused persons to his house. When they all assembled, the said Owun announced to them that he gave the sum N100.00 to the deceased in order to make love to her but that the deceased had refused to submit to his overtures. As a result, he conspired  
25 with and offered them N1,000.00 so that they would murder her.

The appellant, along with the 1st, 2nd and 3rd accused persons, accepted this assignment. The same day, they waylaid the deceased on the road, brutally attacked and dragged her into a cassava farm, where they  
30 strangled her. The deceased died on the spot. Thereafter they had sexual intercourse with her and finally removed some of her pubic hair and hair from her head which they delivered to Owun.

It is necessary to point out that the appellant's statement, exhibit 6, was duly confirmed before a Superior Police Officer, Edward Emodi  
35 Chima who testified as P.W.2 at the trial. The relevant confessional statement confirmation form was tendered in evidence as exhibit 11.

The first issue for determination as formulated by both parties is whether the Court of Appeal was right in affirming the decision of the trial court which convicted the appellant on the basis of his confessional state-

ment which he subsequently retracted at the trial. In his regard, it must be stressed that the trial court after a careful evaluation and assessment of exhibit 6 found it to be free and voluntary statement of the appellant. The learned trial judge in his judgment said of Exhibit 6 as follows:-

*"The confessional statement was direct and positive, duly made 5 and satisfactorily proved. It satisfied all the tests enunciated in R. v. Kanu (1952) 14 W.A.C.A.30. It was evidence against the maker and not his accomplices."*

Earlier on in his judgment, the learned trial judge had posed the 10 question and answered the same in the manner following namely:

*"Is there anything outside the confession to show it is true? The deceased woman was found strangled and sexually assaulted in a cas- 15 sava farm in Abudu .....A basin of ground cassava was found near her .....*"

It seems to be indisputable that the trial court was totally satisfied that the appellant's statement to the police, exhibit 6, is his and voluntarily statement. The Court of Appeal was also ad idem with trial court on this material issue when, in its judgment, it stated as follows:- 20

*"The learned trial judge having concluded as he did on the admis- sion of Exhibit 6 in his judgment, the point is closed and no longer free for debate."*

I will consider the first issue for determination in this appeal against the background of the above findings. 25

The first point must be stressed is that a free and voluntary confessional statement, whether judicial or extrajudicial, if it is direct, positive and satisfactorily proved is sufficient proof of guilt and is enough to sustain a conviction. See *R. v. Sykes* (1913) 8 C.A.R. 233 at 236, *R. v. Ajayi Omokaro* (1941) 7 WACA 146; *Philip Kanu & Another v. King* (1952) 14 W.A.C.A. 30 and *Patrick Ikemson & Ors. v. The State* (1989) 3 N.W.L.R. (Pt. 110) 455. A conviction will not be quashed merely because it is based entirely upon evidence of confession of the appellant. Speaking for myself, a confession that is both well and satisfactorily proved and established to be true must be one of the best evidence that can be produced to justify a conviction. An accused person may therefore be convicted on his own voluntary and true confession alone as there is no law against this procedure. Indeed the law is well established that such a free and voluntary confession of guilt by a prisoner is sufficient to warrant conviction even without any corroboration. 35

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native evidence so long as the court is satisfied of the truth of such a confession. See *Edet Obosi v. The State* (1965) N.M.L.R. 119 and *Jimoh Yesufu v. The State* (1976) 6 S.C. 167 at 113. It is however desirable to have outside the accused person's confession, some corroborative evidence, no matter how slight of the circumstances which make it probable that the confession is true. It must thus be stressed that the courts are not generally disposed to act on a confession without first testing the truth thereof. See *Paul Onochie & Ors. v. The Republic* (1966) N.M.L.R. 307. See too *Jafiya Kopa v. The State* (1971) 1 All N.L.R. 150.

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As earlier indicated, the appellant's statement to the police, Exhibit 6, was duly confirmed before a Superior Police Officer, PW.2. But it must be stated that it is not the law that a free and voluntary confessional statement must be confirmed before a superior police officer to be properly proved or admissible. Confirmation of confessional statements before a superior police officer has however been commended by this court in a number of cases. See *R. v. Omerewure Sapale* (1957) SCNLR 307; *Nwighoke & Ors. v. R.* (1959) 4 F.S.C. 101; *Chungwom Kim v. The State* (1992) 4 N.W.L.R. (Pt 233) 17. It ought also to be emphasised that where a court is expected to attach some weight to a confessional statement purported to have been confirmed before a superior police officer, it is desirable that the laid down procedure for such confirmation should be followed. See *David Obue v. The State* (1976) 2 S.C. 141.

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In the instant case, it is noteworthy that the laid down procedure was strictly adhered to in Exhibit 11 in the confirmation of the appellant's statement, Exhibit 6.

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Learned counsel for the appellant in his brief of argument, attacked the reliance placed on the appellant's confessional statement (Exhibit 6) by the trial court contending that the trial Judge should have disregarded both Exhibit 6 and the testimony of the appellant before the trial court where the appellant retracted his said confessional statement. With respect to learned counsel, this attack is not only unjustifiable but totally misconceived. A confessional statement does not become inadmissible as evidence or liable to be discountenanced or disregarded merely because the accused person retracted it in his evidence before the trial court. This proposition is not now the law.

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No doubt, in *Oladejo v. The State* (1987) 3 N.W.L.R. (Pt. 61) 419 it was laid down that where an accused person makes a confession which

is inconsistent with his testimony at the trial, such a testimony is to be treated by the court as unreliable while the confusion must not be regarded as evidence upon which the court can act. This decision unfortunately was adopted in the subsequent case of Asanya v. The State (1991) 3 N.W.L.R. (Pt. 180) 422. However, in the recent case of Stanley Egboghonome v. The State (1993) 7 N.M.L.R. (Pt. 306) 383 which was heard by a full panel of this court, the said decisions in the Oladejo and Asanya's cases (supra), came up for a closer consideration. The full court finally held that the decision in Oladeji's case was made per incuriam and that the court erred in law in adopting it in Asanya's case.

The confessional statement, Exhibit 6, was found by the trial court to have been made freely and voluntarily by the appellant. It was direct and positive and was properly and satisfactorily proved. It is plain to me that the learned trial judge rightly relied and acted upon the confessional statement, Exhibit 6, even though the appellant resiled it in his evidence at the trial. See too R. v. John Itule (1961) All N.L.R. 462 and Patrick Ikemson v. The State (1989) 3 N.W.L.R. (Pt. 110) 455 at 473. Indeed in Egboghonome v. The State (supra), this court emphasised the principle that the inconsistency rule, that is to say, the rule that where a witness makes an extra-judicial statement which is inconsistent with his testimony at the trial, such testimony is to be treated as unreliable while the statement is not regarded as evidence on which the court can act, was formulated for the resolution of conflict between the latter evidence and the previous statement of a witness to ensure that the evidence received is credible. The court stressed that this rule was not formulated for the resolution of inconsistency in the evidence of an accused person and his extra-judicial confession. It can now be taken as settled that the inconsistency rule does not therefore cover the case of an accused person who testifies contrary to his earlier statement as the court can convict on the confessional statement of an accused alone. Having regard to all my observations above, it seems to me clear that issue number one must be resolved against the appellant.

The second issue which regrettably was inelegantly formulated in the appellant's brief of argument seems to question whether the Court of Appeal was right in affirming the decision of the trial court when the confessional statement upon which the appellant was convicted was not proved to have been made voluntarily. The first point must be made in this regard is that the trial court upon a careful evaluation of Exhibit 6 found that it

was a free and voluntarily confession of the appellant. As was observed by the Court of Appeal on this question, the learned trial judge having rightly concluded, as he did, on the admissibility of Exhibit 6 in his judgment, the point must be regarded as "closed and no longer free for debate". The records clearly show that neither the appellant nor his learned counsel raised  
5 any objection on ground of voluntariness at the stage when the confessional statement, Exhibit 6, was tendered at the trial by the prosecution. The appellant's original claim when Exhibit 6 was tendered was that he did not make the statement to the police at all. It was only when he was testifying on his own defence that he alleged he was brutalised by the police  
10 and was forced to sign Exhibit 6 under duress, a claim which the trial court considered and rejected. At all events, the issue of the voluntariness of a statement is tested at the point the statement is being tendered. See Patrick Ikemson v. The State, (supra) at pages 468-469. I agree with the learned respondent's counsel that the trial court properly accepted and acted on  
15 Exhibit 6 upon which the appellant was convicted and sentenced as prescribed by law. Accordingly issue number two again be resolved against the appellant.

In the final analysis, I accept the submission of learned respondent's counsel that the appellant's confessional statement was duly proved as free  
20 and voluntary. There is on record, abundant evidence outside Exhibit 6 which make it possible that the confession is true. Having accepted the truth of the confession in Exhibit 6, the learned trial judge was perfectly justified in convicting the appellant, and I hold that the court below was justified in dismissing the appeal against the conviction.

25 I find no merit in this appeal which I also hereby dismiss. The judgment of the trial court affirmed by the Court of Appeal is hereby further confirmed.

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