

SUPREME COURT OF NIGERIA
18TH FEBRUARY, 1994. SC 288/1991.
CORAM:- S. M. A. BELGORE, A. B. WALI,
E. O. OGWUEGBU, U. MOHAMMED, S. U. ONU, JJSC.

AUGUSTINE NWANGBOMU RESPONDENT

V.

THE STATE APPELLANT

CRIMINAL LAW - Murder - Evidence - Clear and cogent circumstantial evidence coupled with accused person's confessional statement - Conviction will not be quashed.

CRIMINAL PROCEDURE - Trial within trial - Confessional statements of an accused person - Admissibility - Where the accused did not object to admission of the statement on ground of involuntariness - (Whether) trial within trial was not necessary.

EVIDENCE - Weight - Admissibility - Accused person's denial of his confessional statement is a question of fact - Where the statement is rightly admitted - It has to be considered along with the entire evidence for the weight to be attached.

FACTS

The appellant wanted to marry one Juliana Igwe a child of about 13 years old. Some misunderstanding that led Juliana to run back to her parents made Appellant to attack Juliana's uncle (PW8) with a matchet and gave him several matchet cuts. Juliana's mother went to the rice farm at that time and Appellant was earlier told the farm she went to. Appellant was seen by several witnesses running away with a matchet after attacking PW8. Those working with Juliana's mother (the deceased) had a voice shouting and threatening to kill anybody he met at the farm. They all ran away leaving the deceased behind. She was later found dead in a pool of blood. Apart from Appellant's confessional statement to the police admitting the crime, there was no direct evidence save that there were strong circumstantial evidence.

At the Appellant's trial for murder before the Abakaliki High Court, he accepted making the statement but denied the contents as not being what he told the police. The trial court admitted the statement as Exhibit B, B1 without any trial within trial. Appellant was found guilty as charged. His appeal to the Court of Appeal Enugu Division was dismissed. On further appeal to the Supreme Court, it was asked to determine inter alia, whether the admission of the confessional statement was wrong and whether there was sufficient evidence to support the Appellant's conviction.

HELD (unanimously dismissing the appeal)

1. The issue of admission of Appellant's confessional statement (Exh B, B1) is a matter of fact in respect of which the trial court believed the Appellant made it and his denial was an afterthought. That issue could not have attracted trial within trial as the Appellant never objected on the ground that the statement was involuntarily obtained from him (p.7 L36)

2. Where an accused person denies making a confessional statement under consideration, such mere denial is a question of fact that the trial court must decide. The denial does not make the statement inadmissible only that the statement must be considered along with the entire evidence and circumstances of the case for the weight to be attached thereto. (p.8 L8)

3. In a situation of the accused challenging a confessional statement that it was not voluntary, the court must hold a trial within trial before deciding whether the statement was made voluntarily or not. It is thus not in every case that the accused challenges his statement confessing to the commission of the offence that a trial within trial must be held. (p.8 L24)

4. There is clear and cogent evidence in this case leading to the conclusion that the Appellant murdered the deceased and in his confession he clearly stated where he met the deceased and killed her. (p.9 L15)

PER BELGORE JSC - *"Though this court has not been asked to consider effect of an accused person who earlier confessed to police but resiled the witness box at trial, it is pertinent to restate the present position of this*

court..... An accused person's confession is relevant-and should not be disregarded merely because he later resiles from it. What is important is the weight the trial judge will attach to such confession and retraction. ”(p. L) [See the case of Egboghonome v. the State (1993) 11 KLR 1)

REPRESENTATION:

Chief P. O. Okolo with Frank Ezekwueche for the Appellant.
P.C. Akubilo D.P.P. Ministry of Justice, Enugu for the Respondent.

CASES REFERRED TO

1. Obidiozo v. the State (1987) 4 N.W.L.R. (pt 67) 748, 751
2. Akinfe v. The State (1988) 3 N.W.L.R. (pt 85) 729
3. Ojegele v. The State (1988) 1 N.W.L.R. (pt 71) 414
4. R. v. Kassi & 6 Ors. 5 W.A.C.A. 154
5. R. v. Onabanjo 3 W.A.C.A. 43
6. R. v. Igwe (1960) 5 F.S.C 55
7. Queen v. Eguabor (1962) 1 All N.L.R. 287, 292
8. Obidiozor v. State (1987) 4 N.W.L.R. 748, 760, 761 - 763
9. Oladejo v. The State (1987) 3 N.W.L.R. (part 61) 419
10. Asanya v. the State (1991) 3 N.W.L.R. (part 180) 422
11. Egboghonome v. The State (1993) 7 N.W.L.R. (part 306) 383
12. Ogoala v. The State (1991) 2 N.W.L.R. (part 175) 509 at 734
13. Abdul Mohammed v. The State (1991) 5 N.W.L.R. 192
14. Ehot v. The State (1993) 5 S.C.NJ. 65
15. Ejinma v. The State (1991) 5 L.R.C.N. 1640 at 1671
16. Lori v. The State (1980) 8 -11 S.C at 86 - 87
17. Apishe v. the State (1971) 1 All N.L.R. 50 at 53
18. Tepper v. The Queen (1952) A.C 480 at 489
19. Babalola v. the State (1989) 4 N.W.L.R. (part 115) 264
20. Anakwe v. The State (1976) 9 to 10 S.C. 255 at 264
21. Mamman v. The State (1976) 6 S.C 115 at 124
22. Okoduwa v. The State (1980) 8-11 S.C. 81 at 333, 335 and 354
23. Achabua v. The State (1976) 12 S.C. 63 at 68 - 9
24. Arthur Onyejekwe v. The State (1992) 4 S.C.N.J. 1 at 9
25. Ishola v. the State (1979) 9 and 10 S.C 81
26. R. v. Francis and Murphy (1959) 43 C. App R 174
27. R. v. Omokaro 7 W.A.C.A. 146
28. Ogoala v. The State (1991) 2 N.W.L.R. (pt 175) 509
29. Adekanbi v. A.-G. Western Nigeria (1966) 1 All N.L.R. 47

30. Ashake v. The State (1968) 2 All N.L.R. 198
31. Auta v. The State (1975) N.N.L.R. 60 at 65
32. The Queen v. Nwango Igwe (1960) 5 F.S.C. 55
33. R. v. Udo Eka Ebong 12 W.A.C.A. 139
34. Kanu v. the King 14 W.A.C.A. 40
- 5 35. R. v. Itule (1961) All N.L.R. 462
36. R. v. Sapele & Anor. (1957) 2 F.S.C. 24
37. Salawu v. The State (1971) 1 N.M.L.R. 249
38. Otufale & Ors. v. The State (1963) N.M.L.R. 261
39. Queen v. Chukwuji Obiasa (1962) 2 All N.L.R. 645
- 10 40. Ikpassa v. Bendel State (1981) 9 S.C. 7
41. Queen v. Igwe (1960) 5 F.S.C. 55
42. Onwumere v. The State (1991) 4 N.W.L.R. (part 186) 428
43. Queen v. Itule (1961) 2 S.C. N.L.R 183
44. Queen v. Obiasa (1962) 2 S.C. N.L.R. 402
- 15 45. Mumuni v. The State (1975) 6 S.C. 79
46. Aremu v. The State (1984) 6 S.C. 85
47. Ajinima v. The state (1991) 6 N.W.L.R. (part 200) 627
48. Akpan v. The State (1992) 4 N.W.L.R. (part 233) 19
49. Adio v. The State (1986) 2 N.W.L.R. (Part 24) 585 at 593
- 20 50. Omogodo v. The State (1981) 5 S.C. 5
51. Jules v. Ajani (1980) 5 - 7 S.C. 96
52. Chinwendu v. Nwanegbo Mbamali & Anor (1980) 3/4 S.C. 31
53. Ezewani v. Onwuordi (1986) 4 N.W.L.R. (part 33) 27
54. Alade v. Alemuloke (1988) 1 N.W.L.R. (part 690) 27

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STATUTES REFERRED TO

Criminal Code Law (Laws of Eastern Nigeria) 1963 Cap 43 Vol. II S. 319

(1)

Evidence Act SS. 27, 28

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LEAD JUDGMENT BY BELGORE JSC

The appellant, Augustine Nwangbomu was to marry one Juliana Igwe, a child. It seems that by custom of Ezza in Abakaliki she had to stay
35 with the proposed husband for a while to decide whether they could live together as husband wife. Juliana Igwe (P.W.9) ran back home several times - about fourteen or fifteen times according to her Uncle Michael Onele, P.W.8. The appellant was apparently unhappy at the prospect of losing Juliana.

Michael Onele (PW.8), a teacher got home from school and saw the appellant in their compound. The appellant told PW.8 he had come to effect a settlement on the matter of Juliana and himself. Juliana was very young at the time, perhaps about 12 or 13 years. PW.8 pleaded with the appellant to allow the girl to mature; the appellant apparently took offence for this simple advice. As PW.8 was moving away from him the appellant attacked him (PW.8) with a matchet at his back, neck, ear, right shoulder and on the head. PW.8 raised an alarm and the appellant told him nobody would save him as he was going to kill him. PW.8 was saved by the coming out of Juliana, the PW.8's mother and his wife. Before PW.8 came on the scene, the appellant had spoken to Juliana (PW.9) and she told him the Obaji Oyibo (Juliana's mother) had gone to the farm and that PW.8 was away to school where he was a teacher. When PW.8 arrived and appellant attacked him with matchet, PW.9 ran out with the others and saw the appellant running away with a matchet. PW.8 was having several matchet cuts on him and had to be taken to the hospital.

A little after this at the rice farm of Obaji Oyibo where she was with farm hands including Nwokporo Nweke (PW.4), Nwafor Ochiagu (PW.3), Ovu Onele (PW.5) and Nwoja Odoh (PW.6); suddenly they heard someone shouting and threatening he would kill anybody he met at the farm. All the others escaped and only Obaji Oyibo was not seen again alive as her corpse was found. According to medical evidence, she was at the time of her death about thirty-five years old and was carrying a five months pregnancy. She had a deep wound at the nape of the neck, five centimetres deep and eleven centimetres long. The wound penetrated the lower cervical vertebra. She died of haemorrhage due to a deep wound on the neck. Nobody who heard the threatening voice at the farm of the deceased waited to see who was threatening; they ran away leaving the deceased alone behind.

There was thus no direct evidence of who attacked the deceased with a sharp object that killed her except the appellant in his voluntary statement to the police. He was cautioned by the investigating police officer and he volunteered a statement (Exhibit B & B1) that *infer alia* says as follows:

"It is true that I killed Obaji Oyibo with a matchet. My annoyance is that Obaji and Michael Nwigwe and Ezaka Nwigwe conspired within themselves and took my wife from me. The name of my wife is Juliana Augustine. Obaji Oyibo is the mother of my wife while Michael is her uncle and Ezaka is the grandmother of my wife Juliana. Again that after I reported the matter to the police and the police told us to go and settle at

home, we went home and instead of settling the matter as was directed by the police, Obaji was abusing me saying that since police have set her free, she was no more giving me one kobo. Moreover, I understood that the above mentioned people i.e. Obaji Oyibe, Michael Nwigwe and Ezaka

5 Nwigwe went to make charm so that before 31st December, 1983 I will die and they will get a chance to give out my wife to another person to marry. Since I discovered this, I felt sick in as much, I did not attend Eke market on two occasions. I could remember that the sickness which swoll (sic) my right leg and my waist started on or about 1st December, 1983 and up till

10 now I am still suffering it. At about early November, 1983 when I went to collect Juliana's locker from school Michael met me in the school where the headmaster and other teachers were and told me that he is planning for me with his people that I am going to suffer. This same Michael and Obaji instead of looking for settlement they encouraged Juliana not to marry me

15 again. Having considered all these things, I made up my mind to go and receive my money from them. When I reached their compound, Michael was not in so I waited until he came back from school. When I told him that I came to collect my wife he, Michael told me that Joseph Elom is the care taker and I should meet him with six cartons of beer and goat or any

20 other thing he must have told me before I will come to meet him again. Having heard this, and other things from Michael I come to believe that they have really planned for me so I gave him matchet cut about three times and he fell down. I fell down too and was still there until (sic) they wanted to kill me before I ran away with the matchet I used. Before I left I

25 have heard an information that Obaji went to farm so I ran through that direction and incidentally met her in the farm and gave her matchet cuts one on her neck and the other on her head. She then fell down and I ran away. One Eda Igide 'm' who is a brother to Ezaka was the person who said that the case which I reported to police will not be withdrawn so that any

30 day they see me in their house they will kill me. It was Obaji who told me this and not Eda himself. That was the day I went to collect locker when she was telling me about the charm they have prepared for me. When police came to my house and arrested me, I showed them the matchet which I used in killing Obaji Oyibe."

35 (Sgd.)
Augustine Nwangbomu.

9/12/83

Statement was recorded by me in English language read over to maker in same language and he signed it as correct.

(sgd.)

Chiegbu Cpl. 60454

9/12/83.

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Thus, by this voluntary statement, the appellant confessed that he first attacked P.W.8, and having heard that Obaji Oyibo (deceased) was at the farm he ran there and found her alone and killed her with the matchet.

At the trial, appellant attempted to resile on his voluntary statement. Exhibit B and B1. He admitted he made a statement but that he never said all that was recorded. Thus the making of the statement rather than its voluntariness was in issue. Learned trial Judge ruled and admitted the statement. Trial Judge after a review of the evidence in the case, especially the complete denial of any knowledge of how the deceased died and the denial by appellant that he never even visited the compound of the deceased where P.W.8 and P.W.9 also lived on the 8th December, 1983, found the appellant guilty of the offence of murder under S.319(1) Criminal Code Law (Laws of Eastern Nigeria, 1963) Cap. 43 Vol.II He was sentenced to death. On appeal, Court of Appeal, Enugu Branch dismissed the appeal; thus the appeal to this court.

There is only one ground, the general ground of appeal. There are raised three issues for determination in the appellant's brief of argument, to wit:

"ISSUES FOR DETERMINATION

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(1) *Whether the Court of Appeal was right in affirming the decision of the trial Judge in admitting Exh. B, B1 as a statement made and signed by the appellant, and if the trial court wrongly admitted Exh. B, B1 whether there was sufficient evidence to support the conviction.*

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(2) *Whether there was enough cogent and compelling circumstantial evidence to support the conviction.*

(3) *Whether the prosecution has discharged the onus of proof beyond reasonable doubt.*

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All that happened right at the trial court was that the appellant resiled on his voluntary statement to the police whereby he confessed to killing the deceased. According to the counsel for the appellant "There was a cloud of mystery surrounding" the statement which is marked Exhibit

Band B1. It is difficult to find the mystery as trial Judge and Court of Appeal considered the issue which is that of fact. Trial court believed the appellant made the statement, and his denial was held to be an after-thought. Court of Appeal held the "denial of the appellant signing the statement is a matter of fact which the trial court ought to have resolved in one way or the other. It could not have attracted trial within trialas the appellant never objected that the statement was involuntarily obtained from him."

An accused person can resile on his statement to police officer in one of two ways, Either that he never made the statement at all, in which case it is a matter of fact to be resolved by the evidence before court; or that he made the statement or signed it but not voluntarily. In the former case, the mere denial by an accused of having made a statement confessing to the crime charged is a question of fact that trial court must decide. It does not make the statement inadmissible, it must however be considered along with the entire evidence and circumstances of the case for the weight to be attached to it. For example, in cases where the accused merely challenges the correctness of the statement as recorded or the signature or thumb impression, that will be a question of fact to be decided by the court of trial, but not an issue for the procedure known as "trial within trial," - See *Obidioso v. The State* (1987) 4 NWLR (Pt.67) 748, 751; *Akinfe v. The State* (1988) 3 NWLR (Pt.85) 729; *Ojegele v. The State* (1988) 1 NWLR (Pt.71) 414; Section 27, Evidence Act). Thus confession is relevant and admissible. In the latter case of the statement being challenged not on the ground of it not having been made but that it was not voluntary as in Section 28, Evidence Act which provides:

"28. A confession made by an accused person is relevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature."

The court in that case has more investigation to conduct before it decides whether the statement was made voluntarily or not a trial within trial must be held. In a trial within trial the onus is on the appellant to establish evidence whereby it will be shown that either by inducement,

threat or promise having regard to the charge the accused person faces, and proceeding from a person in authority as to give him reason to believe that he would gain advantage from the evil now confronting him. Evidence will then be led by the accused to establish the involuntariness of the statement and prosecution will lead evidence to rebut whereby the judge will rule on voluntariness. It is thus not in every case the accused challenges his statement confessing the commission of the offence that a trial within trial must be held; it is only held; where the issue is voluntariness but not the making of the statement simpliciter. It is therefore not required in law to hold trial within trial to test a confession unless the issue of voluntariness is clearly raised. [See *R. v. Kass* & 6 Ors. 5 WACA 154; *R. v. Onabanjo* 3 WACA 43; *R. v. Igwe* (1960) 5 FSC 55; 1960 SCNLR 511 *Queen v. Eguabor* (1962) 1 All NLR 287,292; (1962) 1 SCNLR 409 *Obidiozo v. State* (1987) 4 NWLR 748, 760, 761-763.]

In this case there is clear and cogent evidence leading to conclusion that the appellant did murder Obaji. He first attacked P.W.8 and inflict matchet cuts on him, he was lucky to survive; he at that scene promised to kill the deceased, P.W.9 having earlier told him that the deceased was in her farm. The appellant's confession clearly stated where he met the deceased and killed her. Trial court believed these scenerio, Court of Appeal had no reason to interfere or disturb these findings of fact. The concurrent findings of the lower courts on the fact as they now stand hardly need the interference of this court.

Though this court has not been asked to consider the effect of an accused person who earlier confessed to police but resiled in the witness box at trial, it is pertinent to restate the present position of this court. Two cases seemed to have caused great confusion on the doctrine of inconsistency in a witness' evidence; to wit *Oladejo v. The State* (1987) 3 NWLR (Pt.61) 419, and *Asanya v. The State* (1991) 3 NWLR (Pt.180) 422 tending to posit that an accused person resiling on his extra-judicial statement to the police should have his entire evidence regarded as unreliable. In such a case both the evidence in court and the confession should be regarded as unreliable. However, considering S.28 Evidence Act (Supra) and the case of *Egboghonome v. The State* (1993) 7 NWLR (Pt.306) 383, this court has defined a clearer path. An accused person's confession is relevant and should not be disregarded merely because he later resiles on it, what is important is the weight the trial Judge will attach to such confession and retraction. The overwhelming evidence in this case now on appeal is that the accused not

only threatened to kill the deceased but actually killed her and confessed doing so even though he later resiled on this.

For the foregoing reasons, I find no merit whatsoever in this appeal. I hereby dismiss it and affirm the decision of Court of Appeal which upheld the decision of the trial High Court which convicted the appellant of
5 the offence of murder and sentenced him to death.

WALI JSC

I have read before now the lead judgment of my learned brother, Belgore, J.S.C., with which I entirely agree. I however wish to add by way
10 of emphasis the following:

The appellant Augustine Nwangbomu was tried for murdering one Obaji Oyibo (F) on or about the 8th day of December, 1983 at Amalekune Ameka, Ezza in Abakaliki Judicial Division. He was found guilty as charged and sentenced to death by hanging.

15 He appealed to the Court of Appeal, Enugu Division where, in a well considered judgment, it dismissed the appeal and affirmed the conviction and sentence. He has now appealed to this court.

The facts of the case can be narrated as follows:-

The appellant, the deceased, P.W.3 and P.W.9 are both natives of
20 Ameka Ezza. The appellant expressed the desire to take P.W.9, who was at the time very young, as a wife. According to the custom in the area, before the dowry on the prospective bride is paid and the customary ritual of the marriage is performed, the prospective wife must live together with the intending husband to see whether the two can match and agree to be
25 married.

In observance of the custom, P.W.9 went to live with the appellant. Within the period she was staying with the appellant, P.W.9 ran back home for about 14 to 15 times, indicating that she did not like to get married to the appellant.

30 When P.W.9 ran back home on the 14th or 15th occasion, the appellant followed her for a reconciliation and to bring her back to his house. That was on 8th December, 1983 at about 1 p.m. where he met P.W.9. He asked her about P.W.8 and her mother, the deceased. P.W.9 replied him that P.W.8 had gone to school while her mother had gone to the
35 rice farm. It was at that time P.W.8 entered the house, P.W.8 pleaded with the appellant and advised him to allow P.W.9 to mature, but he did not take kindly to that.

No sooner had P.W.8 taken leave of the appellant after the discussion, the appellant followed him and cut him with a matchet on the back,

on the neck, near the ear, on the right shoulder blade and on the head. PW.8 raised an alarm and the appellant told him that that would not save him as he would kill him, Obaji (the deceased mother of PW.9) and PW.9. When PW.9 heard PW.8 shouting, she came out and saw the appellant running away with a machet.

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On the same day, PW.7, after the incident was reported to him, went to the appellant's house and arrested him. It was at the time of the arrest the appellant handed to PW.7 a machet stained with blood. PW.7 said he charged the appellant with the murder of Obaji Oyibo and cautioned him in English Language. The appellant volunteered a statement (Exh. B and B1) in which he confessed to the killing of the deceased. PW.7 recorded it in English. He read the same over to the appellant and the latter confirmed its contents as correct and signed it.

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Observing that Exh. B, B1 is confessional, PW.7 took the appellant along with the statement to a superior police officer the person of Mr. Ndunagu who was also the Divisional Crime Officer. Mr. Ndunagu read over the statement to the appellant who admitted its correctness and that he voluntarily made the same.

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PW.7 said he also visited the scene of the incident which is a cassava farm near a rice farm where he saw the body of the deceased lying dead in a pool of blood.

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Learned counsel filed and exchanged briefs of arguments. Based on the only ground of appeal, that is, the omnibus grounds, the appellant raised in his brief, the following three issues for determination -

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"1. Whether the Court of Appeal was right in affirming the decision of the trial Judge in admitting Exh. B, B1 as a statement made and signed by the appellant, and if the trial court wrongly admitted Exh. B, B1 whether there was sufficient evidence to support the conviction.

2. Whether there was enough cogent and compelling circumstantial evidence to support the conviction.

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3. Whether the prosecution has discharged the onus of proof beyond reasonable doubt."

The respondent on his part formulated the following two issues in his brief for determination:-

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"(i) was the Court of Appeal right in holding that Exhibit B, B1 - the confessional statement of the appellant was rightly admitted by the trial court. When the appellant during his trial objected to having made it and the Judge despite this objection admitted same without holding a trial-

within-trial.

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

The issues formulated by the respondent are more elegant and comprehensive and I prefer them to those of the appellant, and I adopt
5 them for the purposes of my judgment since issue 1 of the appellant's brief is covered by issue 1 of the respondent's while issues 2 and 3 of the appellant's brief are subsumed in issue 2 of the respondent's brief.

Under issue 1, it was the submission of learned counsel for the appellant that the Court of Appeal committed error of law in upholding the
10 admission in evidence by the trial court of Exh. B, B1 as voluntary confessional statement of the appellant since he had denied making the statement and signing it. He submitted that with the appellant denial of making the statement and having regard to the surrounding circumstances in which it was purported to have been made, the learned trial Judge should have
15 conducted a trial-within-trial to ascertain its voluntariness before admitting same in evidence. In support of this submission, learned counsel cited and relied on Ogoala v. The State (1991) 2 NWLR (Pt.175) 509 at 534 and Abdul Mohammed v. The State (1991) 5 NWLR (Pt.192) 438.

In answer to the appellant's submission on this issue, it was the
20 contention and submission of learned counsel for the respondent that since the appellant's objection is only that he did not make Exhibits B, B1 and not that he made it voluntarily, the trial court was right in admitting it in evidence without conducting a trial-within-trial, and that the Court of Appeal was equally right in upholding its admission.

25 Learned counsel cited and relied on Solomon Ehot v. The State (1993) 5 SCNJ 65 at 76. He further submitted that the mere retraction of a voluntary confessional statement without more, by an accused person is not a ground for holding a trial within a trial to decide its voluntariness. Ejinima v. The State (1991) 5 LRCN 1640 at 1671; 6 NWLR (Pt.200) 627
30 1671.

On issues 2 and 3 (which are encompassed by issue 2 of the respondent's) it was the submission of learned counsel for the appellant that the circumstantial evidence relied upon by the trial court was not sufficiently compelling to lead only to the guilt of the appellant, but was also
35 equally compatible- with his innocence. He then referred to page 20 lines 5 to 9 where the learned trial Judge referred to the evidence of P.W.8 and P.W.9 and said that their evidence corroborated Exhibits B, B1. Learned counsel submitted that this is a-misdirection in law and which the Court of Appeal also wrongly upheld. He cited and relied on the following decisions

- *Lori v. The State* (1980) 8-11 SC. at 86-87; *Apishe v. The State* (1971) 1 All NLR 50 at 53 and *Tepper v. The Queen* (1952) A.C.480 at 489. Learned counsel rounded up his submission by reminding the court that suspicion, no matter how strong, cannot ground a conviction and cited in support, *Babalola v. The State* (1989) 4 NWLR (Pt.115) 264 at 268 and 280E; *Anekwe v. The State* (1976) 9 to 10 SC. 255 at 264; *Mamman v. The State* (1976) 6 SC. 115 at 124 and *Okoduwa v. The State* (1980) 8-11 SC.81 at 333, 335 and 354. 5

In reply to the above, learned counsel for the respondent submitted that the Court of Appeal was right in upholding the decision of the trial court that the case against the appellant was proved beyond reasonable doubt. He said both the trial court and the Court of Appeal relied on both the confessional statement of the appellant - Exh. BB1 and the circumstantial evidence in finding the appellant guilty of the offence he was charged with. He submitted that absence of an eye witness to the killing does not in any way affect the potency of the prosecution's case, since confession alone is sufficient to support conviction. He relied on *Achabua v. The State* (1976) 12 SC.63 at 68-9. 10 15

On the corroboration of Exh. BB1, learned counsel referred to the testimonies of P.W.1, P.W.8 and P.W.9 and submitted that they fully corroborated Exh. B, B1 and urged the court to uphold the verdicts of the trial court as well as that of the Court of Appeal since the appellant has failed to show special circumstance why the findings of fact by the trial court should be disturbed. He cited and relied on *Arthur Onyejekwe v. The State* (1992) 4 SCNJ 1 at 9, 3 NWLR (Pt.280) 444 and *Jimoh Ishola v. The State* (1979) 9 and 10 SC.81. He urged us to dismiss the appeal. 20 25

I shall first deal with the issue of Exh. BB1 - the extra-judicial statement said to have been voluntarily made by the appellant. It is trite law that where the admissibility of a statement is challenged on the ground that it was not made voluntarily, it is incumbent on the Judge to call upon the prosecution to establish that it was voluntarily made by conducting a trial-within-trial. See *R. v. Francis and Murphy* (1959) 43 G.App.R.174; *R. v. Omokaro* 7 WACA 146; *Ogoala v. The State* (1991) 2 NWLR (Pt. 175) 509; *Joshua Adekanbi v. A.G. Western Nigeria* (1966) 1 All NLR 47; *Paul Ashake v. The State* (1968) 2 All NLR 198 and *Auta v. The State* (1975) NNLR 60 at 65. But the issue being contested here if I may say so, it is not that Exh. BB1 was not voluntarily made but of a total denial of making the same. The issue is one of a retraction. The question of a trial-with-in-a trial by the trial Judge did not therefore arise. 30 35

Where an accused person challenges a confessional statement credited to him on the ground that he did not make it, the statement can be admitted in evidence when tendered by the prosecution. See *Queen v. Nwango Igwe* (1960) 5 FSC 55 1960 SCNLR 511 and *R. v. Eka Ebong* 12 WACA 139.

5 There was evidence by P.W.7, Cpl. Charles, Chiegbu, the police investigator of the case that as a result of his investigations, he arrested the appellant in his house on 8/12/83 the very day the murder was committed. He said

"Following what I was told, I looked for Michael, I saw accused in
10 *his house. I arrested the accused in his house. The accused gave me a*
matchet which he said he used on the deceased Obaji Oyibo. There were
blood stains on the matchet."

P.W.7 said he then charged the appellant and cautioned him in English language. After that, the appellant volunteered a statement in English language which the witness recorded in English and the appellant affirmed its correctness by signing it. When P.W.7 noticed that it is confessional in nature, he followed the desired and commendable procedure of taking the appellant before a superior police officer in the person of Mr. Ndunagu for its confirmation and before whom the appellant reconfirmed
15 its voluntariness and accuracy. It was tendered in evidence as Exh. BB1 while the matchet handed over by the appellant to P.W.7 was admitted as Exh. A. Mr. Ndunagu died before the commencement of the trial and could not therefore testify.

The learned trial Judge examined the evidence on this issue in his
25 judgment and arrived at the following conclusions:-

"there is before me the statement of the accused Exh. BB1. The
accused has denied making this statement. I do not believe him. This was
an after thought. The accused was taken before Mr. Ndunagu, a Superior
Police Officer who also endorsed the statement.

30 *I believe the evidence of Cpl. Chiegbu as to how the, statement*
was obtained from the accused and his admission before Mr. Ndunagu that
it was correctly recorded. I also believe his evidence that the accused ad-
mitted having made the statement voluntarily. I find that he is the author of
Ex. BB1. He lied when he said that he did not sign the statement."

35 The learned trial Judge is in my view right and on firm ground when he found on the evidence that the appellant's evidence that he did not make Exh. BB1, or that although he admitted making a statement to P.W.7, the contents of Exh. BB1 were not what he told him, was nothing more than an after thought and concoction and therefore could not believe

it, and that Exh. BB1 was voluntarily made and correctly recorded by PW.7. Resiling from or retraction of a confessional statement would not render it inadmissible. See Kanu v. The King 14 WACA 30.

The fact that Mr. Ndunagu, the superior police officer before whom Exh. BB1 was verified and confirmed as the correct and voluntary statement of the appellant did not give evidence at the trial would neither affect the admissibility or credibility of the statement. The procedure is only desirable and is yet to attain the force of law in the southern states of Nigeria where both the Criminal Procedure Act and the Criminal Code apply. See Egboghonome v. The State (1993) 7 NWLR (Pt.306) 383 at 431. 10

The Court of Appeal rightly affirmed the findings of the learned trial Judge that: -

"the appellant made the statement and regarded the allegation of non-make as a tissue of lies. It is a finding of fact which was peculiarly the duty of the trial court in which I could not interfere with unless there are exceptional circumstances." 15

Since no exceptional circumstances exist to warrant any interference, I find no merit in the issue raised and canvassed.

Retraction of a voluntary statement per se by the maker, will not render it inadmissible against him. It may, having regard to the circumstances in the case go down to affect the weight to be attached to it. No such circumstances exist in this case. See R. v. Itule (1961) All NLR 462 (1961) 2 SCNLR 183 and R. v. Sapele & Anor. (1957) SCNLR 307; (1957) 2 FSC.24. The learned trial Judge was right in relying on Exh. BB1 to support his finding against the appellant. 25

Section 27(1) and (2) of the Evidence Act provides as follows:-

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

(2) Confession if voluntary, are deemed to be relevant facts as against the persons who make them only." 30

Subsection 2 of Section 27 shows that a voluntary confession by an accused person is evidence against him at his trial for the offence confessed to. The section does not strictly require any direct or circumstantial evidence to corroborate the confession before a conviction is solely based on it. But decided cases make it desirable to look for such corroborative evidence outside the confession where it is retracted. See Salawu v. The State (1971) 1 NMLR 249; Otujale & Ors v. The State (1968) NMLR 261 and The Queen v. Chukwuji Obiasa (1962) 2 All NLR 645; 651 (1962) 2 35

NWLR 402. Where it is well proved, it will be treated as the best evidence - R. v. Baldry (1852) 5 COX 523.

The learned trial Judge, after satisfying himself that Exh. BB1 is a voluntary confessional statement, and as it is desirable by practice did look for corroborative evidence outside it in support and confirmation of its
5 truthfulness.

He referred to the evidence of P.W.7, P.W.8 and P.W.9 and said-

*"Again there is evidence to corroborate statement. Juliana Igwe and Michael testified as to how the accused visited them on the day of the incident and how he threatened to deal with the deceased. On arrest, it was
10 the accused himself who surrendered a matchet to the investigating corporal. The matchet was blood stained and the accused admitted it was the very matchet he used to inflict the cut that resulted in the death of the deceased. The accused in his statement admitted having shown the police this matchet. It was also admitted in the statement Exh. BB1 that Michael
15 was not at home when he called on them. He had to wait until he came back from school. This in my view tallies with the evidence of Juliana. In my view, there is overwhelming evidence to connect the accused with the matchet cut. I have no doubt at all that it was the accused who inflicted the cut. That cut resulted in the death of the deceased."*

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It is not always possible to get any eye witness to corroborate the voluntary confessional statement of an accused person in all cases of murder. In such a situation, the prosecution will resort to circumstantial evidence. In this case, the prosecution had adduced such evidence. There was
25 evidence by P.W.9 that on the fatal day i.e. 8/12/83, the appellant called at the deceased's house at about 1 p.m. looking for P.W.8 and the deceased. She said-

*"I told him he had gone to school. He asked me about my mother Obaji Oyibo, the deceased. I told him that the deceased had gone to ado
30 Nwanyiogo's rice farm. As I was discussing with the accused, Michael Onele (P.W.8) came in. Later Michael went to have his bath. I later heard Michael shouting. I came out and saw the accused running away with a matchet. The accused had no matchet when I first saw him. P.W.8 had matchet cuts when I saw him."* (Words in brackets supplied)

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P.W.8, Michael Onele, had this to say in his evidence-

"On 8/12/83, when I came back from school, I saw the accused in our compound. The accused told me he came to effect a settlement in connection with his marriage to Juliana Igwe. The accused had expressed his desire to marry Juliana Igwe who at the time was very young. In accor-

dance with our custom, Juliana had to spend some days with the accused to see whether they could make it. Juliana ran back to our house about 14/15 times. We pleaded with the accused to allow her mature. The accused did not take kindly to this. He went to the police who told him to apologize to the family. The accused said he had come to settle the matter. As I took leave of the accused to have my bath, I did not know that the accused was following me. The accused gave me a machet cut at the back (witness shows the court a big scar at the back) another on the neck, a 3rd cut near the ear and 4th cut at the right shoulder blade (witness shows the court a big cut at the right shoulder blade) a 5th cut on the head. I raised an alarm. The accused said the alarm wouldn't help me, that he would kill me and Obaji. Juliana Igwe, my mother and my wife responded to the alarm."

It was after the incident above that the body of the deceased was found lying in a pool of blood in a cassava farm near a rice farm with a deep cut on the back. The medical evidence shows that the deceased had "a deep machet cut at the nape of the neck of about 11cm in length and 5cm in depth, cutting through the lower cervical vertebrae." The wound was said to be caused by a sharp instrument like a machet and it caused the death of the deceased. There was evidence by P.W.3, P.W.4, P.W.5 and P.W.6 that they were together with the deceased in her farm when they heard someone shouting that he would kill anyone he met there. They scattered and ran away.

Considering the confession i.e. Exh. BB1 together with all the pieces of evidence referred to above, I find them cogent and compelling that it was the appellant that murdered the deceased. They connected the appellant with the incident and revealed the truth of all that happened. See Kanu v. The King 14 WACA 30.

The Court of Appeal was right in affirming the findings of the trial court in relation to these issues. I agree with them.

It is also for these and other reasons given in the lead judgment of my learned brother, Belgore, J.S.C., that I find the appeal lacking in merit in its entirety. It is dismissed. Both the conviction and the sentence are affirmed.

OGWUEGBU JSC

I had read in draft the judgment just delivered by my learned brother, Belgore, J.S.C., and I entirely agree with him that this appeal ought to be dismissed.

5 The appellant was charged, tried and convicted of the offence of murder contrary to S. 319(1) of the Criminal Code Cap.30. Vol. 11 Laws of Eastern Nigeria applicable in the former Anambra State. He was sentenced to death by hanging by the learned trial judge sitting in the Abakaliki Judicial Division of the High Court of the said Anambra State. His appeal
10 to the Enugu Division of the Court of Appeal being unsuccessful, he appealed to this court.

The main issues raised in this appeal are:-

(1) Whether the confessional statement of the appellant (Exhibit "B" "B1") was rightly admitted in evidence in the trial court when the appellant objected to having made it and learned trial judge failed to conduct a trial within trial, and

(2) Whether the prosecution proved its case beyond reasonable doubt.

P.W.7 (Police Corporal Charles Chiegbu) was the investigating police officer. He tendered the confessional statement of the appellant as Exhibit "B". When this witness sought to tender the statement, the learned trial judge recorded the following at page 6 from line 30 to page 31 lines 1-7 of the record:-

*"After I had arrested the accused, I charged and cautioned the accused in English, he volunteered a statement in English. I read it over to him, he said it was correct and signed the statement. Statement tendered - Nnamani objects saying that the accused did not sign the statement. Says the accused thumb impressed - Court - the attack/objection is not based on the voluntariness of the statement as to warrant a trial within a trial - the
25 issue is one of credibility and weight to be attached to the evidence. I
30 overrule the objection - statement is admitted and marked Exhibit "B" (Statement is read in Court)."*

P.W.1 continuing his evidence stated that he took the appellant to a superior police office (Mr. Ndunagu) who was also the Divisional Crime
35 Officer. Mr Ndunagu read over the statement to the appellant who admitted that it was correct and that he made it voluntarily. Then Mr. Ndunagu counter-signed the statement.

In relation to admissibility, a confession objected to on the ground that it was not made at all by the accused should be distinguished from a confession objected to on the ground that it was not voluntarily made. In the latter case, the accused person admits that he made the statement but complained that he was forced to make it. In the former, he retracts the statement. In that case the question is not whether the confession is admissible in evidence nor not. The trial Judge is free to admit the confession in evidence as something which occurred in the course of police investigation of the case.

At the conclusion of the case, the trial Judge finds as a matter of fact whether or not in all the circumstances of the case, the accused person did make the statement.

In the latter case, the trial Judge must hold a trial within a trial.

From what transpired in the trial court at page 6 from line 30 to page 31 lines 1 - 7 of the record of appeal which I reproduced above, the case of the appellant falls within the first category of confessional statement. A trial within trial which the learned appellant's counsel erroneously contended was applicable did not arise. See *Ukpasa v. A -G. Bendel State* (1981) 9 S.C. 7 at pages 28-29 and *Queen v. Igwe* (1960) 5 F.S.C. 55.(1960) SCNLR 158.

Having regard to all the circumstances, the learned trial Judge held that the statement (Exhibits "B" "B1") was true. He said at page 19 lines 27 to page 20 lines 1 - 20":-

"These apart, there is before me that statement of the accused Exhibit BB1. The accused has denied making the statement. I do not believe him. This was an afterthought. The accused was taken before Mr. Ndunagu, a superior police officer who also endorsed the statement. I believe the evidence of Corporal Chiegbu as to how the statement was obtained from the accused and his admission before Mr. Ndunagu was correctly recorded

Again there is evidence to corroborate the statement. Juliana Igwe and Michael testified as to how the accused visited them on the day of the incident and how he threatened to deal with the deceased. On arrest it was the accused who surrendered a matchet to the investigating Corporal. The matchet was blood stained and the accused admitted it was the very matchet he used to inflict the cut that resulted in the death of the deceased

In my view there is overwhelming evidence to connect the accused with the matchet cut."

The Court of Appeal in its unanimous decision dismissing the appeal per Katsina-Alu. J.C.A. in the last paragraph of page 78 of the record

held:

"These findings and the conclusion are without any doubt amply supported by the evidence before the learned trial Judge. The appellant's confession was corroborated in every material particular by the testimony of PW.8 and PW.9. I think therefore that the learned trial Judge was right
 5 *in convicting the appellant on the combined effect of Exhibit "B", "B1" and the evidence of PW.9. See Akinfe v. The State (1988) 3 NWLR (Pt.85) 729 at 746."*

Uwaifo, J.C.A., in his concurring judgment at page 81 lines 20 - 30 of the record said:-

10 *"Even without the confessional statement, the circumstantial evidence which can be found on the evidence of PW.1 - PW.6 and also PW.8 and PW.9 is such that it narrates a number of facts and circumstances which make a complete unbroken chain of evidence; and it is such that*
 15 *inference of the appellant's guilt. See Abieke v. The State (1975) 9 -11 S.C. 97 (1975) 1 All NLR 57 at 104, Lori v. The State (1980) 8 - 11 S.C. 81 at 88; Aganmony v. Attorney-General, Bendel State (1987) 1 NWLR (Pt.47) 26 at 35."*

The courts below are entitled to convict on Exhibits "B" "B1" alone:
 20 See Adio v. The State (1986) 2 NWLR (Pt. 24) 581, R. v. Sykes 8 Cr. App. p. 223, R. v. Omokaro 7 WACA 146 Yesufu v. The State (1976) 6 S.C. 167 at 173, but in their wisdom they went outside the appellant's confession to the police to look for outside evidence. The circumstances of the outside
 25 evidence taken alone were also sufficient to warrant the conviction of the appellant sufficient to warrant the conviction of the appellant.

It is therefore idle to speculate whether the prosecution proved its case beyond reasonable doubt or not. The facts of the case, the findings and conclusions of the courts below speak for themselves.

For the above reasons and the fuller reasons of my learned brother,
 30 Belgore, J.S.C., I hereby dismiss the appeal. I affirm the decision of the Court of Appeal.

MOHAMMED JSC

35 I agree that the appeal has no merit for the reasons given in the lead judgment by my learned brother, Belgore, J.S.C. I have nothing more to add. Accordingly this appeal is dismissed.

ONU JSC

I had a preview of the lead judgment of my learned brother Belgore, J.S.C. and with it I am in entire agreement that this appeal ought to fail. It is accordingly also dismissed by me.

The facts of the case have been so amply and admirably set out in my learned brother's judgment to need any restatement here. It will be sufficient if I comment on the three issues submitted for our determination, if only to expound on the present state of the law in the light of the recent decision of this Court in *Egboghonome v. The State* (1993) 7 NWLR (Pt. 306) 383.

Issue 1

The appellant's grouse on this issue is whether the Court of Appeal was right in affirming the decision of the trial judge in admitting Exhibit B, B1 as a statement made and signed by the appellant, which due to its involuntary nature, a trial-within-trial ought not to have been held.

Now, the voluntary statement of the appellant which was confessional in nature was received in the proceedings giving rise to this appeal as Exhibit B and B1 and these as part of the prosecution's case. See *Anofi Opayemi v. The State* (1985) 2 NWLR (Pt. 5) 101. The appellant for his defence in rendering his testimony in Court, admitted he signed the statement but that he never said what was recorded. He thereby sought to retract the statement or resile therefrom. Thus, the making of the statement rather than its voluntariness was in issue - an issue the learned trial judge ruled upon by admitting same as Exhibit B and B1 to wit, that Exhibit B and B1 was the voluntary extra-judicial confessional statement of the appellant, pure and simple. The garb of mystery learned counsel for the appellant in his submission sought to cast on that statement therefore, should not in my view, avail him. Hence, the principle in *Oladejo v. The State* (1987) 3 NWLR (Pt.61) 419 and *Asanya v. The State* (1991) 3 NWLR (Pt.180)422 followed hot on the heels by *Onwumere v. The State* (1991) 4 NWLR (Pt.186) 428, to the effect that an accused person resiling from his extra-judicial statement to the Police should have his entire evidence at the trial regarded as unreliable, was overruled in the recent decision of this Court in *Egboghonome v. The State* (supra). In the latter case, it was held, inter alia, that where an extra-judicial confession has been proved to have been made voluntarily and it is positive and unequivocal and amounts to an admission of guilt, it will suffice to ground a finding of guilt regardless of the fact that the maker resiled therefrom or retracted it altogether at the trial, in as much as such a u-turn does not necessarily make the confession inadmissible vide *R. v. Kanu* (1952) 14 WACA. 30; *The Queen v. Itule*

(1961) 2 S.C. NLR 183; *The Queen v. Obiasa* (1962) 2 S.C. NLR 402; *Mumuni v. The State* (1975) 6 S.C. 79, *Aremu v. The State* (1984) 6 S.C. 85; *Ejinima v. The State* (1991) 6 NWLR (Pt.200) 627; *Akpan v. The State* (1992) 6 NWLR (Pt. 248) 439 and *Akinle v. The State* (1988) 3 NWLR (Pt. 85) 729.

5 Where, as in the instant case, the appellant denied being the author of Exhibit B and B1 but admitted he signed it, the learned trial judge, in my view, owes no duty to investigate the circumstances by holding a trial-within-trial. See *Ikpasa v. The State* (1981) 9 S.C. 7.

10 The case of *Ogoala v. The State* (1991) 2 NWLR (Pt.175) 509 to which we were referred wherein the principle decided is to the effect that when a confessional statement is made by an accused person admitting the commission of the offence, the plea of alibi is completely shut out and
15 abandoned if it is at first ever made. In the instant case where the appellant's defence would appear as merely leaning towards a plea of alibi, but there exists circumstantial evidence which was direct, positive and unequivocal pointing irresistibly to his guilt, such a defence (alibi) not having been claimed would not avail him.

20 Indeed, in the instant case, outside the appellant's retracted statement (Exhibit B and B1), there was not only the threat by the appellant to kill the deceased but the combined effect of the evidence of P.W.8 who was a victim of his vicious attack and P.W.9, contemporaneous with the death of the deceased and pointing irresistibly to him (appellant) and none other
25 as the murderer of the deceased and this shortly after his attack on P.W.8, is confirmatory of the circumstantial evidence. See *Adio v. The State* (1986) 2 NWLR (Pt. 24) 581 at 593.

My answer to this issue is accordingly rendered in the affirmative.

30 Issue 2

I adopt all that I have said in Issue 1 above. In addition, I hold that appellant's confession manifested in Exhibit B and B1 when matched with appellant's utterance to P.W.9 that he was going to kill the deceased, coupled with his attempt on the life of P.W.8 who whom he attacked with
35 a matchet upon the latter's return from school leading to P.W.8 raising an alarm which led to P.W.9, P.W.8's mother and wife coming out, thus making appellant running away matchet in hand, constituted evidence of circumstance from which to infer enough cogent and compelling evidence of the murder of the deceased by the appellant shortly thereafter on the farm.

I will therefore unhesitatingly answer this issue also in the affirmative.

Issue 3

There being no mystery surrounding the making of Exhibit B and B1 which the trial Court found to be confessional in nature and to which the judge attached due weight as having been corroborated by other evidence of circumstances in the murder of the deceased, there was, in my view, 5 proof of the offence punishable under Section 319(1) of the Criminal Code beyond reasonable doubt. See Philip Omogodo v. The State (1981) 5 Sc. 5 and Jules v. Ajani (1980) 5-7 S.C. 96.

The Court below was therefore right, in my view, to have affirmed the conviction and sentence passed on the appellant. The decision of the 10 two lower Courts being concurrent findings of facts, this Court will be loathe to interfere therewith to set them aside, they not being erroneous or perverse. See Mogo Chinwendu v. Nwanegbo Mbamali & Anor (1980) 3/4 SC.31 at 53; Ezewani v. Onwordi (1986) 4 NWLR (Pt.33) 27 and Alade v. Alemuloke (1988) 1 NWLR (Pt.69) Belgore. J.S.C. with which I had earlier 15 expressed my concurrence. I will dismiss this appeal as lacking in merit and affirm the decision of the Court below.

Appeal dismissed.

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