

**SUPREME COURT OF NIGERIA**  
 12TH DECEMBER, 1995. SC. 132/1994  
**CORAM:-S.M.A. BELGORE, M.E. OGUNDARE,**  
**U. MOHAMMED, Y.O. ADIO, A.I. IGUH, JJSC.**

SILAS IKPO & ANOR ..... APPELLANTS  
 V.  
 THE STATE ..... RESPONDENT

**APPEALS** - Concurrent findings - Of the two lower courts - On the issue of voluntary statements of the appellants - Whether to be disturbed.

**CRIMINAL PROCEDURE** - Confessional statements - Whether there is ample corroboration - Of the appellants' confessional statements.

**CRIMINAL PROCEDURE** - Confessional statements - As to the murder of the deceased - Precautions the court would take - Before acting thereon.

**EVIDENCE** - Section 34(3) of the Evidence Act - Is not applicable - To the straight facts of the present case - Need for legal submissions to have bases

**MURDER** - Conviction - Whether the lower courts were justified - In convicting the appellants - For the offence of murder.

**FACTS**

The appellants were among 9 accused persons that were tried before the Rivers State High Court holden at Ahoada, for the offence of murder, case of the prosecution was that the accused persons, labouring under the belief that the deceased invoked a juju against the Ikpo family which led to the death of one of their sons, attacked the deceased and forcibly carried him from his house into the bush. His dead body was later recovered by the police from a river. The accused persons denied the charge. But the present appellants made confessional statements to the police (Exhibits G, G1 and F, F2) which they sought to deny during the trial.

The trial court found the accused persons guilty, after it had discharged and acquitted 4 of them. An appeal to the Court of Appeal led to the acquittal of 3 of the accused persons, while the conviction of the present appellants were confirmed. Being dissatisfied, the appellants have further appealed to the Supreme Court raising 2 issues.

**ISSUES FOR DETERMINATION**

*“(a) Whether the Court of Appeal duly considered the provisions of*

*section 34 (3) of the Evidence Act at the time it affirmed the convictions and sentences of the appellants.*

*(b) Whether there was proof beyond reasonable doubt by the prosecution to necessitate the affirmation of convictions and sentences of the appellants by the lower court.”*

**HELD** ( Unanimously dismissing the appeal per Lead Judgment of **IGUH JSC**)

Section 34(3) of the Evidence Act

1. I can see no relevance in the application of the provisions of section 34(3) of the Evidence Act to the straight facts of the present case. Perhaps, it ought to be restated that legal submissions to succeed, must be based on the accepted facts of a case and not otherwise. The trial court having found that Exhibits F, F2 and G, G1 in issue were duly made to and recorded by P.W.7 who tendered them in evidence which findings were affirmed, quite rightly, by the court below, no question of the application of the provisions of section 34(3) of the Evidence Act to the facts of this case arises. (p. 2159 F)

Concurrent findings

2. This court will not normally interfere with the concurrent findings of the two lower courts unless, of course, there is some miscarriage of justice or a violation of some principles of law or procedure. No miscarriage of justice or a violation of any principle of law or procedure has been established by the appellants on the issue of Exhibits F, F2 and G, G1 and I do not hesitate to affirm that the said statements are the true and voluntary statements of the appellants to P.W.7. (p.2162 C)

Confessional statements - Precautions the court would take

3. It cannot be disputed from the tenor of Exhibits F, F2 and G -G1 that they confessional statements in which both appellants confessed to having killed the deceased, Stephen Biogbo and dumping his dead body into the river at Ozochi Village. The law is clear that a free and voluntary confession of whether judicial or extra-judicial, if it is direct and positive and properly established is sufficient proof of guilt and is enough to sustain a conviction so long as the court is satisfied with the truth of such a confession. (p. 2162 F)

Ample corroboration of confessional statements

4. In the present case, there is abundant evidence of motive for the killing of the deceased as testified to by the prosecution witnesses which completely is in

line with the appellants' confessions. There is also ample corroboration of the appellants' confessions from the testimony of P.W.I, P.W.3 and P.W.5., P.W. 1 and P.W.2 testified in very clear terms that the deceased was tied hand and foot with a rope. In my view, there is overwhelming evidence from the prosecution witnesses in corroboration of the appellants' confessional statements, Exhibits F, F2 and G, G1. This corroborative evidence is fully set out in the judgment of the court below with which I find myself in total agreement. (p. 2163D)

#### **Murder - Conviction**

5. On the established facts of the case, this is a most savage act of cold blooded murder. I am wholly satisfied that the trial court was fully justified in convicting the appellants for the murder of the said Stephen Biogbo. I am also in entire agreement with the decision of the court below in dismissing the appeal against the convictions and sentences of the appellants for this offence of murder. (p.2164B)

#### **NOTABLE POINTS OF INTEREST**

##### **IGUJISC**

##### ***1. Issue not canvassed before an appellate court***

I think I finally ought to observe that this issue of the application of section 34(3) of the Evidence Act was at all events neither canvassed before the trial court nor the court below. It is a basic principle of law that when an issue is not placed before an appellate court, it clearly has no business whatsoever to deal with it, particularly when it has neither received argument from or on behalf of the litigants before it in that regard (p. 2159 H)

##### ***2. Test for determining truth of a confessional statement***

Indeed the test for determining the truth or otherwise of a confessional statement is to seek any other evidence of circumstances which make it probable that the confession is true. In this regard the court would consider issues such as: - (i) Whether there is anything outside the confession to show that it is true. (ii) Whether the Statement is corroborated... (p. 2163 A)

#### **REPRESENTATION**

Dr. T.C. Osanakpo, for the Appellants

K. O. Appah DPP (Rivers State), for the Respondent

#### **CASES REFERRED TO**

Shitta-Bey v. Federal Public Service Commission (1981) 1 S.C. 40

Sande v. Abdullahi (1989) 7 S.C.N.J. 216 at page 229  
 Chief Ebba v. Chief Ogoto (1984) 4 S.C. 84 at page 112  
 Olusanya v. Olusanya (1983) 2 S.C. 41 at page 56 - 57  
 Ochonma v. Unosi (1965) N.M.L.R. 321 at 323  
 Ugwumba v. The State (1993) 5 N.W.L.R. (Part 296) 660 at page 671  
 Sanyaolu v. The State (1976) 6 S.C. 37  
 Wankey v. The State (1993) 5 N.W.L.R. (Part 295) 543 at page 552  
 Akpan v. The State (1992) 6 N.W.L.R. (Part 248) 439 at page 472  
 Bature v. The State (1994) 1 NWLR (Pt. 320) 267  
 Ogugu v. The State (1994) 8 NWLR (Pt. 361) 173

### **STATUTES REFERRED TO**

Criminal Code s. 319  
 Evidence Act Cap 112 LFN 1990 s. 34

### **LEAD JUDGMENT BY IGU H.JSC**

The appellants, Silas Ikpo and Chigozie Ikpo, as 2nd and 3rd accused persons, along with seven others were arraigned before the High Court of Rivers State, holden at Ahoada, charged with the offence of murder contrary to Section 319 of the Criminal Code. The particulars of the offence charged are as follows:-

“Mark B. Ikpo, Silas Ikpo, Chigozie Ikpo, Gospect Ikpo, Christian Tobiah, Evison Ikpo, Ahanam Ikpo, Herbert Aloni and James Abraham on the 17th day of January, 1983 at Ochigba Village in the Ahoada Judicial Division, murdered Stephen Biogbo.

Each of the accused persons pleaded not guilty to the charge and the prosecution called a total of seven witnesses at the trial. The accused persons gave evidence in their own defence but called no witnesses.

The substance of the case as presented by the prosecution was that the accused persons, labouring under the misapprehension that the deceased had invoked some juju spell on the Ikpo family, to which they all belonged, and as a result of which one of their sons allegedly died brutally attacked the deceased, tied him up hands and legs, gagged him and forcibly carried him from his house into the bush on the fateful night. He was never seen alive thereafter.

Following a report of the incident made to the police by P.W.2, the wife of the deceased, the appellants, together with the other accused persons were arrested. A search party was organised and the first accused person took the police to a river from which the dead body of the deceased was recovered.

The case for the defence was a total denial of the charge. The learned

trial Judge, Okor J., after an exhaustive review of the evidence on the 18th December, 1987 found the 4th, 6th, 8th and 9th accused persons not guilty of the offence of murder as charged. Accordingly he acquitted and discharged them. The 1st, 2nd, 3rd, 5th and 7th accused persons were however convicted as charged and were accordingly sentenced to death by hanging.

B Dissatisfied with this judgment of the trial court, the convicted persons lodged an appeal against their convictions and sentences to the Court of Appeal, Port Harcourt Division. The Court of Appeal on the 13th day of April, 1994 allowed the appeal of the 1st, 5th and 7th accused persons, set aside their convictions and sentences and, in their place, entered verdicts of acquittal and discharge. The appeals lodged by the 2nd and 3rd accused persons were C however dismissed and their convictions and sentences were accordingly affirmed. It is against this judgment of the court below that the said 2nd and 3rd accused persons, to wit, Silas Ikpo and Chigozie Ikpo, hereinafter referred to as the appellants, have now appealed to this court.

D Both the appellants and the respondent filed and exchanged their respective written briefs of argument. In the appellants' brief, the under-mentioned issues were formulated for resolution, namely:-

E *"(a) Whether the Court of Appeal duly considered the provisions of section 34(3) of the Evidence Act at the time it affirmed the convictions and sentences of the appellants.*

*(b) Whether there was proof beyond reasonable doubt by the prosecution to necessitate the affirmation of convictions and sentences of the appellants by the lower court."*

F The respondent, for its own part, identified four issues in its brief for the determination, of this court. These are as follows:-

*"1. Not having filed any additional ground of appeal, whether the appellant can argue an additional ground without first properly seeking and obtaining the leave of this Honourable Court.*

G *2. Whether such leave to file and argue an additional ground of appeal can be properly sought for and obtained in the appellant's brief of argument.*

*3. Whether section 34(3), now 35(3) of the Evidence Act is applicable in the circumstances of this cause.*

*4. Whether the case was not proved beyond reasonable doubt."*

H I think it should be observed that following the appellants' application for leave to file an additional ground of appeal and an order deeming the proposed additional ground of appeal which had already been filed as duly filed and served, the first and second issues identified by the respondent for determination become irrelevant and overtaken by events. The respondent's third and fourth issues are identical with the two issues formulated by the

appellant. Accordingly, I shall in this judgment confine myself to the issues raised in the appellants' brief of argument.

At the hearing of the appeal before us on the 4th day of October, 1995, learned counsel for the appellants', Dr. T. C. Osanakpo adopted his brief of argument and made oral submissions in amplification thereof. He contended that there is some doubt as to which of the two police officers, to wit, P.W.5 or P.W.7 that recorded the appellants' extra judicial statements, Exhibits G, G1 and F, F2 upon which the appellants were convicted. He stressed that the appellants maintained that they made their respective written statements to P.W.5, Inspector Emmanuel Nwosu and not to P.W.7, Sergeant Dennis Azuma who tendered them. B

He argued that the proper person to tender the said statements was P.W.5 and not P.W.7 and that in the absence of compliance with the provisions of section 34(3) of the Evidence Act, Exhibits G, G1 and F, F2 were wrongly received in evidence and must be discountenanced in their entirety. He urged the court to hold that the said Exhibits are inadmissible in evidence and therefore incapable of grounding the convictions and sentences passed on the appellants. Learned counsel further argued that being inadmissible, the appellants' statements in issue were of no evidential value and could therefore not be corroborated by any other legal evidence before the trial court. He concluded by submitting that the prosecution in the circumstances of this case woefully failed to prove the guilt of the appellants beyond all reasonable doubt. C D E

Learned counsel for the respondent, Mr. K. O. Appah, Director of Public Prosecutions, Rivers State who appeared before us when this appeal came up for hearing on the 3rd day of October, 1995 had, due to circumstances beyond his control, sought for and obtained the leave of this court to be absent from court at the continuation of hearing of the appeal the following day. He did indicate however that he had filed the respondent's brief and that he was adopting the arguments therein canvassed. In it, learned counsel argued that the provisions of section 34(3) of the Evidence Act, Vol. VIII, Cap. 112 Laws of the Federation of Nigeria, 1990 are not applicable to the facts and circumstances of this case. He contended that it was therefore not necessary for the court below to have considered them particularly as the issue was, at any rate, not canvassed before it. He stressed that both P.W.5 and P.W.7 had testified before the trial court and unequivocally stated whose statements they recorded during their investigation of the case. He submitted that the statements in issue marked Exhibits F, F2 and G, G1 were, on the evidence, recorded and tendered in the proceedings by P.W.7. He therefore submitted that they were properly received in evidence by the trial court. Learned F G H

respondent's counsel further argued that Exhibits F, F2 and G, G1 are both confessional statements of the appellants and that the conviction of the appellants thereupon was in law proper and justifiable as an accused person can be convicted solely on his confessional statement. Learned counsel concluded by submitting that the court below was right in affirming the judgments of the trial court with regard to the convictions and sentences passed on the appellants and he urged this court not to disturb the concurrent findings of the lower courts in the case.

Turning now to the first issue that was canvassed by the parties, section 34(1) of the Evidence Act provides thus:-

*"34(1) Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or when his presence cannot be obtained without an amount of delay or expense which, in the circumstances of the case, the court considers unreasonable: Provided-*

*(a) that the proceeding was between the same parties or their representatives in interest;*

*(b) that the adverse party in the first proceeding had the right and opportunity to cross-examine; and*

*(c) that the questions in issue were substantially the same in the first as in the second proceeding.*

*(2) A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.*

*(3) In the case of a person employed in the public service of the Federation or of a state who is required to give evidence for any purpose connected with a judicial proceeding, it shall be sufficient to account for his non-attendance at the hearing of the said judicial proceedings if there is produced to the court, either a Federal Gazette, or a telegram or letter purporting to emanate from the head of his department, sufficiently explaining to the satisfaction of the court his apparent default."*

The argument of learned appellant's counsel is that the conditions precedent to the admissibility of the appellants' confessional statements, Exhibit G, G1 and F, F2 as required by section 34(3) of the Evidence Act were not complied with before they were wrongly received in evidence. The contention is that in as much as the statements were allegedly recorded by P.W.5, as claimed by the appellants, it was erroneous on point of law for P.W.7 to have tendered them before the court without satisfactory evidence as to the whereabouts of the said P.W.5.

Essentially section 34(3) of the Evidence Act simply makes provision to the effect that the absence of a public servant required to give evidence in a judicial proceeding is sufficiently accounted for by the production of a Gazette, or a telegram or letter purporting to emanate from his head of department sufficiently explaining his absence to the satisfaction of the court. In the present case, the evidence before the trial court which it accepted is that the statements of the appellants, who were the 2nd and 3rd accused persons before it, were recorded by P.W.7 said P.W.7 in his examination in chief-

*"I also took the statements of 1st, 2nd and 3rd accused persons whose statements were confessional. I recorded the statements of the 1st, 2nd and 3rd accused persons in the English Language, read their respective statements to them and each said their statements were correct."*

Although the appellants for reasons best known to them alleged before the trial court that it was P.W.5 who recorded their statements to the police and not P.W.7, the learned trial Judge dismissed this claim as baseless and an afterthought, holding -

*"It is clear from the evidence of P.W.5, Inspector Nwosu and P.W.7, Sgt. Azuma that the said accused persons (meaning the appellants) made their statements to P.W.7 and not P.W.5. Nothing before me to disbelieve P.W.5 and P.W.7. There is no doubt in my mind that the retraction of their statements to P.W.7 is an afterthought realising that their statements were confessional."* (Words in brackets supplied)

A little later in his judgment, the learned trial Judge made further definite findings that he had no doubt in his mind that the 2nd accused made Exhibits F, F2 to P.W.7, Cpl. Azuma and that the statement was his voluntary statement. He made similar definite findings with regard to Exhibits G-G1, the statement of the 3rd accused person.

The above findings were affirmed by the court below and I must, with respect to learned appellants' counsel, state that I can see no relevance in the application of the provisions of section 34(3) of the Evidence Act to the straight facts of the present case. Perhaps, it ought to be restated that legal submissions to succeed, must be based on the accepted facts of a case and not otherwise. The trial court having found that Exhibits F, F2 and G, G1 in issue were duly made to and recorded by P.W.7 who tendered them in evidence which findings were affirmed, quite rightly, by the court below, no question of the application of the provisions of section 34(3) of the Evidence Act to the facts of this case arises.

I think I finally ought to observe that this issue of the application of section 34(3) of the Evidence Act was at all events neither canvassed before



the trial court nor the court below. It is a basic principle of law that when an issue is not placed before an appellate court, it clearly has no business whatsoever to deal with it, particularly when it has neither received argument from or on behalf of the litigants before it in that regard. See *Shitta-Bey v. Federal Public Service Commission* (1981) 1 S.C. 40; *Saude v. Abdullahi* (1989) 4 NWLR B (Pt.116) 387; (1989) 7 SCNJ216 at P. 229; *Chief Ebba v. Chief Ogodo & Anor* (1984) 1 SCNLR 372; (1984) 4 S.C. 84 at page 112; *Florence Olusanya v. Olufemi Olusanya* (1983) 1 SCNLR 134; (1983) 2 S.C. 41 at pages 56-57; *Ochonma v. Unosi* (1965) NMLR 321 at 323 etc. In these circumstances, I entertain no doubt that issue number one must be resolved against the appellants.

C The second issue questions whether the prosecution was able to prove its case against the appellants beyond all reasonable doubt as required by law. In this connection, it ought to be pointed out that the appellants made written statements to the police after they were arrested, charged and cautioned. These statements were tendered in evidence without any objection as D Exhibits F, F2 and G, G1 respectively.

The written and signed statement of the first appellant Silas Ikpo under caution is Exhibit F, F2 and reads in part as follows:-

*"The juju priest who is my friend told us that there is nothing he can do again, that it is dangerous to recall juju back, that if Stephen know how E to regain that boy's life he can do. Stephen did not do anything, he only pour the wine on the ground..... When the child died, Stephen wanted to run back but myself and my senior brother Enoch held him back. When we held him he wounded me. I shouted, Mark have to come, three of us held him and tied him with rope. This happened in F Stephen plantain plantation near his house, every other person were in Stephen house where the child died. When this sick child died myself and my senior brother Enoch were slapping Stephen but my father said that we should not slap him that he will bring police for him from Ahoada. When my father left to Ahoada we tied Stephen rope on his hand backwards and used G his singlet to tied him on his neck and mouth so that he will not shout. It was myself Enoch and Mark that tied him this rope. After tying him rope we carried him to the bush and kept him in the bush half dead. We came back that night. In the morning of 17/1/83 when our father asked us about Stephen we told him that we have killed him. We told him that Stephen body is in the H bush. We did not tell him the actual place. As we told him this, he said that we should not have killed him then we told him that it was out of provocation. On the night of 18/1/83 we carried the dead body to the River. We tie him with a block on the back and wrapped him with a blanket and throw him inside the river at Osochi Village. There is no reason why we throw him to*

*that river that's all."*

Similarly, Exhibit G, G1 is the written and signed statement of the second appellant, Chigozie Ikpo under caution. It runs in part as follows:

"..... *In the midnight this boy died. As this child died Stephen wanted to run away my brother Silas hold him. Stephen wound him and ran away my father told us to leave Stephen he was going to bring police for him when my father went to police we started searching for Stephen. We catch Stephen at Abua Road, three of us, myself Silas and Orlunwo, so we tied him rope there we tied his hands backwards tied his two legs we used cloth to cover his mouth we tied him cloth for neck. He did not die, we leave him for bush. On the 18/1/83 in the night when three of us went where we kept him he has died we came home and carried blanket and tied him. We put him for machine to Ozochi waterside. There we throw away him for water. We only like to throw him inside water. I did not tell my father what we did to Stephen.*"

Both appellants in all fairness, tried to disown their respective statements to the police at the trial. The learned trial Judge duly gave the issue very careful attention but held that the retraction of these statements was baseless and an afterthought. With regard to Exhibits F, F2, the learned trial Judge observed as follows:-

"*This Exhibit F to F2 was voluntarily made and attested to by ASP Tijani. It is pertinent to mention that in evidence before the court what 2nd accused stated is a confirmation of what happened at the village square as stated by P.W.s 1 and 2. Also Exhibit F to F2 confirmed what P.W.s 1 and 2 said as to what happened at the village and in the house of the deceased Stephen Biogbo after the death of the boy Ewoma. The accused is only denying Exhibits F to F2 because it is a confessional statement. It agreed with what 1st accused also said in his statement to the police Exhibits E to E2. I have no doubt in my mind that 2nd accused made Exhibits F to F2 to P.W.7 Cpl. Azuma and it was voluntary statement.*"

Turning to Exhibits G-G1, the learned trial Judge stated as follows:-

"*In Exhibit G to G 1 the 3rd accused stated what led to the gathering at the village square and what happened there. He also stated what happened after the death of the boy. He also stated how the 1st accused, the 2nd accused and himself tied the deceased, carried him into the bush and how they later carried him from there and threw him into the river at Ozochi.*"

*Exhibits G to G1 was made voluntarily and duly attested to by Mr. Tijani an Assistant Superintendent of Police. It confirmed the evidence of P.W.s 1 and 2 as to how the deceased was tied and carried away and later found floating in the river. It confirms the description given by P.W.3 the*

*Doctor and P.W.5 Inspector Nwosu when the body was seen.*

*In view of all these it is preposterous for the 3rd accused to say that he never made Exhibit G to G1. His denial is just an attempt to deceive the court."*

B Before the court below, Katsina-Alu, J.C.A. delivering the judgment of the court below and dealing with the appellants' attempt to retract their said statements to the police pronounced thus:-

*"At the trial they made attempts to disown these statements. The learned trial Judge, rightly in my view held that the retraction of the statements was an afterthought."*

C This court will not normally interfere with the concurrent findings of the two lower courts unless, of course, there is some miscarriage of justice or a violation of some principles of law or procedure. See: Ugwumba v. The State (1993) 5 NWLR (Pt.296) 660 at page 671; Osayeme v. The State (1966) NMLR D 388; Sanyaolu v. The State (1976) 5 S.C. 37; Wankey v. The State (1993) 5 NWLR (Pt.295) 542 at page 552 etc. No miscarriage of justice or a violation of any principle of law or procedure has been established by the appellants on the issue of Exhibits F, F2 and G, G1 and I do not hesitate to affirm that the said statements are the true and voluntary statements of the appellants to P.W.7.

E It is, of course, not the law that a true and voluntary confessional statement not read over or confirmed before a superior police officer ceases ipso facto to be true or voluntary confessional statement or that it is thereby rendered weightless or inadmissible. See Akpan v. The State (1992) 6 NWLR (Pt.248) 439 at page 472.

F In the present case, however, Exhibits F, F2 and G, G1 were duly read over to and confirmed by the appellants before a superior police officer. Mr. Tijani and I can find no reason to impeach their authenticity which was duly established before the lower courts.

G It cannot be disputed from the tenor of Exhibits F, F2 and G, G1 that they are confessional statements in which both appellants confessed to having killed the deceased. Stephen Biogbo and dumping his dead body into the river at Ozochi village. The law is clear that a free and voluntary confession of guilt, whether judicial or extra-judicial, if it is direct and positive and properly established is sufficient proof of guilt and is enough to sustain a conviction H so long as the court is satisfied with the truth of such a confession. See: R. v. Sykes (1913) 8 CAR 233 at 236; R. v. Ajayi Omokaro (1941) 7 WACA 146; Philip Kanu & Anor v. King (1952) 14 WACA 30; Jafiya Kopa v. The State (1971) 1 All NLR 150; James Obi Achabua v. The State (1976) 12 S.C. 63 at 68-69. But it is desirable to have outside the accused person's confession, some corrobora

tive evidence, no matter how slight, of circumstances which make it probable that the confession is true and correct as the courts are not generally disposed to act on a confession without testing the truth thereof. See Paul Onochie & Ors. v. The Republic (1966) NMLR 307; R. v. Sykes *supra*. Indeed the test for determining the truth or otherwise of a confessional statement is to seek any other evidence of circumstances which make it probable that the confession is true. In this regard, the court would consider issues such as:-

- (i) Whether there is anything outside the confession to show that it is true.
- (ii) Whether the statement is corroborated.
- (iii) Whether the statement of facts made in the confessional statement so far as can be tested is true.
- (iv) Whether the accused person had the opportunity of committing the offence charged.
- (v) Whether the confession of the accused person was possible.
- (vi) Whether the confession was consistent with other facts which have been ascertained and proved at the trial. See Ikpassa v. A.-G., Bendel State (1981) 9 S.C.7; Onochie v. The Republic (1966) NMLR 307; Kanu v. King 14 WACA 30; Akpan v. The State (1992) 6 NWLR (Pt.248) 439 at page 460.

In the present case, there is abundant evidence of motive for the killing of the deceased as testified to by the prosecution witnesses which completely is in line with the appellants' confessions. There is also ample corroboration of the appellants' confessions from the testimony of P.W.1, P.W.2, P.W.3 and P.W.5. P.W.1 and P.W.2 testified in very clear terms that the deceased was tied hand and foot with a rope. The appellants in their confessions stated how they tied the deceased's hands and feet. P.W.3 who performed post mortem examination on the body of the deceased testified that the deceased was wrapped in a blanket with his feet and hands tightly tied together with a rope. Similar evidence was given by P.W.5, the Assistant Superintendent of Police who recovered the body of the deceased from the river and which evidence fully corroborated the confessional statements of the appellants. In my view, there is overwhelming evidence from the prosecution witnesses in corroboration of the appellants' confessional statements, Exhibits F, F2 and G, G1. These corroborative evidence are fully set out in the judgment of the court below with which I find myself in total agreement.

Concluding its judgment, the Court of Appeal stated:-

*"On the state of the evidence, it is very clear that the appellants intended to kill or at the very least do the deceased grievous bodily harm. They tied the deceased's feet and hands and left him in the bush to die. Of course he died. A person is taken to intend the natural and probable conse*

*quences of his acts. Intent to murder can be inferred from the acts of the accused person. See Dim v. The Queen (1952) 14 WACA 154.*

*Having regard to all that I have said in respect of the 2nd and 3rd appellants, I am in total agreement with the learned counsel that their appeals have no merit whatsoever. The appeals of the 2nd and 3rd appellants are accordingly dismissed. I affirm their convictions and sentences.”*

I agree entirely with the above observations of the court below and wholly endorse the same. I have myself assiduously searched for any possible defence that may be open to the appellants without success. On the established facts of the case, this is a most savage act of cold blooded murder, I am wholly satisfied that the trial court was fully justified in convicting the appellants for the murder of the said Stephen Biogbo. I am also in entire agreement with the decision of the court below in dismissing the appeal against the convictions and sentences of the appellants for this offence of murder.

This appeal is totally devoid of merit and it is hereby dismissed. The judgment of the trial court in respect of the appellants as affirmed by the Court of Appeal is hereby further affirmed.

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#### **BELGORE JSC**

The issue of confession of an accused person in a voluntary statement to the police has been settled in a long line of cases that I do not here need to repeat them as my learned brother, Iguh, J.S.C. has exhaustively dealt with the matter in his judgment. When such voluntary statement, containing a confession, is retracted at trial, it is a matter of fact which the trial court only can resolve. In this case, the trial court amply considered the retractions and the Court of Appeal rightly refused to interfere with the findings. See this court’s recent views on such statements in *Bature v. The State* (1994) 1 NWLR (pt.320) 267; *Ogugu v. The State* (1994) 9 NWLR (pt.366) 1; *Nnabo v. The State* (1994) 8 NWLR (pt.361) 173; *In Re; osakwe* (1994) 2 NWLR (pt.326) 273. As my learned brother Iguh, JSC., held that this appeal totally lacks merit. I agree with him and for the reasons ably advanced in his judgment. I also dismiss this appeal in affirming the decision of the Court of Appeal which upheld the conviction and sentence passed by the trial court.

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#### **OGUNDARE JSC**

I have been privileged to read in advance the judgment of my learned brother, Iguh, J.S.C. just read. I agree with his conclusion and the reasonings leading thereto which I hereby adopt as mine. I too dismiss the appeals of the appellants and affirm their convictions for the murder of Stephen Biogbo and

the sentences of death passed on them.

### MOHAMMED JSC

I entirely agree with the opinion so ably given by my Lord Iguh. J.S.C. in the lead judgment, just read. I have had the advantage of reading the judgment in draft and I agree that the two appellants had voluntarily confessed to having killed the deceased. Stephen Biogbo. Their confessional statements were consistent with other facts which have been ascertained and provide. For example, in their respective statements both appellants confessed to have tied the deceased, gagged him a piece of cloth and left him in the bush to die.

On the following day they went to where they left him and found that he had died. Thereafter they carried his corpse to the river and dumped it in the water at Osochi. The police found the body at the place where the appellants confessed to have dumped it in the river. The discovery of the body in the river at Osochi and the state in which it was found had amply corroborated the confessional statements of the appellants. See McKay v. The King (1938) 54 C.L.R. 1.

Accordingly, for the reasons given in the lead judgment which I adopt as mine this appeal is dismissed. The judgment of the Court of Appeal is hereby affirmed.

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### ADIO JSC

I have had the opportunity of reading in advance, the judgment just delivered by my learned brother, Iguh. J.S.C., and I agree that the appeal is devoid of merit. I too dismiss it.

This is a straight forward case of murder in which none of the usual defences was available to any of the appellants. The learned trial Judge was right in regarding the retraction of the voluntary statement made by each of the appellants, containing a confession, as an afterthought. The court below was perfectly entitled to affirm the decision of the learned trial Judge. A court can still base a conviction on a confessional statement, retracted at the trial, if satisfied that the accused made the statement in circumstances which gave credibility to the contents of the confession. See Ejinima v. the State (1991) 6 NWLR (Pt.200) 627.

The appeal lacks merit. It is for the foregoing reasons and the detailed reasons given in the lead judgment of my learned brother, Iguh. J.S.C., that I too dismiss the appeal.