

SUPREME COURT OF NIGERIA
5TH MARCH, 1996, SC.58/1994
CORAM:- M. L. UWAIS CJN, I. L. KUTIGI,
E. O. OGWUEGBU, U. MOHAMMED, S. U. ONU, JJSC

IKWUDA EDAMINE APPELLANT

V.
STATE RESPONDENT

CRIMINAL PROCEDURE - Confessional statements - Where voluntarily made - And found to be well proved - Resiling from the statement during trial is immaterial.

CRIMINAL PROCEDURE - Murder - Contention that case was not proved beyond reasonable doubt - Whether sustainable.

EVIDENCE - Proof - Confessional statements - Where voluntarily made - And found to be well proved - Whether conviction was proper.

EVIDENCE - Admissibility - Whether additional evidence of PW2 - Is admissible in proving guilt of the accused.

FACTS

The appellant, a blind 35 years old man was charged before the High Court, Abakaliki, with the offence of the murder of his wife. Appellant made 2 confessional statements to the police admitting murdering his wife for giving out his properties to people. During trial, appellant resiled from his said statements and denied the murder charge.

Appellant's elder brother, PW2 testified as to how appellant admitted the said murder before him. Appellant was found guilty as charged. His appeal to the Court of Appeal was dismissed. Appellant has further appealed to the Supreme Court raising a single issue.

ISSUE FOR DETERMINATION

Whether the case against the appellant was proved beyond reasonable doubt and whether the confessional statement attributed to the appellant was rightly so attributed

HELD (Unanimously dismissing the appeal per lead judgment of **OGWUEGBU JSC**)

Confessional statements - Where voluntarily made

1. The learned trial judge found that the appellant made Exhibits “A” and “B” voluntarily and this finding was upheld by the court below. Both statements having become part of the case for the prosecution, the learned trial judge considered their probative values in the light of their retraction. The confessional statements were well proved. They are positive, unequivocal and amount to admission of guilt. They are sufficient to ground the finding of guilt and it is immaterial that the appellant resiled from them during his trial. (p. 536 D)

Evidence - Admissibility

2. In addition to the confessional statements (Exhibits “A” and “B”), there is also the evidence of Louis Edamine (P. W.2) who is an elder brother of the full blood of the appellant. This evidence is admissible against the appellant and points towards his guilt. The learned trial judge believed the evidence of P. W.2 whom he described as a truthful witness. (p. 536 F)

Contention that case was not proved beyond reasonable doubt

3. The learned counsel for the appellant contended that the prosecution failed to prove its case beyond reasonable doubt. I have examined the contention of the learned counsel against the evidence which formed the basis of the conviction and I am satisfied that the conviction of the appellant can be sustained. (p. 537 A)

REPRESENTATION

Chief Onyeabo Obi for the Respondent
The Appellant is not represented

CASES REFERRED TO

Odili v. The State (1977)4 S.C. 1 at 8
Alonge v. Police (1959)4 F.S.C 203
Nwangbomu v. The State (1994) 4 KLR 1
Egboghonome v. The State (1993) 11 KLR 1
R v. Kani (1952)14 W.A.C.A. 30
Mumuni v. The State (1975)6 S.C. 79 at 94
R v. Sykes (1913) 8Cr. App. R 233

Uso v. Commissioner of Police (1972) 11 S.C. 37
 Nwankwere v. Adewunmi (1966) 1 All N.L.R. 129 at 132
 Lori v. The State (1980) 2 N.C.R. 225
 The Queen v. Onoro (1961) 1 All NLR 33
 Rex v. Martin (1881) 4 Cox CC. 633
 R v. Ani (1944) 10 W.A.C.A. 5
 Nungu v. The Queen (1953) 14 WACA 378
 Miller v. Minister of Pensions (1947) 2 AER 371
 Kasa v. The State (1994) 9 KLR 84

STATUTE REFERRED TO

Evidence Act Cap 112 LFN 1990 s. 179

LEAD JUDGMENT BY OGWUEGBU JSC

The appellant was charged with the offence of the murder of his wife, Nwebonyi Nkwuda on or about 21st November, 1985 at Ishieke, Izzi in the Abakaliki Judicial Division of the High Court of the then Anambra State. He was found guilty of the offence and sentenced to death. His appeal to the Court of Appeal, Enugu Division was dismissed and he has further appealed to this court.

The only issue for determination submitted by the learned counsel for the appellant is whether the case against the appellant was proved beyond reasonable doubt and whether the confessional statement attributed to the appellant was rightly so attributed.

The appellant is a blind man aged about thirty five years. The victim was his wife. The prosecution's case as narrated by Louis Edamine (P.W. 2) is that he was in his house on the day of the incident when one Nkwuda Nshi told him something about the appellant and his wife (deceased). The witness went to his father's compound where the appellant lives. He told the accused that he had information that he fought with his wife. The appellant told the witness that he killed her with a matchet because she was giving his properties out to people and that it was too much for him. The witness went inside the room and saw her lying in a pool of blood. He saw matchet cuts on her face and neck. He asked for the matchet. The accused brought out the matchet he used and threw it outside. The witness picked it and kept it somewhere. It was blood stained. P. W. 2 later reported to the police.

Louis Edamine (P.W. 2) is an elder brother of the full blood of the appellant. Nkwuda Nshi is their younger brother aged about twelve years

then.

Eyale John testified as P.W. 3. He was the investigating police constable. He arrested the appellant, collected the machet from him and conveyed the corpse of the victim to the General Hospital, Abakaliki where post mortem examination was conducted. He recorded the first statement of the appellant (Exhibit "A") on 21:11:85. The appellant volunteered a second statement on 30:11:85 (Exhibit "B"). Both statements were confirmed before a superior police officer (PW.6).

Dr. Innocent Echeogu was the first prosecution witness. He performed the post mortem examination on Nwebonyi Nkwuda on 22: 11:85. His findings were as follows:-

- (a) a cut over the right parallel bone (on the head) measuring 4 c.m. in length and 5 c.m. deep.
- (b) another cut over the left lateral bone measuring about 6 c.m. in length and 5 c.m. deep.
- (c) deep repeated cuts stretching from the proximal part of the remus (bone of the jaw) of the maxilla bone, zygoma bone (bone between jaw and hair) and the temporal squama (bone inside the head)."

In his opinion, the cause of death was haemorrhage resulting from cuts inflicted with considerable force by a very sharp machet or cutlass.

The learned appellant's counsel in his brief reminded the court that the accused was blind at the time of the offence and is still blind. He referred to a portion of the judgment of Uwaifo, J.C.A., where he said:

".....if the attacker was blind, no effort would be spared at quick succession of attacks once the initial blow was struck. This is because if the object of attack were able to move away from the position of the first attack, the blind attacker would most probably lose the initiative."

Learned counsel submitted that the above statement was speculative and should not be allowed and if allowed it should be added that the victim would have been held down by overwhelming force to prevent escape. He also contended that the type of injury described by PW.1 could not have been inflicted unless the assailant held down his victim and inflicted all the injuries described and the assailant could not escape without being literally bathed or drenched in the blood of the victim. Counsel submitted that there was no evidence that the appellant was stained with even a single drop of blood.

It was the further submission of counsel that one Nkwuda Nshi told P.W.2 that the accused and the deceased had fought, that this piece of evidence was hearsay which should not have been admitted in evidence or relied upon. It was suggested that P.W. 2 a convict who was serving a term

of imprisonment for stealing when he testified for the prosecution was lying. It was also submitted that Nkwuda Nshi could be lying and could be the murderer since he has remained at large and the prosecution made no effort to get him.

As to the confessional statement, learned counsel submitted that the appellant asserted that he did not make the thumb-mark on it and that this should have been verified. It was contended that the appellant was saying that he did not make any statement at all and when a blind man said that he did not put his thumb mark on a document that assertion should have been investigated. B

The portion of the judgment of Uwaifo, J.C.A., reproduced above which was attacked by the learned appellant's counsel was at best an observation. It was not a finding or conclusion and the judgment of that court was not based on it. I will therefore ignore the submission of the learned appellant's counsel on it. C

The 2nd prosecution witness did not testify as to what Nkwuda Nshi told him. He merely said that the latter told him something concerning the appellant and his wife. The witness then narrated what the appellant told him when he got to the premises. The fact that P.W.2 was serving a term of imprisonment in respect of an offence unconnected with the present proceedings did not make him a liar. He was a competent witness and the learned trial judge found him to be a truthful witness. D E

Except as provided in section 179 of the Evidence Act Cap. 112 Laws of the Federation of Nigeria, 1990, no particular number of witnesses shall in any case be required for the proof of a fact. The failure of the prosecution to call Nkwuda Nshi to testify is not fatal to its case and the case did not come within the exceptions set out in the said section of Evidence Act. The question here is not the number of witnesses who testified. The prosecution has no duty to call every available piece of evidence. It is enough if sufficient evidence is called to discharge the onus of proof beyond reasonable doubt. See Francis Odili v. The State (1977) 4 S.C. 1 at 8 and Alonge v. Police (1959) 4 F.S.C. 203 (1959) SCNLR 516. As a general rule, one witness is sufficient at a trial subject to the statutory exceptions set out in section 179 (2) - (5) of the Evidence Act. F G

The case hangs on Exhibits "A" and "B" - the confessional statements. In Exhibit "A" the appellant stated as follows:

"I matched my wife Nwebonyi Nkwuda (f) to death this morning. Today being 21:11:85. She used to carry my belongings and kept with outsiders without any cause. I have been begging her to stop but she refused, that is why I killed her. I cannot say the place I cut her because I am H

a blind man. That is all."

In Exhibit "B" the appellant stated as follows:

"*The matchet in question is my matchet. I have been using the matchet for farming during the time I was seeing. I later kept the matchet in my box and locked it as I cannot see again. On the night of 20:11:85. I went to the box and removed the matchet leaving only the cover in the box and kept the matchet till in the morning of 21:11:85 when I used it in matcheting my wife to death. I can't see at all, but I know the position of things in my house. Nobody ever advised me to kill my wife. Nobody tells me that my wife used to pack my belongings to outsiders, I only sensed and knew this. I am adopting this statement to the statement I made to the police on 21:11:85. That is all.*"

The appellant denied making Exhibits "A" and "B". He denied killing his wife. He testified that he did not tell the police that he did so. He further stated that the investigating police constable did not write what he told him. He could not say if he thumb printed Exhibit "A". He denied making Exhibit "B".

The learned trial judge found that the appellant made Exhibits "A" and "B" voluntarily and this finding was upheld by the court below. Both statements having become part of the case for the prosecution, the learned trial judge considered their probative values in the light of their retraction. See *Nwangbomu v. The State (1994) 2 NWLR (Pt.327) 380* and *Egboghonome v. The State (1993) NWLR (Pt. 306) 382*.

The confessional statements were well proved. They are positive, unequivocal and amount to admission of guilt. They are sufficient to ground the finding of guilt and it is immaterial that the appellant resiled from them during his trial. See *R. v. Kanu & Ors. (1952) 14 W.A.C.A. 30*, and *Mumuni & Ors. v. The State (1975) 6. S.C. 79* at 94.

In addition to the confessional statements (Exhibits "A" and "B"). there is also the evidence of Louis Edamine (P.W. 2) who is an elder brother of the full blood of the appellant. Part of his evidence-in-chief reads:

"*I was in my house on the day of this incident when Nkwuda Nshi came to my house. Nkwuda Nshi told me something concerning the accused and his wife. I went to my father's compound. I saw the accused and told him I heard he fought with his wife. The accused told me he killed his wife with a matchet and that he was not insane.....*

I asked accused about his wife. He told me that she was in the room. I went in and saw her lying dead in a pool of blood."

This evidence is admissible against the appellant and points towards his guilt. The learned trial judge believed the evidence of P.W.2 whom he

described as a truthful witness.

The learned counsel for the appellant contended that the prosecution failed to prove its case beyond reasonable doubt. I have examined the contention of the learned counsel against the evidence which formed the basis of the conviction and I am satisfied that the conviction of the appellant can be sustained. B

For the reasons I have given above. I have no doubt that the Court of Appeal was right in affirming the conviction and sentence imposed on the appellant by the learned trial Judge.

The appeal fails and is hereby dismissed. The conviction is affirmed. C

UWAIS CJN

I have had the advantage of reading in draft the judgment read by my learned brother Ogwuegbu, J.S.C. I entirely agree with it. The fact that the appellant is blind is not enough for any court to hold that he was incapable of committing murder. The evidence adduced by the prosecution is overwhelming. D

Accordingly I too see no merit in the appeal and it is hereby dismissed. The decision of the Court of Appeal is affirmed. E

KUTIGI JSC

I read in advance the judgment just delivered by my learned brother Ogwuegbu J.S.C., and agree with him that the appeal fails. I accordingly dismiss it and affirm the conviction and sentence. F

MOHAMMED JSC

I have had the privilege of reading the opinion of my learned brother, Ogwuegbu, J.S.C., in the draft of the judgment, just read, and I agree with him that this appeal must fail. The conviction is based on a voluntary confession of guilt. The appellant confessed to have used his machet to kill his wife for reasons which he disclosed in his statement. A voluntary confession of guilt is sufficient to warrant a conviction without any corroborative evidence - *R. v. Sykes* (1913) 8 Cr. App. R. 233. But in this case there was evidence from the testimony of the appellant's brother who told the trial court that the appellant confessed to him that he killed his wife with a machet. When a confession is well proved, it is the best evidence that can be produced. G H

I agree that the appellant has been rightly convicted for the offence of murder and the Court of Appeal is right to affirm the said conviction and sentence. This appeal fails and it is dismissed.

ONU JSC

B I have had the privilege to read in draft the judgment of my learned brother Ogwuegbu, J.S.C. just delivered. I agree with his reasoning and conclusion that the appeal lacks merit and ought to be dismissed:

I wish however to add a word or two of mine in elaboration thereto as follows:-

C The argument proffered by the appellant in the lone issue formulated for our determination (the first of the respondent's two issues bears no relationship to it and is accordingly discountenanced) is whether the case against the appellant was proved beyond reasonable doubt and whether the Confessional Statement attributed to him was rightly so attributed.

D On the first plank of the issue, proof beyond reasonable doubt can only emanate or be attained from evidence, direct or circumstantial, from a witness or witnesses called for the purpose of establishing the same.

Thus, in a case such as this where the evidence of P.W. 1 Dr. Innocent Echeogu, as to the nature of the injuries inflicted on the deceased and the cause of death, coupled with the testimonies of P.W. 2 (Louis Edamine - elder brother of the appellant) to whom the appellant confessed orally to killing his deceased wife; P.W. 3 (Police Constable Eyale John) who recorded a confessional statement from the appellant under caution and took him before a Senior Police Officer (P.W. 6 of Police. Patrick Monye) for verification of same vide Exhibit "A" and P.W. 4 (Celestine Igwe) who was the interpreter from Izzu dialect to English and vice-versa between the appellant and P.W. 3 for the recording of Exhibit "A", as well as P.W. 5, special constable Stephen Nwizi, who acted as interpreter from Izzu dialect into English and vice-versa between the appellant and P.W. 6 in respect of the verification of Exhibit 'B', the overwhelming evidence pointing to the appellant as the perpetrator of the crime, in my view, amounted to such proof. See David Uso v. Commissioner of Police (1972) 11 S.C. 37; Nwankwere v. Adewunmi (1966) 1 All N.L.R. 129 at 132 and Lori v. The State (1980) 2 N.C.R. 225; (1980) 8 -11 SC 81. For instance, in his evidence-in-chief regarding the commission of the crime, P.W.2 (Louis Edamine) who incidentally is appellant's elder brother testified unchallenged inter alia as follows:-

".....I was in my house in the day of this incident when Nkwuda Nshi came to my house, Nkwuda Nshi told me something concerning the

accused and his wife. I went to my father's compound. I saw the accused and told him I heard he fought with his wife. The accused told me he killed his wife with a matchet and that he was not insane "

And PW 6, Superintendent of Police Patrick Monye, testified among others that

"On 22/11/85 the accused was brought before me by Constable Eyak (sic) John. Ex. A the accused's statement was shown to me I read over Ex. A in English to the accused and it was interpreted to him by Ogba Ebenyi in Izzi dialect. The accused admitted having made the statement voluntarily. I signed the statement. "

and later down in his testimony the witness continued:

"... on 2/12/85 Eyak (sic) John brought the accused back to me. I read over Ex. B to the accused in English and it was interpreted to the accused in Izzi by one special Constable Stephen Nwizi PW 5. The accused admitted having made the statement voluntarily. I signed the statement... .. "

Upon the totality of the evidence adduced through the above prosecution witnesses, it was established that (i) the death of the victim had occurred as a result of appellant's voluntary act; (ii) that he had the intention of killing the deceased or that victim and (iii) that the death of the deceased or victim was caused as a result of his act thereof. See *Lori v. The State* (supra). It is trite that the rule of law is that a person is taken to intend the natural and probable consequences of his act. See *Maye Nungu v. The Queen* (1953) 14W.A.C.A .. 378; *The Queen v. Moses Onoro* (1961) 1 SCNLR 56; (1961) 1 All NLR 33 and *Rex v. Martin* (1881) 4 Cox C.C. 633. Where, as in the instant case, the standard of proof required in criminal trials has been attained then there is proof beyond reasonable doubt. As Denning, J., (as he then was) put it in *Miller v. Minister of Pensions* (1947) 2 AER. 371 at 373 proof beyond reasonable doubt "does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted of fanciful possibilities to deflect the course of justice. If the case is strong, so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence "Of course it is possible, but not in the least probable" the case is proved beyond reasonable doubt but nothing short of that will suffice." See also *R. v. Ani Nwokarafor & Ors.* (1944) 10 WAC.A. 221.

The second plank of the issue is whether the Confessional Statement attributed to him was rightly so attributed. (Italics above is mine). Talking of the Confessional Statement in this issue, the appellant must be taken to be referring to or presumed to be talking about Exhibit 'B' as contained at pages 32 - 33 of the Record and about which that court in the

opening paragraph of its judgment at page 52 thereof observed inter alia:

"Learned counsel for the appellant has in his brief of argument submitted two issues for determination in the appeal against the appellant's conviction, namely:

1.

B *2. Was the trial court right in holding the second confessional statement. Exhibit B., was admissible and lawfully extracted?"*

The question then is, how did Exhibit 'B' originate? It came about through the testimonies of P.W.3, P.C. Eyale John, PW 4, Celestine Igwe, P.W. 5 (Stephen Nwizi) and PW 6, Superintendent of Police, Monye. PW 3's testimony went thus:

C *"Later accused said he would make another statement. I cautioned him through an interpreter Celestine Igwe. This is the statement - Idn 3. I read it over to him. He admitted it was correctly recorded. I again took him before Mr. Monye who read over the statement to the accused through an interpreter Stephen Nwizi. The accused admitted same to be correct. Mr. D Monye signed the statement."*

In his evidence-in-chief PW 4, a clerk attached to the Premier Brewery, Abakaliki said inter alia as follows:-

E *"I am an Ezza. I know the accused. I know PW 3 Eyale John. I acted as an interpreter when the accused volunteered a statement to Eyale John. The words of caution were interpreted to the accused by me. I interpreted the accused's statement to Eyale John in English. Eyale John recorded the statement. He read it over to him and I interpreted same to the accused who said it was correct. I signed the statement. Witness identifies Idn 3. Interpreted in Izzi language. I understand Izzi dialect. Idn 3 is tendered - no objection - Idn 3 is admitted and marked Ex. B (statement read)."*

Testifying about Exhibit B, P.W. 6 said among others that -

G *".....I asked accused how he came about the cutlass he used as I realized that he is blind. He voluntarily accepted taking (sic) an additional statement. Ex. B is the additional statement. On 2/12/85 Eyale John brought the accused back to me. I read over Ex. B to the accused in English and it was interpreted to the accused in Izzi by one Special Constable Stephen Nwizi PW 5. The accused admitted having made it voluntarily. I signed the statement. I filled the confessional statement form after I had posed certain question (sic) to him. I signed the confessional statement form Idn 2. The H accused thumb printed the form and the interpreter Stephen Nwizi signed his nameIdn. 2 is admitted and marked Ex. C."*

Before the testimony of P.W. 6, P.W. 5, Special Constable Stephen

Nwizi, had said on oath as follows:-

".....I know Constable Eyale John. I acted as an interpreter between the accused and Mr. Monye. Witness identifies Ex. B and says that Mr. Monye read over Ex. B to the accused in English and he interpreted same to the accused in Izzi dialect. I am an Izzi. The accused admitted that the statement was correctly recorded." B

With what, in my opinion, appeared clear was the correct setting for the receipt of Exhibit B as the voluntary confessional statement of the appellant, the mere fact that it (Exhibit B) was retracted at the trial does not affect its admissibility - the need for holding a trial - within - trial if any, having long passed. Indeed, the court can act on it. So held this court in Stanley Idigun Egboghonome v. The State (1993) 7 N.W.L.R. (Pt. 306) 383. C

Now, what did the appellant say in Exhibit B? In it he said, inter alia that -

"The matchet in question is my matchet. I have been using the matchet for farming during the time I was seeing. I later kept the matchet in my box and I locked it as I can't see again." D

On the night of 20/11/85, I went to the box and removed the matchet leaving only the cover in the box and kept the matchet till in the morning of 21/11/85 when I used it in matcheting my wife to death. I can't see at all, but I know the position of things in my house. No body tells me that my wife used to park (sic) my belongings to outsiders, I only sensed and knew this. I am adopting this statement to the statement I made to the police on 21/11/85. That is all." E

The above, coupled with the evidence of P.W. 2 wherein the appellant was demonstrated as confessing to P.W. 2 that he killed his deceased wife, is corroboration enough of the commission of the murder of the deceased to leave any shadow of doubt. It is in this regard that the facts in the case of Musa Umaru Kasa v. The State (1994) 5 N.W.L.R. (Pt. 344) 269 relied upon in this case, are with due respect, distinguishable. In that case, this court at page 287 of the Report said that the recovery of a blood-stained shirt in the room of the appellant without sending same for scientific testing to determine if it was firstly human blood and secondly if the blood was of the same group as the deceased's failed to provide corroboration of the appellant's confessional statement. In that case as well as in the case in hand, however, the Court of Appeal convicted the appellants of the offence of murder for other overwhelming pieces of evidence disclosed and proved at the trial. In the instant case, I see no reason to hold otherwise. The court below was therefore justified in convicting the appellant notwithstanding H

standing that he is a blind man on Exhibit B which to all intents and purposes I hold as confessional and so rightly attributed to him. Blindness, it ought to be borne in mind, is a physical impairment separate from a person's criminal proclivity resulting from his effusive acts of commission. It is for these and the fuller reasons set out in the Judgment of my learned brother Ogwuegbu, J.S.C., answering the two planks of the issue considered herein both in the positive, that I too find no merit in this appeal and will also dismiss it. It is accordingly dismissed and the decision of the court below dated 28th October, 1993 is accordingly affirmed.

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