

**SUPREME COURT OF NIGERIA**  
2ND APRIL, 1996. SC. 16/1995  
**CORAM A.B. WALI, I.L. KUTIGI, E.O. OGWUEGBU,**  
**Y. O. ADIO, A. I. IGUH, JJSC.**

FRED DAPERE GIRA ..... APPELLANT

V.

THE STATE ..... RESPONDENT

---

**APPEALS** - *Concurrent findings of courts - Whether to be interfered with where there is no sufficient reason to warrant such interference.*

**CRIMINAL PROCEDURE** - *Murder - Whether proved beyond reasonable doubt - In the circumstances of this case.*

**CRIMINAL PROCEDURE** - *Confessional statement - Is one made by appellant suggesting directly or by implication - That he committed the crime.*

**CRIMINAL PROCEDURE** - *Retracting from confessional statement - Whether such retraction - Would render the confession inadmissible - Where the confession is voluntary and positive.*

**EVIDENCE** - *Admission by conduct - Clear and direct accusation of murder made against accused - Where not denied by accused - Whether evidence of admission by conduct.*

**EVIDENCE** - *Credibility of a witness - Whether every discrepancy in what a witness says - Is sufficient to destroy his credibility.*

**EVIDENCE** - *Witnesses - Slip in evidence - Whether there is a slip in PW2's testimony - As to who killed the deceased.*

**MURDER** - *Burden of proof- What prosecution must prove - To discharge the burden of proof in murder charge.*

**FACTS**

The appellant was charged with the murder of one Kenule Koma in the High Court of Rivers State, Bori. The evidence of the prosecution which the trial court accepted as given by one Sanwii Bira, P.W.2, and corroborated by a medical Doctor who performed Postmortem examination

on the corpse was that the deceased was killed as a result of matchet injuries. P.W.2 said she saw the appellant and another person come to the house of the deceased with matchet and dagger, said the appellant used the matchet to inflict injuries on the deceased who died. P.W.2 who reported the incident to the Police was at the police Station when the appellant also came and reported himself and made a statement, Exhibit A to the police. P.W.2 identified the appellant.

The appellant who at the trial admitted making statement to the police, denied part of the recorded statement. He also denied the charge. The trial Court rejected the appellant's evidence and found him guilty, convicted and sentenced him to death. The appellant's appeal to the court of Appeal was dismissed. Dissatisfied, the appellant has further appealed to the Supreme Court raising 2 issues to which the apex court joined the 2<sup>nd</sup> issue in the respondent's brief to form the 3 issues before the court in this appeal

### **ISSUES FOR DETERMINATION**

*“(1) Whether it was established that the appellant on the evidence killed the deceased.*

*(2) Whether it was true as held by the court below that Exhibit ‘A’, the extra judicial statement of the appellant, was corroborated by other pieces of evidence outside it.*

*(3) Whether the court below was right in holding that Exhibit ‘A’ was confessional in nature as held by the learned trial Judge.”*

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

### ***Burden of proof in murder charge***

1. There are certain things or matters that the prosecution has to prove before it can be said that the prosecution has discharged the burden on it to prove its case beyond reasonable doubt where the charge against an accused is murder. They include, *(i) the death of the deceased; (ii) the act or omission of the accused which caused the death of the deceased; and (iii) that act or omission of the accused, aforesaid in paragraph (ii) above, must have been intentional with knowledge that death or grievous bodily harm was its probable consequence.* (p. 644 F)

### ***Witnesses - Slip in evidence***

2. I have carefully read the record of proceedings, particularly the whole of the evidence of P.W. 2 and the evidence of p.w.5 as they related to the question of the person who killed the deceased, and I am of the firm view

that the court below was right in affirming the finding of the learned trial Judge that it was a slip on the part of the P.W. 2 to state, under cross-examination, that the appellant killed her mother and the appellant's brother killed the deceased. The evidence of the P.W. 2 as recorded in several places in the record of proceedings, that the appellant killed the deceased, was clear, straightforward and firm. (p. 647 H)

### ***Admission by conduct***

3. A person who is accused of committing a crime is, by virtue of provisions of the Constitution of the Federal Republic of Nigeria, 1979, entitled to remain silent either during investigation or when he is being tried in court. However, there is, in law, a legal principle commonly referred to, as admission by conduct. The law is that when a clear and direct accusation is made against a person, in his presence, in circumstances which warrant instant denial, refutation, or protest from him and he does not deny, refute or protest against the making of the accusation, evidence of such could be given against him as evidence of admission by conduct. If the appellant knew or felt that the accusation of the P.W.2 against him that he was the person that killed the deceased was not true, he should have there and then denied it especially when it was made in his presence and at the police station where as a result he was arrested and detained. (p. 649 E)

### ***Concurrent findings of courts***

4. After the appellant has been arrested and detained, he made the statement (Exhibit "A") to the police. The statement was tendered and admitted as Exhibit "A" without objection that it was not voluntary. However, the appellant after the admission of Exhibit "A" stated that there were portions of the statement which were not what he told the police who recorded the statement. In short, the appellant attempted to retract those portions but the learned trial Judge found and the court below affirmed the finding that the appellant made the whole statement and that the contents of the statement represented a true account of what actually happened. No sufficient reason was given to warrant the interference of this court with the concurrent findings of the lower courts. (p. 649 H)

### ***Evidence - Confessional statement***

5. The Statement, Exhibit "A", quoted above, speaks for itself. The appellant stated in the statement that Kenule (the deceased) was the woman that he (appellant) killed. He also said that when he went to look for Koma he did not see Koma but he saw the sister of Koma, the deceased and he used

his matchet to 'beat' the deceased. He then stated that when he returned from Daen he heard that the deceased (Kenule) that he 'beat' with matchet had died. By virtue of sections 6 and 27 of the Evidence Act, the conclusion is obvious and irresistible that the statement (Exhibit "A") made by the appellant is confessional since it suggests directly or by implication that the appellant committed the crime. (p. 651 C)

### ***Retracting from confessional statement***

6. It is necessary to point out, in relation to this aspect of the matter, that when a confessional statement has been proved to have been made voluntarily and it is positive, unequivocal, and amounts to an admission of guilt, as it was in this case, it is enough to sustain a finding of guilt regardless of the fact that the maker resiled therefrom or retracted it altogether at the trial. Such a retraction does not necessarily make the confession inadmissible. (p. 652 C)

### ***Credibility of a witness***

7. It is not every discrepancy between what one witness says and what another says, or between what a witness says at one time and what he says at another that is sufficient to destroy the credibility of a witness altogether. However, where the discrepancy is at least of enough importance to call for mention by the Judge, it should appear on the record that he adverted his mind to it and the reason for believing the witness in spite of the discrepancy should also be stated. That will enable an appellate court to determine whether the learned Judge overlooked the discrepancy or whether he adverted his mind to it and considered it but found the witness credible nevertheless. The foregoing principle was observed in this case and the situation was not, in the circumstances of this case, one in which one could reasonably say that a miscarriage of justice was caused. (p. 652 G)

### ***Murder proved***

8. The answer to each of the questions raised under the 1st, 2nd and 3rd issues is in the affirmative. It was proved beyond reasonable doubt that it was the appellant that killed the deceased, Kenule Koma. It was true, as held by the court below, that Exhibit "A" (the extra judicial statement of the appellant), was corroborated by other pieces of evidence outside it. The court below was right in holding that Exhibit "A" was confessional in nature, as held by the learned trial Judge. (p. 653 B)

NOTABLE POINTS OF INTEREST

**ADIO JSC**

***1. Murder - Death of deceased***

There was no dispute on the question whether the deceased had died. The p.w.2, who was present when the deceased was given several machet cuts as a result of which she died on the spot, testified. Her evidence, on the point, was not contradicted. She was cross-examined and was unshaken. There was, therefore, ample evidence to support the finding of the learned trial Judge on the point, which was rightly affirmed by the court below. The situation was the same in relation to the finding that it was the injury inflicted on the deceased that caused her death. (p. 646 C)

***2. Confession defined***

A confession is, by virtue of section 27(1) of the Evidence Act an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. Therefore, it follows that once accused person makes a statement, under caution, saying or admitting the charge or creating the impression that he committed the offence the statement becomes confessional. (p. 651 B)

**REPRESENTATION**

E F.A. Oso, Esq. - For the Appellants  
I.I.D. Opuminji, Chief State Counsel, Ministry of Justice, Rivers State - For the Respondents

**CASES REFERRED TO**

F Ogba v. The State (1992)2 N.W.L.R. (Pt. 222) 164  
Onungwa v. The State (1976)3 S.C. 169  
Shivero v. The State (1976) 3 S.C. 63  
Udo v. R. (1964) 1 All N.L.R. 21 at p. 23  
Utteh v. The State (1992) 2 N.W.L.R. (pt. 223 257  
G Kasa v. The State (1994) 9 KLR 84  
Adamu v. Kano Native Authority (1956) 1 F.S.C. 25  
Irek v. The State (1976) 4 S.C. 65 at p. 67  
Egboghonome v. The State (1993) 11 KLR 1  
Barure v. The State (1994) 2 KLR 16  
H Ndebilie v. The State (1965) N.M.L.R. 253 at p. 257

**STATUTES REFERRED TO**

Criminal Code Cap. 30 Laws of Eastern Nigeria 1963, (applicable in Rivers State) s. 319

Evidence Act Cap 112, L.F.N. 1990. ss. 6 and 27(1)

### **LEAD JUDGMENT BY ADIO JSC**

In the High Court of the Rivers State of Nigeria, Bori Judicial Division, the charge preferred against the appellant was murder contrary to section 319 of the Criminal Code, Cap. 30 of the Laws of Eastern Nigeria, 1963, applicable in the Rivers State. It was alleged that the appellant, on the 28th February, 1983, did, at Nyown Lueku village in the Bori Judicial Division, murder one Kenule Koma (f).

The evidence led by the prosecution was that on the day of the incident one Sanwn Bira, P.W.2, returned with her mother to her mother's home from where they went. After some time they saw the appellant and his brother (Goodluck) coming to the house of the mother of P.W.2, with torch-lights. The appellant held a matchet and the appellant's brother held a dagger with which they inflicted injuries on the deceased who was the daughter of the witness, and another person who was the mother of the witness. The evidence of the doctor who performed the post mortem examination on the corpse of the deceased, was that the deceased died as a result of the injuries inflicted on her with a sharp instrument or object such as a matchet.

Immediately after the incident, the witness went to the police station to make a report of the incident. While there, the appellant himself came to the police station. The witness there and then identified the appellant as the person who killed the deceased and the appellant himself told the police that he had killed two persons in the village and one other person in another place.

The constable who investigated the case testified that the appellant made a confessional statement to him. The statement was admitted and marked Exhibit "A". The appellant also took the policeman to a house from the roof of which he brought out a matchet which, according to the appellant, was the matchet which he used to inflict the injuries on the deceased. The matchet was Exhibit "8".

The appellant denied the charge. He testified that it was not true that he had a misunderstanding with the deceased or that he and his brother inflicted injuries on the deceased and another person. He agreed that he was holding a matchet at all material times but stated that he did not use it to inflict matchet cuts on the deceased. He also agreed that he made a statement to the police but denied that part of the statement in which he was recorded as having said that he used the matchet to beat the deceased or that he killed her.

The learned trial Judge believed and accepted the evidence led by

the prosecution. He rejected the evidence led by the appellant. In his view, the defence put forward by the appellant was an afterthought. He held that what was recorded in the statement, Exhibit "A", was a true account of what happened as stated by the appellant. The appellant was found guilty. He was convicted and sentenced to death. Dissatisfied with the judgment, the appellant lodged an appeal to the Court of Appeal.

The court below dismissed the appellant's appeal. The court held that notwithstanding the slip made by the P.W.2, when she stated that the appellant killed her mother and the appellant's brother killed the deceased, there was evidence which showed beyond reasonable doubt that it was the appellant who used a lethal weapon, a machet to inflict injury on the deceased and that the injury caused the death of the deceased. Dissatisfied with the judgment, the appellant has lodged a further appeal to this court.

The parties duly filed and exchanged briefs. The appellant filed an appellant's brief and the respondent filed a respondent's brief. The appellant's brief contained three issues but the third one was abandoned. Two issues were set out in the respondent's brief. The first and second issues in the appellant's brief and the second issue in the respondent's brief are sufficient for the determination of this appeal. They are respectively issues (1) and (2) and issue (3) in this appeal and are as follows:

*"(1) Whether it was established that the appellant on the evidence killed the deceased.*

*(2) Whether it was true as held by the court below that Exhibit 'A', the extrajudicial statement of the appellant, was corroborated by other pieces of evidence outside it.*

*(3) Whether the court below was right in holding that Exhibit 'A' was confessional in nature as held by the learned trial Judge."*

There are certain things or matters that the prosecution has to prove before it can be said that the prosecution has discharged the burden on it to prove its case beyond reasonable doubt where the charge against an accused is murder. They include, as stated in *Ogba v. The State* (1992) 2 NWLR (Pt.222) 164:-

(i) the death of the deceased;  
(ii) the act or omission of the accused which caused the death of the deceased; and  
(iii) the act or omission of the accused, aforesaid in paragraph (ii) above, must have been intentional with knowledge that death or grievous bodily harm was its probable consequence.

The evidence relied upon in this case included the direct evidence of an eyewitness who claimed that she was present at the time of the incident

leading to the death of the deceased and that she saw the appellant when he inflicted machet cuts on the deceased and that the deceased died on the spot. It also included a statement (Exhibit "A") voluntarily made by the appellant to the police though there was controversy on the question of whether it was a confessional statement. There are, inter alia. three important principles of law requiring consideration in this case. One is that the credibility of evidence does not ordinarily depend on the number of witnesses that testify on a particular point. The crucial question is whether the evidence of one credible witness, on a particular point, is believed and accepted. If the answer is in the affirmative, then it is sufficient to justify a conviction. See *Ali v. The State* (1988) 1 NWLR (Pt.68) 1. The second legal principle relates to the statement which the appellant made to the police and the question is whether it could properly be said to be a confessional statement. The third legal principle is that if the prosecution is to succeed, then its case, as presented, must be consistent. If there is inconsistency in the prosecution's case such as to cast doubt on the guilt of the accused, the accused is entitled to be given the benefit of doubt and he should be discharged and acquitted. See: *Onubogu v. The State* (1974) 9 S.C. 1; and *Kalu v. The State* (1988) 4 NWLR (Pt.90) 503.

In this case, there was one of the witnesses, who testified for the prosecution, that claimed that she was present when the incident leading to the death of the deceased happened. The witness is P.W.2 and her evidence was that she saw the appellant when he inflicted machet cuts on the deceased and that the deceased died on the spot. She said, inter alia, as follows:-

*"As we were in my mother's house and after a short time we saw people coming to the house with touch lights. The people who came were Fred and Goodluck his brother. Accused is the man I called Fred. I was there when Fred and Goodluck started to butcher my mother. When they butchered my mother they also at the same spot, both accused and his brother Goodluck, started cutting my daughter Kenule Koma. It was about 9 p.m. after evening food. Fred and Goodluck came with knife and dagger and touch light. As I saw then butchering the two of them, I had to escape through one bush and to a road where I took taxi to Bori to report at the Police Station what happened. After the report I went home to bring their corpse and then went to the doctor. I only brought the corpse of Kenule Koma to the doctor. "*

The doctor, P.W.4, examined the corpse of the deceased, which was identified to him. He told the learned trial Judge that he found deep lacerations on the various parts of the corpse; the deceased bled from the



wounds which must have been caused by the deceased being cut with a sharp object. The wounds could not be self-inflicted and the deceased died as a result of bleeding from the wounds.

Ordinarily, it could be said that the evidence of P.W.2 considered along with the evidence of the P.W.4 (the doctor who performed the post-mortem examination on the corpse of the deceased) established the essential ingredients of the criminal offence of murder. However, what was involved in this case was much more than the evidence-in-chief given by P.W.2 and the evidence of the doctor (P.W.4). The circumstances of this case included the questions raised under the first, second and the third issues above. The aforesaid questions will be dealt with together.

There was no dispute on the question whether the deceased had died. The P.W.2, who was present when the deceased was given several matchet cuts as a result of which she died on the spot, testified. Her evidence, on the point, was not contradicted. She was cross-examined and was unshaken. There was, therefore, ample evidence to support the finding of the learned trial Judge, on the point, which was rightly affirmed by the court below. The situation was the same in relation to the finding that it was the injury inflicted on the deceased that caused her death. The crucial issue is the identity of the person who inflicted the injury on the deceased. The evidence of the P.W.2 was that the appellant was the person who inflicted matchet cuts on the deceased. However, during her cross-examination by the learned counsel for the appellant, the P.W.2 stated that the appellant killed her (P.W.2's) mother and the brother of the appellant killed her (P.W.2's) daughter, the deceased. The learned trial Judge gave due consideration to the whole evidence of the P.W.2 and to other evidence and all the circumstances of this case and came to the conclusion that notwithstanding what appeared to be a contradiction in the evidence of the P.W.2., the evidence of the P.W.2 that it was the appellant that inflicted matchet cuts on the deceased and that the deceased died as a result of the injury, represented the true account of what happened. The court below dealt with this aspect of the matter and after giving consideration to the whole evidence of the P.W.2, the evidence of other witnesses together with the confession in the statement (Exhibit "A") of the appellant, affirmed the finding of the learned trial Judge, on the point. The court below stated, inter alia, as follows:-

*"In the case in hand it is necessary to determine whether there is credible evidence that the appellant dealt a blow on the deceased using lethal weapon and whether it was that blow that led to the death of the deceased. .... The learned counsel for the appellant picked on the answers of P.W.2 to cross-examination*

*and submitted that PW.2 as the only eye witness to the murder of the deceased stated that the assailant of the deceased was Goodluck and not Fred Dapere Gira the appellant..... I would like to state that the judgment of a trial court will not be reversed on appeal merely because there were contradictions in the evidence of witnesses. It must be further shown that the Judge did not advert his mind to those contradictions ....* B

*..... It can be said therefore that the finding of the learned trial Judge on the evidence of PW.2 was not perverse and had not occasioned a miscarriage of justice that should engender an interference by this court.”* C

The evidence or matters which the court below considered and bore in mind before it came to the conclusion that notwithstanding the slip or what appeared to be a contradiction in the evidence of the PW.2. her evidence that it was the appellant that inflicted matchet cuts on the deceased and that the deceased died as a result of the injury on the spot, was true included: D

(a) the evidence of PW.2 that when she went to the police station to make a report of the incident, the appellant met her there and she identified him to the police (PW.5) as the person who killed the deceased:

(b) the evidence of PW.5 that the appellant took him to a house from the thatched roof of which the appellant brought out a matchet, Exhibit “8” which he identified as the matchet which he used to cut the deceased: and E

(c) the admissions made in the statement made by the appellant to the police which showed that he was the person who killed the deceased. F

The submission which was made for the appellant was that the finding by the learned trial Judge that the evidence of the PW.2. under cross-examination that the appellant killed the mother of PW.2 and the appellant’s brother killed the deceased was a slip was wrong and the court below too was wrong in affirming the said finding. It was submitted further that the contradiction was on a fundamental point that should render the conviction of the appellant for murder and the affirmation of it also wrong. G  
It was contended for the respondent that the evidence of PW.2 about how she identified the appellant to the police (PW.5) at the police station as the person who killed her daughter (the deceased), confirmed by the PW.5 (police), represented a true account of what happened. I have carefully H  
read the record of proceedings, particularly the whole of the evidence of PW.2 and the evidence of PW.5 as they related to the question of the person who killed the deceased, and I am of the firm view that the court below was right in affirming the finding of the learned trial Judge that it was

a slip on the part of the P.W.2 to state, under cross-examination, that the appellant killed her mother and the appellant's brother killed the deceased. The evidence of the P.W.2 as recorded in several places in the record of proceedings, that the appellant killed the deceased, was clear, straight-forward and firm. She said, for an example, inter alia as follows:

B            *"I know the accused who is Fred Gira. The accused killed Kenule Bira. He (sic) is also known as Kenule Koma. Kenule was my daughter .....*

..... *Three of us were there when Goodluck and the accused came. The accused used matchet in cutting her and Goodluck used dagger on my mother. I was afraid of what was going on and I ran away to the bush and from there to the police. My mother is (sic) Wadam Nagbara. When I reached the police station I reported that Fred killed my daughter. I made statement. When I was making the statement, then Fred reported to the Police that he killed two persons in the village and one at Dain No.2. It was Fred who reported himself to the police.*

D            *As we came from the Chief's house and sat down for sometimes when we said the two of them came. The police locked up the accused and I was given police to go with me to our house. We went home and saw the two who were killed and we went to Dain to carry the other person. Kenule Bira or Kenule Koma died and Wadam Nagbara died."*

E            The P.W.5 was the policeman on duty at the police station to whom the P.W.2 reported what happened. His own evidence, which confirmed the evidence of P.W.2 in various material particulars was inter alia as follows:

F            *"While on duty a case of murder involving the deceased one Kenule Koma was referred to me. The case was reported by P.W.2, Sanwil Bira. As the case was being dispatched to the Divisional Crime Branch, the accused showed up at the Police Station on his own. He was identified by the complainant as the person who killed her daughter Kenule Koma. I arrested and detained him in the cell. ....*

G            *..... After this statement and on 11th March, 1983, I brought out the accused person and questioned him about the matchet he used and he told me that the matchet was somewhere. He made a short statement under caution. On the strength of the statement, the accused took myself and Inspector Ekong to Nyonwii Lueku village. On getting to Nyonwii Lueku we got to a house and at the veranda the accused put his hand and brought the matchet he hid under the tatched (sic). He brought it out and gave me."*

H            (Underlining mine)

The evidence of P.W.2 that the appellant himself reported what

happened at the police station, which was confirmed by the 5th P.W., has its own legal significance. The voluntary visit of an accused to a police station to report what he had done is admissible as evidence of guilt. See *Onungwa v. The State* (1976) 3 S.C. 169. Also relevant, as evidence of guilt, is the discovery or finding of an object used for or connected with the commission of crime at a place where the accused says it was placed or hidden by him. In *Shivero v. The State* (1976) 3 S.C. 63, after the appellant had stabbed the deceased with a knife he went to the police station to report what he had done to the police. The conviction based on evidence of eye-witnesses of the incident, result of post-mortem examination, voluntary visit of the appellant to the police station and evidence of the finding of the knife used in stabbing the deceased was held to be proper. B C

The foregoing is not the end of the legal implication of the appellant going to the police station after the incident. I have referred to the evidence of the P.W.2 that there and then she identified the appellant to the P.W.5, (the police constable dealing with certain aspects of the matter) as the person who killed the deceased. The P.W.5 confirmed the said evidence of the D.W.2. The accusation or allegation made by the P.W.2 against the appellant in his presence and to his hearing was serious but there was no evidence that the appellant either denied the allegation or protested on hearing what the P.W.2 said about him. A person who is accused of committing a crime is, by virtue of the provisions of the Constitution of the Federal Republic of Nigeria, 1979, entitled to remain silent either during investigation or when he is being tried in court. However, there is, in law, a legal principle commonly referred to as admission by conduct. The law is that when a clear and direct accusation is made against a person, in his presence, in circumstances which should warrant instant denial, refutation, or protest from him and he does not deny, refute or protest against the making of the accusation, evidence of such could be given against him as evidence of admission by conduct. See *Udo v. R.* (1964) 1 All NLR 21 at P23 and *Ufreh v. The State* (1992) 2 NWLR (Pt.223) 257. If the appellant knew or felt that the accusation of the P.W.2 against him that he was the person that killed the deceased was not true, he should have there and then denied it especially when it was made in his presence and at the police station where as a result he was arrested and detained. D E F G

After the appellant had been arrested and detained, he made a statement (Exhibit "A") to the police. The statement was tendered and admitted as Exhibit "A" without objection that it was not voluntary. However the appellant after the admission of Exhibit "A" stated that there were some portions of the statement which were not what he told the police who H

recorded the statement. In short, the appellant attempted to retract those portions but the learned trial Judge found and the court below affirmed the finding that the appellant made the whole statement and that the contents of the statement represented a true account of what actually happened. No sufficient reason was given to warrant the interference of this court with the concurrent findings of the lower courts.

There was also controversy on the question whether the statement, Exhibit “A”, was a confessional statement. The statement, aforesaid, was as follows:

*“This matter don become fifteen years. My uncle Toesan Giro he en marry this woman Kenule wey I kill. Since that time wey Kenule say hi nor go marry my uncle Toesan Gira we don count the money wey my uncle pay and the money reach N800.00k (Eight Hundred Naira). The people wey judge the case say make Kenule give two picking to my uncle. Koma Nagbara say he nor go give the N800.00k and the two picking to my uncle Toesan Gira. On the 19th of December, 1982 Koma Nagbara and this Kenule with his mother Kpiribe Bira come hold my uncle Toesdan Gira and beat am till the seat wey comot for hin yas they come give am eat. When I come hear how they beat my uncle I go report for Taabaa Police and they come transfer the case to Bori Police Station. This Koma say as my wife Nwibari see am when he dey beat my uncle and report to me she nor go see life. So since that day he don worry my wife with Juju; nor be small Komasay he don cook my wife for pot. True nor be lie. I don report this matter to chief Banima. I don report to Chief Johnson and Chief Manson Ebenezer too. I say this my wife wey want die if hin die I nor go leave Koma Nagbara. On Sunday 27/2/83 the picking wey day for my wife belly comot. Die don come for my wife. Na hin my mind nor good again. The one wey we marry Koma Nagbara don take am and money he nor give and he want to kill my wife Nwibari.*

*So this Monday evening 28/2/83 no hin people come tell me say my wife wey I sent to Chief Kirika. a native doctor to treat say hin don die. As people say hin don die I nor go look am. Na hin I carry matchet to meet Koma but I nor meet am; but I meet hin sister Kenule. I take the matchet beat am. I leave am because nor be hin dey for my mind na Koma dey for my mind. Then I go meet Koma for bean village for that very night. I see am. Na hin I take my matchet sharp am. When I come back from Daen, I hear say Kenule wey I beat with matchet don die. The mother of Koma Nagbara I nor know something concern am. I nor see am with my eye. As I dey go look for Koma with matchet my brother Goodluck Gira run follow me say make I nor go. When I dey sharp Koma Nagbara with matchet my brother Goodluck dey shout say make I nor kill am. Goodluck*

*dey with empty hand and he nor fit hold me because if he hold me I for sharpen am too. God know na only me sharpen Koma with the matchet. Na leg I take go and my brother run follow me. I nor go with motor-cycle. As I dey for police Station na hin I hear say the mother of Koma self don die. Waiten I mean by sharp is I cut am with the matchet.*

A confession is, by virtue of section 27(1) of the Evidence Act an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. Therefore, it follows that once an accused person makes a statement, under caution, saying or admitting the charge or creating the impression that he committed the offence charged, the statement becomes confessional. See *Kasa v. The State* (1994) 5 NWLR (Pt.344) 269. The Statement, Exhibit "A" quoted above, speaks for itself. The appellant stated in the statement that Kenule (the deceased) was the woman that he (appellant) killed. He also said that when he went to look for Koma he did not see Koma but he saw the sister of Koma the deceased. and he used his matchet to 'beat' the deceased. He then stated that when he returned from Daen, he heard that the deceased (Kenule) that he 'beat' with matchet had died. By virtue of sections 6 and 27 of the Evidence Act, the conclusion is obvious and irresistible that the statement (Exhibit" A") made by the appellant is confessional since it suggests directly or by implication that the appellant committed the crime.

Though the statement, Exhibit" A", is confessional, and ordinarily a conviction can be based on it alone, it is desirable that the things stated therein should be tested by facts outside the statement to see whether they are correct. See *R. v. Obiasa* (1962) 2 SCNLR 402; (1962) W.N.L.R. 354. Evidence showing that the things stated in the statement were correct included the evidence of the doctor who performed the post mortem examination (PW.4) that the injury inflicted on the deceased was caused by a sharp object or instrument which confirmed the truth of the statement of the appellant that he "beat" the deceased with a matchet. There was also the fact that when the PW.2 identified the appellant as the person who killed the deceased, the accusation was not denied or refuted there and then. The accusation was made at a police station and in the presence of the I.P.O. (PW.5) and the appellant. I have earlier referred to the assertion of the appellant, in the statement, that he "beat" the deceased with a matchet when he met her at home at the time he went to look for Koma. The appellant also asserted that subsequently he heard that the deceased that he "beat" with a matchet had died. A matchet is a lethal weapon and not an ordinary cane. The death of the deceased as a result of being "beaten" with a matchet was something which should ordinarily

or naturally be expected. See *Adamu v. Kano Native Authority* (1956) 1 F.S.C. 25; (1956) SCNLR 65. The cause of death was the “beating” with a machet by the appellant. A person intends the natural consequences of his conduct. By “beating” the deceased with a lethal weapon it could properly be inferred that the appellant intended to kill the deceased or wanted to inflict grievous bodily harm on her. See *Irek v. The State* (1976) 4 S.C. 65 at P67. It was true that Kenule (the deceased) had died and that the death was caused by injury inflicted upon her with a sharp object such as a machet. The appellant also asserted in the statement (Exhibit “A”) that he heard that the mother of P.W.2 had also died. It is true that she had died. The evidence of the P.W.2 was that she was the second person that was killed at the time of the incident. The foregoing were some of the things outside the statement which showed that certain assertions in the statement (Exhibit “A”) were true or correct.

It is necessary to point out, in relation to this aspect of the matter, that when a confessional statement has been proved to have been made voluntarily and it is positive, unequivocal, and amounts to an admission of guilt, as it was in this case, it is enough to sustain a finding of guilt regardless of the fact that the maker resiled therefrom or retracted it altogether at the trial. Such a retraction does not necessarily make the confession inadmissible. See *Egboghonome v. The State* (1993) 7 NWLR (Pt.306) 383; and *Bature v. The State* (1994) 1 NWLR (Pt.320) 267. In any case, the finding of the learned trial Judge, which the court below affirmed, in this case, was that the appellant made the whole statement.

The court below observed that in coming to the conclusion that the evidence of the P.W.2 that it was the appellant that killed the deceased was true, the learned trial Judge adverted his mind to the slip made by the P.W.2 and that after noting that the P.W.2 was testifying about an incident which took place many years before, the learned trial Judge considered certain aspects of the matter some of which have been mentioned above, before arriving at the said conclusion. The court below, having satisfied itself that the learned trial Judge did all that should be done before accepting the evidence of the P.W.2 despite the alleged discrepancy or contradiction, was right in affirming the finding of the learned trial Judge, on the question. It is not every discrepancy between what one witness says and what another says, or between what a witness says at one time and what he says at another that is sufficient to destroy the credibility of a witness altogether. However, where the discrepancy is at least of enough importance to call for a mention by the Judge, it should appear on the record that he adverted his mind to it and the reason for believing the witness in spite of the discrepancy should also be stated. That will enable an appellate court to

determine whether the learned Judge overlooked the discrepancy or whether he adverted his mind to it and considered it but found the witness credible nevertheless. See *Ndebilie v. The State* (1965) NMLR 253 at P.257. The foregoing principle was observed in this case and the situation was not, in the circumstances of this case, one in which one could reasonably say that a miscarriage of justice was caused.

The answer to each of the questions raised under the 1st, 2nd and 3rd issues is in the affirmative. It was proved beyond reasonable doubt that it was the appellant that killed the deceased, Kenule Koma. It was true, as held by the court below, that Exhibit "A" (the extra judicial statement of the appellant) was corroborated by other pieces of evidence outside it. The court below was right in holding that Exhibit "A" was confessional in nature, as held by the learned trial Judge.

The appeal does not succeed and it is hereby dismissed. The judgment of the court below, affirming the conviction and sentence imposed on the appellant, is hereby affirmed.

---

#### **WALI JSC**

I have been privileged to have read in draft the lead judgment of my learned brother Adio, J.S.C. and I endorse the way and manner he admirably treated the issues of both law and fact in this appeal.

It was a dastardly case of a premeditated murder in which the appellant's act had no redeeming circumstances whatsoever.

The deceased was matcheted to death by the appellant. P.W. 2 was an eye witness to be brutal act and her evidence was sufficiently confirmed by the confessional statement of the appellant and the instantaneous identification of the appellant by P.W. 2 as the person who killed the deceased when he voluntarily reported himself to the police station, when at the time P.W. 2 was herself making a report of the murder to the same police station, notwithstanding the minor slip in her evidence.

I agree that the evidence against the appellant was overwhelming and that he was rightly and justifiably convicted of the offence of murder.

I also hereby dismiss the appeal and affirm the conviction of murder and sentence of death passed on the appellant.

---

#### **KUTIGI JSC**

I read in advance the judgment just delivered by my learned brother, Adio, J.S.C. I agree with his conclusion that the appeal fails and it is



accordingly dismissed. Conviction and sentence are affirmed.

---

**OGWUEGBU JSC**

I have read in advance the judgment delivered by my learned brother,  
B Adio, J.S.C. I am in entire agreement with the views expressed therein,  
both on the law and facts.

The conclusion reached by the High Court and the Court of Appeal  
that the offence of murder against the appellant was proved beyond rea-  
sonable doubt is accepted by me. I am also satisfied that the appeal lacks  
C substance. The appeal is therefore dismissed.

---

**IGUH JSC**

I have had the opportunity of reading in draft the judgment just  
D delivered by my learned brother, Adio, J.S.C. and I agree that there is no  
merit in this appeal.

It is clear to me that the conclusion reached both by the trial court  
and the court below to the effect that the offence of the murder of Kenule  
Koma on the 28th day of February, 1983 against the appellant was estab-  
lished beyond reasonable doubt is entirely justified and unimpeachable.

E Accordingly I, too, dismiss this appeal as totally devoid of merit.  
The conviction and sentence passed on the appellant by the trial court and  
affirmed by the Court of Appeal are hereby further affirmed.

F

G

H