

**SUPREME COURT OF NIGERIA**  
20TH SEPTEMBER, 1996. SC. 134/1994  
**CORAM:- I. L. KUTIGI, M. E. OGUNDARE, E. O. OGWUEGBU,**  
**U. MOHAMMED, S. U. ONU, JJSC.**

MONDAY EDHIGERE ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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***CRIMINAL PROCEDURE*** - Confessional statement - Where not attested by a senior police officer - Whether unreliable.

***CRIMINAL PROCEDURE*** - Corroboration - Confessional statement - Whether corroborated by other evidence before the court.

***EVIDENCE*** - Conflict - Murder - Whether there is any conflict - Between the two exhibits under consideration.

***MURDER*** - Evidence - Whether sufficient - To justify lower courts' finding of murder.

**FACTS**

The appellant was charged together with 3 other accused persons with the offence of murder, before the defunct Bendel State High Court, Oleh. PW1 was with his father (the deceased) when the appellant and the other accused persons invited the deceased to follow them. All the accused persons were holding machetes. The deceased who followed them was picked up dead the next day from a fish pond. The appellant's confessional statement revealed that they had to kill the deceased because he was believed to be wizard.

The trial court found two of the accused persons guilty as charged as two of them died while awaiting trial. Appellant's appeal to the Court of Appeal was dismissed. Being dissatisfied, he has further appealed to the Supreme Court raising a lone issue.

**ISSUE FOR DETERMINATION**

*"Whether the conviction and sentence of the Appellant on Exhibit C was proper on the facts of this case and the nature of evidence produced by the state?"*

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

***Evidence - Whether there is any conflict***

1. There is no conflict, in my view, between the evidence in Exhibit D and Exhibit C. The appellant had admitted using the matchet in cutting deceased on the head. A matchet was discovered in the house of the accused. The fact that no traces of blood had been found when the matchet was examined by the Government Chemist does not establish any discrepancy between exhibits C and D. It is safe to infer that the accused persons had enough time to wash the matchet of all traces of blood. It should be observed that the deceased had been killed and dumped in a fish pond. (p. 1666 F)

***Confessional statement - Where not attested***

2. The issue about failure to have the confessional statement attested by a Senior Police Officer is another weak argument. This court had said several times in reported cases that the administrative practice of confirmation of confessional statements before a senior police officer is not a legal requirement which if not complied with would render the confession unreliable. No general rule has been laid out that the practice must be observed (p. 1666 G)

***Confessional statement - Whether corroborated***

3. The next point argued by learned counsel for the appellant is whether Exhibit C had been corroborated by the evidence of PW1 and PW4. Without hesitation I will answer the question in the affirmative. The Court of Appeal is quite right to affirm that the confession of the appellant had received adequate corroboration for the trial court to base his conviction on it. (p. 1667 A)

***Murder - Evidence***

4. The respective evidence of PW1 and PW4 are indeed independent testimonies which positively link the appellant to the crime charged. The evidence before the court was overwhelming that the appellant and the other accused persons killed the deceased by cutting him with matchets on the head. The failure of the prosecution to call Onomeroso to testify has not affected the well considered judgment of the trial court which the Court of Appeal affirmed. (p. 1667 E)

**NOTABLE POINTS OF INTEREST**

**MOHAMMED JSC**

***1. Determination of extent of corroboration***

It is trite law that the test applicable to determine the nature and extend of Corroboration is to establish that die evidence is an independent testimony which affects the accused by connecting or tending to connect him with the (p. 1667 E)

**ONUS JSC**

***2. Voluntary confession - Whether corroboration is compulsory***

As has been decided in a long line of cases by this court, it is trite law that and voluntary confession of guilt made by a prisoner whether under examination before a Magistrate or otherwise, if it is direct and positive and idly made and satisfactorily proved, is sufficient to warrant conviction without any corroborative evidence as long as the court is satisfied of the truth of the confession. It has also been laid down that it is desirable however have outside a defence's confession to the police some evidence be it of the circumstances which make it probable that the confession is (p. 1669 H)

**REPRESENTATION**

Olisa Agbakoba Esq. for the Appellant

H. N. Osuhor Esq. Assistant Chief Legal Officer, Delta State, for the Respondent

**CASES REFERRED TO**

Egboghonome v. The State (1993) 11 KLR 1

R. v. Nwigboke (1959) 4 F.S.C. 101

Yusufu v. The State (1976) 6 SC. 167

Dawa v. The State (1980) 8 - 11 SC 236

Obosi v. The State (1965) NMLR 119

Onochie v. The Republic (1966) NMLR 307

R. v. Sykes 8 Cr. App. 233 at 236

Afolabi v. C.O.P. (1961) ALL N.L.R. 634

Igbo v. The State (1975) 9-11 S.C. 129, 135

Alonge v. Inspector-General of Police (1959) 4 F.S.C. 203

Okoro v. The State (1974) 1 ALL N.L.R (Part 1) 466 at 473

**STATUTE REFERRED TO**

Criminal Code s. 319(1)

**LEAD JUDGMENT BY MOHAMMED JSC**

In the High Court of Bendel State, holden at Oleh (now in Delta

State), the appellant and three others were arraigned for the offence of murder, contrary to section 319(1) of the Criminal Code. The other three accused persons were; Josiah Eghagha, Passman Ugbogbo and Lucky Otunu. They were all charged of having murdered one Okpako Eghagha, on 2nd March, 1984, at Ivu bush, Enwhe, in Oleh Judicial Division.

B The facts of the case for the prosecution were given in the testimony of P.W.1, Onoita Okpako. He told the trial court that on 2/3/84 while he was sitting in a hut in Ivu bush together with his father (deceased) and two sisters, the 2nd-4th accused, in the company of one, Onomeroso, came to the hut. The appellant was the 2nd accused at the trial court. The accused told the deceased that the father of Onomeroso had died and that they wanted the deceased to follow them to Enwhe. P.W.1 said that he observed that all the three accused persons were holding matchets. The witness continued with his testimony thus:

*"The deceased then followed them and left me with my junior D brothers in the camp. The following day he did not come back I carried my small brothers and went to Enwhe. When we got to Enwhe I asked my aunt the whereabouts of the deceased and she told me that she did not see him. The name of my aunt is Omotoware. She raised an alarm. We then went to ask Onomeroso the daughter of the 1st accused the whereabouts of E the deceased. She told us certain things. As a result of what Onomeroso told us, we went to ask the 1st accused the whereabouts of the deceased. He admitted that he sent the 2nd - 4th accused persons and Onomeroso to invite the deceased from the bush and kill him. Omotoware Eghagha went to lodge a complaint at the Police Station, Igbide. I was at home F when she went to Igbide. She later returned with two police men and arrested the accused persons and Onomeroso. It was Onomeroso who identified them to this police."*

P.W.2 in his evidence told the trial court that Onomeroso who was G the daughter of the 1st accused led the police to a fish pond in Ivu bush where the corpse of the deceased was found, covered with leaves. It was conveyed from there to the police station. The body was examined by one Dr. Felix Omon Oribator who testified as P.W.4. The doctor told the trial court that he observed a visible cleft on the head of the deceased H extending to the occiput and multiple lacerations. The incised wound went through both the skin and skull. In the doctor's opinion, the death was caused due to severe head injury resulting from the incised wound.

The trial court considered the evidence adduced including, most importantly, the confessional statements made voluntarily by the accused

persons and, in a considered judgment the court convicted the 2nd and 3rd accused persons of murder and sentenced each of them to death. The 1st and 4th accused died in prison custody while awaiting trial.

Monday Edhigere, the appellant, appealed to the Court of Appeal. The court considered all the submissions made by counsel and, in a unanimous decision, dismissed the appeal. B

On further appeal before this court the single issue canvassed by the learned counsel for the appellant is as follows:

*“Whether the conviction and sentence of the appellant on Exhibit C was proper on the facts of this case and the nature of evidence produced by the state?”* C

The learned counsel for the appellant, Mr. Olisa Agbakoba, made heavy weather of the learned trial Judge’s reliance on the confessional statement, Exhibit C, made by the appellant. It is relevant therefore to reproduce that statement in full before I consider the grouse of counsel against the Court of Appeal’s decision upholding the learned trial Judge’s finding in respect of D the confessional statement. The confessional statement reads:

*“On the 2/3/84 at night time, at Enhwe, myself (1) Man-Pass-Man Ugbogbo, (2) Lucky Otunu (3) Ighovuamofa Enuekpe were sent to go and killed (sic) Okpako Eghagha by the following persons (1) Asanim, Chairman of the deceased’s family, (2) Okpoumofa Eghagha Chairlady of the family, Enuekpe Eghagha (5) Omorte Owore, (6) Mowe Okpoumofa, (7) Asvoma Otunu, (8) Mathar Ebiyese, (9) Boy Edhikamaka, (10) Efamana Egeyese and (11) Ariakpomura Ighomraha. The above mentioned persons ordered us to go and bring Okpako Eghagha before them, and burn him with fire. They instructed us that if Okpako Eghagha refused to come with us F we should killed (sic) him on the way. They said he is a wizard, that he has destroyed the family. It was one girl by name Ighovuamofa Enuekpe who told us that (sgd) Monday Edhighere, 6/3/84.*

*Okpako Eghagha is a wizard. As we were bring (sic) the Okpako Eghagha he refused to come with us. Myself, Man-passman Ughogho, G Lucky Otunu and Ighovuamofa Enuekpe started to fight with the man and we used our matchets to cut Okpako Eghagha on the head and the neck, Okpako Eghagha fell down and died, at the spot. We left the deceased on the spot at Enwhe bush and went to report the situation to those who sent us. When we arrived to the place we met Okpomofa H Eghagha, Enuekpe Eghagha, Boy Edhikpamaka and Efamana Egeyese while the rest people had gone away. We reported to them that we have killed Okpako Eghagha at the bush. We left to our houses. On the 5/3/84, I was arrested from my store at Ughelli. I will help the Police to get*

*the remaining persons. That is all about my statement. The matchets were given to those who sent us."*

The learned trial Judge said in his judgment that he was quite satisfied on the evidence before him that Exhibit C made by the appellant under caution was free and voluntary and that the appellant was fully B conscious of the facts set out in that confessional statement. Further in his judgment, the learned trial Judge opined that there was no doubt from Exhibit C that the appellant intended to kill the deceased when he cut the deceased with a matchet on the head. His motive, according to the finding of the judge, was borne out of malice that they were sent to kill the C deceased because he was a wizard who had destroyed their family.

Mr. Olisa Agbakoba submitted, in the appellant's brief which he wrote, that even though this court had held in *Egboghonome v. The State* (1993) 7 NWLR (Pt.306) at 383 that retraction of a confessional statement does not render it valueless, it is not the law that the appellant's D evidence of retraction should be discarded and become valueless once the confession was admitted. But with respect to the appellant's counsel's submission the learned trial Judge did not discard the evidence of retraction. He considered the evidence of alibi that the appellant was at Ughelli on 2/3/84 when the deceased was reported missing and quite rightly, E rejected it. The Court of Appeal referred to the evidence of P.W.1, the eye witness who was together with the deceased in Ivu Bush when the appellant, while in company of the 1st, 3rd and 4th accused came to the hut where the witness was staying with his deceased father. They invited the deceased and he followed them. He was not seen until the following F day when his corpse was found in a fish pond.

**There is no conflict, in my view, between the evidence in Exhibit D and Exhibit C. The appellant had admitted using the matchet in cutting the deceased on the head. A matchet was discovered in the house of the 1st accused. The fact that no traces of blood had been found when the G matchet was examined by the Government Chemists does not establish any discrepancy between Exhibits C and D. It is safe to infer that the accused persons had enough time to wash the matchet of all traces of blood. It should be observed that the deceased had been killed and dumped in a fish pond.**

H The issue about failure to have the confessional statement attested by a Senior Police Officer is another weak argument. This court had said it several times in reported cases that the administrative practice of confirmation of confessional statements before a senior police officer is not a legal requirement which if not complied with would render the confession unreli-

able. No general rule has been laid out that the practice must be observed. R. v. Nwigboke (1959) SCNLR 248; (1959) 4 F.S.C. 101. See also Egboghonome v. The State (1993) 7 NWLR (Pt.306) 383.

The next point argued by learned counsel for the appellant is whether Exhibit C had been corroborated by the evidence of P.W.1 and P.W.4. Without hesitation I will answer the question in the affirmative. The Court of Appeal is quite right to affirm that the confession of the appellant had received adequate corroboration for the trial court to base his conviction on it. P.W.1 testified before the court that the appellant came together with 3 other accused persons to the hut in Ivu bush and requested their father, the deceased, to follow them. In Exhibit C the appellant confessed to have gone, on the instruction of some people, to bring the deceased before them so that he could be burnt with fire since he was a wizard and that if he refused to follow them they should kill him. They came with the deceased and killed him on the way. P.W.1 told the trial court that the appellant was holding a matchet when he came to the hut in the bush.

The doctor who examined the corpse of the deceased testified as P.W.4. The injuries reported by the doctor which, in his opinion, were the cause of the death of the deceased were said to have been caused by a sharp object such as a matchet.

It is trite law that the test applicable to determine the nature and extent of corroboration is to establish that the evidence is an independent testimony which affects the accused by connecting or tending to connect him with the crime. The respective evidence of P.W.1 and P.W.4 are indeed independent testimonies which positively link the appellant to the crime charged. See Afolabi v. C.O.P. (1961) 2 SCNLR 307; (1961) All NLR 654. The evidence before the court was overwhelming that the appellant and the other accused persons killed the deceased by cutting him with matchets on the head. The failure of the prosecution to call Onomeroso to testify has not affected the well considered judgment of the trial court which the Court of Appeal affirmed.

This appeal has no merit at all. It is accordingly dismissed. The judgment of the trial High Court which the court below affirmed is hereby confirmed.

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KUTIGI JSC

The appellant was originally charged along with 3 others with the murder of one Opako Eghagha. During the trial in the High Court two of them died. The appellant and one other were however, at the end of

the trial found guilty, convicted and sentenced to death.

Dissatisfied with the judgment of the High Court, the appellant appealed to the Court of Appeal at Benin City. In a reserved judgment, the Court of Appeal dismissed the appeal as lacking in substance.

It is against the judgment of the Court of Appeal that the appellant has now appealed to this court.

Mr. Olisa Agbakoba learned counsel for the appellant has in his brief of argument submitted only one issue for determination in the appeal as follows:

*"Whether the conviction and sentence of the appellant on Exhibit C was proper on the facts of this case and the nature of evidence produced by the State."*

The appellant had stated in his statement (Exhibit C) to the Police (P.W.5) amongst others that -

*"As we were bring (sic) the Okpako Eghagha he refused to come with us. Myself, Man-Pass-Man Ugbogbo, Lucky Olunu and Ighovuamofa Enuekpe started to fight with the man and we used our matchets to cut Okpako Eghagha on the head and the neck. Okpako Eghagha fell down and died at the spot. We left the deceased on the spot at Enwhe bush and went to report the situation to those who sent us."*

The learned trial Judge in his judgment had also observed thus -

*"I am quite satisfied on the evidence before me that Exhibit "C" made by him (appellant) under caution to the 5th P.W. was free and voluntary and that at the time he made it, he was fully conscious of the facts set out therein."*

The evidence led at the trial also show that-

1. The body of the deceased was recovered by the Police (P.W.5) and others, in a fishing pond in the bush covered with leaves.

2. According to P.W.1 the deceased was last seen alive in the company of the appellant and his gang who went to the house of the deceased and invited him to follow them (appellant and his gang.)

3. The medical doctor (P.W.4) said the deceased died as a result of severe head injuries from incised wounds which might have been caused by a sharp object such as a knife or a matchet.

I have no hesitation under the circumstances therefore in coming to the conclusion that Exhibit 'C' was sufficiently corroborated by the testimonies of the prosecution witnesses as indicated above. It is settled that an accused person may be convicted on his own free and voluntary confession once it is direct and positive (see for example the cases of R. v. Obiasa (1962) 2 SCNLR 402; (1962) All NLR 651; Yusufu

v. The State (1976) 6 S.C. 167; Dawa & Anor v. The State (1980) 8 -11 S.C. 236; Egboghonome v. The State (1993) 7 NWLR (Pt.306) 383.).

It is for the above reasons and others contained in the lead judgment of my learned brother Mohammed, J.S.C., which I read before now and with which I agree, that I too dismiss the appeal.

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**OGUNDARE JSC**

I agree with the judgment of my learned brother Mohammed, J.S.C. just read. I have nothing more to add. I too dismiss the appeal and affirm the judgment of the court below.

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**OGWUEGBU JSC**

I have had the privilege of reading in draft the judgment of my learned brother Mohammed, J.S.C. in this appeal. I am in agreement with the reasoning and conclusion that the appeal ought to be dismissed. I would only emphasize that Exhibit “C” is a free and voluntary confession. It is direct, positive and was properly proved.

The learned trial Judge examined and tested the confession. He found that it was corroborated by the evidence of P.W.1 and P.W.4 (Dr. Felix O. Oributor). P.W.1 testified that the appellant was among the people who came to call the deceased from his hut in Ivu bush on 2:3:84.

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The confession was also consistent with the nature of the wounds described by P.W.4. See *The Queen v. Obiasa* (1962) 2 SCNLR 402; (1962) 1 All NLR (Pt.4) 651 and *Kapa v. The State* (1971) All NLR 151 (Reprint).

I too will dismiss the appeal. The judgment of the Court of Appeal affirming the judgment of the High Court of the former Bendel State holden at Oleh is hereby affirmed.

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**ONU JSC**

I have had the advantage to read before now the judgment of my learned brother Mohammed, J.S.C. just delivered and I am of the same view that this appeal lacks merit and ought to fail.

For emphasis, I wish to add as follows:-

The lone question posed in this case for determination which is setout in the appellant’s brief asks:

Whether the conviction and sentence of the appellant on Exhibit H ‘C’ was proper on the facts of this case and the nature of the evidence.

As has been decided in a long line of cases by this court, it is trite law that a free and voluntary confession of guilt made by a prisoner whether under examination before a Magistrate or otherwise, if it is di-

rect and positive and is duly made and satisfactorily proved, is sufficient to warrant conviction without any corroborative evidence as long as the court is satisfied of the truth of the confession. See *Jimoh Yusufu v. The State* (1976) 6 S.C. 167 and *Edet Obosi v. The State* (1965) NMLR 119. It has also been laid down that it is desirable however to have outside a defence's confession to the police some evidence, be it slight, of the circumstances which make it probable that the confession is true vide *Paul Onochie & 7 ors. v. The Republic* (1966) NMLR 307; *R. v. Kanu* (1952) 14 WACA 30 and *Onuoha v. The State* (1987) 4 NWLR (Pt.65) 331. The latter proposition has been qualified in the principle restated in the case of *The Queen v. John Agariga Itule* (1961) 2 SCNLR 183; (1961) 1 All NLR (pt.3) 462 and more recently in the case of *Stanley Idigun Egboghonome v. The State* (1993) 7 NWLR (Pt.306) 383, to the effect that a confession does not become inadmissible as evidence merely because the accused denies having made it and that in this respect, a confession made to the police by a person under arrest is not to be treated differently from any other confession.

Now, in Exhibit 'C' dated 6th March, 1984 which was retracted at the trial of the appellant, who was 2nd accused in the trial court, he said as follows:

*"On the 2/3/84 at night time, at Enhwe, myself (1) Man-Pass-Man Ugbogbo, (2) Lucky Otunu (3) Ighovuamofa Enuekpe were send (sic) to go and killed (sic) Okpako Eghagha by the following persons (1) Asanim, Chairman of the deceased's family, (2) Okpoumofa Eghagha Chairlady of the family, Enuekpe Eghagha (5) Omone Owore, (6) Mowe Okpoumofa, (7) Asvoma Otunu, (8) Marthar Ebiyese, (9) Boy Edhikamaka, (10) Efamana Egeyese and (11) Ariakpomura Ighomraha. The above mentioned persons ordered us to go and bring Okpako Eghagha before them, and burnt him with fire. They instructed us that if Okpako Eghagha refused to come with us we should kill him on the way. They said he is a wizard, that he has destroyed the family. It was one girl by name Ighovuamofa Enuekpe who told us that (sgd) Monday Edhighere, 6/3/84. Okpako Eghagha is a wizard. As we were bring (sic) the Okpako Eghagha he refused to come with us. Myself, Man-pass-man Ugbogbo, Lucky Otunu and Ighovuamofa Enuekpe started to fight with the man and we used our matchets to cut Okpako Eghagha on the head and the neck, Okpako Eghagha fell down and died, at the spot. We left the deceased on the spot at Enwhe bush and went to report the situation to those who sent us. When we arrived to the place we met Okpomofa Eghagha, Enuekpe Eghagha, Boy Edhikamaka and Efamana Egeyese while the rest people had gone away. We reported to them that we have killed Okpako Eghagha at the bush. We left to our houses. On the 5/3/84, I was arrested*

*from my store at Ughelli. I will help the Police to get the remaining persons. That is all about my statement. The matchets were given to those who sent us."*

Through the investigating police officer i.e. 5th P.W (Corporal Osogi Usanga) Exhibit 'C' was received on 19th November, 1985 as his appellant's voluntary confessional statement. However, in his defence B which he opened on 7th January, 1986 he retracted this statement in the following words among others:

*"..... After beating me I was taken to the cell. On 6/3/84 I was taken out from the cell where I saw the 2 P.W. The 5 P.W. brought out a paper with written words and asked me to sign it. I told him to read it C over to me but he refused. I further asked him to allow me to read it because I can read in English language but he refused. I then refused to sign it. One Policeman brought out a gun and told me that he would shoot me if I failed to sign it. I then signed it. Exhibit 'C' identified. I did not make any other statement apart from Exhibit "C". I had no previous D quarrel with the deceased. I was working in my store at Ughelli on 2/3/84." (Italics is mine for emphasis)*

Under cross-examination, the appellant said inter alia as follows:-

*"Exhibit "C" was written by the 5 P.W. and he asked me to sign it I aid not make it voluntarily. It is true that I was forced to sign Exhibit E "C". I am not a liar."*

The trial court ruled that Exhibit 'C' alleged to have been received by 5th P.W. under duress which is consistent with the evidence adduced in the case had been properly taken on the authority of R. v. Sykes 8 Cr. App. 233 at 236 and adopted by the Federal Supreme Court in Afolabi v. C.O.P. F (1961) 2 SCNLR 307; (1961) All NLR 654, founded on the ratio decidendi that a person may be convicted on his own confession if it is satisfactorily proved that the confession was free and voluntary and the person had the opportunity of committing the offence. The learned trial Judge further opined that contrary to the submission of learned counsel G for the appellant, the fact that Exhibit "C" was not attested to by a superior police officer was not fatal to its admission as a confessional statement; that it only goes to the weight to be attached to it, and that such an attestation is not required by the Judge's Rules vide Nwigboke & Ors. v. Queen (1959) SCNLR 248; (1959) 4 F.S.C. 101, 102-103. The learned H trial Judge also took the view that the defence counsel's submission that failure on the part of the prosecution to call Onomeroso. A person 1st P.W. alleged in his evidence came with the appellant in company of 3rd and 4th accused persons and the only eye-witness to the commission of

the crime but then shown as being at large, was fatal to its (prosecution's) case and so misconceived once the prosecution had placed before the court all available relevant evidence vide *Anthony Igbo v. The State* (1975) 9-11 S.C. 129, 135. Furthermore he held that it being no duty of the prosecution to produce a whole host or set of witnesses as decided in *B Alonge v. Inspector-General of Police* (1959) SCNLR 516; (1959) 4 F.S.C. 203, no onus lies on them to do more by way of adducing evidence.

In the light of the evidence adduced, the learned trial Judge held as follows:

*"I am quite satisfied on the evidence before me that Exhibit C "C" made by him (Appellant) under caution to the 5th P.W. was free and voluntary and that at the time he made it, he was fully conscious of the facts set out therein."*

He then concluded on the point when he said:

*"There was no doubt from Exhibit "C" that the intent of the 2nd D accused (appellant) was to kill the deceased when he cut his head with matchet and this malice is born (sic) out from his statement that they were sent to go and kill the deceased because he was a wizard who had destroyed their family. It is clear that there was clear intention by the 2nd accused to kill the deceased as borne out from Exhibit C."*

E The appellant's submission hinging on *Egboghonome v. The State* (supra) to the effect that -

(i) There was evidence at the trial of his which cast doubt on Exhibit 'C'; and

(ii) There was no eye witness at the trial capable of properly F corroborating the confession is, in my firm view, misconceived in that the appellant denied making Exhibit "C" voluntarily only during his defence evidence and P.W.5, the Investigation Police Officer, was not recalled by the defence to be challenged how its voluntariness came about. Thus, there is inherent contradiction in the defence in that appellant who first agreed he G made Exhibit "C" voluntarily turned round later during his defence to deny it. See *Dominic Okolo v. The State* (1974) 1 All NLR (Pt.1) 466 at 473.

There was abundant evidence outside the confession (Exhibit 'C') albeit circumstantial and devoid of contradiction, upon which to base the appellant's conviction. For instance, regarding Exhibit F (the matchet), the H fact that no blood was found on it does not mean that it was not used. Indeed, in Exhibit 'C' as well as in the testimony of P.W.5, Exhibit F was alleged to be the matchet used by the appellant on the deceased. The time between the commission of the offence and its being recovered in appellant's house was long enough to clean it of the blood stains.

That Exhibit F was found in appellant's house following his confession in Exhibit 'C' cannot be said to amount to a contradiction. The evidence of P.W.1, son of the deceased, to the effect that on the evening of 2/3/84 he was with the deceased when the appellant and his co-accused came to their farm camp to invite him (deceased) away and that the deceased was never found alive thereafter, corroborates what appellant says in Exhibit "C" B to make the conclusion that appellant was the murderer or one of the murderers an irresistible one. So also is the evidence of P.W.4, the Medical Officer who performed the post mortem examination on the deceased upon the identification of his corpse by P.W.2, a relation. Of no lesser significance and incontrovertible proof that the appellant was the perpetrator or one of the C perpetrators of the crime is the injuries found on the deceased and what in the view of P.W.4 were consistent with what Exhibit "F" was capable of inflicting. Besides, both P.W.1 and P.W.2 pungent evidence (which the learned trial Judge believed) was that the deceased was last seen with the appellant and others with their matchets. The two witnesses knew the appellant well before D the incident; hence the onerous task of proving appellant's identity became a foregone conclusion. See *The State v. Aibangbee* (1988) 3 NWLR (Pt.84) 548; (1988) 7 S.C. (Pt.1) 154.

The court below after reviewing all the points canvassed in the issue under consideration held inter alia as follows: E

*"I have examined the record closely including the judgment of the learned trial Judge together with a deep study of Briefs of Argument of both parties. The strongest point made in the appellant's brief was that Exhibit "C" the confessional statement of the second accused appellant herein was not voluntary. Section 27(1) of the Evidence Act defines confession as an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime. Sub-section (2) states that confessions if voluntary are deemed to be relevant facts as against the person who made them. As a matter of law, under section 27 Evidence Act, a confession needs no corroboration as long as the court is satisfied of the truth of the confession. Corroboration would now seem to be required as a matter of practice. F*

*If the defence of the accused is that the confessional statement was obtained under duress, inter alia the defence should challenge it as inadmissible when the police witness tenders it. Then the trial court should H hold a trial-within-trial and decide whether or not it was voluntary. If the answer is yes, it is admitted as an Exhibit. *Ode v. State* (1974) 1 All NLR (Pt2)41; *R. v. Onabanjo* (1936) 3 WACA 23. In this case Exhibit "E" was admitted without objection, therefore there was no need for a*

trial within trial. The defence of the appellant in his defence that it was made under duress is tantamount to a denial that he made it, and should be evaluated like other evidence in the case. The prosecution had concluded its case and there was no application to recall P. W.5 to cross-examine him on that point. R. v. Igwe (1962) 1 All NLR 787, 792 .....

B (Underlining is mine for emphasis.)

Concluding, the court below held, rightly in my view, by dismissing the appeal in its entirety thus: *“As can be seen above the learned trial judge saw corroboration of the confession in the evidence of P.W.1 and P.W.4 Dr. Felix Oribator who performed a post mortem examination on the corpse. The arguments of the appellant on that score were therefore misconceived and an after thought. Such a confession alone as shown in Kanu v. The King is enough to support a conviction.”*

I cannot agree more. The decisions of the two courts below therefore constitute concurrent findings of facts. This court had occasion recently in D Egboghonome v. The State (supra) where one of the issues for resolution was whether the Court of Appeal was justified in affirming the decision of the trial court which convicted the appellant for conspiracy to murder and for murder, mainly on the alleged extra-judicial statement of the appellant which the appellant not only resiled from but also contradicted in his testimony before the trial E court, Bello, C.J.N. at page 411 of the report held, inter alia. as follows:-

*“Indeed, the several authorities cited by the learned Attorney-General and counsel in their submissions supporting the view that a court may convict an accused person on his extra judicial confession, which is voluntary and true but inconsistent with his evidence in court, are too numerous to reiterate. It is sufficient to mention only a few to wit: R. v. Kanu (1952) 14 WACA 30; Queen v. Itule (1961) 2 SCNLR 183; Queen v. Obiasa (1962) 2 SCNLR 402; Mumuni v. State (1975) 6 S.C. 79; Aremu v. State (1991) 7 NWLR (pt.201) 1; Ejinima v. State (1991) 6 NWLR (pt.200) 627; Akpan v. State (1992) 6 NWLR (pt.248) 439; Kim G v. State (1992) 4 NWLR (Pt.233) 17 .....*”

The Egboghonome Case (supra) is similar to the one in hand and I adopt the principle stated therein above.

My answer to the lone issue submitted for our determination herein is accordingly rendered in the positive.

H For the reasons I have given and the more elaborate ones contained in the lead judgment of my learned brother Mohammed, J.S.C. with which I had hereinbefore expressed my concurrence, I too, dismiss this appeal and affirm the decision of the two courts below.