

SUPREME COURT OF NIGERIA
 29TH MAY, 1998. SC. 144/1997
CORAM:- M. L. UWAIS CJN, A. B. WALI, E. O. OGWUEGBU,
U. MOHAMMED, S. U. ONU, JJSC.

SUNDAY EFFIONG	APPELLANT
V.		
THE STATE	RESPONDENT

EVIDENCE - Confessional statement - Where its voluntariness was not objected to at the appropriate time - There was no irregularity in its admission.

EVIDENCE - Confession of guilt - Which is voluntary - Is sufficient to warrant conviction without any corroborative evidence - So long as the court believed it.

EVIDENCE - Discrepancy in evidence - As to the date the offence was committed - Did not materially affect the prosecutions case - Since the appellant was not misled by it.

EVIDENCE - Extra judicial statement - Voluntariness - The appellant could be convicted on the evidence of p.w. 2 and p.w. 3 - Without the extra judicial statement.

MURDER - Cause of death - Medical evidence - Where there are facts which sufficiently show the cause of death - Medical evidence is not essential.

WORDS AND PHRASES - "Tainted witness" - What it connotes.

FACTS

At the High Court of Borno State holden at Bama the appellant was charged under section 221 (b) of the Penal Code for causing the

death of Police constable Isaac Onoh on or about 23-6-82 at Tandari Ward, Bama by stabbing the said Isaac Onoh on the stomach with knowledge that death would be the probable consequence of his act. On 23-6-82, P.W. 2 (Police Corporal Salmanze Bwah) and the deceased were sent to Tandari Ward in Bama town to effect the arrest of the appellant who was suspected to have taken part in various house breaking complaints. The arrest was effected and the appellant requested P.W. 2 not to handcuff him as he was ready to follow them. The deceased pleaded with P.W. 2 not to handcuff the appellant. He agreed and held the appellant by the shirt and they left for the police station. The appellant twice requested to be allowed to ease himself as they were going to the police station. It was during this process that the appellant pulled out a long knife tied to his right leg and attacked the police men. P.W. 2 was stabbed on the chest and neck while the deceased who was stabbed on the stomach died on the spot. P.W. 3 (Police constable John Ginde) who rushed to the scene was also stabbed by the appellant.

At the conclusion of the trial, the appellant was convicted and sentenced to death by hanging. He appealed against his conviction and sentence, to the Court of Appeal and that court dismissed his appeal and affirmed the decision of the learned trial judge. Dissatisfied, he has further appealed to the Supreme Court raising only one main issue.

ISSUE FOR DETERMINATION

Whether the Lower Court was right when it held that the guilt of the appellant had been proved beyond reasonable doubt.

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

Tainted witness

1. A tainted witness is one who is either an accomplice or, by the evidence he gives (whether as a witness for the prosecution or defence) may and could be regarded as having some purpose of his own to serve. I am of the view that there is nothing in the evidence of those witnesses upon which they can be regarded as accomplices or as people having some purposes of their own to serve. (p. 1355 G)

Cause of death - Medical evidence

2. In this case, medical evidence of the cause of death and the identification of the body to the P.W.1 who performed the autopsy are not essential. There were facts which sufficiently showed the cause of death to the satisfaction of the court. There was the evidence of P.W.2 and P.W.3 to the effect that the appellant stabbed the deceased, he fell on the ground and died on the spot. The learned trial judge believed them. There is here abundant evidence as to the circumstances leading to the manner of death. Without the medical evidence and the medical report (Exhibit A), the cause of death of Police Constable Isaac Onoh was established unequivocally by the prosecution¹⁰. (p. 1356 F)

Confessional statement

3. The practice in trial courts has been for an accused person who denies the voluntariness of his extra judicial statement made to the police, to object to the statement when the prosecution seeks to tender it in evidence. When this is done at that stage, the court proceeds to test the voluntariness of such a statement by conducting a trial within trial on the admissibility of the statement and the onus is on the prosecution to prove that it was free and voluntary and it is the prosecution who should begin. See Auta v. The State (1975) 4 S.C. 123 and Gbadamosi & Or. v. The State (1992) 9 N.W.L.R. (Pt. 266) 465 at 480. Exhibit "C" was therefore properly admitted as its voluntariness was not objected to at the appropriate time. There was no irregularity in its admission as confessional statement and the learned trial judge rightly admitted and treated it as confessional statement¹¹. Its contents left no one in doubt as to the implication of the appellant in the offence charged. In this case I am satisfied

¹⁰ See *Emwenya v. A.G. Bendel State* (1993) 6 KLR 168 where it was also held that the absence of medical evidence to establish cause of death was not fatal to prosecution's case

¹¹ See some recent supreme Court cases where confessions were held to be admissible: *Ebagua v. A-G Bendel State* (1994) 3 KLR 77; *Kasa v. The State* (1994) 9 KLR 84; *Egboghonome v. The State* (1993) 11 KLR

that Exhibit "C" was a free and voluntary confession of guilt by the appellant and was fully consistent in itself. This inculpatory statement was corroborated by the evidence of the prosecution witnesses which showed that the confession was true. See Kanu & Ors. v. The King 14 W.A.C.A B 30. (p. 1358 C)

Confession of guilt

4. In Nigeria, a free and voluntary confession of guilt by a prisoner, whether under examination before a magistrate or otherwise, if it is direct and positive and is duly made and satisfactorily proved, is sufficient to warrant conviction without any corroborative evidence so long as the court is satisfied of the truth of the confession. See Edet Obosi v. The State (1965) N.M.L.R. 119. It is however desirable to have outside the confession to the police, some evidence no matter how slight of the circumstances which make it probable that the confession was true. See Onochie & Ors. v. The Republic (1966) N.M.L.R. 307 and Yesufu v. The State (1976) 6 S.C. 167 at 173. (p. 1358 G)

Evidence - Extra judicial statement

5. A single witness if believed by the court, can establish a criminal case even if it is a murder charge. See Alonge v. Inspector-General of Police 4 F.S.C. 203, Onafowokan v. The State (1987) 3 N.W.L.R. (Pt. 61) 538 at 552. In this case, the learned trial judge could have convicted the appellant on the evidence of P.W. 2 and P.W. 3 without the extra-judicial statement (Exhibit "C"). (p. 1359 B)

Discrepancy in evidence

6. The discrepancy in the evidence of P.W.5 on the one hand and those of P.W.2, P.W.3 and P.W.6 on the other as to the date the offence was committed did not materially affect the prosecution's case¹². P.W.5 testi-

¹² In the following cases the legal implications of the discrepancies in evidence of the prosecution was also considered: Namsah v. The State (1993) 6 KLR 125; Buba v. The State (1994) 9 KLR 84; Ogulana v. The State (1995) 5 KLR 1031

fied that an alarm was raised on 23-8-82 at Bama Police Station and the appellant was declared a wanted person and was arrested on 24-8-82 whereas the other witness testified that the offence was committed on 23-6-82 and the appellant arrested on 24-6-82. It was no more than a mere slip and the appellant was not in any way misled by it. (p. 1360 A) B

NOTABLE POINTS OF INTEREST

OGWUEGBU JSC

1. Ground of appeal which the appellant did not argue

The appellant's fourth ground of appeal was not argued by the appellant in his brief and it was not proper for the respondent to formulate an issue in respect of such a ground of appeal which the appellant for reasons best known to him decided not to argue. This comment is necessitated by the respondent's fifth issue for determination. I will therefore ignore it. (p. 1354 B) C D

ONU JSC

2. Proof beyond reasonable doubt

In a case of culpable homicide punishable with death under Section 221(b) of the Penal Code such as this (the same applies for murder), the law requires that there be proof beyond reasonable doubt. See Philip Omogodo v. The State (1981) 5 SC. 5; Gira v. The State (1995) 3 NWLR (Part 385) 619 and Ukut v. The State (1995) 9 NWLR (Part 420) 392. In the instant case, where the eye-witness accounts of PW2 and PW3 bore out the appellant as the killer of the deceased with a lethal weapon of crime, in this case, a knife and where the deceased died on the spot, the offence has been, in my respectful view, proved beyond reasonable doubt. In such a case, medical evidence is not a sine qua non for the proof of the case unless evidence was adduced by the defence to show otherwise. See Adamu Kumo v. The State (1968) NWLR 227; Kato Dan Adamu v. Kano N.A. (1956) SCNLR 65 and Tonara Bakuri v. The State (1965) H NMLR 163. (p. 1362 B) E F G

3. *Police Officers are not by that mere fact tainted witnesses*

In the case in hand, the fact that PW2 and PW3 are Police officers would not raise any doubt on grounds for holding the view that they are tainted witnesses since the learned trial Judge who saw, heard and watched their demeanour accepted and believed their evidence as credible. See the case of Numo Mallam Ali v. The State (1988) 1 NWLR (Part 68) 1 at 20; Akinloye v. Eyiola (1968) NMLR 92; Adeyeri II v. Atanda (1995) 5 NWLR (Part 397) 512; Nlewedim v. Uduma (1995) 6 NWLR (Part 402) 838 and Nwankpu v. Ewulu (1995) 7 NWLR (Part 407) 269. Nor does the evidence of these witnesses amount to corroboration of accomplices. See Ben Okafor v. C.O.P. (1964) 1 ALL NLR 302 at 304. (p. 1362 E)

D **REPRESENTATION**

J. K. Gadzama, Esq. for the Appellant

I. M. Samba, Esq., Principal State Counsel, Ministry of Justice, Borno State for the Respondent

E

CASES REFERRED TO

Auta v. The State (1975) 4 S.C. 123

Gbadamosi v. The State (1992) 9 N.W.L.R. (Pt. 266) 465 at 480.

F Kanu v. The King 14 W.A.C.A 30.

Obosi v. The State (1965) N.M.L.R. 119

Yesufu v. The State (1976) 6 S.C. 167 at 173.

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

Omogodo v. The State (1981) 5 SC. 5

G Gira v. The State (1995) 3 NWLR (Part 385) 619

Ukut v. The State (1995) 9 NWLR (Part 420) 392

Kumo v. The State (1968) NWLR 227

Adamu v. Kano N.A. (1956) SCNLR 65

H Adeyeri II v. Atanda (1995) 5 NWLR (Part 397) 512

Nlewedim v. Uduma (1995) 6 NWLR (Part 402) 838

Nwankpu v. Ewulu (1995) 7 NWLR (Part 407) 269

Okafor v. C.O.P. (1964) 1 ALL NLR 302 at 304

STATUTES REFERRED TO

Penal Code s. 221 (b)

Evidence Act, s. 28

LEAD JUDGMENT BY OGWUEGBU JSC

B

The appellant was on 27-9-83 convicted at the High Court of Borno State holden at Bama and sentenced to death by hanging under section 221(b) of the Penal Code for causing the death of Police Constable Isaac Onoh on or about 23-6-82 at Tandari Ward, Bama by stabbing the said Isaac Onoh on the stomach with knowledge that death would be the probable consequence of his act. C

He appealed against his conviction and sentence to the Court of Appeal and that court on 4-12-95 dismissed his appeal and affirmed the conviction and the sentence of death imposed on him by the learned trial judge. He was not satisfied with the decision of the court below and appealed to this court. Nine grounds of appeal were filed on behalf of the appellant and from the grounds of appeal, only one main issue was identified in paragraph two of the appellant's brief of argument filed on 19-1-97 as arising for determination in the appeal. It reads: D

"The appellant respectively submits that there is only one major issue for determination by this Honourable Court. The major issue is whether the Lower Court was right when it held that the guilt of the appellant had been proved beyond reasonable doubt. This issue is related to all the Grounds of Appeal filed and it encompasses all other minor issues which call for determination". F

The following five issues were formulated in the respondent's brief. G

"(1) Was the appellant herein entitled to any of the defence having regard to the evidence on record?

(2) Whether the Court of Appeal was right in holding that the prosecution had proved its case as required by law? H

(3) Was the Lower Court right in holding that exhibits "A" and "C" were properly admitted and proved to sustain the conviction and sentence of the appellant by the trial Court?

(4) Whether the findings of the two courts were amply supported by the evidence on record.

(5) Whether the trial court had jurisdiction to entertain the appellants (sic) case."

B I will consider this appeal strictly on the singular issue submitted
and argued in the appellant's brief of argument. If any ground of appeal
was not covered by the issue formulated, that ground of appeal is deemed
abandoned by the appellant and it is not open to the respondent to raise an
issue from a ground of appeal which the appellant had abandoned. The
C appellant's fourth ground of appeal was not argued by the appellant in his
brief and it was not proper for the respondent to formulate an issue in
respect of such a ground of appeal which the appellant for reasons best
known to him decided not to argue. This comment is necessitated by the
D respondent's fifth issue for determination. I will therefore ignore it.

The brief facts of the case were that on 23-6-82, P.W. 2 (Police
Corporal Salmanze Bwah) and the deceased (Police Constable Isaac Onoh)
were sent to Tandari Ward in Bama town to effect the arrest of the appel-
E lant who was suspected to have taken part in various house breaking
complaints. The deceased went before P.W.2 to Tandari Ward. Later,
P.W.2 met the deceased and the appellant at Peace and Charity Hotel in
Tandari Ward. He joined them. After greeting the appellant, P.W.2 intro-
F duced himself to the appellant and told him that he was under arrest.
When the appellant wanted to know the reason for his arrest, P.W.2 told
him and wanted to handcuff the appellant who requested P.W.2 not to
disgrace him as he was ready to follow P.W. 2. The deceased pleaded
with P.W.2 not to handcuff the appellant. He agreed and held the appel-
G lant by the shirt and they left for the police station. The appellant twice
requested to be allowed to ease himself as they were going to the police
station and on each occasion, the deceased pleaded with P.W. 2 to allow
the appellant to ease himself when P.W.2 was not willing to accede to the
H request. It was about 9.30 p.m when the appellant urinated the second
time and after this, he asked in Hausa whether P.W.2 was going to leave
him or not. He then pulled out a long knife tied to his right leg. The
appellant stabbed P.W. 2 on the left chest and both of them wrestled for

the knife. The appellant directed the knife towards the deceased and stabbed him on the stomach and he fell down. The appellant stabbed P.W.2 again in the neck and P.W. 3 (Police Constable John Ginde) who rushed to the scene and also stabbed by the appellant. The appellant stabbed P.W. 2 for the third time as the witness was still holding him. At that juncture P.W.2 lost grip of the appellant. Police Constable Isaac Onoh died on the spot. P.W.2 ran to the police station and reported the incident and he was taken to the hospital where he was admitted and treated.

At the hearing of the appeal on 5-3-98, Gadzama, Esq. learned appellant's counsel adopted the brief of argument filed on behalf of the appellant on 19-11-97. He relied on the arguments contained therein and urged us to allow the appeal. It was submitted in the brief that apart from P.W. 1 (Dr. Nicholas Prekkop) who is a medical doctor, the remaining four prosecution witnesses belong to the same calling or occupation as the deceased and would naturally have sympathy over the death of their colleague as against the appellant who was alleged to have caused the death. It was his submission that they are tainted witnesses whose objective was to retaliate the death of their deceased colleague. Learned counsel referred the court to the cases of Okoro v. The State (1988) 4 N.W.L.R. (Pt. 94) 255 at 274, Mbenu v. The State (1988) 3 N.W.L.R. (Pt. 84) 615 at 617 and Ukut & Ors. v. The State (1966) N.W.L.R. 18.

It was submitted in the respondent's brief that P.W.2, P.W.3, P.W.4 and P.W. 6 were not tainted witnesses. Rather P.W.2 and P.W.3 were victims of the appellant's brutal attack and that they testified as to what actually took place and their testimony was corroborated by the appellant's confessional statement (Exhibit "C").

A tainted witness is one who is either an accomplice or, by the evidence he gives (whether as a witness for the prosecution or defence) may and could be regarded as having some purpose of his own to serve. I am of the view that there is nothing in the evidence of those witnesses upon which they can be regarded as accomplices or as people having some purposes of their own to serve.

It was also submitted that sufficient and convincing evidence of

a qualified and experienced medical doctor who conducted the autopsy is a "sine qua non" to secure a conviction for culpable homicide punishable with death and that P.W.1 was not qualified and experienced enough to have conducted the autopsy since from his evidence his duties mainly entailed consultation in matters of internal diseases and occasionally performing post mortem examinations.

It was contended in the brief that there was not nexus between the appellant and the cause of death of Police Constable Isaac Onoh. The following reasoning were advanced to fault the decisions of the courts below:

(a) that P.W.1 in his report Exhibit "A" asserted that the deceased died as a result of a puncture of the heart and bleeding from the heart whereas P.W.2 and P.W.3 testified that the deceased was stabbed on the stomach and that the heart and the stomach are two distinct parts of the human body;

(b) that no link was established between the cause of death and the appellant;

(c) that there are contradictions as to the date of the incident when it was stated in the charge that the offence was committed on 23-6-82 while P.W. 2, P.W.3 and P.W.6 testified that the deceased was murdered on 22-10-82 and P.W.5 stated that he heard the alarm on the night of 23-8-82; and

(d) that the sex of the victim was not in evidence and there was no evidence that the body was identified before the autopsy was conducted.

In this case, medical evidence of the cause of death and the identification of the body to the P.W.1 who performed the autopsy are not essential. There were facts which sufficiently showed the cause of death to the satisfaction of the court. There was the evidence of P.W.2 and P.W.3 to the effect that the appellant stabbed the deceased, he fell on the ground and died on the spot. The learned trial judge believed them. There is here abundant evidence as to the circumstances leading to the manner of death. The learned trial judge had this to say about the medical evidence:

"Even if the doctor did not testify as to the cause of the death and there is no medical certificate indicating the course (sic) of death, this court can still infer the cause of death from the circumstances from the fact that on being stabbed in the abdomen P.C. Isaac Onah (sic) dropped (sic) dead instantly on the spot that the cause of the death is the stab wound inflicted by the accused to the body of the deceased." B

The court below in affirming the above finding said:

"After a calm view and due consideration of all the evidence adduced before the trial court and the law, I am satisfied, that the appellant is inexorably fixed with the acts which resulted in the said injury or harm to wit - stab wound with a lethal weapon on the stomach or abdomen of the deceased from which injury or harm the deceased Police Constable Isaac Onoh died on the spot. There is undisputed credible, accepted evidence, that the deceased died on the spot at Tandari immediately as a result of unprovoked attack and stab wound on the stomach by the appellant on 23-6-82." C D

Without the medical evidence and the medical report (Exhibit A), the cause of death of Police Constable Isaac Onoh was established unequivocally by the prosecution. E

On the confessional statement (Exhibit "C"), it was contended in the appellant's brief that the statement was not voluntary and should be disregarded. Learned counsel referred the court to the evidence of the appellant where he testified that he was forced to sign series of papers and that they were not read over to him. The appellant in his evidence in court retracted the confession contained in Exhibit "C". F

The learned appellant's counsel also submitted that if the evidence of P.W.6 who recorded Exhibit "C" and that of the appellant are weighed, the latter weighs heavier and therefore, the appellant should have been given the benefit of doubt and the confessional statement disregarded. We were referred to section 28 of the Evidence Act and the case of Egboghonome v. The State (1993) 7 N.W.L.R. (Pt. 306) 363 at H 432. Counsel made an alternative submission that if this court comes to the conclusion that the appellant caused the death of the deceased, then the defence of provocation availed him.

On the issue of the voluntariness of Exhibit "C", it must be remembered that when P.W. 6 sought to tender the appellant's statement (Exhibit "C"), the defence raised no objection to its admission in evidence. At the close of the examination-in-chief of P.W. 6, the witness B was not cross-examination by Mr. Lawan who appeared for the appellant. In fact, he told the court that he had no objection to the statement being received in evidence. When called upon to cross-examine P.W.6, it was recorded that he had no questions for the witness and the prosecution closed its case.

C The practice in trial courts has been for an accused person who denies the voluntariness of his extra judicial statement made to the police, to object to the statement when the prosecution seeks to tender it in evidence. When this is done at that stage, the court D proceeds to test the voluntariness of such a statement by conducting a trial within trial on the admissibility of the statement and the onus is on the prosecution to prove that it was free and voluntary and it is the prosecution who should begin. See Auta v. The State E (1975) 4 S.C. 123 and Gbadamosi & Or. v. The State (1992) 9 N.W.L.R. (Pt. 266) 465 at 480. Exhibit "C" was therefore properly admitted as its voluntariness was not objected to at the appropriate time. There was no irregularity in its admission as confessional statement and the learned trial judge rightly admitted and treated it as F confessional statement. Its contents left no one in doubt as to the implication of the appellant in the offence charged. In this case I am satisfied that Exhibit "C" was a free and voluntary confession of guilt by the appellant and was fully consistent in itself. This G inculcating statement was corroborated by the evidence of the prosecution witnesses which showed that the confession was true. See Kanu & Ors. v. The King 14 W.A.C.A 30.

H In Nigeria, a free and voluntary confession of guilt by a prisoner, whether under examination before a magistrate or otherwise, if it is direct and positive and is duly made and satisfactorily proved, is sufficient to warrant conviction without any corroborative evidence so long as the court is satisfied of the truth of the

confession. See Edet Obosi v. The State (1965) N.M.L.R. 119. It is however desirable to have outside the confession to the police, some evidence no matter how slight of the circumstances which make it probable that the confession was true. See Onochie & Ors. v. The Republic (1966) N.M.L.R. 307 and Yesufu v. The State (1976) 6 S.C. 167 at 173. B

A single witness if believed by the court, can establish a criminal case even if it is a murder charge. See Alonge v. Inspector-General of Police 4 F.S.C. 203, Onafowokan v. The State (1987) 3 N.W.L.R. (Pt. 61) 538 at 552. In this case, the learned trial judge could have convicted the appellant on the evidence of P.W. 2 and P.W. 3 without the extra-judicial statement (Exhibit "C"). C

I entirely agree with the finding of the court below on the voluntariness of Exhibit "C". The court said: D

"I have carefully considered all the points and the law raised and applicable to issue (2).

I am satisfied, that:-

(a) the confessional statement Exhibit "A" (sic) was voluntarily, E freely made without any duress, threat, promise or inducement.

(b) that there was complete compliance with the Judge's Rules in relation to the confessional statement.

(c) That the evidence of P.W. 2 and P.W.3 corroborate in every F material fact, the voluntary confessional statement Exhibit "A" (sic), made by the appellant.

(d) that the appellant could be convicted on the evidence of P.W. 2 and P.W.3 without the confessional statement of the appellant Exhibit "A" (sic) and G

(e) that the court could also have convicted the appellant on his confessional statement Exhibit "A" (sic) which is nevertheless corroborated by the evidence of P.W.2 and P.W.3.

(f) that the appellant was represented by counsel who did not H cross-examined (sic) P.W.6 at all or on Exhibit "A" (sic)."

As a result of my conclusion in respect of Exhibit "C", it is not necessary for me to consider the alternative submission of whether or not the de-

fence of provocation availed the appellant. **The discrepancy in the evidence of P.W.5 on the one hand and those of P.W.2, P.W.3 and P.W.6 on the other as to the date the offence was committed did not materially affect the prosecution's case. P.W.5 testified that an alarm was raised on 23-8-82 at Bama Police Station and the appellant was declared a wanted person and was arrested on 24-8-82 whereas the other witness testified that the offence was committed on 23-6-82 and the appellant arrested on 24-6-82. It was no more than a mere slip and the appellant was not in any way misled by it.**

I entertain no doubt in my mind that the prosecution proved the charge against the appellant beyond reasonable doubt and he was rightly convicted. See Onafowokan v. The State supra. In the result, I find no merits in the appeal and it is dismissed. The conviction and sentence imposed on the appellant are hereby affirmed.

UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother Ogwuegbu, J.S.C. I entirely agree that the this appeal lacks merit and that it should be dismissed. I have nothing to add.

WALI JSC

I have read before now the lead judgment of my learned brother ogwuegbu JSC and I entirely agree with his reasoning and conclusion that the appeal has no merit.

There is conclusive evidence from P.W.2 and P.W.3 which both the court below and the trial court accepted that the deceased died as a result of stab wounds he received from the appellant. He died on the spot. Medical evidence in the circumstance is not essential to establish cause of death - See Adamu Kumo v. The State (1968) NMLR 227 and Tonara Bakuri v. The State (1965) NMLR 43. In addition there is Exhibit "C" which is the confessional statement of the appellant to the crime charged. This was tendered and admitted without objection. Where a

voluntary confessional statement is unequivocal and direct, tendered and admitted in evidence without objection, the trial court will be justified to convict on it alone, even if it is a case of murder. See Adio v. The State (1968) ALL NLR 425; Achabua v. The State (1976) 12 SC 63 and Mumuni v. The State (1976) 6 SC 7 at 94 where in the latter case this court stated B that the accused was rightly convicted on his confessional statement, though retracted.

The trial court in addition to Exhibit "C" considered ad relied on other evidence adduced by the prosecution, particularly that of P.W. 2 and P.W. 3 who were eye witnesses to the tragic and cruel incident. Both P.W. 2 and P.W. 3 who were eye witnesses to the tragic and cruel incident. Both P.W. 2 and P.W. 3 said the appellant stabbed the deceased with a knife and the letter fell down and died on the spot. C

The only attack on the evidence of P.W.2 and P.W. 3 was that they were tainted witnesses. This was considered and rejected by both the trial court and the Court of Appeal. The mere fact that P.W. 2 and P.W.3 are policemen as the deceased will not per se make them tainted witnesses as there was no evidence showing that they were accomplices E or had their own purpose to serve in giving the evidence.

The findings of fact by the trial court which were affirmed on appeal by the Court of Appeal are unimpeachable and I see no reason to interfere with them. See Onyejekwe v. The State (1992) 4 SCR (Pt. 1) F 19.

The appeal is completely devoid of merit and for these and the more elaborate reasons contained in the lead judgment of my learned brother Ogwuegbu JSC I also hereby dismiss it. The conviction and sentence of death passed on the appellant are affirmed. G

MOHAMMED JSC

I have had the preview of the judgment read by my learned brother, H Ogwuegbu, J.S.C., in draft and I agree with him that the appeal of the appellant has failed. I therefore dismiss it and affirm the conviction and sentence passed on him by Kolo J (as he then was) of Borno High Court,

thus agreeing with the Court of Appeal that the appeal has no merit.

ONU JSC

Having been privileged to read before now the judgment of my learned brother Ogwuegbu, JSC I entirely agree that this appeal is devoid of merit and must therefore fail.

In a case of culpable homicide punishable with death under Section 221(b) of the Penal Code such as this (the same applies for murder), the law requires that there be proof beyond reasonable doubt. See Philip Omogodo v. The State (1981) 5 SC. 5; Gira v. The State (1995) 3 NWLR (Part 385) 619 and Ukut v. The State (1995) 9 NWLR (Part 420) 392. In the instant case, where the eye-witness accounts of PW2 and PW3 bore out the appellant as the killer of the deceased with a lethal weapon of crime, in this case, a knife and where the deceased died on the spot, the offence has been, in my respectful view, proved beyond reasonable doubt. In such a case, medical evidence is not a sine qua non for the proof of the case unless evidence was adduced by the defence to show otherwise. See Adamu Kumo v. The State (1968) NWLR 227; Kato Dan Adamu v. Kano N.A. (1956) SCNLR 65 and Tonara Bakuri v. The State (1965) NMLR 163.

In the case in hand, the fact that PW2 and PW3 are Police officers would not raise any doubt on grounds for holding the view that they are tainted witnesses since the learned trial Judge who saw, heard and watched their demeanour accepted and believed their evidence as credible. See the case of Numo Mallam Ali v. The State (1988) 1 NWLR (Part 68) 1 at 20; Akinloye v. Eyiola (1968) NMLR 92; Adeyeri II v. Atanda (1995) 5 NWLR (Part 397) 512; Nlewedim v. Uduma (1995) 6 NWLR (Part 402) 838 and Nwankpu v. Ewulu (1995) 7 NWLR (Part 407) 269. Nor does the evidence of these witnesses amount to corroboration of accomplices. See Ben Okafor v. C.O.P. (1964) 1 ALL NLR 302 at 304.

Rather, the appellant made a statement (Exhibit 'C') which was confessional in nature and was corroborated by the evidence of PW2 and PW3.

The learned trial Judge on the overwhelming evidence adduced before him convicted and sentenced the appellant to death in that the appellant to whom no provocation was offered, stabbed the deceased when he was being lawfully apprehended to be taken to the police station for being suspected of committing the crime charge. The Court of Appeal, rightly in my view, confirmed the conviction and sentence.

The decisions of the two courts below therefore constitute concurrent decisions of facts. The appellant having failed to show that a substantial error of law or procedure had been made in these decisions of that the same are perverse, I have no hesitation in agreeing with the opinion of my learned brother Ogwuegbu, JSC that this appeal lacks substance. I accordingly dismiss the appeal and affirms the decisions of the two courts below.

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