

SUPREME COURT OF NIGERIA
13TH JULY, 2001. SC. 281/2000
CORAM:- E. O. OGWUEGBU, A. I. IGUH, A. I. KATSINA-ALU,
U. A. KALGO, A. O. EJIWUNMI, JJSC.

AKIBUHASSAN APPELLANT
V.
STATE RESPONDENT

***EVIDENCE** - Confessional statements - Resiled from - The trial judge rightly decided - That the accused made the statement - After meticulously considering it - Alongside other evidence (H 4)*

***CRIMINAL PROCEDURE** - Confessional statements - Conviction - An accused can be convicted - On his confessions alone - When certain conditions are met - Even if the confession is retracted (H 1)*

***EVIDENCE** - Confessional statement - S. 27(1) Evidence Act - When a statement is said to be confessional (H 2)*

***CRIMINAL PROCEDURE** - Confessional statement - Resiled from - Such statements must be considered - Along with other evidence - Before deciding whether or not - The statement was made (H 3)*

FACTS

The appellant along with 2 others were charged with the murder of one Abiodun Iyiola at the Ibadan High Court. The second count was a charge of assault occasioning harm. The trial judge in a reserved judgment found only the appellant guilty on both counts and sentenced him to death while acquitting and discharging the other accused persons on both counts.

The facts as related by the prosecution witness PW1 was that on the 26th August, 1990 both the deceased, his younger brother and himself left their house at about 4.30am in order that the deceased who was an apprentice motor (trailer) driver may meet his master at 5 a.m.

As they got to the place known as Okikiade, seven men accosted them, asked them to prostrate, tied their hands with ropes and attacked them with machetes and cutlasses. The deceased fell down unconscious and PW1 was ordered by the seven men to take them to his house. Later when the men had run away, PW1 reported the matter to the police and his brother was taken to the hospital where he later died that same day. The appellant after being apprehended made one extra judicial statement to the police which was treated as a confessional statement as it described how they pursued and matcheted the deceased till he fell down. He however retracted the statement at the trial and gave a totally different account and equally raised a defence of alibi.

The trial judge rejected the defence of alibi and believed the evidence of the prosecution thus convicting him for murder and sentencing him to death. The appellant's appeal to the Court of Appeal was dismissed and he has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether in view of the nature and quality of evidence ad-duced by the prosecution, the Court of Appeal did not err in affirming that the trial judge rightly convicted and sentenced the appellant to death for murder.

2. Whether the learned trial judge rightly found that exhibits 1 and 11 were actually made by the appellant. If the answer is yes, whether the exhibits could rightly and properly be used to corroborate the evidence of PW1, exhibits A, B, and C.

3. Whether the appellants identity was properly established with-out doubts.

4. Whether the lower court was right to have affirmed the appellant's conviction for a lesser offence of ordinary assault.

HELD: (Unanimously dismissing the appeal per lead judgment of **KATSINA-ALU JSC**)

Confessional statements - Conviction

1. It is true that an accused can be convicted on his confession alone when the conditions for this are present. These are fully laid down in

several cases including R. V. SYKES (1913)8 Cr. APP. P.233 at 236-237. Even where the accused has retracted the statement: see R. V. Itule (1961) All NLR 462. (p. 2799 G)

Confessional statement - S. 27(1) Evidence Act

2. 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 that he committed that crime. It follows that once an accused person makes a statement under caution, admitting the charge or creating the impression that he committed the offence with which he is charged, the statement becomes confessional. (p. 2800 A)

Confessional statement - Resiled from

3. An accused can therefore be convicted on his confession alone regardless of the fact that he resiled therefrom or retracted it altogether at the trial. It is however, desirable that the contents therein should be tested by facts outside the statement. It must be stated that the retraction notwithstanding a confessional statement must be considered along with other evidence by the trial judge who at the end would decide whether or not the appellant did make the statement alleged by the police. In Godwin Ikpassa v. A.G. Bendel State (supra) the learned judge did just that and came to the conclusion that the appellant made the statement. In John Bamgboye v. A.G. Western Nigeria (1966) NWLR 266, the voluntary admission made to the police by the appellant was different from his evidence in court. This court held that the trial judge, after considering the defence, rightly rejected the evidence of the appellant in court and also rightly accepted the voluntary admission to convict him of murder. (p. 2800 B)

Trial judge - Rightly decided that accused made the statement

4. At the trial the appellant denied ever making the statement. Nonetheless the learned judge rightly admitted it. The retraction notwithstanding, the statement was bound to be considered along with the other available evidence by the trial judge who at the end would decide whether or not

the appellant did make the statement as alleged by the police. The trial judge did just that. He meticulously considered Exhibits 1 and 11 along with exhibits A, B, and C made by PW1 and came to the conclusion that the appellant did make the statement and that it was a confessional statement voluntarily made. (p. 2802 A)

REPRESENTATION

Chief A. A. Aribisala for the Appellant.

C A. A. Lawal A. G. Oyo State (with him A. I. Raheem SLO) for the Respondent.

CASES REFERRED TO

- Achabna v. The State (1976) 12 S.C. 63
D Oboso v. The State (1969) 1 NWLR 204
Obue vs. State (1976) 2 SC 141 at 152
R. vs. Equabor (1962) 1 All NLR 287
Queen vs. Igwe 5 FSC 55
E Gira vs. State (1996) 4 NWLR (Pt. 443) 375 at 387
Liya vs. State (1998) 2 NWLR (Pt. 538) 397 at 408
Buja vs. State (1991) 4 NWLR (Pt. 185) 287 at 297
Egbeyom vs. The State (2000) 4 NWLR (Pt. 564) 559 at 580
F Salawu vs. State (1971) NMLR 249
Akinfe vs. State (1988) 3 NWLR (Pt. 85) 729 at 746-747
Onwumere vs. State (1991) 4 NWLR (Pt. 86) 28 at 440.

STATUTE REFERRED TO

- G Evidence Act S. 27(1)

LEAD JUDGMENT BY KATSINA-ALU JSC

- H At the Ibadan High Court the appellant was, along with Wahabi Adisa and Saka Adekinle, charged with the murder of one Abiodun Iyiola contrary to section 319(1) of the Criminal Code Cap. 30 Volume 11, Laws of Oyo State, 1978.

On the second count, the appellant, along with Wahabi Adisa,

Saka Adekunle and Rasaki Layiwola, was charged with assault occasioning harm. The case was heard by Adekola J.(as he then was) who on 27/1/92 in a reserved judgment found only the appellant guilty of murder on count I and sentenced him to death accordingly. On the second count Adekola J, also found only the appellant guilty of lesser B offence of ordinary assault contrary to and punishable under section 351 of the Criminal Code. The three other accused person were acquitted and discharged on both counts. The appellant's appeal to the Court of Appeal, Ibadan Division, was dismissed. This appeal is from the judg- C ment of the Court of Appeal.

Against that judgment, the appellant has canvassed in the main that he never took part in the murder of the deceased. He also denied ever making exhibits I and 11 which the two courts below held to be D confessional statements. The questions stated for determination in the appellant's brief of argument appear to bear on these issues. They are:

*1. Whether in view of the nature and quality of evidence ad-
duced by the prosecution, the Court of Appeal did not err in affirming
that the trial judge rightly convicted and sentenced the appellant to death E
for murder.*

*2. Whether the learned trial judge rightly found that exhibits I
and 11 were actually made by the appellant. If the answer is yes, whether
the exhibits could rightly and properly be used to corroborate the evi- F
dence of PW1, exhibits A, B, and C.*

*3. Whether the appellants identity was properly established with-
out doubts.*

*4. Whether the lower court was right to have affirmed the G
appellant's conviction for a lesser offence of ordinary assault.*

The respondent formulated three issues for determination which read as follows:

*1. Is the court of Appeal (lower court) in error by believing the
contents of exhibits I and 11 thereby affirming the conviction and sen- H
tence of the appellant by the trial court.*

2. Whether the identity of the appellant was in doubt.

3. Whether the Court of Appeal was right to have affirmed the

appellant's conviction for lesser offence of ordinary assault.

B Briefly, the facts of the case as related by the respondent through P.W.1 Kunmi Iyiola the elder brother of the deceased Abiodun Iyiola, who gave an eye witness account of the incident were that on the 26th day of August, 1990 both the deceased who was an apprentice motor (trailer) driver, and himself left their house at Ogbere Babanla at about 4.30 a.m. in order that the deceased might meet his master at Oremeji by 5 a.m. As they got to a place called and known as Okikiade, seven men accosted them and asked where they were going to at that time of the day. When PW1 and the deceased tried to answer, the men ordered them to prostrate. They obeyed and in that condition PW1's hands were tied with ropes. Thereafter, PW1 and the deceased were attacked with machetes and cutlasses.

D The deceased tried to escape but due to the severe injury he suffered from the machete cuts, he fell down and became unconscious. Thereafter the seven men ordered PW1 to take them to his house. When they nearly got to his house, the men ran away. It was then that PW1 was able to report the incident at the Agugu Police Station.

F A Police sergent was detailed to accompany P.W.1 to the scene of the incident. Abiodun Iyiola was then taken to a hospital at Aremo for treatment. He died later in the hospital at about 10.15 a.m. on the same day i.e. 26/8/90.

G According to P.W.1 the four accused persons arraigned at the trial court were among the seven men that accosted the deceased and himself. The body of the deceased was later taken to the State Hospital, Adeoyo where Dr. M.A. Aboderin performed the post mortem examination on the body. However, before the commencement of the trial, Dr. Aboderin died and the post mortem report was tendered and admitted in evidence by Dr. T.I. Ipadeola as exhibit "K".

H The appellant made one (1) extra judicial statement to the Police. The Yoruba and English versions of the statement were tendered and admitted at the trial as exhibits 1 and 11 respectively. In exhibit 1 the appellant narrated how he and the other accused persons pursued the deceased, macheted him until he fell down. Exhibit 1 was thus treated as

a confessional statement.

In his defence at the trial, the appellant vehemently denied making exhibit I thus retracting the confessional statement. In his evidence on oath he gave an account totally different from the contents of the extra-judicial statement. In his evidence-in-chief the appellant raised for the first time the defence of alibi when he claimed that he was in Ondo province at all times material to the commission of the offence.

The learned trial judge after a careful and thorough evaluation of the evidence before him, believed the evidence of the prosecution and found that the evidence of PW1 was corroborated by exhibit I made by the appellant and exhibits A, B and C made by PW1 as to the role played by the 3rd accused/appellant in the death of the deceased. The defence of alibi raised by the appellant was rejected by the trial judge and consequently the appellant was found guilty of murder and was sentenced to death. He was also found guilty of the lesser offence of ordinary assault on the second count.

The learned trial judge in the course of his judgment said:

“ The evidence against the 3rd accused can be found in his statement, exhibit 1, and the evidence given by him in defence of the charge and the statement and evidence given by the 1st P.W and other prosecution witnesses.

It will be recalled that the name of the 3rd accused was mentioned by 1st P.W. in his first statement by exhibit A which was made on 26/8/90 when the incident was still fresh in his memory. He stated further in exhibit A that 3rd accused was one of the people beating him and the deceased on the day of incident.

There is no doubt in my mind that the identity of the 3rd accused was not in doubt to the 1st P.W. because he was able to identify 3rd accused vividly when Akibu and Alfa Akibu were following 1st P.W. to know his house before both of them later ran away when they saw people gathered round the spot where the deceased was lying down.

Again in the 2nd statement made by 1st P.W. on 29/8/90, he mentioned kamoru as one of the seven people who were beating him and the deceased on the day of incident. So also was 3rd accused's name

mentioned in exhibit C and by the 1st P.W. on 29/8/90.

1st P.W. was consistent in the mentioning of the 3rd accused's name as one of the seven persons who participated in the beating of the deceased who later died as a result of injuries sustained in the hands of their assailants. I accept the evidence of the 1st P.W. that 3rd accused participated in the commission of the crime on the day of incident.

It is pertinent at this stage to refer to the statement made by the 3rd accused to the Police immediately after his arrest. It is no doubt a confessional statement by the 3rd accused voluntarily without any inducement or threat of any kind from the Police. And I have no doubt in accepting it as voluntarily made by 3rd accused.

A statement made to the police during the investigation of a case may amount to admission where an accused confessed the commission of a crime, where there is no eyewitness of the killing, he can be convicted on his own confession, once the confession is positive, direct and properly proved. See the case of Achabna v. The State (1976) 12 S.C 63 and the case of Oboso v. The State (1969) 1 N.W.L.R. 204.

It is my finding that the confessional statement made by the 3rd accused is corroborative of the evidence and the statement exhibits A, B and C made by the 1st P.W. as to the role played by the 3rd accused as the commission of the offence of murder.”

The court below affirmed the conviction of the appellant. In a meticulous manner the court below per Adamu, JCA said:

“ The main thrust of the submissions under the two issues is against the admission by the learned trial judge of the extra-judicial statement made by the appellant to the police and its treatment by the said judge as a confessional statement upon which inter alia he based his conviction of the appellant for the offence of murder. The argument of the appellant is that he did not make that statement to the Police at all. This is different from saying that the appellant had made the statement involuntarily or was compelled or induced to do it under threat or duress. In the later case, it can be said that the statement though made was not voluntary and does not qualify as a voluntary confession under S.27(1) of the Evidence Act Cap.112 Law of the Federation of Nigeria, 1990. In

such a case there is a need for a trial within trial to determine the voluntariness of such a statement or confession - see OBUE VS. STATE (19762 SC.141 at 152; R. vs. EQUABOR 81962)1 ALL NLR 287 and QUEEN VS. IGWE 5 FSC 55. On the other hand where the extra-judicial statement in the nature of a confession is subsequently denied or retracted by an accused person (as is usually and mostly the case) in his evidence before the Court, a different consideration will arise and there is no necessity for a trial within trial. A confession or a confessional statement has been defined in a number of cases by both the Supreme Court and this Court as "an admission made by an accused stating or suggesting that he committed the crime which is the subject of the charge preferred against him. It is an acknowledgement of the crime of the accused - see IKEMSON VS. STATE (1989) 3 NWLR (Pt.110) 455 at 476; GIRA VS. STATE) 1996) 4 NWLR (Pt. 443) 375 at 387; LIYA VS. STATE (1998)2 NWLR (Pt. 538) 397 at 408; BUJA VS. STATE (1991) 4 NWLR (PT. 185) 287 at 297; and EGBEYOM VS. STATE (2000) 4 NWLR (Pt.564) 559 at 580.

It is trite that by virtue of section 27 (1) of the Evidence Act (supra) a confessional statement made as defined above alone can solely be the basis of conviction. However, it is very usual for an accused person to retract, deny or resile during his trial in the court from the extra-judicial statement he had earlier made to the police immediately after the event giving rise to the charge or arraignment against him. In such cases, the law casts a duty on both the accused person who made the subsequent denial to impeach his earlier statement and on the trial judge who is to test the veracity or otherwise of such statement by testing it or comparing it with other facts and circumstances outside the statement or in order to see whether they support, confirm or correspond with the said statement which will then be regarded as correct. In other words the statement will be subjected to scrutiny by the Court in order to test its truthfulness or otherwise in line with other available evidence and circumstances of the case - see SALAWU VS. STATE (1971) NMLR 249; AKINFE VS. STATE (1988) 3 NWLR (Pt. 85) 729 at 746 - 747; R. VS. ITULE (1961) ALL NLR 462; R. VS. SYKES (1913) 8 CAR 233 and

- ONWUMERE VS. STATE (1991) 4 NWLR (Pt. 86) 28 at 440. On the part of an accused person who wants to resile from or retract his earlier confessional statement which he made extra-judiciously to the Police, such a statement is not rendered inadmissible by the mere denial or retraction by the said accused person unless he leads sufficient evidence to rebut the accusation by the prosecution and it is thus his duty to explain to the Court (as part of his defence) the reason (s) for the inconsistency between his earlier confessional statement to the Police and the evidence he has given in his oral testimony before the Court - See R. V. ITULE (supra); ONWUMERE VS. STATE (supra); EGBOGHONOME VS. STATE (1993) 7 NWLR (Pt.306) 383; BATURE VS. STATE (1994) 1 NWLR(Pt. 320)267; AKINFE VS. STATE (supra at p. 746 of the report) and SALAWU VS. STATE (supra) and OSAKWE VS. A.G. BENEL STATE (1991) 1 NWLR (Pt. 167) 315 at 327. Such an accused person who wishes to impeach his earlier extra-judicial statement has an onerous duty to establish that his earlier confessional statement cannot be true or correct by showing any of the following four events or instances:-*
- (a) that he was not correctly recorded; or
- (b) that he, in fact did not make the statement; or
- (c) that he was unsettled in mind at the time he made the statement; or
- (d) that he was induced to make the statement - See ONWUMERE VS. STATE (supra) at p. 440 of the report.
- By applying the above principles of law on the extra-judicial statement of the appellant in the present case to the Police (as per Exhibit 1 and 1 (11), I have confirmed from the record that the learned trial judge has discharged his duty under the law before admitting the said statement by applying the test recommended to ascertain its truth and by finding a corroborative evidence outside the confessional statement when he stated in his judgment as follows:-
- ' It is my finding that the confessional statement made by the 3rd accused is corroborative of the evidence and the statements in Exhibits A, B and C made by the 1st PW as to the role played by the 3rd accused as (sic) the commission of the offence of murder'. See page 62 lines 19-

22 of the record.

Thus the learned trial judge was right in admitting the confessional statement of the appellant made to the police in Exhibit 1 and 11. He did so in compliance with the principle in the cited authorities and he did not therefore commit any error. On the other hand, the appellant in his denial of or retraction from the making of the confessional statement did not discharge his own duty (as imposed by the law) by taking any of the above listed steps to impeach or rebut the confessional statement in Exhibit 1 & 11. He only stated that the Exhibit was not his statement and when cross-examined he said, that he "did not make any statement to the police on 1/9/90" (See page 40 lines 20-23 of the record). In order to impeach the said statement he, the appellant, should have adduced evidence to show that the thumbprint on the statement which he admitted to have made to the police was not in fact his own right thumb impression. As he failed to show that the statement in Exhibit 11 shown to him was not the one made by him because it did not bear his thumbprint, his mere denial or retraction will not render the statement inadmissible as per the principle in the above authorities. Also since the learned trial judge after applying the recommended test as to the truthfulness of the statement and found it to be corroborative of other evidence in the case, he was right in admitting it and in relying on it along with other pieces of evidence in convicting the appellant."

As I have already shown, the prosecution relied on the confessional statement made by the appellant. The appellant denied the statement exhibit 1 in evidence and claimed that he knew nothing about the offence. In fact for the first time he claimed that he was elsewhere at the time of the commission of the offence. That is to say that the appellant raised a defence of alibi for the first time in his evidence.

It is true that an accused can be convicted on his confession alone when the conditions for this are present. These are fully laid down in several cases including R. V. SYKES (1913) 8 Cr. APP. P.233 at 236-237; Yesufu v. The State (1975) 6 SC.167. Even where the accused has retracted the statement: see R. V. Itule (1961) ALL NLR 462; Salawu v. The State (1971) NWLR 249; Godwin Ikpa v.

A.G. Bendel State (1981) 9 SC. 7; Akinfe v. The State (1988) 3 NWLR (Pt. 85) 729SC.

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 that he committed that crime. It follows that once an accused person makes a statement under caution, admitting the charge or creating the impression that he committed the offence with which he is charged, the statement becomes confessional. An accused can therefore be convicted on his confession alone regardless of the fact that he resiled therefrom or retracted it altogether at the trial. It is however, desirable that the contents therein should be tested by facts outside the statement. It must be stated that the retraction notwithstanding a confessional statement must be considered along with other evidence by the trial judge who at the end would decide whether or not the appellant did make the statement alleged by the police. In Godwin Ikpassa v. A .G. Bendel State (supra) the learned judge did just that and came to the conclusion that the appellant made the statement. In John Bamgboye v. A.G. Western Nigeria (1966) NWLR 266, the voluntary admission made to the police by the appellant was different from his evidence in court. This court held that the trial judge, after considering the defence, rightly rejected the evidence of the appellant in court and also rightly accepted the voluntary admission to convict him of murder. In R. V. Itule (supra) the appellant retracted his confessional statement as a result of which the learned trial judge did not consider it. The appellant was convicted of murder on other available evidence. The statement contained assertion of provocation. Since the trial judge failed to consider the statement he consequently failed to consider the defence of provocation. This court, the Federal Supreme Court, as it then was, held that failure to consider the confessional statement which had been retracted amounted to a substantial miscarriage of justice. The appeal was allowed and a conviction of manslaughter was substituted.

In the present case, PW 1 was the star witness for the prosecu-

tion. He was not only at the scene of the incident, he was also a victim, albeit survivor of the brutal and unprovoked attack by the appellant and his co-horts directed at himself and his younger brother, the deceased. He gave direct evidence of what happened on that fateful morning. In his evidence-in-chief he testified that:

"The four accused person were among the seven that stopped us on that day."

PW 1 disclosed that:

"The seven person started to matchet my junior brother with cutlasses. After having cut my brother with cutlasses until (sic) became helpless."

Under cross-examination this witness stated as follows:

"I mentioned the 1st and 3rd (sic) in my first statement that day (sic) participated in the commission of the crime. I told the police in my first statement that the 1st and 3rd accused persons matcheted my brother."

In the course of his judgment the learned judge observed thus:

"It will be recalled that the name of the 3rd accused person was mentioned by 1st PW in his first statement by Exhibit A which was made on 26/8/90 when the incident was still fresh in his memory. He stated further in Exhibit A that 3rd accused was one of the people beating him and the deceased on the day of the incident."

The learned judge thereafter made a specific finding of fact on the involvement of the appellant. He held thus:

"1st PW was consistent in the mentioning of the 3rd accused's name as one of the seven persons who participated in the beating of the deceased who later died as a result of the injuries sustained in the hands of their assailants. I accept the evidence of the 1st PW that the 3rd accused participated in the commission of the crime on the day of the incident."

The Court of Appeal after a careful evaluation accepted this finding. It held as follows:

"PW 1 being an eye witness gave a credible evidence on what took place at the scene of the incident. He implicated the Appellant."

More importantly the case against the appellant was his admis-

sion of the commission of the offence. Exhibits 1 and 11 are the Yoruba version and the English version respectively of the extra judicial statement made by the appellant to the police. **At the trial the appellant denied ever making the statement. Nonetheless the learned judge B rightly admitted it. The retraction notwithstanding, the statement was bound to be considered along with the other available evidence by the trial judge who at the end would decide whether or not the appellant did make the statement as alleged by the police. See Ikpassa v. A.G. Bendel State (supra). The trial judge did just that. C He meticulously considered Exhibits 1 and 11 along with exhibits A, B, and C made by PW1 and came to the conclusion that the appellant did make the statement and that it was a confessional statement voluntarily made. He held thus:**

D *"It is my finding that the confessional statement made by the 3rd accused is corroborative of the evidence and the statements exhibits A, B, and C made by 1st PW as to the role played by 3rd accused as to the commission of the offence of murder.*

E The Court of Appeal affirmed this finding. It held:

"Also since the learned trial judge after applying the recommended test as to the truthfulness of the statement and found it to be corroborative of other evidence in the case, he was right in admitting it and relying on it along with other pieces of evidence in convicting the F appellant."

I completely agree. As I have earlier on stated an accused can be convicted on his confession alone when the conditions for this are met. These are fully laid down in several cases including R. V. Sykes G (supra); Yesufu V. The State (supra). Even where the accused has retracted the statement; see R. V. Itule (supra); Akinfe V. The State supra.

H In the result this appeal fails and I dismiss it. I affirm the conviction and sentence of the Appellant.

OGWUEGBU JSC

I have read the judgment of my learned brother Katsina-Alu,

JSC. with which I am in agreement.

The prosecution relied on Exhibits "1" and "2" (extra-judicial statements made by the appellant) in convicting him. A voluntary confession of guilt by a prisoner is sufficient to warrant conviction without corroborative evidence if it is direct, positive, duly made and satisfactorily proved. See YESUFU v. THE STATE (1976)6 SC. 167 at 173; R. v. SULLIVAN (1887)10 COX 347; R.v. SYKES (1913)8 Cr. APP. R.233 and R. v. WHITE & OR. (1823) 168 E.R.922. It is however desirable to have outside the confession some evidence of circumstances no matter how slight which make it probable that the confession was true. See ONOCHIE & 7 ORS. v. THE REPUBLIC (1966) NMLR 307 and KANU & OR. v. THE KING 14 W.A.C.A.30. In this case the appellant retracted his confession at the trial. The conviction rested on the confession (Exhibits "1" and "2" which was corroborated by the evidence of P.W.1 and Exhibits 'A' 'B' 'C'.

I have found no merit in the appeal and I too dismiss it. The judgment of the Court of Appeal, Ibadan Division delivered on 18th may, 2000 confirming the conviction sentence of death imposed on the appellant is hereby affirmed.

IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Katsina-Alu, J.S.C. and I entirely agree with his reasoning and conclusion.

I, too, hereby dismiss the appeal and affirm the decision of the court of appeal which confirmed the judgment of the trial court.

KALGO JSC

I have read in draft the judgment just delivered by my learned brother Katsina- Alu JSC in this appeal and I entirely agree with his reasoning and conclusion which I adopt as mine.

There is no doubt that the appellant who was the 3rd accused at trial was properly identified by P.W.1 in relation to the crime on the day in

question. The statement of the appellant which he made under caution to the police (Exhibits 1) in which the appellant confessed the commission of the crime, was not effectively challenged at the trial as the appellant merely said that he did not make the statement. And the alibi which the B appellant raised in the defence only at the trial while giving evidence, was not proved and could not be accepted as true by the learned trial judge "in view of the totality of the evidence led by the prosecution coupled with the confessional statement, Exhibit 1" made by the appellant. He convicted him of murder contrary to Section 319 (1) of the Criminal Code C and sentenced him to death. The Court of Appeal agreed with the findings of the learned trial judge on the evidence before him and upheld the conviction and sentence. I agree with them.

I wish to add that Exhibits A, B, and C which were mere statements D by PW 1 to the police in the course of investigation, cannot in law, corroborate the oral evidence of PW 1. I believe that the statement may only be used when PW 1 decided to be funny and turn himself into a hostile witness, in which case the contents of the statements may be E used to cross - examine him and no more.

From what I said above , I find that there is no substance in the appeal and I dismiss it. I accordingly affirm the conviction and sentence passed on the appellant by the learned trial judge and confirmed by the F court or Appeal.

EJIWUNMIJSC

I have before now read the judgment just delivered by my learned G brother, Katsina-Alu, J.S.C. As I agree entirely with his reasoning for concluding that this Appeal lacks merit, I also dismiss the appeal for all the reasons given in the said judgment of my learned brother, Katsina-Alu, J.S.C.

H