

**SUPREME COURT OF NIGERIA**  
FRIDAY 12TH JULY, 2002 SC. 399/2001  
**CORAM:- S. M. A. BELGORE, A. I. IGUH, S. O. UWAIFO,**  
**A. O. EJIWUNMI, E. O. AYOOLA, JJSC**

UCHENNA NWACHUKWU ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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MURDER - Documents - Admissibility - Autopsy Report - Since the location of the doctor who issued the report is uncertain - PW3 was competent to tender the report (H1)

MURDER - Documents - Admissibility - Exhibit E - Propriety - The learned trial judge rightly admitted the exhibit in evidence - Though the doctor that issued it was not cross-examined (H2)

DOCUMENTS - Murder - Autopsy report - Failure to call maker - It is not imperative to call a maker named under Evidence Act s.42 - Though court has jurisdiction on application of a party - To summon such maker (H3)

COURTS - Judicial acts - Validity - It is presumed that formal requisites for validity of such acts were complied with - Provided the acts were done in substantially regular manner (H4)

CRIMINAL PROCEDURE - Confessions - Meaning - Confession is admission by a person charged with crime - Suggesting the inference that he committed the crime (H5)

CRIMINAL LAW - Informal admissions - Meaning - They are statements by accused which are against his interest - But such statements are not conclusive against the maker (H6)

EVIDENCE - Confessions - Weight - Trial court is to consider circumstances under which confession was made - And decide what weight to be attached to same (H7)

EVIDENCE - Informal admissions - Admissibility - Confession made by a person even to himself - If overheard by someone else - May be received in evidence (H8)

MURDER - Ingredients - Proof - Prosecution must prove that deceased died - As a result of act of accused - Which was intentional (H9)

EVIDENCE - Murder - Proof - Autopsy report - Medical report is not a sine qua non to prove death - As death can be established by other sufficient evidence (H10)

MURDER - Proof - Courts rightly held that prosecution - Proved beyond reasonable doubt - The death of deceased by strangulation (H11)

CRIMINAL PROCEDURE - Murder - Co-accused - Joint liability - The three persons named in evidence - Are deemed to have criminally participated in murder of deceased (H12)

CRIMINAL PROCEDURE - Confessions - Voluntariness - Positive confession of guilt is sufficient to warrant a conviction - Without corroborative evidence - Though court should first of all test the truth thereof (H13)

CRIMINAL PROCEDURE - Confessions - Retraction - Court can convict on retracted confession - Though it is desirable that there be some corroboration - No matter how slight (H14)

### **FACTS**

Accused/appellant along with two others was arraigned before the High Court of justice, Imo State, for the offence of murder of one Benjamin Iheoma. Each of the accused persons pleaded not guilty to the charge. At the trial, prosecution called witnesses that testified as per the incident that led to the death of the deceased. The Investigation Police Officer – PW3 particularly testified of how appellant took him and a medical doctor to a site where appellant and others buried the deceased. The doctor thereupon conducted an autopsy on the

exhumed body of the deceased. An autopsy report (Exhibit E) was thus prepared and handed over to PW3.

Subsequently within the trial, PW3 tendered the exhibit in evidence since the location of the doctor is uncertain. Confessional statements obtained from appellant and others were also tendered in evidence. The learned trial judge admitted the said exhibit in evidence. At the end of trial, the court convicted appellant and the others of murder of the deceased. 2<sup>nd</sup> accused was described as accessory after the fact of murder. He was thus sentenced. Appellant and 3<sup>rd</sup> accused were sentenced to death. Being dissatisfied, both appealed to the Court of Appeal. The court allowed the appeal of 2<sup>nd</sup> accused but dismissed that of appellant. Consequently, appellant filed appeal at Supreme Court.

### **ISSUES FOR DETERMINATION**

*"1. Whether the medical report (Exhibit E) as well as P.W. 2's story pertaining to what the appellant allegedly told P.W.2 that the appellant saw and heard at the scene of the commission of the offence were rightly admitted in evidence and if not, did such inadmissible evidence not occasion substantial miscarriage of justice in this case?"*

*2. Whether the purported circumstantial evidence adduced by the prosecution in this case sufficiently established the guilt of the appellant beyond reasonable doubt as laid down by law?"*

**HELD** (Unanimously dismissing the appeal per **IGUH JSC**)

*Documents - Admissibility - Autopsy Report*

**1. It is clear from the record of proceedings that P.W. 3 tendered Exhibit E as the autopsy report which one Dr. H. O. Ihezue, the medical Doctor who performed post mortem examination on the body of the deceased in his presence issued to him by virtue of his position as the investigation police officer in charge of the case. From his evidence, the appellant on the 1st day of February, 1985 took himself, the said Doctor H. O. Ihezue and other members of his investigation Police team to Uratta Express Road, Owerri where the appellant**

pointed to them the shallow grave where the deceased was buried. The Doctor exhumed the body and performed a post mortem examination at the scene and later issued PW.3 with a report to that effect. The Doctor had since traveled overseas for further studies. His location overseas was uncertain, and  
 B the date of his return to Nigeria was unknown. It was at this stage that P.W. 3 tendered the autopsy report which Dr. Ihezue issued to him. There can be no doubt that in the face of the above evidence which was uncontradicted, P.W.3 was a competent witness to have tendered Exhibit E in evidence before  
 C the trial court. (p. 2375 E)

*Documents - Admissibility - Exhibit E*

2. On the issue of the availability of the Doctor for cross-examination, it ought to be observed that at no time in the proceedings did the appellants specifically apply for the production of the Doctor for cross-examination. In the second place, the maxim interest rei publicae ut sit finis litium, that is to say, that it is in the public interest that there should be an end to  
 E litigation appears relevant in all the circumstances of this case. So, the learned trial Judge in admitting Exhibit E in evidence stated thus:-

*“There is the issue of availability of the Doctor for cross examination. The uncontradicted evidence of the witness is that this particular doctor is studying Overseas which is an uncertain location outside the shores of Nigeria and the date of his return is unknown. The alleged murder took place on the face of the charge, in 1985 - nearly ten years ago, during  
 F which time, I presume, the accused have been in prison custody. Since the exact address of the doctor is not known, and his date of return to Nigeria is uncertain, I am of the firm view that this is a proper case, where the document sought to be tendered in evidence prepared by a Government Pathologist,  
 G can be received in evidence, pursuant to the provisions of Section 42 (1) of the Evidence Act, Cap.112, Laws of the Federation of Nigeria, 1990”.*

In my view, the trial court was right in the above observations. (p. 2376 A)

*Murder - Autopsy report - Failure to call maker*

**3. This is because when a certificate, such as Exhibit E, signed by any of the named officers under Section 42 of the Evidence Act, in this case a Government Pathologist is produced, it is not imperative to call the officer to testify in the proceedings although the court has the jurisdiction on the application of a party to the proceeding or on its own motion, to direct that any such officer shall be summoned to give evidence before it if the court is of the opinion that either for the purpose of cross-examination, or for any other reason, the interest of justice so requires. But an accused person who has not specifically applied for the maker of such a certificate to be called as a witness cannot complain if the trial court fails to call the officer who signed the certificate.** (p. 2376 G) B  
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*Judicial acts - Validity*

**4. There is therefore a general presumption of law to the effect that the formal requisites for the validity of all judicial or official acts were complied with so long as they are shown to have been done in a manner substantially regular. The position of the law is summarized by the Latin maxim omnia praesumuntur rite esse acta which means that all acts are presumed to have been done rightly and regularly until the contrary is proved. This presumption of law is commonly applied particularly to judicial and official acts and the onus of proving the contrary lies on him who alleges such contrary position.** (p. 2377 E) E  
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*CRIMINAL PROCEDURE - Confessions - Meaning*

**5. Now, reverting once more to the above quoted passage of the evidence of PW.2 under attack, it cannot be disputed that a confession is an admission made at anytime by a person charged with a crime, stating or suggesting the inference that he committed that crime. See section 27(1) of the Evidence Act. So, too, by Section 27 (2),; *ibid*, confessions, if voluntary, as was found by the trial court and affirmed by the Court of Appeal in the present case are deemed to be relevant facts** G  
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**and are therefore admissible as against the persons who make them only but against nobody else.** (p. 2380 B)

*CRIMINAL PROCEDURE - Informal admissions - Meaning*

**6. Similarly confessions apart, statements whether oral or written made by a party to a proceeding or by an accused person in a criminal prosecution which are against his interest are admissible against him as evidence of the facts thus asserted and they are termed informal admissions. However, such admissions, unlike formal admissions are not conclusive evidence against their maker. They are only prima facie evidence which may be contradicted or explained in appropriate cases.** (p. 2380 D)

*EVIDENCE - Confessions - Weight*

**7. An admission or confession has been said to be like any other evidence and it is the duty of the trial court to consider the circumstances under which it was given and to decide what weight that may be attached to the alleged confession.** (p. 2380 F)

*EVIDENCE - Informal admissions - Admissibility*

**8. The person to whom a confession or an admission is made by a party to a proceeding or by an accused person is generally immaterial and a statement in the nature of a confession or admission made by a person, even to himself, if overheard by some one else may be received in evidence if it amounts to a confession or an admission.**

**In the present case, the evidence sought to be pronounced as hearsay and therefore inadmissible is a statement made by the appellant to PW. 2 in the course of police enquiry and investigation of the case. Without doubt, the statement, to some extent amounts to a confession or admission and is damaging to and against the interest of the appellant. It does prima facie constitute admissions of facts asserted against him. It is plain to me that the evidence of PW. 2 under attack is admissible against the appellant and it was up to the court of trial to decide what weight was fairly to be attached to the**

**alleged confession.**

**I should also state that an extra-judicial confession, though made orally, as in the present case, would carry no less weight than the one that is made in writing.** (pp. 2380 G/2385 C)

*MURDER - Ingredients - Proof*

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**9. It is trite law that to justify a conviction for murder, the prosecution must prove beyond reasonable doubt-**

**(1) that the deceased has died.**

**(2) that the death of the deceased resulted from the act of the accused and**

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**(3) that the act of the accused was intentional with knowledge that death or grievous bodily harm was its probable consequence.** (p. 2381 F)

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*Murder - Proof - Autopsy report*

**10. At all events, even if the autopsy report, Exhibit E, is discounted, and I have already held that it was properly admitted in evidence, it is well settled that much as medical evidence is desirable to prove the cause of death in homicide cases, it is not a sine qua non and death can be established by sufficient evidence other than medical evidence which establishes beyond reasonable doubt that death resulted from the particular act of the accused persons.** (p. 2382 A)

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*MURDER - Proof*

**11. On the copious evidence of the death of the deceased before the court, therefore, it cannot be disputed that both courts below were right in holding that the cause of death of the deceased by manual strangulation was established beyond reasonable doubt by the prosecution.** (p. 2383 A)

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*Murder - Co-accused - Joint liability*

**12. There can be no doubt that all the three named persons, on the evidence were all jointly concerned and therefore criminis participes in the murder of the deceased.** (p. 2383 G)

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*CRIMINAL PROCEDURE - Confessions - Voluntariness*

**13. I think it ought to be mentioned that a free and voluntary confession of guilt by a prisoner, whether judicial or extra-judicial, if it is direct and positive and is duly made and satisfactorily proved, is sufficient to warrant a conviction without any corroborative evidence. So long as the court is satisfied with the truth of a confession which is free and voluntary and in itself fully probable, such confession alone is sufficient to support conviction without corroboration.**

**Accordingly, a confessional statement which is direct and positive and properly proved is enough to sustain a conviction but the court should not, however, act on the confession without first testing the truth thereof.** (p. 2384 H)

*CRIMINAL PROCEDURE - Confessions - Retraction*

**14. The fact that the accused did subsequently retract his confession does not mean that the court cannot act on it and convict him accordingly as the circumstances of the case justify it. It is, however, desirable particularly if the confession is subsequently retracted that there should be some corroboration, no matter how slight, but a conviction will not be quashed merely because it is based entirely upon the evidence of a confession by the appellant.** (p. 2385 D)

**REPRESENTATION**

B. C. I. Nwofor for the Appellant

J. T. U. Nnodum, A-G Imo State with Mrs. C. O. Okoro, D.P.P. Imo State for the Respondent

**CASES REFERRED TO**

Azu v. The State (1993) 6 NWLR (Pt. 299) 303

Akpuenya v. The State (1976) 11 SC 269

Edim v. The State (1972) 4 SC 160

H Lori v. The State (1980) 8-11 SC 81

Ehot v. The State (1993) 4 NWLR 644

Otufale v. The State (1968) NMLR 261

Uche & Anor v. R. (1964) 1 All NLR 195

R. v. Sykes (1913) 8 Cr. Ap. Rep. 233

Kanu & Anor v. The King (1952) 14 WACA 30

R. v. Ajayi Omokaro (1941) 7 WACA 146

Kopa v. The State (1971) 1 All NLR 150

Enweonye v. The Queen (1955) 13 WACA

Ogba v. The State (1992) 2 NWLR (Pt. 222) 164

Iga v. Amakiri (1976) 11 SC 11

R. v. Simons (1834) 6 C. & P. 540

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### **STATUTES REFERRED TO**

Evidence Act s. 27(1), 42, 150(1) and 150(2)

C

### **LEAD JUDGMENT BY IGUH JSC**

The appellant, Uchenna Nwachukwu, along with two others, to wit, Christopher Ndulaka and Chibuzor Nwachukwu was arraigned before the High Court of Justice, Imo State, holden at Owerri, charged D with the offence of murder contrary to Section 319(1) of the Criminal Code, Cap.30. vol 11, Laws of Eastern Nigeria, 1963, applicable to Imo State.

The particulars of the offence charged are as follows:-

*“Christopher Ndulaka, Uchenna Nwachukwu and Chibuzor E Nwachukwu, on the 20th day of January, 1985, at Owerri in the Owerri Judicial Division murdered Benjamin Iheama”*

Each of the accused persons pleaded not guilty to the charge and the prosecution originally called a total of eight witnesses at the abortive trial before Ukattah, J., as he then was. It was during the pendency of the proceeding that the then 1st accused, Christopher Ndulaka, was said to have been shot with a gun by one Anthony Nwachukwu, the principal suspect in this case but who is now at large. F The said Christopher Ndulaka subsequently died at the General Hospital owerri before the conclusion of the trial. With the creation of G Abia State from the old Imo State, Ukattah, J. was obliged to return to Abia State. Consequently the trial of the remaining two accused persons had to be started de novo before Maranzu, J. with the former 2nd and 3rd accused persons becoming the 1st and 2nd accused H persons respectively at the new trial.

Both accused persons again pleaded not guilty to the charge at the new trial and the prosecution called three witnesses and tendered some Exhibits. The accused persons testified on oath on their own

behalf but called no witnesses.

The substance of the case as presented by the prosecution form the evidence of P.W.2 principally and the statements of the 1st accused, Exhibits B and C, is that following some dispute between the said Anthony Nwachukwu, now at large, and the deceased, Benjamin Iheama, both of whom carried on a joint electronics business at No. 4, Douglas Road, Owerri, Anthony Nwachukwu enlisted the assistance of the late Christopher Ndulaka and the two accused persons, his junior brothers, to kill the deceased. Both Anthony Nwachukwu and the deceased lived at all material times in one flat but in different bed rooms at plot 454, Ikenegbu Layout, Owerri.

On the 20th January, 1985, the said Anthony Nwachukwu, the late Christopher Ndulaka and the 1st accused person congregated in the flat of both the deceased and Anthony Nwachukwu. All three of them unceremoniously trooped into the bedroom of the deceased and Anthony Nwachukwu immediately locked the door and intimidated to the deceased, Benjamin Iheama, that they had come to kill him. According to the 1st accused's narrative to P.W.2, before the deceased could say any thing, Anthony Nwachukwu pounced on the late Benjamin Iheama and with the help of Christopher Ndulaka, now deceased, and the 1st accused strangled and killed him. All three later that night jointly brought the dead body of the deceased down from their 2nd floor apartment and carried him into the booth of the 505 peugeot car No IM 315 WB which belonged to the deceased, Benjamin Iheama. Again, all three of them with Anthony Nwachukwu on the wheel drove with the dead body of the deceased in the booth to Uratta Express Road, Owerri where they buried him in a shallow grave in the bush. Christopher Ndulaka brought the two shovels that they used in digging the shallow grave. It was the 1st accused person who in the course of police investigation of this offence took P.W.2 and his team to the shallow grave in the bush along Uratta Express Road, Owerri where they buried the deceased.

With regard to the 2nd accused person, it would appear that the only evidence against him was entirely circumstantial as he took no part in the actual killing of the deceased. The case against him was built around the fact that he was an accessory after the fact to the murder. The case for the defence was a total denial of the charge. The 1st accused denied killing the late Benjamin Iheama on the 20th

January, 1985 or on any other date. He also denied any involvement in the death of the deceased or that he narrated to P.W. 2 how the said deceased was killed. In particular, he said that it was untrue as testified to by P.W.2 that he told the said P.W.2 that Anthony Nwachukwu, Christopher Ndulaka and himself buried the deceased along Uratta Road, Owerri. He claimed that he was not present when the deceased was buried and that he did not take P.W.2 or any policeman to the bush for the identification of the spot where the deceased was buried. He admitted making the statements, Exhibits B and C, to the police. He accepted that their contents were correct but for two areas which he disowned. The areas he denied are, firstly, that he showed the police where Benjamin was buried and, secondly, that he was present when Benjamin was murdered as he ran away at that point. He said he knew nothing whatever about the death of the deceased Benjamin.

The 2nd accused for his own part, also denied any involvement, whether directly or indirectly, in the death of the deceased.

The learned trial judge, Maranzu, J., after a review of the evidence on the 31st day of July, 1995 found both accused persons guilty of the offence of the murder of the deceased, Benjamin Iheama, and accordingly sentenced them to death as prescribed by law. In his findings, the learned trial judge was satisfied with and accepted the evidence of the prosecution to the effect that the 1st accused along with the run-away principal suspect, Anthony Nwachukwu, and the late Christopher Ndulaka acted in concert in the strangulation and murder of the deceased. He accepted the evidence of P.W.2, in particular, and that of the rest of the prosecution witnesses as reliable and found that the 1st accused, before his arrest, voluntarily narrated the part played by each and every one of them to P.W. 2 as testified to by the witness. He was also satisfied that Exhibits B and C were the voluntary statements of the 1st accused to the police. Of the 1st accused, the learned trial Judge stated:-

*“There is also the evidence of P.W. 2 in these proceedings, the relevant part of which I have reproduced in this judgment... and having regard also to exhibits ‘B’ and ‘C’ in these proceedings, I am convinced and I hold as a fact that the entire evidence in this case in respect of first accused Uchenna Nwachukwu and in particular the circumstantial evidence provided by P.W. 2 are cogent, very com-*

plete, compelling and irresistible and they lead to no other conclusion than that first accused Uchenna Nwachukwu was one of those who voluntarily, without any provocation, without any mistake of fact, without any extra-ordinary emergency, being very sane and without any accident killed late Benjamin Iheama and I find him guilty  
 B of the murder of Benjamin Iheama and convict him accordingly.”

He described the 2nd accused as an accessory before and after the fact to the offence of the murder of the deceased Benjamin and also convicted him as charged.

C Dissatisfied with this judgment of the trial court, both convicts appealed against their convictions and sentences to the Court of Appeal, Port Harcourt Division, which court on the 23rd day of April 2001 allowed the appeal of the 2nd accused/appellant and set aside the conviction and sentence passed against him. That court as regards the 2nd accused observed:-  
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“There is no evidence that the 2nd appellant did anything either directly or indirectly to cause the death of the deceased..... with all due respect to the learned trial judge, there is no way on the evidence before him, the 2nd appellant could be  
 E said to be an accessory before or after the fact of the killing of the deceased..... I am of the view that it will be unsafe to allow the conviction of the 2nd appellant to stand.”

It then proceeded to order that the 2nd accused person be acquitted and discharged of the offence of the murder of the deceased. The appeal lodged by the 1st accused/appellant, hereinafter referred to as the appellant, was, however, dismissed and his conviction and sentence were affirmed. Said the Court of Appeal:-  
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“It is clear..... that the learned trial judge did not rely on  
 G the evidence given in a previous proceeding before another Judge in convicting the 1st appellant. He relied on the evidence of P.W.2, supported by that of the 1st appellant himself... neither Exhibit B nor Exhibit C is a confessional statement in relation to the charge on which the 1st appellant was convicted. Therefore, standing by themselves, they cannot ground a conviction for the offence charged. They  
 H are, however, as held by the learned trial Judge, voluntary statements... The fact that they are not confessional statements does not mean that they cannot contain circumstances that, in conjunction with other circumstances, can lead to conviction.”

The Court of Appeal then examined the entire evidence before the court and found ample corroboration of the evidence of PW.2 and PW.3 and affirmed the conviction of the appellant as charged. It is against this judgment of the Court of Appeal that the appellant has now appealed to this court.

Both the appellant and the respondent filed and exchanged their respective written briefs of argument. In the appellant's brief of argument, two issues were formulated for the determination of this court. These are set out as follows:-

*"1. Whether the medical report (Exhibit E) as well as P.W. 2's story pertaining to what the appellant allegedly told P.W.2 that the appellant saw and heard at the scene of the commission of the offence were rightly admitted in evidence and if not, did such inadmissible evidence not occasion substantial miscarriage of justice in this case?"*

*2. Whether the purported circumstantial evidence adduced by the prosecution in this case sufficiently established the guilt of the appellant beyond reasonable doubt as laid down by law?"*

The respondent, for its own part, adopted with some modification the said two issues identified by the appellant for the resolution of this appeal. The issues raised by the respondent, as amended, are framed thus:-

*"1. Whether the Medical Report (Exhibit E) and P.W. 2's evidence were wrongly admitted; and if not, can it be said that the admission occasioned and miscarriage of justice, in the case?"*

*2. Whether the circumstantial evidence adduced by the prosecution sufficiently established the guilt of the Appellant beyond reasonable doubt."*

It is evident that both sets of issues deal essentially with the same questions and it will make no difference which of them is adopted for the determination of this appeal.

At the hearing of the appeal before us on the 2nd day of May, 2002, learned counsel for the appellant, B. E. I. Nwofor Esq, adopted the appellant's brief of argument and made oral submissions in amplification thereof. The substance of learned counsel's contention with regard to issue 1 is that the medical report on the deceased, Exhibit E, although inadmissible, was wrongly admitted in evidence by the trial court. He described the contents of Exhibit E as the

opinion evidence of a supposed expert in medical science and submitted that by the combined effect of the provisions of Section 57 and 65 of the Evidence Act, Cap. 112, Laws of the Federation of Nigeria, 1990, it is imperative that the medical Doctor who made it ought to have been called to testify as a witness, state his qualifications and experience and be cross-examined by the defence. In this regard, he called in aid the decision of this court in *Oko Agwu Azu v. The State* (1993) 6 N.W.L.R. (part 299) 303 at 311. He argued that P.W. 3 not being an expert in medical science but merely a police officer was incompetent to tender it. He contended that Exhibit E not being a certificate signed by any of the authorized persons could not be tendered under the provisions of Section 42 (1)(a) of the Evidence Act. He submitted that there was no evidence that Dr. Ihezue who performed the post mortem examination on the deceased was a “Government Pathologist”. Learned counsel referred to the evidence of P.W. 2 with regard to the appellant’s narrative to him on the issue of how the deceased met his death and submitted that this is hearsay evidence which violated the provisions of section 77(a) of the Evidence Act and is therefore inadmissible in law. On issue 2, learned appellant’s counsel submitted that the evidence adduced by the prosecution, and relied upon by the trial court in convicting the appellant was so weak, unsatisfactory, and incomplete that it did not irresistibly point to the conclusion that the appellant and no one else committed the offence. He therefore urged the court to allow this appeal.

Learned counsel for the respondent, J. T. U. Nnodum Esq., Attorney-General of Imo State in his reply similarly adopted the respondent’s brief of argument and proffered oral submissions in support therefore. On the autopsy report, Exhibit E, he submitted that the same was properly received in evidence pursuant to the provisions of section 42(1) of the Evidence Act. On the evidence of P.W. 2 as to what the appellant voluntarily narrated to him with regard to the death of the deceased, learned Attorney-General argued that the same, without doubt, was admissible evidence against the appellant. He submitted that the learned trial judge who heard and assessed all the evidence before the court had no difficulty in accepting that the appellant, not only actively participated in the murder by strangulation of the deceased, but that he along with Anthony Nwachukwu

and Christopher Ndulaka after the said murder by all three of them carried the dead body of the deceased at night from his second floor apartment into the booth of his car and subsequently buried him in a bush along Uratta Express Road, Owerri. He submitted that the facts found by the trial court against the appellant and affirmed by the court below were overwhelming and established the case against the appellant beyond reasonable doubt. He urged this court to dismiss the appeal. B

It is evident from the nature of the two issues identified by both parties as arising for the determination of this appeal that their resolution lies within a very narrow compass. The first issue that was raised is with regard to the admissibility or otherwise of the autopsy report, Exhibit E. The contention of the appellant, in the first place, is that P.W.3 who tendered it, one of the investigating police officers in the case, was not an expert in medical science and was therefore not competent to tender it in evidence. It was further argued that in the hands of the said P.W. 3, the medical report, Exhibit E was a “documentary hearsay” evidence of a highly prejudicial nature to the appellant and that the report itself was, at all events, inadmissible in evidence. The case of Shell Petroleum Company of Nigeria Ltd. v. Chief Graham Otoko and others (1990) 6 N.W.L.R. (part 159) 693 at 712 and 713 was cited in support of this contention. C  
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E

***It is clear from the record of proceedings that P.W. 3 tendered Exhibit E as the autopsy report which one Dr. H. O. Ihezue, the medical Doctor who performed post mortem examination on the body of the deceased in his presence issued to him by virtue of his position as the investigation police officer in charge of the case. From his evidence , the appellant on the 1st day of February, 1985 took himself, the said Doctor H. O. Ihezue and other members of his investigation Police team to Uratta Express Road, Owerri where the appellant pointed to them the shallow grave where the deceased was buried. The Doctor exhumed the body and performed a post mortem examination at the scene and later issued P.W.3 with a report to that effect. The Doctor had since travelled overseas for further studies. His location overseas was uncertain, and the date of his return to Nigeria was unknown. It was at this stage that P.W. 3 tendered the autopsy report which Dr. Ihezue*** F  
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issued to him. There can be no doubt that in the face of the above evidence which was uncontradicted, P.W.3 was a competent witness to have tendered Exhibit E in evidence before the trial court.

B On the issue of the availability of the Doctor for cross-examination, it ought to be observed that at no time in the proceedings did the appellants specifically apply for the production of the Doctor for cross-examination. In the second place, the maxim interest rei publicae ut sit finis litium, that is to say, that it is in the public interest that there should be an end to litigation appears relevant in all the circumstances of this case. So, the learned trial Judge in admitting Exhibit E in evidence stated thus:-

D *“There is the issue of availability of the Doctor for cross examination. The uncontradicted evidence of the witness is that this particular doctor is studying Overseas which is an uncertain location outside the shores of Nigeria and the date of his return is unknown. The alleged murder took place on the face of the charge, in 1985 - nearly ten years ago, during which time, I presume, the accused have been in prison custody. Since the exact address of the doctor is not known, and his date of return to Nigeria is uncertain, I am of the firm view that this is a proper case, where the document sought to be tendered in evidence prepared by a Government Pathologist, can be received in evidence, pursuant to the provisions of Section 42 (1) of the Evidence Act, Cap.112, Laws of the Federation of Nigeria, 1990”.*

G In my view, the trial court was right in the above observations.

H This is because when a certificate, such as Exhibit E, signed by any of the named officers under Section 42 of the Evidence Act, in this case a Government Pathologist is produced, it is not imperative to call the officer to testify in the proceedings although the court has the jurisdiction on the application of a party to the proceeding or on its own motion, to direct that any such officer shall be summoned to give evidence before it if the court is of the opinion that either for the purpose of cross-examination, or for any other reason, the

**interest of justice so requires. But an accused person who has not specifically applied for the maker of such a certificate to be called as a witness cannot complain if the trial court fails to call the officer who signed the certificate.**

The appellant has further complained, however, that there was no evidence that the said Dr. H. O. Ihezue who performed the autopsy was at all material times a Pathologist in the employment of the Imo State Government. In this regard, the certificate, Exhibit E, stated ex facie as follows:-

*“Case of suspected murder; said to have been buried in a shallow grave along Orji - Uratta Road. Autopsy finding shows - Asphyxiation, follow Strangulation.*

*(Signed) Dr. Ihezue H. O.*

*Resident Pathologist*

*i/c General Hospital, Owerri.*

*13th February, 1985”*

*In this regard, Section 150(1) and (2) of the Evidence Act provides thus-*

*“(1) When any judicial or official act is shown to have been done in any manner substantially regular, it is presumed that formal requisites for its validity were complied with”.*

*(2) “When it is shown that any person acted in a public capacity, it is presumed that he had been duly appointed, and was entitled so to act”. **There is therefore a general presumption of law to the effect that the formal requisites for the validity of all judicial or official acts were complied with so long as they are shown to have been done in a manner substantially regular. The position of the law, is summarized by the Latin maxim omnia praesumuntur rite esse acta which means that all acts are presumed to have been done rightly and regularly until the contrary is proved. This presumption of law is commonly applied particularly to judicial and official acts and the onus of proving the contrary lies on him who alleges such contrary position.** See Jimoh Odubeko v. Victor Fowler and Another (1993) 7 N.W.L.R. 637 at 655; Benson v. Onitiri (1960) 5 F.S.C. 69.*

In the present case, there is no suggestion that the certificate, Exhibit E, which came into existence in the course of and in the execution of an official act was prepared and/or issued irregularly.

On the contrary, there is evidence that Exhibit E was produced in a manner substantially regular and that Dr. Ihezue H. O. who issued it acted at all material times in his official and public capacity. No evidence was produced by the appellant to contradict the contents of the said Exhibit on the qualifications and status of the maker at all times material to the making of the certificate. In these circumstances I think it can be presumed from the face of Exhibit E that Dr. Ihezue H. O. who issued and signed it was at all material times the Resident Pathologist In-Charge, General Hospital, Owerri, that he was duly appointed to the official position and that he was professionally qualified and entitled to perform the post mortem examination in question and to issue the autopsy report, Exhibit E as the contrary was not established by the appellant. It is plain to me, having regard to all the circumstances of this case that Exhibit E was rightly admitted in evidence in proof of what it was sought to establish.

The next question that arises from issue 1 is whether, as contended by the appellant, the evidence of what he was alleged to have narrated to P.W. 2, one of the investigating police officers in the case is hearsay and therefore inadmissible in evidence. For the respondent, it was argued that the evidence in issue had nothing to do with what P.W.2 saw as he was not a witness to the murder. It was argued that the evidence had to do with what P.W.2 heard that is to say, what the appellant narrated to P.W.2 in the course of his official enquiry and that the situation is covered by Section 77(b) of the Evidence Act which provides thus:-

*“77 Oral evidence must, in all cases whatever, be direct*

*(b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard that fact”*

I think that for a better appreciation of the point in issue it is necessary to set out that part of the evidence of P.W.2 which it is contended on behalf of the appellant is hearsay and inadmissible. According to P.W.2, he and his team on information received proceeded to the residence of the appellant at Orji. They saw him and invited him to come to their office as they wished to offer him a contract job for the provision of certain boxes for the decoration of the office of their boss. The appellant gladly followed them to their office. There, they confronted the appellant with the shooting of Christopher Ndulaka, then hospitalized and the car of the deceased

alleged parked at Port Harcourt Airport. The appellant denied knowledge of these two incidents. Later in the office of the boss of PW.2 the latter testified that the appellant voluntarily opened up and told PW.2 how everything happened and how they killed the deceased. In the words of PW.2 :-

*“He (meaning the appellant) said that on the 20th January B  
1985; at about 8 p.m. the senior brother, Anthony Nwachukwu  
Ndulaka, now at large, came to the house of the 1st accused at Orji,  
picked him up in company of Christopher Ndulaka, now late, and  
took them to plot 454 Ikenegbu Layout, Owerri where Anthony C  
Nwachukwu resided with late Benjamin Iheama in the same flat. Later  
they went out again to the town, drank and smoked. They later  
came back to the house at about 10 p.m. Then Anthony Nwachukwu,  
now at large, raised the volume of the musical set in their flat, then  
the late Benjamin Iheama came out from the room and warned them D  
to lower the sound of the music and went back to his room; then  
they; Anthony Nwachukwu now at large, late Christopher Ndulaka  
and Uchenna Nwachukwu, first accused, followed him into his room.  
Then Anthony locked the door and told late Benjamin Iheama that E  
they had come to kill him. Uchenna Nwachukwu, 1st accused, said  
that before he could say anything, Anthony pounced on late Ben-  
jamin and then Christopher Ndulaka, now late, and Uchenna  
Nwachukwu, 1st accused, helped Anthony Nwachukwu now at large  
to kill late Benjamin Iheama; then very early in the morning they F  
took the dead body and put it inside the 505 car belonging to late  
Benjamin Iheama and drove out with the dead body. Anthony  
Nwachukwu now at large drove the car. They drove round the town  
looking for a place to bury the dead body in the car booth until in the  
evening they went and buried the corpse along Uratta road. That G  
was the story of Uchenna Nwachukwu, now first accused”.* (Words in  
brackets supplied for clarity)

It is the above evidence of PW.2 which is an oral account of how the deceased met with his death as narrated by the appellant to the said PW.2 that learned counsel for the appellant contended is H hearsay and therefore inadmissible in evidence. PW.2 explained that he and his boss subsequently took the appellant to the C.I.D office where he made a written statement. Thereafter the appellant took them to where the run-away Anthony, the late Christopher and him-

self buried the deceased in a shallow grave along Uratta Express Road, Owerri. P.W.2 said that it was the appellant who identified and pointed out the grave of the deceased in the bush by the road side to them. It was the same appellant that took them to the grave side on a later date when the body of the late Benjamin was exhumed and post mortem conducted by Dr. Ihezue. The senior brother of the deceased, P.W.1. identified the corpse to the Doctor as that of his brother.

***Now, reverting once more to the above quoted passage of the evidence of P.W.2 under attack, it cannot be disputed that a confession is an admission made at anytime by a person charged with a crime, stating or suggesting the inference that he committed that crime. See section 27(1) of the Evidence Act. So, too, by Section 27 (2),; ibid, confessions, if voluntary, as was found by the trial court and affirmed by the Court of Appeal in the present case are deemed to be relevant facts and are therefore admissible as against the persons who make them only but against nobody else. Similarly confessions apart, statements whether oral or written made by a party to a proceeding or by an accused person in a criminal prosecution which are against his interest are admissible against him as evidence of the facts thus asserted and they are termed informal admissions. However, such admissions, unlike formal admissions are not conclusive evidence against their maker. They are only prima facie evidence which may be contradicted or explained in appropriate cases. An admission or confession has been said to be like any other evidence and it is the duty of the trial court to consider the circumstances under which it was given and to decide what weight that may be attached to the alleged confession. See Joe Iga and others v. Ezekiel Amakiri and others (1976) 11 S.C. 11. The person to whom a confession or an admission is made by a party to a proceeding or by an accused person is generally immaterial and a statement in the nature of a confession or admission made by a person, even to himself, if overheard by some one else may be received in evidence if it amounts to a confession or an admission. See R. v. Simons (1834) 6 C. & P. 540.***

***In the present case, the evidence sought to be pronounced as hearsay and therefore inadmissible is a statement***

**made by the appellant to P.W. 2 in the course of police enquiry and investigation of the case. Without doubt, the statement, to some extent amounts to a confession or admission and is damaging to and against the interest of the appellant. It does prima facie constitute admissions of facts asserted against him. It is plain to me that the evidence of P.W. 2 under attack is admissible against the appellant and it was up to the court of trial to decide what weight was fairly to be attached to the alleged confession.** Having held that Exhibit E and the statement made by the appellant to P.W.2 were properly admitted in evidence, the issue of whether they occasioned a miscarriage of justice does not now arise for consideration. Issue 1 is accordingly resolved against the appellant.

The main question raised under issue 2 is whether the evidence led on behalf of the prosecution in this case sufficiently established the guilt of the appellant beyond reasonable doubt. In this regard, it is the appellant's complaint:-

(i) That the prosecution did not prove the cause of the death of the deceased.

(ii) That the prosecution failed to prove that the appellant's act caused the death of the deceased.

(iii) That there is nothing in the appellant's evidence which corroborated the testimony of P.W.2 and P.W.3 to warrant the conviction of the appellant.

***It is trite law that to justify a conviction for murder, the prosecution must prove beyond reasonable doubt-***

***(1) that the deceased has died.***

***(2) that the death of the deceased resulted from the act of the accused and***

***(3) that the act of the accused was intentional with knowledge that death or grievous bodily harm was its probable consequence.***

See Edwin Ogba v. The State (1992) 2 N.W.L.R. (part 222) 164 at 198, Akinfe v. The State (1988) 3 N.W.L.R. (part 85) 729; Onah v. The State (1985) 3 N.W.L.R. (Part 12) 236 etc.

In the present case, there is no dispute whatsoever that the deceased is dead. As per the Doctor's report, Exhibit E, the cause of the death of the deceased is stated to be "asphyxiation following stran-

gulation". This cause of death is corroborated by the voluntary statement of the appellant to the police, Exhibit C, in which he stated that the cause of death of the deceased was strangulation. **At all events, even if the autopsy report, Exhibit E, is discountenanced, and I have already held that it was properly admitted in evidence,**  
 B **it is well settled that much as medical evidence is desirable to prove the cause of death in homicide cases, it is not a sine qua non and death can be established by sufficient evidence other than medical evidence which establishes beyond reasonable**  
 C **doubt that death resulted from the particular act of the accused persons.** See Azu v. The State (1993) 6 N.W.L.R. (Part 299) 303; Akpuenya v. The State (1976) 11 S.C. 269 at 278; Lori v. The State (1980) 8-11 S.C. 81 at 97; Adekunle v. The State (1989) 5 N.W.L.R. (Part 123) 505 at 516. So, too, where there is a positive  
 D evidence that the deceased had died but the body was not discovered, the accused may still be convicted of murder based on his confessional statement or other circumstantial evidence pointing to the fact that the accused caused the death. See Edim v. The State (1972) 4. S.C. 160 at 162; Efe v. The State (1976) 11 S.C. 75; Ogundipe v.  
 E R. 14 W.A.C.A. 458; Ariche v. The State (1993) 6 N.W.L.R. (part 302) 753 at 769 etc.

In the instant case, however, there is the evidence of PW.2 to the effect that the appellant narrated to him how the entire incident  
 F happened. According to the appellant, Anthony Nwachukwu pounced on the deceased in the latter's room whilst the late Christopher Ndulaka and the appellant "helped" Anthony Nwachukwu to strangle and kill the late Benjamin Iheama. In the very early hours of the following morning, all three of them under the cover of darkness  
 G carried the dead body of the deceased from his room into the booth of the deceased's 505 saloon car and later buried him in a shallow grave in the bush along the Uratta Express Road, Owerri. These admissions and/or confessions on the part of the appellant to PW. 2 were closely considered and accepted by the trial court and affirmed  
 H by the court below as fully established. Also on the evidence accepted by the trial court and affirmed by the Court of Appeal, it was the appellant who took PW. 2, PW. 3 and the pathologist, Dr. H. O. Ihezue who performed autopsy on the body of the late Benjamin to the exact spot in the bush where the deceased was buried by them.

***On the copious evidence of the death of the deceased before the court, therefore, it cannot be disputed that both courts below were right in holding that the cause of death of the deceased by manual strangulation was established beyond reasonable doubt by the prosecution.***

Attention must be drawn at this stage to Section 7(c) of the Criminal Code which provides that where an offence is committed every person who “aids” another person in committing the offence is deemed to have taken part in the commission of the offence and to be guilty of the offence and may be charged with actually committing it. Although on the evidence, Anthony Nwachukwu, now at large, was said to be the kingpin and architect of the murder of the deceased, the late Christopher Ndulaka and the appellant were directly implicated with the actual manual strangulation of the deceased to death. In confessing to this murder, the appellant, in his words, together with the late Christopher, “aided” the said Anthony Nwachukwu in the brutal and senseless strangulation of the deceased to death. To bring a person within Section 7(c) of the Criminal Code, there must be clear evidence that either prior to, or at the time of the commission of the criminal act, that person did something to assist and help or facilitate the commission of the offence.

On the concurrent findings of fact of both courts below in the present case, the appellant, along with the deceased Christopher Ndulaka, positively aided and helped the said Anthony Nwachukwu at the time of the commission of the offence with the murder of the deceased by manual strangulation. All three, after the murder, carried the dead body of the deceased from his bed room into the booth of his car. All three subsequently drove to a bush along Uratta Express Road, Owerri, where they jointly buried him in a shallow grave. ***There can be no doubt that all the three named persons, on the evidence were all jointly concerned and therefore criminis participes in the murder of the deceased.*** See *Ofuonye Enweonye and others v. The Queen* (1955) 13 W.A.C.A.

Learned counsel for the appellant, however, submitted that there was nothing in the confessions of the appellant which corroborated the evidence of P.W.2 and P.W.3 in any material particulars. I have earlier on in this judgment set out the appellant’s narrative to P.W. 2 as to how the deceased was murdered by Anthony, the late

Christopher and himself and it is unnecessary to recount them all over again. I need to mention, however, that one or two areas of that narrative to P.W.2 in which the appellant confessed his personal participation in the murder were retracted by him in his subsequent written statement to P.W.3, Exhibit C. In that statement, the appellant  
 B in a desperate bid to exonerate himself from this crime stated thus:

*“On 20/1/85 at about 0700 hrs my brother Anthony Nwachukwu came to my house at Umuchoke Orji and told me to come and help him to kill Benjamin. I told him that I can not do such  
 C a thing. He rebuked me and said that I should follow him. I refused, later I followed him to his house at No. 454 Ikenegbu Layout, Owerri. When I got to my brother’s house, I saw Christopher Ndulaka and the deceased Benjamin in my brother’s house. Before this time my brother had informed Christopher Ndulaka about the killing of Ben-  
 D jamin and he Christopher agreed with my brother, but I refused to agree because he was my brother.*

*At about 0730 hrs as we were all together in my brother’s bed room at last floor of the house, my brother Anthony Nwachukwu and Christopher Ndulaka held Benjamin and started to strangulate  
 E him. When I saw this I ran away. Only my brother lives in that flat. I ran down stairs and was staying there because I do not want to be there. After about 30 minutes I went back to my brother’s room and saw that Benjamin is dead. My brother Anthony and Christopher  
 F were all there. I did not see any injury on the body of the deceased. After this incident all of us went to our homes.*

*At about 2100 hrs of 20/1/85 my brother Anthony came and collected Christopher Ndulaka and myself to his house. In my brother’s house, he told Christopher and myself to help him bring down the  
 G body of Benjamin from the second floor. Three of us brought the body down. We put the dead body into the booth of car No. IM 315 WB belonging to the deceased Benjamin. Later my brother drove the car and three of us went along Uratta Express Road Owerri where they buried him in a shallow pit. It was Christopher Ndulaka who  
 H brought the two shovels they used in digging sand with which they covered the grave. After the burial my brother dropped me in my house at Orji, he dropped Christopher at Umuahu Orji before me, and finally went away with the car.”*

**I think it ought to be mentioned that a free and voluntary**

**confession of guilt by a prisoner, whether judicial or extra-judicial, if it is direct and positive and is duly made and satisfactorily proved, is sufficient to warrant a conviction without any corroborative evidence. So long as the court is satisfied with the truth of a confession which is free and voluntary and in itself fully probable, such confession alone is sufficient to support conviction without corroboration.** See R. v. Sykes (1913) 8 Cr. Ap. Rep. 233; Philip Kanu and Anor v. The King (1952) 14 W.A.C.A. 30, R. v. Ajayi Omokaro (1941) 7 W.A.C.A. 146 etc.

**Accordingly, a confessional statement which is direct and positive and properly proved is enough to sustain a conviction but the court should not, however, act on the confession without first testing the truth thereof.** See Jafiya Kopa v. The State (1971) 1 All N.L.R. 150. **I should also state that an extra-judicial confession, though made orally, as in the present case, would carry no less weight than the one that is made in writing.** See Olusegun Otufale and others v. The State (1968) N.M.L.R. 261; Uche and Another v. R. (1964) 1 All N.L.R. 195. **The fact that the accused did subsequently retract his confession does not mean that the court cannot act on it and convict him accordingly as the circumstances of the case justify it.** See Nkwuda Edemine v. The State (1996) 3 N.W.L.R. 530; Dapere Gira v. The State (1996) 4 N.W.L.R. 375 at 388. **It is, however, desirable particularly if the confession is subsequently retracted that there should be some corroboration, no matter how slight, but a conviction will not be quashed merely because it is based entirely upon the evidence of a confession by the appellant.** See R. v. Ajayi Omokaro (supra). In the present case, the learned trial Judge enquired most carefully into all the circumstances surrounding how the confessions were made by the appellant. He also meticulously tested the truth of the confession and was satisfied with their genuineness and veracity. He was in no doubt that PW2 was a witness of truth and that the appellant with the late Christopher Ndulaka not only helped the run-away Anthony Nwachukwu to kill the deceased by manual strangulation but that all three of them thereafter carried the dead body of the deceased into the booth of the deceased's car and finally drove to a bush along the Uratta Express Road, Owerri where they buried him in a shallow grave. The Judge

was further satisfied that the appellant physically took part in this brutal murder of the deceased by strangulation and that it was the appellant who showed the Police the shallow grave they buried the late Benjamin Iheama. All the above findings were affirmed by the court below and I can find no reason to interfere with them. Issue 2  
B is accordingly resolved against the appellant.

The conclusion I therefore reach is that this appeal is devoid of merit and it must be and is hereby dismissed. The conviction and sentence passed on the appellant by the trial court as affirmed by the  
C court below are hereby further confirmed.

### ***BELGORE JSC***

I read the draft judgment of my learned brother, Iguh, JSC  
D well in advance and I agree with him that this appeal is devoid of merit. For the reasons contained on the said judgment which I adopt also as mine, I dismiss this appeal.

### ***UWAIFO JSC***

I have had the opportunity of reading in advance the judgment of my learned brother Iguh, JSC. The facts of the case have been adequately stated and the reasons for the conclusions reached  
F have been clearly, articulated. I am left in no doubt from the facts and circumstances of the case that the conviction and sentence of the appellant were inevitable. I therefore respectfully adopt the judgment of my learned brother Iguh JSC as mine. I too dismiss the appeal and confirm the conviction and sentence of the appellant.

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### ***EJIWUNMI JSC***

I was privileged to have read before now the judgment just delivered by my learned brother Iguh, JSC. In that judgment, my  
H learned brother copiously reviewed the facts of the case and considered the issues raised thereon very carefully before holding that the appeal lacks merit and therefore dismissed it. As I agree entirely with his reasoning and conclusion in the said judgment, it is also my view that the appeal lacks merit. The appeal is therefore dismissed by me.

The conviction and sentence passed on the appellant by the trial court as affirmed by the Court below are also affirmed by me.

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**AYOOLA JSC**

I have read in draft the judgment just delivered by my learned brother Iguh, JSC. I agree that this appeal is devoid of merit and that it must be dismissed. I too dismiss it accordingly.

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