

SUPREME COURT OF NIGERIA
FRIDAY 5TH APRIL, 2002. SC. 335/2001
CORAM:- A. I. KATSINA-ALU, U. A. KALGO,
S. O. UWAIFO, A. O. EJIWUNMI,
E. O. AYOOLA, JJSC

ALHAJI PRINCE FAROUNBI

KAREEM

..... APPELLANT

V.

THE FEDERAL REPUBLIC OF

NIGERIA

..... RESPONDENT

CRIMINAL PROCEDURE - Confession - Retraction - Although appellant resiled from his statement - The same remained voluntary - As the trial Judge applied right principle regarding conviction on such confession (H1)

CRIMINAL PROCEDURE - Conviction - Confession - Accused will not be convicted upon inadmissible statement - Unless prosecution shows that same was voluntarily obtained (H2)

CRIMINAL PROCEDURE - Charge - Other offence - Conviction - By Special Tribunal Act s. 10(5) - Person charged for an offence under the Act - Can be convicted for any other offence disclosed by evidence at trial (H3)

FACTS

Following the arrest at the Murtala Mohammed Airport Lagos of one Korede Lawal for being in possession of hard drugs (Indian hemp/heroin), he made confessional statements to the officials of the National Drug Law Enforcement Agency (NDLEA). Information he supplied led to a further investigation which led to the arrest of appellant. The officials of the agency had stormed the house of appellant where a search was conducted leading to the discovery of incriminating items such as the traveling documents of the said Korede Lawal, dried leaves, etc. Appellant was subsequently arraigned on a two count charge of illegal dealings with various kilograms of Indian hemp/heroin punishable under section 10(c) of the NDLEA Decree

2764 Kareem v. FRN (2002) 7 KLR (pt. 146) 2763; (2002) 8 NWLR
No. 48 of 1989.

At the trial, the traveling documents of Korede Lawal was tendered and admitted in evidence as exhibits 29 – 33. In all, respondent tendered 52 exhibits including two written statements of appellant. Appellant testified in person and called one witness. He denied that he made the statements to the officials of the agency and even denied having prior knowledge of his witness until the later visited his (appellant's) tenant. In his judgment, the learned trial Judge found that respondent did not prove the offence in count one against appellant, save for dealing in 400 kilograms of heroine. Appellant was however found guilty in count two. He was therefore convicted and sentenced to six years imprisonment. Being dissatisfied, appellant filed appeal at the Court of Appeal. The court examined whether the learned trial Judge applied the principles obtainable for convicting an accused upon retracted confessional statements. The appeal was dismissed. Aggrieved further, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

“Whether the Court of Appeal was right in holding that exhibit 52 was properly evaluated as a confessional statement by the learned trial Judge notwithstanding its retraction at the trial by the appellant.

Whether the learned trial Judge was right in law in convicting the appellant under section 10(c) NDLEA Decree No.20 of 1994 amended by Decree No. 22 of 1996 even when the said legislation was inconsistent with section 33 of the 1979 constitution and thereby denied the appellant the right to fair hearing as upheld by the Court of Appeal”.

HELD (Unanimously dismissing the appeal per

EJIWUNMI JSC)

CRIMINAL PROCEDURE - Confession - Retraction

1. Upon that premise the court below held, rightly that, the retraction of exhibit 52 does not amount to retraction in law. However, having retracted from his confession, the court below then considered whether the trial court followed the prin-

ciples that should govern the use of such a confession to convict the maker of the statement. The court below after a careful review of the extant cases germane to this principle then upheld the trial court as that court considered the principles relevant to the conviction of an accused upon his confessional statement.

I would therefore hold that the court below was right to have upheld the Tribunal's treatment of exhibit 52 as the confessional statement of the appellant. It is also right to uphold the court below that though the appellant resiled from that statement, his statement remained voluntary and his conviction upon that statement depended very much upon whether there is anything outside it to show it was true. Is it corroborated? Are the statements made in it of fact so far as they can be tested true? Was the prisoner a man who had the opportunity of committing the offence? Is his confession possible? Is it consistent with other facts which have been ascertained and have been proved?

Having regard to all I have said above, I am of the view that the court below rightly affirmed the conviction of the appellant. Having reached the above conclusion in respect of issue II, it is my view that his conviction was established beyond all reasonable doubt in all the circumstances.

(pp. 2776 H/2777 E/2779 E)

Conviction - Confession

2. In affirming the court below, it is pertinent to observe that it has long been established by several decisions of this court that an accused will not be convicted upon a statement that is not admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority. From what I have read in the printed record, there is no evidence that exhibit 52 was made by the appellant from duress, fear or prejudice or hope of any advantage exercised or held out by a person in authority. (p. 2777 C)

Charge - Other offence - Conviction

3. The respondent called in aid the provisions of section 10(5) of Special Tribunal (Miscellaneous Offences) Act, Cap. 410, Laws of the Federation, 1990 (Amended by Decree 22 of 1996) which reads:-

B ***“Where a person is charged with an offence under this act, but the evidence establishes the commission of another offence under this act, the offender shall not be entitled to acquittal but he may be convicted of that offence and punished as provided under the act.”***

C ***I think that the wording of the above quoted section of the Special Tribunal (Miscellaneous Offences) Act clearly allows a person charged for a particular offence under the act to be convicted for any other offence disclosed by the evidence during the trial. This statutory provision, I must observe***
D ***has only put into statutory form what had been the practice in the courts to convict upon offences disclosed by the evidence before the court other than the offence for which the accused was charged. In such a situation, the accused person is usu-***
E ***ally not called upon to plead afresh to the charge, provided the offence for which he was to be convicted arose directly from the facts disclosed in the evidence led in the main charge and sufficiently connected with the original charge for which the appellant was charged. In such a situation the denial of***
F ***fair hearing cannot be canvassed successfully, as the appellant is taken to have pleaded to the charge prior to his trial. It is therefore my view that there is no merit in this issue and indeed, the entire appeal must be dismissed accordingly.***

G (p. 2780 A)

NOTABLE POINT OF INTEREST

EJIWUNMI JSC

H ***Evidence Act s. 29(1) – Prosecution can act on information received from an accused***

1. Though the point was not taken, it is apposite to state that it was proper for the N.D.L.E.A. officials to act upon the information given to them by Korede Lawal in his statement. Sec 29(1) of the Evidence

act surely permits the step taken by the N.D.L.E.A. officials to act upon the statement of Korede Lawal.

The said provisions of sec. 29(1) of the evidence act reads thus:-

“Where information is received from a person who is accused of an offence, whether such person is in custody or not, and as a consequence of such information any fact is discovered, the discovery of that fact, together with evidence that such discovery was made in consequence of the information received from the accused, may be given in evidence where such information itself would not be admissible in evidence.” (p. 2778 D) B
C

REPRESENTATION

Chief A. A. Aribisala (with Abdulmumini Hanafi, Esq.), for Appellant F. A. Oloruntoba, Esq., Director of Public prosecutions, N.D.L.E.A. D (with B. Jedyagba [Mrs.], Principal Law Officer, N.D.L.E.A. and B. Viashimah [Mrs.], Principal Law Officer NDLEA), for Respondent

CASES REFERRED TO

Nwanghomu v. State (1994) 2 NWLR (pt. 327) 380 E

Ogoola v. State (1991) 2 NWLR (pt. 175) 509

Edamine v. State (1996) 3 NWLR (pt. 438) 530

Akpan v. State (1990) 7 NWLR (pt. 160) 101

Onwumere v. State (1991) 4 NWLR (pt. 186) 428 F

R. v. Walter Sykes (1913) 8 Cr. App R. 233

R. v. Kanu (1952) 14 WACA 30

R. v. Ndo (1953) 14 WACA 352

Erekanure v. State (1993) 5 NWLR (pt. 294) 385 G

STATUTES REFERRED TO

NDLEA Decree No. 48 of 1989, s. 10(c)

Constitution of Federal Republic of Nigeria 1979, s. 33

Evidence Act, ss. 27(1), 29(1)

Special Tribunal (Miscellaneous Offences) Act, Cap. 410, LFN 1990 H (Amended by Decree 22 of 1996), s. 10(5)

LEAD JUDGMENT BY EJIWUNMI JSC

In this appeal, issue with regard to the procedure for pros-

ecution of accused persons, who in the course of the trial changed their plea by withdrawing pleas of not guilty and substituting thereof, the plea of guilty, would be considered. Also, whether the prosecution ought to have called such persons, who were co-accused, to give evidence in support of the case for the prosecution against the remaining accused person. And also whether an accused person may be convicted upon his confessional statement made during the investigation of the case.

I shall now state briefly the facts that gave rise to this appeal. The appellant in the instant appeal was primarily charged with three other accused persons, namely, Oluwole Korede Lawal, Alhaji Mufutau Idris Atanda and Tunde Sosanya before the Miscellaneous Offences Tribunal sitting in Lagos on the 9th day of December, 1994. They were variously charged with dealing and selling heroin and for being in possession of Indian hemp, otherwise known as cannabis sativa, without lawful authority and thereby committed offences punishable under section 10(c) of the National Drug Law Enforcement Agency Decree No. 48 of 1989.

However, during the trial, the accused, Oluwole Korede Lawal, sought the leave of the Tribunal to change his plea to that of guilty. Whereupon, on the 19th September, 1995, the charge against him was read to him and after the explanation, he pleaded guilty to the charge. The summary of the facts that gave rise to the charge was read to his hearing before the Tribunal. Thereafter, the learned presiding Judge of the Tribunal sentenced him, as he thought fit. And as the trial of the other accused progressed further, the 3rd and 4th accused, namely, Alhaji Mufutau Idris Atanda and Tunde Sosanya sought the leave of the Tribunal to change their plea. Having granted the leave, the Judge of the Tribunal then caused the charge as relevant to be read to them, to which they pleaded guilty. Thereafter they were sentenced after the summary of the facts as relevant to the said charge were read to the Tribunal as deemed appropriate by the Judge of the Tribunal on the 12th of January 1998.

The prosecution then continued with the trial of the appellant alone upon the following charge, and which reads:

“Count One: -

‘That You Alhaji Prince Farounbi Kareem (m), Alhaji Mufutau Idris Atanda (m) and Tunde Sosanya (m) on or about the 22nd day

of March, 1994, at No.1 Amoo Farounbi Drive, Isolo, Lagos dealt in 467 grammes of heroin by selling same to one Oluwole Korede Lawal and thereby committed an offence punishable under section 10(c) of the National Drug Law Enforcement Agency Decree No. 48 of 1989".

Count Two:-

'That you Alhaji Prince Farounbi Kareem (m) on or about the 23rd day of March, 1994, at No.1 Amoo Farounbi Drive Isolo, Lagos dealt in 2.5 kilogrammes of Indian hemp otherwise known as cannabis sativa drug similar to cocaine, LSD or heroin without lawful authority and thereby committed an offence punishable under section 10(c) of the National Drug Law Enforcement Agency Decree No. 48 of 1989"

Evidence in support of the case for the prosecution was given by six witnesses. Also tendered and admitted were 52 exhibits, which consisted of various documents and other objects to show what formed the basis of the case for the prosecution.

The appellant also gave evidence and called a witness. The case for the prosecution from the evidence given by P.W.4, Yinka Fatoba had as its starting point, the Murtala Mohammed International Airport Ikeja., Lagos on the 22nd day of March, 1994. On that day, P.W.4 was on duty at the airport, in the course of his duties as a civil servant and staff of the National Drug Law Enforcement Agency, which I would henceforth refer to simply as N.D.L.E.A. It was while there that he noticed Korede Lawal during the outward clearance of Air Afrique flight no. RK126 from Lagos to the United States of America. While the passengers were boarding the flight, Korede Lawal also joined them to board the flight. It was at this stage that P.W.4 demanded the travelling documents of Korede Lawal as P.W.4 suspected that he might be carrying hard drugs. Korede Lawal duly handed over his traveling documents to P.W.4.

Thereafter, P.W.4 took him to the office of the N.D.L.E.A. for x-ray examination. In their office as Korede Lawal confessed that he had swallowed hard drugs, P.W.4 then handed him over to two of their officers. P.W.4 further testified that after a body search was conducted on Korede Lawal, 13 wrappings of substance suspected to be hard drugs were found in his canvass shoes. All these suspected drugs with the canvass shoes were variously packed in special pouches by

the officials of the N.D.L.E.A. who took part in the operation. Korede Lawal thereafter signed as the owner of the pouches in the form for that purpose. The other officers of the N.D.L.E.A. who took part in the operation also signed, forms requesting for scientific analysis were also signed by Korede Lawal after the pouches containing the suspected hard drugs were before then packed in the presence of Korede Lawal, and these included his canvass shoes. The traveling documents obtained from Korede Lawal were also kept in the custody of the N.D.L.E.A. and were later tendered and admitted as exhibits during the trial.

All the pouches which contained the suspected hard drugs were parked separately and taken by officials of the N.D.L.E.A. to the forensic laboratory at Oshodi on the following dates; 29th March 1994; 20th April 1994 with the forms duly filled and signed with which requests were made to the forensic analysts to determine the kind and nature of the suspected hard drug which included those found with Korede Lawal and others discovered in the course of their investigation by N.D.L.E.A. officials. The forensic analyst who received the various parcels containing the suspected hard drug was Miss Gloria Bassey. She gave evidence at the trial and told the court that she duly examined the various parcels of hard drugs forwarded to her. After she had finished with their examination, she prepared reports on them and she thereafter re-parceled the various drug and forwarded them with her report to the N.D.L.E.A. In the course of her evidence, she tendered and it was admitted in evidence, the report and scientific aid form which accompanied the exhibit to the laboratory as exhibits (1) and (2). Also tendered and admitted in evidence as exhibit 3 is the parcel, the contents of which she had earlier analysed to be cannabis sativa, popularly known as Indian hemp.

The scientific analyst, next gave evidence about the five sets of exhibits which were forwarded to the forensic laboratory on the 20th of April, 1994, but which were handed over to her on the 29th of April, 1994 for analysis. For this purpose she identified to the court the endorsed form for scientific analysis. She then stated that as a result of her analysis of them she came to the conclusion that the exhibits contained heroin. After she had formed that view, she re-parceled the exhibits, sealed them and wrote her report accordingly.

She then forwarded the report and the exhibits to the N.D.L.E.A. The report was admitted as exhibit 5, while the request for scientific aid forms which accompanied the exhibits to forensic science laboratory were admitted as exhibits “6-11”. The large brown envelope in five transparent pouches was admitted as exhibit 11. The five transparent pouches themselves were admitted without objection as exhibits 12-16. B

Now, earlier in this judgment, I have said that the 1st, 3rd and 4th accused who were charged with the appellant at the Tribunal changed their plea of “not guilty” to that of “guilty” at different stages of their trial at the Tribunal that tried them for the possession of and dealing with hard drugs, namely, cannabis sativa and heroin. C

The first accused whose name is Korede Lawal, is the person that I have referred to in the narrative given above. It is evident that following his arrest, he made statements to the officials of the N.D.L.E.A. who interrogated him. As a result of the information he gave, the officials of the N.D.L.E.A. carried out further investigation, which led to the arrest of the appellant. It would appear from the information given to the N.D.L.E.A. officials by Korede Lawal that when Mufutau Atanda was arrested, it was him who apparently took Korede Lawal to the Murtala Mohammed Airport, Ikeja, when he was arrested enroute to the United States of America, via New York. Also following the information given to the N.D.L.E.A. officials they proceeded to a duplex house, which apparently belonged to the appellant. The duplex house had attached to it another room allegedly occupied by a tenant. That tenant was not found in the premises. During the search in the house of the appellant by the N.D.L.E.A. officials, they found some suite cases, an iron clamp, dried leaves in a carton, some photocopies of Korede Lawal’s traveling documents, the car of the appellant, seven passports, four cheque booklets, nine pass books, a cigarette lighter and some pairs of scissors were also taken away from the appellant’s house. And in the room allegedly occupied by the tenant of the appellant, named Johnny Nwankwo, dried leaves were found in the kitchen of the room. The search document, the travelling documents of Korede Lawal were admitted as exhibits 29-33. Also admitted in evidence were the passports, exhibits “34-36” the four cheque booklets “37-41” and the six suite cases “42-47”. The statements made by appellant were also D E F G H

admitted as exhibits “49 and 52” respectively.

The appellant in his defence to the charges against him gave evidence on his own behalf and called a witness. This witness was Alhaji Mufutau Idris Atanda. This witness testified to the effect that he knew Johnny Nwankwo and he was living as a tenant in the house of the appellant. But added that the said Johnny Nwankwo had since March 1994 left the house and his whereabouts became unknown since then. He then claimed that he knew Korede Lawal through his friend Johnny Nwankwo. He further testified that it was himself and Johnny Nwankwo who sold the 467 kilogrammes of cocaine to Korede Lawal. And he added that he had been convicted for that transaction. He then claimed that the appellant had nothing to do with the offence for which he was charged. The appellant in his own evidence denied the charges for which he was put on trial. He also denied that he made the statements that the N.D.L.E.A. officials claimed he made during the investigation of the case. He further claimed that he never knew his witness, Alhaji Mufutau Idris Atanda until he started visiting his tenant, Johnny Nwankwo in his house. With the conclusion of the evidence led by the prosecution and by the appellant, the learned counsel who appeared addressed the Tribunal. The learned Judge of the Tribunal after a careful review of the evidence and the submission made to him by counsel concluded his Judgment as follows:

“I therefore, find as fact that though the prosecution had proved the charge against the accused person as per count one of the charge, I find as a fact that the accused person dealt in 400 grammes of heroine by receiving the sum of N190,000.00 with which money he bought the said 400 grammes of heroin which he gave to Korede Lawal to carry to America, is an offence punishable under (sic) s.10(c) of NDLEA Decree No.48 of 1989 and convicted accordingly. The prosecution did not prove the charge against the accused person as per count two of the charge. He is therefore discharged and acquitted accordingly”.

On the 1st count for which the appellant was convicted, he was sentenced to a term of six years imprisonment from the date he was first arrested. As the appellant was dissatisfied with the judgment and the order of custodial sentence passed on him by the Tribunal, he appealed to the court below. As he lost his appeal to that court, he has now appealed further to this court. Pursuant thereto, four grounds

of appeal were filed against the judgment of the court below. Without their particulars, they read thus: -

“Ground One

The Honourable Court of Appeal erred in law and on the facts when it upheld the conviction and sentence of the appellant by the trial court of dealing in 400kg of heroin even though the prosecution failed woefully to prove the charge preferred against the appellant and thereby occasioned a miscarriage of justice. B

Ground Two

The learned Justices of the Court of Appeal erred in law and on the facts in holding that the accused had confessed to dealing in the hard drugs by buying some and giving same to Korede Lawal to carry to the United States of America in view of exhibit 52 tendered by the prosecution and thereby occasioned a miscarriage of justice. C

Ground Three

The Honourable Court of Appeal erred in law when it upheld the decision of the learned trial Judge that though the prosecution had not proved the charge against the accused person as per count one of the charge, the accused person dealt in 400kg of heroin by receiving the sum of N190,000 with which he bought the 400kg of heroin which he gave to Korede Lawal to carry to America and thereby occasioned a miscarriage of justice. D E

Ground Four

The Honourable Court of Appeal erred in law when it upheld the conviction of the appellant by the trial court for dealing in 400kg of heroin an offence for which the appellant was not specifically charged with and thereby violated section 36 of the 1999 constitution which error has occasioned a miscarriage of justice”. F

In accordance with the rules of this court, briefs were filed G and exchanged. In the appellant’s brief which was filed for him by his learned counsel, Mr. A. Aribisala, the following issues were identified for determination:-

“Issue I

Whether the learned Justices of the Court of Appeal were right in law in holding that the appellant dealt in 400 grammes of heroin even though the prosecution had failed to discharge the onus placed upon it to prove the guilt of the appellant beyond reasonable doubt. H

Issue II

Whether the Court of Appeal was right in holding that exhibit 52 was properly evaluated as a confessional statement by the learned trial Judge notwithstanding its retraction at the trial by the appellant.

B *Issue III*

Whether the learned trial Judge was right in law in convicting the appellant under section 10(c) NDLEA Decree No.20 of 1994 amended by Decree No. 22 of 1996 even when the said legislation was inconsistent with section 33 of the 1979 constitution and thereby denied the appellant the right to fair hearing as upheld by the Court of Appeal”.

As already noted above, three issues were identified by the appellant for the determination of this appeal. As the respondent D also agreed with the issues set out above for the appellant, they adopted them as their own and argued their appeal based on those issues. By the 1st and 3rd issues the appellant is contending that the court below was wrong to have affirmed his conviction for dealing in 400 grammes of cocaine LSD when he was not charged for that offence. And with regard to the second issue, the question raised is whether exhibit 52 was properly evaluated as the confessional statement of the appellant.

The second issue will however be first considered as the view F formed of that question would determine the validity of the contention made in respect of the first issue. On this second issue, the contention made for the appellant is that the court below was wrong to have affirmed the decision of the Tribunal as that court did not evaluate the whole evidence adduced in the course of the proceeding G while considering the evidence which were accepted as corroborative of the appellant’s confessional statement which resulted from under re-examination. It was further argued for the appellant that the court below also fell into error when it failed to hold that all pieces of evidence considered corroborative of the confessional statements H were wrongly so adjudged by the Tribunal. In support of that submission, the following cases were referred to namely Nwanghomu v. State (1994) 2 NWLR (Pt. 327) 380 at 397; Ogoola v. State (1991) 2 NWLR (Pt. 175) 509 at 531.

Replying, the first contention made by the respondent in

respondent's brief is that the confessional statement was made voluntarily by the appellant and which was tendered through him under cross-examination. Secondly, at the time it was tendered and admitted in evidence as exhibit 52, no objection of any kind was raised against its admission. It was only under re-examination by his learned counsel that he claimed that he did not make the statement. B That renunciation of the statement at that stage, argued Femi Oloruntoba the learned counsel for the respondent cannot in the circumstances affect the admission of the statement, exhibit 52, as part of the evidence led at the trial. And for that submission, reference was made to *Edamine v. The State* (1996) 3 NWLR (Pt. 438) 530 at 541; *Onwumere v. The State* (1991) 4 NWLR (Pt. 186) 428; (1991) LRCN 984 at 987, (1991) 1 NSC 606. C

Learned counsel for the respondent therefore further argued that the learned trial Judge of the Tribunal properly convicted the D appellant upon his confessional statement exhibit 52 in respect of count (1) of the charge after he had duly considered the evidence outside it, and which corroborated the facts disclosed in the said statement. The court below was also right to have affirmed the conviction of the appellant by the Tribunal. In support of that submission, he E made reference to the case of *Akpan v. The State* (1990) 7 NWLR (Pt. 160) 101.

In the instant appeal, the first question that ought to be considered is whether exhibit 52 was properly admitted by the trial court as a confessional statement. For that question to be answered, it is F desirable to refer to the pieces of evidence given at the trial as reviewed by the learned Judge of the Tribunal. At page 88 of the record, the Tribunal, said inter alia, thus:

"It is to be observed at this juncture that after this witness had G finished testifying, the prosecutor applied to have PW6, recalled so as to tender another statement of the accused person. After overruling an objection by the defence counsel, the witness was re-called and through him the statement was admitted in evidence and marked as H exhibit 51 without any objection by the defence counsel. PW6 also identified another statement the caution which was admitted by Aliyu Mohammed Yusuf and same was admitted in evidence as 'ID.F' without any objection by the defence counsel"

Though the statement, 'ID.F' was referred to as an exhibit, it

was not until later in the proceedings that it was properly admitted as exhibit 52 during the cross-examination of the appellant who gave evidence as D.W.2. The questions and answers that led to its admission were correctly recorded in the judgment of the Tribunal, at page 91 of the printed record, thus:

B “D.W.2 said in answer to another question that he made another statement after they had come back from the search in his house. It was after his arrest that he came to know Sadiq but he could not remember whether it was him who witnessed the statement. He also testified to the effect that if the two statements he made were shown to him, he could identify them by reading the contents and by the date they were made. And that he also signed the statements and that he can identify them (statements) by his signature. He identified exhibit ‘51’ and IDF, and on application which C was not objected by the defence counsel. IDF was admitted in evidence and marked as exhibit ‘52’.” D

Although, under re-examination, the appellant denied making exhibit 52, the learned Judge of the Tribunal later in the course of his judgment then considered whether exhibit 52 can be regarded as E confessional statement. For that purpose, after adverting to the provisions of section 27(1) of the Evidence Act, the learned Judge of the Tribunal then held exhibit 52 to be the confessional statement of the appellant.

F Now, before the court below, the thrust of the complaint of the appellant was whether exhibit 52 was properly evaluated as a confessional statement by the learned trial Judge in view of its retraction at the trial by the appellant. In their consideration of this question, the learned Justices of the court below examined the question G with regard to whether the learned Judge applied the correct principles before convicting the appellant upon his confessional statement. The court below, then considered such cases as Edamine v. The State (1996) 3 NWLR (Pt. 438) 530 at 541; Onwumere v. The State (1991) 4 NWLR (Pt. 186) 428; (1991) LRCN 984 where at H 999, Akpata JSC, observed that

“if the accused person resiles from his confessional statement it is his function to explain to the court as part of his evidence the reason for the inconsistency.”

Upon that premise the court below held, rightly that,

the retraction of exhibit 52 does not amount to retraction in law. However, having retracted from his confession, the court below then considered whether the trial court followed the principles that should govern the use of such a confession to convict the maker of the statement. The court below after a careful review of the extant cases germane to this principle then upheld the trial court as that court considered the principles relevant to the conviction of an accused upon his confessional statement. Some of the cases to which reference was made are as follows:- Edamine v. The State (1996) 3 NWLR (Pt. 438), at 530; Onwumere v. The State (1991) 4 NWLR (Pt. 186) 428; (1991) LRCN 984 at 987; Akpan v. The State (1990) 7 NWLR (Pt. 160) 101.

In affirming the court below, it is pertinent to observe that it has long been established by several decisions of this court that an accused will not be convicted upon a statement that is not admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority. From what I have read in the printed record, there is no evidence that exhibit 52 was made by the appellant from duress, fear or prejudice or hope of any advantage exercised or held out by a person in authority.

I would therefore hold that the court below was right to have upheld the Tribunal's treatment of exhibit 52 as the confessional statement of the appellant. It is also right to uphold the court below that though the appellant resiled from that statement, his statement remained voluntary and his conviction upon that statement depended very much upon whether there is anything outside it to show it was true. Is it corroborated? Are the statements made in it of fact so far as they can be tested true? Was the prisoner a man who had the opportunity of committing the offence? Is his confession possible? Is it consistent with other facts which have been ascertained and have been proved? See R. v. Walter Sykes (1913) 8 Cr. App R. 233, at 236-237. In R. v. Kanu (1952) 14 WACA 30 adopted the tests approved by Ridley J. in R. v. Sykes (supra). See also R. v.

Ndo (1953) 14 WACA 352; Ebong (1947) 12 WACA 139.

Now, in the instant appeal the court below affirmed the decision of the Tribunal which found these tests established from the evidence of the exhibits discovered in the residence of the appellant. These exhibits came to light through Korede Lawal, the carrier of the drug the subject of the charge, who was arrested as he was boarding the plane to the United States of America. Following his arrest, Korede Lawal confessed immediately that he was carrying heroin and even said that he had swallowed some of them. There is evidence that he vomited some of the drugs in the presence of those who arrested him. In his statement, he gave information about the appellant and others who were involved in the transaction. As a result of this information the officers and men of N.D.L.E.A. who arrested Korede Lawal and took the statement from him, proceeded to the residence of the appellant. It was during the search conducted in his residence that photocopies of traveling documents of Korede Lawal were found. They were admitted in evidence, as Exhibits 29-33.

Though the point was not taken, it is apposite to state that it was proper for the N.D.L.E.A. officials to act upon the information given to them by Korede Lawal in his statement. Sec 29(1) of the Evidence act surely permits the step taken by the N.D.L.E.A. officials to act upon the statement of Korede Lawal.

The said provisions of sec. 29(1) of the evidence act reads thus:-

"Where information is received from a person who is accused of an offence, whether such person is in custody or not, and as a consequence of such information any fact is discovered, the discovery of that fact, together with evidence that such discovery was made in consequence of the information received from the accused, may be given in evidence where such information itself would not be admissible in evidence."

It is pertinent to refer to the confessional statement exhibit 52 which the learned Judge of the Tribunal held was sufficiently corroborated by exhibits 29-33. The relevant portion of exhibit 52 reads thus: -

"...I met (sic) Lawal Korede through Segun who lives in the United States of America. Segun brought Korede to me that I should assist him to buy the drug and give him to carry (sic) to the United

States of America. Segun gave me One hundred and ninety thousand naira to buy the drug. I bought the drug on the 20th day of March, 1994 from Bisi who lives at Ikotun-Egbe, for N190,000.00 for 400 grammes. Alhaji Atanda was called to come and assist me in helping the boy to travel. I told Alhaji Atanda that the boy was going to carry (sic) drug...The boy M.B. Lawal Korede stay (sic) with me for one week, before Alhaji Atanda take (sic) him to his house. Alhaji Atanda came to collect the drug from my house yesterday 21st day of March, 1994. Alhaji help me to buy the ticket Air Afrique for the boy to travel. There was an agreement between me and Atanda that the boy would swallow (sic) the drug and Atanda will bring him to the airport this morning. I saw him before he checked (sic) in. I do not Know Korede's parents. It was Segun that brought him." B C

A careful perusal of that statement shows that the appellant had the opportunity to commit the offence, and did in fact commit it from his own account and the evidence found in his residence namely, the photocopies of the traveling documents of Korede Lawal. This is because the said travel documents, Exhs. 29-33 in my view, afford corroboration for the statements made by the appellant in his confessional statement, Ex 52 that Korede Lawal, who he admitted he did not know before the incident, stayed in his house for a week before he moved over to Atanda where he swallowed some of the drugs which he was to carry to the United States of America. E

Having regard to all I have said above, I am of the view that the court below rightly affirmed the conviction of the appellant. Having reached the above conclusion in respect of issue II, it is my view that his conviction was established beyond all reasonable doubt in all the circumstances. F

However, by issue III, the conviction of the appellant may be vitiated if the submission made in respect of that issue was found to be right. In respect of this issue, the question is whether it was right to have convicted the appellant under section 10(c) of the N.D.L.E.A. Decree No.2 of 1984 amended by Decree No. 22 of 1996 when the said legislation was inconsistent with section 33 of the 1979 constitution. The appellant it was argued for him in the appellant's brief, was thereby denied the right to fair hearing. The kernel of the submission made for the appellant is that the nature and content of the offence for which he was convicted was not disclosed to him. In support of G H

this submission reference was made to Erekanure v. State (1993) 5 NWLR (Pt.294) 385 at 393.

Responding to that argument proffered for the appellant, it is contended for the respondent that the argument advanced for the appellant ought to be rejected.

B *The respondent called in aid the provisions of section 10(5) of Special Tribunal (Miscellaneous Offences) Act, Cap. 410, Laws of the Federation, 1990 (Amended by Decree 22 of 1996) which reads:-*

C *“Where a person is charged with an offence under this act, but the evidence establishes the commission of another offence under this act, the offender shall not be entitled to acquittal but he may be convicted of that offence and punished as provided under the act.”*

D *I think that the wording of the above quoted section of the Special Tribunal (Miscellaneous Offences) Act clearly allows a person charged for a particular offence under the act to be convicted for any other offence disclosed by the evidence during the trial. This statutory provision, I must observe*
E *has only put into statutory form what had been the practice in the courts to convict upon offences disclosed by the evidence before the court other than the offence for which the accused was charged. In such a situation, the accused person is usually not called upon to plead afresh to the charge, provided*
F *the offence for which he was to be convicted arose directly from the facts disclosed in the evidence led in the main charge and sufficiently connected with the original charge for which the appellant was charged. In such a situation the denial of*
G *fair hearing cannot be canvassed successfully, as the appellant is taken to have pleaded to the charge prior to his trial. It is therefore my view that there is no merit in this issue and indeed, the entire appeal must be dismissed accordingly.*

H In the result, the judgment of the court below is therefore upheld. The conviction and sentence of the appellant are affirmed accordingly.

KATSINA-ALU JSC

I have had the opportunity of reading in draft the judgment of my learned brother Ejiwunmi, JSC. I agree with it and for the reasons he has given, I too dismiss the appeal.

B

KALGO JSC

I have had the opportunity of reading in draft the judgment in this appeal just delivered by my learned brother Ejiwunmi JSC. I entirely agree with his treatment of the issues for determination therein and with the reasoning and conclusions he has reached. I am satisfied from the evidence on record that the conviction of the appellant was proper and that his own confessional statement (exhibit 52) upon which the conviction was based was substantially corroborated. I have nothing useful to add. I therefore dismiss the appeal as being without any merit. I affirm the decision of the Court of Appeal confirming the conviction and sentence of the appellant by the trial court.

E

UWAIFO JSC

I have had the opportunity of reading in advance the judgment of my learned brother Ejiwunmi JSC. I agree with him and also accordingly dismiss the appeal.

F

AYOOLA JSC

I have had the privilege of reading in advance the judgment just delivered by my learned brother, Ejiwunmi JSC. I agree with him that this appeal should be dismissed and with the reasons he gives. Accordingly, I too, would dismiss the appeal. Appeal dismissed.

H