

**SUPREME COURT OF NIGERIA**  
18TH APRIL, 2008 SC. 293/2006  
**CORAM:- N. TOBI, G. A. OGUNTADE, I. F. OGBUAGU,**  
**F. F. TABAI, I. T. MUHAMMAD, JJSC**

BASIL AKPA	.....	APPELLANT
V.		
THE STATE	.....	RESPONDENT

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MURDER - Proof of - Circumstantial evidence - Sufficiency of - Accused could - Be convicted of murder - If there is enough circumstantial evidence - That accused killed the deceased - Though there is no eye witness (H1)

CRIMINAL PROCEDURE - Evidence - Proof - Confession of accused - Sufficiency of - Positive and properly proved confession - Of an accused - can sustain his conviction - without more (H2)

EVIDENCE - Contradiction - Effect of - Contradiction in evidence of prosecution - Can only affect conviction - If it relates to a matter - Which must be determined - Before court can arrive at proper verdict (H3)

COURTS - Criminal trials - Prosecution of suspects - The prosecution has unfettered discretion - To decide who it will prosecute - Courts have no jurisdiction - To question the exercise of that discretion (H4)

CRIMINAL PROCEDURE - Corroboration - Necessity of - One witness of truth can result in conviction of an accused - Except in an offence where corroboration is statutorily required - Which is not the case herein (H5)

***FACTS***

The Appellant was arraigned, and tried for culpable homicide contrary to section 221 of the Penal Code. He was alleged to have committed the offence by causing the death of one Mr. Ikechukwu Njoku at Jibia on or about the 3<sup>rd</sup> day of December, 1989. There

was no eyewitness testimony during the trial. However, the established circumstantial evidence is that on or about the fateful day, the deceased visited the Appellant at Jibia and never returned back home, whereupon he was reported missing. In the course of their investigation of the case, the police recovered a human head on a refuse dump in Jibia, which the brother of the deceased identified as the deceased's head. When the police extended their investigation to the premises of the Appellant they found blood stains on the floor of the inner room of the Appellant's shop. The mattress in the room was also soaked with blood. There was also blood stains by the hole of the pit toilet attached to the inner room. Moreover, two human legs were recovered from inside the pit toilet when it was broken open.

Appellant also made a written statement to the police, admitted as Exhibit 3, in which he confessed to commission of the offence, detailing the moment by moment progress of his participation in the crime. Exhibit 3 also mentioned the names of certain people with whom the Appellant perpetrated the crime. These people were neither called in evidence, nor prosecuted with the Appellant during the trial. After the trial, Appellant was found guilty as charged by the trial judge. His appeal to the Court of Appeal was dismissed. Hence he as brought this further appeal to the Supreme Court.

### ***ISSUE FOR DETERMINATION***

*“Whether the guilt of the appellant was proved and established beyond reasonable doubt, having regard to the evidence adduced at the trial court affirmed by the Court of Appeal?”*

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

### ***MURDER - Proof of - Circumstantial evidence***

1. Although no witness saw the appellant killing the deceased, there is enough circumstantial evidence that he killed the deceased.

Both P.W.1 and P.W.2, police officers, said in their evidence-in-chief that parts of the body of the deceased were found in the accommodation of the appellant, the floor of the room; the mattress were soaked with blood. There were blood stains by the hole of the pit toilet, which led the witnesses to recover two human legs. During the course of the investigation, the two witnesses recovered a human body without legs, arms and neck.

The nexus of the criminality of the appellant was given by the identification of the body of the deceased by the brother of the deceased. When the identification is taken along with the body without legs, arms and neck, and in separate places, two legs of the deceased together with the soaked floor and mattress, is very strong circumstantial evidence that the appellant killed the deceased.

There was no eye witness of the killing. There is however enough circumstantial evidence. It is the law that an accused person could be convicted of murder even if the body was not found, if there is enough compelling circumstantial evidence that the accused person killed the deceased. In this appeal, the body of the deceased was recovered, though piece-meal. A court could properly infer from circumstantial evidence that the death of the deceased was caused by the act of the accused without hearing medical evidence.

It is also the law that for circumstantial evidence to support a conviction for murder, it must lead only to one conclusion that the murder was committed by the accused. (pp. 1573 F/1574 D/1579 C)

### ***Confession of accused - Sufficiency of***

2. In law, where an accused person confesses to a crime, in the absence of an eye witness of killing he can be convicted on his confession alone once the confession is positive, direct, and properly proved.

The confession of the appellant to the killing of Ikechukwu is positive and direct. The confession was proved by the tendering of the statement by the prosecution. The statement was admitted as Exhibit 3. How can a person who voluntarily said that he played such a role in the killing of Ikechukwu now foment a defence on the homicide to exculpate himself from criminal responsibility? He brought the iron rod, knowing it that it can kill. He handed it over to Felix to do the killing. That was not all. He took back the iron rod from Felix and did the hitting himself. The body was cut in parts. Appellant gave the reason for dismembering the body. It is because “*the whole body of Ikechukwu could not enter into the toilet.*” After the dismembering, appellant performed the duty of throwing the legs and the hands into the pit latrine. (p. 1575 E/G)

### ***EVIDENCE - Contradiction - Effect of***

3. A contradiction can only help a murder accused if it is material and affects the live issue or issues in the matter. A contradiction can only help a murder accused if it relates to a fact which must be determined before the court can arrive at proper verdict. For contradiction in the evidence of prosecution witnesses to affect conviction, it must raise a doubt as to the guilt of the accused person.

A contradiction which is peripheral to the live issue or issues in the matter will not avail an accused person, such as the discrepancy in the two December dates. I therefore dismiss the issue raised by learned counsel for the appellant. (p. 1577 D)

***Criminal trials - Prosecution of suspects***

4. The prosecution has an unfettered discretion to prosecute persons in court and because the discretion is unfettered, courts of law do not have the power to question it. The only jurisdiction of the court is to try accused persons presented before it for prosecution. A court cannot go outside the prosecution and ask for some other persons to be charged before it.

The mere fact that an accused person specifically mentioned other persons in his statement to the Police, in the chain of criminality or criminal liability does not necessarily mean that the persons are in fact guilty of the offence or must as a matter of law be charged to court. And what is more, I know of no law which says that because other persons who committed an offence are not charged to court, the accused person charged to court must, on that ground, be discharged and acquitted. Criminal liability is personal. It cannot be transferred. This is because the mens rea or actus reus is on the accused in court and cannot be transferred to any other person not charged.

By way of recapitulation, I should say that the prosecution is not under any regimental duty or any duty at all, to charge all possible accused persons. I should perhaps mention here the practice where the prosecution, instead of charging a particular suspect, decides to call him as a witness, to ensure the conviction of a particular accused person or particular accused persons. The issue fails. (p. 1577 H)

***Corroboration - Necessity of***

5. The prosecution has no duty to call a village, community or bar-

rage of witnesses before the court can convict an accused person. In law, one witness of truth can result in the conviction of an accused person unless in an offence where corroboration is statutorily required. Appellant told a pathetic and sorrowful story of the role he played in the killing of Ikechukwu in Exhibit 3 and there was no need to call a large number of witnesses to testify against him. Confession in criminal procedure, like admission in civil procedure, is the strongest evidence of guilt on the part of an accused person. It is stronger than the evidence of an eye witness because the evidence, borrowing the daily axiom, comes out from the mouth of the horse, who is the accused person. What better evidence than that? He knows or knew what he did and he says or said it in court. Is there need for any further proof? I think not. (p. 1578 F)

### **NOTABLE POINTS OF INTEREST**

#### **OGBUAGU JSC**

*1. Trial within trial is only relevant to voluntariness, not authorship of a confession*

Before going into the merits of this appeal, as appears in the stated facts of this case by me earlier in this judgment that when the learned counsel for the appellant objected to the tendering of what has been described by him in the appellant's Brief, as "*purported confessional statement of the appellant*", on the ground that the signature thereon, was not that of the appellant and that the appellant was seeing the document for the first time i.e. that he never made the statement, in my respectful view, a trial within trial, should not have been conducted. This is because, trial within the trial, is ordered and conducted, where the voluntariness of the making of the statement by an accused person, is in issue or raised by an accused person. In other words, where an accused person admits making the statement, but contends or asserts that he did not make it voluntarily but under duress or some other alleged influence, then a trial within trial, is conducted in order to determine whether the statement was voluntary or made by duress or otherwise. When the trial Judge, is satisfied that the statement was voluntary, he then admits it as an exhibit in the evidence before the court.

But where as in the instant case, the making of the said state-

ment is denied, the trial court is expected and this is settled, to admit it in evidence as an exhibit and in its judgment, it decides, whether or not such denial, avails the accused person. (p. 1582 A)

**2. Issue of authorship of a confession affects only weight, not admissibility of it**

In the case of Olusegun Otufale & Ors. (1968) NMLR 261 at 265-268, Breth, Ag. CJF., summed up the principle in the case of R. v. John Agagariga Itule (1961) 1 ANLR 402 at 465, thus:

*“A confession does not become inadmissible merely because an accused person denies having made it and in this respect a confession contained in a statement made to the police by a person under arrest, is not to be treated differently from any other confession”.* [The underlining mine]

In short, the denial of an accused person of making a statement to the police, it is settled, is an issue of fact to be decided in the judgment as the issue does not affect, admissibility of the statement.

Also to be stressed and this is also settled, that a confession, is an admission made by a person - See Section 27(1) of the Evidence Act. The duty of the court, is to consider the circumstances under which it was given and to decide what weight is to be attached to it. (pp. 1582 G/1583 E)

**REPRESENTATION**

N. Ekanem, (with him; Godwin Udoudiah), for Appellant.  
Abdullahi Garba Faskari, Hon. Attorney-General, Katsina State, (with him; Hassan Yusuf, Principal State Counsel and Abu Umeh, State Counsel Ministry of Justice, Katsina State), for Respondent.  
Evidence Act, Ss. 27(1), 42, 138(3), 139, 141 and 143 Penal Code S. 221.

**CASES REFERRED TO**

Ikemson v. State (1989) 6 S.C. (Pt. 1) 114  
Awopejo v. State (2001) 12 S.C. (Pt. I) 168  
Anyanwu v. State (1986) 5 NWLR (Pt. 43) 612 at 624  
Kasa v. State (1994) 5 NWLR (Pt.344) 69 at 285  
Onubogu v. State (1974) S.C. 1, (1974) 9 S.C

Oladimiji v. State (1998) 1 NWLR (Pt. 573) 156  
 Nasiru v. State (1999) 1 S.C. 1; (1999) 2 NWLR (Pt. 87) 102  
 Bakare v. State (1987) 1 NWLR (Pt. 52) 578  
 Ikemson v. State (1989) 3 NWLR (Pt.110) 455  
 Ogoala v. State (1989) 6 S.C. (Pt.I) 114  
 Ogbu v. State (2007) 2 S.C. 273; (2007) 5 NWLR (Pt.1028) 635 B  
 Ali v. State (1988) 1 NWLR (Pt. 68) 1  
 Ogbodu v. State (1987) 2 NWLR (Pt. 54) 20  
 Udo v. State (2006) 7 S.C. (Pt. II) 83; (2006) 15 NWLR (Pt. 1001) 179  
 Effiong v. State (1998) 8 NWLR (Pt.562) 370 C

### **STATUTES REFERRED TO**

Evidence Act, Cap 112, LFN. 1990, ss. 27(1), 42, 138(3), 139, 141 & 143 D  
 Penal Code, s. 221

### **LEAD JUDGMENT BY TOBI JSC**

The case of the prosecution is that the deceased, Ikechukwu Njoku, visited the appellant at Jibia and never returned. He was murdered by the appellant. At the scene of crime, police recovered a human body without legs, arms and neck. In the inner room of the appellant's shop, police found the floor of the room and a mattress soaked with blood. They also found blood stain by the hole of the pit latrine attached to the inner room. When the pit latrine was dug open they saw two human legs. Appellant was arrested for murdering Ikechukwu Njoku on or about 3rd of December, 1989. F

The learned trial Judge found the appellant guilty of culpable homicide punishable with death and sentenced him to death. His appeal to the Court of Appeal was dismissed. He has come to this court. Briefs were filed and duly exchanged. The appellant formulated a single issue for determination: G

*"Whether the guilt of the appellant was proved and established beyond reasonable doubt, having regard to the evidence adduced at the trial court affirmed by the Court of Appeal?" H*

Respondent adopted the issue formulated by the appellant.

Learned counsel for the appellant, Mr. N. Ekanem, contended

that in a criminal case the onus is on the prosecution to prove the guilt of the accused person beyond reasonable doubt and failure to do so will lead to the matter being resolved in favour of the accused. He submitted that contradictions abound in the case of the prosecution.

B Learned counsel pointed out that P.W.1 stated in evidence that the offence was committed in Jibia on 17th December, 1989, but Exhibit 3 tendered by the witness stated that the offence was committed on the 3rd of December, 1989. Relying on the case of Ikemson v. State (1989) 6 S.C. (Pt. 1) 114, (1989) ICLRN 1 at 12, learned  
C counsel urged the court to resolve the contradiction in favour of the appellant. He submitted that the case of Awopejo v. State (2001) 12 S.C. (Pt. I) 168, (2001) 6 NWLR (Pt. 659) 1 at 13, relied upon by the Court of Appeal is not appropriate as the difference in the time  
D frame was just a day.

Learned counsel raised three issues on Exhibit 3, the confessional statement of the appellant. First, is the failure on the part of the prosecution to arrest and charge other accused person mentioned by the appellant as committing the offence with him. The failure on  
E the part of the police to investigate and if found true arrest the other accused persons raised some doubt as to the authenticity of Exhibit 3. He cited Anyanwu v. State (1986) 5 NWLR (Pt. 43) 612 at 624. Second, is the failure on the part of the prosecution to call the Police  
F Officer in whose presence Exhibit 3 was made, to give evidence in court. He cited Kasa v. State (1994) 5 NWLR (Pt.344) 69 at 285. Third is that the appellant ought not to have been convicted solely on his confessional statement. He cited Onubogu v. State (1974) S.C. 1, (1974) 9 S.C (Reprint) 1. He however contended later that a  
G court can convict on the confessional statement of an accused only but for purposes of conviction, the prosecution must prove its case.

Learned counsel also faulted the prosecution for not calling the health officials who exhumed the body parts to give evidence in court as well as the Doctor who conducted the postmortem. He contended that identification of the corpse of the deceased to the Medical Doctor who performed the post-mortem examination is a vital  
H factor in determining whether in fact, the Doctor actually performed the post-mortem examination on the deceased . He cited Oladimiji v.



State (1998) 1 NWLR (Pt. 573) 156. He urged the court to allow the appeal.

Learned counsel for the respondent, Alhaji Abdullahi Faskari, while conceding to the submission of appellant that in all criminal cases the onus is on the prosecution to prove the guilt of the accused beyond reasonable doubt, and failure to do so will lead to the matter being resolved in favour of the accused, submitted that once the prosecution has adduced evidence which shows that the accused is guilty of the offence charged, the burden of proving that he is innocent shifts to the accused by virtue of Sections 138(3), 139, 141 and 143 of the Evidence Act. He cited *Nasiru v. State* (1999) 1 S.C. 1; (1999) 2 NWLR (Pt. 87) 102 and *Bakare v. State* (1987) 1 NWLR (Pt. 52) 578. B  
C

On the issue of contradictions in respect to the date of the commission of the offence, learned counsel submitted that it is only contradictions in respect of a material fact or points in the evidence collected by the prosecution that an acquittal will result on the premise that it cannot be said that the case has been proved beyond reasonable doubt. He cited *Ikemson v. State* (1989) 3 NWLR (Pt.110) 455 and *Ogoala v. State* (1989) 6 S.C. (Pt.1) 114; (1991) 12 NWLR (Pt. 175) 509. D  
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Where a ground of appeal complains of contradictions in the evidence of the prosecution witnesses, it is not enough to warrant a reversal of the judgment merely for the appellant to show the existence of the contradictions; he must show further that the trial court did not advert to and consider the effect of the contradictions. The contradictions must be shown to amount to substantial disparagement of the witness concerned, making it dangerous or likely to result in miscarriage of justice to rely on the evidence of the witness or witnesses, learned counsel submitted. He cited *Ogbu v. State* (2007) 2 S.C. 273; (2007) 5 NWLR (Pt.1028) 635. F  
G

Learned counsel submitted that the testimony of P.W.1 that the offence was committed on 17/12/89, was a discrepancy which did not materially affect the prosecution's case. At the trial, the appellant was not in anyway misled by the discrepancy. He cited *Effiong v. State* (1998) 5 S.C. 136; (1998) 8 NWLR (Pt.562) 362. H

On the failure of the prosecution to charge those mentioned

by the appellant in Exhibit 3, learned counsel submitted that the failure did not raise doubts as to the authenticity of the exhibit. He distinguished the case of Anyanwu v. State (*supra*), cited by learned counsel for the appellant. On the failure by the prosecution to call the police officers who were present when the confessional statement was made by the appellant, counsel contended that this was because of the inability of the prosecution to secure their attendance. He called the attention of the court to the fact that another police officer, though not mentioned by P.W.1, testified that he was also present when the confessional statement was recorded, and his evidence was never impeached under cross-examination. Although the burden is on the prosecution in criminal cases to prove its case beyond reasonable doubt, counsel argued that it has absolute discretion which witnesses to call to prove its case. He cited *Ali v. State* (1988) 1 NWLR (Pt. 68) 1.

On failure to call the health officials who exhumed the body parts of the deceased, the brother of the deceased and the Medical Doctor who performed the post-mortem examination, counsel contended that the position of the law is that where there are several witnesses to an event, the law does not compel the prosecution to call all of them as witnesses, rather the prosecution is required to call only those it considers material in order to establish its case. He cited *Ogboodu v. State* (1987) 2 NWLR (Pt. 54) 20, *Ali v. State* *supra*, and *Udo v. State* (2006) 7 S.C. (Pt. II) 83; (2006) 15 NWLR (Pt. 1001) 179. He referred to the evidence of P.W.1 and P.W.2 who were present when the body parts were exhumed and identified by the brother of the deceased. He also referred to Section 42 of the Evidence Act, on the production of certificate and the case of *Nwachukwu v. State* (2002) 7 S.C. (Pt. 1) 124; (2002) 12 NWLR (Pt. 543) 564.

On the issue of identification of the body parts to the Medical Doctor, learned counsel submitted that in a murder trial, proof of identity of the deceased person can be by direct or circumstantial evidence provided such circumstantial evidence leads irresistibly to the conclusion that the autopsy performed was on the body of the deceased. He cited *Idemudia v. State* (1999) 5 S.C. (Pt. II) 110; (1999) 7 NWLR (Pt. 610) 202, *Effiong v. State* (1998) 8 NWLR (Pt.562) 370 and *Ogboodu v. State* *supra*.

Dealing with the cause of death in murder cases, learned counsel submitted that it can be inferred from the circumstances of a given case as was in this case where the deceased was butchered by the appellant. The act of butchering the deceased was the cause of death, learned counsel submitted. He cited *Ogbu v. State* supra and *Oguonzee v. State* (1998) 4 S.C. 110; (1998) 5 NWLR (Pt. 557) 521. B

Learned counsel submitted that where an accused person confesses to a crime, in the absence of an eyewitness to the killing, he can be convicted on his confession alone if the confession is positive, direct and properly proved. He cited *Mohammed v. State* (2007) 4 S.C. (Pt. I) 181; (2007) 11 NWLR (Pt. 1045) 303, *Ubierho v. State* (2005) 2 S.C. (Pt. I) 18; (2005) 5 NWLR (Pt. 919) 644, *Ikemson v. State* supra. Counsel urged the court to dismiss the appeal. C

For an accused person to be sentenced for culpable homicide punishable with death under the Penal Code, the prosecution must prove the following: (a) The death of the deceased. (b) That the death resulted from the act of the accused person. (c) That the accused knew that his act will result in death or did not care whether the death of the deceased will result from his act. See *Bakare v. The State* (1987) 1 NWLR (Pt. 52) 579, *Kada v. The State* (1991) 11-12 S.C 1; (1991) 8 NWLR (Pt. 208) 134, *State v. Danjummam* (1996) 8 NWLR (Pt. 469) 660, *Garba v. State* (2000) 4 S.C. (Pt. II) 157; (2000) 6 NWLR (Pt. 661) 378, *Ahmed v. State* (2001) 12 S.C. (Pt. I) 135; (2001) 18 NWLR (Pt. 746) 622, *State v. Sadu* (2001) 15 NWLR (Pt. 735) 102. D  
E  
F

***Although no witness saw the appellant killing the deceased, there is enough circumstantial evidence that he killed the deceased.*** P.W.1, a police constable, said in his evidence-in-chief at pages 7 and 8 of the Record: G

*“At Jibia in the cause of our investigation we recovered a human head in a refuse dump. We also recovered a human body but without legs, arms and neck. With the help of health officials we parked the parts to public mortuary. In the cause of our investigation we learnt that one Ikechukwu Njoku visited the accused person at Jibia and did not come back home. This led us to conduct a search in the premises of the accused person both his house and his shop. We saw* H

or found nothing incriminating in the house but at the shop the inner room of the shop we found the floor of the room soaked with blood. We also saw a mattress soaked with blood also in the room. There was blood stain by the hole of a pit toilet attached to the inner room. We suspected that there might be same thing in the pit so with the help of health official we opened up the pit. Inside the pit toilet two human legs were found. The two legs were removed to mortuary.”

P.W.2, a Police sergeant, said in his evidence-in-chief at page 11 of the Record:

“... in the course of the investigation, we found human parts (head) in a refuse dump. We were together with the brother of the deceased person. The brother identified its part the head. We also found the abdomen i.e. the body without the head to the limbs. We took the parts to mortuary.”

**Both P.W.1 and P.W.2, police officers, said in their evidence-in-chief that parts of the body of the deceased were found in the accommodation of the appellant, the floor of the room; the mattress were soaked with blood. There were blood stains by the hole of the pit toilet, which led the witnesses to recover two human legs. During the course of the investigation, the two witnesses recovered a human body without legs, arms and neck.**

**The nexus of the criminality of the appellant was given by the identification of the body of the deceased by the brother of the deceased. When the identification is taken along with the body without legs, arms and neck, and in separate places, two legs of the deceased together with the soaked floor and mattress, is very strong circumstantial evidence that the appellant killed the deceased.**

How did the body without legs, arms and neck get to the accommodation of the appellant? How did two human legs find their way to the pit toilet of the appellant? Did they walk there? How did the floor of the appellant get soaked with blood? How did the mattress of the appellant also get soaked with blood? I believe that after dismembering the body of the deceased, appellant in his downright criminality distributed the body without the legs, arms and necks as well as the legs to different places of his accommodation, to avoid any trace of his brutal and most inhuman murder.

Unfortunately for him, nemesis caught him when P.W.1 and P.W.2, by application of most excellent investigatory dexterity, exposed the apparently hidden crime.

The above apart, the appellant made a clean breast of his involvement in the crime. He made a confessional statement. In his confessional statement, appellant said in part: B

*“Felix took the iron rod brought by me and hit Ikechukwu twice on the neck. I also took the iron rod from Felix and continued hitting him while Christian Kalu brought his knife and choked him on his neck. Peter also hit him with iron rod till he stopped breathing... Christian Kalu and Peter took the body of Ikechukwu to the toilet when Felix came with the saw to cut the head, the two hands and legs. We did the cutting because the whole body of Ikechukwu could not enter into the toilet. When Felix cut the hands and the two legs, they took away the body and the head leaving behind with me the legs and two hands which I threw into the latrine pit in my shop. Then myself and Madam Hope were busy, washing the toilet before Felix, Peter and Christian came back from where they dumped the body, the body of Ikechukwu.”* C

The above is a clear, clean, unequivocal and direct confessional statement of the appellant. He did not hide his involvement in the killing of Ikechukwu. He made a very clean breast of his level of involvement which was deep, penetrating and killing. ***In law, where an accused person confesses to a crime, in the absence of an eye witness of killing he can be convicted on his confession alone once the confession is positive, direct, and properly proved.*** E  
 See *Milla v. The State* (1985) 3 NWLR (Pt. 11) 190, *Achabua v. The State* (1976) 12 S.C. 63; (1976) 12 S.C (Reprint) 41, *Obasi v. The State* (1969) 1 NMLR 204, *Atano v. Attorney-General Bendel State* (1988) 2 NWLR (Pt. 75) 201, *Bature v. The State* (1994) 1 NWLR (Pt. 32) 267. F

***The confession of the appellant to the killing of Ikechukwu is positive and direct. The confession was proved by the tendering of the statement by the prosecution. The statement was admitted as Exhibit 3. How can a person who voluntarily said that he played such a role in the killing of Ikechukwu now foment a defence on the homicide to exculpate himself*** H

**from criminal responsibility? He brought the iron rod, knowing it that it can kill. He handed it over to Felix to do the killing. That was not all. He took back the iron rod from Felix and did the hitting himself. The body was cut in parts. Appellant gave the reason for dismembering the body. It is because “the whole body of Ikechukwu could not enter into the toilet.” After the dismembering, appellant performed the duty of throwing the legs and the hands into the pit latrine.**

I should take the issues raised by learned counsel for the appellant in the appellant’s Brief. The first one is, contradictions in the evidence of P.W.1 and Exhibit 3 on the date of the commission of the offence. While P.W.1 gave the date as 17th December, 1989, Exhibit 3 gave the date as 3rd December, 1989. The correct date is 3rd December, 1989, which was given by the person who committed the offence. He knew it to be 3rd December, and he said so. P.W.1 did not commit the offence. He must have slipped. Is that human slip enough to discharge and acquit the appellant of the charge of culpable homicide punishable with death? Does the slip in date of the same month really kill or destroy the actus reus of the appellant? Is that not really pursuing the shadow and leaving the substance of the act of killing?

I am in entire agreement with learned counsel for the respondent that the evidence on the date by P.W.1 was a mere discrepancy because, it is mere lack of agreement or similarity and no more. Can this court allow the appellant to go home a free man because of the lack of agreement in respect of the date that the offence was committed? I think not.

This court dealt with the point in *Effiong v. The State* (1989) 5 S.C. 136; (1998) 8 NWLR (Pt.562) 362 at 372:

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

*misled by it.*”

In Effiong the different dates of the commission of the offence were given by two sets of prosecution witnesses: P.W.5 on the one hand and P.W.s 2, 3 and 6 on the other. In this appeal, the different dates were given by P.W.1 and no less a person than the appellant. If this court can hold, and rightly too for that matter, that the mix up in the dates was a mere slip in Effiong, I think I am very much on the correct side to hold that P.W.1 merely slipped, in the light of the confessional statement of the appellant which put the correct date he committed the offence as 3rd December, 1989. After all they have a common denominator in the last month of the year - December and the evidence of P.W.1 of the 17th day of the month is clearly a slip which merely reflects the humanity in P.W.I. There is the common adage that no human being is perfect. I think that adage clearly fits in here.

***A contradiction can only help a murder accused if it is material and affects the live issue or issues in the matter. A contradiction can only help a murder accused if it relates to a fact which must be determined before the court can arrive at proper verdict. For contradiction in the evidence of prosecution witnesses to affect conviction, it must raise a doubt as to the guilt of the accused person.*** See Nwosisi v. The State (1976) 6 S.C 109; (1976) 6 S.C (Reprint) 72, Eiigbadero v. The State (1978) 9 and 10 S.C 81; Atano v. Attorney-General of Bendel State (1988) 2 NWLR (Pt. 75) 201 Kalu v. The State (1988) 10-11 S.C. 19; (1988) 4 NWLR (Pt. 90) 503, Igbi v. The State (2000) 2 S.C 67; (2000) 3 NWLR (Pt. 648) 169. ***A contradiction which is peripheral to the live issue or issues in the matter will not avail an accused person, such as the discrepancy in the two December dates. I therefore dismiss the issue raised by learned counsel for the appellant.***

That takes me to the issue of failure on the part of the respondent to charge other persons mentioned by the appellant in Exhibit 3. They are Felix, Christian, Peter and Hope. ***The prosecution has an unfettered discretion to prosecute persons in court and because the discretion is unfettered, courts of law do not have the power to question it. The only jurisdiction of the court***

**is to try accused persons presented before it for prosecution. A court cannot go outside the prosecution and ask for some other persons to be charged before it.**

**The mere fact that an accused person specifically mentioned other persons in his statement to the Police, in the chain of criminality or criminal liability does not necessarily mean that the persons are in fact guilty of the offence or must as a matter of law be charged to court. And what is more, I know of no law which says that because other persons who committed an offence are not charged to court, the accused person charged to court must, on that ground, be discharged and acquitted. Criminal liability is personal. It cannot be transferred. This is because the mens rea or actus reus is on the accused in court and cannot be transferred to any other person not charged.**

**By way of recapitulation, I should say that the prosecution is not under any regimental duty or any duty at all, to charge all possible accused persons. I should perhaps mention here the practice where the prosecution, instead of charging a particular suspect, decides to call him as a witness, to ensure the conviction of a particular accused person or particular accused persons. The issue fails.**

I go to the submission of learned counsel for the appellant on the failure of the prosecution to call the police officers present when Exhibit 3 was made, the failure to call the health officer who exhumed the body of the deceased and the failure to call the Medical Doctor who conducted the postmortem examination. **The prosecution has no duty to call a village, community or barrage of witnesses before the court can convict an accused person. In law, one witness of truth can result in the conviction of an accused person unless in an offence where corroboration is statutorily required.** That apart, medical evidence is not a desideratum if the cause of death is clear and particularly in a case, such as this, where the appellant clearly, precisely, concisely and unequivocally confessed to the commission of the offence. **Appellant told a pathetic and sorrowful story of the role he played in the killing of Ikechukwu in Exhibit 3 and there was no need to call a large**



**number of witnesses to testify against him. Confession in criminal procedure, like admission in civil procedure, is the strongest evidence of guilt on the part of an accused person. It is stronger than the evidence of an eye witness because the evidence, borrowing the daily axiom, comes out from the mouth of the horse, who is the accused person. What better evidence than that? He knows or knew what he did and he says or said it in court. Is there need for any further proof? I think not.** B

**There was no eye witness of the killing. There is however enough circumstantial evidence. It is the law that an accused person could be convicted of murder even if the body was not found, if there is enough compelling circumstantial evidence that the accused person killed the deceased. In this appeal, the body of the deceased was recovered, though piecemeal. A court could properly infer from circumstantial evidence that the death of the deceased was caused by the act of the accused without hearing medical evidence. See Ibo v. The State (1971) NMLR 245. It is also the law that for circumstantial evidence to support a conviction for murder, it must lead only to one conclusion that the murder was committed by the accused.** See The State v. Ifu (1964) 8 ENLR 28. C D E

From whatever angle one looks at this appeal, even from the best angle of or for the appellant, it is clear that the appellant was one of the persons who killed Ikechukwu. In the circumstance, the appeal fails and it is dismissed. He has to face the gallows. It is now his turn. After all, one bad turn deserves another. F

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### OGUNTADE JSC G

I have had the advantage of reading in draft a copy of the judgment of my learned brother, Niki Tobi, JSC. I agree with him that this appeal has no merit. I would also dismiss it and affirm the judgment of the court below. H

**OGBUAGU JSC**

This is an appeal against the decision of the Court of Appeal, Kaduna Division (hereinafter called “*the court below*”) delivered on B 19th July, 2006, affirming the judgment of the Katsina State High Court sitting at Katsina and presided over by Abdulummini, J., delivered on 11th August, 1997, convicting and sentencing the appellant to death.

C Dissatisfied with the said decision, the appellant has appealed to this court on two (2) grounds of appeal. Without their particulars, they read as follows:

“(a) *GROUND ONE:*

D *The learned appeal court Justices erred in law when they held that the evidence of P.W.1 given in 1992, three years after the offence, stating that the offence was committed on 17/12/89, is a minor discrepancy that did not create any doubt whatsoever in the mind of the court as to the commission of the offence or the involvement of the appellant. Thus, occasioning a substantial miscarriage of*  
E *justice.*

(b) *GROUND TWO*

F *The learned appeal court Justices erred in law when they affirmed the judgment of the trial High Court Judge based on the confessional statement of the appellant and other things which they took into consideration?”*

The facts of the case are that the appellant who is a patent medicine dealer carrying on business at Jibia in Katsina State, was charged with culpable homicide punishable with death contrary to G Section 221 of the Penal Code. At the trial, two (2) witnesses testified for the prosecution while the appellant testified on his own behalf. Four (4) exhibits were tendered and admitted in evidence. The PW.1-PC. Ibrahim Sanni who investigated the case, gave a graphic picture in his testimony in the trial court of his or their findings in the course H of his or their investigation. He testified that a case of culpable homicide was referred to him at S.I.I.B. Katsina. He and one Sgt. Dauda Madawaki, went to Jibia to investigate. That in the course of their investigation, they recovered a human head in a refuse dump. They

also recovered a human torso without legs, arms and neck. The recovered body parts, were taken to the mortuary. I note that the photographs of the head and torso, were admitted in evidence as Exhibits 1 and IB respectively. According to P.W.2, Sgt. Dauda Madawaki, the brother of the deceased, identified first, the head and later, the legs they recovered as belonging to his brother, Ikechukwu Njoku. B Also, in the course of their investigation, they learnt that the said Ikechukwu Njoku, visited the appellant at Jibia and did not return home. Based on this information, a search was conducted in the appellant's home and shop. Nothing incriminating was found in his house. However, they found the floor of the inner room of his shop, C soaked with blood. They also found a mattress in the same room, soaked with blood. They found bloodstains by the hole of a pit toilet attached to the inner room and noticed an unusual odour emanating from it. When the toilet was opened with the help of health officials, two human legs were found. According to P.W.2, the brothers of the deceased, were present when the legs were recovered and they identified them as belonging to their late brother. The legs were also taken to the mortuary. A post-mortem report was obtained. The appellant was subsequently arrested on 2nd February, 1990. P.W.I E testified that the appellant, volunteered a statement under caution. An objection was raised to the tendering of the statement on the ground that the signature thereon, was not that of the appellant and that he the appellant, was seeing the document, for the first time. F The learned trial Judge, ordered a trial within trial. At the conclusion of the trial within trial, the statement was admitted in evidence as Exhibit 3. In his defence, the appellant denied any knowledge of the incident. He also stated that he did not know the deceased.

At the hearing of this appeal on 24th January, 2008, both G learned counsel for the parties, adopted their respective Briefs. While Ekanem, Esqr., - learned counsel for the appellant urged the court to allow the appeal, Faskari, Esqr., (Attorney-General, Katsina State) urged the court to dismiss the appeal. Thereafter, judgment was reserved till to-day. H

One issue for determination has been formulated in the appellant's Brief which has been adopted by the respondent, namely,  
*"Whether the guilt of the appellant was proved and established*

*beyond reasonable doubt having regard to the evidence adduced at the trial court affirmed by the Court of Appeal”.*

Before going into the merits of this appeal, as appears in the stated facts of this case by me earlier in this judgment that when the learned counsel for the appellant objected to the tendering of what has been described by him in the appellant’s Brief, as “*purported confessional statement of the appellant*”, on the ground that the signature thereon, was not that of the appellant and that the appellant was seeing the document for the first time i.e. that he never made the statement, in my respectful view, a trial within trial, should not have been conducted. This is because, trial within the trial, is ordered and conducted, where the voluntariness of the making of the statement by an accused person, is in issue or raised by an accused person. In other words, where an accused person admits making the statement, but contends or asserts that he did not make it voluntarily but under duress or some other alleged influence, then a trial within trial, is conducted in order to determine whether the statement was voluntary or made by duress or otherwise. When the trial Judge, is satisfied that the statement was voluntary, he then admits it as an exhibit in the evidence before the court. See the cases of *Auta v. The State* (1975) 4 S.C. 123; (1975) 4 S.C. (Reprint) 92, *Gbadamosi & Ors. v. The State* (1992) 9 NWLR (Pt.266) 465 at 480; (1992) 11-12 SCNJ. 1268 and *Effiong v. The State* (1998) 5 S.C. 136; (1998) 5 SCNJ. 158 at 166; (1998) 8 NWLR (Pt.562) 362 - per Ogwuegbu, JSC.

But where as in the instant case, the making of the said statement is denied, the trial court is expected and this is settled, to admit it in evidence as an exhibit and in its judgment, it decides, whether or not such denial, avails the accused person. See the cases of *Phillip Kanu & Anor. v. R.* (1952) 14 WACA 30 at 32, *Dawa v. The State* (1980) 8-11 S.C. 236 at 267-268; (1980) 8-11 (Reprint) 147 and *Mills v. The State* (1985) 3 NWLR (Pt.11) 190.

In the case of *Olusegun Otufale & Ors.* (1968) NMLR 261 at 265-268, Breth, Ag. CJF., summed up the principle in the case of *R. v. John Agagariga Itule* (1961) 1 ANLR 402 at 465, thus:

*“A confession does not become inadmissible merely because an accused person denies having made it and in this respect a confession contained in a statement made to the police by a person under*

*arrest, is not to be treated differently from any other confession”.*

[The underlining mine]

See also the cases of Itule v. Queen (1961) 2 NSCC 221 at 224; (1961) ANLR 462 at 465, Grace Akinre v. The State (1988) 7 S.C. (Pt. II) 131; (1988) 3 NWLR (Pt. 85) 729 and Ejinima v. The State (1991) 7 S.C. (Pt. III) ; (1991) 6 NWLR (Pt.200) 627; (1991) 7 SCNJ 318, just to mention but a few. B

In other words, all the usual tests put forward in the case of R v. Kanu (supra), in which the principles in the case of R. v. Sykes (1913) 8 CAR 233, which were adopted, would have to be considered. See also the cases of The Queen v. Obiasa 2 NSCC 412; (1962) 1 All NLR 645, Obosi v. The State (1965) NMLR 119, Obue v. The State (1976) 2 S.C. 141; (1976) 2 S.C. (Reprint) 79, Nwaebonyi v. The State (1994) 5 NWLR 138; (1994) 5 SCNJ. 86 and Idowu v. The State (2000) 7 S.C. (Pt. II) 50; (2000) 7 SCNJ. 245 at 260, D where the test, have been applied. In short, the denial of an accused person of making a statement to the police, it is settled, is an issue of fact to be decided in the judgment as the issue does not affect, admissibility ‘of the statement. See recently, the case of Aiguoregheian & Anor. v. The State (2004) 1 S.C. (Pt. I) 65; (2004) 3 NWLR (Pt. 860) E 367; (2004) 1 SCNJ. 65.

Also to be stressed and this is also settled, that a confession, is an admission made by a person - See Section 27(1) of the Evidence Act. The duty of the court, is to consider the circumstances under F which it was given and to decide what weight is to be attached to it. See the case of Nwachukwu v. The State (2002) 7 S.C. (Pt. I) 124; (2002) SCNJ. 230 at 249 per Iguh, JSC., citing the case of Joe Igah & Ors. v. Ezekiel Amakiri & Ors. (1976) 11 S.C. 11; (1976) 11 S.C. (Reprint) 1. G

However, I see no prejudice suffered or miscarriage of justice occasioned against the appellant in the course taken by the learned trial Judge. In my respectful view, it was a transparent exercise of discretion. I note that the appellant has not complained about this both at the two lower courts and in this court. It is settled that if a H procedure adopted in a trial court is consented to by a party, he cannot complain or be heard to complain afterwards or on appeal, that the procedure was irregular. See the case of Akhiwu v. Principal

Lotteries Officer, Mid-West State (1972) 3 S.C. (Reprint) 175; (1972) 1 All NLR 229.

Since there is one issue raised in this appeal, there is no slightest doubt in my mind that this appeal, is most frivolous and lacks merit in whatever angle I or one looks at it. My reasons are as follows:

B 1. There is the evidence of P.W.1 substantially stated by me under the facts of this case and which are also contained at pages 7 - 12 of the Records. P.W.2 swore that the brother of the deceased, identified first, the head and later, the legs of the deceased. He also testified that the brothers of the appellant, were present when the legs were recovered. In the course of their (i.e. Police) investigation, they learned that the deceased visited the appellant at Jibia and never returned - (i.e. last seen). The appellant, did not controvert all the said findings by the P.W.I in his defence. He did not say how those D human parts, were discovered and recovered in his said shop and pit latrine. Perhaps by magic or invocation by a witch.

2. Even during the trial within trial as borne out in the Ruling of the learned trial Judge at page 25 of the Records, the appellant admitted that he not only told the police, his own version of the story, but he stated also that he was forced to sign some statements. E Yet he denied flatly ever making Exhibit 3 which he said he was seeing in court for the first time. My conclusion therefore, is that he is an unreliable person.

F 3. It is submitted in the appellant's Brief, that there were contradictions in the date of the offence. But it is not in dispute that P.W.I, testified in 1992 about three (3) years after the offence was committed. But the appellant himself in Exhibit 3, gave the date of the offence as 3rd December, 1989. That is the date that is stated in the G charge. In any case, the offence took place in December, 1989. Not only is the said contradiction as found and held as a fact by the court below, minor, there is no evidence in the Record of Proceedings, that the appellant was misled by the said evidence as to the date by the P.W.I. See the cases of Awopeju & Ors. v. The State (2001) 12 S.C. H (Pt. I) 168; (2001) 6 NWLR (Pt.659) 1 at 13; (2001) 12 SCNJ. 293 and Effiong v. The State (supra). Human faculty, it is settled, may miss some minor details due to lapse of time. Hence, if the contradiction, do not touch on material point or substance of the case, it will

not vitiate a conviction once the evidence is clear and it is believed or preferred by the trial court. See the case of *Sele v. The State* (1993) 1 SCNJ. 15 at 22-23 - per Belgore, JSC., (as he then was).

4. There is the said confessional statement of the appellant - Exhibit 3. It has been held in numerous decided cases, that in Nigeria, a free and voluntary confession of guilt by a prisoner, if it is direct and positive and is duly made and satisfactorily proved (as in the instant case leading to this appeal), it is sufficient to warrant conviction without any corroborative evidence so long as the court is satisfied as to the truth of the confession. See the cases of *Edet Obosi v. The State* (supra); *Paul Onochie & 7 Ors. v. The Republic* (1966) NMLR 307 and *Onuoha v. The State* (1987) 4 NWLR (Pt.65) 331. Exhibit 3, was corroborated by the evidence of P.W.1 and P.W.2, as regards the recovery 'of various parts of the body of the deceased as well as the identity of the appellant who knew the deceased before his death although shamelessly denied by the appellant.

The learned trial Judge as noted by the court below, found as a fact, that Exhibit 3, was made by the appellant and that it is reliable and that the narration of events surrounding the commission of the offence as contained therein, was consistent with other evidence before the court. That the statement of how the deceased was killed, was consistent with the cause of death as stated in the medical report tendered by the prosecution.

Again for purposes of emphasis, it is now firmly established that where the circumstances of the commission of an offence, are positive, direct, unequivocal and irresistibly lead to the inference that it is the accused person that committed the crime, such inference ought to be or should be drawn. See the cases of *Shazali v. The State* (1988) 12 S.C (Pt. II) 58; (1988) 12 S.C. (Pt.II) 58; (1988) 12 SCNJ. 145 and *Uwaekweghinye v. The State* (2005) 3 - 4 S.C. 29; (2005) 3 SCNJ. 32 at 49.

Observation: Although the appellant is the only person charged, tried and convicted in this brutal and merciless slaughter of the deceased, it is my respectful view that the prosecution or police, should consider seriously, arresting and bringing the other mentioned accomplices and participants in the crime, to also face the music.

Finally, I note that there are concurrent findings of fact by the

two lower courts. From the overwhelming evidence in the records including the confessional statement of the appellant, I hold that if there are appeals that are hopelessly and completely unmeritorious, this is one of them.

From the said findings of fact by the two lower courts concurrently, there is nothing to show that the findings are perverse. It is settled that what is admitted need no further proof. See the cases of *Ogwumba v. The State* (1993) 5 NWLR (Pt.291) 660 at 671; (1993) 6 SCNJ. 217 and *Ibeh v. The State* (1997) 1 SCNJ. 256, citing several other cases therein.

It is from the foregoing and the reasoning and conclusion in the leading judgment of my learned brother, Tobi, JSC., which I agree with, that I too, hold that the appeal fails and I too, dismiss the same. I accordingly, affirm the decision of the court below affirming the decision of the trial court .

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### **TABAI JSC**

I was privileged to read, in draft, the leading judgment of my learned brother, Tobi, JSC., and I agree that the appeal be dismissed for lack of merit. The appellant was charged with culpable homicide contrary to Section 221 of the Penal Code. He was alleged to have committed the offence by causing the death of one Mr. Ikechukwu Njoku on or about the 3rd day of December, 1989. The trial was at the Katsina Judicial Division of the High Court of Katsina State. The trial involved the testimony of the P.W.I, Police Constable, Ibrahim Sanni, P.W.2, Police Sgt. Dauda Madawaki and the appellant himself. By the judgment on the 11/8/97, the appellant was convicted as charged. His appeal to the Court of Appeal was dismissed. He has come on further appeal to this court.

In the appellant's Brief, learned counsel for the appellant submitted only one issue for determination and it is, whether the guilt of the appellant was proved beyond reasonable doubt having regard to the evidence adduced at the trial court. My learned brother, Tobi, JSC., meticulously and exhaustively addressed the issue which he resolved against the appellant. I agree entirely with his reasoning and



conclusion. The evidence though circumstantial pointed irresistible to one and only one conclusion.

The established circumstantial evidence is that on or about the fateful day, the deceased visited the appellant at Jibia and never returned back home. At Jibia a human head was recovered in a refuse dump. Also recovered was a human body without arms, legs and neck. The head was identified by a relation of the deceased as that of the deceased. When in the course of police investigation they were informed that the deceased visited the appellant and never returned, the P.W.I and 2 extended their investigations to the premises of the appellant. In his house nothing incriminating was found. In the inner room of the appellant's shop however some blood stains were found on the floor. The mattress in the room was also soaked with blood. There was also blood stains by the hole of the pit toilet attached to the inner room. And inside the pit toilet of the appellant two human legs were recovered.

The totality of these circumstantial evidence is, in my view, strong and cogent enough to sustain a conviction for the offence of culpable homicide. The settled principle of law is that, where circumstantial evidence is cogent, strong and therefore compelling, a court can convict upon it. See *Atano v A.G. Bendel State* (1988) 2 NWLR (Pt.75) 201, *Gabriel v State* (1989) 12 S.C. 129; (1989) 5 NWLR (Pt.122) 457, *Ikomi v State* (1986) 3 NWLR (Pt.28) 340.

In my view there is ample circumstantial evidence to support the conviction of the appellant. In addition there is his confessional statement. It is my conclusion therefore that the only issue in this appeal should be resolved against the appellant.

For the foregoing and the fuller reasons contained in the leading judgment of my learned brother, Tobi, JSC. I also dismiss the appeal as lacking in merit.

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### **MUHAMMAD JSC**

I have the privilege of reading before now the judgment of my learned brother, Tobi, JSC. I agree with his reasoning and conclusions. The appeal lacks merit and ought to be dismissed. I dismiss the appeal. I affirm the judgment of the court below which affirmed the

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**1588** Akpa v. State (2008) 4 KLR Muhammad JSC  
trial courts judgment.

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