

SUPREME COURT OF NIGERIA

8TH JULY, 2011. SC. 352/2009

CORAM:- A. M. MUKHTAR, W. S. N. ONNOGHEN, F. F. TABAI, I. T. MUHAMMAD, B. RHODES-VIVOUR, JJSC

THE STATE APPELLANT
V.
JIMOH SALAWU RESPONDENT

CRIMINAL PROCEDURE - Confession - Denial of - Effect - Where accused denies making a statement - Court will admit such statement in evidence - And may determine its probative value - At end of trial (H1)

CRIMINAL PROCEDURE - Confession - Obtained under duress - Effect - Where accused admits making such statement - Court must conduct a trial within trial - To test the voluntariness of same (H2)

CRIMINAL PROCEDURE - Confession - Admissibility - Statement made by accused to the police becomes objectionable - And inadmissible - If it is obtained under duress or by inducement (H3)

APPEALS - Interference - Findings of fact by trial court - Since the findings are not perverse - Appellate court ought not to interfere (H4)

CRIMINAL PROCEDURE - Confession - Significance and meaning of - It is an admission by an accused - That he committed the offence (H5)

CRIMINAL PROCEDURE - Confession - Admissibility - If the confession is positive and direct - It is sufficient to convict an accused - Without any corroboration (H6)

COURTS - Criminal procedure - Justice - Need to uphold - Courts are to consider the substance of a matter - Rather than insisting on technicalities (H7)

FACTS

Accused/respondent and one Abolarinwa Ewedayo were arraigned before High court of Kogi State, Okene on a two count charge of conspiracy and culpable homicide. In his earlier statement to the police, respondent confessed via exhibits 1 and 2 of having killed one Hassanatu Husseini - the deceased in the bush. However at the trial, he stated that he did not make the statement voluntarily. This necessitated the conduct of a trial within trial. During the trial within trial proceeding, respondent denied ever making exhibits 1 and 2. Nevertheless, the court admitted the exhibits in evidence. Respondent also contends that there are inconsistencies with respect to the identity of corpse of the deceased.

Prosecution called five witnesses. Respondent and 2nd accused person did not testify. They relied on prosecution's case. At the end of trial, the court discharged and acquitted 2nd accused person. While respondent was convicted and sentenced to death. Dissatisfied, respondent appealed to Court of Appeal, Kaduna. The court however discharged and acquitted him on the technical ground of inconsistencies in evidence of prosecution witnesses. Aggrieved, appellant has appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the learned justices of the Court of Appeal were right in reversing the judgment of the learned trial judge on the ground that inconsistencies existed in the Prosecution's case which created doubts regarding the corpse upon which post mortem examination was carried out.

2. Whether the Court of Appeal was right when it held that the learned trial judge improperly admitted Exhibits 1,2 and 3 being confessional statements of the Respondent in evidence and utilizing them in convicting the Respondent.

3. Whether having regard to the facts and circumstances of this case, the Court of Appeal was in error in tampering with the learned trial judge's evaluation of the evidence in this case when same was not shown to be perverse.

HELD (Unanimously allowing the appeal per **TABAI JSC**)

Confession - Denial of - Effect

1. In the face of the above circumstances, was the trial court wrong to

admit Exhibits “1”, “2” and “3” in evidence? In other words were the statements inadmissible in law? The settled principle of law is that where, in a criminal trial, a statement allegedly made by an accused person is sought to be tendered in evidence and the Accused person challenges it by denying ever making it, there is no issue of admissibility raised thereby and the court will be at liberty to admit it. The court’s duty then would be to determine at the conclusion of the case whether or not the Accused person made the statement.

(p. 2219 H)

Confession - Obtained under duress - Effect

2. Where however, the admissibility of the alleged confessional statement is challenged on the ground that it was made under duress, threat or some form of inducement, then there is raised the issue of admissibility and as a matter of practice a trial-within-trial will be conducted to test, whether or not the confession was voluntary.

(p. 2220 D)

Confession - Admissibility - Statement by accused to police

3. It is perhaps necessary to emphasize that it is not a rule of our Criminal Procedure Law and the law of evidence that where, in the course of recording the statement of an Accused person, a police officer asks questions and records the answers by the Accused therein, the statement automatically becomes involuntary and thus inadmissible in law. That was not the principle upon which Namsoh’s case was decided by this court. A careful look at the Namsoh’s case shows that the specially prepared questions were oppressive of the Accused in the sense that they were meant to sap and indeed sapped the free will of the Accused person and thus rendered his ensuing statement involuntary. It is my firm view and I hold with respect, that Namsoh v. State (supra) is quite distinguishable from this case and was therefore wrongly applied by the court below. The mere assertion by the P. W. 1 that in the course of recording the statements of the respondent, he asked questions and recorded the answers does not ipso facto render the statements involuntary. An alleged confessional statement made by an accused person to the police only becomes objectionable and inadmissible in evidence in a criminal proceeding, if the making of the confession is proved to have been prompted by any

inducement, threat or promise by the police and sufficient to give the Accused person the impression that by making it, he would gain an advantage or avoid an evil. That in my view is the purport of the provisions of Section 28 of the Evidence Act, Cap. E 14, Laws of the Federation of Nigeria, 2004. (p. 2223 B)

B

APPEALS - Interference - Findings of fact by trial court

4. The foregoing clearly demonstrates the strong and unchallenged evidence of the identity of the deceased being that of Hassanatu Husseini. The trial court was therefore perfectly right when it held that there was, in the circumstances, no need for further evidence in proof of the identity of the corpse. And having regard to the fact that findings are not perverse, there was absolutely no basis for the interference by the court below. I say, with respect, that there was not the slightest confusion as to the corpse upon which the P.W. 4 performed the examination. What the court below regarded as material contradictions are simply mere inaccuracies in the entries in some of the documents and the doctor's evidence to the date on which he performed the post mortem examination. (p. 2226 H)

E

Confession - Significance and meaning of

5. Before I conclude, I wish to emphasize the significance of a confessional statement in a criminal proceeding. A confessional statement made by an Accused person and properly proved is the best guide to the truth of the part played by him. It is an admission by the Accused person that he committed the offence and therefore in the nature of his plea of guilty to the offence. (p. 2227 D)

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Confession - Admissibility - If confession is positive

6. It is also settled principle of law that a free and voluntary confession by an Accused person if direct, positive and satisfactorily proved is sufficient to warrant a conviction even if there is no corroborative evidence to establish the truth of the confession. (p. 2227 E)

H

Criminal procedure - Justice - Need to uphold

7. In my view, the decision of the court below is not just a travesty of justice; it is an outright injustice which ought not to be allowed to stand. It is a case where the court employed technicalities to defeat

the ends of justice. This court has emphasized again and again the dangers of technicalities to the cause of justice.

Regrettably, the court below did not feel bound by the above principle of doing substantial justice. Rather it chose to adopt the path of technical justice and inflicted thereby the injustice complained of. As I already indicated above, there is merit in this appeal. The judgment of the court below dated the 18th of June, 2009 is palpably wrong and is accordingly hereby set aside. On the other hand, the judgment of the trial court dated the 24th of June, 2008 was right. The conviction and sentence of the Accused/Respondent was proper. Consequently, the judgment of trial court of the 24th of June, 2008 be and is hereby restored. (pp. 2228 G/2229 E)

REPRESENTATION

Steve Adehi for Appellant.

A. M. Aliyu. with Audu Sani and S. O. Alhassan for Respondent

CASES REFERRED TO

Obulor v. Oboro (2001) 4 S.C. (Pt. I) 77

U.B.A Plc, v. BTL Ind. Ltd. (2006) 12 S.C. 63

Godwin Igabele II v. The State (2006) 2 S.C. (Pt. II) 61

Ozana Ubierho v. The State (2005) 2 S.C. (Pt. I) 18

The Queen v. Eguabor (1962) 1 ALL NLR 287

Dangari v. The State (1968) 1 ALL NLR 249

Amodu v. The State (2010) 2 NWLR (Pt. 1177) 47 at 69

Tunde Adava v. State (2006) 2 S.C. (Pt. II) 136

Edwin v. The State (1992) 2 NWLR (Pt. 222) 164 at 198

Ukorah v. State (1977) 4 S.C. 167

R. v. Adengowe (1936) 3 WACA 85

Bakuri v. State (1965) NMLR 163

Bwashi v. State (1972) 6 S.C. 93

Aruna v. State (1990) 9-10 S.C. 87

Onubogu v. State (1974) 9 S.C. 1

STATUTES & RULES REFERRED TO

Criminal Procedure Code, s. 126 (1) and (2)

Evidence Act Cap. E 14 LFN 2004, ss. 28, 138

Criminal Procedure Code, s. 126 (2)

Constitution of Federal Republic of Nigeria 1999, ss. 1(3), 35(2)
Criminal Procedure (Statement to Police Officers) Rules 1760,
Cap. 30 Laws of Northern Nigeria 1963, Order 6
Penal Code, s. 221

B

LEAD JUDGMENT BY TABAI JSC

The Respondent, Jimoh Salawu and one other person, Abolarinwa Ewedayo, were tried at the High Court of Kogi State holding at Okene on a two count charge of conspiracy and culpable homicide. The learned trial judge was H. A. Olusiyi, J. The prosecution called five witnesses and tendered a number of exhibits and closed its case on the 26th November, 2007. The matter was then adjourned for defence. On the 21st January, 2003 however, J. U. Barrah, learned counsel for the Accused persons announced that they (Accused persons) would not testify and that they were solely on the Prosecution's case. He therefore asked for a date for address. On the order of the court written addresses were submitted.

In the trial court's judgment on the 24th of June, 2008, the 2nd Accused, Abolarinwa Ewedayo was discharged and acquitted. The Accused/Respondent was however convicted and sentenced to death. He was not satisfied with his conviction and proceeded on appeal to the court below.

In its judgment on the 18th of June, 2009, the appeal was allowed, the judgment of the trial court was set aside and a verdict of discharge and acquittal entered for the Respondent.

The State was aggrieved by the decision of the court below and has come on appeal to this court via the notice of appeal dated and filed on the 21st January, 2010. It contained six grounds of appeal.

The parties, through their counsel filed and exchanged their briefs of arguments. By a fiat dated 27th October, 2009, Sir Steve Adehi was given the authority to prosecute the appeal. He therefore prepared the Appellant's brief of argument. It was filed on the 9th March, 2010. The Respondent's brief was prepared by Abdullahi Aliyu and same was filed on the 20th April, 2010.

In the Appellant's brief, Sir Steve Adehi formulated the following three issues for determination:-

1. Whether the learned justices of the Court of Appeal were right in

reversing the judgment of the learned trial judge on the ground that inconsistencies existed in the Prosecution's case which created doubts regarding the corpse upon which post mortem examination was carried out.

2. Whether the Court of Appeal was right when it held that the learned trial judge improperly admitted Exhibits 1,2 and 3 being confessional statements of the Respondent in evidence and utilizing them in convicting the Respondent. B

3. Whether having regard to the facts and circumstances of this case, the Court of Appeal was in error in tampering with the learned trial judge's evaluation of the evidence in this case when same was not shown to be perverse. C

In the Respondent's brief, Abdullahi M. Aliyu also proposed three issues for determination. Apart from differences in phraseology the three issues are in substances, the same as those of the Appellant. It is therefore unnecessary to reproduce the Respondent's issues. D

With respect to the first issue of whether there were material contradictions in the case of the prosecution, Sir Steve Adehi argued that there were no such material contradictions in the case of the Prosecution to justify the reversal of the judgment of the trial court by the Court of Appeal. Learned counsel pointed out that the basis of the lower court's decision of there being material contradictions is the evidence of the P.W. 4 and the content of Exhibits 4B, 4C and 4D and argued that Exhibit 4B Which is the coroner's form made no reference to the corpse of Hassanatu Husseini and had no significance on the case before that court He argued that Exhibits 4C and 4D prepared and signed by that P.W. 4 were significant. Learned counsel referred to the reasoning of the court below at Pages 248-249 of the record and contended that the reasoning was not supported by the evidence in the printed record. He argued that the question of where the corpse was between the 6th and 17th of October, 2003 was not an issue. Also not in issue at the trial court and at the court below was the question of whether or not a corpse kept in the mortuary for about eleven days can remain fresh. It was learned counsel's contention therefore that the two issues upon which the court below based its decision of there being material contradictions did not arise from the decision of the trial court. It was his submission therefore that a court of law is bound to decide a case only on the E
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issue raised and submitted by the parties. For this submission, he relied on *Obulor v. Oboro* (2001) 4 S.C. (Pt. I) 77; (2001) 4 SCNJ 22 at 31. It was counsel's further submission that an appellate court can only determine an issue which had been raised and pronounced upon by the lower court. Reliance was placed on *U.B.A Plc, v. BTL Ind. Ltd.* (2006) 12 S.C. 63; (2006) 19 NWLR (Pt. 1013) 61 at 107-108.

Learned counsel further contended that the court below misinterpreted the evidence of the P.W. 4 about the freshness of the corpse to mean that the deceased had just died. He referred to the uncontradicted evidence of the P.W. I and P.W. 5 to the effect that the corpse of the deceased was deposited at the mortuary on the 7th of October, 2003 and remained there until the 17th of October when the autopsy was carried out. It was further contended that the Respondent did not adduce any evidence to show that even if the body was kept in the mortuary for preservation on the 7th of October, 2003, it could not have remained fresh by the 17th October, 2003. Learned counsel argued that there is clear, uncontradicted and unambiguous evidence that the corpse of Hassanatu Husseini allegedly killed by the Respondent on the 6th of October, 2003 was the one upon which the P.W. 4 performed the autopsy on the 17th October, 2003. It was counsel's further contention that contradictions that would warrant an appellate court's reversal of the decision of a trial court must be substantial and relied on *Samson Nkenji Uwaekweghinya v The State* (2005) 3-4 S.C. 29, Vol. I NCC 369 at 384; *Godwin Igabele II v. The State* (2006) 2 S.C. (Pt. II) 61; Vol. H NCC 125 at 149-150.

On the second issue of whether the confessional statements in Exhibits 1, 2 and 3 were inadmissible in law and were therefore wrongly admitted, learned counsel pointed out that there was no objection to the admissibility of Exhibits 1 and 3 at the trial. With respect to Exhibit 2, learned counsel referred to the objection to its admissibility on the ground that it was not voluntarily made. He however pointed out that in the course of the trial-within-trial to test its voluntariness, the Respondent denied ever making it at all. It was counsel's submission therefore that what fell for determination was not the voluntariness of the statement but rather the issue of whether the Respondent made the statement at all. The mere fact that an Accused person

denies a statement allegedly made by him does not render the statement inadmissible, counsel argued. He relied on *Ozana Ubierho v. The State* (2005) 2 S.C. (Pt. I) 18; Vol. NCC 146 at 160. Learned counsel argued that the trial court was perfectly right in admitting and acting on the three statements. Learned counsel referred to *The Queen v. Eguabor* (1962) 1 ALL NLR 287 on the principle that an Accused can only legally retract his confessional statement at the point of making his defence and contended that in the instant case the Respondent did not do that. B

With respect to the second ground upon which the court below held the statements to be inadmissible in law, counsel submitted that the mere fact of a statement being the product of questions and answers does not render the statement inadmissible in law, For this submission, learned counsel relied on Section 126 (I) and (2) of the Criminal Procedure Code Learned counsel argued that the provisions of the Criminal procedure Code were observed by the PW. 1. C D

As regards to the third issue of whether the Court of Appeal was in error in tampering with the trial court's evaluation of the evidence, learned counsel argued that in view of the painstaking evaluation of the entire oral and documentary evidence and the findings which were not proved to be perverse, the court below had no basis for its interference with the decision of the trial court. Learned counsel made specific reference to some of the crucial finding and contended that they are supported by and flow naturally from the evidence before the court. On when it would be appropriate for an appellate court to interfere with findings of trial court, learned counsel relied on *Felicia Akinbisade v. The State* (2006) 9 S.C. 118, Vol. 2 NCC 76. Learned counsel argued that the confession in Exhibits 1, 2 and 3 were reinforced by the evidence of the PW. 1, PW. 2 and PW. 5 and that in the absence of any evidence from the Respondent in rebuttal, the court below had no basis for the interference. E F G

In conclusion, Sir Steve Adehi urged that the appeal be allowed.

The substance of the arguments of Abdullahi M. Aliyu in the Respondent's brief is as follows:- With respect of the first issue of whether there are material contradictions in the case of the Prosecution, learned counsel reiterated the settled principles of law about the Prosecution's burden of proof beyond reasonable doubt and which H

burden never shifts. He cited Section 138 of the Evidence Act, Cap. E 14, Laws of the Federation of Nigeria, 2004, *Dangari v. The State* (1968) 1 ALL NLR 249; *Amodu v. The State* (2010) 2 NWLR (Pt. 1177) 47 at 69. He also reiterated the principle that for proof of the offence of culpable homicide the Prosecution must establish with credible evidence

- (i) The death of the deceased;
- (ii) That such death was caused by the Accused person; and
- (iii) That the act was done with the intention of causing death or that death would be a probable consequence of the act, and all the three ingredients must be proved.

For this principle, learned counsel relied on *Tunde Adava v. State* (2006) 2 S.C. (Pt. II) 136; (2006) 2 SCNJ 259 at 261; *Edwin v. The State* (1992) 2 NWLR (Pt. 222) 164 at 198. Learned counsel submitted that for proof of culpable homicide, the Prosecution must prove not only the death of the deceased but must go further to prove that it was the act of the Accused that caused the death. For submission, learned counsel relied on *Ukorah v. State* (1977) 4 S.C. 167; (1977) 4 S.C. (Reprint) 111; (1978) NSCC 218 at 223; *R. v. Adengowe* (1936) 3 WACA 85; *Bakuri v. State* (1965) NMLR 163 and *Bwashi v. State* (1972) 6 S.C. 93; (1972) 6 S.C. (Reprint) 55. Learned counsel referred to the 2nd count of the allegation of which is that the Accused caused the death of Hassanatu Husseini by “inflicting bodily blows On her with your hands with the intention of causing death” and the evidence of the P. W. 4 in Exhibit 4D which says “I certify that the cause of death in my opinion to be stab injury to the head,” and contended that the death of the deceased was not and could not have been caused by the Appellant. Learned counsel submitted that where the evidence adduced in a case is different from the charge against an Accused, the evidence goes to no issue and the Accused entitled to be discharged. He relied on *Aruna v. State* (1990) 9-10 S.C. 87; (1990) 6 NWLR (Pt. 155) 125 at 135-136.

Learned counsel went further to highlight other contradictions in the case of the Prosecution which he classified as material contradictions. He made copious references to the documentary evidence and contended that there are material contradictions as to the date of death of the deceased. He referred in particular to the evidence of P. W. 2 who allegedly discovered the corpse of the deceased and his

evidence that the deceased died on the 6th October, 2003 and Exhibits 4A and 4B prepared by the P.W. 2 wherein the date of death is recorded as 16th October, 2003 and argued that the Respondent who was already in police custody since 6th October, 2003 could not have killed the deceased on the 16th October, 2003.

Still on contradictions learned counsel referred to the Evidence of the P.W. 5 and Exhibit 4D to the effect that the deceased was taken to the hospital from the mortuary on the 7th October, 2003 and the evidence of the P.W. 4 to the effect that the corpse was brought to him on the 17th October, 2003 for post mortem examination and that he examined the corpse on that same 17th October, 2003. He referred further to the contradictions between the testimony of the medical doctor P.W. 4 and the entries as Exhibits 4C and 4D and submitted that 7th October, 2003 is not one and the same as the 17th October, 2003.

With respect to the state of the corpse upon which the P.W. 4 purportedly performed the post mortem examination learned counsel referred to the evidence of the P.W. 4 that the body was “almost fresh as there was no rigour mortis” and submitted that given the definition of “rigour mortis” in Black’s Law Dictionary, 7th Edition, Hassanatu Husseini allegedly killed by the Respondent on the 6th October, 2003 was not the person whose corpse was examined by the P.W. 4. There is a serious doubt as to the identity of the person allegedly killed by the Respondent learned counsel argued. This lack of proof of identity, he contended, is further aggravated by the failure of the prosecution to call the father and fiancée of the deceased.

In response to the Respondent’s argument about the date of death and identity of the corpse not being in issue, learned counsel submitted that once an Accused person pleads not guilty to a charge, all the facts necessary to be established to prove the charge are put in issue. On this issue, it was the contention of learned counsel that the unexplained contradictions as to the date of death and the state of the corpse of the deceased are fundamental and material contradictions which have created a doubt the benefit of which was rightly given to the Respondent by the court below. For these submission, he relied on *Ikenye v. Ofune* (1985) 2 NWLR (Pt. 5) 1 at 13, *Onubogu v. State* (1974) 9 S.C. 1; (1974) 9 S.C. (Reprint) 1; and *Stephen v. State* (1996) 5 NWLR (Pt. 46) 978.

On the second issue of whether or not the confessional statement were wrongly admitted and acted upon by trial court, learned counsel pointed out that the trial court's conviction of the Respondent was based essentially on the purported confessional statements. He then referred to Page 60 of the record wherein the trial court ordered a trial-within-trial in respect of Exhibits "1" and "2" following the objection to their admissibility and observed that the trial-within-trial was rightly ordered. It was counsel's submission that once a trial-within-trial is ordered, the Prosecution has the burden of proving the voluntariness of the statement beyond reasonable doubt and which burden never shifts. He relied on *R. v. Isaac Ajia* (1960) NWLR 196 at 198; *Balogun v. A. G. Federation* (1994) 5 NWLR (Pt. 345) 442 at 458; and *Ebhomiennor v. The Queen* (1963) ALL NLR 371.

Learned counsel then referred to the evidence of the P.W. 1 at Pages 63 and 73 of the record to the effect that the statements were recorded in answer to questions by him to the Respondent and submitted that the statement were by reason thereof rendered inadmissible. For this submission, he relied on *Namsoh v. The State* (1993) 6 SCNJ 55 at 69; *Onobu v. I.G.P.* (1957) NNLR 25 at 26 *State v. Matti Audu* (1971) NNLR 91 and Section 35 (2) of the 1999 Constitution. Learned counsel further referred to the evidence of the P.W. I to the effect that he obtained a third statement (Exhibit "3") from the Respondent and contended that the Respondent was thus persuaded to make the statement and which persuasion rendered the statement involuntary and therefore inadmissible. Reliance was placed on *R v. Kwagbo* (1962) NNLR at 4-5.

Learned counsel again referred to the evidence of the two witnesses of the Prosecution at the trial-within-trial proceedings, and pointed out that while the P.W. I therein simply said he recorded the statement of the Respondent, the P.W. 2 therein said the Respondent confirmed the correctness of the statements. There was no evidence of voluntariness of the Respondent in making the statements, learned counsel argued. It was counsel's contention that in the absence of clear proof from the Prosecution that the Respondent volunteered the statements, they were inadmissible and ought to have been rejected irrespective of whatever the Respondent said at the trial-within-trial. Learned counsel argued that *Namsoh v. State* (supra) was cited

before the trial court which however ignored it, contending that the trial court was bound to apply the decision. He relied on *Dalhatu v. Turaki* (2003) 7 S.C. 1; (2003) 15 NWLR (Pt. 848) 310 at 350-351.

Learned counsel contended that Section 126 of the Criminal Procedure Code is no authority for the P.W. I to question the Respondent in the course of his making the confessional statement and that the provision was read out of context. It was counsel's further submission that if Section 126 (2) of the Criminal Procedure Code authorised such questioning then it is inconsistent with Section 35 (2) of the 1999 Constitution and by Section 1 (3) of the Constitution it would be void for inconsistency with the Constitution.

With respect to the contention of the Appellant that the Respondent did not challenge the admissibility of the statements at the point of their tendering at the trial court, learned counsel submitted that where inadmissible evidence is inadvertently admitted without objection, the court is bound to expunge it. Reliance was placed on *Alade v. Olukade* (1976) 2 S.C. 183; (1976) 2 S.C. (Reprint) 83; (1976) 2 FNR 10 at 13; *R v. Thomas* (1958) NSCC 22 at 24; and *Ameh v. State* (1978) 6-7 S.C. 27; (1978) 6-7 S.C. (Reprint) 21; (1978) NSCC 368 at 373,

As respect the third issue of whether or not the trial court properly evaluated the evidence, learned counsel described the trial court's evaluation as merely perfunctory and the findings based there thereon perverse. The finding by the trial court that the confessional statements were voluntary is perverse because they were made in answer to questions by the police, counsel argued. He contended that this fact was ignored by the trial court. Learned counsel submitted that it was the duty of the Prosecution to prove that the statements were voluntary and not for the Respondent to prove that they were not voluntary statements.

The finding that the arrest of the Respondent at the scene of crime sweating and covered with dust corroborates the confessions is perverse, counsel further argued. It was his submission that the mere arrest of the Respondent at the scene of crime is no proof of his guilt. He relied on *Buje v. State* (1991) 4 NWLR (Pt. 185) 287. Testing the confessional statements in the light of other evidence clearly shows that they cannot be true and the failure by the trial court so to do led to the perversity of the findings; counsel argued. In support of this

argument, he relied on *R. v. Kalu* 14 WACA 30; *Obisi v. Chief of Naval Staff* (2002) 2 NWLR (Pt. 751) 400 at 418. *Moshood v. State* (2004) 14 NWLR (Pt. 893) 422 at 434. Learned counsel referred to the finding that the deceased's hand bag and the N10,000.00 contained therein and produced by the Respondent from where he hid them was a corroboration of the confessions and submitted that the finding was per verse since the said items were not tendered in evidence. He referred to the various conflicts in the case of the Prosecution which he described as serious and fundamental and contended that the trial court was not entitled to ignore them. It was counsel's contention that the trial court did not properly evaluate the evidence and the court below was therefore right to set aside the in conclusion, learned counsel urged that the appeal be dismissed.

Let me now deliberate on the issues, starting with the second Issue of whether the statements of the Exhibits "1", "2" and "3" were wrongly admitted in evidence. The Respondent has two grounds for contesting the admissibility of Exhibits "1", "2" and "9" The first ground, according to the Respondent, is that the Prosecution failed in its burden of proving the voluntariness of the statements beyond reasonable doubt. On this challenge of the admissibility of Exhibits "1", "2" and "3" part of the proceedings immediately before and at the trial- within-trial are relevant. At the proceedings on the 19th December, 2005, when the Prosecution sought to tender Exhibits "1" and "2", Mr. J. U. Barrah for the Accused/Respondent objected in the following terms:-

"I object on the ground that the 1st Accused did not make the statements voluntarily. The statement of 10th October, 2003 was not made voluntarily. My client told me he was tortured and beaten. The other statement of the 10th December, 2003 was not signed by the 1st Accused person." (See Pages 59-60 of the record).

Following this objection, the trial court ordered a trial-within-trial. The trial, within-trial was commenced with the Prosecution calling two witnesses. The two statements were admitted for identification only and were marked "ID1" and "ID2". In his evidence however, the Accused/Respondent denied making any of the statements. In part of his evidence at the trial-within-trial, the Accused/Respondent had this to say:-

"I was arrested on 10th October, 2003 by the police. I made a

statement to them at Okene. On 12th October, 2003, 1 was taken to the State C.I.D. Lokoja. I did not make any fresh statement there. I was never taken before the PW. 2. I did not sign or thumbprint "ID1". I did not sign "ID2". I was in detention for three weeks at State C.I.D. before I was arraigned in court "ID1" and "ID2" are not my statements." (See Page 66 of the record).

Under cross-examination, the Accused/Respondent added

"I did not make any statement to the police at Lokoja. Despite the fact that I was tortured by the police, I did not make any statement to the police. The statement I made to the police in Okene was in my one handwriting." (See Page 67 of the record).

Following this volte-face of the Accused/Respondent, his counsel, J. U. Barrah remarked and submitted as follows:-

"This court ordered a trial-within-trial upon the objection raised by me on the grounds that "ID1" and "ID2" sought to be tendered were not made voluntarily by him. The evidence of D.W. 1 this morning that he did not make those statements at all has rendered the trial-within-trial unnecessary. When an Accused person denies making a statement, it is a matter within the discretion of the court to admit or not to admit it. I urge my lord not to admit "ID1" and "ID2"

I. A. Jamil for the Prosecution reacted as follows:-

"It is apparent that the 1st Accused person is retracting from making any statement to the police which makes trial-within-trial unnecessary. I urge my lord to admit "ID1" and "ID2" in evidence and the weight to be attached to them will be left to the conclusion of the proceedings." (See Pages 67-68 of the record). In its ruling on the 6th February, 2007, the trial court reasoned and found as follow:

"In this case, what the 1st Accused person has done is not a retraction but an outright denial. The requirement of trial-within-trial is not applicable where the objection to the admissibility of a confessional statement is that, the statement was not read to the Accused before he signed it or that he never made the statement at all. See Okoro v. State (1993) 3 NWLR (Pt. 282) 425. The two statements allegedly made by the 1st Accused person and sought to be tendered in evidence on 19th December, 2005 are hereby admitted in evidence and marked Exhibits "1" and "2" respectively."

In the face of the above circumstances, was the trial court wrong to admit Exhibits "1", "2" and "3" in evidence? In other

words were the statements inadmissible in law? The settled principle of law is that where, in a criminal trial, a statement allegedly made by an accused person is sought to be tendered in evidence and the Accused person challenges it by denying ever making it, there is no issue of admissibility raised thereby and the court will be at liberty to admit it. The court's duty then would be to determine at the conclusion of the case whether or not the Accused person made the statement. See Dawa & Anor. v. The State (1980) 8-11 S.C. 236; (1980) 8-11 S.C. (Reprint) 147; (1980) NSCC 334 at 345; Solomon Ehot v. State (1993) 4 NWLR (Pt. 290) 644 at 659 and 672-673; Ikpa v. A.G. of Bendel State (1981) 9 S.C. 7 at 28; (1981) 9 S.C. (Reprint) 5; Ogunye v. State (1999) 4 S.C. 30; (1999) 5 NWLR (Pt. 604) 548 at 570.

Where however, the admissibility of the alleged confessional statement is challenged on the ground that it was made under duress, threat or some form of inducement, then there is raised the issue of admissibility and as a matter of practice a trial-within-trial will be conducted to test, whether or not the confession was voluntary. See Egboghonome v. State (1993) 7 NWLR (Pt. 306) 383 at 435; Odunye v. State (supra); Ikemson v. State (1989) 6 S.C. (Pt. I) 114; (1989) 2 NWLR (Pt. 110) 455.

It is clear from the various texts of the proceedings which I have reproduced above that, the trial court adhered to the relevant guiding principles of criminal law and procedure. The Respondent's challenge of the admissibility of Exhibits "1" and "2" on the 19th December, 2005 was that he did not make the statements voluntarily. Both J. U. Barrah for the Accused/ Respondent and I. A. Jamil for the Prosecution called for a trial-within-trial to Bottle the issue of the voluntariness of the statements. The trial court acceded to the invitation of the parties and embarked on the trial-within-trial. In his testimony at the trial-within-trial proceedings on the 6th February, 2007, he somersaulted and claimed that he never ever made the statements. His counsel J. U. Barrah was quick to point out that the trial-within-trial was, in the wake of the testimony of the Accused, rendered unnecessary. He nevertheless urged that the statements be rejected. I. A. Jamil for the Prosecution also conceded that trial-within trial had become unnecessary but urged that the statements be ad-

mitted in evidence. The trial court reasoned that in view of the new position of the Accused/respondent completely different from that which he had taken on the 19th December, 2005 admissibility was no longer an issue and admitted the statements in evidence, citing Okoro v. State (1993) 3 NWLR (Pt. 282) 425 as its authority.

With respect to the Accused/Respondent's first ground of his challenge of the admissibility of Exhibits "1" and "2", it is my view and I hold the trial court was perfectly right to admit the statements. B

I now come to the Respondent's second ground for contesting the admissibility of Exhibits "1", "2" and "3", the ground being that they were the products of questions by the P.W. 1 and answers by the Accused/ Respondent. This issue was raised both at the trial court and at the Court of Appeal and before both courts reliance was placed on Mamsoh v. State (supra). The trial court did not appear to have deliberated upon it. That was wrong. The court had a duty to examine it and make its pronouncement on it. The court below however examined the issue in considerable details and resolved it in favour of the Respondent. C

In his evidence, the P. W. 1 Cpi Bello Isiaku at Page 63 of the record said:- E

"1. I recorded 'ID1' by the answers given to the questions I asked the 1st Accused person. I also put questions to the 1st Accused which he answered and wrote in 'ID1'."

Again under cross-examination, the P.W. 1 said at Page 73 of the record:- F

"Exhibit '2' was written by the 1st Accused person himself. I recorded Exhibits '1' and '3'. The 1st Accused person answered the questions I put to him which I recorded in Exhibits 1 and 3"

In its judgment, the court below examined the above testimony of the P.W. 1 under cross-examination and at Pages 256-257 reasoned as follows:- G

"In the present case from the evidence-in-chief of the P.W. 1 reproduced above, the confession associated with the 1st Accused/Appellant was recorded from questions and answers prompted by the police. A confession obtained through questions and answers cannot be said to be voluntary. I am of the opinion that such statements alleged to have been made by the 1st Accused/Appellant to the police (P.W. 1) has not satisfied the provisions of Section 21(1) of H

the Evidence Act which requires that confession made by an Accused person must be voluntary before it can be admissible in evidence. See Okonkwo v. State”

The court below further made reference to some texts in the case of Namsoh v. State (supra) and in an apparent application of the principle therein to the facts of this case concluded thus -

“I am of the opinion that Exhibits ‘1’ and ‘3’ admitted by the trial court as confession have not passed the test of their being made voluntarily. They were made as a result of question and answer session between the 1st Accused/Appellant and P.W. 1.”

The question is whether the principle in Namsoh v. State applies to the facts of this case. In Namsoh v. State also reported in (1993) 5 NWLR (Pt. 292) 144 at 17, this court per Kutigi, (JSC) (as he then was) observed:-

“This statement unlike the other statement Exhibit ‘F’ which was recorded or written by the Appellant himself was recorded by one policeman Sgt. Titus Kwakiya (P.W. 7). Both P.W. 7 and the Appellant in their testimonies made it abundantly clear that Exhibit ‘H’ was a product of a ‘question and answer’ session between the two of them. The police recorder (P.W. 7) was putting questions already prepared by his superiors on a sheet of paper to the Appellant while he (P.W. 7) also recorded the answers. This procedure is clearly wrong. Once a police officer decides to make a complaint against an Accused person, he must first of all caution the Accused in a prescribed form. If the Accused decides to volunteer a statement, he may write it himself or the police officer may write it for him. I cannot see how a statement such as Exhibit ‘H’ herein would be regarded as free and voluntary when it is evident that the so called statement was a result of questions selected by and put to the Accused by the police officer himself. The procedure is against the provisions of Order 6 of the Criminal Procedure (Statement to Police Officers) Rules, 1760, Cap. 30 of the Laws of the Northern Nigeria, 1963. (underlining mine).”

From the above text, there is one clear striking feature in the Namsoh’s Case. It is that the police Sgt. (P.W. 7) who recorded the statement of the Accused person was armed with a sheet of paper which contained selected questions already prepared by his superiors and designed to excite from him self-implicating answers. It was the view of this court therefore that the alleged statement of the Ac-

cused person made up of the answers to such specially prepared questions could not be said to be free and voluntary.

That situation does not exist in this case. Unlike the Namsoh's Case, there is in this case no evidence of the specific questions asked by the P.W. 1, in response to which the admissions in Exhibits "1", "2" and "3" were made. Nor was there evidence that the facts constituting the admissions in the said statements were prompted by questions from the P.W. 1. B

It is perhaps necessary to emphasize that it is not a rule of our Criminal Procedure Law and the law of evidence that where, in the course of recording the statement of an Accused person, a police officer asks questions and records the answers by the Accused therein, the statement automatically becomes involuntary and thus inadmissible in law. That was not the principle upon which Namsoh's case was decided by this court. A careful look at the Namsoh's case shows that the specially prepared questions were oppressive of the Accused in the sense that they were meant to sap and indeed sapped the free will of the Accused person and thus rendered his ensuing statement involuntary. It is my firm view and I hold with respect, that Namsoh v. State (supra) is quite distinguishable from this case and was therefore wrongly applied by the court below. The mere assertion by the P.W. 1 that in the course of recording the statements of the respondent, he asked questions and recorded the answers does not ipso facto render the statements involuntary. An alleged confessional statement made by an accused person to the police only becomes objectionable and inadmissible in evidence in a criminal proceeding, if the making of the confession is proved to have been prompted by any inducement, threat or promise by the police and sufficient to give the Accused person the impression that by making it, he would gain an advantage or avoid an evil. That in my view is the purport of the provisions of Section 28 of the Evidence Act, Cap. E 14, Laws of the Federation of Nigeria, 2004. The said section provides:- C
D
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"28. A confession made by an Accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise

having reference to the charge against the Accused person, proceeding from a person in authority, and sufficient, in the opinion of the court, to give the Accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature.”

B As I have already pointed out above, there is no evidence of the specific questions put by the P.W. 1 to the Accused/ Respondent in this case. In any event there was even no issue as to the voluntariness and/or admissibility of the statements, Exhibits “1”, “2” and “3”
C at the trial court. In the proceedings at the trial court on the 19th December, 2005, the Accused/Respondent admitted making the statements but claimed that he made them under duress and he thereby forced, as it were, a trial-within-trial to test the voluntariness of the statements. Yet on the 6th of February, 2007, after nearly 15 months
D on this issue of voluntariness at the trial-within-trial, the Accused/ Respondent made a complete “U” turn to say that he never made the statements at all. And as agreed by counsel for both parties admissibility was, in the circumstances, no longer an issue and the statements were accordingly admitted.

E In view of the foregoing, I hold that the statements are admissible in law and with the agreement of counsel for both parties on the 6th February, 2002 at the trial court rightly so admitted. The court below was therefore clearly in error in its decision about their inadmissibility. The result is that the issue is resolved in favour of the Appellant.
F

Next is the issue of whether there exist such material contradictions that created doubts regarding the corpse upon which the post mortem examination was carried out. With respect to inconsistencies
G as to the identity and cause of death of the deceased, the court below at Pages 243-244 reasoned:-

*“It may be possible that an Accused person may admit causing the death of the deceased, but in actual fact unknown to him the deceased might have died of other causes unknown to the Accused
H person. In order to avoid such a scenario that it becomes imperative that the Prosecution is required to prove beyond reasonable doubt not only that the act of the Accused person could have caused the death of the deceased, but that it actually did. If there is the possibility that the deceased died from other causes than the act of the Ac-*

cused, the Prosecution has not established the case against the Accused person. See Audu v. State (2003) 7 NWLR (Pt. 830) 51; Kauru v. State (2000) 9 NWLR (Pt. 771) 90”

The court then made copious references to the evidence of the P.W. 1, P.W. 4 and P.W. 5 and Exhibits 4A, 4B, 4C and 4D and at Page 250 of the record expressed its own perception of the evidence as follows:-

“There is confusion from the evidence placed before the court as to which corpse was the post-mortem examination of 7th October, 2003 conducted as per Exhibit 4D and on which corpse was post-mortem examination of 17th October, 2003 conducted on as per Exhibit 4C and the evidence-in-chief of P.W. 4 the medical doctor. These inconsistencies or contradictions are substantial to the main issues in question before the trial court and are capable of creating some doubts in the mind of the court. I am of the opinion that the 1st Accused/Appellant should be entitled to the benefit of these doubts....

I am in agreement with the submission of learned counsel for the Appellant that it is very doubtful if the corpse examined by P.W. 4 on 17th October, 2003 was that of the deceased allegedly killed by the 1st Accused person (Appellant) going by the contradictions in the evidence of the Prosecution witnesses as regards the identity of the corpse.

I am satisfied that the Prosecution has not linked the 1st Accused/Appellant to the cause of death of the deceased and has therefore not proved a case of culpable homicide against the Appellant.”

The question here is whether there were such material contradictions as to the identity of the corpse being that of Hassanatu Husseini to justify the above findings of the court below? Put in another way are there such material contradictions as to the identity of the deceased fatal to the Prosecution’s case? This issue was raised before the trial court. It was contended before that court that going by the contradictions in the evidence of the prosecution as regards the identity of the corpse, it was doubtful if the corpse examined by the P.W. 4 was that of the deceased allegedly killed by the Accused/Respondent. The court examined the admissions in Exhibits “1”, “2” and “3” and some other evidence outside the confessions and concluded as follows:-

“From the totality of the evidence before me, I am satisfied

beyond any reasonable doubt that it was the intentional and unlawful act of the 1st Accused person that caused the death of the deceased. It is clearly unnecessary in the circumstances, for the prosecution to call further evidence in proof of the identity or cause of death of the deceased."

B By the above statement, the trial court was of the view and held that there was sufficient proof of the identity of the corpse being that of Hassanatu Husseini and that there was, in the circumstances, no need for further evidence in proof of same. Was this finding of the trial court about the identity of the corpse being that of Hassanatu C Husseini perverse? I shall answer this question in the negative. The finding was amply supported by the evidence on record. In his evidence on the 5th June, 2007, the P.W. 1 had this to say with respect of the identity of the corpse:-

D "When the case diary was handed over to me by Inspector Ojo, there was wedding invitation card of the deceased Hassanatu Husseini. The photograph of the deceased and her fiance was on the invitation card. I traced the father of the deceased through the information contained in the invitation card. When the father of the deceased was invited to our office in Lokoja, he was told of what had E happened. He got in touch with the fiance of his daughter. When he came, I brought them to the General Hospital Okene where they identified the corpse of the deceased after which it was released to them for burial. The father of the deceased informed us that his daughter F was serving in the Nigeria Police Force at Benin. We sent signals to the Edo State Police Command, Benin. See Pgs 77-72 of the record.

Still on the identity of the corpse being that of Hassanatu Husseini, the P.W. 4 also had this to say.

G "On the 17th October, 2003, the corpse of Hassanatu Husseini was brought in by some Policemen. I performed post mortem on the corpse after which I issued a report. It is Exhibits '4C' and '4D'. The corpse was identified to me by the father of the deceased... There was a deep cut on the forehead. In my opinion, the cause of death H was the deep cut inflicted on her forehead... I performed the post mortem on the same day the corpse was brought in. However, I filled in the form later from the card which was opened for the corpse." (See Page 83 of the record).

The foregoing clearly demonstrates the strong and un-

challenged evidence of the identity of the deceased being that of Hassanatu Husseini. The trial court was therefore perfectly right when it held that there was, in the circumstances, no need for further evidence in proof of the identity of the corpse. And having regard to the fact that findings are not perverse, there was absolutely no basis for the interference by the court below. I say, with respect, that there was not the slightest confusion as to the corpse upon which the PW. 4 performed the examination. What the court below regarded as material contradictions are simply mere inaccuracies in the entries in some of the documents and the doctor's evidence to the date on which he performed the post mortem examination.

The result from the foregoing analyses is that I resolve issues One and Three in favour of the appellant. Having resolved all the issues in favour of the appellant, this appeal succeeds.

Before I conclude, I wish to emphasize the significance of a confessional statement in a criminal proceeding. A confessional statement made by an Accused person and properly proved is the best guide to the truth of the part played by him. It is an admission by the Accused person that he committed the offence and therefore in the nature of his plea of guilty to the offence. See *Egboghonome v. State* (supra), *Obosi v. State* (1965) NMLR 119; *Obasi v. State* (1992) 8 NWLR (Pt. 260) 383; *R v. Wilson* (1959) SCNLR 462. **It is also settled principle of law that a free and voluntary confession by an Accused person if direct, positive and satisfactorily proved is sufficient to warrant a conviction even if there is no corroborative evidence to establish the truth of the confession.** See *R v. Omokaro* (1941) 7 WACA 146 and *Ejinima v. State* (1991) 7 S.C. (Pt. III) 1; (1991) 6 NWLR (Pt. 200) 627 at 655.

In the instance case, the Accused/Respondent admitted the commission of the offence in each of the confessional statements in Exhibits "1", "2" and "3". Even these confessional statements, without more, were sufficient to sustain the Accused/Respondent's conviction for the offence of culpable homicide with which he was charged. There was nevertheless strong corroborative evidence outside the confessions. It is that on the 6th October, 2003 the Accused/Respondent's vespa motorcycle was parked by the roadside some 10 kilome-

tres from Okene town along the Okene - Auchi Road, At about 8:45 pm a police patrol team in which was also the P.W. 2 saw it and became suspicious of the mission of its owner in that place at that hour. In reaction therefore, the team sounded a warning to whoever that owned it to come out. Following this warning, the Accused/ Respondent emerged from the bush holding a torch light. He was sweating and his body was covered with dust. On interrogation by the police, he could not give any satisfactory explanation as to what he was doing in that environment at that odd time. He was therefore taken along with his motorcycle to the Nigeria Police Area Commander's office Okene. The patrol then returned to the Okene-Auchi Road to continue their patrol. On their way back to Okene in the morning, they decided to check the place from where the Accused/Respondent emerged in the night and behold, they saw the corpse of the deceased lying naked on the ground and covered with sand and leaves and with blood stain on the forehead.

It is my firm view that this evidence besides being a corroborative evidence of the confessions also qualifies as a strong circumstantial evidence pointing irresistibly and conclusively at the accused person as the perpetrator of the gruesome murder. In other words, the above circumstantial evidence, standing alone and without the confessional statements is strong enough to sustain the conviction of the Accused/ Respondent.

Despite the above stated admission by the Accused/ respondent of his guilt and the strong circumstantial evidence which also established his guilt, the court below, by sheer recourse to unwarranted technicalities entered a verdict of not guilty to him, abandoning thereby its sacred duty of doing substantial justice. The court below cannot claim to have done justice by returning a verdict of not guilty to the Accused person who positively and unequivocally confessed to the murder of the innocent and unsuspecting young police officer Hassanatu Hussein on her way to Benin.

In my view, the decision of the court below is not just a travesty of justice; it is an outright injustice which ought not to be allowed to stand. It is a case where the court employed technicalities to defeat the ends of justice. This court has emphasized again and again the dangers of technicalities to the cause of justice. In the case of Sylvester Ogbomor v. The State

(1985) I NSCC 224 at 239, this court per Aniagolu, JSC, re-emphasized the ultimate aims of the law at doing substantial justice as opposed to technical justice when he said:-

“The dictates of justice which command that the guilty be punished and the innocent set free after a fair hearing under procedural regularity, do not permit the acquittal of an otherwise guilty person upon fanciful errors contained in the charge. The law always aims at substantial justice.”

In State v. Salihu Mohammed Gwonto & Ors. (1983) NSCC 104 at 119 again, this court per Eso, JSC, restated the principle thus:-

“It would have amounted to travesty of justice to allow the judgment of the Court of Appeal to stand. This court has for some time now laid down as a guiding principle that it is more interested in substance than mere form. Justice can only be done if the substance of the matter is examined. Reliance on technicalities leads to injustice.”

And in Bature v. State (1994) 1 NWLR 267 at 282, this court per Onu, JSC, re-emphasized:-

“Rather, what I mean is that mere technicalities (as opposed to substantial justice upon which the law looks with seriousness) as depicted in the instant case ought not to be allowed to defeat the ends of justice.”

Regrettably, the court below did not feel bound by the above principle of doing substantial justice. Rather it chose to adopt the path of technical justice and inflicted thereby the injustice complained of. As I already indicated above, there is merit in this appeal. The judgment of the court below dated the 18th of June, 2009 is palpably wrong and is accordingly hereby set aside. On the other hand, the judgment of the trial court dated the 24th of June, 2008 was right. The conviction and sentence of the Accused/Respondent was proper. Consequently, the judgment of trial court of the 24th of June, 2008 be and is hereby restored.

H

MUKHTAR JSC

This appeal is against the decision of the Court of Appeal, Abuja, wherein the Appellant's conviction on the charge of culpable homi-

cide contrary to Section 221 of the Penal Code was quashed, and the Accused/Appellant was discharged and acquitted. The Appellant had in the High Court of Kogi State been discharged of the offence of criminal conspiracy for which he was also charged. The Prosecution has appealed against the decision of the Court of Appeal on six
B grounds of appeal, from which it has distilled three issues for determination which are set out in the Appellant's brief of argument. The issues-

“1. Whether the learned justices of the Court of Appeal were right in
C reversing the judgment of the learned trial judge on the ground that inconsistencies existed in the Prosecution's case which created doubts regarding the corpse upon which post-mortem examination was carried out.

2. Whether the Court of Appeal was right when it held that the learned
D trial judge improperly admitted Exhibits 1, 2 and 3 being the confessional statements of the Respondent in evidence and utilizing them in convicting the Respondent.

3. Whether, having regard to the facts and circumstances of this case, the Court of Appeal was not in error in tampering with the learned
E trial judge's evaluation of the evidence in this case when same was not shown to be perverse.”

These issues have been thoroughly dealt with in the leading judgment, but I will by way of emphasis make some contributions.

F The gravamen of the complaint under Issue (1) supra is hinged on the finding of the lower court on the evidence of P.W. 4 and Exhibits 4B, 4C and 4D, which it regarded as inconsistent. I will now look at the exhibits. Exhibit 4B, which has 16/10/03 as the date of death, stabbing and beating as cause of death, 17/10/2003 as the
G date report was sent to the coroner. Exhibit 4C, a post-mortem examination report states the name of the deceased as Hassanatu Husseini, and the date of the report as 17/10/03. In the case of Exhibit 4D, which still bears the name of the deceased as Hassanatu Husseini, the probable date of death as 6th October, 2003, and date
H of conducting examination as 7/10/03. The pertinent evidence of P.W. 4 to this discussion reads as follows:-

“On 17/10/2003, the corpse of Hassanatu Husseini was brought in by some policemen. I performed a post-mortem on the corpse, after which I issued a report. It is Exhibits 4C and 4D.”

The lower court in the course of evaluating the evidence observed and found as follows in its leading judgment-

“There is confusion from the evidence placed before the court as to which corpse was the post-mortem examination of 7/10/2003 conducted on as per Exhibit 4D and on which corpse was post-mortem examination of 17/10/2003 conducted on as per Exhibit 4C^B and the evidence-in-chief of P.W. 4, the Medical Doctor. These inconsistencies or contradictions are substantial and fundamental to the main issues in question before the trial court and are capable of creating some doubt in the mind of the court. I am of the opinion that C the 1st Accused/Appellant should be entitled to the benefit of these doubts... I am in agreement with the submission of the learned counsel for Appellant that it is very doubtful if the corpse examined by P.W. 4 on 17/10/2003 was that of the deceased allegedly killed by the 1st Accused Person/ Appellant, going by the contradictions in the evidence of the prosecution witnesses as regards the identity of the corpse.” D

The pertinent questions to ask and answer here are, are these inconsistencies and contradictions substantial and fundamental enough to negatively affect the case of the prosecution? Perhaps I should E look at the exhibits again to be able to answer this question. Exhibit 4B does not bear the name of the deceased, so it is not certain if it is connected with this case, but it is instructive to note that the dates on it synchronizes with the dates on Exhibit 4C and Exhibit 4D bear the F same name of the deceased, but the dates on them differ. Me think that since these exhibits bear the same names, and the cause of death are consistent with one another and with the evidence of P.W. 4 who conducted the post-mortem examination (i.e. that the deceased was stabbed), the fact that a figure ‘1’ is missing in one does not result in G substantial and material contradiction/inconsistency. A careful perusal of the evidence of P.W. 4 reproduced above, the dates on Exhibits 4C and 4D will show that the month and year the incident happened are the same. The only anomaly that exists is the figure of the day, H which to my mind could have been the mistake of omitting the figure ‘1’ in some of the evidence before the court. In criminal cases like this the most important factors to consider are the ingredients of the offence of culpable homicide, and whether or not they are present. In this case, there is ample evidence that a woman was killed, and the

act has been linked with the Appellant, as is illustrated in the Appellant's caution statement. In this wise, I subscribe to the finding of the learned trial judge which reads as follows:-

"There is no contradiction in the evidence of the Prosecution witnesses on all the material issues in this case. There is no irreconcilable evidence creating doubt as to who killed the deceased. In effect there is no contradiction or doubt created to necessitate a resolution of same in favour of the 1st Accused person. The evidence of the Prosecution witness and the confession of the 1st Accused person establish beyond any shadow of doubt that the 1st Accused person had both the motive and capability of committing the crime he is charged with and that he indeed committed the said crime."

The lower court had no justification to interfere with the findings. The contradictions and/or inconsistencies alluded to by the lower court are to my mind not substantial or fundamental as to affect the case of the Prosecution, which was proved beyond reasonable doubt. In this event the answer to the poser above is in the negative. The cardinal principle of law is that inconsistency or contradiction in evidence will be substantial only if such contradictions and/or inconsistencies are material to an issue of fact. In the case of Igbi v. State (2000) 2 S. C. 67; (2000) NWLR (Pt. 648) 169, Ayoola, JSC, in a majority judgment expounded the position of such evidence thus:-

"Discrepancies or contradictions in the evidence of a witness or witnesses may be said to be material where they go to an issue of fact which must be determined before a proper verdict can be arrived at in a case or where in the circumstances in which they occurred they were such as the case or when in the circumstances in which they occurred they were such as to cast a doubt on the credibility of the witness or witnesses."

I am guided by the above. It is my firm belief that the lower court erred on the findings of the learned trial court on the evidence before it, and its own perception of the quality or credibility of the evidence vis-a-vis perceived contradictions and/or inconsistencies therein. I allow the appeal and set aside the judgment of the Court of Appeal.

ONNOGHEN JSC

I have had the benefit of reading in draft the leading judgment of my learned brother, Tabai, JSC, just delivered. I agree with his reasoning and conclusion that the appeal has merit and should be allowed.

B

MUHAMMAD JSC

I was privileged to read in draft the judgment of my learned brother, Tabai, JSC. I agree with his reasoning and conclusion. The confessional statement of the Respondent alone is strong enough to ground a conviction. Secondly, the circumstantial evidence is so compelling in suggesting that it was the Appellant and nobody else that murdered the deceased. The Appellant in his statement to the police which was admitted in evidence and marked Exhibit 1 stated inter alia:

“I wish to state further that on 6-10-2003 at about 1900 hrs, I left my house with my Vespa Motorcycle to bought(sic) Petrol at Total Filling Station Okene on my arrival at the Filling Station, I bought my fuel and I am (sic) about to move away when a young lady whom I don’t(sic) know before, the young lady stop me (sic) to carry her to check point where she can get a vehicle going to Benin because she was coming from a journey. The lady was with her hand bag and a polythene bag containing her clothes. I agreed with her and she climb (sic) my Vespa on our way going, I started moving very fast until I passed check point towards Okpelia road. The lady didn’t shout at the first instance because she is a stranger and she did not know anywhere. On getting to a place in the bush around 2200 hrs and I stopped my motorcycle and ordered her to come down. As she obey G and come down.(sic) I dragged her inside the bush and ask (sic) her to off dress (sic) her cloth that I want to sex her. As she refused me to sex her, I started beating and boxing her to the extent that she fell down. Nobody was with us to help her as she was shouting. I boxed her to death because I am a boxer. As I was still inside the bush, I H over heard a shout at where I park (sic) my vespa at the road side and I came out before I was arrested by a mobile policeman.(sic) I didn’t disclose to them over what I did inside the bush. It was the following day being 7-10-2003 that police took me to that place and

the dead body of the lady was found where I killed her.”

Exhibits 2 & 3 were additional statements by the Appellant to the police. Although the Appellant denied making such confessional statements, the trial court conducted a trial-within-trial with a view to finding the truth of the matter. In admitting the statements made by the Appellant, the learned trial judge stated:

“I believe and accept the evidence of P.W. 1 that Exhibits “1” to “3” were made voluntarily by the 1st Accused person. Having been made voluntarily the statements are no doubt admissible in evidence.”

The learned trial judge went on to hold, as follows:

“Tested against the evidence of P.W. 1; P.W. 2 and P.W. 5. I am satisfied that the confession of the 1st Accused person that he killed the deceased is not only probable but it is also true, positive and direct. Since the 1st Accused person did not give evidence in his defence, he did practically nothing to rebut the presumption of guilt or to cast a reasonable doubt on the case of the Prosecution.”

The court below, however, while receiving the case, found as follows:

“I have also carefully perused all the exhibits tendered in evidence as confessional statement and having mirrored them against other credible evidence before the court, I am satisfied that they did not constitute a confessional statement because they are not positive and direct and are also not credible I am also of the opinion that Exhibits 1, 2 and 3 were improperly admitted in evidence and utilized by the learned trial judge.”

It appears to me that the above holding of the court below was done as if that court was sitting as a first instance court. But, I think the general practice anywhere is that an appeal court has less to do, if at all, with evaluation of evidence which is pre-eminently within the confines of trial court. The trial court, in my view, did all that the law required it to do in relation to a statement which is alleged to have been made voluntarily by Accused/Respondent but which the same Accused/Respondent denied its voluntariness. The law places the burden of proving the voluntariness of a statement said to be confessionally(sic) made by Accused person, on the prosecution. The learned trial judge as quoted above by me showed his satisfaction that the statements made by the Respondent were voluntarily made. It is baffling to observe a contrary holding by the appeal court when

the trial-with-in-trial was not conducted by that court. The trite position of the law is still that once a statement which was made by an Accused was made in a free atmosphere and it is direct, unequivocal, positive and properly proved, it alone, can sustain a conviction without any corroborative evidence. See: *Akinmoju v. The State* (2000) 4 S.C. (Pt. I) 64; (2000) 4 SCNJ 179; *Peter v. The State* (1979) 12 SCNJ 53. B

The court below, as an appellate court, has some limited power of review of cases where circumstances dictate. It is not part of its powers to look for mistakes supposedly committed by the trial court where none exists. In *Ejowhomu v. Edok-Eter Mandilas Ltd.* (1986) 5 NWLR (Pt. 39) 1, Aniagolu, JSC, commented as follows: C

“The appeal court is not avant-garde with powers of review of cases decided at the high court like an ombudsman, going about raking up, suo motu, decisions of that court, and ‘looking for mistakes, supposedly made by trial court with or without applications made to it by a complainant. Such is not among “the wide powers” given to that court by Section 16 of the Court of Appeal Act, 1976.” D

The evaluation of the evidence carried out by the trial court including the trial-within-trial which showed the confessional statements of the Respondent to be freely and voluntarily made, I am of the view that the trial court was right in discharging its responsibility. I find its decision unassailable, and like my brother, Tabai, I affirm same and set aside the one delivered by the court below. E

F

RHODES-VTVOUR JSC

The Appellant and one, Abolarinwa Ewedayo were arraigned on a two count charge which reads: G

COUNT 1

That you, Jimoh Salawu and Abolarinwa Ewedayo, on or about the 7th day of October, 2003, at Okene in Okene Local Government Area within the Kogi State Judicial Division agreed to do on illegal act to wit: to commit culpable homicide punishable with death and in pursuance of the agreement you killed Hassanat Husseini and you thereby committed an offence punishable under Section 97 (1) of the Penal Code. H

COUNT 2

That you, Jimoh Salawu and Abolarinwa Ewedayo, on or about the 7th day of October, 2003, at Okene in Okene Local Government Area within the Kogi State Judicial Division in further of your common intention did commit culpable homicide punishable with death in that you caused the death of Hassanatu Husseini by doing an act
 B to wit: inflicting bodily blows on her with your hands with the intention of causing her death and thereby committed an offence punishable under Section 221 of the Penal Code read along with Section 79 of the same code.

C The case proceeded to trial. Olusiya, J, of the Kogi State High Court presided. The Appellant and Abolarinwa Ewedayo were acquitted and discharged on Count 1. On Count 2 the Appellant was convicted and sentenced to death. The Court of Appeal set aside the judgment of the trial court. The Appellant was convicted .principally
 D on his confessional statement by the trial court.

Section 27 (1) of the Evidence Act states that:

“A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.”

E See: The Queen v. Ogucha (1959) NSCC Vol. 150

Statements which are direct acknowledgment of guilt ought to be regarded as confessions. There must be clear acknowledgment of guilt before an admission would amount to a confession. Put in another way a confession is a voluntary admission by a person of his
 F participation in a crime and a trial court can convict on a confessional statement of an Accused person.

Relevant extracts from the statement of the Appellant which the trial judge found to have been made voluntarily runs as follows:

G “.....I wish to state further that on 6/10/2003 at about 1900 hrs, I left my house with my vespa motorcycle to buy petrol at Total Filling Station Okene, on my arrival at the filling station, I bought my fuel and I am about to move away when a young lady who I don't know before, the lady stop me and beg me to carry her to check
 H point where she can get a vehicle going to Benin because she was coming from a journey. The lady was with her hand bag and a polythene bag containing her cloths. I agreed with her and she climbed my vespa. On our way going, I started moving very fast until I passed check point towards Okpella road. On getting to a place in the bush

around 2200 hrs and I stopped my motorcycle and ordered her to come down. As she obey and came down, I dragged her inside the bush and ask her to off dress her cloths that I want to sex her. As she refused me to sex her. I started beating and boxing her to extent that she fell down... I box her to death because I am a boxer. As I was still inside the bush I overheard a shout at where I park my vespa at the road side and I came out before I was arrested by a mobile police-man. I didn't disclose to them what I did inside the bush. It was the following day being 7/10/2003 that Police took me to the place and the dead body of the lady was found at where I killed her... I only kill the girl to enable me get more money for living... I killed the lady alone and my aim is to make use of her breast for making money..."

To my mind, this is a confession by the Appellant. It shows how he killed Hassanat Hussein. The Appellant is clearly an evil and dangerous man. He took advantage of a defenceless young lady. He lunged at her with repeated blows, physically assaulted her to submission and raped her. He left her dead body in the bush. The Appellant's act was indeed appalling. The trial court was correct in ruling that the Appellant should forfeit his place among civilized people. His act was callous in the extreme.

My lords the Appellant did not give evidence or call any witness. If an Accused person pleads not guilty to murder, and says he did not make a confessional statement admitting the murder for which he was charged, he ought to explain to the court that his confessional statement is not correct. Failure to explain to my mind is conclusive evidence that he killed the deceased, moreso as the confession was free and voluntary.

The finding of the trial court that the confessional statement of the Appellant was a true account of how the Appellant killed Hassanat Hussein was right and the conviction based on it was correct.