

SUPREME COURT OF NIGERIA
27TH JANUARY, 2012. SC. 396/2010
CORAM: - F. F. TABAI, C. M. CHUKWUMA-ENEH,
B. RHODES-VIVOUR, N. S. NGWUTA,
M. U. PETER-ODILI, JJSC

OLATINWO NURUDEEN BRIGHT APPELLANT
V.
THE STATE RESPONDENT

EVIDENCE - Confession - Admissibility - Under Evidence Act s. 27(2)
- It is admissible against the maker if it is voluntarily made - And
cannot be held inadmissible merely because the accused denies hav-
ing made it (H1)

CRIMINAL PROCEDURE - Confession - Voluntariness - When the
voluntariness of confessional statement is an issue - Trial court has a
duty to conduct a trial within trial - To determine the voluntariness or
otherwise of same (H2)

CRIMINAL PROCEDURE - Conviction - Based on uncorroborated
confession - Propriety - Court can convict an accused upon such -
Provided among other items - That there is something outside the
confession - Which shows that it may be true (H3)

CONSPIRACY - Ingredients - How to prove - Proof of the offence is
a matter of inference - Hence the involvement of appellant can be
inferred from the circumstances of the case (H4)

CONSPIRACY - Essential element - The offence is complete upon
meeting of the minds - And in order to complete the offence - It is
not necessary that anything should be done beyond the agreement
(H5)

MURDER - Ingredients - Proof - Prosecution must prove - That there
was death of a human being - Which was caused by the intentional
act of the accused (H6)

MURDER - Cause of death - Proof of - Medical report - Relevance of - Cause of death can generally be determined from medical report - However medical evidence is not essential in all cases (H7)

CRIMINAL PROCEDURE - Murder - Proof - Duty on prosecution - Prosecution must prove its case beyond reasonable doubt - By adducing relevant evidence - And not by calling many witnesses (H8)

FACTS

In September 1999 in Lagos State, defendant/appellant (an Estate Agent) conspired with one Patrick Olufemi Kolawole Ogedengbe (D.W1, also a former driver of the deceased Navy Captain Yetunde Peters) to murder and indeed murdered the deceased. Thereafter, they were arrested by the police. Appellant made confessional statements to the police i.e. exhibits D and E. Accordingly, they were arraigned before the High court of Lagos State, Ikeja on a two-count charge of conspiracy to commit murder and murder contrary to sections 324 and 319(1) respectively of Criminal Code Cap 32 Laws of Lagos State 1994. Although nobody witnessed the murder, however prosecution/respondent contended at the trial that appellant and DW1 wrapped the deceased in a rug and put her in the boot of her car and eventually dumped the body in the lagoon along Adeniji Adele Area of the third Mainland Bridge, Lagos.

Respondent utilized the evidence of five witnesses and the extrajudicial statements of appellant marked as exhibits D and E. Appellant objected to those statements on the ground that they were not free and voluntary. This necessitated the conduct of a trial within trial by the court. The statements were found to be voluntary and were accordingly admitted in evidence. At the end of the trial, the court found appellant and the other person guilty as charged and sentenced each to seven years imprisonment in count one and to death by hanging in count two. Aggrieved, appellant filed an appeal to the Court of Appeal, Lagos division. The court dismissed the appeal and affirmed the judgment of the trial court. Aggrieved further, appellant has appealed to Supreme Court.

ISSUES FOR DETERMINATION

“(a) Whether the trial Court and indeed the lower Courts were both right in convicting and sentencing the appellants primarily on

the uncorroborated and retracted extra-judicial statements of the Appellant.

(b) Whether the prosecution proved the necessary ingredient(s) of the offence of conspiracy and murder against the appellant beyond reasonable - doubt as required by the law.

(c) Whether the failure on the part of the prosecution to call vital witnesses circumstantially links the appellant with the murder of the deceased did not amount to a gross miscarriage of justice."

HELD (Unanimously dismissing the appeal per **NGWUTA JSC**)
Confession - Admissibility

1. If voluntarily made, a confession is deemed a relevant fact and admissible against the maker under s. 27(2) of the Act. A confession does not become inadmissible merely because the accused denies having made it. (p. 137 G)

Confession - Voluntariness

2. And when the voluntariness of the confessional statement is an issue, the trial Court has a duty to conduct a trial within trial to determine the voluntariness vel non of the confession, as was done in this case.

Proof of the voluntariness is beyond reasonable doubt before the statement can be admitted. In this case, the appellant claimed that the statements were written by the PW5 and he was forced to append his signature thereto. The trial Court dutifully held a trial within trial and found that Exhibits D and E were freely and voluntarily made by the appellant and admitted them in evidence against him. (p. 137 G)

Conviction - Based on uncorroborated confession - Propriety

3. It is a settled principle of law that a Court can convict an accused on his uncorroborated confessional statement, provided the following conditions are satisfied.

(1) There is something outside the confession which shows that it may be true.

(2) The statements contained therein are likely to be true.

(3) The accused had the opportunity to have committed the offence, and

(4) The facts stated by the accused are consistent with other facts which have been ascertained and established at the trial.

It is my view that for a Court to convict upon an uncorroborated confessional statement of the accused, the four conditions must be cumulatively satisfied. (p. 138 C)

B

CONSPIRACY - Ingredients - How to prove

4. Issue 2 queries the proof of the necessary ingredients of conspiracy and murder. I will take conspiracy first. Proof of the offence of conspiracy is generally a matter of inference. The involvement of the appellant can be inferred from all the collateral circumstances of the case. See R. v. Aspinall (1976) 2 Q.B.D. 48 at 58-59. The circumstances of this case as testified to by the witnesses for the prosecution and in particular the confessional statements of the appellant Exhibit D D and E, show clearly that the appellant had foreknowledge of the crime and consented to everything done to execute the plan to murder the deceased. The appellant and his co-conspirator acted in pursuance of their preconceived agreement or meeting of the minds upon the criminal purpose common between them. (p. 140 A)

E

CONSPIRACY - Essential element

5. The offence of conspiracy is complete upon meeting of the minds and in order to complete the offence, it is not necessary that any one thing should be done beyond the agreement. (p. 140 D)

F

MURDER - Ingredients - Proof

6. In my view, the collateral circumstances of the case and Exhibits D and E constitute facts from which the ingredients of conspiracy can be inferred in a charge of murder, the prosecution is required by law to prove the following:

G

- (a) that the death of a human being actually occurred;
- (b) that such death was caused by the accused;
- H (c) that the accused person's act resulting in the death of the human being was done with the intention of causing death or grievous bodily harm;
- (d) that the accused knew that death would be a probable, not just likely, consequence of his act. (p. 140 E)

Proof of cause death - Medical report – Relevance of

7. The cause of death, a medical question is generally determined from medical report. However, medical evidence is not essential in all cases.

In this case, the appellant himself provided not only the cause of death but also the manner of death. See Exhibits D and E. There is no iota of doubt that the appellant and his partner in crime knew, intended and appreciated the probable consequence of their act. I resolve Issue 2 against the appellant. (p. 140 H)

Murder - Proof - Duty on prosecution

8. Issue 3 is “*whether the failure on the part of the prosecution to call vital witnesses to circumstantially link the appellant with the murder of the deceased did not amount to gross miscarriage of justice.*” The prosecution has a duty to prove its case beyond reasonable doubt. A conviction in a criminal trial is not a function of the number of witnesses called by the prosecution. What is material is the quality of the evidence adduced. In the case at hand, the appellant who knows the facts better than anyone other than his partner in crime convicted himself without any prompting by anyone. See Exhibits D and E. He offered the best evidence of his involvement in the crime. The prosecution has no business calling any witness “*to circumstantially link the appellant*” with the murder of the deceased when there is direct evidence by the appellant linking him with the crime. The issue is resolved against the appellant. (p. 141 B)

NOTABLE POINT OF INTEREST***RHODES-VIVOUR JSC***

1. *Concurrent findings of courts – Bases for interference on appeal*
I said that findings of fact made by the trial Court and confirmed by the Court of Appeal are very rarely disturbed or interfered with, but this Court would quickly interfere and state the correct position if satisfied that there has been exceptional circumstances such as:

- (a) the findings cannot be supported by evidence or are perverse; or
- (b) that there was miscarriage of justice or
- (c) the court overlooked some principle of Law or procedure.

Concurrent findings of fact by the Courts below are to the effect that Exhibits D and E were voluntary made and that evidence of PW1, PW4 and PW5 are consistent with the contents of both exhibits, resulting in the conclusion that the appellant and Patrick Otufemi Kolawole Ogedengbe conspired and killed Navy Captain Yetunde Peters. There is nothing in the Record of Appeal or in submissions before this Court to show that those findings were wrong. They were correct findings of fact. Concurrent findings of fact are unassailable and so this Court would not interfere with them. (p. 143 A)

C

REPRESENTATION

B. Dambo with Yakure K. Baba for Appellant
Adewunmi Ogunsanya with Mahmud Adesona for Respondent

D

CASES REFERRED TO

- Egboghonome v. State (1993) 7 NWLR (Pt. 306) 382
Alarape v. State (2001) 5 NWLR (Pt. 205) 29
Onochie v. The Republic (1966) NMLR 307
E Ikpassa v. A.G. Bendel State (1981) 9 SC 7
Akpan v. The State (1992) 6 NWLR (Pt. 248) 439
Bature v. State (1994) 1 NWLR (Pt. 370) 267
Ahmed v. State (1999) 7 NWLR (Pt. 612) 641
Arebia v. The State (1982) 4 SC 78
F Gambo v. State (2009) 6-7 SC 24
Adekunle v. State (2006) 14 NWLR (Pt.1000) 217
Haruna v. State (1972) 8-9 SC 174
Archibong v. State (2004) 1 NWLR (Pt. 855) 488
G Idowu v. State (1998) 11 NWLR (Pt. 574) 354
Aigbodion v. State (2000) 7 NWLR (Pt. 666) 686
Amadi v. State (1993) 8 NWLR (Pt. 314) 644

STATUTES REFERRED TO

- H Criminal Code Law Cap 32 Laws of Lagos State 1994, ss. 319 (1), 324
Evidence Act Cap E14 LFN 2004, ss. 27(1) (2) and 28, 138(1), 149(1) (d)
Constitution of Federal Republic of Nigeria 1999, s. 36(5)

LEAD JUDGMENT BY NGWUTA JSC

The appellant and one Patrick Olufemi Kolawole Ogedengbe were arraigned on a two-count charge before the criminal Division of the High court of Lagos State sitting at Ikeja. They were charged with conspiracy to commit murder contrary to S.324 of the Criminal Code Law and murder, contrary to S.319(1) of the Criminal Code Law cap 32 Laws of Lagos state 1994. The trial Court found each of the appellant and his co-accused guilty as charged in each count and sentenced each to seven years imprisonment in count one and to death by hanging in Count Two.

The appeal to the Court of Appeal, Lagos Division was dismissed and the judgment of the trial Court was affirmed. The appellant further appealed to this Court on six (6) grounds, hereunder reproduced, shorn of their particulars:

“GROUND 1: The learned Justices of the Court of Appeal erred in law when they held at pages of the judgment as follows: ‘The learned trial Judge took all requisite procedural steps for the management of an allegation of inducement, threat or duress in the making of a confessional statement under investigation. A trial within trial was conducted. After the procedure the learned trial Judge found that the statements were voluntarily made. It was the learned trial Judge who had an opportunity of a visual of the appellants as they each testified and responded to the questions put to them. No compelling reason has been advanced for interfering with the decision of the trial Court Judge.

The said extra judicial statements therefore stand admitted as exhibits.”

“GROUND 2: The learned Justices of the Court of Appeal erred in law when they held that the prosecution proved the case against the Appellant beyond reasonable doubt when in actual fact there was no evidence to show that the appellant in fact committed the offence and thereby occasioning a miscarriage of justice.”

GROUND 3: The Justices of the Court of Appeal seriously erred in law when they failed to make a finding on the effect of failure by the Police (PW5) to interrogate vital witnesses especially one of the security guards (Wale) and other domestic staff that worked with the deceased in order to eliminate the likelihood of any other person

other than the appellant, being responsible for the death of the deceased.

GROUND 4: The lower Court seriously erred in law in making a case for the prosecution instead of deciding issues as presented by the parties.

B *GROUND 5: The learned Justices of the Court of Appeal misdirected themselves on facts and drew and drew inferences which cumulatively occasioned a miscarriage of justice.*

C *GROUND 6 OMINIBUS GROUND: The Judgment is unreasonable, unwarranted and cannot be supported having regard to the evidence adduced at the trial."*

From the (6) grounds of appeal, learned counsel for the Appellant formulated the following three issues for determination:

D *"(a) Whether the trial Court and indeed the lower Courts were both right in convicting and sentencing the appellants primarily on the uncorroborated and retracted extra-judicial statements of the Appellant.*

E *(b) Whether the prosecution proved the necessary ingredient(s) of the offence of conspiracy and murder against the appellant beyond reasonable - doubt as required by the law.*

(c) Whether the failure on the part of the prosecution to call vital witnesses circumstantially links the appellant with the murder of the deceased did not amount to a gross miscarriage of justice."

F In his own brief of argument, learned counsel for the respondent distilled the following two issues from the respondent's ground of appeal for determination:

G *"(1) whether the court of Appeal was right in affirming and or confirming the admission of the Appellant's Extra Judicial Statement by the Trial Court.*

(2) whether the Court of Appeal was right in confirming the conviction of the Appellant for murder having regard to the evidence before the Court."

H Arguing issue one in his brief, learned Counsel for the Appellant referred to Sections 27(1) and 28 of the Evidence Act Cap E14 Laws of the Federation 2004 for the meaning of a confession and factors that render a confession inadmissible respectively. He said that a confession made as a result of inducement, threat or promise having reference to the charge against the accused is inadmissible in evi-

dence against him. He relied on *Egboghonome v. State* (1993) 7 NWLR (Pt. 306) 382. He argued that before admitting the extra judicial statements of the appellant Exhibits D and E in the trial within trial (as confessional statements), the trial court did not look for corroboration outside the statements, but erroneously relied heavily and solely on the evidence of the 1st witness at the trial within trial to determine the voluntariness vel non of Exhibits D and E. He relied on *Alarape v. State* (2001) 5 NWLR (Pt. 205) 29 at 98-99 paras. H-A and submitted that in determining the voluntariness or otherwise of the confessional statements Exhibits D and E, the trial Court failed to determine:

- (a) whether there is anything outside the confession to show that it is true;
- (b) whether the statement is corroborated, no matter how slightly;
- (c) whether the facts contained therein, so far as can be tested are true;
- (d) whether the accused person had the opportunity of committing the offence;
- (e) whether the confession of the accused person was possible;
- (9) whether the confession was consistent with other facts which have been ascertained and proved in the matter.

He referred to and relied on *Onochie v. The Republic* (1966) NMLR 307; *Ikpa v. A.G. Bendel State* (1981) 9 SC 7; *Akpan v. The State* (1992) 6 NWLR (Pt. 248) 439 and *Bature v. State* (1994) 1 NWLR (Pt. 370) 267. He referred to the statement of PW1 to the Police at pages 9, 10 and 11 of the record and the testimony of the same witness at pages 61, 60 to 62 of the record and submitted that the statement made by the PW1 to the Police was in conflict with the witness' testimony at the trial.

He impugned the testimony of PW5 which he said was predicated primarily on the flawed evidence of the PW1. He said that the evidence of PW1 and PW5 upon which the trial Court convicted the appellant and upon which the lower Court affirmed the conviction has no probative value and cannot sustain the conviction. Counsel said that the contradiction in the evidence of PW1 was not explained and it is not for the Court to choose which of the contradictory evidence to believe. He relied on *Ahmed v. State* (1999) 7 NWLR (Pt.

612) 641 at 672 paras D-E; *Arebia v. The State* (1982) 4 SC 78.

He argued further that even if the appellant knew the abode of the deceased that is not enough to link the appellant with the crime, more so in the absence of direct evidence of the cause of death. He said that the chain of causation is broken and that the doubt thus created should be resolved in favour of the appellant. He argued that the conviction and sentence imposed on the appellant is contrary to the intentment of s. 138(1) of the Evidence Act (supra) and submitted that the trial Court convicted the appellant in error as the prosecution did not prove his guilt beyond reasonable doubt and that the lower Court was equally in error when it confirmed the judgment of the trial Court.

In Issue 2, learned Counsel relied on *Gambo v. State* (2009) 6- 7 SC 24 at 64-65 for the following ingredients of murder:

- D (a) That the deceased died.
 - (b) That the death of the deceased was caused by the accused.
 - (c) That the act or omission of the accused which caused the death of the deceased was intentional with the knowledge that death or grievous bodily harm was its probable consequence.
- E He referred also to *Adekunle v. State* (2006) 14 NWLR (Pt.1000) 217 at 736-737 paras. G-A; *Haruna v. State* (1972) 8-9 SC 174; *Archibong v. State* (2004) 1 NWLR (Pt. 855) 488. He submitted that the three conditions listed above must co-exist before there can be a valid conviction on a charge of murder. He argued
- F that the prosecution has failed to prove beyond reasonable doubt, the death or cause of death or that the death is attributable to an intentional act(s) or omission(s) of the appellant.

Counsel said both the trial Court and the lower Court were in error in their failure to draw a distinction from the facts laid, between the acts ascribable to the appellant and the DW1. Counsel conceded that the deceased is presumed dead but added that there is nothing linking her death with the appellant. However, he argued that the prosecution cannot obtain a conviction in a case such as this for its failure to prove by direct or circumstantial evidence the cause of death.

H He relied on *Oyo v. A.G. Bendel state* (1986) 1 NWLR (pt.17) 418 at 419 and 420 ratios 1 & 3; *Akpan v. State* (1992) 6 NWLR (Pt.248) 439 at 462 paras E-F. He contended that the evidence of P. W's as to how the body of the deceased was disposed of was not credible as it

was based on the flawed confessional statements Exhibits D and E.

He referred to the evidence PW3 the Medical Doctor and younger brother of the deceased and the PW5 as to the blood stain each of them said he saw, and contended that if what they saw was blood there is no proof that it was the blood of the deceased, especially as no DNA or any other test was conducted on the stain of blood allegedly seen by the PW3 and PW5. B

Counsel emphasized that there was no eye witness and that for circumstantial evidence to ground a conviction, the following conditions must be met:

(a) It must irresistibly and unequivocally lead to the guilt of the appellant. C

(b) No other reasonable inference could be drawn from it, and

(c) There must be no co-existing circumstances which could weaken the inference. D

He relied on *Idowu v. State* (1998) 11 NWLR (Pt. 574) 354 at 370; *Aigbodion v. State* (2000) 7 NWLR (Pt. 666) 686.

He reviewed the evidence of PW1 and PW3 and Exhibits D and E and concluded that there was no sufficient evidence to found a conviction for murder. He submitted further that a finding of fact must be based on credible evidence or reasonable inference drawn from facts presented by the prosecution and not on speculations. He relied on *Amadi v. State* (1993) 8 NWLR (Pt. 314) 644 at 663-664 paras H-A; *Ahmed v. State* (1999) 7 NWLR (pt. 612) 641 at 673 paras C-D; *Udedibia v. State* (1976) 11 SC at 138-139. E

On the facts of this case, he argued that there is nothing before the trial Court or the lower Court that could point exclusively to the guilt of the appellant, and that the evidence before the trial Court is not incompatible with the innocence of the appellant. He relied on the evidence of PW1 and PW3 that the deceased hired and fired her domestic staff at an alarming rate and contended that there is a very high likelihood that any of them could have killed her. F

He argued that even if Exhibits D and E were voluntarily made by the appellant, the relationship between the appellant and one Kayode is vital to the veracity of the appellant's extra judicial statements Exhibits D and E but the relationship was not investigated by the Police. He said that the lower Court erred for failure to distinguish G

between the roles of the appellant and those of the DW1. He said that the appellant never led the Police to the deceased's car as found by the lower court and that it was the DW1 who led the Police to the car.

B Counsel impugned the conviction of, and the sentence passed on, the appellant on charge of conspiracy as defined in S.518 of the criminal code for the absence of criminal purpose common to the appellant and DW1. He referred to (1973) NSCC 280. He urged the Court to find that, from his arguments; the guilt of the appellant was not established and urged the Court to resolve the issue in favour of the appellant.

In issue 3, learned Counsel argued that the failure to call vital witness whose evidence might have determined the case one way or the other is fatal to the case against the appellant. He relied on Onah D v. The State (1985) 3 NWLR (Pt. 12) 236. He referred to the extra judicial statements of the appellant and DW1 and said that it is clear that Kayode was aware that it was the appellant who got DW1 for the deceased as her driver. He said it is clear from the testimony of the appellant at page 36 of the record that Kayode escorted both the E appellant and the DW1 to the house of the deceased to secure the job as a driver for the deceased.

He referred to Omoyodo v. State (198 1) 12 NSCC 119 at 130, paras 40-50 and page 131 paras 1-12; State v. Nnolim (1994) F 5 NWLR (Pt.345) 394 at page 406 para. D and argued that the failure of the prosecution to call Kayode to the stand to testify at the trial weakened the prosecution's case. He urged the Court to invoke S.149(1)(d) of the Evidence Act, adding that failure to call Kayode led to a miscarriage of justice. He contended that the lower Court G found the charge against the appellant proved even before considering the defences he offered, contrary to S.36(5) of the constitution of the Federal Republic of Nigeria 1999 Cap C23 Laws of the Federation 2004.

In conclusion, he urged the Court to take a critical look at H Exhibits D & E, alleged confessional statements of the appellant, in the light of the totality of evidence adduced by the prosecution at the trial, He said the evidence of PW1 and PW5 which he said formed the basis of the circumstantial evidence upon which the appellant was convicted did not link the appellant with the offence charged. He

urged the Court to allow the appeal, set aside the conviction of and sentence passed on the appellant and make an order to discharge or acquit the appellant.

In his argument on Issue 1 in his brief, learned Counsel for the Respondent referred to s.27 (1) & (2) of the Evidence Act on confession and *Saidu v. State* (1976) 2 SC 41 and *Onungwa v. State* (1976) 2 SC 109 and submitted that Exhibits D & E were properly admitted in evidence and relied on by the trial Court. He said that the appellant contradicted himself when he claimed that his right hand which he claimed was wounded was the same hand he signed his statement with. He drew attention to the claim of the appellant that he signed the statement at gun point and that he was slapped with the heel of sandals as baseless as the appellant did not state the name of any officer who pointed a gun at him or slapped him. He relied on *Sanyaolu v. The State* (1976) NSCC in his argument that the verdict of the trial Court was based on proper evaluation of the evidence and, therefore is not perverse as to warrant appellate Court interfering with it.

He referred to *Achuba v. The State* (1976) 12 SC 63; *Obosi v. State* (1965) NWLR 119; *Osakwe v. A-G Bendel State* (1991) 1 NWLR (Pt. 167) 315; *Nwaebonyi v. The State* (1994) 5 NWLR (pt.343) 138; and *Yesufu Jomoh v. The State* (1925) 6 SC 167 in support of his contention that a confession alone is sufficient to ground conviction without corroboration if the Court is satisfied with the truth of its contents.

He referred to *Egboghonome v. State* (1993) 7 NWLR (pt. 308) 373 *Queen v. Itule* (1961) 2 SCNLR 183; *Queen v. Obiasa* (1962) 2 SCNLR 402; *Kim v State* (1992) 4 NWLR (Pt. 233) 19 among others in his contention that a confession will suffice to ground a conviction regardless of its retraction.

He referred to the evidence that the hands of the appellant were stained with blood, the evidence of the PW1 at page 62 of the record to the effect that the main gate was open and that as the witness was about to enter the appellant prevented her from doing so, the fact that the appellant and one Patrick Olufemi Kolawole Ogedengbe were in possession of the deceased's C of O with the intention to dispose of the deceased's property and contended that the trial Court did not base the conviction of the applicant solely on

Exhibits D and E. He urged the Court not to disturb the findings of the two courts below in admitting Exhibits D and E.

In issue 2, learned Counsel referred to *Olalekan v. The State* (2002) 1 MJSC 159 at 163; *Ogba v. The State* (1992) 2 NWLR (pt.169) 198; *Bakare v. The State* (1987) 1 NWLR (Pt. 52) 582 for the ingredients that must be proved to secure a conviction in a charge of murder:

- (a) That the deceased died.
- (b) That the death resulted from the act of the appellant.
- (c) That the act of the appellant was intentional with the knowledge that death or grievous bodily harm was its probable - consequence

He argued that evidence showed that Navy Captain Yetunde Peters died, and that she was killed in her home and her body dumped in the Lagoon in Lagos. He referred to the evidence of PW1 at page 72, PW5 at page 153, statement of appellant to the police at p.31 of the record to show that there was a death, that of Navy Captain Yetunde Peters. He referred to the evidence of PW3 and PW5 and the extra-judicial statement of the appellant and said that the late Navy Captain Yetunde Peters was killed in her home and the body was dumped into the lagoon in Lagos State. Learned Counsel argued that cause of death is a fact in issue herein which can be proved by either direct or circumstantial evidence where medical evidence is not available. He relied on *Ahmed v. The State* (2002) 1 MJSC (pages not supplied). Conceding the absence of eye-witness, learned Counsel relied on Exhibits D and E and the uncontroverted evidence of the prosecution witnesses for the 2nd and 3rd ingredients for the offence charged.

He said that the extra judicial statements reveal how the appellant and the Patrick Olufemi Kolawole Ogedengbe implicated, and no other, as the mastermind behind the gruesome murder of the late Navy Captain Yetunde Peters. He relied on S.8 of the Criminal Code Law, Laws of Lagos State of Nigeria, 2005. He urged the Court to find that the circumstantial evidence is direct, positive and compelling. He relied on *Ejiofor v. The state* (2001) 3 MJSC 61 at 64; *Edim v. State* (1972) 4 SC 160 at 162; *Efe v. State* (1926) 22 SC 75.

He urged the Court not to disturb the finding of fact of the trial Court as the same is not perverse or based on evidence not legally

admissible. He relied on Ejiofor v. State (supra); Saidu v. The State (1982) 13 NSCC 70; Oguala v. The State (1991) 2 NWLR (pt.175) 509 in his argument that the prosecution is not bound to call a particular witness to secure a conviction.

In summary, learned Counsel stated that:

(1) That both Exhibits D and E were made voluntarily. B

(2) That the learned trial Judge conducted a trial within trial to ascertain the veracity or truth of the appellant's statement.

(3) The trial Judge did not base the conviction of the appellant solely on Exhibits D and E. There were other pieces of evidence outside the confessions. C

He urged the Court to dismiss the appeal for lacking merit.

I have scrutinized the grounds of appeal and the issues distilled therefrom by learned counsel for each side. The two issues framed for determination by learned counsel for the Respondent are subsumed in the three issues presented in the appellant's brief. I intend to determine the appeal on the three issues. D

Issues 1 queries the conviction of and sentence passed on the appellant allegedly based primarily on the uncorroborated and retracted extra-judicial statements of the appellant. In framing the said issue, learned counsel for the Appellant intentionally or unintentionally failed to state the nature of the extra-judicial statements' Exhibits D and E, the statements credited to the appellant, are not just extra-judicial statement. They are confessional statements within the intendment of S. 27(1) of the Evidence Act which defines a confession as: E

"... an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime." F

If voluntarily made, a confession is deemed a relevant fact and admissible against the maker under s. 27(2) of the Act. A confession does not become inadmissible merely because the accused denies having made it. See R v. John Agariga Itule (1962) All NLR 462 SC. And when the voluntariness of the confessional statement is an issue, the trial Court has a duty to conduct a trial within trial to determine the voluntariness vel non of the confession, as was done in this case. G

Proof of the voluntariness is beyond reasonable doubt before the statement can be admitted. See Uche Obidiozo v. The H

State (1987) 4 NWLR (Pt. 67) 748 at 761; R v. Kass 5 WACA 154; Gbadamosi & Anor v. The State (1962) 9 NWLR (pt. 266) 465. **In this case, the appellant claimed that the statements were written by the PW5 and he was forced to append his signature thereto. The trial Court dutifully held a trial within trial and found that Exhibits D and E were freely and voluntarily made by the appellant and admitted them in evidence against him.**

Appellant claimed he did not make Exhibits D and E and that he was forced to append his signature thereto after the PW5 had written them. I have stated earlier that a retraction of the statement per se does not render it inadmissible, though the fact that the denial was made timely may lend weight to it. See R. V. Sapele & Anor (1957) 2 of SC 24.

It is a settled principle of law that a Court can convict an accused on his uncorroborated confessional statement, provided the following conditions are satisfied.

(1) There is something outside the confession which shows that it may be true.

(2) The statements contained therein are likely to be true.

(3) The accused had the opportunity to have committed the offence, and

(4) The facts stated by the accused are consistent with other facts which have been ascertained and established at the trial.

See R v. Itule (supra); R v. Sykes (1913) 8 CR App Report 233 Kanu v. The King 14 WACA 30; Akpan v. The State (1986) 3 NWLR (pt.27) 258.

It is my view that for a Court to convict upon an uncorroborated confessional statement of the accused, the four conditions must be cumulatively satisfied.

Are the four conditions so satisfied in this case? To answer this poser, I will take the conditions seriatim:

(1) The PW1 was prevented from getting into the premises of the deceased by the appellant who lied to her that the deceased had travelled to answer an urgent call at Abuja. This was a ploy to prevent the PW1 from discovering the facts stated in Exhibits D and E, i.e. the gory killing of the deceased, and the search for valuables in her house leading to the home being in disarray. It is independent and outside

the confessions. The cover up speaks the truth of the contents of Exhibits D and E. (see page 62 of the record).

The appellant lied to the PW4 that his friend lost his mother a few years back and wanted to sell his late mother's property. The property put on sale is that of the deceased whose property documents the appellant and his co-accused stole after killing the deceased and disposing her body. None of them - the appellant and his co-accused - is a blood relation of the deceased, not to talk of being the late woman's son. (see page 76 of the record).

PW5 swore that the house of the deceased was "scattered". He found a trace of blood on the stair case of the deceased's house. He recovered the original Certificate of Occupancy of the deceased's property from PW4 who got same from the appellant and his co-accused.

The fact that only traces of blood were found in the house of the deceased whose throat was slit after a struggle for her life demonstrates the truth of the confession that the body was wrapped in her rug and disposed of. There is no doubt that her blood was collected on the rug on which she was killed.

(2) My Lords, the graphic accounts in Exhibits D and E of who held what part of the deceased's body during the struggle to kill her, who struck the fatal blow and the events following thereafter can only be given by a participant in the inhuman act. There is no way the police who are not magicians, and even if magicians, can recall the horrors of the devil at work as contained in Exhibits D and E. only a participant could have given such account.

(3) There is no suggestion during the investigation of the crime and subsequent trial and appeal through the lower Court to this Court that the appellant was not within the vicinity of the crime scene and so could not have been involved in the commission of the offence charged. He did not plead alibi.

(4) The fact that the house of the deceased was "scattered" after the murder, that only traces of blood were seen at the scene of crime that the appellant and his co-accused stole the property of their victim some of which were recovered from them and the fact that the appellant deliberately lied to the PW1 that the deceased travelled to Abuja to answer an urgent call are facts established and not controverted at the trial.

In my view, the conditions laid down by the authorities cited above were conclusively established in this case. Based on the above, I resolve issue 1 against the appellant and in favour of the Respondent.

Issue 2 queries the proof of the necessary ingredients of conspiracy and murder. I will take conspiracy first. Proof of the offence of conspiracy is generally a matter of inference. The involvement of the appellant can be inferred from all the collateral circumstances of the case. See R. v. Aspinall (1976) 2 QBD 48 at 58-59. The circumstances of this case as testified to by the witnesses for the prosecution and in particular the confessional statements of the appellant Exhibit D and E, show clearly that the appellant had foreknowledge of the crime and consented to everything done to execute the plan to murder the deceased. The appellant and his co-conspirator acted in pursuance of their preconceived agreement or meeting of the minds upon the criminal purpose common between them. See *Erim v. State* (1994) 5 NWLR (Pt. 346) 522 at 538.

The offence of conspiracy is complete upon meeting of the minds and in order to complete the offence, it is not necessary that any one thing should be done beyond the agreement. See *R. v. Aspinall* (supra), page 45 at pages 58-59.

In my view, the collateral circumstances of the case and Exhibits D and E constitute facts from which the ingredients of conspiracy can be inferred in a charge of murder, the prosecution is required by law to prove the following:

- (a) **that the death of a human being actually occurred;**
- (b) **that such death was caused by the accused;**
- (c) **that the accused person's act resulting in the death of the human being was done with the intention of causing death or grievous bodily harm;**
- (d) **that the accused knew that death would be a probable, not just likely, consequence of his act.**

See *The State v. Danjuma* (1996) 8 NWLR (pt. 469) 660 at 668; *Kada v. The State* (1991) 22 NSCC (pt. 11) 592 at 598. The fact of death of a human being is not an issue in the case.

The cause of death, a medical question is generally determined from medical report. However, medical evidence is

not essential in all cases. See Adamu v. Kano N.A. (1956) 1 FSC 25; Bakori v. State (1980) 8-11 SC 81; Eric Uyo v. A-G Bendel State (2000) 12 NWLR (Pt. 681) 415 at 430.

In this case, the appellant himself provided not only the cause of death but also the manner of death. See Exhibits D and E. There is no iota of doubt that the appellant and his partner in crime knew, intended and appreciated the probable consequence of their act. I resolve Issue 2 against the appellant.

Issue 3 is “whether the failure on the part of the prosecution to call vital witnesses to circumstantially link the appellant with the murder of the deceased did not amount to gross miscarriage of justice.” The prosecution has a duty to prove its case beyond reasonable doubt. See S.135(1) of the Evidence Act; Albert Ikem v. The State (1985) 4 SC 30, John D Nwankwo v. The State (1990) 2 NWLR (Pt. 134) 627 at 639; Esangbedo v. State (1989) 4 NWLR (pt. 113) 57; Egbe v. The King 14 WACA 105. **A conviction in a criminal trial is not a function of the number of witnesses called by the prosecution. What is material is the quality of the evidence adduced. In the case at hand, the appellant who knows the facts better than anyone other than his partner in crime convicted himself without any prompting by anyone. See Exhibits D and E. He offered the best evidence of his involvement in the crime. The prosecution has no business calling any witness “to circumstantially link the appellant” with the murder of the deceased when there is direct evidence by the appellant linking him with the crime. The issue is resolved against the appellant.**

My noble Lords, this is a case of reality playing fiction. The macabre facts could have been lifted from a horror film, unfortunately, it is a real life play. The deceased, Navy captain Yetunde Peters, a lady who spent her productive years serving in the Armed Forces of her fatherland, was not only denied her well-earned rest, she was deliberately butchered in her own home like a common animal. Her body was consigned to a watery grave. They are ferocious beasts who walk the streets in the guise of human beings.

Having resolved all the three issues in the appellant’s brief against him, I hold that the appeal is devoid of merit.

Consequently, I dismiss the appeal and affirm the judgment of the lower Court which had affirmed the judgment of the trial court.
Appeal dismissed.

B RHODES-VIVOUR JSC

I have had the privilege of reading in draft the leading judgment of my learned brother Ngwuta, JSC. So completely do I agree with it that I only intend to add a few paragraphs of my own.

C The appellant and Patrick Olufemi Kolawole Ogedengbe were sentenced to death by an Ikeja High Court. That Court found that both of them killed Navy Captain Yetunde Peters in her home and dumped her body in the Lagos Lagoon. The Court of Appeal confirmed the judgment of the Ikeja High Court. The appellant was convicted on his retracted confessional statement and compelling evidence of witnesses called by the prosecution. The position of the Law is that an accused person may be convicted on his extra judicial confession provided it was made voluntary and the Court is satisfied that its contents are true. See: *R v. Kanu* 1952 14 W.A.C.A. p.30, *Mumuni v. State* 1975 6 SC p.79.

F Where the accused person denies making the extra judicial statement the Court should look for some independent evidence, that is to say evidence outside the confession to make the confession probable. See *Kapa v State* 1971 1 ALL N.L.R. p.150, *Onochie & ors. v. The Republic* 1966 NWLR p.307.

G The extra judicial statements of the appellant are exhibits D and E. They are confessions. Evidence of PW1, PW4, PW5 provides ample evidence outside the said exhibits. Furthermore there was compelling evidence, to wit: The deceased house was in a rough state with traces of blood and some of her stolen property, e.g. her Certificate of occupancy, was recovered from the appellant.

H To my mind the contents of Exhibits D and E are consistent with other facts proved to my satisfaction. I am satisfied that the learned trial judge followed the well laid down rules to wit: conducting a trial within trial, and evaluating evidence properly. The Court of Appeal was correct when it confirmed the sentence of death on the appellant. *Shipcare Nig. Ltd. v. The Owners of the M/V Fortunato and anor* 2011 2-3 SC. Pt.11 p.1.

I said that findings of fact made by the trial Court and confirmed by the Court of Appeal are very rarely disturbed or interfered with, but this Court would quickly interfere and state the correct position if satisfied that there has been exceptional circumstances such as:

(a) the findings cannot be supported by evidence or are perverse; or

(b) that there was miscarriage of justice or

(c) the court overlooked some principle of Law or procedure.

See also *Ogba v. The State* 1992 2 NWLR Pt.222 p.164

Ogbu v. The State 1992 8 NWLR Pt.259 p.255

Concurrent findings of fact by the Courts below are to the effect that Exhibits D and E were voluntary made and that evidence of PW1, PW4 and PW 5 are consistent with the contents of both exhibits, resulting in the conclusion that the appellant and Patrick Otufemi Kolawole Ogedengbe conspired and killed Navy Captain Yetunde Peters. There is nothing in the Record of Appeal or in submissions before this Court to show that those findings were wrong. They were correct findings of fact. Concurrent findings of fact are unassailable and so this Court would not interfere with them.

For this and the detailed reasoning in the leading judgment, I find no merit in this appeal. It is dismissed.

PETER-ODILI JSC

This is an appeal against the judgment of the Lagos Division of the Court of Appeal delivered on the 9th day of March 2010 in which that court affirmed the judgment of the Lagos High Court coram: Justice J. A. Oduneye delivered on the 12th of January, 2004 whereby the High Court convicted the appellant and one Patrick Olufemi Kolawole Ogedengbe on a two count charge of conspiracy and murder of one Navy captain yetunde Peters. The charge was based on the provisions of sections 324 and 319(1) respectively of the Criminal Code of Lagos State. The appellant was sentenced to seven (7) years imprisonment for the count of conspiracy and death for the count of murder. It is against the judgment of the Court of Appeal that the appellant has now appealed to this Court through a Notice of Appeal.

Briefly the facts leading to this appeal are that sometime in September 1999, the appellant who is an Estate Agent conspired with one Patrick Olufemi Kolawole Ogedengbe (herein after referred to as DW1), then the driver of the deceased Navy Captain Yetunde Peters to murder and indeed murdered the deceased.

B Though there was no eye witnesses account as to the fact of the murder however the prosecution contended that the appellant and DW1 wrapped the deceased in a rug and put her in the boot of her car and eventually dumped the body in the lagoon along Adeniji Adele Area of the third Mainland Bridge, Lagos. The prosecution
C utilized the evidence of five witnesses and the extra-judicial statements of the appellant, Exhibits “D” and “E”. The appellant had objected to those statements on the ground that they were not free and voluntary and the trial judge conducting a trial within trial admitted the
D statements. The trial Court found the appellant guilty on both counts and convicted him accordingly.

The appellant filed this brief settled by Biriayi Dambo on 19/4/2011 and in it were formulated three issues for determination which are as follows:

E (a) Whether the trial and indeed the lower Courts were both right in convicting and sentencing the appellant primarily on the uncorroborated and retracted extra judicial statements of the appellant.

(b) Whether the prosecution proved the necessary ingredients
F of the offences of conspiracy and murder against the appellant beyond reasonable doubt as required by the law.

(c) whether the failure on the part of the prosecution to call vital witnesses to circumstantially link the appellant with the murder of the deceased did not amount to a gross miscarriage of justice.

G The respondent filed their brief on 20/5/2011 which was settled by Adewunmi Ogunsanya Esq. Two issues were couched for determination and they are:

(1) whether the Court of Appeal was right in affirming and
H confirming the admission of the appellant’s extra judicial statement by the trial Court.

(2) whether the Court of Appeal was right in confirming the conviction of the appellant for murder having regard to the evidence before the Court.

The issues as crafted by the respondent seem more appropri-

ate in answering the questions raised in this appeal.

ISSUE NO.1

Whether the Court of Appeal was right in affirming and or confirming the admission of the appellant's extra judicial statement by the trial Court.

Learned counsel for the appellant submitted that the trial judge did not adequately test the truth of the statement as contained in Exhibits D and E before acting on them. Also the Court of trial did not determine the voluntariness of the said exhibits nor did the trial judge look outside the said statements for corroborative evidence of circumstances which make it probable that the facts therein stated were true. He cited: *Alarape v State* (2001) 5 NWLR (Pt.705) 29 at 98 - 99; *Onochie v. The Republic* (1966) NMLR 307; *Ikpesa v. A. G. of Bendel State* (1981) 9 SC. 7; *Akpan v The State* (1992) 6 NWLR (Pt.248) 439; *Bature v. State* (1994) 1 NWLR (Pt. 320) 267; *Nsofor v. State* (2004) 18 NWLR (pt.905) 292; *Shande v. State* (2005) 1 NWLR (Pt.907) 218 at 536; *Ahmed v. State* (1999) 7 NWLR (pt.612) 41 at (1982); *Arehia v The State* 641 at 672, 4 SC.78.

For the appellant was further contended that the link between the accused/appellant and the death of the deceased was broken and so that broken link must be resolved in favour of the appellant as it affects the *actus reus* of the offence. He cited *Friday Aiguoreghian v. State* (2004) NWLR (Pt.860) 367; Section 183 (3) of the Evidence Act.

Responding, learned counsel for the respondent contended that the confessional statements of the appellant was voluntarily made and the allegation that appellant signed the statement under duress had not been substantiated. That those confessions alone need no corroboration to satisfy the Court of the veracity of what was contained therein. Also that the confessional statement would not become inadmissible merely because the accused/appellant denied making them. He referred to many judicial authorities but I shall mention a few. *Olalekan v. The State* (2002) 1 M.J.S.C. 159 at 162; *Obosi v. The State* (1965) NMLR 119; *Osakwe v. Attorney General, Bendel State* (1991) 1 NWLR (Pt.167) 315; *Nnaebonye v. The State* (1994) 5 NWLR (Pt.343) 138, *Yesufu Jimoh v. The State* (1975) 6 SC 167; *Edamine v. State* (1996) 3 NWLR (Pt.438) 530 at 533; *Egboghonome v. State* (1993) 7 NWLR (Pt.307).

ISSU4 NO. 2

Whether the Court of appeal was right in confirming the conviction of the appellant for murder having regard to the evidence before the Court.

B For the appellant was submitted that to sustain a conviction for the offence of culpable homicide the ingredients viz; that the deceased died, that the death was caused by the accused and that the act or commission of the accused which caused the death of the deceased was intentional with knowledge that death or grievous bodily harm was its possible consequences, all of which must be proved beyond reasonable doubt. Learned counsel for the appellant contended that even though the deceased died nothing connected the accused/appellant with the cause of death and so the second and third ingredients of the offence of murder were absent and so the conviction cannot be sustained. He cited the cases: *Uyo v. A. G. Bendel State* (1986) 1 NWLR (Pt.17) 418 at 419; *Akpan v State* (1992) 6 NWLR (Pt.248) 439 at 462.

E That what the prosecution proffered was nothing more than suspicion which cannot take the place of legal proof. He referred to: *Onah v. State* (1985) 3 NWLR (pt.12) 236; *State v. Ogbubunjo* (2001) NWLR (Pt.698) 567; *Idowu v. State* (1998) 11 NWLR (Pt.574) 354 at 370; *Aigbadion v. State* (200) 7 NWLR (Pt.666) 686.

F It was further submitted for the appellant that a vital piece of evidence or vital witnesses 'testimony was missing and that is that of the oft mentioned Kayode who was not called and so brought into operation section 149(1) (d) of the Evidence Act. That a miscarriage of justice had occurred when the Court below made some presumptions and speculative pronouncements on facts not within the facts before the Court. He cited: *Omogodo v. State* (1981) 12 NSCC 199 at 130; *State v. Nnolim* (1994) 5 NWLR (pt.345) 406, *State v. Oladimeji* (2003) 4 NWLR (Pt.839) 57, *Garba v. University of Maiduguri* (1986) 1 NWLR (Pt.18) 555.

H Responding learned counsel for the respondent said there were circumstantial evidence as shown in the record of this appeal which are positive, cogent and compelling as they linked, the appellant with the killing of the deceased. He cited:

Edim v. State (1972) 4 SC 160 at 62; *Efe v. State* (1976) 11 SC 75; *Ogundipe v. Oueen* 14 WACA; *Aniche v. State* (1993) 6 NWLR

(Pt.302) 752 at 753; Ejiofor v. State (2001) 3 MJSC 61 at 64; Buba v. State (1992) 1 NWLR (pt.215); Saidu v. The State (1982) 13 NSCC 70; Oguala v. The State (1991) 2 NWLR (Pt.175) 509; Sanyaolu v. The State (1976) NSCC vol. 10 page 269.

The appellant had quarrels with the concurrent findings of the trial High Court and as affirmed by the Court of Appeal on the ground that the use of the confessional statements Exhibits “D” and “E” which appellant contends were not voluntarily made. The appellant states that the conviction could not be properly made on such confessional statements which had not been obtained voluntarily. That nothing linked the accused/appellant with the crimes of conspiracy and murder as charged and found. B
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That stance was vehemently countered by the respondent which counsel on their behalf said was not sustainable in the light of the facts and circumstances which led positively and cogently to the guilt of the accused/appellant and also offered the corroborative evidence necessary when confessional statements are in issue. D

Some basic principles of law need be revisited for clarity even if for the Court to show where it is coming from. Indeed confession alone is sufficient to support conviction as long as the Court is satisfied of the truth of the said confession. In this, the trial Court went to great lengths with the trial upon trial on the voluntariness or not of the two statements, Exhibits D and E and came to the conclusion that they were made voluntarily and not induced. That can be seen from the statements themselves which gave details that could not have come from a contraption of another or by force and not from free will. In that regard, these two confessional statements were alone enough to ground the conviction. See: Obosi v. State (1965) NMLR 119; Osakwe v. A. G. Bendel State (1991) 1 NWLR (Pt.167) 315; Edamine v. State (1996) 3 NWLR (pt.438) 530; Egboghonome v. State. E
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Furthermore there were pieces of evidence with corroborative value impacting on those statements of the appellant and of particular mention was the evidence of PW1, the woman who lived in the Boys Quarters and also PW4 whom the accused/appellant and co-accused sought to sell the land belonging to the deceased with the certificate of occupancy in tow. Those apart from the items of furniture found in the possession of the accused. Clearly is a surfeit of H

even circumstantial evidence’ positive, compelling and cogent leading to no other hypothesis than that the accused/appellant and his partner in crime killed the deceased. The fact of her body not having been recovered or seen does not in any way daint the weight, heavy indeed of the guilt of the appellant. The evidence is so overwhelming, that the attempt to wriggle out of the net of guilt has no effect whatsoever. See *Idowu v. State* (1998) 11 NWLR (pt.574) 354 at 370; *Aigbadon v. State* (2000) 7 NWLR (pt.666) 696.

It is indeed easy to flow along the findings and decisions of the courts below and from the above and the more detailed reasons of my learned brother N. S. Ngwuta JSC, I dismiss this appeal for lacking in merit. I affirm the decision, conviction and sentence of the trial High court as affirmed by the Court of Appeal.

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