

SUPREME COURT OF NIGERIA
FRIDAY 14TH DECEMBER, 2012. SC. 319/2009
CORAM:- I. T. MUHAMMAD, J. A. FABIYI,
M. U. PETER-ODILI, O. ARIWOOLA, K. B. AKA'AH, JJSC

JAMES CHIOKWE APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Confession - Validity - Since appellant's confessions have not been found wanting - Same are sufficient to ground conviction - Without other evidence in corroboration (H1)

CRIMINAL PROCEDURE - Murder - Search warrant - There is no need for the warrant - Since appellant took PW7 to the scene of the crime (H2)

LEGAL PRACTITIONERS - Submissions - Effect - Submissions of counsel however beautiful - Cannot take the place of evidence - As such addresses must be a reminder to court of evidence proffered (H3)

MURDER - Proof - Circumstantial evidence - By s. 139 Evidence Act - Court can accept proof of death by such evidence - Since possibility of not having eyewitness account in criminal cases is not rare (H4)

FACTS

Accused/appellant was alleged to have raped and murdered one Dorothy (the deceased) at Nike, Enugu State. He was consequently arrested and arraigned before the High Court of Enugu State for murder contrary to section 316(1) and punishable under section 319(1) of Criminal Code Law Cap 30 Vol. 2 Laws of Eastern Nigeria 1963. At the trial, prosecution/respondent called 8 witnesses and tendered appellant's confessional statements exhibits B and D. Appellant denied making exhibit B voluntary while exhibit D was admitted without objection.

After a trial within trial and having assessed other evidence available, the learned trial Judge found appellant guilty, convicted

and sentenced him to death. Dissatisfied, appellant appealed to the Court of Appeal Enugu Division. The court dismissed the appeal and affirmed the decision of the trial court. Aggrieved further, appellant filed appeal in Supreme Court, contending the validity of the aforementioned confessional statements.

ISSUES FOR DETERMINATION

(a) Whether the learned Justices of the Court of Appeal were right in relying on the alleged confessional statements credited to the Appellant tendered and admitted at the trial court as EXHIBITS B and D in upholding the judgment of the trial court which convicted and sentenced the Appellant to death for murder.

(b) Whether the Learned Justices of the Court of Appeal were right in giving full probative value to Exhibits A, B, C and D and relying on them to uphold the conviction and sentence passed on the Appellant by the trial court.

(c) Whether the Learned Justices of the Court of Appeal were not in error when they held that EXHIBIT C and the evidence of PW1 constitute corroborative evidence to EXHIBITS B and D and thereby upheld the conviction and sentence of the Appellant by the trial court.

HELD (Unanimously dismissing the appeal per **PE-TER-ODILI JSC**)

Confession - Validity

1. Putting Exhibit “D” and even Exhibit “B” under the “litmus test” as to its truth outside the statements themselves and from other external evidence to see if the following are in existence:

- (a) Is there anything outside it to show that it is true?**
- (b) Is it corroborated?**
- (c) Are the facts stated in it true as far as can be tested?**
- (d) Did the accused have an opportunity of committing the offence?**
- (e) Is the accused’s confession possible?**
- (f) Is the confession consistent with other facts which have been ascertained or proved?**

These standards above from decided authorities of even this Court have been met as on all counts in these tests, the accused's confessional statements, have not been found wanting. I would return to say that there are other things outside the statements to show that the statements are true. Yes, the confessions are corroborated by other pieces of evidence including the issue of the matchet found where the Accused/Appellant pointed in his house; the Medical Report on the cause of death of the deceased.

In fact, the confessional statements, Exhibits "B" and "D" are in my view sufficient to ground a conviction, considering the finding in the course of trial-within-trial in the case of Exhibit B and later D which cleared some grey areas in the earlier statement are both sufficient in themselves to found a conviction without "any other extraneous evidence in corroboration.

The attempt by the Appellant at this stage and even at the Court below to impugn the voluntariness of the statements and thereby have them scuttled is in the light of the circumstances of this case a day dream or perhaps a "wishful thinking" as a possible escape to what is so weighty, true and the admission of the act of an accused well considered and evaluated by the trial Court which the Court of Appeal did not have any reason to interfere with and that rightly so since this Court cannot and is not persuaded to either interfere with or obstruct. The question is resolved against the Appellant and is a positive answer on what the Court of Appeal did.

(p. 3527 F)

Murder - Search warrant

2. There was no necessity of a search warrant since the Appellant not only took him to his (accused's) house and room and showed him where he kept the machete, but also took PW7 to the house of the deceased showing him the broken window which the Appellant said he broke in the quest to get at the deceased for sex a day before the incident leading to the death of the deceased. Furthermore, the Appellant in the course of the investigation took PW7 to the scene of crime

where he kept the dead body after having sex with the victim and killing her. In none of the transactions is the need for a search warrant at play. Therefore, the assertion for the search warrant flies off the handle. (p. 3532 E)

B *LEGAL PRACTITIONERS - Submissions - Effect*

3. Another point, necessary to be commented upon is that there has been nothing put forward by the Appellant upon which can be found a doubt, be it inconsequential or minute that the weapon, the machete did not belong to the Appellant.

C **What learned counsel for the Appellant did was just to put up a submission of such a doubt which did not flow from the evidence before the trial court. It needs be reiterated that submissions of counsel however beautiful or enticing cannot take the place of evidence. This is because address of counsel to be accepted and utilized must be a reminder to court on evidence proffered. On its own, address of counsel cannot stand.**
(p. 3532 H)

E *MURDER - Proof - Circumstantial evidence*

4. Also to be said is that just as the trial court found and upheld by the Court of Appeal the fact that the murder instrument was consistent with the wounds suffered by the deceased as described by the PW1, Dr. Anthony Okafor who carried out the post mortem. The Appellant's counsel asking for finger prints of the Appellant on the weapon before it can be accepted or that no forensic examination thereof before the weapon can be taken as the instrument of death, is an elegant

F **argument which is bereft of other factors that could demolish such an argument like the cogent, compelling and direct circumstances which lead to no other explanation than that Exhibit "C" is the instrument deployed in taking the life of the deceased and an act effected by the Appellant. Section 139 of the Evidence Act, Cap 112 Laws of the Federation of Nigeria has provided the Court the mandate to accept the proof of death by circumstantial evidence. This being so since in criminal cases the high possibility of not been availed an eye witness account is not rare. Therefore, when the court can infer**

from the circumstances available and established other facts-which point to no other hypothesis or reasoning than the guilt of the accused then absence of forensic blood test of the deceased on the instrument or the fingerprint of the accused/appellant as in this case on that weapon becomes moot.

(p. 3533 B)

B

NOTABLE POINTS OF INTEREST

ARIWOOLA JSC

1. Murder – Accused must prove evidence of unintentional act or provocation to be entitled to an acquittal

When evidence of death and malice has been given (this is a question for the jury), the accused is entitled to show by evidence or by examination of the circumstances adduced by the crown that the act on his part which caused death was either unintentional or provoked. If the jury are satisfied with his explanation or, upon a review of all the evidence, are left in a reasonable doubt whether, even if this explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted. (p. 3537 H)

E

2. Prosecution must prove ingredients of murder

In our law instead of the emphasis on “malice”, the requirement is that the killing was unlawful. The principle to guide the court is that the prosecution to sustain the charge of murder has to prove the following:

- (i) that the deceased died;
- (ii) that his death was not a natural death;
- (iii) that the accused person did something or omitted to do something he had a duty to do by law;
- (iv) that the said act or omission resulted in harm to the deceased;
- (v) that the deceased died as a result of the said injury or harm.

(p. 3538 A)

H

REPRESENTATION

C. I. ENWELUZOR for the Appellant

S. E. ELEMA for Respondent

CASES REFERRED TO

- Ezemba v. Ibeneme (2004) 14 NWLR (Pt. 894) 617
Adun v. Osunde (2003) 16 NWLR (Pt. 847) 643
Unipetrol Nig Plc v. Adireje (W/A) Ltd (2004) All FWLR (Pt. 231)
B 1238
Asanya v. State (1991) 4 SC 42
Onyegbule v. State (1995) 4 NWLR (Pt. 391) 510
Queen v. Wilcox (1961) 2 SCNLR 296
C State v. Okoro (1964) 1 All NLR 423
Okeke v. The State (2003) 15 NWLR (Pt. 842) 25
Queen v. Obiasa (1962) 1 All NLR (Pt. 4) 651
Yusuf v. The State (1976) SC 167
Obasi v. The State (1965) 1 MLR 119
D Obue v. The State (1976) All NLR 134
Mohammed v. State (1997) 11 NWLR (Pt. 528) 339
Queen v. Akpan (1961) 1 All NLR 3
Ogueri v. State (2000) 2 CLRN 14

E **STATUTES REFERRED TO**

- Criminal Code Cap. 30 Vol. 2 Laws of Eastern Nigeria 1963, ss. 316(1), 319(1)
Constitution of Federal Republic of Nigeria 1999, s. 33(6)(a)
F Evidence Act Cap. 112 LFN 1990, ss. 57(1), 139

LEAD JUDGMENT BY PETER-ODILI JSC

- This is an appeal against the Judgment of the Court of Appeal delivered on the 16th day of November, 2004 upholding the
G conviction and sentence passed on the Appellant for the offence of murder contrary to Section 316 (1) and punishable under Section 319 (1) of the Criminal Code, Cap 30 Vol.2, Laws of Eastern Nigeria, 1963.

FACTS:

- H The Appellant was tried in the High Court of Enugu State in the Enugu Judicial Division holden at Enugu for the offence of murder contrary to Section 316 (1) and punishable under Section 319 (1) of the Criminal Code Law, Cap.30, Volume 2, Laws of Eastern Nigeria, 1963. From the particulars of offence, the Appellant was

alleged to have murdered one Dorothy Ibekwe, a 15 year old secondary school girl on or about the 5th day of March, 1983 at Ugbo Edem Nike in the Enugu Judicial Division. The said Dorothy had been raped and murdered.

On the 3rd day of July, 1984 the charge was read and explained and the Appellant pleaded not guilty. The prosecution called 8 witnesses and the Appellant alone testified and called no witness. The trial court presided over by B. O. Okadigbo J. delivered its judgment on 5/3/85 and convicted the Appellant for murder and sentenced him to death.

Dissatisfied with the judgment of the Court of first instance the Appellant filed an appeal on 13/3/85 at the Enugu Division of the Court of Appeal. The appellate court heard the appeal and dismissed it on the 16th day of November, 2004 and affirmed the decision of the trial High Court.

The Appellant again dissatisfied appealed to this Court by leave of this Court since the appeal was out of time.

On the 4th October, 2012 date of hearing the appeal, the learned counsel, C. I. Enweluzor adopted the Appellant's Brief filed on 18/3/2010 in which were crafted three issues for determination, viz:-

(a) Whether the learned Justices of the Court of Appeal were right in relying on the alleged confessional statements credited to the Appellant tendered and admitted at the trial court as EXHIBITS B and D in upholding the judgment of the trial court which convicted and sentenced the Appellant to death for murder.

(b) Whether the Learned Justices of the Court of Appeal were right in giving full probative value to Exhibits A, B, C and D and relying on them to uphold the conviction and sentence passed on the Appellant by the trial court.

(c) Whether the Learned Justices of the Court of Appeal were not in error when they held that EXHIBIT C and the evidence of PW1 constitute corroborative evidence to EXHIBITS B and D and thereby upheld the conviction and sentence of the Appellant by the trial court.

Learned counsel however sought leave to withdraw the second Issue which was granted with the Issue (b) being struck out. He also adopted the Reply Brief filed on 2/2/12.

Mr. Elema, learned counsel for the Respondent adopted the Respondent's Brief filed on 10/11/11 and deemed filed on 16/11/11 in which were formulated two issues for determination as follows:-

(a) Whether the Lower Court was right to have upheld the admission in evidence of the Appellant's confessional statements, Exhibits B and D and the reliance placed on the second documents in the conviction and sentence of the accused persons.

(b) Whether the Lower Court was right in upholding the reliance placed on the evidence of PW1 (the medical practitioner who carried out the post mortem) and Exhibit C murder weapon (the machete) surrendered to the Police by the Appellant.

The two issues couched on either side are really of the same content and so there is no difficulty in using any of them. For a free flow I shall make use of those crafted by the Appellant.

D ISSUE 1:

Whether the learned Justices of the Court of Appeal were right in relying on the alleged confessional statements credited to the Appellant tendered and admitted at the trial court as EXHIBITS B and D in upholding the judgment of the trial court which convicted and sentenced the Appellant to death for murder.

Learned counsel for the Appellant, Mr. Enweluzor, contended that the alleged confessional statements tendered as Exhibits B and D were worthless, of no evidential value and ought not to have been relied upon by the Court below in convicting and affirming the conviction of the Appellant for murder. The reasons being that in taking the confessional statements, Exhibits B and D the Appellant's right to have the offence explained to him in a language he understood was breached contrary to Section 33(6)(a) of the 1999 Constitution.

G He stated on that the evidence of PW5, the Investigating Police Officer was contradictory as to how he obtained the statements of the Appellant and what language English or Pidgin English. That the same malaise visited the evidence of PW7 who said he interpreted to the appellant but did not disclose from which language the interpretation was made and to what language Exhibit D, the second statement was obtained. That the two confessional statements should therefore be rejected. He cited *Ezemba v Ibeneme* (2004) 14 NWLR (Pt. 894) 617; *Adun v Osunde* (2003) 16 NWLR (Pt. 847) 643 at 650; *Unipetrol (Nig.) Plc v Adireje (W/A) Limited* (2004) All FWLR (Pt.

231) 1238 at 1243; Asanya v State (1991) 4 SC 42 at 52; Onyegbule v State (1995) 4 NWLR (Pt; 391) 510; Queen v Wilcox (1961) 2 SCNLR 296; State v Okoro (1964) 1 All NLR 423.

He concluded by saying that when these two Exhibits B and D, the defective confessional statements are jettisoned then there would be insufficient evidence to sustain the conviction of the Appellant for murder. B

Mr. Elema for the Respondent stated in response by firstly going into the circumstances that led to the confessional statement where Exhibit B was -obtained by corporal Elias Ehoda who later testified as PW5. He referred to the-trial-within-trial over the admissibility of the Statement after which the learned trial judge rejected the denial of voluntariness of that Exhibit B, had been confirmed by PW2, Deputy Superintendent of Police, Famous Enweluzor to whom the Appellant had been taken. Exhibit D, another confessional statement made before Sergeant Nicholas Bisong after the Appellant was transferred from Abakpa Nike Police Station to the State Criminal Investigation Department, Enugu. Exhibit D was admitted without objection. Also Exhibit D had been confirmed by a Superior Police Officer, this time Chief Superintendent of Police, Elkanah O. Makinde. C D E

Mr. Elema of counsel said the voluntariness of the two statements cannot be faulted as Appellant's counsel is urging since they were voluntarily made. He cited the case of Jimoh Yusuf v The State (1976) SC 167 at 173. E

In resolving this question above under the issue One, which is a query as to the tightness of the Court below in upholding the admission in evidence of the Appellant's confessional statements, Exhibits B and D and the reliance placed on the subsequent Exhibits in the conviction and sentence of the Accused/Appellant. In answer to this poser going back in time to what the learned justices of the Court of Appeal had to say or did would shed the necessary light. That Court per Mika'ilu JCA stated: F G

"It is therefore desirable to have outside the confession of the accused person some evidence, be it slight, of circumstances which make it probable that the confession was true. Conviction should not be solely and entirely on confession... In this case there are two confessional statements alleged to have been made by the Appellant which have been admitted in evidence as Exhibits "B" and "D". In his H

evidence-in-chief the Appellant had this to say:

“It is true that I told the police in both Exhibits “B” and “D” that I killed Dorothy Ibekwe. I was not myself when I made the statements i.e. I did not mean to tell the police that I killed Dorothy Ibekwe”.

“This has undoubtedly reduced the task of the trial court to the question as to whether the statements were made voluntarily as the appellant has admitted in the above making the statements. In solving the issue of voluntariness or involuntariness of the alleged confessional statement, Exhibits “B” and “D”, the trial court acted upon evidence of PW5 and evidence of PW7, rejecting evidence of the accused, in disbelieving the fact alleged that the accused was beaten up before he made the statements in Exhibits “B” and “D”. Considering the evidence-in-chief of the Appellant as per the record of proceedings page 58, one will not quarrel with the trial court in finding that the Appellant was not beaten before making the statements. He had this to say:-

“It was at the Ugbo Edem bush that I was beaten up by PW3 and his relations it was after I was beaten up by PW3 and his relations at Ugbo Edem bush that I was brought to the Abakpa Nike Police Station where I made Exhibit “B”. PW3 and his relations were not present in the room at the Abakpa Nike Police station when I made Exhibit “B”. I admitted killing Dorothy Ibekwe in Exhibit “D” because I was also badly beaten up by the police from the State C.J.D. who recorded my statement. It was when I made my statement which was recorded by the police from the State C.I.D. that he beat me up”.

The Court of Appeal went on thus:-

“It is to be noted that PW3 was Nicholas Ibekwe a relation of the deceased, a staff of the University of Nigeria Teaching Hospital, Enugu and not a police officer. It is also to be noted that a trial-within-trial was conducted by the trial court before accepting Exhibit “B” in evidence. It is also to be noted that Exhibit “D” was tendered in evidence without objection. I think even if PW3 did beat the accused in the bush it would have nothing to do with the statement taken by the police in the office in the absence of PW3. That Exhibit “D” having been tendered in evidence without objection the Appellant can never be heard to complain. In any case the trial court who saw and heard PW5 and PW7 as well as the accused believed the PW5 and PW7 and disbelieved the accused. I must therefore agree

with the decision of the trial court that the appellant was not beaten in respect of the two statements. They are therefore voluntary statements of the Appellant.

The next question is whether the trial court in convicting the Appellant solely relied upon confessional statements Exhibits "B" and "D". From the judgment of the trial court besides considering the confessional statements Exhibits "B" and "D" and also Exhibit "C", the machete, it considered the following:-

(a) the evidence of PW1 where he clearly described the injuries that were sustained by the deceased and the evidence of the accused in Exhibit "D" where he stated that "After I sexed her I carry my knife and cut her on her neck, I also cut her on her hand and on her head and she died".

The Court below indeed considered what the trial Court did as all that the law required in the admissibility and even the utilization of Confessional Statement or statements in the finding of the guilt of an accused and the follow up of a conviction and sentence. The Appellant had been at great effort to try to reduce the value of the Statements firstly by claiming to be illiterate and that he made the first statement Exhibit "B" in Pidgin English and had been recorded in English, a language he did not understand apart from the fact of alluding to having been beaten up thoroughly thereby rendering the voluntariness of the Statement doubtful or inadmissible. That assertion had been debunked in the trial-within-trial of the learned trial Judge apart from the fact that indeed Exhibit "B" had been recorded in Pidgin English. Coming after the matter of Exhibit "D" recorded in English and there had been no objection. **Putting Exhibit "D" and even Exhibit "B" under the "litmus test" as to its truth outside the statements themselves and from other external evidence to see if the following are in existence:**

- (a) **Is there anything outside it to show that it is true?**
- (b) **Is it corroborated?**
- (c) **Are the facts stated in it true as far as can be tested?**
- (d) **Did the accused have an opportunity of committing the offence?**
- (e) **Is the accused's confession possible?**
- (f) **Is the confession consistent with other facts which have been ascertained or proved?**

These standards above from decided authorities of even this Court have been met as on all counts in these tests, the accused's confessional statements, have not been found wanting. I would return to say that there are other things outside the statements to show that the statements are true. Yes, the confessions are corroborated by other pieces of evidence including the issue of the matchet found where the Accused/Appellant pointed in his house; the Medical Report on the cause of death of the deceased. I place reliance on the following cases:- Okeke v The State (2003) 15 NWLR (Pt.842) 25; Queen v Obiasa (1962) 1 All NLR (Pt.4) 651; Jimoh Yusuf v. The State (1976) SC 167 at 173.

In fact, the confessional statements, Exhibits "B" and "D" are in my view sufficient to ground a conviction, considering the finding in the course of trial-within-trial in the case of Exhibit B and later D which cleared some grey areas in the earlier statement are both sufficient in themselves to found a conviction without any other extraneous evidence in corroboration. Edet Obasi v. The State (1965) 1 NMLR 119; R v Kanu 14 WACA. ***The attempt by the Appellant at this stage and even at the Court below to impugn the voluntariness of the statements and thereby have them scuttled is in the light of the circumstances of this case a day dream or perhaps a "wishful thinking" as a possible escape to what is so weighty, true and the admission of the act of an accused well considered and evaluated by the trial Court which the Court of Appeal did not have any reason to interfere with and that rightly so since this Court cannot and is not persuaded to either interfere with or obstruct. The question is resolved against the Appellant and is a positive answer on what the Court of Appeal did.***

ISSUE 2:

Whether the Learned Justices of the Court of Appeal were not in error when they held that Exhibit C and the evidence of PW1 constitute corroborative evidence to Exhibits B and D and thereby upheld the conviction and sentence of the Appellant by the trial Court.

Learned counsel for the Appellant, Mr. Enweluzor contended that the learned trial judge was wrong in his conclusion on the corroborative evidence and that the Court of Appeal was therefore in

error in accepting Exhibits A and C as the trial court did as corroboration since in respect to Exhibit C, the weapon, no search warrant was executed to get it from the house of the Appellant. That a serious doubt was at play as to who was the actual owner of the matchet, the weapon and if it had not been planted in Appellant's house. He cited David Obue v. The State (1976) All NLR 134 at 139. B

He stated on that it was not properly established that Exhibit C was the weapon with which the deceased was killed. He referred to the case of Mohammed v. State (1997) 11 NWLR (Pt.528) 339 that there was no expert evidence that Exhibit C had the finger print impression of the Appellant before same was admitted in evidence as corroborative of the guilt of the Appellant. He relied on Queen v Akpan (1961) 1 All NLR 3; Section 57 (1) of the Evidence Act. C

From the Appellant was questioned whether the circumstantial evidence relied on by the trial court which was upheld by the Court of Appeal amounted to sufficient proof. Mr. Enweluzor in answer said the circumstantial evidence was not strong and cogent pointing unequivocally to the guilt of the accused/Appellant. He cited Nasiru v. The State (1999) 2 NWLR (Pt. 589) 87 at 98; Ogueri v. State (2000) 2 CLRN 14; Ukorah v State (1977) 4 SC 167 at 174; Valentine Adie v The State (1980) All NLR 39 at 49. D E

Mr. Elema for the Respondent said the argument of the absence of a search warrant did not hold water since Appellant's house was not searched and that there was evidence that it was Appellant himself who took PW7 to his residence and surrendered the murder weapon to PW7. Also, it was Appellant who had earlier taken PW7 to the bush and showed him where he raped the deceased and where he eventually killed her. That there was enough from the circumstantial evidence available from which the guilt of the Appellant was established. That these concurrent findings of the two Courts below were not to be disturbed as there was nothing to support such interference. F G

In reply on points of law, Mr. Enweluzor submitted that no exceptional circumstances are in existence necessitating the intervention of this Court as the findings were based on evidence that were merely speculative and perverse thus to a miscarriage of justice. He referred to Overseas Construction Co (Nig.) Ltd v Creek Enterprises Nig. Ltd (1985) 3 NWLR (Pt. 13) 407; Ihewuezi & Ors v Ekeanya & H

Anor (1989) 1 NWLR (Pt. 96) 329 at 248; Umar v Bayero University Kano (1988) 4 NWLR (Pt. 86) 92.

To answer the question posed under this Issue 2 is really to fulfill all righteousness since giving the answer in Issue One the matter has been adequately settled, but to leave no room for a second guessing I will in a short while place on record what the resolution of this issue is for the abundance of caution. I will refer to part of the judgment of the Court of Appeal relevant to this inquiry. It is thus, firstly quoting from the Confessional Statements of the Appellant thus:-

“Exhibit “C” which was recovered by PW7 when he took the accused person to his house. Then it was found under the accused person’s bed.

The statement of the accused in Exhibit “D” that “the knife I show police under my bed is the knife I used to kill Dorothy.”

That Court then went on:-

“Thus the trial Court having found that the statements in Exhibits “B” and “D” were voluntary confessions of the accused person it also found that there was evidence corroborating the said statements. The learned counsel for the appellant has averred that the case of THE QUEEN v CHUKWUJI OBIASA (1962) 1 All NLR (Pt. iv), P651 has similarities with the present cause. I have seen no similarities between the two cases. In the present case there are two confessional statements in which one has been admitted after trial within trial, Exhibit “B” and the other has been admitted without objection, Exhibit “D” unlike the case of THE QUEEN V OBIASA (supra). The statement in that case contained intrinsic circumstances and certain statements which were inconsistent with relevant facts as proved by independent prosecution witnesses, unlike in our present case. In our case the confessional statements are direct and positive. The conflict of the date, 10th December as in the statement in the report of the pathologist, the machete was received, and 12th December when it was alleged to have been delivered to the pathologist by the police cannot be similar to situation of this case in respect of the corpse. Here PW1 said he performed the post mortem on 8th March 1983 while under cross-examination he said the corpse was received on 5th March 1983. There is no discrepancy on the date the corpse was received or the date post mortem examination was performed. Moreso, the death of the deceased is not an issue in this appeal but

whether it was the Appellant who committed the offence which question is resolved in answering the question as to whether Exhibits “B” and “D” the confessional statements of the accused have been supported or corroborated by other evidence. The case of the QUEEN v. OBIASA (supra) is not similar to the present case.

The Appellant’s counsel has in the alternative urged this court to be lenient to the accused by reducing his conviction to manslaughter on the basis that he had set out to have sexual intercourse with the deceased at the farm and along the line lost his senses and killed her after the act. That the murder could not have been premeditated. I feel that to convict a person charged for murder with manslaughter is not a matter of leniency but evidence adduced before the trial court. Where the evidence is sufficient to warrant the trial court to convict the accused for murder the trial court cannot do otherwise but convict the accused for murder and the appellate court has no discretion to be lenient to convict the accused for manslaughter.

It is dependent upon what offence has been proved beyond reasonable doubt. I am therefore satisfied that the confessional statements, Exhibits “B” and “D” have been properly admitted and acted upon by the trial court. That the confessional statements are voluntary and despite being direct and positive they have been supported or corroborated by other evidence to warrant the conviction of the Appellant by the trial Court. All the averments of the learned counsel on the two issues failed.”

On the grouse of the Appellant’s counsel that the machete, weapon of the dastardly act was brought out from the Appellant’s room without a search warrant. That posturing cannot just stand in the circumstances of this case where the Investigating Police Officer, Nicholas Bisong who testified as PW7 had stated thus:-

“On the 7th March, 1983, I was on duty at State C.I.D. Office when a case of murder was referred to me for investigation. In the course of my investigation, I visited the scene of crime in company of the accused. There the accused showed me where he saw the deceased in a farm when she (the deceased was harvesting yams). The accused told me that he held the deceased by her neck and took her to the side of the farm where he had sex with the deceased. The accused also took me to a dried river very near to the farm where he

said he killed the deceased and dumped her corpse there and covered it with dried leaves. I thereafter took the accused to his house where he showed me where he hid a machete which he said he used in killing the deceased. I then brought out the machete from underneath a bench claimed to be his bench by the accused. This is the
 B matched, (sic) Tendered, admitted and marked Exhibit "C". As a result of what the accused told me in the course of my investigation, I followed him to a house i.e. the house of the deceased which is opposite the house of the accused. The accused showed me a window in Dorothy's house which he said he broke a day before he
 C killed the deceased and that before he could enter the room, he was challenged and he ran back to his house. I thereafter took the accused to the State C.I.D Office where I arrested him, charged and cautioned him in Pidgin language with the murder of Dorothy Ibekwe.
 D The accused volunteered a statement in Pidgin English, which I recorded in Pidgin English, read it over to the accused and he said it was correct and signed it. I thereafter counter-signed the statement. This is the statement. Tendered, admitted and marked Exhibit "D". I thereafter took Exhibit "D" and the accused person before the
 E Officer-in-Charge Homicide Mr. Makinde (D.S.P) who read over Exhibit "D" to the accused in my presence and the accused said it was correct. Mr. Makinde then counter signed on Exhibit "D"

There was no necessity of a search warrant since the
 F **Appellant not only took him to his (accused's) house and room and showed him where he kept the machete, but also took PW7 to the house of the deceased showing him the broken window which the Appellant said he broke in the quest to get at the deceased for sex a day before the incident leading to**
 G **the death of the deceased. Furthermore, the Appellant in the course of the investigation took PW7 to the scene of crime where he kept the dead body after having sex with the victim and killing her. In none of the transactions is the need for a search warrant at play. Therefore, the assertion for the search**
 H **warrant flies off the handle.**

Another point, necessary to be commented upon is that there has been nothing put forward by the Appellant upon which can be found a doubt, be it inconsequential or minute that the weapon, the machete did not belong to the Appellant.

What learned counsel for the Appellant did was just to put up a submission of such a doubt which did not flow from the evidence before the trial court. It needs be reiterated that submissions of counsel however beautiful or enticing cannot take the place of evidence. This is because address of counsel to be accepted and utilized must be a reminder to court on evidence proffered. On its own, address of counsel cannot stand. B

Also to be said is that just as the trial court found and upheld by the Court of Appeal the fact that the murder instrument was consistent with the wounds suffered by the deceased as described by the PW1, Dr. Anthony Okafor who carried out the post mortem. The Appellant's counsel asking for finger prints of the Appellant on the weapon before it can be accepted or that no forensic examination thereof before the weapon can be taken as the instrument of death, is an elegant argument which is bereft of other factors that could demolish such an argument like the cogent, compelling and direct circumstances which lead to no other explanation than that Exhibit "C" is the instrument deployed in taking the life of the deceased and an act effected by the Appellant. Section 139 of the Evidence Act, Cap 112 Laws of the Federation of Nigeria has provided the Court the mandate to accept the proof of death by circumstantial evidence. This being so since in criminal cases the high possibility of not been availed an eye witness account is not rare. Therefore, when the court can infer from the circumstances available and established other facts which point to no other hypothesis or reasoning than the guilt of the accused then absence of forensic blood test of the deceased on the instrument or the fingerprint of the accused/appellant as in this case on that weapon becomes moot. C D E F G

I see no difficulty in accepting the submission of Mr. Elema for the Respondent that the allegation of the commission of the heinous crime of murder by the Appellant in the brutal rape and murder of the deceased, Dorothy Ibekwe has been found as proven beyond reasonable doubt by the Enugu High Court and affirmed by the Court of Appeal, Enugu Division and nothing new or fresh has been placed before this Court whereby it can disturb or upset these concurrent findings of the two Courts below. H

It is without saying that this issue is resolved against the Appellant. The two issues having been resolved against the Appellant, I have no hesitation in saying that this appeal lacks merit and I hereby dismiss it. I affirm the decision of the Court of Appeal which affirmed the Judgment, Conviction and Sentence of death by hanging of the trial High Court. Appeal is dismissed.

MUHAMMAD JSC

I have had the opportunity of reading the judgment just delivered by Odili JSC. I agree with the conclusion that the appeal lacks merit and it should be dismissed. I dismiss the appeal and affirm the judgment of the court below.

D

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother Peter-Odili JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal is totally devoid of merit and should be dismissed.

The appellant was tried for the offence of murder of Dorothy Ibekwe punishable under section 319 (1) of the Criminal Code, Cap. 30, Vol. 2 Laws of Eastern Nigeria, 1963. He was found culpable and sentenced to death by the trial court.

The facts of the case sound rather gory; in the main. The allegation against the appellant was that on 5th March, 1983, one Miss Dorothy Ibekwe, a 15 year old secondary school girl was brutally attacked in the farm by the appellant who raped her and thereafter inflicted severe machete cuts on her neck, head, and hand. He thereafter covered her remains with some dried leaves.

The appellant made two confessional statements which were admitted as Exhibits B and D respectively. It was maintained that Exhibit B was not made voluntarily by the appellant. There was a trial-within-trial duly conducted by Okadigbo, J. who found Exhibit B to be in order. Exhibit D was admitted without any shred of objection.

The appellant led the Police to his residence where he showed them the machete he used to commit the offence and same was

admitted as Exhibit C at the trial court. P.W.I - the medical practitioner who performed the postmortem examination on the dead body confirmed that the cause of death was due to severe bleeding arising from multiple deep cuts on the body of the deceased. He certified cause of death to be due to loss of blood from multiple laceration wounds. B

The learned trial Judge appraised the evidence garnered by him. After considering the applicable law, he found the appellant culpable and consequently convicted and sentenced him to death. He appealed to the Court of Appeal which upheld the conviction C and sentence passed on him by the trial court.

The appellant has decided to further appeal to this court. It is his right to so do.

The appellant had axe to grind with the reliance placed on Exhibits B and D - his confessional statements by the trial court and the Court of Appeal. As regards effect of confessions made by an accused person, it should be stated unequivocally that a free and voluntary confession of guilt, if direct and positive, duly made and satisfactorily proved, is sufficient to warrant conviction even without corroborative evidence so long as the court is satisfied of the truth of the confession. See: Jimoh Yusuf v. The State (1976) 9 SC 167 at 173; Edet Obasi v. The State (1965) NMLR 119. E

However, to make assurance doubly sure, it is desirable to have outside the accused's confession, some evidence, be it slight of the circumstances which make it probable that the confession was true. See: Paul Onoche & Ors. v. The Republic (1966) NMLR 307; R v. Kanu 14 WACA 30. F

Where a self confessed felon, as the appellant herein, his dastardly act was carried out and such is believed by the court, same will suffice to nail him. See: Musa v. Sadak & Anor. v. The State (1988) NMLR 208. G

The cutting of the neck, head and hand of the deceased with a machete - Exhibit C was corroborated by the evidence of P.W.I - the Medical Officer. And, it was the appellant who took the Police to his house where he surrendered Exhibit C to them. H

I do not see the propriety for the unnecessary fuss generated in trying to impugn the veracity of Exhibits B and D in which he admitted the offence that roundly culpatd (sic) him. All accusing

fingers point at him. He failed to wriggle out of the web created by him.

Finally, I wish to state it in clear terms that the two concurrent findings of fact in all material respects. I have no cause to interfere with the balanced findings touching on this rather gory matter as they have not been shown to be perverse in any respect. I shall not interfere. See: *Oduntan v. Akibu* (2000) 7 SC (Pt.2) 106.

For the above reasons and the fuller ones adumbrated in the lead judgment, I too, feel that the appeal is devoid of merit and should be dismissed. I order accordingly and affirm the decision of the Court of Appeal which wholly affirmed the stance of the trial court.

ARIWOOLA JSC

I had the opportunity of reading in draft the lead judgment just delivered by my learned brother, Mary Peter-Odili JSC. I agree in entirety with the reasoning and conclusion in the said lead judgment.

After being charged with an offence of murder, the Appellant had been tried, convicted and sentenced to death on the 5th day of March, 1985 by the Enugu State High Court, sitting at Enugu. Upon an appeal to the Court below, Enugu Division, the appeal was dismissed on the 16th day of November, 2004 while the decision of the trial court was affirmed, which led to the instant appeal to this Court.

It is note worthy that the appellant had challenged the decision of the Court below, raising the following issue for determination inter-alia,

“Whether the learned Justices of the Court of Appeal were right in relying on the alleged confessional statements credited to the Appellant tendered and admitted at the trial court as Exhibits B and D in upholding the judgment of the trial court which convicted and sentenced the appellant to death for murder.”

Mr. Enweluzor of counsel for the appellant in arguing the above issue contended that the alleged confessional statements credited to the appellant, tendered as Exhibits B and D were worthless, of no evidential value and therefore ought not have been relied upon by the trial court and the court below in convicting and affirming the

conviction of the appellant for the offence with which he was charged. It was submitted that the right of the appellant was breached in taking the said alleged confessional statements, Exhibits B and D, in that the charge was not read and explained to him in the language he understood. This was said to be contrary to Section 33(6) (a) of the 1999 Constitution (as amended). He urged the court to reject the two alleged confessional statements. He cited a few cases to support his claim. Learned counsel finally submitted that when the two alleged confessional statements are rejected, there would be nothing to sustain the charge against the appellant.

In response, the learned counsel for the respondent, Mr. Elema had given the background of how the said statements of the Appellant were made and duly obtained. He referred to the testimony of the Police Officers who were involved in the matter and the trial within trial conducted by the trial court on the statements, upon denial of voluntariness by the appellant. He urged the Court to hold that the said statements were confessional and were duly admitted and relied on by the two courts below in convicting and affirming the appellant's conviction by the trial court and court below respectively.

It is noteworthy that the appellant was charged with the offence of murder of one Dorothy Ibekwe pursuant to Section 319(1) of the Criminal Code Cap 30 Vol. 1, Laws of the Eastern Nigeria, 1963.

In Woolmington Vs. Director of Public Prosecutions (1935) 25 CR App. R. 72 AT 95 /96 the lord chancellor dealt with the problem of proof in murder cases and what the Prosecutor for the State is expected to prove to achieve conviction as follows:

*“(a) death as a result of a voluntary act of the accused and
(b) malice of the accused. It may prove malice either express or by implication. For malice may be implied where death”* occurs as the result of a voluntary act of the accused which is –

- (i) intentional and
- (ii) unprovoked”

When evidence of death and malice has been given (this is a question for the jury), the accused is entitled to show by evidence or by examination of the circumstances adduced by the crown that the act on his part which caused death was either unintentional or provoked. If the jury are satisfied with his explanation or, upon a review

of all the evidence, are left in a reasonable doubt whether, even if this explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted.

In our law instead of the emphasis on “malice”, the requirement is that the killing was unlawful. The principle to guide the court is that the prosecution to sustain the charge of murder has to prove the following:

- (i) that the deceased died;
- (ii) that his death was not a natural death;
- (iii) that the accused person did something or omitted to do something he had a duty to do by law;
- (iv) that the said act or omission resulted in harm to the deceased;
- (v) that the deceased died as a result of the said injury or harm.

See *The State Vs. Collins Ojo Aigbangbee & Anor* 2 LC 550 at 600 - 601 per Oputa, JSC (1988) 3 NWLR (pt 84) 548, *Onah Vs. The State* (1985) 3 NWLR (pt 12) 236, *Nwachukwu Vs. The State* (2005) 4 LRCN 153 at 72, *Sule Vs. The State* (2009) 8 SCMLR 177 (2009) 4 NCC 456; *Sabina Chikaodi Madu Vs. The State* (2012) 6 SCNJ 129 at 177; (2012) 6 SC (pt. I) 80.

In the instant case, it is not in controversy or dispute that the deceased Dorothy died and that the death was not a natural death.

However, the two Courts below had concurrently found that the Appellant voluntarily confessed to having committed the offence of killing the deceased. The confessional statements were of the record of appeal, the appellant clearly in pidgin English stated how he carried out the dastardly act. Indeed, it was found that the appellant himself led the police to his room where he kept the weapon he used on the deceased, which was recovered, tendered and properly admitted in evidence as Exhibit C.

It is already settled, that a court can convict an accused person on the confessional statement he made, provided same is direct, positive and unequivocal about his committal of the crime. See *Yusufu Vs. The State* (1976) 6 SC 163 at 173, *Okesbu Vs. The State* (1984) 8 SC 65; *Osusu & 4 Ors. Vs. The State* (1990) 2 NWLR (pt 134) 559, *Kim Vs. The State* (1992) 4 SCNJ 81 at 110.

It has also been established that the retraction of the confessional statement by an accused person in his oral testimony in court

during trial is of no moment. The most important thing is that the court must be satisfied as to the truth of the confession, and can therefore rely on it alone to ground conviction. See *Onyejekwe Vs. The State* (1992) 4 SCNJ 1 at 8 *Bature Vs. The State* (1994) 1 SCNJ 19 at 29, *Akpan Vs. The State* (2001) 7 SCNJ 567 at 580; (2001) 11 SCMLR 66. *Solola & Anor Vs. The State* (2005) 6 SCMLR 137; (2005) 5 SCNJ 139 at 154, (2005) 22 NSCQR 254 at 267; (2005) 5 SC (pt 1) 135, *Omoju Vs. The Federal Republic of Nigeria* (2008) 2 SCMLR 164 at 177.

However, it is also settled that it is desirable that the trial court should, outside the confessional statement, look for some corroborative evidence, no matter how slight. In the instant case, it is clear that Exhibit C which the appellant claimed to have used to cause injuries on the deceased was recovered from under his bed to where he led the police investigating. Exhibits C and A therefore with the testimony of PW1 who performed post mortem on the deceased were enough corroboration which convinced the trial court to accept the confession as a clear admission of guilt. In any event, a confession is an admission made at any time by a person charged with a criminal offence stating or suggesting that he committed the crime. See *Saidu Vs. The State* (1982) 3 SC 41, *Nwachukwu Vs. The State* (2007) 12 SCMLR (pt 2) 447 at 473. And it is now firmly settled that a confessional statement is the best evidence in our criminal procedure. The reason being that as a statement of admission of guilt by the accused person, the trial court must admit it in evidence, unless it is contested at the trial and the objection is sustained. See *Solola & Anor Vs. The State* (supra).

In the instant case, there is no iota of doubt that the appellant rightly admitted in his confessional statements that he committed the offence he was charged with. In other words, the trial court was right to have held that the prosecution proved the ingredients of the offence beyond reasonable doubt. The Appellant was rightly found guilty of the offence, convicted and sentenced accordingly.

In the same vein, the Appellant has failed to show any perversion of justice in the concurring findings of fact by the Court below to warrant an order of this court to set same aside. The court below was therefore right in affirming the decision of the trial Court in sentencing the Appellant.

For the above reason and the fuller and more comprehensive reasons in the lead judgment, I hold that this appeal is unmeritorious and lacking in substance. It is liable to dismissal. Accordingly, it is dismissed by me while the decision of the Court below is affirmed.

B

AKA'AH'S JSC

I read the draft of the judgment of my learned brother, MARY PETER-ODILI JSC. I agree that the appeal is completely devoid of merit and ought to be dismissed. I too dismiss it.

C

The facts of this case are quite pathetic. They concern the brutal murder of Dorothy Ibekwe, a 15 year old girl who had gone to the farm to harvest yams. The appellant followed her to the farm where he raped her and thereafter macheted her to death. He hid both himself and the corpse of the girl in the bush and it took a search party two days to locate the corpse before arresting him from his hideout. After his arrest he made two confessional statements which were admitted in evidence as Exhibits 'B' and 'D'. The machete he used in killing the girl was also recovered and tendered in evidence as Exhibit 'C'. An autopsy was carried out on the corpse which was identified by the father of the deceased and a medical report issued was admitted as Exhibit 'A'. The learned trial Judge found the accused guilty. His appeal to the Court of Appeal against his conviction was dismissed. He has now appealed to the Supreme Court.

F

The appellant raised three issues in his brief of argument which have been adequately dealt with in the lead judgment. I wish to comment on issue (b) which is whether the learned Justices of the Court of Appeal were right in giving full probative value to Exhibits 'A', 'B', 'C', and 'D' and relying on them to uphold the conviction and sentence passed on the appellant by the trial court.

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The prosecution is required to prove the following to secure a conviction for murder:-

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(a) The death of the deceased

(b) The act or omission of the accused which caused the death of the deceased was unlawful and

(c) The act or omission of the accused that caused the death must have been intentional with knowledge that death or grievous

bodily harm was its probable consequence. See *Abodede vs State* (1996) 5 NWLR (Pt. 448) 270 at 276.

Since there was no eye witness account, the evidence has to be circumstantial. It is however not in doubt that the dead body recovered in the bush on which the autopsy was carried out and Exhibit 'A' the medical report issued was that of Dorothy Ibekwe. The corpse was identified by PW2 the father of the deceased. The circumstantial evidence linking the appellant with the death of Dorothy Ibekwe is to be found in Exhibits 'B' and 'D'. In both Exhibits 'B' and 'D' the appellant confessed to killing the deceased with a machete and this was corroborated by Exhibit 'A'. The PW1 in his oral evidence found a deep incised wound on the back of the left fore arm measuring 6cm x 2cm x 4cm which resulted in the fracture of the nerves. He also found a lacerated wound on the left shoulder blade causing the separation of the left hand. There was also a cut lacerated wound measuring 6cm x 3cm in width x 5cm in depth on the left side of the neck region which damaged all vital arteries, veins and nerves especially the carotid. This particular wound caused acute hemorrhage. He concluded his report by stating that: *"I certified the cause of death in my opinion to be due to acute loss of blood from the multiple laceration wounds. These wounds could have been caused by a sharp solid instrument like a machete. The wounds could not have been self inflicted"*.

Not only did the appellant make a clean breast of the commission of the crime but he led the prosecution to recover the murderous weapon he used which he had hidden underneath a bench.

From all the surrounding circumstances of this case, it is obvious that it was the appellant who killed the deceased. Although he tried to rub in Ernest Chijioke Ike in Exhibit 'D' the latter denied acting in cahoots with him in carrying out the dastardly act. All the pieces of evidence produced by the prosecution no doubt led to the guilt of the appellant and they left no degree of possibility or chance that some other person could have been responsible for the commission of the offence; more so with the production of the murder weapon which the appellant hid under the bench. See: *Igho vs. State* (1996) NSCC 166.

The innocent blood of this young girl like that of Abel must have cried to heaven for vengeance; hence the confessional state-

ments of the appellant who could only say it was the work of the devil. His place is in hell where the devil holds sway.

It is for this reason and the more detailed reasons contained in the lead judgment that I dismiss the appeal and affirm the judgment of the lower court.

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