

**SUPREME COURT OF NIGERIA**  
FRIDAY 15<sup>TH</sup> JUNE, 2012. SC. 203/2010  
**CORAM:- M. MOHAMMED, C. M. CHUKWUMA-ENEH,**  
**J. A. FABIYI, B. RHODES-VIVOUR, O. ARIWOOLA , JJSC**

JOSEPH UBI IGRI ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

---

CRIMINAL PROCEDURE - Proof - Burden of - Onus is on prosecution to establish the guilt of accused - Beyond reasonable doubt (H1)

CRIMINAL PROCEDURE - Burden of proof - Shift in - In the case of recent possession of stolen property - Burden on accused is discharged on balance of probabilities (H2)

MURDER - Ingredients - Proof - Prosecution must inter alia prove death of deceased - And that it was voluntary act or omission of accused that caused the death (H3)

CRIMINAL PROCEDURE - Confession - Conviction - Validity - Accused can be convicted on his confession without corroboration - Provided the truth therein is unequivocal (H4)

CRIMINAL PROCEDURE - Confession - Definition - By s. 27(1) Evidence Act - Confession is admission made by person charged with crime - Stating inference that he committed crime (H5)

**FACTS**

The case against appellant and his co-accused was that they murdered the deceased at a nearby bush inside an uncompleted building. Thereafter, they dug a shallow grave and buried the deceased. Few days later, their act was discovered by the owner of the building who promptly made a report to the police. The dead body was exhumed and an autopsy conducted, which revealed the cause of the death. Subsequently, appellant was arrested in connection with the murder. He made confessional statement in exhibit G5.

Appellant and co-accused were subsequently arraigned be-

fore the High Court of Cross-River State, Ugep for murder of the deceased contrary to section 319(1) of Criminal Code Law of Cross-River State. They pleaded not guilty to the charge. At the trial, prosecution called six witnesses and relied essentially on appellant's confessional statement. At the end of trial, the court convicted appellant and co-accused of murder and sentenced him to death by hanging. Dissatisfied, appellant appealed to the Court of Appeal, Calabar Division. The court dismissed the appeal and affirmed trial court's judgment. Aggrieved further, appellant filed appeal in Supreme Court.

### **ISSUES FOR DETERMINATION**

*“(1) Whether from the circumstances of this case, the alleged confessional statements of the appellant exhibits G, G1*

*- G5 and especially exhibit G5 upon which the appellant was convicted and sentenced were voluntarily made and rightly admitted in evidence.*

*(ii) Assuming (without conceding) that the alleged confessional statements of the appellant were voluntarily made and rightly admitted in evidence, whether the trial court was right to have convicted the appellants on the strength of the said confessional statements, especially exhibit G5 without putting into consideration the strength of exhibits G, G1 - G4 which are other confessional statements allegedly made by the appellant and in the absence of any other independent corroborative evidence.”*

**HELD** (Unanimously dismissing the appeal per

**CHUKWUMA-ENEH JSC)**

*CRIMINAL PROCEDURE - Proof - Burden of*

**1. There can be no doubt that in criminal cases such as in the instant case the onus is on the prosecution to establish the guilt of the accused beyond reasonable doubt implying that unless the prosecution has discharged that onus it is not entitled to succeed. This principle agrees with the proposition of the law that one who asserts a disputed fact must prove it. There is no onus on the accused to establish his innocence. This burden on the prosecution does not shift as it rests squarely on the prosecution throughout.** (p. 3809 B)

*CRIMINAL PROCEDURE - Burden of proof - Shift in*

**2. There is no onus on the accused but where the charge imports a presumption of guilt intent as exemplified, in the case of being in recent possession of presently stolen property the burden on the accused is discharged on the balance of probabilities; that is, such proof rests upon facts peculiarly within the accused's own knowledge. (p. 3809 E)**

*MURDER - Ingredients - Proof*

**3. In a case of murder as here it is settled law that the prosecution is required to established the following factors/ ingredients:**

- 1. the death of the deceased.**
  - 2. that the voluntary act or omission of accused caused the death of the deceased.**
  - 3. that the accused's act resulted in the death of the deceased having been done with the intention of causing death or grievous bodily harm to the deceased.**
  - 4. that the accused knew that death is the probable and natural consequences of his act or omission.**
- (p. 3809 H)

*Confession - Conviction - Validity*

**4. The above cited case has underscored the premium which the law places on confession. And so there can be no gain stating dial upon the rationale of the foregoing case an accused person can be convicted on his confession alone provided it is unequivocal as to the truth of the confession and this is so even without any corroborative evidence outside the confession not even where as here it is retracted. Therefore where a confession as a fact is unequivocal and true; I see no reason why a court cannot act on it as clearly it cannot be lightly made by an accused person against his interest unless the confession is true. (p. 3811 A)**

*Confession - Definition*

**5. Firstly, it is appropriate here to avert to section 27 (supra)**

**which has defined confession as it is mainly on exhibit G5 - the confessional statement that the appellant has been convicted and sentenced in this matter. Section 27 (supra) reads as follows:**

**“27(1) A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.**

**(2) Confessions, if voluntary, are deemed to be relevant facts as against the persons who make them only.”**  
 (p. 3811 C)

## NOTABLE POINT OF INTEREST

### **CHUKWUMA-ENEH JSC**

#### **1. Appropriate time to object to voluntariness of confession**

It is clear as conceded by the appellant also as found by the lower courts that the process of trial-within-trial is contingent on challenging the voluntariness of a confession otherwise it is of no moment. As a matter of fact the tendering of exhibit G5 has not been challenged at the trial in the proper manner and time so as to ignite that process and besides the appropriate time to conduct a trial-within-trial as I have said is at the tendering of the confessional statements that is as per exhibits G, G1- G5. The whole essence of resorting to the said process is to test the admissibility in evidence of a confession. So as can be seen here it is belated to have a recourse to the process of trial-within-trial at the defence stage of the proceedings i.e. after the prosecution has closed its case at which stage the prosecution cannot reopen its case. It is therefore proper to do so at the point of tendering the statement invariably during the prosecution’s case and not when the defence has opened or as in this case to be precise at time the appellant has commenced to testify in his defence. At that stage it is belated to raise the issue. (p. 3812 G)

### **CASES REFERRED TO**

- Shande v. The State (2005) 1 NWLR (Pt. 907) 218
- Ikpo v. The State (1995) 9 NWLR (Pt. 241) 540
- Nwachukwu v. The State (2002) 12 NWLR (Pt. 751) 366
- Hassan v. The State (2001) 15 NWLR (Pt. 735) 184

Oche v. The State (2007) 5 NWLR (Pt. 1027) 214

Mbele v. The State (1990) 4 NWLR (pt. 145) 484

Amadi v. The State (1993) 8 NWLR (Pt. 314) 644

Gbadamosi v. The State (1991) 6 NWLR (Pt. 196) 182

Odeh v. FRN (2008) All FWLR (Pt. 124) 1590

Solola v. The State (2005) 11 NWLR (Pt. 937) 460

B

Emeka v. The State (2001) 14 NWLR (Pt. 734) 666

Oka v. The State (1975) 9-11 SC 17

Akpan v. The State (2008) 14 NWLR (Pt. 1106) 72

Bature v. The State (1994) 1 NWLR (Pt. 320) 267

C

Kada v. The State (1991) 11-12 SC 1

### **STATUTES REFERRED TO**

Criminal Code Law of Cross-River State, s. 319(1)

Evidence Act Cap. E14 LFN 2004, ss. 27(1), 28, 149(d)

D

### **LEAD JUDGMENT BY CHUKWUMA- ENEH JSC**

This appeal is against the judgment of the Court of Appeal Calabar Judicial Division (lower court) dismissing the appeal against the judgment of the High Court (trial court) sitting at Ugep Judicial Division that convicted and sentenced the appellant and his co-accused to death by hanging for the grisly murder of one Mary Obongha Inah (deceased).

E

The facts of the case are that the appellant and a co-accused one Ekpo Obongha Mbang were arraigned before the trial court at Ugep for the murder of one Mary Obongha Inah on 13/4/2001 contrary to section 319(1) of the Criminal Code Law of Cross-River State. The appellant pleaded not guilty to the charge. The prosecution opened its case and called 6 (six) witnesses to prove the charge preferred against the appellant (and his co-accused) who testified in his defence but called no witness. At the conclusion of the trial, the appellant and the co-accused Ekpo Obongha Mbang both having been found guilty of the murder of Mary Obongha Inah were each sentenced to death by hanging.

F

G

H

Dissatisfied with the conviction and sentence the appellant has now appealed to this court as per a notice of appeal filed on 16/4/2009 in which he has raised 2 (two) grounds of appeal from which issues for determination have been distilled. Both sides to this matter

have filed and exchanged their respective briefs of argument. The appellant has filed his brief of argument on 18/1/2011 which has been properly deemed filed on 23/3/2011 and has therein raised two substantive issues for determination to wit:

- B “(1) *Whether from the circumstances of this case, the alleged confessional statements of the appellant exhibits G, G1 - G5 and especially exhibit G5 upon which the appellant was convicted and sentenced were voluntarily made and rightly admitted in evidence.*
- C (ii) *Assuming (without conceding) that the alleged confessional statements of the appellant were voluntarily made and rightly admitted in evidence, whether the trial court was right to have convicted the appellants on the strength of the said confessional statements, especially exhibit G5 without putting into consideration the*
- D *strength of exhibits G, G1 - G4 which are other confessional statements allegedly made by the appellant and in the absence of any other independent corroborative evidence.*”

E The respondent has also filed a brief of argument on 18/7/2011 and deemed properly so filed and served on 22/3/2012 and in it, the respondent has clearly adopted the two issues for determination as formulated by the appellant. In that wise I see no need to set its two issues *in extenso*.

*On issue one:*

- F Having referred to the 6 (six) confessional statements made by him that is exhibits G, G1 - G5, the appellant has submitted on the backdrop of these exhibits and the definition of confession as per Sections 27 and 28 Evidence Act, Cap. E14, Laws of the Federation of Nigeria, 2004 that a confessional statement in the circumstances
- G of this matter is inadmissible in evidence against an appellant unless it has been shown by the prosecution to have been made voluntarily. The appellant here has claimed that among the vitiating factors to render a confession inadmissible evidence under section 28 (*supra*) include inducement thereat or promise held out by any person in
- H authority. The appellant has made in all 6 (six) confessional statements - exhibits G, G1 - G5. He has referred and relied on the case of *Uluebeka v. State* (2000) 7 NWLR (Pt. 665) 404 at 436 per *Kalgo JSC*. He has also posited that in especially exhibit G5 there are elements of admission of the appellant's complicity in the crime. Even

then, he has asserted that the confession has not been made voluntarily in his testimony as he has charged the IPO of having forced him to sign the statements. He has specifically been threatened to speak the truth. Additionally he has also alleged that the confession has after all been retracted thus rendering it impotent and so should have been discountenanced; nonetheless the trial court without cautioning itself of the dangers inherent in acting on a retracted confession has relied on it to convict and sentence the appellant. In answer to the countervailing argument of not having raised the questions of having retracted the confession and having been forced to sign exhibit G5 timely enough the appellant at paragraph 4.16 of page 13 of his brief of argument has opined thus that:

*“while we concede that the issue of the voluntariness or otherwise of exhibits G, G1 - G5 and especially G5 ought to have been raised at the time they were tendered for admission as exhibits, we submit that subsequent retraction of the voluntariness of exhibit G5 by the appellant during evidence-in-chief and cross-examination ought to have form (sic) the basis upon which the trial court would have cautioned itself before relying upon it to convict the appellant.”*

Thus, the appellant has narrowed the issue before the court. In the circumstances it has been emphasized that the confession especially in exhibits 4 and 5 has not been made voluntarily and should not have been admitted in evidence and acted upon by the trial court without other pieces of evidence outside exhibits G4 and G5 albeit without cautioning itself upon its having been retracted by the appellant. The court is urged to resolve the issue in favour of the appellant.

#### *On Issue Two:*

The appellant has rightly conceded as settled law that a confessional statement alone is sufficient to ground a conviction once it is believed by the court to be true. Vide: *Yusufu v. The State* (1976) 6 SC 167. However, it has been submitted by the appellant that a trial court relying solely on an accused's confession to convict as in the instant matter is obliged to carry out the necessary tests as to its voluntariness as laid down in *Shande v. The State* (2005) 1 NWLR (Pt.907) 218 and *Ikpo v. The State* (1995) 9 NWLR (Pt.241) 540. Moreso it has been opined that there is no evidence outside of exhibits G, G1 - G5 as corroborating the truth of the confession - a neces-

sary requirement, and that it cannot be safe in the instant case to rely on a bare confession alone to convict the appellant in the circumstances. See *Nwachukwu v. The State* (2002) 12 NWLR (Pt.751) 366; *Hassan v. The State* (2001) 15 NWLR (Pt.735) 184; *Oche v. The State* (2007) 5 NWLR (Pt.1027) 214 at paragraphs E-G; *Mbele v. The State* (1990) 4 NWLR (pt.145) 484 at 490 and *Amadi v. The State* (1993) 8 NWLR (Pt.314) 644 at 647.

Therefore the appellant has urged that the trial court having relied especially on exhibits G4 and G5 to convict him in spite of their being involuntary and inadmissible evidence in law besides the fact that there is no evidence of an eye witness to the crime. And so, that the appellant has been wrongly convicted based on exhibits G4 and G5 alone without any other necessary corroborative evidence outside the said exhibits as required by law even moreso as the confession has been actively retracted. Thus implying overall that the prosecution has not otherwise proved its case beyond reasonable doubt; consequently has rendered his conviction and sentence unsustainable in law in the circumstances. See *Onafowokan v. The State* (1987) 3 NWLR (Pt.61) 538 at 541 and *Gbadamosi v. The State* (1991) 6 NWLR (Pt. 196) 182 at 190. The court has again been urged to allow the appeal in that the prosecution has not proved its case against the appellant based on the above reasons.

The respondent on issue one has argued that exhibit G5 especially on which both sides have dwelt very heavily in their respective submissions clearly contain a confession voluntarily made by the appellant. It has urged the court to reject as baseless the contention that exhibit G5 particularly has not been voluntarily made and therefore inadmissible evidence wrongly acted upon by the trial court in convicting and sentencing the appellant to death by hanging. In this regard, it has referred to and relied on the provisions of sections 27 and 28 of the Evidence Act, 2004 to say that the objection to the voluntariness of exhibit G5 has been belated as it has not been raised at the appropriate time the confessional statements have been sought to be tendered, and that not having objected to tendering them timely has negated activating the process of trial-within-trial to determine their voluntariness and admissibility in law and that the process of trial-within-trial has therefore been an after thought having been overtaken by events. See *Odeh v. Federal Republic of Nigeria* (2008)



All FWLR (Pt. 124) 1590 at 1595; (2008) 13 NWLR (Pt. 1103) 1. On the question of retraction of the confession the respondent has relied on *Dibie v. The State* (2007) 9 NWLR (Pt.1038) 30 to submit that there is nothing special about retracting a confessional statement and particularly so where a court as here has been otherwise satisfied as to the truth of the confession. However, it has been submitted here that the instant confession has been corroborated by evidence outside exhibits G4 and G5, that is to say, evidence which is consistent with proved facts and that in this case both lower courts rightly have rejected the retraction and again rightly have reached the same conclusion on the voluntariness of exhibits G4 and G5 made by the appellant upon which the appellant's conviction is based. The court is urged to resolve this issue against the appellant. B  
C

On Issue Two: The respondent has emphasized as settled law the concession by the appellant to the effect that a voluntary confessional statement alone found to be unequivocal and true is sufficient to ground a conviction. However on whether there is evidence outside the confession to corroborate the instant confession as a matter of practice and procedure the respondent has referred to collateral pieces of circumstantial evidence as at p.174 -p.176 of the records corroborating exhibits G4 and G5 and clearly implicating the appellant as having committed the offence. Even moreso that the evidence of PW6 being the evidence of an independent witness, all told has particularly nailed the accused as having committed the offence. D  
E  
F

On the question of concurrent findings of the two lower courts, it has submitted as baseless the appellant's attacks on the same as being perverse and as unsupported by evidence otherwise required as corroborative evidence outside the confession thus rendering the confession inadmissible and that the appellant's case in that regard does warrant setting aside the decisions of the lower courts. The respondent in further response has submitted that the findings of both lower courts cannot be faulted as irrefutable evidence exists outside the confession to support the concurrent findings and neither is there a miscarriage of justice. The respondent has also relied on the case of *Solola v. The State* (2005) 11 NWLR (Pt.937) 460; 22 NSCQR (pt. 1) 254 at 262 263 to support its case that this court does interfere where the findings are perverse or unsupported by evidence or has occasioned a miscarriage of justice which has not been the case here. G  
H

The respondent finally has again referred to and relied on *Solola v. The Stale* (supra) to say that exhibits G4 and G5 being direct, positive, unequivocal and possible have been rightly admitted in evidence albeit without objection and so that even the late retraction of the confession being an afterthought is of no moment. The court is urged to resolve this issue against the appellant and as the appeal is bereft of any merits to dismiss the same accordingly.

The critical materials placed before this court for the consideration of this matter are:

“(1) *The confessional statements of the appellants i.e. exhibits G, G1-G5.*

(2) *A cutlass alleged in protruding from the deceased neck.*

(3) *A hoe the appellant and co-accused used in burying the deceased at Ekori.*

(4) *Medical report exhibit A.*

(5) *Photographs of the body of the deceased exhibits B,B1 to B5 and negatives exhibits C, C1- C5.”*

The respondent has adopted the two issues raised by the appellant in this case. I therefore, proceed to consider the appeal on those bases. The appellant and respondent before this court as in the lower court have fought this appeal on identical grounds. The appellant’s confession especially as per exhibit G5 is the fulcrum of the case upon which the prosecution and defence have as it were joined issues in the two lower courts and here. And the appellant and respondent appear in their respective cases here to have rehashed and rehearsed the same arguments at every stage/level of the appellate courts. It is important to remark in this judgment indeed to emphasize that there is no eye witness to the crime and so the prosecution has to prove its case by relying heavily, albeit solely on the appellant’s confession to commit the crime. That is to say on exhibits G4 and G5 and on circumstantial facts and evidence outside exhibits G4 and G5 as corroborative evidence to prove its case.

It is the case of the appellant that the prosecution i.e. the respondent has failed to prove its case beyond reasonable doubt in that firstly, as argued by appellant the confession as per exhibit G5 (particularly on which the appellant and respondent have pitched their respective cases) has not been made voluntarily as the appellant has alleged that force has been used on him to sign the exhibits.

Secondly, even moreso the absence of corroborative evidence outside the said exhibit G5 in support of the confession, as required as a matter of practice and procedure; and thirdly, that even though the appellant has been forced to sign the confessional statements he has after all retracted the entire confession and that the consequent effect is that the confession is no longer relevant nor of any material weight or evidential value any longer upon which a court of law can rely to act and so it is wrongful for the trial court as affirmed by the lower court to act on it. B

***There can be no doubt that in criminal cases such as in the instant case the onus is on the prosecution to establish the guilt of the accused beyond reasonable doubt implying that unless the prosecution has discharged that onus it is not entitled to succeed.*** See *Mandilas & Karaberis Ltd v. Inspector General of Police* (1958) 3 F.S.C. 20; (1958) SCNLR 335. ***This principle agrees with the proposition of the law that one who asserts a disputed fact must prove it. There is no onus on the accused to establish his innocence.*** See *Ogbewe v. Inspector General of Police* (1958) WNLR 17; (1958) SCNLR 341. ***This burden on the prosecution does not shift as it rests squarely on the prosecution throughout. There is no onus on the accused but where the charge imports a presumption of guilt intent as exemplified, in the case of being in recent possession of presently stolen property the burden on the accused is discharged on the balance of probabilities; that is, such proof rests upon facts peculiarly within the accused's own knowledge.*** See *Woolmington v. D.P.P.* (1935) A.C. 462, 25 CR. App. R. 72 per Lord Sankey and *R. v. Adanu* (1944) 10 WACA 161. D E F

What seems to have emerged from the foregoing scenarios is that given the absence of any eyewitnesses to the crime in this case that is to say being one of the settled three ways of proving of a crime, the respondent has fallen back on the appellant's confession alone and other circumstantial evidence outside the confession to establish the guilt of the appellant and rightly so on decided authorities. See *Emeka v. The State* (2001) 14 NWLR (Pt.734) 666 at 683 G-H and *Oka v. The State* (1975) 9-11 SC 17. G H

***In a case of murder as here it is settled law that the prosecution is required to established*** as in the case of *Kada v.*

The State (1991) 11-12 SC 1, (1991) 8 NWLR (Ft. 208) 134 **the following factors/ ingredients:**

**1. the death of the deceased.**

**2. that the voluntary act or omission of accused caused the death of the deceased.**

B **3. that the accused's act resulted in the death of the deceased having been done with the intention of causing death or grievous bodily harm to the deceased.**

C **4. that the accused knew that death is the probable and natural consequence of his act or omission.**

By Kudu's case it is settled that for the prosecution to succeed in a case as the instant one it must discharge the onus on it by proving the case beyond reasonable doubt based upon the foregoing factors which must co-exist.

D The prosecution's case is that the appellant and his co-accused killed the deceased i.e. one Mary Obongha Inah at Ekorì on 13/4/2001 and buried her remains thereat in a shallow grave in an uncompleted building. In consequence thereof the appellant has made exhibits G, G1- G5 and particularly exhibit G5 has confessed to committing the crime and has opined that the principles settled in the case of Solola v. State (supra) govern the issues in this case despite the purported retraction of the confession which speaking pre-emptorily is of no moment in the circumstances particularly so where  
E as here the confession is unequivocal as to its truthfulness and I quote  
F at 497-498 paras H-D

*"A confessional statement is the best evidence in our criminal procedure. It is a statement of admission of guilt by the accused and the court must admit it in evidence, unless it is contested at the trial. If  
G a confessional statement is contested at the trial, our procedural law requires that the trial Judge should conduct a trial within a trial for purposes of determining the admissibility or otherwise of the statement. Once the confessional statement is admitted, the prosecution need not prove the case against the accused person beyond reasonable  
H doubt, as the confessional statement ends the need to prove the guilt of the accused ... but where a confessional statement is unequivocal as in this case, a trial judge can convict on it. After all, there cannot be a more appropriate human being to give evidence of the guilt of the accused more than the accused himself".*

***The above cited case has underscored the premium which the law places on confession. And so there can be no gain stating that upon the rationale of the foregoing case an accused person can be convicted on his confession alone provided it is unequivocal as to the truth of the confession and this is so even without any corroborative evidence outside the confession not even where as here it is retracted.*** This rationale is founded and supported also by Akpan v. The State (2008) 14 NWLR (Pt. 1106) 72 at 100-101. ***Therefore where a confession as a fact is unequivocal and true; I see no reason why a court cannot act on it as clearly it cannot be lightly made by an accused person against his interest unless the confession is true.*** See Bature v. The State (1994) 1 NWLR (Pt.320) 267.

***Firstly, it is appropriate here to avert to section 27 (supra) which has defined confession as it is mainly on exhibit G5 - the confessional statement that the appellant has been convicted and sentenced in this matter. Section 27 (supra) reads as follows:***

***“27(1) A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.***

***(2) Confessions, if voluntary, are deemed to be relevant facts as against the persons who make them only.”***

The foregoing provisions of section 27 (supra) have been construed and applied in too many decisions of this court that they do not need being freshly construed as such here and they include these few to wit: Yusufu v. The State (1976) 6 SC 167; Nsofor v. The State (2004) 18 NWLR (Pt.905) 292; Dawa v. The State (1980) 8-11 SC 236 and State v. Enabosi (1966) 2 ANL 116 and Mbang v. The State (2010) All FWLR (Pt.508) 395; (2010) 7 NWLR (Pt. 1194) 431. Furthermore the law is settled from the above mentioned decisions that for a voluntary confession to be admissible it is required to be voluntary. See *R. v. Hide* (1961) All NLR 462 at 465; reported as *Itule v. Queen* (1961) 2 SCNLR 183 at 187 paras A-B per Brett Ag. C.J.F. in this regard he said:

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

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

Thus this abstract has underscored the law that for a confession to be relevant and so admissible it must be voluntarily made as the weight attached to a confession is unequivocal where the confession is voluntary and true. In the instant case, the appellant has made exhibit G5 although he has claimed he signed it by force. The point must be made that it is as late as at the defence stage i.e. while testifying in his defence that he raised the question denying the confession as per exhibit G5.

I must however go on to consider in addition appropriately here other vitiating factors the appellant has alleged against exhibit G5. On the backdrop of whether exhibit G has been voluntarily made vis-à-vis its retraction later on. The question that immediately springs to the mind is whether or not the appellant’s confession as per exhibit G5 has been tested against the principles as enunciated in *Dawa v. The State* (1980) 8-11 SC 236 at 267 - 268 (infra). The lower court having done so has rightly found that exhibit G5 having been voluntarily made is an admissible evidence against the appellant and I agree.

On the question of failing to test the voluntariness and admissibility of the confession in a trial within-trial 1 shall come to anon. In the circumstances of the appellant’s challenge of the voluntariness of exhibit G5 and the retraction of the same later; the challenge that no trial-within-trial has been conducted to test its admissibility as evidence against the appellant is baseless. I say so as it is the appellant’s case that having challenged the voluntariness of the confession and having signed exhibit G5 by force that a trial-within-trial ought to have been conducted to determine the admissibility of exhibit G5; and that having failed to do so has made exhibit G5 inadmissible evidence against him and fatal to rely on it to convict him. To find these arguments in favour of the appellant will amount to standing the truth of this case on its head.

It is clear as conceded by the appellant also as found by the lower courts that the process of trial-within-trial is contingent on challenging the voluntariness of a confession otherwise it is of no moment. As a matter of fact the tendering of exhibit G5 has not been challenged at the trial in the proper manner and time so as to ignite that process and besides the appropriate time to conduct a trial-within-

trial as I have said is at the tendering of the confessional statements that is as per exhibits G, G1 - G5. The whole essence of resorting to the said process is to test the admissibility in evidence of a confession. So as can be seen here it is belated to have a recourse to the process of trial-within-trial at the defence stage of the proceedings i.e. after the prosecution has closed its case at which stage the prosecution cannot reopen its case. It is therefore proper to do so at the point of tendering the statement invariably during the prosecution's case and not when the defence has opened or as in this case to be precise at time the appellant has commenced to testify in his defence. At that stage it is belated to raise the issue. See *Nwachukwu v. The State* (supra); *Okaroh v. The State* (1988) 3 NWLR (Pt. 81) 214; *Eguabor v. Queen* (1962) 1 SCNLR 409 and *Akpa v. The State* (supra).

I think at this point it is most apt and pertinent to state the lower court's attitude to those questions and I quote as follows:

*"... It is alleged that the appellant clearly stated during trial that he was forced to sign exhibit G5. That allegation is misconceived and it is of no moment. Having carefully gone through the record with a fine tooth comb; I cannot find where the appellant's counsel objected to the admissibility of the confessional statements exhibits G, G1 - G5 which were tendered together on the grounds that they were not made voluntarily. Rather, the objection raised was as to the dates and that the six confessional statements were not made by the appellant, also that the prosecution should produce the statements made by the appellant on 13/4/01."*

From the record, the trial court also has arrived at the same conclusion as the lower court by the same route of reasoning. The foregoing findings by lower court which I uphold having resolved the questions beyond peradventure, I therefore hold that a trial-within-trial as borne out in the case of *Nsofor v. The State* (supra) is only resorted to in order to test the voluntariness of an accused's confession where that has become an issue in the case, So also where as here the appellant has challenged exhibit G5 his confessional statements as not having been voluntarily made as he has otherwise been forced to sign exhibit G5. These issues are not properly raised during evidence in chief for the first time. It cannot be said that the parties have, as it were, joined issues on the matter. What I am trying to say here is that a trial-within-trial as per *Auta v. The State* (supra) and

Gbadamosi v. The State (supra) is simply the only process of determining the voluntariness or not and the same principle is applicable to the admissibility of the confession in the case of exhibit G5 in this matter. The objection to a confession is required to be raised at the tendering of the confessional statement. This is ordinarily so during  
B presenting of the prosecution's case at the main trial.

As per the record, I agree with the lower court that the other objections to exhibits G, G1 - G5 relate to very minor discrepancies as to the dates of making the exhibits like the challenge posed against  
C the evidence of PW6 that exhibits G, G1-G5 have been made on 13/4/01 which cannot be correct when the appellant has been alleged to have been arrested only on 14/4/01. Obviously, the challenge as to dates in this instance is baseless. I will come anon to the more contested question of not having called the cyclist that conveyed the  
D appellant, his co-accused and the deceased to the locus in quo.

Having as it were cleared these minor objections to admitting exhibit G5 in evidence, I find as well taken the point by the respondent to the effect that as no objection has been taken to the exhibits G, G1- G5 vis-a-vis their voluntariness at most appropriate time of  
E tendering the exhibits and so that there is no cause for conducting of the process of trial-within-trial to determine their voluntariness or otherwise before being admitted and acted upon by the court. In the circumstances of this case I uphold the submission. The trial court's  
F decision as affirmed by the lower court rightly admitted the confession as the essence of the process of trial-within-trial if I may repeat is to determine the admissibility of a confession where the confession is effectively challenged and not where the accused person as the appellant here, has not taken the advantage to do so at the trial stage  
G particularly before the defence has opened. He cannot be heard to complain afterwards as it is belated. See Nwachukwu v. The State (supra). There is no way the process of trial-within-trial could have been activated at the time the appellant in this case has raised the issue of the voluntariness of exhibit G5. See Okaroh v. The State  
H (supra) and Akpa v. The State (supra). In my view there is no legitimate ground for attacking the decisions of the lower courts on these grounds. I find these attacks as baseless and a matter of afterthoughts and so unacceptable. The appellant's case in this regard bears all the trappings of a drowning man catching at every straw to avoid being



drowned.

Notwithstanding having come to the foregoing evitable findings I must also examine exhibit G5 closely vis-a-vis the prosecution's case that the confession by the appellant is not unequivocal and true and is sufficient even then all alone to ground the conviction and sentence of the appellant for the murder of Mary Obongha Inah. In that regard firstly I set forth the graphic and chilling account of exhibit G5 as depicting how the appellant and his co-accused callously murdered the deceased. Exhibit G5 states:

*"In addition to my former statement I made to the police on 21/5/01, I wish to state as follows: What I am now saying about the death of one Mary Obongha Inah are as follows: That on the 12/4/01 being Thursday as we returned from farm in the morning hours I and my friend Ekpo Obongha Mbang returned to my house there Mary Obongha Inah now deceased met us in my house there as she arrived she told Ekpo Obongha that she had been look for him. It is then Ekpo Obongha Mbang asked her if she came with the money? I did not know the amount. She replied yes. Ekpo asked her to bring the money, she said she left the money at Ekpo's house. Ekpo left immediately to his house and came back alter collecting the money. He then call me and suggested we should go to Aferekpe village where Solomon Ntuogha live to see him. When we arrived as we did not see Solomon we went to one Otu's house and waited for him. There in Otu's house, my friend Ekpo brought out N80.00 and gave to Otu to cook rice for us thereafter we went to Solomon's house and we met him. I collected my radio cassette from him. We later went to Otu's house and ate the rice he prepared. Thereafter we picked a motorcycle from there to Ekorì where we dropped at Ekpo's compound. There in Ekpo's house he gave me the sum of Two thousand naira (N2,000) and asked me keep it since I knew where the money come from, I did not asked any question. Thereafter I asked him how much Mary gave to him. He said it was six thousand naira (N6,000) after this he brought out another N680.00 and gave to me and said that I should use it for myself. Thereafter I went to my house. When I reached home I bought food for the deceased Mary that was about 5pm. There I went to the church and came back to change there I met my mother Mary Obia Ihan who told me that one man I named Obongha Inah came and look for me. There I asked my*

mother what does he said? She said he ask her about church activity. By this time I locked myself inside my room. My mother was not aware that Mary was in my room. As I opened my room and saw her she told me that her father came and look for me. I replied her that let her wait until Ekpo's master called Sam Archibong being herbalist  
 B would free her before we shall go and tell Mary's father. There I lucked her back inside and went to church. There in the Church Ekpo met me and called me there we follow together to my house in the night. There in our house people have already sleep. There my  
 C friend Ekpo told me that 1 should call her out to go and kill her. There 1 asked Ekpo that if we kill her where are we going to keep her? Ekpo said we should go to the beach Ekori beach. There 1 told Ekpo that since this girl is being look for if we work with her to Ekori beach people would us. Ekpo then told me that he know where he  
 D would ask her to go and wait for us. I did not accept that he then ask me where can we see a motorcyclist to take us to Ekori beach. As we discussed I had the sound of the motorcycle. I called the cyclist man ogba he answered me. He asked me who are you? I told him I am Joseph Ubi and he should come out. As he came out I told him that  
 E he would carry me and two others to Ekori beach and there's a girl that we want to go and kill. I told him the girl is from Ekori. He said he want to see the girl. I took the cyclist man to my house there he met the girl and Ekpo in my room. The cyclist man called Monday  
 F Eteng alias Ogba Ogba there the cyclist man said no he already parked the motorcycle, his brother would be annoyed for him to bring out again. He then directed me to another cyclist. I refused to contact another person. I came back and told Ekpo let us find another way to deal with this girl. He said since there is no motorcycle around let  
 G us take the girl to the bush and kill. As I called the girl out I asked Ekpo would people not see us as their quarreling? Then Ekpo said we should go. Then together we left towards the bush near uncompleted building along Ekomaty Road, Ekori. As we reach the spot there Ekpo asked Mary to stand with me while he reach the spot  
 H there Ekpo asked Mary to stand with me while he is going to call his master Sam Archibong he came back without his master rather he came back and said that his master need me. He asked Mary to wait. I followed him to uncompleted building there he told me that I should not be afraid but be a man by holding her on her hand. After the

*instruction from Ekpo we came out from different direction to the deceased. Ekpo asked her if his master gripe her on her neck would she fear? She said no. Ekpo did another gesture and gripped her on her throat there she started shouting while I ran immediately and gripped her hand. She was struggling with us and fell down. We ran and hide in the bush for safety as we are conscious of a watch night in a nearby primary school, there after we found the girl stood up and was staggering. We went back and hit her with a plank and she fell again while Ekpo used sword to pierce the girl through her throat and Ekpo ordered me to hit the sword with the plank in my hand, which I did, till the sword pears out of the deceased neck. As we found that she was totally dead she was then buried in the place where she was later found. Solomon Ntongha did not take part in the killing of the deceased. That's all my statement. Signed Joseph Ubi Igri."*

Let me recall here that this is the appellant's statement containing his confession which the appellant in desperation has attempted to retract. I will come to that question anon. The above abstract has painted a graphic dastardly act of the gruesome murder of the deceased. I have no doubt in my mind and in that regard I agree with the two lower courts that clearly the statement i.e. exhibit G5 is intended to be believed as true as it has admitted all the ingredients of the crime of murder as stated in a forthright manner in exhibit G5. The confession being unequivocal and true has been as rightly found by the lower courts relied upon by the lower court to convict the appellant, as the retraction of his confession has been made in vacuo particularly so here that exhibit G5 has rightly been found to be unequivocal and true.

Having perused the foregoing abstract of exhibit G5, I find that the essence of its admissibility as a confession lies in its voluntariness and as confessing to having committed the crime. See sections 27 and 28 of the Evidence Act, 2004. Even then it is quite evident from the detailed, vivid and graphic account of the facts of the gruesome murder that none other than the appellant as a party in criminis can possibly do so vis-a-vis the gory details contained in exhibit G5 as committing the crime in that manner. There can be no doubt in my mind that the appellant and his co-accused killed the deceased and that death is the probable consequence of their acts. At this stage of

this judgment I examine other collateral evidence to exhibit G5 making the confession probable particularly so as the appellant has tried to retract the confession in his defence. I think that in a case as the instant one in which the lower courts have made concurrent findings upon which an accused person has been rightly convicted and sentenced and has ultimately appealed the case to this court on the same grounds upon which the case has been contested in the two lower courts that is excepting any questions with grave consequences to lie conviction, this court ought not to re-open the issue of the findings upon which the decision is founded unless and until the appellant has shown the grounds of convicting him as perverse, or unsupported by evidence or even then has occasioned a miscarriage of justice. This court at this stage of the case cannot be expected to recommence the act of reviewing all over again questions of facts particularly. Most of the issues raised in this case hinge on issues of facts or mixed law and facts which the concurrent findings of both lower courts have clearly settled. I pause here to say that this case falls within that pigeon hole.

Having taken an overview of the above reasoning and findings, it is my conclusion that the two lower courts have applied the tests so eloquently discussed in *Dawa v. The State* (supra) and that in considering the voluntariness of exhibit G5 and subsequent retraction they have raised and addressed the following questions:

“(1) *Is there anything outside the confession to show that it is true?*

(2) *Is it corroborated?*

(3) *Are the relevant statements made in it of facts, true as far as they can be tested?*

(4) *Was the prisoner one who had the opportunity of committing the murder?*

(5) *Is his confession possible?*

(6) *Is it consistent with other facts which have been ascertained and hence been proved? See: R. v. Sykes (1913) 8 CR. Appeal Report 233 and approved by WACA in Kamu v. The King (1952/55) 14 WACA 30.”*

I have gone through the judgments of the two lower courts against the background of the record of appeal in this matter and I

am satisfied that the two lower courts have observed the tests set forth above. I am further satisfied that exhibit G5 is unequivocal and true and is a voluntary confession upon which the two lower courts have rightly acted to find the appellant connected with the instant crime and again have relied rightly to convict and sentence the appellant to death by hanging. B

Even then there are abundant materials though circumstantial evidence outside exhibit G5 to support the conviction of the appellant of the crime and I have herein elucidated on that question. The appellant and his co-accused it must be recalled have shared with the deceased the sum of N10,000 stolen by the deceased from the mother's home as the mother has alleged in her statement to the court. The manner of using a machete to pierce the neck of the deceased has been authenticated and corroborated by exhibit A - the medical report and also it is evident that the appellant has taken the PW6 to the locus in quo i.e. an uncompleted building at Ekori - where the remains of the deceased have been buried. It must be mentioned that the graphic and vivid account of how the gruesome murder has been committed and the burial of her remains as per exhibit G5 can only be told by a party in criminis. There can be no doubt that the circumstances of this case have shown the appellant and his co-accused as having committed the crime. These circumstantial facts and evidence are direct, positive, compelling and irresistibly pointing to no other conclusion than the conclusion of the appellant's involvement in this crime. To my mind the confession being unequivocal and true as to every detail of the crime, is voluntary as well as true and admissible in evidence and rightly acted on by the lower courts as its retraction by the appellant is of no moment. Besides the confession is consistent with the facts outside the confessional statements as I have tried to show above. I have no doubt in my mind that exhibit G5 has nailed the appellant to the crime. C D E F G

I have examined the holly contested question of not having called the cyclist who it has been alleged ferried the appellant, his co-accused and the deceased to the *locus in quo* at Ekori beach where the appellant and his co-accused killed the deceased. I hold that the prosecution's duty as a prosecutor is to produce evidence to prove its case and not failure to produce witnesses not necessary to establish its case. See *Musa Sudan & Anor. v. The State* (1968) NMLR 208. I H

find that section 149(d) of the Evidence Act, 2004 does not apply here; and my findings in regards to his evidence would not have advanced the prosecution's case any further or better. In the face of exhibit G5 having been found to be voluntary and admissible in establishing the prosecution's case the failure to call the cyclist for what-  
B ever he would otherwise have said cannot be superior to the appellant's wholehearted confession as per exhibit G5 in which he admitted forth-right against his interest to having killed the deceased with his co-accused in the crime and the trial court rightly has believed it as true.

C I have given due attention to why the process of trial- within trial for the admissibility of exhibit G5 visa-a-vis the confessional state-ment exhibit G5 and if I may repeat, I am satisfied that the time to object to tendering a statement as exhibit G5 indeed any material object for that matter is at the point of tendering it. In this case exhib-  
D its G, G1 - G5 are therefore admissible evidence. And I may recap that to raise any challenge against exhibit G5 at the defence stage particularly as the appellant is testifying is belated as the prosecution has closed its case and it may not to be reopened. See *Okaroh v. Stole* (supra) and *Akpa v. State* (supra).

E I find that each of the two lower courts in their respective decisions has dispassionately examined the two crucial issues for de-termination as raised by the parties in this matter and each of the courts has rightly found the prosecution's case as proved beyond  
F reasonable doubt and their respective conclusions in this regard cannot be faulted. There is therefore concurrent findings and I can find no perversity or that the conclusions so reached are not supported be admissible evidence nor that the decisions have occasioned a mis-carriage of justice. I have also considered exhibit G5 the confession  
G of the appellant to the crime on the backdrop of the challenges and attacks of the appellant *vis-a-vis* the making of exhibit G5 and I am satisfied as the two lower courts before now that the confession as per exhibit G5 is admissible evidence being unequivocal and true, which has established as rightly found by the lower courts that the  
H appellant and his co-accused killed Mary Obongha Inah and I find the retraction baseless in the circumstances.

Without any doubt whatsoever I find no merit whatsoever in this appeal as the guilt of appellant has been proved beyond reason-able doubt. It is a sheer waste of the time of this court so expended

on a bad case. I must remark that counsel must in the circumstances of this case and on the backdrop of the way the two lower courts have exhaustively treated these issues raised for determination and their respective conclusions thereupon, know when to submit to court in a matter as hopeless as here that he has nothing to urge and to rest his case thereat. This is one case counsel should have known as to whether or not to do so here timely enough. I say no more. The appeal being most unmeritorious is accordingly dismissed. The decisions of the two lower courts are hereby respectively affirmed.

B

C

### **MOHAMMED JSC**

At the trial High Court of Justice of Cross-River State sitting at Ugep, the appellant together with one Ekpo Obongha Mbang were jointly charged with the murder of Mary Obongha Inah under section 319(1) of the Criminal Code, Laws of Cross-River State. The prosecution called 6 witnesses while the appellant testified in his defence but declined to call any witness. A number of exhibits were tendered and received in course of the prosecution of the case.

The case against the appellant at the trial court was that on 12<sup>th</sup> April 2001, the appellant in concert with the co-accused Ekpo Obongha Mbang, murdered the deceased at a nearby bush inside an uncompleted building. Thereafter the appellant and his co-accused dug a shallow grave and buried the deceased. Few days later, the owner of the uncompleted building on inspection at the site, discovered the shallow grave of the deceased and a complaint was made to the Police. The deceased body was exhumed and post-mortem examination confirmed the identity of the deceased and the cause of death. At the end of the trial, the trial court relying on circumstantial evidence and the confessional statement of the appellant, convicted the appellant and his co-accused as charged and sentenced them to death by hanging. The appellant's appeal to the Court of Appeal Calabar Division was heard and dismissed, hence the appellant's further appeal to this court.

E

F

G

H

From the brief of argument filed on behalf of the appellant by his learned counsel two issues were distilled from the grounds of appeal upon which it was sought to determine the appeal. These issues were thoroughly examined by my learned brother, Chukwuma-Eneh,

JSC in his leading judgment which I have had the opportunity of reading in draft before today and with which I entirely agree that this appeal is bound to fail. Accordingly I also see no merit at all in this appeal which is hereby dismissed. The conviction and sentence of the appellant by the trial High Court and affirmed by the court below is hereby further affirmed.

---

**FABIYI JSC**

I have read before now the judgment just handed out by my learned brother, Chukwuma Eneh, JSC. I agree with the lucid reasons advanced therein to arrive at the conclusion that the appeal lacks merit and should be dismissed.

At the trial court, the appellant was charged along with one Ekpo Obongha Mbang with the offence of murder of Mary Obongha Inah contrary to section 319(1), Criminal Code, Laws of Cross River State. The learned trial Judge garnered evidence adduced on both sides. Exhibit G5, the confessional statement of the appellant contains the main source of evidence which the trial court found as having nailed the appellant. In a considered judgment, the trial court convicted the appellant and sentenced him to death by hanging. The appeal of the appellant to the Court of Appeal, Calabar Division was dismissed. This is a further appeal to this court.

I wish to just chip in a few words of my own and I shall be done as my learned brother has said it all. The case of the prosecution principally rests on the appellant's confessional statement exhibit G5. Therein, he related in gory terms how himself and his cohort - one Ekpo Obongha Mbang executed the deceased by piercing her throat with a dagger on the neck. The cohort hit the deceased with the dagger while the appellant used a stick to knock the dagger until the deceased's neck got severed. They then buried her in a shallow grave in an uncompleted building. All these happened in the night. It will be preposterous to look for such evidence in other directions or from other source. See: Patrick Njovens v. The State (1973) 1 NMLR 331.

The evidence contained in exhibit G5 makes one feel a sense of shock. There is a string of material circumstantial evidence to prop the evidence of the appellant - a self confessed felon. The appellant



and his cohort along with the deceased had shared the sum of N10,000 stolen by the deceased from her mother; as extant in the record. The murder of the deceased was designed as a cover up of their inglorious act. The manner of cutting the neck of the deceased with a dagger was corroborated by the medial report in exhibit A. The appellant took PW6 to the scene of crime - an uncompleted building at Ekori where the remains of the deceased had been buried. B

I do not see the propriety for the fuss generated in trying to impugn the veracity of exhibit G5 which gave clear and positive evidence that nailed the appellant and his cohort as the culprits who murdered the deceased. All accusing fingers point at the appellant and his cohort and they failed to wriggle themselves out of the web created by them. C

In a criminal matter, it is not a must that the prosecution must call a host of witnesses to prove their case beyond reasonable doubt. A single witness who gives cogent account of the incident will suffice. See: *Odili v. The State* (1977) 4 SC 1. Similarly where a self confessed felon, as herein, relates an account of how a dastardly act was carried out and same is believed by the court, same will suffice. See: *Musa Sudan & Anor. v. The State* (1968) NMLR 208. The invocation of the presumption dictated in section 149(d) of the Evidence Act, 2004 relates to brushing aside vital evidence and not failure to call a host of witnesses or a particular witness. E

On behalf of the appellant, it was insinuated that the case was not proved beyond reasonable doubt. With the gory story related in exhibit G in respect of the manner the deceased's throat was cut off by the duo, I feel tempted to say that the appellant should go and tell the marines that the case was not proved beyond reasonable doubt. The case was proved beyond reasonable doubt as all vital ingredients of the offence have been established. See: *Alabi v. The State* (1993) 7 NWLR (Pt. 307) 511 at 523. F

Let me say it finally, without much ado, that the two lower courts made concurrent findings which I have no cause to disturb as they have not been shown to be perverse. See: *Kale v. Coker* (1982) 12 SC 252. H

For the above reasons and the detailed ones adumbrated in the lead judgment, I too feel that the appeal lacks merit and should

be dismissed. I order accordingly and affirm the decisions of the two lower courts.

---

**RHODES-VIVOUR JSC**

B I read in draft the leading judgment delivered by my learned brother, Chukwuma-Eneh, JSC and I agree with his Lordship’s reasoning and conclusions.

C The appellant was convicted on his confessional statements, exhibits G4 and G5. The conviction was confirmed by the Court of Appeal. A court may convict an accused person on his extra judicial confession provided it is voluntary, true and consistent with evidence in court. See *Itule v. Queen* (1961) 2 SCNLR p.183; *Obiasa v. Queen* (1962) 2 SCNLR p.402

D The reasoning being that a voluntary confession of guilt by an accused person is sufficient, to convict without any corroborative evidence. Prudence and practice demand that notwithstanding the fact that a confessional statement was made voluntarily, it is desirable to have some evidence outside the confession which will make the  
E confessional statement probable and true. See *Onuoha v. State* (1987) 4 NWLR (Pt. 65) p.331.

The confession to murder of Mary Obongha Inah was free and voluntary and consistent and probable. This is so because it was corroborated by several facts which showed the confession to be true.  
F For instance:

(i) In exhibit 5 appellant said:

G *“Ekpo ordered me to hit the sword with the plank in my hand, which I did till the sword pierced out of the deceased neck. As we found that she was totally dead she was then buried in the place where she later found.”*

(ii) In exhibit F the appellant’s co-accused said:

*“We were unable to remove the long sword on her neck and left her with the sword.”*

H (iii) The medical report exhibit A, confirmed that a long cutlass was seen protruding from the neck of the deceased which appellant disclosed he and his co-accused drove into the deceased’s neck using a plank. See exhibit G5.

(iv) The appellant and his co-accused also took PW6, the

Investigating Police Officer from the State Criminal Investigating Department Calabar, to an uncompleted building at Ekori where the deceased was buried.

(i), (ii), (iii) and (iv) are compelling corroborative evidence which shows that the confessions were true. The deceased had a very painful and gruesome death at the hands of the appellant and his co-accused. This was naked aggression, sheer wickedness and callousness. The deceptive mien of the appellant was clear for anyone to see. Both courts below were correct to convict the appellant to death for the murder of Mary Obongha Inah. There is no merit in this appeal. For this and the more elaborate reasoning in the leading judgment the appeal is dismissed.

### **ARIWOOLA JSC**

The appellant herein was convicted and sentenced to death by hanging by the trial High Court of Justice of Cross River State sitting at Ugep. He had earlier been charged along with one Ekpo Obongha Mbang for the murder of Mary Obongha Inah pursuant to Section 319 (1) of the Criminal Code, Laws of Cross River State. At the trial, the prosecution called six (6) witnesses while the appellant only testified on his defence without calling any other witness. Couple of exhibits were duly tendered and admitted.

The facts of this case as presented by the prosecution and defended by the appellant were duly and ably stated in the leading judgment. In the main, it was the murderer of Mary Obongha Inah by the appellant in conjunction with the co-accused, Ekpo Obongha Mbang on the 12<sup>th</sup> April 2001.

The trial court had based his decision on his findings including the confessional statement of the appellant in exhibit G5. Indeed in exhibit G5, a graphic account or description of the events that led to the death of the deceased and how the corpse was buried in a shallow grave by the appellant and his co-accused were given in the statement.

It is interesting to note that there was no objection when the said exhibit CJ5, the confessional statement of the appellant was tendered and being admitted. It was therefore relied on to find the appellant guilty, convicted and sentenced to death by the trial court.

It is note worthy that the appellant's complaint at this stage now of the involuntariness of his statement is belated. It has been held that the appropriate lime to object to or complain about voluntariness of a statement by an accused person is at the point of tendering of the document during trial. See *Asimiyu Alarape v. The State* (2001) 2 SC B 114, (2001) FWLR (Pt. 41) 1872 at 1875, (2001) SCM 1, (2001) 5 NWLR (Pt. 706) 79.

In *Hello Shurumo v. The State* (2010) 12 (Pt.2) SCM 28, (2010) 12 SC (Pt. 1) 73, (2010) 12 NMLR (Pt. 1) 38; (2010) 19 C NWLR (Pt. 1226) 73 this court held that if an accused person desires to object to voluntariness of a statement ascribed to him he ought to do so at the earliest opportunity during the trial and when the statement is being tendered. Otherwise, on appeal such an opportunity will be taken to have been lost and any such objection will be belated. D

In *Idowu v. State* (2000) 12 NWLR (Pt. 680) 48, this court per Wali, JSC opined thus:

*"If the confessional statement is satisfactorily proved, a conviction founded on it without more, will be sustained by an appellate court."* See *The Queen v. Obiasa* (1962) 1 All NLR 645; *Paul Onochie A 7 Ors v. The Republic* (1966) NMLR 307; *Obue v. The State* (1976) 2 SC 141 and *Jimoh Yesufu v. The State* (1976) 6 SC 167. E

There is no iota of doubt that the confession in exhibit G.5, the statement of the appellant was satisfactorily proved to establish F the guilt of the appellant before the trial court. It was therefore good enough to sustain and it indeed sustained the conviction of the appellant.

In several cases, it has been held by our courts of record that G in particular in this country, a free and voluntary confession of guilt by an accused person if it is direct and positive and is duly made and satisfactorily proved, it is sufficient to warrant conviction without any corroborative evidence, so long as the court is satisfied as to the truth of the confession. See *Edet Obosi v. The State* (1965) NMLR 119; H *Onochie A Ors v. The Republic* (supra); *Onuoha v. The State* (1987) 4 NWLR (Pt. 65) 33-1. In *Akpan v. The State* (2008) 8 SCM 68 at 79 & 86 (2008) 4-5, SC (Pt.11) 1; (2008) 14 NWLR (Pt. 1106) 72 at 92 paras B-D, this court, per Niki Tobi, JSC when considering a similar confessional statement as in this case and quoted in the lead judg-

ment stated thus:

*“The above is a clear, clean, unequivocal and direct confessional statement of the appellant. He did not hide his involvement in the killing of Ikechukwu. He made a very clean breast of his level of involvement which was deep, penetrating and killing. In law, where an accused person confesses to a crime in the absence of an eye witness of killing, he can be convicted on his confession alone once the confession is positive, direct and properly proved.”* B

See Milla v. The State (1985) 3 NWLR (Pt.11) 190; Achabua v. The State (1916) 12 SC 63; Bature v. The State (1994) 1 NWLR (Pt. 320) 267; Abdullahi Ada v. The State (2008) 6 SCM 1, (2008) 4-5 SC (Pt. 11) 45; (2008) 13 NWLR (Pt. 1103) 149. C

I am satisfied that the trial court properly evaluated the evidence adduced before the court and rightly convicted and sentenced the appellant. The court below also correctly affirmed the decision of the trial court. In the circumstance, in the absence of any substantiated allegation of perversion or miscarriage of justice, there is no basis for interfering with the concurrent findings of fact by the two courts below. D

I had the opportunity of reading in draft the fully articulated lead judgment of my learned brother, Chukwuma-Eneh, JSC. I am in total agreement that the appeal lacks merit. As a result, for the above reason and the fuller and more detail reasons in the lead judgment, I will also dismiss the appeal. Accordingly, this appeal is dismissed by me. F

Appeal dismissed.

G

H