

**SUPREME COURT OF NIGERIA**  
14TH DECEMBER, 2012. SC. 99/2011  
**CORAM:- W. S. N. ONNOGHEN, C. M. CHUKWUMA-  
ENEH, B. RHODES-VIVOUR, C. B. OGUNBIYI,  
K. B. AKAHS, JJSC**

MANU GALADIMA ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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CRIMINAL PROCEDURE - Confession - Conviction - Validity - Confession is sufficient to support conviction without corroboration - Provided court is satisfied of the truth therein (H1)

CRIMINAL PROCEDURE - Provocation - Proof - Accused must prove that the act was grave and sudden - And that he was deprived of self control - And extent of the retaliation was proportionate to the provocation (H2)

**FACTS**

Accused/appellant was alleged to have hit the deceased with an axe on the head. The deceased died as a result of the impact of the hit. There was no direct and independent eye witness account of the incident except the confessional statements of appellant himself which he retracted at the trial of the case. Appellant was subsequently arraigned before the High Court of Kebbi State, Zuru, on one count charge of culpable homicide contrary to section 221(b) of the Penal Code and punishable with death.

At the trial, appellant did not plead guilty to the charge. Prosecution/respondent called two witnesses and tendered the confessional statement of appellant. Appellant did not give evidence but rather relied on respondent's case. At the end of trial, the learned trial judge found appellant guilty and sentenced him to death by hanging. His appeal to the Court of Appeal, Sokoto Division was dismissed and his conviction and sentence were equally affirmed. Aggrieved further, appellant appealed to Supreme Court.

**ISSUES FOR DETERMINATION**

1. Whether the prosecution discharged the onus of proof

4340 Galadima v. State (2012) 12 KLR (pt. 321) 4339; (2012) 18  
placed on it.

2. Was the Court below correct to have relied on an alleged confessional statement of the appellant to confirm or affirm the conviction and sentence of the appellant.

**HELD** (Unanimously dismissing the appeal per  
**AKA'AH S JSC**)

*Confession - Conviction - Validity*

**1. The law is firmly established that confession alone is sufficient to support conviction even without corroboration so long as the court is satisfied of the truth of the said confession.** (p. )

*CRIMINAL PROCEDURE - Provocation - Proof*

**2. For a plea of provocation to avail the accused, the burden is on him to establish:**

(a) **The act of provocation was grave and sudden.**

(b) **He must have been deprived of the power of self-control and;**

(c) **The mode of resentment degree or extent of retaliation must bear a reasonable relationship or be proportionate to the provocation offered.**

**The burden is discharged on a balance of probabilities and not on proof beyond reasonable doubt. It is true that words alone can constitute provocation but this depends on the actual words used and their effect or what they mean to a reasonable person having a similar background with the accused person.** (p. )

## NOTABLE POINTS OF INTEREST

### **OGUNBIYI JSC**

#### **1. Confession - Definition**

A confession in this context is defined as an admission made at any time by an accused person charged with a criminal act stating or suggesting that he committed the offence. (p. )

**2. Confessional statement – Test**

The following guidelines are a road map direction in assessing the quality of a confessional statement for purpose of determining its credibility for acceptability.

- (a) whether there is anything outside the confession which shows that it may be true;
- (b) whether it is corroborated in anyway;
- (c) whether the relevant statement of fact made in it are most likely to be true as far as they can be tested;
- (d) whether the accused had the opportunity of committing the offence;
- (e) whether the confession is possible;
- (f) whether the alleged confession is consistent with other facts that have been ascertained and established. (p. )

**3. Retraction does not render confession inadmissible**

The law is trite that once a confessional statement is proved as having been made voluntarily as in the instant case, by being direct, positive unequivocal and clearly suggestive of an admission of guilt it is sufficient to ground conviction even where the maker resiled therefrom or retracted the same completely at the trial. Retraction, in other words does not render a confession inadmissible. It does not also deter a trial court from acting thereon. A confessional statement, once properly proved, is sufficient to sustain a conviction despite any retraction by the maker as it is in the instant case. (p. )

**4. Homicide trial – Duty of court**

In all trials of culpable homicide, the court has the onerous duty to consider:-

- (a) all the defence raised by the evidence whether the accused person specifically put up such defence or not; and
- (b) any defence raised by an accused person no matter how weak, inconsequential or stupid it may appear must be given due attention. (p. )

**REPRESENTATION**

A. Ogunsanya Esq with Mahmud Adesina, for the Appellant  
Illo Katune Sanusi SAN, (D.PP Ministry of Justice Kebbi State) with

Kabir Aliyu (DDPP Kebbi State), Stephen M. Kibo (ADPP Kebbi State),  
for the Respondent

**CASES REFERRED TO**

- Buhari v. Obasanjo (2005) 8 M.J.S.C 1  
B Rabi'u v. State (1980) 8/11 SC 130  
Ebba v. Ogodu (1984) 1 SCNLR 372  
Shande v. State (2005) 12 NWLR (pt. 939) 301  
Nwaebonyi v. State (1994) 5 NWLR (pt. 343) 138  
C Achabua v. The State (1976) 12 SC 63  
Ekpenyong v. The State (1993) 5 NWLR (pt. 295) 513  
Nwuzoke v. The State (1988) 1 NWLR (pt. 72) 529  
Uluabeka v. The State (2000) 7 NWLR (pt. 665) 404  
Ali v. State (1988) 1 NWLR (pt. 68) 1  
D Obasi v. State (1965) NMLR 119  
Yusufu v. State (1976) 6 SC 167  
Ogbu v. State (1992) 8 NWLR (pt. 259) 255  
Igago v. State (1999) 14 NWLR (pt. 637) 1  
Ugwanyi v. FRN (2012) Vol.49 (pt. 11) NSCQLR 1243  
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**STATUTES REFERRED TO**

Penal Code, s.221(b)  
Evidence Act Cap 112 LFN 1990, ss.77, 138

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**LEAD JUDGMENT BY AKA'AHs JSC**

- This is an appeal by the Appellant against the judgement of  
the Court of Appeal Sokoto Division delivered on the 10th day of  
June, 2010 which affirmed the conviction and sentence of the Trial  
G Court. The accused now Appellant was arraigned before the Kebbi  
State High Court Zuru Judicial Division on a one count charge for  
Culpable Homicide punishable with death contrary to section 221  
(b) of the Penal Code in charge No. KB/ZR/HC/IC/2005. The charge  
read:-  
H *“That you Manu Galadima ‘M’ on or about the 19th day of  
May, 2003 at Usara Village of Sakaba Local Government Area of  
Kebbi State within the Zuru Judicial Division committed the offence  
of culpable Homicide punishable with death in that you caused the  
death of Namurna Hadari by hitting him with an axe on the head*

*with the knowledge of his death would be the probable and not only the likely consequence of your act and you thereby committed an offence punishable under section 221 (b) of the Penal Code”*

The appellant did not plead guilty to the charge. At the trial the Prosecution called two witnesses and tendered the statement of the accused. The appellant did not give evidence but relied on the prosecution's case. The learned trial judge found the accused guilty and sentenced him to death by hanging. His appeal to the Court of Appeal was dismissed and his conviction and sentence was affirmed. The appellant has further appealed to this Court. The Notice of Appeal which contained three grounds of appeal was filed on 6/9/2010. Two issues were formulated from the grounds of appeal. Issue No. 1 was formulated from ground 1 while issue No. 2 was distilled from grounds 2 and 3. The issues are reproduced as follows:-

1. Whether the prosecution discharged the onus of proof placed on it.

2. Was the Court below correct to have relied on an alleged confessional statement of the appellant to confirm or affirm the conviction and sentence of the appellant.

The respondent adopted the issues raised by the appellant. Arguments in the appeal

Issue No.1: Learned counsel for the appellant submitted on issue 1 that the commission of a crime by a person must be proved beyond reasonable doubt and the burden of proof lies with the prosecution. He said that going by the record, there is nothing in the evidence of PW1 and PW2 which suggests an inference or positive act that the appellant was responsible for the death of the deceased because the entire evidence adduced by the prosecution was circumstantial evidence and the nexus connecting the accused person to the killing of the deceased is non-existent. According to the learned counsel the evidence of PW1 and PW2 amounts to hearsay which is inadmissible and cited the cases of *Buhari vs Obasanjo* (2005) 8 M.J.S.C 1 at 30; *Rabiu vs State* (1980) 8/11 SC130 and *Ebba vs Ogodo* (1984) 1 SCNLR 372. He submitted that both the trial court and the Court below acted upon hearsay evidence of both PW1 and PW2 in convicting and sentencing the appellant. He further argued that guilt has not been established against the appellant as there was no evidence before the trial court to show the object used in hitting

the deceased head. He urged this Court to overturn the judgment of the lower court on the ground that the findings of both the trial court and the Court of Appeal was based on inadequate evidence. It was submitted on appellant's behalf that when an accused is being tried for any case whatsoever, it behooves the Court to subject every item of facts raised by or against him to merciless scrutiny because of the constitutional presumption of the innocence of an accused person until he is proven guilty and where there is a doubt in the mind of the court either as to the procedure adopted or failure to address on very important latent issues that assail or circumscribe the case, the Court should acquit and discharge citing *Shande vs State* (2005) 12 NWLR (Part 939) 301 at 321 in support.

On the second issue learned counsel argued that the appellant objected to the admissibility of the confessional statement. While conceding that a conviction and sentence of an accused can be based on his confessional statement it is desirable to have outside the confession, some corroborative evidence, no matter how slight, of circumstances which make it probable that the confession is true and correct and that it is not every confessional statement which if admitted in evidence can be relied upon by the Court to convict the maker of the statement. It was pointed out that the prosecution failed to prove the absence of provocation as alleged in the alleged confessional statement and same was not properly considered by both the trial and lower courts. In conclusion learned counsel urged this Court to discharge and acquit the appellant of the offence charged for the following reasons:

1. There was no eye witness account of the crime.
2. That there was no evidence linking the appellant with the murder of the deceased.
3. The trial court failed to carry out six tests in deciding the weight to be attached to the appellant's retracted statement as laid down in the case of *Nwaebonyi vs State* (1994) 5 NWLR (part 343) 138 at 142.
4. The respondent failed and neglected to comply with section 77 of the Evidence Act.

In response the respondent enumerated the ingredients that must be proved beyond reasonable doubt to secure a conviction for the offence of Culpable Homicide punishable with death under sec-

tion 221 (b) Penal Code. He pointed to the evidence of PW1 as satisfying the first ingredient that there was a death of one Namurna Hadari. He also argued that as regards the second and third ingredients even though there was no direct evidence that someone saw the appellant inflicting injury on the deceased which resulted in his death, however there is a confession by the appellant that he used an axe to hit the deceased on the head and this confession is corroborated by Exhibit B, the medical report. He therefore submitted that the prosecution established the voluntariness of the extra-judicial confessional statement of the appellant which was not challenged. On issue 2 learned counsel said that there is enough evidence that Namurna Hadari had died unnaturally and the accused escaped to a village in Niger State after he had committed the alleged offence. He contended that a court will be failing in its duty if it refuses or neglects to convict on the evidence of the prosecution which is unchallenged and uncontroverted. B C D

The learned trial Judge found that the deceased died two days after the attack which made the production of a medical report on the cause of death unnecessary. He also held that Exhibit A-A1 was a confessional statement which he admitted in evidence as having been made voluntarily. He was satisfied that the Prosecution had proved beyond reasonable doubt that Namurna Hadari died from the act of the accused person. On the weapon used, the learned trial Judge said: E

*“Accused said in his Extra Judicial Statement that he hit the deceased with an axe on the head. Even if it is held he did not do so with intend (Sic) to kill, could he not have expected that by using axe lethal weapon on the head of the deceased he would probably have died? I did not have the privilege of examining the axe, as it is not tendered before me, but I know sharp object used in hitting head sensitive part of the body death would be the probable consequence. Lamba Kumbin vs Bauchi N.A (1963) NNLR 49. See Heider vs Gown (1950) PAKL.R (104349) Exhibit B - Medical Report shows Namurna Hadari died from the deep laceration on the head from wounds inflicted. In sum, I am of the firm view that accused intended the natural consequences of his act.”* F G H

Based on these findings the learned trial Judge found the accused person guilty of Culpable Homicide punishable with death

and accordingly convicted him under section 221 of the Penal Code. There is no doubt that the learned trial Judge relied on Exhibit A-A1 in convicting and sentencing the appellant to death which decision was affirmed by the Court of Appeal. In the lead judgment delivered by Oredola J.C.A after setting out the approach to be followed in assessing the quality of a confessional statement held at page 108 of the records that:-

*“Confession alone is sufficient to support conviction even without corroboration so long as the court is satisfied of the truth of the said confession”.*

The appellant’s statement was recorded by PW2 on 25/5/2003 in Hausa language and then translated to English language. The original statement recorded in Hausa was admitted as Exhibit A while the English translation is Exhibit A1. In Exhibit A, the appellant claimed the deceased insulted him and he used an axe to hit him and he fell down. He (the appellant) then ran away. It was argued on appellant’s behalf that there was no evidence of eye witness before the trial court as the evidence of PW1 and PW2 was hearsay and no circumstantial evidence was adduced. There is no doubting the fact that neither PW1 nor PW2 was present when the appellant hit the deceased with an axe on the head. That piece of evidence came from Exhibit A and, A1.

***The law is firmly established that confession alone is sufficient to support conviction even without corroboration so long as the court is satisfied of the truth of the said confession.*** In James Obi Achabua vs The State (1976) 12 SC 63 this Court was faced with a similar situation where there was no eye witness account of the murder except the confessional statements of the appellant which he retracted but was found guilty and convicted by the High Court of murder and subsequently appealed to the Supreme Court. Obaseki Ag. J.S.C (as he then was) dealing with the issue stated at pages 68-69 as follows:-

*“Only in few cases do criminals perpetrate their crimes in the open and secrecy with which they execute their plans has tended to deprive the prosecution in some cases of eye-witnesses. Happily, in this instant case, we have the extra judicial confessional statements in evidence and the recovery of the severed head of the deceased from the grave identified by the appellant as the place he buried it estab-*



*lished the truth of the confession. It is settled law that confession alone is sufficient to support conviction without corroboration so long as the court is satisfied of the truth of the confession. R. vs Sykes 8 Cr. App. R 223 R vs Kanu 14 WACA 30; Edet Obosi vs The State (1965) NMLR 119; Paul Onochie & 7 Others vs The Republic (1966) NMLR 307 and Jimoh Yesufu vs The State (1975) 6 SC 167”* B

In *Nwaebonyi vs State* (1994) 5 NWLR (Part 343) 138 it was held that a court can convict on extra-judicial confession alone, even without corroborative evidence where the trial Judge accepts the truth of the confession provided the accused person voluntarily made the statement. C

The learned trial Judge stated quite equivocally that the law is clear and settled that a confession can support a conviction if proved to be made and true. After a careful examination of the evidence adduced he then found there was no defence opened to the accused D and he accordingly found him guilty of culpable Homicide punishable with death. There was a challenge by learned counsel for the appellant that the learned trial Judge did not consider all the defences available to him. Learned counsel argued that the prosecution failed to prove absence of the provocation as contained in the confessional statement. This point was taken up in the lead judgment of Oredola J.C.A in the lower court where he reproduced section 221 (1) of the Penal Code and said- E

*“In order to invoke the plea embedded in this sub-section, the accused must lead evidence to establish the following elements of facts: F*

- i. The act of provocation was grave and sudden.*
- ii. The accused must have been deprived of the power of self-control actual and reasonable. G*
- iii. The mode of resentment, degree or extent of retaliation must bear a reasonable relationship or be proportionate to the provocation offered”.*

He held that where an accused person seeking to rely on the plea of provocation does not testify to explain how the provocation arose, and to be open to cross-examination the defence cannot be said to have been given in evidence. See: *Ekpenyong v. The State* (1993) 5 NWLR (Part 295) 513; *Nwuzoke v. The State* (1988) 1 NWLR (Part 72) 529. A close scrutiny of Exhibit A and A1 reveals H

that the appellant hit the deceased with an axe on the head and he fell down. On noticing what had happened he took to his heels because he feared a reprisal attack from the relations of the deceased. He therefore knew or had reason to know that death would be the probable and not only likely consequences of the act or of any bodily injury which the act was intended to cause. This comes within the purview of section 221 (b) of the Penal Code. Hitting a person with an axe on the head could lead to instant death. A plea of provocation does not exculpate the perpetrator of the act from blame but is only a mitigating factor when it comes to the sentencing.

***For a plea of provocation to avail the accused, the burden is on him to establish:***

***(a) The act of provocation was grave and sudden.***

***(b) He must have been deprived of the power of self-control and;***

***(c) The mode of resentment degree or extent of retaliation must bear a reasonable relationship or be proportionate to the provocation offered.***

***The burden is discharged on a balance of probabilities and not on proof beyond reasonable doubt. It is true that words alone can constitute provocation but this depends on the actual words used and their effect or what they mean to a reasonable person having a similar background with the accused person.***

In his extra judicial statement, Exhibit A and A1 the appellant stated that on 18/5/2003 he was returning home from a Wedding Ceremony which held in Ba'a Damina's House when he met Namurna Hadari and some boys among whom was Kanki Baba and enquired from Kanki Baba if he had seen his brother Musa but Namurna Hadari retorted that he should not ask any question and when he replied back that the question was not meant for Namurna Hadari, the latter then insulted him by saying 'Janduri Uwana' and this led him to hit Namurna Hadari with an axe on the head and he fell down and he ran away.

In their consideration of the complaint that the learned trial Judge failed to consider the defence of provocation, the Court of Appeal applied section 141 Evidence Act to hold that the burden of proving his entitlement to the defence of justification and provoca-

tion rests squarely on the shoulders of the accused person, a burden which the appellant failed to discharge. The lower court was perfectly right to hold that there was no evidence whatsoever in the record of proceedings to establish that the appellant was so provoked by the deceased in a manner that will enable him to enjoy the benefit of the defence of provocation. See: *Uluebeka vs The State* (2000) 7 NWLR <sup>B</sup> (Part 665) 404. Since the appellant elected not to testify but rest his case on the prosecution, he took a gamble and none of the defences he was entitled to would avail him. See *Ali & Anor vs State* (1988) 1 NWLR (Part 68) 1. No Court of law will presume or speculate on the existence of facts not placed before it. The lower court meticulously <sup>C</sup> appraised the evidence adduced at the trial court and came to the right conclusion that the prosecution proved its case beyond reasonable doubt leading to the conviction of the appellant for the offence of Culpable Homicide punishable with death contrary to section 221 <sup>D</sup> of the Penal Code. The concurrent findings made by the two lower courts cannot therefore be faulted. The learned trial Judge found that the extra judicial statement of the appellant contained in Exhibit A and A1 was a confessional statement which was true and voluntarily made and convicted the accused based on it. The said conviction <sup>E</sup> and sentenced was affirmed by the lower court. The finding of the trial court is not perverse; so also the decision of the lower court.

The appeal is lacking in merit and I accordingly dismiss it. The conviction and finding of the trial court is not perverse; so also <sup>F</sup> the decision of the lower court. The appeal is lacking in merit and I accordingly dismiss it. The conviction and sentence pronounced by the trial court and affirmed by the Court of Appeal Sokoto Division is further affirmed by this Court.

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### **ONNOGHEN JSC**

I have had the benefit of reading in draft the lead judgment of my learned brother AKAAHS, JSC just delivered. I agree with his reasoning and conclusion that the appeal has no merit and should be <sup>H</sup> dismissed.

I therefore order accordingly. Appeal dismissed.

**RHODES-VIVOUR JSC**

I have had the advantage of reading in draft the leading judgment delivered by my learned brother Aka'ahs, JSC. I am in complete agreement with it. I intend to add a few paragraphs of my own.

Crimes are hardly ever committed in full glare of people.

B There is most of the time an element of secrecy, so eyewitnesses are hard to come by. In this case there are no eyewitnesses but the extra judicial confessional statement of the appellant which he never denied making, and the Medical Report are in evidence. The Medical  
C Report established the truth of the confession that the deceased died from injury to his head. It is long settled that confession alone is enough to sustain a conviction without corroboration provided the trial judge is satisfied that the confession is true. See *Edet Obasi v. State* 1965 NMLR p.119, *Jimoh Yusufu v. State* 1976 6 SC p.167. In view of the  
D fact that the appellant never denied making his extra judicial confessional statement or ever said it was not made voluntarily, the trial court was right to convict on it, moreso as the Medical Report supports it. The Court of Appeal was also correct to agree with the trial court.

E Finally, this court would only interfere with concurrent findings of fact if they are found to be perverse or cannot be supported from the evidence led and accepted in court or there is miscarriage of justice or violation of some principle of law of procedure See *Ogbu v. State* 1992 8 NWLR pt.259 p.255, *Igago v. State* 1999 14 NWLR  
F Pt.637 1, *Ugwanyi v. FRN* 2012 Vol.49 pt.11 NSCQLR P.1243. The finding by both courts below that deceased died from injury to his head caused by an axe, a fact admitted by the appellant and corroborated by the Medical Report is not a perverse finding rather it is  
G true. This court cannot interfere with concurrent findings of the courts below since they are correct.

As quite rightly pointed out by my learned brother Aka'ahs JSC there is no merit in this appeal. Appeal dismissed.

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**OGUNBIYI JSC**

The appeal is against the concurrent findings of the Court of Appeal which affirmed the conviction and sentence by the trial high court Kebbi wherein the appellant was convicted and sentenced to

death contrary to section 221 (b) of the penal code. The appellant at the trial court was alleged to have hit the deceased with an axe on the head. There was no direct and Independent eye witness account of the incident except the confessional statements of the appellant himself which he retracted. Plethora of judicial authorities avail and empowering the courts to convict an accused person solely on his extra B judicial confessional statement made voluntary. See the case of Solomon Ehot V. The State (1993) 4 NWLR (Pt.290) 644 at 659. It is evident on the record that the deceased in this appeal died 2 days after he was attacked with a lethal weapon to wit an axe which was confessed to by the appellant. The mere denial or retraction of the C statement thereafter should not per se be a reason to believe that he did not in fact make the statement. In other words the consideration has to take into account the entire behaviour of the appellant inclusive of the actions taken as well as the resultant cause of death of the D deceased which the medical report gave as a result of “*deep laceration on the head with skull involvement.*”

The consistency of the intervening events/factors with the confessional statement of the appellant Exhibits A, A1; the medical E report on the deceased admitted as exhibit B which certified the cause of death to be “*cerebral contusion*” as well as the evidence of PW 2 the Investigating police officer, are all very indicative of the accused/appellant’s culpability. The Evidence Act Cap 112 Laws of the Federation 1990 vide section 138 is conclusive on the principle that the F standard of proof in every criminal prosecution is set at proof beyond reasonable doubt. This is an evidential burden on the prosecution which does not shift. It is also significant to re-iterate that the use of the phrase “*proof beyond reasonable doubt*” does not necessarily mean “*proof beyond the shadow of doubt.*” The extent of proof G requires that, the court, having regard to the entire evidence, should not be left in any doubt that the offence was in fact committed by the accused person. Suffice it to say also that the burden will be deemed H discharged and the conviction of the accused/appellant will be upheld, even on the evidence of a single credible witness or the confessional statement of the accused/appellant alone.

A confession in this context is defined as an admission made at any time by an accused person charged with a criminal act stating or suggesting that he committed the offence. See the case of Saidu v.

State (1982) 4 SC 41 and Onungwa v. State (1976) 2 SC 169. The following guidelines are a road map direction in assessing the quality of a confessional statement for purpose of determining its credibility for acceptability.

- B (a) whether there is anything outside the confession which shows that it may be true;
- (b) whether it is corroborated in anyway;
- (c) whether the relevant statement of fact made in it are most likely to be true as far as they can be tested;
- C (d) whether the accused had the opportunity of committing the offence;
- (e) whether the confession is possible;
- (f) whether the alleged confession is consistent with other facts that have been ascertained and established.

D The law is trite that once a confessional statement is proved as having been made voluntarily as in the instant case, by being direct, positive unequivocal and clearly suggestive of an admission of guilt it is sufficient to ground conviction even where the maker resiled therefrom or retracted the same completely at the trial. Retraction, in  
 E other words does not render a confession inadmissible. It does not also deter a trial court from acting thereon. A confessional statement, once properly proved, is sufficient to sustain a conviction despite any retraction by the maker as it is in the instant case. See Egboghomome  
 V. The State (1993) 7 NWLR (Pt 307)383. The trial court in the case  
 F at hand was properly directed in the approach when dealing with the retracted confessional statement. See Ntah V. The State (1972) 4 SC 1. The accused in his defence had sought to raise the defence of provocation which under the provision of section 222(1) of the Pe-  
 G nal Code is a mitigating factor against conviction under section 221 of the same code. The reproduction of the section 222 (1) states thus:-

H *“Culpable homicide is not punishable with death if the offender whilst deprived of the power of self control by grave and sudden provocation causes the death of any other person by mistake or accident.”*

From the foregoing provision, a mitigating factor will only avail the accused/appellant where there is evidence of “grave and sudden provocation” and thus depriving the appellant of power of

self control and thereby rendering him to cause either the death of the person who was responsible for the provocation or any other person by mistake or accident. It must be established, not only that the act was done under the influence of some feeling which took away from the person doing it all control over his emotion and action, but also that, that feeling had an adequate spontaneous cause and control over him. B

In all trials of culpable homicide, the court has the onerous duty to consider:-

(a) all the defence raised by the evidence whether the accused person specifically put up such defence or not; and C

(b) any defence raised by an accused person no matter how weak, inconsequential or stupid it may appear must be given due attention. See the cases of *Apishe v. The State* (1971) 1 All NLR 50; *Takida V. The State* (1969) 1 All NLR 270 and *Williams V. I.G.P.* D (1965) NMLR 470.

Provocation by nature must involve some acts or series of acts done by the deceased person to the accused/appellant which would cause in a reasonable person, and actually caused in the accused, a sudden and temporary loss of self control, rendering the accused to be subject or under such violent rage as to make him or her for the moment not to be in control and master of himself. The appellant who did not provide for any evidence in support of the defence he raises cannot as in the case at hand, be given the benefit of the defence. The court can only consider defences which are supported by evidence before it without which there is nothing to assess the veracity thereon. The proof is a matter of fact. See the case of *Philip Ekpenyong V. The State* (1993) 5 NWLR (Pt. 295) 513 at 525. The accused has the onus of adducing credible and positive evidence to support the plea of provocation raised. Where the accused/appellant had failed to adduce such evidence as it is with the present case at hand, the trial court has to rely on the evidence before it as adduced by the prosecution. F G

In the instant case, there was no evidence whatsoever on the record to establish that the appellant was so provoked by the deceased in a manner that will entitle him to the benefit of the defence of provocation. See *Uluebeka V. The State* (2000) 7 NWLR (Pt.665) 404. The appellant who opted not to give evidence did not therefore H

testify or subject himself to cross examination as to how he was provoked. The said defence does not in the circumstance avail the appellant as rightly held by the lower court in affirming the judgment of the trial High court.

B On the totality of the appeal I am in agreement with my learned brother Aka'ahs, JSC that this appeal is devoid of any merit and I also dismiss same in terms of the lead judgment. The conviction and sentence by the trial court and affirmed by the lower court is also endorsed by me.

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