

SUPREME COURT OF NIGERIA
FRIDAY 8TH MARCH, 2013. SC. 145/2011
**CORAM:- W. S. N. ONNOGHEN, M. S. MUNTAKA-
COOMASSIE, N. S. NGWUTA, O. ARIWOOLA,
M. D. MUHAMMAD, JJSC**

RASHEED LASISI APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Confession - Admissibility - The law renders irrelevant admission obtained - By oppression or duress of the maker - Admissible confession must be voluntary (H1)

CRIMINAL PROCEDURE - Confession - Conviction - Court can convict accused only on his confession - Where the statement is found to be direct and unequivocal (H2)

EVIDENCE - Evaluation - Evaluating and drawing inference from accused's statement - Is the duty of trial court - Which appellate courts do not enjoy the advantage of doing (H3)

APPEALS - Evidence - Evaluation - Interference - Appellate courts interfere to ensure that justice prevails - Only where trial court failed to draw correct inferences (H4)

FACTS

Prosecution/respondent's case is that the accused persons i.e. appellant and one other person had carried out an armed robbery operation at a petrol filling station in Ilorin, Kwara State. During the course of the operation, one of the two security guards at the station was murdered. Appellant's co-accused is the 2nd security guard. PW3 reported the robbery incidence to the police. Appellant was subsequently arrested for burglary at the house of PW4 some ten days after the robbery incidence at the petrol station. Exhibits 4 and 5 are appellant's extra judicial statements wherein, particularly in exhibit 5, he admitted being together with the other person for the robbery at the petrol station.

The two were thus arraigned before the High Court of Kwara State on a two count charge of robbery contrary to section 1(1) of the Robbery & Firearms (Special Provisions) Act Cap. 398 LFN 1990 and culpable Homicide punishable under section 224 of the Penal Code. At the trial, appellant denied making the statements to the police and told the court that the police shot him on the leg for failing to sign the statements. The other person equally feigned ignorance of the robbery incidence. At the end of the trial within trial, the court admitted exhibits 4 and 5. Consequently, appellant was found guilty of the offence of robbery and homicide. He was sentenced accordingly. Dissatisfied, appellant appealed to the Court of Appeal Ilorin Division. The court dismissed the appeal and affirmed the conviction and sentence passed by the trial court. Aggrieved further, appellant filed appeal in Supreme Court.

ISSUES FOR DETERMINATION

“(i) Whether the alleged confessional statements contained in Exhibits 4 and 5 were of such quality that a Court of law could rely upon in convicting the Appellant of the offences with which he was charged.

“(ii) Whether the Prosecution proved its case against the Appellant beyond reasonable doubt.”

HELD (Unanimously dismissing the appeal per

MUHAMMAD JSC)

CRIMINAL PROCEDURE - Confession - Admissibility

1. The law renders irrelevant any admission obtained by oppression of the person who made it, or in consequence of anything said or done which was likely to render the admission unreliable. The practice has evolved, pursuant to these requirements, imposing the duty on Courts to reject any statement obtained from an accused under torture, duress, threat or inducement. Thus confessional statement is admissible only if voluntarily given. (p. 1322 C)

CRIMINAL PROCEDURE - Confession - Conviction

2. It is not the law that denial by an accused of his confes-

sional statement provides reason for either rejecting or rendering it unreliable and incapable of sustaining the conviction of the accused for the offences he stands trial for. Where his confessional statement is direct, positive and unequivocal as to the admission of his guilt, the statement is enough to ground an accused person's conviction notwithstanding the fact that he has resiled from the statement. Of course, it is desirable to ensure that other ascertained facts consistent with the confessional statement abound before convicting the accused. The law does not, however, preclude a court from convicting an accused only on his confessional statement where the statement is found to be direct, positive and unequivocal.

(p. 1325 B)

EVIDENCE - Evaluation

3. Finally, it must be remarked that whether or not a statement of an accused person is confessional and/or the weight same should fetch is a question of fact. Evaluation of evidence and drawing the right inferences has always been the primary duty of the trial court that had the advantage of seeing and watching the witnesses as they testified. The Appellate Court, which the lower Court and indeed this Court are, does not enjoy the advantage the trial Court had in the task of evaluating the evidence of the witnesses before it and making the necessary inferences as to whether or not Exhibits 4 and 5 are confessional. (p. 1327 B)

Evidence - Evaluation - Interference

4. Appellate Courts interfere to ensure that justice prevails only where the trial Court failed to draw the correct inferences from the evidence or arrived at a finding consequent upon its consideration of extraneous matters. (p. 1327 E)

NOTABLE POINTS OF INTEREST

MUHAMMAD JSC

1. Confession – Meaning of

A confession, see Section 28 of the Evidence Act 2011, is an admis-

sion made at any time by a person charged with a crime stating or suggesting that he committed the crime. Such an admission may be given in evidence against its maker in proof of any fact in issue provided the statement was obtained in the manner provided under section 29(1) and (2) of the same Act. (p. 1322 B)

B

ONNOGHEN JSC

2. Trial within trial is not relevant where accused denies making a confession

C Another little point to be noted is the fact that where an accused person denies making the statement sought to be tendered the issue of trial within trial is not relevant as it is settled law that the said statement is admissible in evidence, subject however, to the weight to be attached thereto. In other words, the procedure of trial within trial is not designed to determine whether an accused person made the statement but whether he made it voluntarily. In other words, an accused person must admit making the confessional statement before he could raise the circumstances in which the confessional statement was made by him. (p. 1328 E)

E

REPRESENTATION

M. J. Onigbanjo with Onaiyi Otokurin, for the Appellant
Kamaldeen Ajibade Alakwara with J. A. Mumini (DPP Kwara State),
F for the Respondent

CASES REFERRED TO

- Gbadamosi v. State (1991) 5 NWLR (pt. 196) 182
Barmo v. State (2000) 1 NWLR (pt. 641) 424
G Oche v. State (2007) 5 NWLR (pt. 1027) 214
Ojegele v. State (1988) 1 NWLR (Pt. 71) 414
Amachree v. Nig. Army (2003) 3 NWLR (pt. 807) 281
Odua v. FRN (2002) 5 NWLR (pt. 761) 615
Alarate v. State (2001) 2 SC 114
H Agbo v. State (2006) All FWLR (pt. 309) 1380
Ahmed State (1999) 7 NWLR (pt. 612) 641
Bakare v. State (1987) 1 NWLR (pt. 52) 579
Onuchukwu v. State (1998) 4 SCNJ 36
Sowemimo v. State (2004) 11 NWLR (pt. 385) 515

Ukwunneyi v. State (1989) 4 NWLR (pt. 114) 131

Nigeria Air Force v. Obiora (2003) 1 SC (pt. 11) 145

Ebot v. State (1993) 4 NWLR (pt. 240) 644

STATUTES REFERRED TO

Evidence Act 2011, ss. 27, 28, 29(1)(2) B

Robbery & Firearms (Special Provisions) Act Cap. 398 LFN 1990, s. 1(1)

Penal Code, s. 224

LEAD JUDGMENT BY MUHAMMAD JSC C

This is an Appeal against the decision of the Ilorin Division of the Court of Appeal, hereinafter referred to as the Court below, dismissing the Appellant's Appeal and affirming his conviction and sentence for the offences of robbery contrary to section 1(1) of the Robbery and Firearms (Special Provisions) Act CAP 398 LFN 1990 and culpable Homicide punishable under Section 224 of the Penal Code by the Kwara State High Court, hereinafter referred to as the trial Court. The brief facts of the case leading to the appeal are herein under supplied at once. D
E

The Appellant and another person were arraigned before the High Court of Kwara State on a two count charge in charge No.KWS/28C/2004. Respondent's case is that on the 9th and in the early hours of 10th October 2003, the accused person robbed the Rock Field Petroleum Nigeria Ltd. They took away properties of the filling station worth about N44,340.00k and in the course of the robbery caused the death of Obioma Nwakocha one of the two security guards at the filling station. Appellant's co-accused is the 2nd security guard at the filling station. F
G

The incidence of the armed robbery was reported to the police by pw3 who, on 10th October, 2003, discovered the fact of the robbery, the murder of Obioma Nwakocha and the disappearance of the 2nd guard, Silas Sule Mohammed, Appellant's co-accused, from the venue of the crime. H

It is Respondent's further case that the Appellant was arrested on the 20th October 2003, some ten days after the robbery and the death of Mr. Nwakocha at the Rock Field Petrol Station at Mr. Olusola Adebuyo's (PW4) house for burglary. Exhibits 4 and 5 are Appellant's

extra judicial statements wherein, particularly in Exhibit 5, he admitted being, together with the 1st accused, Silas Sule Mohammed, responsible for the robbery at the Rock Field filling station along Fate Road, Ilorin and the death of the other security guard, Mr. Nwakocho. The content of Exhibit 5 led to the arrest of the said Silas Sule Mohammed at Ajase - Ipo on the 22nd October, 2003 and the subsequent arraignment of both accused persons.

Appellant testified in his own defence. A vulcanizer, he denies being arrested in Pw4's house on 20th October 2003. Instead, he asserts that he was arrested on the 10th of October, at around 8.00am on his way to his work place. Appellant also denies having made Exhibits 4 and 5 to the police. He told the Court that his failure to sign the statements the police said he had made resulted in his being shot at on his leg.

Silas Sule Mohammed, the 1st accused charged along with the Appellant, also gave evidence in his own defence. He equally denies having been arrested at the Ajase-Ipo Police Station on his being identified by the Appellant. Mr. Sule told the trial Court that he was arrested when he went to the Kulende Police Station around 3pm on the 10th October 2003 to report the robbery that took place at his work place.

At the end of the trial, which included the trial within trial to ascertain the admissibility of Appellant's extra judicial statements, Exhibits 4 and 5, and Counsel addresses, the trial Court found the Appellant guilty of the offences of robbery under Section 1 of the Robbery and Firearms (special provisions) Act Cap. 398 Laws of the Federation and homicide not punishable with death under section 224 of the penal code. The trial Court in concluding its judgment dated 14th December 2006, sentenced the Appellant accordingly.

Dissatisfied with the judgment of the trial Court, the Appellant appealed to the Court below which judgment of 11th February, 2011 dismissed Appellant's appeal and affirmed the trial Court's conviction and sentence of the Appellant in respect of the two offences. Still aggrieved, the Appellant has appealed to this Court on two grounds.

In the Appellant's brief settled by his Counsel, M. J. Onigbanjo Esq. and filed on 7th June 2011, two issues have been distilled as having arisen for the determination of the appeal thus:-

“(i) Whether the alleged confessional statements contained in

Exhibits 4 and 5 were of such quality that a Court of law could rely upon in convicting the Appellant of the offences with which he was charged.

(ii) Whether the Prosecution proved its case against the Appellant beyond reasonable doubt.”

At page 6 of the Respondent’s brief settled by M. A. Oniye, B two issues have equally been distilled from the two grounds in the Appellant’s notice for the determination of the appeal. The issues are:-

“i. Whether the Court below was right to have relied on the Appellant’s confessional statements, exhibits 4 and 5, in affirming his conviction by the trial Court. {Distilled from ground one} C

ii. Whether the Court below was right to have affirmed the conviction of the Appellant for the offences of robbery and culpable homicide not punishable with death. [Formulated from ground two]” D

At the hearing of the appeal, both sides identified, adopted and relied on their respective briefs of arguments for and against the appeal. The issues distilled by the Appellant, being preferred, will form the basis of determining the appeal.

On the first issue, learned Appellant’s Counsel refers, inter alia, to the decisions in *Gbadamosi v. State* (1991) 5 NWLR (Pt.196) 182 at 203, *Barmo v. State* (2000) 1 NWLR (pt 641) 424 at 434, *Oche v. State* (2007) 5 NWLR (Pt 1027) 214 at 235 and submits that detailed principles have been propounded by Courts to guide on the admissibility or weight to be attached to a confessional statement. F The reliance of the two Courts below on exhibits 4 and 5 which purports to be Appellant’s confessional statements, learned Counsel submits, stands in clear breach of all the principles on such statements. The documents, he argues, should not have been admitted G and having been admitted no weight whatsoever should have been attached to them.

The evidence of PW1, at page 52, PW4 at page 69 - 70 all go to corroborate Appellant’s evidence at page 75 as well as that of his co-accused that exhibits 3, 4, and 5, the accused persons’ statement, H was not given voluntarily. The police had inflicted injuries on the two in the process of obtaining their statements. This fact alone, contends learned Counsel, makes the statements inadmissible in law. All the questions the trial Court ought to have answered before admitting

the statements in evidence as being confessional, learned Appellant's Counsel submits are left unanswered in spite of the testimonies of Respondent's witnesses during the trial within trial. Further relying on *Ojegele V. State* (1988) 1 NWLR (Pt.71) 414 at 425, learned Counsel urges that with exhibits 4 and 5 not having been corroborated, the Court below is wrong to have, on the basis of the two statements, affirmed the trial Court's decision. He submits that the issue be resolved in their favour.

On the 2nd issue, it is re-iterated that the trial Court in deciding on Appellant's guilt relied on exhibit 4 and exhibit 5 alone. Nothing outside the two statements are commended to the Court by the Respondent. Neither the weapons used in killing Mr. Nwakocho nor the goods stolen by the appellant in the course of the robbery have been tendered in evidence before the Court. Besides, the oral testimonies of Respondent's witnesses are riddled with material contradictions. Most importantly, learned Appellant's Counsel concludes that Appellant's plea of alibi has not been duly considered. The lower Court's affirmation of the trial Court's finding that the defence has not been timeously raised is a manifest error which entitles this Court to set-aside the decision. Learned Counsel so urges and further prays that the appeal be allowed.

Responding, learned Counsel asks us to resolve the two issues for the determination of the appeal in the affirmative. He submits that a Court can rely on the confessional statement of the accused to convict him. Indeed, if well proved, a confessional statement is considered the best evidence. Exhibits 4 and 5, it is contended, are, the credible and compelling evidence led by the Respondent during the trial within a trial, established beyond doubt to be made freely and voluntarily. Appellant's objection that brought about the procedure is that the statements were not voluntarily made but obtained from him by force and intimidation. Appellant's subsequent posture is a total denial that he made the said statements. The trial Court admitted the statements it found to be confessional which finding, learned Counsel submits, the Court below at page 167 of the record rightly affirmed. Evidence on record does not show that the injuries the learned Appellant's Counsel capitalizes on in arguing that Appellant's statements were induced or given under duress, were sustained or inflicted on the Appellant in the course of recording his statements.

Instead, the injuries occurred in the course of arresting the Appellant and therefore of no consequence on the admissibility of the statements. In urging us to so hold as well, learned Counsel relies on *Amachree v. Nigeria Army* (2003) 3 NWLR (pt. 807) 281, *Odua v. Federal Republic of Nig.* (2002) 5 NWLR (pt. 761) 615, *Alarate v. State* (2001) 2 SC 114 and *Agbo v. State* (2006) All FWLR (pt. 309) B 1380 at 1393.

In further argument, learned Respondent's Counsel submits that none of the witnesses called by the Respondent to establish that Exhibits 4 and 5 are voluntarily given by the Appellant demonstrate any attribute by virtue of which his testimony should be disbelieved or ignored. The two statements clearly establish the Appellant as a member of the gang which robbed the filling station and killed Mr. Nwakocha in the course of committing the robbery. From the two statements, learned Respondent's Counsel contends, all the ingredients of the two offences the Appellant is convicted for are discernible. These directly positive and unequivocal statements cannot lawfully be discountenanced. In fact, submits learned Counsel, by virtue of the decisions in *Ahmed State* (1999) 7 NWLR (pt. 612) 641 and *Bakare v. State* (1987) 1 NWLR (pt. 52) 579, it is incumbent on the trial Court to rely on the statements and for the Court below to affirm a decision reached consequent upon the reliance placed at trial on the statements. D E

Concluding, learned Respondent's Counsel submits that the Appellant raised his alibi for the first time at the trial Court. Having not raised the defence timeously and promptly, he is disentitled to raise the defence belatedly at trial in the open Court. Where the Respondent succeeds by evidence to fix the Appellant at the scene of crime, learned Counsel submits, it satisfies the requirement of the law thereby making the defence unavailable to the Appellant. Learned Counsel relies on *Onuchukwu v. The State* (1998) 4 SCNJ 36, *Sowemimo v. The State* (2004) 11 NWLR (part 385) 515, *Ukwunneyi v. State* (1989) 4 NWLR (part 114) 131 at 155 - 156 and *Nigeria Air Force v. Obiora* (2003) 1 SC (pt. 11) 145 at 167 and urges us to hold that the lower Court's affirmation of the trial Court's rejection of Appellant's belatedly raised alibi is well grounded in Law. On the whole, learned Counsel submits that the issues the appeal raises be resolved in Respondent's favour and the appeal dismissed. F G H

Now, the questions the appeal raises are whether indeed Appellant's statements are confessional and, if so, whether the conviction for the offences he stands trial for are lawfully founded on his confessional statements without more. There is also the need to consider if indeed Appellant has raised any alibi and same has been
B wrongly discountenanced.

A confession, see Section 28 of the Evidence Act 2011, is an admission made at any time by a person charged with a crime stating or suggesting that he committed the crime. Such an admission may
C be given in evidence against its maker in proof of any fact in issue provided the statement was obtained in the manner provided under section 29(1) and (2) of the same Act.

The law renders irrelevant any admission obtained by oppression of the person who made it, or in consequence of anything said or done which was likely to render the admission unreliable. The practice has evolved, pursuant to these requirements, imposing the duty on Courts to reject any statement obtained from an accused under torture, duress, threat or inducement. Thus confessional statement is admissible only
D ***if voluntarily given.*** See In Re Osakwe (1994) 2 NWLR (Pt 326) 273 at 290; Ebot v. State (1993) 4 NWLR (Pt.240) 644 and Nwosu v. State (1986) 4 NWLR (Pt.186) 428.
E

In the case at hand, following his arrest on 20-10-2003 for breaking into PW4's house and the Respondent's resolve to make a
F complaint against him before a Court, the Appellant in Exhibit 4, inter-alia, states as follows:-

*"I came to the city of Ilorin about 3 months ago and since I have been following bricklayers to do some Labourer job at the building sites. It was whenever I go to building site that I use to target
G houses that I would (effectual) eventually broke into I started to steal and broke into people's houses for over 2 months ago. Members of group are 1. Suleiman 'M' who has left the city of Ilorin to Ajasepo, Kwara State. 2. Abu Alli 'M' of Ode-Alfanda, Ilorin, 3. Small 'M' 4.
H Abdullahi Alli and Soladipo 'M', One Mathew 'M' is along member of the group. The leader of the group is Suleiman who now lives at Ajasepo."*

In his second statement obtained on 22-10-2003, Exhibit 5, the Appellant elaborates in part as follows:-

“...I have a gang of 2 persons including myself and Silas Sule Mohammed who specializes in breaking into people’s houses to remove and steal their property away. I have operated in four different places within Sango and Fate Areas with Silas Sule Mohammed. On Thursday 9th October, 2003 at about 10:30pm. I left my place to Rockfield petroleum to meet Silas Mohammed who was a night guard^B at the filling station. Before this time, I have had arrangement with Silas Sule Mohammed to come to the filling station to steal things in the Mini-Mart and that we should prevent the other night guard from disturbing us from carrying with the operation. Silas Sule brought the move that he would use drug so that he would use drug so that he would sleep a way throughout the operation. On arrival at the scene we tightened up his legs and hands and we hit him with hard object and killed him. It was thereafter that we removed the block and gained entrance into the Mini-Mart where valuables were removed and stolen away...”^C

In the course of trial, the Respondent tendered the two statements parts of which are reproduced above. At that point, Appellant’s Counsel objected to their being admitted in evidence by the Court on the ground that they were not voluntarily obtained from the Appellant. The trial Court conducted a trial within trial to ascertain whether the statements were voluntarily obtained and thus admissible in evidence. The Respondent relied on two policemen, one of whom recorded the two exhibits to prove their admissibility. The Appellant’s evidence in the course of the trial within trial states partly thus:-^F

“I did not make any written statement to the police when I was arrested. It is not true that I made two statements to the police on 21st October, 2003 and on 22nd October, 2003, after I had been cautioned by the police. PW1 did not tell the truth.” In the trial Court’s well considered ruling dated 25th May 2006, after reviewing the evidence of both sides in the trial within trial, the Court, see page 62 of the record, states the applicable procedure thus:-^G

“Any objection to the admissibility in evidence of a statement on the ground that it was not made voluntarily by the accused, ... H calls for a trial within trial to determine the voluntariness or otherwise of the statement.”

At page 63 of the record, the trial Court concluded its ruling as follows:-

"However, where the accused said under cross-examination or in his evidence -in-chief in a trial within trial that he did not make any statement to the police at all, or that the statement sought to be tendered was written by the police, a different consideration is called for. Where the accused has denied making a statement at all to the police there will be no necessity to conduct a trial within trial. The statement can properly be received in evidence..."

Having found that Appellant's case has ended in a denial of ever making the statements, the Court admitted the two in evidence. The lower Court in affirming the trial Court's findings at page 162 of the record states as follows:-

"Accordingly, the learned Counsel was again on a pedestal when he relied on Nsofor v. The State (supra) to submit that where as in this case, the admissibility of the Appellant's extra judicial statements were objected to not on grounds of involuntariness, but on outright denial of making them, the Court must first admit them without trial within trial and therefore to determine their probative value or whether the Appellant made them. See also Ikpassa v. The State supra."

The Court's foregoing holding is beyond reproach. Its further reliance on the decision of this Court in Olalekan v. The State (2001) 18 NWLR (Pt.746) 793 is apposite. At page 809 of the report this Court held on the point in issue thus:-

"It would appear that the objection taken to Exhibit A in this Court is different to the objection raised on it in the Court below. In that Court it was the question of its voluntariness that was contested as borne out by issue 3 raised in the Appellant's brief in that Court. And this led to the observation of the Court to the effect that

'When the voluntariness of a confession is being denied, a trial within trial will be held, but if the statement is voluntarily made- then it is admissible by virtue of Section 27 of the Evidence Act, Laws of the Federation of Nigeria, 1990.

It is however noteworthy that when an accused person alleged that the confessional statement credited to him is made under duress or not made voluntarily by him, objection must then be raised to its admission when the statement is sought to be tendered in evidence and not after they have (sic) been admitted in evidence.

Of course, this observation represents the law and to that extent, their lordships of the Court below arrived at a correct decision."

Learned Appellant's Counsel insists that Appellant's conviction by the trial Court as affirmed by the Court below cannot be founded on Appellant's retracted confessional statements. Learned Counsel seems unimpressed by the plethora of decisions of this Court that hold otherwise.

It is not the law that denial by an accused of his confessional statement provides reason for either rejecting or rendering it unreliable and incapable of sustaining the conviction of the accused for the offences he stands trial for. Where his confessional statement is direct, positive and unequivocal as to the admission of his guilt, the statement is enough to ground an accused person's conviction notwithstanding the fact that he has resiled from the statement. Of course, it is desirable to ensure that other ascertained facts consistent with the confessional statement abound before convicting the accused. The law does not, however, preclude a court from convicting an accused only on his confessional statement where the statement is found to be direct, positive and unequivocal. See *Ejinima v. State* (1991) 6 NWLR (Pt.200) 627, *Onyejekwe v. State* (1992) 3 NWLR (Pt.230) 444; *Obosi v. State* (1965) NMLR 129 and *Egboghonome v. State* (1993) 7 NWLR (Pt.306) 383.

In *Nwaebonyi v. State* (1994) 5 NWLR (Pt.343) 138 Wali, JSC in his lead judgment stated at page 150 of the report thus:-

"Even without these corroborative evidence, decisions of this Court abounds to show that a trial Court can convict on accused person on his free and voluntary statement alone. See Queen v. Obiasa (1962) 1 ALL NLR 691.

Having accepted the truth of the confession contained in Exhibit AA1 the learned trial judge was perfectly justified in finding the appellant guilty of the charge against him and the court of appeal was also right in affirming the conviction and sentence on the evidence accepted and evaluated by the trial judge."

Ogwuegbu, JSC at 154 of the report appears more emphatic in his concurrence thus:-

"The trial court held that the Appellant made Exhibit AA1. He found that the Appellant made Exhibit AA1 voluntarily and that there was also overwhelming evidence to corroborate the statement. He concluded that it was a deliberate act of murder motivated by some

deep rooted suspicion held by the Appellant that P.W.1. was responsible for the death of the children. The Court below found that the contents of Exhibit A were true that it amounted to a confession which is direct and positive.

Exhibit AA1 having been proved to be positive, direct and made voluntarily, a court can convict on it. The fact that the appellant resiled from it does not necessarily render it inadmissible: Egboghonome v. The State (1993) 7 NWLR (Pt.306) 383 and R. v. Kanu (1952) 14 WACA 30. The general rule is that a free and voluntary confession satisfactorily proved is sufficient proof of guilt without corroborative evidence, though the whole evidence should be weighed with the view of seeing whether they are incompatible with facts stated by the accused in the statement: The Queen v. Mboho (1964) NMLR 49 and the Queen v. Obiasa (1962) All NLR. 645 (Reprint) (1962) 1 SCNLR 137. In this case the truth of the confession was positive and the evidence relied upon by the learned trial judge were compatible with the facts stated in Exhibit AA1.”

In the case at hand the Court below like the trial Court, in addition to the confessional statements of the Appellant, relied on such other evidence from the testimonies of Respondent’s witnesses to further establish the truth in Appellant’s confessional statements. Both Courts are aware of the desirability of having such corroborative evidence before convicting the Appellant. That the availability of the corroborative evidence is, however, not a condition precedent to the conviction of the Appellant is equally a principle the two Courts fully understand. Not surprisingly, the lower Court in affirming the trial Court’s judgment states per Agube JCA at page 154 of the record as follows:-

“I am of the firm view that the learned trial Judge rightly convicted the Appellant on his confessional statements (Exhibits 4 and 5) particularly, by Exhibit 5 and the Evidence of the PW1-PW3. Although the Appellant alleged that the confessional statements were obtained under threat, the evidence of the PW1-PW4 has proved the contrary.”

In Exhibits 4 and 5, the Appellant himself has provided material evidence of all the ingredients of the two offences he is convicted and sentenced for by the trial Court. The lower Court’s affirmation of such a decision that draws from cogent admissible evidence re-

mains beyond reproach. It must also be stated that by the same confessional statements, the Appellant having fixed himself at the scene of the offences no reasonable tribunal would take his Counsel's contention that the defence of alibi avails the Appellant even if it would be conceded to them that the defence has indeed been raised. See *Ogoala v. State* (1991) 2 NWLR (Pt.175) 509; *Ibrahim v. State* (1991) 4 NWLR (Pt.186) 399 and *Esangbedo v. The state* (1989) 1 NWLR (Pt 113) 57. B

Finally, it must be remarked that whether or not a statement of an accused person is confessional and/or the weight same should fetch is a question of fact. Evaluation of evidence and drawing the right inferences has always been the primary duty of the trial court that had the advantage of seeing and watching the witnesses as they testified. The Appellate Court, which the lower Court and indeed this Court are, does not enjoy the advantage the trial Court had in the task of evaluating the evidence of the witnesses before it and making the necessary inferences as to whether or not Exhibits 4 and 5 are confessional. C D

Appellate Courts interfere to ensure that justice prevails only where the trial Court failed to draw the correct inferences from the evidence or arrived at a finding consequent upon its consideration of extraneous matters. E

In the case at hand the two Courts below have concurrently found and correctly too, that Respondent herein, by virtue of exhibits 4 and 5 as well as the evidence of the witnesses it led at trial, has discharged the burden the law places on it by proving the guilt of Appellant beyond reasonable doubt. This Court remains hesitant, nay incapable of saying that these findings are perverse and for that reason disentitled to interfere. *Igago v. State* (1999) 14 NWLR (pt. 637) 1 & *Bamigboye v. University of Ilorin* (1999) 6 SC (Pt.11) 72. F G

Consequently, I resolve Appellant's two issues against him, find no merit in his appeal, dismiss same and affirm the decision of the Court below. H

ONNOGHEN JSC

I have had the benefit of reading in draft, the lead Judgment

of my learned brother, MUHAMMAD, JSC just delivered. I agree with his reasoning and conclusion that the Appeal lacks merit and should be dismissed.

My learned brother has dealt exhaustively with the issues presented for resolution and I do not see the need to repeat the principles of law applicable to the relevant facts of this case, in this concurring judgment except to emphasize that once a confessional statement satisfies the conditions laid down in Sections 27, 28 and 29 of the Evidence Act, it is admissible in evidence and the Court can legally rely on the said confession to convict the accused of the offence(s) charged though it is desirable, not mandatory that the facts constituting the confession should be corroborated by evidence outside the confessional statement.

Once a confessional statement is admitted following a trial within trial proceeding, it becomes very difficult for an appellate Court to intervene on an appeal against its admissibility as the evaluation of the evidence adduced at the said trial is based on the credibility of witnesses, which duty is solely that of the trial Court as the appellate Court is not privileged to have seen the witnesses testify nor watch their demeanor, etc. The above position of the law makes it very difficult for an Appellant to successfully contest the question of admissibility of a confessional statement following a trial within trial proceeding, on appeal.

Another little point to be noted is the fact that where an accused person denies making the statement sought to be tendered the issue of trial within trial is not relevant as it is settled law that the said statement is admissible in evidence, subject however, to the weight to be attached thereto. In other words, the procedure of trial within trial is not designed to determine whether an accused person made the statement but whether he made it voluntarily. In other words, an accused person must admit making the confessional statement before he could raise the circumstances in which the confessional statement was made by him.

It is for the above reasons and the more detailed reasons contained in the said lead judgment of my learned brother that I too dismiss the appeal for lack of merit. Appeal dismissed.

MUNTAKA-COOMASSIE JSC

The Appellant and one Silas Sule Mohammed were arraigned before the High Court of Justice, Ilorin Kwara State on two count charge viz:-

THE CHARGE

1. That you SILAS SULE MOHAMMED (M) and RASHEED LASISI (M) on or about the 9th and the early hours of the 10th day of October, 2003 in Ilorin, Kwara State within the judicial division of this Honourable Court robbed the mini - mart of Rock Field Petroleum Nigeria Limited opposite former FRSC office Fate Road, Ilorin and carted away valuables amounting to N44,340.00k and you thereby committed an offence punishable under Section 1 Armed Robbery and Firearms (Special Provisions) Act Cap. 398 Laws of the Federation of Nigeria. B

2. That you SILAS SULE MOHAMMED (M) and RASHEED LASISI (M) about 9th and the early hours of the 10th day of October, 2003 in Ilorin, Kwara State within the judicial division of this Honourable Court while robbing the Mini-Mart of Rock Field Petroleum Nigeria Limited opposite former FRSC Office, Fate Road, Ilorin caused the death of One Obioma Nwokocha, a security guard employed by Rock Field company from Kuta Guard Security outfit, by tying him up and beating him to death and you thereby committed an offence punishable under Section 221 of the Penal Code. C

Count 1 was later amended and brought under the provisions of Section 1 Armed Robbery and Firearms (Special Provisions) Act Cap. 398 Laws of the Federal Republic of Nigeria. The plea of the two accused persons was taken i.e. two accused persons pleaded not guilty to the two counts. The Court then proceeded to hear the case. The Prosecution called one Callistus Kanjuwa as PW1. He was the General Manager of Kuta Guards Limited, the employer of the 1st accused person. He gave evidence of how the 1st accused person was assigned to Rock Field Petroleum as Security guard. D

On the 10th of October, 2003 he got a telephone call from one Alhaji Mohammed Lawal, the Managing Director of the Rockfield Petroleum that armed robbers burgled the filling station on Fate Road Ilorin. He then proceeded to the scene and saw the burgled Mini-mart but he could not see any of the security guards, in the process he saw the dead body of Obioma Nwokocha lying at the back of the E

Filling station, but could not see the 1st accused person. The matter was then reported to the police at the Kulende Police station. One week later the police invited him to come and see some people that were arrested and that he should come and check whether the 1st accused person was among. He went and he identified the 1st accused person. Under cross-examination, he affirmed that he saw the dead body of Obioma Nwokocha in the pool of his blood. He stated that the police informed him that the 1st accused person was arrested at Ajase-Ipo.

One Corporal, Lawrence Ogunsusi was called as PW2. He stated that he knows the two accused persons. On 10/10/2003 he was at his duty post when one Alhaji Mohammed Lawal came and reported that at about 6.30 am on that same day he visited his petrol Filling Station and discovered that the Mini-Mart had been broken into, and removed some petrochemical products and some edible materials worth about N44,340.00k and that he discovered the lifeless body of his night guard with two legs tied and his body covered with empty bags of cement.

He visited the Filling Station in company of Williams Aghoromo, a DSP and Akinwale Adedoyin, DCO. He removed the corpse and took it to the University of Ilorin Teaching Hospital Mortuary for a post mortem examination. A search party was organised to look for the 1st accused person.

On 20/10/2003 one Mr. Olushola Adebayo phoned police E, Division Kulende Division and said he suspected a land line inside his premises. A team of policemen, including himself, went to N0.6 Veterinary Road, Ministry of Agriculture, Fate Road G.R.A. Ilorin. The house was searched with tear gas used on the neighbourhood, this made the 2nd accused person to come out from an empty water container where he had hidden. Some electronics he had removed were also found. He was then arrested. He took the 2nd accused person's statement after administering words of caution on him. In his statement he mentioned the 1st accused person, who he said has just traveled to Ajase-Ipo in order to sell some of the things they stole from Rockfield filling station. The 2nd accused person made two statements. After that he left for Ajase-Ipo, where the 1st accused was found to have been arrested in respect of another crime and detained at the Ajase-Ipo police station.

The 2nd accused person identified the 1st accused person who did not say anything when he was identified by the 2nd accused person. On arrival at Ilorin, he took the two accused persons to the Rockfield Filling station and they both confessed that they killed Obioma Nwokocha. He then took them back to the station where he recorded their statement. The 2nd accused person made two statements while the 1st accused person made one statement. These statements were admitted in evidence after going through the test of trial within trial. B

Under cross-examination the witness admitted that he took the corpse of Obioma Nwokocha to the Hospital. C

PW3 was one Alhaji Mohammed Lawal, the Managing Director of Rockfield petroleum Nig. Ltd. He knew the 1st accused person and Obioma Nwokocha, they were the night guards on duty in his filling station. On the 10/10/2003 he was at the filling station at about 7.00 am when some of the workers informed him that none of the night guards was on duty and that the mini-mart was broken into. He went round and he discovered the wall of the sales office to the filling station had been broken. He discovered that something was covered with empty cement bags, he looked closely and discovered that it was Obioma Nwokocha. His hands and legs were tied and he had sustained injury on his head in the pool of blood. He then went and reported at the Kulende police station and with Kuta guards Ltd. The police came and removed the corpse of Obioma Nwokocha. The 1st accused was nowhere to be found. About a week after he had reported the case, he was invited to the police station to come and identify some suspects who had been arrested. He identified the 1st accused person. He only met the 2nd accused person for the first time at the police station. E F G

Under cross-examination he stated that he reported to the police by 7.15 am on 10/10/2003. He stated that he went to the police to report the robbery. He normally resumes at the filling station by 6.55 am daily and opens for sale by 7.00am. He stated that the two accused persons confessed that they committed the offence and killed Obioma Nwokocha. H

One Olusola Adebayo was called as PW4, he is a Pastor. He knows the 2nd accused person. On 20/10/2003 after a heavy rain storm, the NEPA poles around his house were blown off, he then

wanted to inform his neighbour. In the process he discovered that the glass of his window louvers has been removed and the burglar proof damaged. He sensed a strange movement in the house, as a result he called the police of Kulende police station, he then stood outside the house to ensure that nobody runs out of the house. The police came almost immediately. They entered the house and observed that foot prints on the wall and the breaking of the ceiling. This made the police to use tear gas. The 2nd accused person was then found holding a knife in water container where he had hidden himself. The container was pushed and the 2nd accused person was arrested. Under cross examination he stated that the incident happened around 10.45a.m on 20/10/2003. He stated that there was no water in the container when the 2nd accused person hid himself. There was no rain on that day and container was dry.

The accused persons gave evidence on their behalf. The 1st accused person stated that he worked with Kuta Guards Nigeria limited. He denied knowing the 2nd accused person. He knew Obioma Nwokocha, he was his co-worker. He denied killing Obioma Nwokocha. He stated that on 9/10/2003, some armed robber's came to the field filling station in a vehicle. He stood in front of the station while Obioma Nwokocha was at the back. When the robbers came he ran to Obioma Nwokocha and the two of them went into hiding. The robbers discovered them and pulled out a cutlass, but because he was not armed he ran away. He jumped over the fence and went to lodge a report at Kulende Police station. The police told him that their senior officer was not around and they could not follow him. He told the Police that the robbers were holding his partner hostage at the petrol filling station. It was after 15 minutes before the police could follow him to the scene of the incident. On getting to the scene Obioma Nwokocha had been seriously injured. He wanted to go and report the case to his employers but the police did not allow him. He was in the police station till the early hours of 10/10/2003 when the manager of Kuta Guards limited came to the police station. On the same day, that is, 10/10/2003, the police took him to a room and asked him to kneel down and told him to say the truth, and if he did not say the truth the policemen should deal with him and they started beating him with iron rods and sticks. He denied making any statement to the police. He denied confessing to the killing of Obioma

Nwokocha.

He denied also robbing Mini-Mart of Rockfied filling station and he did not steal anything from there. He said he was not arrested at Ajase-Ipo, he denied knowing where is called Ajase-Ipo. Under cross-examination he admitted that Obioma Nwokocha and himself were guards at the Rockfield Petrol Station. He cannot remember the time the armed robbers arrived at the Station as he had no wrist-watch on him. He did not know the name of the police officer he met at the police station on that date. He was at the police station at about 4.30a.m. He did not know how Obioma was killed but he knew that robbers broke into the Filling Station and stole some things.

The 2nd accused person also testified as DW2. He is a vulcanizer, and he did not know the 1st accused person and Obioma Nwokocha. He denied killing Obioma Nwokocha in conjunction with the 1st accused person. He stated that on 10/10/2003 he was on his way to his workshop at Maraba garage, Ilorin when the police stopped him and ordered him in their patrol van. He was accused of being a member of wanderers who had nothing to do. The police then removed his vulcanizer union uniform and the key to his master's workshop and ordered him to be locked up. He did not know pw4 and it is not true that he was arrested in his house, and he was not shot before he was arrested. He was shot at Kulende police station when a document was brought for him to sign or thumb print and he refused. Under cross-examination he stated that he was an apprentice and he was not to boss (sic) by the police. He did not know why the 1st accused should be brought to Court, the allegation that they were in the same syndicate was not true.

Counsel to both parties addressed the trial Court, and in his considered judgment delivered on 14/12/2006, Orilonise J. found the two accused persons guilty on the two count charges. In its conclusion, the trial Court found thus:-

"I am however satisfied and find from the statements of the two accused persons in Exhibits 3, 4 and 5 coupled with the evidence of PW1, PW2 and PW3 that the accused persons caused the deceased some grievous hurt. They may not have intended to cause his death but all the same the deceased died shortly after he had been tied up by the accused persons and hit with objects which inflicted injuries on him. He was found in a pool of his own blood and

on the spot where he had been so assaulted by both accused. I have painstakingly considered all defences that could have availed the accused persons but I have not been able to find any defences available to them. I have already rejected the defence of the 1st accused that it was some armed robbers other than himself and the 2nd accused that raided Rockfield Petroleum station on 10th October 2003 and inflicted injuries on Obioma Nwokocha. This is in view of the inconsistency and contradictions between his testimony in Court and the confessional statement Exhibit 4 which he made to the police. It is for the same reason that I reject the defence of the 2nd accused that he did not participate with the 1st accused to cause injury to the deceased. Their defences were after thoughts and I disbelieve them.

I therefore find each of them guilty of the lesser offence of culpable homicide not punishable with death contrary to Section 224 D of the Penal Code and convict them accordingly”.

The trial Court then sentenced the two accused persons to 21 years in prison with effect from today i.e. 14/12/2006 for the offence of robbery, while for culpable homicide not punishable with death each of them is sentenced to 14 years imprisonment from today. The sentences shall run concurrently.

Dissatisfied with the above judgment, the 2nd accused person had appealed to the Court of Appeal, Ilorin Division, hereinafter called the lower Court. The lower Court heard the appeal and dismissed it for lacking in merit and affirmed the decision of the trial Court. Agube, F JCA delivering the lead Judgment of the Court held as follows:-

“Although, I agree with the learned Counsel for the Appellant that the offences for which the appellant was charged demanded an accused to be physically present at the scene of crime, the totality of evidence of the Prosecution and indeed the confessional statements (particularly Exhibit 5) of the Appellant, fixed him at the scene of crime and he was duly and rightly convicted by the learned trial judge.

Accordingly, this appeal is unmeritorious and is hereby dismissed. I affirm the judgment of the learned trial judge convicting and sentencing the Appellant to 21 years imprisonment for the offence of robbery and 14 years for culpable homicide not punishable with death, albeit reluctantly, since there was no cross-appeal from the Respondent/Prosecution on the inadequacy of the sentences imposed by the learned trial judge”.

The Appellant was again dissatisfied with the decision of the lower Court and has appealed to this Court. In accordance with the rules of this Court both parties filed and exchanged their respective briefs of argument each formulating two issues for determination as follows:-

“1. Whether the alleged confessional statement contained in Exhibits 4 and 5 were of such quality that a Court of law could rely upon in convicting the Appellant of the offences with which he was charged and

2. Whether the Prosecution proved its case against the Appellant beyond reasonable doubt.”

The Respondent also formulated two issues for the determination as follows:-

“1. Whether the Court below was right to have relied on the Appellant’s confessional statements, Exhibits 4 and 5 in affirming the conviction by the trial Court; and

2. Whether the Court below was right to have affirmed the conviction of the appellant for the offences of robbery and culpable homicide not punishable with death”.

At the hearing before us, both Counsel adopted their respective briefs of argument. The learned Counsel to the Appellant urged this Court to allow the appeal. Arguing issue No.1 of his brief of argument, learned Counsel submitted that Courts of law can convict an accused person on his confessional statement, in so far as the said statement was given freely, voluntarily and equivocally by the accused person. He cites in support the case of *Saida v. The State* (1982) 4 SC 41, *Nwangbon v. The State* (1991) 2 NWLR (Pt.327) 380.

A trial judge must be sure and satisfied that a statement is really a confessional statement before it can be so treated, cited the case of *Gbadamosi v. The State* (2001) NWLR (pt.641) 182/203. It was his contention that a denial or detraction of a confessional statement is a matter to be taken into consideration to decide the weight to be attached to the statement, cites *Oche v. State* (2007) 5 NWLR (Pt. 1027) 214 at 295. Learned Counsel then submitted that Exhibits 4 and 5 ought not to have been admitted and if admitted no weight whatsoever ought to have been attached to them. He referred to the evidence of PW4 about how the Appellant sustained injuries on his leg. It was his position that the lower Court was wrong to have be-

lieved the PW4 that the Appellant was shot on his leg with tear gas in order to enable the police arrest. That evidence of the DW2 ought to be preferred in that he sustained the injury at the police station where he was shot for him to thumb-print Exhibits 4 and 5. Learned Counsel cited the case of *Borno V. The State* (supra) and submitted that
 B the lower Court did not subject the statement to the principles stated in the case to wit,

1. Whether there is anything outside it to show it was true.
2. Whether it was corroborated.
- C 3. Whether there was opportunity to commit the offence.
4. Whether it was consistent with the facts of the case; and
5. Whether it conforms with the judges rules.

Counsel therefore submitted that the Prosecution did not care about voluntariness of Exhibits 4 and 5. He pointed out that the Exhibit 4
 D does not mention anything about the robbery of Rock Field Petroleum filling station.

On issue No. 2, learned Counsel submitted that apart from the confessional statement of the accused persons, the Prosecution was not able to tender any other vital exhibits relating to the charges
 E against the accused persons, i.e. no photograph which PW2 claimed that the police took at the premises was tendered, goods allegedly stolen were not tendered, the electronic stolen by the Appellant as stated by the Pw2 were not tendered. Hence, failure to tender any of
 F the above mentioned resulted to absence of no corroboration to the confessional statements.

Counsel also pointed out the contradiction in the evidence of the Prosecution as to who first saw the corpse of the late Obioma Nwokocha between the PW2, PW3, all these contradictions ought to
 G create doubt in the mind of the trial Judge which ought to be resolved in favour of the Appellant. Learned Counsel also pointed out the defence of alibi claimed by the Appellant. It was his submission that the defence of alibi was not investigated by the police. The trial Court ought to have held that Prosecution was deemed to have
 H admitted the defence of alibi, cites *Odu V. State* (2000) NWLR (Pt.664) 283 at 297.

Learned Counsel then urged this Court to allow the appeal and set aside the conviction and sentence imposed on the Appellant. Learned Counsel to the Respondent also adopted his brief of argu-

ment and urged us to dismiss the appeal.

On his issue 1, he submitted that the Exhibits 4 and 5 have been proved to be confessional statements and where a confessional statement has been proved it will be treated as the best evidence, cites *Nwangbome v. The State* (1994) 2 NWLR (Pt. 327) 380 at 397. In the instant case, these statements have been tested in the trial within trial before they were admitted by the trial Judge, the case of *Emeka v. The State* (2001) 6 SCNJ 259, and *Yusuf v. The State* (1976) 6 SC 167 were cited. Learned Counsel pointed out that at the trial within trial the appellant's position was that the statements were not obtained voluntarily that they were obtained by threat, force and intimidation while in another breath he denied ever making any statement at all. He therefore contended that the admissibility of an extra judicial statement of an accused person is objected to not on ground of involuntariness but on ground that the accused did not make the statement the court must first admit the statement even without holding any trial within trial. He cited the case of *Nsofor v. The State* (2002) 10 NWLR (Pt.775) 274. The retraction or otherwise of a statement merely gives to the weight to be attached to the statement. It was the learned Counsel's submission that the two lower Courts were *ad idem* on the application of the tests after admission of the statement as enumerated in the case of *Nwachukwu v. The State* (2007) All FWLR (pt.390) 1350 at 1410.

Learned Counsel contended that the facts and circumstances of the arrest of the Appellant and of taking the statement which not only revealed the Appellant's involvement in the commission of the crime but also led to the arrest of the 1st accused have indeed provided the needed corroboration of the veracity of the Appellant's statement made to the police.

The evidence of Pw4 in whose house the Appellant was arrested negated the Appellant's evidence, that he was arrested while going to work. Learned Counsel further submitted that the injury sustained by the Appellant when he was being arrested at the Pw4's residence is not in any way related to or affected the voluntary statement he made after due caution, at the police station. Learned Counsel referred to Exhibit 4 in which the 1st accused was mentioned by the Appellant as not only a member of their gang but the leader of the group.

On issue No.2, learned Counsel to the Respondent submitted that evidence was led at the trial which established the ingredients of the offence of robbery that took place at Rockfield petroleum filling station against the Appellant who was proved to have participated in the crime. PW1, PW2 and PW3 as well as the viva voce evidence of the 1st accused all confirmed that the Mini-Mart of the Rock Field filling station was burgled by robbers in the early hours of 10/10/03. That though the Appellant was not arrested at the scene of the robbery, the Prosecution was able to demonstrate his involvement at the commission of the crime. There was the circumstance of the arrest of the Appellant which led to the arrest of his co-accused and this has negated the defence of alibi.

With respect to the offence of culpable homicide, it was submitted that the death of Obioma Nwakocho was not in doubt. PW3 confirms the death, the police team led by PW2 that recovered the deceased's corpse from the scene to UITH mortuary also confirmed the death, and the PW1 also confirmed it. Above all, the Appellant in the statement admitted killing the deceased after tying his hands and legs and struck him with iron rod on the head. It was his submission therefore that the ingredients of both the offence of culpable homicide and robbery were proved against the Appellant beyond reasonable doubt. Learned Counsel pointed out that the defence of alibi was raised for the first time at the trial and not at the time of making the statement to the police or at the earliest opportunity. For the defence of alibi to be sustained, it must be raised timeously and promptly by the accused person and the duty is on him, i.e. the accused, to provide the police with information of his alibi. It is when this is done that the burden shifts to the Prosecution to investigate the alibi, cited *Balogun v. A-G Ogun State* (2002) 6 NWLR (Pt.763) 512 at 536. This Court was therefore urged to dismiss the appeal and affirm the decision of the lower Court. I have painstakingly set out the facts of this case and submissions of the learned Counsel to the parties.

It is a settled principle of law that Courts can convict an accused person solely on his confessional statement if the statement was given freely, voluntarily and without threat of force by the accused person. See *Saidu v. The State* (1982) 4 SC 41, *Adebayo v. A-G. Ogun State* (2008) 2 SCNJ 352. Equally, a voluntary confession

made by an accused person is relevant and admissible against him at the trial. Where no objection is raised to the admissibility of a confessional statement, it is admitted in evidence. It is for the trial Judge to determine at the end of hearing, whether the contents of the statement are true as part of his determination of the truth or otherwise of the whole case presented by the Prosecution. See *Omoju v. The Federal Republic of Nigeria* (2008) 2 SCNJ 197. B

The test to be adopted in determining whether the confessional statement is true are-

i. Whether there is/are circumstance(s) that make (s) it probable that the confession is true and correct. C

ii. Whether the accused person had the opportunity of committing the offence charged.

iii. Whether the confession is consistent with other facts proved at the trial. D

iv. Whether there are some other corroborative evidence no matter how slight. See *Nwachukwu v. The State* (2007) All FWLR (pt. 390) 1380 at 1410 and *Borno v. The State* (supra) at 433 - 434.

Also settled is the principle that where a confessional statement is direct, positive and properly proved, it is sufficient to sustain a conviction without any need for corroborative evidence as long as the Court is satisfied with its truth. See *Henry Odeh v. Federal Republic of Nigeria* (2008) 4 SCNJ 50. Thus, a retraction of a confessional statement in testimony in Court by accused person does not affect its potency so long as it was freely and voluntarily made and Court is satisfied that it is true; see *Golden Dibia & ors v. The State* (2007) 3 SCNJ 160. E

The confessional statements in question were subjected to trial within trial. In the trial within trial the Appellant denied making any statement at all to the police, whereas at the hearing of the substantive case he stated that he was forced to thumbprint exhibits 4 and 5. That is, he made those statements under duress. The Appellant cannot be allowed to approbate and reprobate. I have no doubt in my mind that he was not saying the truth. F

A close perusal of the exhibits give a graphic account of how the Appellant and his co-accused committed the offence. The Appellant in his statement dated 21/10/2003 exhibit 4 stated thus:- H

"I started to steal and broke into peoples houses for over 2

months ago. Members of group are:-

1. Suleiman M. Who has left the city of Ilorin to Ajase-Ipo Kwara State.

2. Abu Ali M. Ode Alfanya Ilorin;

3. Smale M. O. Abdullahi Ali, and

B 4.) Soladipo M.

5) One Mathew M. is a long member of group. The leader of the group is Suleiman who now lives at Ajase-Ipo..."

C In exhibit 5 statement dated 22/10/03, the Appellant gave an account of what happened as follows:

"Thursday 9th October, 2003 at about 10.30 p.m. I left my place to Rockfield Petroleum to meet Silas Sule Mohammed who was night guard at the Filling Station. Before this time I have had arrangement with Silas Mohammed to come to the Filling Station to D steal things in the Mini-Mart and that we shall prevent the other night guard from disturbing us from carrying wit (Sic) the operation. Silas Sule brought the move that we would use drugs so that he would sleep away throughout the operation. On arrival at the scene we E tight up his legs, and hands and we hit him with hard object and killed him. It was thereafter that we removed the block and gained entrance into the mini - mart".

It is my view my lords, that this confession is direct and gave the true account of how the Appellant committed the crime. The trial F Court was right in convicting and sentencing the Appellant for the offences charged and indeed the lower Court was equally right in affirming the judgment of the trial Court. It must be pointed out that the trial Court did not solely rely on the confessional statement in finding the Appellant guilty of the offence charged, even though it G has the right to so do. There was also the evidence of PW1, PW2 and PW3, which corroborated the Appellants' confessional statements. In view of the above, I resolve this issue in favour of the Respondent. Having resolved issue No.I in favour of the Respondent, the issue No.II as formulated by the respective parties has been adequately H taken care of.

I have had the opportunity of reading in advance the all important lead Judgment rendered by my learned lord Musa Dattijo Muhammad. I entirely agree with it. For this my little analysis and the more articulate reasons adumbrated in the lead judgment I too find

no merit in this appeal. Therefore this Appeal fails and it is hereby dismissed. The Judgment of the Court of Appeal affirming the decision of the trial Court is hereby affirmed. The decision of the lower Court, for the avoidance of any possible doubt, delivered on 11/2/2011 is hereby affirmed.

B

NGWUTA JSC

I had the privilege of reading in advance the lead Judgment of My Noble Lord, Muhammad, JSC and I entirely agree with the reasoning and conclusion therein.

C

In the trial within trial, the trial Court came to the conclusion that the Appellant's confessional statement was made voluntarily. This was a finding of fact, affirmed by the Court below. Appellant offered no reason for this Court to disturb a concurrent finding of the two Courts below.

D

For the above and based on the fuller reasons in the lead judgment, I also dismiss the appeal as it is devoid of merit.

E

ARIWOOLA JSC

I had the opportunity of reading the draft of the lead judgment of my learned brother, Dattijo Muhammad, JSC just delivered. I am in total agreement with the reasoning and the conclusion arrived thereat.

F

The Appeal is against the judgment of the Court of Appeal, Ilorin Division which was delivered on the 11th day of February, 2011, whereby the Appellant's appeal was adjudged unmeritorious and dismissed.

G

The Appellant and one other person had been charged with the offences of robbery punishable under Section 1 of the Robbery and Firearms (Special Provisions) Act, Cap. 308, Laws of the Federation of Nigeria and causing death of one Obioma Nwokocha, a Security Guard employed by Rockfield Company. They were found guilty, convicted and sentenced for lesser offence not punishable with death contrary to Section 224 of the Penal Code.

H

He had appealed against the judgment of the trial Court and the appeal was dismissed while the conviction and sentence to 21

years and 14 years imprisonment respectively were affirmed by the Court below.

Further dissatisfied, the Appellant appealed to this Court by his Notice of Appeal containing two Grounds of Appeal.

B Parties filed and exchanged briefs of argument. The two Issues formulated by the Appellant in his brief of argument for determination of his appeal are as follow:-

C 1. Whether the alleged confessional statements contained in Exhibits 4 and 5 were of such quality that a Court of law could rely upon in convicting the Appellant of the offences with which he was charged.

2. Whether the Prosecution proved its case against the Appellant beyond reasonable doubt.

D It is clear from the argument of the learned Counsel for the Appellant that what is being attacked and challenged are the statements credited to the Appellant as confessional statements, which were admitted and marked Exhibits 4 and 5 respectively.

E What then is a confession? A confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime. A confession therefore, if voluntary, is deemed to be relevant fact as against only the person who made the said confession. See Section 27 of the Evidence Act. Inusa Saidu v. The State (1982) 4 SC 26, (1982) LPELR 2977. Henry F Odeh v. Federal Republic of Nigeria (2008) 13 NWLR (Pt.1103) 1, (2008) 6 SCM 162, (2008) LPELR 2205, (2008) 3-4 SC 1147.

G The two statements which were admitted as confessional statements of the Appellant have been quoted in the lead judgment, and I need not repeat same. There is no doubt, the Appellant resiled. He objected to the admissibility of the said statements on the ground that he did not make them voluntarily. This led to the conduct of trial within trial by the trial Court. But when testifying, the Appellant denied flatly that he ever made any statement at all when he was arrested. The total denial would ordinarily have led to the admission of H the statements without any conduct of trial within trial, but will depend on the weight to be attached to the statements.

However, upon consideration of the totality of the evidence adduced by both parties during the trial within trial, the trial Court in my view properly admitted the Appellant's statements.

Ordinarily, the issue of weight to be attached to confessional statements whether retracted or not, the test to be applied and followed by the Court had long been laid down in *R vs Sykes* (1913) 8 Criminal Appeal Report, 233 and approved by the West African Court of Appeal in *Kanu Vs The King* (1952/55) 14 WACA 30. A Judge is expected to pose the following questions for himself when faced with the weight to be attached to confessional statement in that circumstance. B

(i) Is there anything outside the confession to show that it is true? C

(ii) Is it corroborated?

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

(iv) Was the prisoner one who had the opportunity of committing the murder? See also, *Sahalatu Shazali Vs. The State* (1988)... D
NWLR (Pt.93) 164; (1988) 12 SC (pt.11) 58; (1988) LPELR 3040.

It has been held by this Court that a man may be convicted on his own confession alone; there is no law against it. Once the said statement is found to have been made freely and voluntarily. And it is proved to be consistent with the other facts which have been ascertained before the Court, an accused person can be safely convicted based solely on the statement. See *Copa Vs. The State* (1971) LPELR 1792 per Ademola, CJN. E

Reading through the Statements in Exhibits 4 and 5, one cannot be in doubt that they satisfied the test stated above. They sound freely and voluntarily made. I am therefore satisfied that the Prosecution proved the case beyond reasonable doubt to earn the conviction and sentence of the Appellant. The Court below also properly affirmed the decision of the trial Court. There was no perversity in the judgments of the two Courts below which could have warranted the interference of this Court in the findings and final decision of the Courts. The decisions were according to law. F

For the above reasons and the fuller and detailed reasoning in the lead Judgment of my learned brother, I too will dismiss the appeal for being unmeritorious. It is dismissed. The decision of the two Courts below is affirmed. Appeal dismissed. H