

SUPREME COURT OF NIGERIA
FRIDAY 24TH MAY, 2013. SC. 247/2010 (CONS.)
**CORAM:- W. S. N. ONNOGHEN, M. S. MUNTAKA-
COOMASSIE, N. S. NGWUTA, O. ARIWOOLA,
M. D. MUHAMMAD, JJSC**

1. SANI ABDULLAHI
2. ABDULLAHI BLACK APPELLANTS
3. HUSSAINI DANJUMA
V.
THE STATE RESPONDENT

APPEALS - Issue - Formulation - Basis - Issue must relate to a ground
- Which challenges the validity of ratio or decision - Being appealed
against (H1)

SUPREME COURT - Appeals - Fresh issue - Leave must be sought
and obtained to raise such issue - Otherwise the court will be inca-
pable of determining the issue (H2)

CRIMINAL PROCEDURE - Confession - Objection to - In raising
objection as to voluntariness of his confession - Being tendered as
exhibit - Accused must be categorical and specific (H3)

CRIMINAL PROCEDURE - Confession - Admissibility - Involuntary
confession is inadmissible - But accused who denies making state-
ment at all - Will be seen as resiling from the one he voluntarily made
- And that fact does not render the statement inadmissible (H4)

CRIMINAL PROCEDURE - Confession - Corroboration - Convic-
tion not founded on evidence on record as per the charge - But on
mere confessional statement - Cannot stand on appeal (H5)

FACTS

Prosecutor/respondent's case at the High Court of Niger State
is that accused/appellants while posing as policemen took away one
Binta Garba from her boyfriend and against her consent, individu-
ally had sexual intercourse with her. Appellants were alleged to have

attacked PW1 in the process. The matter was later reported to the police at Suleja by her boyfriend (i.e. PW1). Appellants were subsequently identified and arrested as the culprits. Appellants' confessional statements were taken by PW2. Appellants were subsequently arraigned before the court for rape contrary to section 283 of the Penal Code and inflicting body injuries contrary to section 265 of the Penal Code. However, during the trial, appellants' counsel objected to the admissibility of the statements on the ground that appellants did not make the statements. The court however admitted the statements in evidence. The victim of rape did not testify at the trial.

Appellants in appeals Nos. SC.247/2010 and SC.247A/2010 claimed to be innocent in the criminal charge. They rather stated that they met appellant in appeal No. SC.247B/2010 at the crime scene and had pleaded with some rapists to spare the girl in question. The third appellant also claimed not guilty. In its judgment, trial court found each appellant guilty of attempted rape punishable under the Penal Code. Appellants were thus convicted as charged. Dissatisfied, appellants appealed to the Court of Appeal Abuja. The court affirmed the decision of the trial court. Aggrieved further, appellants appealed to Supreme Court. Respondent raised preliminary objection to ground one of the Notice of Appeal in appeals nos: 247/2010 and 247B/2010. It argued that appellants cannot raise the issue therein since same had not been raised at and decided by the Court of Appeal.

ISSUES FOR DETERMINATION

“(a) Whether the Appeal Court erred in affirming the judgment of the trial Court based on the confessional statements of the accused; which the Accused objected to and denied making any statement.

(b) Whether the Court of Appeal erred in law when it held that the prosecution proved its case beyond reasonable doubt.”

HELD (Unanimously allowing the appeals in part per **MUHAMMAD JSC**)

APPEALS - Issue - Formulation - Basis

1. The principle must be restated at this stage that an issue for

determination in an appeal must relate to a ground of appeal which challenges the validity of the ratio of the decision being appealed against. Where the ground of appeal, the issue which purports to have been distilled therefrom do not arise from the decision appealed against, both are incompetent.

Put differently, an appeal presupposes the existence of some decision appealed against. In the absence of such a decision on a point there cannot, therefore, possibly be an appeal against what has not been decided. (p. 1989 A)

SUPREME COURT - Appeals - Fresh issue

2. Again, it is trite that any aspect of the trial court's decision the two failed to appeal against and had determined by the court below, such decision persists and cannot, being a fresh issue, be raised in this Court except with leave sought and obtained. Appellants' failure to seek and obtain leave in respect of their issues under reference renders this Court incapable of proceeding on and determining those particular issues. (p. 1990 B)

CRIMINAL PROCEDURE - Confession - Objection to

3. In raising an objection at trial as to the voluntariness of his confessional statement being tendered as an exhibit, the accused must be categorical and specific the tenor of the objection he raises. (p. 1997 A)

CRIMINAL PROCEDURE - Confession - Admissibility

4. The law only excludes as irrelevant a confessional statement that was not voluntarily made. An accused who denies making any statement at all and seeks the rejection of one the prosecution asserts he has made would be seen as resiling from that which he indeed voluntarily made. That fact does not in law render the statement, if confessional, inadmissible. (p. 1997 B)

CRIMINAL PROCEDURE - Confession - Corroboration

5. It must be stressed that once there is nothing outside the confessional statements of the appellants to base their con-

viction under any of the heads of charge for which they were tried, the trial court's decision convicting them for the charges as affirmed by the court below cannot enure on appeal. It does only if founded on evidence on record other than their confessional statements. The testimony of PW1 is only to the effect
B that his girlfriend was forcefully removed from his residence and subsequently returned. Nothing more. The evidence of PWII equally remains unavailing to the respondent.

In the circumstance, therefore, learned appellant's counsel is right in his submission that the decision of the court below affirming the conviction of the appellant in appeal No. SC.247/2010 for rape, proof of which is not borne by the evidence on record, is perverse. I also agree with learned appellant's counsel in appeal No. SC.247B/2010 that the
C lower court's affirmation of the trial court's decision convicting the appellant therein under the 2nd head of charge is equally perverse for the same reason, which reason explains my resolution of the 2nd issue in favour of the two appellants. In consequence, the two appeals, Nos. 247/2010 and 247B/
D 2010 succeed in part. (p. 1998 D)
E

NOTABLE POINTS OF INTEREST

MUHAMMAD JSC

F 1. Supreme Court hears appeal from Court of Appeal

The two appellants must further be reminded that this Court by virtue of Section 233 of the 1999 Constitution (as amended) has jurisdiction to hear and determine only appeals from the decisions of the Court of Appeal and not from the decision of the trial court.

G (p. 1990 A)

2. Confession – Meaning of

The court below has correctly stated the principle that by virtue of Section 27(1) and (2) of the Evidence Act a confessional statement is
H an admission made at any time by a person charged with certain offences stating or suggesting that he committed the offences. It is equally part of the principle that a confessional statement is deemed to constitute relevant facts against the person who made it only if

voluntarily given by its maker and/or obtained from him.
(p. 1994 C)

3. Conviction may be based solely on confession

I am in complete agreement with learned respondent's counsel that it is not the law that a confessional statement of an accused person must, in all cases, be corroborated to entitle the trial court convict the accused for the offences the accused admitted having committed. This Court in numerous of its decisions has been emphatic, and the court below has in its decision towed the line, that a conviction may be based solely on a confessional statement once the confessional statement is direct, positive and unequivocal. Indeed in *Nwachukwu v. State* (2007) 17 NWLR (part 1062) 31 at 70, a case alluded to by both sides in each of the three appeals, the confessional statement of an accused that is positive, direct, and voluntarily has been held to be the best evidence a criminal court can conveniently admit to convict its maker. (p. 1996 C)

NGWUTA JSC

4. Trial within trial – When conducted

The exhibits referred to are appellant's Confessional Statements. Now trial within trial is resorted to only when the voluntariness of the confessional statement is in issue. If the accused person admits making the statement but claims it was coerced out of him, the trial Court has a duty to embark on a trial within trial to determine the voluntariness, vel non, of the confession.

The Court may admit the statement if it is satisfied from the trial within trial, that it was voluntarily made. On the other hand, when the accused retracts his statement or says he did not make a statement at all, trial within trial is not appropriate. (p. 2000 A)

REPRESENTATION

Abdullahi Haruna Esq. with S. G. Ogbogboyibo Esq. and M. O. Ibe, for the appellant in appeal No. SC.247/2010;

Oluwakemi Balogun Esq. with Moyosore Okesaju Esq. and Sherifat Balogun, for the appellant in appeal No. SC.247A/2010.

T. O. Busari, for the appellant in appeal No. SC.247B/2010

Rotimi Ojo Esq. with Eucharia Nwankpa, Taiwo Adebale, George

Halliday, Joy Umoren (Mrs.), Jacob Omini Usang and Matilda, for the respondent in the three appeals

CASES REFERRED TO

- Babalola v. State (1989) 4 NWLR (pt. 115) 264
B Ubeirko v. State (2005) 5 NWLR (pt. 919) 645
Osunye v. State (1999) 5 NWLR (pt. 604) 548
Ehot v. State (1993) 5 SCNJ 65
Aonge v. IGP (1959) SCNLR 516
C Akpan v. State (2000) 12 NWLR (pt. 682) 607
Onubugu v. State (1974) 9 SC 1
Omini v. State (1999) 12 NWLR (pt. 630) 168
Yongo v. COP (1990) NWLR (pt. 148) 103
Olalekan v. State (2001) 18 NWLR (pt. 793) 824
D Nsofor v. State (2004) 18 NWLR (pt. 905) 292
FRN v. Iweka (2013) 3 NWLR (pt. 1341) 285
Onyeye v. State (2012) 312 LRCN 107
Oseni v. State (2012) 5 NWLR (pt. 1293) 351

E **STATUTES REFERRED TO**

Penal Code, ss. 79, 265, 283, 294
Constitution of the Federal Republic of Nigeria 1999, s. 233
Evidence Act, s. 27(1)(2)

F **LEAD JUDGMENT BY MUHAMMAD JSC**

- This is an appeal against the decision of the Court of Appeal, Abuja Division, affirming the judgment of the Niger State High Court convicting and sentencing the appellant for offences contrary to Sections 265, 283 read together with Sections 79 and 294 of the Penal Code. It is pertinent to state that the appellant, Sani Abdullahi, was tried, convicted and sentenced by the latter court, hereinafter referred to as the trial court, along with the others: Abdullahi Black and Hussaini Danjuma. Dissatisfied, all the three appealed to the former court, hereinafter referred to as the court below, whereat their appeals were dismissed.
- G
H

They have further appealed to this Court by their individual notices raising similar issues in their briefs of arguments for the determination of their respective appeals. This judgment relates to the

three appeals: SC.247/2010, SC.247A/2010 and SC.247B/2010 filed by Sani Abdullahi, Abdullahi Black and Hussaini Danjuma respectively. The facts of the case are brief and shall be told at once. The respondent's case is that the three appellants, on or about the 31st May, 2006 at about 1:00 am at Suleja, posing as policemen, carried away one Binta Garba from the room of her boyfriend at Bakin Kasuwa to Yangonon area of Suleja town and, against her consent, individually had sexual intercourse with her. B

Binta Garba's boyfriend, Abubakar Isah, testified as PW1 at the trial court. He reported the incident to the Emir of Suleja and subsequently to the "A" Division police station, Suleja. When brought back to his house by the appellants, Binta, he told the court, looked upset. Pursuant to the report lodged with the police, so many arrests were made from which multitude of the witness identified the appellants. C

It is PW1's further evidence that the appellants came to his house twice on the fateful date. They inflicted some injury on him and extorted the sum of six hundred Naira from him as well. He remained unshaken under cross-examination. PW2, Bala Ibrahim, a corporal attached to "A" Division Police Station Suleja was, on 1st June, 2006 detailed to investigate the case reported by PW1. Two of the appellants had already been arrested then. The 3rd appellant was later taken to the police station by his parents. PW2 it was, who obtained statements from the appellants. The appellants, he asserted, voluntarily gave him their statements which statements counsel objected to their being admitted on the grounds that the appellants did not make them. In overruling the objection and admitting the statements, the trial court at page 28 of the record of appeal held thus:- D

"Court: The claim that the accused persons did not make confessional statements is not a ground not to admit the statements in evidence. The statements of 1st, 2nd and 3rd accused persons are also admitted to exhibits "3", "4", "5" and "6" respectively." E

Respondent's efforts to make Binta Garba testify having yielded no result, the trial court forced it to close its case. The appellants gave evidence on their own behalf. The case of Sani Abdullahi and Abdullahi Black, the appellants in appeals Nos. SC.247/2010 and SC.247A/2010 is that on the 31st May, 2006 shouts of their neighbours woke them up from sleep. The two were sleeping in Sani Abdullahi's room. F

They decided to find out what was behind the shouts. Not far from PW1's house, they met some people and on enquiry they were informed that some people wanted to rape a girl. The incident, they told the court, took place around 12 midnight. They also told the court that they saw the appellant in appeal No. SC.247B/2010 at the scene. Along with the said appellant, they pleaded with the people intent on raping the girl to spare her. They however left the appellant behind at the same scene only to be arrested the following day for raping the very girl they urged others not to rape.

After their arrest, PW2 recorded the statements of the appellants in all the three appeals. They were later arraigned. The 3rd appellant, Hussaini Danjuma was also attracted by some noise in front of his residence and on approaching the scene he discovered that a girl had been arrested by some men. He pleaded that the men left the girl alone and in PW1's presence departed and went back home. It is his case also that he was arrested the next day.

At the end of trial, the trial court held in respect of the 1st head of charge at page 40 of the record as follows:-

"In view of the foregoing I find each of the accused persons guilty of attempt to commit rape punishable under S.283 of the Penal Code reads along with Section 95 of the same code as provided under Section 219 of the CPC and I convict them accordingly."

The Court having also held the ingredients of the offence under Section 265 of the Penal Code proved by the respondent found the appellants guilty and convicted them as charged. They were however discharged and acquitted for the offence under Section 294 of the code which the court held had not been proved by the respondent. At the court below, the appellants relied on a composite brief wherein three issues were raised for the determination of their appeal by that court. The issues read:-

"(1) Whether is it (sic) correct to say that the appellants made confessional statement and retracted them.

(2) Did the trial court consider the defence put forward by the appellants.

(3) Did the prosecution prove its case beyond reasonable doubt as required by law."

The respondent also distilled three similar issues for the lower court's consideration in the determination of the appeal before it.

Here, the appellant in appeal No. SC.247/2010, Sani Abdullahi has distilled five issues for the determination of his appeal. The issues read:

“1. Whether the failure of the Respondent to tender the Appellant’s statement made on 1/6/2006 (which was not confessional) does not amount to withholding of evidence under Section 149(d) of the Evidence Act (Ground 1).” B

2. Whether the lower court is right when it affirmed the decision of the trial court, that it was not necessary to have conducted a trial within trial when the Appellant objected to the admissibility of exhibits 3, 4, 5 and 6 (Ground 2).” C

3. Whether having regard to the evidence adduced at the trial Court, there was credible evidence outside Exhibits 3, 4, 5, and 6 (the alleged confessional statements) on which a finding of guilt on count 1 of the charge could be reasonably based (Grounds 3 and 4).” D

4. Whether the lower court was right when it substituted the verdict of guilt for “attempt to commit rape” with rape even though same was not an issue for determination placed before it. (Ground 5).”

5. Whether having regard to the totality of the evidence adduced by the Respondent, they had proved their case beyond reasonable doubt. (Grounds 6 and 8).” E

The appellant in appeal No. SC.247A/2010, Abdullahi Black, has raised three issues for the determination of his appeal thus:-

“1. Whether the Appeal Court erred in affirming the judgment of the trial Court based on the confessional statements of the accused, which the accused objected to and denied making any statement.” F

2. Whether the Court of Appeal was right to have relied totally on the findings of facts of the trial Court in convicting the Appellant, when the prosecution’s evidence at the lower court was contradictory.” G

3. Whether the Court of Appeal erred in law when it held that the prosecution proved its case beyond reasonable doubt.” H

The five issues distilled by Hussaini Danjuma for the determination of his appeal No. SC.247B/2010 read:-

“i. Whether the non-production of the non-confessional statement of the Appellant dated 1st June 2006 by the prosecution does

not amount to withholding of Evidence as envisaged by Section 149(1) of the Evidence Act Cap E14 Laws of the Federation of Nigeria 2004.

ii. *Whether the objection raised by the Appellant to the tendering of Exhibits 3, 4, 5 and 6 (i.e. the alleged confessional statement of the accused persons) amounts to a retraction or the voluntariness of the content of the said Exhibits.*

iii. *Whether the evidence of PW1 provides the necessary and credible corroboration against the content of Exhibits 3, 4, 5 and 6.*

iv. *Whether the fact finding of the lower court on the testimony of PW1 does not adversely affect the Appellant and, whether the substitution of offence by the lower court does not amount to miscarriage of justice.*

v. *Whether the findings of the lower court can be supported having regards to the evidence before the trial court.”*

The respondent’s brief in all the three appeals were settled by Rotimi Ojo Esq. and filed on 22nd November, 2012. The respondents have in respect of each of the three appeals, adopted the issues formulated by each of the appellant therein as the issues calling for determination in the particular appeal. These issues have already been reproduced earlier in this judgment. The respondent having earlier filed a Notice of preliminary objection in respect of ground one in appeals Nos. 247/2010 and 247B/2010, proceeded to argue the objection in relation to each of the two appeals in its relevant briefs. It is argued in the two briefs that ground 1 of each of the two Notices of Appeal does not arise from the judgment of the lower court appealed against. The appellant, it contended, cannot raise the issue since same had not been raised at and decided upon by the court below.

Furthermore, the appellant who has not sought and obtained leave of this Court before filing the ground and the issue it purports to give rise to cannot be heard on the very issue. Relying inter alia on *Unity Bank Plc v. Bouari* (2008) 7 NWLR (part 1086) 372 at 398, *Ogbe v. Asade* (2009) 18 NWLR (part 1179) 106 at 137: *Oluruntoba Ojo v. Abdulkareem* (2009) 13 NWLR (part 1157) 83 at 136 and *H Ogbu v. Onuazu* (2005) 14 NWLR (part 945) 331 at 344, learned counsel for the respondents in the two appeals urges that ground 1 and the issue purportedly distilled from the ground be struck out.

Appellants in appeals Nos. SC.247/2010 and SC.247B/2010 appear not to have joined issues with the respondent on the objec-

tion it raises and argues in respect of ground one of each of the Notices of the two appeals in the two respondents' briefs. That notwithstanding, learned respondents' counsel however remains on a very firm terrain regarding the objection he raises.

The principle must be restated at this stage that an issue for determination in an appeal must relate to a ground of appeal which challenges the validity of the ratio of the decision being appealed against. Where the ground of appeal, the issue which purports to have been distilled therefrom do not arise from the decision appealed against, both are incompetent.

Put differently, an appeal presupposes the existence of some decision appealed against. In the absence of such a decision on a point there cannot, therefore, possibly be an appeal against what has not been decided. See Babalola v. State (1989) 4 NWLR (Pt 115) 264. See Dagaci of Dere & Ors v. The Dagaci of Ebwa & Ors (2006) 1 SCNJ 160, and Mercantile Bank of Nig. Plc. & Anor. v. Linus Nwobodo (2005) 7 SCNJ 569.

The three issues formulated by and in respect of which the appellants asked the court below to set aside the trial court's decision they had appealed against invariably circumscribes the decision the court below is competent to give and against which the jurisdiction of this Court can lawfully be invoked. The three issues the court below was asked to determine have earlier on in this judgment been reproduced as well. My examination of the judgment of the court below being appealed against shows that the court's judgment is strictly limited to those three issues it was urged to consider and determine.

Equally reproduced earlier in this judgment are the issues the appellants invite this Court to consider in the determination of their respective appeals. It is glaring that only the three issues distilled by the appellant in appeal No. SC.247A/2010, Abdullahi Black, as replicated by the other appellants, relate to the decision of the court below being appealed against. Evidently, the 1st and 4th issues distilled by the appellant in appeal No. SC.247/2010, and the 1st issue formulated by the appellant in appeal No.247B/2010 do not relate to the decision of the court below, the two set out to challenge in this Court by their respective appeals. These issues are, on this score, incompetent and must necessarily be struck out. See Egbe v. Alhaji

(1990) 1 NSCC (vol. 21) (part 1) 306 and Dalek Nig Ltd v. Ompadec (2007) ALL FWLR (364) 204.

The two appellants must further be reminded that this Court by virtue of Section 233 of the 1999 Constitution (as amended) has jurisdiction to hear and determine only appeals from the decisions of the Court of Appeal and not from the decision of the trial court. See A-G Anambra v. A-G Federation & Anor. NSCQLR (vol 22) (2005) 572 and A-G Oyo State & Anor v. Fairlake Hotels Ltd & anor LC (vol.4) (2012) 319.

Again, it is trite that any aspect of the trial court's decision the two failed to appeal against and had determined by the court below, such decision persists and cannot, being a fresh issue, be raised in this Court except with leave sought and obtained. Appellants' failure to seek and obtain leave in respect of their issues under reference renders this Court incapable of proceeding on and determining those particular issues. See Godwin v. C.A.C. (1998) 14 NWLR (part 584) 162 and Kwajaffa v. BON Ltd (2004) 13 NWLR (part 889) 146. The issues are accordingly hereby discountenanced. In the result, it is my firm and considered view that the just determination of the three appeals requires the resolution of only the 1st and 3rd issues formulated by the appellant in appeal No. SC.247A/2010 as similarly distilled by the appellants in the two other appeals to wit:-

“(a) Whether the Appeal Court erred in affirming the judgment of the trial Court based on the confessional statements of the accused; which the Accused objected to and denied making any statement.

(b) Whether the Court of Appeal erred in law when it held that the prosecution proved its case beyond reasonable doubt.”

The contention of each of the appellants under the 1st issue supra is that their conviction by the trial court as affirmed by the court below solely on the basis of his confessional statement is wrong in law. It is argued that their respective statements not being direct and positive, in the absence of any corroboration, cannot be the basis of a safe conviction by any reasonable tribunal. At the trial court, counsel to each of the three appellants argues, each accused has objected to his statement being admitted as same had not been made by him. The lower court's affirmation of the trial court's failure to

ascertain if indeed the appellants had made the statement ascribed to them is perverse. Learned counsel to the appellants variously rely on *Ubeirko v. State* (2005) 5 NWLR (part 919) 645 at 455, *Osunye V. State* (1999) 5 NWLR (part 604) 548 at 570, *Solomon Ehot v. The State* (1993) 5 SCNJ 65, *Alonge v. IGP* (1959) SCNLR 516, *Akpan v. The State* (2000) 12 NWLR (part 682) 607, *Omisade v. Queen* B (1964) 1 ALL NLR and urge that the issue be resolved in their favour.

Under the 2nd of the two issues identified for the determination of the appeals, learned counsel for all the three appellants submit that the testimonies of PWI and PWII do not provide the required reliable corroborative evidence necessary for the conviction of the appellants. Evidence outside the confessional statement of the appellants, learned counsel contends, is a necessity to warrant a conviction. Indeed, it is contended, the evidence proffered by the two witnesses who never witnessed the commission of the offences the appellants are convicted for being hearsay is of no use. Counsel refers D to pages 12 and 24 to buttress their point.

In further argument, it is submitted that the material contradictions in the testimonies of PWI and PWII render reliance on them by any reasonable tribunal impossible. The conflict in the evidence of the two witnesses that remain unexplained disentitles the court from acting on the evidence that leads to doubt in the case of the respondent. On the authority of *Onubugu v. State* (1974) 9 SC 1 and *Omisade v. R* (1964) 1 ALL NLR 233 learned appellant counsel submit, the doubt the inherent conflict in the evidence of the prosecution creates is to be resolved in favour of the appellants. Failure of the two courts to have so decided entitles this Court to interfere. On the whole, it is urged that the two issues be resolved in favour of the appellants, their respective appeals allowed and the decision of the court below set-aside. Appellants in consequence are to be discharged and acquitted. G

In reply, learned counsel for the respondent in all the three appeals argues that the evidence of PWII, the investigating police officer who recorded the statements of all the appellants, shows that all procedures were duly complied with in obtaining the statements; that the statements were read to the appellants after which they voluntarily appended their signatures to them. The record of appeal, it is submitted, clearly shows that at the point of tendering the state- H

ments, learned counsel to the accused objected to their being admitted on the ground that the appellants did not make the statements. The affirmation of the trial court's decision overruling counsel's objection, submits learned counsel, is right in law. He further submits that the reliance of the appellants on the case of *Nwankwoala v. State* B (2006) 14 NWLR (Pt. 1000) 663, *Omini v. State* (1999) 12 NWLR (Pt.630) 168, *Yongo v COP* (1990) NWLR (Pt. 148) 103 does not further their case as the decisions are not applicable to their circumstances. Instead, learned counsel argues. It is the principle as stated in C *Nwachukwu v. State* (2007) 17 NWLR (Pt. 1062) 31 at 65-66 *Olalekan v. State* (2001) 18 NWLR (Pt. 793) 824 and *Ankpa v. State* (2008) 14 NWLR (Pt. 1106) 72 at 98-99 that applies to appellants' situation. The 1st issue, submits learned counsel, should be resolved against the appellants.

D Arguing the 2nd extant issue in all the three appeals, learned respondent counsel submits that the respondent's burden is to prove against the appellants the entire ingredients of the offences they are charged with beyond reasonable doubt. Counsel argues that the burden has been discharged against all the appellants. In discharging E that burden, it is submitted, the prosecution can do so by any or a combination of any of: (1) confessional statement (ii) circumstantial or (iii) direct evidence of an eye witness. The voluntary confessional statement of each of the appellants, learned counsel asserts, contain F proof of the two offences the appellants were tried for and convicted by the trial Court. No law requires the prosecution to employ a particular form of evidence, of the three, counsel submits, in the discharge of its burden. The inability of the respondent to call Binta, the victim of the offences the appellants are convicted for does not deroga G gate from the requirements of the law. Learned counsel relies on appellants' voluntary statements which, he submits, are direct and positive to insist that the lower court's judgment based on such concrete and lawful evidence cannot be interfered with.

H In my determination of the three appeals I shall simultaneously consider the two issues identified as having arisen for the determination of all the appeals. Two charges appellants are convicted for read:-

"1. That you Sani Abdullahi, Sani Abdullahi (Black) and Hussaini Danjuma on or about the 31st May, 2001 at Suleja within the Jurisdiction of this Honourable Court carried away one Binta Garba from

the room of her boyfriend Abubakar Isah at Bakin Kusuwa at 1.00am under the pretext that you were policemen, to one yangonon area, behind I.B.B. Market, Suleja, you each had sexual intercourse with her one after the other against her will and against her consent, you thereby committed an offence contrary to Section 283 of the Penal Code to be read together with Section 79 of the Penal Code. B

2. That you Sani Abdullahi, Sani Abdullahi (black) and Hussaini Danjuma on or about 31st May 2006 at Suleja within the Jurisdiction of this Honourable court beat up Abubakar Isah inflicting injuries on him while carrying away his girlfriend from him at her Bakin Kasuwa residence to be raped, you thereby committed an offence contrary to Section 265 of the Penal Code.” C

The Court below in affirming the trial court’s decision inter alia held at page 152 of the record of appeal thus:-

“In the instant appeal, a careful perusal of the judgment of the lower court showed that the trial court had tested and ascertained facts in the proceedings against the contents of Exhibits “3”, “4”, “5” and 6...” D

The Pw1 testified that appellants were among the people that came to his house on 31st day of May 2006 and carried away his girlfriend to an unknown place where she was raped. All the appellants except the 1st appellant in their statement confirmed that they raped the victim but in their evidence before the lower court they denied raping the victim i.e. Binta. But that denial notwithstanding, it is my view that their confessional statements were voluntary and unequivocal and the lower court was right in convicting them.” E F

The court proceeded on the point at p. 153 of the record as follows:-

“...The evidence of the appellants at the lower court was that their statements in exhibits 3, 4, 5 and 6 were made after they were tortured. It would be noted that this aspect of the appellant’s evidence is purely retraction of the confessional statements earlier made which does not in any way constitute a defence to the charges against the appellants. G H

The trial court reviewed the evidence at page 40 of the record of proceedings when (sic) the trial judge held that

‘I also observed that when the accused persons testified to court they all retracted their confessional statements...”

In my humble view the later retraction of the confessional statements made by the appellants would not affect its voluntariness.”

The court concluded at page 158 of the record of appeal that the respondent having proved the two offences the appellants stand trial for, the trial court is right to have convicted them. The questions the three appeals raise have been raised in and answered by this Court in a seemingly endless body of cases. The questions are: (i) what is a confessional statement and when is it safe to ground conviction solely on same? (ii) What is the prosecution’s burden and when, can it be said that same has been distorted?

The court below has correctly stated the principle that by virtue of Section 27(1) and (2) of the Evidence Act a confessional statement is an admission made at any time by a person charged with certain offences stating or suggesting that he committed the offences. It is equally part of the principle that a confessional statement is deemed to constitute relevant facts against the person who made it only if voluntarily given by its maker and/or obtained from him. See *Nsofor v. The State* (2004) 18 NWLR (part 905) 292.

In the instant case, exhibits 3, 4, 5 and 6 are the statements of the appellants; PWII told the trial court he voluntarily obtained from the appellants. Exhibit 3, the extra judicial statement of Sani Abdullahi, the appellant in appeal No. SC.247/2010, is at pages 4 - 5 of the record of appeal, wherein he inter-alia states thus:-

“...On 01/06/2006 at about 0100 hrs myself and the following persons ...went to Abubakar’s house... and forcefully bring (sic) him and his girlfriend out of his room. First of all we identify (sic) ourselves to them as police officers, we take (sic) his girlfriend away from him, we took her to Yangongon market opposite IBB market Suleja and raped her, myself did not have sexual intercourse with the girl. Is the following persons that has (sic) sexual intercourse with the girl (1) Babale Chairman (2) Sule Fuska (3) Sule Tanko (4) Zubairu white house (5) Hassan Yanbiu. After the above mentioned persons had sexual intercourse with the girl, myself, and one Dantani took the girl back to her boy friend Abubakar where Babale Oji Chairman requested that he must give us N400 before we leave the girl for him, he actually gave the N400 to Babale Chairman ... I also joint (sic) them in attacking the complainant, Chairman Mohammadu Ali ... gave us cutlass that we should attack the complainant, we actually

...effected injuries on their body (sic) with cutlass and ...”

In exhibit 4, see page 6 of the record of appeal, Abdullahi Black the appellant in appeal No. SC.247A/2010 states in part as follows:- *“The truth of this case is that on the 01/06/2006 at about 1230hrs myself and the following persons ... went to one Abubakar house at Bakin Kasuwa Suleja and identify ourselves to him as Police Officers, that very time he was with his girlfriend who come to visit him right from Jos we forcefully take away the girl to Yangongon Area Suleja and had sexual intercourse with her after I had sexual intercourse with her I left them to my house, I don’t know who returned her back home, ... but later the same date we went and attacked the complainants and injured them with cutlass, I participated in the fighting. Chairman did not give us cutlass he is not aware of the fighting...”*

At page 8 of the record of appeal is exhibit 5, the statement of Hussaini Danjuma, the appellant in appeal No. SC.247B/2010 whereat he states in part thus:-

“I was in my house at Bakin Kasuwa Suleja one Babale Oji came and called me that one Abubakar has brought one girl into his room, we went and called the following (sic) person ... and jointly went to Abubakar house when we arrived ... ,we took the girl you (sic) Yangongon Area back of IBB Market Suleja and had Sexual Intercourse with her, Sule Fуска was the first person that has sexual intercourse (sic) with the give (sic) Babale Oji was the second person, Sani Zisko the third person, Sule Tanko the fourth person, I was the fifth person, Zubairu White House was the last person, when I finished I left them to my house...”

On the 1st day of June, 2006 Sani Black came and told me that fought with Abubakar the boyfriend to the girl we had sexual intercourse with I did not participated in the fighting that is all I know.”

Now, from the foregoing passages of the extra judicial statements of the appellants, what offences can any reasonable tribunal infer the appellants admitted having committed? It appears to me that it is only the appellant in appeal No 247A/2010, Abdullahi Black who by his statement, exhibit 4, admits the offences contained in the 1st and 2nd heads of charge in respect of which the trial court’s conviction of all the appellants the court below affirmed.

Abdullahi Sani, the appellant in appeal No. 247/2010 how-

ever clearly denies in exhibit 3, his extra judicial statement, having committed the offence of rape the trial court convicted him for and which conviction the court below affirms in spite of the finding to the contrary. He however admits committing the offences under the 2nd head of charge the trial court convicted him for which conviction the court below affirmed.

The appellant in appeal No.247B/2010, Hussaini Danjuma, on the other hand, while admitting committing the offence in the 1st head of charge for rape, denies inflicting on PW1 injuries, the offence under the 2nd head of charge the trial court convicted him for which conviction the court below equally affirmed.

I am in complete agreement with learned respondent's counsel that it is not the law that a confessional statement of an accused person must, in all cases, be corroborated to entitle the trial court to convict the accused for the offences the accused admitted having committed. This Court in numerous of its decisions has been emphatic, and the court below has in its decision towed the line, that a conviction may be based solely on a confessional statement once the confessional statement once the confessional statement is direct, positive and unequivocal. Indeed in *Nwachukwu v. State* (2007) 17 NWLR (part 1062) 31 at 70, a case alluded to by both sides in each of the three appeals, the confessional statement of an accused that is positive, direct, and voluntarily has been held to be the best evidence a criminal court can conveniently admit to convict its maker. See also *Akpan v. State* (2008) 14 NWLR (part 1106) 72 at 98 - 99 and *Olalekan v. State* (2001) 18 NWLR (part 793) 824.

In the instant appeals, all the appellants appear consumed in the argument that the trial court, in the face of the objection they raised when the respondent herein tendered exhibits 3, 4, 5 and 6 as exhibits, should have conducted a trial within a trial before admitting same in evidence. The court's failure in doing so and the lower court's affirmation of the trial court's stand on the point, in spite of the evident lapse, it argued, is fatal.

I am unable to agree with learned counsel to the appellants in all the appeals on this point. It is evident from the record of appeal that appellants' objection to the admissibility of exhibits 3, 4, 5 and 6, the statements of the appellants, is based purely on their assertion that the accused persons did not "make any confessional statements."

The objection is not that the exhibits be rejected because they were not voluntarily obtained.

In raising an objection at trial as to the voluntariness of his confessional statement being tendered as an exhibit, the accused must be categorical and specific the tenor of the objection he raises. B

The law only excludes as irrelevant a confessional statement that was not voluntarily made. An accused who denies making any statement at all and seeks the rejection of one the prosecution asserts he has made would be seen as resiling from that which he indeed voluntarily made. That fact does not in law render the statement, if confessional, inadmissible. C
In Akpa v. State (supra) this Court has held thus:

“Where an accused person denies making a confessional statement, the Trial Court expected to admit the statement in evidence as an exhibit and in its judgment decide whether or not such denial avails the accused persons. Thus, a confession does not become inadmissible merely because an accused person denies having made it. In this respect, a confession contained in a statement made to the police by a person under arrest is not to be treated differently from any other confession. In short, the denial of an accused person of making a statement to police is an issue of fact to be decided in the judgment as the issue does not affect admissibility of the statement.” E

From the foregoing, learned appellants’ counsel cannot simply be right in their insistence that the court below has erred in its affirmation of the trial court’s decision admitting and relying on exhibits 3, 4, 5 and 6, the extra judicial statements of the appellants the appellants retracted from in the course of trial. The 1st issue is therefore resolved against the appellants in all the three appeals. Both sides in the appeals are one and correctly too that the law requires the respondent to prove its case beyond reasonable doubt, this is a principle of great antiquity. The question here as raised by the appellants in furtherance of the 2nd issue in their three appeals is if the court below was right in affirming the trial court’s decision that the respondent has discharged that burden in respect of the offences for which all the appellants have been convicted. H

It must be stressed at this point that apart from their confessional statements only the evidence of PW1, in the manner it has,

remains relevant as to the facts required in proof of the charges against the appellants. The relevance of the testimony of PW1, it must however be stated, appears limited. The conviction of the appellants having proceeded on the basis of their confessional statements, they can only be lawfully convicted on the basis of the facts they confessed in their respective statements which facts constitute any of the offences they have been convicted for.

It has earlier been demonstrated in this judgment, through the passages extracted and reproduced from their respective confessional statements, firstly, that the appellant in appeal No. SC.247/2010 in exhibit 3, his statement, only admitted inflicting on PW1 the injury by virtue of which the appellants are convicted under the 2nd head of charge. In the same statement, the appellant denied raping Binta as alleged in the 1st head of charge.

The point has also been made that the appellant in appeal No. SC.247A/2010 admitted committing the offences under the 1st and 2nd heads of charge and that the appellant in appeal No. SC.247B/2010 admitted committing offence under the 1st head of charge only.

It must be stressed that once there is nothing outside the confessional statements of the appellants to base their conviction under any of the heads of charge for which they were tried, the trial court's decision convicting them for the charges as affirmed by the court below cannot enure on appeal. It does only if founded on evidence on record other than their confessional statements. The testimony of PW1 is only to the effect that his girlfriend was forcefully removed from his residence and subsequently returned. Nothing more. The evidence of PWII equally remains unavailing to the respondent.

In the circumstance, therefore, learned appellant's counsel is right in his submission that the decision of the court below affirming the conviction of the appellant in appeal No. SC.247/2010 for rape, proof of which is not borne by the evidence on record, is perverse. I also agree with learned appellant's counsel in appeal No. SC.247B/2010 that the lower court's affirmation of the trial court's decision convicting the appellant therein under the 2nd head of charge is equally perverse for the same reason, which reason explains my resolution of the 2nd issue in favour of the two appellants.

In consequence, the two appeals, Nos. 247/2010 and 247B/2010 succeed in part.

The lower court's decision in respect of appeal No. SC.247A/2010 affirming the decision of the trial court convicting the appellant therein for the two heads of charge, having evolved from direct, positive and unequivocal admission of the appellant that he has committed the two offences, however, endures. B

For the avoidance of doubt, while the conviction and sentences of the appellants in appeal Nos. SC.247/2010 and SC.247B/2010 for the 1st and 2nd heads of charge respectively are hereby set aside, their conviction and sentence for the 2nd and 1st head of charge respectively are, however, hereby further affirmed. C

In appeal No. SC.247A/2010 the lower court's affirmation of the trial court's conviction and sentence of the appellant therein for both heads of charge which have endured are hereby further affirmed, the appeal having totally failed. D

ONNOGHEN JSC

I have had the benefit in reading in draft the lead judgment of my learned brother MUHAMMAD, JSC just delivered. E

I agree with his reasoning and conclusion that the appeals are devoid of merit and should be dismissed and therefore order accordingly, as I have nothing useful to add. Appeals dismissed. F

MUNTAKA-COOMASSIE JSC

I have had the preview of the judgment just rendered by my learned brother Musa Dattijo, JSC. G

I entirely agree with the reasons and conclusions reached by him that the appeal lacks merit. I too hold that the appeal fails. Same is hereby dismissed.

NGWUTA JSC

I have read in draft the lead judgment just delivered by my Lord, Muhammad, JSC. While I entirely agree with the reasoning and conclusion therein, I wish to comment on Issue 2 in SC.247/ H

2010. It reads: “(2) *Whether the lower Court is right when it affirmed the decision of the trial Court, that it was not necessary to have conducted a trial within trial when the appellant objected to the admissibility of Exhibits 3, 4, 5 & 6 (Ground 2).*”

The exhibits referred to are appellant’s Confessional Statements.

B Now trial within trial is resorted to only when the voluntariness of the confessional statement is in issue. If the accused person admits making the statement but claims it was coerced out of him, the trial Court has a duty to embark on a trial within trial to determine the voluntariness, vel non, of the confession. See FRN v. Iweka (2013) 3 C NWLR (Pt. 1341) page 285 at 292 and 293. The Court may admit the statement if it is satisfied from the trial within trial, that it was voluntarily made. On the other hand, when the accused retracts his statement or says he did not make a statement at all, trial within trial D is not appropriate. See Onyeye v. The State (2012) 312 LRCN 107 at 113. Retraction does not, ipso facto, render the confessional statement inadmissible. If an accused takes the earliest opportunity to deny having made the statement, the denial may affect the weight the Court will attach to the confessional statement. It is, however, not a E reason to exclude the statement. See Itule v. Queen (1961) 2 SCNLR 214; Oseni v. The State (2012) 5 NWLR (Pt. 1293) 351 at 372-373, H-C.

Based on the above and the more comprehensive reasoning in the lead judgment, I also allow the Appeal Nos. SC.247/2010 and F SC.247B/2010 in part and affirm the decision of the Court below in SC.247/2010.

G **ARIWOOLA JSC**

I had the privilege of reading in draft the lead judgment of my learned brother, Dattijo Muhammad, JSC just delivered. His Lordship has meticulously and comprehensively dealt with the issues involved in the three appeals. I am in total agreement with the reasoning and conclusion arrived thereat. I have nothing more to add. Accordingly, I adopt them as mine and I abide by the consequential orders in the lead judgment.