

SUPREME COURT OF NIGERIA

FRIDAY 13TH JUNE, 2014. SC. 193/2011

**CORAM:- M. MOHAMMED, J. A. FABIYI, M. U. PETER-
ODILI, M. D. MUHAMMAD, K. M. O. KEKERE-EKUN, JJSC**

PATRICK OLUFEMI

KOLAWOLE OGEDENGBE APPELLANT

V.

THE STATE RESPONDENT

CRIMINAL PROCEDURE - Conviction - Confession - Voluntary confession which is direct and unequivocal - Is the best evidence - And may solely support conviction (H1)

CRIMINAL PROCEDURE - Conviction - Confession - Corroboration - Though desirable it is not a necessity - That corroborative evidence outside confession - Must exist before court convicts accused (H2)

COURTS - Finding - Neither CA nor SC can interfere with trial court's finding - Since they did not watch demeanor of the witnesses - During the trial within trial (H3)

CRIMINAL PROCEDURE - Confession - Test - Court should inter alia determine whether - There is anything outside the confession that makes it true - And that accused had opportunity of committing the offence (H4)

CRIMINAL PROCEDURE - Murder - Conspiracy - Proof - Appellant in Exhibit C admitted agreeing with DW2 - To commit the murder - Hence lower courts' findings on appellant's guilt - Cannot be faulted (H5)

FACTS

Before the High Court of Lagos State Ikeja, appellant and one other (DW2) were charged on two counts of conspiracy to commit murder and murder of Navy Captain Yetunde Peters (the deceased) contrary to sections 324 and 319(1) of the Criminal Code Law of

Lagos State. The case against appellant is that he was at the material time a driver to the deceased. Prosecution/respondent led evidence that sometime in September 1999, appellant and DW2 conspired to murder the deceased. In furtherance of their intention, appellant and DW2 stabbed and killed the deceased in her home in Ogudu area of Lagos State, wrapped the body in a rug, put it in the boot of her car and dumped same into the Lagos Lagoon along the Adeniji Adele area of the Third Mainland Bridge Lagos. There is also evidence to the fact that after disposing of the body, appellant and DW2 ransacked the house of the deceased and carted away valuables, including a Certificate of Occupancy in the name of the deceased.

It was in the process of trying to dispose of the deceased's landed property in the Lekki Area of Lagos State that appellant was apprehended. Appellant made confessional statement (Exhibit C) to the Police. At the trial, appellant objected to the admissibility of exhibit C on the ground that the same was not voluntarily made. A trial within trial was conducted and at the end of which the said exhibit was admitted in evidence. Upon resumption of full trial, respondent called five witnesses and tendered five exhibits in support. Appellant and DW2 testified in their defence. Eventually, appellant and DW2 were found guilty as charged. They were sentenced to seven years imprisonment each for the count of conspiracy and were sentenced to death for the count of murder. Dissatisfied, appellant proceeded to the Court of Appeal to challenge his conviction and sentence. The court dismissed the appeal and affirmed trial court's decision. Aggrieved further, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

(a) Whether the trial and indeed the lower courts were both right in convicting and sentencing the appellant primarily on the uncorroborated and retracted confessional statement (EXHIBIT C) of the Appellant.

(b) Whether the prosecution proved the necessary ingredient(s) of the offences of conspiracy and murder against the appellant beyond reasonable doubt as required by the law.

HELD (Unanimously dismissing the appeal per MUHAMMAD JSC)

Conviction - Confession

1. Firstly, it is undoubtedly the law that voluntary confession which is direct, unequivocal and positive may support conviction. Indeed, this court has held, too, that the voluntary confessional statement of an accused provides the best evidence to herald his conviction. It is thus a trite principle that there cannot be evidence stronger than the accused's direct, positive and unequivocal confession which alone, on the authorities, may support his conviction. (p. 2520 D)

Conviction - Confession - Corroboration

2. Secondly, though desirable, it is not a necessity that corroborative evidence outside the confession must exist before the trial court convicts the accused.

The principle remains, therefore, that the voluntary confessional statement of the accused person alone, without any corroborative evidence, suffices and, where solely relied upon by the trial court, will sustain a conviction. An appellate court's affirmation of the trial court's conviction of an appellant solely on the latter's direct, positive and unequivocal confessional statement cannot, therefore, be interfered with on a further appeal. (p. 2520 F)

COURTS - Finding

3. Neither the lower court nor this court had had the opportunity of seeing and observing the witnesses the respondent led during the trial-within-the trial, nay the substantive trial, as they testified on these facts. Neither court, therefore, can interfere with the trial court's finding which the appellant has not otherwise shown to be perverse. (p. 2521 D)

CRIMINAL PROCEDURE - Confession - Test

4. In *Bature v. The State* (supra), a case wisely cited and relied upon by learned respondent's counsel, this court restated the

principle which should guide trial courts in deciding whether or not to uphold a confession. The truth of the confessional statement, this court has repeatedly held, should be examined in the light of other evidence by determining whether:-

- (a) There is anything outside the confessional statement showing that the confession is true;**
- (b) That the facts contained in the confessional statement are true so far as they can be tested;**
- (c) That the accused had the opportunity of committing the offence;**
- (d) That the confession is possible;**
- (e) That the confession is consistent with other facts which have been ascertained and proved. (p. 2521 H)**

D Murder - Conspiracy - Proof

- 5. A community consideration of the excerpts of the evidence of PW2 and PW5 vis-à-vis the content of Exhibit 'C', appellant's confessional statement, absolves the lower court from the grudges the appellant urges we ascribe to it. The evidence proffered by the two witnesses justifies the lower court's inference that appellant did possibly confess in the manner contained in Exhibit 'C' and that the content of the said statement had indeed occurred. It is beyond doubt that in Exhibit 'C' the appellant does admit not only agreeing with the DW2, the 2nd accused, to kill their victim but the further fact that they did in fact kill the said Navy Captain Yetunde. The concurrent findings of the two courts on the guilt of the appellant cannot, therefore, be faulted. On the authorities, the findings must endure. The two issues relevant to the determination of the appeal are hereby resolved against the appellant. (p. 2523 H)**

NOTABLE POINT OF INTEREST

PETER-ODILI JSC

H 1. Murder – Ingredients of

In answering those questions I will refer to the ingredients of the offence of murder which as follows: That the deceased died

- (a) That the deceased died**

(b) That death of the deceased was caused by the accused.

(c) That the act or omission of the accused which caused the death of the deceased was intentional with knowledge that death or grievous bodily harm was its probable consequence. (p. 2541 A)

REPRESENTATION

B

Funke Agbor (Mrs.) with A. A. Abdulhameed for the A-G Lagos, for the Appellant

Ade Ipaye with Olabisi Ogungbesan DPD, Justine Jacobs, SSC and Akingbolahan Adewunmi, for the Respondent

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CASES REFERRED TO

Orisakwe v. State (2004) 12 NWLR (pt. 887) 258

Aiguokhian v. State (2004) 7 NWLR (pt. 783) 565

Agbo v. State (2006) 6 NWLR (pt. 977) 545

D

Onochie v. Republic (1956) NMLR 307

Ikpasa v. A-G Bendel State (1981) 9 SC 7

Akpan v. State (1992) 6 NWLR (pt. 248) 439

Bature v. State (1994) 1 NWLR (pt. 320) 267

Nsofor v. State (2004) 18 NWLR (pt. 905) 292

E

Shande v. State (2005) 1 NWLR (pt. 907) 218

Ona v. State (1985) 3 NWLR (pt. 12) 236

State v. Ogbubunjo (2001) 2 NWLR (pt. 698) 576

Idowu v. State (1998) 11 NWLR (pt. 574) 354

F

Aigbadion v. State (2000) 7 NWLR (pt. 666) 686

Amadi v. State (1993) 8 NWLR (pt. 314) 644

STATUTES REFERRED TO

Criminal Code Law Cap 32 Laws of Lagos State 1994, ss. 8, 319(1), G 324

Evidence Act 2011, ss. 28, 29, 183(3)

LEAD JUDGMENT BY MUHAMMAD JSC

This is an appeal against the judgment of the Lagos Division of the Court of Appeal, hereinafter referred to as the lower court, affirming the judgment of the Lagos State High Court, hereinafter referred to as the trial court, convicting the appellant and one Olatinwo Nurudeen Bright for the offences of conspiracy to commit murder

and murder contrary to Sections 324 and 319 (1) respectively of the Criminal Code Law Cap 32 Laws of Lagos State. The judgment of the trial court was delivered on the 12th February, 2004 while that of the lower court being appealed against was delivered on 9th March, 2010.

B The appeal is predicated on a Notice dated and filed on 6th January, 2012 containing seven grounds. The facts of the case that brought about the appeal are briefly stated herein under.

C It is respondent's case that sometime in September, 2009, the appellant, a driver to Navy Captain Yetunde Peters, who is now deceased, conspired with one Olatinwo Nurudeen Bright and murdered the said Navy Captain Yetunde Peters. Though there was no eye witness to the fact of the murder, it is asserted that the appellant and his co-conspirator, DW2, had murdered and wrapped the deceased D in a rug, conveyed the corpse in the boot of her car and dumped same in the Adeniji Adele Area part of the Lagos Lagoon. Appellant's conviction draws largely from Exhibit 'C', his confessional statement which admission in evidence the appellant stoutly objected to but failed.

E The appellant contended that PW5, ASP Ajibola Osayemen, the investigating Police Officer, had forced him to write his statement. Having admitted the appellant's statement in evidence and found it to be confessional, the trial court convicted the appellant for the two count charge. The instant appeal is sequel to the dismissal of F appellant's unmeritorious appeal by the lower court.

At the hearing of the appeal, parties adopted and relied on their respective briefs, earlier filed and exchanged, as their arguments for or against the appeal. The three issues the appellant considers to G have arisen for determination of his appeal read:-

(a) Whether the trial and indeed the lower courts were both right in convicting and sentencing the appellant primarily on the uncorroborated and retracted confessional statement (EXHIBIT C) of the Appellant.

H (b) Whether the prosecution proved the necessary ingredient(s) of the offences of conspiracy and murder against the appellant beyond reasonable doubt as required by the law.

(c) Whether the failure on the part of the prosecution to call witnesses to circumstantially link the Appellant with the murder of

the deceased did not amount to a gross miscarriage of justice.

The two issues distilled by the respondent as calling for determination in the appeal are:-

(a) Whether the lower courts were right in relying on the confessional statement of the Appellant (Exhibit C) having been held to have been voluntarily made and admissible in evidence. B

(b) Whether the Prosecution/Respondent proved the necessary ingredients of the offences of conspiracy and murder against the Appellant beyond reasonable doubt.

It is my considered view that the resolution of appellant's first two issues will adequately and justly determine the appeal. After all, it is the quality of evidence rather than the number of witnesses the respondent called to prove its case that counts. The two issues the respondent formulated for the determination of the appeal, it needs to be pointed out, are not dissimilar to the two appellant's issues D preferred for the determination of the appeal. C

Now, whether or not the statement the trial court relied upon to convict the appellant and the lower court further invoked to affirm the conviction is confessional is a question of fact.

Again, whether the respondent had led evidence which proved the guilt of the appellant beyond reasonable doubt is also a question of fact. E

The two courts in their concurrent findings answered both questions affirmatively. In his two issues suggested for the determination of the appeal, the appellant challenges these concurrent findings of fact of the two lower courts. He sets an onerous task for himself as this court is very hesitant to disturb such findings and obliges an appellant only where he successfully shows that the findings are perverse. The question to answer in resolving the two issues pertinent to the complaints the appellant raises, therefore, is whether the decisions of the two courts are based on the evidence on record or that in arriving at these decisions the courts have wrongly applied the law, substantive or procedural, to ascertained facts and, most importantly, if the lapse, if any is established, has occasioned a miscarriage of justice. See *Orisakwe v. State* (2004) 12 NWLR (pt 887) 258, *Aiguokhian v. State* (2004) 7 NWLR (pt 783) 565 and *Agbo v. State* (2006) 6 NWLR (pt 977) 545. F G H

On the first issue, learned appellant's counsel submits that only

such confessional statement of the appellant that comes within the purview of Sections 28 and 29 of Evidence Act 2011 can legally be used by the trial court against the appellant. In the case at hand, learned appellant's counsel further submits, the trial judge having not adequately tested the truth of appellant's statement, Exhibit 'C',
 B by reference to any evidence outside the confessional statement, the lower court cannot affirm the trial court's sole reliance on the statement to convict the appellant. The testimony of PW5 who recorded the statement from the appellant, it is contended, does not provide
 C the necessary corroborative evidence the law requires must exist to render the statement admissible and reliable. The lower court's affirmation of the trial court's contrary finding on the point at pages 301 - 302 manifestly occasions miscarriage of justice. Learned counsel buttresses his submissions with inter-alia, *Onochie v. the Republic*
 D (1956) NMLR 307; *Ikpasa v. AG Bendel State* (1981) 9 SC 7; *Akpan v. The State* (1992) 6 NWLR (part 248) 439; *Bature v. State* (1994) 1 NWLR (part 320) 267; *Nsofor v. State* (2004) 18 NWLR (part 905) 292 and *Shande v. State* (2005) 1 NWLR (part 907) 218, and urges that appellant's first issue be resolved in his favour.

E On the 2nd issue, it is contended that nothing outside the appellant's wrongly admitted extra judicial statement grounds his conviction. The evidence of all the witnesses the respondent called, it is submitted, does not establish appellant's guilt for the two offences
 F he has been convicted for. For one, it is argued, there is no eye witness account on appellant's alleged criminal conduct. The circumstantial evidence which ropes in the appellant, it is further contended, is weak and equivocal. The case against the appellant remains mere suspicion which does not take the place of legal proof. Learned counsel
 G relies on *Ona V. State* (1985) 3 NWLR (Pt 12) 236 and *State V. Ogbubunjo* (2001) 2 NWLR (Pt 698) 576.

Emphasizing by way of conclusion, learned counsel submits that since the respondent had failed to lead credible evidence in establishing its case the eventual affirmation of appellant's conviction
 H by the lower court is perverse. Relying further on *Idowu v. State* (1998) 11 NWLR (Pt 574) 354 at 370, *Aigbadion V. State* (2000) 7 NWLR (Pt 666) 686 and *Amadi V. State* (1993) 8 NWLR (Pt 314) 644 at 663-664, learned appellant's counsel urges that the issue be resolved in appellant's favour and his appeal allowed.

Responding, learned counsel to the respondent submits that the law is settled that a person can be convicted for an offence solely on the basis of his voluntary confession which is direct and positive. Counsel relies inter-alia on *Bature v. The State* (1994) 1 NWLR (part 320) 267 at 283, *R v. Obasa* (1962) 1 ALL NLR 645; *Alhabua v. The State* (supra) and *Obosi v. The State* (supra). Appellant's confessional statement, contends learned counsel further, was admitted in evidence after the trial court had conducted a trial-within-trial following appellant's objection that the statement was not admissible as same was not voluntary. Having ascertained that the statement was voluntary, the trial court admitted it in evidence and correctly relied on it to convict the appellant. The lower court, submits learned respondent's counsel, cannot interfere with the trial court's decision that evolved from the evidence on record. The lower court, contends learned counsel, rightly stated the position of the law on the issue at pages 297 - 298 of the record. He supports his submission with the decisions of this court in *Gbadamosi & 8 ors v. The State* (1992) 9 NWLR (part 266) 465 at 480, *Effiong v. The State* (1998) 5 SC 136 and *Akpa v. State* (2008) 4 - 5 SC (part 11) 1 at 22.

On the aspect of the issue that touches on the reliability of Exhibit 'C', the appellant's confessional statement, it is argued that the totality of the evidence on record determines the weight the statement should attract. The fact that appellant had retracted from the statement does not make the statement less reliable once evidence abound to facilitate that inference. The available evidence, submits learned counsel, makes the inference that the appellant had had the opportunity of committing the offences and that the confession was possible and logical as well. Indeed, learned counsel further submits, the testimonies of PW1, PW2 and PW5 go to show that Exhibit 'C' was in fact made by the appellant. Supporting his submission with the cases of *R v. Itule* (1961) 1 ALL NLR 462 (supra), *Afolalu v. The State* (2010) 16 NWLR (part 1220) 584 at 611, *Edoho v. State* (2010) 14 NWLR (part 1214) 651 at 693 and *Olaiya v. The State* (2010) 3 NWLR (part 1181) 423 at 438, learned counsel urges that the issue be resolved against the appellant.

On the 2nd issue for the determination of the appeal, learned respondent's counsel submits that the issue overlaps with 1st issue. The 2nd issue begs the question whether indeed evidence exists that

justifies the lower court's affirmation of appellant's conviction and sentence for the offences he stood trial. Relying on *Emeka v. The State* (2001) 14 NWLR (part 734) 666 at 683, *Igbele v. The State* (2006) 2 SC (part 11) 61 at 69, *Otufale v. State* (1968) NMLR 262, learned counsel submits that given Exhibit 'C' and the corroborative
 B circumstantial evidence, the lower court's affirmation of the trial court's conviction of the appellant for the offences of conspiracy and murder cannot be faulted. He urges that we so hold in resolving the 2nd issue against the appellant and dismissing the unmeritorious appeal.

C The terrain the appellant treads in this appeal is a very familiar one. It has gone grey from frequent use. Yet this court has remained resolute on the principles which must govern the two issues in which appellant's complaints are clothed. Learned counsel for the respondent has, in his submissions, identified with this court's persistent position regarding the issues under reference. Let us revisit the apex
 D court's position on these issues.

Firstly, it is undoubtedly the law that voluntary confession which is direct, unequivocal and positive may support conviction. Indeed, this court has held, too, that the voluntary
 E ***confessional statement of an accused provides the best evidence to herald his conviction. It is thus a trite principle that there cannot be evidence stronger than the accused's direct, positive and unequivocal confession which alone, on the authorities, may support his conviction.*** See *Alarape & ors v. State* (2001) 5 NWLR (part 205) 79 and *Ozana Ubierho v. State* (2005) 2
 F SC (part 1) 18.

Secondly, though desirable, it is not a necessity that corroborative evidence outside the confession must exist be-
 G ***fore the trial court convicts the accused.***

The principle remains, therefore, that the voluntary confessional statement of the accused person alone, without any corroborative evidence, suffices and, where solely relied upon by the trial court, will sustain a conviction. An appellate court's
 H ***affirmation of the trial court's conviction of an appellant solely on the latter's direct, positive and unequivocal confessional statement cannot, therefore, be interfered with on a further appeal.*** See *Akpan v. State* (2000) 12 NWLR (part 682) 607 and *Osetola v. State* (2012) 17 NWLR (part 1329) 251 at 278.

In the instant case, as correctly submitted by learned respondent's counsel, Exhibit 'C', appellant's extra judicial statement, was admitted in evidence after the trial court had concluded a trial-within-trial and found the statement, contrary to appellant's objection then, to be voluntarily given. The trial court remains best placed to adjudge whether or not the statement had met the requirements, the law, in Section 28 and 29 of the evidence Act 2011 puts in place. B

The issue whether or not Exhibit 'C', appellant's confessional statement, was voluntarily given by the appellant and/or recorded from him is an issue of fact. Decision on the issue touches on the credibility of the witnesses, particularly PW5 who recorded the statement and PW1 and PW2 who supplied evidence outside the confession establishing the fact that the appellant voluntarily made the confessional statement. C

Neither the lower court nor this court had had the opportunity of seeing and observing the witnesses the respondent led during the trial-within-the trial, nay the substantive trial, as they testified on these facts. Neither court, therefore, can interfere with the trial court's finding which the appellant has not otherwise shown to be perverse. See *Idowu v. The State* (2000) 7 SC (part 11) 50 at 62 – 63 and *Ikemson v. The State* (1989) 3 NWLR (part 110) 455. D

The stratum of appellant's grudges in this appeal is that even if the lower court is right in affirming the trial court's sole reliance on Exhibit 'C', appellant's confessional statement, in convicting the appellant, Exhibit 'C' does not establish the ingredients of the offences for which the trial court found him guilty. I disagree. E

Learned respondent's counsel is right that, firstly, Exhibit 'C' alone divulges all the ingredients of the two offences for which appellant has been convicted and, secondly, the trial court's finding of appellant's guilt, beyond Exhibit 'C', rests on corroborative evidence outside the confessional statement as well. The lower court's position, on the facts of the instant case, cannot, therefore, be said to be wrong. F

In Bature v. The State (supra), a case wisely cited and relied upon by learned respondent's counsel, this court restated the principle which should guide trial courts in deciding whether or not to uphold a confession. The truth of the G

H

confessional statement, this court has repeatedly held, should be examined in the light of other evidence by determining whether:-

- (a) **There is anything outside the confessional statement showing that the confession is true;**
- B (b) **That the facts contained in the confessional statement are true so far as they can be tested;**
- (c) **That the accused had the opportunity of committing the offence;**
- C (d) **That the confession is possible;**
- (e) **That the confession is consistent with other facts which have been ascertained and proved.**

In the case at hand, the appellant is convicted for the offences of conspiracy and murder in relation to which he states in Exhibit 'C',
D his confessional statement, inter-alia thus:-

"Mrs. Yetunde Peters now went inside her house with Ola. I was still rolling up the glasses of the Car when Ola came back to me that Mrs. Yetunde Peter said he should ask me if I want to eat and I said to him that I will. He Ola touch me and said come corporate with me, I want to strike this woman (sic) this knife, I was going after him Ola when he suddenly brought out a table knife and slaughter the neck of the women Yetunde Peters while I hold the woman leg hold he fight till he Ola cut off the neck. I then ask him Ola that now that this woman is dead how do we do the dead body because there are security Official by the main gate to the Ogudu G.R.A. He said I should not worry that he has something in his pocket that he will put in his mouth and nobody will stop us I Patrick and Ola Bright now put the dead body inside the Car and drive down to third mainland bridge, throw kid it, in the water and went back home (sic) and search house where we carted away with two bags, 2 AC TV and video Tape recorder, 5,000 franc and N4,000 and a C of a certificate and we went away (sic) with it. We sold the 2 A.C at Lawanson Street Ojuelegba and the video tape recorder was sold at Oshodi market."

H At pages 64 - 65 of the record PW2 states thus:-

"I know one Monday Eze. No my friend. I also know Sule Musa; I know Tajū and Tiri through Monday Eze the time he brought them from Lagos... Sometimes in the month of October 1999, one of my neighbour (sic) Christopher Oseghale (that is, PW4) brought

the 1st Accused (that is, the Appellant) to my house and introduce him to me as Tunde Peters and that they were childhood friends and that 1st Accused lost his mother 2 years ago then. The 1st Accused then brought out a certificate of occupancy of a land. He showed me the original and a photocopy. 1st Accused then told me that he wanted to travel abroad and that he wanted to sell the land belonging to her (sic) mother who was dead then.” B

At page 80 of the record of proceedings PW5 states inter-alia as follows:-

“Accused (that is, the Appellant) told me that he was not the only person that killed the deceased and that PW4 did not know about the matter but was only interested in the commission he would collect when the land is sold. The 1st Accused then took us to Ejigbo area in Lagos to see the 2nd Accused (that is, DW2).” C

The lower court in affirming the trial court’s findings on D appellant’s guilt held firstly thus:-

“In this appeal, the C of O which was found in possession of a total stranger who claims a relationship with the owner raises the presumption that he is either responsible for the disappearance of the deceased or he knows the person who caused the disappearance of the deceased. The two convicts said the owner of the C of O is dead.... None of the Appellants has been shown to be in such a close standing with the deceased that they should possess her personal property and attempt to sell it at the time her where about (sic) was unknown. Such is the conduct of a person who knows that the owner is not coming back because they have killed her.’ See pages 303 to 305 of the record of proceedings.” E

The court concluded thus:-

“... the evidence of the PW1, PW2 and PW5 provided sufficient materials for the inference that the two Appellants had guilty knowledge of the circumstances leading to the disappearance of the deceased. Their graphic extra-judicial statements were correctly admitted and relied upon by the learned trial judge in addition to the independent evidence put together.” F

A community consideration of the excerpts of the evidence of PW2 and PW5 vis-à-vis the content of Exhibit ‘C’, appellant’s confessional statement, absolves the lower court from the grudges the appellant urges we ascribe to it. The H

evidence proffered by the two witnesses justifies the lower court's inference that appellant did possibly confess in the manner contained in Exhibit 'C' and that the content of the said statement had indeed occurred. It is beyond doubt that in Exhibit 'C' the appellant does admit not only agreeing with the DW2, the 2nd accused, to kill their victim but the further fact that they did in fact kill the said Navy Captain Yetunde. The concurrent findings of the two courts on the guilt of the appellant cannot, therefore, be faulted. On the authorities, the findings must endure. The two issues relevant to the determination of the appeal are hereby resolved against the appellant.

The appeal is devoid of any merit. It is accordingly dismissed. The judgment of the lower court is hereby affirmed.

D

MOHAMMED JSC

On 12th February 2004, in a judgment delivered by Oduneye, J. of the High Court of Justice of Lagos State, the Appellant in this appeal and one Olatinwo Nurudeen Bright, were convicted on a two count charge of the offences of conspiracy to commit murder contrary to Section 324 and murder contrary to Section 319(1), respectively, of the Criminal Code Law CAP 32, Laws of Lagos State of Nigeria, 1994. The Appellant and his co-accused were accordingly sentenced to 7 years imprisonment for the count of conspiracy and for the offence of murder the convicts were sentenced to death.

Dissatisfied with his conviction and sentences, the Appellant then appealed to the Court of Appeal Lagos Division which after hearing the appeal, in a unanimous judgment delivered on 9th March, 2010 dismissed the appeal and affirmed the conviction and sentences pronounced upon the Appellant by the learned trial Judge of the High Court. Still aggrieved with the decision of the Court of Appeal, the Appellant is now before this Court on a further appeal by his Notice and Grounds of Appeal dated 6th January, 2012 and filed the same day and from which grounds of appeal, the following three issues were formulated in the Appellant's brief of argument -

“(a) Whether the trial and indeed the lower Courts were both right in convicting and sentencing the Appellant primarily on the un-

corroborated and retracted confessional statement (Exhibit 'C') of the Appellant.

(b) Whether the prosecution proved the necessary ingredients of the offences of conspiracy and murder against the Appellant beyond reasonable doubt as required by the law.

(c) Whether failure on the part of the prosecution to call vital witnesses to circumstantially link the Appellant with the murder of the deceased did not amount to a gross miscarriage of justice."

The Respondent however saw only two issues for determination as arising from the grounds of appeal.

The issues in the Respondent's brief of argument are –

(a) Whether the lower Courts were right in relying on the confessional statement of the Appellant (Exhibit 'C') having been held to have been voluntarily made and admissible in evidence.

(b) Whether the Prosecution/Respondent proved the necessary ingredients of the offences of conspiracy and murder against the Appellant beyond reasonable doubt."

These issues for the determination of the appeal have been carefully considered and effectively resolved resulting in the dismissal of the appeal in the lead judgment of my learned brother Musa Dattijo Muhammad, JSC, which I have had the privilege of reading before today and with which I have entirely agree. The appeal is indeed without merit because the conviction and sentences pronounced on the Appellant by the trial Court for the offences of conspiracy and murder under Sections 324 and 319(1) respectively of the Criminal Code Law of Lagos State, 1994, are fully supported by credible evidence on record. Although the Appellant in the course of his trial had retracted and challenged the voluntariness of his confessional statement made to the police, in a trial within a trial conducted by the trial Court as required by law, that confessional statement was found to have been voluntarily made and consequently admitted in evidence. See Akpa v. The State (2008) 14 N.W.L.R. (pt. 1106) 72.

The law is well settled that where an accused person facing the charge of murder makes a free and voluntary confession which is direct and positive, that evidence alone is sufficient to support the conviction of the accused person of that offence. See R. v. Obiasa (1962) 1 All N.L.R. 645, Obosi v. The State (1965) N.W.L.R. 119 at 123; Achabua v. The State (1976) 12 S.C. 63 at 63, Ntaha v. The

State (1992) 4 S.C. 1 and Bature v. The State (1994) 1 N.W.L.R. (pt.320) 267 at 283.

However, it is also the law that it is desirable to have outside the confessional statement some evidence of circumstances which make it probable that the confession was true. See Onochie v. Republic (1966) N.M.L.R. 307. In the present case, taking into consideration the confessional statement which had revealed why the corpse of the deceased was not traced after her murder by the Appellant who was her driver and his co-accused, coupled with the tracing of the Certificate of Occupancy of the deceased landed property to the possession of the Appellant, the conviction of the Appellant for the offences he was charged with on the evidence adduced by the prosecution, was quite in order. The Court below was therefore on very strong grounds in affirming the conviction and sentences on the Appellant.

In the result, I also see no merit at all in this appeal which is hereby dismissed.

FABIYI JSC

I had the advantage of reading before now the judgment just handed out by my learned brother - M. D. Muhammad, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal lacks merit and should be dismissed.

The facts of the matter culminating in this appeal appear sordid and really gruesome. The appellant and another accused were charged at the trial court for the offences of conspiracy to commit murder and murder of late Navy Captain Yetunde Peters. The appellant was her driver.

Along with D.W.2, they stabbed the deceased, wrapped her body with carpet, put same in car boot and went to dump it in the lagoon along Adeniji Adele Area, Lagos. From her house, they carted valuable properties including Certificate of Occupancy in the name of the deceased. In the process of disposing same, they were apprehended. The appellant made confessional statement which was admitted as Exhibit 'C'.

Based on the evidence garnered, the trial judge was properly addressed by the learned counsel on both sides of the divide. The

trial judge convicted and sentenced the appellant. His appeal to the Court of Appeal was dismissed. He has decided to further appeal to this court.

Before this court, briefs of argument were filed and exchanged. The three issues distilled on behalf of the appellant for determination read as follows:- B

(1) Whether the trial and indeed the lower courts were both right in convicting and sentencing the appellant primarily on the uncorroborated and retracted confessional statement (Exhibit C of the appellant). C

(2) Whether the prosecution proved the necessary ingredients of the offence of conspiracy and murder against the appellant beyond reasonable doubt as required by law.

(3) Whether the failure on the part of the prosecution to call vital witnesses to circumstantially link the appellant with the murder of the deceased did not amount to a gross miscarriage of justice. D

At this point, I wish to point it out that the offence of conspiracy in this type of heinous matter is often hatched in utmost secrecy. The circumstance of the matter must be carefully considered. In the case of Patrick Njovens v. The State (1973) 1 NMLR 331, this court per GBA Cooker, JSC (of blessed memory) pronounced as follows:- E

“When it is proposed to give evidence of happenings inside hell, it is only a matter of common sense to call one of the inmates of that place or one whose business is carried out in reasonable propinquity to hell and it must be surprising indeed to find even a lone angle fit and qualified for the assignment. Indeed it would be preposterous to look for such evidence in other directions.” F

The hatching and the mode of operation of the cruel act of killing and disposing of the body of the deceased can be clearly seen in the appellant’s confessional statement - Exhibit C. All things being equal, the appellant will not say something negative against his own interest. The trial court was right in finding him culpable based on his clear and positive confession and the court below was on a firm stand in affirming same. H

P.W.1 testified that the appellant and D.W.2 were the last to see the deceased alive. The appellant admitted same under cross-examination. The appellant and his cohort were, no doubt, enmeshed by

the ‘last seen doctrine’ and could not exculpate themselves from culpability. This is because the law raises a presumption that the person(s) last seen with a deceased person bear(s) full responsibility for any ensuing death as herein. See: *Egboghonome v. The State* (1993) 7 NWLR (Pt. 307) 383, *Igabele v. The State* (2006) 2 SC (Pt. 11) 61.

B On behalf of the appellant, it was contended that the prosecution failed to call some witnesses to circumstantially link the appellant with the murder of the deceased. It must be stressed here that in a criminal trial, a host of witnesses is not required by the prosecution to achieve proof beyond reasonable doubt. A single witness who gives
C cogent eye witness account on a vital point will suffice. See: *Odili v. The State* (1977) 4 SC 1; *Akpa v. The State* (2008) 4-5 SC (pt. 11) 1 at 18.

It is clear to me that the appellant was not in any way prevented from calling any witness he desired in disproof of linking him with the murder of the deceased. The appellant has no right to dictate to the prosecution the witnesses to call or not to call. This principle of law was well stated in *Ime David Idiok v. The State* (2008) 13 NWLR (Pt. 1104) 225.

E The two courts below made concurrent findings of fact on all crucial points in this heinous matter. Same have not been shown to be perverse in any respect. This court will not interfere with same. See: *Igabele v. The State* (supra) at page 71.

F There is no doubt about it that the prosecution proved the case beyond reasonable doubt. It is a clear case of men’s inhumanity to a benefactress. The conviction and sentence by the trial court as affirmed by the court below will serve as deterrence to other heartless human beings like the appellant herein.

G My learned brother said it all. For the reasons adumbrated in the lead judgment and the above points touched upon briefly by me, I too feel that the appeal is devoid of any atom of merit. It is hereby dismissed. I affirm the judgment of the court below without any form of hesitation.

H

PETER-ODILI JSC

I agree with the judgment and the reasoning just delivered by my learned brother, Musa Dattijo Muhammad JSC, and for empha-

sis of that support I shall make some comments.

This is an appeal against the Judgment of the Lagos Division of the Court of Appeal delivered on the 9th of March, 2010 in which that court unanimously affirmed the Judgment of the Honourable Justice J. A. Oduneye delivered on the 12th day of February 2004 where the appellant and one Olatinwo Nurudeen Bright who testified as DW2 were convicted on a two count charge of conspiracy to commit murder contrary to Section 324 and murder contrary to Section 319 (1) respectively of the Criminal Code Law, Cap 32, Laws of Lagos State, 1994. The trial court sentenced the appellant and DW2 to seven (7) years imprisonment for the count of conspiracy and to death for the count of murder.

The appellant not satisfied with the Judgment of the trial court appealed to the Court of Appeal or lower court or court below which court in turn dismissed the appeal and affirmed the judgment of the Court of trial court. Again dissatisfied the appellant has come before this court by a Notice of Appeal dated 6th January, 2012.

FACTS

The appellant and DW2 were charged before the High Court of Lagos State, Ikeja presided over by the Hon. Justice Oduneye on a two count charge of conspiracy to commit murder and murder of the late Navy Captain Yetunde Peters, contrary to Sections 324 and 319 (1) respectively of the Criminal Code Law of Lagos State.

In establishing its case the prosecution, now respondent tendered five exhibits and relied on the testimonies of five witnesses. The appellant and DW2 testified for themselves in their defence. The facts that came to light during the trial are that sometime in September 1999, the appellant and DW2 conspired together to murder Captain Yetunde Peters (the deceased), at the material time the appellant was the driver of the deceased. Also emerged is that the appellant and DW2 stabbed the deceased in her home in Ogudu GRA, Lagos State, wrapped the body of the deceased in a rug, put the body in the boot of her car and dumped same in the Lagoon along the Adeniji Adele area of the Third Mainland Bridge, Lagos.

The prosecution also led evidence, to establish that after disposing of the body, the appellant and DW2 ransacked the house of the deceased and carted away valuables, including a Certificate of Occupancy in the name of the deceased. It was in the process of

trying to dispose of the landed property belonging to the deceased in the Lekki Area of Lagos State that the appellant was apprehended. Among the exhibits relied upon by the prosecution is the confessional statement (Exhibit C) of the appellant and in the course of the trial appellant challenged the voluntariness of the statement. The learned trial judge conducted a trial within a trial, at the end of which Exhibit C was admitted in evidence. At the end, the trial count found the appellant and DW2 guilty of the two offences charged hence they appealed to the court below and from thence to the current place.

On the 20th March, 2014 date of hearing, learned counsel for the appellant, Mrs. Funke Agbor adopted the Brief of Argument settled by Biriyai Dambo Esq. and filed on 15/3/12. In the brief of argument were identified three issues for determination which are thus:

(a) Whether the trial and indeed the lower counts were both right in convicting and sentencing the appellant primarily on the uncorroborated and retracted confessional statement (Exhibit "C") of the appellant.

(b) Whether the prosecution proved the necessary ingredient(s) of the offences of conspiracy and murder against the appellant beyond reasonable doubt as required by law.

(c) Whether the failure on the part of the prosecution to call vital witnesses to circumstantially link the appellant with the murder of the deceased did not amount to a gross miscarriage of justice.

The Attorney General of Lagos State, Ade Ipaye, counsel for the respondent adopted the brief of argument he had settled and filed on 21/5/12. He raised two issues for determination which are as follows:

(a) Whether the lower courts were right in relying on the confessional statement of the appellant (Exhibit C) having been held to have been voluntarily made and admissible in evidence.

(b) Whether the prosecution/respondent proved the necessary ingredients of the offences of conspiracy and murder against the appellant beyond reasonable doubt.

I see the issue as formulated by the respondent properly encapsulates the questions raised by the appellant and those issues of the respondent being simply distilled. I shall use them for the determination of this appeal.

ISSUE ONE

Whether the lower courts were right in relying on the confessional statement of the appellant (Exhibit C), having been held to have been voluntarily made and admissible in evidence.

Mrs. Funke Agbor, learned counsel for the appellant contended that a confessional statement by an accused person is not admissible in evidence against him unless it appears to the trial court that in making the confession to a police officer before trial, the accused person was not offered an inducement or promise having reference to the charge against him. The reasons for the above submission learned counsel stated stems from the provisions of Section 28 of the Evidence Act, 2011 and Section 29(2) (a) (b) and (3) of the same Act which in the main provide that 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 and the latter section then places the burden on the prosecution to prove beyond reasonable doubt that the statement was voluntarily obtained. She cited *Egboghonome v. State* (1993) 7 NWLR (Pt. 306) 382 at 432.

She stated further that the trial court did not take into account the test and criteria laid down by this court in the *Alarape v. State* (2001) 5 NWLR (Pt. 705) 29 at 98 - 99 for the admissibility of confessional statements. She enumerated the tests and submitted that this court had applied them in *Onochie v. The Republic* (1966) NMLR 307; *Ikpasa v. A. G. Bendel State* (1981) 9 SC 7; *Akpan v. The State* (1992) 6 NWLR (Pt. 248) 439; *Bature v. State* (1994) 1 NWLR (pt. 320) 267.

For the appellant it was further submitted that the trial court ought to have sought corroborative evidence outside of that confessional statement once the accused denies either making it or that it was not voluntarily made. That in this regard the extra judicial statement of PW1 tallying with the evidence of the appellant cannot be the corroboration envisaged.

Mrs. Agbor of counsel went on to contend that PW2's evidence that the appellant tried to dispose of the landed property of the deceased only showed evidence of bad character and by virtue of Section 69(1) of the Evidence Act, 2011, such evidence is irrelevant and so the lower court should not have relied on it to establish or link the appellant with the death of the deceased. That the mere

fact that the appellant lied to PW2 and PW4 that he was son of the deceased is not enough on which culpability would be based. She relied on *Omogodo v. State* (1981) NSCC Vol. 12 page 119 at 128.

Also submitted for the appellant is that the court could not accept the ports of Exhibit C which were not favourable to the appellant and jettison those parts in his favour, a situation which rendered the evaluation of the court of trial faulty and should not have been accepted by the court below. She cited *Ahmed v. State* (1999) 7 NWLR (pt. 612) 641 at 681.

Learned counsel for the appellant contended that there was a glaring break in the claim of causation of the death of the deceased especially as it related to the evidence of PW1 which is the substratum on which the star witness PW5 anchored his entire evidence. That this broken link should be resolved in favour of the appellant. She cited *Friday Aiguoreghian v. State* (2004) NWLR (pt. 860) 367: Section 183(3) of the Evidence Act.

In response, the Hon. Attorney - General stated that it is settled law that if a person makes a free and voluntary confession which is direct and positive it can be and has been held by this court in several cases to be sufficient to support a conviction of murder. He referred to *Bature v. The State* (1994) 1 NWLR (Pt. 320) 267 at 283; *R v. Obiasa* (1962) 1 ALL NLR 645; *Jimoh Yesufu v. The State* (1976) 6 SC 167 at 173, *Achabua v. The State* (1976) 12 SC 63 at 68, *Saidu v. The State* (1982) 4 SC 41, *Obosi v. The State* (1965) NMLR 119 at 123.

He submitted further that it is trite law that where an accused person alleges that a confessional statement was not voluntarily made the proper procedure to be adopted by the trial court is to conduct a trial -within- a trial to decide upon the voluntariness or otherwise of the statement. He cited: *Akpa v. The State* 4 - 5 SC (Pt. II) 1 AT 22, *Gbadamosi v. Ors v. The State* (1992) 9 NWLR (Pt. 266) 465 at 480; *Effiong v. The State* (1998) 5 SC 136.

That the trial court in this instance complied with that procedure of trial within trial and reached the conclusion that the confessional statement was voluntarily made and so admitted as Exhibit C.

Mr. Ipaye of counsel said the lower courts were right in relying on the Exhibit C after the trial within trial on the voluntariness of the statement. He cited *R v. Itule* (1961) 1 ALL NLR 462.

The Attorney - General submitted that the concurrent findings of the two courts on the admissibility of the confessional statement should not be interfered with as there is no reason for such interference. He referred to *Afolalu v. The State* (2010) 16 NWLR (Pt. 1220) 584 at 611, *Edoho v. The State* (2010) 14 NWLR (Pt. 1214) 651 at 693; *Olaiya v. The State* (2010) 3 NWLR (Pt. 1181) 423 at 438. B

The main grouse of the appellant on this issue is that the learned trial judge did not adequately test the truth of the statement as contained in Exhibit C before acting on it. Also that the trial judge did not seek corroborative evidence which would make probable that the facts stated in the statement are true. C

In contrast, the respondent contends that the appellant was approaching the situation from wrong premises since the issue on ground was the voluntariness or otherwise of Exhibit C which appellant was challenging. D

With these two differently taken positions, the point has to be made that an accused now appellant on contesting the voluntariness of the statement, the first hurdle is for the trial court to determine whether or not the confessional statement was made voluntarily by the accused or he made it under duress, influence or force. This consideration is done by the procedure of trial inside the main trial. In this regard the trial court suspends everything else until this trial within trial is conducted and a decision reached by the court as to whether the statement was made voluntarily by the accused or not. When the answer is positive the statement is admitted in evidence as exhibit but when the answer is negative, then the statement is rejected and the main trial recommenced without that statement. I place reliance on *Akpa v. The State* 4-5 SC (Pt. II) 1 at 22, *Gbadamosi v. Ors v. The State* (1992) 9 NWLR (Pt. 266) 465 at 480; *Effiong v. The State* (1998) 5 SC 136. E F G

After that first hurdle and the accepting of the Statement as voluntarily made by the accused as in this case with the admittance of the statement as Exhibit C.

Therefore, in the consideration of all the evidence before court H including the confessional statement, several options are open to the trial court, one of which is that if he considers the confession as direct and positive then it is sufficient by itself to ground a conviction of murder. See *Jimoh Yesufu v. The State* (1976) 6 SC 167 at 173:

Achabua v. The State (1976) 12 SC 63 at 68; Saidu v. The State (1982) 4 SC 41; Obosi v. The State (1965) NMLR 119 at 123.

The other option is for the trial court to combine the confessional statement with other surrounding circumstances which offer corroborative qualities to that statement imbuing it with strength with which a conviction can be obtained. See Otufule v. The State (1968) NMLR 262; Salawu v. The State (1971) 1 NMLR 249; Yaro v. The State (2008) 2 WRN 131 at 153.

On the weight to be attached to Exhibit C, the Supreme Court had laid down some ground rules and I shall refer to them as stated in Bature v. The State (1994) 1 NWLR (Pt. 320) 267, which test as to the truth in that statement in the light of other evidence are as follows:

- (a) There is anything outside it to show that it is true;
- (b) It is corroborated
- (c) The facts stated in it are true in so far as can be tested;
- (d) The accused had the opportunity of committing the offence;
- (e) The accused confession is possible.
- (f) the confession is consistent with other facts which have been ascertained and proved.

I shall at this point, recast the salient part of Exhibit C and it is thus:

"I was born in Kabba Kogi State 1973 22 Jan. I attend St. Andrew Primary School Kabba and Saint Augustine College Kabba, also attend Kwara Polytechnic Ilorin in the year 95/96 I then came down to Lagos working in a barbing salon as a perform worker in Anthony Village Lagos where I came across a boy called Kayode he stay in Oshodi 21 Mosaku Street. He (Kayode) then took me to their house in Oshodi, and I told him that I want to be staying with him (Kayode) said Okey I can be staying with him but the house belong to his friend called Ola Bright Nurudeen that he is not around. Two weeks later Ola Bright came home No. 21 Masaku Street Oshodi. While we were greeting each other, Ola said he coning that he wants to see one of his Clients at Ogudu. Till the next day when Ola came back home and told us I Patrick and Kayode in the same room that his client want a driver and security in her house.

I Patrick stood up and told him that I can drive. He Ola said he

will take me there the next morning and he took I Patrick to the woman (Yetunde Peters) at her house in Ogudu, Ojota Lagos State. I Patrick and Mrs. Yetunde Peters and Ola Bright now discussed about the driver the woman now said I should come the next morning and I went there the next morning and I start to drive her so same time he Ola come to visit Mrs. Yetunde Peters and whenever he come he B went in to the sitting room and sit with her so whenever they discuss finish he, Ola come outside to say hello to me that he Ola is going home and he will leave while I close the gate. I then ask him Ola that now that this woman is dead how do we do the dead body because C there are security official by the main gate to the Ogudu G.R.A. He said I should not worry that he has something in his pocket that he will put in his mouth and nobody will stop us I Patrick and Ola Bright now put the dead body inside the car and drive down to third main-land bridge throw it in the water and went back home and search D house where we cart away with two bags, 2 AC TV and Video Tape Recorder, 5,000 France and N4,000 and a C of O Certificate and we went away with it.

We sold the 2 A. C. at Lawason Street Ojuelegba and the Video Tape Recorder was sold at Oshodi Market while Ola went to sell the E bags according to him Ola said he sold it to a Mallam in Ejigbo. After this period he Ola went to his friend's house at Egbe to discuss with him about a land. That belong to Yetunde Peters on the same He Ola came back home to tell me that he has seen a buyer for the land I F should go and present myself as the son of the owner of the land. I agree to present myself as the owner of the land. I Patrick and Ola now went to meet Ola's friend in his house called Chris. Ola introduced me to Chris as the son of the owner of the land Chris welcome me and Ola and Patrick to a Lawyer at Isolo where we drop a copy of G the land C of O. From there we went to a new garage and we did not meet the person. We (Chris, Ola, Patrick) went to see and we return home till the next day when Ola and Chris took Frank to Ekpoma and then meet Mr. Frank there and discuss the land with him so when they came back to Lagos Chris/Ola ask me to go and see Mr. H Frank that he want to see me I told I don't know the man you are talking about Chris said he will take me to the house and the next day we went there I Patrick introduce myself to Frank. So Frank now said I should go and show him where the land is. I promise to come

back the next day when I got home I told Ola the outcome he Ola now said I should not worry that himself and Chris will go and locate the land before I see Frank again. So they (Chris and Ola) did. The following day I Patrick with Chris went to meet Frank in his house and took him to where the land is he saw it and he said he like it we
 B then bargain a price 3,500.000 he said he Frank cannot pay the amount that I should go and think about it.

When I got home I told Ola. Ola said I should allow him to price it before he can say anything about. So Frank traveled to London until I Patrick and Chris went down to Ekpoma for a funeral
 C ceremony on the 10 - 11- 99. On the 11 - 11- 99 Ola come down to Ekpoma to meet us and left to Lagos on the 14 - 11- 99. On the 20 - 11 -99 Mr. Frank send a message to Chris that he should come and collect some money Chris went there and came back to call me that
 D Mr. Frank said I should come and see him so that we can talk about the price of the land. I and Chris left for Benin on getting there two police men arrested us and took us to the State CID Benin where we were detained till the next day when another two police men came from Lagos and brought us shown to the State CID Yaba where I
 E confess and tell the true story how it happen and how it end. I Patrick took the police men to where we (Patrick and Ola Bright) pack the car belonging to Mrs. Yetunde Peters. The car was parked on the Murtala Muhammed Airport Local wing. ”

F Placing Exhibit C beside the evidence of PW2, wherein PW2 stated as follows:

“Sometimes in the month of October 1999, one of my neighbor (sic) Christopher Oseghale (that is PW4) brought the 1st accused (that is, the appellant) to my house and introduce him to me as Tunde
 G Peters and that they were childhood friends and that 1st accused lost his mother 2 years ago then. The 1st accused then brought out a Certificate of Occupancy of a land.

He showed me the Original and a photocopy. 1st accused then told me that he wanted to travel abroad and that he wanted to sell
 H the land belonging to her (sic) mother who was dead then.”

PW2’s testimony (sic) he, Ola (that is, DW2) cone bock home to tell me that he has seen a buyer for the land and I should go and present myself as the son of the owner of the land. I agree to present myself as the owner of the land.

I, Patrick and Ola now went to meet Ola friends in his house called Chris (that is, PW4). Ola introduced me to Chris as the son of the owner of the land... So when they came back to Lagos Chris/Ola ask me to go and see Mr. Frank (that is, PW2) that he want to see me. I told I don't know the man you are talking about Chris said he will take me to the house and the next day, we went there. I Patrick introduce myself to Frank. So Frank now said I should go and show him where the land is.” B

From the confessional statement, Exhibit C and compared to the extract of PW2's evidence in court the corroboration sought are glaringly evident. In fact the testimonies of PW1, PW2, PW4 and PW5 provided the necessary materials upon which the trial count and affirmed by the court below that the appellant and his cohort had guilty knowledge of the circumstances leading to the disappearance of the deceased. C D

It was also from the appellant that the PW5 apprehended the DW2, who was equally convicted and sentenced for the offences for which appellant was equally charged. The DW2, Nurudeem Bright on appeal to the Court of Appeal lost as that court affirmed the convictions and even before this court, the Supreme Court upheld those concurrent findings and conclusion of the two courts below. E

Again from the evidence of PW1, the appellant was the last to see the deceased alive being the driver and the other person who drove in with the deceased and so even on the principle of lost seen the appellant was culpable not proffering any defence as to his role in the disappearance and death of the deceased, Captain Yetunde Peters. F

For a fact, the confessional statement, Exhibit C was direct, positive and had the truth of what transpired in it and sufficient by itself for the reaching of the a conclusion of guilty on the appellant. The statement had enough background information which could only be brought out by the appellant and no other not to talk about the details of all that transpired between him and his co-accused in the death and disappearance of the late Captain peters. G H

Furthermore and of note is the attempt by the appellant and his colleague to sell off the property of the deceased including the Certificate of Occupancy of her land with which he tried to sell the land claiming to be her son while the disappearance of the deceased

was a matter of concern to relations and the authorities.

To answer the question herein posed, the two courts below were right in relying on the confessional statement of the appellant after holding that it was voluntarily made and admissible in evidence.

ISSUE TWO

B Whether the prosecution/respondent proved the necessary ingredients of the offences of conspiracy and murder against the appellant beyond reasonable doubt.

C Mrs. Funke Agbor of counsel submitted for the appellant that murder being a capital offence and a most heinous offence, for an accused to be charged with murder there must be sufficient materials of proof of evidence to justify and back up the offence which the court should see at a mere glance of the proof of evidence that the accused is properly charged of the offence which is not the case in D this instance.

That the ingredients of the offence of murder, to determine culpability if any of the appellant in the murder of the deceased are as follow:

- (a) That the deceased died
- E (b) That the death of the deceased was caused by the accused.
- (c) That the act or omission of the accused which caused the death of the deceased was intentional with knowledge that death or grievous bodily harm was its probable consequence.

F He cited Adamu Suleiman v. The State (2008) 21 WRN 1 at 32: Gambo v. State (2009) 6 - 7 SC 24 at 64 – 65, Adekunle v. State (2006) 14 NWLR (Pt. 1000) 717 at 736 – 737, Haruna v. State (1972) 8 - 9 SC 174, Archibong v. State (2004) 1 NWLR (Pt. 855) 488.

G Learned counsel for the appellant went on to say that even though circumstantially there is a presumption that the deceased is dead since there has been no trace of her since her disappearance but that there is no positive proof that the cause of death was from the direct action of the appellant.

H That the charge of culpable homicide cannot therefore be established as required by law. She referred to the cases of Uyo v. AG Bendel State (1986) 1 NWLR (Pt. 17) 18 at 419, Akpan v. State (1992) 6 NWLR (Pt. 248) 439 at 462.

For the appellant was also submitted that PW3 and PW5 testi-

fied that they saw blood stains in the house of the deceased and there is no certainly that the blood stain is that of the deceased which situation equates to suspicion which however strong cannot take the place of legal proof. She cited *Onoh v. State* (1985) 3 NWLR (Pt. 12) 236; *State v. Ogunbanjo* (2001) 2 NWLR (Pt. 698) 576.

That it is settled that circumstantial evidence to support a conviction in a criminal trial must be cogent, complete and unequivocal. Also it must be compelling and must be such that leads to only an irresistible conclusion that it is the appellant and no one else who committed the act. She stated that it is trite law that for circumstantial evidence to ground and sustain a conviction it must meet the following conditions

- (a) It must irresistibly and unequivocally lead to the guilt of the appellant
- (b) No other reasonable inference could be drawn from it: and
- (c) There must be no other co-existing circumstances which could weaken the inference.

She relied on *Idowu v. State* (1998) 11 NWLR (Pt. 574) 354 at 370; *Aigbadion v. State* (2000) 7 NWLR (Pt. 666) 686.

For the appellant was submitted that the trial court cannot pick and choose parts of the evidence of a defence witness favourable to the prosecution and reject the part favourable to the defence. That all the inferences drawn by the trial court and the justices of the lower court border on unsubstantiated circumstantial evidence, speculation and suspicion. That the position of the law is that corroborative evidence must be evidence which confirms in some material particular not only that the crime has been committed but also that it was the accused that committed it. She relied on *Mbele v. State* (1990) 4 NWLR (Pt. 145) 484 at 470; *Amadi v. State* (1993) NWLR (Pt. 314) 644 at 675.

On the offence of conspiracy learned counsel for the appellant submitted that to constitute the offence there must be a criminal purpose common to all the conspirators which have not been established in this case. That the prosecution failed to discharge the onus placed on him by virtue of Section 135 (1) of the Evidence Act. She cited *Njovens & Ors v. The State* (1973) NSCC 280.

Mrs. Agbor of counsel contended that the prosecution has the

discretion to call whichever witnesses it considers necessary to prove the offence charged, its failure to call vital witnesses whose evidence may determine the case one way or the other will be fatal to its case. She cited *Onah v. State* (1985) 3 NWLR (Pt.236) 237.

B Mr. Ade Ipaye for the respondent stated that the guilt of an accused person may be proved by (a) a confessional Statement, (b) circumstantial evidence or (c) evidence of eye witnesses. Also that it must be reiterated that a free and voluntary confession by a person if direct and positive, duly made and satisfactorily proved is sufficient to
C ground a conviction. However it is desirable to have some evidence outside the confession which would make it probable that the confession is true. He cited: *Emeka v. The State* (200) 14 NWLR (Pt. 734) 666 at 683, *Igbele v. The State* (2006) 2 SC (Pt. II) 61 at 69, *Otufale v. The State* (1968) NMLR 262; *Salawu v. The State* (1971) D 1 NMLR 249; *Musa Yaro v. The State* (2008) 2 WRN 131 at 153.

He stated on for the respondent that the trial Judge carefully evaluated the total evidence before his count before giving a well considered Judgment in the case. That the judgment was not solely based on the confessional statement of the appellant but also on the
E clear evidence of each prosecution witness. He said the sufficiency of the evidence adduced at the trial by the prosecution was upheld on appeal to the lower court, which affirmed the conviction and sentences pronounced on the appellant and DW2. He relied on *Gambo v. State* (2009) 6 - 7 SC 24 at 64 - 65.
F

Learned Attorney-General submitted that the law noises a presumption that the person last seen with the deceased person bears full responsibility for the death and so applies to the appellant and his co-accused. He cited *The State v. Godwin Nwakerendu & 3 Ors* (1973) G 3 ECSLR (Pt. II) 757 etc.

He said the common purpose or intention need not be based on direct evidence of an express agreement as it can be inferred from the circumstances. He cited: *Abu Peter & Anor. v. the State* (1977) NMLR 81 at 89; *Paul Onochie v. The Republic* (1966) NMLR 307.
H

The poser here is if the necessary ingredients of the offences of conspiracy and murder against the appellant were made out beyond reasonable doubt. For the appellant was contended that the ingredients of the offence of conspiracy and murder had not been established as required by law. The respondent submits otherwise.

In answering those questions I will refer to the ingredients of the offence of murder which are as follows: That the deceased died

(a) That the deceased died

(b) That death of the deceased was caused by the accused.

(c) That the act or omission of the accused which caused the death of the deceased was intentional with knowledge that death or grievous bodily harm was its probable consequence. B

In respect to the offence of conspiracy to commit murder the ingredients are captured in Section 8 of the Criminal Code Law, Cap 32, Laws of Lagos State, 1994 which stipulates thus: C

“When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence” D

See: Gambo v. State (2009) 6 - 7 SC 24 at 64 - 65: Abu Peter & Anor. v. The State (1977) NMLR 81 at 89;

On this matter of proof of the guilt of the accused and how it can be made, this court had held that the guilt of an accused can be established by (a) a confessional statement, (b) circumstantial evidence or (c) evidence of eye witnesses. See Emeka v. The State (200) 14 NWLR (pt. 734) 666 at 683, Igabele v. The State (2006) 2 SC (pt. II) 61 at 69. E

With regard to the first ingredient of murder, in the confessional statement, the appellant said thus: F

“I then ask him Ola (that is DW2) that now that this woman is dead how do we do the dead body because there are security officials by the main gate to the Ogudu GRA... I, Patrick and Ola Bright G now put the dead body inside the car and drive down to Third Mainland Bridge, throw (sic) it in the water and went back home and search house where we cast (sic) away with two bags, 2 AC, TV and Video Tape Recorder, 5,000 Francs and N4,000 and a C of O Certificate and we went away with it.” H

In his testimony, PW3, the brother of the deceased said they found that the apartment of the deceased had been ransacked with the bag of the deceased open and the contents scattered and on the following day with policemen they found blood stains on the bed

and down the rails and no one seeing his sister since. It is not surprising the finding of the Court of Appeal that there were many links to the appellant as he and the other co-accused were the last to see the deceased alive and on her disappearance were the people caught trying to dispose of her property claiming to be inheritors of her estate. All these taken together, that Captain Yetunde Peters died is not in doubt. I rely on *Archie v. The State* (1993) 6 NWLR (Pt. 302) 752 at 752 - 766; *Ayinde v. The State* (1973) 3 SC 153.

On the second and third ingredients of murder that is that the death of the deceased was caused by the appellant and it was the act of the appellant and the other which caused the death of the deceased was intentional with knowledge that death or grievous bodily harm was the probable consequence, the evidence adduced established those ingredients. I say so because the appellant in his confessional statement described how DW2 brought out a table knife and slaughtered the neck of the woman while he, appellant held her leg till the neck was cut off. The facts shown in Exhibit C attempt to sell her landed property while passing off as son of the deceased established that their act of cutting off the neck while appellant held her legs tightly showed an intention that she would be dead by the act, which act brought about the death. The two ingredients well established and settled in the light of the appellant and DW2 being the lost seen in the company of the deceased. Indeed the circumstantial evidence was overwhelming and the absence of an eye-witness of no moment. *Emeka v. The State* (200) 14 NWLR (Pt. 734) 666 at 685, *The State v. Godwin Nwakerendu & 3 Ors* (1973) 3 ECSLR (Pt. II) 757.

On the matter of the offence of conspiracy, the common purpose or intention required in the essential ingredients of the offence as envisaged by Section 8 of the Criminal Code, was available with the immediate programme of searching for and taking away the personal properties of the deceased and setting out to sell her landed property claiming to be close relations entitled to same. Therefore it is easy as the two courts below found that the killing of the deceased was part of a plan to enrich the accused. In the prevailing circumstances direct evidence of an express agreement was not needed for the inference the two courts made. See *Abu Peter & Anor. v. the State* (1977) NWLR 81 at 89; *Paul Onochie v. The Republic* (1966)

NMLR 307.

In totality the prosecution had loads of evidence including the well detailed confessional statement from which the trial court as upheld by the court below found that the offences charged were established beyond reasonable doubt and the guilt of the appellant as a result. Therefore what the appellant is positing here as lack of evidence is a mere beating about the bush, as the necessary witnesses in proof were produced and no need for a host of witnesses to prove the same thing as those who testified would establish. In this I anchor on the pronouncement of this court in Akpa v. The State (2008) 4 - 5 SC (Pt. II) 1 at 18. B
C

From the foregoing I resolve this second issue in favour of the respondent. The two issues effectively resolved against the appellant and the fuller reasoning in the lead judgment, I dismiss this appeal as lacking in merit. I abide by the consequential orders made. D

KEKERE-EKUN JSC

I have had the privilege of reading in draft the well considered judgment of my learned brother, M.D. MUHAMMAD, JSC just delivered. I agree with the reasoning and conclusion that the appeal is devoid of merit and should be dismissed. E

The appellant herein and one other were arraigned before the trial court on 29th October 2002 on a two-count charge of conspiracy to commit murder and murder of one Navy Captain Yetunde Peters contrary to Sections 324 and 319 (1) of the Criminal Code Law of Lagos State. They both pleaded not guilty to each count of the charge. F

At the conclusion of the trial both were found guilty as charged. They were sentenced to seven years imprisonment each for the count of conspiracy and were sentenced to death for the count of murder. G

Being dissatisfied with the decision both accused persons appealed to the lower court. Their appeal was dismissed. The appellant who was the first appellant at the court below has further appealed to this court. H

The prosecution's case is that sometime in September 2009, the appellant, who was a driver to the deceased, conspired with one Olatinwo Nurudeen Bright (DW2) an estate agent, to murder and

did murder the deceased, Navy Captain Yetunde Peters. The prosecution contended that the appellant and DW2 stabbed the deceased to death in her home in Ogudu GRA, Lagos State, wrapped her body in a rug, placed it in the boot of her car and dumped the body in the lagoon along the Adeniji Adele area of the Third Mainland Bridge in Lagos.

That after disposing of the body, the appellant and DW2 ransacked the house of the deceased and carted away valuables, including a certificate of occupancy in the name of the deceased. It was in the process of trying to dispose of the landed property covered by the C. of O. belonging to the deceased in the Lekki area of Lagos State that the appellant was apprehended. The appellant made an extra-judicial statement. After conducting a trial within trial, the trial court held that the statement was voluntarily made. It was accordingly admitted in evidence as Exhibit C.

Briefs of argument were duly filed and exchanged. The Appellant formulated three issues for determination as follows:

1. Whether the trial and indeed the lower courts were both right in convicting and sentencing the appellant primarily on the uncorroborated and retracted confessional statement (Exh. C) of the appellant).

2. Whether the prosecution proved the necessary ingredient(s) of the offences of conspiracy and murder against the appellant beyond reasonable doubt as required by the law.

3. Whether the failure on the part of the prosecution to call vital witnesses to circumstantially link the appellant with the murder of the deceased did not amount to a gross miscarriage of justice.

My comments in support of the lead judgment are in respect of Issue 1. It is contended on behalf of the appellant that from the extrajudicial statement made by PW1 and her oral testimony at the trial, the appellant was not at the scene of crime and PW1 never linked him to the commission of the offence. It was contended further that the evidence of PW2 to the effect that the appellant tried to dispose of deceased's property does not amount to proof that he was linked to the crime. Learned counsel argued that the evidence merely portrays bad character and not complicity in the crime. BIRIYAI DAMBO ESQ, learned counsel for the appellant argued that the fact that the appellant lied that he is the son of the deceased is not suffi-

cient to link him with the offence. He contended that the case was based on presumption and suspicion and that there was a break in causation between the evidence of PW1 and evidence of PW5, which ought to be resolved in the appellant's favour.

ADE IPAYE ESQ., Hon. Attorney General of Lagos State, who settled the respondent's brief noted that the concurrent finding of the two lower courts is to the effect that that Exhibit C was voluntarily made. He noted that admissibility of the document is quite different from the weight to be attached to it. On the factors to be considered in testing the truth of a confessional statement, he referred to several authorities including: *Bature V. The State* (1994) 1 NWLR (320) 267 and *Obosi V. The State* (1965) NMLR 119 @ 123. He submitted that the evidence shows that the appellant had the opportunity to commit the offence.

The two planks upon which Issue 1 is based are that the confessional statement, Exhibit C was not only uncorroborated but that it was retracted at the trial and therefore the lower court erred in placing reliance on it to affirm the appellant's conviction and sentence. It has been reiterated by this court time and time again that retraction of a confessional statement does not automatically vitiate its admission as a voluntary statement. There can be no account of the commission of a crime more accurate than the account of an accused person narrating how the offence was committed and the role he played.

Once the statement is proved to have been voluntarily made and is a direct, unequivocal and clear admission that the accused person committed the offence, it is sufficient to sustain a conviction notwithstanding its subsequent retraction at the trial. See: *Egboghonome v. The State* (1993) 7 NWLR (Pt. 307) 383; *Galadima G v. The State* (2012) LPELR-15530 (SC); *Ntah v. The State* (1972) 4 SC 1.

In the instant case, Exhibit C was admitted in evidence after the conduct of a trial within trial. The trial court found that the statement was voluntarily made. On appeal, the appellant and his co-accused challenged the admission of their confessional statements (Exhibits C and D) by the trial court. In resolving the issue, the lower court held at pages 297 - 298 of the record:

"The fact that the accused persons decided to deny their con-

fessional statements does not affect the decision of the Court to draw whatever inference it discerns from the said statements. The learned trial Judge took all the requisite procedural steps for the management of an allegation of inducement, threat or duress in the making of a confessional statement under investigation. A trial within trial was
 B *conducted. After the procedure the learned trial Judge found that the statements were voluntarily made. It was the learned trial Judge who had an opportunity of a visual perception of the Appellants as they each testified and responded to questions put to them. No com-*
 C *PELLING reason has been advanced for interfering with the decision of the trial Judge. The said extra judicial statements therefore stand admitted as exhibits."*

I fully agree with the lower court in this regard. Although not mandatory, the courts, as a matter of practice, usually look for independent corroboration, outside the confessional statement, no matter how slight, that shows that the narration therein is probable. See: *Nwachukwu v. The State (2007) 17 NWLR (Pt.1062) 31 @ 69; Itule v. Queen (1961) 2 SCNLR 183.*
 D

In the instant case PW1 testified that the appellant and DW2
 E were the last to see the deceased alive. The appellant admitted this fact under cross-examination. PW2, an oil marketer testified that his neighbour, Christopher Oseghale, who testified as PW4, introduced the appellant to him sometime in October 1999 as Tunde Peters. He
 F was informed that the said Tunde Peters lost his mother two years earlier.

That he wanted to travel abroad and needed to sell a plot of land belonging to his late mother to finance the trip. PW2 was shown a certificate of occupancy bearing the photograph of the late Navy
 G Captain Yetunde Peters. PW2 expressed some reservations about the potential sale after visiting the land and being told by the security guard, upon his enquiry, that the appellant had visited the land with the deceased the previous month. This raised a red flag for him since the appellant's representation to him was that his mother had died
 H two years before. He testified that he asked the appellant to return in a month's time, as he was to travel abroad. Coincidentally, upon his return, he happened to purchase a copy of the Punch newspaper on 20/11/99 (Exhibit A), where he noticed a news item about the missing navy captain. The item was accompanied by a photograph, which

he recognised as being the same as the photograph on the certificate of occupancy presented to him by the appellant a month earlier. He then reported the matter to the Police. This independent evidence corroborates the appellant's narration of events as contained in Exhibit C, Again, I refer to the finding of the lower court at pages 303 - 304 of the record:

"I am of the humble view that a distinction must be drawn between the effect and use of a confessional statement which stands solo with nothing else to support it and one which actually corroborates other facts gathered independently of the accused persons. The situation in this appeal is the latter.

Blinded by their greed and totally unperturbed by their gruesome crime, the appellants sought to dispose of the properties of the deceased even before the dust of the disappearance of the deceased settled down... Unsuspecting people of high integrity and responsive citizens of this nation took the action which led to the arrest of the appellants. Whatever they allege about their confessional statements is an afterthought; ...A retraction of the statement will serve no useful purpose. Without the statement, the circumstances under which they were arrested are sufficiently implicating.

In this appeal, the C of O. which was found in possession of a total stranger who claims a relationship with the owner raises the presumption that he is either responsible for the disappearance of the deceased or he knows the person who caused the disappearance of the deceased. The two convicts said the owner of the C of O. is dead. They killed her and set about dispossessing (sic) of her property. Their words and conduct bind them."

The finding of the lower court is unimpeachable. The appellant has not advanced any reason to warrant interference by this court.

PW5, the investigating police officer, testified that on 8/10/99 while at Panti C.I.D. Homicide section, Yaba, Lagos, he received a report that the deceased, Navy Captain Yetunde Peters, was missing; that her driver (the appellant) and her car were also missing. He left for Ketu Police station where the matter was initially reported. The case file was handed over to him along with the appellant (who had been arrested based on the report of PW2 linking him with the attempt to sell the deceased's property). He testified that the appellant

told him he did not commit the offence alone and volunteered the information that led to the arrest of DW2 and exonerated PW 4 (Christopher Oseghale). He also testified that the appellant took the investigating team to the airport where he had parked the deceased's car. Thereafter both accused persons took them to the spot along the
 B Third Mainland Bridge at Adeniji Adele road where they dropped the deceased into the lagoon and described how she was killed. PW4 identified DW2 as the person who prevented her from entering the compound of the deceased on 24/9/1999. There is no doubt that
 C there was sufficient evidence outside Exhibit C showing that the contents were true. It is significant that the confessional statement was made after the appellant and his co-accused returned to Panti Police station after taking the investigating team to recover the deceased's vehicle and after taking them to the spot where they dropped her
 D body into the lagoon.

There are several factors that linked the appellant to the commission of the crime:

- a. the attempt to sell the deceased's property soon after her death;
- E b. presenting himself as the son of the deceased and informing the prospective buyer that his "*mother*" was dead;
- c. the coincidence of the newspaper article which prompted PW2 to make a report to the Police;
- F d. investigation that led to the appellant's arrest;
- e. the appellant's admission that he did not act alone, which led to the arrest of his co-accused; and finally,
- f. Exhibit C, the appellant's confessional statement, which tied the various parts of the story together.

G In the circumstances of this case, the confessional statement of the appellant was sufficient to ground his convictions and sentences for the offences with which he was charged. I fully endorse the concurrent findings of fact made by the two lower courts. I agree entirely with my learned brother, M.D. MUHAMMAD, JSC in the lead judgment that this appeal is devoid of merit. I accordingly dismiss it.
 H

The convictions and sentences imposed on the appellant by the trial court and affirmed by the lower court are further affirmed.