

SUPREME COURT OF NIGERIA
FRIDAY 30TH MAY, 2014. SC. 366/2011
CORAM:- W. S. N. ONNOGHEN, J. A. FABIYI.
S. GALADIMA, B. RHODES-VIVOUR,
K. B. AKA'AH, JJSC

ADAMU SALIU APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Confession - Validity - Conviction can be based on confession alone - And the withdrawal of objection to admissibility of exhibit E - Signified that it was made voluntarily (H1)

CRIMINAL PROCEDURE - Confession - Retraction - Where accused retracts his confession - Trial court should look for other external evidence which corroborates - And shows that the confession is true (H2)

CRIMINAL PROCEDURE - Conviction - Sentence - Failure of trial Judge to pass separate sentences - After conviction for conspiracy and armed robbery - Did not result in miscarriage of justice (H3)

COURTS - Judgment - Mistake - Weight - It is not every error of lower court that results in setting aside its decision on appeal - As such error must be substantial - And leads to miscarriage of justice (H4)

CRIMINAL PROCEDURE - Sentence - Requirement - CPC s. 269 - Failure to specify punishment meted to accused as provided in the section - Is remediable and not fatal to prosecution's case (H5)

FACTS

Accused/appellant and one other were arraigned before the High Court of Kogi State on a three count charge of conspiracy, armed robbery and culpable homicide punishable with death. Appellant and the other armed with locally made pistols waylaid the deceased (Mohammed Abubakar), killed and dispossessed him of

his Nissan saloon car. For this act, they were charged to the court. At the trial, prosecution/respondent sought to tender appellant's confessional statement – Exhibit E in evidence. Initially, appellant contested the admissibility of Exhibit E as a confessional statement, his reason being that it was not voluntarily made by him. This resulted in a trial within trial proceeding.

However, the mini trial was aborted midway because appellant withdrew his objection to the admissibility of the statement. Thus, the said exhibit was admitted without objection. At the resumption of main trial, prosecution/respondent called several witnesses in support of its case against appellant and the other. At the end of the trial, the court relied on the evidence of respondent's witnesses which duly corroborated appellant's confession in Exhibit E in finding the culprits guilty. Appellant and the other was therefore convicted as charged and sentenced accordingly. Dissatisfied, appellant appealed to the Court of Appeal Abuja Division. The court dismissed the appeal and affirmed the trial court's judgment. Dissatisfied further, appellant decided to appeal to Supreme Court.

ISSUES FOR DETERMINATION

“(a) Whether taking into consideration the peculiar facts of this case, the learned trial judge and the lower court treated EXHIBIT “E” (alleged confessional statement) properly as the true confessional statement of the Appellant to ground a conviction of armed robbery, conspiracy and culpable homicide.

(b) Whether from the totality of evidence before this Honourable court the prosecution has proved its case beyond reasonable doubt in respect of the three heads of charge against the Appellant considering the role of corroborative evidence in their proof.

(c) Whether in the face of the evidence adduced the learned trial Judge and indeed the lower court drew the right inferences and were thereby right in law to have convicted the Appellant on the three heads of charge.

(d) Whether the conviction and sentence of the appellant by the trial court and upheld by the lower court is right despite the absence of a separate sentence in respect of each and every count as charged before the trial court.

HELD (Unanimously dismissing the appeal per ONNOGHEN JSC)

CRIMINAL PROCEDURE - Confession - Validity

1. The question is whether learned counsel is right in his submissions. To begin with, it is not in doubt that appellant contested the admissibility of exhibit 'E' as a confessional statement on the ground that it was not voluntarily made by him which resulted in a trial within trial proceedings. The proceedings were, however, aborted when appellant withdrew his objection to the admissibility of the statement

From the above, it is clear that exhibit E was eventually admitted without objection whatever. It is settled law that an accused person can be validly convicted on his confessional statement alone. With the withdrawal of the objection to the admissibility of exhibit 'E', appellant admitted unequivocally that he made the said statement and voluntarily too. Appellant also stated that he agreed that the police should write his statement for him and read same to him; the fact that the statement was later admitted in evidence as exhibit E' without objection speaks volume as to the identity of its maker.

(p. 3127 D/H)

CRIMINAL PROCEDURE - Confession - Retraction

2. Not only is it trite law that an accused person can be validly convicted on his confessional statement alone, the courts however state that the trial court, in the circumstance of a retraction by the accused, should direct itself on the requirement of looking for other evidence outside the confessional statement, in this case, exhibit E, which would corroborate and show that the confession is true. In that regard, the lower courts concurrently found/held that there was sufficient evidence of corroboration of the contents of exhibit E having regards to the evidence of PW2, PW3, PW4 and PW5 as evaluated at pages 156 - 157 of the record by the trial Judge which was affirmed by the lower court.

Secondly, I wish to state that the requirement that the trial

court should look for independent evidence in corroboration of the confession or which tends to connect the accused to the commission of the crime charged, is basically a rule of practice which is satisfied if there exists evidence outside the confession which links the accused with the crime. In this case, there is also exhibit 'F', the confessional statement of the co-accused and the independent testimony of seven prosecution witnesses. The practice of seeking for corroboration of the confessional statement arises only where the accused person retracts his confession at the trial as in the instant case.
 (p. 3128 B)

Conviction - Sentence

3. On the issue as to whether the lower court was right when it upheld the conviction and sentence of appellant despite the failure of the trial court to pass distinct and separate sentences in respect of two of the three counts for which appellant was convicted, I agree with learned counsel for the respondent that the failure is not fatal to the conviction and sentence of appellant. I hold the considered view that the failure of the trial Judge to pass separate sentences after conviction of appellant for the offences of conspiracy and armed robbery has not in anyway resulted in any miscarriage of justice to appellant which would have resulted in this court setting aside the convictions and sentence by the trial Judge. (p. 3129 E)

Judgment - Mistake - Weight

4. It is settled law that it is not every error committed by a lower court that would result in the decision being set aside by an appellate court. To qualify for a setting aside order, the mistake/error must be substantial/material and should lead to a miscarriage of justice if not corrected or set aside.
 (p. 3129 H)

CRIMINAL PROCEDURE - Sentence - Requirement - CPC s. 269

5. Finally on this issue, though section 269 of the Criminal Procedure Code requires a trial court to specify the punishment to which an accused person is sentenced, section 275

of the said Criminal Procedure Code provides that any error in specifying such a sentence is remediable which means that such an omission is not fatal to the case of the prosecution.
(p. 3130 C)

REPRESENTATION

B

Funke Agbor (Mrs.) for the Appellant

Steve Adehi, Esq. with him Shaibu Muazu, Esq., for the Respondent

CASES REFERRED TO

C

Ogunye v. State (1999) 5 NWLR (pt. 604) 548

Aiguoreghian v. State (2004) 3 NWLR (pt. 860) 367

Ogudo v. State (2011) 18 NWLR (pt. 1278) 1

Alarape v. State (2001) 5 NWLR (pt. 705) 79

Oseni v. State (2012) 5 NWLR (pt. 1293) 351

D

Abdullahi v. State (2008) 17 NWLR (pt. 1115) 203

Orji v. State (2008) 10 NWLR (pt. 1094) 31

Oyediran v. The Republic (1966) NSCC (Vol. 4) 252

Ogunbayo v. State (2007) 8 NWLR (pt. 1035) 157

Awopeju v. State (2001) 12 SCNJ 293

E

Ben v. State (2006) 16 NWLR (pt. 1006) 582

Madagwa v. State (1988) 12 SC (pt. 1) 68

Obidiozo v. State (1987) 4 NWLR (pt. 64) 148

Adio v. State (1986) 2 NWLR (pt. 24) 581

F

Salawu v. State (2011) 7 SCNJ 67

STATUTE REFERRED TO

Criminal Procedure Code, ss. 269, 275

BOOK REFERRED TO

G

Black's Law Dictionary, 6th Ed. p. 344

LEAD JUDGMENT BY ONNOGHEN JSC

H

This is an appeal against the judgment of the Court of Appeal Holden at Abuja in appeal No. CA/A/16C/2009 delivered on the 12th day of July 2011 in which the court dismissed the appeal of appellant against his conviction and sentence by the High Court of Kogi State in charge No. HC/31C/2005 delivered on the 20th day of June,

2008.

The facts of the case include the following: Appellant and one Peter Iliya Azabade were alleged to have waylaid the deceased, one Mohammed Abubakar, along Akogun-Ozugbe road, KotonKarfe, in Kogi State on the 9th day of August, 2003 with the intention of robbing the deceased of his car. During the robbery, appellant and Peter Azabade were armed with locally made pistols with which they shot and killed the deceased and dispossessed him of his car, a red Nissan Saloon car with registration no. KOGI AA 969 KAF.

Appellant and co-accused were charged to the High Court of Kogi State on a three count charge of conspiracy, armed robbery and culpable homicide punishable with death. They were tried, found guilty and sentenced accordingly. Appellant was dissatisfied with the conviction and sentence and consequently appealed to the lower court which dismissed same and affirmed the conviction and sentence of appellant by the trial court. The present appeal is a further appeal by appellant against the said judgment of the lower courts.

Learned Counsel for appellant BIRIYAI DAMBO ESQ has formulated four issues for the determination of the appeal in the appellant brief filed on 22/5/2012. The issues are as follows:

“(a) Whether taking into consideration the peculiar facts of this case, the learned trial judge and the lower court treated EXHIBIT “E” (alleged confessional statement) property as the true confessional statement of the Appellant to ground a conviction of armed robbery, conspiracy and culpable homicide.

(b) Whether from the totality of evidence before this Honourable court the prosecution has proved its case beyond reasonable doubt in respect of the three heads of charge against the Appellant considering the role of corroborative evidence in their proof.

(c) Whether in the face of the evidence adduced the learned trial Judge and indeed the lower court drew the right inferences and were thereby right in law to have convicted the Appellant on the three heads of charge.

(d) Whether the conviction and sentence of the appellant by the trial court and upheld by the lower court is right despite the absence of a separate sentence in respect of each and every count as charged before the trial court.

On his part, learned counsel for the respondent, STEVE ADEHI

ESQ n the respondent brief filed on 5/7/12 formulated two issues for the determination of the appeal. These are as follows:

“(I) Whether the conviction and sentence passed on the Appellant by the Trial Court was rightly upheld by the Court of Appeal having regard to the evidence led by the prosecution before the Trial Court.” B

“(II) Whether the Court of Appeal was right when it upheld the conviction and sentence of the Appellant despite the failure of the Trial Court to pass distinct and separate sentences in respect of two of the three counts for which the Appellant was convicted.” C

Looking at the issues as presented by both counsel, I am of the view that the respondent’s issues best capture the complaints of appellant though I will adopt the issues and arguments thereon as presented by learned counsel for appellant in this judgment.

In arguing his issue 1, learned counsel for appellant stated that D the trial judge based the conviction of the appellant on facts contained in Exhibit E which conclusion was affirmed by the lower court, the appellant maintained, during trial within trial, that he neither thumb printed nor made exhibit “E” particularly as appellant is literate and that the said exhibit “E” was written and thumb printed on behalf of E appellant by PW 6; that the lower courts failed to find out whether it was appellant who made exhibit “E”, relying on *Ogunye vs The State* (1999) 5 NWLR (pt. 604) 548 at 570, 572; *Aiguoreghian vs The State* (2004) 3 NWLR (pt. 860) 367 at 403; it is the contention of F counsel that the lower courts are in error in holding that appellant retracted exhibit “E” and that, in any event, there is no corroborative evidence in respect of the contents of exhibit “E” – the alleged confessional statement of appellant, relying on *Ogudo vs The State* (2011) 18 NWLR (pt. 1278) 1 at 26; 32; 45 - 47; *Alarape vs The State* G (2001) 5 NWLR (pt. 705) 79 at 98 - 99; *Oseni vs The State* (2012) 5 NWLR (pt. 1293) 351 at 387.

In respect of issue 2, counsel submitted that there is no corroborative evidence on record linking appellant with the offences charged particularly as appellant is alleged to have retracted the confessional statement, exhibit “E”; that the only evidence adduced by H the respondent to link appellant with the offence are exhibits “A”, “A1” and “A2 which are photographs of the deceased at the locus criminis which did not capture the image of the appellant; exhibit C,

a search warrant of the premises of appellant from which a car key which was neither tendered in evidence nor proven to be the particular key used to drive the stolen car from Kaduna back to Kogi State; that the vehicle particulars allegedly found in the premises of appellant in the course of executing exhibit 'C' was not endorsed on the said exhibit C as being those of the stolen vehicle nor were they tendered in evidence; that exhibits "G", "G1" and "H", the two locally made pistols and a blood stained cloth respectively, were not found in the custody of appellant but PW2; that evidence of PW4, rather than implicate appellant implicated PW4.

It is the further submission of counsel that there is no corroborative evidence outside exhibit E linking appellant with the offence charged particularly as the confessional statement, exhibit "E" was retracted; that where a trial judge had drawn a wrong conclusion from accepted or proven facts and which facts do not prove the case of the prosecution, an appellate court has the duty to interfere with such findings as same are perverse, relying on *Abdullahi vs State* (2008) 17 NWLR (pt. 1115) 203 at 219.

On issue 3 learned counsel submitted that the inferences drawn as it relates to the guilt of appellant and the evidence of the prosecution witnesses relied upon including the exhibits, the deductions made leading to the conviction and sentence of appellant are unsustainable as same bordered on sentiments and suspicion, relying on *Orji vs State* (2008) 10 NWLR (pt. 1094) 31 at 47 - 48; 51; 52, 57; 61 that there was no eyewitness account of the events thereby making the case to be dependent on circumstantial evidence; that the circumstantial evidence relied upon are not cogent to establish the cause of death of the deceased as PW5 had said that he did not know what made the holes on the body of the deceased nor what killed the deceased; that the holes on the corpse of the deceased could have been caused by a spear or sharp object rather than exhibits "G" and "G1"; that no doctor's report on the corpse was tendered in evidence.

It is the contention of counsel that even if it is assumed that what PW6, PW1 and the rest of the police search team recovered from the premises of appellant are the vehicle key and particulars of the deceased vehicle, these cannot amount to circumstantial evidence in proof of the allegation that appellant tolled the deceased or con-

spired to so do; that there is nothing to show that the vehicle was stolen at the time the deceased was killed; that mere possession of the vehicle or keys and particulars thereof four days after the commission of the alleged offence is not enough link with the murder of the deceased; that the prosecution did not prove that it was the act of appellant that killed the deceased. B

Finally on issue 4, learned counsel submitted that sentencing in a criminal proceeding must comply with certain standards particularly the avoidance of lumping together of sentences or non-sentencing for offences upon which convictions were returned; that such decisions are liable to be set aside, relying on the case of Oyediran & C
ors vs The Republic (1966) NSCC (Vol. 4) 252; (1967) NMLR 122 and section 269 of the Criminal Procedure Code and urged the court to resolve the issues in favour of appellant and allow the appeal.

On his part, learned counsel for respondent submitted that D
from the totality of the evidence on record, the lower court was right in sustaining the conviction and sentence of appellant; that the conviction of appellant was not based solely on his confessional statement, exhibit “E” but also on the totality of evidence of PW1 - PW7 E
and the confessional statements of appellant and 2nd accused; that the trial judge also evaluated the evidence of DW1 and DW2 called by appellant before arriving at the decision.

On exhibit E counsel stated that the initial reaction of appellant to the admission of that document as an exhibit is that though he F
made the document, it was made involuntarily; that this resulted in a trial within trial procedure to determine the issue of voluntariness of the statement which procedure was later terminated due to the withdrawal by appellant of his objection; that appellant later denied ever making exhibit “E” which in effect amounts to a retraction, as found G
by the trial court and affirmed by the lower court.

It is the further submission of counsel and rightly in my view, that the trial court applied the right procedure to satisfy itself that it was appellant that made exhibit “E”, which was, in any event, not H
objected to by appellant; that the court carefully examined the evidence of PW5, PW2, PW4 and PW1 before arriving at the guilt of appellant as the evidence corroborated the contents of exhibit ‘E’, relying on Ogunbayo vs. State (2007) 8 NWLR (pt. 1035) 157 at 179; that the cause of death of the deceased is not in doubt at all as

Exhibit “E” & “F” stated how appellant and the co-accused bought pistols with which they shot the deceased twice and confirmed him dead before taking away his car; that there was no necessity for the prosecution to furnish a medical report on the deceased as to the cause of death as evidence before the court clearly shows the cause of death, relying on *Awopeju vs State* (2001) 12 SCNJ 293 at 300; *Ben vs The State* (2006) 16 NWLR (pt. 1006) 582; that the key and particulars of the vehicle of the deceased were found in the possession of appellant; the contact made by appellant with the view of selling the vehicle, the process leading to the recovery of the vehicle in Kaduna etc. It was safe and right to infer that appellant conspired to and indeed killed the deceased and robbed him of his car. Relying on the decision of this court in the case of *Madagwa vs The State* (1988) 12 S.C (pt. 1) 68, learned counsel submitted that where a person is found in possession of a stolen car a few hours after same was stolen he is rightly presumed to be the thief.

It is the further contention of counsel that the attempt at impugning the integrity of PW4 and the confessional statement, exhibit “E” is misconceived and clearly an afterthought; that it was appellant who led the police to arrest PW4 at Abuja; that appellant admitted that PW4 took him to a man in Kaduna for the purpose of selling the stolen car, etc; that the contention of appellant that he can read and write and did offer to write his statement cannot be supported having regards to his testimony which shows that he is a school drop-out and a taxi driver and urged the court to resolve the issues against appellant.

On the issue of failure of the trial court to pass distinct and separate sentences in respect of two of the three counts of the convictions, learned counsel submitted that the failure is not fatal to the conviction and sentence of the appellant; that the failure has not resulted in any miscarriage of justice to the appellant; that having regard to the sentence of death passed on appellant a further sentence would make no difference or have any effect or would be superfluous as the sentence on those two counts is also death; that though section 269 of the Criminal Procedure Code requires a trial court to specify the punishment to which an accused is sentenced, section 275 of same allows any error in specifying such sentence to be remedied, relying on *Obidiozo vs The State* (1987) 4 NWLR (pt.

64) 148 at 179. Finally, learned counsel urged the court to invoke its general powers to impose two additional sentences of death on appellant, resolve the issues against appellant and dismiss the appeal.

I have carefully gone through the record of appeal and submissions of both counsel on the relevant issues identified for determination in this appeal. B

It is very clear that the main issue raised by appellant is the legal status of exhibit “E and/or its effect on the charge having regards to the requirement of corroboration of retracted confessional statement. C

The contention of learned counsel for appellant is that since appellant denied making exhibit “E” the lower courts had a duty to make a finding as to who made it (Exhibit ‘E’) and even if exhibit ‘E’ is treated as a retracted confessional statement the lower courts ought to have assessed evidence adduced on record corroborative of the said exhibit “E”; that there is no extraneous evidence corroborative of exhibit ‘E’ in any material particular. D

The question is whether learned counsel is right in his submissions. To begin with, it is not in doubt that appellant contested the admissibility of exhibit ‘E’ as a confessional statement on the ground that it was not voluntarily made by him which resulted in a trial within trial proceedings. The proceedings were, however, aborted when appellant withdrew his objection to the admissibility of the statement. At page 89 of the record appears the following:- F

Tolifashe, Esq - we object to the tendering of the two statements because they are a product of threat, severe human degradation and not voluntary.”

However at page 105 of the record and after the prosecution had closed its case and the defence had opened in the trial within trial proceedings, the following appears:- G

“Taifashe, esq- After a careful perusal of the evidence adduced, we shall abandon our earlier objection on the voluntariness of the statements of the accused persons which we made on 14/12/06 which we challenged the voluntariness of the confessional statements. We therefore have no objections to the tendering of the statements of the accused persons in evidence.” H

From the above, it is clear that exhibit E was eventually

admitted without objection whatever. It is settled law that an accused person can be validly convicted on his confessional statement alone. With the withdrawal of the objection to the admissibility of exhibit 'E', appellant admitted unequivocally that he made the said statement and voluntarily too. Appellant also stated that he agreed that the police should write his statement for him and read same to him; the fact that the statement was later admitted in evidence as exhibit E' without objection speaks volume as to the identity of its maker.

Not only is it trite law that an accused person can be validly convicted on his confessional statement alone, the courts however state that the trial court, in the circumstance of a retraction by the accused, should direct itself on the requirement of looking for other evidence outside the confessional statement, in this case, exhibit E, which would corroborate and show that the confession is true. In that regard, the lower courts concurrently found/held that there was sufficient evidence of corroboration of the contents of exhibit E having regards to the evidence of PW2, PW3, PW4 and PW5 as evaluated at pages 156 - 157 of the record by the trial Judge which was affirmed by the lower court. It is settled law that the Supreme Court does not make a practice of interfering with the concurrent findings of fact of the lower courts except in exceptional circumstance, such as where the finding has been demonstrated to be perverse or not supported by evidence on record, etc, etc, which have not been demonstrated to have occurred in the instant case. I therefore find no reason to disturb the said concurrent findings.

Secondly, I wish to state that the requirement that the trial court should look for independent evidence in corroboration of the confession or which tends to connect the accused to the commission of the crime charged, is basically a rule of practice which is satisfied if there exists evidence outside the confession which links the accused with the crime. In this case, there is also exhibit 'F', the confessional statement of the co-accused and the independent testimony of seven prosecution witnesses. The practice of seeking for corroboration of the confessional statement arises only where the accused person retracts his confession at the trial as in the

instant case.

The lower courts concurrently found and held that there was corroboration of the confessional statement of appellant and I have seen no reason to interfere with the said findings particularly as no special circumstance, necessitating such interference, has been proved/ established before this court. The findings are supported by evidence on record and are therefore not perverse etc. B

In the case of Mohammed vs The State Vol. 2 N.C.C. 574, this court held, at page 586 as follows:-

“It is important to say that when the confessional statements of the appellants were tendered, there was no objection, and so there was no trial within trial. In the absence of objection, this court can come to the conclusion that the statements were made voluntarily by the Appellants. This court held in Adio vs State (1986) 2 NWLR (pt 24) 581 that a free and voluntary confession of guilt by an accused person, if it is direct, positive and satisfactorily proved occupies the, highest place of authenticity when it comes to proving beyond reasonable doubt. The judgment of this court is valid. After all, the accused is the best person and in the best position to say whether he committed the offence or not although he may decide to hide the truth from the court. If he says that he committed the offence, the prosecution need not prove the offence any longer. The confession C D E

On the issue as to whether the lower court was right when it upheld the conviction and sentence of appellant despite the failure of the trial court to pass distinct and separate sentences in respect of two of the three counts for which appellant was convicted, I agree with learned counsel for the respondent that the failure is not fatal to the conviction and sentence of appellant. I hold the considered view that the failure of the trial Judge to pass separate sentences after conviction of appellant for the offences of conspiracy and armed robbery has not in anyway resulted in any miscarriage of justice to appellant which would have resulted in this court setting aside the convictions and sentence by the trial Judge. It is settled law that it is not every error committed by a lower court that would result in the decision being set aside by an appellate court. To qualify for a setting aside order, the mistake/error must be substantial/material and should lead to a F G H

miscarriage of justice if not corrected or set aside.

In the instant case, the two counts for which appellant was convicted but not sentenced carry the same sentence of death as the count of culpable homicide punishable by death for which appellant was convicted and sentenced. It is preposterous that appellant is complaining that the trial court sentenced him to death for one count instead of three death sentences for the three counts on which he was convicted!! He is also contending that the failure to add the other two death sentences should nullify the validly imposed sentence of death for one of the counts!! This is clearly the act of a drowning man clinging to a straw to save his life.

Finally on this issue, though section 269 of the Criminal Procedure Code requires a trial court to specify the punishment to which an accused person is sentenced, section 275 of the said Criminal Procedure Code provides that any error in specifying such a sentence is remediable which means that such an omission is not fatal to the case of the prosecution.

See also the case of Obidiozo vs The State (1987) 4 NWLR (pt. 64) 747 where this court held that an error by a trial court on the mode of sentence passed on a convict will not, without more, render the proceedings, including the conviction and sentence void.

In the circumstance I find no merit whatsoever in this appeal which is accordingly dismissed by me.

Appeal dismissed.

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother - Onnoghen, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal lacks merit and should be dismissed.

I wish to chip in a few words of my own in support. The appellant, along with the 2nd accused, stood trial before the Kogi State High Court on a three count charge of conspiracy, armed robbery and culpable homicide punishable with death. The appellant pleaded not guilty. At the trial the appellant's confessional statement was in effect, admitted as Exhibit E. Therein, the appellant admitted that he and the 2nd accused agreed and indeed killed the deceased with lo-

cally made pistols and robbed him of his car. The deceased's car was recovered from where the appellant had taken it for sale in Kaduna. The car keys and particulars were recovered from the appellant in the course of executing a search warrant in his abode.

The learned trial judge relied on the evidence of the prosecution witnesses which duly corroborated the appellant's confession in Exhibit E. He was duly found guilty of the offences charged. He was thereafter convicted and sentenced. B

The appellant felt unhappy and appealed to the court of Appeal which unanimously affirmed the stance of the trial court. The appellant has further decided to appeal to this court as he was entitled to do: in the main. C

I wish to touch briefly issues A and B formulated in the appellant's brief of argument which read as follows:-

"(a) Whether taking into consideration the peculiar facts of this case, the learned trial judge and the lower court treated Exhibit 'E' (alleged confessional statement) properly as the true confessional statement of the appellant to ground a conviction of armed robbery, conspiracy and culpable homicide.

(b) Whether from the totality of evidence before this honourable court the prosecution has proved its case beyond reasonable doubt in respect of the three heads of charge against the Appellant considering the role of corroborative evidence in their proof." E

Let me say it without any shred of equivocation that a confession made by an accused person is the best form of evidence to be relied upon by a trial judge. This is because no rational being will say anything negative against his interest; all things being equal. The confessional statements in Exhibit 'E' was in effect, admitted without objection. As such, the appellant admitted that it was freely made by him. Therein, he stated how he and his co-accused bought pistols with which they shot the deceased twice and confirmed him dead before they took away his car. Once confessional statement is free and properly established, as herein, it is sufficient proof of guilt and enough to sustain a conviction so long as the court is satisfied with such a confession. See *Adio v. The State* (1986) 2 NWLR (Pt. 24) 581; *Jimoh Salawu v. The State* (2011) 7 SCNJ 67. F

In most cases, it is desirable to have some sort of corroborative G H

evidence, however slight, in support of a confessional statement by an accused person. Corroborative evidence is the specie which is supplementary to that already given and tending to strengthen or confirm it. Additional evidence of a different character to the same point. *Edwards v. Edwards Tenn*, App 501 S.W 2d. 283, 289. Black's Law Dictionary, Sixth Edition Page 344.

It hardly needs any farther gainsaying that the recovery of the deceased's car from where the appellant had taken it for sale in Kaduna as well as the stolen car keys and particulars recovered from the appellant's abode in the course of executing a search warrant thereat is, no doubt, due corroborative evidence indeed.

I need to state it here that the two courts below made concurrent findings of fact on all pertinent issues canvassed in this appeal. They have not been demonstrated to be perverse or against the cogent evidence on record. I shall not interfere with same. See: *Shorumo v. The State* (2010) 12 SC (Pt. 1) 73 at 96; 102; *Victor v. The State* (2013) 12 NWLR (Pt 1369) 465 at 485.

The appellant attempted to contend that the prosecution failed to prove the charges against him beyond reasonable doubt. To my mind, the contention rests on shifting sand. This is because proof beyond reasonable doubt is not proof to the hilt. All essential ingredients of the offence charged were clearly established. It was no doubt, idle to have argued to the contrary. See *Alabi v. The State* (1993) 7 NWLR (Pt 307) 511 at 523; *Abogede v. The State* (1996) 5 NWLR (Pt. 448) 270 at 276.

For the above reasons and those elaborately adumbrated in the lead judgment, I too feel that the appeal lacks merit. It is hereby dismissed as the decision of the court below is affirmed.

G

GALADIMA JSC

I have had the opportunity of reading before now, the Lead Judgment just delivered by my learned brother ONNOGHEN, JSC. I completely agree with his reasoning and conclusions reached therein in dismissing the appeal.

The facts of this case have been carefully set out in the Lead Judgment. I have summarized same as this will enable me chip in a few words of my own. The Appellant and one Peter Iliya Azabade

armed with locally made pistols waylaid the deceased, one Mohammed Abubakar, killed and dispossessed him of his Nissan Saloon Car. For this act, appellant and co-accused were charged to the High Court of Kogi State on a three count charge of conspiracy, armed robbery and culpable homicide punishable with death. They were tried, found guilty and sentenced to death. Appellant was dissatisfied with the conviction and sentence and he appealed to the lower court which dismissed the appeal while affirming his conviction and sentence. This is further appeal by the appellant against the Judgment of the lower courts, 4 issues were formulated by the appellant while the respondent distilled 2 issues for determination of the appeal,

I am in complete agreement that the central issue raised by the appellant is the legal status of Exhibit 'E' and its effect on the charge having regard to the requirement of corroboration of retracted confessional statement. It is for this stance, his counsel has contended that since appellant denied making Exhibit 'E', the lower courts had a duty to make a finding as to who made it. That even if the Exhibit is treated as a retracted confessional statement the lower courts ought to have assessed evidence adduced on record corroborative of the said Exhibit 'E'.

Let it be noted that appellant contested the admissibility of Exhibit 'E' as a confessional statement, his reason being that it was not voluntarily made by him. This resulted in a trial within trial proceeding which were aborted because the appellant withdrew his objection to the admissibility of the statement. For this reason, the learned counsel for the respondent had correctly argued that Exhibit 'E', was admitted without any objection.

It is in view of the foregoing that I hold that with the withdrawal of the objection to the admissibility of Exhibit 'E', appellant admitted clearly that he made his statement voluntarily. He also agreed that he asked the police to write his statement for him and same was read to him.

Having said that Exhibit 'E' is the appellant's confessional statement voluntarily made to the police, the next question is the legal status of the Exhibit and/or its effect on the charge having regards to the requirement of corroboration of retracted confessional statement. I have taken the arguments from both sides (from the appellant and the respondent respectively).

It is trite law that confessional statement; so long as it is free and voluntary and is direct, positive and properly proved, is enough to sustain conviction. It is because confession is the best evidence in criminal law. In it, the accused admits that he committed the offence for which he is charged. As it is often said, for this purpose, the accused is the figurative horse's mouth. There cannot be any better evidence. In the instant case the trial judge admitted the confessional statement of the appellant, which was made voluntarily without any inducement, threat or promise from a person in authority or the like. See *ADIO v. THE STATE* (1986) 2 NWLR (pt. 24) 581; *ADEBAYO v. A-G OGUN STATE* (2008) 2-3 SC (pt. II) 50; *AKPA v. THE STATE* (2008) 4-5 SC (pt. II) 1 and *EKE v. THE STATE* (2011) 1-2 SC (pt. 1) 219.

Although confessional statement is enough to sustain conviction, in most cases a need will arise for the court to test the truth thereof. The test for determining its veracity or otherwise is to seek any other evidence by slight, of circumstances which make it possible that the confession is true. See *ASHIWE v. THE STATE* (1983) 5 SC, 23. *GALADIMA v. THE STATE* (2012) 12 SC (pt. II) 213. Therefore corroborative evidence is required. In the instant case there are as follows:

The fact that the deceased's car was recovered from the appellant who had taken it for sale in far away Kaduna, as well as the recovery of the keys and particulars of stolen car recovered from the appellant's abode in the course of executing a search warrant thereat and the testimony on oath of Pw2, Pw3 and Pw5, these indeed are corroborative evidence.

The two courts below made concurrent findings of fact on all the vital or important issues canvassed in this appeal. These are not shown to be perverse or against the clear evidence on record. I have no cause to disturb the concurrent findings of the two courts below and I shall not; See *SEVEN UP BOTTLING COMPANY v. ADEWALE* (2004) 4 - NWLR (pt.862) 183 *FAJEMIROKUN v. COMMERCIAL BANK (CREDIT LYONNAIS) (NIGERIA) LIMITED* (2009) 5 NWLR (PT.1135) *OLALOMIND. LTD v. NIDB LTD* (2009) 16 NWLR (pt.1167) 266 at 298. *VICTOR v. THE STATE* (2013) 12 NWLR (pt.1369) 465 at 485.

In the light of the foregoing, I hold that the prosecution has

proved the charges against the appellant beyond reasonable doubt

For the above contribution and those more elaborately set out in the lead judgment I too would dismiss the appeal for lacking in merit. It is hereby dismissed. I affirm the decision of the court below.

B

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the judgment of my learned brother Onnoghen, JSC. I agree with the reasons and conclusions. In view of the consequences of a confessional statement in a Criminal trial I shall add a few words of mine.

C

On the 9th day of August 2003 at about 9.30 p.m. along the Akogun-Ozugbe Road in Kogi State, the appellant and his friend, Peter I. Azabade shot and killed the deceased, and in the process of that horrid act stole his red Nissan car with Reg. No. AA969KAF.

D

They were both sentenced to death for Conspiracy; Armed Robbery, and culpable homicide. The Court of Appeal affirmed the decision of the trial court.

Exhibit E is the confessional statement made to the Police by the appellant. During trial the appellant maintained that he did not make it neither did he thumb print it. A trial within trial was conducted by the learned trial judge to find out if the exhibit was made voluntarily by the appellant. When the prosecution applies to tender a confessional statement and the maker, i.e. the accused person denies making it, the trial judge should admit it. In that case the weight to be attached to such a statement would be decided by the judge at the end of trial, but where the accused person objects on grounds that it was not voluntarily made, a trial within trial should be conducted. A trial within trial is a mini trial conducted to find out if the accused person made his confessional statement voluntarily. If the statement was not made voluntarily it would be rejected by the court but if found to have been made voluntarily it would be admitted in evidence and relied on by the court in convicting the accused person. A confessional statement is the best evidence that the accused person committed the crime for which he is charged. It is an admission against the maker. No further proof of the offence is usually needed when a confessional statement has been admitted as an exhibit.

E

F

G

H

Learned counsel for the appellant, Mr. K. Tolufashe objected to the tendering of Exhibit E, the appellant's confessional statement on the ground that it was not voluntarily made. Midway through trial within trial counsel applied to withdraw his objection to Exhibit E being admitted as an exhibit. His request was granted.

B The learned trial judge discountenanced the proceedings of the trial within trial and admitted the appellant's confessional statement as exhibit E. The withdrawal of the objection to the tendering of the confessional statement simply means that the appellant had no objection to his confessional statement being admitted as an exhibit.
C This is conclusive proof beyond any doubt that exhibit E was not beaten out of the appellant, rather it was voluntarily made by him and a court may convict the accused person on his extra judicial confession. See *Queen v. Itule* (1961) 2 SCNLR p.185, *Akpan v. State* (1962) 6 NWLR pt.248 p.459 *Adekoya v. State* (2012) 5 SC (pt.iii) p.56
D

It is desirable in some cases to have some independent evidence, be it corroboration that would make it probable that the confession was true, See *Bright v. State* (2012) 1 SC (pt. ii) p.47
E *State v. Isah* SC 2 ors. (2012) 7 SC (pt. iii) p.93 The confession to killing the deceased and stealing his red Nissan car was free and voluntary. It was consistent, and corroborated by exhibits to wit: the keys and particulars of the stolen car and the testimony on oath of the prosecution witnesses, PW2, PW3, PW4 and PW5. In the final
F analysis the case was one way. The appellant in company of his friend Peter I, Azabade shot and killed the deceased, stole his car and tried to sell it in Kaduna before it was retrieved by the police.

Concurrent findings of the two courts below are that the appellant
G and his friend killed the deceased and stole his car. This finding was made by the trial court and affirmed by the Court of Appeal. This court will rarely upset findings of fact made by the trial court. This is so because such findings of fact were only arrived at after passing through cross-examination, the judge observing demeanour, the witnesses' reactions, and assessment of the truthfulness of their testimony. Such findings when made ought to be highly respected by an
H appellate court which did not have the advantage of the trial court. But where concurrent findings of fact are found by this court to be perverse or cannot be supported by evidence, or there is a miscar-

riage of justice, this court would upset such findings. See R-Benkay Nig Ltd v. Cadbury Nig PLC (2012) 3 SC (pt. iii) p.169, ACN v. Lamido & 4 ors (2012) 2 SC (pt. ii) p. 163

Learned counsel for the appellant was unable to show to this court why concurrent findings of the two courts below should not be affirmed. B

For these brief reasons as well as those more fully given by my learned brother, Onnoghen, JSC, I would dismiss the appeal. Appeal dismissed.

C

AKA'AH S JSC

I had a preview of the judgment just delivered by my learned brother Onnoghen, JSC with which I agree.

The appellant who was the 1st accused was arraigned along D with Peter Iliya Azabada on an amended three count charge of criminal conspiracy, armed robbery and culpable homicide punishable with death contrary to sections 97 (I), 298(d) and 221 read along with section 79 respectively of the Penal Code. After the trial, the learned trial Judge evaluated the evidence and found each of the E two accused persons guilty of the offences charged and sentenced them to death by hanging on the third count. Each of them appealed against his conviction to the Court of Appeal, Abuja Division. The lower court consolidated the appeals and dismissed them on 12th F May, 2011. This is a further appeal by the appellant from that judgment.

Learned counsel for the appellant, Biriya Dambo Esq. formulated four issues for determination in the appellant's brief while Steve Adehi formulated two issues. My learned brother Onnoghen, JSC G considered all the issues raised by the appellant and found that the appeal lacked merit and dismissed it. I agree with him.

The main issue in this appeal is whether the appellant was convicted solely on the confessional statement Exhibit E which he retracted. In the said confessional statement he stated that he and Peter H Iliya planned before they killed Mohammed Abubakar. He said that after Peter had bought a locally made pistol, he too went to Shensheyi village and bought his own pistol for N2000 and on 9/8/2003 the two of them waylaid the deceased, shot him and after they had con-

firmed he was dead, they dragged him out of the taxi and drove the taxi away to Kaduna. They tried to sell the taxi but the intending purchaser declined to buy it when they could not produce the particulars. He said that after they had carried out the robbery, Peter kept the guns while he retained the keys to the vehicle.

B Fasaki Toba who testified as PWI stated under cross-examination that when investigation was conducted the car keys and particulars of the vehicle were recovered from under the appellant's bed. So quite apart from the confessional statement which the appellant made, there was very strong corroborative evidence of the keys and
C vehicle particulars which linked him to the crime he admitted to have committed. He was therefore properly convicted for culpable homicide punishable with death.

Although the law provides that where an accused person has
D been found guilty of an offence the appropriate sentence should be imposed, the failure to do so in respect of the offences for criminal conspiracy and armed robbery has not rendered the trial a nullity and the lower court had power to correct the error. See: Onyejekwe VS The State (1992) 3 NWLR (Pt. 230) 444; Ejelikwu VS State (1993)
E 3 NWLR (Pt. 307) 554 at 569.

It is for this reason and the more detailed reasons contained in the judgment of my learned brother, Onnoghen, JSC that I equally found no merit in the appeal and dismissed it. The appeal is accord-
F ingly dismissed.

G

H