

**SUPREME COURT OF NIGERIA**  
FRIDAY 27TH FEBRUARY, 2015. SC. 241/2013  
**CORAM:- S. GALADIMA, M. U. PETER-ODILI,**  
**O. ARIWOOLA, J. I. OKORO, C. C. NWEZE, JJSC**

TAJUDEEN ILIYASU ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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MURDER - Ingredients - Proof - Prosecution must prove that deceased died - And that his death was caused by accused - Who intended to kill or cause grievous bodily harm to deceased (H1)

MURDER - Confession - Veracity of - From appellant's positive account - Lower courts rightly resolved fact of the death of deceased - And that it was appellant's gruesome act that caused it (H2)

MURDER - Intention - Dangerous weapon - Where such weapon was used - Court will infer that death was a probable - And not just a likely consequence of accused act (H3)

ALIBI - Plea - Conditions - Accused must raise the defence at the earliest opportunity - Giving particulars of his whereabouts and those present with him - Otherwise it will not avail accused (H4)

CRIMINAL PROCEDURE - Circumstantial evidence - Weight - In absence of direct evidence - Conviction may be based on circumstantial evidence - Provided it points to the guilt of accused (H5)

MURDER - Proof - Doctrine of last seen - In absence of explanation as to cause of death - A person last seen with deceased bears full responsibility for his death (H6)

**FACTS**

Before the High Court of Kaduna State, accused/appellant and one other were arraigned for conspiracy and culpable homicide punishable with death contrary to sections 97 and 221 of the Penal Code, respectively. Both of them pleaded not guilty to the counts. The case

as presented by prosecution/respondent is that appellant and the deceased were friends and business associates. On a certain day, an argument arose between both of them about the sum of N4,000.00. Later on the same day, appellant and the deceased rode on the deceased's motorcycle to appellant's house and that was the last time the deceased was seen by his wife (PW2).

Appellant was arrested in connection with the death. He made confession admitting hitting the deceased on the head and stomach with an iron rod. At the trial, PW3 testified that on the following day he went to appellant's house and saw blood splashes on the walls of the room of appellant. PW3 stated that he immediately informed PW4 of his discovery, which led to the invitation of the police. On their arrival, the police discovered the half buried body of the deceased in the compound close to appellant's room. Appellant on his part denied the crime and raised the defence of alibi. At the end of the trial, the court found respondent's case proved against appellant. The court therefore convicted and sentenced appellant to death. Appellant was dissatisfied with the judgment. Hence, he appealed to the Court of Appeal Kaduna Division. The court heard the appeal and dismissed same. Aggrieved further, appellant appealed to Supreme Court.

### **ISSUE FOR DETERMINATION**

Whether or not the lower court's decision to affirm the trial court's conviction of the appellant for culpable homicide was right having regard to the circumstantial evidence available and the appellant's confessional statement?

**HELD** (Unanimously dismissing the appeal per **NWEZE JSC**)

*MURDER - Ingredients - Proof*

**1. As indicated at the outset, the appellant was tried; found guilty; convicted and sentenced to death by hanging for the offence of Culpable Homicide punishable with death by, the trial court. The charge was laid under section 221 of the Penal Code. The three constitutive elements or ingredients of the offence which must be proved in order to secure a convic-**

**tion under this section have been, generously, outlined in case law, *Maigari v State* [2013] 6-7 MJSC (pt. 11) 109.**

**Under the said section, the prosecution is obliged to prove: (1) that the deceased died; (2) that his/her death was caused by the accused; (3) that she/he intended to either kill the victim or cause her/him grievous bodily harm. (p. 570 H)**

*MURDER - Confession - Veracity of*

**2. Essentially, both the trial court and the lower court placed reliance, inter alia, on exhibits F1; F2 and G, the appellant's confessional statements, [and circumstantial evidence exemplified, for example, in the appellant's blood-spattered room; in exhibits C1 to C5- photographs showing a heap of sand in the appellant's compound with a dead body buried thereunder and the "last seen doctrine"] in finding in favour of the proof of the above three ingredients of the offence in question. In the said confessional statement, the appellant gave a picturesque description of his gory and dastardly sequence of acts that dispatched the deceased to his untimely death.**

**From the appellant's own vivid; direct; positive and cogent account, both the trial court and the lower court had no difficulty in resolving the first two ingredients in favour of the Prosecution, that is, the fact of the death of the deceased [Abdullahi Bala Getso] and the fact that the appellant gruesome act of hitting the late Abdullahi Bala Getso with an iron rod several times on his head and stomach caused the death of the said deceased person.**

**Unarguably, the most handy nail that sealed the coffin of the infantile or puerile testimony of the appellant was the unchallenged testimony that the deceased person was last seen with the appellant, [pages 63 and 64 of the record for the testimonies of PW2 and PW3 in this regard]. In effect, the cogency of the appellant's confession was all too evident and, most instructively, the testimonies of PW1; PW2; PW3; PW4 and PW6, demonstrably, bore out its incontestable veracity.**

**(pp. 573 A/F/574 C)**

*MURDER - Intention - Dangerous weapon*

**3. True indeed, case law and scholastic treatises are unanimous on the point that if a dangerous weapon [such as the iron rod used in dispatching the late victim of the offence charged to the great beyond] was used, the courts will infer that death was a probable and not just a likely consequence of the accused person's act, I, equally, endorse the concurrent findings of the lower courts on the Prosecution's proof of this third element of the offence in question. (p. 576 E)**

*ALIBI - Plea - Conditions*

**4. Thus, to be entitled to its beneficent effect, such an accused person must raise it at the earliest opportunity, which would, preferably, be in his extra-judicial statement. This is to offer the police an opportunity either to confirm or confute its availability to the accused person. Above all, the said defence must be unequivocal as to the particulars of the accused person's whereabouts and those present with him.**

**It is only where such an accused person raised the said defence at the earliest opportunity without any ambiguity that a burden is cast on the Prosecution to investigate it. Failure to investigate the defence of alibi raised in such circumstance will lead to an acquittal.**

**In effect, where a defence of alibi consists of vague accounts which are devoid of material facts worthy of investigation, the police, in the circumstance, would least be expected to embark on a wild goose chase. In situations, such as was the case at the court of trial, where the accused person raised the defence of alibi during the trial, it would be unavailing. Such a strategy would simply be viewed as a ploy, deliberately, contrived to deny the Prosecution its right and duty to investigate the defense. Worse still, where an accused person was fixed at the scene of crime, any plea of alibi would be valueless. At the trial court, PW3 and PW4, during their further cross-examination merely reiterated the vague defence of alibi which the appellant introduced for the first time during evidence at the trial court. Surely, that was a deliberate ploy aimed at short-changing the Prosecution. The said defence could, therefore,**

**not avail the appellant contrary to the misconceived submissions of his counsel on paragraphs 4. 00; 4. 01; 4.02- 6.00 and, even, paragraph 7.00 of the appellant's brief where he [counsel] urged the court to extend the trial court's resolution of doubt in favour of the discharged second accused person to the appellant. We find no merit in the contention of the learned counsel on these issues. (p. 578 A)** B

*CRIMINAL PROCEDURE - Circumstantial evidence - Weight*

**5. Now, the category of evidence known as circumstantial evidence, which is, more often than not, the best evidence, is the evidence of surrounding circumstances which, by under-signed coincidence, is capable of proving a proposition with the accuracy of mathematics. This is so for, in their aggregate content, such circumstances lead cogently, strongly and unequivocally to the conclusion that the act, conduct or omission of the accused person caused the death of the deceased person.** C D

**Simply put, it means that there are circumstances which are accepted so as to make a complete and unbroken chain of evidence. Where such circumstances are established to the satisfaction of the court, they may be properly acted upon.** E

**Thus, where there is no eye witness account or direct evidence of the commission of an offence, a conviction may be based on circumstantial evidence. However, such circumstantial evidence must point to only one conclusion, namely, that the offence had been committed and that it was the accused person who committed it. For the purpose of drawing an inference of an accused person's guilt from circumstantial evidence, there must not be other co-existing circumstances which would weaken or destroy the inference. Thus, all other factors and surrounding circumstances must be carefully considered for they may be enough to adversely affect the inference of guilt. (p. 579 E)** F G H

*MURDER - Proof - Doctrine of last seen*

**6. One final point: the submission of the appellant's counsel in paragraph 8.02 of the brief bespeaks his misconception of**

*the pungency of the evidence, which the trial court believed and the lower court affirmed, that the deceased person was last seen with the appellant on the fateful night. The last seen doctrine, a doctrine of global application, also, referred to as ‘the last seen theory’, is applied in homicide cases in Nigeria.*

*B It creates a rebuttable presumption to the effect that the person last seen with a deceased person bears full responsibility for his or her death.*

*C Thus, where an accused person was the last person to be seen in the company of the deceased person, he has a duty to give an explanation relating to how the latter met his or her death. In the absence of such an explanation, a trial court and even an appellate court will be justified in drawing the inference that he [the accused person] killed the deceased person.* (p. 583 A)

## NOTABLE POINTS OF INTEREST

### NWEZE JSC

#### *1. Retraction does not affect admissibility of confession*

*E* Suffice to observe for now that a retraction or denial of a confessional statement [as the appellant did during his defence at the trial court] does not affect its admissibility. (p. 572 F)

#### *F 2. Confession – Test of*

*G* From pages 196 -197 of the record, I find clear evidence of the lower court’s application and consideration of the principles which should be considered in determining whether or not to believe and act on a confession or confessions which an accused person resiled from as enunciated in R. v. Sykes (1913) 8 C.A. R. 233, These are: whether there is anything outside the confession which may vindicate its veracity; whether it is corroborated in any way; whether its contents, if tested, could be true; whether the defendant had the opportunity of committing the alleged offence; whether the confession is possible and the consistency of the said confession with other facts that have been established. (p. 574 H)

### ***3. Intention to cause murder – Test of***

In order to determine whether the defendant really had an intention to murder, the law has set down some criteria, some of which are (i) the nature of the weapon used; here, the law builds its tent not just on any weapon but on a lethal weapon, that is, a weapon which is deadly or death-dealing; (ii) the part of the body which was brutalized by the lethal weapon; and (iii) the extent of the proximity of the victim with the lethal weapon used by the accused [person]. (p. 576 B)

### ***4. Presumption of innocence – Doctrine of last seen – Exception to the rule***

The doctrine has been held to be an exception to the watertight constitutional provision that a person is presumed innocent until proved guilty. (p. 583 H)

### **CASES REFERRED TO**

FBN Plc. v. Onkuga (2005) 16 NWLR (pt. 950) 120  
 Oforlete v. State [2000] 12 NWLR (pt. 681) 415  
 Abadom v. State [1997] 1 NWLR (pt. 479) 1  
 Bozin v. State [1985] 2 NWLR (pt. 8) 465  
 Okonji v. State [1987] 1 NWLR (pt. 52) 659  
 State v. Sadu (2001) 15 NWLR (pt. 735) 102  
 Oluma v. Onyuna (1996) 4 NWLR (pt. 443) 449  
 Attah v. State [2010] 10 NWLR (pt. 1201) 190  
 Edoho v. State [2010] 14 NWLR (pt. 1214) 651  
 Adamu v. State [1991] 4 NWLR (pt. 187) 530  
 Opayemi v. State [1985] 2 NWLR (pt. 5) 101  
 Bassil v. Fajebe [2001] 11 NWLR (pt. 725) 592  
 Mohammed v. State (2007) 11 NWLR (pt. 1045) 303  
 Co Ltd v Okhai [2003] 18 NWLR (pt. 851) 79  
 Shehu v State [2010] 8 NWLR (pt 1195) 143

### **STATUTE REFERRED TO**

Penal Code, ss. 97, 221

### **REPRESENTATION**

J. M. M. Majiyagbe for the appellant, with C. C. Okonkwo; Kehinde

Ogunwumiju, for the respondent, with Ademola Abimbola and Bridget Emengo (Mrs.)

**LEAD JUDGMENT BY NWEZE JSC**

At the High Court of Kaduna State, the appellant in this appeal [as second accused person] and one Kabiru Muhammad [as first accused person] were charged with the offences of conspiracy under section 97 and Culpable Homicide punishable with death under 221 of the Penal Code. At the said High Court [hereinafter referred to as the “trial court”], they pleaded not guilty to the two counts.

In proof of its case, the prosecution called eleven witnesses and tendered nine exhibits. On his part, the appellant [as second accused person] testified in his defence. He did not call any other witness. At the conclusion of the trial, the trial court (Coram Othman J), in its judgment of July 18, 2011, first, discharged and acquitted both accused persons on the count of conspiracy; it equally discharged and acquitted the first accused person [Kabiru Mohammad] on the second count of culpable homicide punishable with death. The appellant was unlucky as the trial court found him guilty, convicted and sentenced him death by hanging.

He was naturally aggrieved by the outcome of the criminal trial against him, hence, his appeal to the Court of Appeal, Kaduna Division, (hereinafter, simply, referred to as “the lower court”). In its judgment of March 22, 2013, the lower court, [as per the leading judgment of Abiru JCA], dismissed the appellant’s appeal. This further appeal is the appellant’s persistent quest for justice. He formulated two issues from his three grounds of appeal. They were framed thus:

(1) Whether the Court of Appeal was right when it dismissed the appellant’s appeal on the ground that the prosecution had proved its case against the appellant beyond reasonable doubt to sustain the charge of Culpable Homicide against the appellant?

(2) Whether the Court of Appeal was right to have sustained the conviction of the appellant on circumstantial evidence?

On its part, the respondent formulated a lone issue couched in these terms:

Whether or not the lower court’s decision to affirm the trial court’s conviction of the appellant for culpable homicide was right

having regard to the circumstantial evidence available and the appellant's confessional statement?

On our part, we are enamored of the respondent's sole issue. It is not only appealing due to its concision, it is, actually, more pungent apropos the appellant's complaint in his three grounds of appeal. We shall, therefore, adopt this sole issue in the determination of this appeal. For the avoidance of doubt, therefore, the issue for the determination of this appeal is:

Whether or not the lower court's decision to affirm the trial court's conviction of the appellant for culpable homicide was right having regard to the circumstantial evidence available and the appellant's confessional statement?

#### ARGUMENTS OF COUNSEL

#### APPELLANT'S CONTENTION

At the hearing of this appeal on December 4, 2014, J. M. M. Majiyagbe for the appellant, with C. C. Okonkwo, adopted the appellant's brief of argument filed on October 14, 2013, although deemed, properly and served on February 26, 2014. Counsel contended that exhibits F1, F2 and G, the appellant's confessional statements, were fraught with many irregularities. Citing page 123 of the record, he pointed out that the appellant's evidence was consistent with his denial and retraction of the exhibits. He noted that the prosecution did not cross examine him on these facts and, in his view, must be deemed to have admitted their truth. He cited the Court of Appeal decision in *FBN Plc. v Onkuga* (2005) 16 NWLR (pt 950) 120 and this court's decisions in *Oforlete v State* [2000] 12 NWLR (pt 681) 415, 436; *Abadom v State* [1997] 1 NWLR (pt 479) 1, 20. He maintained that the prosecution failed to cross examine the appellant on his evidence that he did not commit the offence.

He, further, observed that the appellant raised a defence of alibi. According to him, this defence was supported and corroborated by the testimonies of PW3 and PW4, citing pages 118 -119 of the record. He turned to what he referred to as "serious conflict" between the testimonies of PW3 and PW4 and the appellant's confessional statements. He urged the court to resolve the conflicts in favour of the appellant, *Bozin v State* [1985] 2 NWLR (pt 8) 465; *Okonji v State* [1987] 1 NWLR (pt 52) 659.

Counsel canvassed the view that the lower court should have

discountenanced the testimonies of PW3 and PW4 for being inconsistent. He drew attention to pages 64 and 118 for the alleged inconsistent testimonies. He observed that the trial court placed reliance on the inconsistent testimony of PW3, [page 147 of the record] and the lower court adopted that the trial court's position, [page 200 of the record]. He maintained that the doubt created by the inconsistencies in the testimonies of PW1; PW2; PW3 and PW4 should be resolved in favour of the appellant, *The State v Sadu* (2001) 15 NWLR (pt 735) 102, 112; *Oluma v Onyuna* (1996) 4 NWLR (pt 443) 449, 457.

Emboldened by the above submissions, he maintained that the trial court erred when it failed to consider the defence of alibi. The lower court, in his view, fell into the same error. For his proposition that a court has a duty to consider all the defences available to an accused person, he cited *Oforlete v State* (supra) at pages 429-430; *Attah v State* [2010] 10 NWLR (pt 1201) 190, 221; *Edoho v State* [2010] 14 NWLR (pt 1214) 651, 681-682; 698. In his view, both the trial court [page 123 of the record] and the lower court failed to consider all the evidence favourable to the appellant, *Adamu and Ors v State* [1991] 4 NWLR (Pt.187) 530, 538-539; *Opayemi v. State* [1985] 2 NWLR (pt. 5) 101; *Bassil v Fajebe* [2001] 11 NWLR (pt 725) 592, 617.

Citing *Mohammed v State* (2007) 11 NWLR (pt 1045) 303, he took the view that the circumstantial evidence used in convicting the appellant does not meet the requirements of the law. He divided the pieces of circumstantial evidence into three categories. For the first category, he re-iterated the inconsistent evidence of PW2 and PW3 who saw the deceased last in the company of the appellant, [pages 64 and 118-118 of the record]; and the concurrent findings of the lower court at page 200 of the record, *C and C Construction Co Ltd v Okhai* [2003] 18 NWLR (pt 851) 79, 100. He classified the confessional statements under the second category and adopted his earlier submissions on them. In the third category, he listed the blood stain; the corpse and non-existent evidence. With regard to the blood stain, he referred to page 147 of the record, pointing out what, in his view, was the error of the trial court by setting out the pieces of evidence of PW3 on pages 64; 118-119 of the record.

He attempted a juxtaposition of the evidence of PW3 with the

conclusion of the trial court, [paragraph 8.05, pages 19-20 of the brief]. He urged the court to reverse the concurrent findings of the trial and lower courts on the ground that they failed to narrowly examine with utmost care, the circumstantial evidence used in convicting the appellant, *Shehu v State* [2010] 8 NWLR (pt 1195) 143, 144. He, further, pointed out that the trial court and the lower court were wrong in law or in the application of the law to the admitted facts, *Long-John v Blakk* [2005] 17 NWLR (pt 953) 1, 14-15; *Adeyemi v State* [1991] 6 NWLR (Pt. 195) 1, 22. He urged the court to allow the appeal and discharge and acquit the appellant, *Adamu v State* [1991] 4 NWLR (pt 187) 530, 538-539. B  
C

#### RESPONDENT'S SUBMISSION

On his part, Kehinde Ogunwumiju, counsel for the respondent, appearing with Ademola Abimbola and Bridget Emengo (Mrs.), adopted the brief filed on November 4, 2014, although deemed properly filed and served on November 6, 2014. In his well articulated brief, he broached the settled position that, where a confessional statement contains a direct and unambiguous admission of all ingredients of the offence charged, an accused person can be convicted on it [such a confessional statement] alone, citing *Akpa v State* [2008] 14 NWLR (pt 1106) 72; *Milla v State* [1985] 3 NWLR (pt 11) 190; *Achabua v State* [1976] 12 SC 63 and *Onuoha v State* [1987] 4 NWLR (pt 65) 331. E

He re-iterated the ingredients of the offence of Culpable Homicide Punishable with death, as adumbrated in *Haruna v A. G. Federation* [2012] 9 NWLR (pt 1306) 419 and *Ali v State* [2012] 7 NWLR (pt 1299) 209. Drawing attention to pages 105 and 113 of the record, where exhibits F1; F2 and G were admitted as confessional statements, he submitted that these confessional statements were direct, cogent and positive enough to ground the appellant's conviction as he, clearly, admitted the existence of the said ingredients of the offence charged. F  
G

He, also, referred to the findings of the lower court on this issue, pages 199-200 of the record. He maintained that these statements scaled the threshold tests which case law outlined for the admission of confessions, *Akpan v State* [1992] 6 NWLR (pt 248) 438; *Alarape v State* [2001] 5 NWLR (pt 705) 79. He pitch-forked these requirements into the testimonies of the eleven witnesses whom the H

Prosecution marshaled and invited the court to sustain the concurrent findings of the lower courts.

Against the background of the conspectus of facts which he set out on paragraphs 4.15-4.16, pages 7-8 of the brief, he, further, contended that the circumstantial evidence on record, being cogent and compelling, pointed conclusively to the fact that the appellant killed the deceased person, *Akinbisade v State* [2006] 17 NWLR (pt 1007) 184; *Ahmed v State* [2001] 18 NWLR (pt 746) 622. He urged the court to invoke the presumption inherent in the “last seen doctrine” and hold that the appellant could not absolve himself from the implication of the said doctrine, citing pages 63; 123 of the record; *Igbele v State* [2006] 6 NWLR (pt 975) 100; *Madu v State* [2012] 15 NWLR (pt 1324) 405, 456-457.

He urged the court to discountenance the appellant’s defence of alibi for two main reasons. He pointed out that the said defence was not raised at the earliest opportunity, *Akpan v State* [2002] 12 NWLR (pt 780) 189; *Ndukwe v State* [2009] 7 NWLR (pt 1139) 43, 89. He, equally, pointed out that, at least, three witnesses gave evidence fixing him to Rigasa, Kaduna, on September 30, 2003, when the death of the deceased person occurred, *Peter v State* [1997] 3 NWLR (pt 496) 625, 642. He, even, contended that the arguments of the so-called defence are unrelated to the grounds of appeal, citing pages 212-213 of the record, *Madumere v Okafar* [1996] 4 NWLR (pt 445) 637, 644.

He turned to the appellant’s contention relating to the inconsistencies in the testimonies of PW3 and PW4. He relied on *Madumere v Okafar* (supra) as authority for the view that, since the said argument does not flow from his grounds of appeal, they ought to be discountenanced. What is more, he, [the appellant], not having complied with sections 199 and 209 of the Evidence Act [in force at the material time], cannot be heard to complain that PW3 and PW4 contradicted themselves, *Madumere v Okafar* (supra) 648-649; *Kwaghshir v State* [1995] 3 NWLR (pt 386) 651, 661-662; *Samba v State* [1993] 6 NWLR (pt 300) 399, 417. In all, he urged the court to dismiss the appeal and affirm the judgment of the lower court.

#### RESOLUTION OF THE ISSUE

***As indicated at the outset, the appellant was tried; found guilty; convicted and sentenced to death by hanging for the***

**offence of Culpable Homicide punishable with death by, the trial court. The charge was laid under section 221 of the Penal Code. The three constitutive elements or ingredients of the offence which must be proved in order to secure a conviction under this section have been, generously, outlined in case law, Maigari v State [2013] 6-7 MJSC (pt 11) 109, 125, citing** B  
Ochemeje v The State [2008] SCNJ 143; Daniel v The State [1991] 8 NWLR (Pt 4430 715; Obudu v State [1999] 6 NWLR (pt 1980 433; Gira v State [1996] 4 NWLR (pt 428) 1, 125.

**Under the said section, the prosecution is obliged to prove: (1) that the deceased died; (2) that his/her death was** C  
**caused by the accused; (3) that she/he intended to either kill the victim or cause her/him grievous bodily harm.** These ingredients, which are the same with the ingredients of the offence of murder under the Criminal Code have witnessed consistent espousal D  
in many jurisdiction for example, by English courts, R V Hopwood (1913) 8 Cr. App. R. 143; Hyam v DPP [1974] 2 All ER 41; Woolmington v DPP [1935] AC 462; by Nigerian courts, Madu v State [2012] 15 NWLR (pt 1324) 405, 443, citing Durwode v State [2000] 15 NWLR (pt 691) 467; Idemudia v State [2001] FWLR (pt E  
55) 549, 564; [1999] 7 NWLR (pt 610) 202; Akpan v State [2001] FWLR (pt 56) 735; [2000] 12 NWLR (pt 682) 607 and by courts in other Commonwealth jurisdictions, see, for example, R. v Nichols (1958) QWR 46; R v Hughes (1958) 84 CLR 170; Timbu Kolian v F  
The Queen (1968) 42 A. L. J. R.; R. v Tralka [1965] Qd. R. 225, [Queensland, Australia].

Scholars have seldom disagreed with judicial authorities on this question, C. O. Okonkwo, Okonkwo and Naish: Criminal Law in Nigeria (Second Edition) (Ibadan: Spectrum Books Ltd, 2009) 209 G  
et seq; A. G. Karibi-Whyte, History and Sources of Nigerian Criminal Law (Ibadan: Spectrum Books Ltd, 1988) passim; Archbold's Pleadings: Evidence and Practice in Criminal Cases (Fourth Edition) (London: Sweet and Maxwell, 1979) passim; K. S. Chukkol, The Law of Crimes in Nigeria (Zaria: Ahmadu Bello University Press Ltd, 1988); H  
P. Ocheme, The Nigerian Criminal Law (Kaduna: Liberty publications Ltd, 2006) 194 et seq.

Both the trial court [page 89 of the record] and the lower court [pages 10-13 of the record], concurrently, found in favour of

the proof of these ingredients. As such, in this further appeal, the appellant has an onerous duty to discharge. As it is well known, this court will not disturb concurrent findings of fact of lower courts unless the appellant is able to fulfil the following pre-conditions: establish a substantial error apparent on the face of the record of proceedings; show that such findings of fact were perverse; the said findings were unsupported by the evidence before the trial court; that the findings and conclusion were arrived at as a result of a wrong approach to the evidence or a wrong application of the principles of substantive law or procedure, *Enang v Adu* [1981] 11- 12 SC 25, 42; *Nwadike v Ibekwe* [1987] 4 NWLR (pt. 67) 718; *Igwego v. Ezeugo* [1992] 6 NWLR (pt. 249) 561, 576; *Lamai v Orbih* [1980] 5-7 SC 28; *Woluchem v Gudi* [1981] 5 SC 291, 326; *Ike v Ugboaja* [1993] 6 NWLR (pt. 301) 539, 569; *Chinwendu v Mbamali* [1980] 3-4 SC D 31 and so on.

The question now is whether the appellant has shown sufficient reasons why this court should interfere with the said concurrent findings of the lower court and the trial court? In the first place, counsel for the appellant cited page 123 of the record. There, the appellant, testifying in his evidence-in-chief, for the first time purported to raise the defence of alibi. Counsel then contended that the said testimony is “cogent and consistent with the denial of the alleged confessional statement.” In the course of this judgment, I shall return to the probative value (if any) of the said defence of alibi which the appellant raised for the first time during his defence at the trial court.

Suffice to observe for now that a retraction or denial of a confessional statement [as the appellant did during his defence at the trial court] does not affect its admissibility. This has long been settled in the very old cases of *R. v Sapele and Anor* (1952) 2 FSC 74; *R v Itule* (1961) All NLR 462; the relatively old decisions of *Ikpasa v The State* [1981] 9 SC 7; *Akpan v State* (1992) LPELR -381 (SC) 36; *Osakwe v State* [1994] 2 SCNJ 57; *Nwangbonu v The State* [1994] 2 NWLR (pt 327) 380; *Bature v State* [1994] 1 NWLR (pt 320) 267; *H Eragna and Ors V The A-G Bendel* (1994) LPELR (SC) 30; *Idowu v State* [1996] 11 NWLR (pt 574) 354; as well as the more recent decisions of *Silas Sule v State* (2009) LPELR - 3125 (SC) 28-30, *G-B; FRN v Iweka* (2011) LPELR - 9350 (SCO 53; *Oseni v. The State* (2012) LPELR -7833 (SC) 22-23.

**Essentially, both the trial court and the lower court placed reliance, inter alia, on exhibits F1; F2 and G, the appellant's confessional statements, [and circumstantial evidence exemplified, for example, in the appellant's blood-splattered room; in exhibits C1 to C5- photographs showing a heap of sand in the appellant's compound with a dead body buried thereunder and the "last seen doctrine"] in finding in favour of the proof of the above three ingredients of the offence in question. In the said confessional statement, the appellant gave a picturesque description of his gory and dastardly sequence of acts that dispatched the deceased to his untimely death.** The lower court summed up this ugly account thus:

*"The appellant stated in the two statements that he and one Kabiru Mohammed, a.k.a. Two Hours, killed the deceased [person] in the appellant's room in the appellant's house and that while Kabiru hit the deceased [person] with an iron rod on his head, he beat the deceased with bare hands and that they killed the deceased [person] because of a dispute over the sum of N4, 000.00. The appellant stated that the deceased [person] came to his house with a Vespa motorcycle and that after they killed the deceased [person], they buried the corpse in a heap of sand in front of his room and within the compound and that he took the Vespa motorcycle to a friend of his junior (sic) brother called Haruna to keep..."* [Pages 197 -198 of the record]

**From the appellant's own vivid; direct; positive and cogent account, both the trial court and the lower court had no difficulty in resolving the first two ingredients in favour of the Prosecution, that is, the fact of the death of the deceased [Abdullahi Bala Getso] and the fact that the appellant gruesome act of hitting the late Abdullahi Bala Getso with an iron rod several times on his head and stomach caused the death of the said deceased person.**

The trial court found abundant evidence from the Prosecution's case that corroborated these vivid descriptions of the unholy actions of the appellant which occasioned the death of the deceased person. The Prosecution had placed at the disposal of the trial court, through the testimonies of PW2 [the wife of the deceased person] and PW3 [the appellant's younger brother], evidence of blood splashes in the

appellant's house, [page 64 of the record]; the sand-covered lifeless body of the deceased person in the appellant's morbid compound, [page 66 of the record]; sand used in covering the blood of the deceased person, page 64 of the record.

In addition, the Prosecution marshaled evidence in proof of the fact that the appellant, unsuccessfully, tried to conceal a vital piece of evidence that linked him, inextricably, with the said offence. That was his action of hiding the deceased person's "Vespa" Motorcycle sequel to the gruesome and grisly death of the deceased person, page 64 of the record. Being clever by half, the appellant bought two gallons of paint and a brush at Panteka market [page 77 of the record]. This was, inferentially, for the purpose of swathing the scarlet memento of the grisly incident he had caused, that is, the death of the deceased person. **Unarguably, the most handy nail that sealed the coffin of the infantile or puerile testimony of the appellant was the unchallenged testimony that the deceased person was last seen with the appellant, [pages 63 and 64 of the record for the testimonies of PW2 and PW3 in this regard]. In effect, the cogency of the appellant's confession was all too evident and, most instructively, the testimonies of PW1; PW2; PW3; PW4 and PW6, demonstrably, bore out its incontestable veracity.**

Against this background, Abiru JCA, who read the leading judgment of the lower court, did not entertain any doubt that the confession of the appellant, apart from being cogent, direct and compelling, scaled the threshold test enunciated in case law for ascertaining the truth of confessions. Little wonder then why His Lordship opined that the said confessions [evidenced in the said exhibits F1; F2 and G] would not just morph into pieces of inadmissible evidence because the appellant [as accused person] denied having made them; retracted them or resiled from them, see 197 of the record.

I entirely endorse the approach of the lower court on this issue. I note that a confession contained in a statement, such as exhibits F1; F2 and G (supra), is not to be treated differently from any other confession. From our reading of pages 147 -148 of the record, I am satisfied that trial court factored in all the tests laid down in *R v Kanu* (1952) 14 WACA 30.

From pages 196 -197 of the record, I find clear evidence of

the lower court's application and consideration of the principles which should be considered in determining whether or not to believe and act on a confession or confessions which an accused person resiled from as enunciated in *R. v. Sykes* (1913) 8 C.A. R. 233, 236; *Kanu v The King* (1952) 14 WACA 30; *The Queen v. Obiasa* (1962) 1 All NLR 651; [1962] 1 SCNLR 137; *Obosi v The State* (1965) NMLR B 129; *Onochie and Ors v The Republic* (1966) NMLR 307; *Jafiya Kopa v. The State* (1971) 1 All NLR 150 *Dawa v The State* [1980] 8 -11 SC 236; *Ejinima v The State* [1991] 5 LRCN 1640, 1671; *Arthur Onyejekwe v The State* [1992] 4 SCNJ 1, 9; [1992] 3 NWLR (Pt. C 230) 444; *Aiguoreghian and Anor. v. The State* [2004] 3 NWLR (pt 860) 367; [2004] 1 SCNJ 65; [2004] 1 SC (pt.1) 65.

These are: whether there is anything outside the confession which may vindicate its veracity; whether it is corroborated in any way; whether its contents, if tested, could be true; whether the defendant had the opportunity of committing the alleged offence; whether the confession is possible and the consistency of the said confession with other facts that have been established, *Osetola and Anor v The State* (2012) LPELR 9348 (SC) 32-33, G-D; *Kareem v FRN* [2002] 7 SCM 73; *Akpan v The State* [2001] 11 SCM 66. E

This court cannot, therefore, interfere with the concurrent findings of the lower courts on the first two ingredients of the offence in question having regard to the cogency of the confessions and the other circumstances [which we had set out above] which corroborate them. We, therefore, endorse the conclusion that the prosecution proved the first two ingredients of the said offence. I agree with the lower courts that the Prosecution proved that the deceased died. It also, proved that, in actual fact, the deceased died as a result of the act of the accused person, to the exclusion of all other possibilities, *R. v. Nwokocha* (1949) 12 WACA 453, 455; *The State v. Omoni* (1969) 2 ANLR 337; *Adie v. The State* [1980] 1-2 SC 116, 122- 123; *R. v. Owe* (1981) ANLR 680; *Princewill v The State* [1994] 7 - 8 SC (pt.11) 226, 240; *Silas Sule v The State*. (2009) LPELR -3125 (SC) 24, F-G. F

As indicated earlier in this judgment, the third ingredient of the offence under consideration is that the Prosecution must prove that the accused person intended to either kill the victim or cause him grievous bodily harm, *C. O. Okonkwo, Okonkwo and Naish: Criminal Law in Nigeria* (supra); *Maigari v State* (supra); *Ochemeje v The* H

State (supra); Daniel v The State (supra); Obudu v State (supra); Gira v State (supra). Again, from my reading of pages 199- 200 of the record, I find that the lower court, admirably, dealt with this requirement. Listen to Abiru JCA, who read the leading judgment of the lower court.

B The third requirement of the offence of culpable homicide punishable with death is whether the appellant caused the death of the deceased [person] intentionally or with knowledge that death or grievous bodily harm was its probable consequence... In order to determine whether the defendant really had an intention to murder, the law has set down some criteria, some of which are (i) the nature of the weapon used; here, the law builds its tent not just on any weapon but on a lethal weapon, that is, a weapon which is deadly or death-dealing; (ii) the part of the body which was brutalized by the lethal weapon; and (iii) the extent of the proximity of the victim with the lethal weapon used by the accused [person], citing Iden v State [1994] 8 NWLR (pt 365) 719 ...In the instant case, the appellant confessed in exhibits F1 and F2 that the appellant was hit on the head several times with an iron rod until he died. This was an exhibition of a clear intention on the part of the appellant and his alleged cohorts to cause the death of the deceased. [pages 199-200 of the record).

***True indeed, case law and scholastic treatises are unanimous on the point that if a dangerous weapon [such as the iron rod used in dispatching the late victim of the offence charged to the great beyond] was used, the courts will infer that death was a probable and not just a likely consequence of the accused person's act,*** Adamu Garba v The State [1997] 3 SCNJ 68; Bakuri v The State (1965) NMLR 163; Silas Sule v The State (2009) LPELR -3125 (SC) 24, F-G; Ejeka v State [2003] 7 NWLR (pt 819) 408; Garos Bwashi v State [1972] 6 SC (Reprint) 55; (1972) LPELR-SC. 104/1972; P. Ocheme, The Nigerian Criminal Law, (Kaduna: Liberty publications Ltd, 2006) 203; also, C. O. Okonkwo, Okonkwo and Naish: Criminal Law in Nigeria (Second Edition) (supra) 221. ***I, equally, endorse the concurrent findings of the lower courts on the Prosecution's proof of this third element of the offence in question.***

I pause here to acknowledge the academic reservations on the

propriety of the courts' continued espousal of the "reasonable man" or "natural consequence" guide in ascertaining intent in homicide cases, see, for example, C. O. Okonkwo, *Okonkwo and Naish: Criminal Law in Nigeria (Second Edition)* (supra) 55; Glanville Williams, *Criminal Law: The General Part* 89-99; 894-896, cited in C. O. Okonkwo, (supra) at page 55; Wootton, *Crime and the Criminal Law* (London: Hamlyn Lectures, 1963) 33-39. According to Professor C. O. Okonkwo, SAN, Africa's leading authority on Criminal Law, while this requirement has been abolished in England, it has been rejected in the Australian jurisdiction, see, C. O. Okonkwo, *Okonkwo and Naish: Criminal Law in Nigeria (Second Edition)* (supra) 55. However, these academic views notwithstanding, this court has continued to invoke the natural consequence test, see, for example, *Garba and Ors v State* [2000] 6 NWLR (Pt 661) 378, 388; *Adamu Garba v State* [1997] 3 SCNJ 68.

I now return to the appellant's so called defence of alibi. At page 5 of his brief, counsel claimed that "*the appellant raised a complete defence of alibi in his evidence-in-chief of not being in Kaduna at the relevant time and this alibi was creditably supported and corroborated by the evidence of PW3 and PW4 during further cross-examination by the prosecution,*" citing pages 118-119 of the record, [italics supplied for emphasis].

With respect, this is a very curious submission. In our accusatorial jurisprudence, the defence of alibi falls into the genre known as exculpatory defences, *Ebre v State* [2001] 12 NWLR (pt 729) 617, 636; others include: self defence, *Uwaekweghinya v The State* [2005] 9 NWLR (pt 930) 227 and accident, *Bakare v State* [1987] NSCC 267. They are exculpatory defences because where they are established in a criminal trial, they exonerate the accused person, *Uwaekweghinya v The State* (supra) 287 C-D.

From the italicized portion of the above submission, it is evident that even the learned counsel for the appellant entertained no doubt that the appellant only trumped up his so-called defence of alibi during his evidence-in-chief. Even then, he proceeded to categorize it as "*a complete defence.*" This cannot be. The said defence of alibi is not conceded with levity to an accused person due to the fact that, as indicated above, when properly established, it has the far-reaching effect of exculpating him from criminal responsibility.

Ebre v The State (supra).

**Thus, to be entitled to its beneficent effect, such an accused person must raise it at the earliest opportunity,** Hassan v The State (2001) 6 NWLR (pt 709) 286, 305, **which would, preferably, be in his extra-judicial statement. This is to offer the police an opportunity either to confirm or confute its availability to the accused person.** Ibrahim v The State [1991] 4 NWLR (pt 186) 399; Nwabueze v The State (1988) 3 NWLR (pt 86); Ikemson. v The State (1989) 3 NWLR (pt 110) 455. **Above all, the said defence must be unequivocal as to the particulars of the accused person's whereabouts and those present with him.** Onyegbu v The State [1995] 4 SCNJ 275, 285-286; Ibrahim v State (supra); Balogun v AG, Ogun State (2002) 6 NWLR (pt 763) 512, 535-536; Eke v The State (2011) LPELR-1133 (SC) 16.

**It is only where such an accused person raised the said defence at the earliest opportunity without any ambiguity that a burden is cast on the Prosecution to investigate it.** Eyisi v State [2000] 4 NSCQR 60 and to disprove same, Eke v The State (supra). **Failure to investigate the defence of alibi raised in such circumstance will lead to an acquittal.** Yanor v The State (1965) ANLR (Reprint) 199; Bello v. Police [1956] SCNLR 113; Odu and Anr v The State [2001] 5 SCNJ 115, 120; [2001] 10 NWLR (pt.772) 668.

**In effect, where a defence of alibi consists of vague accounts which are devoid of material facts worthy of investigation, the police, in the circumstance, would least be expected to embark on a wild goose chase.** Ebre v The State (supra) at 636. **In situations, such as was the case at the court of trial, where the accused person raised the defence of alibi during the trial, it would be unavailing. Such a strategy would simply be viewed as a ploy, deliberately, contrived to deny the Prosecution its right and duty to investigate the defense.** Hassan v State [2001] 6 NWLR (pt 709) 305. **Worse still, where an accused person was fixed at the scene of crime, any plea of alibi would be valueless.** Obokpolo v The State [1991] 1 SCNJ 91, 107, 108.

**At the trial court, PW3 and PW4, during their further cross-examination merely reiterated the vague defence of alibi**

**which the appellant introduced for the first time during evidence at the trial court. Surely, that was a deliberate ploy aimed at short-changing the Prosecution. The said defence could, therefore, not avail the appellant contrary to the misconceived submissions of his counsel on paragraphs 4.00; 4.01; 4.02-6.00 and, even, paragraph 7.00 of the appellant's brief where he [counsel] urged the court to extend the trial court's resolution of doubt in favour of the discharged second accused person to the appellant. We find no merit in the contention of the learned counsel on these issues.**

Next, counsel turned to the question whether the circumstantial evidence used in convicting the appellant was "*direct, positive and equivocal (sic, unequivocal)*." On his part, Kehinde Ogunwumiju, learned counsel for the respondent, invited the court to hold that "*even though there was no eye witness to the death of the deceased, the circumstantial evidence placed before the trial court was enough to sustain the finding of the court below that the appellant intentionally caused the death of the deceased [person]*." From my earlier review of the totality of the circumstances surrounding the death of the deceased person, I, entirely, agree with the brilliant and compelling submissions of Mr. Ogunwumiju on this point.

**Now, the category of evidence known as circumstantial evidence, which is, more often than not, the best evidence,** Obosi v State (1965) NMLR 119; Ukorah v State [1977] 4 SC 167; Lori v State (1980) NSCC 269; Onah v State [1985] 3 NWLR (pt 12) 236; Ebenehi v State [2009] All FWLR (pt 486) 1825, 1832-1833; Ijiofo v. State [2001] 9 NWLR (pt 718) 371, 385, **is the evidence of surrounding circumstances which, by undersigned coincidence, is capable of proving a proposition with the accuracy of mathematics.** Ijiofor v State (supra) 385. **This is so for, in their aggregate content, such circumstances lead cogently, strongly and unequivocally to the conclusion that the act, conduct or omission of the accused person caused the death of the deceased person.** Idiok v State [2008] All FWLR (pt 421) 797, 818.

**Simply put, it means that there are circumstances which are accepted so as to make a complete and unbroken chain of evidence.** Omotola and Ors v State [2009] 7 NWLR (pt 1139)

148, 178; (2009) LPELR -2663 (SC) 42-43. ***Where such circumstances are established to the satisfaction of the court, they may be properly acted upon.*** Wills on Circumstantial Evidence [Seventh edition] 324; A. Okekeifere, Circumstantial Evidence in Nigerian Law (Port Harcourt: Law-house Books, 2000) 1; Omotola v State (supra) 178.

***Thus, where there is no eye witness account or direct evidence of the commission of an offence, a conviction may be based on circumstantial evidence.*** Igbale v State [2004] 15 NWLR (pt 896) 314. ***However, such circumstantial evidence must point to only one conclusion, namely, that the offence had been committed and that it was the accused person who committed it.*** Dick v. C. O. P. [2009] 9 NMLR (pt 1147) 530, 551. ***For the purpose of drawing an inference of an accused person's guilt from circumstantial evidence, there must not be other co-existing circumstances which would weaken or destroy the inference.*** Igho v State [1978] 3 SC 87; State v Edobor [1975] 9-11 SC 69. ***Thus, all other factors and surrounding circumstances must be carefully considered for they may be enough to adversely affect the inference of guilt.*** Lori v State [1980] 8-11 SC 81; Udedibia v State [1976] 11 SC 133; Aigbadion v State [2000] 7 NWLR (pt 666) 686.

The explanation for this need for circumspection is simple: evidence that falls within this category may be fabricated to cast aspersions on other people, per Lord Normand in R v Tepper (1952) 480, 489 approvingly adopted in State v Edobor [1975] 9-11 SC 69, 77. That is why a court must, properly, appraise the circumstantial evidence adduced by the Prosecution before convicting an accused person thereon, Adepelu v State [1998] 9 NWLR (pt 565) 185; Iko v State [2001] FWLR (pt 68) 1161; [2001] 14 NWLR (pt 732) 221; Orji v State [2008] All FWLR (pt 422) 1093, 1107.

It must be noted that there is no yardstick by which any circumstantial evidence can be measured before a conviction can be entered against an accused person. Thus, each case depends on its own facts. However, one test which such evidence must satisfy is that it should lead to the guilt of the accused person and leave no degree to possibility or chance that other persons could have been responsible for the commission of the offence, Ijiofor v State (supra) 385;

Ebenehi v State (supra) 1832.

With regard to this appeal, I take the view that the lower court, correctly, mapped the nexus of the criminality of the accused person in the circumstances. In the first place, the appellant's retraction of his confessional statements, as shown above, could not have vitiated the proceedings, Obidiozo and Ors. v. The State [1987] 1 NWLR (pt. 67) 748; [1987] 11-12 SCNJ 103; Okaroh v The State [1988] 3 NWLR (pt 8) 220; [1988] 1 SCNJ 124; Ikemson and Ors v The State [1989] 3 NWLR (pt 110) 455, 467-468; [1989] 6 SCNJ 54; Ejinima v The State [1991] 6 NWLR (pt. 200) 637; [1991] 7 SCNJ 318; Durugo v The State [1992] 7 NWLR (pt. 255) 525; [1992] 9 SCNJ 46; Egboghonome v The State [1993] 7 NWLR (pt.306) 382; [1993] 9 SCNJ (pt.1) 1, 29, 32, 48.

Indeed, the lower court's unanswerable concurrent findings put paid to the appellant counsel's submission on this issue. Hear Abiru JCA:

*"Additionally, the lower court referred to the doctrine of 'last seen' ... The doctrine of 'last seen' means that the law presumes that the person last seen with a deceased [person] bears full responsibility for his death if it turns out that the person last seen with him has turned up (sic) dead. Thus, where a defendant was the last person to be seen in the company of the deceased [person] and circumstantial evidence is overwhelming and leads to no other safe confusion, then there is no room for acquittal. It is the duty of the defendant in such damning circumstances to give an explanation relating to how the deceased met his or her death and in the absence of such an explanation, surely and certainly, a trial court will be perfectly justified in drawing the necessary inference that the defendant must have killed the deceased..."* [page 199 of the record]

His Lordship then proceeded to instantiate the circumstances which favoured the inferences that the appellant, intentionally, caused the death of the deceased person. According to the erudite Justice of the Court of Appeal:

There was unchallenged evidence in the testimony of the second prosecution witness, the wife of the deceased person, that the deceased was last seen leaving the house in the company of the appellant in the night of the day before the corpse of the deceased [person] was discovered and the third prosecution witness said he

last saw the appellant with the deceased [person] in the room of the appellant in the compound where the corpse was discovered under a heap of sand. This was the room where splashes of blood were found everywhere on the next day shortly before the corpse was discovered in a heap of sand in the compound. These were compelling facts requiring explanation from the appellant and the appellant offered no explanation. There was thus cogent, credible and compelling facts in the evidence led by the Prosecution before the lower court to justify and sustain the finding of the lower court that the appellant participated in the killing of the deceased [person]. This court cannot fault the findings of the lower court on the guilt of the appellant. [page 199 of the record]

Just like the lower court could not fault the findings of the trial court on the guilt of the appellant, I find that I cannot, equally, fault the lower court in its concurrent finding on the appellant's guilt. I had earlier noted the peculiar facts of this case: peculiar facts that prompted the lower court's conclusion that it could not fault the trial court's findings. At the risk of repetition, I shall highlight the circumstances again: the sudden disappearance of the deceased person who was last seen with the appellant [pages 63 and 64 of the record]; the sand-covered lifeless body of the deceased person in the appellant's morbid compound, [page 66 of the record]; sand used in covering the blood, [page 64 of the record]; the unsuccessful attempt to conceal a vital piece of evidence that linked him, inextricably, with the said offence, namely, his action of hiding the deceased person's "Vespa" Motorcycle sequel to the gruesome and grisly death of the deceased person, [page 64 of the record]; his purchase of two gallons of paint and a brush at Panteka market [page 77 of the record].

That action was, inferentially, for the purpose of swathing the scarlet memento of the grisly incident he had caused, that is, the death of the deceased person. All these were matters which called for explanation for they inculpated him. Against this background, I agree with the lower court that the available pieces of circumstantial evidence were cogent, complete and led irresistibly to the guilt of the accused person, *Igho v State* [1978] NSCC 166; *Popoola v Police* (1964) NMLR 1; *Udedibia v State* [1976] 11 SC 133; *Lawanson v State* [1975] 4 SC 115; *Dick v C. O. P.* [2009] 9 NWLR (pt 1147) 530, 546. Though the said pieces constituted circumstantial evidence,

they proved the guilt of the appellant beyond every reasonable doubt, see, per Eso JSC in *Igho v State* (supra).

***One final point: the submission of the appellant's counsel in paragraph 8.02 of the brief bespeaks his misconception of the pungency of the evidence, which the trial court believed and the lower court affirmed, that the deceased person was last seen with the appellant on the fateful night. The last seen doctrine, a doctrine of global application, Madu v The State (2012) LPELR -7867 (SC) 51-52; [2012] 15 NWLR (pt 1324) 405; [2012] 6 SCNJ 129; [2012] 6 SC (pt 1) 50; [2012] 50 NSCQR 67, also, referred to as 'the last seen theory', Rajashkhanna v State of AP (2006) 10 SCC 172, is applied in homicide cases in Nigeria. Rabi Ismail v The State [2011] MJSC 20, 77. It creates a rebuttable presumption to the effect that the person last seen with a deceased person bears full responsibility for his or her death.*** Jua v The State [2010] 2 MJSC 152, 186 -187.

***Thus, where an accused person was the last person to be seen in the company of the deceased person, he has a duty to give an explanation relating to how the latter met his or her death. In the absence of such an explanation, a trial court and even an appellate court will be justified in drawing the inference that he [the accused person] killed the deceased person.*** Igabele v State [2006] 6 NWLR (pt. 975) 100; Obosi v State (1965) NMLR 140; Nwaeze v The State [1996] 2 SCNJ 47, 61- 62; Gabriel v. State [1989] 3 NWLR (pt.122) 457; Adeniji v. State (2001) 87 LRCN 1970; Madu v The State (supra); Igho v The State [1978] 3 SC 87, 254; [1978] 3 SC 61, 63.

In view of the said doctrine, therefore, it is the duty of the accused person to give an explanation relating to how the deceased met his or her death. Surely, in the absence of such an explanation, a trial court and even an appellate court, will be justified in drawing the inference that the accused person killed the deceased, Igabele v The State (supra); Obosi v The State (supra); Adepetu v The State [1998] 7 SCNJ 83; [1998] 9 NWLR (pt. 565) 185; Adeniji v The State (supra); Emeka v The State [2001] 14 NWLR (pt 734) 666, 683; [2001] 6 SCNJ 259; Uguru v The State [2002] 4 SCNJ 282, 293; [2002] 9 NWLR (Pt.771) 90.

The doctrine has been held to be an exception to the water-

tight constitutional provision that a person is presumed innocent until proved guilty. *Madu v The State* (supra) 84, A-D, citing *Igho v State* [1978] 35 SC 51, 62 - 63; *Igabele v State* (supra); *Nwaeze v State* (supra); *Obosi v State* (supra); *Uguru v State* (supra); *The State v. Kalu* [1993] 7 SCNJ 113, 124-125; *Adepetu v The State* (supra);

<sup>B</sup> *Rabi Ismail v The State* [2011] MJSC 28, 77.

There was ample evidence before the lower court that the deceased person was last seen in the company of the appellant. Unfortunately, he [the appellant] could not give an explanation relating to how the deceased person met his death. The trial court, accordingly, convicted him. The lower court, rightly, affirmed the conviction and sentence on the appellant. Surely, in the absence of such an explanation, both the trial court and the lower court were justified in drawing the inference that the appellant killed the deceased, *Igabele v The State* (supra); *Obosi v The State* (supra); *Adepetu v The State* (supra); *Adeniji v The State* (supra); *Emeka v The State* (supra); *Uguru v The State* (supra).

I find no justification for disturbing their concurrent findings. This appeal has no redeeming feature. I hereby enter an order dismissing it. In consequence, I further enter an order affirming the lower court's affirmation of the trial court's conviction of and sentence on the appellant. Appeal dismissed.

F

### **GALADIMA JSC**

I have been obliged a copy of the judgment of my learned brother NWEZE, JSC just delivered. I agree with his reasoning leading to the conclusion that there is no justification for disturbing the concurrent findings of the two lower courts, thereby dismissing the appeal. My contribution here is only to emphasis the obvious.

The prosecution indeed proved its cause against the appellant beyond reasonable doubt to sustain the charge of culpable homicide punishable with death under section 221 of the Penal Code. Exhibits <sup>H</sup> F1, F2 and G admitted at the trial were confessional statements of the appellant. These statements contain direct and unambiguous admission of all ingredients of the offence charged for which the appellant can be convicted. See *ACHABUA v. STATE* (1976) 12 SC 63, *MILLA v. STATE* (1985) 3 NWLR (pt. 11) 190; *ONUOHA v, STATE*

(2008) 14 NWLR (pt. 1106) 72, HARUNA v. ATTORNEY GENERAL OF THE FEDERATION (2012) 9 NWLR (pt.1306) 419, ALI v. STATE (2012) 7 NWLR (pt.1299) 209.

Besides, all circumstantial evidence on record were cogent and compelling, pointing conclusively to the fact that the appellant and no other persons killed the deceased person. Invoking the presumption inherent in the “last seen doctrine”, there is no way the appellant can absolve himself from the implication of the said doctrine. This is what the court below had to say on this at page 199 of the record:

*“There was unchallenged evidence in the testimony of the second prosecution witness, the wife of the deceased person, that the deceased was last seen leaving the house in the company of the appellant in the night of the day before the corpse of the deceased (person) was discovered and the third prosecution witness said he last saw the appellant with the deceased (person) in the room of the appellant in the compound where the corpse was discovered under a heap of sand. This was the room where splashes of blood were found everywhere on the next day shortly before the corpse was discovered in a heap of sand in the compound. These were compelling facts requiring explanation from the appellant and the appellant offered no explanation. There were thus cogent credible and compelling facts in the evidence led by Prosecution before the lower court to justify and sustain the finding of the lower court that the appellant participated in the killing of the deceased (person). This court cannot faulty (sic) the findings of the lower court on the guilt of the appellant.*

The appellant introduced for the first time during trial the vague defence of alibi. This was a deliberate ploy aimed at exculpating himself from gruesome murder of the deceased. This defence could not avail the appellant. The defence was not raised at the earliest opportunity unambiguously to cast a burden on the prosecution to investigate such claim.

In the circumstances of this case, I, too find no justification for disturbing the concurrent findings of the courts below. I dismiss this appeal. The decision of the lower court affirming the decision of the trial court is further upheld. Appeal is dismissed.

**PETER-ODILI JSC**

I am in total agreement with the judgment just delivered by my learned brother, Chima Centus Nweze, JSC and for emphasis in support of the reasonings, I shall make some remarks.

This is an appeal against the decision of the Court of Appeal, Kaduna Judicial Division which court affirmed the judgment of the trial Court convicting the Appellant of culpable homicide.

**FACTS BRIEFLY STATED:**

The Appellant and the deceased were friends and business associates and on the 30<sup>th</sup> of September, 2013, the Appellant and the deceased were involved in an argument on the sum of four thousand naira (N4,000.00). The prosecution put forward that later the same day, the Appellant and the deceased rode on the deceased's 'vespa' motorcycle to the Appellant's house and that was the last time the deceased was seen by his wife, PW2. That in the appellant's house at about 9 pm, the Appellant's younger brother PW3 was in Appellant's room and excused himself leaving the deceased and Appellant in the room and that was the last time deceased was seen by anyone else.

PW3 on his part testified that the following day he went back to the Appellant's house and saw blood splashes on the walls of the room of the Appellant and informed his other brother, PW4 and the police were invited.

On the arrival of the police to the Appellant's house, the half buried body of the deceased was discovered. Also discovered were some gallons of paint Appellant had purchased. That Appellant was arrested by the police and he made a confessional statement admitting hitting the deceased on the head and stomach with an iron rod until he died.

At the end of the trial, the trial High court convicted and sentenced the Appellant to death, which decisions were affirmed by the Court of Appeal hence this appeal before the Supreme Court on three grounds of appeal.

On the 4th day of December, 2014 date of hearing, learned counsel for Appellant, J.M.M. Majiyagbe Esq. adopted the Appellant's Brief filed on 14/10/2013 and deemed filed on the 26<sup>th</sup> February, 2014. He formulated two issues for determination as follows:-

1. whether the Court of Appeal was right when it dismissed the

Appellant's appeal on the ground that the prosecution had proved its case against the Appellant beyond reasonable doubt to sustain the charge of culpable homicide against the Appellant. (Grounds 1 and 2)

2. Whether the Court of Appeal was right to have sustained the conviction of the Appellant on circumstantial evidence. (Ground 2) B

Mr. Kehinde Ogunwumiju of counsel for the Respondent adopted the Brief of Argument of the Respondent filed on 4/11/14 and deemed filed on 6/11/14. He raised a sole issue for determination, viz:- C

Whether or not the Lower Court's decision to affirm the trial court's conviction of the Appellant for culpable homicide was right having regard to the circumstantial evidence available and the Appellant's confessional statements. (Grounds 1, 2, & 3) D

The sole issue as crafted by the Respondent is apt and covers all areas and it is sufficient to deal with all questions for determination and I shall utilize it-

#### SOLE ISSUE:

This raises the question whether the Lower Court's decision to affirm the trial court's conviction of the Appellant for culpable homicide was right having regard to the circumstantial evidence available and the Appellant's confessional statements. E

It was submitted for the Appellant that Exhibits F1, F2 and G Confessional Statements as well as the testimony of PW3 are sufficient to sustain the trial Court's conviction of the Appellant. That the alleged confessional statements of the appellants are fraught with many irregularities from the evidence before the trial court and the Court below and the doubt emanating should have been resolved in favour of the Appellant. Also that the evidence of the appellant is consistent with his denial and retraction of the documents which were impugned under cross-examination. F

Mr. Majiyagbe of counsel contended that Appellant raised a complete alibi in his evidence in chief of not being in Kaduna at the relevant time which alibi was creditably supported and corroborated by the evidence of PW3 and PW4 during further cross-examination by the prosecution. He cited *Bozin v State* (1985) 2 NWLR (Pt. 8) 465; *Okonji v State* (1987) 1 NWLR (Pt. 52) 659. H

That the trial Court erred when it failed to consider the defence of alibi which failure occasioned a miscarriage of justice. He referred to *Adamu & Ors v State* (1991) 4 NWLR (Pt. 187) 530 at 538 - 539; *Edoho v State* (2010) 14 NWLR (Pt. 1214) 651; *Attah v State* (2010) 10 NWLR (Pt. 1201) 190 at 221.

B It was submitted for the Appellant that the doubts that were resolved in favour of the 2<sup>nd</sup> accused should also benefit the 1<sup>st</sup> accused (Appellant) and the failure to resolve same in favour of the Appellant was an error which was unfortunately sustained by the  
C Court of Appeal. That the learned trial Judge failed to consider the totality of the evidence before him. That he gave attention to and believed the evidence of the prosecution witnesses which were contradictory to convict the appellant, while the same set of evidence or similar evidence was used to acquit the second accused person.

D Learned counsel for the Appellant said that the doubt or inadequacy or gaps which the evidence adduced by the prosecution against the 2<sup>nd</sup> accused person created in the mind of the learned trial judge which led to his acquittal was also available to the appellant and ought to have been extended to the appellant. He relied on *Kalu v State*  
E (1988) 4 NWLR (Pt. 90) 503 at 510.

On the matter of circumstantial evidence, learned counsel for the Appellant stated that what constitutes circumstantial evidence has been settled to be wherein such evidence is direct, unequivocal, positive and leads only to one direction. He cited *Mohammed v State*  
F (2007) 11 NWLR (pt. 1045) 303 at 318.

That the two Courts below failed to narrowly examine with utmost care the circumstantial evidence used in convicting the Appellant, the same having not pointed to the appellant with “mathematical exactitude” as the person that killed the deceased. He relied on  
G *Shehu v State* (2010) 8 NWLR (Pt. 1195) 143 - 144.

Learned Counsel for the Respondent, Mr. Ogunwumiju contended that an accused person can be convicted on his confessional statement alone, the only rider being that the statement must contain  
H a direct and unambiguous admission of all the ingredients of the offence. He relied on *Akpa v State* (2008) 14 NWLR (Pt. 1106) 72; *Milia v State* (1985) 3 NWLR (Pt. 11) 190 etc.

He stated further that there are three ways by which the prosecution can prove its case in a criminal matter which are real/direct

evidence, confession and circumstantial evidence. That the standard of circumstantial evidence that will sustain a conviction is that which is cogent, compelling and points to the irresistible conclusion that the accused person was guilty of the offence. He cited *State v Isah* (2012) 16 NWLR (Pt. 1327) 613 at 632; *Akinbisade v State* (2006) 17 NWLR (Pt. 1007) 184; *Ahmed v State* (2001) 18 NWLR (Pt. 746) 622. B

It was submitted for the Respondent that where as in this case the accused was the last to see the deceased, the court would always presume that his death was caused by the person with whom he was last seen. That the only way such a person can escape culpability is by C giving cogent explanation of what happened to the deceased or how the deceased died without his involvement or the whereabouts of the deceased. He relied on *Igabele v State* (2006) 6 NWLR (975) 100; *Madu v State* (2012) 15 NWLR (Pt. 1324) 405 at 456-457.

For the Respondent was that it is trite that where the defence D of alibi is raised, it must be raised at the earliest opportunity so that the police can investigate it and not as in this instance when it was raised at the point of Appellant's defence and where at least three witnesses had testified fixing Appellant to the scene of crime. He placed reliance on *Peter v State* (1997) 3 NWLR (Pt. 496) 625 at 642; *Akpan v State* (2002) 12 NWLR (Pt. 780) 189; *Ndukwe v State* (2009) 7 E NWLR (Pt. 1139) 43 at 89.

Mr. Ogunwumiju of counsel submitted for the respondent that the appellant's argument on the defence of alibi and contradictions F of the prosecution witnesses ought to be discountenanced by the court as they did not arise from or relate to the grounds of appeal. He cited *Madumere v Okafor* (1996) 4 NWLR (Pt. 445) 547 at 544; Sections 209 of the Evidence Act; Section 199 of the Evidence Act (Cap. E 14 LFN 2004). G

From the submissions briefly stated above can be seen that the stance of the Appellant is that the concurrent findings of the two Courts below are perverse, a departure from settled positions and principles of law as well as statutory requirements of proving a criminal case beyond reasonable doubt and therefore liable to be inter- H ferred with by the judgments being set aside.

The respondent's contrary position being that the appeal should be dismissed as the confessional statement alone was sufficient to bear the conviction as its contents were a direct and unambiguous

admission of the crime. Also that the circumstantial evidence was cogent, compelling and pointed to no other conclusion than the guilt of the appellant apart from the appellant being the last to see the deceased without proffering any credible explanation as to what happened to him different from the appellant being the killer under the doctrine of “last seen”.

The learned trial Judge in his summation came to the point where he stated as follows:-

*“On the other hand although there is no direct evidence linking the 1<sup>st</sup> accused with the murder of the deceased, there is however abundant circumstantial evidence to link him up with the commission of the alleged offences, evidence that the 1<sup>st</sup> accused was last seen with the deceased up to 9.30pm when PW3 told the court that 1<sup>st</sup> accused and his guests came to the room and he vacated the room for them including the deceased for his friend’s room and on coming back in the morning the deceased was found dead and buried in a hip (sic) of sand in the compound where the 1<sup>st</sup> accused was left with the deceased. I have no reason not to believe that the 1<sup>st</sup> accused has a hand in killing the deceased. Most especially considering the 2<sup>nd</sup> statement which were all tendered in court where he dearly admitted participated (sic) killing the deceased. The circumstances and his confession give proof of the offence of culpable homicide because if he has no hand why was he buried in his premises and there is evidence that splashes of blood were seen in the room he slept or why did he not report to the police who even killed the deceased in his premises. I believe the prosecution has successfully proved the charge of culpable homicide....”*

The Court of Appeal evaluating what the Court of trial did stated thus:-

*“The statements were admitted after a conduct of a trial-within-trial. The witness was not cross-examined by the counsel to the appellant in the course of trial; he was only cross-examined during the trial-within-trial. The testimony of the witness was thus not discredited or disparaged under cross-examination. Again, the original version of the statement, the Hausa version, confirmed on its face the steps that the witness said he took in recording the statement - the signature of the Appellant after the cautionary words, the signature of the Appellant and of the witness at the conclusion of the statement*

and the attestation by the senior police officer.

There is nothing on record to show that either the Appellant or his counsel protested the English versions of the two statements, Exhibits F2 and G and/or they contested that the English versions were not the true reflection or translations of the Hausa versions when the two statements were tendered or when Exhibits F1 and F2 were read out in open Court and neither did they do so in the course of trial or even in the written address of counsel at the close of trial. The Appellant did not also furnish the Lower court with what he believed was the correct English translations of the statements. There is also nothing on record to show that the Appellant or his counsel complained about the competence of the two witnesses to translate the statements. These issues were not raised before the Lower court and it is the view of this Court that they cannot now be raised by the Appellant on this appeal. A party must be consistent with the case he presents in Court - *Suberu v State* (2010) 8 NWLR (Pt. 1197) 585 and *Ojogun v Fatayo* (2013) 1 NWLR (Pt.1335) 303. Moreover, the Courts have always accepted the English translations of statements of accused defendants made by the recording police officers without questioning whether the police officers were certified translators or not *Ojakekan v State* (2001) 18 NWLR (Pt. 746) 793; *Adeyemi v State* (2013) 3 NWLR (Pt. 1340) 78.

The Appellant denied making either of the confessional statements when he testified in his defence. It is trite that a Court is empowered to compare the handwriting and signature on documents under the provisions of Section 101 (1) of the Evidence Act *Daniel-Kalio v Daniel-Kalio* (2005) 4 NWLR (Pt. 915) 305 and *Gboko v State* (2007) 17 NWLR (Pt. 1063) 272. Looking at the three signatures said to belong to the Appellant on Exhibit F1, they are substantially similar to the three signatures said to belong to the Appellant on the Hausa version of Exhibit G. The Appellant did not present the Lower court with any contrary signature to show that the six signatures on the two documents did not belong to him”.

The Lower Court went on to state thus:-

“The account of the killing of the deceased given in the two sets of statements Exhibits F1, and F2 and Exhibit G, were the same. The Appellant stated in the two statements that he and one Kabiru Mohammed, aka, Two Hours, killed the deceased in the Appellant’s

room in the Appellant's house and that while Kabiru hit the deceased with an iron rod on his head, he beat the deceased with his bare hands and that they killed the deceased because of a dispute over the sum of N4,000.00. The Appellant stated that the deceased came to his house with a Vespa motorcycle and that after they killed the deceased, they buried the corpse in a heap of sand in front of his room and within the compound and that he took the Vespa motorcycle to a friend of his junior brother called Haruna to keep. The Appellant said in the statements that he asked his younger brother to leave the room and go and sleep in the house of neighbour called Haruna before they committed the act of killing the deceased and that he caused his junior brother to repaint the room because of the blood that was splashed on the wall of the room.

There was ample corroboration of these facts in the testimonies of the prosecution witnesses... The photographs were Exhibits C1 to C5 and a look at the photographs show a heap of sand in the compound with a dead body buried thereunder. There was evidence of facts outside the confessional statements that point to the truth of the facts contained in the confessional statements. There was unchallenged evidence in the testimony of the second prosecution witness, the wife of the deceased, that the deceased was last seen leaving the house in the company of the Appellant in the night of the day before the corpse of the deceased was discovered and the third prosecution witness said he last saw the Appellant with the deceased in the room of the Appellant in the compound where the corpse was discovered under a heap of sand. This was the room where splashes of blood were found everywhere on the very next day shortly before the corpse was discovered in the heap of sand in the compound. These were compelling facts requiring explanation from the Appellant and the Appellant offered no explanation.

There were thus cogent, credible and compelling facts in the evidence led by the Prosecution before the Lower court to justify and sustain the finding of the Lower court that the Appellant participated in the killing of the deceased. This Court cannot fault the findings of the Lower Court on the guilt of the Appellant".

From the findings of the two Courts below, a summary of which has been captured verbatim above, the question that naturally follows is whether the ingredients of the offence of Culpable Homicide

punishable with death for which the Appellant was convicted have been made out. These ingredients are:-

1. That the death of a human being has actually taken place.
2. That such death was caused by the act or omission of the accused person.
3. That the act or omission was done with the intention of causing death.

The cases of *Haruna v A-G Federation* (2012) 9 NWLR (pt. 1306) 419; *Ali v State* (2012) 7 NWLR (pt. 1299) 209 have been guides.

In exploring the facts and circumstances as to whether the requirements have been met, it is necessary to say that the confessional statements alone are sufficient to ground a conviction if such confession is direct and unambiguous admission of the ingredients of the offence. I rely on *Akpa v State* (2008) 14 NWLR (Pt. 1106); *Achabua v State* (1976) 12 SC 63 and *Onuoha v State* (1987) 4 NWLR (Pt. 65) 331.

Of note is that it has been stated and restated by this Court that admissions in a confessional statement need be subjected to some tests which if passed would impel the Court to act upon the confession alone to effect a conviction. These tests are:-

Whether there is anything outside the confession which shows that it may be true;

- ii) Whether it is corroborated in any way;
- iii) Whether the relevant statements of facts made in it are mostly true as far as they can be tested;
- iv) Whether the defendant had the opportunity of committing the offence;
- v) Whether the confession is possible; and
- vi) Whether the alleged confession is consistent with other facts that have been ascertained and established.

With ease, it can be said that the confessional statements have met the requirements set out in the six tests above. Firstly, there are independent facts outside the statements which showed the confessions to be true such as the blood splashes on the wall of Appellant's house and the half buried body of the deceased in the compound of the Appellant. Also the corroboration of the statements of the Appellant by the evidence of prosecution witnesses PW1 to PW6. Then

came the part showing that the Appellant had the opportunity of committing the offence on the doctrine of last seen to which he offered no counter explanation. Finally is the fact that there is evidence of appellant hiding the Vespa motorcycle of the deceased after his death and the paint bought by the Appellant used to cover up the blood splashes on the wall in his room.

Clearly the confessional statements well corroborated by facts and circumstances surrounding are well positioned upon which the findings of the two Courts below can be secured.

On the skepticism raised by the learned counsel for the Appellant as to whether the circumstantial evidence in existence are enough on which the trial court could found the guilt of the appellant. In answer it needs to be reiterated that a conviction of an accused person can be based on circumstantial evidence where such evidence is cogent, compelling and points to no other conclusion than the guilt of the accused person. I place reliance on *Akinbisade v State* (2006) 17 NWLR (Pt. 1007) P.184; *Ahmed v State* (2001) 18 NWLR (Pt. 746) 522.

From all that is available, it is indeed difficult not to be persuaded by learned counsel for the Respondent that the circumstances are such that are compelling, cogent and leading irresistibly to the conclusion that Appellant is guilty of the offence charged. Some pointers are as follows:-

1. The Appellant was a friend and business associate of the deceased and on the day the deceased was last seen, Appellant quarreled with him over money and deceased was seen by his wife in the company of the Appellant for last time.

2. PW3, Appellant's brother was the last person to see the deceased and deceased was in company of the Appellant in Appellant's room and the following day that room had splashes of blood on the walls.

3. The Corpse of the deceased was found half buried in the Appellant's compound and Appellant had hidden the motorcycle of the deceased.

4. Appellant had immediately after the incident bought paint with which his room was repainted to cover up the blood splashed thereon.

5. Appellant on arrest had no explanation as to how the de-

ceased died.

For a fact Appellant could not offer any explanation without his involvement in the act that resulted in the death of the deceased. See *Igabeje v State* (2006) 6 NWLR (Pt. 975) 100; *Madu v State* (2012) 15 NWLR (Pt. 1324) 405.

Indeed from the surrounding circumstances, the evidence proffered, including the confessional statements of the Appellant, the case is awash with enough evidence upon which the two Courts below had no difficulty in reaching their conclusion of guilt based on well grounded findings to which this Court cannot deviate from. On these and the better articulated reasoning in the lead judgment of my learned brother, C. C. Nweze, JSC I too find no merit whatsoever in this appeal which I therefore dismiss.

I abide by the consequential orders made.

D

### **ARIWOOLA JSC**

My learned brother, C.C. Nweze, JSC obliged me with a draft of the leading judgment just delivered. I am in total agreement with the reasoning therein and the conclusion arrived thereat, that the appeal is very unmeritorious and deserves to be dismissed.

The appellant and one other, that is, one Kabiru Muhammad (as first accused) were charged with the offences of conspiracy to commit and culpable homicide punishable with death pursuant to Section 97 and 221 respectively of the Penal Code. Before the trial court, both pleaded not guilty to the two counts. They were tried. The 1st accused person was discharged and acquitted while the appellant was found guilty of the 2<sup>nd</sup> count only. He was convicted and sentenced to death by hanging.

He was dissatisfied with the decision of the trial court, hence appealed to the court below which in its reserved judgment dismissed the appeal, which has led to the further appeal to this apex court.

One of the issues raised in this appeal is whether the court below was right when it dismissed the appellant's appeal on the ground that the prosecution had proved its case against the appellant beyond reasonable doubt to sustain the charge of culpable homicide against the appellant.

At the trial and in proof of the charge, the prosecution called

eleven witnesses and tendered nine exhibits. In defence, the appellant only testified but did not call any other witness.

The details of the evidence adduced and how it was resolved by the trial court is already beautifully analysed and stated in the well researched leading judgment of my learned brother, Nweze JSC. I have no reason to repeat same here. However, I must state that the three ingredients which the law expected the prosecution to establish to prove the charge of culpable homicide are - (a) that the deceased actually died; (b) that the death was caused by the accused, (c) that the accused intended to either kill the victim or cause grievous bodily harm. In other words, the law squarely placed the duty on the prosecution to establish the death of the victim, as the responsibility of the accused by act or omission and the intentional act or omission of the accused with the clear knowledge that the act or omission could cause grievous bodily harm or death. Indeed, the prosecution must prove that the act or omission of the accused complained of actually caused the death but not that it could have caused death. See; Sabina Chikaodi Madu Vs The State (2012) 15 NWLR (Pt.1324) 405; (2012) 50 NSCQR 67; (2012) 6 SC (Pt. 1) 80; (2012) All FWLR (Pt.64) 1416; (2012) 6 SCNJ 129 Durwode Vs. State (2000) 15 NWLR (Pt.691) 467; Akpan Vs. State (2000) 12 NWLR (Pt. 682) 607.

From the totality of the credible evidence adduced by the prosecution in this case, one is not in the slightest doubt that the three ingredients or elements the prosecution was obliged to establish the case against the appellant were clearly established. The trial court therefore properly found the appellant guilty of the death of the victim and was rightly convicted and sentenced as prescribed by law. The doctrine of “last seen” was properly applied in this case. In the same vein, the court below rightly dismissed the appellant’s appeal to it and affirmed the conviction and sentence.

In the circumstance and without any further ado, I am equally convinced that this appeal is not only lacking in merit but vexatious and should be dismissed. Accordingly, for the above reason and the fuller reasoning contained in the leading judgment, I too will dismiss the appeal. Appeal is dismissed. The judgment of the court below which affirmed the conviction and sentence by the trial court is hereby affirmed.

**OKORO JSC**

I read before now the judgment of my learned brother Nweze, JSC just delivered with which I agree that this appeal lacks merit and ought to be dismissed. My learned brother has painstakingly dealt with the sole issue adopted for the determination of this appeal and I wish to make a few comments only in support of the judgment. B

As can be gleaned from the record of appeal, the appellant and the deceased were friends and business associates. On the 30<sup>th</sup> of September, 2013, the appellant and the deceased were involved in an argument over the sum of N4,000.00 (four thousand naira) only. C It is shown that later, they both rode on the deceased's vespa motorcycle to the appellant's house. They came from the deceased's house. This was the last time the deceased was seen by his wife. She was PW2 in this case.

The facts further reveal that at about 9.00 pm on that same D day, when the deceased and the appellant got to the appellant's house, they met the appellant's younger brother (PW3) in the appellant's room, PW3 politely excused his elder brother (the appellant) and the deceased and went to sleep at his friend's house. The appellant and the deceased were left in the room and that was the last time the E deceased was seen by anyone.

On the following day, the PW3 went back home to the appellant's house, he saw that there were blood splashes on the walls of the appellant's room where he left the appellant and the deceased the previous night. He also noticed the dead body of someone half F buried in the appellant's compound. PW3 rushed to inform one of his brothers (PW4). They both informed and invited the police to the appellant's house.

Upon the arrival of the police to the appellant's house, it was G discovered that the half buried body was that of the deceased. Also, it was discovered that the appellant had purchased some gallons of paint to cover up the splashes of blood on the walls of his room. Appellant was arrested by the police. He went on to volunteer confessional statements to the police. H

In these statements he stated clearly that he hit the deceased on the head and stomach with an iron rod until he died.

Based on the facts above, the learned trial judge found the appellant guilty of culpable homicide and sentenced him to death.

An appeal to the Court of Appeal was dismissed. The appellant has further appealed to this court.

For me, I agree that the sole issue formulated by the respondent captures the three complaints raised in the three grounds of appeal as contained in the notice of appeal. It states:

B *“Whether or not the lower court’s decision to affirm the trial court’s conviction of the appellant for culpable homicide was right having regard to the circumstantial evidence available and the appellant’s confessional statements.”*

C In exhibits F1, F2 and G, the appellant gave a graphic description of how the deceased met his gruesome and untimely death. Both the trial court and the court below relied on these statements, coupled with the circumstantial evidence to convict and affirm same respectively. Also, the fact that there were blood stain in the room of D the appellant and the lifeless body of the deceased found in a shallow grave in appellant’s compound made a compelling evidence and an irresistible conclusion that the appellant, if not the architect of the crime had an explanation to make. This he failed to do. This court has held in quite a number of cases that a confessional statement is E admissible if it is direct and positive and relates to the maker’s acts, knowledge or intention, stating or suggesting the inference that he committed the crime charged. I need to emphasize that a voluntary confession of guilt, if fully consistent and probable, and is coupled F with a clear proof that a crime has been committed by some persons is usually accepted as satisfactory evidence on which the court can convict. See *Ogoala v The State* (1991) 2 NWLR (pt. 175) 509.

The learned counsel for the appellant had submitted in paragraph 3.02 of his brief that upon the denial of the voluntariness and G retraction of the statements by the appellant, the trial court had only one duty having admitted the documents and the duty is to resolve any “doubt” arising from further evidence in favour of the respondent. It is trite that if an accused person resiles from his confessional statement; it is his duty to explain to the court as part of his defence H the reason for the inconsistency. And in such circumstances, if he is to be believed, the accused has to lead evidence to establish that his confessional statement could not be correct. It may be that he was not correctly recorded or that in fact he did not make the statement or that he was unsettled in mind at the time the statement was made

or that he was induced to do so. The explanation should come from the accused without prompting from the prosecution. See *Matthew Oke Onwumere v The State* (1991) 4 NWLR (pt. 186) 428. As I said earlier the appellant failed to do this. I think the two courts below were right to rely on the confessional statements to convict the appellant.

B

The other complaint of the appellant is that the circumstantial evidence upon which the learned trial judge relied to convict him was not cogent enough. I must state from the outset that our law on circumstantial evidence is well settled. The circumstances put together which are to be relied upon should point unequivocally, positively, unmistakably and irresistibly to the fact that the offence was committed and that accused person committed the offence. See *Yongo V. Commissioner of Police* (1992) 4 SCNJ. 113, *Abieke V. The State* (1995) 9 - 11 SC 97.

C

D

In the instant case, although nobody saw when the appellant killed the deceased, the fact that two of them were left in the room by PW3 and on the morrow, blood stains were found on the walls of the appellant's room, the purchase of the paint to conceal the crime, the burial of the deceased in a shallow grave in appellant's compound lead to an irresistible conclusion that it was the appellant, and no other person who committed the offence. I have no reason to depart from the concurrent findings of the lower, courts in this matter. Accordingly, I resolve the sole issue against the appellant.

E

F

In the circumstance therefore, based on the above reasons and the more detailed ones in the lead judgment I also hold that this appeal is devoid of merit. I dismiss it accordingly.

G

H