

SUPREME COURT OF NIGERIA
FRIDAY 3RD JULY, 2015. SC. 504/2012
CORAM:- J. A. FABIYI. O. ARIWOOLA,
M. D. MUHAMMAD, C. B. OGUNBIYI,
J. I. OKORO, JJSC

THE STATE APPELLANT
V.
JAMES GWAN GWAN RESPONDENT

EVIDENCE - Conspiracy - Proof - Actus reus of the offence is agreement between two persons or more - To act unlawfully or lawfully in unlawful way - And it is inferred from facts and evidence led (H1)

EVIDENCE - Confession - Retraction - The fact that accused has retracted a confession - Does not mean that court cannot act and rely on same - To convict him (H2)

CRIMINAL PROCEDURE - Trial within trial - Conduct of - Having cast doubt on voluntariness of respondent's statement - The trial Judge ought to have concluded the already started mini trial (H3)

CRIMINAL PROCEDURE - Confession - Binding nature - Extent of - Where accused makes confession - He is not confessing for his accomplices - As the confession is only against him (H4)

CORROBORATION - Meaning of - For evidence to be corroborative - It must be an independent testimony which affects accused - By connecting or tending to connect him with the crime (H5)

FACTS

Before the High Court of Kwara State Ilorin, accused/respondent and some other persons were arraigned on a two count charge of conspiracy to commit armed robbery and armed robbery contrary to sections 6(b) and 1(2) of the Robbery & Firearms (Special Provisions) Act Cap. R11 LFN 2004 respectively. A team of police officers arrested and brought to the station, one Joshua John, who confessed that he belonged to a six-man gang of armed robbers

whose names he mentioned, including that of respondent. All the named persons except one were arrested and according to PW5, they all confessed to participating in robbery activities in Offa and its environs. After investigation, four of the six accused persons were arraigned before the court. At the trial, prosecution/appellant called five witnesses and tendered one locally made gun to prove its case against respondent and the others. Appellant tendered in evidence alleged confessional statement of the suspects. Respondent and the others objected to the admissibility of the said statements on the ground of involuntariness.

A trial within trial was thus commenced by the court to determine the admissibility of the statement. However, midway into the mini trial, it was aborted by the court on the ground that respondent's and other accused persons' evidence amounted to a retraction rather than a challenge to its voluntariness. It proceeded to admit the statements into evidence. In its judgment, the court convicted respondent along with others for the offence of criminal conspiracy to commit armed robbery. They were sentenced to 14 years imprisonment each. They were discharged and acquitted on the other count. Dissatisfied, respondent appealed to the Court of Appeal Ilorin Division. The court allowed the appeal and entered a verdict of discharge and acquittal for respondent. Aggrieved with the stand of the penultimate court, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the Lower Court was right to have held that the prosecution did not sustain the charge of conspiracy against the respondent before the trial court.

2. Whether the Court of Appeal was right to have concluded that the prosecution did not prove its case beyond reasonable doubt against the respondent.

HELD (Unanimously dismissing the appeal per

OKORO JSC)

EVIDENCE - Conspiracy - Proof

1. Now, the pith and substance of the offence of conspiracy do not lie merely in the intention or thoughts of two or more

persons to do an unlawful act or a lawful act by unlawful means, but in the agreement between them to carry out their lawful intention. The actus reus of the offence of conspiracy is the agreement between at least two persons to do an unlawful act or a lawful act by unlawful means. There is no need to prove that the parties actually met and put their heads together. Persons who have never met or seen each other could conspire together by communication especially nowadays where communication is made easy and cheap by the introduction of the mobile phone.

In order to prove a charge of conspiracy, the prosecution must establish the element of agreement to do something which is unlawful or to do something which is lawful by unlawful means. Conspiracy is an offence which is difficult to prove because it is often hatched in secrecy. It is usually inferred from the facts and evidence led. More often, circumstantial evidence is used to point to the fact that the confederates had agreed on the plan to commit an overt act to infer conspiracy. (p. 2480 B/H)

EVIDENCE - Confession - Retraction

2. It is now well settled that the fact that an accused has retracted a confessional statement does not mean that the court cannot act upon it and rely on same to convict him.

(p. 2482 C)

CRIMINAL PROCEDURE - Trial within trial - Conduct of

3. The rule with respect to conducting a trial within a trial operates only in cases questioning the voluntariness or otherwise of confessions. It does not apply to questions of weight to be attached to admissible evidence admitted. The question of weight of evidence is always decided at the end of the trial in relation to the totality of the evidence adduced before the court.

With due respect to the learned trial judge, the evidence of the respondent and his co-accused persons did not amount to a retraction. Rather, they challenged the voluntariness of the evidence extracted from them by the police under beatings and torture. The trial within trial begun by the trial court

was in order but when it was called off midway into it and the subsequent admission of the statements in evidence, rendered the said alleged confessional statement irregular, inadmissible and unreliable. Having cast doubt on the voluntariness of the statement by the respondent herein, the learned trial judge ought to have allowed the trial within trial to reach its logical conclusion. The abrupt stoppage of the exercise, was, in my humble view, fatal to this case. (p. 2483 A)

CRIMINAL PROCEDURE - Confession - Binding nature - Extent of
4. One other issue which afflicted this case relates to the decision of the learned trial judge that the evidence of PW5 and the co-accused persons corroborated the alleged confessional statement of the respondent. Happily, the Lower Court shot down the said decision. The reason is not far-fetched. First, where an accused person makes a confessional statement as to his participation in a crime, he is not confessing for his accomplices. An accused person's confession is only evidence against him and not against co-accused persons and it is a misdirection which may lead to the quashing of the conviction. However, a confessional statement of a co-accused can only be used against an accused person if he voluntarily adopts it. In the instant case, the use of the statements of co-accused persons against the respondent without him adopting them as his, was unlawful and has a vitiating effect on his conviction by that court.

There was indeed no evidence to infer conspiracy. I accordingly affirm the decision of the Court of Appeal which set aside the judgment of Kwara State High Court in this case. I also affirm the setting aside of the conviction and sentence of the respondent for 14 years imposed by the trial court. The order of discharge and acquittal of the respondent entered by the Lower Court is hereby upheld. (pp. 2483 E/2485 E)

CORROBORATION - Meaning of

5. Now, corroboration means or entails the acts of supporting or strengthening a statement of a witness by fresh evidence of another witness. In Sale Dagayya V. The State (2005) 7

NWLR (Pt.980) 637, this court held that corroboration does not mean that the witness corroborating must use the exact or very like words, unless the matter involves some arithmetic. I agree entirely with the above conclusion of the Lower Court. The evidence that is regarded as corroboration is clearly not a repetition of the evidence sought to be corroborated, otherwise, there will be no need for the original evidence. For a piece of evidence to be corroborative, it must be independent testimony which affects the accused by connecting him or tending to connect him with the crime. The evidence of PW5 in this case which was itself a repetition of the evidence of a co-accused, one Joshua John, could not by any stretch of imagination be taken as corroboration of the statement of the respondent. May be I need to add that the said evidence of PW5, by all intents and purpose, was hearsay. The court below was therefore on a sound wicket when it set aside the decision of the learned trial judge on this issue. This is much more so when the learned trial judge had held that the evidence of PW2, PW3, and PW4 contradicted the evidence of PW5. And to make the matter worse, PW5 was just a policeman who recorded the statement of the accused persons. Indeed he had nothing to corroborate the statement of the respondent in this case. (p. 2484 D)

NOTABLE POINTS OF INTEREST

OKORO JSC

1. Criminal procedure – Standard of proof

The issue to be determined in this appeal is whether the prosecution proved the offence of criminal conspiracy made against the appellant beyond reasonable doubt. It is now well settled that in our criminal jurisprudence, in order for the prosecution to succeed whenever the commission of a crime is in issue against an accused person, he is under a duty to establish its case beyond reasonable doubt. It must however be noted that proof beyond reasonable doubt does not mean proof beyond all shadow of doubt. I need to emphasize that in criminal proceedings, the onus is on the prosecution to establish the guilt of the accused beyond reasonable doubt and this would be

achieved by ensuring that all the necessary and vital ingredients of the charge or charges are proved by evidence. (p. 2479 E)

2. Retraction of evidence – Meaning of

A retraction means to say that something you have said earlier is not true or correct or that you did not mean it. (p. 2482 C)

OGUNBIYI JSC

3. Findings of trial court – Basis for interference

The law is trite and well established that it is open for an appellate court to interfere with findings of a trial court when such findings have been made on legally inadmissible evidence, or they are perverse or are indeed not based on any evidence before the court. (p. 2496 C)

REPRESENTATION

Kamaldeen Ajibade, Esq., Hon. Attorney General of Kwara State, with J. A. Mumini, Esq., DPP and Isa Zakari Esq., State Counsel I; For the Appellant

Olumuyiwa Akinboro, Esq., with Kenneth Iweka, Esq., Chidi Ezenwafor, Esq., and Emeka Nwali Esq.; For the Respondent

CASES REFERRED TO

- Miller v. Minister of Pension (1947) 2 All ER 371
- Lori v. State (1980) 8 - 11 SC 81
- Akalezi v. State (1993) 2 NWLR (pt. 273) 1
- Iwuneye v. State (2000) 5 NWLR (pt. 658) 550
- Osondu v. FRN (2000) 12 NWLR (pt. 682) 483
- Idowu v. State (2000) 7 SC (pt. 11) 1
- Deboh v. State (1977) NSCC 309
- Gbadamosi v. State (1991) 6 NWLR (pt. 196) 182
- Obiakor v. State (2002) 10 NWLR (pt. 776) 612
- Sele v. State (1993) 1 NWLR (pt. 267) 282
- Iyaro v. State (1998) 1 NWLR (pt. 69) 256
- Mbang v. State (2009) 18 NWLR (pt. 1172) 159
- Okadichi v. State (1975) NSCC 124
- Kasa v. State (1994) 5 NWLR (pt. 344) 269
- Onubogu v. State (1974) 9 SC 1

STATUTES REFERRED TO

Robbery & Firearms (Special Provisions) Act Cap. R11 LFN 2004, s. 6

Evidence Act 2011, ss. 29(4), 135(2), 139

Penal Code, s. 97

B

BOOK REFERRED TO

Oxford Advanced Learners' Dictionary 6th ed

C

LEAD JUDGMENT BY OKORO JSC

This is an appeal against the judgment of the Court of Appeal, sitting at Ilorin delivered on 25th January, 2011 wherein it set aside the judgment of the High Court of Kwara State, Ilorin which had earlier convicted and sentenced the appellant to 14 years imprisonment on a charge of conspiracy to commit armed robbery contrary to Section 6 of the Robbery and Firearms (Special Provisions) Act 2004. The Court of Appeal entered a verdict of discharge and acquittal for the respondent. A synopsis of the facts will suffice.

On 4th July, 2006, while PW5, one Abioye Moses was on duty at the Police Station, Ajasaiipo, a team of police officers led by one Cpl. Inusa Ibrahim arrested and brought to the station, one Joshua John together with one cartridge where he (Joshua) confessed that he belonged to a six-man gang of armed robbers whose names he mentioned, including the respondent herein. All the named persons except one were arrested and, according to PW5, they all confessed to participating in robbery activities in Offa and its environs. After investigation, four of the six accused persons were charged with conspiracy to commit armed robbery and armed robbery contrary to Section 6(b) and 1(2) of the Robbery and Firearms (Special Provisions) Act Cap. R11 Laws of Federation of Nigeria, 2004 respectively. However, the charges against the 4th and 6th accused persons before the trial court were dropped upon the application of the prosecution on the grounds that the 1st accused, one Joshua John who was granted bail by the police, jumped bail and that the 6th accused, one Shina, had been at large and was never apprehended. Consequently, it was the respondent alongside three other accused persons that stood trial for the offences charged.

E

F

G

H

During the trial, the prosecution in proof of its case against the respondent and other accused persons, called five witnesses and tendered one locally made gun and two life cartridges. The prosecution also tendered in evidence what it termed the confessional statements of the accused persons.

B The respondent and others standing trial with him objected to the admissibility of the said statements on the ground of involuntariness which led the trial court to order a trial within trial to determine its admissibility.

C However, midway into the trial within trial, it was aborted by the learned trial judge on the ground that the respondent's and other accused persons' evidence amounted to a retraction rather than a challenge to its voluntariness. He proceeded to admit the statements into evidence.

D In his judgment the learned trial judge convicted the respondent along with others for the Offence of Criminal Conspiracy to commit Armed Robbery contrary to Section 6 of the Robbery and Firearms Act (supra). He sentenced the respondent and others to 14 years imprisonment each. The trial court discharged and acquitted
E them on other counts.

Dissatisfied, the respondent appealed to the Court of Appeal which found for the respondent herein, set aside the decision of the learned trial judge and entered a verdict of discharge and acquittal for the respondent.

F Also, not being satisfied with the stance of the Lower Court, the appellant has appealed to this court. Notice of appeal was filed on 25th February, 2011 with four grounds of appeal contained therein. Out of the four grounds of appeal, the appellant has distilled
G two issues for the determination of this appeal.

In the brief settled by Kamaldeen Ajibade, Esq, Hon. Attorney General of Kwara state, for the appellant, which was adopted at the hearing of this appeal, two issues have been distilled for the determination of this appeal. The issues are as follows:

H 1. Whether the Lower Court was right to have held that the prosecution did not sustain the charge of conspiracy against the respondent before the trial court.

2. Whether the Court of Appeal was right to have concluded that the prosecution did not prove its case beyond reasonable doubt

against the respondent.

Also, Olumuyiwa Akinboro, Esq., Counsel for the respondent in his brief filed on 13/5/2013 and adopted at the hearing of this appeal, had adopted the two issues exactly as formulated by the appellant. There is therefore no need to reproduce the issues again.

In arguing this appeal, the learned counsel for the appellant sought leave to argue the two issues together. He submitted that in order for the prosecution to succeed whenever the commission of a crime is in issue against an accused person, he must establish its case beyond reasonable doubt, relying on the cases of *Miller V. Minister of Pension* (1947) 2 All ER 371 at 373, *Lori V. The State* (1980) 8 - 11 SC 81 and *Akalezi v. The State* (1993) 2 NWLR (pt. 273) 1. B
C

Learned counsel submitted that the conclusion of the court below which set aside the judgment of the trial court is not in tandem with the law on the issue. He contended that the pieces of evidence in the confessional statement of the respondent, when juxtaposed with the confession of the other accused persons in Exhibits 3, 4, 5, 6, 7, 9 and 10, establish beyond reasonable doubt an inference of conspiracy to commit armed robbery. It is his view that from these exhibits, there was clear evidence of agreement or confederacy among the accused persons including the respondent to strike their deadly act along Offa-Ajase-Ipo highway. D
E

It was further argued that by all known settled principle of law, Exhibit 8 is a confessional statement which was enough to sustain the Offence of Conspiracy against the appellant and that the learned trial judge was right to have convicted the respondent in the circumstances. He opined that a court of law can infer conspiracy from the criminal acts of the parties including evidence of complicity, citing the cases of *Iwuneye v. The state* (2000) 5 NWLR (Pt.658) 550 at 560 and *Osondu V. FRN* (2000) 12 NWLR (Pt. 682) 483 at 501. F
G

Finally, learned counsel faulted the decision of the Lower Court that the evidence of PW5 did not corroborate the confessional statement of the respondent. He submitted that the evidence of PW5 in this case is not a repetition of the evidence of the appellant but an independent testimony which not only affects the appellant, but connects him with the offence of conspiracy to rob. The learned Attorney General urged this court to resolve the issues in favour of the appellant. H

In response, the learned counsel for the respondent also prayed to argue the two issues together. He however merged the two issues into one in the following words:

“Whether the Lower Court was right to have held that the prosecution did not sustain the charge of conspiracy against the respondent nor prove its case beyond reasonable doubt before the trial court?”

Referring to the case of *Idowu v. The State* (2000) 7 SC (Pt.11) 1 at 80 - 81 amongst others, he submitted that where a person is charged with any criminal offence, the onus is on the prosecution to prove the charge beyond reasonable doubt. Also refers to s. 135(2) and 139 of the Evidence Act 2011. Learned counsel argued that the learned trial judge erred in law in convicting the respondent and the other accused persons for the offence of conspiracy to commit armed robbery having discharged and acquitted them for the offence of armed robbery.

Learned counsel submitted further that where an accused person is charged with the offence of criminal conspiracy, the prosecution has to prove the conspiracy as laid in the charge and that it was the accused that engaged in the said conspiracy, referring to the case of *Deboh V. The State* (1977) NSCC 309. He opined that to prove the above, the prosecution has the burden of proving not only the inchoate or rudimentary nature of the offence charged, but also the meeting of the minds of the accused persons with a common intention and purpose to commit the particular offence. He relies on *Gbadamosi & Ors V. The State* (1991) 6 NWLR (Pt.196) 182 and *Obiakor V. State* (2002) 10 NWLR (Pt.776) 612.

Learned counsel noted that the learned trial judge relied heavily on the alleged confessional statement of the respondent to convict him for the offence of criminal conspiracy whereas the respondent challenged the voluntariness of the said statement. That he told the court that he was tortured and forced to sign the statement but the learned trial judge terminated the trial within trial and admitted same without testing it according to law. He urged this court to hold that the finding of the trial court was perverse. Referring to several paragraphs of the judgment of the Lower Court, learned counsel submitted that the trial court erred in law when it relied on the legally inadmissible confessional statement of the respondent to convict him for

the said offence of criminal conspiracy and that the lower appellate court rightly interfered to set aside the said conviction. He cited the cases of *Sele V. The State* (1993) 1 NWLR (Pt.267) 282 and *Iyaro V. The State* (1998) 1 NWLR (Pt.69) 256.

Again, learned counsel faulted the trial court's reliance on the statements of co-accused persons as corroboration to convict the respondent. This, he contended, is wrong in law, placing reliance on the case of *Mbang V. The State* (2009) 18 NWLR (Pt.1172) 159. It was further contended that the evidence of prosecution witnesses were adjudged contradictory and yet the learned trial judge used it as corroboration to the evidence of the appellant. He urged this court to hold that the court below was right to hold that evidence of PW5 and that of the other accused persons did not amount to corroboration. He cited the case of *Okadichi V. The State* (1975) NSCC page 124.

Finally, he submitted that evidence or statement of a co-accused cannot constitute evidence against an accused person unless the accused has adopted the statement by words or conduct, citing the case of *Kasa V. The State* (1994) 5 NWLR (pt. 344) 269. See also S.29(4) of the Evidence Act 2011. Learned counsel then urged this court to resolve the issues against the appellant.

The issue to be determined in this appeal is whether the prosecution proved the offence of criminal conspiracy made against the appellant beyond reasonable doubt. It is now well settled that in our criminal jurisprudence, in order for the prosecution to succeed whenever the commission of a crime is in issue against an accused person, he is under a duty to establish its case beyond reasonable doubt. It must however be noted that proof beyond reasonable doubt does not mean proof beyond all shadow of doubt. I need to emphasize that in criminal proceedings, the onus is on the prosecution to establish the guilt of the accused beyond reasonable doubt and this would be achieved by ensuring that all the necessary and vital ingredients of the charge or charges are proved by evidence. See *Yongo V. Commissioner of Police* (1992) LPELR -3528 (SC), (1992) 4 SCNJ 113, *Ogundujan V. State* (1991) LPELR - 2333 (SC), (1991) 3 NWLR (Pt.181) 519, *Akigbe V. IOG* (1959) 4 FSC 203, *Onubogu V. The State* (1974) 9 SC 1 at 20, *Babuga V. State* (1996) LPELR - 701 (SC), (1996) 7 NWLR (Pt. 460) 279.

By Section 6(b) of the Robbery and Firearms (Special Provisions) Act Cap. R11 Laws of Federation of Nigeria 2004:

“Any person who -

b. Conspires with any person to commit such an offence,

Whether or not he is present when the offence is committed or attempted to be committed, shall be deemed to be guilty of the offence as a principal offender and shall be liable to be proceeded against and punished accordingly under this Act.”

Now, the pith and substance of the offence of conspiracy do not lie merely in the intention or thoughts of two or more persons to do an unlawful act or a lawful act by unlawful means, but in the agreement between them to carry out their lawful intention. The actus reus of the offence of conspiracy is the agreement between at least two persons to do an unlawful act or a lawful act by unlawful means. There is no need to prove that the parties actually met and put their heads together. Persons who have never met or seen each other could conspire together by communication especially nowadays where communication is made easy and cheap by the introduction of the mobile phone.

Thus in Gregory Godwin Daboh & Anor V. The State (1977) LPELR - 904 (SC) pp 25 - 26 paras F - A, this court per Udo Udoma, JSC held as follows:

“It may be stated that where persons are charged with criminal conspiracy, it is usually required that the conspiracy as laid in the charge be proved, and that the persons charged be also proved to have been engaged in it. On the other hand, as it is not always easy to prove the actual agreement, courts usually consider it sufficient if it be established by evidence the circumstances from which the court would consider it safe and reasonable to infer or presume the conspiracy.”

It is also reported in (1977) 5 SC 122. See also Njovens V. The State (1973) 5 SC 12, (1973) LPELR - 204 2 (SC), Lawson V. The State (1975) 4 SC (Reprint) 84, (1975) LPELR -1765 (SC).

In order to prove a charge of conspiracy, the prosecution must establish the element of agreement to do something which is unlawful or to do something which is lawful by unlawful means. Conspiracy is an offence which is difficult to prove

because it is often hatched in secrecy. It is usually inferred from the facts and evidence led. More often, circumstantial evidence is used to point to the fact that the confederates had agreed on the plan to commit an overt act to infer conspiracy.

See David Omotola & Ors V. The State (2009) 7 NWLR (Pt.1139) 148, (2009) LPELR - 2663 (SC).

In the instant appeal, all the evidence available to the court from which conspiracy was inferred come from the alleged confessional statement of the respondent and the co-accused persons. At the trial before the learned trial judge, the respondent herein challenged the admissibility of the alleged confessional statement on the ground that same was not voluntary but was a product of torture by the police who forced him to sign the said statement.

In the circumstance, the learned trial judge opened a trial within trial. However, the said trial was terminated half way into it on the excuse that the respondent's evidence amounted to a retraction and the court proceeded to admit same holding that the said statement was free and voluntary and thereby constituting a valid confessional statement to sustain a conviction. It was based on the said statement and those of the co-accused persons, that the respondent and others were convicted and sentenced. The Lower Court however found otherwise and set aside the said conviction.

In view of the fact that it was the alleged confessional statement of the respondent which the learned trial judge used to infer conspiracy, I shall at this stage examine the said statement to see if it meets the litmus test of a confessional statement. The court below held that the said statement was unreliable and ought not to have been admitted and used to convict the appellant.

On page 81 of the record, the learned trial judge summed up the case of the respondent as follows:-

"James Gwangwan the 2nd accused gave evidence as PW2... He said he told the police he had nothing to say as a result of which they started beating and torturing him after which they brought a boy he did not know. He said PW5 then brought out a paper and made him to sign. He said he signed the paper before he read it to him and what he read out was not what he told him. He testified that after 3-4 days they were taken to State CIP, Ilorin where the same thing happened in that he was brought out of the cell to make state-

ment and on refusing he was beaten and tortured and he decided to cooperate. He said he was asked many questions. He said they later brought a paper for him to sign as his statement and he signed it."

The above was the summary of the evidence of the respondent by the learned trial judge. But in spite of the clear evidence by the respondent that he was beaten up and tortured to sign the alleged confessional statement, the learned trial judge held that he had retracted his statement and that there was no need to continue with trial within trial to test the voluntariness or otherwise of the statement.

A retraction means to say that something you have said earlier is not true or correct or that you did not mean it. See Oxford Advanced Learners' Dictionary 6th Edition.

It is now well settled that the fact that an accused has retracted a confessional statement does not mean that the court cannot act upon it and rely on same to convict him. Ozana Ubiecho V. The State (2005) LPELR - 3283 (SC), (2005) 2 SC (Pt.1) 18, Edamine V. The State (1996) 3 NWLR (Pt.438) 530, Akpan V. The State (2001) LPELR - 383 (SC) (2001) 15 NWLR (Pt.737) 745.

In circumstances of a retraction of a confessional statement, this court held in Hassan V. The State (2001) LPELR - 1358 (SC) at pp. 12-13 that:-

"However, it is very usual for an accused person to retract, deny or resile during his trial in the court from the extra-judicial statement he had earlier made to the police immediately after the event giving rise to the charge or arraignment against him. In such cases, the law casts a duty on both the accused person who made the subsequent denial to impeach his earlier statement and on the trial judge who is to test the veracity or otherwise of such statement by testing it or comparing it with other facts and circumstances outside the statement or in order to see whether they support, confirm or correspond with the said statement which will then be regarded as correct. In other words, the statement will be subjected to scrutiny by the court in order to test its truthfulness or otherwise in line with other available evidence and circumstances of the case." Also reported in (2001) 15 NWLR (Pt.735) 184.

In circumstances described above, there is no need to conduct a trial within trial.

The rule with respect to conducting a trial within a trial operates only in cases questioning the voluntariness or otherwise of confessions. It does not apply to questions of weight to be attached to admissible evidence admitted. The question of weight of evidence is always decided at the end of the trial in relation to the totality of the evidence adduced before the court. See *Owie V. The State* (1985) 4 SC (Pt. 2) 1, (1985) LPELR - 2847 (SC), *R. V. Nwigboke & Ors* (1959) 4 FSC 101 at 102. B

With due respect to the learned trial judge, the evidence of the respondent and his co-accused persons did not amount to a retraction. Rather, they challenged the voluntariness of the evidence extracted from them by the police under beatings and torture. The trial within trial begun by the trial court was in order but when it was called off midway into it and the subsequent admission of the statements in evidence, rendered the said alleged confessional statement irregular, inadmissible and unreliable. Having cast doubt on the voluntariness of the statement by the respondent herein, the learned trial judge ought to have allowed the trial within trial to reach its logical conclusion. The abrupt stoppage of the exercise, was, in my humble view, fatal to this case. C
D
E

One other issue which afflicted this case relates to the decision of the learned trial judge that the evidence of PW5 and the co-accused persons corroborated the alleged confessional statement of the respondent. Happily, the Lower Court shot down the said decision. The reason is not far-fetched. First, where an accused person makes a confessional statement as to his participation in a crime, he is not confessing for his accomplices. An accused person's confession is only evidence against him and not against co-accused persons and it is a misdirection which may lead to the quashing of the conviction. However, a confessional statement of a co-accused can only be used against an accused person if he voluntarily adopts it. See *Ozaki V. State* (1990) LPELR - 2888 (SC), (1990) 1 NWLR (Pt.124) 92, *Evbuomwan V. COP* (1961) WNLR 257. ***In the instant case, the use of the statements of co-accused persons against the respondent without him adopting them as his, was unlawful and has a vitiating effect on his con-*** F
G
H

viction by that court.

One more thing and I shall be done. The Lower Court had set aside the decision of the trial court that the evidence of PW5 and the statements of co-accused persons corroborated the alleged confessional statement of the respondent. In *Nwauchi V. The State* (1976) LPELR - 2103 (SC) at pp 12 - 13, this court per Obaseki, JSC (of blessed memory) held on the issue as follows:

"In a criminal trial, under English law, where a person who is an accomplice gives evidence on behalf of the prosecution, it is the duty of the judge to warn the jury that although they may convict on his evidence, it is dangerous to do so unless it is corroborated - (Danis V DPP (1954) AC 378 at 379). This rule, although a rule of practice now has the force of a rule of law, and where the judge fails to give due warning, the conviction will be quashed even if in fact there is ample corroboration unless the court applies the proviso to Section 216(1) of the Supreme Court Act. That is the law in Nigeria. (See Section 177(1) Evidence Act) (See Section 177(1) of the Evidence Law of Northern Nigeria Cap. 40 Vol 2 L/NN 1963)". **Now, corroboration means or entails the acts of supporting or strengthening a statement of a witness by fresh evidence of another witness. In *Sale Dagayya V. The State* (2005) 7 NWLR (Pt.980) 637, this court held that corroboration does not mean that the witness corroborating must use the exact or very like words, unless the matter involves some arithmetic.** In setting aside the decision of the trial court on this issue, the Lower Court held as follows:

"the mere fact that one accused said that other accused persons could be found at Offa and they were found there could not have any corroborative effect taking into consideration that for evidence to have any corroborative effect, it must be independent piece of evidence which not only discloses the commission of the offence but the accused must have committed the crime."

I agree entirely with the above conclusion of the Lower Court. The evidence that is regarded as corroboration is clearly not a repetition of the evidence sought to be corroborated, otherwise, there will be no need for the original evidence. See *Okadichi V. State* (1975) NSCC 124. For a piece of evidence to be corroborative, it must be independent testimony which af-

fects the accused by connecting him or tending to connect him with the crime. The evidence of PW5 in this case which was itself a repetition of the evidence of a co-accused, one Joshua John, could not by any stretch of imagination be taken as corroboration of the statement of the respondent. May be I need to add that the said evidence of PW5, by all intents and purpose, was hearsay. The court below was therefore on a sound wicket when it set aside the decision of the learned trial judge on this issue. This is much more so when the learned trial judge had held that the evidence of PW2, PW3, and PW4 contradicted the evidence of PW5. And to make the matter worse, PW5 was just a policeman who recorded the statement of the accused persons. Indeed he had nothing to corroborate the statement of the respondent in this case.

From all that I have said above, I hold a very strong view that the court below was right when it held as follows:

“In view of the foregoing, I am of the concluded view that the trial judge was in grave error to have relied heavily on Exhibits 3 and 4 the alleged confessional statement of the appellant in convicting him.”

There was indeed no evidence to infer conspiracy. I accordingly affirm the decision of the Court of Appeal which set aside the judgment of Kwara State High Court in this case. I also affirm the setting aside of the conviction and sentence of the respondent for 14 years imposed by the trial court. The order of discharge and acquittal of the respondent entered by the Lower Court is hereby upheld.

Appeal Dismissed.

FABIYI JSC

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

The facts of the matter leading to this appeal have been clearly set out in the lead judgment. Put briefly, the respondent was charged along with others for the offences of conspiracy to commit robbery

and armed robbery at the trial High Court. The respondent raised objection to the admission of his statement on the ground that same was not voluntarily made. The trial court embarked upon the requisite trial-within-trial but got it aborted mid-stream for the palpably wrong reason that the evidence of the respondent at that stage amounted to retraction. Learned trial judge relied on the statement of the respondent, inter alia, to nail him. As well, reliance was placed on the evidence adduced by co-accused as corroboration. The trial court convicted the respondent and sentenced him to 14 years in prison.

The respondent appealed to the Court of Appeal (the court below). Thereat, the judgment of the trial court was reversed and the respondent was acquitted and discharged.

The State has decided to appeal to this court. The salient issue canvassed before us, as carefully decoded by the learned counsel for the respondent, reads as follows:-

“Whether the Lower Court was right to have held that the prosecution did not sustain the charge of conspiracy against the respondent nor prove its case beyond reasonable doubt before the trial court.”

Let me observe it at this point that conspiracy is often hatched in utmost secrecy. The circumstance of the matter must be carefully considered and/or appraised by the court. In the often cited case of Patrick Njovens vs. The State (1973) 1 NMLR 331, GBA Coker, JSC (of blessed memory) pronounced as follows:-

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

The above pronouncement of this court, I must say clearly, is not a lee-way for the trial court to place reliance on Exhibits 3 and 4, the so-called confessional statements of the respondent which were admitted after an aborted trial-within-trial for wrong reason without a formal ruling on same.

The court below found that the position taken by the trial court was wrong. I form the opinion that the court below was right. The

evidence adduced by the respondent, as an accused at the trial-within-trial, cannot amount to retraction as found by the trial court for aborting the trial-within-trial. It goes without saying that the trial court was wrong when it relied on the legally inadmissible statement of the respondent to convict him. The court below rightly interfered with same. The decision in the case of *Sele vs. The State* (1993) 1 NWLR (Pt.267) B 282 cited by the respondent's counsel is in point.

Apart from the above, the trial court placed reliance on the statements of co-accused persons as corroboration to convict the respondent. That was wrong. A statement made to the Police by an accused person implicating a co-accused is not admissible against that accused. Where the prosecution intends to use the statement against a co-accused, as herein, then the prosecution is bound to make a copy of the incriminating statement available to the co-accused for him to reject or adopt same. There is nothing in the record that same was carried out by the prosecution. The decisions in the cases of *Mumuni vs. The State* (1975) 6 SC 79; *Chukwueze vs. The State* (1991) 7 NWLR (Pt.205) 604 and *Yongo vs. Comm. of Police* (1992) 8 NWLR (Pt.257) 36 are in point here. C D

Put briefly, the reliance placed on the evidence gathered from the statements of co-accused to nail the respondent by the trial court was improper as found by the court below which was on a firm stand. I endorse the stance taken by the court below without any shred of doubt. E

For the above reasons and of course the detailed ones clearly adumbrated in the lead judgment, I too, feel that the appeal lacks merit. I hereby join in dismissing same. The appellant is hereby accordingly acquitted and discharged as the orders of the court below are affirmed. F G

ARIWOOLA JSC

I had the privilege of reading in draft the lead judgment of my learned brother, Okoro, JSC just delivered. H

The appeal is against the decision of the Court of Appeal Ilorin Division (hereinafter referred to as "court below") delivered on 25/01/2011 wherein it set aside the judgment of the trial High Court of Kwara State sitting in Ilorin which had earlier convicted and sentenced

the respondent to 14 years imprisonment on a charge of conspiracy to commit armed robbery, contrary to Section 6 of the Robbery and Firearms (Special Provisions) Act, 2004. The court below had set aside the decision of the trial court and ordered the acquittal of the appellant now respondent. The State, as prosecutor, was dissatisfied
 B with the decision of the Court below leading to this appeal.

At the trial before the High Court, the prosecution had in proof of its case against the respondent and other co-accused called five witnesses and tendered one locally made gun and two life cartridges.
 C It also tendered the Statements of the accused persons.

The respondent, as the other accused who stood trial, objected to the admissibility of the said Statements. The ground of his objection was that he did not make the statement voluntarily. Indeed, the respondent alleged that he was tortured and beaten before he was
 D forced to sign the said Statement which was made for him by the Police.

As expected, the learned trial judge ordered a trial within trial to ascertain the veracity of the Statement accredited to the respondent as a confessional statement.

However, surprisingly, before the trial within trial could be concluded, it was aborted by the trial Judge. The reason the trial court gave was that the accused person merely retracted or resiled the statement he had earlier made but not that it was not made voluntarily.
 F The respondent was accordingly convicted and sentenced upon the alleged confessional statement. Upon appeal to the court below, the respondent's conviction and sentence were quashed and set aside. He was discharged and acquitted. This is the appeal against the decision of the court below by the State upon four grounds of appeal.

From the two issues distilled by the appellant, I am convinced that the following issue can be couched out for determination -

"Whether the Lower Court was right to have held that the prosecution failed to prove its case beyond reasonable doubt against the respondent leading to the setting aside of the conviction and sentence of the respondent."
 H

There is no doubt that the facts of the case and arguments of both counsel have been eloquently and beautifully stated in the lead judgment of my learned brother, John Okoro, JSC and I need not repeat same here except where exceedingly necessary for emphasis

only.

It is already settled law that in criminal trials, the prosecution can establish the guilt of an accused person for the commission of the alleged offence by any of the following:-

- (a) The confessional statement of the accused;
- (b) Circumstantial evidence;
- (c) Evidence of an eye witness.

B

In the Evidence Act, the procedural law, in particular Section 27(2) recognizes the relevance of confessional statements in criminal proceedings if such statements are made voluntarily. See: Agboola Vs. The State (2013) 8 SCM 157; (2013) 11 NWLR (Pt.1366) 619; (2013) 54 NSCQR (Pt.11) 1162; Abdullahi Ibrahim Vs. The State (2013) LPELR 21883 (SC) (2013) 12 SCM (Pt.3) 547; (2014) 9 WRN 35 at 65; (2014) All FWLR (Pt.721) 1410 at 1431; Alufohai Vs. The State (2015) 3 NWLR (Pt.1445) 172; (2015) All FWLR (Pt.765) 198.

C

D

There is no doubt that the trial court eventually relied only on the Statement purportedly tendered as the confessional statement of the appellant. It should be noted that the respondent had objected to the admissibility of the said Statement as his confession to the alleged crime. To his objection, the trial judge had rightly ordered a trial within trial before he suddenly changed his mind mid way into the said trial within trial.

E

Generally, in any dispute as to the voluntary nature of any given statement, the onus lies on the prosecution to prove positively and affirmatively beyond reasonable doubt that the statement is voluntary. It is to achieve this, that the trial court holds a mini trial within the main trial. If the court is satisfied that the statement was made voluntarily, then it will admit same in evidence. See Samuel Ojegele vs. The State (1988) NWLR (pt. 71) 414. In other words, it is already settled that where an extrajudicial confession has been proved to have been made voluntarily and it is found positive and unequivocal amounting to an admission of guilt, such confession will suffice to ground a finding of guilt, regardless of the fact that the maker resiles therefrom or retracted it altogether at the trial. See; Egboghonome Vs. The State (1993) 7 NWLR (Pt.306) 383; Osetola & Anor Vs The State (2012) 17 NWLR (Pt.1329) 251; (2012) 12 SCM (Pt.2) 347; (2012) 6 SC (Pt.10) 148; (2012) 50 (2) NSCQR 598.

F

G

H

As earlier stated, it is clear from the evidence on the record of appeal that the respondent clearly challenged the voluntariness of the statement which the prosecution accredited to him as a confessional statement showing that he admitted his involvement in the crime with which he was charged. But having retracted and stated
B that he was beaten and tortured by the Police before being forced to sign the said statement, it clearly behoves the learned trial Judge to conclude the trial within trial which he started to establish the veracity of the respondent's claim. Failure to conduct the trial within trial to
C conclusion has undoubtedly vitiated the case of the Prosecution against the respondent which was primarily based on the said Statement. In other words, the alleged confessional statements:- Exhibits 3 and 4 were inadmissible documents and having been wrongly admitted were liable to be expunged from the record. In which case, there was nothing
D left to base the findings of the trial court on in convicting the respondent. There was therefore no available evidence to connect the respondent to the offence of conspiracy with which he was charged, convicted and sentenced. The court below was right to have held that the Prosecution failed to prove the charge beyond reasonable
E doubt against the respondent at the trial court.

For the above reason and the fuller and detailed reasoning beautifully adumbrated in the lead judgment of my learned brother, Okoro, JSC, with which I entirely agree, I too affirm the decision of
F the court below which set aside the judgment of the trial high court which convicted and sentenced the respondent to 14 years imprisonment. Accordingly, the respondent is acquitted and discharged.
Appeal is dismissed.

G

MUHAMMAD JSC

I read in draft the lead judgment of my learned brother Okoro JSC, just delivered. I agree with his lordship's reasoning and conclusion that this appeal has merit and that it succeeds.
H The point has repeatedly been made that a conviction solely based on the confessional statement of an accused is sustained on appeal only where the statement was voluntarily made and the confession therein, in addition, is direct, positive and unequivocal. Even at that, though not a necessity, it is desirable that evidence outside

such a confessional statement be further relied upon by the trial court in convicting the accused. Evidence corroborating the content of a confessional statement is all the more required where the accused resiles from his confessional statement. See *Akpan V. The State* (2001) 15 NWLR (Pt.737) 745, *Hassan V. State* (2001) LPELR 1358 (SC) 12-13 and *Ozana Ubiecho V. State* (2005) 2 SC (Pt 1) 18. B

Respondent's statement before and as summarized by the trial court at page 81 of the record of appeal clearly shows that respondent's purported confessional statement was not freely given. Indeed the Lower Court has held that the statement cannot, in law, ground C respondent's conviction for the offences he has been tried. The court also found, and rightly too, that the evidence of PW5 as well as respondent's co-accused persons does not constitute the corroboration the trial court held them to be.

These findings draw from the evidence on record viewed within D the purview of trite principles. Most certainly the evidence of a co-accused cannot provide the corroboration to respondent's confessional statement the trial court relied upon to convict the respondent herein see *Ozaki V. State* (1990) 1 NWLR (Pt.124) 92 and *Nwauchi V. State* (1976) LPELR 2013 (SC) 12 at 13. The appellant has argued E that the Lower Court is wrong. It cannot be.

PW5 is the investigating police officer into the case against the respondent. He merely repeated in his evidence what he heard from respondent's co-accused persons. His testimony cannot, on the authorities, provide the corroboration the trial court desired to further F rely on before convicting the respondent, See *Okadichi V. State* (1975) NSCC 124. Exhibits 3 and 4, the confessional statement of the respondent, it follows, do not deserve the weight the trial court placed on them in convicting the respondent. See *Owie V. The State* (1985) G 4 SC (Pt 2) 1. The Lower Court cannot in the circumstance, be faulted in its finding that appellant had not proved their case beyond reasonable doubt against the respondent.

For the foregoing and more so the detailed reasons contained in the lead judgment, I also allow the appeal and abide by the consequential H orders made in the lead judgment.

OGUNBIYI JSC

The appeal is against the judgment of the Court of Appeal Ilorin Division delivered on the 25th day of January, 2011. The Appellant herein, (the State) which was the Respondent before the Lower Court is seeking an order of this court, setting aside the judgment of the Court of Appeal which discharged and acquitted the Respondent herein (who was the Appellant before that court) of the offence of Criminal Conspiracy for which he was tried, convicted and sentenced to 14 years imprisonment by the High Court of Kwara State.

Briefly the respondent now before us was charged along with five others for Criminal Conspiracy to commit an offence to wit: possession of two life cartridges and a single barreled gun with intent to rob and being in illegal possession of firearms contrary to Sections 97 of the Penal Code and 3(1) of the Firearms Act, Laws of the Federal Republic of Nigeria 2004.

At the trial, the prosecution in proof of its case against the respondent and other accused persons, called five witnesses and tendered one locally made gun and two life cartridges. During the course of the trial, the respondent and the other accused persons objected to the admissibility of their statements on the ground of involuntariness, which led the trial court to order a trial within trial for purpose of determining same.

Somehow and midway into the trial within trial, the High Court aborted same abruptly and terminated the exercise on the ground that the respondent and the other accused persons' evidence before it amounted to a retraction of their confessional statements and not a challenge to the voluntariness; hence that a trial within trial was therefore unnecessary and the statements, which were alleged as being confessional were admitted duly in evidence.

Upon resumption of the main trial, the respondent and other accused persons each testified for themselves and called no witness.

The trial court in its judgment delivered on the 18th July, 2008, convicted the respondent along with others for the offence of criminal conspiracy to commit armed robbery contrary to section 6 of the Robbery and Fire arms special provisions Act 2004. The respondent along with others were sentenced to 14 years imprisonment. The respondent was however acquitted and discharged on other counts. On appeal to the court of Appeal, Ilorin Division, the court in its

judgment delivered on the 25th January, 2011, found in favour of the respondent herein and thereby proceeded to set aside his conviction by the High court of Kwara State for the said offences. He was acquitted and discharged accordingly. Dissatisfied with the decision of the Lower Court, the state has now appealed to this court by a notice of Appeal dated 25th February, 2011 and raised four grounds of appeal. B

The two issues formulated by the appellant were argued together. The Respondent also adopted the appellant's two issues and in merging them for purpose of convenience he reformulated same as follows:- C

Whether the Lower Court was right to have held that the prosecution did not sustain the Charge of Conspiracy against the Respondent nor prove its case beyond reasonable doubt before the trial court. D

On the one hand, it is the submission on behalf of the Appellant that the Lower Court was wrong to have held that the prosecution did not sustain the offence of conspiracy against the Respondent. A further submission highlights also the error committed by the Lower Court which the appellant concludes was wrong to have held that the prosecution did not prove its case beyond reasonable doubt. E

On the other hand, the Learned counsel for the respondent in summary took the view that looking at the overall evidence adduced before the trial court, particularly the confessional statement of the respondent, the learned trial Judge erred in law and facts when he held that the statement was free and voluntary, thereby constituting a valid confessional statement to sustain a conviction of the respondent; that evidence of any lingering doubt should be resolved in favour of the accused always. F G

The adversarial system of adjudication in our Criminal justice set up is well established that the onus of proof is firmly rested on the prosecution following the Constitutional presumption of innocence of the accused person until proven guilty. See the case of *Ukwunnenyi V. The State* (1989) 20 NSCC (pt. 2) 42 at 59. Also the case of *Ikwunne V. The State* (2000) 5 NWLR (pt. 658) 550 at 561 wherein Tobi JSC said:- H

"In a Charge of Conspiracy, the Prosecution has the burden to prove not only the inchoate or rudimentary nature of the offence

but also the meeting of the minds of the accused persons with a common intention and purpose to commit a particular offence.”

Further in the case of *Oforlete v. The State* (2000) 7 WRN 86 at 106, (2000) 12 NWLR (Pt 681) 415 at 436. Achike, JSC observed that, doubt (referring to doubt as to the possibility of the appellant committing the offence) must be resolved in favour of the appellant where the allegation of his offence has not been proved beyond reasonable doubt.

A further reference made to the case of *Oladele V. Nigerian Army* (2004) 6 NWLR (Pt 868) at 1166 is where this Court has this to say on what constitutes the phrase “beyond reasonable doubt”

“Proof beyond reasonable doubt in the realm of criminal justice connotes such proof as precludes every reasonable hypothesis except that which it tends to support. Certainly, it is not proof beyond all shadow of doubt. [Dimlong V. Dimlong (1998) 2 NWLR (Pt 538) 381 referred to]” at 178.”

It is intriguing when regard is had to the reasoning by the trial Judge when he held thus at pages 53 - 54 of the record:-

“I do not think the Court need to go further on the review of the evidence adduced by the parties since it is now obvious that the accused are denying making the statement altogether. Regarding the point made by Mr. Agaka that since the trial within trial has been conducted, Mr. Akande cannot take the issue of the appropriateness of the trial within trial, I do not agree with him. Since it was the defence that get the Court on a wild goose chase by stating that there was for a trial within trial because the statements were not voluntarily obtained, it is not reasonable for the defence to insist when on the evidence of the accused it became apparent that they are denying making the statement at all, the court must continue and decide a point it ought not to decide at that stage... Consequently the statements are admissible in evidence...”

In the case of *Ogunye V. State* (1999) 5 NWLR (pt.604) 548 at 570, this Court per Iguh, JSC held thus and said:-

“Where the admissibility of a confessional or any statement is challenged on the ground that it was not made voluntarily, it is incumbent on the trial court to call upon the prosecution to establish the voluntariness of the statement by conducting a trial within trial.”

The same pronouncement was also made by this Court in the

case of Akpa V. State (2008) 14 NWLR (Pt. 1106) 72 at 98 where a trial within trial is held as a matter of necessity where the voluntariness of the making of a confessional statement by an accused person is either in issue or raised by the accused. The reasoning behind this requirement is logical so as to ensure that judgment must clearly demonstrate that the conclusions arrived at in the case are not based on the intuition and whim of the Judge but on the evidence properly evaluated and the law. It should not be on an insistence on mere form, but should derive from the need to ensure and demonstrate that substantial justice has been done in the case. Again see the case of Sagay V. Sajere (2000) 6 NWLR (pt. 661) 360 and Yekini V. Nigerian Army (2002) 11 NWLR (pt. 777) 127 referred to page 192 - 183.

In view of the reasoning of this Court in Ogunye V. State and Akpa v. State (supra), the view held by the trial court that the accused compelled it to “embark on a wild goose chase” at pages 53 - 54 of the record of appeal (reproduced supra), is uncalled for because the procedure and adoption of the conduct of trial within trial is not novel in our system of adjudication but very well known to our law. In the circumstance therefore, it was wrong for the trial court to have admitted the statements exhibits 3 and 4 in evidence without first conducting the trial within trial which was mandatory and required by the law.

It is expedient to recapitulate that the action taken by the trial court which terminated the trial within trial was grounded on the reason that the Respondent and the other accused persons’ evidence before it amounted to a retraction of their confessional statements rather than a challenge to the voluntariness and hence the court would not engage in an unnecessary exercise.

It is evident at page 47 of the record of appeal that the counsel Mr. Aminu who represented the accused persons at the trial court objected vehemently to the admissibility of the statements and stated the ground as follows:-

“The ground of our objection is on voluntariness of the statements. My clients all informed me that these statements as well as those of others were not made voluntarily. I pray the court to order a trial within trial.”

The learned counsel Mr. Akande who represented the pros-

ecution conceded to the request made by the accuseds' counsel and same was sanctioned by the court which ordered for a trial within trial to be conducted accordingly.

With the exercise of trial within trial in session, it is out of place and erroneous that the trial court should rule that the accuseds' testimony amounted to a retraction of the purported confessional statement. Without having to belabor the issue, the finding by the trial Judge in the circumstance was certainly perverse and cannot be supported or sustained in view of the inchoate nature of the trial within trial; the justice of the respondent's case had been truncated. A judgment based on incomplete evidence cannot certainly stand the test of time.

The law is trite and well established that it is open for an appellate court to interfere with findings of a trial court when such findings have been made on legally inadmissible evidence, or they are perverse or are indeed not based on any evidence before the court. See the cases of Sele V. The State (1993) 1 NWLR (Pt.267) p.276 at 282 and Iyaro V. The State (1998) 1 NWLR (Pt.69) p.256.

The learned Justices of the Lower Court held that the trial Judge fell into a grave error in relying on exhibits 3 and 4, the alleged confessional statements of the respondent in convicting him. The decision cannot be faulted in my view. It is hereby sustained.

On the totality of this appeal, my learned brother Okoro, JSC has done justice to same and in terms of his lead judgment, I also enter a verdict of a dismissal of same as it lacks merit.

G

H