

COURT OF APPEAL AKURE DIVISION
THURSDAY 30TH OCTOBER, 2014. CA/B/276C/2007
CORAM:- M. A. OWOADE, M. A. DANJUMA, J. S. ABIRIYI, JJCA

OMOSULE IDUWE APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Confession - Exhibits A & C are in the nature of confessional statements - Since a critical perusal of the statements - Reveals a comprehensive flow of a narration (H1)

EVIDENCE - Crime - Unchallenged evidence - Weight - Where evidence is led by party - And there is no contrary evidence from the other party - The evidence is deemed to be true and accepted (H2)

CRIMINAL PROCEDURE - Confession - Cautionary words - Effect - The words as used in opening page of a confession - Do not necessarily render such statement inadmissible (H3)

CRIMINAL PROCEDURE - Confession - Validity - Since the exhibits went through trial within trial - Exhibits A & C were properly admitted and relied upon - In convicting appellant (H4)

ALIBI - Particulars - Proof - Accused who raises the defence - Must give particulars of his whereabouts at the time the offence was committed - So as to assist police in their investigation (H5)

ALIBI - Plea of - Validity - Exhibits A & C having fixed appellant at the crime scene - His plea was rightly rejected - Since where there is direct participation in a crime - The plea is negated (H6)

MURDER - Proof - Corroboration - Evidence of PW3 is unequivocal as to the cause of the death - And it corroborates appellant's extrajudicial statements (H7)

FACTS

Before the High Court of Ondo State Okitipupa Judicial Division

sion, accused/appellant was arraigned with four others for murder contrary to section 316(2) and punishable under section 319(1) of the Criminal Code Cap. 30 vol. II Laws of Ondo State of Nigeria 1978. Before the commencement of the trial, the names of the four others were withdrawn from the case upon an application brought by prosecution/respondent. The case against appellant is that he and some other persons (at large) caused the death of one Adeniran Omogunloye (the deceased) by severely torturing him upon an allegation of the latter stealing appellant's money.

Appellant on the contrary claimed to have heard of the demise of the deceased from a third party. That it was upon the information that he voluntarily went to the police station with his brother to report the incident. Appellant also stated that they were arrested at the station and their statements taken. At the trial, respondent called three witnesses while appellant testified for himself and called a witness. At the close of the case, the court found appellant guilty as charged. He was therefore sentenced to death. Aggrieved, appellant lodged appeal in the Court of Appeal, Akure Division.

ISSUES FOR DETERMINATION

i. Whether the trial judge was wrong to have admitted and relied on Exhibit A, B and C (Extra Judicial Statements) without expunging same from the records before convicting the Appellant.

ii. Whether the learned trial judge was wrong to have held that the defence of alibi did not avail the Appellant.

iii. Whether having regard to the evidence led by the prosecution the learned trial judge was wrong to hold that the prosecution has proved the case of murder beyond reasonable doubt against the Appellant.

HELD (Unanimously dismissing the appeal per
OWOADE JSC)

CRIMINAL PROCEDURE - Confession

1. To be able to answer the above questions from the Learned Counsel for the Appellant, I took a more careful look at Exhibits A, B and C and also the proceedings of the court more particularly as it concerns the two separately held trials within

trials the first leading to the admissibility of Exhibit A and the second to the admissibility of Exhibits B and C.

Meanwhile, it is not in dispute that while Exhibits A and C are in the nature of confessional statements, Exhibit B cannot be so tagged. In answer to (a) above, I do agree with the Learned Counsel for the Respondent that “a critical perusal of the statements reveals a comprehensive flow of a narration rather than a question and answer session...”(p. 2627 D)

EVIDENCE - Crime - Unchallenged evidence - Weight

2. The complaint of threat or inducement by the Appellant under (b) above could not have applied to Exhibits B and C where the evidence of the prosecution witness during the trial within trial was neither challenged nor contradicted in any form.

It is trite that where evidence is led by a party and there is no contrary evidence from the other party, the evidence is deemed to be true and accepted. (p. 2628 G)

CRIMINAL PROCEDURE - Confession - Cautionary words - Effect

3. In answer to (C) above, I must first point out that the mere presence or use of cautionary words in the opening page of a confessional statement does not necessarily render such a statement inadmissible as a confessional statement. It seems to me that each case would depend on its own facts but the test to be applied at all times is whether the cautionary words used could be said to have amounted to an inducement as to render the statement inadmissible. (p. 2629 F)

CRIMINAL PROCEDURE - Confession - Validity

4. Finally, in answer to (d) above, there is nothing spectacular about Exhibit B, contradicting Exhibits A and C and indeed, except for his eventual denial of his involvement in the beating of the deceased, the rest of the story of the Appellant in relation to his lost money and the suspicion that the money was stolen by the deceased ran through the three Exhibits A, B and C. Meanwhile, Exhibits C and A were indeed later in time to Exhibit B. While Exhibit B was made on 23/2/2003 Exhibits

C and A were made on 24/2/2003 and 28/2/2003 respectively.

All the Exhibits went through the process of trial within trial and in my opinion Exhibits A and C were properly admitted and relied on by the learned trial judge in convicting the Appellant. Issue No. 1 is resolved against the Appellant.

B In the instant case, the case of the prosecution was essentially proved by Exhibits A and C and undoubtedly, a free and voluntary confession of guilt by an accused person as in the instant case. If it is direct and positive, duly made and satisfactorily proved, is sufficient to warrant a conviction, even though retracted and notwithstanding that there is no corroborative evidence. A conviction based on such a confession will not be quashed on appeal merely because it is based entirely on the evidence of confession by the Appellant provided the court is satisfied with the fact and circumstance in which the confession was made. (pp. 2631 A/2640 D)

ALIBI - Particulars - Proof

5. Now, the central question for issue No. 2 is whether the Appellant could have been availed of the defence of alibi through his statement Exhibit B. There are at least three reasons why the Appellant in this case could not have successfully pleaded the defence of alibi. The first is that the said Exhibit B, the statement which he made to the police at Ode Irele Police Station did not give any indication or particulars for the police to investigate his whereabouts. For example, in the said Exhibit B, the Appellant did not give specific location he was at Okitipupa, the person he went to see and the time he left for Okitipupa. He only mentioned the name of DW2 in his oral testimony on 6/6/2006.

It is not enough for an accused to raise the defence of alibi at large. He must give adequate particulars of his whereabouts at the time of the commission of the offence to assist the police to make a meaningful investigation of the alibi. The law relating to alibi is that an accused person who wishes to raise alibi must raise it at the earliest opportunity to enable the police to investigate it. The accused must offer evidence as to where he was at the time of the crime and with whom he

was at the material time. (p. 2634 F)

ALIBI - Plea of - Validity

6. The second reason why the plea of alibi could not avail the Appellant in this case is that there are in any event material contradictions as to date in between Exhibit B, the 1st statement of the Appellant to the police, his oral testimony and the evidence of DW2. Exhibit B suggests that the Appellant went to Okitipupa and returned on 21/2/2003. The evidence of DW2 and the Appellant's oral testimony gave the impression that the Appellant slept at Okitipupa on the night of 20/2/2003.

Thirdly and perhaps more significantly, Exhibits A, B and C, particularly Exhibits A and C, the extra-judicial statements of the Appellant fixed the Appellant to the scene of crime and reveal a direct and positive participation of the Appellant at the scene of crime. The law is that where there is direct participation in a crime the plea of alibi is negative.

For the reasons stated above, the learned trial judge was right to have rejected the plea of alibi of the Appellant. Issue 2 is resolved against the Appellant. (p. 2635 G)

MURDER - Proof - Corroboration

7. The evidence of PW3 is direct, positive and unequivocal as to the cause of death of the deceased in the instant case, it is neither inexact or product of hearsay as suggested by the Learned Counsel for the Appellant. Also, I must say that the evidence of PW3 substantially corroborates the Appellant's extra judicial statements Exhibits A, B and C. Secondly, the Learned Counsel for the Appellant was not also right when he suggested that the prosecution did not prove the necessary intent in the instant case to ground the Appellant's conviction for the offence of murder. Suffice to say that the severity of the torture and brutality meted to the deceased by the Appellant and others at large is very well described in Exhibits A, B and C. It goes without saying that a man is presumed to intend the natural and probable consequences of his actions. Accordingly, where by an unlawful act of a person which causes another person grievous harm leading to the death of

that person, he is presumed to have intended to kill that person and he would be guilty of murder irrespective of his intention.

Indeed, as a matter of evidence the greater the probability of a consequence, the more likely it is that the consequence was foreseen and, if that consequence was foreseen, the more likely it is that that consequence was also intended. (p. 2639 E)

REPRESENTATION

C F.O. Oye Esq. Min. of Justice, for the Appellant
Rasheed Adewobi Esq., for the Respondent

CASES REFERRED TO

Namsoh v. State (1993) 6 SCNJ 55
D Timitimi v. Amabebe (1953) 13 WACA 274
Sadhvani v. Sadhwani Nig. (1989) 2 NWLR (pt. 101) 72
Azeez v. State (2008) All FWLR (pt. 424) 1423
Olukade v. Alade (1976) 2 SC 183
State v. Audu (1971) NNLR 91
E Nakumde v. Jos N. A. (1966) NWLR 52
Queen v. Pbong (1961) NNLR 47
Onobi v. I.G.P. (1957) NNLR 25
Dogo v. State (2001) FWLR (pt. 39) 1388
F Ukwunneyi v. State (1989) 7 SC (pt. 1) 64

STATUTES REFERRED TO

Criminal Code Cap. 30 Vol. II Laws of Ondo State 1978, ss. 316(2), 319(1)
G Evidence Act Cap. 112 LFN 1990, ss. 27-31

LEAD JUDGMENT BY OWOADE JCA

This is an appeal from the decision of Honourable Justice S.A. Bola of the Ondo State High Court sitting at Okitipupa Judicial Division delivered on the 26th day of September, 2006.

The Appellant was charged with four (4) others by way of Information with the offence of Murder, contrary to Section 316(2) and punishable under Section 319(1) of the Criminal Code Cap. 30 Vol. II Laws of Ondo State of Nigeria 1978.

The prosecution brought an application withdrawing against the 2nd - 5th accused persons on the basis that the 2nd accused who was on police bail could not be found and the 3rd - 5th accused persons were not indicted in the legal advice issued by the Ministry of Justice, Ondo State. The application was granted and the case went for full trial. B

The case of the prosecution against the Appellant was that on the 19th of February, 2003, the wall of the Appellant's room was perforated and his money which was N185,000.00 was stolen by unknown person while he was outside. He did not see anybody stealing the money, he however later suspected his wife's half brother. One Adediran Omogunloye who lived in another camp because he did not come to sympathize with him as others did. The Appellant later left his camp to meet the deceased in his camp and challenged him of stealing his money. The deceased denied the allegation. Thereafter, the Appellant took the deceased to another camp where the deceased parents were. They asked the deceased if he was the one that stole the money and he still denied the allegation. An herbalist was invited who performed divination and said the deceased was the person who stole the money. In spite of this, the deceased continued to deny the allegation. The deceased was later taken away to the Appellant's camp where his legs were tied together and was hung on a kolanut tree by the house of the Appellant. The Appellant with others at large tortured the deceased by flogging him severely, setting fire underneath him, pouring hot red oil into his ears so that he could confess to allegation of stealing the Appellant's money. About two days later, the deceased was rushed to the hospital by his brother, one Segun Omogunloye for treatment. C
D
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However, he could not recover from the torture and died at the hospital on 23rd day of February 2003. G

The Appellant, on the other hand said the family of the deceased asked him to take the deceased away. He said he later left the camp with his wife for their own camp and later traveled to Okitipupa to repair his car. That it was when he came back to the camp the second day that he was told that the deceased had been taken to the hospital at Ode Irele for treatment. He visited the deceased at the Hospital. That on the 23/2/2003, he was informed by one Kola and Modimu that the deceased had died and that some boys were look- H

ing for him. He went to the police station voluntarily to report and was accompanied there by his brother Modimu. That they were both arrested at the police station where they made statements.

At the hearing, the prosecution led three (3) witnesses while the accused Appellant testified for himself and called a witness to testify. At the close of the case, the Appellant was found guilty, convicted and consequently sentenced to death.

Dissatisfied with his conviction and sentence, the Appellant filed a Notice of Appeal (containing four (4) grounds of appeal) in this court on 29/09/06.

By leave of this Honourable Court granted on 13/07/2011, the Appellant filed an Amended Notice of Appeal (Containing eight (8) grounds of appeal) on 3/8/2011.

Briefs of argument were filed and exchanged. Appellant's brief of argument dated 10/4/2014 was filed on 11/4/2012 and deemed properly filed on 17/5/2012. The Respondent's brief of argument dated 17/7/2012 was filed on 18/7/2012 and deemed filed on 6/5/2013. Learned Counsel for the Appellant nominated three (3) issues for determination as follows:

i. Whether the trial judge was wrong to have admitted and relied on Exhibit A, B and C (Extra Judicial Statements) without expunging same from the records before convicting the Appellant. (Grounds 1, 2, 5, 6 and 7)

ii. Whether the learned trial judge was wrong to have held that the defence of alibi did not avail the Appellant. (Ground 8)

iii. Whether having regard to the evidence led by the prosecution the learned trial judge was wrong to hold that the prosecution has proved the case of murder beyond reasonable doubt against the Appellant.

Learned Counsel for the Respondent adopted the issues formulated by the Appellant's Counsel with little modification as follows.

1. Whether the trial Judge was wrong or right to have admitted and relied on Exhibits A, B, & C (Extra Judicial Statements) without expunging same from the records before convicting the Appellant.

2. Whether the learned trial Judge was wrong or right to have held that the defence of alibi did not avail the Appellant.

3. Whether having regards to the evidence led by the prosecution the learned trial judge was wrong or right to hold that the prosecution has proved the case of murder beyond reasonable doubt against the Appellant.

On issue 1, Learned Counsel for the Appellant submitted that the learned trial judge in the instant case admitted the statements made by the Appellant to the police on 28/02/2003, 23/02/2003 and 24/02/2003 as Exhibit A, B, C respectively. That the said Exhibits though admitted after trial within trial, does not meet the requirement of the law as a voluntary statement which the trial judge can rely on while writing his judgment.

Counsel submitted that a careful perusal of the statements (Exhibits A, B, and C) show that the statements were products of a question and answer session which restrict the statement of the Appellant to questions which were asked and not what the Appellant knew or intended to state. The fact that the statements were products of a question and answer session said Counsel, is borne out by the evidence of PW2 under cross Examination at page 31 lines 24 - 26 stated thus:

"I was asking the question from the accused person. I was asking specific question and was giving specific answer..."

Learned Counsel referred to the case of Namsoh Vs State (1993) 6 SCNJ 55 at 69 and submitted that Exhibits A, B, and C cannot be said to be voluntary as it was limited to the questions asked alone, instead of allowing the Appellant to state all he knows about the alleged offence for which he was arrested. He submitted referring to the cases of Timitimi V Amabebe (1953) 13 WACA 274, Sadhwani V Sadhwani Nig. (1989) 2 NWLR (Pt 101) 72 and Agagu V Dawodu that Exhibits A, B and C ought to have been expunged from the records by the trial judge instead of the heavy reliance placed on them.

Learned Counsel submitted further that apart from the fact that Exhibits A, B, and C were products of question and answer, the Appellant also raised the issue that they were not voluntarily made. That, though the trial judge had conducted trial within trial before the admission of Exhibit A, B, and C, the trial judge failed to consider the fact that at the earliest opportunity, the Appellant made a statement Exhibit B wherein he denied participating in the torture of the

deceased and that he was actually not around during the period the deceased was tortured. The question, according to Counsel, is what then made him to confess to the commission of the offence 4 days later? The answer, said Counsel can be found at page 45 lines 18 - 23 when he stated in his examination in chief thus:

B *"I made two statements. I read up to class three at Laragunsin Grammar School at Iyansan. I can write a little bit. I made two statements because I was beaten. Four people flogged me and I was told to admit whatever..."*

C That, also, at page 49 lines 25 - 26, under cross-examination, the Appellant stated:

"At Akure I made statement to the police I was force to make it..."

D Counsel submitted that the prosecution did not dislodge the fact that the statements were products of threat and intimidation. And, that the learned trial judge should have examined Exhibits A and C in the light of Exhibit B and the evidence which were led in court on the voluntariness of the statement.

E Learned Counsel submitted further that if the trial judge had examined the said Exhibits A and C in the light of Exhibit B and the viva voce evidence of the Appellant as DW1, it would have been found that the statements were not voluntary and could have been expunged during judgment. On this, Counsel referred to the cases of *Azeez V State* (2008) All FWLR (Pt.424) page 1423 and *Olukade V*
F *Alade* (1976) 2 SC 183.

On another wicket, Appellant's Counsel submitted that Exhibits A, B and C which were said to have been made by the Appellant all started with cautionary words in the opening paragraph, and PW1
G and PW2 stated in their evidence that they obtained the statements from the Appellant. That it is trite that statement obtained from an accused person which opens with cautionary words, cannot be said to be voluntary statements made willingly by such an accused person. He referred to the cases of *The State V Mati Audu* (1971) NNLR
H 91 at 92; *Nakumde v Jos N. A.* (1966) NWLR 52 at 58 - 59; *Queen v Pbong* (1961) NNLR 47 at 47 - 48; *Onobi v I.G.P* (1957) NNLR at 25 and also to the unreported decision of the Supreme Court in *State V Olashehu Salawu* delivered on the 16th December 2011 where the court per Nwali Sylvester Ngwuta JSC held that the word

“obtain” “caution” takes the statement of the accused person out of the realm of voluntary or confessional statement as the “cautionary words” itself amounts to an inducement.

Appellant’s Counsel argued that flowing from the above decision of the Supreme Court and a careful perusal of Exhibits A, B, and C, it is Clear that all the Exhibits contained cautionary words and that they were obtained from the Appellant rendering the statements involuntary and non-confessional. Still on this score, learned Counsel submitted also that Exhibits A, B and C are contradictory. That while in Exhibit A and C the Appellant partially admitted participating in the crime, he denied taking part in Exhibit B which was the 1st statement he made after submitting himself to the police. That, the trial judge was therefore wrong in relying on Exhibit A & C without stating why he rejected Exhibit B.

And, finally on issue 1 that Exhibit A, B and C ought not to have been admitted in the first instance and instead should have been expunged from the records.

On issue 1, Learned Counsel for the Respondent submitted that the learned trial judge was right to have admitted exhibits A, B, and C being the statements of the appellant to the police at Ode Irele Police Station and S.I.I.B Akure. He referred to the provisions of sections 27, 28, 29 and 30 of the Evidence Act Cap. 112 LFN 1990. He further submitted that in the instant case, when the Appellant raised the issue of ‘voluntariness’ a trial within trial was conducted for all his statements that is Exhibits A, B and C. That it was after this that the trial court who had the opportunity of watching the demeanor of the Appellant in the witness box had to invoke the provision of section 30 of the Evidence Act and admit the statements of the Appellant. Counsel added, that PW1 Insp. Teimolomi Ebangbugha tendered Exhibit A after “trial within trial” was conducted and that the evidence of the Appellant under cross-examination during trial within trial was not different from the content of his statement, Exhibit A.

Respondent’s Counsel submitted further that before exhibits B and C were admitted, they were also subjected to trial within trial and that after the evidence of the prosecution, the defence rested his case on that of the prosecution. The Appellant, said Counsel, did not give evidence at all during the trial within trial that led to the admission of Exhibits B and C and could not tell the court what type of

inducement, threat or promise was made by the IPO before he volunteered his statements Exhibits B and C. He submitted that the Appellant was enjoined to inform the court on what type of threat, inducement or promise was made to him. That the only witness that gave evidence in that trial within trial was the PW2 (IPO) and he said at page 40 of the records that he never did anything to the accused (Appellant) to make him make his statements and that he read the statements to the accused (Appellant) who signed the statements as correct.

Counsel submitted that the evidence of the witness PW2 that the Appellant came voluntarily to the police station and due process was followed in taking the statements of the accused (Appellant) and that the Appellant's statements were voluntarily made rather than been discredited was strengthened under cross-examination.

On the issue of whether the IPO asked the Appellant some questions, Counsel submitted that the statements of the Appellant Exhibits A, B and C do not portray or show that they were made as a result of specific question and answer session. That a critical perusal of the statements reveals a comprehensive flow of a narration rather than a question and answer session. Counsel conceded that it may not be ruled out whether one or two questions may have been asked from the accused Appellant, but that the Exhibits do not reveal any question or answer session. Learned Counsel further referred to page 43 of the record, where the learned trial judge in his Ruling on the admissibility of Exhibits B and C in particular recognized that no evidence was led to show that the confessional statements of the accused was caused by inducement, threat or promise but that the fulcrum of the objection is that the statement was obtained under question and answer session. And, that the learned trial judge correctly answered the question by reference to section 31 of the Evidence Act cap. 112 LFN 1990 to the effect that a confession which is otherwise relevant does not become irrelevant merely... because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such statement and that evidence of it might be given. Learned Counsel also submitted that if Exhibits A, B and C are contradictory as suggested by the Appellant's Counsel, it is the duty of the Appellant to proffer expla-

nation to the court for the contradictions. He referred to the case of Okafor v State (2006) All FWLR (Pt. 318) 719 at 729.

It seems to me that the fulcrum of the Appellant's complaints on issue 1 borders on the voluntariness of the Appellant's confessional statements Exhibits A and C and also the impropriety of the admissibility of his other extra judicial statement Exhibit B. Learned counsel for the Appellant gave a lump sum attack to the admissibility of the Exhibits in four compartments as follows.

(a) That the admissibility of the statements Exhibits A, B, and C followed a question and answer session.

(b) That the statements were not voluntarily made as they were products of threat and inducement.

(c) That the statements Exhibits A, B and C all started with cautionary words in the opening paragraph and that PW1 and PW2 stated in their evidence that they obtained the statements from the Appellant.

(d) That the statements Exhibits A, B and C are contradictory.

To be able to answer the above questions from the Learned Counsel for the Appellant, I took a more careful look at Exhibits A, B and C and also the proceedings of the court more particularly as it concerns the two separately held trials within trials the first leading to the admissibility of Exhibit A and the second to the admissibility of Exhibits B and C.

Meanwhile, it is not in dispute that while Exhibits A and C are in the nature of confessional statements, Exhibit B cannot be so tagged. In answer to (a) above, I do agree with the Learned Counsel for the Respondent that "a critical perusal of the statements reveals a comprehensive flow of a narration rather than a question and answer session..." and also with the learned trial judge when he held at page 37 of the record, more particularly in respect of Exhibits B and C that:

"It is pertinent to state at this juncture to the effect that no evidence was led to show that the accused was ceased (sic) by inducement, threat or promise. The fulcrum of the objection is that the statement was obtained under question for answer session, would any statement obtained under such circumstance render the statement involuntary or irrelevant to make it inadmissible? To answer this question, I refer to sec. 31 of the Evidence Act which provides as

follows:

B “31 if such a confessional statement is otherwise relevant. It does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of deception practiced on accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such statement and that evidence of it might be given.”

C “The confessional statement of the accused in this matter was made by the accused and written down by the I.P.O. A reading through of the statements shows that it flowed smoothly. It was not disappointed (sic). The objection raised was not for the effect that the accused did not make the statement...”

D Finally, on this score, the situation in the instant case is quite distinguishable from the facts and circumstances of the Supreme Court decision in *Namsoh V State* (1993) 6 SCNJ 55 at 69 which was heavily relied upon by the Learned Counsel for the Appellant.

E In the case of *Namsoh V State* (supra) the Supreme Court frowned on the procedure whereby the police recorder was putting questions already prepared by his superior on a sheet of paper to the Appellant while he also recorded the answers. The Supreme Court thus held appropriately in the case of *Namsoh v state* (supra) at page 69.

F “...This procedure is clearly wrong, once a police officer decides to make a complaint against an accused person, he must first of all caution the accused person in a prescribed form. ...I cannot see how a statement... would be regarded as free and voluntary when it is evident that the so called statement was a result of question selected by and put to the accused by the police officer himself”.

G ***The complaint of threat or inducement by the Appellant under (b) above could not have applied to Exhibits B and C where the evidence of the prosecution witness during the trial within trial was neither challenged nor contradicted in any form.***

H ***It is trite that where evidence is led by a party and there is no contrary evidence from the other party, the evidence is deemed to be true and accepted.*** See *Okoebor v Police Council*

(2003) 12 NWLR (pt. 834), Akinlagun v Oshoboja (2006) 12 NWLR (pt. 993) 60.

In relation to Exhibit A, the learned trial judge had a choice in believing either the version of the Prosecution or that of the Appellant and for good reasons stated at pages 29 - 30 of the record accepted the story of the prosecution at the trial within trial that the statement of the Appellant was voluntarily made. B

The learned trial judge found that the content and or admission of the Appellant in Exhibit A was not too different from his evidence at cross-examination in the course of the trial within trial. That the Appellant understands English language and that he is not a “stark literate”. That the accused (Appellant) said he could not differentiate between the injury he sustained in the form and that allegedly inflicted by the police. And finally, that: C

“Considering the totality of the evidence adduced under trial within trial. I take into consideration the demeanor of witness and the evidence of the accused person. The accused testimony under cross examination reveals that he made statement to the police and the statement to the police at S.I.I.B. is not far from his admission under cross-examination. If he admitted the salient facts which (although does not prove that he committed the offence at this stage) it shows that he agreed substantially with the statement he is seeking to reject as not being made voluntarily... In the light of the foregoing, I believe the evidence of the PWI (I.P.O) that the statement of the accused was regularly, validly as voluntarily made. I do not believe the evidence of the accused that the statement was obtained from him after torture or beating...” D
E
F

In answer to (C) above, I must first point out that the mere presence or use of cautionary words in the opening page of a confessional statement does not necessarily render such a statement inadmissible as a confessional statement. It seems to me that each case would depend on its own facts but the test to be applied at all times is whether the cautionary words used could be said to have amounted to an inducement as to render the statement inadmissible. G
H In other words, the question raised in relation to “inducement” by section 28 of the Evidence Act is “*was the confession preceded by an inducement to make a statement?*” And, not “*was the confession preceded by cautionary words*”.

The above is clearly the position of the law even when some of the decided cases have demonstrated that inappropriate cautionary words or suggestive testimony by prosecution witnesses could give strong indications that a statement made by an accused person was preceded by an “inducement”. For example, in *R. V Nimiel Viapbong*, (1961) NNLR 47 a police sergeant in cautioning an accused person had said to him “*you should bear in mind that any statement you make shall be written down by me and taken before the court so that it may be your evidence*” or “*so that it may be evidence for you*”. After hearing this, the accused made a confession of the offence with which he was charged. Hurley S.P.J (as he then was) said:

“*The caution was clearly an inducement to speak. An accused person can hardly be expected to keep silent when told that he need not say anything, but that anything he says will be written down and taken before the court to be his evidence, or evidence for him, he is being given amply sufficient grounds for supposing that by speaking he will avoid the evil of being condemned unheard.*”

In contrast, in the instance case the cautionary words that preceded Exhibits A, B, and C are couched similarly as follows:

“*I Omosule Iduwe (M) having been charged and duly cautioned in English Language that I am not oblige to say anything unless I wish to say so, but whatever I say will be taken down in writing and may be given in evidence.*
Signed
Dated”

In addition to the above, Exhibits B and C opened up with the words “I voluntarily elect and state as follows:

All the Exhibits A, B and C were signed at the foot of each of the statements by both the Appellant and the recorder. Similarly, the use of the word “obtain statement” in the evidence of PW1 and PW2 cannot on its own suggest that such a statement was preceded by an inducement.

The position in the instant case is in contrast for example with the case of *R. V Nyinya Kwaohbo* (1962) NMLR 4, where after the accused had been apprehended, he made a statement to a police constable who at the trial said he had “obtained the statement from the accused who had “agreed” to make it. In that case, it was not

shown that the prescribed caution had been administered. It was held that there were strong indications that the accused had been induced to make the statement and as there was no satisfactory evidence that the statement was voluntary, it was not accepted in evidence.

Finally, in answer to (d) above, there is nothing spectacular about Exhibit B, contradicting Exhibits A and C and indeed, except for his eventual denial of his involvement in the beating of the deceased, the rest of the story of the Appellant in relation to his lost money and the suspicion that the money was stolen by the deceased ran through the three Exhibits A, B and C. Meanwhile, Exhibits C and A were indeed later in time to Exhibit B. While Exhibit B was made on 23/2/2003 Exhibits C and A were made on 24/2/2003 and 28/2/2003 respectively.

All the Exhibits went through the process of trial within trial and in my opinion Exhibits A and C were properly admitted and relied on by the learned trial judge in convicting the Appellant. Issue No. 1 is resolved against the Appellant.

On issue No. 2, Learned Counsel for the Appellant submitted that the Appellant at the earliest opportunity, when he reported at the police station, Ode-Irele made Exhibit B, wherein, he stated that he was not at the scene of the crime as he was away to Okitipupa. Failure to investigate the Appellant's alibi as contained in Exhibit B, said Counsel is fatal to the case of the prosecution.

He submitted that the findings of the trial judge at pages 109 - 110 to the effect that the Appellant failed to give date and with whom he was with and that the failure to give the particulars defeat the alibi.

Learned Counsel submitted that the trial judge failed in his duty to consider the evidence of the Appellant to the effect that he only answered questions which were put to him. (page 47 lines 7 - 10) thus-

"...The police did not ask me to take them to where I slept at Okitipupa in the night between 20th to 21st February 2003..."

On the above, Counsel submitted that the way and manner in which the statement was obtained prejudiced the Appellant as he was not allowed to state what he knows and where he was since the statement was limited to questions asked by the police.

He referred to *Rabiu V State* (2010) 5 NWLR 322. Moreover, said Counsel, since the Appellant said he was at Okitipupa on the date, the policemen who were asking him the questions should have asked him to take them to Okitipupa to verify his claim.

B He submitted that in the instant case, the prosecution failed to investigate the alibi raised by the Appellant and failed to lead rebuttal evidence that the Appellant was at the scene of crime.

C He referred to the cases of *Dogo V State* (2001) FWLR (Pt.39) 1388 and *Ukwunneyi V State* (1989) 7 SC (Pt.1) 64 and submitted that the Appellant was entitled to be discharged and acquitted.

Learned Counsel for the Respondent reacted to Appellant's issue 2 and submitted that the trial judge was right to have held that the defence of alibi did not avail the Appellant. That, the Appellant made three (3) statements to the police, Exhibit A at the SIIB Akure D and Exhibits B and C at the Ode-Irele police station, Ode-Irele. That in Exhibit B at page 128 - 130 of records, which is the 1st statement made by the Appellant the very day the deceased died, that is on 23/2/2003, after narration of the whole story, the Appellant only said he was not around when the deceased was being tortured. That the E Appellant wrote in Exhibit B that the deceased had followed them to their camp since on the 19/2/2003 and was with them till on the 21/2/2003 when he claimed he traveled to Okitipupa. Also, in the same Exhibit B that "...Adediran was still in my camp before on the 21/2/2003 before I travelled to Okitipupa in the morning and I came back F to my camp on that 21/2/2003 at about 6. pm".

Learned Counsel referred to the case of *Balogun V The State* (2002) 4 SCM at 34 and said that the defence of alibi was not thereby properly raised in Exhibit B. that, it was only in his oral testimony on G 6th June 2006, that the Appellant provided the particulars of his whereabouts in "Okitipupa" as follows:.

"I left Gbebe village for Okitipupa on 20/2/2003, slept in Olaoluwa's room on the 20th to 21st February. I do not know where Ola-Oluwa Awotunla is now. I do not know his whereabouts".

H Counsel submitted that even the above Appellant's testimony did not also meet the requirement of giving place, address or clue to where he was. But that notwithstanding, he had forgotten that he had narrated his involvement in the whole incident before he embarked on his journey to Okitipupa if he ever went there. Learned

Counsel then referred to Exhibit A and submitted that the admitted involvement of the Appellant in the torture of the deceased as stated in Exhibit A was corroborated by the evidence of PW3, the medical pathologist as to the cause of the deceased's death.

He submitted relying on the case of Ikemson V State (1998) 1 ACLR 98 that by Exhibit A, there is direct and positive participation of the Appellant in the crime. And, that where there is direct participation in a crime, plea of alibi is negative. B

Learned Counsel submitted further that the evidence of the Appellant in court on the 6th of June 2006 came too late for any meaningful investigation to be carried out by the prosecution at that stage when he himself did not know the where about of the person he claimed he slept with at Okitipupa. He did not mention that he was with anybody at Okitipupa in any of the statements made to the police. The Appellant himself, said Counsel, disproved his alibi by making the following contradictory statements in Exhibit 'B' and his oral testimony in court. In Exhibit 'B', that *"Adediran was still in my camp before on 21/2/2003 before I traveled to Okitipupa in the morning and I came back to my camp on that 21/2/2003 at about 6p.m"* C D E

And in his oral testimony at page 50 lines 30 - 32 of the record, he said:

"I left Gbede village for Okitipupa on 20/2/2003, slept in Okitipupa on 20/02/2003, slept in Olaoluwa's room on the 20th to 21st February, 2003. I do not know where Olaoluwa is now. I do not know his whereabouts". F

Learned Counsel submitted that the Appellant cannot take advantage of the unexplained contradictions in his 1st statement Exhibit B and his oral testimony in court as regards the defence of alibi he raised in his defence. G

He submitted that the alibi raised by the Appellant is an afterthought. He did not say it at the earliest opportunity he had. He did not give specific location he was at Okitipupa, the person he went to see, and the time he left for Okitipupa. That, DW2 brought to give evidence was only imported from nowhere and his evidence could not assist the Appellant. The date DW2 quoted, said Counsel, was different from that quoted on Exhibit A by the Appellant who said he went to Okitipupa on the 21/02/2003. DW2 said in his evidence at H

page 56 lines 22 - 24 of the records that “on the 20/2/2003, I went to Igbokoda to load, I got home at about 9p.m only to meet the accused person... we slept together in my house until the following day”. But, the Appellant himself in Exhibit B said he did not sleep at Okitipupa but returned to his camp on the same 21/2/2003.

B Learned Counsel argued that even if it is conceded that the Appellant slept at Okitipupa, DW2 was only able to account for his where about between 9p.m of 20th and the next morning of 21st. The torturing of the deceased was done in day time and not in the night. However, that the Appellant has forgotten that he told the
C police in Exhibit B that he went to Okitipupa and returned to his camp the same day of 21/2/2003.

Counsel submitted that the Appellant did not give the I.P.O. an opportunity or clue to investigate his alibi if it is necessary at all for the
D police to carry out any, after the Appellant had concluded the act of torturing the deceased and kept him in his house helpless. He referred to Exhibit A at pages 126 - 127 of the Record of Appeal.

Finally, Learned Counsel submitted on issue 2 that if the Appellant could rely on his alibi raised in Exhibit B, he should also be
E able to admit all other things said by him in that Exhibit.

It is pertinent to observe that the Learned Counsel for the Appellant further raised the question of Exhibit B being a product of question and answer session in his submissions on issue 2. I had earlier on in the treatment of issue No. 1 come to the conclusion that
F Exhibits A, B and C are relevant and legally admissible evidence and that the learned trial judge was right to have relied particularly on the Appellant’s confessional statements in exhibits A and C in convicting him of the offence charged. I say no more on that issue.

G ***Now, the central question for issue No. 2 is whether the Appellant could have been availed of the defence of alibi through his statement Exhibit B. There are at least three reasons why the Appellant in this case could not have successfully pleaded the defence of alibi. The first is that the said Exhibit B, the statement which he made to the police at Ode Irele Police Station did not give any indication or particulars for the police to investigate his whereabouts. For example, in the said Exhibit B, the Appellant did not give specific location he was at Okitipupa, the person he went to see and the time***
H

he left for Okitipupa. He only mentioned the name of DW2 in his oral testimony on 6/6/2006.

It is not enough for an accused to raise the defence of alibi at large. He must give adequate particulars of his whereabouts at the time of the commission of the offence to assist the police to make a meaningful investigation of the alibi. Nsofor V State (2002) 10 NWLR (Pt. 775) 274; Balogun V A.G Ogun State. B

The law relating to alibi is that an accused person who wishes to raise alibi must raise it at the earliest opportunity to enable the police to investigate it. The accused must offer evidence as to where he was at the time of the crime and with whom he was at the material time. Onyegbu V State (1995) 4 NWLR (Pt. 391) 510; Ifejirika V State (1999) 3 NWLR (Pt. 593) 59; Isiekwe V State (1999) 9 NWLR (Pt. 617) 43; Eyisi V The State (2000) 12 SC (Pt. 1) 24; Njiokwuemeni V The State (2001) 14 WRN 96. C D

In the instant case, the evidence of the Appellant in court on the 6th of June 2006 came too late for any meaningful investigation to be carried out by the prosecution at that stage. The Appellant did not mention that he was with anybody at Okitipupa in any of his statements to the police. E

In the case of Adebayo v State (2007) All FWLR (Pt. 365) 498 at 520 - 521, the court held:

“To take advantage of the defence of alibi, the accused must give a detailed particularization of his where about on the crucial day of the offence which will include not just specific place(s), where he was, but additionally the people in whose company and what, if any, transpired at the time and place. Such defence must timeously be brought to the attention of the police by the accused person, preferably in his extra judicial statement, to afford the police ample time to carry out it’s investigation”. See also Sowemimo V State (2004) 11 NWLR (pt. 885) 515. F G

The second reason why the plea of alibi could not avail the Appellant in this case is that there are in any event material contradictions as to date in between Exhibit B, the 1st statement of the Appellant to the police, his oral testimony and the evidence of DW2. Exhibit B suggests that the Appellant went to Okitipupa and returned on 21/2/2003. The evidence of DW2 and the Appellant’s oral testimony gave the H

impression that the Appellant slept at Okitipupa on the night of 20/2/2003.

Thirdly and perhaps more significantly, Exhibits A, B and C, particularly Exhibits A and C, the extra-judicial statements of the Appellant fixed the Appellant to the scene of crime and reveal a direct and positive participation of the Appellant at the scene of crime. The law is that where there is direct participation in a crime the plea of alibi is negative. See Ikemson V State (1998) 1 ACLR Pg. 98.

In Balogun V Attorney General Ogun State (2002) FWLR (Pt. 100) 1287 at 1303, it was held that when the prosecution is able to lead cogent and unassailable evidence which shows that an accused was at the scene of crime at the material time, his alibi when placed alongside the evidence against him in the normal evaluation of evidence, collapses. See also Patrick Njovens & Ors V State. (1973) 5 SC 17 at 65.

For the reasons stated above, the learned trial judge was right to have rejected the plea of alibi of the Appellant. Issue 2 is resolved against the Appellant.

On issue 3, Learned Counsel for the Appellant relied on his submissions on Issue No. 1 to the effect that the prosecution failed to prove that the Appellant caused the death of the deceased in view of the fact that Exhibits A and C which were relied on by the learned trial judge were unreliable, contradictory and wrongfully admitted.

He also submitted that the evidence of PW3 (Dr. W.O. Ajewole) is not exact as to the cause of the death. That in his evidence in chief PW3 stated at page 40 lines 17 - 18, thus:

“My conclusion was that the young man must have died of torture...” Counsel said the use of the word “must” by the witness is not exact as to the cause of death, he did not exclude other factors and possibilities. He referred on this to the case of Adawa V State (2006) AFWLR (Pt.424) 1337 at 1786.

He submitted that PW3 did not give evidence as to the extent of damage found on the body of the deceased. And, that PW3 relied on hearsay evidence in coming to the conclusion on the cause of death. He referred to the case of R V Oledima (1940) 6 WACA 202.

Learned Counsel submitted further that the prosecution did not in any way lead evidence of common intention by the Appellant

and others at large and did not prove that the Appellant acted with the intention of causing death or causing bodily injury which the Appellant knew that the probable consequence would be death.

He referred to the cases of *Alarape V State* (2001) FWLR (Pt. 41) 1872) and *State V Azeez* (2008) AFWLR (Pt 424) 1423

Finally, on Issue No. 3, Learned Counsel submitted that the prosecution listed material and eye witnesses of the account which were not called to give evidence. That, the said witnesses are the ones that could give eye witness account on the part played by the Appellant in torturing the deceased, that the evidence of the prosecution on the account is rendered inconclusive and that the failure to call the listed witnesses is fatal to the case of the prosecution. He referred on this to the cases of *Oluwatoba V State* (1985) 1 NSCC 306; *State V Nnolim* (1994) 5 NWLR (Pt.424) 394 at 406 and *Opayemi V State* (1985) 2 NWLR (Pt. 5) 101.

Learned Counsel for the Respondent submitted in relation to issue No. 3 that the learned trial judge was right to hold that the prosecution has proved the charge of murder against the Appellant beyond reasonable doubt. He referred to the cases of *Abogede V The State* (1996) 5 NWLR (Pt.424) 270 and *Young Uguru V The State* (2002) FWLR (Pt.424) 330, that for the prosecution to succeed in a case of murder, three basic elements must be established. They are:

1. That the deceased had died.
2. That such death was caused by the accused.
3. That the act of the accused was done with the intention of causing death or that it was done with the intention of causing such bodily injury as:
 - (a) The accused knows or had reason to know that death would be probable and not only a likely consequence of his act; or
 - (b) The accused knows or had reason to know that death would be probable and not only, the likely consequence of any bodily injury which the act was intended to cause.

Learned Counsel for the Respondent submitted that the parties are agreed that the 1st ingredient of the offence of murder has been met and that the deceased had died is not in contention.

He argued that the learned trial judge rightly placed reliance on the Appellant's extra judicial statements Exhibits A, B and C espe-

cially Exhibits A and C in coming to the conclusion that the death of the deceased was caused by the Appellant.

Counsel further submitted that in placing reliance on the Appellant's extra judicial statements, the learned trial judge not only had to cross the hurdle of determining the voluntariness of the statements, Exhibits A, B and C but also subjected the confessional statements to the six way test to determine the truth of a confessional statement as laid down in the case of *Dibie V State* (2004) 14 NWLR (Pt.424) 257 at 287. That the learned trial judge also relied on the decision of the Supreme Court in *Igabale V The State* (2006) 6 NWLR (Pt.424) 100 at 116 - 117, where it was held that it is settled that the guilt of an accused can be proved by:

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

Learned Counsel submitted that flowing from Exhibits A and C, it is patently obvious that the Appellant's act of torture resulted in the deceased death. That, this was corroborated by PW3 in evidence in chief at page 46 lines 23 - 25 of the record when he said; "I said that the death was due to injury sustained by way of torture. The attendant stress and the blockage of the opening". The learned trial court, said Counsel, finally concluded on this point at page 105 of the records thus:

"Having considered the confessional evidence upon which this issue can be determined, I have no hesitation and I come to the conclusion that it was the act of the accused as regards the beating, flogging, torture and other ordeals he with others visited on the deceased (to make him own up to the stealing of the accused money) that culminated or resulted in the death of the deceased. This settled the second ingredient of the offence of murder in this case".

On the 3rd ingredient of murder that the Appellant's act was done with the intention of causing death or grievous bodily harm to the deceased, Counsel submitted that a man intends the natural and probable consequences of his action(s). That, Exhibits A, B and C described how the deceased was hanged, on a kolanut tree, flogged severely, burn with fire, hot red oil poured into his ears and other severe torture and punishment the deceased went through. That, an intention to cause bodily harm is established if it is proved that the

accused deliberately and intentionally did an act knowing that it is highly probable that it would result in the death of or cause grievous bodily harm to the victim even though he did not desire that result.

He referred to Criminal Law in Nigeria by Okonkwo & Nash page 231 - 232.

Respondent's Counsel concluded that the only one thing that could be inferred from Exhibits A and C is that the Appellant and others intended to kill or cause the death of the deceased. B

It is not true as suggested by the Learned Counsel for the Appellant in terms of issue No. 3 that the report/evidence of the PW3 Dr. Williams Olu Ajewole was not precise or exact on the cause of death or was based on hearsay evidence. The relevant portion of the evidence of PW3 could be seen on page 40 of the record of appeal lines 13 - 27 as follows: C

"...I did perform the post mortem examination accordingly, my finding were; those were multiple flog marks bruises and abrasions were lineal in nature were on the body. There were also multiple burn injuries in the body. An oily substance was found on the ear orifices and the mouth which were also burn and swollen, My conclusion was that the man must have died of torture. The flog marks on the body could not have been self-inflicted. At the conclusion of examination, I wrote a report signed by me with my name on it. The report was given to the investigating police officer. ...I said that the death was due to injury sustained by way of torture ..." D E

The evidence of PW3 is direct, positive and unequivocal as to the cause of death of the deceased in the instant case, it is neither inexact or product of hearsay as suggested by the Learned Counsel for the Appellant. Also, I must say that the evidence of PW3 substantially corroborates the Appellant's extra judicial statements Exhibits A, B and C. Secondly, the Learned Counsel for the Appellant was not also right when he suggested that the prosecution did not prove the necessary intent in the instant case to ground the Appellant's conviction for the offence of murder. Suffice to say that the severity of the torture and brutality meted to the deceased by the Appellant and others at large is very well described in Exhibits A, B and C. It goes without saying that a man is presumed to intend the natural and probable consequences of his actions. Accord- F G H

ingly, where by an unlawful act of a person which causes another person grievous harm leading to the death of that person, he is presumed to have intended to kill that person and he would be guilty of murder irrespective of his intention. Audu

V State (2003) 7 NWLR (Pt.424) 516; Nwali V State (1991) 3 NWLR
 B (Pt.424) 663; Umoru V State (1990) 3 NWLR (Pt. 138) 363 at 370.

Indeed, as a matter of evidence the greater the probability of a consequence, the more likely it is that the consequence was foreseen and, if that consequence was foreseen, the more likely it is that that consequence was also intended.

C See. R. V Hancock; R. V Shankland (1986) AC 455, 82 Cr. APP. Rep. 264, HL.

Finally, on Issue 3, the submission of the Learned Counsel for the Appellant that the failure of the prosecution to call Fikemi
 D Omogunloye, Omotayo Omogunloye and Orunsato Omosekeji all listed as witnesses on the Information Sheet is fatal to the prosecution's case does not represent the position of the law.

**In the instant case, the case of the prosecution was essentially proved by Exhibits A and C and undoubtedly, a free
 E and voluntary confession of guilt by an accused person as in the instant case. If it is direct and positive, duly made and satisfactorily proved, is sufficient to warrant a conviction, even though retracted and notwithstanding that there is no corroborative evidence. A conviction based on such a confession will
 F not be quashed on appeal merely because it is based entirely on the evidence of confession by the Appellant provided the court is satisfied with the fact and circumstance in which the confession was made.** Edamine V State (1996) 8 NWLR (Pt.424)

G 1; Nwaeze V State (1996) 2 NWLR (Pt.424) 1; Bature V State (1991) 5 NWLR (Pt.424) 697; Ekpenyong V State (1991) 6 NWLR (Pt.424) 683, Onwumere V State (1991) 4 NWLR (Pt 186) 428; Ogoala V State (1991) 2 NWLR (Pt.424) 509, Asanya V State (1991) 8 NWLR (Pt.424) 715; Agbolor V A.G Bendel State (1990) 6 NWLR (Pt. 155)
 H 141; C.A. Akpan V State (1990) 7 NWLR (Pt.424) 101; Bassey V State (1993) 7 NWLR (Pt.424) 469; Egboghonome V State (1993) 7 NWLR (Pt.424) 383; Ogbu V State (1992) 8 NWLR (Pt.424) 255; Buba V State (1992) 1 NWLR (Pt.424) 1; Nwaebonyi V State (1992) 5 NWLR (Pt 244) 698; Njoku V State (1992) 8 NWLR (Pt. 262) 714;

Onyejekwe Vs State (1992) 3 NWLR (Pt. 230) 444; Akinmoju V State (1995) 7 NWLR (Pt. 406) 204; Edhighere V State (1994) 5 NWLR (Pt.424) 312; Madaki V State (1996) 2 NWLR (Pt. 429) 171.

In any event, while it is true that the prosecution has a duty to place before the court all available relevant evidence, this does not mean that a whole host of witnesses must be called upon the same point. What it does mean is that if there is a vital point in issue and there is one witness who will settle it one way or the other, that witness ought to be called. State V. Ajie (2000) FWLR (Pt.16) 2831 at 2844; Obayemi Vs State (1985) 2 NWLR (Pt.5) 101 at 108.

In Ekpeyong V State (1991) 6 NWLR (Pt. 200) 683 at 698, it was held that a prosecutor is not bound to call witnesses merely because their names are on the back of the indictment. See also, Oladele v. State (1991) 1 NWLR (Pt.424) 708 at 719.

Having decided all of the above points in relation to Issue No. 3 as against the Appellant, Issue 3 is also resolved against the Appellant.

The three (3) issues in this appeal have been resolved against the Appellant. This appeal lacks merit and it is accordingly dismissed.

The judgment, conviction and sentence of the Hon. Justice S.A. Bola in charge No. HOK/9C/2004 delivered on the 26th day of September 2006 is accordingly affirmed.

DANJUMA JCA

I agree that the confessional statements of the Appellant as an accused person at the trial court had been amply corroborated by the direct evidence pinning him to the commission of the offence upon which he was convicted. Exhibits A, 'B' and 'C' are direct, clear and unequivocal confessions of guilt. They bring out all the ingredients of the offence of Murder as charged.

The evidence of PW3, the medical Doctor, who examined the corpus delicti, describes and testifies to the corpse and condition thereof and the possible cause of death that tallies with the confessions made.

The confessional statement of the Accused/Appellant had logically demolished his defence of Alibi and fixed him at the place i.e. (locus delicti) where the offence was alleged to have been committed.

ted. See *Dibie Vs State* (2007) SCM 101 @ 118-119.

Furthermore, the nature of the injuries found on the corpus delicti as testified to by PW3 was sufficient for the trial Judge to draw the inference, as he rightly did, that Appellant intended to cause the death of the human being, whose identity had been proved at the trial.

The arguments as to a host of witnesses as listed in the proof of evidence being called is untenable and a spurious legal heresy in the jurisprudence of legal proof in criminal prosecution. See *Taofeek Adeleke V. State NSCC Oct - Dec 2013 Pg. 1193 @ 1216*.

The Appellant, by his confession, which had been found at the trial court to be free and voluntary had given himself up to the law; being his own accuser and indeed convicted himself! See also *Kalu & Anor Vs King* 14 WACA 30; *Yusuf Vs State* (1976) 6 SC 167 *Ekwe Vs The State* (1999) 13 NWLR (Pt. 635) 456 @ 469

The corroborative link and strengthening of the confessional statements by the PW's 3 evidence had removed the presumption of innocence on the part of the Accused/Appellant and rendered the burden of proof of the actus reus and mens rea of the offence as hitherto cast on the prosecution (Respondent) as having been discharged, in satisfaction of section 138(3) of the Evidence Act. See *Dibie V. State* (2007) SCM 101 @ 118 - 119; *Olatinwo V State NCC* 8 Pg. 82, *Chikwe V State NCC* 8, Pg 185. Indeed, the confession of the felon in the record of trial was a 'Karmic' Visitation, in view of the facts and the circumstances of the heinous crime.

I concur that the appeal be dismissed.

G

ABIRIYI JCA

I read before now in draft the lead judgment just delivered by my learned brother MOJEED ADEKUNLE OWOADE, JCA. He has ably dealt with the issues for determination. I have nothing more useful to add.

H

I agree entirely with him that this appeal lacks merit and should be dismissed. I too dismiss the appeal.

The conviction and sentence of the Appellant are affirmed by me.