

SUPREME COURT OF NIGERIA
FRIDAY 21ST JUNE, 2013. SC. 103A/2011
CORAM:- I. T. MUHAMMAD, C. M. CHUKWUMA-ENEH,
S. GALADIMA, C. B. OGUNBIYI, S. S. ALAGOA, JJSC

OLABODE ABIRIFON APPELLANT
V.
THE STATE RESPONDENT

MURDER - Ingredients - Proof - Prosecution has burden to prove that accused killed the deceased - That the killing was unlawful - And that it was intentional (H1)

MURDER - Proof - Means of - Murder can be proved by confession of accused - Direct evidence - Or by circumstantial evidence (H2)

APPEALS - Concurrent findings - Except where there are strong reasons - Supreme Court does not interfere with such decisions of the lower courts (H3)

FACTS

Before the Ekiti State High Court sitting at Ado-Ekiti, accused/appellant, his brother and father were arraigned pursuant to sections 324 and 319(1) of the Criminal Code Laws of Ondo State (applicable to Ekiti State), for conspiracy and murder of one Peter John – the deceased. Two of the accused persons died prior to the commencement of the trial. Their names were thus struck out from the list. Appellant pleaded not guilty to the two count charge. The case as presented by prosecution/respondent is that the deceased was an annual labourer to Mr. Mathew Oloni Abirifon (appellant's father).

The said Mr. Mathew owed the deceased N30,000.00 being money due to the deceased as his annual dues for the year 2008. It was in a bid to avoid the payment of the money to the deceased that Mr. Mathew conspired with his children and murdered the deceased. Appellant denied killing the deceased. At the end of the trial, the learned trial Judge found appellant guilty as charged. He was consequently convicted and sentenced to death. Not satisfied, appellant

3022 *Abirifon v. State* (2015) 9 KLR (pt. 372) 3021; (2013) 13 NWLR
appealed to the Court of Appeal Ilorin Division. The Court dismissed
the appeal. Appellant has further appealed to the Supreme Court.

ISSUE FOR DETERMINATION

*“Whether the prosecution proved its case beyond reasonable
doubt to warrant the affirmation of the conviction and sentence of
the 1st appellant by the Court of Appeal.”*

HELD (Unanimously dismissing the appeal per

MUHAMMAD JSC)

MURDER - Ingredients - Proof

1. In a murder charge such as this, brought pursuant to Section 319(1) of the Criminal Law, Cap. 30 Vol. II of the Laws of 1978 Ondo State (as applicable in Ekiti State), the prosecution has the burden to prove that:

- a) the accused person killed/murdered the deceased;**
- b) the killing was unlawfully committed and**
- c) the killing was intentional. (p. 3026 C)**

MURDER - Proof - Means of

2. This means that the offence of murder (as in this case) can be proved beyond reasonable doubt by any or a combination of any of the following methods:

- i. by confession of the accused person;**
- ii. by direct evidence and or**
- iii. by circumstantial evidence. (p. 3027 F)**

APPEALS - Concurrent findings

3. From the above dicta, it is clear that the decisions arrived at by the two lower courts is concurrent. Except where there are strong reasons, this court is always loathe to interfere with such concurrent decisions. No such strong, compelling and special reasons have been adduced by the appellant to make me interfere with such concurrent decisions of the two lower courts. In fact I find both decisions to be sound and lucid being supported throughout by earlier decisions of this court with which, unless reviewed by the same court (for which there is no evidence), I must be bound. I therefore find it diffi-

cult to interfere with the decision of the court below. I rather affirm the decision in finding the appeal unmeritorious and I accordingly dismiss it. (p. 3029 C)

NOTABLE POINT OF INTEREST

ALAGOA JSC

1. Conviction on voluntary confession

It is settled on a long line of judicial authorities that an accused may be convicted on his own confession alone whether retracted or not provided the confession is free, voluntary, direct and positive. Once these attributes are present, a confessional statement must rank among the highest if not the highest method by which the commission of a crime is proved. (p. 3030 A)

REPRESENTATION

Olusegun Fowowe, Esq., for the Appellant
Adedayo Apata, Esq. (SG, Ekiti State) with Gbemiga Adaramola, Esq. (DDCL), for the Respondent

CASES REFERRED TO

Emeka v. State (2002) 14 NWLR (pt. 734) 666
Ogba v. State (1992) 2 NWLR (pt. 222) 146
Oladipopo v. State (1993) 2 NWLR (pt. 590) 253
Ubierho v. State (2005) 2 SC (pt. 1) 18
Ojibah v. Ojibah (1991) 5 NWLR (pt. 191) 296

STATUTES REFERRED TO

Criminal Code Laws of Ondo State (as applicable to Ekiti State), ss. 324, 319(1)
Evidence Act, s. 138(1)

LEAD JUDGMENT BY MUHAMMAD JSC

This appeal has same antecedent with its sister i.e. SC/103/2011. All the facts, the grounds of appeal and the issues for determination are the same. I am really in pains in giving this judgment separately because of the non-consolidation of the two appeals, though they were tried and convicted in a joint trial at both the trial court and

the court below.

The simple facts are as follows:

The appellant herein, along with others: Sunday Abirifon and Mathew Oloni Abirifon were charged with conspiracy, and murder of one Peter John, an indigene of former Bendel State. He was an annual labourer to Mr. Mathew Oloni Abirifon (father to the appellant). Mr. Mathew Oloni Abirifon owed Peter John (the deceased) an amount of money in the sum of thirty thousand Naira (N30,000.00) being money due to the deceased as his annual dues for the year 2008. It was in a bid to avoid the payment of the money to Late Peter John that Mr. Mathew Oloni Abirifon conspired with his children and murdered the deceased. The charge was brought before the Ekiti State High Court Holden at Ado Ekiti (trial court) pursuant to Sections 324 and 319(1) of the Criminal Code Laws of Ondo State as applicable in Ekiti State. Before trial commenced however, Mr. Mathew Oloni Abirifon and Sunday Abirifon died and their names were struck out, subsequently, from the trial court's cause list, now leaving the names of the appellant and one other.

On arraignment, the appellant pleaded not guilty to the two counts charge. The case then proceeded for full trial. Witnesses were called. Exhibits were tendered. After the close of evidence and defence, respective learned counsel for the parties addressed the court. At the end of trial, the learned trial judge found the appellant guilty as charged, convicted him and sentenced him to death.

Dissatisfied, the appellant appealed to the Court of Appeal sitting in Ilorin. His appeal was unsuccessful as it was dismissed. The appellant appealed further to this court on a sole ground of appeal.

In compliance with this Court's Rules, parties filed and exchanged briefs of argument. The learned counsel for the appellant distilled the following issue for determination:

"Whether the prosecution proved its case beyond reasonable doubt to warrant the affirmation of the conviction and sentence of the 1st appellant by the Court of Appeal."

Learned counsel for the respondent adopted the issue formulated by the appellant as set out above.

In his submissions, the learned counsel for the appellant mainly relied on Section 138(1) of the Evidence Act is to emphasize the position of the law that it is the prosecution which bears the burden

of proof beyond reasonable doubt as there was neither eye-witness evidence, nor compelling circumstantial evidence for the prosecution. The conviction of the appellant was predicated on the confession of the appellant which was either wrongly admitted in evidence; made involuntarily or even retracted. The corroborating evidence was not independent of the confession it seeks to corroborate. Some of the prosecution witnesses, learned counsel submitted, were without any credit whatsoever and there were inconsistencies in their testimonies. The foregoing facts leave lingering doubts in the case of the prosecution. It is learned counsel's further submission that the trial court and the court below never seriously considered appellants defence of alibi. Learned counsel urged this court to allow the appeal. B
C

In his brief of argument the learned DPP for the respondent, submitted on his sole issue, after stating the ingredients of the offence of murder and some decided cases, that the prosecution employed two methods, i.e. confessional statement and circumstantial evidence to prove the guilt of the appellant and that the prosecution proved beyond reasonable doubt the offence of conspiracy to commit murder and murder against the appellant. The lower courts were right in convicting and sentencing the appellant and no miscarriage of justice was suffered by the appellant. This court is urged to affirm the conviction and sentence of the appellant. D
E

Now, the main complaint of the appellant in both the court below and this court is that the trial court was wrong in convicting and sentencing him to death on the offence of murder when the prosecution failed to prove the offence beyond reasonable doubt in that: F

a) the conviction of the appellant was not based on any eye-witness testimony; G

b) the conviction was based on uncorroborated/independent evidence:

c) the conviction was based on circumstantial evidence which was not direct and did not fix the appellant at the scene of the crime and H

d) there was ample evidence that the appellant lived in Lagos far away from the scene of the crime in Ekiti and that he arrived at Ekiti two days after the commission of the crime was neither contro-

verted and nor was he seen at the scene of the crime;

e) that the police (prosecution) suppressed the statements voluntarily made by the appellant and never brought before the trial court;

f) the guns and cutlasses admitted in evidence as the weapons used in committing the crime were not scientifically proved to be the ones used by the appellant and no linkage was established between the weapons and the appellant.

g) There were several material contradictions in the case of the prosecution that were never rationally explained.

In dealing with this appeal vis-à-vis the sole issue raised by the appellants it is always helpful to state from the outset, the requirement(s) of the law in order to secure conviction.

In a murder charge such as this, brought pursuant to Section 319(1) of the Criminal Law, Cap. 30 Vol. II of the Laws of 1978 Ondo State (as applicable in Ekiti State), the prosecution has the burden to prove that:

a) the accused person killed/murdered the deceased;

b) the killing was unlawfully committed and

c) the killing was intentional.

The learned trial judge re-stated these ingredients in his judgment as follows:

“As a recapitulation, it is apposite to conclusively restate that to justify a conviction for murder, the prosecution must prove beyond reasonable doubt:

1) that the deceased died.

2) That the death of the deceased resulted from the act of the accused and

3) That the act of the accused was intentional with knowledge that death or grievous bodily harm was its probable consequences.”

The court below repeated the same position of the law:

“On the substantive count of murder, it is settled by a host of judicial authorities that a charge of murder is established when the prosecution proves the following essential ingredients beyond reasonable doubt:

1) That the deceased died;

2) That the death of the deceased resulted from the act of the accused;

3) *That the act of the Accused was intentional with the knowledge that death or grievous bodily harm was its probable consequence. See: Ogba v. The State (1992) 2 NWLR (Pt.222) 146; State v. Aibangbee (1988) 3 NWLR (Pt.297) 29; Oladupopo v. The State (1993) 6 NWLR (Pt.298) 131 and Okeke v. The State (1999) 2 NWLR (Pt.590) at 253.* B

There are several methods laid down by the law in proof of such a crime in discharging the burden of proof beyond reasonable doubt. Several authorities of this court, repeatedly made the point clear. For instance in Adio v. The State (1986) 5 SC 194 at 219-220, C it was stated as follows:

“How is a case proved beyond reasonable doubt? A case can be proved by direct oral evidence if the testimony of the witness who saw and heard them are believed, there will be proof beyond reasonable doubt... the local case of JOSEPH OGUNBADEJO V. THE D QUEEN (1954) 14 WACA 458 (otherwise known as APALARA’s case) is an excellent example of proof beyond reasonable doubt based purely on inference from circumstantial evidence but far above these two methods of proof is voluntary confession of guilt by an accused E person if it is direct and positive and satisfactorily proved should occupy the highest place of authenticity when it comes to proof beyond reasonable doubt. This is why such a confession by itself is sufficient without further consideration to warrant a conviction unless the trial court is satisfied that the case has not been proved beyond reason- F able doubt.”

This means that the offence of murder (as in this case) can be proved beyond reasonable doubt by any or a combination of any of the following methods:

i. by confession of the accused person; G

ii. by direct evidence and or

iii. by circumstantial evidence. See further: Emeka v. State (2002) 14 NWLR (Pt.734) 666 at 683; Ogba v. The State (1992) 2 NWLR (Pt.222) 146; Oladipopo v. The State (1993) 2 NWLR (Pt.590) 253. H

In what appears to be captivating, the learned trial judge made the following finding, among others, in proof of the offence of murder with which the appellant was charged:

“Having dispassionately considered and found as established

all the ingredients of the offence of murder, the evidence of the witnesses of the prosecution which I equally consider credible and the cogent confessional statements of the accused person; I have come to the conclusion that the prosecution had proved beyond reasonable doubt that the death of Peter John (M) was unlawfully caused
 B *by the deliberate and intentional act of the two accused persons. There was no justification in law for the act. In my well considered view, what happened in this case was an unleashing of a vicious death by the entire Abirifon family on the deceased, a stranger but dutiful*
 C *labourer who in pursuit of earning a means of livelihood came all the way from Taraba State to sojourn in Ekiti State. This was certainly not a way of rewarding someone who had served so to speak the Abirifon family for some couple of years uninterrupted and I dare say faithfully too. This was a heinous crime perpetrated wickedly and secretly*
 D *far away from person eyes. However, the magnetic and eagle eyes of the 'Law' run to and fro the nation, and indeed the whole world. Its very long arms are more than able to catch criminals and contraveners of the law. The acts of the accused person leading to the death of the deceased were impious acts. They deserve a corresponding great*
 E *reprimand, grant consequences and punishment in accordance to law."*

In affirming the above dictum, the court below went further to say:

F *"I shall commend the immortal dicta of Oputa and Karibi-Whyte, JSC in the locus classicus of Bakare v. The State (1987) 1 NWLR (Pt.52) 581 at held 8 and 10 to the learned counsel for the appellants that:*

G *'proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace this presumption, the evidence of the prosecution must prove beyond reasonable doubt, not beyond the shadow of doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure including*
 H *the administration of criminal justice. Proof beyond reasonable doubt means just what it says. It does not admit of plausible and fanciful possibilities but it does admit of a high degree of cogency consistent with an equally high degree of probability.*

As I said elsewhere, from the arguments of learned counsel for

the appellants, he probably required the prosecution to prove its case beyond all shadow of doubt which to my mind would be setting a higher standard than the law required. If the appellants confessed as they had done in this case that they killed the deceased and there is corroboration of that confession as can be seen from the evidence of the PW1 - PW5 and the exhibits tendered, then that evidence would be sufficient to convict the appellants even though they subsequently retracted or denied making the confession. See R. v. Akinwale (1963) FSC 322/1963.

From the foregoing, Issue No. 2 shall also be resolved in favour of the respondent and ground one of the grounds of Appeal shall also fail."

From the above dicta, it is clear that the decisions arrived at by the two lower courts is concurrent. Except where there are strong reasons, this court is always loathe to interfere with such concurrent decisions. No such strong, compelling and special reasons have been adduced by the appellant to make me interfere with such concurrent decisions of the two lower courts. In fact I find both decisions to be sound and lucid being supported throughout by earlier decisions of this court with which, unless reviewed by the same court (for which there is no evidence), I must be bound. I therefore find it difficult to interfere with the decision of the court below. I rather affirm the decision in finding the appeal unmeritorious and I accordingly dismiss it.

CHUKWUMA-ENEH JSC

Judgment not available at press time.

GALADIMA JSC

Judgment not available at press time.

OGUNBIYI JCA

The appeal at hand is a sister case to SC/103/2011, with set of facts, grounds of appeal and issues. The records are also the same. Having read the judgment of my learned brother I. T. Muhammad, JSC I endorse same and dismiss the appeal as lacking in merit.

ALAGOA JSC

I read before now and in draft form the lead judgment just delivered by my learned brother Ibrahim Tanko Muhammad, JSC and I wish to chip in this bit of mine by way of contribution.

B It is settled on a long line of judicial authorities that an accused may be convicted on his own confession alone whether retracted or not provided the confession is free, voluntary, direct and positive. See the Supreme Court Cases of *OZANA UBIERHO V. THE STATE* (2005) 2 SC (PART 1) 18; *KOPA V. THE STATE* SC.16/1970 by **C** Ademola, CJN, following *R. V. SYKES* (1913) 8 Cr. App. Rep. 233. Once these attributes are present, a confessional statement must rank among the highest if not the highest method by which the commis-
D sion of a crime is proved. The Director of Public Prosecution for the Respondent adopted two methods of proof of the offence of murder viz confessional statement and circumstantial evidence which the lower courts agreed with. This is enough. Not even in murder cases as in the present case is proof beyond the shadow of doubt required but remains proof beyond reasonable doubt. It is a pity that a murder-
E ous family can hatch out a plan to kill on a paltry sum of N30,000.00 owed the deceased by the patriarch of the family. This is a concurrent finding of guilt by two lower courts. There is a long line of judicial authorities to the effect that the Supreme Court will not disturb the concurrent findings of fact by two lower courts except such findings
F are perverse, or there is some miscarriage of justice or a violation of some important principle of law or procedure. See *OJIBAH V. OJIBAH* (1991) 5 NWLR (PART 191) 296; *ADELEKE v. ASERIFA* (1990) 5 SC (PART I) 104; *CHUKWUOGOR V. OBUORA* (1987) 3 NWLR (PART 61) 454, 457; *OSHO V. FOREIGN FINANCE CORPORA-
G* *TION* (1991) 4 NWLR (PART 184) 157; *AKEREDOLU V. AKINREMI* (1989) 3 NWLR (PART 108) 164. I don't find these findings to be bedeviled by these shortcomings and lapses. The conviction and sen-
H tence stand.

It is for these reasons and the more elaborate reasons con-
H tained in the lead judgment of my learned brother earlier referred to that I too find no merit in the appeal and dismiss same while affirm-
ing the decision of the court below.