

SUPREME COURT OF NIGERIA
FRIDAY 11TH DECEMBER, 2015. SC. 635/2013
**CORAM:- I. T. MUHAMMAD, M. S. MUNTAKA-
COOMASSIE, B. RHODES-VIVOUR,
C. B. OGUNBIYI, C. C. NWEZE, JJSC**

SEGUN AKINLOLU APPELLANT
V.
THE STATE RESPONDENT

MURDER - Proof - Ingredients - Prosecution must prove that the deceased had died - That act of the accused caused the death - And that the act was done with intention to cause death (H1)

CRIMINAL PROCEDURE - Proof - Standard of - Required is not proof beyond any shadow of doubt - But proof beyond reasonable doubt - Which connotes sufficiency of evidence against accused person (H2)

EVIDENCE - Inconsistency rule - Application - Udo v. Queen - Inconsistency rule does not apply - To the previous confessions of an accused and his evidence in court (H3)

EVIDENCE - Tainted witness - As no attempt was made to show the falsity of trial court's findings - CA affirmation that PW2 is not to be classified as tainted witness cannot be faulted (H4)

FACTS

Before the High Court of Akwa-Ibom State, accused/appellant and two others were charged with murder of the deceased - Okon Uyeh, an offence punishable under section 319 (1) of the Criminal Code, Vol. 2, Laws of Cross River State of Nigeria (as applicable in Akwa Ibom State). The case as presented by prosecution/respondent is that appellant, the two other accused persons, the deceased, PW2 and one other person were on a boat on the high sea heading to a destination. PW2 testified that appellant stabbed the driver of the boat and threw his body into the sea. The deceased who was a passenger of the boat was also stabbed and thrown into

the sea. While appellant and his partners in crime stabbed and threw their two victims into the sea, PW2 and one other passenger jumped into the sea.

They were later rescued alive by fishermen. The corpses of the two dead persons were recovered after about four days. At the trial, respondent relied mainly on the testimonies of PW1 (Investigating Police Officer) and PW2 and tendered some exhibits in proof of its case. Appellant testified for himself. On the basis of the evidence adduced by the two respondent's witnesses, the Court in its judgment found appellant guilty as charged. Accordingly, he was convicted and sentenced to death. Dissatisfied, appellant appealed to the Court of Appeal, challenging his conviction and sentence by the trial Court. The Court in its majority judgment affirmed the conviction and sentence passed on appellant. His appeal was therefore dismissed. Aggrieved further, appellant proceeded to the Supreme Court on appeal.

ISSUE FOR DETERMINATION

Whether the Court of Appeal was right in holding that the respondent proved the charge of murder against the appellant beyond reasonable doubt?

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

MURDER - Proof - Ingredients

1. As indicated at the outset of this judgment, the appellant in this appeal and two other persons were charged with the murder of Okon Uyeh of Udesi Akai Ati, an offence punishable under section 319 (1) of the Criminal Code. At page 4, paragraph 4.1 of his brief of argument, the Honourable Attorney General of Akwa Ibom State, rightly, conceded that, to prove the said offence, the Prosecution had the obligation to demonstrate that (a) the deceased person had died; (b) the act of the accused person caused the death of the deceased person and (c) the act was done with the intention of causing death or grievous bodily harm.

In the realm of our accusatorial jurisprudence, these

tripartite requirements for the proof of the offence of murder have become so well-entrenched and have been so frequently upheld in a succession of binding authorities, that by now, they must have matured into a prosecutorial sing-song.

My Lords, I find no justification for interfering with the cogent, if not compelling, reasoning of the lower court which upheld the articulate logic which yielded the trial court's conviction of and sentence on the appellant. In the first place, there was clear evidence that the lower court was on firm ground when it affirmed that the Prosecution proved the ingredients of the offence charged. With regard to the first ground, the trial court had found that the testimonies of PW1 and PW2 were sufficient to establish that Okon Uyeh had died, page 166 of the record.

The Majority of the lower court, rightly, affirmed the trial court's conclusion on the proof of the other ingredients of the said offence. (pp. 3609 G/3613 A)

CRIMINAL PROCEDURE - Proof - Standard of

2. Now, it must always be borne in mind that in criminal trials, the standard required is proof beyond reasonable doubt. It is not proof beyond any shadow of doubt. The two requirements are completely dissimilar. That is why the expression "proof beyond reasonable doubt" cannot be employed conterminously with the expression "proof beyond any shadow of doubt." The law has opted for the expression "proof beyond reasonable doubt,"

I have examined most notable authorities, ancient and modern. They are all unanimous that this expression "proof beyond reasonable doubt" must remain the ubiquitous touchstone for estimating when the prosecution has discharged the burden imposed on it by law. In the realm of criminal justice, the said expression "proof beyond reasonable doubt" connotes such proof as precludes every reasonable proposition except that which it tends to support.

Hence, it connotes sufficiency of evidence. It depends on the quality of the evidence tendered by the prosecution. Consequently, if the evidence is strong against an accused

person as to leave only a remote possibility in his favour which can be dismissed with the sentence “of course it is possible but not in the least probable”, the case is proved beyond reasonable doubt. (p. 3615 G)

B EVIDENCE - Inconsistency rule - Application - Udo v. Queen
3. Consistent with the doctrine of stare decisis, post Egboghonome decisions have reverted to the position in Udo v The Queen (supra), namely, that the inconsistency rule does not apply to the previous confessions of an accused person and his evidence in court.

C The lower court endorsed this approach. I have no reason to disturb these approaches for they find firm and solid anchorage on the position of this court on the long line of cases listed above and many more. (pp. 3619 G/3620 B)

EVIDENCE - Tainted witness

4. Finally, my Lords, I do not intend to waste further time on the last question in the appellant’s brief, namely, the suggestion that the lower court “failed to fault the trial court’s reliance on the evidence of PW2 who was clearly a tainted witness without the necessary caution and corroboration,” paragraph 2.60, page 26 of the appellant’s brief.

F It is, actually, surprising that counsel for the appellant still pursued this argument in this further appeal notwithstanding that Tur JCA, unremittingly, dismantled the logic [or rather the illogic] of that contention.

G Neither was any attempt made to demonstrate the falsity of the trial court’s findings nor the wrong premise on which the lower court affirmed them. On the contrary, against the background of the available evidence, Tur JCA, brilliantly, highlighted the factors which put the PW2 beyond this court’s characterization of a tainted witness.

H My Lords, how can any higher court fault the following reasoning of Tur JCA?

“The appellant and his co-conspirators met PW2, late Okon Uyeh and the Ibo (sic) man for the first time on 25th September, 1993 when they boarded the speed boat as pay-

ing passengers only to stab and throw them into the waters of the high seas. Where is the evidence that there had been a long-standing dispute or animosity between PW2 and the appellant, and over what? What grudge did PW2 have against the appellant and his co-conspirators to warrant his evidence being excluded by the learned trial Judge? On what evidence would the learned trial Judge have treated PW2 as a tainted witness? I see none on the record. What purpose had PW2 served by framing the appellant and his co-conspirators?" [Pages 238 -239 of the record, italics supplied for emphasis]

I, entirely, endorse His Lordship's admonition that "argument by counsel on appeal should have regard to the evidence adduced in the court of trial coupled with the findings of the learned trial Judge." [page 239 of the record].

Be that as it may, there is no merit in the appellant's complaint against the Majority judgment of the lower court which endorsed the findings of the trial court. (p. 3620 G)

REPRESENTATION

Sonny O. Wogu, with C. P. Egwuatu (Mrs.), for the appellant;
Uwemedimo Nwoko, Hon. Attorney General of Akwa Ibom State, with C. O. Ekwu (Miss), for the respondent

CASES REFERRED TO

Usufu v. State [2007] 3 NWLR (pt. 1020) 94
Effiong v. State [1988] 8 NWLR (pt. 562) 363
Afolalu v. State [2011] 194 LRCN 136
Ubani v. State [2005] QCCR vol. 1 p. 131
Eyisi v. State [2001] 8 WRN 1
State v. Salami [2012] Vol. 203 LRCN 183
Akpan v. State [2012] 5 SCNJ 300
Ogbu v. State [2007] 5 NWLR (pt. 1028) 635
Adekunle v. State [1989] 12 SCNJ 184
Mbang v. State [2010] 3 NSCR 95
Ikemson v. State [1989] 3 NWLR (pt. 110) 455
Alarape v. State [2001] 2 SCNJ 162
Haruna v. A-G Federation [2012] 209 LRCN 70
Oseni v. State [2012] Vol. 208 LRCN 151

Madu v. State [2012] 15 NWLR (pt. 1324) 405

STATUTES REFERRED TO

Criminal Code Vol. 2 Laws of Cross River State (as applicable in Akwa Ibom State), s. 319(1)

B Evidence Act 2011, s. 135(1)

LEAD JUDGMENT BY NWEZE JSC

At the High Court of Akwa Ibom State, the appellant in this appeal [as first accused person] and two other persons were charged with the murder of Okon Uyeh of Udesi Akai Ati, an offence punishable under section 319 (1) of the Criminal Code, Vol 2, Laws of Cross River State of Nigeria, as applicable in Akwa Ibom State.

The Prosecution's case was woven around the testimonies of two witnesses, namely, PW1, Edward Agabi, the Investigating Police Officer [IPO]; PW2, Bassey John Effiong and two exhibits, viz, exhibits 1 and 2. On their part, each of the accused persons testified at the trial in a spirited attempt to vindicate his innocence. The appellant was the DW1. Persuaded by the testimonies of the Prosecution's said two witnesses, the court (hereinafter referred to as "the trial court," Coram Ikpe J), in a well-articulated judgment delivered on October 27, 2009, found the appellant and the second accused person guilty as charged. It, accordingly, convicted and sentenced them. In passing, it may be noted that, well-ahead of the said judgment, the third accused person had died in Police custody.

Aggrieved by the outcome of his trial, the appellant proceeded to the Court of Appeal, Calabar Division (hereinafter, simply, called "the lower court") where he agitated for the reversal of the trial court's conviction and sentence on him. By a plurality decision [Tur and Uzo-Anyanwu JJCA], the lower court dismissed the appellant's complaint against his conviction and sentence. However, the minority judgment [Coram Garba JCA] allowed his appeal and set aside his conviction and sentence.

Dissatisfied with the Majority decision of the lower court [which constituted the judgment of the said court], the appellant approached this court with an entreaty to resolve the sole issue for determination in this appeal in favour of the affirmation of his innocence by upturning the said Majority judgment of the lower court.

My Lords, I will return to this issue anon but before then, however, a factual narrative of the circumstances that brought the appellant in conflict with the Criminal Justice System will not be out of place here.

FACTUAL BACKGROUND

The Prosecution's case was encapsulated in the story of the survivor, PW2, Bassey John Effiong, a Cameroun-based trader. On September 25, 1993, on his return journey from Cameroun, he boarded a flying boat in which he, also, acted as boat Conductor. In addition to the Boat driver, there were two other persons in the said boat. The boat stopped over at Abana. Thereat, the appellant, second accused person and the deceased suspect boarded the boat. B

Somewhere on the sea way, precisely at the mid sea, the first accused person pleaded with the driver to slow down as he wanted to urinate. The driver obliged; whereupon he [first accused person] brought out a knife, stabbed and threw him [the driver] into the sea. The second accused person, who was staying close to him [PW2], attempted to attack him but ended up attacking another passenger. He [PW2] jumped into the sea. C

While the accused persons stabbed and threw their two victims into the sea, PW2 and one other passenger jumped into the sea. Fishermen rescued both of them at 4pm. The corpses of the two dead persons were recovered after about four days. D

As noted earlier, there was a sole issue for determination which was framed thus: E

Whether the Court of Appeal was right in holding that the respondent proved the charge of murder against the appellant beyond reasonable doubt? F

APPELLANT'S ARGUMENTS ON THE SOLE ISSUE G

When this appeal came up for hearing on October 15, 2015, counsel for the appellant, Sonny O. Wogu, with C. P. Egwuatu (Mrs.), adopted the brief of argument filed on November 29, 2013. Relying on the arguments therein, he urged the court to allow the appeal and set aside the majority judgment of the lower court. H

In all, the appellant impugned the majority decision on four grounds. They are: (a) the death of the deceased person was not proved; (b) the trial court's erroneous reliance on the confessional statement of the accused person; (c) the said court's reliance on the

confessional statement of a co-accused person and (d) its reliance on the evidence of a tainted and unreliable witness.

With regard to the first ground, it was contended that there was nothing on record to establish that the body examined was that of the deceased person. It was argued that the lower court equated the case before it with an ordinary case of absence of corpus delicti. Paragraphs 2.01 -2.37, pages 14- 22 of the brief. The thrust of the submission with respect to the second question was that exhibit 1, the appellant's confessional statement, was not made voluntarily, paragraphs 2.38-2.50, pages 22-24 of the brief.

Placing reliance on several decided cases, it was further contended that the lower court erred in not faulting the trial court's erroneous reliance on the confessional statement of the second accused person in convicting the appellant, paragraphs 2.51- 2.59, pages 24 -26. Finally, the view was canvassed that the lower court was in error in not setting aside the judgment of the trial court which relied on the evidence of a tainted and unreliable witness, paragraph 2.60 -2.72, pages 26 -29 of the record. The court was urged to allow the appeal and set aside the majority judgment of the lower court.

E CONTENTION OF THE RESPONDENT

Uwemedimo Nwoko, Hon Attorney General of Akwa Ibom State, who appeared with C. O. Ekwu (Miss), for the respondent, adopted the brief filed on July 15, 2014, although deemed properly filed and served on June 10, 2015.

In the said brief, it was conceded that the Prosecution had the obligation to prove the ingredients of the offence of murder, paragraph 4.1, page 4 of the brief. The view was canvassed that, at the trial, the appellant failed to puncture the veracity of the PW2's graphic account of how the three accused persons, gruesomely, stabbed and threw the boat driver, late Eteyen and one of his passengers into the bowels of the sea.

Against that background, counsel maintained that the identity of the deceased person was not in doubt and, hence, obviated the imperative of medical evidence, *Usufu v State* [2007] 3 NWLR (pt 1020) 94; *Effiong v State* [1988] 8 NWLR (pt 562) 363; *Afolalu v State* [2011]194 LRCN 136, 147; *Ubani and Ors. v State* [2005] QCCR Vol 1, 131, 134.

He submitted that the PW2, the conductor of the Speed Boat

which the three accused persons [the appellant, the two others] and the other passengers boarded, had no difficulty in identifying the appellant and his cohorts when he encountered them again at the Police cell. He cited *Eyisi v State* [2001] 8 WRN 1; *State v Salami* [2012] Vol. 203 LRCN 183 as authorities for the view that a witness's recognition of an accused person at the scene of crime is the best evidence. In effect, an accused person is fixed to the scene when he is clearly identified by any of the prosecution witnesses, *Akpan v. State* [2012] 5 SCNJ 300, 306. B

Counsel maintained that, since PW2 [in his extra-judicial statement and un-contradicted evidence in court] also identified the role the accused persons played in the course of the commission of the crime, it was immaterial what each of them did in furtherance of the crime when he [PW2] saw that they jointly pursued their criminal intentions, *Ogbu v State* [2007] 5 NWLR (pt 1028) 635; *Adekunle v D State* [1989] 12 SCNJ 184; *Mbang v State* [2010] 3 NSCR 95; *Ikemson v State* [1989] 3 NWLR (pt 110) 455, 495. C

He explained that the trial court, methodically, conducted a trial within trial before admitting the appellant's extra-judicial statement. Above all, the said court, in the judgment, sought for, considered and analysed other factors before placing reliance on the said statement, *Alarape v State* [2001] 2 SCNJ 162. D

In his submission, the appellant's retraction of the confessional statement was, thus, of no moment since the said court was satisfied that he [the appellant] made it and the circumstances, as narrated by the PW2, bolstered the credibility of its contents, *Haruna v A-G Federation* [2012] 209 LRCN 70; *Oseni v State* [2012] Vol 208 LRCN 151, 154. He disagreed with the appellant's characterization of PW2 as a tainted witness and urged the court to dismiss the appeal and affirm the Majority decision of the lower court which upheld the trial, conviction of, and sentence on, the appellant. E

RESOLUTION OF THE ISSUE F

As indicated at the outset of this judgment, the appellant in this appeal and two other persons were charged with the murder of Okon Uyeh of Udesi Akai Ati, an offence punishable under section 319 (1) of the Criminal Code. At page 4, paragraph 4.1 of his brief of argument, the Honourable Attorney General of Akwa Ibom State, rightly, conceded that, to H

prove the said offence, the Prosecution had the obligation to demonstrate that (a) the deceased person had died; (b) the act of the accused person caused the death of the deceased person and (c) the act was done with the intention of causing death or grievous bodily harm.

B In the realm of our accusatorial jurisprudence, these tripartite requirements for the proof of the offence of murder have become so well-entrenched and have been so frequently upheld in a succession of binding authorities, that by now, they must have matured into a prosecutorial sing-song. Adekunle v State [2006] 14 NWLR (pt 1000) 717, 726; Haruna v A-G Federation (supra); Nwachukwu v State [2002] 12 NWLR (pt 782) 543, 548; Madu v State [2012] 15 NWLR (pt 1324) 405, 443, citing Durwode v State [2000] 15 NWLR (pt 691) 467.

D Other cases include: Idemudia v State [2001] FWLR (pt 55) 549, 564; [1999] 7 NWLR (pt 610) 202; Akpan v State [2001] FWLR (pt 56) 735; [2000] 12 NWLR (pt 682) 607; Maigari v State [2013] 6 MJSC (pt 11) 109, 125, citing Ochemeje v The State [2008] SCNJ 143; Daniel v The State [1991] 8 NWLR (Pt443) 715; Obudu v State [1999] 6 NWLR (pt 198) 433; Gira v State [1996] 4 NWLR (pt 428) 1,125.

PROOF OF THE OFFENCE OF MURDER OF OKON UYEH

F At pages 16 et seq, learned counsel for the appellant dissipated so much energy all in an attempt to convince this court that the Majority judgment of the lower court ought to have set aside the appellant's conviction on the ground that the Prosecution failed to prove the death of Okon Uyeh.

G What, then, was the evidence before the trial court which the Majority decision of the lower court affirmed? After an exhaustive consideration of the case law on the above ingredients, the Majority decision of the lower court, in affirmation of the findings of the trial court, posed this question at page 239 of the record [per Tur JCA]:

H “...what is the legal effect of the appellant and his co-conspirators stabbing and throwing Eteyen and Okon Uyeh into the waters of the High Seas?”

His Lordship cited section 167 of the Evidence Act, 2011 and answered the question thus:

“To stab a person with a knife and throw him in the waters of

the high seas has only one motive, namely, that the person should probably drown ...The issue is whether there is no evidence to believe PW1 and PW2 that Okon Uyeh died as a result of being stabbed and thrown into the high seas. When PW2 met the appellant and his co-conspirators in the police cell they were surprised and exclaimed that he had not died. This was not disparaged under cross examination..." [page 240 italics supplied for emphasis] B

At page 242 of the record, His Lordship continued:

Bassey John Effiong (PW2) was in the flying boat and described vividly how the three suspects they had conveyed from Abana Fishing Port to Oron attacked them on the high sea on 25th September, 1993, before escaping with their speed boat... C

[page 242; italics supplied]

After setting out the PW2's evidence in extenso, His Lordship continued thus: D

The two men stabbed and thrown into the water were the boat driver by name Eteyen and the old man named Mr. Okon Uyeh... The Igbo boy and PW2 however survived having been rescued from the water around 4pm. PW2 later learnt that the two corpses had been recovered from the waters of the high seas... E

[page 244 of the record, italics for emphasis]

Although PW2 testified that post-mortem examination was carried out on Eteyen Andem Uwana and Okon Uyeh at the General Hospital, Oran and the corpses released for burial, the report of that examination was only put in "*for purposes of identification.*" The lower court, rightly, endorsed the view of the trial court that, not having been admitted and marked as an exhibit, the report could not be used, citing *Q. v. Mboho* (1964) NMLR 49, 52; *Ahmadu Tea v Commissioner of Police* (1963) NNLR 77. F G

The lower court, accordingly, concluded that "*...there was no admissible post-mortem report to prove the cause of the death of Okon Uyeh,*" page 245 of the record. However, the absence of the said report was not a sufficient ground for upturning the finding of the trial court that the Prosecution, successfully, proved the cause of death of the deceased person. H

It [the lower court], first, posed the question "*but was there not independent evidence to support the fact that the appellant and his confederates committed the acts which led to the death of Okon*"

Uyeh?” It reasoned that there was. Listen to this:

“I think there was. The evidence by the prosecution witnesses that the corpses of Eteyen and Okon Uyeh were afterwards recovered from the sea and a post mortem was carried out by a Doctor was not disparaged under cross examination by the defence counsel... I do not think that the failure of the prosecution to tender the post mortem report so that it would be marked as an exhibit per se can be a ground for arguing that the prosecution had not proved her case beyond reasonable doubt...” [page 246].

True, indeed, the lower court was mindful of the fact that, other than a post mortem report, there were alternative, and indeed, more authentic modes of identifying a corpus delicti. In the circumstances of the instant case, the court set out the three alternative modes in these words:

“The best evidence of identification of the corpse as that of Okon Uyeh would have come from his father, Andem Umana or any member of the search party that recovered the corpse. The second is PW2 who happened to be the conductor of the flying boat for he had been together with Okon Uyeh in the trade. They were in the speed boat on that fateful day when the crime was committed. PW2 was an eye witness to what happened. He described in vivid terms what each accused did, and to whom. The third person is PW1 who investigated the crime and testified that the corpse of Okon Uyeh was recovered about two weeks thereafter thus confirming his death.” [pages 246-247 of the record, italics supplied for emphasis]

Instructively, the appellant and his co-accused person, who were present in court all through the proceedings when PW1 and PW2 testified, did not debunk the grisly stories of these witnesses. Little wonder then why the lower court had no difficulty in affirming the success of the Prosecution’s case. Hear the conclusion of the lower court on the question of proof:

“In a situation where Eteyen and Mr. Okon Uyeh were stabbed with knives and thrown into the high seas and their corpses were later recovered and subsequently buried, and this is not controverted by the defence in the lower court how on earth can it be argued on appeal that the Prosecution did not prove the charge beyond reasonable doubt?” [page 252; italics supplied for emphasis]

Well, that was exactly what the appellant has done in this fur-

ther appeal. However, in doing that, counsel failed to demonstrate the falsity in the reasoning of the Majority which affirmed the judgment of the trial court.

My Lords, I find no justification for interfering with the cogent, if not compelling, reasoning of the lower court which upheld the articulate logic which yielded the trial court's conviction of and sentence on the appellant. In the first place, there was clear evidence that the lower court was on firm ground when it affirmed that the Prosecution proved the ingredients of the offence charged. With regard to the first ground, the trial court had found that the testimonies of PW1 and PW2 were sufficient to establish that Okon Uyeh had died, page 166 of the record.

The Majority of the lower court, rightly, affirmed the trial court's conclusion on the proof of the other ingredients of the said offence.

In the words of the erudite Ikpe J, the trial Judge who convicted and sentenced the appellant:

"I need not say and it needs no persuasion to believe that to throw a man into an open sea is an act most likely to endanger human life with death as a probable consequence ... They never intended the owners to stay alive... Indeed the PW2 said the first and second accused persons were surprised to see him alive and expressed their shock openly...

...When two or more persons form a common intention to prosecute an unlawful purpose (like we have in this case) in conjunction with one another and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence, citing Ubiero v State [2005] 5 NWLR (pt 919) 644.

[pages 177-179 of the record]

As shown above, Tur JCA, writing for the Majority of the lower court, affirmed the reasoning of the trial court in these memorable words *"to stab a person with a knife and throw him in the waters of the high seas has only one motive, namely, that the person should probably drown..."*, page 239 of the record.

That takes me back to the arguments which the appellant put

forward in urging this court to set aside the Majority judgment of the lower court. At page 17, paragraph 2.14 of the brief, it was argued that *“there was nothing on record to establish that the body examined was that of the deceased.”*

B With respect, this submission flies in the face of the findings of the trial court, findings which were rightly affirmed in the Majority judgment thus:

C *“PW2 happened to be the conductor of the flying boat [and] had been together with Okon Uyeh in the trade. They were in the speed boat on that fateful day when the crime was committed. PW2 was an eye witness to what happened. He described in vivid terms what each accused did, and to whom. The third person is PW1 who investigated the crime and testified that the corpse of Okon Uyeh was recovered about two weeks thereafter thus confirming his death.”*
D [pages 246 -247 of the record; italics supplied]

Above all, it would even appear that learned counsel for the appellant did not read [or, if he read, did not understand] the reasoning of this court in *Jua v State* [2010] 4 NWLR (pt 1184) 217, 258 which he cited in paragraph 2.25 of the brief. In that case, this
E court held inter alia:

“The Law as regards the absence of corpus delicti is that a court may still convict an accused person of murder even though the deceased’s body cannot be found provided that there is sufficient compelling circumstantial evidence to lead to the inference that the man had been killed.”
F

Both Ikpe J, at pages 177-179 of the record, and Tur JCA, at page 239 of the record, appreciated the sacred nature of the obligation they owed to the administration of criminal justice given the circumstance of the case. At the risk of repetition, I would invite the redoubtable Ikpe J, the trial Judge, to speak to the circumstances and why the appellant should have his day with justice. According to the erudite Judge:

H *“I need not say and it needs no persuasion to believe that to throw a man into an open sea is an act most likely to endanger human life with death as a probable consequence... They never intended the owners to stay alive... Indeed the PW2 said the first and second accused persons were surprised to see him alive and expressed their shock openly...”*

...When two or more persons form a common intention to prosecute an unlawful purpose (like we have in this case) in conjunction with one another and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence, citing Ubiero v State ^B [2005] 5 NWLR (pt 919) 644.” [pages 177-179 of the record]

Tur JCA, writing for the Majority of the lower court, was enamored of this conclusion for His Lordship maintained that *“to stab a person with a knife and throw him in the waters of the high seas has only one motive, namely, that the person should probably drown...”*, ^C page 239 of the record.

Pray, what other compelling evidence was the Prosecution supposed to adduce in order to prove the offence the appellant was charged with? Indeed, as the erudite Professor of Law, Frank Asogwah, ^D has argued, and I endorse his views entirely-

“Intent can be proved either positively where there is proof of the declared intent of the accused person or inferentially from the overt act by the accused. Therefore, in law, an accused person is taken to intend the consequences of his voluntary act, when he fore-^Esees that it will probably happen, whether he desires it or not, Hyam v. DPP [1974] 2 All ER 41. Here, the House of Lords decided that a person has the mens rea for murder if, when he does the act which kills, he knows that it is highly probable that he will cause death or ^Fgrievous bodily harm.

See Frank I. Asogwah, *“Criminal Liability in ‘Accidental Discharge’ in Murder Cases and the Right of the Police to use Force,”* (2003) 2 Port Harcourt Law Journal, 198, [italics supplied for emphasis]. ^G

Now, it must always be borne in mind that in criminal trials, the standard required is proof beyond reasonable doubt. It is not proof beyond any shadow of doubt. The two requirements are completely dissimilar. That is why the expression “proof beyond reasonable doubt” cannot be employed ^Hconterminously with the expression “proof beyond any shadow of doubt.” The law has opted for the expression “proof beyond reasonable doubt,” Dibia v State (2007) LPELR -941 (SC); Dimlong v Dimlong [1998] 2 NWLR (pt 538) 381, 178; State v

Gwangwan (2015) LPELR -24837 (SC).

I have examined most notable authorities, ancient and modern. They are all unanimous that this expression “proof beyond reasonable doubt” must remain the ubiquitous touchstone for estimating when the prosecution has discharged the burden imposed on it by law. In the realm of criminal justice, the said expression “proof beyond reasonable doubt” connotes such proof as precludes every reasonable proposition except that which it tends to support. Oladele v. Nigerian Army [2004] 6 NWLR (pt 868) 166, 179.

Hence, it connotes sufficiency of evidence. Nsofor v. State (2004) 18 NWLR (pt. 905) 292, 305. ***It depends on the quality of the evidence tendered by the prosecution. Consequently, if the evidence is strong against an accused person as to leave only a remote possibility in his favour which can be dismissed with the sentence “of course it is possible but not in the least probable”, the case is proved beyond reasonable doubt.***

The cases on this point are many. Only a handful will be cited here, Okere v. State (supra) 415 - 416; Sabi v State [2011] 14 NWLR (pt.1268) 421; Iwunze v Federal Republic of Nigeria [2013] 1 NWLR (pt.1324) 119; Njoku v State [2013] 2 NWLR (pt.1339) 548; Osuagwu v State [2013] 5 NWLR (pt.1347) 360; Ajayi v State [2013] 9 NWLR (pt. 1360) 589.

ARGUMENTS ON THE ERRONEOUS RELIANCE ON APPELLANT’S CONFESSORIAL STATEMENT

Learned counsel for the appellant devoted pages 22- 24 to what he perceived to be the “erroneous reliance on the purported confessional statement of the appellant.” Precisely, on paragraph 2.38 of the brief, counsel for the appellant canvassed the view that the lower court should have chastised the trial court for acting on the appellant’s confessional statement “despite the appellant’s vehement and credible objection on the ground that it was not voluntarily made.”

Again, with respect, this submission is not only misleading but, totally, tendentious. I invite the trial court to speak to the facts:

“I agree entirely with the prosecution that what happened in court during the testimony in chief of the accused persons amounted to a retraction of their confessional statement. ..the retraction of a confessional statement by an accused person in his evidence on oath

during the trial is of no moment as it does not adversely affect the situation once the court is satisfied as to the truth of the contents of a confessional statement...” [page 163-164 of the record].

Indeed, the submissions in the respondent’s brief, [page 10, paragraph 4.9] exposed the poverty of the appellant’s contention. The Honourable Attorney General expressed the forceful view that: ^B

“The Law is that the Inconsistency Rule does not apply to an accused person. It does not cover a case where an accused person’s extra judicial statement is contrary to his testimony in court. A court can convict on the retracted confessional statement of an accused person but the court must evaluate the testimony and confession of the accused person and all the evidence available to ascertain that the necessary legal criteria are met...” ^C

In my respectful view, this exposition on the Inconsistency Rule can, hardly, be faulted. As I had occasion to opine in another medium: opinions I now adopt as part of my reasons in this judgment: the inconsistency rule traces its jurisprudential pedigree to England. Its most eloquent formulation can be found in *R v Golder* (1960) 1 WLR 1169 where Lord Parker CJ held: ^D

“...when a witness is shown to have made previous statements inconsistent with the evidence given by that witness at the trial, the jury should not merely be directed that the evidence given at the trial should be regarded as unreliable; they should also be directed that the previous statements, whether sworn or unsworn, do not constitute evidence upon which they can act.” ^E ^F

Well before the decision in *R v Golder* (supra), the rule had been applied to witnesses only. *Birch v R* (1926) 1 CAR 26; also, *R v Harris* (1927) 20 CAR 144.

The first case to invoke that rule in Nigeria was *Queen v Ukpung* (1961) ALL NLR 25, 26 which approved the statement of law in *R v Golder* (supra). At its said evolution in Nigeria, therefore, the posture of the courts was that the rule was, properly, applicable to the evidence of an ordinary prosecution witness.

Subsequent decisions confirmed this posture, *Joshua v The Queen* (1964) 1 ALL NLR 1, 3 - 4; *Agwu v The State* (1965) NMLR 18, 20; *The State v Okoro* (1974) 2 SC 73, 80 - 81; *Onubogu v The State* (1974) 9 SC 1; *Williams v The State* (1975) 9 - 11 SC 139; *Boy Muka v The State* (1976) 9 - 10 SC 305. ^H

Indeed, in *Udo v The Queen*, (1964) ALL NLR 21, 24, Brett JSC resisted an attempt to extend the application of the rule to the previous confession of an accused person and his evidence.

As noted above, on its adoption in Nigeria, the rule was applicable to the evidence of an ordinary witness. Since its adoption, it has not been an inflexible rule of law or practice. In order to ensure that its operation did not eventuate to injustice, the courts had developed a safeguard. Thus, in addition to considering the totality of the evidence, the witness was given an opportunity, while in the witness box, to explain the inconsistency.

Bello CJN in *Egboghonome v The State* (1993) 9 SCNJ 1, 21 - 22, approvingly, quoted the observation of Idigbe JSC in *Jizurumba v The State* (1976) NSCC (Vol. 10) 156 on the rationale for the introduction of this safeguard:

“A witness may have a good explanation for the inconsistency between his previous unsworn statement and his evidence in court, or the inconsistency may, indeed, be minor or unsubstantial ...in which case the inconsistency may fail to discredit his entire testimony.”

Thus, it was only where the witness was unable to explain the inconsistency satisfactorily that the rule was applied. The rule was limited to the statement of a witness and his inconsistent testimony. However, in 1985, the decision in *Owie v The State*, (1985) 1 NWLR (pt. 3) 470, for the first time, extended the rule to the statement and evidence of the accused person.

Subsequent decisions such as *Omogodo v The State* (1987) 5 - 7 SC 5; *Stephen v The State* (1986) 5 NWLR (pt 46) 98; *Oladejo v The State* (1987) 3 NWLR (pt. 61) 419; *Umani v The State* (1988) 19 NSCC (pt. 1) 137; *Mbenu v The State* (1988) 3 NWLR (pt. 84) 615 perpetuated this trend.

Interestingly, in 1989, this Court went back to the earlier position in *Udo v The Queen* (supra) and held that the principle did not apply to an accused person and his confessional statement. *Ikemson v The State* (1989) 3 NWLR (pt. 110) 455, 473.

Such was the uncertainty that characterised the application of the rule in Nigeria, hence, the law on the effect of the inconsistency between the sworn oral testimony and previous statements made by an accused person, was enveloped in unwarranted recondity. See, C. C. Nweze, *Contentious Issues and Responses in Contemporary*

Evidence Law in Nigeria [Volume One] (Enugu: IDS, University of Nigeria, 2003).

In 1991, in *Asanya v The State* (1991) 3 NWLR (pt. 180) 422, this Court had another opportunity to examine the rule. The question there was whether the rule was applicable when the witness was an accused person himself. In that case, the apex court declined the invitation to overrule the line of cases in *Omogodo v The State* (supra); *Stephen v The State* (supra); *Oladejo v The State* (supra); *Umani v The State* (supra); *Mbenu v The State* (supra) which had extended the rule to the accused person himself.

This state of affairs continued until 1993 when, in *Egboghonome v The State* (supra), this court streamlined the application of the rule. Delivering the leading judgment of the court, Bello CJN (Karibi-Whyte JSC dissenting) described the decisions in the *Saka Oladejo* and *Asanya* cases (supra) as “a departure from the long established principle laid down in *Udo v The State* (supra) and the several decisions of this court thereafter that [the] inconsistency [rule] does not apply to retracted extra-judicial confession of an accused.”

According to His Lordship, the application of the rule in *R v Golder* to retracted confessions would tantamount to overruling, by implication, all the relevant decisions of this Court from 1964 to 1992. His Lordship was not unmindful of the sociological implication of the extension of the rule for he held [at page 31] that:

“...grave miscarriage of justice would also be occasioned by the extension. It may perpetuate injustice to the society as murderers would be at large simply because after a second thought, they have retracted their confessions.”

He, therefore, overruled the decisions in *Saka Oladejo* (supra) and *Asanya* (supra) and so on.

Consistent with the doctrine of stare decisis, post *Egboghonome* decisions have reverted to the position in *Udo v The Queen* (supra), namely, that the inconsistency rule does not apply to the previous confessions of an accused person and his evidence in court. For example: *Akpan v The State* (2001) 15 NWLR (pt 737) 745; *Nsofor v The State*; (2004) 18 NWLR (pt 905) 292; *Dobie and Ors v State* (2007) All FWLR (pt 363) 83; *Amoshima v State* (2009) 32 WRN 47; *Saidu v State* (2009) 29 WRN 86; *Aiguoreghian v State* (2004) 1 KLR (pt 170) 129, 152;

Adeoti v State (2009) All FWLR (pt 454) 1450, 1509-1511 etc.

The trial court, evidently, not unmindful of this position, had opined that “...*the retraction of a confessional statement by an accused person in his evidence on oath during the trial is of no moment as it does not adversely affect the situation once the court is satisfied as to the truth of the contents of a confessional statement...*” [pages 163- 164 of the record].

The lower court endorsed this approach. I have no reason to disturb these approaches for they find firm and solid anchorage on the position of this court on the long line of cases listed above and many more. For example, Ogudu v State [2011] Vol. 202 LRCN 1, 9; Nwachukwu v State [2002] 12 NWLR (pt 782) 543; Haruna v Federation [2012] 209 LRCN 70; Oseni v State [2012] Vol. 208 LRCN 151, 154.

D RELIANCE ON EVIDENCE OF CO-ACCUSED PERSON

In the appellant’s brief, the impression was created that the trial court placed reliance on the confession of the second accused person in convicting the appellant, paragraphs 2.51 .2 .59, pages 24- 26. Again with respect, this cannot be the position of what transpired at the trial court. Happily, the Majority of the lower court addressed this issue squarely. From my perusal of the record, I find no justification for interfering with the findings of the Majority on this point. Tur JCA had this to say:

“The learned trial Judge did not utilize the confessional statement in exhibit “1” against the first accused person as argued by the learned counsel to the appellant. That is prohibited by section 29 (4) of the Evidence Act, 2011; Adelumona v State [1988] 19 NSCC (pt 1) 465, 473; Chuka v State [1988] 7 SCNJ 226; Mumuni v State [1975] 6 SC 79; Atanda v Attorney General (1965) NMLR 225.” [Pages 265 -267 of the record]

Finally, my Lords, I do not intend to waste further time on the last question in the appellant’s brief, namely, the suggestion that the lower court “failed to fault the trial court’s reliance on the evidence of PW2 who was clearly a tainted witness without the necessary caution and corroboration,” paragraph 2.60, page 26 of the appellant’s brief.

It is, actually, surprising that counsel for the appellant still pursued this argument in this further appeal notwithstanding

ing that Tur JCA, unremittingly, dismantled the logic [or rather the illogic] of that contention.

Neither was any attempt made to demonstrate the falsity of the trial court's findings nor the wrong premise on which the lower court affirmed them. On the contrary, against the background of the available evidence, Tur JCA, brilliantly, highlighted the factors which put the PW2 beyond this court's characterization of a tainted witness in *Ishala v State* [1978] NSCC 499, 509; *Sakata v State* (1968) 1 All NLR 116, 123. B

My Lords, how can any higher court fault the following reasoning of Tur JCA? C

"The appellant and his co-conspirators met PW2, late Okon Uyeh and the Ibo (sic) man for the first time on 25th September, 1993 when they boarded the speed boat as paying passengers only to stab and throw them into the waters of the high seas. Where is the evidence that there had been a long-standing dispute or animosity between PW2 and the appellant, and over what? What grudge did PW2 have against the appellant and his co-conspirators to warrant his evidence being excluded by the learned trial Judge? On what evidence would the learned trial Judge have treated PW2 as a tainted witness? I see none on the record. What purpose had PW2 served by framing the appellant and his co-conspirators?" [Pages 238 -239 of the record, italics supplied for emphasis] D E F

I, entirely, endorse His Lordship's admonition that "argument by counsel on appeal should have regard to the evidence adduced in the court of trial coupled with the findings of the learned trial Judge." [page 239 of the record].

Be that as it may, there is no merit in the appellant's complaint against the Majority judgment of the lower court which endorsed the findings of the trial court. Accordingly, I have no choice than to dismiss this appeal. Appeal is hereby dismissed. I endorse the concurrent findings of the Majority judgment of the lower court and the trial court. I further affirm the lower court's judgment [embodied in the Majority decision] which dismissed the appellant's complaint against his conviction and sentence by the erudite Ikpe J on October 27, 2009. Appeal dismissed. G H

MUHAMMAD JSC

I was privileged by my learned brother, Nweze, JSC, to read in draft the Judgment just delivered by him. I agree with my learned brother in his reasoning and conclusion which I adopt as mine. I dismiss the appeal. I abide by consequential orders made in the leading judgment.

MUNTAKA-COOMASSIE JSC

The three accused persons were arraigned before the High Court of Justice Akwa Ibom State charged with the murder of the deceased Okon Uyeh of Udesi Akai Ati.

The offence is punishable under Section 319 (1) of the Criminal Code Vol. II, Laws of Cross - River State of Nigeria, as applicable in Akwa Ibom State.

All the accused persons pleaded not guilty to the charges.

CHARGES

Segun Akinlolu, and Andrew Ayedatiwor, on the 25th day of September, 1993 at Akpa Ikang fishing settlement in Mbo Local Government Area of Oron Judicial Division murdered Okon Uyeh of Udesi Akai Ati, from Mbo Local Government Area.

The prosecution called witnesses, it tendered two exhibits, which are confessional in nature the 2nd accused person, Andrew Ayedatiwor is not an appellant in this appeal. Only Segun Akinlolu is filing the appeal in this case.

The trial High Court found the appellant guilty as charged and was convicted for the offence of murder of Okon Uyeh contrary to Section 319 (1) of the Criminal Code Cap 31 Vol. II. Laws of the Cross-River State then applicable to Akwa-Ibom State.

The Court of Appeal, lower court has split judgments. The majority judgment dismissed the appeal of the appellant. While Hon. Justice Mohammed Lawal Garba JCA has dissented. This is his conclusion on page 310 of the record. He held thus:-

“In the final result, I find merit in the appeal and allow it. Consequently, the judgment of the High Court delivered on 29/10/2009 in charge No. HDR/IC/2002 by which the appellant was convicted

for the offence of murder and sentenced to death, is hereby set aside. The conviction is quashed and the sentence set aside.

The appellant is discharged and acquitted of the offence with which he was charged before the High court”.

The appellant herein was happy with the dissenting judgment but aggrieved with the majority judgment. He then appealed against the majority judgment to the Supreme Court by filing a notice of appeal containing six (6) grounds of appeal. They are hereunder reproduced without their respective particulars.

GROUND ONE

The learned justices of the Court of Appeal erred in law in affirming the conviction of the accused/appellant for the murder of Okon Uyeh in the absence of a nexus established that the body examined was that of the deceased; as the prosecution failed to identify the body on which the post mortem examination was carried out by the doctor as the body of the person allegedly killed by the appellant.

GROUND TWO

The learned justices of the Court of Appeal erred in law in affirming the conviction of the accused/appellant amidst unexplained substantial contradiction in the testimonies of the prosecution witnesses.

GROUND THREE

The learned justices of the Court of Appeal erred in law placing reliance on and treating the purported statement of the appellant as a confessional statement when they should have adjudged same as inadmissible.

GROUND FOUR

The learned justices of the Court of Appeal erred in law in confirming the conviction of the appellant on the basis of the purported confessional statement of the co-accused person.

GROUND FIVE

The learned justices of the Court of Appeal erred in law in concluding that there was common intention to prosecute an unlawful purpose in the absence of evidence to that effect, and thereupon convicted the appellant.

GROUND SIX

The learned justices of the Court of Appeal erred in law in affirming the conviction of the accused/ appellant for the murder of

Okon Uyeh, when the prosecution did not prove the case beyond reasonable doubt as required by Section 135 (1) of the Evidence Act, 2011.

Both parties filed and served each other with their respective brief of argument.

B Both counsel adopted their brief of argument on 15/12/2015.

Both counsel adopted their issues. The appellant urged this court to allow the appeal and set aside the majority decisions of the lower court while the respondent urged this court to dismiss the appeal.

C I have seen the lead judgment delivered by my noble lord. I was permitted to have a perusal of his judgment. I entirely agreed with my noble lord C. C. Nweze, JSC. It is my view that his lordship was correct in dismissing the appeal and affirming the majority decision of the court below.

RHODES-VIVOUR JSC

E My lords, I have had the advantage of reading in draft the leading judgment of my learned brother, Nweze, JSC. I am in complete agreement with his lordships reasoning and conclusions. I adopt the statement of facts set out in the leading judgment.

F I intend to say a few words on Proof of the charge of Murder beyond reasonable doubt. Under section 316 of the Criminal Code a person charged with the offence of Murder can only be convicted of Murder if his act that led to the death of the deceased falls within one of the circumstances listed in section 316 supra. Section 316 of the Criminal Code states that:

G *“316. Except as hereinafter set forth, a person who unlawfully kills another under and of the following circumstances, that is to said:-*

(a) If the offender intends to cause the death of the person killed, or that of some other person;

H *(b) If the offender intends to do the person killed or to some other person, some grievous harm;*

(c) If death is caused by means of an act done in the prosecution of an unlawful purpose which act is such a nature as to be likely to endanger human life;

(d) If the offender intends to do grievous harm to some per-

son for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit such an offence, if death is caused by administering and stupefying or overpowering things for either of the purposes last aforesaid. B

(e) If death is caused by willfully stopping the breath of any person for either of such purposes is Guilty of Murder.

In the second case (i.e. b) it is immaterial that the offender did not intend to hurt the particular person who is killed. C

In the third case, (i.e.) it is immaterial that the offender did not intend to hurt any person.

In the last case (i.e. d) it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.

PW2, an eyewitness to the vicious attack by the Appellant gave D flawless evidence of how the Appellant stabbed the deceased and threw him into the sea to die, and he died. This act of stabbing by the Appellant falls within (a) (b) or (c) of section 316 of the Criminal Code.

The offence of Murder is thus established. E

WAS THE OFFENCE OF MURDER PROVED BEYOND REASONABLE DOUBT?

Proof beyond reasonable doubt does not mean proof beyond all doubt, or all shadow of doubt. It simply means establishing the guilt of the accused person with compelling and conclusive evidence. F
A degree of compulsion which is consistent with a high degree of probability. See *Lori & anor v State* 1980 19 NSCC p. 269.

A conviction for Murder would be sustained if the prosecution is able to prove the ingredients of Murder beyond reasonable doubt. G
The ingredients for Murder are, or the prosecution must prove the following.

(a) That a person died;
(b) That the death of that person was caused by the accused person. H

(c) That the accused persons act which caused the persons death was done with the intention of causing bodily harm.

(d) That the accused person knew that death would be a probable, not likely consequence of his act. See *Kada v State* (1991) 22

NSCC (pt. ii) p. 592 State v. Danjummai (1996) 8 NWLR (Pt. 469) p.660

The only reasonable conclusion to arrive at is that a man who is stabbed and thrown into the sea would die. The act of the Appellant satisfies (a) to (d) above. The charge of Murder was in the circumstances proved beyond reasonable doubt.

For this and more in the comprehensive judgment of my learned brother, Nweze, JSC the appeal is dismissed.

C

OGUNBIYI JSC

I read in draft the lead judgment of my learned brother Chima Centus Nweze, JSC. I agree without more that the appeal is lacking in dire merit and should be dismissed.

The appeal is against a majority judgment of the Court of Appeal Calabar Division delivered on the 28th May, 2013 wherein Garba (JCA) dissented. The lower court dismissed the appeal of the appellant and affirmed the conviction and sentence by the trial court. Thus this appeal is against the concurrent findings of the two lower courts.

The facts of the case have been well spelt out in the lead judgment.

The law is well settled and trite that concurrent findings of two lower courts are not to be disturbed as a matter of course, except where the appellant makes out a case or reason to hold otherwise. In other words, it is now fully established that this court will not ordinarily interfere with such findings of facts except where the appellant shows that a miscarriage of justice had occurred or the decision was perversely reached. See Onyejekwe V. The State (1992) 3 NWLR (Pt 230) 444. In the case of Posu V. The State (2011) All FWLR (Pt 565) 234 for instance, this court at P.249 held and said:-

“The Supreme Court will not interfere with concurrent findings of lower courts unless compelling reasons are shown. In the instant case the concurrent findings of the lower courts were not perverse, therefore the Supreme Court will not interfere with it.”

Other related authorities are the cases of Tiza V. Begha (2005) 5 SC 1 P.17; Akpagbue V. Ogu (1976) 6 SC 63; Woluchem V. Gudi (1981) 5 SC 291; Amadi V. Nwosu (1992) 5 NWLR (Pt 241) 273 and Ezekwesili V. Agbapuonwu (2003) 9 NWLR (Pt 825) 337.

For the determination of this appeal, the appellant raised a

lone issue which same was adopted by the respondent as follows:-

Whether the Court of Appeal was right in holding that the respondent proved the Charge of murder against the appellant beyond reasonable doubt.

The offence involved in this case is murder. The law is settled that to prove the charge of murder, the prosecution must show that:- B

- a) the deceased had died;
- b) the act of the accused caused the death;
- c) the act was done with the intention of causing death or grievous bodily harm.

There is ample and well founded evidence that the deceased Okon Uyeh was one of the passengers that fared the speed boat on the fateful day in question and that he was pushed into the sea where he died. The said piece of evidence given by the two witnesses Pw2 and Pw1 were direct, unswerving as well as uncontradicted and therefore held firmly as proved. It is expedient to say also that the learned trial judge had made his findings equally on this issue without any challenge. C D

Pw2 was an eye witness to the entire episode wherein he himself had to jump into the water for purpose of saving his own life. The law is trite that the best form of evidence is where the eye witness is direct and his evidence gives an, on the spot narration of the event as it happened. It is also within reason to conclude that the ultimate fate of a person thrown overboard a flying boat into the wild and deep sea, is conclusively without hope of survival. The reality of such an experience can only be imagined. The submission by the appellant's counsel wherein he refuted the deceased's death is, in my view without proper calculation and completely out of tune with natural outcome of the circumstance. Therefore, for the proof of murder to sustain, the appellant's statements needed not contain any confession of murder, as wrongly conceived by his counsel. It is obvious and sufficient that the appellant intended the consequential effect of his act i.e. death of his victim. E F G

The learned trial judge was very meticulous in identifying the sinister motive conceived by the appellant which same was rightly endorsed by the majority decision of their Lordships of the Court of Appeal which I have no reason to depart there from. H

My brother Nweze, JSC had dealt with the issue raised com-

prehensively and I adopt his reasoning and conclusions as mine.

In the same terms as the lead judgment, I also find this appeal without merit and dismiss same accordingly. The concurrent findings of the majority judgment of the lower court and the trial court are hereby further endorsed by me.

B The appeal is dismissed.

C

D

E

F

G

H