

SUPREME COURT OF NIGERIA
FRIDAY 12TH FEBRUARY, 2016. SC. 234/2012
CORAM:- W. S. N. ONNOGHEN, N. S. NGWUTA, M. U.
PETER-ODILI, O. ARIWOOLA, M. D. MUHAMMAD, JJSC

OBASANJO EGHAREVBA APPELLANT
V.
STATE RESPONDENT

MURDER - Medical evidence - Is required to establish the cause and manner of death - Thus PW2 properly determined the cause of death - As resultant effect of the head injury suffered by deceased (H1)

MURDER - Identity of deceased - Post mortem - Where evidence of prosecution identified body of deceased after a post mortem - A separate witness on issue of deceased's identity is not a necessity (H2)

CRIMINAL PROCEDURE - Confession - Retraction - Trial court rightly skipped the mini trial and admitted Exhibit A in evidence - As the issue of voluntariness of same was not in issue (H3)

FACTS

Accused/appellant and another were arraigned before the High Court of Edo State Benin City on two count charge of conspiracy to murder punishable under section 324 and murder punishable under section 319 of the Criminal Code Cap. 48 vol. II Laws of Bendel State 1976 (applicable to Edo State). They pleaded not guilty to the charge. The case for prosecution/respondent is that appellant and the others were serving various prisons terms in Benin City. They went to work in the prison's garden. In the process, appellant hit the deceased – a prison warder in the head with a hoe.

PW3 – one of the prisoners ran to the scene on hearing the screaming of the deceased. PW3 helped in taking the deceased to the prison's compound where he (deceased) was taken to the hospital, where he later died. Appellant and his co-accused fled from the scene. They were however apprehended and handed over to the police. Appellant denied the charge. At the conclusion of the trial,

1358 Egharevba v. State (2016) 2 KLR (pt. 381) 1357; (2016) 8

the learned trial Judge found that respondent has not proved the charge against 2nd accused. He therefore discharged and acquitted the 2nd accused. Appellant was however found guilty as charged. He was convicted and sentenced to death by hanging. Aggrieved, appellant appealed to the Court of Appeal Benin Division. The Court heard the appeal and dismissed same. Judgment of the trial Court was affirmed. Aggrieved further, appellant appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the Court of Appeal was right in affirming the decision of the trial Court holding that the prosecution did prove the guilt of the appellant beyond reasonable doubt.

2. Whether the learned Justices of the Court of Appeal were right in upholding the admission of the purported confessional statement of the appellant (Exhibit A) by the lower Court and affirming the judgment and conviction of the Appellant based on the said purported confessional statement.”

HELD (Unanimously dismissing the appeal per
NGWUTA JSC)

MURDER - Medical evidence

1. In murder cases, medical evidence is required to establish the cause of death and manner of death. The cause of death is medical question while the manner of death determines whether or not the injury which is the cause of death was or could have been self-inflicted. In my view, the PW2 properly determined the cause of death as the resultant effect of the head injury suffered by the deceased even though the wound itself had healed at the time he performed the post mortem on the body of the deceased.

The PW2 shied away from the second issue he was to determine - the manner of death. He said: “I do not know if the injury in this case was self-inflicted.” He did not have to know whether the injury he described as from which the deceased died was, or was not, self-inflicted. He was required to give an opinion based on his training and experience as a pathologist whether the injury he described could have been self-inflicted or not.

It is not his duty, however, to fix the appellant at the time and scene of the crime. He did not give eye-witness account of the incident. Those who commit violent crimes do not invite medical doctors to witness their misdeeds so that he the doctor can fix them at the scene of their crime. (p. 1367 E)

MURDER - Identity of deceased - Post mortem

2. It has been held severally that where the totality of the evidence of the prosecution shows consistently that the body on which a doctor performed a post mortem examination was that of the deceased, a separate witness on the issue of the deceased's identity, though desirable, is not a necessity. (p. 1368 C)

CRIMINAL PROCEDURE - Confession - Retraction

3. Issue 2 is on admissibility of Exhibit 2, the statement credited to the appellant. When the learned prosecuting Counsel sought to tender the statement learned Counsel for the appellant said:

"The 1st accused says he did not make the statement sought to be tendered in evidence. Voluntary is not an issue."

Learned Counsel for the appellant was right. The voluntariness of Exhibit A is not an issue in the appeal since the appellant denied having made it. The trial Court did not have to engage in a trial within trial. The trial Court was right to have admitted Exhibit A in evidence even though the appellant pleaded non est factum. (p. 1369 E)

NOTABLE POINTS OF INTEREST

NGWUTA JSC

1. Appeals – Formulation of issues

Ideally, in an appeal, issues are not formulated to coincide with the number of grounds of appeal. It is better to raise an issue from a combination of grounds of appeal. The principle which governs the formulation of issues for determination is that a number of grounds of appeal could, where appropriate, be formulated into a single issue. (p. 1366 A)

2. Counsel to accord due respect to the bench

I noted earlier in the judgment that learned Counsel for the appellant referred to the learned Justice of the Court below who wrote the leading judgment in the third person pronoun.

B This is unacceptable. It violates the ethics of the noble profession. It is contemptuous.

On no account should a judicial officer be addressed or referred by pronouns. To deter further occurrence of this lapse and those who may imagine they can look down on/or talk down on the bench in this country, I hereby order learned Counsel for the appellant, Emmanuel O. Achukwu, Esq to tender an unreserved apology, within 30 days from today, to the Honourable Justices who heard this appeal in the Court below through the Hon. President of the Court of Appeal and copy the Chief Registrar of this Court.
D (p. 1370 D)

REPRESENTATION

Emmanuel Achukwu (with him: B. C. Hezes and J. N. Okongwu),
E For the Appellant
Oluwole Iyamu (SG/PS), Edo State (with him V. U. Adeleye (Mrs.), Assistant Director; R. Oaihimire (Mrs.), SSC; I. Eribo (Mrs.), SSC; M. O. Efuaga (Miss) SSC), for the Respondent

CASES REFERRED TO

Morka v. State (1998) 2 NWLR (pt. 537) 294
Okeke v. State (1999) 2 NWLR (pt. 590) 596
Owah v. State (1985) 3 NWLR (pt. 12) 236
G Effiong v. State (1998) 59 LRCN 3961
Gbadamosi v. State (1992) 9 NWLR (pt. 266) 465
Nsofor v. State (2004) 1 MJSC 1
Rex v. Sykes (1913) 8 CAR 233
Kanu v. King (1952) (1913) 14 WACA 30
H Nwachukwu v. State (2005) 4 LRCNCC 53
Nkwuda Edumme v. State (1996) 3 NWLR (pt. 438) 530
Emeka v. State (2001) 14 NWLR (pt. 734) 666
Igabele v. State (2006) 6 NWLR (pt. 915) 100
Oguonwee v. State (1998) 4 SC 1104

Nwudenyi v. Aleke (1996) 4 NWLR (pt. 449) 349

Labiya v. Anretiola (1992) 10 SCNJ 1

STATUTES REFERRED TO

Criminal Code Cap. 48, vol. II Laws of Bendel State of Nigeria 1976,
ss. 319, 324

B

Evidence Act 2011, s. 135(1)

LEAD JUDGMENT BY NGWUTA JSC

Appellant and one other person were tried at the High Court of Justice of Edo State of Nigeria, Benin Judicial Division, in two count information for conspiracy to murder punishable under Section 324, and murder punishable under Section 319, of the Criminal Code Cap. 48, Vol II Laws of Bendel State of Nigeria, 1976 now applicable to Edo State of Nigeria. The appellant and his co-accused were serving terms of imprisonment at the Oko Maximum Prison, Benin City, Edo State.

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The prosecution's case is that the appellant, his co-accused and two other inmates of the prison went to work in the prison's garden. Each of them had a hoe. At his request, the appellant was taken to a source of water close by to drink water. He was led by the deceased Warden. Appellant hit the deceased in the head with his hoe and the deceased fell down screaming. The prisoners, one of whom was to testify at the trial as PW3, ran to the scene and helped the wounded Warden to the prison's compound from where he, the deceased, was taken to the University of Benin Teaching Hospital where he died about three weeks later.

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The incident took place on 19th May 2001. Meanwhile appellant and his co-accused had escaped but were apprehended the night of the same date by members of a vigilante group. They were handed over to the Police who charged them to Court.

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From the point of view of the appellant one Omoruyi asked him to help clear the grass in her garden. He went with Omoruyi and three inmates to the farm. He was the leader of the team and went round to inspect the work of the other inmates. At a point he left for a place called Ogbemudia Pond. At the pond he heard some noises and saw people running helter skelter. He had at that point escaped but was caught by some vigilante group who handed him over to the

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police. He denied the charge and stated that his co-accused was not in the team he took to work for Omoruyi.

At the conclusion of the trial, the learned trial Judge first dealt with the second accused person. His Lordship held:

“It is my view that the prosecution has failed abysmally to prove the charges or offences as laid against the 2nd Accused person beyond reasonable doubt as required by Law. Consequently, the 2nd accused person is hereby and accordingly discharged and acquitted on them two count charge of the information.”

In the case of the appellant, the learned trial Judge held:
In the result, arising from all the analysis, I hold that the prosecution has proved the guilt of the 1st accused person beyond reasonable doubt as required by law. In the circumstances, I find the 1st accused person guilty of the murder of Lucky Ononike (m) and I hereby convict him accordingly.”

Accordingly the appellant was sentenced to death by hanging.

Dissatisfied with the judgment, and sentence of death passed on him, the appellant appealed to the Court of Appeal, Benin Division. That Court on 23rd April 2012, dismissed the appeal and affirmed the judgment of the trial Court.

Appellant further appealed to this Court on two grounds from which he distilled the two issues reproduced below:

“1. Whether the Court of Appeal was right in affirming the decision of the trial Court holding that the prosecution did prove the guilt of the appellant beyond reasonable doubt.

2. Whether the learned Justices of the Court of Appeal were right in upholding the admission of the purported confessional statement of the appellant (Exhibit A) by the lower Court and affirming the judgment and conviction of the Appellant based on the said purported confessional statement.”

Learned Counsel for the Respondent practically adopted the two issues framed by the appellant except that he reversed the numbering.

Arguing issue 1 in his brief of argument learned Counsel for the appellant referred to the evidence of the PW2 who stated, inter alia, that “the injury on the head had healed” and argued that the submission of Counsel to that effect cannot be said to be half-truth. He said that the evidence of PW2, PW3 and evidence relating to the

alleged murder weapon (Exhibit C) was not properly evaluated and that the Court erred in its conclusion that the case against the appellant was proved beyond reasonable doubt.

He relied on *Morka v. The State* (1998) 2 NWLR (Pt.537) page 294 at 301; S.135 (1) of the Evidence Act, 2011. Relying on *Cyriacus Ogidi & Ors v. The State* 1 SCNJ 67 at 85-86 in his contention that in criminal cases, the onus of proof is static and never shifts. He submitted that in a charge of murder, the prosecution must prove:

(1) Death of the deceased.

(2) That it was the act of the accused that caused the death of the deceased, and

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

He relied on *Okeke v. The State* (1999) 2 NWLR (Pt.590) p.596, *Owah v. The State* (1985) 3 NWLR (Pt.12) 236. He maintained that the prosecution failed to prove all the essential ingredients and that "such failure must be resolved in favour of the accused person". He referred to the findings of the PW2 relating to the cause of death and submitted that the evidence of PW2 did not fix the appellant at the scene of crime. He argued that the evidence of PW1 who said that the murder weapon he recovered is a wooden hoe differed from the evidence of PW3 who said the appellant hit the deceased with an iron hoe and urged the Court to resolve the doubt arising from the contradiction in the evidence of the PW1 and PW3 in favour of the appellant.

Learned Counsel said that PW3 was the son of an unnamed warden living in the prison quarters and did not witness the incident in respect of which he gave eye witness account, adding that the Court ought not to convict on the evidence of a witness whose identity is in doubt. Learned Counsel repeated his argument on various points and after highlighting what he described as contradiction in the evidence led by the prosecution he urged the Court to hold that the case against the appellant was not proved beyond reasonable doubt as required by law. He urged the Court to resolve the issue in favour of the appellant.

In issue 2, learned Counsel impugned the finding of the Court below that the statement (Exhibit A) was tendered and received in

evidence without objection, adding that the record will show that the statement was challenged/denied when it was introduced by the PW1. He said that the appellant admitted making a statement but said he could not write and he thumb printed. He argued that what the appellant thumb-printed could not be Exhibit A which bore a signature, and not thumb-impression.

At paragraph 5.05 of his brief, learned Counsel said: “The learned Justice of the Court of Appeal ... held that she agreed with learned Counsel for the Respondent...” I will deal with the personal pronoun at the end of the judgment.

He argued that neither the PW2 nor the PW3 was present when Exhibit A was made. He said that the Court below erred by upholding the admissibility of Exhibit A. He urged the Court to allow the appeal and set aside the conviction of, and the sentence of death passed on, the appellant.

Dealing with issue 1 in the respondent’s brief (which is issue 2 in the appellant’s brief) learned Counsel for the respondent said that the Court below was right to have held that the statement Exhibit A was rightly admitted by the trial Court. He referred to the claim of the appellant that “... The signature on Exhibit A is not my signature. I did not make Exhibit A” and argued that the retraction of the statement is belated. He relied on *Effiong v. State* (1998) 59 LRCN 3961 at 3975 and *Gbadamosi v. State* (1992) 9 NWLR (Pt.266) 465 at 480 in his contention that the retraction should have been made at the time the document was sought to be admitted.

On the authority of *Nsofor v. State* (2004) 1 MJSC 1. He submitted that the timely denial of making Exhibit A may lend weight to the denial but is not a ground for rejecting the statement. He relied on *Rex v. Sykes* (1913) 8 CAR 233; *Kanu v. King* (1952) (1913) 14 WACA 30. He cited the case of *Nwanchukwu v. State* (2005) 4 LRCNCC 53 at 75 and said that the statement was admitted because it was free, voluntary, true, positive and probable. He urged the Court to hold that all conditions for admission of confessional statement were met before the trial Court admitted Exhibit A. He urged the Court to resolve issue 1 in his brief against the appellant.

In issue 2 (issue 1 in appellant’s brief) learned Counsel for the respondent submitted that in the circumstances of this case the Court below was right to have affirmed the decision of the trial Court, add-

ing that the prosecution is not expected to prove the guilt of an accused with absolute certainty. He relied on *Re: Onafowokan v. State* (1987) SCNJ 328. With reliance on *Nkwuda Edumme v. State* (1996) 3 NWLR (Pt.438) 530 he said that the prosecution discharged the burden of proof beyond reasonable doubt having proved (a) that the deceased died; (b) that the act of the accused caused the death of the deceased, and (c) that the accused intended to cause the death of the deceased or cause him grievous bodily harm. B

He referred to the evidence of the three prosecution witnesses for proof that the case against the appellant was proved as required by law. He referred to the record and said that the trial Court duly considered the defence of provocation, self-defence and accident and held that none of the above availed the appellant. C

Learned Counsel submitted that the guilt of an accused person can be established in any of the following ways: D

- (a) his confessional statement; or
- (b) circumstantial evidence, or
- (c) evidence of eye-witness to the crime.

He relied on *Emeka v. State* (2001) 14 NWLR (Pt.734) p.666 and *Igabele v. The State* (2006) 6 NWLR (Pt.915) p.100 and argued that the prosecution can rely on any of the three ways to prove the case against the accused. He however failed to disclose whether he relied on any or all of the ways of proving the guilt he listed. He said that the Court below considered what the appellant highlighted as contradictions and concluded that the same were “*immaterial and of no moment to warrant overturning the verdict of guilt passed on the appellant by the lower Court.*” E F

He contended that the findings of fact and conclusion reached by the trial Court were rightly affirmed by the Court below and this Court has not been given any occasion to disturb the concurrent findings of the two Courts below. He invoked this Court’s decision in *Oguonwee v. State* (1998) 4 SC 1104 at 124. He urged the Court to resolve issue 2 against the appellant, summarised his argument and urged the Court to dismiss the appeal for want of merit and affirm the decision of the two lower Courts. G H

I will determine the appeal on the two issues raised by the appellant which were substantially adopted, but re-numbered, by the respondent. The same issues were raised and canvassed to no

avail in the Court below.

Ideally, in an appeal, issues are not formulated to coincide with the number of grounds of appeal. See *Nwudenyi & Ors v. Aleke* (1996) 4 NWLR (Pt.449) 349. It is better to raise an issue from a combination of grounds of appeal. The principle which governs the formulation of issues for determination is that a number of grounds of appeal could, where appropriate, be formulated into a single issue. See *Labiya v. Anretiola* (1992) 10 SCNJ 1 at P2.

The two issues raised from the two grounds of appeal can conveniently be argued as one. Be that as it may I will resolve the issues as raised and canvassed by learned Counsel for the appellant.

Issue 1 queries the decision of the Court below that the prosecution proved its case beyond reasonable doubt. Now, what is proof beyond reasonable doubt? The answer is provided in the case of *K. Gopal Redding v. State of AP* AIR 1979 SC 387 wherein the Indian Supreme Court held, inter alia:

“A reasonable doubt does not mean some light, airy, insubstantial doubt that may flip through the minds of any of us about almost anything at some time or other; it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reasons.”

Before the Court below learned Counsel for the appellant contended that PW2, the Medical Doctor who performed the post mortem on the deceased said that the external wound sustained by the deceased had completely healed as at the time the deceased died. Their Lordships of the Court below had characterised the said submission as “half-truth”.

With due respect to learned Counsel the portion of the evidence of the PW2 he relied on in his submission is of less importance than the portion he left out in the determination of the guilt vel non of the appellant. What was left unsaid of the PW2’s evidence is louder than what was said. The Pw2 said inter alia:

“... There was freshly healed wound on the right side of the head, an area I called the right temporal scalp. When I opened the body, my important findings were on the head collection of atttered blood in the right temporal scalp area of the head. There was fracture of the right temporal scalp bone. There was also bleeding into a compartment that surrounds the brain (subdural compartment). This

bleeding compressed the brain which led to the death of the deceased... I attributed the death of the deceased to head injury that fractured the skull which led to intracranial bleeding... The injury on the head had healed, but the problem was inside the head. The injury would have been caused by a blunt object. I do not know if the injury in this case was self-inflicted." B

Under cross-examination by the two learned Counsel for the two accused persons, the PW2 re-emphasised the evidence he had given in examination-in-chief. From the evidence of the PW2, it was the internal injury, not the external injury which he said had healed, that caused the death of the deceased. In the circumstances, I agree C with the Court below that learned Counsel for the appellant represented only the half truth when he relied only on the healed external injury and feigned ignorance of the internal injury which was the direct result of the external injury. D

Learned Counsel complained that the PW2 gave evidence of fractured skull which led to intracranial bleeding but did not also fix the appellant to the scene of the crime. May be learned Counsel did not understand why the PW2 was called. D

In murder cases, medical evidence is required to establish the cause of death and manner of death. The cause of death is medical question while the manner of death determines whether or not the injury which is the cause of death was or could have been self-inflicted. In my view, the PW2 properly determined the cause of death as the resultant effect of the head injury suffered by the deceased even though the wound itself had healed at the time he performed the post mortem on the body of the deceased. E F

The PW2 shied away from the second issue he was to determine - the manner of death. He said: "I do not know if the injury in this case was self-inflicted." He did not have to know whether the injury he described as from which the deceased died was, or was not, self-inflicted. He was required to give an opinion based on his training and experience as a pathologist whether the injury he described could have been self-inflicted or not. G H

It is not his duty, however, to fix the appellant at the time and scene of the crime. He did not give eye-witness account

of the incident. Those who commit violent crimes do not invite medical doctors to witness their misdeeds so that he the doctor can fix them at the scene of their crime. Learned Counsel stated three elements the prosecution must prove to secure conviction in a murder charge:

B (a) Death of the deceased; it is not in doubt that the body upon which the PW2 performed post mortem examination was that of the deceased, Lucky Ominike. This is clear from the totality of the evidence and in the circumstance a conviction cannot be voided because the person who identified the body to the doctor was not called.

C ***It has been held severally that where the totality of the evidence of the prosecution shows consistently that the body on which a doctor performed a post mortem examination was that of the deceased, a separate witness on the issue of the deceased's identity, though desirable, is not a necessity.*** See D *Enemoh v. State* (1990) 4 NWLR (Pt.145) 459; *Princewill v. State* (1994) 6 NLR (Pt.353) 703 at 713 G-H.

(b) That it was the act or omission of the accused that caused the death of the deceased. The PW3 was the prosecution's star witness. He was serving a term of imprisonment at the said prison facility with the appellant and his co accused. The three of them were taken to work in the garden by the deceased warden. He was at the scene and heard the deceased screaming.

F He swore that "I say the 1st accused used the iron hoe he was working with to hit the deceased." In an attempt to impeach the credit of the PW3 the appellant said he knew "PW3 as a son to a warder... don't know the father's name." But the PW3 had denied the allegation. He stated under cross-examination:

G *"I was born in Otuo... it is not true that I am not Friday Jatto. It is not true that I was brought in to stand for Friday Jatto..."*

H Appellant put identity of the PW3 in issue. If the PW3 was not who he claimed to be, then the appellant who knew that fact had the burden to prove his assertion by producing the real Friday Jatto or by any other means. It is a matter peculiarly within his own knowledge. See Section 140 of the Evidence Act, 2011.

He could have called Mrs. Omoniyi he claimed he went to work for with two elderly men and two boys. He could have called any of the two elderly men or two boys to give evidence that he took

them to work for Mrs. Omoniyi. The evidence that could have established that he went to work for Omoniyi with two elderly men and two boys was available but the appellant deliberately withheld it. This is a presumption that the evidence would have been fatal to his case if he had produced it. See Section 167 (d) Evidence Act 2011. See also *Framo Nig Ltd v. Shaibu Daodu* (1993) 3 NWLR (Pt.281) 372. B

Every decision of a Court is a finding of fact to which the appropriate law is applied. In this case, the trial Court found the facts and applied the law and convicted the appellant. The Court below reviewed the case and found no reason to disturb the decision of the trial Court. Perhaps appellant's Counsel did not appreciate the fact that he was dealing with a concurrent findings of the two Courts below. C

In absence of a finding that the current finding of facts is either perverse or bedevilled with error in substantive or procedural law D which if not corrected will lead to a miscarriage of justice, this Court will not interfere even if the appellant had prayed the Court to do so. See *Lokoyi & Anor v. Olojo* (1983) 8 SC 61 at 68; *Bankole v. Pelu* (1991) 8 NWLR (Pt.211) 23.

I accept the submission of the respondent that the case against the appellant was proved beyond reasonable doubt; bearing in mind that proof beyond reasonable doubt is not proof to mathematical certainty. I resolve issue one against the appellant. E

Issue 2 is on admissibility of Exhibit 2, the statement credited to the appellant. When the learned prosecuting Counsel sought to tender the statement learned Counsel for the appellant said: F

"The 1st accused says he did not make the statement sought to be tendered in evidence. Voluntary is not an issue." G

Learned Counsel for the appellant was right. The voluntariness of Exhibit A is not an issue in the appeal since the appellant denied having made it. The trial Court did not have to engage in a trial within trial. See Emeka v. State (2001) FWLR (Pt.66) 632 ratio 5. The trial Court was right to have admitted Exhibit A in evidence even though the appellant pleaded non est factum. See Queen v. Nwango Iginie (1960) 5 JSC 55. H

At the end of the trial the trial Court considered Exhibit A in the light of the prevailing circumstances and came to the conclusion:

“In the instant case, from the facts of the admission of the 1st accused person in Exhibit ‘A’ and the surrounding circumstances of the whole case... I am satisfied that the 1st accused person made Exhibit A...”

This is a finding of fact made by the trial Court and endorsed
B by the Court below. Appellant did not even attempt to prove perversity in the finding. I see no reason to disturb the finding that the appellant made the confessional statement, Exhibit A, and the said exhibit was rightly admitted in evidence by the trial Court. The Court
C below rightly upheld the admission of Exhibit A. I resolve the issue against the appellant.

Having resolved the two issues in this appeal against the appellant, I hold that the appeal is devoid of merit and accordingly it is hereby dismissed. I affirm the judgment of the Court below.

D Appeal dismissed.

I noted earlier in the judgment that learned Counsel for the appellant referred to the learned Justice of the Court below who wrote the leading judgment in the third person pronoun.

This is unacceptable. It violates the ethics of the noble profession. It is contemptuous.

On no account should a judicial officer be addressed or referred by pronouns. To deter further occurrence of this lapse and those who may imagine they can look down on/or talk down on the bench in this country, I hereby order learned Counsel for the appellant, Emmanuel O. Achukwu, Esq to tender an unreserved apology,
F within 30 days from today, to the Honourable Justices who heard this appeal in the Court below through the Hon. President of the Court of Appeal and copy the Chief Registrar of this Court.

G _____

ONNOGHEN JSC

I have had the benefit of reading in draft, the leading Judgment of my learned brother, NGWUTA JSC just delivered.

H My learned brother has dealt exhaustively with the issues for determination leaving me with nothing to add.

I therefore adopt his reasoning and conclusions, which I am in agreement with, as mine in dismissing the appeal for lack of merit.

Appeal dismissed.

PETER-ODILI JSC

I agree with the judgment just delivered by my learned brother, Nwali Sylvester Ngwuta JSC and in support of the reasoning I shall make some comments.

This is an appeal against the judgment of the Court of Appeal, Benin Division Coram: R. C. Agbo, O. F. Omoleye and C. E. Nwosu-Iheme JJCA, delivered on the 23rd day of April, 2012 which affirmed the conviction of the appellant by the Edo State High Court presided over by E. O. Ahanioje J.

The facts of this appeal are well adumbrated in the leading Judgment and so no need repeating them here.

Learned counsel for the appellant, Emmanuel O. Achukwu on the 19th November, 2015 adopted and relied on the Brief of Argument of the Appellant filed on the 27/7/2010 in which learned counsel formulated two issues for determination, viz:

1. Whether the Court of Appeal was right in affirming the decision of the trial Court holding that the prosecution did prove the guilt of the appellant beyond reasonable doubt.

2. Whether the learned Justices of the Court of Appeal were right in upholding the admission of the purported confessional statement of the appellant (Exhibit A) by the lower Court and affirming the judgment and conviction of the appellant based on the said purported confessional statement.

For the respondent, Mr. Oluwole Iyamu adopted their Brief of Argument filed on 1/12/2014 and deemed filed on the 19/11/2015. He distilled two issues for determination which are thus:

1. Whether the Court of Appeal was right to have held that the confessional statement of the appellant (Exhibit "A") was rightly admitted in evidence and relied on by the learned trial judge.

2. Whether the Court of Appeal was correct in holding that the prosecution proved the charge of murder against the appellant beyond reasonable doubt to warrant affirming his conviction by the trial Court.

The issues framed by either side are really similar and different only in placement as issue 1 of the appellant is in content Issue 2 of the respondent and Issue 2 of the appellant in substance Issue 1 of the respondent and I shall utilise the issues as drafted by the appel-

lant for convenience.

ISSUE 1

Whether the Court of Appeal was right in affirming the decision of the trial Court holding that the prosecution did prove the guilt of the appellant beyond reasonable doubt.

B Emmanuel Achukwu Esq. for the appellant submitted that it is a settled principle of law that in criminal cases especially murder cases which carry the death penalty, such as the present, the onus is on the prosecution to prove the guilt of the accused person beyond reasonable doubt. That in a charge of murder the prosecution must prove

C (a) Death of the deceased.
(b) That it was the act or omission of the accused that caused the death of the deceased.

(c) That the act or omission of the accused was intentional with D the knowledge that death or grievous bodily harm was its probable consequence. He cited *Morka v. The State* (1998) 2 NWLR (Pt.537) 294, *Okeke v. The State* (1999) 2 NWLR (Pt.590) 596; *Owah v. The State* (1985) 3 NWLR (Pt.12) 236.

E That the question that arises is if the prosecution proved all these questions that proved all these essential ingredients against the appellant beyond reasonable doubt. Also that where the prosecution failed to prove all these essential ingredients such failure must be resolved in favour of the accused person.

F For the appellant was submitted that the evidence of PW1, the Police Officer did not fix the appellant to the scene of crime, also the evidence of PW2, the Medical Doctor lacked certainty. That in the case of PW3, there was conflicting evidence of the weapon used in the doubt reasonable enough to be resolved in favour of the appellant. He relied on *Akosile v. The State* (1972) 5 SC 332; *Onubogu v. The State* (1974) 9 SC 1.

Mr. Achukwu of counsel for appellant stated that the appellant when he testified raised a fundamental question as to the identity of PW3 which situation is serious and created doubt which should be H resolved in favour of the appellant. He cited *Oghor v. The State* (1990) 3 NWLR (Pt.139) 184; *Folarin v. The State* (1999) 1 NWLR (Pt.371) 31.

Mr. Iyamu, learned counsel for the respondent contended that “reasonable doubt”, connotes proof which carry a high degree of

probability and not proof beyond every shadow of doubt. He relied on *Re: Onafowokan v. The State* (1987) SCN 328.

That the prosecution proved the essential elements of the offence beyond reasonable doubt from the strong pieces of evidence of PW2 and PW3 with the credible evidence of PW1 and Exhibit “A” the confessional statement of the appellant all of which overwhelmed the mere denial of the offence by the appellant. He cited Section 138(1) Evidence Act, Cap. E14 LFN 2004 now Section 135(1) Evidence Act, 2011. That even the confessional statement alone having successfully passed the veracity test is enough to ground a conviction. He relied on *Akpa v. State* (2008) 7 MJSC 77; *Ogoala v. The State* (1991) 2 LRCN 66. B
C

On this matter of the confessional statement of the appellant as to whether the appellant objected to its admissibility timeously or not. The appellant contended they did when it was sought to be tendered but the respondents disagree, saying it was admitted without objection and that the rejection of making it came when the appellant was testifying. From what I see from the records, the objection on the ground that appellant did not make the statement came not in the course of the testimony of prosecution witnesses but when the appellant was testifying which situation produced a different scenario on what should obtain. This is because once a confessional statement is tendered and admitted without objection by the defence, it is good evidence and can be relied upon. The Court can even utilizing it alone place a conviction without corroboration even if the appellant had retracted the making thereof. See *Effiong v. The State* (1998) 59 LRCN 3961 at 3975; *Gbadamosi v. State* (1992) 9 NWLR (Pt.266) 465 at 480; *Ikemson v. The State* (1989) 3 NWLR (Pt.110) 455. D
E
F

The next line of action in relation to that statement admitted even if retracted is for the Court to consider the weight to attach to it and that the Court does in line with the time honoured test as stated in *Rex v. Sykes* (1913) 8 CAR 233 followed subsequently by Courts in *Kanu v. The King* (1952) 14 WACA 30, *DAWA v. The State* (1980) 8 - 11 SC 236; *The Queen v. Obiasa* (1952) 1 ALL NLR 651; *Emmanuel Nwaebonyi v. The State* (1994) 5 NWLR (Pt.343) 138 and these conditions are thus: G
H

1. Is there anything outside the confession to show that it is true?

2. Is it corroborated?

3. Are the relevant statements made in it of facts and true as far as they can be tested?

4. Was the prisoner one who had the opportunity of committing the murder?

B 5. Is his confession possible?

6. Is it consistent with other facts which have been ascertained and have been proved?

Applying the above tests to the case in hand, the question that arises is whether the conditions are present here and it is difficult to answer in the negative when considering the evidence of PW1, PW2 and PW3, an eye witness alongside Exhibits 13 and C which corroborated Exhibits A, the confessional statement to hold that Exhibit A is possible. This is so as from the evidence of the appellant himself he was in the garden with the deceased on the day in question.

Apart from the extra judicial statement passing the tests in *R v. Sykes* (supra) the Court can on satisfying itself that the statement was freely, voluntarily obtained and also true, positive and probable and once that is the case the Court can rely on it without corroboration to convict. See *Nwachukwu v. The State* (2005) 4 LRCN 53 at 75, *Jimoh Yusuf v. State* (1976) 6 SC 167 etc.

To buttress the legal principles in the light of the evidence available to the trial Court, that Court held thus in its finding:

"In the instant case, from the facts of the admission of the 1st accused person in Exhibit A, and the surrounding circumstances of the case, particularly the credible evidence of PW1, PW2 and PW3, I am satisfied that the 1st accused person made Exhibit A. I am satisfied he signed same. I therefore hold and find that the 1st accused person made Exhibit A actuated by remorse of conscience to make reparation for his dastardly and wicked act of savagely hitting a defenseless deceased with a hoe, Exhibit C, on the head on 19/5/2001. On the whole, I find the confessional statement of the 1st accused, Exhibit A to be true... I regard his story as puerile and an afterthought to hoodwink this Court...I believe the facts contained in Exhibit A as truly reflective of what transpired between the deceased and the 1st accused person on the fateful day of the incident."

The Court of Appeal could not resist accepting that finding when it said:

“These show that the confession of the appellant was not only possible but true. I therefore hold that the lower Court rightly admitted and relied on Exhibit A to convict the appellant.”

These concurrent findings of the two Courts below are not easy to fault and so I cannot but resolve the issue against the appellant.

ISSUE 2

Whether the learned Justices of the Court of Appeal were right in upholding the admission of the purported confessional statement of the appellant (Exhibit A) by the lower Court and affirming the judgment and conviction of the appellant based on the said purported confessional statement.

Learned counsel for the appellant submitted that, appellant objected to the said confessional statement, Exhibit A as not one he had made and so the two Courts below ought not to have utilized the contents to ground the conviction.

For the respondent it was contended that retracting a statement does not stop its admissibility and in this instance it was even belated being a retraction after the prosecution had closed its case. He cited *Effiong v. The State* (1998) 59 LRCN 3961 at 3975; *Gbadamosi v. State* (1992) 9 NWLR (Pt.266) 465 at 380.

Mr. Iyamu of counsel for the respondent said in this case, the confessional statement was admitted as Exhibit A and without objection and the trial Court found it good evidence on which reliance could be placed and so it was sufficient of itself to ground a conviction whether or not it had corroboration or the appellant resiled therefrom. He referred to *Ikemson v. The State* (1989) 3 NWLR (Pt.110) 455; *Nsofor v. State* (2004) 1 MJSC 128.

That once an accused retracts from his statement after it is admitted what is left for the trial Court to consider is the weight to attach to it. He cited *Rex v. Sykes* (1913) 8 CAR 233; *Kanu v. The king* (1952) 14 WACA 30 etc.

Also that learned trial Judge satisfied himself that Exhibit “A”, the confessional statement was positive, true and probable in attaching weight to it. He relied on Section 27(1) Evidence Act, *Jimoh Yusuf v. State* (1916) 6 SC 167.

It seems to me that with Issue No 1, which dealt with the confessional statement and the surrounding pieces of evidence, that this

issue 2 which questions whether the prosecution proved the charge of murder against the appellant beyond reasonable doubt becomes an over flogged response as the resolution of the first issue has settled this second one. I see nothing detracting from the proof of the murder charge as shown in the course of issue 1 and there is no point embarking on a further exploration of this issue which I consider adequately resolved against the appellant.

From the above and the fuller reasons in the leading judgment I too dismiss this appeal and abide by the orders made.

C

ARIWOOLA JSC

I had the opportunity of reading in draft, the leading judgment of my learned brother, Ngwuta, JSC, just delivered. I am in agreement entirely with the reasoning therein and the conclusion arrived thereat. The appeal truly lacks merit and deserves to be dismissed. I too will dismiss the appeal.

Appeal dismissed.

I abide entirely by the consequential orders in the said leading judgment, in particular, the order made against the counsel for the appellant, Emmanuel O. Achukwu, Esq. to tender an unreserved apology to the Honourable Justices of the Court of Appeal who heard the matter at the Court below.

F

MUHAMMAD JSC

From the preview of the leading judgment of my learned brother Ngwuta JSC, that I had, I entirely agree with his lordship's reasoning and conclusion that the appeal lacks merit.

I dismiss the appeal as well and further abide by the consequential orders made in the leading judgment.

H