

SUPREME COURT OF NIGERIA
FRIDAY 22ND APRIL, 2016. SC. 181/2012
CORAM:- I. T. MUHAMMAD, M. U. PETER-ODILI,
M. D. MUHAMMAD, J. I. OKORO, A. SANUSI, JJSC

JAMES AFOLABI APPELLANT
V.
STATE RESPONDENT

CRIMINAL PROCEDURE - Conviction - Confession - Accused can be convicted on his confessional statement alone - If same is positive and made voluntarily (H1)

MURDER - Conviction - Absence of eyewitness - Where accused confesses to a crime in absence of eyewitness of killing a person - He can be convicted on his confession alone (H2)

MURDER - Mens rea - By aiming his gun at deceased's chest - It can be inferred that appellant intentionally shot and killed the deceased (H3)

FACTS

Before the High Court of Kogi State, accused/appellant was arraigned on one count charge of culpable homicide punishable with death and contrary to Section 221 (b) of the Penal Code, Laws of Northern Nigeria. Appellant was alleged to have murdered the deceased – one Abubakar Mohammed. Appellant although admitted shooting the deceased in Exhibits C and D, yet he denied committing the offence in his testimony in court. Appellant stated that he accosted the deceased in his farm on the fateful day. Appellant further stated that he later on heard the news of the death of the deceased. To prove its case against appellant, prosecution/respondent called three witnesses.

In the course of the trial, respondent's witnesses tendered four negatives and four pictures of the deceased corpse and same were admitted in evidence as Exhibits A1-A4 and B1-B4 respectively. A post mortem examination was conducted on the deceased and the result of the autopsy was admitted in evidence as Exhibit BB. Appel-

lant made two confessional statements (Exhibits C and D). Exhibit E is a gun used to commit the offence, while Exhibits F and G are a blood stained cap and a pair of scissors respectively. At the end of the trial, the court convicted appellant as charged. He was therefore sentenced to death. His appeal to the Court of Appeal Abuja was dismissed. Hence, appellant has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the Court of Appeal was correct in holding that the trial Court was right in convicting the Appellant on the strength of his confessional statements.

2. Whether the learned Justices of the Court of Appeal were right in coming to the conclusion that it is obvious from the evidence before the trial Court that the Appellant intentionally killed the deceased.

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

CRIMINAL PROCEDURE - Conviction - Confession

1. As was gallantly conceded by the learned counsel for the appellant, an accused person can be convicted on his confessional statement alone if same is positive, direct and made voluntarily.

A confession in itself is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime. See Section 28 of the Evidence Act, 2011. Thus, a properly admitted extra judicial confession of an accused is part of the case of the prosecution.

It is however not a general rule that a confession relieves the prosecution of its duty of proving its case beyond reasonable doubt. Therefore, for a confession to form the basis of a conviction, it has to be shown to be free and voluntary, positive and proved to be true.

At this stage, I must state clearly that although it is desirable to have outside an accused person's confession to the police some evidence, no matter how slight of the circumstances

which make it probable that the confession was true, a voluntary confession of guilt if true, consistent and probable, and is coupled with a clear proof that a crime has been committed by some persons, is usually accepted as satisfactory evidence on which the Court can convict. (pp. 2401 C/2402 E)

MURDER - Conviction - Absence of eyewitness

2. Although there was no eye witness when the appellant shot the deceased, the prosecution gave evidence through the PWs which gave vent to the confession of the appellant. And in any case, this Court held in Mohammed v. State (2007) 11 NWLR (Pt. 1045) 303 at 230 paragraph F that where an accused person confesses to a crime, in the absence of an eye witness of killing he can be convicted on his confession alone.
(p. 2403 F)

MURDER - Mens rea

3. It is an elementary proposition of the criminal law that every person is taken to intend the natural and probable consequences of his or her act. And, the consequence of an act may be said to be probable, if a reasonable man would consider its occurrence to be the natural and normal effect of the act.

From the above definitions, it seems to me that in an offence of murder, intention, which is not tangible, can be inferred from the instrument used to commit the crime, the force used and the part of the body on which the injury was inflicted. Also, the force with which the accused applied with the instrument on the deceased is also to be taken into consideration.

In the instant case, the appellant states emphatically in Exhibit D adjudged to have been freely and voluntarily made, that he aimed his gun at the chest of the deceased at close range and shot him. It was his further evidence that the deceased fell down and could not move again. At that point, he ran to the village head and reported that he had killed a man. In the circumstance, did he intend to kill the man? I had earlier stated in this judgment that a person is taken to intend the natural and probable consequences of his act. So, when the

appellant aimed his gun at the chest of the deceased and shot it, did he intend to keep him alive? I do not think so. At least he intended to cause him grievous bodily harm. And in view of the force of a gunshot aimed at the heart, the engine room of a man’s life, it can safely be concluded that the appellant intended to kill the deceased by his action, the report he made to the village head notwithstanding. Had the appellant shot the deceased on the leg, maybe, just maybe, one would have thought otherwise. At the age of the appellant, he ought to have known that the part of the body of the deceased he aimed at (the heart) was the last that could have entered his mind if he had intended the man to stay alive. I agree with the lower Court that the appellant intentionally shot and killed the deceased. All the arguments of the learned counsel for the appellant which had nothing to do with whether or not the killing was intentional are of no moment. They are discountenanced. This issue is accordingly resolved against the appellant.
(pp. 2405 F/2406 D)

NOTABLE POINTS OF INTEREST

OKORO JSC

1. Confessional statement – Test of

The learned counsel for the appellant drew the attention of the Court to the case of Shalatu Shazali v. The State (1988) 3 NSCC 234 at 245 wherein this Court reiterated certain questions a Judge must ask himself before relying on the confessional statement to convict an accused person.

- The questions are:
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, true as they can be tested?
 4. Was the prisoner one who had the opportunity of committing the offence?
 5. Is his confession possible?
 6. Is it consistent with the other facts which have been ascer-

tained and have been proved? (p. 2402 B)

SANUSI JSC

2. Murder – Ingredients – Proof

It needs to be reiterated here that in order to secure conviction in a charge of culpable homicide punishable with death contrary to Section 221 of the Penal Code, the prosecution has the tasking burden to prove the following ingredients of the offence, namely:-

- (a) That the death of a human being has actually taken place;
- (b) That such death was caused by the accused.
- (c) That the act was done with the intention of causing such bodily injury as:

- (i) the accused knew or had reason to know that death would be the probable and not only likely consequence of his act or
- (ii) that the accused knew or had reason to know that death would be the probable and not only likely consequence of any bodily injury which the act was intended to cause.

Thus, in order to prove that the appellant had actually killed the deceased, the prosecution should adduce credible evidence linking him with the death of the deceased. This means that there should be evidence of positive act or even negative omission of the appellant which caused injury to the deceased and that the death of the deceased was as a result of such injuries. (p. 2420 H)

REPRESENTATION

J. A. Akubo, Esq. with him, G. S. Omagbogu, Esq., Jacob Ajayi, Esq. and Ngozi Okoh (Miss), for the Appellant
 Mrs. B. A. Alfa (DPP, Kogi State Ministry of Justice) with Mrs. H. E. Yusufu (DDPP, MOJ, Kogi State) and D. E. Abu, Esq. (Snr. Legal Officer), for the respondent

CASES REFERRED TO

- Oforlete v. State (2000) 7 SC (pt. 1) 80
- Udor v. State (2011) 11 NWLR (pt. 1259) 472
- Oseni v. State (2012) 5 NWLR (pt. 1293) 351
- Mohammed v. State (2007) 11 NWLR (pt. 1045) 303
- Odeh v. F.R.N. (2008) 13 NWLR (pt. 1103) 1
- Suleiman v. C.O.P Plateau State (2008) 8 NWLR (pt. 1089) 298

- Dawa v. State (1979) 12 NSCC 334
- Ojegele v. State (1985) 1 NWLR (pt. 71) 414
- Odofin v. State (1984) 12 SC 139
- Akpan v. State (2007) 9 NWLR (pt. 1019) 500
- Dibie v. State (2007) 9 NWLR (pt. 1038) 30
- B Nwachukwu v. State (2007) 17 NWLR (pt. 1062) 31
- Akinmoju v. State (2004) 4 SC (pt. 1) 64
- Ihuebeka v. State (2000) 4 SC (pt. 1) 203
- Oche v. State (2007) 5 NWLR (pt. 1027) 219

C **STATUTES REFERRED TO**

- Penal Code, s. 221(b)
- Evidence Act 2011, ss. 13, 27, 139(1)

D **LEAD JUDGMENT BY OKORO JSC**

This is an appeal against the judgment of the Court of Appeal, Abuja Division wherein the Court below upheld the judgment of the Kogi State High Court sitting at Lokoja in which the appellant was convicted and sentenced to death for the offence of culpable homicide punishable under Section 221 (b) of the Penal Code.

The record of appeal shows that the Appellant was arraigned on a single count charge of culpable homicide punishable with death contrary to Section 221 (b) of the Penal Code, Laws of Northern Nigeria. The prosecution called a total of three witnesses who gave evidence of the death of one Abubakar Mohammed. In the course of the trial, the prosecution witnesses tendered four negatives and four pictures of the deceased corpse and same were admitted in evidence as Exhibits A1-A4 and B1-B4 respectively. A post mortem examination was conducted on the deceased and the result of the autopsy was admitted in evidence as Exhibit BB.

The appellant made two confessional statements. Exhibits C and D are the said confessional statements the appellant made at B Division Police Station, Lokoja and State CID Lokoja respectively. Exhibit E is a gun used to commit the offence while Exhibits F and G are a blood stained cap and a pair of scissors respectively.

It is the case of the respondent (Prosecution) that the appellant committed the offence with which he was charged at the trial Court. The appellant admitted in both Exhibits C and D that he shot

the deceased with a gun which led to his death. Exhibit D was subjected to trial within trial after which the learned trial judge held that it was voluntarily made. There is no appeal against the aforementioned ruling of the learned trial judge.

On the other hand, the appellant simply denied committing the offence in the course of his evidence before the trial High Court. He narrated that he has a farm land where he planted cassava and yam. He said that a Fulani man came to his farm on 27/2/2009. He further stated that he accosted the Fulani man within the vicinity of his farm. About 6pm of the same date, he became aware of the death of the deceased.

As I stated earlier, the trial Court convicted and sentenced the appellant to death under Section 221(b) of the Penal Code. An appeal to the lower Court was dismissed. The Court of Appeal held that the Trial Court was right in convicting the Appellant on the strength of his confessional statements and that the respondent had proved the ingredients of the offence of culpable homicide punishable with death contrary to Section 221 of the Penal Code. Against the decision of the Court below, the appellant has further appealed to this Court.

On 24th April, 2012, the appellant filed his notice of appeal containing four grounds of appeal. Three issues have been formulated from the four grounds of appeal. The issues are:

1. Whether the Court of Appeal was correct in holding that the trial Court was right in convicting the Appellant on the strength of his confessional statements.

2. Whether the learned Justices of the Court of Appeal were right in coming to the conclusion that it is obvious from the evidence before the trial Court that the Appellant intentionally killed the deceased.

3. Whether from the totality of evidence proffered in this case, the Appellant ought to have been convicted for a lesser offence of culpable homicide not punishable with death under Section 224 of the Penal Code.

Appellants' brief was settled by J. A. Akubo, Esq. and filed on the 18th of May, 2012. The said learned counsel adopted the brief on 28th January, 2016 when the appeal was heard.

Also, the learned counsel for the Respondent B. A. Alfa (Mrs.),

Director of Public prosecution, Ministry of Justice, Kogi State, adopted the brief of the Respondent which was settled by Badama Kadiri, Chief Legal Officer, Ministry of Justice, Kogi State. Two issues are however distilled by the Respondent as follows:

1. Whether the lower Court was right in upholding the conviction and sentence of the Appellant to death contrary to Section 221 (b) of the Penal Code on the strength of his confessional statements.
2. Whether the lower Court was right in coming to the conclusion that the Appellant intentionally killed the deceased.

On page 4 of the respondents' brief, the learned counsel for the respondent has drawn the attention of this Court to the fact that appellants issue 3 does not flow from any of the grounds of appeal and was never decided upon by the Court below Relying on the cases of Oforlete v. State (2000) 7 SC (Pt. 1) 80 at 83, Udor v. State (2011) 11 NWLR (Pt. 1259) 472, learned counsel urged this Court to strike out the said issue. There is no reply brief and it appears the complaint stands unchallenged.

I have already reproduced appellant's issue No 3 above. It is said to be distilled from ground of appeal number four. For ease of reference, I shall set out ground four as follows:

"Ground Four

The judgment of the Court of Appeal is unreasonable, unwarranted and unsupportable having regard to the evidence on the printed record of Appeal."

Now placing the 4th ground of appeal side by side appellant's 3rd issue shows clearly that the issue and the ground of appeal are miles apart. They have nothing in common. And having regard to the judgment of the Court below, no paragraph of the judgment discussed the possibility of the appellant being convicted for a lesser offence of culpable homicide not punishable with death under Section 224 of the Penal Code, Thus, issue 3 does not arise from any ground of appeal; neither does it flow from the judgment or decision of the Court below. It is now well settled that an issue or issues for the determination of an appeal must be distilled from, or must arise or flow from a competent ground of appeal. An issue is incompetent if it does not flow from any competent ground of appeal and is liable to be struck out. Corollary, the argument in respect of the incompetent issues must be discountenanced. See Duwin Pharmaceutical & Chemi-

cal Co. Ltd v. Beneks Pharmaceutical & Cosmetics Ltd & Ors. (2008) 4 NWLR (Pt. 1077) 376, (2008) 1-2 S.C. 68, Patrick D. Magit v. University of Agriculture, Makurdi & Ors. (2005) 19 NWLR (Pt. 959) 211, Odeh v. F.R.N. (2008) 13 NWLR (Pt. 1103) 1.

The end result is that issue 3 is incompetent having not derived from any of the four grounds of appeal filed by the appellant. Also, the issue allegedly distilled from ground four is a stranger to the judgment of the lower Court. Had the appellant wanted to legitimately raise the issue, he should have obtained the leave of this Court before doing so. Having not sought for and obtained the leave of this Court before raising the new issue, it is incompetent and is accordingly struck out. The arguments made in respect of the said issue 3 are hereby discountenanced.

This appeal, shall, in the circumstance, be determined based on issues one and two only. The 1st issue relates to whether the Court of Appeal was correct in holding that the trial Court was right in convicting the Appellant on the strength of his confessional statement.

Learned counsel for the appellant contends that the Court of Appeal was in error in affirming the conviction and sentence of the appellant by the trial Court for the offence of culpable homicide punishable with death contrary to Section 221 (b) of the Penal Code based on Exhibits C & D only i.e. the extra judicial statements of the appellant. Learned counsel concedes to the point of law as stated by the Court below that an accused person can be convicted on his confessional statement alone if same is positive, direct and made voluntarily in view of the decisions in *Demo Oseni v. The State* (2012) 5 NWLR (Pt. 1293) 351, *Mohammed v. The State* (2007) 11 NWLR (Pt. 1045) 303 amongst others.

It is however his submission that in law, every case is treated according to its peculiar facts and circumstances, relying on the case of *Adamu Suleiman & Anor v. C.O.P., Plateau State* (2008) 8 NWLR (Pt. 1089) 298 at 318. According to him, the Court below ought to have treated Exhibits C & D with caution and not rely on them to convict and sentence the appellant to death because they were infested with illegality which makes them unreliable and lacking in evidential value for the following reasons.

1. That the Exhibits were not subjected to six - way test laid

down by this Court in *Dawa & Anor v The State* (1979) 12 NSCC 334 at 348, *Demo Oseni v. The State* (2012) 5 NWLR (Pt. 1293) 351 at 374, *Ojegele v. The State* (1988) 1 NWLR (Pt. 71) 414, *Odofin v. The State* (1984) 12 SC 139. He opined that having regard to the totality of evidence, Exhibits C & D did not meet the test.

B 2. That there was no slight evidence of corroboration outside the contents of Exhibits C & D.

3. That Exhibits C & D is a gross violation of criminal procedure (statement to Police Officers) Rule Cap 30 LNN 1963, in that the cautionary words were not signed by the Appellant.

C 4. That the body or contents of Exhibits C & D was not written by the appellant nor was it written by the PW1 & 2 on the instructions of the Appellant.

D 5. That Exhibits C & D were admitted in contravention of Section 27 of the Evidence Act in that both statements were not positive, direct and voluntary.

He urged the Court to resolve this issue in favour of the appellant. In response, the learned counsel for the respondent submitted that a confessional statement is the highest and most satisfactory evidence if there is independent proof that a crime has indeed been committed by someone and the accused had the opportunity of committing same as in the present case, relying on the cases of *Akpan v. The State* (2007) 9 NWLR (Pt. 1019) 500 at 524 paras F-C, *Dibie v. The State* (2007) 9 NWLR (Pt. 1038) 30 at 51, *Nwachukwu v. The State* (2007) 17 NWLR (Pt. 1062) 31 at 65-66 paras H - A.

According to learned counsel, the respondent has sufficiently established the fact that the confessional statements of the appellant were freely and voluntarily made as confirmed by the ruling of the trial Court. It was further contended that the evidence of PW1, PW2, and PW3, Exhibits A1-A4, B1-B4 and "BB" clearly show that the deceased had died. He opines that this corroborates Exhibits C & D.

Learned counsel submitted that Exhibits C & D can be relied upon to convict the appellant even in the absence of an eye witness because it amounts to enough proof beyond reasonable doubt, relying on the case of *Mohammed v. State* (2007) 11 NWLR (Pt. 1045) 303 at 320. Learned counsel also submitted that a confessional statement alone is sufficient to sustain a conviction without any corroborative evidence, citing and relying on *Mohammed v. State* (supra) at

320 para G, Akinmoju v. State (2004) 4 SC (Pt. 1) 64 at 84, Ihuebeka v. State (2000) 4 SC (Pt. 1) 203 at 218, Oche v. State (2007) 5 NWLR (Pt. 1027) 219 and others.

As regards the contention that there are no cautionary words in Exhibits C & D, learned counsel submitted that it cannot invalidate a confessional statement of an accused, citing the case of Akinmoju v. State (supra) at 67. He however stressed that the cautionary words in both Exhibits C & D were signed by the appellant.

Finally, learned counsel submitted that since there is no appeal against the ruling on the trial within trial, the Court should hold Exhibits C & D proper and that the Court below was right to hold that the confessional statements alone were sufficient for the conviction and sentence of the appellant.

As was gallantly conceded by the learned counsel for the appellant, an accused person can be convicted on his confessional statement alone if same is positive, direct and made voluntarily.

A confession in itself is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime. See Section 28 of the Evidence Act, 2011. Thus, a properly admitted extra judicial confession of an accused is part of the case of the prosecution. See Ikemson & 2 Ors v. The State (1989) 3 NWLR (Pt. 110) 455; Bature v. The State (1994) 2 Kings Law Report (KLR) 16.

It is however not a general rule that a confession relieves the prosecution of its duty of proving its case beyond reasonable doubt. Therefore, for a confession to form the basis of a conviction, it has to be shown to be free and voluntary, positive and proved to be true. See Joseph Okoro Abasi v. The State (1992) NWLR (Pt. 260) 383.

In Jimoh Yesufu v. The State (1976) 6 SC 167 at 173, this Court, per Obaseki, JSC, held that:

“There is a long line of judicial authorities (on the effect of confessions) and we agree with the statements which establish that in Nigeria, a free and voluntary confession of guilt by a prisoner, whether under examination before a magistrate or otherwise, if it is direct and positive and is duly made and satisfactorily proved, is sufficient to warrant convictions without any corroborative evidence so long as

the Court is satisfied of the truth of the confession (Edet Obasi v. The State (1965) NMLR 119). But it is desirable to have outside a defendant's confession to the police, some evidence be it slight of the circumstances which made it probable that the confession was true (Paul Onochie & 7 Ors v. The Republic (1966) NMLR 307; R. v. Kanu 14 WACA, 30)."

The learned counsel for the appellant drew the attention of the Court to the case of Shalatu Shazali v. The State (1988) 3 NSCC 234 at 245 wherein this Court reiterated certain questions a Judge must ask himself before relying on the confessional statement to convict an accused person.

The questions are:

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, true as they can be tested?
4. Was the prisoner one who had the opportunity of committing the offence?
5. Is his confession possible?
6. Is it consistent with the other facts which have been ascertained and have been proved? See also Musa v. The State (2013) 2-3 S.C. (Pt. 11) 75 at 92-94 Paras 35-15.

At this stage, I must state clearly that although it is desirable to have outside an accused person's confession to the police some evidence, no matter how slight of the circumstances which make it probable that the confession was true, a voluntary confession of guilt if true, consistent and probable, and is coupled with a clear proof that a crime has been committed by some persons, is usually accepted as satisfactory evidence on which the Court can convict. See Ogoala v. The State (1991) 2 NWLR (Pt. 175) 509.

In the instant case, the prosecution, through PW1, PW2 and PW3 succinctly testified before the trial Court that the deceased person was dead. It also tendered Exhibits A1-A4, B1-B4 and BB to confirm the death of the deceased person. Apart from that the prosecution had tendered Exhibits C and D, the confessional statements of the appellant which were adequately tested by the learned trial

judge in a trial within trial. There is no appeal against the ruling of the trial Court on the trial within trial. Thus, the appellant had accepted the decision of the trial Court that the confessional statement was freely and voluntarily made by him. I had earlier stated that a confessional statement tendered in evidence is part of the evidence of the prosecution. See *Ikemson v. The State* (supra). B

In Exhibit D, the appellant states clearly what happened before the deceased died, Hear him:

"I aim him with my dane gun and fired him on the chest. But he still pursued me with the bullet wound until he fell down and could not rise again. I ran to the village and reported to the village Head one Solomon Ballo "M" of Oyo-wa village via Lokoja L.G.A. The Chief attached one Garba Mohammed to go and check the farm with me. And he reported the same thing to him and the Chief ordered that I should be taken to the police station." C D

On page 43 of the record of appeal, particularly line 28, the appellant testified in Court that he went back to the farm with Mohammed. This piece of evidence is consistent with his confessional statement in Exhibit D. It is a piece of evidence outside the confessional statement which corroborates same. So, apart from the evidence of PW1, PW2 and PW3 including the exhibits listed earlier in this judgment appellant's evidence in Court which is consistent with his confessional statement clearly strengthens and makes the statement most probable. All the issues raised by the learned counsel for the appellant against the statements are issues which were or ought to have been raised during the trial within trial. E F

Although there was no eye witness when the appellant shot the deceased, the prosecution gave evidence through the PWs which gave vent to the confession of the appellant. And in any case, this Court held in Mohammed v. State (2007) 11 NWLR (Pt. 1045) 303 at 230 paragraph F that where an accused person confesses to a crime, in the absence of an eye witness of killing he can be convicted on his confession alone. G
See also *Oche v. State* (2007) 5 NWLR (Pt. 1027) 219. H

For all I have said above, I hold a strong view that the Court below was on a strong wicket when it upheld the conviction and sentence of the appellant upon reliance on his confessional statements. Accordingly I resolve this issue against the appellant.

Although the learned counsel for the appellant in paragraph 5.01 of his brief states that he would argue issues 2 and 3 together, he reneged and argued them separately. For, whereas issue two spans pages 11 to 16, at paragraph 5.14, issue 3 starts from paragraph 5.15 on page 16. It will be recalled that issue 3 had earlier been
 B adjudged incompetent not having derived from any of the grounds of appeal. So arguing the incompetent issue with the competent issue 2 would have created problems since the Court would not be in a position to pick, choose and/or decipher which argument is for
 C which issue. It is not the duty of the Court to sift submissions by learned counsel made on issues raised from competent and incompetent/non existent grounds of appeal. See *Geo-source Nig. Ltd v. Biaragbara* (1997) 5 NWLR (Pt. 506) 607. Since the appellant has in
 D actual fact argued the two issues separately, I shall ignore the statement in paragraph 5.01 of his brief and hold that the issues were argued separately. This is a criminal appeal and I think it deserves the indulgence. I shall now consider issue two separately.

The second issue is whether the learned Justices of the Court of Appeal were right in coming to the conclusion that it is obvious
 E from the evidence before the trial Court that the appellant intentionally killed the deceased. It is the submission of the learned counsel that the lower Court was in error when it held that the appellant intentionally killed the deceased.

According to the learned counsel for the appellant the prosecution failed to prove the essential ingredients of the offence of murder as enunciated in the cases of *Basil Akpa v. The State* (2008) 14 NWLR (Pt.) 72 at 90, *Tunde Adera & Anor v. The State* (2006) 2 SCNJ 255 at 266-267, *Godwin Idebele v. The State* (2006) 2 SCNJ
 G 124 at 133-134 and *Isah v. The State* (2007) 12 NWLR (1049) 582 at 602-604. He opined that the evidence of PW1-PW3 cannot sustain the essential ingredients of the charge against the appellant.

Learned counsel further submitted that contrary to the finding of the two lower Courts, there is no oral or documentary evidence
 H proffered by the prosecution pointing irresistibly, conclusively and compellingly that it was the appellant who intentionally killed the deceased. That there was contradiction in the evidence of PW1 and PW2 in relation to the ownership, recovery and use of the gun i.e. Exhibit E. Therefore, it is unsafe to rely on Exhibits C and D to hold

that the appellant used Exhibit E. It was his view that the only evidence against the appellant is that found in Exhibits C and D which he opines was wrongly relied upon. He urged the Court to resolve this issue in favour of the appellant.

In response, the learned counsel for the respondent submitted that from Exhibits C and D, it is obvious that the appellant intentionally killed the deceased. That when the appellant aimed the gun at the chest of the deceased and shot it, he intended the natural consequence of his action, relying on the cases of *Garba v. State* (2000) 4 SC (Pt. 11) 157 at 163, *The State v. Oludamilola* (2002) NNLR 582 at 589, *Ibikunle v. State* (2007) 2 NWLR (Pt. 1019) 555. B
C

On the contention that it was not proved that the appellant used Exhibit E - the gun, learned counsel submitted that the answer is found in Exhibit D the confessional statement of the appellant and the gun subsequently recovered from him. Moreso, in view of the fact that the appellant stated that after he shot the deceased, he fell down and did not wake up again, there was no need for medical evidence, referring to *Sunday Ihuebeka v. State* (2000) 4 SC (Pt. 1) 203 at 212, *Oforlete v. State* (2000) 7 SC (Pt. 1) 80 at 96. D

As regards issue of contradiction, learned counsel urged the Court to hold that there was no such thing as none exists. Also, an accused person need not personally own a gun before he can use it to commit a crime. On the whole, learned counsel urged the Court to resolve this issue against the appellant. E

It is an elementary proposition of the criminal law that every person is taken to intend the natural and probable consequences of his or her act. And, the consequence of an act may be said to be probable, if a reasonable man would consider its occurrence to be the natural and normal effect of the act. See *Shazali v. State* (1988) 12 SC (Pt. 11) 58, (1988) NWLR (Pt. 93) 164, *R v. Dim* 14 WACA 154 at 155; *Yakubu v. The State* (1980) 3-4 SC 84 at 98, *Atani v. R* (1955) 15 WACA 34. F
G

But, what is intention? The Black's Law Dictionary Ninth Edition by Bryan A Garner, page 883 defines intention as follows: H

"The willingness to bring about something planned or foreseen; the state of being set to do something."

Also, John Salmond, in his book *Jurisprudence*, 378 [Glanville L. Williams ed, 10th Edition (1947) reproduced in *The Law Dictio-*

nary first alluded to above, defines intention thus:

"Intention is the purpose or design with which an act is done. It is the foreknowledge of the act coupled with the desire of it such foreknowledge and desire being the cause of the act, in as much as they law themselves through the operation of the will. An act is intentional if, and in so far as, it exists in idea before it exists in fact, the idea realizing itself in the fact because of the desire by which it is accompanied."

Another learned author, P. H. Winfield, in his book, A Text-book of the Law of Torts p.19 (5th Edition 1950) also defines intention in the following words.

"This signifies full advertence in the mind of the defendant to his conduct, which is in question, and to its consequences, together with a desire for those consequences."

From the above definitions, it seems to me that in an offence of murder, intention, which is not tangible, can be inferred from the instrument used to commit the crime, the force used and the part of the body on which the injury was inflicted. Also, the force with which the accused applied with the instrument on the deceased is also to be taken into consideration. See *Orisakwe v. The State* (2004) 12 NWLR (Pt. 887) 258, *Queen v. Moses Onoro* (1961) 1 All NLR (Pt. 1) 33, *Ejeliwe v. State* (1993) 7 NWLR (Pt. 307) 554, *Nwokearu v. State* (2013) 4-5 SC (Pt. iv) 95 at 122 paras 25-30.

In the instant case, the appellant states emphatically in Exhibit D adjudged to have been freely and voluntarily made, that he aimed his gun at the chest of the deceased at close range and shot him. It was his further evidence that the deceased fell down and could not move again. At that point, he ran to the village head and reported that he had killed a man. In the circumstance, did he intend to kill the man? I had earlier stated in this judgment that a person is taken to intend the natural and probable consequences of his act. So, when the appellant aimed his gun at the chest of the deceased and shot it, did he intend to keep him alive? I do not think so. At least he intended to cause him grievous bodily harm. And in view of the force of a gunshot aimed at the heart, the engine room of a man's life, it can safely be concluded that the appellant in-

tended to kill the deceased by his action, the report he made to the village head notwithstanding. Had the appellant shot the deceased on the leg, maybe, just maybe, one would have thought otherwise. At the age of the appellant, he ought to have known that the part of the body of the deceased he aimed at (the heart) was the last that could have entered his mind if he had intended the man to stay alive. I agree with the lower Court that the appellant intentionally shot and killed the deceased. All the arguments of the learned counsel for the appellant which had nothing to do with whether or not the killing was intentional are of no moment. They are discountenanced. This issue is accordingly resolved against the appellant.

Having resolved the two issues against the appellant, all that remains to be said is that this appeal is devoid of any scintilla of merit and deserves an order of dismissal. Appeal is accordingly dismissed. The judgment of the Court of Appeal delivered on 22nd day of March, 2012 which upheld the conviction and sentence of the appellant to death, is hereby affirmed.

Appeal dismissed.

E

I. T. MUHAMMAD JSC

I read the judgment of my learned brother, Okoro, JSC just delivered. I am in agreement with my brother that the appeal lacks merit and it be dismissed. I, too, dismiss the appeal and affirm the judgment of the Court below.

F

PETER-ODILI JSC

G

I agree with my learned brother, John Inyang Okoro in the judgment and reasoning he just delivered. I shall make some comments in support thereof.

The appellant was convicted and sentenced to death by the High Court of Justice of Kogi State sitting in Lokoja, Coram; S. T. Husseini J. for the offence of culpable homicide punishable under Section 221 (b) of the Penal Code.

Dissatisfied, the appellant approached the Court of Appeal Abuja Division which affirmed what the trial High Court did hence

H

the current appeal to the Supreme Court.

The details of the facts leading to this appeal are captured in the lead judgment and I shall not repeat them.

J. A. Akubo, learned counsel for the appellant on the 28th January, 2016 date of hearing adopted the Brief of Argument filed on the 18/5/2012 wherein were identified three issues for determination which are thus:

1. Whether the Court of Appeal was correct in holding that the trial Court was right in convicting the appellant on the strength of his confessional statements (Grounds 1 of the Notice of Appeal)

2. Whether from the totality of evidence proffered in this case, the appellant ought to have been convicted for a lesser offence of culpable homicide not punishable with death under Section 224 of Penal Code. (Ground 4 of the Notice of Appeal)

The learned Director of public Prosecutions of Kogi State, Mrs. R. A. Alfa adopted the Brief of Argument of the respondent settled by Badama Kadiri, Esq. and filed on the 11/7/12 and in it were formulated two issues for determination, viz.

1. Whether the lower Court was right in upholding the conviction and sentence of the appellant to death contrary to Section 221 (b) of the Penal Code on the strength of his confessional statements. (Ground 1 of the Notice of Appeal)

2. Whether the lower Court was right in coming to the conclusion that the appellant intentionally killed the deceased. (Grounds 2 and 3)

The issues as crafted by the respondent are apt in answering the questions for determination.

ISSUES 1 & 2

These ask whether the lower Court was correct in upholding the conviction and sentence of the appellant on the confessional statements and if the killing of the deceased was intentionally done by the appellant.

Learned counsel for the appellant contended that the Court of Appeal was in error in affirming the appellant's conviction and sentence by the trial High Court based on Exhibits C and D only being the extra judicial statements of the appellant. This being the case because there was no direct evidence of the cause of death by PW1, PW2 and PW3 apart from Exhibits C and D which exhibits were

retracted by the appellant. That the Court of trial ought to have treated those exhibits with caution as they were infested with illegality which made them unreliable and lacking in evidential value. He cited *Udoji Nwadiigbo & Ors. v. Anambra/Imo River Basin Dev. Authority & Anor.* (2010) 19 NWLR (Pt. 1226) 364 at 386; *Adamu Suleman & Anor. v. COP. Plateau State* (2008) 8 NWLR (Pt. 1089) 298 at 318 B etc.

It was further contended that there was no corroboration in the case of the prosecution that would persuade the Court to regard Exhibits C and D as true. Also that the failure of the prosecution to call the brother of the deceased being a vital witness brought into operation Section 149 (d) of the Evidence Act now Section 167 (d) of the Act 2011 (as amended). He relied on *Chukwuka Ogudo v. The State* (2011) 18 NWLR (Pt. 1278) 1 at 45-47. C

Learned counsel for the appellant stated that Exhibits C and D D were admitted in contravention of Section 27 of the Evidence Act as both statements were not positive, direct and voluntary.

For the appellant it was submitted that from the totality of the evidence adduced by the prosecution in this case, the requisite burden of proof as required by Section 13 (1) of Evidence Act now E Section 139(1) of the Evidence Act, 2011 as amended had not been discharged. He cited *Oseni v. The State* (2012) 5 NWLR (Pt. 1293) 351 at 378. That the appellant ought to have been convicted for a lesser offence of culpable homicide not punishable with death under F Section 224 of the Penal Code.

Mr. Akubo of counsel contended that there was no evidence pointing conclusively, irresistible and compelling that it was the appellant who intentionally killed the deceased, Also that there was a material contradiction in the evidence of PW1 and PW2 in relation to G the ownership, recovery and use of the gun that is Exhibit E in this case and so the doubt created should be resolved in favour of the appellant. He referred to *The State v. Azeez* (2008) 14 NWLR (Pt. 1108) 439 at 454; *Ogwa Nweke Onah v. The State* (1985) 2 NSCC H 1361.

Learned counsel for the respondent contended that it was well established that the confessional statements, Exhibits C and D of the appellant were freely and voluntarily made and no better or stronger evidence than a person's admission or confession as the best evi-

dence that the Court can conveniently rely upon to convict its maker. He cited *Dibie v. State* (2007) 9 NWLR (Pt. 1038) 30 at 51; *Nwachukwu v. State* (2007) 17 NWLR (Pt. 1062) 31 at 65-66 etc.

That a confessional statement alone is sufficient to sustain a conviction without any corroboration evidence. He cited *Mohammed B v. State* (2007) 11 NWLR (Pt. 1045) 303 at 320.

On the matter of the material contradiction, learned counsel for the respondent said the contradiction must touch a vital ingredient of the offence with which an accused person is standing trial for it to have an adverse effect on the case of the prosecution. He cited *Dibie v. State* (2007) 9 NWLR (Pt. 1038) 30 at 38; *Uwagbeo v. State C* (2007) 6 NWLR (Pt. 1031) 606 at 610 etc.

That it is patently obvious from Exhibits C and D that the appellant intentionally killed the deceased. The learned counsel for the respondent stated that once the probability of death is high from the act of an accused person, the irrefutable presumption is that he intended to cause death or injury sufficient to terminate the life of the victim. He cited *Garba v. State* (2000) 4 S.C. (Pt. 11) 157 at 163.

That the ingredients of the offence of culpable homicide punishable with death contrary to Section 221 (b) of the Penal Code had been proved beyond reasonable doubt.

The summary of the two divergent standpoints on either side are on the part of the appellant, that the two lower Courts convicted the appellant based on his confessional statements, Exhibits C and D while there was need for corroborating evidence to test the truthfulness of those extra-judicial statements. Also that the Court below failed to apply the six-way test on those statements before affirming the decision of the trial Court. Again of note, that there was absence of intention to cause death of the deceased and so as an alternative to appellant ought to have been convicted for the lesser offence of culpable homicide not punishable by death under Section 224 of the Penal Code.

The contrary stance of the respondent is that the Exhibits “C” and “D” being confessional statements of the appellant are sufficient to sustain the guilt of the appellant and sustain the conviction that no mystery existed surrounding the cause of death of the deceased and as it was glaringly obvious that the appellant shot the deceased the medical evidence ceased to be of any practical legal necessity.

Walking along the route trod by the trial Court, the Court of Appeal per Bada, JCA stated at pp 128-130 thus:

“The appellant admitted on page 1 of Exhibit “C” particularly at the last two lines at the base of the Exhibit, and line 1 of the 2nd page of the same Exhibit that he saw the deceased dead at the scene of crime as a result of his gun shot on him.

The appellant also restated in Exhibit “D” that he aimed the deceased person on his chest and shot him.

The appellant admitted unequivocally in Exhibits “C” and “D” that he shot the deceased and consequently the deceased died.

I agree with the submission of learned counsel for the respondent that there is no better or stronger evidence than a person’s admission or confession. It is indeed regarded as the highest, most satisfactory and best evidence that a Court can conveniently rely upon to convict its maker.

It is clear from evidence placed before the trial Court that the appellant caused the death of the deceased. And it is obvious from Exhibits “C” and “D” that the appellant intentionally killed the deceased.

In Exhibit “D” the appellant said he aimed the deceased with a gun and shot him on the chest.”

The learned Justice of the Court of Appeal stated on as follows:

“The position of the law is that once the probability of death is high from the act of an accused person, the irrefutable presumption is that he intended to cause or injury sufficient to terminate the life of the victim. It is also the presumption of law that a person intends the natural consequence of his act.

In this cause under consideration, the mere fact that the appellant aimed and shot the deceased on his chest with a gun shows that he had the intention of killing the deceased.”

The Court below went on to say at page 130 of the Record as follows:

“The law presumes that a man intends the natural and probable consequences of his act. And the test to be applied is the objective test, namely the test of what a reasonable man would contemplate as the probable result of his acts. If from the intentional act of injury committed, the probability of death resulting is high, the finding should be that the accused intended to cause the death or injury

sufficient in the ordinary cause of nature to cause death. And the result of shooting a person with gun is either to cause the death of the victim or to cause him grievous bodily harm.

The learned counsel for the appellant contended that there was no eye witness evidence but my humble view is that the guilt of an accused can be established by:

- (a) An eye witness account or;*
- (b) Circumstantial evidence or*
- (c) By confessional statement,*

Each of the above modes of establishing the guilt of an accused person can be solely relied upon to sustain an accused person's conviction, See the case of: Nigerian Navy v. Lambert (2007) 18 NWLR (Pt. 1066) page 300 at 314 Para. E."

As a reminder or to refresh or jerk up the memory, the essential ingredients of the offence of culpable homicide punishable with death are that;

- (a) The Deceased had died.*
- (b) The death of the deceased was caused by the accused.*

(c) The act or omission of the accused was intentional with knowledge that death or grievous bodily harm was its probable consequence. See Idowu v. State (2007) 7 SC (Pt. II) 50 at 79-80; Duruwode v. State (2000) 12 SCNJ (Pt. 1) 1 at 16.

In concurrent findings, the two Courts below had no difficulty in stating that those essential elements of the offence of culpable homicide as shown above had been made out beyond reasonable doubt, the required standard of proof.

I agree with learned counsel for the respondent that from the extra-judicial statements of the appellants, Exhibits "C" and "D" that the appellant by his own admission in aiming and shooting the deceased on the chest clearly intended to kill him. It follows therefore that by that act of the appellant, the natural consequence was the termination of the life of the victim and in this the law presumes that the person intends the natural consequence of his act, and the operation of Section 22 (b) of the Penal Code would take place. I rely on Garba v. State (2000) 4 SC (Pt. II) 157 at 163; Ibikunle v. State (2007) 2 NWLR (Pt. 1019) 555.

In the confessional statements, Exhibits "C" and "D" the appellant had stated explicitly how he shot the deceased on the chest

and he died, while he ran to the village head to report what had happened. Even though the lower Court was satisfied that those statements were on their own alone sufficient to ground a conviction, there were also many facts from other witnesses, independent of Exhibits “C” and “D” from which corroboration could be gathered. In this the test for a confessional statement to be accepted and good enough to be used to effect a conviction were met and these are: B

- (i) Anything outside the confession to show that it is true.
- (ii) Is it corroborated in any way?
- (iii) Are the relevant statements of fact made in it (most likely to be) true as far as they can be tested? C
- (iv) Did he have the opportunity of committing the offence?
- (v) Is the confession possible?
- (vi) Is the alleged confession consistent with other facts, which have been ascertained and established? See the cases of: *Ubieho v. State* (2005) 2 SCNJ 1 at 8; *Idowu v. State* (2000) 7 SC 114 at 125 at 126. D

The prime of place of a confessional statement derives from the fact that there is no better or stronger evidence than a person’s admission or confession and that it is considered the best evidence which a Court can rely on easily to convict its maker. E

In this regard, Exhibits “C” and “D” had passed through the crucible of a trial within trial and the Court of first instance found them free and voluntary and so informed the Courts below accepting them of themselves to be sufficient without corroboration upon which to found the guilt of the appellant. See *Dibie v. State* (2007) 9 NWLR (Pt. 1038) 30 at 51; *Nwachukwu v. State* (2007) 17 NWLR (Pt. 1062) 31 at 65-66; *Mohammed v. State* (2007) 11 NWLR (Pt. 1045) 303 at 330; *Alapere v. State* (2001) 2 SC 114 at 135. F

The appellant had had a grouse that the two Courts below had not subjected Exhibits “C” and “D” to the six way test for confessional statements as laid down in *R v Skyes* (1913) 8 CR APP R 233 as approved in *Kanu v. The King* (1952/55) 14 WACA 30 which are as follows: G

- (i) Anything outside the confession to show that it is true.
- (ii) Is it corroborated in any way?
- (iii) Are the relevant statements of fact made in it of facts, true as far as they can be tested? H

(iv) Was the prisoner one who had the opportunity of committing the offence?

(v) Is the confession possible?

(vi) Is the confessional statement passes these tests satisfactorily, a conviction founded on it is invariably upheld unless other grounds of objection exist. If the confessional statement fails to pass the test, no conviction can properly be founded on it and if any is founded on it, on appeal, it will be hard to sustain.

The position of the appellant clearly in the circumstances of this case would not stand, firstly, because there are sufficient pieces of evidence including those proffered by the appellant in his defence from which the possibly desired corroboration could be found and the confessional statements were indeed on their own rock solid, difficult to impugn that on their own would ground a conviction. Therefore the case of *Chukwudi Ogundo v. State* (2011) 18 NWLR (1278) 1 at 45-47 on which the appellant relied did not apply.

From the foregoing and the better and fuller reasoning in the leading judgment, I see no basis for departing from or upsetting what the two lower Courts did in their findings and conclusions. I too find no merit in this appeal which I dismiss.

I abide by the consequential orders made.

M. D. MUHAMMAD JSC

My learned brother John Inyang Okoro, JSC had obliged me in draft his lead judgment just delivered. I entirely agree with his lordship that this appeal lacks merit and that it has failed.

The appeal turns on whether or not Exhibits C and D the extra judicial statements recorded from the appellant are voluntary and same can sustain the conviction of the appellant by the trial Court as affirmed by the Court below. The record of this appeal shows very clearly that a trial within trial was conducted by the trial Court before its finding that the statements are voluntary.

The law remains that any finding of a Court of competent jurisdiction remains valid until same set-aside consequent upon an appeal. See *Vaswani v. Savalakh* (1972) 12 SC 77. The extra judicial statements of the appellant, Exhibits C and D admitted in evidence after the trial within-trial and the trial Court's ruling thereon that the

statements are confessional remain so as the trial Court's finding in that regard has neither been challenged nor set aside. The question the appellant seeks answer to, in my considered view, is open ended. With the trial Court's acceptance of Exhibits C and D in evidence and finding that the statements contain all the facts which constitute the offence it convicted the appellant for, the lower Court cannot be wrong in affirming such a conviction. B

The two Courts below, it is clear from their judgments, are fully aware that conviction on the basis of the confessional statement of an accused person proceeds only where the extra judicial statement is direct and positive. The Courts are also well informed as to the desirability of looking for evidence outside the confessional statement as to the probability of the content of the confessional statement being true. They are further not unaware that such evidence outside the confessional statement might not avail the Court at all times. In such cases, and the instant case, as they rightly found, is one of them, the decision of the trial Court convicting the appellant solely on his confessional statement that is direct and positive meets the requirements of the law. Thus at pages 71 - 72 of the record, the trial Court have enthused as follows:- C
D
E

"A conviction for the Offence of Culpable Homicide (as in this instant case) can be based on Confessional Statements of the Accused Exhibits C and D have been proved to my satisfaction to be direct and positive statements of the Accused person. See, Dibia v. State (2007) 8 NWLR (Pt. 1038). F

Mr. Akubo has talked about facts outside the confessional statement as corroborative facts or factors as to make the allegation look probable.

He cited decision in:- G

1) Yahaya v. State (2009) 1 NCC 120, 134.

2) Odey v. FR.N. (2005) 1 NCC 303, 325, 328.

3) Haruna Isah v. State (2007) 12 NWLR (Pt. 1049) 582, 608-609.

I have considered these authorities and the authorities cited by Mr. Kadri on this same point and this include Nwede v. State (1985) 3 NWLR (Pt. 13) 444 and Mohammed v. State (supra) at page 328-321. H

It can be recalled that there was no eye witness account in this

matter. In such a situation, it is difficult to have corroborative facts except the confession alone. On the authority of Mohammed v. State (supra) I'm well guided that an Accused person can be convicted on his own confessional statement in the circumstances as this."

It is the affirmation of the foregoing findings of the trial Court by the lower Court that learned appellant counsel submits is perverse. It cannot be. Both Courts are right in these concurrent findings and the appellant's failure to show that the findings are perverse signifies the lack of merit in his appeal. See *Sande v. The State* (1982) 4 SC 41, *The State v. Aibangbee* (1998) 3 NWLR (Pt. 84) 548 and *Dibie v. The State* (2007) All FWLR (Pt. 353) 83 at 102 and 110.

For the foregoing and more so the fuller reasons articulated in the lead judgment of my learned brother John Inyang Okoro, JSC, I also dismiss the appeal and affirm the judgment of the lower Court of 22 day of March, 2012 upholding the conviction and sentence of the appellant for culpable homicide under Section 221 (b) of the Penal Code.

E

SANUSI JSC

The appellant was arraigned before Kogi State High Court of Justice (the trial Court), on a single charge of culpable homicide punishable with death, contrary to Section 221 (b) of the Penal Code, Laws of Northern Nigeria. The charge to which the appellant pleaded not guilty on arraignment, reads as below:-

CHARGE

"That you James Afolabi on about 27th day of February, 2009 at Obajanna in Lokoja Local Government Area within the Kogi State Judicial Division shot Abubakar Mohammed (deceased) on the chest with a gun with intention of causing his death, and you thereby committed an offence punishable under Section 221 of the Penal Code."

During the trial, the prosecution, now respondent called three witnesses and tendered some exhibits in proof of its case. The Exhibits tendered by the prosecution include the followings:-

(a) Four negatives and four pictures of the deceased's corpse Exhibits A1 to A4 and B1-B4 respectively.

(b) Post-mortem examination Report - Exhibit BB.

(c) Two confessional statements - Exhibits C and

(d) A gun used in the commission of the offence by the accused/appellant - Exhibit E.

(e) Blood-stained cap and pair of scissors - Exhibits F and G respectively.

The accused, now appellant, testified on his own behalf for his defence without tendering any exhibit. At the end of the trial, the trial Court Coram S.T. Hussaini J. (as he then was,) found the accused/appellant guilty when he held as below:- "On the whole, I am of the firm view that the prosecution has proved their case against the accused beyond reasonable doubt and I convict him as charged and you shall be hung by the neck until you are dead."

Dissatisfied with the judgment of the trial Court, the appellant herein appealed to the Court of Appeal (lower or Court below) without success, as the latter Court affirmed the judgment of the trial Court after dismissing his appeal for being devoid of any merit.

Still aggrieved by the judgment of the lower Court, the appellant further appealed to this Court. To that effect, he filed a notice of appeal dated 18th day of April, 2012 containing four grounds of appeal. The appellant proposed three issues in his brief of argument filed on 18/5/2012 for the determination of his appeal as per his Brief of Argument, which said issues are set out hereunder:-

1. Whether the Court of Appeal was correct in holding that the trial Court was right in convicting the Appellant on the strength of his confessional statements.

2. Whether the learned justices of the Court of Appeal were right in arriving at its conclusion, that it is obvious from the evidence before the trial Court that the Appellant intentionally killed the deceased.

3. Whether from the totality of evidence proffered in this case, the Appellant ought to have been convicted for a lesser offence of culpable homicide not punishable with death under Section 224 of the Penal code.

The learned counsel for the Respondent, Mrs. B. A. Alfa DPP, Kogi State Ministry of Justice, who settled the respondent's brief filed same on 18/5/2012. Therein, she raised two issues for the determination of this appeal and the said dual issues are:-

a. Whether the lower Court was right in upholding the conviction and sentence of the Appellant to death contrary to Section 221(b)

of the Penal Code in the strength of his confessional statements.

b. Whether the lower Court was right in coming to the conclusion that the Appellant intentionally killed the deceased.

Looking at the two sets of issues for determination proposed by the parties, I am of the view that the two issues raised in the respondent's brief of argument are more germane and relevant for the determination of the appeal, since both of them arose from the judgment appealed against without engaging arguments on points not covered by the judgment of the Court below, now being appealed against. Happily enough, the two issues raised by the respondent have similarity with the corresponding first two issues raised in the appellant's brief of argument. The two sets of issues merely differ in the wordings used in couching them. I must state here, that I will be guided by the dual issues raised in the respondents' brief of argument, as they are less verbose and are also straight to the points calling for determination. I will consider the two issues together.

On the first issue for determination, the learned counsel for the appellant submitted that the lower Court was wrong in affirming the death sentence passed on the appellant by the trial Court. Although he conceded that an accused person can be convicted on his confessional statement alone if such confessional statement is direct and positive and made voluntarily, he however opined that there was no direct evidence in the instant case; hence the appellant should not have been convicted by the trial Court based on such confessional statement alone. He also argued that the exhibits were not subjected to the six ways of test laid down by this Court. See *DAWA & ANOR v. THE STATE* (1979) 12 NSCC 334 at 348/349; *DEMO OSENI v. THE STATE* (2012) 5 NWLR (Pt. 1293) 351 AT 378; *CHUKWUKA v. THE STATE* (2011) 18 NWLR (Pt. 1278) 1 at 45 to 47.

The learned appellant's counsel also submitted that the evidence of PWs 1, 2 and 3 and Exhibits BB1, E, F & G tendered at the trial Court were not subjected to the six tests hence he urged this Court to quash the conviction and sentence of the appellant. He added that there was no evidence before the trial Court corroborating the confessional statements outside the contents of Exhibits C and D which makes it probable that the contents of the confessional statements were true. In another submission, it was argued by the

appellant's counsel that Exhibits C and D violated the provisions of Criminal Procedure (statement to police officers) Rules 1960 Cap 30 LNN 1963 as Exhibits C and D were not taken to superior police officer for endorsement.

On issues No.2, the learned counsel for the appellant submitted that the lower Court was in error when it held that the appellant intentionally killed the deceased as there was nothing to show from the record, that the provisions of Section 138 (1) of the Evidence Act now Section 139 (1) of the Evidence 2011 (as amended) had been satisfied. He argued that there were contradictions in the evidence of PW1 & PW2 with regard to the recovery of and ownership of the gun (Exhibit E) used in the commission of the offence by the appellant as shown on page 43 lines 3, page 46 & 47 lines 10 - 13 of the Record. He then urged this Court to resolve this issue in favour of the appellant. He concluded his submissions on this issue, by contending that the only evidence linking the accused/appellant with the gun (i.e. Exhibit E) is the confessional statements Exhibits C and D which according to him cannot be relied upon in the absence of corroboration in the circumstance of this case. He also urged this Court to resolve this issue in appellant's favour.

In her response and while advancing arguments on the first issue, the learned DPP representing for the respondent submitted that the contents of Exhibits C and D had established that the confessional statements were free and voluntary and were also direct and positive as could be gleaned from pages 71 lines 13-15 of trial Court's judgment. She said the appellant while testifying in his defence, stated that he went back to the farm with Mohammed after killing the deceased hence that piece of evidence had corroborated the content of Exhibit D which states that his village Chief sent Garba Mohammed, with the Appellant to check the said farm. She submitted therefore, that the above facts amounted to independent proof outside the confessional statements that the crime was committed. She stated that these facts tally with the test of a confessional statement as mentioned by the appellant's learned counsel. She contended that admission and confession are the best evidence a Court can rely on in convicting an accused person. See *DIBIE v. STATE* (2007) 9 NWLR (Pt. 1038) 10 at 51; *MOHAMMED v. STATE* (2007) 11 NWLR (Pt. 1045) 303. On failure to take the accused/appellant to a superior officer for

the endorsement of the confessional statement in compliance with the provisions of Criminal Procedure (Statement to Police Officer's) Rules, the learned respondent counsel rightly submitted that such exercise was not mandatory even though it is highly commendable. See *DIBIE v. STATE* (supra). On the alleged contradiction in evidence of PW1 & PW2, the learned respondent's counsel argued that only material contradictions are relevant and fatal and the contradiction referred to by the appellant's counsel are not material at all. See *DIBIE v. STATE* (supra). She urged this Court to resolve the first issue against the appellant and in her favour.

Arguing the second issue for determination, the learned counsel for the respondent submitted that the appellant intentionally killed the deceased based on Exhibit D that he aimed the deceased with a gun and shot him on his chest hence the conviction under Section 221 (b) of Penal Code for culpable homicide punishable with death is valid in law once if has been established that he intended to cause grievous bodily harm even if the intention was to cause bodily injury. Again, on the issue of the tendering of weapon used in the commission of a crime, the respondent's counsel submitted that tendering of weapon used in the commission of an offence is not a prerequisite for establishing the offence of culpable homicide. See *Olayinka v. STATE* (2007) 9 NWLR (Pt. 1040) 576 at 575. She also argued that a came can be proved without necessary calling an eye witness, as an offence can be proved by way of confessional statement voluntarily made by an accused or even through circumstantial evidence. See *SUNDAY IHUEBEKA v. STATE* (2000) 4 SC (Pt. 1) 203 at 212. She further remarked that evidence of intent to commit crime can be inferred, depending on the surrounding circumstance of the case and in the present case, the appellant stated that "he aimed at the deceased with a gun and shot him on the chest." Finally, learned counsel for the respondent submitted that she had proved all the ingredients of the offence of culpable homicide punishable with death through the credible evidence she called which she used in proving the offence beyond reasonable doubt against the accused/appellant. In urging this Court to resolve the second issue in her favour, the learned counsel also urged the Court to dismiss the appeal for want of merit.

It needs to be reiterated here that in order to secure conviction

in a charge of culpable homicide punishable with death contrary to Section 221 of the Penal Code, the prosecution has the tasking burden to prove the following ingredients of the offence, namely:-

(a) That the death of a human being has actually taken place;

(b) That such death was caused by the accused.

(c) That the act was done with the intention of causing such bodily injury as:

(i) the accused knew or had reason to know that death would be the probable and not only likely consequence of his act or

(ii) that the accused knew or had reason to know that death would be the probable and not only likely consequence of any bodily injury which the act was intended to cause.

Thus, in order to prove that the appellant had actually killed the deceased, the prosecution should adduce credible evidence linking him with the death of the deceased. This means that there should be evidence of positive act or even negative omission of the appellant which caused injury to the deceased and that the death of the deceased was as a result of such injuries. See *Onah v. State* (1998) ACLR 642 at 656.

In this instant case, the prosecution had established that there was a death of a human being in this case, the deceased, vide the medical report or post mortem report tendered in evidence by it i.e. Exhibit BB.

On the second ingredient of the offence which is whether the accused now appellant could be linked with the death of the deceased, the prosecution tendered confessional statements of the accused/appellant which were voluntarily made by him, namely Exhibits C and D. In those confessional statements the appellant linked himself with the offence when he admitted therein, that he fired a gun shot on the chest of the deceased which certainly led to the death of the deceased. Admittedly, there was no eye witness to the commission of the offence by the appellant, but the confessional statements are so direct and positive as would create no doubt in the mind of any reasonable Court or tribunal. I will later come to the test that they are subjected to the confessional statement but meanwhile, suffice it to say, that the prosecution had also tendered evidence such as the gun with which the appellant fired shot on the chest of the deceased as he himself confessed. It is worthwhile to state here, that

cause of death can be proved by direct or circumstantial evidence and it can also be inferred where the person injured or attacked died immediately as in this instant case. See *Uguru v. State* (2002) 9 NWLR (Pt. 771) 90.

I am however mindful of the fact that whether the evidence is direct or circumstantial it must establish the guilt of the accused beyond reasonable doubt and that the onus in that regard, is on the prosecution and it never shifts. See *Aruna v. State* (1990) 6 NWLR (Pt. 155) 125; *Ubani v. State* (2003) 18 NWLR (Pt. 857) 22, *Ozatu v. State* (1990) 1 NWLR (Pt. 124) 92. In the case at hand, as it is clear as crystal that the appellant had without any provocation shot the defenceless deceased on his chest in the farm, not in an effort to repel any attack from the former. The fact that he shot him on the chest as he himself confessed, the law is trite, that where a person by an unlawful act, causes the grievous bodily harm on another person leading to the death of that person, he is presumed to have intended to kill that person and he will be guilty of culpable homicide punishable with death regardless of his intention. Since a man is presumed to intend the natural consequences of his act. See *Audu v. State* (2003) 7 NWLR (Pt. 820) 516. The third element of the offence had therefore been duly proved by the respondent.

In that regard, I am inclined to agree with the finding of the Court below when it stated thus:-

“In the case under consideration, the mere fact that the appellant aimed and that the deceased on his chest with a gun shows that he had the intention of killing the deceased”.

It is noted by me, that the appellant’s learned counsel rightly submitted that there was no eye witness evidence. However, I wish to say that the guilt of an accused person of an offence can be proved by the prosecution through the following modes.-

- (i) Eye witness account of the commission of the offence;
- (ii) Circumstantial evidence, or
- (iii) By confessional statement. See *NIGERIAN NAVY v. LAMBERT* (2007) 18 NWLR 300 (Pt. 1066).

In this instant case, the prosecution heavily relied in proof of their case, on the confessional statements of the accused/appellant it tendered in evidence i.e. Exhibits C and D. This Court had decided in plethora of cases, that there is no evidence stronger than a persons

own admission or confession. It is settled law however that although a Court can convict an accused person solely by relying on his own confessional statement, it is however desirable to have some evidence outside the confession, which would make it probable that his confession was true. See *DIBIE v. STATE* (supra) *NWAEBONYI v. STATE* (1994) 5 NWLR (Pt. 343) 130; *SOLOLA v. STATE* (2005) 11 NWLR (Pt. 937) 460. I will add here, that a free and voluntary confession of guilt or whether judicial or extra-judicial, if it is direct and positive and properly established, is sufficient to prove the guilty of an accused person. See *SOLOLA v. STATE* (supra) *IDOWU v. THE STATE* (2000) a SC (Pt. 1) 50; *ALARAPE v. STATE* (2001) 14 WRN 1.

In any case, this Court settled the law that confession which is direct and positive can be relied on alone to convict an accused person. It however over length of time evolved some tests for the trial Courts to apply in relying on the confession, in order to convict an offender. The six test that trial Courts should apply in that regard are:-

- (a) Any evidence outside the confession to show that it was true.
- (b) Was the confession corroborated in any way or manner.
- (c) Are the relevant statements of facts made in it likely to be true as far as they can be tested?
- (d) Did the accused have opportunity of committing the offence?
- (e) Is the confession possible; and
- (f) Is the alleged confession consistent with other facts which have been ascertained and established. See the authorities of *IDOWU v. STATE* (supra); *UBIEHO v. STATE* (2005) 2 SCNJ 1 at 8.

I think considering the surrounding circumstances of this case, it will be safe to say that the two confessional statements made by the appellant and relied upon by the two lower Court had applied the above tests and it could be said that they had correctly relied on by the trial Court in convicting the appellant. Firstly evidence abound corroborating the confession. For instance, the village head of the appellant's village assigned one Mohammed to follow the appellant to the scene of the crime where the gun was recovered and the corpse of the deceased picked by the police and later taken to hospital for autopsy.

Since there was no eye witness nobody could know the scene of the crime except the appellant and he was the one who led the person assigned with him by the village head to go there. Also the post-mortem report i.e. Exhibit BB likewise, the bloodstained cap of the deceased victim were tendered. All these pieces of evidence in my view, went along way in establish that the confessions were true and possible and that the appellant had the opportunity of making them and that what they contained were the true account of what had ensued or happened which led to the commission of the crime by the accused/appellant. The trial Court was therefore correct in relying on the said confessional statements in convicting the appellant.

Apropos of the above, for these few comments of mine and for more detailed and thorough reasoning contained in the leading judgment of my learned noble lord JOHN INYANG OKORO, JSC, which I am in entire agreement with and, I also see no merit in this appeal. It is accordingly dismissed by me. I affirm the judgment of the Court of Appeal delivered on 22nd March, 2012 in which the judgment of the trial High Court of Kogi State convicting and sentenced the appellant to death as charged. Appeal is therefore dismissed.

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