

SUPREME COURT OF NIGERIA

FRIDAY 17TH JUNE, 2016. SC. 705/2014

CORAM:- W. S.N. ONNOGHEN, M. D. MUHAMMAD, C. B. OGUNBIYI, K. B. AKA'AH, K. M. O. KEKERE-EKUN, JJSC

ASUQUO OKON ASUQUO APPELLANT
V.
THE STATE RESPONDENT

MURDER - Proof - Cause of death - It is unnecessary to prove cause of death - Where deceased is attacked with lethal weapon - And he died on the spot (H1)

CRIMINAL PROCEDURE - Conviction - Retracted confession - Accused can be convicted on such confession - If Court is satisfied that he made the statement (H2)

EVIDENCE - Contradiction - Weight - It is not every inconsistency in evidence of prosecution witness that is fatal to its case - Save when such is substantial - As to create doubt in the mind of court (H3)

EVIDENCE - Confession - Language - Where accused was cautioned in English - And he signed the caution prior to his statement - He cannot later complain that the same was not translated (H4)

FACTS

This action was commenced at the High Court of Cross River State Calabar, wherein accused/appellant was arraigned for murder contrary to section 319(1) of the Criminal Code Cap C16 Vol. 3 Laws of Cross River State of Nigeria 2004. Four prosecution/respondent's witnesses testified against appellant. PW2 – wife of the deceased particularly gave an eye witness account of how appellant went to the deceased house on the fateful date and therein inflicted machete wounds on the deceased. The deceased died shortly after while he was being conveyed by PW1 to the hospital. Appellant was subsequently arrested and taken to police station.

PW4 was mandated to investigate the case. He recorded appellant's statement tendered as Exhibit 5 at the trial. An earlier

2742 Asuquo v. State (2016) 6 KLR (pt. 387) 2741; (2016) 14

statement of appellant which was recorded by one Sgt. Jane Dickson was tendered without objection and admitted as Exhibit 4. In his defence, appellant testified in person. He denied committing the offence of murder. He equally denied making Exhibit 4 but made a statement which Sgt. Umo recorded. He set up the defence of alibi at the trial. At the conclusion of trial, the court rejected the defence of alibi and held that the offence has been proved beyond reasonable doubt against appellant. Appellant was thus convicted and sentenced to death by hanging. Dissatisfied, appellant lodged an appeal at the Court of Appeal Calabar. The appeal was dismissed. Hence, appellant has brought the present appeal to the Supreme Court.

ISSUE FOR DETERMINATION

Whether the Court of Appeal was right in holding that the respondent proved the charge of murder against the appellant.

HELD (Unanimously dismissing the appeal per

AKA'AH'S JSC)

MURDER - Proof - Cause of death

1. The Court below held that it is hardly necessary to prove the cause of death where a man is attacked with a lethal weapon and he died on the spot since it can be inferred that the wound inflicted caused the death. This is the correct position of the law.

Since PW2 noticed that the neck of the deceased could not stand and he was confirmed dead on arrival in the hospital, the proper inference that it was the matchet wounds which the appellant inflicted on the deceased that caused his death cannot be faulted. (p. 2749 D)

CRIMINAL PROCEDURE - Conviction - Retracted confession

2. Contrariwise, objections woven around the denial of the authorship of statements or the incorrect recording of such statements would not conduce to their inadmissibility. Such statements that fall into the latter category are admissible in evidence. The trial Court, however, will attend to the accused person's reaction of the said statement in his judgment; that is to say, will determine whether such denial enures in favour

of the accused person.

It is well settled that an accused can be safely convicted on his retracted confessional statement if the trial Court was satisfied that the accused made that statement and as to the circumstances which gave credibility to the contents of the confession. It is however, desirable that before a conviction can be properly based on such retracted confessional statement, there should be some corroborative evidence outside the confession which would make it probable that the confession was true. Such corroboration is to be found in the evidence of PW2, exhibits 1, 2A, 28, 2C, 2D and 3.

(pp. 2750 H/2751 D)

EVIDENCE - Contradiction - Weight

3. The appellant also raised the issue of inconsistencies and contradictions in the evidence of the respondent against the appellant. It is not every trifling inconsistency in the evidence of the prosecution witnesses that is fatal to its case. It is only when such inconsistencies or contradictions are substantial and fundamental to the main issues in question before the Court and thus necessarily create some doubt in the mind of the trial Court that an accused is entitled to benefit therefrom.

(p. 2751 F)

EVIDENCE - Confession - Language

4. It is a constitutional requirement that if an accused person does not understand English at all and he makes a statement, it must be recorded in the language he speaks or understands and later translated into English. See Section 36 (6) of the Constitution of Federal Republic of Nigeria 1999 (as amended). Where, as in the present appeal, the appellant was cautioned in English and he signed the caution before making his statement which was recorded in English, the appellant cannot thereafter be heard to complain that the statement was not translated into Efik. (p. 2752 F)

NOTABLE POINT OF INTEREST
ONNOGHEN JSC

1. Prove of murder – Ingredients of

It is now settled law, that in a charge of murder, as in this case, the prosecution has the duty/burden of proving:

- (a) that the deceased died;
- (b) that the death of the deceased was caused by the accused;

B and

(c) that the accused intended to either kill or cause the victim/deceased grievous bodily harm.

C It is also settled law that the above three elements/ingredients of the offence of murder must co-exist at the same time, otherwise the accused person is entitled to be acquitted of the offence so charged. (p. 2753 F)

REPRESENTATION

D Sonny O. Wogu with him, O. A. Abodunrin (Miss), for the Appellant
E. A. Oyebanji with him, M. O. A. Olawepo M. A. Olarewaju and
Opeyemi Adekoya, for the Respondent

CASES REFERRED TO

- E Olalekan v. State (2001) 18 NWLR (pt. 746) 793
- Ahmed v. State (2011) 18 NWLR (pt. 746) 622
- Azu v. State (1993) 15 NWLR (pt. 299) 303
- Akpa v. State (2008) All FWLR (pt. 420) 644
- Madjemu v. State (2001) 5 SCNJ 31
- F Obidozor v. State (1987) 4 NWLR (pt. 67) 48
- Dibie v. State (2007) All FWLR (pt. 363) 83
- Ogudo v. State (2011) 12 SC (pt. 1) 71
- Owie v. State (1985) 4 SC 1
- G Okoh v. State (2014) 8 NWLR (pt. 1410) 502
- Okonji v. State (1987) NWLR (pt. 52) 059
- State v. Aigbangbee (1988) 3 NWLR (pt. 84) 548
- Wankey v. State (1993) 5 NWLR (pt. 295) 542

H **STATUTES REFERRED TO**

Constitution of the Federal Republic of Nigeria 1999, s. 36(6)
Criminal Code Cap C16 vol. 3 Laws of Cross River State of Nigeria
2004, s. 319(1)

BOOKS REFERRED TO

S. T. Hon's Law of Evidence Nigeria vol. 1 pp. 258-259

J. Amadi Contemporary Law of Evidence in Nigeria vol. 1 p. 26

LEAD JUDGMENT BY AKA'AHs JSC

The appellant was charged before the High Court of Cross River State Holden at Calabar with the offence of murder contrary to Section 319(1) of the Criminal Code Cap C16 Vol. 3 Laws of Cross River State of Nigeria 2004 in Charge No.HC/59C/2006. The charge reads thus:-

"STATEMENT OF OFFENCE

MURDER contrary to Section 319(1) of the Criminal Code Cap. C16 Vol. 3 Laws of Cross River State of Nigeria 2004.

PARTICULARS OF OFFENCE

ASUQUO OKON ASUQUO on or about 21st day of August 2006 at Okurikang village in Calabar Judicial Division murdered one Andong Bassey Andong."

In order to prove the offence the prosecution called four witnesses and tendered six exhibits. One of the four witnesses who testified is PW2, the wife of the deceased who gave an eye witness account on how the appellant went to the deceased house armed with a matchet and when the deceased sighted him, he tried to escape but fell in front of the Presbyterian Church which was not far from the house. It was there the appellant inflicted the matchet wounds on the deceased. The deceased died shortly after while he was being conveyed by PW1 to the hospital. It was PW2 who ran to PW1 for help and on rushing to the scene of the crime PW1 saw the deceased in a pool of blood. PW3 who is a neighbour of the deceased heard shouts from the wife of the deceased in the morning of 21/8/2006. He ran out to find out what was happening. He saw the deceased lying on the ground with wounds all over his body and a deep cut on his hand. He heard the deceased shouting "*Udo Udo has killed me*" As he turned around he saw the appellant running away with a matchet in his hand. PW4 was mandated to investigate the case after it had been transferred from Odukpani to the State C. I. D. Calabar. He recorded a statement from the appellant tendered as Exhibit 5. An earlier statement of the appellant which was recorded by Sgt. Jane Dickson on 30/8/2006 was tendered without objection and

admitted as Exhibit 4.

The appellant testified in person. He denied murdering Andong Bassey Andong. He also denied making Exhibit 4 but made a statement which Sgt. Umo recorded. He said he was at his work place by 7am at Calcemco Calabar on 20/8/2006 and Otu Bassey one of his co- workers saw him at work.

The learned trial Judge, Ita J. (as he then was) meticulously evaluated the evidence adduced during the trial and rejected the alibi which the appellant set up when he testified, found that the prosecution proved all the ingredients of the offence of murder against the appellant convicted and sentenced him to death by hanging.

The appellant was dissatisfied with the judgment of the learned trial Judge and appealed to the Court of Appeal, Calabar on a Notice of Appeal containing 7 grounds of appeal.

The appeal was dismissed. The appellant has further appealed to this Court in his Notice of Appeal filed on 21/7/2014 which has 8 grounds of appeal. Comparing the two notices of appeal, the only difference is that the 7 grounds of appeal filed at the Court of Appeal, the 1st ground is the omnibus ground which is not found in the Notice of Appeal to this Court but all the complaints in the other grounds are the same as in the Notice of Appeal to this Court from which a sole issue was raised namely:-

Whether the Court of Appeal was right in holding that the respondent proved the charge of murder against the appellant.

Learned counsel for the appellant enumerated the elements of the offence which must be proved beyond reasonable doubt which are:-

- a. The death of the deceased.
- b. The act or omission of the accused which caused the death;
- c. That the act or omission of the accused stated in (b) above was intentional with knowledge that death or grievous bodily harm was its probable consequence.

He cited several authorities and submitted that the nature of the evidence adduced on behalf of the respondent was fragile which made it susceptible to reasonable doubts which should have been resolved in favour of the appellant giving the following examples:-

- (i) The poor quality of the evidence of the respondents wit-

nesses who are tainted witnesses

(ii) The purported statements made by the appellant which he denied making and therefore inadmissible

(iii) The inexplicable unavailability of the statement made to Sgt. Umoh.

(iv) The appellant's insistence that he set up an alibi upon his arrest and informed the Police accordingly which testimony was not successfully dislodged by cross-examination

(v) Non interpretation of the accused statement from English to Efik to ascertain its correctness.

It is the contention of learned counsel for the appellant that PW1, PW2 and PW3 are tainted witnesses, most especially PW2, the wife of the deceased who claimed to have witnessed the alleged attack on the deceased was not free from equivocation and there were inconsistencies in her evidence which should not have been glossed over.

Learned counsel for the appellant reproduced verbatim the arguments he advanced before the Court below on the evidence of PW1, PW2 and PW3 whom he categorized as tainted witnesses. In resolving the issue the Court below per Nweze JCA (as he then was) stated at pages 133-134 of the record:-

"This submission need not delay us here. As Karibi-Whyte JSC, sagaciously, held in Olalekan v. State (1992) FWLR (Pt.91) 1605, 1628 the evidence of a wife [PW2 was the wife of the deceased person] who witnessed the brutal murder of her husband [as PW2 did on Monday, August 21, 2006] cannot be regarded as that of a tainted witness that would require corroboration because she cannot be said to have "any other interest to serve" than to identify the killer of her husband. As such, she is one "whose evidence is ... deserving of utmost credibility and is probable.

In the same vein, Pw1 and PW3, although relations of the deceased person, do not fall into the category of tainted witnesses. Oguonzee v State (1998) 5 NWLR (Pt.551) 521. Ishola v. State (1978) 9 - 10 SC 18; Ben v. State (2006) 16 NWLR (Pt. 1006) 582; Paul Onyia v. State (2005) 11 NWLR (Pt. 991) 252 Ogunye v. State (1995) 8 NWLR (Pt.413) 333. Even then we endorse the respondent's counsel that the Lower Court found sufficient corroboration of the testimonies of PW1, PW2 and PW3 in exhibits 1, 2A, 2B, 2C, and 2D as

well as exhibits 3, 4, 5 and 6, Yahaya v. State INCC 120. 124. John Peter v. State (1994) 5 NWLR (Pt.342) 45.58.74".

I am in full agreement with the stand taken by the Court below that PW1, PW2 and PW3 were not tainted witnesses whose evidence required corroboration. As stated by Onu JSC in *Olalekan v. State* B (2001) 18 NWLR (Pt. 746) 793 at page 825:

"...it is neither a rule of law or practice that the evidence of relations of victims of a crime need corroboration.

They are neither "tainted" witnesses (see: R v. Omisade (1964) NMLR 67) nor witnesses who have their own purpose to serve (see: C Idahosa v. R 1965 NMLR 85)".

PW2 in her evidence narrated that there was a boundary dispute between her husband's land and the house of the accused whereby a sister of the accused planted plantain very close to their D (PW2) kitchen. The deceased reported the incident to the village council which straightened out the boundary by removing the plantain. This did not go down well with the sister of the accused who quarreled with the deceased and she overheard her telling the deceased that she was going to inform her brother in Bayside Calabar to come E and kill her husband.

In exhibit 5 which the appellant retracted in Court but which PW4 recorded on 1/9/2006, the appellant gave his own version of how the incident happened. He said-

"In addition ... my sister also informed of the problem they F had with the man I killed pertaining to the demarcation of boundary in our compound as we are sharing a common boundary. Upon that information I went to Okurikang village where my sisters are living. I went to Olurikang on Monday 21/8/06. On my getting to the village G questioned the boundary council as was done by the village council.

In other words, I was not comfortable with the demarcation. From there I and the deceased quarrel and lastly we fought. No we did not fight, but we were about to fight then I sensed that he will have power more than me, thus I went to our house and carried a H matchet. Then with the matchet I pursued the deceased and got him in the frontage of the Presbyterian Church Olurikang where the man fell down. At that place I cut him on the hand and leg. After I had cut him, I ran away and dropped the matchet behind our house".

The Court below was absolutely right when it held that even if

PW2 had her own purpose to serve in wanting to exert revenge on the appellant, her evidence was corroborated by exhibit 5. PW4 who recorded exhibit 5 had nothing to do either with the deceased or PW2 and could not have concocted the sequence of events which led to the death of the deceased as stated by PW2.

The appellant denied making exhibits 4 and 5 but the prosecution disproved this when he was asked to write his name and admitted it as exhibit 6. The trial Court compared the writing in exhibit 6 with his name which was written in exhibits 4 and 5 and came to the conclusion that the person who wrote "Asuquo Okon Asuquo" in open Court exhibit 6 also wrote Asuquo Okon Asuquo on exhibits 4 and 5. B
C

The learned trial Judge considered the possible defences raised in exhibits 4 and 5 and concluded that since the appellant wrestled the matchet from the deceased and deceased thereafter ran away while the appellant pursued him and killed him in front of the church 50 meters from the deceased's house there was no justification for his action. D

The Court below held that it is hardly necessary to prove the cause of death where a man is attacked with a lethal weapon and he died on the spot since it can be inferred that the wound inflicted caused the death. This is the correct position of the law. See: Adamu v. Kano NA (1965) SCNLR 65, Mohammed Garba v. State [2000] 12 NWLR [Pt.682] 595 (2000) 4 SC (Pt. 11) 157; Ahmed v. State 120011 18 NWLR (Pt.746) 622. Azu v. State 1199315 NWLR (Pt.299) 303. ***Since PW2 noticed that the neck of the deceased could not stand and he was confirmed dead on arrival in the hospital, the proper inference that it was the matchet wounds which the appellant inflicted on the deceased that caused his death cannot be faulted.*** E
F
G

The elements of murder needed to be proved by the prosecution have been proved beyond reasonable doubt. The claim by the appellant that he raised the defence of alibi is not contained in exhibits 4 and 5 which he retracted in Court. In his oral evidence in Court, he was referring to what took place on 20/8/2006 which was the day previous to the event and this not an alibi. H

Learned counsel for the appellant harped on the statement which the appellant allegedly made to Sgt. Umoh presumably raising

the defence of alibi which was nowhere to be found as opposed to exhibits 4 and 5 which were tendered by the prosecution in which PW4 said he recorded exhibit 5 but appellant denied making exhibit 5 to PW4. On the alleged statement the appellant made, learned counsel contended that the trial Court made a definite finding of fact B which has not been appealed against.

I do not think the learned trial Judge believed the appellant when he denied making exhibits 4 and 5 but made a statement to Sgt. Umoh. The trial Judge considered exhibits 4 and 5 when he said C at pages 51-52 of the record:-

"On exhibits (4) and (5) the accused person confirms that after matchetting the deceased he ran away with the matchet which he threw into a bush behind their (accused's) house. Even if the alibi in this case had been timeously raised, it would have been destroyed by D those pieces of evidence which graphically fix the accused person at the scene of crime".

Did the appellant object to the admissibility of exhibits 4 and 5 as being canvassed by his counsel? During the trial this is what the trial Judge recorded at pages 33-34 when PW4 sought to tender the E statement of the appellant:-

"Statement of accused in the file dated 24/8/2006 Inyang: Says accused person did not make any statement to police anywhere.

Court: Exhibit 4.

Statement made at SCID dated 1/9/2005

F *Inyang: Accused made no statement Court: Exhibit 5".*

When the issue of admissibility of exhibits 4 and 5 were raised at the Court below, the Court stated at pages 134-135 of the records:-

"One last response to counsel's submission here; he challenged G the propriety of admitting the statements the appellant made to the Police. According to him the appellant vehemently objected to their admissibility on the ground that he did not make the said statements, paragraphs 2.10 et seq pages 12 13 of the brief".

With respect, this submission would appear to conflict the re- H quirements relating to objections on the grounds of involuntariness and denial of authorship of a statement.

Contrariwise, objections woven around the denial of the authorship of statements or the incorrect recording of such statements would not conduce to their inadmissibility. Such

statements that fall into the latter category are admissible in evidence. The trial Court, however, will attend to the accused person's reaction of the said statement in his judgment; that is to say, will determine whether such denial enures in favour of the accused person. Akpa v. State (2008) All FWLR (Pt.420) 644; (2007) 2 NWLR (Pt.1019) 500. B

The reason is simple; such questions relate to the weight attachable to them, Madjemu v. State (2001) 5 SCNJ 31; Obidozor v. State (1987) 4 NWLR (Pt. 67) 48, Dibie v. State (2007) All FWLR (Pt. 363) 83; Ogudor v. State (2011) 12 SC (Pt.1) 71, 97; Owie v. State (1985) 4 S.C. 1, 27; see, generally, S. T. Hon (SAN), S. T. Hon's Law of Evidence Nigeria Vol. 1 (Port Harcourt: Pearl Publisher) 2012 258-259; J. Amadi Contemporary Law of Evidence in Nigeria vol. 1 (Port Harcourt: Pearl Publishers, 2011) 260 et seq. In all, we agree with the Lower Court that the prosecution proved the second ingredient of the offence of murder. D

It is well settled that an accused can be safely convicted on his retracted confessional statement if the trial Court was satisfied that the accused made that statement and as to the circumstances which gave credibility to the contents of the confession. It is however, desirable that before a conviction can be properly based on such retracted confessional statement, there should be some corroborative evidence outside the confession which would make it probable that the confession was true. See: Uluebeka v. The State (2000) 7 NWLR (pt.565) 41; Okoh v. State (2014) 8 NWLR (Pt.1410) 502. **Such corroboration is to be found in the evidence of PW2, exhibits 1, 2A, 28, 2C, 2D and 3.** E F

The appellant also raised the issue of inconsistencies and contradictions in the evidence of the respondent against the appellant. It is not every trifling inconsistency in the evidence of the prosecution witnesses that is fatal to its case. It is only when such inconsistencies or contradictions are substantial and fundamental to the main issues in question before the Court and thus necessarily create some doubt in the mind of the trial Court that an accused is entitled to benefit therefrom. See: Okonji v. State (1987) NWLR (Pt. 52) 059; State v. Aigbangbee (1988) 3 NWLR (Pt. 84) 548; Wankey v. State (1993) 5 G H

NWLR (Pt.295) 542; Azu v. State (1993) 5 NWLR (299) 303; Theophilus v. State (1996) 1 NWLR (Pt. 423) 139; Akindipe v. State (2012) 16 NWLR (Pt. 1325) 94. In Akindipe v. State, the Supreme Court per Ngwuta JSC at 113 held that:-

“Though there may be elements of contradictions and inconsistencies in evidence of witnesses at a trial, only those contradictions and inconsistencies shown by the appellant to be substantial and fundamental to the main issue before the Court can lead to a reversal of the judgment appealed against. Minor discrepancy or disparity between a previous written statement and subsequent testimony in Court will not destroy the credibility of the witness”.

In the Court below as in this Court, apart from saying that PW2 did not qualify as an eye witness since she did not witness what precipitated the incident of the deceased running from the shed through the sitting room to the Presbyterian Church where he fell, learned counsel did not point to any contradiction which was substantial and fundamental to the main issue on whether it was the appellant who inflicted the machet wounds that caused the death of the deceased. At the trial Court, learned counsel pointed out that PW2 in one breath said many people came out when she raised an alarm only to turn somersault under cross-examination that people did not come out because of the rain. I do not see how this evidence is material. The fact was established that after the attack the deceased was taken to the hospital where he was confirmed dead.

The last complaint raised by appellant’s counsel is that exhibit 5 was not translated into Efik.

It is a constitutional requirement that if an accused person does not understand English at all and he makes a statement, it must be recorded in the language he speaks or understands and later translated into English. See Section 36 (6) of the Constitution of Federal Republic of Nigeria 1999 (as amended). Where, as in the present appeal, the appellant was cautioned in English and he signed the caution before making his statement which was recorded in English, the appellant cannot thereafter be heard to complain that the statement was not translated into Efik. See Queen v Zakwakwa of Yaro (1960) 1 NCC 8, Nwali v. State (1991) 3 NWLR (Pt.182) 663.

In the latter case where the appellant’s statement was recorded

in Ibo and translated to English language, the Supreme Court held that since both versions (Ibo and English) were tendered in evidence, the Court of Appeal could rely on the English translation since the appellant did not disown the statement in English as not being the correct version of what he said and was recorded in Ibo, I have already shown that when the prosecution applied to tender exhibits 4 B and 5, the learned counsel for the appellant did not raise any objection to their admissibility. All he said was that the appellant did not make any statement.

There is nothing in this appeal that was not adequately addressed in the Court in the Court below. The appeal lacks redeeming features for it to succeed. This is a murder that was dastardly executed by the appellant against the deceased who did not bargain for what befell him. The appellant was rightly convicted of the murder of Andong Bassey Andong and appropriately sentenced to death. D

I therefore find no merit the appeal and it in hereby dismissed. The conviction and sentence of the appellant by the High Court of Cross River State Calabar in Charge No. HC/59C/2006 which was affirmed by the Court of Appeal Calabar in CA/C/168C/2013 is further affirmed by this Court. E

Appeal dismissed.

ONNOGHEN JSC

I have had the benefit of reading in draft, the lead Judgment F of my learned brother, AKA'AH'S JSC just delivered.

I agree with his reasoning and conclusion that the appeal is devoid of merit and should be dismissed.

It is now settled law, that in a charge of murder, as in this case, G the prosecution has the duty/burden of proving:

- (a) that the deceased died;
- (b) that the death of the deceased was caused by the accused;
- and
- (c) that the accused intended to ether kill or cause the victim/ H deceased grievous bodily harm.

It is also settled law that the above three elements/ingredients of the offence of murder must co-exist at the same time, otherwise the accused person is entitled to be acquitted of the offence so charged.

The trial Court found, from the record, that the above three elements co-exist in this case and proceeded to convict and sentence the accused/appellant accordingly. The findings by the trial Court was affirmed by the lower Court.

At page 51 of the record the trial Court found and held as follows -

“On exhibit 4 the accused person says he wrestled the matchet from the deceased. There is no evidence that the deceased had any other weapon with him. Deceased ran away and accused person pursued him and killed him in front of the church 50 metres from deceased’s house from where he started running in those circumstances the matcheting of the deceased with the matchet wrestled from him cannot be excused at law.

On exhibit 5 the accused person says because he conjectured that if he fought physically with the deceased without a weapon the deceased would over power him, he ran to his house and produced a matchet. Upon getting to the deceased with the matchet, the deceased ran away and did so for all of 50 metres until he tripped and fell to the ground. In that helpless situation the accused person said he matcheted the deceased. Matcheting in such circumstances is not excused at law”

At page 52 of the record, the trial Court concluded in that respect thus:

“I therefore find and hold that it was the accused person who inflicted the matchet cuts on the deceased which caused his death”.

After reviewing this evidence on record including the confessional statements of accused/appellant, the Lower Court held, inter alia, as follows:

“Contrary to the submission of the appellant’s counsel the Lower Court, in our humble view was justified in its conclusion that it was the appellant who inflicted the matchet cuts on the deceased person which caused his death. In the first place, the testimonies of PW1 And PW2 fixing the appellant at the locus criminis sufficed to justify the conclusion that it was the accused person who wielded the deadly matchet, the lethal weapon that snuffed life out of the deceased person. In effect the testimony of PW2 was direct evidence; the testimonial evidence of a witness who claimed personal knowledge of the gory details of the appellant’s dastardly act that rendered

her a widow by the fact of her husband's death...."See page 132 of the record of appeal.

I hold the considered view that the Lower Courts cannot be faulted in their above findings/holdings having regard to the facts of the case and evidence on record.

It is very important to note that appellant made confessional statements viz exhibits 4 and 5 in which he confessed to the offence charged. It is settled law that an accused person can legally be convicted on his confessional statement if found to be admissible in evidence and reliable.

In exhibit 4, at page 49 of the record, appellant confessed as follows, inter alia:

"...as he (deceased) was running I pursued him and he fell down there I matcheted him on the right leg and hand, right hand, so blood started rushing..."

At page 50 in exhibit 5, appellant, again wrote inter alia:

"...I went to our house and carried a matchet. Then with the matchet I pursued the deceased and got him in the frontage of the Presbyterian Church Okurikang where the man fell down. At that place I cut him on the hand and leg. After I have cut him I ran away and dropped the matchet behind our house."

On the sub-issue of admissibility and reliance on exhibits 4 and 5 as confessional statements of the appellant I have to point out that appellant did not say that he made the said statements under duress, of upon being beaten up or in any involuntary way/manner etc, which would have necessitated the conduct of a trial within trial procedure to determine their admissibility as required by law. Rather appellant simply denied ever making the statements to the police in which the law is settled that:

"Objections founded on the ground that a statement was not made voluntarily would result in a trial within trial for the determination of its voluntariness..."

Contrariwise, Objections woven around the denial of the authorship of extra judicial statements or the incorrect recording of such statement would not conduce to their inadmissibility. Such statements that fell into the latter category are admissible in evidence"

See page 135 of the record of appeal which I adopt as mine herein. Emphasis supplied by me.

On the other sub-issue of alibi raised by learned counsel for appellant it is very clear that the defence does not avail appellant having regard to the facts and circumstances of the case. The essence of a defence of alibi is that a person cannot normally be present in two different locations simultaneously. In other words, a man cannot
 B be said to be at a different location while allegedly committing an offence at another location at the same time. Where, however, the facts of the case fixed an accused/appellant at the scene of crime as in the instant case, a defence of alibi cannot, in the circumstance be
 C available to him.

In this case, the situation of appellant in relation to the said defence of alibi is made worse by the confessions of appellant in exhibits 4 and 5 which, without doubt fixed appellant in the locus criminis thereby rendering the alleged defence irrelevant and un-
 D available to appellant.

It is for the above reasons and the more detailed reasons contained in the said lead Judgment of my learned brother. AKA'AH'S J.S.C. that I too find no merit whatsoever in the appeal and consequently dismiss same.

E Appeal dismissed.

MUHAMMAD JSC

F Having read before now the lead judgment of my learned brother Aka'ahs JSC, just delivered, I entirely agree with the reasoning and conclusion arrived at by my lord that the appeal lacks merit.

I must emphasize that appellant's grudges that because he had resiled from Exhibits 4 & 5, his extra judicial statements, his appeal
 G must succeed is a grave misunderstanding of the principle that governs the issue he raised. Only statements that have not been voluntarily made by a person purportedly convicted on the basis of the very statements will avail the person on appeal. In the instant case where the two Courts below have found these statements voluntary
 H and rightly so, the appeal naturally fails. I hold it does. For the fuller reasons contained in the lead judgment which I adopt as mine I hereby dismiss the appeal. I abide by all the consequential orders reflected in the lead judgment.

OGUNBIYI JSC

I read in draft the lead judgment of my learned brother Aka'ahs, JSC. I agree that the appeal is devoid of any merit and also dismiss some in terms of the lead judgment.

The two Lower Courts were concurrent in finding the appellant guilty of murder and sentenced him to death by hanging. B

The only issue raised by the appellant is: whether the Court of appeal was right in holding that the respondent proved the charge of murder against the appellant beyond reasonable doubt.

The three elements necessary for the prosecution to prove the accused guilty are all spelt out in the lead judgment. C

The law is trite and well settled that the best evidence against an accused person is his own confession which is very much contained in Exhibits 4 and 5. See the cases of Ogudo V. State (2011) 12 SC (Pt.1) 71 at 97 also Owie v. State (1985) 4 SC 1 at 27. The following reproduction of extract from the statements of the accused/ D appellant from Exhibits 4 and 5 are very informative:-

"...as he was running I pursued him (the deceased) and he fell down there. I macheted him on the right leg and hand, right hand, so blood started rushing..." E

Also from Exhibit 5 the appellant said:-

"... I went to our house and carried a matchet. Then with the matchet I pursued the deceased and got him in the frontage of the Presbyterian Church Okurikang where the man fell down. At that place I cut him on the hand and leg. After I have cut him I ran away and dropped the matchet behind our house." F

It is intriguing that the appellant has raised the defence of alibi and for the first time in the witness box while such defence is to be raised timeously. It is also overwhelming from the evidence of PW2 G and PW3 that the appellant was fixed of the scene of crime and thus rendering the defence of alibi raised on mere illusion which will not avail the appellant in the circumstance.

The law is also trite that even the devil himself does not know the intention of man. Intention is subjective in nature and can only be inferred from a man's act or conduct and thus necessitating the consideration of certain salient features depending on the nature of the offence committed. In the case at hand for instance, the appellant matcheted his victim to death. The evidence of PW2, the wife of H

the victim, is a clear brutal killing of her husband. While the appellant was armed with a dangerous weapon (a matchet) in a menacing manner, there is no corresponding evidence that the victim was either armed or indeed prepared for such an encounter.

The appellant confessed in his statements Exhibits 4 and 5 that he pursued the deceased who was running and he caught up and got him.

It was the evidence of PW2 also that the appellant followed the deceased into his shed where he was working.

Appellant's act was not spontaneous. It was calculated and intentional. A reasonable person in the place of the appellant should have known that the use of a matchet being a lethal weapon would have a devastating effect on his victim. The appellant acted wickedly on the deceased and he should not be spared to live within a decent society. He had no right or reason to have hacked the deceased to death. I agree that the appeal lacks merit and I also dismiss same in terms of the lead judgment of my brother Aka'ahs, JSC.

Appeal dismissed and I affirm the concurrent judgment of the two Lower Courts.

E

KEKERE-EKUN JSC

I have had a preview of the judgment of my learned brother, AKA'AHs, JSC, just delivered. I agree with the reasoning and conclusion that the appeal lacks merit and should be dismissed.

The facts that gave rise to the charge against the appellant have been well summarized in the lead judgment. The appellant has raised a single issue for determination in this appeal, namely:

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

It is settled law that in order to sustain a conviction for murder, the prosecution must establish the following beyond reasonable doubt:

1. The death of the deceased.
2. That the death was caused by the appellant.
3. That the appellant had the intention of causing the death of the deceased or to cause him grievous bodily harm. See *Maiyaki Vs State* (2008) 15 NWLR (Pt.1109) 173 @ 192-193 G-B; Mohammed

Vs the State (1997) 11 NWLR (Pt.528) 341 @ 350 E - G: Igabele vs State (2006) 6 NWLR (Pt.975) 100 @ 116 - 117 D - A. The fact of the death of the deceased was not in dispute.

The appellant has challenged his conviction on the ground that the second and third ingredients were not proved by the prosecution beyond reasonable doubt. B

The appellant has specifically attacked the evidence of PW2, the wife of the deceased and PWs 1 & 3 on the ground that the witnesses are tainted witnesses and their evidence ought not to have been relied upon. A tainted witness has been described as a witness who may or may not be an accomplice, but who, by the evidence he gives (whether as witness for the prosecution or for the defence) may be regarded as having some purpose of his own to serve. See: Oguonze Vs The State (1998) 5 NWLR (Pt.551) 521 (O 554 F; Ishola Vs The State (1978) NSCC 499 @ 509; Omotola & Ors Vs The State (2009) 2 - 3 SC 7; (2009) 7 NWLR (Pt.1139) 148; Alhaji Muazu Ali Vs State (2015) 10 NWLR (Pt.1460) 1. C

PW2, the wife of the deceased testified as to a dispute that arose regarding the boundary between the house where the deceased lived and the appellant's family. The resolution of the dispute by the village council involved the removal of some stems of plantain planted by the appellant's sister. This resulted in a quarrel between the deceased and the appellant's sister with his sister threatening to invite him (appellant) from the village to kill the deceased. She also testified as to how, on the fateful day she witnessed the appellant come into her husband's shed where he was working and raised a matchet to strike him, The deceased ran from the shop and the appellant chased him until he fell in front of the Presbyterian Church where the appellant began to strike him with the matchet. In spite of grabbing the appellant by the waist and pleading with him not to kill her husband, he showed no mercy and threatened to kill her too. She tried to carry her husband "but his neck could not stand." She ran to inform PW1, the deceased's brother who testified that he got to the scene and found his brother in a pool of blood and rushed him to the hospital where he was confirmed dead. F G H

PW3 on the other hand testified that he ran out when he heard shouts and saw the deceased on the ground shouting "*Udo Udo has killed me*" and that he had wounds all over his body. He testified that

he saw the appellant running away with a matchet in his hand.

The evidence of these witnesses was clear and unequivocal. None of the witnesses was discredited under cross-examination.

The fact that PW2 and PW1 are the wife and brother of the deceased is no basis for contending that they are tainted witnesses.

B The onus was on the appellant to show that they had an interest to serve by the evidence they gave beyond speaking the truth in an effort to ensure that justice is done. See: *Ojo vs Gharoro* (2006) 10 NWLR (Pt.987) 173; *Oguonzee Vs State* (supra).

PW2 was an eye witness to the callous murder of her husband.

C The Court had no reason to disbelieve her. Indeed the appellant could have been convicted on the evidence of PW2 alone.

Even though PW1 and PW3 were not eye witnesses to the murder, their evidence corroborated the evidence of PW2 as well as the con-

D tents of Exhibits 4 and 5, the appellant's confessional statements.

I also agree with my learned brother AKA'AH'S, JSC that Exhibits 4 and 5 were properly admitted in evidence as the appellant did not contend that they were not voluntarily made. He merely denied making the statements. Where an accused person denies

E making a statement, the Court will admit it in evidence and determine the weight to be attached to it after considering all the evidence in the case. See: *Akpa Vs The State* (2008) 14 NWLR (Pt.1106) 72; *Saidu v. The State* (1982) 4 SC 41; *Ikpasa Vs A.G. Bendel State* (1991) 9 SC 7 @ 28; *Isma'il Vs The State* (2011) 17 NWLR (Pt.1277)

F 601. This is what the trial Court did in the instant case.

The alleged discrepancy in the evidence of PW2 regarding who took the deceased to the hospital is immaterial. I am of the view that the appellant has failed to advance any cogent reason to warrant interference by this Court with the concurrent findings of the two
G Lower Courts.

For these and the more detailed reasons ably advanced in the lead judgment, I find no merit in this appeal. It is accordingly dismissed.

H