

SUPREME COURT OF NIGERIA
FRIDAY 16TH DECEMBER, 2016. SC. 10/2013
CORAM:- O. RHODES-VIVOUR, M. D. MUHAMMAD,
C. B. OGUNBIYI, C. C. NWEZE, A. SANUSI, JJSC

IREGU EJIMA HASSAN APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Arraignment - Fair hearing - There is no breach of fair hearing against appellant - As he has by admission stated that he was in Court when proceedings were held (H1)

COURTS - Proceedings - Recording of - Judges should ensure that record leaves no one in doubt as to what really happened - As nothing should be left to speculation (H2)

CRIMINAL PROCEDURE - Trial within trial - Conduct of - Where there is objection to admissibility of confession - On basis that same was obtained under duress - Mini trial should be conducted (H3)

EVIDENCE - Confession - Retraction - Where accused denies making statement - The statement should be admitted in evidence - And issue of whether or not he made it is decided at end of trial (H4)

CRIMINAL PROCEDURE - Trial within trial - Procedure - Prosecution leads evidence that confession was voluntary - Whereas accused gives evidence that he was beaten before he confessed (H5)

EVIDENCE - Evaluation - Credibility of witness - Where evaluation is done according to legal principles by trial Court - Appellate Court would be slow to disturb findings of trial Court (H6)

EVIDENCE - Vital witness - Meaning of - He is an eyewitness to the commission of a crime - And one who can give evidence on what is logical and true (H7)

EVIDENCE - Confession - Admissibility of - Judges Rules - Are rules of administrative practice - Which should never be used to defeat justice - But to ensure that confessions are voluntary (H8)

CRIMINAL PROCEDURE - Confession - Effect on co accused - Where accused incriminates co accused - The statement is evidence only against the accused - And not against co accused (H9)

CRIMINAL PROCEDURE - Conspiracy - Ingredients of - The offence is complete once concluded agreement exists - And there must be criminal purpose that the parties share as their common purpose (H10)

MURDER - Proof - Ingredients - Prosecution must prove that there was death - Which was caused by act of accused - And that the act was intentional (H11)

EVIDENCE - Contradiction - Effect - Minor discrepancies between previous written statement and subsequent oral testimony - Do not destroy credibility of a witness (H12)

CRIMINAL PROCEDURE - Confession - Conviction - Once Court is satisfied that confessional statement is voluntary and true - It is safe to convict on such confession (H13)

FACTS

Before the High Court of Kogi State, accused/appellant and two others were charged with criminal conspiracy and culpable homicide contrary to sections 97(1) and 221 (a) of the Penal Code. They pleaded not guilty to both counts. The case against appellant and the others is that they conspired among themselves to kill and did kill the deceased - Madam Oziohu Iregu. Upon his arrest by the police, appellant confessed to the crime. At the trial, prosecution/respondent called four witnesses in support of its case, while appellant gave evidence for himself.

When respondent applied to tender the confessional statement of appellant in evidence, appellant raised an objection on the

ground that the same was obtained from him under duress. A mini trial was therefore conducted by the Court to ascertain the voluntary nature of the confession. At the end of the mini trial, the Court admitted appellant's confession in evidence as Exhibit C. Besides, there was a postmortem report which revealed that the deceased died from multiple violent injuries at the neck. At the end of the trial, the Court relying on the confession and postmortem report, convicted and sentenced them to death. Aggrieved, appellant appealed to the Court of Appeal Abuja Division. The Court affirmed the decision of the trial Court. Aggrieved further, appellant appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the learned Justices of the Court of Appeal were right in affirming the conviction of the appellant when part of the proceedings was held in his absence.
2. Whether the learned Justices of the Court of Appeal were right when they refused to expunge exhibit C, which is manifestly inadmissible in law.
3. Whether the learned Justices of the lower court were right to have affirmed the conviction and sentence of the appellant; when the prosecution grossly failed to establish its case beyond reasonable doubt at the trial.

HELD (Unanimously dismissing the appeal per

RHODES-VIVOUR JSC)

CRIMINAL PROCEDURE - Arraignment - Fair hearing

1. The demands of natural justice are that an accused person must be heard before the case against him is decided. Even the Lord gave Adam an oral hearing despite overwhelming evidence against him that he had eaten the forbidden fruit. See Genesis 3:9-19.

Once an accused person shows that there is an infringement of the principle of natural justice against him, in that proceedings in court continued in his absence it is my view that there has been an infringement of the principle and the trial should be declared a nullity.

The proceedings complained about are those of 23

January 2003 and it is on page 25 of the record of appeal. Where proceedings conducted on 23/1/2008 in the absence of the appellant?

The learned justices of the Court of Appeal examined the record of appeal and found that it was clear from the record of appeal that the accused persons were in court as recorded by the learned trial Judge. The court did observe though, that what was not obvious is at what stage the accused person entered the court before the prosecutor opened their case.

PC Adeyemi is PW3. See his testimony on page 28, he said; “On 24/3/06 I cautioned the 2nd accused person in English language and read it back to him and having said he understood it, signed.”

PC Adeyemi gave the above evidence on 23/01/08. My lords, PW1 would not have said that he knows the three accused persons before this court if they were not before the court, neither would PW3. PW2 would also not describe his relationship with accused persons who are not in court. PW1, PW2 and PW3 could only have said what they said because the appellant and his co-accused persons were physically present in court.

Furthermore, the evidence of PC Adeyemi referred to above is conclusive evidence that the appellant was in court on 23 01 08 as the said evidence was given on 23/01/08. (See evidence of the appellant, PW2 reproduced above). By the appellant’s own admission he and his co-accused persons were indeed in court on 23/01/08. It is though, not clear at what stage the appellant and his co-accused persons entered the court before the State opened its case.

To my mind this is not fatal since there is overwhelming evidence and the appellant’s own admission that he and his co-accused persons were in court on 23/01/08 when proceedings were held. Issue 1 is easily resolved in favour of the respondent. (pp. 4218 F/4219 F/4220 A)

COURTS - Proceedings - Recording of

2. It is common practice in our courts that handle criminal

trials and other matters that on some days the accused persons come late to court. When such a situation presents itself the Judge is expected to be very careful how he records proceedings.

Judges should ensure that the recording of proceedings leaves no one in doubt as to what really happened on the day in question. Nothing should be left to speculation.

(pp. 4220 G/4221 B)

CRIMINAL PROCEDURE - Trial within trial - Conduct of

3. Exhibit C is the confessional statement of the appellant. The issue is whether it was voluntarily made by the appellant, or whether it was beaten out of him. When in the course of trial the prosecution seeks to tender the confessional statement of an accused person, as it happened in this case and there is an objection on the grounds that it was obtained under duress and not voluntarily made, what is in issue is the admissibility in evidence of the confession and the trial Judge must order that a trial-within-trial (mini trial) is held. The purpose of a trial-within-trial is to determine whether or not the confession was voluntary. (p. 4222 E)

EVIDENCE - Confession - Retraction

4. I must observe that where the accused person denies making the confessional statement, the question of whether he made it or not is to be decided at the end of trial by the Judge. Such a statement should be admitted in evidence as the issue of voluntariness does not arise for consideration or decision. (p. 4222 H)

CRIMINAL PROCEDURE - Trial within trial - Procedure

5. The well laid down procedure for conducting a trial-within-trial is as follows:

Since the voluntariness of the confession is challenged the onus is on the prosecution to show that the confessional statement was voluntarily made by the accused person. So the prosecution leads evidence to show that such was the case.

Thereafter, the accused person gives evidence to show that he was beaten up etc before he made the statement. And to prove that he was beaten up he would do well to call witnesses to support his case, and a medical doctor is usually a good witness. (p. 4223 A)

EVIDENCE - Evaluation - Credibility of witness

6. Evaluation of evidence when properly done assists the trial Judge to arrive at the correct conclusion of a case. It is the sole responsibility of the trial Judge to evaluate evidence and where this has been done in accordance with the principles of the law an appellate court would be very slow to disturb the findings of the trial Judge.

There is a distinction between findings of fact based on the credibility of witnesses and findings based on evaluation of evidence. In the latter case an appellate court is in as good a position to evaluate the evidence as the trial court, but it would at the same time give weight to the opinion of the trial Judge.

This is not the position of an appellate court in the former case. Appellate Judges do not see or hear witnesses, so they rely a lot on the findings of the trial Judge.

My Lords, the findings arrived at by a trial Judge at a trial-within-trial are findings of fact based on the credibility of witnesses called by both sides. The learned trial Judge saw and heard the witnesses. He was in the best position to observe them, their demeanour etc before coming to the decision that the confessional state was in fact voluntarily made by the appellant. The court would not disturb that finding. The learned trial Judge in arriving at his findings has not offended any principle of the law. His lordship is correct and the Court of Appeal was right to affirm the finding that exhibit C was voluntarily made by the appellant. (p. 4223 E)

EVIDENCE - Vital witness - Meaning of

7. A vital witness is an eyewitness to the commission of a crime or/and a witness who can give very truthful and relevant

evidence that would resolve the case one way or the other. A witness who gives evidence on what is logical and true is a vital witness. The Superior Police Officer that the appellant was taken to after he wrote exhibit C, (for endorsement) is a vital witness in determining if exhibit C was voluntarily made by the appellant. (p. 4224 C) B

EVIDENCE - Confession - Admissibility of - Judges Rules

8. What is the effect when the Superior Police Officer was not called to give evidence? C

In answering that question it would be important that I examine the Judges Rules and their application in Nigeria. The Judges Rules are rules made by English Judges to guide English Police Officers. The Rules are not Rules of law but Rules of administrative practice. They are rules made for the more efficient and effective administration of justice and therefore should never be used to defeat justice. D

The Court of Appeal in England observed that the court must take care not to deprive themselves by new artificial rules of practice of the best chances of learning the truth. The Judges Rules say that when an accused person makes a confessional statement before a junior Police Officer the statement and the accused person should be taken before a superior Police Officer. This practice in fact is in line with prudence, and that where it is practicable, especially where the only evidence against an accused person is his confessional statement, the Judges Rules should be followed. E F

The sole purpose of the Judges Rules is to ensure that confessions are voluntary. G

In this case, this appellant was cautioned as required by the Rules. He signed, the junior Police Officer also signed. He was taken before a Superior Police Officer who also signed. All that was needed to be done was done except that the superior Police Officer was not called as a witness. To my mind since the Judges Rules were more than complied with in exhibit C, it would be stretching the Rules too far and covering guilt if exhibit C is viewed with suspicion. Exhibit C is a H

genuine confessional statement of the appellant. Not calling the superior Police Officer as a witness has no effect whatsoever on the fact that exhibit C was voluntarily made by the appellant. (pp. 4224 E/4225 C)

B CRIMINAL PROCEDURE - Confession - Effect on co accused

9. The appellant and two others were charged for conspiracy and culpable homicide. They were all convicted. The same complaint was made against them. It is elementary that in a criminal trial where an accused person incriminates a co-accused in his statement to the police, the statement is evidence only against the maker and not against the co-accused. But if the prosecution, police decides to use the statement against a co-accused then the prosecution is bound to make the incriminating statement available to the co-accused.

This is a case where the three accused persons (2nd accused person is the appellant) made a clean breast of their individual involvement in the conspiracy and murder of Madam Oziohu Iregu. The appellant made confessional statement, exhibit C which is similar to the confessional statements of the 1st and 3rd accused persons (exhibits B and D). A careful reading of the judgments of both courts below attest to the fact that the appellant was convicted on his confessional statement, and there was no recourse to the statements of the co-accused persons to convict the appellant. There was thus no need whatsoever for the appellant to be shown the confessional statements of the co-accused persons. I am satisfied that the learned trial Judge did not rely on the confessional statements of the co-accuseds' persons, (exhibit B and D) neither did the Court of Appeal, to affirm the conviction of the appellant.
(p. 4226 B/H)

CRIMINAL PROCEDURE - Conspiracy - Ingredient of

H 10. The offence of conspiracy is complete once a concluded agreement exists. The parties must agree that a course of conduct shall be pursued which will definitely amount to or result in the commission of an offence by one or more of the

parties to the agreement. There must be a criminal purpose that the parties share as their common purpose. (p. 4228 G)

MURDER - Proof - Ingredients

11. To succeed in a charge of culpable homicide under section 221 of the Penal Code, the prosecution must prove the following C beyond reasonable doubt.

(a) **that the person the accused person is charged of killing actually died;**

(b) **that the deceased died as a result of the act of the accused person;**

(c) **that the act of the accused person was intentional and he knew that death or bodily harm was its likely consequence.** (p. 4229 E)

EVIDENCE - Contradiction - Effect

12. Learned counsel for the appellant made heavy weather of contradictions in the case of the prosecution. I must at this stage explain contradiction and discrepancy, and the effect on a case. A piece of evidence contradicts another when it affirms the opposite of what that other evidence has stated, not when there is just a minor discrepancy between them. Two pieces of evidence contradicts one another when they are by themselves inconsistent.

A discrepancy may occur when a piece of evidence stops short of, or contains a little more than, what the other evidence says or contains some minor differences in details. Minor discrepancies between previous written statement and subsequent oral testimony do not destroy the credibility of the witness. When such do (sic, do not) occur it may lead to a suspicion that the witness has been tutored. (p. 4229 H)

CRIMINAL PROCEDURE - Confession - Conviction

13. Once the court is satisfied that a confessional statement was free, voluntary and true it is safe to convict on it.

The trial court was satisfied that exhibit C was voluntarily made by the appellant after a trial-within-trial was con-

ducted. There was no appeal against the ruling of the trial-within-trial. That ruling remains inviolate until set aside. In the confessional statement, exhibit C, the appellant explained how the co-accused persons and himself agreed to kill the deceased.

(p. 4231 F)

B

REPRESENTATION

A. Saiki Esq., with S. O. Alhassan Esq., A. Omotosho Esq., I. T. Hassan Esq., and A. Abdulwahab Miss for the Appellant

Ayoola Ajayi Esq., for the Respondent

C

CASES REFERRED TO

Autu v. State (1975) All NLR 163

Ozaki v. State (1990) All NLR 94

D Yongo v. C.O.P. (1992) 8 NWLR (pt. 257) 36

Bature v. State (1994) 1 NWLR (pt. 320)

Queen v. Igwe (1960) 5 FSC 55

Ikpassa v. Bendel State (1981) 12 NSCC 300

Osuagwu v. State (2013) 1-2 SC (pt. 1) 37

E Ibanga v. Usanga (1982) 5 SC 103

Sanusi v. Makinde (1994) 5 NWLR (pt. 343) 230

Ojegele v. State (1988) Vol. 19 NSCC 76

Smart v. State (2016) 1-2 SC (pt. II) 41

R. v. Richardson (1971) 2 QB 484

F Edwin v. State (19) 2 NWLR (pt. 222) 164

Ajose v. State (2002) 7 NWLR (pt. 766) 302

Musa v. State (2009) 15 NWLR (pt. 1165) 467

G **STATUTES & RULES REFERRED TO**

Penal Code, ss. 97(1), 221(a)

Criminal Procedure Code, ss. 153, 373(1)(f)

Criminal Procedure Law, s. 210

Criminal Procedure (Statement to Police Officers) Rules 1960, r.

H 7(1)(2)

LEAD JUDGMENT BY RHODES-VIVOUR JSC

The appellant, Iregu Ejima Hassan and two others, namely:

Ajoze Iregu and Okareyi Jimoh were on 15 November, 2007 arraigned before the High Court of Kogi State, Holden at Okene, charged with criminal conspiracy and culpable homicide contrary to sections 97(1) and 221 (a) of the Penal Code. The particulars of the offence charged are as follows:

“Ajoze Iregu, Iregu Ejima Hassan and Okaraji Jimoh on or about 25 February, 2006 at Idamha Quarters Ogaminana village in Kogi State Judicial Division agreed to do an illegal act to wit: to commit culpable homicide on Madam Oziohu Iregu” B

“Ajoze Iregu, Iregu Ejima Hassan and Okaraji Jimoh on or about 25 February, 2006 at Idamha quarters Ogaminana village in Kogi State Judicial Division did commit culpable homicide on Madam Oziohu Iregu.” C

The appellant pleaded not guilty to both counts and the trial proceeded. The prosecution called four witnesses at the trial. The appellant gave evidence. There was a mini trial (trial-within-trial to find out whether the appellant made his confessional statement voluntarily or whether it was beaten out of him. Documents marked exhibits A, B, C, D, E, F, G, H were admitted in evidence. D

In a judgment delivered on 27 February, 2009, the learned trial Judge found the appellant and the other two persons guilty on both counts and sentenced the three of them to death. Dissatisfied with the judgment, the appellant filed an appeal. It was heard by the Abuja Division of the Court of Appeal. That court on 4th December, 2012 affirmed the decision of the trial court when it said F

“Having resolved the three issues against the appellant I find no merit in this appeal and it is accordingly dismissed. The decision of the High Court of Kogi State on conviction and sentence delivered on 27 February 2009 is hereby affirmed.” G

This appeal is against that judgment. In accordance with Rules of this court briefs of argument were duly filed and served. The appellant’s amended brief filed on 26 September 2016 was deemed duly filed and served on 3 October, 2016, while the respondent’s brief was filed on 21 October 2013. Learned counsel for the appellant formulated three issues from four grounds of appeal. They are: H

1. Whether the learned Justices of the Court of Appeal were right in affirming the conviction of the appellant when part of the

proceedings was held in his absence.

2. Whether the learned Justices of the Court of Appeal were right when they refused to expunge exhibit C, which is manifestly inadmissible in law.

3. Whether the learned Justices of the lower court were right to have affirmed the conviction and sentence of the appellant; when the prosecution grossly failed to establish its case beyond reasonable doubt at the trial.

The respondent adopted the issues formulated by the appellant, so, since the issues before the court are the issues formulated by the Appellant, it is safe to say they are the real grievance of the appellant. They shall be considered in determining this appeal.

At the hearing of the appeal on 13 October 2016, learned counsel for the appellant Mr. A. Seriki adopted the appellant's amended brief deemed duly filed and served on 13 October 2016 and urged the court to allow the appeal.

Mr. A. Ayeni adopted the respondent's brief filed on 21 October 2015 and urged this court to affirm the conviction and sentence.

The facts are these. The appellant, one of the three accused persons was charged along with the others at a Kogi State High Court with the offence of criminal conspiracy and culpable homicide punishable with death, contrary to sections 97(1) and 221 (a) of the Penal Code. The case for the prosecution was that the accused person/appellant in company of two other accused persons conspired to kill and did kill Madam Oziohu Iregu (deceased). When the appellant was arrested by the Police he made a confessional statement. During trial when the prosecution (state) applied to tender the confessional statement, learned counsel for the appellant objected on the ground that the statement was not voluntarily made, claiming that they were beaten, tortured and hanged by the Police to extract the confession. The learned trial Judge ordered a trial-within-trial. In a ruling rendered after the trial-within-trial the appellant's confessional statement was admitted as exhibit C. Extracts from exhibit C reveals how Madam Iregu Oziohu (deceased) was killed. It reads:

"I am voluntarily wish to state that myself, Ajoze Iregu and Okaraji Jimoh both 'm' are the one conspired and killed the said late

Iregu Oziohu we killed the deceased in our compound on 25/02/2006 at about 10.00 hrs, while we killed her was that on 24/12/2006 at about 18.00 hrs the said Ajoze Iregu m called me and Okaraji Jimoh and said it to our hearing that the deceased was the one who killed my father also she was the one who killed Okaraji Jimoh's mother with her witch and that the deceased has started worrying him and she wanted to kill him and that the earlier the better because if we did not kill her it will affect all of us because she was the one that did not allow us to progress and we both agreed and we carried out the operation successfully on the following day. On that day being 25/02/2006 when we ready for the operation the said Ajoze Iregu held her two legs and somersaulted her on the ground he held the two legs tightly while Okaraji Jimoh held her two hands I then removed knife from Ajoze Iregu waist and I chucked it into the deceased throat where I know that she cannot survived it and we left her in the pool of her blood and we escaped from the compound. Then I heard that Ajoze Iregu 'm' has been arrested myself and Okaraji Jimoh escaped to Owo town in Ondo State before we were later arrested. The knife we used to kill the deceased belongs to Iregu Ajoze 'm' and I returned it to him alter successful operation."

The postmortem report revealed that the deceased died as a result of multiple violent injuries at the neck. There were no eyewitnesses. The appellant and his co-accused persons were convicted on their respective confessional statements and the postmortem report which confirmed that the deceased died from multiple stab wounds to the neck.

ISSUE 1

Whether the learned Justices of the Court of Appeal were right in affirming the conviction of the appellant when part of the proceedings was held in his absence.

Learned counsel for the appellant observed that on 23 January, 2008 when PW1, PW2 and PW3 gave evidence the appellant was absent. He referred to page 25 of the record of appeal for the proceedings of 23 January, 2008. He submitted that the physical presence of an accused person at his trial is a fundamental aspect of fair hearing as enshrined in the Constitution and re-echoed under section 153 of the Criminal Procedure Code. He further observed

that since the appellant was not in court on 23 January 2008 when proceedings continued the judgment of the trial court ought to have been set aside as a nullity.

Opposing the application learned counsel for the respondent' observed that the case was stood down for a period to enable the state produce the appellant in court. He observed that when proceedings resumed PW1 admitted knowing the accused persons before the court. Reference was made to page 25 line 13 of the record of appeal. He further observed that PW2 and PW3 also admitted knowing the three accused persons before the court. Reference was made to page 27 line 9 and page 28 line 20 further observing that PW3 confirmed the presence of the appellant in court. Referring to page 41 line 18, learned counsel observed that the appellant admitted being in court on 23 January, 2008 when PC Adeyemi gave evidence. He submitted that there is overwhelming evidence that the appellant was in court during the proceedings on 23 January 2008. He urged this court to resolve the issue in favour of the respondent.

Section 210 of the Criminal Procedure Law provides for the presence of the accused person at trial. It states:

"210. Every accused person shall subject to the provisions of section 100 and of subsection (2) of section 223, be present in court during the whole of his trial unless he misconducts himself by so interrupting the proceedings or otherwise as to render their continuance in his presence impracticable."

The demands of natural justice are that an accused person must be heard before the case against him is decided. Even the Lord gave Adam an oral hearing despite overwhelming evidence against him that he had eaten the forbidden fruit. See Genesis 3:9-19.

Once an accused person shows that there is an infringement of the principle of natural justice against him, in that proceedings in court continued in his absence it is my view that there has been an infringement of the principle and the trial should be declared a nullity. The proceedings complained about are those of 23 January 2003 and it is on page 25 of the record of appeal. Where proceedings conducted on 23/1/2008 in the absence of the appellant?

Relevant extracts from page 25 of the record of appeal runs as follows:

23-01-08

Coram: Otu J

The State

v

1. Ajoze Iregu (m)

2. Iregu Ejima Hassan (m)

3. Okaraji Jimoh (m)

All present in court, speak Ebira language, Chief Legal Officer for the state Y.S. Adeiza, Esq., for the accused persons (with Olufemi Olatimehin, Esq.)

Jamil, Esq., the case is for continuation of hearing but the accused persons are not in court, humbly ask for a stand down.

Jamil, Esq., we are ready to open our case with our four witnesses in court today.

Court: Interpreter reminded that he is still on his affirmation.

(Sgt) S.O. Otu Judge 23/01/2008

PROSECUTIONS CASE

PW1, PW2, PW3 and PW4 gave evidence. Their evidence covered pages 25, 26, 27, 28, 29, 30, 31 and part of page 32 of the record of appeal. Thereafter the learned trial Judge signed and dated 23/01/08. The next day's proceedings was on 5/03/08.

What really occurred on 23/01/08 in the trial court.

Was the appellant in court?

The learned justices of the Court of Appeal examined the record of appeal and found that it was clear from the record of appeal that the accused persons were in court as recorded by the learned trial Judge. The court did observe though, that what was not obvious is at what stage the accused person entered the court before the prosecutor opened their case.

When PW1 commenced his evidence he said;

"I know the three accused persons before this court."

PW2 said: I know the three accused persons.

PW3 said: I know the accused persons before this court."

The 2 accused person is the appellant. See page 41 of the record of proceedings. The appellant said:

"I was in court when PC Adeyemi told the court that I made a voluntary statement on 24/3/06."

PC Adeyemi is PW3. See his testimony on page 28, he said;

B "On 24/3/06 I cautioned the 2nd accused person in English language and read it back to him and having said he understood it, signed."

C PC Adeyemi gave the above evidence on 23/01/08. My lords, PW1 would not have said that he knows the three accused persons before this court if they were not before the court, neither would PW3. PW2 would also not describe his relationship with accused persons who are not in court. PW1, PW2 and PW3 could only have said what they said because the appellant and his co-accused persons were physically present in court.

E Furthermore, the evidence of PC Adeyemi referred to above is conclusive evidence that the appellant was in court on 23 01 08 as the said evidence was given on 23/01/08. (See evidence of the appellant, PW2 reproduced above). By the appellant's own admission he and his co-accused persons were indeed in court on 23/01/08. It is though, not clear at what stage the appellant and his co-accused persons entered the court before the State opened its case.

F To my mind this is not fatal since there is overwhelming evidence and the appellant's own admission that he and his co-accused persons were in court on 23/01/08 when proceedings were held. Issue 1 is easily resolved in favour of the respondent.

G It is common practice in our courts that handle criminal trials and other matters that on some days the accused persons come late to court. When such a situation presents itself, the Judge is expected to be very careful how he records proceedings. A detailed recording of proceedings which is expected especially from trial Judges would run as follows:

H Registrar - The State v. XYZ

MR. A for the State - The accused persons are not in court.

MR. B for the accused persons – I ask for a stand down my lord to

give the prison authorities time to bring the accused persons to court.
Court - case stood down.

Meanwhile, other matters are heard by the court or the court rises until the accused persons are brought to court.

Court reassembled at 12 noon

Mr. A - The accused persons are now in court.

B

Court - Trial would now proceed.

Judges should ensure that the recording of proceedings leaves no one in doubt as to what really happened on the day in question. Nothing should be left to speculation.

In this example I have shown that the proceedings commenced at 12 noon. The learned trial Judge ought to have stated clearly when proceedings commenced and not leave such vital information in the realm of speculation.

C

ISSUE 2

D

Whether the learned Justices of the Court of Appeal were right when they refused to expunge exhibit C which is manifestly inadmissible in law. Learned counsel for the appellant observed that the superior Police Officer to which the appellant was taken after he made exhibit C is a vital witness that the prosecution must call to give evidence. He submitted that since the prosecution failed to call him it is fatal to the assertion of the prosecution that the statement is voluntary.

E

Reliance was placed on *Auta v. State* (1975) All NLR p. 163. Learned counsel for the appellant observed that the trial Judge failed to evaluate the evidence at the trial-within-trial in that evidence favourable to the appellant was ignored. He submitted that the appellant gave evidence of how he was subjected to severe torture, contending that the learned trial Judge was wrong to reject such uncontroverted evidence and the Court of Appeal was also wrong. He urged this court to re-evaluate the evidence at the trial-within-trial as the findings there from are perverse. He submitted that the prosecution failed to prove that the statement, exhibit C was voluntary.

F

Learned counsel for the appellant observed that the appellant was not shown the confessional statements of his co-accused person, contending that this is contrary to Rule 7 of the Criminal Procedure (Statement to the Police) Rules. 1960 Volume 4 Laws of

H

the Northern Nigeria, 1963 made pursuant to section 373(1) (f) of the Criminal Procedure Code. He submitted that once the statements of suspects are taken and they are to be tried for the same offence, the Police is obliged to show the statement of the accused to each of them. Reference was made to Ozaki & Anor. v. State (1990) All NLR p. 94, (1990) 1 NWLR (Pt. 124) 92; Yongo v. C.O.P. (1992) 8 NWLR (Pt. 257) p. 36.

He urged this court to expunge exhibit C from the record of appeal.

Learned counsel for the respondent observed that exhibit C is the confessional statement of the appellant admitting to guilt of the offence charged. He submitted that the learned trial Judge was right to admit the statement after conducting a trial-within-trial and finding that it was indeed a confessional statement, voluntarily made by the appellant. He contended that a court can convict on a confessional statement. Reliance was placed on Bature v. State (1994) 1 NWLR (Pt.320) p.

He observed that the appellant made confessional statement admitting committing the crime and the statement was similar to evidence of 1st and 3rd accused persons confessional statements. Concluding, he submitted that the appellant duly confessed voluntarily to committing the offence of culpable homicide punishable with death.

Exhibit C is the confessional statement of the appellant. The issue is whether it was voluntarily made by the appellant, or whether it was beaten out of him. When in the course of trial the prosecution seeks to tender the confessional statement of an accused person, as it happened in this case and there is an objection on the grounds that it was obtained under duress and not voluntarily made, what is in issue is the admissibility in evidence of the confession and the trial Judge must order that a trial-within-trial (mini trial) is held. The purpose of a trial-within-trial is to determine whether or not the confession was voluntary.

I must observe that where the accused person denies making the confessional statement, the question of whether he made it or not is to be decided at the end of trial by the Judge. Such a statement should be admitted in evidence as

the issue of voluntariness does not arise for consideration or decision. See Queen v. Igwe (1960) 5 FSC p. 55, (1960) SCNLR 158; Ikpassa v. Bendel State (1981) 12 NSCC p. 300; Osuagwu v. State (2013) 1-2 SC (Pt. 1) p. 37.

The well laid down procedure for conducting a trial-within-trial is as follows:

Since the voluntariness of the confession is challenged the onus is on the prosecution to show that the confessional statement was voluntarily made by the accused person. So the prosecution leads evidence to show that such was the case. Thereafter, the accused person gives evidence to show that he was beaten up etc before he made the statement. And to prove that he was beaten up he would do well to call witnesses to support his case, and a medical doctor is usually a good witness. A trial-within-trial was held to test the voluntariness of exhibit C. The appellant said that he was not able to withstand the beating so he signed the statement. He did not call any witness. The learned trial Judge evaluated evidence led and delivered a ruling on 9 July, 2008 wherein he admitted the appellant's confessional statement as exhibit C.

Now, did the learned trial Judge evaluate evidence given at the trial-within-trial?

Evaluation of evidence when properly done assists the trial Judge to arrive at the correct conclusion of a case. It is the sole responsibility of the trial Judge to evaluate evidence and where this has been done in accordance with the principles of the law an appellate court would be very slow to disturb the findings of the trial Judge. See Ibanga v. Usanga (1982) 5 SC p. 103; Sanusi v. Makinde (1994) 5 NWLR (Pt. 343) p. 230.

There is a distinction between findings of fact based on the credibility of witnesses and findings based on evaluation of evidence. In the latter case an appellate court is in as good a position to evaluate the evidence as the trial court, but it would at the same time give weight to the opinion of the trial Judge. This is not the position of an appellate court in the former case. Appellate Judges do not see or hear witnesses, so they rely a lot on the findings of the trial Judge.

My Lords, the findings arrived at by a trial Judge at a trial-within-trial are findings of fact based on the credibility of witnesses called by both sides. The learned trial Judge saw and heard the witnesses. He was in the best position to observe them, their demeanour etc before coming to the decision that the confessional state was in fact voluntarily made by the appellant. The court would not disturb that finding. The learned trial Judge in arriving at his findings has not offended any principle of the law. His lordship is correct and the Court of Appeal was right to affirm the finding that exhibit C was voluntarily made by the appellant.

A vital witness is an eyewitness to the commission of a crime or/and a witness who can give very truthful and relevant evidence that would resolve the case one way or the other. A witness who gives evidence on what is logical and true is a vital witness. The Superior Police Officer that the appellant was taken to after he wrote exhibit C, (for endorsement) is a vital witness in determining if exhibit C was voluntarily made by the appellant.

What is the effect when the Superior Police Officer was not called to give evidence? In answering that question it would be important that I examine the Judges Rules and their application in Nigeria. The Judges Rules are rules made by English Judges to guide English Police Officers. The Rules are not Rules of law but Rules of administrative practice. They are rules made for the more efficient and effective administration of justice and therefore should never be used to defeat justice. See Ojegele v. State (1988) Vol. 19 NSCC p.76, (1988) 1 NWLR (Pt.71) 414; F. Smart v. State (2016) 1-2 SC (Pt. II) p. 41, (2016) 9 NWLR (Pt. 1518) 447. In R. v Richardson (1971) 2 QB p. 484.

The Court of Appeal in England observed that the court must take care not to deprive themselves by new artificial rules of practice of the best chances of learning the truth. The Judges Rules say that when an accused person makes a confessional statement before a junior Police Officer the statement and the accused person should be taken before a superior Police Officer. This practice in fact is in line with prudence, and that

where it is practicable, especially where the only evidence against an accused person is his confessional statement, the Judges Rules should be followed. The Federal Supreme Court did not quite agree with the above reasoning in *Nwigboke & Ors. v. The Queen* (1959) 4 FSC p. 101, (1959) SCNLR 248 @ page 250, paras. G-H. The F.S.C. held as follows: B

“We do not however, agree with the Judge that where the practice is not followed, the statement should necessarily be viewed with suspicion we are not prepared to go to the length of laying down as a general rule that where it (the practice) is not observed the statement should be viewed with suspicion.” C

The sole purpose of the Judges Rules is to ensure that confessions are voluntary.

In this case, this appellant was cautioned as required by the Rules. He signed, the junior Police Officer also signed. He was taken before a Superior Police Officer who also signed. All that was needed to be done was done except that the superior Police Officer was not called as a witness. To my mind since the Judges Rules were more than complied with in exhibit C, it would be stretching the Rules too far and covering guilt if exhibit C is viewed with suspicion. Exhibit C is a genuine confessional statement of the appellant. Not calling the superior Police Officer as a witness has no effect whatsoever on the fact that exhibit C was voluntarily made by the appellant. D
E
F

Did the learned trial Judge rely on the confessional statement of the co-accused (i.e. 1st and 3rd accused persons) to convict the appellant (the 2nd accused person.)?

Rule 7(1) and (2) of the Criminal Procedure (Statement to G Police Officers) Rules 1960 states that:

“7(1) When a police officer has decided to make the same complaint against two or more persons and their statements are taken separately, the police officer shall not read such statements to the other person or persons, but each of such persons shall be given by H the police officer a copy of such statements and nothing shall be said or done by the police to invite a reply:

Provided that where such a person is an illiterate, the state-

ment may be read over or interpreted to him apart by some person other than a police officer and anything said to such reader by such person when the statement is read shall not be admissible in evidence against him.

(2) *If such a person desires to make a statement in reply, a caution shall be administered.”*

The appellant and two others were charged for conspiracy and culpable homicide. They were all convicted. The same complaint was made against them. It is elementary that in a criminal trial where an accused person incriminates a co-accused in his statement to the police, the statement is evidence only against the maker and not against the co-accused. But if the prosecution, police decides to use the statement against a co-accused then the prosecution is bound to make the incriminating statement available to the co-accused. See R v. Afose (1934) 2 WACA p.118.

In finding the appellant and the other two accused persons guilty of conspiracy and culpable homicide the learned trial Judge said:

“...from the totality of evidence before this court including in particular exhibits F, G, H and the confessional statements of the accused persons. exhibits B, C, and D I have no doubt in my mind that the three accused persons inflicted violent multiple injuries on the deceased with a knife on her neck and that such injuries caused the death of the deceased by name Oziohu Iregu...”

Agreeing with the learned trial Judge the Court of Appeal said:

“...appellant in his confessional statement stated the motive for the gruesome attack of the deceased with a knife.... Therefore, the prosecution in the instance appeal from the record did prove beyond reasonable doubt that the act of the appellant caused the death of the deceased and the appellant’s intention was clear from his confessional statement...”

This is a case where the three accused persons (2nd accused person is the appellant) made a clean breast of their individual involvement in the conspiracy and murder of Madam Oziohu Iregu. The appellant made confessional statement,

exhibit C which is similar to the confessional statements of the 1st and 3rd accused persons (exhibits B and D). A careful reading of the judgments of both courts below attest to the fact that the appellant was convicted on his confessional statement, and there was no recourse to the statements of the co-accused persons to convict the appellant. There was thus no need whatsoever for the appellant to be shown the confessional statements of the co-accused persons. I am satisfied that the learned trial Judge did not rely on the confessional statements of the co-accused persons, (exhibit B and D) neither did the Court of Appeal, to affirm the conviction of the appellant.

ISSUE 3

Whether the learned justices of the lower court were right to have affirmed the conviction and sentence of the appellant; when the prosecution grossly failed to establish its case beyond reasonable doubt.

Learned counsel for the appellant observed that exhibit C ought not to have been admitted in evidence by the trial court. He urged this court to expunge it, observing that if this is done there is no evidence upon which this sentence and conviction of the appellant could be based. He observed that failure to call the Superior Police Officer who was alleged to have read the statement to the appellant before he confirmed it, renders the statement worthless, further observing that the statement, exhibit C should not be relied on since it was not put to test to see if there is other available evidence to ascertain its reliability. Reference was made to *R v. Kanu* (1952) 14 WACA p.30.

On manifest contradictions in the case of the prosecution he observed that in exhibit H, the medical report, stated that the cause of death was multiple injuries to the neck of the deceased, while in the confessional statement exhibit C, the appellant said he stabbed the deceased on the neck once. He submitted that this contradiction was not explained, and so reasonable doubt as to the cause of death is established. Reliance was placed on *Edwin v. State* (19) 2 NWLR (Pt.222) p. 164; *Ajose v. State* (2002) 7 NWLR (Pt.766) p. 302. He further submitted that on the basis of the contradiction it cannot

be said that the appellant caused the death of the deceased. He observed that exhibit H also showed that the corpse on which postmortem examination was conducted was received on 23/2/06 by the doctor, observing that this is in sharp contrast to exhibits E, F, and G which all stated that the deceased died on 25/2/06.

B Finally, he observed that PW1 said in evidence that it was Ozohu Iregun that was killed by the appellant and his co-accused, while exhibit H shows the corpse of Oziohu Iregu, contending that there was no evidence from the prosecution to show that Oziohu Iregu and Ozohu Iregu are one and the same person. He urged this court to acquit and discharge the appellant since the prosecution did not prove the case beyond reasonable doubt.

Learned counsel for the respondent observed that exhibit F states the approximate date of death as 25/2/06, contending that D PW1, 1st and 3rd accused person and the appellant gave the same evidence, submitting that date of death of deceased was an error and not a contradiction as it does not affect the substance of the issue to be decided. Reliance was placed on Musa v. State (2009) 15 NWLR (Pt.1165) p. 467.

E He urged the court to hold that the deceased died on 25/2/06. He submitted that it is dear and obvious that the death of the deceased was a result of the combined acts of the appellant, the 1st and 3rd accused persons. He urged this court to hold that the prosecution duly proved the charge/s against the appellant beyond reasonable doubt.

F Section 96(1) of the Penal Code defines criminal conspiracy. It reads:

“96(1) when two or more persons agree to do or cause to be done-

(a) an illegal act; or

(b) an act which is not illegal by illegal means, such an agreement is called a criminal conspiracy.”

The offence of conspiracy is complete once a concluded agreement exists. The parties must agree that a course of conduct shall be pursued which will definitely amount to or result in the commission of an offence by one or more of the parties to the agreement. There must be a criminal purpose

that the parties share as their common purpose. See Adejobi & Anor. v. State (2011) 6-7 SC (Pt.VI) p. 65, (2011) 12 NWLR (Pt. 1261) 347; State v. Salawu (2001) 12SC (Pt.IV) p.191,(2011) 18 NWLR (Pt. 1279) 580.

Culpable homicide is defined in section 220 of the Penal Code. It reads:

“220. Whoever causes death-

(a) by doing an act with the intention of causing death or such bodily injury as is likely to cause death, or

(b) by doing an act with the knowledge that he is likely by such act to cause death; or

(c) by doing such a rash or negligent act, commits the offence of culpable homicide.

In *Smart v. State* (2016) 1-2 SC (PUI) p. 41, 82016) 9 NWLR (Pt. A 1518) 447 at page 479-480, paras. H-A I explained proof beyond reasonable doubt thus:

“Proof beyond reasonable doubt does not mean proof beyond all doubt, or all shadow of doubt. It simply means establishing the guilt of the accused person with compelling and conclusive evidence. A degree of compulsion which is consistent with a high degree of probability.”

To succeed in a charge of culpable homicide under section 221 of the Penal Code, the prosecution must prove the following

(a) that the person the accused person is charged of killing actually died;

(b) that the deceased died as a result of the act of the accused person;

(c) that the act of the accused person was intentional and he knew that death or bodily harm was its likely consequence. See State v. John (2013) 1 NWLR (Pt.1368) p. 337.

Now was (a), (b) and (c) above proved beyond reasonable doubt?

“That the person the accused person is charged of killing actually died.”

Learned counsel for the appellant made heavy weather of contradictions in the case of the prosecution. I must at this stage explain contradiction and discrepancy, and the effect

on a case. A piece of evidence contradicts another when it affirms the opposite of what that other evidence has stated, not when there is just a minor discrepancy between them. Two pieces of evidence contradicts one another when they are by themselves inconsistent. See Gabriel v. State (1989) 5 NWLR

B (Pt.122) p. 457.

A discrepancy may occur when a piece of evidence stops short of, or contains a little more than, what the other evidence says or contains some minor differences in details. Minor discrepancies between previous written statement and subsequent oral testimony do not destroy the credibility of the witness. When such do (sic, do not) occur it may lead to a suspicion that the witness has been tutored.

D PW1 gave evidence that it was Ozohu Iregu that was killed by the appellant, while exhibit H (report of medical practitioner) shows corpse as that of Oziohu Iregu. So who was killed by the appellant? After examining relevant exhibits it can be seen that in exhibits E, F and G, the warrant to bury, the postmortem examination, and the death report to coroner the name of the deceased is given as Oziohu E Iregu, while in exhibit H, the report of medical practitioner the name of the deceased is given as Ozohu Iregu. PW1 gave evidence. He is the uncle of the three accused persons, the he appellant inclusive. The deceased is his elder sister. He gave her name as Oziohu Iregu. F In view of the fact that the name of the deceased was given on exhibit H as Ozohu Iregu but on exhibits E, F, G as Oziohu Iregu, it is clear to me that Ozohu Iregu and Oziohu Iregu is one and the same person. A 90 year old female was the deceased, she actually died. This is clearly proof beyond reasonable doubt that Oziohu Iregu is G dead.

“On whether the deceased died on 23/2/06 or 25/2/06.”

The Court of Appeal in coming to the conclusion that the deceased died on 25/2/06 reasoned as follows:

H *“... the appellant is his extra judicial confessional statement, exhibit C said we killed the deceased in our compound on 25/02/06 at about 10.00 hrs. It is therefore indisputable from the totality of evidence adduced at the court below that the deceased was killed on 25/2/06 and was taken to hospital on the same date 25/2/06....”*

An examination of exhibits C, the appellant’s confessional

statement, F the postmortem examination report, G the death report and H the medical report form all state that it was on 25/2/06 the corpse was received at the mortuary. It was only in exhibit H that 23/2/05 is inserted as date of receipt of the corpse, but also in exhibit H, 25/2/06 is given as the date the deceased was taken to the mortuary for postmortem. To my mind this is a mere discrepancy since both the prosecution and defence witnesses gave the date of death as 25/2/06.

“On whether the deceased died from multiple injuries as stated in exhibit H or from one stab to the throat.”

The Court of Appeal resolved the issue when it said that:

“... there is no disparity, as the Doctor reported multiple injuries on the root of the neck. Whilst appellant said he chucked the knife inside the neck ... there is no contradiction to raise doubt. The effect of one stab can result in multiple injuries that is not unusual ...”

In exhibit H, cause of death in the opinion of the medical doctor is given as multiple violent injuries to the root of the neck the appellant in his confessional statement, exhibit C said and I quote him:

“I then removed knife from Ajoze Iregu waist and chucked it into the deceased throat...”

Whether he stabbed her once or several times is irrelevant. The important fact is that she died from stab wounds on her throat. C There is no contradiction. In fact exhibit C corroborates exhibit H that the deceased died from violent injuries on her throat.

“That the deceased died as a result of the act of the accused person.”

Once the court is satisfied that a confessional statement was free, voluntary and true it is safe to convict on it. G See Egbohonome v. State (1993) 7 NWLR (Pt. 306) p. 383; Obiasa v. Queen (1962) 2 SCNLR p. 402; Osuagwu v. State (2013) 5 NWLR (Pt. 1347) p. 360.

The trial court was satisfied that exhibit C was voluntarily made by the appellant after a trial-within-trial was conducted. There was no appeal against the ruling of the trial-within-trial. That ruling remains inviolate until set aside. In the confessional statement, exhibit C, the appellant explained how H

the co-accused persons and himself agreed to kill the deceased.

Relevant extracts from exhibit C reproduced earlier on in this judgment reads as follows:

B “... on that day 25/2/2006 when we ready for the operation the said Ajoze Iregu held her two leg and somersaulted her on the ground, he held the two leg tightly while Okarayi Jimoh held her two hands I then removed knife from Ajoze Iregu waist and I chucked it into the deceased throat where I know that she cannot survived ...”

C The postmortem report revealed that the deceased died as a result of multiple injuries to her neck. That is to say exhibits F the postmortem report, H, report of medical practitioner corroborate the confessional statement exhibit C that the deceased died from multiple violent injuries to the neck. The deceased died from stab wounds inflicted on her by the appellant, (see exhibit C). I am in the D circumstances satisfied that the fact that the deceased died as a result of the act of the accused person was proved beyond reasonable doubt.

“That the act of the accused person was intentional and he knew that death or bodily harm was its likely consequence.”

E There can be no doubt whatsoever that the act of the appellant stabbing the deceased on her neck with a knife was intentional and he knew that death was its likely consequence. This to my mind is proof beyond reasonable doubt that the appellant intended the natural consequences of his action. That is to say he intended that F Oziohu Iregu dies, and she did die in a pool of her own blood.

The offence of conspiracy was complete when the appellant and his co-accused persons agreed to kill Madam Oziohu Iregu. There was thus a criminal purpose that the appellant and his co-accused shared as their common purpose. To kill Madam Oziohu Iregu.

G After examining exhibits C, F, G, H, I am left in no doubt whatsoever that it was the appellant, assisted by his co-accused who inflicted stab wounds to the neck of the deceased with a knife. Madam Oziohu Iregu died from the injuries on her throat.

H In his confessional statement, exhibit C, the appellant stated the motive for his horrendous attack on the deceased with a knife. The standard of proof required, proof beyond reasonable doubt was comfortably surpassed. The vicious act of the appellant caused the death of the deceased.

There is no merit in this appeal. Appeal dismissed.

MUHAMMAD JSC

I had the privilege of reading in draft the lead judgment of my learned brother Rhodes-Vivour, JSC just delivered. I agree with him that the appeal lacks merit and for me, too, it stands dismissed. B Having woefully failed to establish that the concurrent findings of facts by the two courts below are perverse, the appellant has, therefore, not met the pre-condition that entitles him to a reversal of the lower court's judgment he appeals against. See Eholor v. Osayande C (1992) LPELR - 8053 (SC), (1992) 6 NWLR (Pt. 249) 524 and Okoye & Anor v. Obiaso & Ors. (2010) LPELR - 2507 (SC), (2010) 8 NWLR (Pt. 1195) 145 SC. It is for this and more so the further reasons advanced in the lead judgment that I also dismiss the appeal. I abide by the consequential orders made in the lead judgment. D

OGUNBIYI JSC

I have read in draft the lead judgment of E my learned brother Rhodes-Vivour JSC. I agree that the appeal is devoid of any merit E and should be dismissed.

Briefly and just for purpose of emphasis, I wish to state that the appellant is appealing against concurrent judgment of two lower courts. There is a burden placed on him therefore to show convincingly that the decision arrived at, is either erroneous or is shown to F have occasioned a miscarriage of justice or have been perversely reached. See Onyejekwe v. The State (1992) 3 NWLR (Pt. 230) 444 also Posu v. The State (2011) All FWLR (Pt. 565) 234 at 249, (2011)2 NWLR (Pt. 1234) 393. The appellant have not shown sufficient or G any reason at all why the judgment should be interfered with.

Furthermore, when regard is had to the statement of the appellant exhibit C, same is very revealing and over whelming against the appellant. It is pertinent to state that there cannot be a better H evidence than that which is within the knowledge of the person who testify thereto, the commission of an offence. It is the best because the information given is within his frame of mind and could not have been formulated. This is especially where the confessional statement

made tallies with, and is consistent with the acts or events leading to the commission of the offence complained of.

My brother Rhodes-Vivour, JSC has dealt with this appeal exhaustively and I adopt the conclusion in terms of his endorsing and affirming the judgments of the two lower courts. I also dismiss this appeal in like manner.

NWEZE JSC

My Lord, Rhodes-Vivour, JSC, obliged me with the draft of the leading judgment just delivered now. I, entirely agree with His Lordship that this appeal, being unmeritorious, ought to be dismissed.

As my Lord pointed out in the leading judgment, when, as happened at the trial court, an objection is taken as to the admissibility of a confessional statement because it was not made voluntarily, the trial court is under obligation to conduct a trial-within-trial. As this court explained in *Dairo v. FRN* (2015) All FWLR (Pt. 776) 486, 518-519, reported as *FR.N. v. Dairo* (2015) 6 NWLR (Pt. 1454) 141 at page 178-19, paras. E-A (per Nweze,JSC):

“...the *raison d’être* of the evolution of the mini trial or *voire dire* procedure is to arm the trial court with a procedural mechanism for sifting the chaff of involuntary, and, hence, inadmissible evidence from the wheat of admissible evidence whose cogency and probative value are indubitable ... The cases on this point are legion: they are countless. Only one or two of them will be cited here, *Ogudo v. The State* (2011) 12 SC (Pt. 1)71, (2011) 18 NWLR (Pt. 1278) Ibemev. *The State* (2013) LPELR-20138 (SC), (2013) 10 NWLR (Pt. 1362) 333; *Auta v. State* (1975) 4 SC 125; *Effiong v. State* (1978) 8 NWLR (Pt. 562) 362; *Lasisi v. State* (2013) LPELR-20183 (SC) 29, (2013) 12 NWLR (Pt. 1367) 133; *The State v. Rabi* (2013) LPELR-19982 (SC); *Ogudo v. The State* (2011) LPELR-860 (SC), (2011) 18 NWLR (Pt. 1278) 1; *Nwangbonu v. State* (1987) 4 NWLR (Pt. 67) 748; *Ogunye v. State* (1999) 5 NWLR (Pt.664) 548, 570.

Scholars are also unanimous on this issue, *I. H. Dennis, The Law of Evidence (Second Edition)* (London: Sweet and Maxwell, 2002) 184; *L. O. Aremu, “The Voluntariness of Confessions in Nigerian Law,”* in 1977-1980 *Nigerian Law Journal*, 32; *J. Amadi. Con-*

temporary Law of Evidence in Nigeria (Vol. 1) (Port Harcourt: Pearl Publishers, 2011) 324; M. A. Owoade, "Voluntariness of Confessions in Nigerian Law - Need for Reform," in 1987 Nigerian Current Law Review 179.

That was what the trial court did in the instant case. Sequel to the said mini trial, His Lordship, upon the evaluation of the evidence, found in favour of the voluntariness of the appellant's statement; hence its reception in evidence as exhibit C.

I agree with the leading judgment that the findings which eventuated from the said mini trial were findings based on the credibility of the witnesses in the said trial-within-trial, its exclusive prerogative which no appellate court can interfere with, *Olarenwaju A v. Governor of Oyo State* (1997) 8 NWLR (Pt. 364) 622; *Sokwo v. Kpongbo* (2008) 7 NWLR (Pt. 1086) 342; *Woluchem v. Gudi* (1981) 5 SC 291, 326; *Fatoyinbo and Ors. v. Williams* (1956) 1 FSC 87, (1956) SCNLR 274; *Kodilinye v. Mbanefo Odu* (1935) 2 W.A.C.A. 336, 338; *Ramonu Atolagbe v. Olayemi Shorun* (1985) 1 NWLR (Pt. 2) 360; *Mogaji v. Odofin* (1978) 4 SC 91; *Obisanya v. Nwoko* (1974) 6 SC 69; *Okuoja v. Ishola* (1982) 7 SC 31.

Since the said court saw the witnesses, heard them, and watched their demeanour in the witness-box at the mini trial, it was in a very peculiar vantage position to believe or disbelieve them. That advantage could not have been recaptured by the lower court which, accordingly, was bound to accept the said findings on the witnesses' credibility, *Adelumola v. The State* (1988) LPELR-119 (SC), (1988) 1 NWLR (Pt. 73) 683; *Ebba and Ors v. Ogodo and Ors* (1984) 4 SC 84; (1984) 1 SCNLR 372; *Motunwase v. Sorungbe* (1988) 5 NWLR (Pt. 92) 90; *Akpakpuna and Ors v. Obi Nzeka II* (1983) 2 SCNLR 1; *Nzekwu v. Nzekwu* (1989) 2 NWLR (Pt. 104) 373, 393.

Accordingly, I find no reason for interfering with the conclusion of the lower court that the appellant, voluntarily, made exhibit C. It is for these, and the more detailed, reasons in the leading judgment that I shall enter an order dismissing the appellant's appeal as lacking in merit.

Appeal dismissed.

SANUSI JSC

I had the opportunity of reading the draft copy of the judgment of my learned brother Rhodes-Vivour, JSC. I entirely agree with his reasoning and the conclusions he arrived at that this appeal lacks merit and deserves to be dismissed. I accordingly dismiss it.

The prosecution now respondent, led evidence through the four witnesses it called in proof of the two counts charge of conspiracy to commit culpable homicide, homicide punishable with death contrary to sections 97(1) and 221 (a) of the Penal Code respectively. The appellant gave evidence in his own defence and some exhibits were tendered and admitted at the trial including the confessional statement of the accused/appellant which was admitted after a trial-within-trial was conducted. In the end, the trial court found against the appellant and convicted him and sentence him to death.

The appellant was dissatisfied with his conviction and sentence by the trial court, hence he appealed to Court of Appeal (the lower court) which also upheld the conviction and sentence of the appellant by the trial court and dismissed his appeal.

Still piqued by the judgment of the lower court, the appellant further appealed to this court. Briefs were filed and exchanged and in the appellants brief, three issues were distilled from the four grounds of appeal contained in the notice of appeal filed by the appellant. The three issues which were reproduced in the lead judgment were adopted by the respondent in his brief of argument.

The law is settled, that in order to obtain conviction in an offence of culpable homicide punishable with death contrary to section 221 (a) of the Penal Code, the following ingredients of the offence must be established, namely:-

- (a) The death of a human being was caused.
- (b) That the death was caused through the act of the accused.
- (c) That the act leading to the death of the deceased was done intentionally or with knowledge that death would be to the probable and not only likely consequence of the death of the deceased victim.

In the instant case, in the confessional statement of the accused exhibit C, the appellant confessed that himself and some other persons conspired to kill the deceased victim Iregu Ododu because they heard that the deceased was the one who killed their father and mother.

There is also the post-mortem report which confirmed the death of the deceased victim. Although the appellant alleged that the confessional statement Exh. C, was not voluntarily made by him, the trial court conducted a trial-within-trial and the trial court tested the truth of the confession before admitting same in evidence. Even, there are other independent evidence corroborating the evidence or confessional statement.

On the alleged disparity in the name of the deceased, I think that issue is of no moment, because other evidence abound confirming the identity of the deceased victim. Again, on the act done by the accused leading the death of the deceased, evidence was also led by the prosecution/respondent to show that the deceased was stabbed by the appellant and his co-conspirators and she sustained wounds on her throat which led to her death, hence that ingredient of the offence was also well established.

With all these pieces of evidence placed on the table of the trial court, I feel the trial court was in good and solid footing when it found the accused/appellant guilty as charged and sentenced him accordingly.

Similarly, the lower court is right in affirming the findings of the trial court in convicting the appellant as charged.

Thus, in the light of these highlights and for the detailed reasons given in the leading judgment learned brother, I also find no merit in this appeal. The appeal is therefore dismissed by me for want of merit.