

SUPREME COURT OF NIGERIA
FRIDAY 9TH DECEMBER, 2016. SC.235/2012
CORAM:- I. T. MUHAMMAD, N. S. NGWUTA, O.
ARIWOOLA, J. I. OKORO, A. SANUSI, JJSC

CHIEF VINCENT DURU (ALIAS OTOKOTO)..... APPELLANT
V.
THE STATE RESPONDENT

MURDER - Proof - Ingredients - Prosecution must prove that deceased died - That death was caused by accused - And the act of accused that caused the death was intentional (H1)

MURDER - Proof - Means of - Guilt of accused can be proved beyond reasonable doubt by his confessional statement - Evidence of eye witness - Or circumstantial evidence (H2)

MURDER - Proof - Circumstantial evidence - For such evidence to ground conviction - It must not only be cogent - But must lead to irresistible conclusion - That accused committed the murder (H3)

EVIDENCE - Confession - Weight on co accused - Confessional statement is only admissible against the maker - But not against co accused - Save the co accused adopts same (H4)

EVIDENCE - Admissibility - Confession - Information discovered from a confession - The information and confession may be given in evidence - Where ordinarily such information - Would not be admissible, s. 30 EA (H5)

ALIBI - Investigation - Where accused raises alibi - He must give details of his whereabouts at earliest opportunity - Which will lead prosecution in their investigation (H6)

ALIBI - Defence - Rejection of - Where evidence called by prosecution against an alibi is credible and compelling - Court is entitled to reject the defence of alibi (H7)

FACTS

Before the High Court of Imo State Holden at Owerri Judicial Division, accused/appellant and six others were arraigned for the offence of murder of the deceased one Anthony Ikechukwu Okoronkwo, aged eleven (11) years, an offence punishable under section 319(1) of the Criminal Code Cap. 30 Laws of Eastern Nigeria 1963 (as applicable to Imo State). They pleaded not guilty to the charge. The case against appellant and the others is that on the 19th September 1996, one Innocent Ekeanyanwu lured the deceased (a groundnuts seller) into Otokoto Hotel Owerri (appellant's hotel), on the pretence that he wanted to buy groundnuts. The deceased was later on drugged and subsequently killed by the said Ekeanyanwu with the assistance and support of some others, upon the instruction of appellant. The deceased's head and tip of his penis was cut off for ritual purposes as requested by one Leonard Unogu. The corpse was buried in appellant's wife cassava farm within the premises of the hotel. It was while Ekeanyanwu was on his way to deliver the head of the deceased, as instructed by appellant to the said Unogu that he (Ekeanyanwu) was arrested by a team of policemen at a road block, acting on a tip off.

Upon a search conducted on him, a human head was found which was later discovered to be that of the deceased. Ekeanyanwu was thereupon interrogated and arrested by the police. Following the disclosure to and discoveries made therefrom by the police, appellant and the others were arrested and charged with the murder of the deceased. Ekeanyanwu later on died in Police custody. At the trial, prosecution/respondent called eleven witnesses and tendered several exhibits in support of its case. Appellant testified for himself and called an additional witness in support. At the end of the trial, the Court convicted appellant and the others as charged and accordingly sentenced them to death by hanging. Aggrieved, appellant appealed to the Court of Appeal Owerri Division. The appeal was heard and dismissed. The judgment of the trial Court was upheld. Still dissatisfied, appellant appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the learned Justices of the Court of Appeal were

right to have concluded that Section 30 of the Evidence Act, LFN, 2011 as amended allow them to rely on the facts contained in Exhibits 21 and 36.

2. Whether the learned Justices of the Court of Appeal were right to have relied on Exhibits 21 and 36 against the appellant when it was clear that the two Exhibits were unreliable in law.

3. Whether the learned Justices of the Court of Appeal were right to have decided that the conviction of the appellant was proper on the basis of circumstantial evidence when the said circumstantial evidence was not direct, positive nor cogent as required by law.

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

MURDER - Proof - Ingredients

1. It has long been settled beyond controversy from several decided cases of this court that to secure conviction on a charge of murder, the prosecution must necessarily prove the following:

(a) That the deceased had died;

(b) That the death of the deceased was caused by the accused; and

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

(p. 4390 E)

MURDER - Proof - Means of

2. Generally, the evidence relied upon by the prosecution to establish a charge of murder may be direct or circumstantial. However, whether the evidence adduced and relied upon is direct or circumstantial in nature, the important thing is that it must establish the guilt of the accused beyond reasonable doubt. In other words, the guilt of an accused person can be proven or conviction achieved by the prosecution by confessional statement, eye witness evidence or circumstantial evidence. (p. 4390 H)

MURDER - Proof - Circumstantial evidence

3. However, for circumstantial evidence to support or ground conviction, it must not only be cogent, complete and unequivocal, but compelling and must lead to irresistible conclusion that the accused and no one else is responsible for the murder of the deceased.

It is trite law that circumstantial evidence is receivable in criminal as well as in civil cases. Indeed, the necessity of admitting such evidence is more obvious in criminal cases than civil, for, in criminal cases, the possibility of proving the offence charged by the direct and positive testimony of eye witnesses or by conclusive documents is much more rare than in civil cases; and where such testimony is not available, the trial Judge sitting alone as a Judge of law and facts is permitted to complete the elements of guilt or establish innocence in other words, the Judge is permitted to raise a presumption from the proof of some facts the existence of another fact without further proof of that other fact.

Generally, for circumstantial evidence to ground a conviction, it must lead only to one conclusion, namely, the guilt of the accused person but where there are other possibilities in the case than that it was the accused who committed the offence but that others other than the accused had the opportunity of committing the offence, with which he was charged, such accused person cannot be convicted of murder.
(pp. 4392 D/4395 C)

EVIDENCE - Confession - Weight on co accused

4. In the instant case, it is clear on the record, as I stated earlier, that one Innocent Ekeanyanwu, who was a staff of the appellant's Otokoto Hotel was apprehended by the Police at a checkpoint, having been found in possession of a fresh human head. In his first statement to the Police he admitted that he killed the deceased, owner of the head and dumped this headless body in Mbaa River. But it was in another statement obtained by PW11 which was admitted as Exhibit 36 that ref-

erence was made to the role played by the appellant in the killing of the deceased Okoronkwo. It is note worthy that there is nothing on record to show that after the said statement was made, which implicated the appellant, that the appellant was confronted with the said statement for him to either admit or deny same. There is also nothing on record that the appellant adopted the contents or the said statement as his own. The law is very clear on this situation, and it is that the confessional statement of an accused is only admissible against the maker but not against a co-accused who is incriminated in the said statement except the said co-accused adopts same. The law expects that where the prosecution intends to use the statement against a co-accused, the prosecution is bound to make a copy of the incriminating statement available to the co-accused.

There is no iota of evidence on record that the statements credited to Ekeanyanwu which were admitted as Exhibits 21 and 36 were made in the presence of the appellant. And there is nothing on record to show that he adopted the said statement. As a result, the said statements are ordinarily not admissible against the appellant. In other words, there is nothing on record to show that a copy of the said statements of the deceased Ekeanyanwu was made available to the appellant by the Prosecution. That situation alone rendered the said statements inadmissible against the appellant. In other words, ordinarily the court cannot ascribe the confession in the said statements to the appellant having not been made available to him and he adopted same. (p. 4392 E)

EVIDENCE - Admissibility - Confession - Fresh facts

5. However, the position of the law is clear. Where information is received from a person who is accused of an offence, whether such person is in custody or not, and as a consequence of such information any fact is discovered, the discovery of that fact, together with the evidence that such discovery was made in consequence of the information received from the accused, may be given in evidence where such informa-

tion itself would not be admissible in evidence. See Section 30 of the Evidence Act, 2011 as amended.

In other words, the law permits the admissibility of evidence of discoveries inconsequence of information given which ordinarily may not be admissible. (p. 4393 E)

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ALIBI - Investigation

6. It is trite law that when an accused person raises unequivocally the issue of alibi, that he was somewhere else other than the locus delicti at the time of the commission of the offence with which he is charged and gives some facts and circumstances of his whereabouts, the prosecution is duty bound to investigate the alibi set up, to verify its truthfulness or otherwise.

D

Ordinarily, there is no burden on the accused person to prove his alibi, but he is certainly not expected to merely state that he was not at the scene of the crime without more. He is bound to give the lead and particulars of his whereabouts at the earliest opportunity which will lead the prosecution in their investigation of the alibi. (p. 4398 H)

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ALIBI - Defence - Rejection of

7. With the uncontradicted evidence of PW10 on the whereabouts of the appellant on 19/9/96, the day of the incident, and his own admission in his statement, that he was in the hotel, there is no controversy that he was in the hotel on the day Okoronkwo, the groundnut hawker was murdered. His defence of alibi was rightly held to be an afterthought by the trial court and was correctly discountenanced.

G

It has been held that one of the ways by which the prosecution may disprove an alibi set up by an accused is to call cogent and credible evidence against it. In other words, the fact that an accused has raised a defence of alibi by his evidence does not imply that the alibi must be accepted by a court. If the evidence called by the prosecution is credible, strong and compelling, the court is entitled to reject the defence of alibi.

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With the evidence adduced by the prosecution which confirmed that the appellant was in the hotel on the day of the incident, his defence of alibi becomes baseless and unreliable.
(p. 4400 A)

NOTABLE POINT OF INTEREST

ARIWOOLA JSC

1. Counsel must always uphold the interest of justice

My Lords, I must state it loud and clear, that Counsel should know when and where to stop in the sole pursuit of his client's interest, be it in civil or criminal proceeding. It should be noted that the primary and most important interest of both counsel and even the court should be and indeed is the interest of justice. It is justice we all crave and overwhelmingly desire at all times.

There is no doubt and it cannot be the contention of the appellant's senior counsel that, the eleven year old groundnut hawker Anthony Ikechukwu Okoronkwo was not murdered in cold blood, beheaded and dismembered before the headless body was buried in a shallow grave within the secured compound of Otokoto Hotel of which the appellant is the Proprietor and Managing Director on the day and time when the appellant was within the said hotel. Most of us, including the appellant are fathers to our own children. None of us will surely pray that any of our children should be treated in this way. This is an unfortunate situation. I need say no more.

As a writer rightly put it - *"Have the courage to say no. Have the courage to face the truth. Do the right thing because it is right. These are the magic keys to living your life with integrity."* - William Clement Stone (1902-2002).

A word, they say, is enough for the wise. (p. 4401 E)

REPRESENTATION

Professor A. Amuda Kannike, SAN, with A. O. Yusuf Esq. and Dr. E. C. Jumbo for the appellant.

M. O, Nlmedim Esq. Attorney General, Imo State with Osita Chukwu Emeka Esq., SSC for the respondent.

CASES REFERRED TO

- Dibie v. State (2005) All FWLR (pt. 259) 1995
 Ozaki v. State (1990) 1 NWLR (pt. 124) 92
 State v. Ogbubunjo (2001) 2 ACLR 5277
 Fatoyinbo v. A. G. Western Nigeria (1966) WNLR 4
 B Atano v. A. G. Bendel State (1988) 2 NWLR (pt. 75) 2001
 Lori v. State (1998) 3-11 C31
 Uweesai v. State (1976) 11 SC 39
 Omogodo v. State (1981) 5 SC 5
 C Onah v. State (1985) 3 NWLR (pt. 12) 236
 Dozin v. State (1985) 2 NWLR (pt. 8) 465
 State v. Ajie (2000) FWLR (pt. 16) 2813
 Archibong v. State (2007) 143 LRCN 228
 Oforlette v. State (2000) NWLR (pt. 2) 2081
 D State v. Oladotun (2011) 199 LRCN 65
 Ogba v. State (1992) 2 NWLR (pt. 222) 1634

STATUTES REFERRED TO

- Criminal Code Cap. 30 Laws of Eastern Nigeria 1963, ss. 7(d), 319(1)
 E Evidence Act LFN 2011, ss. 29(4), 30

LEAD JUDGMENT BY ARIWOOLA JSC

F This is an appeal against the judgment of the Court of Appeal, Owerri Division delivered on the 5th day of April, 2012.

The appellant and six others had been charged jointly before the High Court of Imo State, Owerri Judicial Division with the murder of one Anthony Ikechukwu Okoronkwo, aged eleven (11) years, an offence punishable under Section 319(1) of the Criminal Code
 G Cap. 30 Laws of Eastern Nigeria, 1963, applicable to Imo State of Nigeria.

The gist of the case briefly as presented by the prosecution before the trial court is as follows:-

H Sometime on 19th September, 1996, the deceased Anthony Ikechukwu Okonkwo was hawking cooked groundnuts around Otokoto Hotel when one Innocent Ekeanyanwu lured him into the hotel on the pretence that he wanted to buy the groundnuts. The deceased was later drugged and subsequently killed by Innocent

Ekeanyanwu with the assistance and support of Alban Ajaegbu and Samson Nnainito, on the instruction and request of Vincent Duru alias Otokoto, who was the Proprietor and Managing Director of the hotel. It was Leonard Unogu who had requested for the head of a young male person for ritual purposes. In the process, the deceased's head was decapitated and the tip of his penis cut off, while the remains were buried in a cassava farm within the premises of the hotel. The said farm was said to have been cultivated by the wife of the appellant. B

It was while Innocent Ekeanyanwu was on his way to deliver the head of the deceased, as instructed by Vincent Duru to Leonard Unogu that he was arrested by a team of policemen at a road block, acting on a tip off by one Hillary Opara. Upon a search conducted on Innocent Ekeanyanwu, a human head was found on him which was later discovered to be that of one Ikechukwu Okoronkwo. Upon interrogation by the police, the said Innocent Ekeanyanwu informed the police that he had killed the boy Ikechukwu Okoronkwo and that it was his Uncle, Leonard Unogu, alias Ochiriozuo of Eziamma who had requested him to procure the head for him. That he had earlier gone to deliver the head to Leonard Unogu but did not see him. He was on his way back to Owerri when he was arrested. C
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Upon the disclosure to and discoveries made therefrom by the police, the appellant and the others were arrested and charged with the murder of Ikechukwu Okoronkwo. F

It is however on record that the said Innocent Ekeanyanwu died in police custody before the police concluded their investigation. F

At the trial, the prosecution called eleven (11) witnesses and tendered several exhibits which included the statements of the accused made to the police. Each of the accused testified and the appellant in particular called, in addition, one witness - DW10. At the conclusion of the trial, the learned trial Judge C. E. Nwosu-Iheme, (as he then was) believed the case as presented by the prosecution and accordingly found the appellant, among others, guilty, convicted and sentenced him to death by hanging. G
H

The appellant's appeal to the lower court against the judgment of the trial court was found to be unmeritorious and was dis-

missed. The lower court accordingly affirmed the conviction and sentence of the appellant.

Being dissatisfied with the judgment of the lower court, the appellant further appealed to this court upon seven (7) grounds of appeal.

B The instant appeal was then heard on 6th October, 2016 upon the following processes. Appellant's brief of argument filed on the 15th day of June, 2012 and the respondent's brief of argument filed on the 4th day of October, 2012 but having been filed out of time was deemed properly filed and served on the 12th of June, 2013 sequel
C to the respondent's application so to do.

From the said seven grounds of appeal, the appellant distilled the following three issues for determination of the appeal.
Issue for Determination.

D 1. Whether the learned Justices of the Court of Appeal were right to have concluded that Section 30 of the Evidence Act, LFN, 2011 as amended allow them to rely on the facts contained in Exhibits 21 and 36. (Distilled from Ground 1)

E 2. Whether the learned Justices of the Court of Appeal were right to have relied on Exhibits 21 and 36 against the appellant when it was clear that the two Exhibits were unreliable in law. (Distilled from grounds 2 and 3)

F 3. Whether the learned Justices of the Court of Appeal were right to have decided that the conviction of the appellant was proper on the basis of circumstantial evidence when the said circumstantial evidence was not direct, positive nor cogent as required by law. (Distilled from Grounds 4, 5, 6 and 7)

G In arguing the appeal, learned senior counsel for the appellant - Dr. Amuda-Kannike, SAN took the above issues seriatim. On issue 1, he submitted that the learned Justices of the lower court were wrong to have concluded that Section 30 of the Evidence Act, Laws of the Federation of Nigeria, 2011 as amended allow them to rely on the facts contained in Exhibits 21 and 36 against the appellant. He referred copiously to the findings of the lower court and their observations on pages 120 and 121 of the record, from the judgment of the trial court on the interpretation of Section 30 of the Act in relation to Exhibits 21 and 36 and made three deductions.

Learned senior counsel submitted that what Section 30 of the Evidence Act is saying is not that the statement and allegations against the appellant contained in Exhibits 7.1 and 36 can be used against him, but that, if by looking at Exhibits 21 and 35, a clue was given as to where certain facts are kept or certain Exhibits are kept, then the fact that exhibits 21 and 36 stated where such evidence were, including the Exhibits that were eventually discovered may be given in evidence. Learned senior counsel referred to Section 30 of the Evidence Act, and contended that applying its provisions, the only evidence that would have been available to the courts are :-

(a) We discovered and exhumed the body of the deceased at Hotel.

(b) The body of the deceased was discovered at Otokoto Hotel as a result of the fact that late Ekeanyanwu said the lifeless body of the deceased was buried there.

Learned senior counsel submitted that the lower courts instead of using the provisions of Section 30 of the Evidence Act in favour of the appellant used it against him to conclude that the appellant participated in the murder as stated in Exhibit 36 given by a co-accused and applied same to convict the appellant, thereby causing a miscarriage of justice. He urged the court to resolve the issue in favour of the appellant.

On issue 2, learned senior counsel submitted that the learned Justices of the lower court were wrong to have relied on Exhibit 21 and 36 against the appellant when it was clear that the two Exhibits were unreliable in law.

Learned senior counsel contended that instead of deciding that Exhibits 21 and 36 which were the confessional statements of a co-accused, late Innocent Ekeanyanwu ought not to be relied upon by the learned trial Judge, their Lordships failed to do so and on their own even used the same Exhibits, especially Exhibit 36 against the appellant which he submitted led to a miscarriage of justice. Learned senior counsel again referred to the observations of the court below on pages 120 and 124 on the judgment of the learned trial Judge and submitted that their Lordships ought to have rejected and overturned the appellant's conviction for murder having realized that the trial Judge placed reliance on Exhibits 21 and 36 which the trial

court ought not to have done.

Learned senior counsel contended that it is not in doubt that both Exhibits 21 and 36 were confessional statements of a co-accused, late Innocent Ekeanyanwu who died in police custody even before the trial commenced. He submitted that Exhibit 36 especially
B cannot be relied upon against the appellant because the statement was not made in the presence of the appellant for him to have adopted same either by words or conduct. He relied on Section 29(4) of the Evidence Act, 2011 and *Dibie Vs. State (2005) All FWLR (Pt.259) 1995; Ozaki Vs. State (1990) 1 NWLR (Pt.124) 92 at 113.*

C He submitted further that it is the law that a confessional statement of a co-accused made to the police by an accused person is not evidence against a co-accused and the court must warn itself of this fact so that the mind will not be affected by that statement in
D considering the case against the co-accused.

Learned senior counsel contended that another reason why the courts below ought not to have relied on Exhibit 36 was that the said Exhibit was allegedly made under duress and obtained by force from the maker - Late Ekeanyanwu. He relied on section 29(2) of
E the Evidence Act, and Exhibits 44 and 54. He submitted that if the evidence from the respondent shows that Exhibit 36 cannot be relied upon, there was no basis for the lower courts to pick a point of Exhibit 36 for the purpose of convicting the appellant. He urged the
F court to resolve the issue in favour of the appellant.

On issue 3, learned senior counsel submitted that the learned Justices of the lower court were wrong to have decided that the conviction of the appellant was proper on the basis of circumstantial evidence when it can be seen that the said circumstantial evidence is not
G direct, positive nor cogent as required by law. He submitted that It is the law that where direct evidence is not available, such as was the case of the appellant, the circumstantial evidence which must be available must be cogent and point irresistibly and unequivocally and must be compelling against the accused before a conviction can be sus-
H tained. He relied on *State Vs Ogbubunjo (2001) 2 ACLR 5277 Fatoyinbo Vs A. G. Western Nigeria (1966) WNLR 4, Atano Vs. A. G. Bendel State (1988) 2 NWLR (Pt.75) 2001.*

Learned senior counsel submitted that since there existed no

cogent, direct, compelling and unequivocal circumstantial evidence against the appellant, the learned Justices of the lower court were completely wrong to have resorted to circumstantial evidence. He submitted further that in order to support a conviction on the question of circumstantial evidence, it must not only be cogent, complete and unequivocal but compelling and lead to the irresistible conclusion that the accused person and no one else was the murderer. It must leave no ground for reasonable doubt. Learned senior counsel contended that such evidence is expected to lead irresistibly to the guilt of the accused and inconsistent with any other rational conclusion. There must be no other co-existing circumstances which can weaken such inference. He relied on *Joseph Lori & Anor Vs The State* (1998) 3-11 C 31. *Uweesai & Anor Vs. The State* (1976) 11 SC 39; *Phillip Omogodo Vs. The State* (1981) 5 SC 5 at 24.

On whether the mere fact that the corpse of the deceased was found at Otokoto Hotel amounts to circumstantial evidence of guilt against the appellant, learned senior counsel submitted that it does not amount to circumstantial evidence against the appellant for several reasons that he gave, including the fact that there was no evidence that the appellant directed that the corpse be buried on the hotel land. There was no evidence that he was aware that any corpse was buried at the Hotel. There was no evidence that the appellant was seen at any time, around the burial site nor witnessed what was buried. There was no evidence of any telephone conversation between late Innocent Ekeanyanwu and the appellant on the issue, around the period of time the deceased was killed and buried on the Hotel land.

Learned senior counsel contended that there were doubts as to the finding of the corpse of the deceased at Otokoto Hotel but that the court below failed to take the doubts into consideration in their judgment in allowing it as enough circumstantial evidence to sustain conviction. He referred to the statements of Innocent Ekeanyanwu in Exhibits 21 and 36 on where he had buried the remains of Okoronkwo after he beheaded him. First at Mbaa River as in Exhibit 21 and later at Otokoto Hotel as in Exhibit 36. He contended further that since there was the possibility of transferring the corpse to the hotel by PW1 and others like him who hated the appellant, then he

submitted that Circumstantial evidence as to discovery of the corpse at Otokoto Hotel cannot hold against the appellant as the said evidence was not cogent enough and there were other co-existing circumstances which weakens the inference on this point of the recovery of the corpse at the appellant's hotel.

B On the statement credited to the appellant as having been said upon citing the deceased staff with the police within the premises of the Otokoto hotel such as "*Have you implicated me?*", and the denial of the appellant and the testimony of DW10 - who was on the team of policemen who investigated the case, that the appellant never made such statement to the deceased Innocent Ekeanyanwu, learned senior counsel submitted that the learned trial Judge ought not to have picked and chose as to who to believe in the testimony of PW1 and DW10. To have believed PW1 that the appellant made the state-
C ment led to miscarriage of justice.
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Learned senior counsel referred to the testimony of PW1 and DW10 both policemen involved in the investigation of the alleged murder and submitted that the case against the appellant was a more suspicion that he committed the offence of murder. He concluded by saying that suspicion no matter how grave, great or strong,
E it cannot amount to admissible proof that an accused person committed an alleged crime. He relied on Onah Vs State (1985) 3 NWLR (Pt.12) 236; Dozin Vs State (1985) 2 NWLR (Pt.8) 465.

F Learned senior counsel finally submitted that the court below was wrong with the inferences it held on the circumstantial evidence which were not direct, positive nor cogent. He urged the court to resolve issue 3 in favour of the appellant and allow the appeal and set aside the conviction and sentence of' death imposed on the ap-
G appellant. He urged the court to acquit and discharge the appellant.

In the respondent's brief of argument deemed filed on the 12th day of June, 2013 the following two issues were formulated for determination of this appeal.

H "1. *Whether the interpretation of Section 30 Evidence Act, 2011 by the learned Justices of the Court of Appeal in relation to Exhibits 21 and 36 occasioned miscarriage of justice to the appellant.*

2. *Whether the learned justices of the Court of Appeal were not right in upholding the conviction of the appellant based on cir-*

cumstantial evidence adduced at the trial.

In arguing the first issue, the respondent submitted that the learned justices of the Court of Appeal correctly construed Section 30 of the Evidence Act, 2011 in relation to Exhibits 21 and 36 and that no miscarriage of justice was occasioned to the appellant thereof.

Learned counsel for the respondent referred to the findings of the court below on page 120 lines 20-29 Vol.2 of the record and contended that the learned trial Judge did not rely on the confessional statement of late Innocent Ekeanyanwu, Exhibit 36, rather the court relied on facts and evidence discovered as a result of Exhibits 21 and 36. He submitted that the learned Justices of the lower court were right in their assessment of the decision of the trial court in his evaluation of the evidence adduced before him during the trial.

Learned counsel referred to the findings of the trial court on the circumstantial evidence the court relied upon to convict the appellant and which the court below agreed with to affirm the conviction and sentence of the appellant. He submitted that the inferences made by the two courts below are concurrent findings of facts based on credible circumstantial evidence, but not just on the statements of late innocent Ekeanyanwu contained in Exhibits 21 and 36.

Learned counsel contended that where there are concurrent findings of facts by the two courts below, the Supreme Court will not interfere with such findings where the findings are justified and supported by credible evidence. He relied on *State Vs Godfrey Ajie* (2000) FWLR (Pt.16) 2813; *Bassey Akpan Archibong Vs The State*.(2007) 143 LRCN 228. He submitted that the concurrent findings of facts in this case are supported by credible evidence.

Learned counsel referred to and quoted extensively from Exhibit 36, the statement of the deceased co-accused to the appellant to show the facts that were discovered as a consequence of the information in the statement. Also, the testimony of PW11 on pages 204 to 205 of the records and testimony of PW1 and PW5 on pages 61 and 110-111 of the record of appeal. Learned counsel contended that without the information received from Exhibit 36, discovery of the fact that the deceased was murdered and buried at the Otokoto Hotel could not have been made. He submitted that without the facts discovered as a consequence of the information received by

virtue of exhibit 36, the police team would have ended their investigation fruitlessly at the Mbaa River.

Learned counsel further submitted that the learned Justices of the Court of Appeal were right in holding that the trial Judge by Section 30 of the Evidence Act, LFN, 2011 acted within his powers and correctly evaluated and ascribed probative value to the evidence adduced before the trial court. And that there was no miscarriage of justice occasioned in the application of Section 30 of the Evidence Act, 2011. He urged the court to so hold.

On the respondent's issue 2, learned counsel contended that the learned Justices of the Court of Appeal were right in upholding the conviction of the appellant which was based on circumstantial evidence as the said evidence was direct, positive and cogent.

Learned counsel gave circumstantial evidence as the proof of circumstances from which according to the ordinary course of human affairs the existence of some fact may reasonably be presumed. Put in the mathematical language, it is that evidence surrounding circumstance which by undersigned coincidence is capable of proving a preposition with the accuracy of mathematics. He relied on *Mustapha Mohammed & Anor Vs The State* (2007) 153 LRCN 10 at 132.

Reference was made to the case of the prosecution as adduced before the trial court on the alleged movement of the appellant and contended that the appellant was caught by Section 7(d) of the Criminal Code. He referred, in particular, to the testimony of PW1 and contended that the piece of evidence that connected the appellant to the alleged crime was not challenged or debunked under cross examination by the defence. He submitted that where a party fails to cross examine a witness on an issue raised in the evidence-in-Chief, he is deemed to have accepted the truth of the witness's testimony. He relied on *Patrick Oforlette Vs. The State* (2000) NWLR (Pt.2) 2081. *The State Vs Femi Oladotun* (2011) 199 LRCN 65.

Learned counsel submitted that since the evidence of PW1 to the effect that the appellant walked up to late Ekeanyanwu as PW1 was guarding him and without any prompting asked him:-

"Have you implicated me?" was not challenged nor contra-

dicted under cross-examination, the court was entitled and indeed bound to accept such unchallenged evidence as it is not incredible.

He referred to the testimony of DW10 also a policeman and one of those who investigated the murder, but submitted that his testimony which attempted to deny the statement credited to the appellant, did not amount to a challenge or debunk of the testimony of PW1. At best he described it as an afterthought, an exercise in futility. Learned counsel contended that there was no evidence on record that there was any other person with PW1 when the appellant was said to have made the statement credited to him.

Learned counsel referred to the evidence on record that the headless body of the deceased was discovered buried and was exhumed in a cassava farm within the Otokoto Hotel premises which farm was being cultivated by the appellant's wife in consequence of the information received from Exhibit 36. The testimony of PW1 and PW10 revealed that the deceased co-accused who made Exhibit 36 was living in a room behind which was the cassava farm of the appellants wife within the Otokoto hotel premises, and these pieces of testimony were neither controverted nor debunked, but rather the appellant denied Knowledge of the person who was farming within the hotel premises.

Learned counsel contended that the discovery and exhumation of the headless body with part of his penis cut off at the Otokoto Hotel led to the arrest of the 6th accused person - Leonard Unogu who was also discovered to be well known to the appellant, though which fact the appellant tried to deny. The testimony of the 6th accused that the appellant and himself had known each other for many years was not controverted by the appellant beyond merely denial. Learned counsel submitted that the denial by the appellant of ever knowing the 6th accused was only to show that he could not have sent late Ekeanyanwu to deliver the head of the deceased to the 6th accused. He concluded that that was a natural behavior of a guilty person.

Learned counsel contended further that in consequence of Exhibit 26, evidence of other graves within the Otokoto hotel was discovered and it was on record that the hotel was a notorious one well known for its criminal activities. He submitted that the case was

in no way based on oil suspicion. He referred to the record, for the evidence that the hotel premises was a well fenced property with gate and watchmen guarding it day and night, as the 3^d and 4th accused persons were the watchmen Learned counsel submitted that the circumstantial evidence adduced in the trial pointed unequivocally to the fact that the appellant procured late Innocent Ekeanyanwu and the 1st and 2nd accused persons to behead the deceased. He urged the court to so hold and dismiss the appeal and affirm the judgment of the court below which affirmed the conviction and sentence of the appellant.

I have carefully examined the issues formulated by both parties for the determination of this appeal and I have decided to utilize the issues distilled by the appellant. However, being interwoven the three shall be taken together in my resolution.

As I stated earlier, the appellant was tried along with six others before an Imo State High Court for the murder of one Anthony Ikechukwu Okoronkwo on 19/9/1996. He was convicted and sentenced to death. Failure of his appeal before the lower court led to this instant appeal.

It has long been settled beyond controversy from several decided cases of this court that to secure conviction on a charge of murder, the prosecution must necessarily prove the following:

(a) ***That the deceased had died;***
 (b) ***That the death of the deceased was caused by the accused; and***

(c) ***That the act or omission of the accused which caused the death of the deceased was intentional with knowledge that death or grievous bodily harm was its probable consequence.***

See; Ogba Vs. The State (1992) 2 NWLR (Pt. 222) 1634; Monday Nwaeze Vs. The State (1996) 2 NWLR (Pt. 428) 11, Fred Dapere Gira Vs. The State (1996) 4 NWLR (Pt. 443) 375; Madu Vs. The State (2012) 6 SC (Pt. 1) 80 Mukaila Salawu Vs. The State (2014) 12 SCN (Pt. 2) 622 at 642-643; Inyang Akpan Vs. The State (1994) 9 NWLR (Pt. 368) 347.

Generally, the evidence relied upon by the prosecution to establish a charge of murder may be direct or circum-

stantial. However, whether the evidence adduced and relied upon is direct or circumstantial in nature, the important thing is that it must establish the guilt of the accused beyond reasonable doubt. In other words, the guilt of an accused person can be proven or conviction achieved by the prosecution by confessional statement, eye witness evidence or circumstantial evidence. See; Adekoya Vs. The State (2012) 6 SCM 58; Mbang Vs. The State (2012) 10 SCM 31 The State Vs. Isah & Ors (2012) 12 SCM (Pt. 2) 425. B

It is on record that from the evidence adduced by the prosecution, one Innocent Ekeanyanwu in whose possession a fresh human head was found had confessed to the killing of the deceased Ikechukwu Okoronkwo. The said Ekeanyanwu was reported to have made confessional statements to the police as to how he came about the fresh human head. However, the accused was reported to have died in custody of the Police before the conclusion of Police investigation. He never stood trial. C

The prosecution during trial called eleven witnesses and tendered several Exhibits including the statements of the accused. Exhibits 21 and 36, in particular, were the statements said to have been made by and obtained from late Ekeanyanwu. There is no doubt, the prosecution was said to have relied on circumstantial evidence to prove its case at the trial court, since there was no direct evidence of an eye witness and the appellant did not confess to his involvement in the killing of the deceased, Okoronkwo. D

As I had earlier stated in this judgment, the sum total of the submission of learned senior counsel for the appellant in his brief of argument that the trial court relied on the statements obtained from Ekeanyanwu, a co-accused with the appellant but who died before the trial commenced to convict the appellant. But the learned counsel for the respondent disagreed and submitted that the conviction was based on circumstantial evidence, but not on Exhibits 21 & 36, tendered by the prosecution. E

The law in relation to circumstantial evidence has long been settled beyond dispute or controversy. But it is the application of the law that is often the cause of dispute between the prosecution and defence. F

In the English case of R Vs. Taylor & Ors (1928) 21, CAR 20 at 21, the Lord Chief Justice of England, Lord Hewart stated the law as follows:

B *“It has been said that the evidence against the applicants is circumstantial; so it is, but circumstantial evidence is very often the best. It is evidence of surrounding circumstances which, by under-
signed coincidence, is capable of proving a proposition with the ac-
curacy of mathematics. It is no derogation of evidence to say that it is circumstantial.”*

C The above statement of the law was approved by this court in Fatoyinbo Vs. Attorney General of Western Nigeria (1966) W.N.L.R. 4. See; also, Adie Vs The State (1980) 1-2 SC 1 at 16; Ukorah Vs. The State (1977) 4 SC 167; Aigbadion Vs. The State (2000) 1 NWLR 686.

D ***However, for circumstantial evidence to support or ground conviction, it must not only be cogent, complete and unequivocal, but compelling and must lead to irresistible conclusion that the accused and no one else is responsible for the murder of the deceased.*** See Yongo Vs. COP (1992) 80 NWLR
E (Pt.257) 36; Alake Vs. The State (1992) 9 NWLR (Pt. 265) 260.

F ***In the instant case, it is clear on the record, as I stated earlier, that one Innocent Ekeanyanwu, who was a staff of the appellant’s Otokoto Hotel was apprehended by the Police at a checkpoint, having been found in possession of a fresh human head. In his first statement to the Police he admitted that he killed the deceased, owner of the head and dumped This headless body in Mbaa River. But it was in another statement obtained by PW11 which was admitted as Exhibit 36 that ref-
G erence was made to the role played by the appellant in the killing of the deceased Okoronkwo. It is note worthy that there is nothing on record to show that after the said statement was made, which implicated the appellant, that the appellant was confronted with the said statement for him to either admit
H or deny same. There is also nothing on record that the appellant adopted the contents or the said statement as his own. The law is very clear on this situation, and it is that the confes-
sional statement of an accused is only admissible against the***

maker but not against a co-accused who is incriminated in the said statement except the said co-accused adopts same. The law expects that where the prosecution intends to use the statement against a co-accused, the prosecution is bound to make a copy of the incriminating statement available to the co-accused. See Yongo & Anor v. COP (supra). B

There is no iota of evidence on record that the statements credited to Ekeanyanwu which were admitted as Exhibits 21 and 36 were made in the presence of the appellant. And there is nothing on record to show that he adopted the said statement. As a result, the said statements are ordinarily not admissible against the appellant. In other words, there is nothing on record to show that a copy of the said statements of the deceased Ekeanyanwu was made available to the appellant by the Prosecution. That situation alone rendered the said statements inadmissible against the appellant. In other words, ordinarily the court cannot ascribe the confession in the said statements to the appellant having not been made available to him and he adopted same. C
D

However, the position of the law is clear. Where information is received from a person who is accused of an offence, whether such person is in custody or not, and as a consequence of such information any fact is discovered, the discovery of that fact, together with the evidence that such discovery was made in consequence of the information received from the accused, may be given in evidence where such information itself would not be admissible in evidence. See Section 30 of the Evidence Act, 2011 as amended. Farounbi Kareem Vs. FRN (2002) 4 SC (Pt.11) 42; (2003) 1 WRN 1; Nilla Vs. The State (1985) 3 NWLR (Pt. 11) 190. E
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In other words, the law permits the admissibility of evidence of discoveries in consequence of information given which ordinarily may not be admissible. In its judgment, the lower court on pages 118-119 states thus: H

“In the instant case, the late Innocent Ekeanyanwu made a statement which was admitted in evidence. Based on that statement, the role played by the appellant in the death of the deceased was

clearly and unequivocally stated. Based on such statement, certain discoveries were made in the course of the investigation. True enough, the learned trial Judge expressed the view that he would treat Exhibits 21 and 36 with caution in the determination of the guilt of the appellant. He stated thus:

B *'For the purpose of this judgment, I will concentrate on other evidence before me, excluding Exhibits 21 and 36 in the determination of the guilt or innocence of the accused persons. If in the course of doing so, and as events unfold, it becomes inevitable to look at*
 C *Exhibits 21 and 36 as I have been called upon to do by the prosecution, I shall look at it, and no more The learned trial Judge reproduced Exhibits 21 and 36 and then proceeded to look at the evidence adduced against each of the accused persons including the*
 D *appellant. It is clear that the learned trial Judge did not shut himself out completely from utilizing Exhibits 21 and 36. If anything, the record shows clearly that the learned trial Judge relied on facts and evidence discovered as a result of the statements in Exhibits 21 and 36."*

E It is on the record of appeal that it was from the statements of the deceased accused who had admitted that he killed Okoronkwo that it was discovered that, he (Ekeanyanwu) lured and killed the boy - Okoronkwo with the support of others at Otokoto hotel. Indeed, it was in the second Statement - Exhibit 36 that the police
 F discovered that the headless body was actually not thrown into Mbaa river, as earlier made to believe but was buried in a shallow grave within a cassava farm in Otokoto hotel which cassava farm was being cultivated by the wife of the appellant.

G In my candid view, the trial Judge was properly guided by Section 30 of the Evidence Act to rely on the facts discovered from the information supplied in Exhibit 36 in particular, in consequence of which the evidence of how Okoronkwo was killed and where the headless body of the deceased victim was buried.

H In the circumstance, the lower court was therefore right to have concluded that Section 30 of the Evidence Act, 2011 allowed them to rely on the facts contained in the Statements made by the deceased accused in Exhibits 21 and 36 which were properly admitted by the trial court. In other words, the lower court was right to

have relied on the facts discovered from the information given in those Exhibits to affirm the conviction and sentence of the appellant.

As earlier stated in this judgment, since the appellant did not make any confessional statement of his involvement, if any, in the killing of Okoronkwo, his conviction was based on circumstantial evidence from the totality of the evidence adduced by the prosecution. B

It is note worthy that the appellant has raised here whether the learned Justices of the Court of Appeal were right to have decided that the conviction of the appellant was proper on the basis of circumstantial evidence when the said circumstantial evidence was not direct, positive nor cogent as required by law. C

It is trite law that circumstantial evidence is receivable in criminal as well as in civil cases. Indeed, the necessity of admitting such evidence is more obvious in criminal cases than civil, for, in criminal cases, the possibility of proving the offence charged by the direct and positive testimony of eye witnesses or by conclusive documents is much more rare than in civil cases; and where such testimony is not available, the trial Judge sitting alone as a Judge of law and facts is permitted to complete the elements of guilt or establish innocence in other words, the Judge is permitted to raise a presumption from the proof of some facts the existence of another fact without further proof of that other fact. See Chima Ijiofor Vs. The State (2001) 5 SCM 107. D E

Generally, for circumstantial evidence to ground a conviction, it must lead only to one conclusion, namely, the guilt of the accused person but where there are other possibilities in the case than that it was the accused who committed the offence but that others other than the accused had the opportunity of committing the offence, with which he was charged, such accused person cannot be convicted of murder. See; Esai & Ors Vs. The State (1976) 11 SC 39; Abainta Okendi Ubani & Ors Vs. The State (2003) 12 SCM 310. F G

In its judgment, the lower court found as follows:- H

"In arriving at his decision, the learned trial judge considered the denial of the appellant. The learned trial judge then held as follows:

'The 7th accused person, Chief Vincent Duru alias Otokoto testified as DW11. He was the Managing Director of Otokoto Hotel. He denied ever meeting the 6th accused - Leonard Unogu before this case. He also denied procuring and or counseling Innocent Ekeanyanwu to kill and bring him a human head and the tip of his penis. He denied sending Innocent Ekeanyanwu to their customer or having anything whatsoever to do with the murder of Ikechukwu Okoronkwo. His defence was hinged mainly on his claim that on the 19/6/96, he was at Okigwe and on the 20/9/96 he was at Owerri and on the 20/9/96 he was at Owerri Prison. He denied asking Innocent Ekeanyanwu several times if he had implicated him.'

After considering the specific denials of the appellant, he disbelieved him. The position of the learned trial Judge appears to me to be built on the Statement of Innocent Ekeanyanwu in Exhibit 36, wherein he stated that:

'Further to my previous Statement made earlier today 20/9/96. I now want to say the truth of what happened between me and the deceased.... When the boy dey sleep, I go tell our Director, Chief Vincent Duru that we don get one small boy which he said we should look for. He then directed me to kill him as we dey kill before and cut off the head and the penis and bring to him.....'

After cutting off his head, I also cut off the boy's penis. After cutting off the boy's head and part of his penis, myself, Sampson Nnamito and Alban Ajaegbu dig small grave and put the boy's body inside the grave. I then go to the Director, Chief Vincent Duru and informed him that we have killed the boy. The Director, Chief Vincent Duru followed me to the bush where the body was already in the grave. As the Director reached there and saw the body in the grave he said "well done" and asked me where is the head and part of the penis. I showed him the two parts. The Director, Chief Vincent Duru took the Penis and told me to take the head to our customer, Mr. Leonard Unogu alias Ochiriozu. After giving this order, the Director, Chief Vincent Duru stood by and watched us cover the grave with sand. We did not remove the boy's shirt and some coins in his pocket.'

Ordinarily, the Justices of the lower court had earlier rightly held that the statement of Innocent Ekeanyanwu could not be utilized against the appellant who did not adopt same. The court how-

ever found that in the course of the investigation and in consequence of the information contained in Exhibit 36, the headless body of the deceased with the head of the penis cut off was found buried in Otokoto Hotel where the appellant is owner and Managing Director. The said headless body was found buried and exhumed from a farm within the premises of the Hotel, which cassava farm was being cultivated by the wife of the appellant. It is also in evidence on record that Leonard Unogu who was to take possession of the head was known to the appellant though he denied knowing him. The lower court found that the trial Judge who had the opportunity to observe the appellant testifying in court, was right in concluding that the appellant's denial of knowing Leonard Unogu was to show that he could not have sent Ekeanyanwu to deliver the human head to him. Also that the conduct of the appellant from the evidence on record betrayed the behavior of a person who knew why Innocent Ekeanyanwu was arrested and brought to the Hotel, without being told. The lower court held that the learned trial Judge drew the right inferences and came to the right conclusion on the guilt of the appellant based on circumstantial evidence.

It is on record that the appellant attempted to raise a defence of alibi to show that he was not in the Hotel when the incident occurred. It is note worthy that he made Statements twice to the Police. The first statement was when he was arrested on 20/9/96, the following day after the deceased was murdered. The second statement was made on 27/9/96. In the first statement which was admitted as Exhibit 32, the appellant did not raise any defence of alibi. Indeed, he admitted that he was in the hotel on 19/9/96, the day the incident took place. It was in the second statement, which he made seven (7) days after he had made the first that he stated that he was away in Owerri to see his son in the prison and the Divisional Police Officer, therefore could not have been in the hotel when the incident took place.

In Idemudia Vs State (2015) 8 5CM 55 at 78 I had opined as follows:

“What then does the defence of alibi raised by the appellant mean? It simply means “elsewhere”. That is a defence based on the physical impossibility of a defendant’s guilt by placing him in a location other than the scene of the crime at the relevant time. It is the

fact or state of having been elsewhere when an offence was committed. See; Kareem Olatinwo Vs. The State (2013) 8 NWLR (Pt.1355) 126 at 149; (2013) 4 SCM 178 at 194. In other words, alibi means, when a person charged with an offence says - "I was not at the scene at the time the alleged offence was committed. Indeed, I was somewhere else, therefore I was not the person who committed the alleged offence": See Okosi & Ors Vs The State (1989) CLRN 29 at 48; Agboola Vs. The State (2013) 11 NWLR (Pt. 1366) 619.

In the considered judgment of the lower court at page 127 of the record, the court had found, *inter alia*, as follows:

"In the instant case, the evidence on the record shows that the appellant was arrested on the 20/9/96 and he immediately made a statement to the police. Such statement is in evidence as Exhibit 32, See pages 873-874 of the record of appeal. Therein the alibi presented to the court was not raised in that statement. Therein the appellant merely denied knowledge of the act of Innocent Ekeanyanwu. Specifically he said:

'I am the Management Director of Otokoto Hotels Group of Companies. My Manager is Ebenezer Egwuekwe. Before I reached the Hotel today I visited my son Vincent Duru at Owerri prisons. I was at the Hotel yesterday. 'The Manager is in charge to know who is present and who is absent.'

It is therefore clear that he admitted being at the hotel yesterday, which is the 19/9/96, the day the deceased was killed. His visit to the Owerri prison was therefore not on the 19/9/96 but on the 20/9/96, the day he was arrested. This contradicted his assertion in Exhibit 37 that he visited Owerri prison on the date of the incident. Furthermore, Exhibit 37 wherein he raised the alibi was made on the 27/9/896, which is seven days after his arrest and detention. Therein he stated that he went to Okigwe to see the Divisional Police Officer (DPO) on the 10/9/96 and only arrived at Otokoto Hotel at about 5.30p.m and left at about 6.15p.m."

The lower court had come to the conclusion that the trial court was right in disbelieving the appellant's defence of alibi and described it as an afterthought.

It is trite law that when an accused person raises unequivocally the issue of alibi, that he was somewhere else other than the locus delicti at the time of the commission of the of-

fence with which he is charged and gives some facts and circumstances of his whereabouts, the prosecution is duty bound to investigate the alibi set up, to verify its truthfulness or otherwise. See Maikudi Aliyu Vs. The State (2007) All FWLR (Pt.388) 1123 at 1141.

Ordinarily, there is no burden on the accused person to prove his alibi, but he is certainly not expected to merely state that he was not at the scene of the crime without more. He is bound to give the lead and particulars of his whereabouts at the earliest opportunity which will lead the prosecution in their investigation of the alibi. See Yanor Vs State (1965) 1 All NLR 193; Ozulonye Vs State (1981) NCR 38 at 50; Agboola Vs. The State (2013) 8 SCM 157.

On the duty of the prosecution to investigate an alibi set up by an accused person, this court has reinstated that there is indeed that duty but opined as follows:

“The police are however not expected to go on a wild goose chase in order to investigate an alibi. Any accused person setting up alibi as a defence is also duty bound to give to the police at the earliest opportunity some tangible and useful information relating to the place he was and the persons with whom he also was.”

See; Christopher Okosi & Anor Vs State (1981) 1 CLRN 29; Akile Gachi Vs. State (1965) NMLR 333 at 335.

There is no doubt that the appellant was in the Hotel on the day of the incident, that is, 19/9/96 when Okoronkwo was murdered, and his headless body was buried in a shallow grave in his wife’s cassava farm.

PW10 was one Margaret Acholonu. She was a Receptionist at Otokoto Hotel as at 1996. She was employed in 1977. She testified that the appellant was in Otokoto Hotel on the 19/9/96 from 11a.m. till 6p.m. She testified further that the appellant was inside his private room in the hotel when the policemen came with Ekeanyanwu.

Answering questions under cross examination by counsel for the appellant, PW10 stated that when the police told the appellant that Innocent Ekeanyanwu killed someone, the appellant asked him if he killed with a knife or machete, to which Ekeanyanwu replied

that he killed with a knife. Still under cross examination, PW10 stated that she had told the police in her statement that the appellant was in Otokoto hotel on 19/9/96 and stayed for a very long time before he left.

With the uncontradicted evidence of PW10 on the whereabouts of the appellant on 19/9/96, the day of the incident, and his own admission in his statement, that he was in the hotel, there is no controversy that he was in the hotel on the day Okoronkwo, the groundnut hawker was murdered. His defence of alibi was rightly held to be an afterthought by the trial court and was correctly discountenanced.

It has been held that one of the ways by which the prosecution may disprove an alibi set up by an accused is to call cogent and credible evidence against it. In other words, the fact that an accused has raised a defence of alibi by his evidence does not imply that the alibi must be accepted by a court. If the evidence called by the prosecution is credible, strong and compelling, the court is entitled to reject the defence of alibi. See: David Omotola & Ors Vs The State (2009) 3 SCM 127; (2009) 4 NCC 89; (2009) 7 NWLR (Pt.1139) 148.

With the evidence adduced by the prosecution which confirmed that the appellant was in the hotel on the day of the incident, his defence of alibi becomes baseless and unreliable.

Furthermore, the lower court was right to have affirmed the rejection by the trial court of the appellant's denial of knowing who was cultivating the cassava farm in the hotel inside which the headless body of the deceased Okoronkwo was buried on 19/9/36. Also the appellant's denial of ever knowing Leonard Unogu, the man who was to receive the head of Okoronkwo for ritual purposes.

As I stated earlier, for circumstantial evidence to support a conviction, it must not only be cogent, complete, and unequivocal, but must be compelling and lead to irresistible conclusion that the accused person and no one else is the murderer. Yongo Vs. COP (supra). There must be no iota of doubt. In the instant case the circumstantial evidence is mathematically accurate that it points to the one and only irresistible conclusion that the appellant was one of those who organized and murdered Okoronkwo, the groundnut

hawker on 19/9/96.

My Lords, before I conclude this judgment I must say a word on one embarrassing submission the appellant's senior counsel made in his arguments of the appeal.

On the discovery of the headless body of the deceased Okoronkwo in a Cassava farm within the Otokoto hotel in consequence of the second statement made by late Ekeanyanwu which was admitted 35 Exhibit 36, it is amazing and greatly disturbing that a learned senior counsel could insinuate that the headless body of the victim of the murder which was discovered and exhumed within the hotel premises could have been transferred to the hotel from the Mbaa river by a policeman investigating the case (PW1.) along with others he claimed hated the appellant. To whom much is given, much is expected. This submission belittles the learned senior counsel. He is expected to know better and perform better. Learned senior counsel forgot that he had earlier in his appellant's brief of argument, submitted that it is not in doubt that Exhibits 21 & 36 were confessional statement said to have been made by late Ekeanyanwu. In neither of the statements did he state that the headless body was transferred from the river to the hotel. This kind of practice is enough to rob one of integrity and respect, to say the least.

My Lords, I must state it loud and clear, that Counsel should know when and where to stop in the sole pursuit of his client's interest, be it in civil or criminal proceeding. It should be noted that the primary and most important interest of both counsel and even the court should be and indeed is the interest of justice. It is justice we all crave and overwhelmingly desire at all times.

There is no doubt and it cannot be the contention of the appellant's senior counsel that, the eleven year old groundnut hawker Anthony Ikechukwu Okoronkwo was not murdered in cold blood, beheaded and dismembered before the headless body was buried in a shallow grave within the secured compound of Otokoto Hotel of which the appellant is the Proprietor and Managing Director on the day and time when the appellant was within the said hotel. Most of us, including the appellant are fathers to our own children. None of us will surely pray that any of our children should be treated in this way. This is an unfortunate situation. I need say no more.

As a writer rightly put it - *“Have the courage to say no. Have the courage to face the truth. Do the right thing because it is right. These are the magic keys to living your life with integrity.”* - William Clement Stone (1902-2002).

A word, they say, is enough for the wise.
B In conclusion, I hold that the three issues are resolved against the appellant. There having not been any proof of a miscarriage of justice, and not having shown that the concurrent finding of facts is perverse, this court will not disturb the said concurrent finding of
C facts of the two courts below. The appellant was rightly convicted upon circumstantial evidence adduced by the prosecution. In the result, I find this appeal lacking in merit and it is accordingly dismissed. The judgment of the lower court which had earlier affirmed the appellant’s conviction and sentence by the trial court is hereby
D affirmed.

Appeal is dismissed.

MUHAMMAD JSC

E I read before now, the judgment just delivered by my learned brother, Ariwoola, JSC. I adopt his reasoning and conclusion. I dismiss the appeal I abide by consequential orders made in the lead judgment of my learned brother, Ariwoola, JSC.

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NGWUTA JSC

I read in draft the lead judgment just delivered by my learned brother, Olukayode Ariwoola, JSC, and I entirely agree with His Lord-
G ships’ analysis leading to the conclusion that the appeal lacks merit and ought to be dismissed.

I accordingly dismiss the appeal and abide by the consequential orders made therein.

Appeal dismissed.

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OKORO JSC

I read in draft the lead judgment of my learned brother

Olukayode Ariwoola, JSC, just delivered.

I am in agreement with the reasons advanced and the conclusion reached therein that this appeal lacks merit and ought to be dismissed. I adopt the said lead judgment as mine. I also dismiss the appeal. I abide by the consequential orders made therein.

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SANUSI JSC

The appeal is against the judgment of the Court of Appeal, Owerri Judicial Division, delivered on the 5th day of April, 2012 which affirmed the decision of High Court of Imo State, (the trial court) sitting in Owerri.

BRIEF OF FACT

The appellant and six others were alleged to have murdered one ANTHONY IKECHUKWU OKORONKWO at Otokoto Hotels in Amakohia-Uratta, Imo State. The Appellant was tried and convicted by the trial court and hence being arraigned he appealed to the Court of Appeal, Owerri Division (*“the lower court”* for short) unsuccessfully and further appealed to this court.

The Appellant in his brief of argument raised issued for determination by this court.

Issue No. 1 This issue relates to whether the Court of Appeal was right that Section 30 of the Evidence Act allows him to rely on facts contained in Exhibits 21 and 36.

The learned-senior counsel for the Appellant on this issue argued that Section 30 of the Evidence Act is not saying that the statement contained in Exhibits 21 and 36 can be used against him, but that the evidence of fact that the Appellant participated in the crime. He argued that in his statement it was stated that the Appellant participated in the crime was given by a co-accused which was used to convict the Appellant. He submitted that Section 30 of the Evidence Act should have been used in his favour rather than same being used against him.

Issue No. 2: This issue relates to placing reliance on Exhibits 21 and 36. In arguing it, the learned silk submitted that the lower court ought to have rejected and overturned the conviction because the trial court wrongly relied on Exhibits 21 and 36. He referred to

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page 39 Vol.2 lines 14-16 where it was held that the statement of one Innocent Ekeanyanwu cannot be used against the Appellant. He argued that the lower court should have reached a verdict that using Exhibits 21 and 36 amounts to a miscarriage of justice. He submitted further, that it is out of injustice to use unreliable evidence to convict the Appellant. He argued that the two exhibits which are confessional statements of the co-accused cannot” be relied upon because Exhibit 36 was not made in the presence of the Appellant for him to adopt same either by conduct or words as required by section 29(4) of the Evidence Act. He referred to the case of OZAKI v STATE (1990)1 NWLR pt.124 pg.92 at 113 where it was held thus:

“It is an error in law to convict an accused on the statement of another accused to the police

It is settled law by statute and judicial decisions that the confessional statement of a co-accused is no evidence against an accused who has not adopted the statement”

He argued further, that Exhibit 36 was shown to have been made under duress as corroborated by Exhibit 44 which is the investigation report of Zone 6 Police Headquarter, Calabar which stated that Exhibit 36 was obtained illegally. He referred to vol.1 pages 89 - 922 and 950 - 968 of the Record. He then urged the court to resolve this issue in favour of the Appellant.

Issue No. 3 relates to whether the lower court was right to have convicted the Appellant based on circumstantial evidence which was not direct, cogent and positive. He argued that where direct evidence is not available, circumstantial evidence if available must be cogent and point irresistibly to the guilt of the accused person before it can be used to convict. He referred to the case of SALA V SATI (1938)WACA where it was held that in order to support a conviction on circumstantial evidence, it must not only be cogent and compelling but it must also lead to irresistible conclusion that the accused person is the murderer.

He contended that the mere fact that the headless body of the deceased was dug out of Otokoto Hotel, does not amount to circumstantial evidence because there was no evidence that he directed the corpse to be buried on the land. He also argued that the PW1 was biased in his investigation report, he referred to Vol.1 page

48 line 8 and lines 16-19 to show the basis of his bias. He also referred to page 63 lines 11-17 page 378 lines 17-18 and page 380 lines 1-17. He submitted that the case against the Appellant was based on suspicion and that the learned justices of the lower court wrongly drew inferences when they held that at page 125 Vol.2 lines 14-29 and page 126 lines 1-3 of the record that the appellant did commit an offence he was charged with. In conclusion, he urged the court to allow the appeal and set aside the conviction and sentence of death imposed on the Appellant. B

The Respondent on the other hand formulated 3 issues for determination. C

Issue No. 1 pertains to interpretation of section 30 of the Evidence Act in relation to Exhibits 21 and 36.

The learned counsel to the Respondent argued that the trial judge did not rely on confessional statement of late Innocent D Ekeanyanwu (Exhibit 36) but rather relied on facts and evidence discovered as a result of Exhibits 21 and 36. He argued that the trial judge relied on the irresistible inferences that the owner of Otokoto Hotel, Chief Vincent Duru was fully involved, otherwise the deceased could not have been buried in his wife's farm without his consent. He concluded that those inferences are findings of facts and that the two lower courts made concurrent findings of facts based on credible evidence. E

He submitted further, that in interpreting Section 30 of the Evidence Act in relation to Exhibits 21 and 36 as it affects the Appellant, the learned justices of the court below took cognizance of Section 29(4) of the Evidence Act. He stated that the learned justices of the lower court did not hold or state that Section 30 of the Evidence Act allowed them or the trial judge to rely on the fact contained in Exhibits 21 and 36. He referred to a portion of the judgment of the lower court in relation to this on pages 25 lines 14-29 and 126 lines 1-3 of Vol.2 of the record. He submitted further, that both trial court and the court below relied on facts discovered as a consequence of the information received from Exhibit 36 in arriving at their conclusion. He argued that the discovery of the headless body of the deceased victim and exhuming same was consequence of facts from the information received in Exhibit 36. He also submitted that F G H

Exhibit 36 was freely and voluntarily made, and there is no evidence of force or duress. He argued that Exhibits 44 and 54 did not in any form, suggest evidence of duress but rather affirms the culpability of the Appellant. He referred to page 967 lines 14-18 Vol.1 of the record. He then urged the court to hold the Court of Appeal's construction of Section 30 of the Evidence Act did not occasion any miscarriage of justice.

Issue No.3 relates to Appellant's conviction on circumstantial evidence. On this, he submitted that the Justices of the lower court were right to have convicted the Appellant based on the circumstantial evidence which was direct, positive and cogent. He referred to the evidence of PW1 following the statement of Innocent Ekeanyanwu that he lives and works in Otokoto Hotel, and that while working with Ekeanyanwu, the Appellant walked up to them and asked
"Have you implicated me? Have you implicated me? (page 47 lines 1-10 vol. 1 of the record)"

He argued that this piece of evidence was not challenged under cross examination. He argued further, that the Appellant did not ask for the reason why Ekeanyanwu and his staff were arrested in his hotel premises. He argued that the reaction of the Appellant to the presence of police when they came to arrest him, portrayed a guilty reaction of a man who has knowledge of the reason for their presence. He submitted that where a party fails to ask a witness under cross examination on any issue raised in the evidence in chief, he is deemed to have accepted the truth of such witness's evidence in chief. He argued that evidence of PW1 at page 379 lines 21-23 of Vol.1 of the record, does not in any way amount to challenge the evidence of PW1 under cross examination. He argued that the evidence of PW1 was nothing but mere afterthought. The learned counsel for the Respondent referred to pg 53 lines 18-19 of Vol.1 of the record to the effect that there is evidence of other graves in the premises of the Appellant. This is another consequence of information received from Exhibit 36. He submitted that it is on record that Otokoto Hotel was notorious and known for its criminal activities. He submitted further, that the discovery of other graves at the same farm owned by the wife of the Appellant is relevant and points to the guilt of the Appellant. He urged the court to hold that the circumstantial evi-

dence adduced at the trial, points to the fact that the Appellant employed late Innocent Ekeanyanwu, the 1st and 2nd accused persons, to behead the deceased. He then urged the court to dismiss the appeal and affirm the judgment of the lower court.

In view of the similarities in the issue for determination raised by the two parties in this appeal, I think it will be comfortable to be guided by the three issues contained in the appellant's brief of argument. However, in view of the similarities of issues 1, 2 and 3 in the appellant's brief of argument, it will be more appropriate if they are taken together in considering this appeal.

In an effort to prove the case against the appellant at the trial court, the prosecution called eleven witnesses and tendered several Exhibits, it is trite law, that the prosecution always has the burden of proving the guilt of an accused person and that burden never shifts even when the accused person admits his guilt and the standard of such burden is nothing less than proof beyond reasonable doubt. It is pertinent to say, that the law provides mode of proving of the guilt of an accused person, to be either through direct evidence or through circumstantial evidence. With regard to the latter mode of proof, the circumstantial evidence adduced or presented or relied on by the prosecution which the trial court could accept and act on, must be compelling and also must irresistibly point to the guilt of the accused against when it is presented by the prosecution at the trial court. The direct evidence on the other hand, could be in either of the following forms:-

- (a) *Testimony of eye witness or witnesses that witnessed the commission of the crime, or*
- (b) *Through voluntary confession of the accused person, provided that the court must look for some evidence no matter how slight, supporting that the said confession was actually true.*

There is no gainsaying, that in this instant case, there was no eye witness account of the commission of the offence the appellant was charged with. The prosecution therefore relied on circumstantial evidence. The appellant also did not confess the commission of the offence he stood trial on. It is settled law, that circumstantial evidence that the prosecution should rely on to obtain conviction, must point unequivocally, unmistakably, positively and irresistibly to the accused

and to nobody else had committed the offence.(emphasis supplies)
See Sebastean S. Yongo & Anor vs Commissioner of Police (1992)2
SCNJ 113; Abeke vs The State (1978) 9-11 SC 97 or (1978)1 All
NLR 57.

In this instant case, the appellant’s submission is to the effect
B that the prosecution had principally relied on the statement it ob-
tained from one Innocent Ekeanyanwu, a co-accused of the appel-
lant, who passed on before the trial was concluded. The learned coun-
C sel for the respondent, however, had a contrary view, when he sub-
mitted that the appellant was convicted based on circumstantial evi-
dence and NOT based on Exhibits 21 and 36 tendered by the pros-
ecution. He said the trial court drew inferences from the evidence
adduced before it and the surrounding circumstances of this case. I
will below highlight some of the inferences that must have informed
D the court to find that the appellant was culpable. For instance:-

*(a) From the information contained in Exh 36 the body and
penis of the small boy were recovered, buried in cassava farm in the
hotel owned by the appellant’s wife.*

*(b) That Leonard Unogu who was to take possession of the
E head of the deceased was well known to the appellant even though
he denied knowing him.*

*(c) That the appellant came to know of the arrest of Innocent
Ekeanyanwu(dcd).*

*(d) Appellant was asking one of the co-accused arrested,
F whether he was implicated by the witness.*

*(e) Also, in his second statement made to the police 7 days
after the first one, the appellant raised alibi that he was away to Lagos
on the day of the incidence.*

G The learned justices of the Court of Appeal had affirmed all
these pieces of inferences made by the trial court.

I must say, that I am fully aware that for a trial court to act on
circumstantial evidence to convict, it must be very cautious. This court
in the case of Olusola Adepetu vs The State (1998) 6 NWLR (pt.565)
H 185 or (1998) 14 SC (pt.1) 117 had this to say.

*“In drawing an inference of a guilt of an accused person from
circumstantial evidence, however great care must be taken not to fall
into serious error.*

It follows therefore, that circumstantial evidence must always be narrowly examined, as this type of evidence may be fabricated to cast suspicion on innocent persons. Before circumstantial evidence conform the basis of conviction, the circumstances must clearly and forcibly suggest that the accused was the person who committed the offence and that no one else could have been the offender. B
See Fatoyinbo vs AG of W Nigeria (1966) WNLR 4; 7; Udedibia V The State (1980) 1-2 SC 5".

It is my view that from the evidence adduced in the case, the trial court had rightly drawn inferences to find that the appellant had really committed the offence as charged. The lower court was also correct in affirming the findings of the trial court with regard to the admissibility of the evidence of co-accused Innocent Ekeanyanwu. I hold that the statement of that co-accused could only be admissible if same had earlier been shown to the accused and read to him and he adopted it. That is not the position here, because the said Exhibited statement was never adopted by the appellant or even shown to him let alone to adopt same. D

However, the provision of Section 30 of the Evidence Act states that where information is received from a person who is accused of committing an offence, whether such person is dead or alive or whether such person is in custody or not and as a consequence of such information a fact is discovered, the discovery of that fact together with evidence that such discovery was made in consequence of the information recovered, received from the defendant may be have been admissible in evidence. See *Kareem vs FRN (No. 2) (2002) 8 NWLR (pt.770) 644*. In this instant case therefore, the fact recovered following the information received from them is admissible e.g. the corpse and the head of the deceased person. E F G

Then on the alibi defence raised by the appellant in his second statement, I think the two lower courts were correct in discarding it not only because it was not given at the earliest stage of investigation to enable the police investigate it, but also because he did not give details and the particulars of the place he was in Lagos as at the time of the commission of the offence. See *Yanor v State (1965) 1 All NLR 193; Agboola V State (2013) SCM 157*. Evidence abound that the appellant was also in his own hotel when the offence of murder H

of the deceased was executed. In the light of all that I have said supra, I must say that all the three issues ought to be and are indeed, hereby resolved against the appellant.

Finally, it is not the practice of this court to interfere with the concurrent findings of two lower courts, except, of course, where such concurrent findings are perverse or - there-is misconception or wrong application of law. That is not the position in this case, hence I have no business interfering or disturbing the two lower courts' findings.

Thus, with these few comments which are chipped in to support the more detailed reasoning and conclusions reached by my noble lord Ariwoola, JSC in his leading judgment which I agree with and adopt as mine, I also see no merit in this appeal and it is accordingly dismissed by me as it is unmeritorious. I affirm the judgment of the lower court which had earlier affirmed the judgment of the Imo State High Court, the trial court.

Appeal is dismissed accordingly.

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