In the Supreme Court of Nigeria

On Friday, the 17th day of February 2012

Before their Lordships

Ibrahim Tanko Muhammad	.....	Justice Supreme Court
Olufunlola Oyelola Adekeye	.....	Justice Supreme Court
Suleiman Galadinma	.....	Justice Supreme Court
Nwali Slyvester Ngwuta	.....	Justice Supreme Court
Olukayode Ariwoola	.....	Justice Supreme Court

SC. 14/2011

Between

Demo Oseni ..... Appellant

And

The State ..... Respondent

Judgment of the Court

Delivered by

Nwali Slyvester Ngwuta. JSC

The appellant was charged along with one Abubakar Umaru Sadiq with the offences of conspiracy and armed robbery before the High Court of Justice of Kwara State, lIorin Judicial Division. The counts of conspiracy and armed robbery were laid under S.97 of the Penal Code and S.l (2)(a) and (b) of the Robbery and Fire Arms (Special Provision) Act Cap. R.ll Laws of the Federation 2004, respectively.

In the course of the trial, the Criminal Justice Committee of Kwara State released the 1st accused person Abubakar Umaru Sadiq on bail based on ground of ill-health. Subsequently, he was reported dead and his name struck out of the charge. At the end of the trial, the learned trial Judge discharged and acquitted the 2nd accused, the appellant herein, of the offence of conspiracy. He was however convicted of the offence of armed robbery and sentenced to death by hanging.

The appellant appealed to the Court of Appeal Ilorin. The lower Court dismissed the appeal and affirmed the decision of the trial High Court.

Appellant has appealed to this Court on four grounds which are hereunder Reproduced shorn of their particulars:-

Ground One

The Court of Appeal erred in law when it held that the respondent proved its case beyond reasonable doubt.

Ground Two

The Court of Appeal misdirected itself when it held that the confessional statement was sufficiently corroborated.

Ground Three

The Court of Appeal misdirected itself in law when it held that the argument that the appellant speaks and understands a different language from that of the prosecution witnesses cannot avail the appellant the benefit of doubt in view of the fact that the witnesses were not cross-examined on how they heard the confession of the appellant.

Ground Four

The Court of Appeal misdirected itself when it held that the learned trial Judge was right in convicting the appellant of the offence of armed robbery while discharging him on the offence of conspiracy.

In compliance with the rules, learned Counsel for the parties filed and exchanged briefs of argument. From the four grounds of appeal in the Notice of Appeal, learned Counsel for the appellant formulated the following two issues for

Issues for determination:

(a) Whether in view of the evidence adduced at the trial, Court the Court of Appeal was right to have affirmed the decision of the trial Court that the charge of armed robbery was proved beyond reasonable doubt.

(Related to Grounds 1 & 2).

(b) Whether the Court of Appeal was right when it held that Exhibit 5 was rightly acted upon by the learned trial Judge.

(Related to Grounds 3 & 4).

Learned Counsel for the respondent adopted the two issues presented by the appellant.

Arguing issue one in his brief, learned counsel for the appellant referred to S.138(1) of the Evidence Act on the burden of proof in criminal cases. He relied on s.36 (6) (5) and (11) of the Constitution of the Federal Republic of Nigeria 1999 as amended and on the presumption of innocence. He cited *Chianugo v. State (2002) 2 NWLR (Pt. 750) 225 at 236.* He argued that to prove armed robbery, the prosecution must prove three ingredients:

(a) That there was robbery.

(b) That the robbery was armed robbery.

(c) That the deceased was one of those who robbed.

He relied on *Bello v. The State (2007) 10 NWLR (Pt. 1043) 564 at 566-567*. He argued that the prosecution must prove, in addition to the above ingredients, that the accused at, or immediately after, the time of the robbery inflicted wounds or used any personal violence on any person. He contended that the prosecution did not prove the ingredients of the offence of armed robbery as enumerated above.

He argued that the prosecution relied heavily on what he called discredited confessional statement of the appellant. He said the State sought to corroborate the statement by pieces of evidence which had no existence outside the confession and which were inadmissible hearsay evidence. He relied on *Akpa v. State (2008) 14 NWLR (Pt. 1106) p.72 at 99 Para D-E; Nwachukwu v. State (2002) 2 NWLR (Pt. 751) p.366* in his contention that the trial Court failed in its duty to consider the circumstances under which the confession was made with a view to deciding the weight to be attached to it.

Learned Counsel conceded that the appropriate time to raise objection to the statement on grounds of involuntariness is at the point of tendering the statement. He cited *Alarape v. The State (2001) FWLR (Pt. 41) 1872 at 1875.* He regretted that Counsel for the appellant at the trial Court did not object to the statement and said that the trial Court should have been more cautious and considered the statement in the light of the testimony of the appellant. He relied on *Ismail v. State (2008) 15 NWLR (Pt. 1111) page 593 at 621 para. D-E; Efffong v. State (1998) 8 NWLR (Pt. 562) 632* in support of his argument that before a conviction can be founded on a retracted confession, it is desirable to have some evidence outside the confession which would make it possible that the confession is true. He said there were no eye-witnesses to the incident leading to the charge against the appellant and what the prosecution witness claimed to have heard the appellant say was not direct but hearsay evidence and not admissible. He relied on *Jolayemi v. Alaoye (2004) 12 NWLR (Pt. 887) 322 at 341.*

He argued that what the prosecution witnesses claimed they heard the appellant say was not direct experience or sensation emanating directly from a fact in issue. He referred to *Ojo v. Gbarono (1999) 8 NWLR (Pt. 615) 374 at 387* wherein such statement as testified to by the prosecution witnesses were admitted as what the witness heard during the incident. He argued that the evidence of prosecution witnesses is extraneous to, and cannot corroborate, the confessional statement of the appellant.

Learned Counsel conceded that a search warrant was executed leading to the recovery of a cutlass based on the confessional statement but argued that in the face of uncontroverted testimony of the appellant at the trial the Court should have been cautious in placing reliance on the recovery of the cutlass. He relied on *Orji v. State (2008) 10 NWLR (Pt. 1094) 31 at 50* in his argument that the recovery of a cutlass in the appellant's shed is no conclusive proof of crime. He added that there was no forensic examination to prove that the cutlass was the instrument of crime as alleged by the prosecution.

He argued further that even though the 1st accused was caught with the stolen motorcycle, the prosecution did not establish a link between the appellant and the said 1st accused. He urged the Court to resolve the issue in favour of the appellant.

In Issue Two, learned Counsel relied on *Akpa v. The State (2007) 2 NWLR (Pt. 1019) p.500; Uwagboe v. State (2007) 6 NWLR (Pt. 1031) 606 at 623* and contended that the trial Court should have considered the following before convicting the appellant based on the confessional statement:

(i) Is there anything outside the confession to show that it is true?

(ii) Is it corroborated?

(iii) Are the facts therein stated as true as far as can be tested?

(iv) Had the accused person the opportunity of committing the offence?

(v) Is the confession possible?

(vi) Is the confession consistent with other facts ascertained and proved?

Counsel argued that there is nothing outside Exhibit P5 to show that the appellant committed any crime or conspired with the 1st accused or any other person to commit any crime. He re-emphasised that Exhibit P5 is not corroborated. He argued that the facts contained in Exhibit P5 and the testimonies of the prosecution witnesses are not true as far as the same can be tested. He maintained that the confession is inconsistent with other facts and findings of the Court. He referred to the evidence of PW2 who he said under cross-examination admitted that he speaks only the Baruten whereas the appellant speaks and understands only Hausa and Fulani languages.

On the neglect of Counsel to cross-examine the prosecution witnesses on the language they spoke *vis-a-vis* the appellant, learned Counsel relied on the presumption of innocence in S.36 (5) of the Constitution *(supra).* Learned Counsel added:

> "A corollary of this is that an accused person has the sole discretion whether to cross-examine the prosecution witnesses or not and the exercise of that discretion, or lack of it, should not serve as the basis of any imputation of guilt by the Court."

Counsel argued that even though Exhibit P5 was admitted in evidence, the appellant never adopted same and in fact, disclaimed it and said he was forced to append his thumbprint on it. Learned Counsel emphasised that the evidence of the appellant in his defence was not contradicted, disputed or successfully challenged by the prosecution. He urged the Court to resolve the issue in favour of the appellant. In conclusion, he urged the Court to allow the appeal and set aside the decision of the lower court affirming the decision of the trial court.

In dealing with issue one in his brief, learned counsel for the respondent naturally contended that the charge against the appellant was proved beyond reasonable doubt as found by the trial Court and affirmed by the lower Court. He emphasised that proof beyond reasonable doubt is not and should not be mistaken for proof, beyond every shadow of doubt. He argued that once the prosecution has proved that an offence has been committed and that no other than the accused has committed the offence, the proof beyond reasonable doubt is attained. He relied on *Mufutau Bakaru v The State (1987) 3 SC 1 at p.5*.

He adopted the constituent ingredients of armed robbery as stated in paragraph 4.1.3 of the appellant's brief. He referred to the evidence of PW2, PW3 and PW4 as contained at pages 27 - 42 of the record and argued that if the evidence is read together with the confessional statement of the appellant admitted and marked Exhibit P5, there will be no doubt that the charge of armed robbery against the appellant is proved as laid. He drew attention to the conclusion reached by the trial Court at page 20 of the record and affirmed by the lower Court at page 134 of the record. He conceded the absence of eye-witness account of the robbery resulting to the death of the victim but argued that the quality of the circumstantial evidence warranted the conviction of the appellant.

He relied on *Amusa Opoola Adio & Anor v The State (1986) 4 SC 194 at 219-220* where it was held, inter alia, that circumstantial evidence can prove a case beyond reasonable doubt.

Learned Counsel contended that the trial Court did not rely solely on the confessional statement of the appellant and that the conviction of the appellant was the cumulative effect of the trial Court's consideration of the evidence of PW2-PW4, the cutlass recovered in the home of the appellant and his confessional statement Exhibit P5.

He relied on S.27 (B) of the Evidence Act; *Utteh v. The State (1992) 2 NWLR (Pt. 223) 257 at 221; UBN Plc v. Ishola (2001) 15 NWLR (Pt. 735) 47 at 75* and argued that the facts stated by PW2-PW4 are facts which could be heard and were in fact heard by the witnesses who gave direct evidence of what they heard. The evidence of the witnesses, he argued, is not hearsay evidence as argued in the appellant's brief.

With regard to the argument on the respective languages spoken by the witnesses on one hand and the appellant on the other hand, learned Counsel said it was not true that there was no way the witnesses could have understood what the appellant said for the following reasons:

(1) The witnesses were not cross-examined on how they heard the confession of the appellant. An interpreter could have been used but

(2) The appellant himself did not object to Exhibit P5 which contains the summary of the evidence of PW3 and PW4.

He urged the Court to resolve the issue in favour of the respondent.

In Issue Two, learned Counsel conceded the duty of a trial Judge to evaluate a confessional statement, more so where the Court relies solely on it to convict the accused. However, he argued that the conviction of the appellant was not based

exclusively on the confessional statement but also on other cogent and compelling pieces of circumstantial evidence which made the facts stated in the confession true. He argued that the confessional statement Exhibit P5 was corroborated by the evidence of PW2, PW3 and PW4 which showed the facts in the statement to be true as can be tested, the appellant had the opportunity of committing the crime, the appellant's confession is possible and the confession is consistent with other facts ascertained and proved at the trial.

Learned Counsel faulted the arguments of the appellant that the difference between the confessional statement and the oral testimony of the appellant should have weighed in favour of the appellant and submitted that the trial Court was right to reject the testimony of the appellant as an afterthought since he did not object to the said statement. He relied on *Alarape v The State (2001) FWLR (Part 41) 1872 at 1875*.

On the argument that the evidence of the appellant was not controverted or contradicted in cross-examination, learned Counsel argued it was the appellant who did not rebut, controvert or contradict the evidence against him under cross-examination but elected to build a new case in the course of his defense. He relied on *Alarape v. The State (supra)* in his contention that the approach adopted by the appellant has an adverse effect on his case. He urged the Court to resolve the issue against the appellant.

In conclusion, he urged the Court to dismiss the appeal and affirm the decision of the Court below which affirmed the decision of the trial Court.

Issue One is on whether the lower Court was right to affirm the decision of the trial Court based on the evidence adduced at the trial. It is related to Issue two in that the queried Exhibit P5 is part of the evidence adduced at the trial. This accounts for the spillage of argument on Issue One into Issue Two in the briefs filed and exchanged by the parties.

In the circumstances, I consider it appropriate to take Issue Two first. If issue two is resolved in favour of the appellant, it will be resolved whether or not the totality of evidence adduced at the trial excluding Exhibit P5 is sufficient to ground the conviction of the appellant. On the other hand, if the issue 2 is resolved against the appellant, I will proceed to determine whether or not the totality of the evidence adduced, including Exhibit P5, constitute proof beyond reasonable doubt in a charge of armed robbery.

Exhibit P5 was admitted as a confessional statement of the appellant. 5.27 (1) of the Evidence Act as amended defines confession:

> "5.27 (1): A confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime."

It is further provided in subsection 2 that:

> "Confessions, if voluntary, are deemed to be relevant facts as against the persons who make them only."

The voluntariness *vei non* of Exhibit P5 was not an issue at the trial. Learned counsel for the appellant conceded this much in his brief but urged that the statement be treated with utmost caution in view of the testimony of the appellant in his defence. It is the law that a retraction of a confession does not *ipso facto* render the confession inadmissible. See *R. v John Agagariga Itule (1961) 1 ANLR 402* (FSC) wherein Brett, Ag CJF held that

> "a confession does not become inadmissible merely because the accused person denies having made it and in this respect a confession contained in a statement made to the Police by a person under arrest is not to be treated different from any other confession. The fact that the appellant took the earliest opportunity to deny having made the statement may lend weight to his denial. See *R v. Sapele & Anor (1952) 2 FSC 74* but it is not in itself a reason for ignoring the statement."

The appellant took the earliest opportunity when the statement was offered in evidence to deny having made it. A mere denial without more, even at the earliest opportunity, cannot, on the facts of this case, lend weight to the denial. The denial is a bare statement bereft of any supporting fact and standing only on the *ipso dexit* of the appellant. As stated earlier, the statement was not challenged on ground of involuntariness and the trial Court rightly declined the invitation to conduct trial within trial.

The burden of proving affirmatively beyond reasonable doubt that the confession was made voluntarily is always on the prosecution see *Joshua Adekanbi v. AG Western Nigeria (1961) All NLR 47; R v Maton Priestly (1966) 50 CR App. R 183 at 188; Isiaka Auta v The State (1975) NNLR 60 at 65 SC.*

On the evidence adduced by the prosecution, coupled with the fact that the voluntariness of the statement was not raised or challenged at trial, I hold that the prosecution proved affirmatively beyond reasonable doubt that Exhibit P5 is the voluntary confessional statement of the appellant. A man of full reason, in control of his senses and without any form of threat or inducement, the onus of proof of which is on him, who makes a statement confessing to a crime that had been committed, cannot be heard to deny that statement and exonerate himself of the crime. There was no allegation of inducement or that the appellant was coerced to confess to a crime which was not committed or if committed, was not committed by him.

As for the issue of corroboration stressed by learned Counsel for the appellant, the law is settled and:

> "it is the law that even without corroboration a confession is sufficient to support a conviction so long as the Court is satisfied of its truth."

See *Mohammed J. Yahaya v. The State (1986) 12 SC 282 at 290; R v. Aminu Kano (1941) 7 WACA 146; Isaac Stephen v. The State (1986) 12 SC 45 at 470.*

On the weight to be attached to a confessional statement whether retracted or not retracted the tests are as laid down in *R v. Sykes (1913) 8 CR App. R.233* approved by the West African Court of Appeal in *Kanu v. The King (1952/55) 14 WACA 30.* These are the questions a Judge must ask himself on the weight to be attached to a confessional statement:

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

(2) Is it corroborated?

(3) Are the relevant statements made in it of facts, true as far as they can be tested?

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

(5) Is his confession possible?

(6) Is it consistent with other facts which has been ascertained and have been proved?

Whether a conviction based on a confessional statement will be upheld or not will depend on whether or not the confessional statement passed satisfactorily the six tests listed above. I will take the tests *seriatim:*

(1) Is there anything outside the confession to show that it is true? In his confessional statement Exhibit P5, the appellant stated inter alia:

> " ……. at this juncture, we planned together to wait for him in the bush pending his returning back .... While in the bush, Umaru Sabi Sika came with his motorcycle while we forced him to stop. At this juncture I matched (sic) him on his right hand, head and neck while he fell down …..... After we've killed him, Abubakar Umaru Sadiq went away with his motorcycle so that he would sell it ... Actually it was myself and Abubakar- Umaru Sadiq that killed the said Umaru Sabi and carted away his motorcycle …….. The cutlass I used in killing the deceased is in my house. I am ready to produce the said cutlass to the Police at any time my house is visited." See page 61 of the records.
>
> (Underlining mine).

The Report of the medical practitioner on the condition of the corpse Exhibit P9 states inter alia:

> "Deep cut on the neck ... his right wrist almost cut off. There are six (6) other deep cuts on his head."
>
> See page 69 of the record.

Appellant said he macheted (he used the word "matched") the deceased on his right hand, head and neck. Exhibit 9 which is outside the confession shows the presence of "Deep cut on the neck, his right wrist almost cut off" and "six (6) other deep cuts on his head." The contents of Exhibit P9 tallies in all material particulars with the contents of Exhibit P5 with regards to the injury inflicted on the deceased.

There is credible evidence that the deceased travelled to a market on his motorcycle. A motorcycle was recovered and identified as belonging to the deceased. In Exhibit P5, appellant said he and his co-accused laid ambush for the deceased, stopped him and killed him on the road. There is evidence which was not challenged, that the deceased who left for market on 26/5/05 was found on the road in a pool of blood on 27/5/05. He was macheted to death.

In my view, only the perpetration of the crime could without the benefit of Exhibit P9 state where the injuries were inflicted on the body of the deceased with such degree of accuracy as evident from Exhibits P5 and P9. The contents of Exhibit P9 corroborate the confessional statement Exhibit P5. The facts that cuts were inflicted on the neck, head and right hand of the deceased and that the deceased was killed on the road and his motorcycle stolen are true as far as can be tested. They are relevant facts contained in Exhibit P5.

The appellant did not plead alibi and there is nothing, even from his cock and bull story, to suggest, even remotely, that he had no opportunity to commit the crime. He did not say he was not within the area at the time of the murder. Even without the evidence of PW2-PW4, the possibility of the confession is amply demonstrated in Exhibit P9.

The confession is consistent with the discovery of the body of the deceased in a pool of blood on the road, the fact that the deceased was macheted to death, the fact that the motorcycle on which he travelled to the market was stolen, the machete cuts on his body. Above are facts ascertained and proved and the confessional statement Exhibit P5 is consistent with them.

Exhibit P5, in my view, satisfactorily passed the six tests listed above. On the facts of this case it can by itself support the conviction of the appellant on the charge of armed robbery upon which he was tried. In *Ashcraft v. Tennessee 322 US 143,161 (1994),* it was stated:

> "A confession is wholly and incontestably voluntary only if a guilty person gives himself up to the law and becomes his own accuser."

Having satisfied the conditions for its admission and the weight to be attached to it, it is the best and strongest evidence possible, short of eye witness account which was not presented in this case. I endorse the decision of the lower Court on Exhibit P5. I resolve issue two against the appellant.

Issue one is whether in view of the evidence adduced at the trial Court, the Court of Appeal was right to have affirmed the decision of the trial Court that the charge of armed robbery was proved beyond reasonable doubt. The evidence adduced at the trial is, inclusive of but not mainly, the contents of Exhibit P5. Not only have I decided that the Court below was right in holding that the trial Court rightly acted upon it, I have also come to the conclusion that the appellant could have been rightly convicted solely on his confessional statement, Exhibit P5.

The rest of the evidence - the testimonies of PW2, PW3 and PW4 will only add, but will not detract from Exhibit PS. The testimonies of those witnesses are mere subsidiaries of the main evidence, Exhibit P5, and having resolved the two issues against the appellant, it is not necessary to formally resolve issue one.

In the final analysis, I dismiss the appeal as devoid of merit. I endorse the decision of the court below which affirmed the judgment of the trial court. Appeal dismissed. Conviction of, and the death sentence passed on the appellant are affirmed.

Judgment delivered by
Ibrahim Tanko Muhammad. JSC

There were initially two accused persons before the Kwara State High Court of Justice, holden at Ilorin (trial court). The charge against them reads as follows:

> Count One
>
> That you, Abubakar Umaru Sadiq, Demo Oseni on or about 26th May, 2005 along Chikanda road in Baruten Local Government Area of Kwara State within the jurisdiction of this Court, agreed to do an illegal act to wit: killed one Umoru Sabi Sika with cutlass and Robbed him of his Zinoki Supra motorcycle, and you thereby committed an offence punishable under section 97 of Penal Code.
>
> Count Two
>
> That you Abubakar Sadiq, Demo Oseni, on or about 26th May, 2005 along Chikanda Road in Baruten Local Government Area of Kwara State within the jurisdiction of this court killed one Umoru Sabi Saka with a cutlass and robbed him of his Zinoki Supra motorcycle and attempted to sell same at qure market in Baruten Local Government Area and you thereby committed an offence contrary to section 1 (2)(a) and (b) of Robbery and fire Arms (Special Provision) Act Cap. R11, Laws of Federation of Nigeria, 2004."

The appellant and the other co-accused pleaded not guilty. Full trial commenced. Witnesses testified. Exhibits tendered and admitted. In the midstream of the trial, the co-accused (that is 1st accused) was released on bail by the Chief Judge of Kwara State and since then, the whereabouts of the 1st accused is unknown and the 2nd accused, now appellant, had to face the prosecution alone. At the end of trial, the learned trial judge found the appellant guilty on the 2nd count, convicted and sentenced him to death by hanging by virtue of the provision of section 1 (2) (a) and (b) of the Robbery and Firearms (Special Provision Act) Cap R11, LFN 2004. He was however discharged and acquitted on the 1st count of conspiracy

The appellant appealed to the Court of Appeal, Ilorin Division (the court below). The court below dismissed the appeal and affirmed the decision of the trial court.

Further dissatisfied, the appellant appealed to this court against the court below's judgment.

In his brief of argument before this court the appellant through his counsel formulated the following issues for determination:

(a) Whether in view of the evidence adduced at the trial Court the Court of Appeal was right to have affirmed the decision of the trial Court that the charge of armed robbery was proved beyond reasonable doubt.

(Related to Grounds 1 & 2).

(b) Whether the Court of Appeal was right when it held that Exhibit 5 was rightly acted upon by the learned trial Judge."

(Related to Grounds 3 & 4).

Learned counsel for the respondent adopted the issues formulated by the appellant

I focus my attention particularly on the argument of learned counsel for the appellant on issue one as contained in paragraphs 4.1.6 of page 8 to end of paragraph 4.1.11 on page 9 of the appellant's brief of argument. I take pains to reproduce same herein

"4.1.6 The prosecution relied heavily on the discredited confessional statement of the appellant allegedly made to the police and only sought to corroborate the said statement by pieces of evidence having their existence tied to the statement itself and which we respectfully reiterate, are a bunch of hearsay evidence which in law is inadmissible.

4.1.7 No doubt a confession is admissible against its maker, it is however the duty of the trial judge to consider the circumstances under which it was given to decide what weight is to be attached to. See *Akpa v. State (2008) 14 NWLR (Pt.1106) page 72 at page 99, para D - E: see also Nwachukwu v. State (2002) 2 NWLR (Pt.751) pg. 366*. Moreover, an extra-judicial confession in a case attracting the maximum penalty ought to be treated with utmost caution.

4.1.8 In the instant case, the appellant, an illiterate cattle rearer who speaks only Hausa language testified in the open court as to the inhuman conditions to which he was subjected to, which compelled him to involuntarily thumbprint exhibit P5, the so-called confessional statement. See page 50 of the Records of Appeal.

4.1.9 No doubt, the appropriate time to raise objection on the ground of involuntariness is at the point of tendering the document. *See Alarape v. The State (2001) FWLR (Pt.41) pg, 1872 at 1875.* Regrettably, however, the appellant's counsel at the trial court neglected to do this. My Lords, it is not our contention that the defence of involuntariness ought to avail the appellant *per se*, but that the statement *viz-a-viz* the testimony of the appellant in court ought to have engender [sic] the mind of the court below to treating the said statement with utmost caution, See pages 50 - 51 of the Records of Appeal. This, we respectfully submit, the court below did not do.

4.1.10 It is trite law, a confession where freely given is sufficient to ground a conviction, However, before a conviction can be based on a retracted statement it is desirable to have some evidence outside the confession which would make it possible that the confession was true, See *Olusegun Otufale v. State. See also, Ismail v State (2008) 15 NWLR (Pt.1111) page 593 at 621, paras D - E, See also, Effiong v. State (1998) 8 NWLR (Pt.562) at 632.* Corroborative evidence is to give support or strength to the assertion of the prosecution. That is why as a matter of practice, a trial court should be very slow to convict on uncorroborated evidence of the prosecution. Such corroborative evidence should not only be independent but must also pin the accused person with the offence.

4.1.11 Such corroborative evidence must be independent and distinct of the evidence it seeks to corroborate. In the instant case, both trial court and the court below ought to have averted their mind to the question, whether there was any independent and distinct testimony which affect the appellant by confirming the evidence given and tending to connect the appellant with the offence? In the instant case, the lower court held as rightly corroborating the appellant's confessional statement the evidence of the prosecution witnesses, particularly the testimonies of PW2, PW3 and PW4 whereas they merely repeated what they admitted they heard the appellant say at the police station. This reasoning of the learned trial judge was affirmed by the court below. However, my lords, it is our submission that the so-called testimonies were mere hearsay evidence and as such ought not be held as corroborating the statement."

My humble understanding from the above is that, the learned counsel is saying that:

(i) The appellant confessional statement was discredited

(ii) The prosecution sought to corroborate the confessional statement by pieces of evidence having their existence tied to the confessional statement itself.

(iii) Those "pieces of evidence" are a bunch of hearsay evidence which are inadmissible.

(iv) Corroborative evidence must be independent and distinct of the evidence it seeks to corroborate.

The appellant was subjected to inhuman conditions which compelled him to voluntarily thumbprint exhibit P5. The learned

counsel for the appellant conceded that:

(a) A confession is admissible against its maker

(b) The appropriate time to raise objection on the ground of involuntariness is at the point of tendering the document

(c) It is regrettable that the appellant's counsel at the trial court neglected to object to the admission of the involuntary confessional statement

(d) That confession where freely given is sufficient to ground a conviction

But, from the printed record of appeal, it is pretty clear that in the process of evaluating the evidence laid before him, the trial judge made the following findings:

> "The court believed the evidence of PW2 that the confessional statement of the accused Demo Oseni was taken before his superior officer ASP Abel Ademola ……. He testified further that the accused admitted that he made exhibit P5 voluntarily and the ASP endorsed it, the accused thumb printed and the PW2 signed as a witness.
>
> I am of the candid view that the evidence of PW2 and PW3 corroborates one another as to the confession of the accused person to the effect that he killed the deceased. I am of the view that the evidence of PW4 Tola Bababtunde, who testified as the Investigation Police Officer attached to the divisional Police headquarters, Kosubosu to the effect that the accused Demo Oseni confessed that he himself and the 1st ccused killed the deceased also corroborate[s] the evidence of PW2 and PW3 ……. On a critical perusal of exhibit P5, the statement of the accused, Demo Oseni, I am of the view, corroborates the evidence in chief of PW2, 3 and 4 in particular the evidence of PW3"

On whether such pieces of evidence upon which the learned trial judge made his findings were discredited and were a bunch of hearsay, the learned trial judge provided a positive answer as follows:

> "It is pertinent, to state that the defence did not controvert, deny or rebut any of these evidences under Cross-examination and so the court believed it to be true. The court also believed the evidence of PW2 that the Motorcycle stolen from the deceased in the course of the robbery was released to the brother of the deceased on bond that is exhibit P2, because this piece of evidence was neither rebutted, denied nor controverted by the defence".

The court below agreed with the trial court in its findings as summarized above. It in fact commented further that:

> "It is pertinent to observe that the learned trial judge did not only rely on the confessional statement of the appellant herein, the trial court was confronted with other independent evidence outside the confession which makes the confession probable and which corroborates it in substance. The evidence of P2, PW3 and PW4 together with the search warrant on the house and premises of the appellant admitted as exhibit P8 strengthen the prosecutions."

Again, the court below observed as follows:

> "Learned counsel for the appellant has made heavy weather on the evidence of PW2. PW3 and PW4 which he dubbed as hearsay evidence. With due respect to the learned counsel, the evidence of the said witnesses is not and cannot be hearsay in view of section 77 [B] of the Evidence Act.

The court below concluded that:

> In the light of the avalanche of authorities reproduced supra, I am of the firm view that the evidence of the prosecution witnesses is not and cannot be hearsay. Far from it, the learned trial judge was right in relying on the said evidence *inter alia* in convicting the appellant".

On the issue of involuntariness of the confessional statement of the appellant, the court below stated, inter alia, as follows:

> "It is pertinent at this stage to pause and say that when exhibit 5 was sought to be tendered by the prosecution, there was no objection to its admissibility on the ground of inhuman treatment or that being an illiterate he did not understand what was being tendered before the court. In fact, as can be gleaned from the record, the appellant and the statement were taken before a superior Police Officer and same was read to him and he confirmed that he is the maker of the statement and that he made it without duress or promise of favour.
> (See the endorsement on exhibit P5).
>
> It is noteworthy to observe that it was after exhibit 5 had been admitted in the course of his defence that the appellant for the first time raised the issue of involuntariness of the statement. The question that must be asked and answered is this; can the appellant successfully raise the involuntariness of the confessional statement at the stage of defence?"

Further, in affirming the conviction and sentence of the appellant, the court below stated categorically that the confessional statement of the appellant is direct, positive and unequivocal and even the motive of the killing had been expressly stated by the appellant himself. The settled principle of law has always been that a confessional statement so long as it is free, direct, positive and voluntary is enough to ground a conviction. See: *Kopa v. The State [1971] 1 All NLR 150; Yusuf v The State [1965] NMLR 119; R. v Omokaro [1941] 7 WACA 146.*

In this case, there are ample corroborative evidence in sustaining the conviction and sentence on the appellant as found by the trial court and affirmed by the court below

Another principle of the criminal law which has been consistently repeated in our law reports is: at what time does an accused person object to the admissibility of a statement credited to him as his confession? This court in its several decisions answered the question in the following words:

> "The question of the voluntariness of a confessional statement is tested at the time the statement is sought to be tendered in evidence. In the instant case, the confessional statements were tended [sic] without any objection from the defence. None of the prosecution witnesses were cross examined as to their involuntariness. It was not until the prosecution had closed its case and the appellant were testifying in their own defence in the witness box that the issue was belatedly raised. The trial judge was right to dismiss this aspect of the defence case as an afterthought having regard to the qualitative evidence tendered by the prosecution and accepted by the trial court on the subject."

Thus, throughout the trial at the trial court, there was no objection to the admissibility of the appellant's confessional statement. It is rather too late to raise such an issue on appeal. It is an afterthought which will succeed in reversing the hands of the clock back. I think I should observe in passing though conceded by the appellant counsel in this matter that it was regrettable that the appellant's counsel at the trial stage did not object to the admissibility of the appellants confessional statement, yet he went on to blame the trial court in not treating the appellant's confessional statement with utmost caution. May I say that it is my belief and indeed, it is the law and practice in the legal profession that once a counsel takes over a litigation from another counsel, the former must own up the good deeds and misdeeds, the credits and debits, the praises and the blames and indeed all other blunders that might have been committed by the latter. It will appear to be too late in the day to seek to supply a remedy to a dented or a crucified matter which can hardly be revived. It is too late to seek to retract such confessional statement after its admission without objection from the defence. It is always taken to be an afterthought which the courts are not ready to accommodate. See: *R. v State [1961]All NLR 462; Alarape v The (2001) FWLR (Part 41) 1872 At Page 1875*

I am in full agreement with my learned brother, Ngwuta, JSC, that this appeal should be dismissed. For the above reasons and the fuller reasons given by my learned brother, Ngwuta, JSC in his lead judgement, I too dismiss the appeal. I affirm the judgement of the court below.

Judgment delivered by
Olufunlola Oyelola Adekeye. JSC

I was opportuned to read before now the judgment just delivered by my learned brother, N.S. Ngwuta, JSC. I support his reasoning on the legal questions raised for determination in this appeal and his conclusion.

The issues formulated for determination are as follows: -

(a) Whether in view of the evidence adduced at the trial Court the Court of Appeal was right to have affirmed the decision of the trial Court that the charge of armed robbery was proved beyond reasonable doubt.

(b) Whether the Court of Appeal was right when it held that Exhibit 5 was rightly acted upon by the learned trial Judge."

The appellant contended that the burden to prove its case beyond reasonable doubt lies on the prosecution and such evidence adduced must be strong enough to rebut the presumption of innocence constitutionally guaranteed to the accused person. The prosecution failed to discharge this burden in the case put forward before the trial court. The inference drawn by the trial court in the circumstance was unsupported by evidence. The appellate court is therefore duty bound to re-evaluate or re-assess the facts and the overall evidence in order to arrive at a proper conclusion.

This offence being a capital one, the court must tread cautiously in convicting on a confessional statement particularly when same was retracted. The evidence in support of the confessional statement was ridden with inconsistencies in this case. The court must satisfy itself of the truth of the confessional statement.

The respondent however submitted that though there was no eye witness account of the death of the victim and the event of the robbery leading to this case, there was however strong circumstantial evidence which was cogent, compelling and reasonable enough to warrant the conviction of the appellant. The appellant did not object to the confessional statement Exh. P5 on the grounds of its involuntariness when the exhibit was sought to be tendered. The evidence of PW 2 - 4 did not amount to hearsay.

The burden on the prosecution to prove the guilt of an accused to rebut the presumption of his innocence and the standard that such proof must be beyond reasonable doubt have remained with us since the evolution of crime and is now properly entrenched in our criminal jurisprudence. The concept admitted that proof beyond reasonable doubt does not mean proof beyond all doubt or any show of doubt. Our law of Evidence had given recognition to this fundamental principle of criminal law and Section 137 of the Evidence Act reads –

> "Where the commission of a crime by a party to any proceeding is directly in issue it must be proved beyond reasonable doubt."

See *Igabele v. State (2006) 6 NWLR (pt.975) page.100; Aigbadion v. State (2000) 4 SC (pt.1) page.1; Agbo v. State (2006) 6 NWLR (pt.977) page.5456; Bakare v The State 1987) 3 SC page.1*

On the contrary, if an accused gives an account which is consistent with his innocence and could be true and is not proved to be untrue, he is entitled to be acquitted. This is because in such scenario a doubt about his guilt has been created. See *Igabele v State (2006) 6 NWLR (pt.975) page.100.*

In discharging the burden of proof on the prosecution, the guilt of an accused can be proved by - .

1. The confessional statement of the accused or
2. Circumstantial evidence or
3. Evidence of an eye witness of crime.

The evidence must cogently establish the essential elements of the offence charged. The appellant Demo Oseni was arraigned with one Abubakar Umar Sadiq (1st accused) on a two count charge of criminal conspiracy and armed robbery contrary to Sections 97 (2) of the Penal Code and of the Armed Robbery and Firearms (Special Provisions) Act Cap R 11 Laws of the Federation of Nigeria, 2004. Abubakar Umar Sadiq died before trial commenced in this case.

The essential ingredients of the offence of armed robbery which the prosecution must prove are –

1. That there was a robbery
2. That the Robbery was an armed robbery
3. That the accused while with the arms participated in the robbery

See *Olayinka v State (2007) 9 NWLR (pt.1040) pg.561; Okosi v A-G Bendel state (1989) 1 NWLR (pt.100) pg.642; Bello v The State (2007) 10 NWLR (pt.1043) pg.546*

These three ingredients must co-exist and they must each be proved before an accused can be found guilty of the crime. The evidence of PW2, PW3 and PW4 before the trial court established that there was a robbery. It was the evidence of PW3 that the motorcycle of the deceased was found with the appellant and the 1st accused at Gure Market in the process of selling it. The matchet, Exh P1 was recovered in the shed of the appellant. The investigating police officer recovered the matchet after the accused confessed in his statement that it was the instrument used in killing the victim of the robbery and he gave the location of the matchet in the same statement. The confessional statement of the appellant was tendered and admitted in evidence through him at the trial without any objection. The confessional statement was marked Exhibit P5.

It is trite law that: -

> "A free and voluntary confession of guilt by an accused person if it is direct and positive and satisfactorily proved should occupy the highest place of authenticity when it comes to proof beyond reasonable doubt. That is why such a confession by itself alone is sufficient without further corroboration to warrant a conviction. And there cannot be such a conviction unless the trial court is satisfied that the case has been proved beyond reasonable doubt."

See *Amusa Popoola Adio & Anor v State (1986) 4 SC 194; Solola v State (2005) 11 NWLR (pt.937) pg.460; Ihuebeka v The State (2000) 4 SC (pt.1) pg.203; Alarape v State (2001) 4 WRNSC 1; Ogunbayode & ors v The Queen (1954) WACA 458*

There is no evidence stronger than a person's own admission or confession. Such a confession is admissible. A confession made in judicial proceedings is of greater force or value than all other proofs. A confession is more often denied or retracted. The denial or retraction is a matter to be taken into consideration to decide what weight could be attached to it. See *Dibie v State (20007) 9 NWLR (pt.1 038) pg.30; Ukpong v Queen (No.1) (1961) 1 SCNLR 23; Idowu v The State (2007) SC (pt.11) pg.50*

There is however a duty on the court to test the truth of a confession by examining it in the light of the other credible evidence before the court by inquiry into whether

i) There is anything outside it to show that it is true

ii) It is corroborated

iii) The facts stated in it are true as far as can be tested

iv) The accused person had the opportunity of committing the offence

v) The accused person's confession is possible

vi) The confession is consistent with the other facts ascertained and proved

See *Akpa v The State (2007) 2 NWLR (pt 1019) pg 500; Uwagboe v. State (2007) 6 NWLR (pt.1031) pg.606; Udofia v. State (1984) 12 SC pg.139; Daura v. State (1980) 8-11 SC pg.236; Ojegele v. State (1988) (pt.71) pg.414*

In this appeal, the appellant did not object to the tendering of the statement during the prosecution's case but turned round in his defence to raise the involuntariness of the statement. He in other words, retracted the statement. The court in its judgment regarded this act of the appellant as an afterthought. The court similarly relied on other independent evidence outside this confession which corroborated the story in the statement. The strongest evidence was that of PW3 who recovered the missing motorcycle of the victim of the robbery from the 1st accused now deceased and the appellant as they were about to dispose of it at Gure Market. The cutlass used in the robbery to kill the robbery victim was found in his shed. The dead body of Umar Jabi Sike was found in a pool of his own blood with his motorcycle missing.

In a similar situation in which the accused did not object to the tendering of his confessional statement by the prosecution but later turned round to retract same while giving his defence to the offence of robbery, the Supreme Court had this to say in the case of *Alarape v. State (2001) FWLR (ptA1) pg.1872-1875*-

> "The question of admissibility of a confessional statement is tested at the time the statement is sought to be tendered in evidence. In the instant case, the confessional statement were (sic) tendered without any objection from the defence. None of the prosecution witnesses were cross-examined as to their involuntariness. It was not until the prosecution had closed its case and the appellant were (sic) testifying in their own defence in the witness box that the issue was belatedly raised. The trial judge was right to dismiss this aspect of the defence case as an afterthought having regard to the qualitative evidence tendered by the prosecution and accepted by the trial court on the subject."

It is apt to adopt the foregoing reasoning in the circumstance of this case. Moreover once the conditions for admissibility of a document are met by the trial court and the document is admissible, an appellant who failed to object to them in the trial court cannot do so on appeal. Broadly speaking proof beyond reasonable doubt simply means the prosecution establishing the guilt of an accused person with compelling and conclusive evidence. It means a degree of compulsion which is consistent with a high degree of probability.

In the case of *Miller v Minister of Pensions* (1947) 2 *ER p.372,* it was held that proof beyond reasonable doubt does not mean proof beyond all shadow of doubt and if the evidence is strong against a man as to leave only a remote probability in his favour which can be dismissed with the sentence "of course, it is possible but not in the least probable", the case is proved beyond reasonable doubt. See *Baker v. State (1987) 1 NWLR (pt.52) pg.579*

With the fuller reasons given in the lead judgment by my learned brother Ngwuta JSC, I also dismiss the appeal. I affirm the judgements, conviction and sentence of the two lower courts.

Judgment delivered by
Suleiman Galadima. JSC

I have had the opportunity of reading in draft the Judgment delivered by my learned brother Ngwuta, JSC. I agree with him in his conclusion that the appeal is lacking in merit and I also dismiss it.

Judgment delivered by
Olukayode Ariwoola. JSC

The Appellant herein was charged along with one Abubarkar Umaru Sadiq, the 1st Accused, on two counts of conspiracy and armed robbery contrary to Section 97 of the Penal Code and Section 1 (2) (a) and (b) of Robbery and Firearms (Special Provisions) Act Cap.11, Laws of the Federation 2004 at the Kwara State High court, Ilorin Judicial Division.

The Appellant was discharged and acquitted on the charge of criminal conspiracy by the trial court but found guilty of armed robbery, convicted and sentenced to death.

Dissatisfied with the decision of the trial court, the appellant appealed to the court below on four grounds of appeal. All issues formulated by the appellant for determination of the appeal were resolved against the appellant and the appeal was dismissed for lacking merit.

Dissatisfied further, the appellant appealed to this court on yet another four ground of appeal, from which he distilled two issues for determination as follows:-

Issue one

"Whether in view of the evidence adduced at the trial court, the Court of Appeal was right to have affirmed the decision of the trial court that the charged of armed robbery was proved beyond reasonable doubt. (Ground 1 & 2)

Issue Two

"Whether the Court of Appeal was right when it held that exhibit 5 was rightly acted upon by the learned trial judge (Ground 3 & 4)

The appellant had contended that the burden of proof in criminal cases is on the prosecution and the standard required is proof beyond all reasonable doubt. That the burden of proof is always on the prosecution which never shifts. It was submitted that if on the entire evidence the court is left in a state of doubt, the prosecution would have failed to discharge the onus of proof reposed on it and the accused should be entitled to an acquittal. He relied on *Njoku v State (1993) 6 NWLR (Pt 299) 272*

Learned Appellant's counsel referred to the established ingredients required to prove a case of armed robbery by the prosecution against an accused person. He contended that the said ingredients must co-exist and must each be positively proved before an accused can be found guilty of the crime. Where one or all of the ingredients is or are missing, the prosecution would have failed in his duty.

Learned counsel contended that the prosecution did not prove by plausible evidence, all the ingredients required in law to successfully sustain the charge of armed robbery.

Learned counsel contended that the prosecution relied heavily on the discredited confessional statement of the appellant allegedly made to the police. He however conceded that a confession is admissible against its maker, but that it is the duty of the trial judge to consider the circumstances under which it was given and to decide what weight is to be attached to it.

Learned counsel further contended that, the appellant, an illiterate cattle rearer spoke only Hausa language, testified in the open court as to an inhuman condition to which he was subjected and which compelled him to involuntarily thumb-print exhibit P5, the so called confessional statement. He however, also conceded again that there is no doubt that the appropriate time to raise objection on the ground on involuntariness is at the point of tendering the document. He relied on *Alarape v. State (2001) FWLR (ptA1) pg.1872 at 4875*

Learned counsel submitted that the culpability of the appellant in the offence could only have been established by association or by linking him with the 1st accused person who was allegedly caught with the stolen motorcycle. He contended that the only way for the prosecution in the circumstances to establish this association is by conspiracy.

He finally submitted that the prosecution having failed to establish any cogent and reasonable link between the appellant and the 1st accused and by extension, the offence of armed robbery, has failed to prove the offence of armed robbery against the appellant beyond reasonable doubt and where there is a doubt in a criminal trial, such doubt ought to be resolved in favour of the accused person. He relied on *State v Azeez (2008) 14 NWLR (Part 1108) 483 at 501* and urged the court to resolve the issue in favour of the appellant.

The charge sheet of the two counts are as follows:-

Count One

That you Abubakar Umaru Sadiq, Demo Oseni on or about 26th May, 2005 along Chikanda road in Baruten Local Government Area of Kwara State within the jurisdiction of this Court, agreed to do an illegal act to wit: killed one Umoru Sabi Sika with cutlass and Robbed him of his Zinoki Supra motorcycle, and you thereby committed an offence punishable under section 97 of Penal Code.

Count Two

That you Abubakar Sadiq, Demo Oseni, on or about 26th May, 2005 along Chikanda Road in Baruten Local Government Area of Kwara State within the jurisdiction of this court killed one Umoru Sabi Saka with a cutlass and robbed him of his Zinoki Supra motorcycle and attempted to sell same at qure market in Baruten Local Government Area and you thereby commited an offence contrary to section 1 (2)(a) and (b) of Robbery and fire Arms (Special Provision) Act Cap. R11 Laws of Federation of Nigeria, 2004."

As contained in the printed record of the appeal from the trial court only the Appellant stood trial, the 1st accused having been reported deceased after being released on bail by the then AG. Chief Judge of Kwara State on the ground of ill health. As stated earlier, the prosecution not being able to sustain the 1st count of the charge against the Appellant alone, he was

discharged and acquitted of the alleged offence of conspiracy.

It is trite law that it generally takes two persons to conspire and a person alone cannot be convicted of conspiracy, if the other(s) are discharged and acquitted.

However, it is equally trite law that conspiracy to commit an offence is a separate and distinct offence and it is independent of the actual commission of the offence to which the conspiracy is related See *Balogun v Attorney-General of Osun State (2002) SCM 4 SCM 23, (2002) SCNJ 196 at 209; Silas Sule v. The State (2009) 8 SCM 177.* In the instant case, the appellant was properly acquitted of the offence of conspiracy.

On the charge of armed robbery, the appellant was found guilty, convicted and sentenced to death. It is trite law that for the prosecution to establish the offence of armed robbery, the following must be proved:

(a) That there was a robbery

(b) That the robbery was an armed robbery

(c) That the accused person was the robber.

See; *Bozin v State (1985) 2 NWLR (Pt.8) 465, 467; Alabi v State (1993) 7 NWLR (Pt.307) 511.*

On the above ingredients, the prosecution relied on the testimonies of PW2, PW3, PW4 and exhibit P5. PW2 and PW4 were Policemen who participated in investigating the complaint. Exhibit P5 was the statement of the Appellant made to the police after his arrest and appropriate action. The appellant's confessional statement which was tendered and admitted as Exhibit P5 without objection, inter-alia reads thus:

> "On 26/5/95 at about 1600 hours, I was at home when Abubakar Umaru Sadiq came and informed me that he saw Umaru Sabi Sika in Chiokanda Township. At this juncture, we planned together to wait for him in the bush pending his returning back. On the said date at about 1730 hours while in the bush, Umaru Sabi Sika came with his motorcycle while we forced him to stop. At this juncture, I matched (sic) him on his right hand, head and neck while he fell down and gave up his ghost. Then after we have killed him, Abubarkar Umaru Sadiq went away with his motorcycle so that he could sell it. I later learned that Abubarkar Umaru sadiq was arrested at Gure township when he wanted to sell the motorcycle and through him I was arrested too. Actually, it was myself and Abubarkar Umaru sadiq that killed the said Umaru Sabi Sika and carted away his motorcycle."

In the said statement, the Appellant had continued as follows:-

> "I am not an Armed Robber; I only decided to kill because of his evil deeds. I know that it amounted to robbery hence we went away with his motorcycle after the attack. The cutlass I used in killing the deceased is in my house. I am ready to produce the said cutlass to the police at any time my house is visited."

The printed record shows that Exhibit P1, the Cutlass was recovered under the wooden bed of the appellant upon execution of a search warrant - Exhibit P8

It is noteworthy that the appellant did not object to the admissibility of his alleged confessional statement, for the reason that he did not make it voluntarily at the tendering stage. Hence, the trial court found that the appellant's evidence in his evidence-in-chief that the statement was made under duress, was an afterthought hence the court held that the statement could be used against the appellant even without an eye witness.

It is clear from the record that the accused/Appellant was represented in court by counsel and neither the accused/appellant himself nor the counsel objected to the admissibility of the statement.

In the appellant's brief of argument, paragraph 4.1.9 at pages 7-8, the learned counsel had conceded that no doubt, the appropriate time to raise objection on the ground of involuntariness is at the point of tendering the document. He cited *Alarape v The State (2001) FWLR (Part 41) 1872 at 1875*. He however regretted that the appellant's counsel at the trial court did not object to the admissibility of the statement. It has been held that where a counsel stands by and allows exhibits to be tendered, smoothly to become evidence without objection he cannot be heard to later complain about same. See *Bello Shurumo v The State (2010) 12 (Part 2) 28 at 39.*

It has also been held in a plethora of cases particularly in Nigeria, that, a free and voluntary confession of guilt by a prisoner, if it is direct and positive and is duly made and satisfactorily proved, is sufficient to warrant conviction without any corroborative evidence, so long as the court is satisfied as to the truth of the confession See *Edet Obasi v The State (1965) NMLR 119, Paul Onochie & ors v The Republic (1966) NMLR 307, Onouoha v The State (1987) 4 NWLR (Pt.65) 33*. In *Basil Akpa v The State* (2008) 8 SCM 68 at 79 & *86* where the court considered a similar confessional statement, it was held as follows:

> "The above is clear, clean, unequivocal and direct confessional statement of the appellant. He did not hide his involvement in the killing of Ikechukwu. He made a very clean breast of his level of involvement which was deep,

penetrating and killing. In law where an accused person confesses to a crime, in the absence of an eye witness of killing he can be convicted on his confession alone once the confession is positive, direct and properly proved"

See; *Milia v The State (1989) 3 NWLR (Pt.11) 190, Achibua v The State (1976) 12 SC 63; Obasi v The State (1969) 1 NMLR 204; Atano v Attorney General Bendel State (1988) 2 NWLR (Pt.75) 201, Bature v The State (1994) 1 NWLR (Pt.32) 267, Abdullahi Ada v The State (2008) 6 SCM 1*

In the instant case the confession of the appellant to killing the deceased and stealing his money and motorcycle is positive and direct. It was proved by the prosecution by tendering and admitting the said statement without objection as Exhibit P5. It was however corroborated by the recovery of the weapon claimed by the appellant to have been used in the operation, tendered and admitted as Exhibit P1 - the cutlass. The trial court therefore properly convicted the Appellant for the offence of armed robbery, the prosecution having proved same beyond reasonable doubt. The court below having properly resolved all the issues raised in the appeal against the appellant, this appeal deserves to fail for lacking in merit.

I read before now the lead judgement of my learned brother, Ngwuta, JSC and I agree entirely with his reasoning and conclusion that the appeal should be dismissed.

Accordingly, for the above reason and the more detail reasons in the lead judgement I also dismiss the appeal. I affirm the decision of the court below which affirmed the judgement of the trial court. The conviction and sentence of the appellant stays.

Counsel

Mr. Olalekan Yusuf *with him* Yemi Ogunluwoye	……..	For the Appellant
Mr. J.A. Mumini *(DPP Kwara State Ministry of Justice)*	……..	For the Respondent