MR UBONG OBOT v. THE STATE

(2014) LPELR-23130(CA)

In The Court of Appeal of Nigeria

On Monday, the 31st day of March, 2014

CA/C/294C/2013

Before Their Lordships

MOHAMMED LAWAL GARBA Justice of The Court of Appeal of Nigeria

UZO I. NDUKWE-ANYANWU Justice of The Court of Appeal of Nigeria

CENTUS CHIMA NWEZE Justice of The Court of Appeal of Nigeria

Between

MR UBONG OBOT Appellant(s)

AND

THE STATE Respondent(s)

RATIO DECIDENDI

1. WORDS AND PHRASES - "CORROBORATION": Meaning of "Corroboration"

"Corroboration evidence is defined as "evidence given by an independent witness who confirmed in some material particular not only that a crime has been committed but also that it was committed by the accused person. See Amadi Vs. State (1993) 8 NWLR pt 314 page 644, Siwobi Vs. C.O.P (1997) 1 NWLR pt 482 page 411." Per NDUKWE-ANYANWU, J.C.A. (P. 27, paras. A-B) (...read in context)

2. CRIMINAL LAW AND PROCEDURE - CONFESSIONAL STATEMENT OF AN ACCUSED: Whether confessional statement play a major role in the determination of the guilt of an accused

"The law reports are replete with the notion that a Confessional Statement of an accused person to the commission of a crime plays a major role in the determination of his guilt." Per NDUKWE-ANYANWU, J.C.A. (Pp. 24-25, paras. G-A) (...read in context)

3. EVIDENCE - CONFESSIONAL STATEMENT OF AN ACCUSED: Effect of a confessional Statement of an accused person to the commission of a crime

"The Confessional Statement of the Appellant Exhibit C and C(1) were tendered by the prosecution without objection. The only objection raised by the Appellant was to the effect that the Investigating Police Officer was not the one who obtained the Confessional Statements. Confession of an accused person to the commission of a crime plays a major part in the determination of his guilt and a court of law is entitled to convict on the confession if it comes to the conclusion that the confession is voluntary. This is because the confession itself puts an end to the rough and speculative edges of criminal responsibility In terms of mens rea and actus reus. Okeke Vs. State (2003) 15 NWLR (pt.842) 25 SC" Per NDUKWE-ANYANWU, J.C.A. (P. 22, paras. D-G) (...read in context)

4. CRIMINAL LAW AND PROCEDURE - CONFESSIONAL STATEMENT OF AN ACCUSED PERSON: Whether a free and voluntary confession of guilt made by an accused person, if it is direct and positive is sufficient to warrant his conviction

"The law is that a free and voluntary confession of guilt made by an accused person, if it is direct and positive is sufficient to warrant his conviction without any corroborative evidence as long as the court is satisfied of the confession. Effiong Vs. State (1998) 8 NWLR (pt. 552) 362 SC, Ihuebeka Vs. State (2000) 4 SC (pt.1) 203, Idowu Vs. State (2000) 7 SC (pt.11) 50, Alarape vs. The State (2001) 14 WRN 1 SC." Per NDUKWE-ANYANWU, J.C.A. (P. 24, paras. E-G) (...read in context)

5. EVIDENCE - HEARSAY EVIDENCE: When statement made to a witness will be hearsay and inadmissible

"Evidence of a statement made to a witness by a person who is not himself called as a witness may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and admissible when it is proposed to establish by

evidence not the truth of the statement but the fact that it was said. Kala vs. Potiskum (1998) 3 NWLR (pt.540) 1 SC." Per NDUKWE-ANYANWU, J.C.A. (P. 35, paras. C-E) (...read in context)

6. EVIDENCE - HEARSAY EVIDENCE: What is hearsay evidence

"Hearsay evidence is an evidence which does not derive its value solely from the credit given to the witness himself, but which rests also, in part, on the veracity and competence of some other person. Thus, where a third party relates a story to another as proof of the contents of a statement, such story is hearsay. Judicial service Committee vs. Omo (1990) 6 NWLR (Pt.157) 407 CA." Per NDUKWE-ANYANWU, J.C.A. (P. 35, paras. A-C) (...read in context)

7. POLICE - INVESTIGATING POLICE OFFICER: Job discription of an Investigating Police Officer

"It appears the learned Appellant's counsel does not appreciate fully the job description of an Investigating Police Officer. He just investigates crimes. Invariably an Investigating Police Officer is hardly ever at the crime scene. His investigation comes after the crime had been committed. An Investigating Police Officer obtains statements from accused persons and witnesses alike. He thereafter testifies in court giving a synopsis of what he did during the investigation. He tenders the statements of both accused and in some cases that of witnesses. He also tenders some documents and exhibits obtained during investigation. The Investigating Police Officer therefore gives direct evidence as to what he has done during the investigation of the crime. The evidence of the Investigating Police Officer is not by any standard hearsay. He gives an account of what he has done in the process of his investigations. The trial Judge was right in holding that the Investigating Police Officer gave evidence of what he did during his investigation as part of his duties." Per NDUKWE-ANYANWU, J.C.A. (P. 36, paras. B-G) (...read in context)

8. CRIMINAL LAW AND PROCEDURE - MURDER: What the prosecution must prove in a charge of murder

"In a charge of murder the prosecution must prove; 1. That the deceased had died; 2. That the death of the deceased was caused by the accused; and 3. That the act or omission of the accused was intentional with the knowledge that death or grievious bodily harm was its probable consequence. See Ogba vs. the State (1992) 2 NWLR pt.222 page 164, Nwaeze vs. The State (supra)" Per NDUKWE-ANYANWU, J.C.A. (Pp. 36-37, paras. G-B) (...read in context)

9. EVIDENCE - PRESUMPTION OF LAW: Whether a man is presumed to intend the natural consequences of his acts

"Our law is that a man is presumed to intend the natural consequences of his acts. The test to be applied is that of a reasonable man. A man intends, the result of his action. See Adelumola Vs. State (1988) 1 NWLR pt.73 page 683, Arabaman Vs. The State (1972) 4 SC page 35, Uyo Vs. Attorney General Bendel State (1986) 1 ALL NLR page 112, Garba vs. The State (2000) FWLR pt 24 page 1448, Ibikunle Vs. The State (2007) 1 SC pt.II page 32." Per NDUKWE-ANYANWU, J.C.A. (Pp. 37-38, paras. G-B) (...read in context)

10. CRIMINAL LAW AND PROCEDURE - PROOF BEYOND REASONABLE DOUBT: Requirement and meaning of proof beyond reasonable doubt

"I would emphasise that requirement of proof beyond reasonable doubt does not mean proof beyond all or every shadow of doubt, both reasonable and unreasonable in the peculiar circumstances of a case. It simply means that there is sufficient, admissible and credible evidence that all the essential ingredients or elements constituting the offence an accused was charged with, were established, that would justify the conviction of the accused person by the court. See Jua v State (2010) 43 WRN 1 at 24-5 (10) 4 NWLR (1184) 217; Amah v State (1978) 6-7 SC.27; Afolalu v. State (2010) 6-7 MJSC, 187." Per NDUKWE-ANYANWU, J.C.A. (Pp. 40-41, paras. F-B) (...read in context)

11. CRIMINAL LAW AND PROCEDURE - RETRACTED CONFESSIONAL STATEMENT: What the trial court is expected to do where a confessional statement is retracted

"Where an accused retracts his statement during the tendering of such statement, a trial within trial is conducted see Olayinka vs. state (2007) 9 NWLR pt.1040 Page 561." Per NDUKWE-ANYANWU, J.C.A. (P. 23, paras. E-F) (...read in context)

12. CRIMINAL LAW AND PROCEDURE - RETRACTED CONFESSIONAL STATEMENT: Whether mare retraction of a voluntary confessional statement by an accused person renders such statement inadmissible

"It is trite law that mere retraction of a voluntary confessional statement by an accused person does not render such statement inadmissible or worthless and untrue in considering his guilt. Silas Ikpo Vs. The State (1996) 1 NILR 59 SC, Ihebeka vs. State (2000) 4 SC (pt.1) 203. Idowu Vs. State (2000) 7 SC (Pt.II) 50. The trial Judge was therefore right in holding that the retraction of the Appellant's confessional statement did not render them inadmissible or worthless or untrue in considering the guilt of the Appellant. Silas Ikpo vs. State (1996) 1 NILR pate 59, Ihuebeka vs. State (2000) 4 SC pt 1 page 203, Idowu vs. State (2000) 7 SC pt II Page 50." Per NDUKWE-ANYANWU, J.C.A. (P. 24, paras. A-B) (...read in context)

13. CRIMINAL LAW AND PROCEDURE - RETRACTED CONFESSIONAL STATEMENT: Whether where a confessional statement is retracted such statement will be inadissible

"It is trite law that even if the Appellant retracted a voluntary confessional statement it does not render such statement inadmissible or worthless and untrue Ikpo Vs. State (supra) Inspite of all these, the prosecution was able to prove the guilt of the Appellant. The burden of proving a charge against an accused is always on the prosecution. The prosecution has however in this case, adduced enough evidence to show that the accused is guilty of the offence of murder charged Nasiru Vs. State (1999) 2 NWLR Pt.589 page 87, Imhanria vs. Nigerian Army (2007) 14 NWLR pt.1053 page 78." Per NDUKWE-ANYANWU, J.C.A. (Pp. 39-40, paras. F-B) (...read in context)

14. INTERPRETATION OF STATUE - SECTION 209 (1) OF THE EVIDENCE ACT: Statutory provision of Section 209 (1) Evidence Act which provides for testimony of an infant

"Section 209 (1) Evidence Act provides as follows: (1) In any proceeding in which a child who has not attained the age of 14 years is tendered as a witness, such child shall not be sworn and shall give evidence otherwise than on oath or affirmation, if in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of his evidence and understands the duty of speaking the truth. This subsection is mandatory and it provides that a child under the age of 14 years shall not be sworn. This child as at the time of giving evidence on the 29th of July, 2004 was 13 years. The learned trial Judge A. E. Archibong went through the whole hug to ascertain whether he, indeed, understood what it meant to tell the truth. He ascertained that he sufficiently understood what it meant to testify and the seriousness of what it meant to testify in court. The infant passed this test and made to take the

oath before testifying. SECTION 209 3. A person shall not be liable to be convicted for an offence unless the testimony admitted by virtue of subsection (1) of this section and given on behalf of the prosecution is corroborated by some other material evidence in support of such testimony implicating the defendant. The subsection provides that the testimony of an infant must be corroborated by some other material evidence in support of such testimony implicating the accused/defence. However, in Solola vs. State (2005) 11 NWLR pt 937 page 460, the Supreme Court held that the evidence of a child given on oath need not be corroborated." Per NDUKWE-ANYANWU, J.C.A. (Pp. 21-22, paras. C-C) (...read in context)

15. EVIDENCE - TESTIMONY OF AN INFANT: Whether the evidence of a child given on oath needs to be corroborated

"The Supreme Court in Solola Vs. State (supra) held that the evidence of a child given on oath need not be corroborated. "A child who does not understand the nature of an oath is even competent to give unsworn evidence if in the opinion of the court such a child is possessed of sufficient intelligence to justify the reception of his evidence Solala Vs. State (supra)." Per NDUKWE-ANYANWU, J.C.A. (P. 26, paras. A-C) (...read in context)

UZO I. NDUKWE-ANYANWU, J.C.A. (Delivering the Leading Judgment): This is an appeal against the judgment of the High Court of Akwa Ibom State sitting in Uyo delivered on the 29th of July, 2013 and sentencing the accused to death by hanging.

Being dissatisfied with the judgment, the Appellant filed a notice of appeal on the 5th of August, 2013.
The facts of this case is that it was alleged that the accused/Appellant beat up the deceased a 13 year old boy, carried him up, turned him upside down and hit his head on the floor several times. As a result of these hits, blood started gushing out from all the orifices in his head. He became unconscious and the accused mum, bought rob ointment and applied on his body. When the senior sister of the deceased returned from the market, she raised an alarm. One of their neighbours gave her money to take the deceased to the hospital. The deceased mum came back from the market and joined them in the hospital. The deceased was moved to three hospitals that night but he later died in the early hours of the morning, the following day. The body was thereafter deposited in the mortuary.

The deceased mum later made a complaint to the Police hence the arrest of the accused. After investigations, the accused was charged to court on a one count charge of murder contrary to Section 326(1) of the Criminal Code Cap 38 Vol. II Laws of Akwa Ibom State of Nigeria. At the trial, the accused pleaded 'Not guilty' and the trial commenced.

The prosecution called two witnesses, who testified in chief and were cross-examined. The trial Judge was thereafter transferred. Trial started de novo in another court. In the second court, the two witnesses did not testify again. However, their testimonies were tendered by the ACR of the court as Exhibit B. After that, the Doctor and the Investigating Police officer testified as pw 1 and pw 3 respectively and the prosecution closed its case.

The accused testified as DW1 and called no other witness in defence of his case.
Both counsel for the parties filed and adopted their written addresses. At the end of which the learned trial Judge delivered his considered judgment and found the Appellant guilty as charged, hence this appeal.

The Appellant filed his notice of Appeal with a Further Amendment on the 22nd of October, 2013.

The Appellant filed his appellant's brief on the 22nd of October, 2013 and the Appellant's reply brief on the 4th of February, 2014. In the Appellants brief, counsel articulated four (4) issues for determination. They are namely thus:
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1. Whether the judgment is unreasonable and cannot be supported having regard to the evidence.

2. Whether the Learned Trial Judge erred in law when he relied upon the hearsay evidence of Inspector Monday Nnah (PW3) and Exhibit 'B' to convict the Appellant.

3. Whether the Learned Trial Judge erred in law when he admitted the proceedings/evidence that were taken by Honourable Justice A. E. Archibong when same was not certified by Honourable Justice A. E. Archibong.
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4. Whether the Learned Trial Judge erred in law when he visited the sin/mistake of counsel on the litigant by refusing to acknowledge the mistake made by Appellant's Counsel during the hearing of the case and relied upon the mistake.

The Respondent filed its brief on the 26th of February, 2014 but deemed properly filed and served on the 26th of February, 2014. Both parties on the 25th February, 2014 the date fixed for hearing of the appeal adopted their various briefs and relied on them in furtherance of their various submissions.

ISSUE ONE

Counsel submitted that in the first trial court, the trial Judge took evidence from an eyewitness PW 1, Blessing Peter Asuquo, (an infact)' When the trial started de novo before another Judge, the A.C.R tendered the evidence of PW1 and it was admitted as Exhibit B See Shurumo Vs. The State (2001) 196 LRCN. Counsel submitted that there were grownups in the house when this incident took place and none was invited to testify.

Counsel further submitted that the judgment of the trial court was unreasonable as the evidence of PW1 an infant, needed to be corroborated. Section 209 (1) of the Evidence Act 2011 provided the mode an infant can testify.

Section 209 provides.

"in any proceeding in which a child who has not attained the age of 14 years is tendered as a witness, such child shall not be sworn and shall give evidence otherwise than on oath or affirmation, if in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of his evidence and understands the duty of speaking the truth".

Also, section 209 (3) of the Evidence Act, 2009 provides that;

"a person shall not be liable to be convicted for an offence unless the testimony admitted by virtue of subsection (1) of this section and given on behalf of the prosecution is corroborated by some other material evidence in support of such testimony implicating the Defendant."

Counsel contended that the trial Judge relied so much on Exhibit B, the statement of the infant in his judgment. Counsel argued that the absence of corroboration of the evidence of the infant was fatal to the case of the Prosecution See Sambo Vs. State (1993) 6 NWLR pt 300 page 399 at page 419, Agenu Vs.

State (1992) where the Supreme Court set aside the judgment of the trial court because the evidence of the infants were not corroborated. Counsel urged the court to jettison Exhibit B relied on, to convict the Appellant.

Counsel submitted that the trial court admitted Exhibit C, C1 and D the statements of the Appellant which he denied during his evidence in Chief. The said confessional statement Exhibit C & C1 were made before a superior police officer which is, only evidence that they were made but not evidence of the truth. See Suberu Vs. The State (2012) Vol 10 LRCNCC page 122 where it was held.

Held 6: on whether a statement of an accused person to the Police is an evidence of the truth of its content: It is settled that a statement of an accused person to the police is evidence of the fact that it was made, but being an extra judicial statement, it is not evidence of the truth of its contents.

The prosecution cannot rely on the alleged confessional statements of the Appellant tendered as Exhibit C, C1 and D to be the truth of their content. Yahaya Vs. State (2005) NCC PAGE 120. It would appear that the Appellant's statements Exhibit C, C1 and D2 are inconsistent with the Appellant's statement on oath. The court ought to look into the inconsistencies in both statements and resolve the issues as in Emoja Vs. State (1997) 55 LRCN page 2353 where the court held

"On whether the inconsistency rule can be applied to the evidence and extrajudicial statement of an accused Person; the inconsistency rule which has been explained in the extractor the judgment of Uwaifo JCA is now the correct statement of the law. The inconsistency rule cannot be extended and applied to the evidence and extra judicial statement of an accused person".

Counsel submitted that even if the court wants to rely on these confessional statements to convict the Appellant, there should be corroboration no matter how slight see Yahaya Vs. State (supra)
Counsel therefore urged the court not to rely on the unreliable evidence of the child to convict the Appellant.

In response, the learned counsel to the Respondent submitted that the trial court duly considered Exhibit B tendered in Evidence. See Section 46 (1) (a) (b) and (c) Evidence Act. 2011. The provisions laid down by this section were satisfied. The Investigating Police officer, PW3, swore to an affidavit which

was filed stating, the difficulties of getting PW1 and PW2 in the previous court. The appellant's counsel neither filed a counter affidavit nor objected to Exhibit B being tendered in evidence. Counsel stated that Exhibit B was a public document which came from proper custody and thereby admissible see S. 104(1), (2) and (3) of the Evidence Act and S.156 Evidence Act 2011.

Section 105 Evidence Act 2011 state that:
Copies of documents certified in accordance with S. 104 may be produced in proof of the contents of public documents or part of public document which they purported to be copies".

In the case of Okonji Vs. Njokanma (1999) 14 NWLR pt 638 page 250, the supreme court listed the 3 main criteria for admissibility.
(a) Is the document Pleaded?
(b) Is it relevant to the inquiry being tried by the court?
(c) And is it admissible in Law.

Achike JSC (as he then was) held:
"... I am satisfied that there being proper conformance with those provisions of the evidence Act, Exhibit "B" (in the case) was properly, admitted in Evidence"' G & T Investment Ltd vs. WITT & Bush Ltd (2011) 8 NWLR Pt 1250 Page 500.

Counsel submitted that Exhibit B was properly admitted in evidence and without objection by the Appellant.
Counsel submitted that the judgment delivered by the trial Judge was very well considered and that the trial Judge convicted the Appellant on the evidence of a single eye witness Exhibit B. See Igbo Vs. The State (1975) NSCC vol. 9 at page 415. See also Oke vs. Republic (1967) Vol 5 NSCC page 76.

Counsel referred the court to the Appellant's refusal to call his mother as a witness even though she was at home when the incident occurred.

Counsel submitted that the evidence of Blessing Peter Asuquo an infant was corroborated by evidence of PW 2 the ACR and Exhibit A, the Medical Report tendered by PW1 Dr. Mmefin Ekpo. Counsel

submitted that the trial Judge, did evaluate all the evidence placed before it and assessed the credibility of the witnesses. See Aremu Vs. Board of Customs and Excise (1965) NWLR page 258.

Counsel re-iterated that there was no objection from the Appellant when Exhibit C and C1 were tendered as his confessional statements. The Appellant only sought to retract his statements in his examination in chief which is an after thought. See Odey vs. FRN (2008) 6 SCM 162 at 169. Where Ogbuagu JSC held as follows:

"It is now firmly settled that the appropriate time to raise the involuntariness of confessional statement is when it is about to be tendered in evidence and especially, where as in the instant case leading to this appeal the accused person, was represented by a counsel who is assumed to know or ought to know what to do at each stage of the Proceedings"

Counsel stated that the only opportunity an accused has to object to the admissibility of his alleged confessional statement on the ground that it was not voluntarily made is during the time the statement is sought to be tendered in evidence and not afterward to ensure the trial court embarked on a proper and appropriate course of action. See Odeh vs. FRN (supra) Olalekan vs. The State (2000) FWLR pt. 91 page 160, Igago Vs. The State (1999) 14 NWLR Pt. 637 page 1. There was no objection to the tendering of Exhibit C, C1 & D as to voluntariness of the statements. There was infact no miscarriage of justice to the Appellant in any way. Counsel submitted further that even if there was just the evidence of PW3, Inspector Monday Nnah, the court would still have been right to convict the Appellant, on the evidence of one single witness, if believed, given the surrounding circumstance of this case. See Nwaeze Vs. The State (1996) 2 NWLR pt. 428 page 1 where the Supreme Court held:

"The credibility of evidence does not ordinarily depend on the number of witnesses that testify on a point. Evidence of one credible witness, if acted upon and believed by a Trial Court, is sufficient to justify a conviction". See also Onafowokan Vs. The State (1987) NWLR (pt 61) 538; Amadi vs. The State (1993) NWLR (pt. 314) 644.

The learned counsel therefore urged the court to resolve this issue against the Appellant.

This issue as articulated by the Appellant, argued at length the inadmissibility of the testimony of the infant, Blessing Peter Asuguo and the inadmissibility of the confessional statements of the Appellant tendered as C, C (1) and D.

There are 3 Prosecution Witnessed in this case, PW1 is Dr. Mmefin Ekpo, PW2 is the ACR, who tendered Exhibit B, the record of proceedings in the first High Court before its transfer and PW 3 is the Investigating Police Officer Inspector Monday Nnah who testified and tendered some relevant documents. The infant, the Appellant's counsel referred to testified as PW1 in the first court. This infant was the only eye witness who testified before the first court. His testimony was tendered in the 2nd High Court and marked as Exhibit B.

Section 209 (1) Evidence Act provides as follows:

(1) In any proceeding in which a child who has not attained the age of 14 years is tendered as a witness, such child shall not be sworn and shall give evidence otherwise than on oath or affirmation, if in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of his evidence and understands the duty of speaking the truth.

This subsection is mandatory and it provides that a child under the age of 14 years shall not be sworn. This child as at the time of giving evidence on the 29th of July, 2004 was 13 years. The learned trial Judge A. E. Archibong went through the whole hug to ascertain whether he, indeed, understood what it meant to tell the truth. He ascertained that he sufficiently understood what it meant to testify and the seriousness of what it meant to testify in court. The infant passed this test and made to take the oath before testifying.

SECTION 209

3. A person shall not be liable to be convicted for an offence unless the testimony admitted by virtue of subsection (1) of this section and given on behalf of the prosecution is corroborated by some other material evidence in support of such testimony implicating the defendant.

The subsection provides that the testimony of an infant must be corroborated by some other material evidence in support of such testimony implicating the accused/defence. However, in Solola vs. State (2005) 11 NWLR pt 937 page 460, the Supreme Court held that the evidence of a child given on oath need not be corroborated.

The Confessional Statement of the Appellant Exhibit C and C(1) were tendered by the prosecution without objection. The only objection raised by the Appellant was to the effect that the Investigating Police Officer was not the one who obtained the Confessional Statements.
Confession of an accused person to the commission of a crime plays a major part in the determination of his guilt and a court of law is entitled to convict on the confession if it comes to the conclusion that the confession is voluntary. This is because the confession itself puts an end to the rough and speculative edges of criminal responsibility In terms of mens rea and actus reus. Okeke Vs. State (2003) 15 NWLR (pt. 842) 25 SC

The Appellant made Exhibit C and C(1) and in Exhibit D confirmed Exhibit C and C (1) in front of his mother and a Senior Police Officer. If not at that point his mother was there he would have denied Exhibits C & C(1). The Appellant did not rather he confirmed Exhibits C & C(1). lt would be taken that Exhibits C and C(1) were voluntarily made by the Appellant. See Akpan vs. State (1992) 6 NWLR pt. 248 page 439, Silas Ilkpo Vs. The State (1996) 1 NILR page 59, Alarape Vs. the State (2001) 14 WRN Page 1.

The Appellant did not object to his statements being tendered in evidence and as such it would be taken that these statements were voluntarily obtained. Had the Appellant objected to them being tendered, the trial court is under an obligation to conduct a trial within trial to ascertain the voluntariness of the statements obtained from the Appellant.

Where an accused retracts his statement during the tendering of such statement, a trial within trial is conducted see Olayinka vs. State (2007) 9 NWLR pt. 1040 Page 561.

In this trial, the Appellant did not retract his confessional statements. He only attempted to retract his confessional statements during his examination in chief at which time the opportunity for, a trial within trial had been lost. Having lost the opportunity to retract his confessional statement, it therefore stands:

It is trite law that mere retraction of a voluntary confessional statement by an accused person does not render such statement inadmissible or worthless and untrue in considering his guilt. Silas Ikpo Vs. The State (1996) 1 NILR 59 SC, Ihebeka vs. State (2000) 4 SC (pt.1) 203. Idowu Vs. State (2000) 7 SC (Pt.II) 50.

The trial Judge was therefore right in holding that the retraction of the Appellant's confessional statement did not render them inadmissible or worthless or untrue in considering the guilt of the Appellant. Silas Ikpo vs. State (1996) 1 NILR pate 59, Ihuebeka vs. State (2000) 4 SC pt 1 page 203, Idowu vs. State (2000) 7 SC pt II Page 50.

The law is that a free and voluntary confession of guilt made by an accused person, if it is direct and positive is sufficient to warrant his conviction without any corroborative evidence as long as the court is satisfied of the confession. Effiong Vs. State (1998) 8 NWLR (pt. 552) 362 SC, Ihuebeka Vs. State (2000) 4 SC (pt.1) 203, Idowu Vs. State (2000) 7 SC (pt.11) 50, Alarape vs. The State (2001) 14 WRN I SC.

The law reports are replete with the notion that a Confessional Statement of an accused person to the commission of a crime plays a major role in the determination of his guilt.

The Appellant in his statements Exhibit C and C(1) confessed to the crime he was charged with. Exhibit D was again made confirming the other statements Exhibit C and C(1). Exhibit D was made in front of his mother, a Senior Police Officer and the mother of the deceased. Had it been that Exhibit C and C(1) were not voluntary he would have said so in Exhibit D. There would not have been any threat or cohesion in front of his mum and the deceased mother.

In the face of the Appellant's confessional statements, the trial Judge was entitled to convict the Appellant having ascertained that the confession was voluntary. Okeke vs. State (2003) 15 NWLR pt 842 page 25.

I had earlier in this issue whilst resolving the evidence of the eye witness desisted from making any findings on questions of corroboration. The Appellant's counsel had argued that, the trial Judge relied on the uncorroborated testimony of an infant in reaching his decision and convicting the Appellant. It would be recalled that, A. E. Archibong J the first Judge tested the infant as required by Section 209 (1) Evidence Act, 2011. The infant passed this test and was sworn before giving his testimony. His testimony gave a graphic detail of what transpired on that fateful day leading to the death of his twin brother.

The Appellant's Counsel had argued that the trial Judge relied on the evidence of an infant without it being corroborated. The Supreme Court in Solola Vs. State (supra) held that the evidence of a child given on oath need not be corroborated.
"A child who does not understand the nature of an oath is even competent to give unsworn evidence if in the opinion of the court such a child is possessed of sufficient intelligence to justify the reception of his evidence Solala Vs. State (supra).

However, this infant having shown his understanding of what an oath meant and the seriousness of it, was sworn and gave his evidence. His evidence does not need to be corroborated if the trial Judge accepted his evidence as being positive and direct and believable.

The confessional statement of the Appellant adjudged free and voluntary by the trial Judge was sufficient to warrant the Appellant's conviction. The evidence of the infant in Exhibit B is strong enough to convict the Appellant.

However, both the evidence of the infant and the Appellant are materially the same. They both state how the Appellant beat the deceased, turned him upside down, hitting his head on the floor. Both their testimonies corroborate each other.

Corroboration evidence is defined as
"evidence given by an independent witness who confirmed in some material particular not only that a crime has been committed but also that it was committed by the accused person. See Amadi Vs. State (1993) 8 NWLR pt 314 page 644, Siwobi Vs. C.O.P (1997) 1 NWLR pt 482 page 411.

The evidence of PW 1 the doctor corroborated the evidence of both the infant and the Appellant that the deceased died as a result of the injuries inflicted on him by the Appellant. The deceased died within 24 hours that he sustained those injuries.

The evidence of the infant and the Appellant was enough to sustain the conviction of the Appellant.
Issue one is therefore resolved against the Appellant.

ISSUE TWO AND THREE

The learned counsel to the Appellant submitted that, the trial Judge erred in law when he admitted and relied on the hearsay evidence of PW3 - Investigating Police Officer and Exhibit B tendered by PW2 - ACR to convict the Appellant. Counsel drew the court's attention to the fact that PW3 Investigating Police Officer only gave hearsay evidence of what happened as regards the crime. Exhibit B was the evidence taken by A. E. Archibong J. which is hearsay of what happened in the 1st court. Exhibit B is inadmissible because it did not conform strictly to the provisions of Section 295 (1) and (3) of the criminal procedure Law Cap 39 Laws of Akwa Ibom State, 2000 which provides.

Section 295 (1).

The court shall in every case take notes in writing of the oral evidence, or so much thereof as it considers is material, in a book to be kept for that purpose and such book shall be signed by the judge or magistrate at the conclusion of each day's proceeding.

Section 295 (3)

The record so kept as aforesaid or a copy thereof purporting to be signed and certified as a true copy by the judge or magistrate shall at all times, without further proof, be admitted as evidence of such proceedings and of the statements made by the witnesses.

These sections provide that the proceedings must be signed by the Judge the same day it was taken and must be certified by the Judge that took the evidence. In this case while the Judge took the evidence of Blessing Peter Asuquo on the 29th of July, 2004 he signed it on the 27th of July, 2005 while the witness was cross examination on the 14th of February, 2005, the Judge signed the evidence proceedings on the 14th of February, 2006. There is no indication that the Judge actually certified Exhibit B. counsel also stated that Exhibit B was a doctored version of what really transpired in the 1st court. Counsel submitted that the non-compliance with S.295 (1) and (3) of the criminal Procedure Law makes Exhibit B inadmissible. Counsel urged the court to hold that Exhibit B is inadmissible and wrongly admitted. See Ipinlaiye Vs. Olukotun (1996) 6 NWLR pt. 453 page 148 where the Supreme court held:

That a court has power to expunge from its record inadmissible evidence irrespective of the fact that it was not objected to at the point of tendering. Having now been convinced that the Exhibit B was wrongly admitted, we submit that this Appellate Court has power to expunge Exhibit B which is inadmissible from the records.

Counsel therefore urged the court to expunge Exhibit B, it being inadmissible.

Also the learned trial Judge admitted Exhibit B, the proceedings from A. E. Archibong J when same was not certified by him. Counsel argued further that when a trial starts de novo, all steps taken in the previous court abates. See Eke vs. Akpu (2010) All FWLR pt 510 page 640, Bamayi vs. State (2006) 12 NWLR pt 994 page 221.

Counsel reiterated that the conditions stipulated in S. 39 and S. 46 Evidence Act 2011 were not fulfilled as the prosecution did not say why their witnesses were not produced to give evidence in the 2nd court. It was therefore wrong for the trial court to rely upon the evidence that was found in Exhibit B, to convict the Appellant. See Dada Vs. Bankole (2008) 1 SCNJ page 244 page 253, Oguntayo Vs. Adelegu (2009) 7 SCNJ page 390. Counsel therefore urged the court to resolve issue 2 and 3 in favour of the Appellant.

In response, the learned counsel to the respondent, submitted that the PW3 - Investigating police Officer's evidence to the court is admissible in court as the witnesses could not be traced.

Counsel argued that there was substantial compliance of S. 39 and S. 46(1) of the Evidence Act 2011. Exhibit B was brought from proper custody of PW2 - the ACR and therefore admissible. See S. 295 (1) and (3) of the Criminal Procedure Rules, Laws of Akwa Ibom State.

The fact that the case was heard on the 29th July, 2004 and same signed and given a later date of the 27th July, 2005 cannot vitiate the genuiness of the original record of that court which was properly certified.

Counsel submitted that there is a presumption of correctness of Exhibit B tendered by the ACR - PW 2. If it were not correct, it is the duty of the appellant to file an affidavit stating so. See Ukwuyok vs. Ogbulu (2010) 5 NWLR pt 1187 page 316, Ngige vs. Obi (2006) 14 NWLR pt. 999 page 1, Idakula vs. Richards (2001) 1 NWLR pt 693 page 111, Agbeutu vs. Brisibe (2005) 10 NWLR pt. 932 page 1, Abatan vs. Anudu (2004) 17 NWLR pt 902 page 430. S.147 of the Evidence Act 2011 raises the presumption that the contents of Exhibit B was genuine and properly admitted. There was also substantial compliance of S.

295 (3) of the Criminal Procedure Law Cap. 39 Laws of Akwa Ibom State. The non certification of Exhibit B by the High Court Judge is not fatal to the case of the Respondent.

The Appellant did not object to the tendering of Exhibit B during the trial and therefore cannot be heard to complain about its admissibility. See Chief Bruno Vs. Chief Oko Udo Ekpe (1983) 3 SC page 12 where the Supreme Court per Aniagolu held:

"it is the cardinal rule of evidence, and practice in civil as well as in criminal cases, that an objection to the admissibility of a document sought by a party to put in evidence is taken when the document is offered in Evidence. Barring some exceptions where by law certain documents are rendered in admissible (consent or no consent of the parties not withstanding) for failing to satisfy some conditions or to meet some criteria, the rule still remain inviolate that where objection has not been raised by the opposing party to the reception in evidence of a document (or other evidence - See Chukwura Akune Vs. Matthias Ekwuno (1952) 14 WACA 59) the document will be admitted in evidence and the opposing party cannot be heard to complain about its admission"

Counsel submitted that by not objecting or contesting the admissibility of a document during trial, one is foreclosed on appeal from raising the issue provided the document questioned is not one required to satisfy some criteria or condition. This position of the law still stands.

Furthermore, counsel submitted that the Appellant made oral and written confessional statements to PW 3 - IPO and was admitted in evidence and used against him. See Arogundade vs. State (2009) 3 NSCR page 33, Nwachukwu Vs. State (2002) FWLR pt 123 page 312 where the Supreme Court held

"An admission or confession has been said to be like any other evidence and it is the duty of the trial court to consider the circumstances under which it was given and decide what weight that may be attached to the alleged confession". Akinmoju Vs. State (2000) 4 SCNJ page 179, Onugwa vs. State (1976) NSCC vol. 10 page 27, Nwachukwu vs. State (2002) FWLR pt 123 page 312.

Counsel again stated the position of the Law about Confessional Statements and retraction of same. The trial Judge held in his judgment thus:

"The statements were tendered by prosecution and admitted in evidence. The accused did not deny at the point of tendering them that he did not make them to police. Exhibit C came with C1 which was duly endorsed by a superior Police Officer to show that the accused admitted that Exhibit C represented what he said... Furthermore where a confessional statement has been tendered and admitted without objection is later retracted is of no moment".

Finally, counsel submitted that the respondent proved its case against the Appellant beyond reasonable doubt. counsel therefore urged the court to hold that the respondent proved the case against the Appellant beyond reasonable doubt.

The learned counsel to the Appellant had argued strenuously that the learned trial Judge convicted the Appellant on the hearsay evidence of PW3 the Investigating Police officer and on Exhibit B, the court proceedings in the first court of trial.

The learned trial Judge relied on S.39 of the Evidence Act 2011 in admitting Exhibit B. Section 39 provides.

Statements, whether written or oral of facts in issue or relevant facts made by a person-
(a) Who is dead;
(b) Who cannot be found;
(c) Who has become incapable of giving evidence; or
(d) Whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable, are admissible under section 40 to 50.

The infant Master Blessing Peter Asuquo who gave evidence with his mum in the first court as PW1 & PW2 respectively were nowhere to be found. They had packed out of the Appellant's compound and could not be traced.

Section 39 definitely provided for this position the prosecution found itself. PW1 & PW2 fell under the category of 39 (b) "who cannot be found".

In terms of admissibility of Exhibit B, S. 46 of the Evidence Act 2011 is apt and provides adequately for the situation at hand. The infant Master Blessing peter Asuquo had earlier testified in the first court. He was also cross examination before A. E. Archibong J. The proceedings is still between the same parties ie the state against the Appellant.

Exhibit B cannot therefore be described as hearsay evidence. It was a direct evidence obtained during examination in chief and cross examination of the witnesses.

Hearsay evidence is an evidence which does not derive its value solely from the credit given to the witness himself, but which rests also, in part, on the veracity and competence of some other person. Thus, where a third party relates a story to another as proof of the contents of a statement, such story is hearsay. Judicial service Committee vs. Omo (1990) 6 NWLR (Pt.157) 407 CA.

Evidence of a statement made to a witness by a person who is not himself called as a witness may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and admissible when it is proposed to establish by evidence not the truth of the statement but the fact that it was said. Kala vs. Potiskum (1998) 3 NWLR (pt.540) 1 SC.

The learned Appellant's counsel had argued that the Respondent did not strictly conform with the provisions of S. 295 (1) and (3). The issues of date complained about cannot vitiate, the admissibility of Exhibit B. It conformed substantially with the provisions of that section. The A.C.R. of the court certified Exhibit B in his usual line of duty and within his job description. The Appellant did not object to the tendering of this Exhibit and therefore estopped from doing so on appeal. Chief Bruno Vs. Chief Oko Udo Ekpe (supra) Moreso, the provisions of S.295 (1) and (3) were substantially adhered to.

The Appellant also argued that, the evidence of PW3 Investigating Police Officer was hearsay evidence. It appears the learned Appellant's counsel does not appreciate fully the job description of an Investigating Police Officer. He just investigates crimes. Invariably an Investigating Police Officer is hardly ever at the crime scene. His investigation comes after the crime had been committed. An Investigating Police Officer obtains statements from accused persons and witnesses alike. He thereafter testifies in court giving a synopsis of what he did during the investigation. He tenders the statements of both

accused and in some cases that of witnesses. He also tenders some documents and exhibits obtained during investigation. The Investigating Police Officer therefore gives direct evidence as to what he has done during the investigation of the crime. The evidence of the Investigating Police Officer is not by any standard hearsay. He gives an account of what he has done in the process of his investigations.
The trial Judge was right in holding that the Investigating Police Officer gave evidence of what he did during his investigation as part of his duties.

In a charge of murder the prosecution must prove;
1. That the deceased had died;
2. That the death of the deceased was caused by the accused; and
3. That the act or omission of the accused was intentional with the knowledge that death or grievious bodily harm was its probable consequence. See Ogba vs. the State (1992) 2 NWLR pt.222 page 164, Nwaeze vs. The State (supra)

The prosecution in this case has proved that the deceased had died. This was confirmed by the evidence of Master Blessing Peter Asuquo, the Appellant, PW1 and PW 3. The prosecution has also proved that the death of the deceased was caused by the accused. This was proved by the evidence of Master Blessing in Exhibit B. So also from the confessional statements of the Appellant himself.

Both Master Blessing and the Appellant gave a graphic story of how the Appellant beat the deceased, turned him upside down and hit his head on the floor.

The Appellant was a lot older than the deceased. He beat him up and turned him upside down hitting his head several times on the floor. Ofcourse he had the intention of doing him grievous harm which resulted in death within 24 hours. Our law is that a man is presumed to intend the natural consequences of his acts. The test to be applied is that of a reasonable man. A man intends, the result of his action. See Adelumola Vs. State (1988) 1 NWLR pt.73 page 683,Â Â Arabaman Vs. The State (1972) 4 SC page 35, Uyo Vs. Attorney General Bendel State (1986) 1 ALL NLR page 112, Garba vs. The State (2000) FWLR pt 24 page 1448, Ibikunle Vs. The State (2007) 1 SC pt. II page 32.

The prosecution has proved the case of murder against the Appellant beyond reasonable doubt. The 2nd and 3rd issues are also resolved against the Appellant.

ISSUE 4

Learned counsel to the Appellant had submitted that the learned trial Judge erred in law when he visited the sin/mistake of the counsel on the Appellant. Counsel stated that the former counsel failed to object to the tendering of Exhibit B. Also that the confessional statements were not voluntary but the counsel neglected to object to its tendering. Counsel urged the court to discountenance Exhibit B and the confessional statement Exhibit C, C1 and D and expunge them.

The Respondents had nothing to urge the court specifically on this issue. However, the Respondent had argued on these issues in issues 1-3 above.

It is unfortunate that the learned counsel to the Appellant is of the opinion that the Appellant's former Counsel failed him. The learned counsel to the Appellant felt that the former counsel should have objected to the admissibility of Exhibit B. I have discussed at length this issue in issues 1, 2 & 3. Exhibit B was tendered and accepted as evidence after complying substantially with S.295 (1) & (3) of the Criminal Procedure Rules, Laws of Akwa Ibom State. See also S. 39 and Section 46 of the Evidence Act 2011.

The learned trial Judge cannot be faulted in his acceptance of Exhibit B and its use in reaching his decision to convict the Appellant.

The confessional statement Exhibit C, C1 and D were tendered without objection from the Appellant's counsel. As discussed earlier in the other issues, the statements were taken because, the trial Judge was convinced it was made voluntarily. The statements gave a graphic picture of what happened on that fateful day. The confessional statements tallied with the statement of master Blessing who was an eyewitness to the crime.

Both statements of Master Blessing and Appellant corroborate each other. It is trite law that even if the Appellant retracted a voluntary confessional statement it does not render such statement inadmissible or worthless and untrue Ikpo Vs. State (supra)

Inspite of all these, the prosecution was able to prove the guilt of the Appellant. The burden of proving a charge against an accused is always on the prosecution. The prosecution has however in this case,

adduced enough evidence to show that the accused is guilty of the offence of murder charged Nasiru Vs. State (1999) 2 NWLR Pt.589 page 87, Imhanria vs. Nigerian Army (2007) 14 NWLR pt.1053 page 78.

The prosecution has proved this charge beyond reasonable doubt. This issue is also resolved against the Appellant.

All the four (4) issues articulated by the Appellant have all been resolved against him. This appeal is unmeritorious. It is dismissed. The judgment, conviction and sentence of the Lower Court is affirmed.

MOHAMMED LAWAL GARBA, J.C.A.: I have read in draft, the lead judgment just delivered by my learned brother Uzo I. N. Ndukwe-Anyanwu, JCA, in this appeal and agree with the resolutions of the issues considered therein. For the reasons set out in the lead judgment, I also find that the Respondent has proved the offence with which the Appellant was charged, beyond reasonable doubt, as required by the law. I would emphasise that requirement of proof beyond reasonable doubt does not mean proof beyond all or every shadow of doubt, both reasonable and unreasonable in the peculiar circumstances of a case. It simply means that there is sufficient, admissible and credible evidence that all the essential ingredients or elements constituting the offence an accused was charged with, were established, that would justify the conviction of the accused person by the court. See Jua v State (2010) 43 WRN 1 at 24-5 (10) 4 NWLR (1184) 217; Amah v State (1978) 6-7 SC.27; Afolalu v. State (2010) 6-7 MJSC, 187.

No reasonable doubt, howsoever, was left by the evidence before the High Court that the Appellant, indeed and in law, committed the offence he was charged with, even if some procedural rules were not strictly complied with in the admission of some of the pieces of evidence. I join in dismissing the appeal and affirming the conviction and sentence of the Appellant by the High Court.

CHIMA CENTUS NWEZE, J.C.A.: My Lord, Uzo I. Ndukwe-Anyanwu, JCA, obliged me with the draft of the leading judgment just delivered now. I am persuaded by the reasoning and conclusion. I abide by the consequential orders in the said leading judgment.

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Appearances

F. Udom, Esq.For Appellant

AND

J. Umoren Esq. Asst. Dir. Ministry Of Justice with Him O. Umoh Senior State Counsel For Respondent