

IN THE HIGH COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT JUDICIAL DIVISION
HOLDEN AT PORT HARCOURT

CHARGE NO: PHC/1523CR/2021

BETWEEN

THE STATE

>>>>>>>> PROSECUTION

AND

1. ONYEMACHI GODWILL
2. BRIGHT BENNETH
3. BRIGHT FINEBOY

DEFENDANTS



JUDGMENT DELIVERED BY HON. JUSTICE T.S. OJI ON THE 18TH DAY OF DECEMBER, 2024

Coram:

Defendants present

Appearances: P.C. George for the Prosecution, V.U. Uzochukwu with P.C. Ukadinolu for the Defendants

The Defendants are standing trial on a two-count charge of (1) Conspiracy to murder contrary to Section 324 of the Criminal Code, Laws of Rivers State of Nigeria 1999 and (2) Murder contrary to Section 319 of the Criminal Code, Laws of Rivers State of Nigeria 1999. The defendants pleaded not guilty to the charge. The prosecution called one witness and tendered seven exhibits marked Exhibits A-g. At the close of the Prosecution's case, the Defendants elected to rely on the case of the Prosecution as put forward by PW1.

The Prosecution filed its written address on 7/11/2024 wherein it raised a lone issue for determination to wit:

"Has the prosecution by totality of the evidence adduced before this court, oral, documentary and exhibits tendered, proved its case against the defendants beyond reasonable doubts as envisaged by law to warrant a conviction?"

Prosecution Counsel Nkiruka Wonodi submitted that in criminal proceedings, the legal burden is always on the prosecution to establish the guilt of the defendant beyond reasonable doubt, but does not by any stretch of imagination mean proof beyond all shadow of doubt. Counsel relied on *Miller v. Minister of Pensions (1974) 2 All ER, 372*, *Egwumi v. State (2013) LPELR-20091 (SC)* and *Smart v. The State (2017) 20 WRN P.1* @ 32 lines 30-40. She submitted that in criminal proceedings, there are three ways to prove the guilt of an accused person namely:

1153390
THE JUDICIARY
HIGH COURT REGISTRY
PORT HARCOURT
CASH OFFICE
Date 15/11/2025

- A. By eye witness account
- B. By confessional
- C. By circumstantial evidence

She submitted that the position of the law is that in order to discharge its burden of proof, the prosecution may rely on any of the above and the court may rightly convict an accused person based on any or a combination of them. Counsel relied on **Emeka v. State (2001) 14 NWLR (Pt.734)666;** **Mbang v. State (2010) 7 NWLR (Pt.1194) 431.**

Counsel stated that the prosecution relies heavily on the confessional statements of the defendants which is in tandem with the narrative of the IPO and the complainant. Counsel stated that Exhibit B which is the confessional statement of the 1st Defendant says a different story from the other two defendants but yet establishes that the deceased was shot on that day and he was at the scenario of the shooting. Counsel argued that where two people are saying the same thing and the other is saying a completely different story which led to the killing of the deceased, it is only likely that the one person whose story is not in line with the others is twisting the events to suit himself and exonerate himself from the crime committed, that from their confessional statements, the defendants are claiming to be just accomplices. Counsel contends that in the instant case, the defendants are as guilty as the one who shot the deceased as they were all part of the gang up.

Counsel submitted that while direct evidence, such as eye witness testimony is the most reliable method for proving murder, Nigerian law recognises that murder can also be proved with circumstantial evidence which is indirect evidence that allows a court to infer that the accused committed the crime, even if there is no direct evidence.

Counsel argued further on the issue of the absence of the corpse of the deceased that, there has been several decided cases on when an accused can be convicted of murder in the absence of a corpse. Counsel stated that in Exhibit A, the complainant explained why the corpse was buried that same day and not deposited with the police therefore the absence of the corpse does not absolve the defendants from the commission of the crime. Counsel relied on the case of **Oladimeji v. State (1998) 11 NWLR (Pt.573)189.** Arguing further, counsel opined that circumstantial evidence can be sufficient to prove murder even when the defendant denies committing the act, provided the circumstances overwhelmingly point to the accused's involvement.



Counsel submitted that in Nigerian law, the conviction for murder generally requires proof beyond reasonable doubt, which is typically established through direct or circumstantial evidence. That while the testimony of a police investigating police officer (IPO) is generally not sufficient on its own to convict someone for of murder, there are exceptional circumstances where such testimony can be pivotal in securing a conviction for murder. These exceptions usually arise when the IPO's testimony is credible, corroborated by other pieces of evidence, or when the IPO provides crucial evidence that ties the accused directly to the crime.

Counsel submits that in the instant case, circumstantial evidence can be drawn from the confessional statements of the defendants and the IPO's testimony is sufficient to prove the guilt of the defendants. That Exhibits B,C,D and E; the voluntary confessional statements of the defendants are positive and direct and were duly admitted by the court, and it points to the fact that the defendants committed the crime they are being charged with and as such, the prosecution has proved the guilt of the defendants as required by law.

Counsel argued that in the instant case, Exhibits A-G shows that the defendants after committing the crime, were chased from the scene of the crime to the palace where they were arrested by the police. That all the statements admitted show the same line of events leading to the murder. That the confessional statements of the 2nd and 3rd defendants show that the 1st defendant was the mastermind of the murder of the deceased. Counsel argued that although in the instant case the defendants denied making the confessional statement, the law as held in a plethora of cases is that a retracted confessional statement is admissible in evidence. Counsel relied on *Musa v. State* (2021) LPELR- 55423 (CA); *Yusuf & Anor v. State* (2019) LPELR-46945 (SC); *Awosika v. State* (2018) LPELR- 44351 (SC) 63-64.

Counsel contends further that flowing from the fact that the defence rested its case on that of the prosecution, the defence can be said to have admitted the facts of the case as presented by the prosecution. Counsel relied on the case of *Akpa v. State* (2019) 9 NWLR (Pt.1678) 399.

It is counsel's submission that for the prosecution to secure a conviction of conspiracy, the prosecution must as a matter of facts and law establish that there was an agreement between two or more persons to do, or cause to be done an illegal act or an act which though not illegal by illegal means. She submitted that in the instant case, from the confessional statement of the defendants, they all stated how they gathered together to proceed to



commit murder because of cult rivalry. That it is the law that there need not be an express agreement before a common intention can be shown in an offence of conspiracy. Counsel relied on the case of *Agugua v. State* (2017) 10 NWLR (Pt.1573) 254; *Adekunle v. State* (1989) 5 NWLR (Pt.123) 505.

On the proof of commission of murder, counsel submitted that the defendants from their statements had intent, which is cult rivalry, they were seen when they carried out the shooting, they were pursued and arrested. That the deceased was buried the same day leaving the prosecution without the body of the deceased to strengthen its case does not vitiate the guilt of the defendants. Counsel relied on the case of *Olude v. State* (2014) 7 NWLR (Pt.14) 89.

Counsel submitted finally that the prosecution has proved its case beyond reasonable doubt that defendants committed the crime for which they are standing trial.

Defendants' counsel donated two issues for determination viz:

1. Whether from the totality of evidence led by the prosecution, it has proved the offences of conspiracy to commit felony and murder against the accused persons beyond reasonable doubt.
2. Whether in the event the 1st issue is resolved against the prosecution, the court has the inherent powers under Section 6 (6) of the 1999 Constitution as amended to award monetary sum of 10 Million Naira each for the rehabilitation of the 1st, 2nd and 3rd defendants on grounds of *ubi jus ibi remedium*.

On issue 1, counsel for the defence Victor U. Uzochukwu Esq. submitted that it is trite law that the onus to prove the guilt of an accused in a criminal trial in Nigeria rest on the prosecution. He relied on the case *Adeboye v. State* (2011) LPELR – CA, Section 135(1) of the Evidence Act. He submits that the guilt of the accused can be proved by direct oral evidence, circumstantial evidence or through the confessional statement of the accused if it is direct, positive and satisfactorily proved. Counsel relied on the case *Obasi Onyenye v. State* (2012) LPELR- 7866 SC, *Ame v. The State* (1978) 6 and 7 SC. Pg.27.

Counsel submitted that to resolve the issue of conspiracy in the instant case, the court should first and foremost resolve the offence of murder as both are interwoven and that the conviction on the offence of conspiracy requires proof that there is an existence of an agreement by the defendants to commit the alleged offence and did commit the offence of murder and that should the offence of murder fail, the alleged offence of conspiracy will equally collapse.



Counsel submitted that the ingredients of murder that the prosecution must prove to secure the conviction of an accused person are:

- a. That there was death of a human being
- b. That the death was caused by the act of the accused person
- c. That the act of the accused person was done with intention of causing death.

Counsel relied on the case of *Adekunle v. State* (2003) 3 ACLR Pg. 561 and *Ahmed v. State* (2003) ACLR Pg.145 @ 157. Counsel submitted that the testimony of the prosecution witness PW.1 that the defendants killed the deceased Eze Tabele Chukwuma was greatly contradicted during cross examination. Counsel expressed the view that it is overly important that the court finds and determines from the evidence of the prosecution witness PW.1 whether the said deceased Eze Onyebuchi Tabele is dead as such fact is very crucial to the charge before the court. That PW.1 during her evidence emphatically stated that the police did not see or access the corpse because the nominal complainant Tabele Chukwuma and his family refused the police access to the corpse. He argued that though in Nigeria, the police do not need to see the body of the deceased to prove murder but that the burden is on the prosecution to adduce before the trial court eyewitness testimonies, forensic evidence, DNA analysis and motive in proof of the offences against the defendants. Counsel relied on the case of *State v. Ahmed* (2020) LPELR-49497 (SC).

It is counsel's further contention that the nominal complainant did not witness the commission of the crime been tried before this court and that in fact assertions of the prosecution sole witness PW1 elicited during cross examination clearly show that there is no eye witness who directly witnessed the defendants' commission of the offences alleged against them. He urged the court to hold that there is no direct evidence or testimony upon which the court can safely convict the defendants for the alleged offences.

Also, counsel argued that PW.1 contradicted herself when she testified in chief on 07/02/23 that every effort to get the nominal complainant to take the police to the scene proved abortive but while still testifying in chief on 30/5/23 stated there are exhibits which she recovered, one expanded 12 by 12 cartridge (Exhibit G). Counsel urged the court to hold that these contradicting averments of the prosecution sole witness PW.1 are serious contradictions and fatal to the case of the prosecution. That the witness cannot speak from both sides of her mouth. He relied on the case of *Henry Nwokearu v. State* (2010) 15 NWLR (Pt.1215)1 @12 and *Osadim v. Taiwo* (2010) 6 NWLR (Pt.1189)155 @ 162.



Counsel submits that even the content of the statement of the nominal complainant (Exhibit A) tendered before this court clearly states that he did not witness the commission of the alleged crime the defendants are accused of and that the fact that the nominal complainant was called to the scene shows that the nominal complainant's statement to the police and to PW.1 is in itself hearsay and amount to no evidence. He relied on Section 38 of the Evidence Act, 2011. He argued further that the prosecution failed to lead evidence linking the cause of the death of the alleged deceased to the accused persons in any way whatsoever and that the court should apply great caution in relying on the mere tendering of the extra-judicial statement of the defendants without any form of corroboration by the prosecution witness. He relied on the case of *Ayobami v. State* (2017) ALL FWLR (Pt.886) Pg.1964.

Counsel submitted that an accused person can be convicted on his confessional statement alone provided that the statement satisfies the test of being positive, direct and unequivocal. He stated that in the instant case, the accused persons' confessional statements marked Exhibit B, C, D and E were admitted in evidence though denied by the defendants on the grounds that the statements were not made or signed by either of them. That to determine the weight to attach to the confession of the defendants, it is necessary to examine the evidence of the prosecution sole witness PW.1 to find out if there are facts to show that the statements (Exhibits "B, C, D and E") are true. He submits that before the court can rely on the extra judicial statements of the defendants to convict them, the six-way test established by the higher courts must be applied. Counsel relied on the case of *Ahmed Olatidoye v. The State* (2010) LPELR-9079 CA where the court highlighted the six-way test as follows:

1. Is there anything outside the statement to show it was true
2. Is it corroborated
3. Are the statements made in it of facts so far as we can test them
4. Did the accused persons have the opportunity of committing the murder (crime)
5. Is the confession possible?
6. Is it consistent with other facts which have been ascertained and which have been proved?

Counsel submits that the procedure in applying these tests is to examine the confessional statements of the defendants (Exhibits B, C, D and E) respectively by comparing them with other bits and pieces of evidence adduced by the prosecution sole witness PW1. It is counsel's view that the entire evidence of the sole witness of the prosecution (PW.1) was contradicted during cross



examination and there is nothing outside the confessional statement of the defendants to attest to its veracity as borne out by the evidence of PW.1.

On issue 2, counsel submits that where a court finds that an accused person was unlawfully arrested, detained and made to go through an unfairly long protracted trial, the court has an inherent power to not just discharge and acquit the accused person but to order that the accused person be rehabilitated after his loss of youthful age. By way of persuasion, counsel referred the court to the decision of Hon. Justice Ntong Ntong of the Ikot Ekpene High Court in *The State v. Idaraobong Sunday Dickson & 3 Ors* (2015) (unreported). Counsel urged the court to take judicial notice of its record as to the time the defendants were arrested, that the lost years can never be recovered so the court can at best order that the 1st, 2nd and 3rd defendants be compensated by the Rivers State Government through whose officers, the Attorney General and the Director of Public Prosecution, the defendants were kept in detention since 2016. Counsel urged the court to hold that the maxim of *Ubu jus, Ibi remedium* applies to this case.

RESOLUTION OF THE CASE

The defendants in this case are standing trial for the offence of Conspiracy and Murder contrary to Sections 324 and 319 of the Criminal Code, Laws of Rivers State of Nigeria 1999. It is now well settled in our legal jurisprudence that proof in criminal trials is beyond reasonable doubt as rightly conceded by both counsel in their written address. *"The law, ancient and modern is that in a criminal trial, the burden of proof lies throughout upon the prosecution to establish the guilt of the accused person beyond reasonable doubt. The burden never shifts. Even when the accused person in his statement to the police admitted committing the offence, the prosecution is not relieved of the burden so that a wrong person will not be convicted for an offence he never committed. There must be evidence which identifies the accused with the offence. This is because the constitution presumes the accused person to be innocent until the contrary is proved. See Section 36(5) of the 1999 Constitution FRN, Section 135(1) of the Evidence Act 2011, Dongtoe v. Civil Service Commission, Plateau State (2001) LPELR - 959SC, People of Lagos State v. Umaru (2014) 3 SCNJ 114 at 137, Igabele v. State (2006) NWLR (pt.975)100 and Abbey v. State (2017) LPELR - 42358SC p.34-35.*

The standard of proof in a criminal trial is proof beyond reasonable doubt. Per ABIRIYI, J.C.A in C.O.P V. OGAR (2021) LPELR-53593(CA) (Pp. 10 paras. A).

The crucial questions that need to be answered at this point therefore is whether the prosecution has proved the guilt of the defendants in respect of



the charge beyond reasonable? The prosecution called one witness PW.1 in proof of its case through whom Exhibits A-G were tendered and admitted. PW.1 testified in respect of the charge on 7/2/23 thus:

"My name is Inspector Dikeocha Stella. I live at Woji Estate in Port Harcourt. I am a police officer. I am attached to State C.I.D. Port Harcourt. I have been in State C.I.D since 2013. I have served with the police for 23 years. My appointment number is 177041. I know the as per this case. I di not know them before this case. They are in court because of a charge for conspiracy and murder. I was one of the Investigating Police Officers in State C.I.D who investigated the matter. They were transferred from Ahoada Area Command.

The Investigating Police Officer Area Command Ahoada transferred them to State C.I.D. and it was minuted to my department. The transfer was in 2016 about June. It was minuted to my section for investigation. We managed to meet the complainant the elder brother of the deceased who said that Onyemachi and his group on the 1/6/2016 came in at Obeta roundabout in Obeta community ad killed his younger brother. They shot him multiple times around 11.00 hours and he died.

With the help of security people at Obeta round about and the police they pursued them and they ran into the palace of the HRM Eze Ekpeye Robinson (now late) who in turn handed them over to the police. About four of them escaped. When we received the matter with the help of the Area Command Ahoada we were able to get the complainant who volunteered his statement and the three defendants all made their statements respectively.

During their statement some of them said one of them.....came to their houses with gun before they were able to follow him to the said Obeta. After the statement, the complainant refused to come take us to the scene because he buried his brother same day he was.....Every effort to get him to take us to the scene proved abortive. He did not allow the police get hold of the corpse.

The accused persons (defendants) were transported with some of the evidence; one expanded 12 by 12 cartridge..."

The testimony of PW.1 on 7/2/2023 that the defendants allegedly shot and killed one Eze Onyebuchi Tabele is not personal to PW.1 who testified about the alleged killing. From the testimony of PW.1 on 7/2/2023, the information was obtained from the nominal complainant in the course of investigation as an Investigating Police Officer. Sadly, the said nominal complainant was not called as a witness. Being that the evidence of PW.1 was given to establish the offence charged, it amounts to hearsay evidence and the court cannot rely on



same to establish the offence charged. See the case of AMUKALI V. STATE (2021) LPELR-55864 (CA) where the Court held as follows:

"The information that the appellant assisted the 1st and 3rd accused persons to repaint every vehicle snatched from their victims is a general one and does not specifically tie the appellant to the repainting of the cars the subject of the instant matter. More importantly, the information was not personal to the PW4 who testified about it. He must have obtained the information from other persons in the course of his investigation. Being that it was given to establish the offences charged, it was hear-say evidence irrespective of the fact that it came from the investigating police officer. Being an investigating police officer does not exempt him from the rule as to hear-say evidence. I draw inspiration for this statement from Chapter iv of the Evidence Act, 2011. The only exception to the rule as to hearsay in relation to a police officer is in Section 49 of the said Act which is as to the tendering of the statement of an investigating police officer in his absence. The provision is not relevant in this instance. I also draw strength from the case of Nwosisi v State (1976) 6 SC 109,112 where the Supreme Court gave a nod of approval to the rejection of the hear-say evidence of PW8, the investigation police officer, in the following terms:

"The trial Court also quite rightly disregarded the testimony of P.W.8, the investigating police officer, to the effect that he had inquired from Dorothy Mokwe who said that the appellant did not sleep in her house that night, as being hearsay." Per EKANEM, J.C.A.

See also the case of C.O.P, KANO STATE V. ABDU & ANOR (2021) LPELR-57391 (CA) where the Court stated the position of the law thus:

"The IPO in any investigation is not an eye witness to the crime he is investigating. The investigation mainly is as a result of complaint and report made to the Police. In the course of his investigation he interrogates suspects and takes down their statements, he interviews witnesses, visit the locus in quo for further investigations and recover exhibits connected to the case. Therefore, the general rule is that evidence of an investigating Police officer as regards what he saw or discovered in the course of an investigation is not hearsay. See OLADEJO VS. THE STATE (1994) 6 NWLR (PT. 348) 101, ADO & ANOR VS. THE STATE (2013) LPELR 22596 and AKWARA VS. THE STATE (2019) LPELR 49537. However, the evidence of Investigating Police Officer would nevertheless be hearsay if he volunteers to give evidence of what a third party told him if the third party was not called to give evidence. In this respect, there is no distinction between a witness and a police officer who is called to testify. His evidence must relate to what he saw and discovered in the course of his



investigation and not what he was told by someone not called to testify as a witness. The rule on hearsay cannot be relaxed on Police officers simply because they investigated the crime.

See *UKO VS. THE STATE (2019) LPELR 48770.*" Per LAMIDO ,J.C.A.

The prosecution tendered Exhibits A-G in proof of its case. Exhibit A is the statement of the nominal complainant who was not called as a witness in this case. The position of the law is that the statement of a person not called as a witness cannot be relied upon as proof of the truth of what is contained therein. See the case of *PAUL V. COP (2021) LPELR-52489(CA)* (Pp. 93 paras. A) where the Court stated the position of the law thus:

"...The Appellant by his statement raised an alibi which the trial Court found was overtaken by the evidence. The statement of a person not called as witness cannot be tendered for reliance by the Court, see *IKE V. STATE OF LAGOS (2019) LPELR-47712(CA)* wherein the Court held:

"...It is even more so where it is an extra judicial statement made by a person who was not called as a witness...the statements cannot be used as proof of the truth of what it contains: *ADISA vs. THE STATE (1964) LPELR (25197) 1 at 6-7, KASA vs. THE STATE (1994) LPELR (1671) 1 at 18, UGBOGBO vs. THE STATE (2016) LPELR (42225) 1 at 18-23 and AGBANIMU vs. FRN (supra).*"

Per *OGAKWU, J.C.A (Pp. 42-46, paras. B-A)*

So the statement of the Appellant's fiance couldn't have been used without her oral testimony. The missing link in the evidence of the Appellant in his initial statements was his where about between 5-6am on the fateful day, who was he with and what he did if different from the evidence before the Court." Per *NIMPAR ,J.C.A*

See also the case of *IKE V. STATE OF LAGOS (2019) LPELR-47712(CA)* (Pp. 42-46 paras. B) where the Court held as follows:

"I turn to the extra-judicial statements of the complainant, exhibit 1(a) and 1(b) which the lower court accorded probative value even though the complainant was not called as a witness. The respondent has argued that the said statements are admissible under sections 39 and 83 (1) of the Evidence Act. It is pertinent to state that admissibility is one thing, while the weight to be accorded to the admitted evidence is an entirely different kettle of fish. The complainant was not called as a witness, so the story in exhibit 1(a) and 1(b) were never tested under cross examination. The law is that the evidence in chief of a witness who is not produced for cross examination cannot be acted upon by the court: *Isiaka vs. the State (2011) ALL FWLR (pt 583) 1966.* It is even more



so where it is an extra judicial statement made by a person who was not called as a witness, and the circumstances in which the statement was made are not such that the known exceptions like *res gestae* are applicable. The veracity of the contents of exhibit 1(a) and (b) has not been proved since the complainant was not a witness in the matter. The statements cannot be used as proof of the truth of what it contains: *Adisa vs. The State* (1964) LPELR (25197) 1 at 6-7, *Kasa vs. The State* (1994) LPELR (1671) 1 at 18, *Ugbogbo vs. The State* (2016) LPELR (42225) 1 at 18-23 and *Agbanimu vs. FRN* (*supra*). In the circumstances, there was no credible evidence adduced by the prosecution which established that there was a robbery incident and the lower court was in error when it so held. The lower court equally found and held at page 106 of the records that it was established that there was an intention to permanently deprive the complainant of the thing stolen. This finding was based on the same reasoning process and evidence [testimony of pw1" Per OGAKWU ,J.C.A .

Exhibits B, C, D and E are the alleged confessional statements of the defendants which the prosecution relies heavily on in proof of its case against the defendants. Defendants however denied making the said statements. Now what is the position of the law where an accused person makes a denial of his confessional statement? In *Matthew v. State* (Pp. 18-19 paras. A) the Court held as follows:

Now, what is the legal effect of a retracted confessional statement? The answer to this poser can be found in a number of decided cases, one of which is the case of *ELEWANNA VS. THE STATE* (2019) LPELR - 47605 (CA) PP. 33 - 334 PARAS D-D, where this Court held as follows:

"There was, however, a retraction and total denial of some of the confessional statements. In a retraction, the law only requires the Court to seek for evidence outside the confessional statement to corroborate it. In a total denial, the question of voluntariness is not in issue because the Appellant flatly denies those statements and that goes to weight and not admissibility, now whether it is the denial or retraction of a confessional statement, they all go to considering the weight to attach to the statements and usually evidence outside the statements verifying the facts in the statement becomes valuable. The apex Court in the old case of *UKPONG VS. QUEEN (NO.1)* (1961) 1SCNLR PG.53 held thus:

"A denial or retraction of a confessional statement is a matter to be taken into consideration to decide what weight could be attached to it. *Dibie v. State* (2007) (pt.1038) pg.30." In answering the question whether a confessional statement becomes inadmissible because an accused person retracted or

1153390

THE JUDICIARY
HIGH COURT REGISTRY
PORT HARCOURT
CASH OFFICE
Date: 15/1/2025

CERTIFIED TRUE COPY
SIGN:.....
15 JAN 2025
SONNY DAOPUYE
DIRECTOR

denied making it, the apex Court in the case of DADA VS. STATE (2017) LPELR-43468(SC) simply said as follows: "It is trite that a confessional statement cannot be regarded as unreliable by the mere denial or retraction of same." Per NIMPAR, J.C.A." Per ANDENYANGTSO, J.C.A.

"The following guidelines are a road map direction in assessing the quality of a confessional statement for purpose of determining its credibility for acceptability.

(a) whether there is anything outside the confession which shows that it maybe true;

(b) whether it is corroborated in anyway;

(c) whether the relevant statement of fact made in it are most likely true as far as they can be tested;

(d) whether the accused had the opportunity of committing the offence;

(e) whether the confession is possible;

(f) whether the alleged confession is consistent with other facts that have been ascertained and established." Per OGUNBIYI, J.S.C in GALADIMA V. STATE (2012) LPELR-15530(SC) (Pp. 20-21 paras. D)

From decided authorities, a denial or retraction of a confessional statement is a matter to be taken into consideration to decide the weight to be attached to the said statements. The said confessional statement must go through the veracity test outlined in the above cited authority. In the instant case where the defendants through their counsel denied making the said statements i.e Exhibits B, C, D and E, the court has to ascertain if the said statements passed the tests for determining the truth or weight to be attached to such statement.

In the instant case, the confessional statements were not corroborated in anyway. The evidence of PW.1 as earlier noted is hearsay since PW.1 did not witness the incident as expected but only gave evidence as to what the nominal complainant told her about the alleged incident. The nominal complainant was not called as a witness in this suit therefore the court cannot rely on his statement Exhibit A. None of the villagers/vigilante members who were said to have pursued the defendants after they allegedly shot and killed the victim into the palace of the traditional ruler who handed over the defendants to the police were not called to testify in this case. Wile it is true that the prosecution is not under an obligation to call a particular witness in proof of its case, the prosecution is under an obligation to call material witness(es).



See the case of C.O.P V. LUKA (Pp. 12-13 paras. A) where the Court held as follows:

"In this instant case, there is no evidence of an eye witness and no circumstantial evidence. The learned trial Judge held that there is no issue of any confession in exhibit A, the conditions favourable for accepting a statement as a confession were absent. The evidence of the victim Grace Ezekiel is no doubt very vital, and failure to call the victim to testify is fatal to the case of the prosecution. Her evidence is no doubt a material evidence. Material evidence is such evidence which on account of its logical nexus with the issue tends to influence decisively the establishment of the facts in issue. The prosecution has a duty to call all material witnesses. See Oguonzee v. The State (1998) 4 SC 110 and Effiong v. The State (1998) 5 SC 136. If the prosecution had called the victim Grace Ezekiel to testify, she would have been cross-examined to test the veracity, the accuracy and completeness of her story. And if she withstands the agony of cross-examination it follows that her testimony was truthful, accurate and complete. See State v. Aibangbee (1988) 7 SC (Pt. 1) 96. The failure of the prosecution/appellant to call the victim to testify led the trial Judge to draw inferences unfavourable to the prosecution's case. The learned trial Judge held thus;

"Her evidence if it were produced would have been detrimental to prosecution case that was why it was not so brought. See Section 167(d) Evidence Act 2011 and I so hold."

The learned trial Judge also held thus;

"... If there was any sex between them it was a consensual one enjoyed by both on that glittering evening of the incident and so hold."

It is settled law that where two or more persons are witnesses to an event, the law does not impose a duty on the prosecution to call all the persons as witnesses. Rather the prosecution is required to call only those it considers material in order to establish its case. In other words, the discretion as to the number of witnesses to be called is entirely that of the prosecution. It need not call all the witnesses listed in the proof of evidence. See Ogbodu v. The State (1987) 2 NWLR (Pt. 54) 20 (SC) and Adaje v. The State (1979) 6-9 SC 18." Per TALBA, J.C.A

In the instant case, there is no evidence of any eye witness. The evidence of PW.1 as to the events leading to the charge before this court is purely hearsay which the Court cannot rely on.



PW.1 stated that the police did not see the corpse of the deceased victim because the said victim was allegedly buried before the police got involved in the matter. Also, PW.1 who was the Investigating Police Officer did not visit the scene of the alleged crime because the complainant refused to take the police to the scene of the crime. When asked under cross examination how PW.1 recovered Exhibit G, PW.1 stated that the police officers at Area Command Ahoada recovered the said Exhibit. The said police officers who recovered Exhibit G were not called to testify in this case. There is nothing before the Court linking Exhibit G to the defendants beyond the testimony of PW.1 who is not the one who recovered the said Exhibit.

Exhibit F is a report from a police officer at Area Command, Ahoada. The author of the report stated that he was directed to record the statement of the suspects which he did and he also transferred the case file to and the suspects to State C.I.D. There is nothing in Exhibit F stating that the police at Area Command, Ahoada recovered Exhibit G at the scene or that the defendants were chased and arrested at the palace of the traditional ruler. Exhibit G stated that the police officer at Area Command Ahoada recorded the statements of the defendants but curiously, the prosecution did not tender the said statements of the defendants made at Area Command Ahoada.

The law is settled that it is the duty of the prosecution to establish the guilt of the accused beyond reasonable doubt. *"Proof beyond reasonable doubt does not mean proof beyond any iota of doubt or any shadow of doubt. In my view, it only means proof that discountenances with doubts that arise out of the idiosyncracies of the Judge. It means that when the*

evidence adduced is compelling and conclusive and point to no other deduction then the accused committed the offence charged. Thus, where the evidence adduced by the prosecution has established each and every ingredient of the offence charged, the prosecution has proved the offence beyond reasonable doubt. See Nwaturuocha v. State (2011) 6 NWLR (Pt. 1242) 170; Osain v. State (2017) LPELR-42546 (CA) and Sani v. State (2020) LPELR-53905 (SC). Thus, in Miller v. State (2005) 8 NWLR (Pt. 927) 236 at 265, this Court per Onnoghen, JCA (as he then was) defined proof beyond reasonable doubt as follows:

"In the case of Bakare v. State (1987) 1 NWLR (Pt 52) p.599, (1987) 3 SC 1 at 32, the Supreme Court stated the meaning of the term or phrase "proof beyond reasonable doubt" as follows: "proof beyond reasonable doubt stand out of a compelling presumption of innocence inherent in our adversary system of criminal justice. To displace the presumption, the evidence of the prosecution must proof beyond reasonable doubt, not beyond the shadow of any doubt that



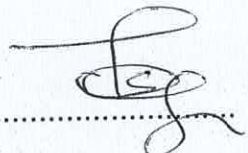
the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure

including the administration of justice".

Accordingly, if the evidence is strong against the accused person as to leave only a remote possibility 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. It therefore follows that, for the prosecution to discharge the burden cast on it, it must lead cogent, credible and compelling evidence which proves all the essential ingredients of the offence beyond reasonable doubt." Per TSAMMANI ,J.C.A in GODWIN V. COP (Pp. 22-24 paras. E)

From all of the above, it is my view that the evidence led by the prosecution is not compelling enough to lead to only one conclusion that the defendants committed the crime for which they are standing trial. There are so many loose ends in this case raising doubts in the mind of the court and the law is settled that where there is doubt in the mind of the court, such doubts should be resolved in favour of the defendants as it is better for 99 guilty persons to go scot- free than for one innocent person to be punished for an offence he did not commit.

It is my view that the prosecution has failed to prove its case beyond reasonable doubt. Defendants are accordingly discharged and acquitted on all counts charged against them.

Signed.....

Hon. Justice T.S. Oji

High Court No. 6

Port Harcourt, Rivers State.



15 follows of A1500 =