**JIBRIN IBRAHIM**

**V**

**COMMISSIONER OF POLICE, PLATEAU STATE COMMAND**

COURT OF APPEAL (JOS DIVISION)

29TH DAY OF APRIL 2016

CA/J/26C/2016

**LEX (2016) - CA/J/26C/2016**

OTHER CITATIONS

2PLR/2017/153 (CA)

**BEFORE THEIR LORDSHIP**

JOSEPH TINE TUR, JCA (Presided and Read the Lead Judgment)

ELFRIEDA O. WILLIAMS-DAWODU, JCA

RIDWAN MAIWADA ABDULLAHI, JCA

**BETWEEN**

JIBRIN IBRAHIM – Appellant

AND

COMMISSIONER OF POLICE, PLATEAU STATE COMMAND – Respondent

**ORIGINATING COURT**

HIGH COURT OF PLATEAU STATE HOLDEN AT JOS.

**ISSUES FROM THE CAUSE(S) OF ACTION**

CRIMINAL LAW AND PROCEDURE – CONFESSION:- Oral confession made to a local chief - Admissibility of.

CRIMINAL LAW AND PROCEDURE – CONFESSION:– What constitutes.

CRIMINAL LAW AND PROCEDURE - CONFESSIONAL STATEMENT:- Attitude of court to where voluntary.

CRIMINAL LAW AND PROCEDURE - CONTRADICTION AND DISCREPANCY IN EVIDENCE:- Distinction between.

CRIMINAL LAW AND PROCEDURE - CONTRADICTORY EVIDENCE:- Nature of – Whether capable of affecting a conviction.

CRIMINAL LAW AND PROCEDURE - CONTRADICTORY EVIDENCE:- Where prosecution witnesses give in criminal trial - Duty on defence.

CRIMINAL LAW AND PROCEDURE - STATEMENT OF WITNESSES:- Party’s failure to attach to and serve with application for leave to prefer a charge - Effect thereof – Criminal procedure (Application for leave to prefer a charge in High Court) Rules 1970 construed.

CRIMINAL LAW AND PROCEDURES - CONFESSIONAL STATEMENT:- Sufficiency of basing conviction solely thereon - When deemed involuntary.

CRIMINAL LAW AND PROCEDURES - CRIMINAL PROCEDURE (APPLICATION FOR LEAVE TO PREFER A CHARGE IN HIGH COURT) RULES 1970:- Statement of witnesses - Party’s failure to attach and serve with application for leave to prefer a charge - Effect of.

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE – CONFESSION:- Oral confession made to a local chief - Admissibility of.

EVIDENCE – CONFESSION:- What constitutes.

EVIDENCE - CONFESSIONAL STATEMENT - Attitude of court where voluntary - Sufficiency of basing conviction solely thereon - When would deemed involuntary

EVIDENCE - CONTRADICTION AND DISCREPANCY IN EVIDENCE:- Distinction between.

EVIDENCE - CONTRADICTORY EVIDENCE:- Nature of – Whether capable of affecting a conviction.

EVIDENCE - CONTRADICTORY EVIDENCE:- Where prosecution witnesses give contradictory evidence in criminal trial - Duty on defence

EVIDENCE - STATEMENT OF WITNESSES:- Party’s failure to attach to and serve with application for leave to prefer a charge - Effect thereof - Criminal procedure (Application for leave to prefer a charge in High Court) Rules 1970 construed.

WORDS AND PHRASES – “CONFESSION”:- Definition of.

WORDS AND PHRASES – “CONFESSION”:- What constitutes.

WORDS AND PHRASES:- Contradiction and discrepancy in evidence - Distinction between

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant and other persons were arraigned and charged before the Plateau State High Court, sitting at Jos for the offence of conspiracy to commit culpable homicide and homicide contrary to and punishable under sections 97(1) and 221 of the Penal Code Law, Cap. 89, Laws of Northern Nigeria, 1963 respectively. They were alleged to have beaten and stabbed to death, one Mohammadu Abdul Karim. They pleaded not guilty to the charge.

Parties led evidence at trial, written addresses were filed and adopted. The trial court in its considered judgment, found the appellant and another accused guilty as charged. They were convicted and sentenced to ten years imprisonment on count 1 and life imprisonment on count 2.

Aggrieved, the appellant appealed, challenging the decision of the trial court on grounds of contradictions and inconsistencies in prosecution’s case.

**DECISION(S) APPEALED AGAINST**

The trial Court entered judgment, finding the appellant and another accused guilty as charged. They were convicted and sentenced to ten years imprisonment on count 1 and life imprisonment on count 2.. Dissatisfied, the Appellant appealed to the Court of Appeal.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT:*

“1. Whether the fair hearing of the appellant (sic) was not breached by allowing P.W.4 to give evidence and tender exhibit “P5” when the statement of the said P.W.4 was not frontloaded (Ground 6).

2. Whether having regards to the totality of the evidence adduced and the serious contradiction and inconsistencies in the prosecution’s case, the learned trial judge was not wrong in convicting the appellant when the prosecution failed in its duty to prove the guilt of the appellant beyond reasonable doubt (Grounds 1, 2, 3, 4, 5, 7 and 8).”

*BY RESPONDENT:*

[The respondent adopted the issues formulated by the appellant].

**MAIN JUDGMENT**

TUR JCA (DELIVERING THE LEAD JUDGMENT):

The appellant was arraigned by the state before the High Court of Justice of Plateau State holden at Jos on the following charges:

“Count 1:

That you Jibrin Ibrahim “M”, Ya’u “M”, Ya’u Isah and one other still at large on or about 5 November 2012, at Exland Junction in Barkin Ladi Local Government Area within the Plateau Judicial Division agreed to commit an illegal act to wit: culpable homicide when you armed yourself with knives, sticks and other weapons and attacked one Muhammadu Abdulkarim “M” (deceased) beat him and stabbed him with a knife, which led to his death, an act done in pursuant to your agreement and you thereby committed an offence contrary to and punishable under section 97(1) of the Penal Code Law, Cap. 89, Laws of Northern Nigeria, 1963, 4th Edition, 1987.

Count II:

That you Jibrin Ibrahim “M”, Ya’u “M”, Ya’u Isah and one other still at large on or about 5 November 2012, at Exland Junction in Barkin Ladi Local Government Area within the Plateau Judicial Division did commit an illegal act to wit: culpable homicide when you armed yourself with knives, sticks and other weapons and attacked one Mohammadu Abdulkarim “M” (deceased) beat him and stabbed him with a knife, which led to his death, with the knowledge that death of the deceased will be the probable consequence of your act and you thereby committed an offence contrary to and punishable under section 221 of the Penal Code Law, Cap. 89, Laws of Northern Nigeria, 1963, 4th Edition, 1987.”

The appellant and the other accused persons pleaded not guilty to the two-counts on 26 September 2013. The prosecution called P.W.1-P.W.4 to prove their case while the two accused persons testified as DW1 (Jibrin Ibrahim) and DW2 (Ya’u Jauro). Ya’u Isa testified as DW3. None called any witness in their respective defences. Learned counsel submitted written addresses. The learned trial judge D. D. Longi, J., rendered decision on 30 June 2004, holding at page 129, line 23 to page 130, lines 1 - 3 of the printed record as follows:

“I therefore hereby hold that the prosecution has proved its case against the 1st and 2nd accused beyond reasonable doubt, and are hereby convicted of the offences of criminal conspiracy contrary to section 97 of the Penal Code Law and section 221 of the Penal Code Law as charged.

For the 3rd accused, the only evidence against him is exhibit “P7”, but discharged the said exhibit “P7”, there remains nothing to hold him. There is no evidence standing against him. He is hereby discharged and acquitted.

Allocutus:

Learned counsel for the 1st and 2nd convicts: We urge the court to temper justice with mercy.

Court: I have considered the allocutus of the learned counsel for the 1st and 2nd convicts. Even though I am mindful of section 221 of the Penal Code, I hereby sentence the 1st and 2nd convicts to 10 years imprisonment on count one; and life imprisonment on count two.”

Time was extended by the Court of Appeal for Jibrin Ibrahim to appeal against the decision of the lower court on eight grounds that accompanied the notice of appeal filed on 15 December 2015.

The appellant distilled the following issues for determination in a brief filed on 1 February 2016.

“1. Whether the fair hearing of the appellant (sic) was not breached by allowing P.W.4 to give evidence and tender exhibit “P5” when the statement of the said P.W.4 was not frontloaded (Ground 6).

2. Whether having regards to the totality of the evidence adduced and the serious contradiction and inconsistencies in the prosecution’s case, the learned trial judge was not wrong in convicting the appellant when the prosecution failed in its duty to prove the guilt of the appellant beyond reasonable doubt (Grounds 1, 2, 3, 4, 5, 7 and 8).”

Upon service of the appellant’s brief, the respondent adopted the above issues for consideration in the brief filed on 10 February 2016. The appellant responded by filing a reply brief on 23 February 2016. All briefs were adopted on 21 March 2016, when the appeal came up for hearing. Before I consider the argument by counsel, I shall recapitulate the facts that led to the arrest, arraignment, trial, conviction and sentence to death of the appellant by the learned trial judge, now subject of this appeal. The facts are to be generated from the evidence of the prosecution witnesses.

Aisha Isa a.k.a. Aishatu Mohammed (P.W.1) was the wife of late Mohammadu Abdulkarim who was killed on 5 November 2012. P.W.1 testified at page 86 line 18 to page 88, lines 1 – 5 of the printed record as follows:

“On 5 November 2012, I was at home when some Fulani knocked at our door at about 11pm and entered. The people, 3 of them entered and flashed torch and I asked them who they were. One of the three asked: Have you seen him? One of them just shook his head to indicate that he did not see him.

They went out and I followed them. The people then went into the room that my husband was sleeping. The people were knocking on the door, and forced the door open. I was trying to follow them to see what they would do to him, then 2nd accused was hitting his stick on the ground and prevented me from moving out of the room. I heard the people saying to my husband in Fulani language to bring also said in Hausa “ka kawo” but I did not know what they were asking him to bring. I heard my husband cried out “O wai O Allah” which means “Oh my God.” I heard him reciting how great God is. They brought him outside, and he was still reacting how great God is.

At this point, the 2nd accused left where he was and went to meet the others. It was then that I had opportunity to come out and went to where my husband was. I was praying for him and did ablution for him. The people stood aside watching. I finished ablution for him and our children asking whether their father had died. When I came out to him, he was not speaking as his throat making sound but blood was gushing out but I did not know where it was coming from. I noticed many cuts on his head and neck. When I finished the ablution, the people left, but my husband finally died. Before this incident, the 2nd accused used to come to our husband begging my husband to reconcile him with his first wife whom he had divorced. 2nd accused stays close to Rarim which only a river separates us. Before the incident I did not know the 1st and 3rd accused. I only know the 2nd accused.

Cross Examination:

By counsel to the 1st accused: The incident happened on a Monday. The incident happened in the night around 11 pm. We do not have electricity. I have never known the 1st and 3rd accused apart from the meeting here in court. I was alone with my husband that night with children aged 9 and 10 years.

By counsel to 2nd accused: When the people entered my room I followed them. But 2nd accused prevented me from going further. I remember giving a statement at Barkin Ladi police station. It is true that at the police station, I gave my statement to the police to the effect that I was not suspecting any one. If I see the statement I will identify. This is the statement.

Here is my signature.

Counsel to the 2nd accused: I seek to tender the statement in evidence. Counsel for the prosecution: No objection.

Court: The statement of the P.W.1 given at Barkin Ladi police station is hereby admitted in evidence and marked as exhibit “P1”.” Isa Adam (P.W.2) was not at the scene when the incident happened but described what he saw when he came to the victim’s house on 5 November 2012, at page 88 line 22 to page 89 lines 1 - 24 of the printed record as follows:

“At the house of the deceased I met him with matchet cuts on the head and his throat was slashed and lying helplessly on the ground. I then called the soldiers through my phone who were at the junction to our place. The soldiers are called STF. I told the soldiers that there were unknown people who entered my son’s house and killed him. The STF said since he was dead, they would not come until the following morning. I also called the Secretary of Miyitti Allah and informed him about the incident. He in turn called the police at Barkin Ladi.

The following morning the police and the STF came to the scene. They saw how the blood traced on the ground to a far place through the farm land. As the police were tracing the blood, the D.P.O. gave instruction that his men should go to the hospitals in Bokkos, Mangu and Barkin Ladi and find out a wounded patient. On the next Thursday, the police found out one Jibrin who is the 1st accused at the hospital in Barkin Ladi being treated of a wound on the hand when the police found the 1st accused, they called me to intimate me and I went to see the police at the station where the 1st accused was already arrested and brought to the station. I made statement at police station, Barkin Ladi. I did not tell the police that in my statement that I was suspecting any Ya’u Jauro. At the police station, I in company of some Fulani, I asked him in Fulani language how he came about the wound in his hand and 1st accused confessed that he and three others were the ones who killed the said Mohammadu AbdulKarim.

Cross-Examination:

By counsel to 1st accused: Saleh is a neighbor to my son that was killed. When the wife of Saleh heard the sounds she called her husband who in turn called me.

By counsel to 2nd accused - Nil.

By counsel to 3rd accused - Nil.

Counsel to prosecution: That’s all for the witness.”

Corporal Yakubu Maji (P.W.3) is one of the policemen that investigated the crime. The witness’s testimony is at page 89 line 26, page 91 lines 1 - 14 of the printed record as follows:

“My name is Yakubu Maji. I am a policeman with force No. 228220, a CPL attached to “D” division, Barkin Ladi. I know only two of the three accused in the dock. I know the 1st and 2nd accused. I don’t know the 3rd accused.

On 6 November 2012, at about 6am, information reached our DPO that there was an attack at Gidin Akwati. The DPO detailed me together with other detectives to go to the scene of crime. The deceased was called Mohammadu AbdulKarim. At the scene of crime, we met the deceased in a pool of blood inside room. We went round the area of the house.

We saw drops of blood through bush. We got to a place where the blood disappeared. We guessed that someone among the attackers was injured. We then removed the deceased to General Hospital, Barkin Ladi. The DPO ordered me to pass information within the hospital and locality to check anybody with a fresh wound should be questioned. In the evening of that same date, we got information that a Fulani man was treated with a fresh wound at General hospital, Barkin Ladi. The name of the person with the wound was Jibrin Ibrahim. He was asked to come back a day after the following day for dressing of the wound.

Once this information was given, we waited until Thursday when the person should report to hospital for dressing of the wound, and we went to hospital; waited to see the arrival of the person. At about 1pm on the said Thursday, the person turned out to be the 1st accused who come for the dressing of his wound.

As he the 1st accused entered the hospital, the hospital people signaled me and after they had finished the dressing his wound, I got him arrested. I took him to the police station. I noticed that the wound was a knife cut on the left side of his arm. At the police station, I cautioned the 1st accused and obtained his statement which I recorded in English language and interpreted to him in Hausa language.

The 1st accused confessed that they were four (4) in number when they went for the attack. It was he who gave me the name Ya’u Jauro (i.e. 2nd accused) Ya’u Isa (i.e. 3rd accused) and one Shuaibu Jibrin who is still at large. I read and explained the statement to the 1st accused who agreed that, that was his statement and signed by thumb printing it. I then got 2nd accused arrested, who stays not far away from the deceased’s house.

I cautioned him and recorded his statement in English language and translated same to him in Hausa language who also confessed that he was part of the attack.

Based on the magnitude of the case I decided to transfer the case to state C.I.D. We did not recover any exhibit at the scene of crime. The relations of the deceased refused post mortem examination and applied for the corpse which was approved by the magistrate in Barkin Ladi who signed warrant to release the corpse for burial. This is the warrant signed by the magistrate.”

The extra-judicial statements of the 1st and 2nd accused persons were admitted without objection and marked exhibits “P3” and “P4” respectively. P.W.3 gave evidence under cross-examination at page 92 lines 7 - 21 of the printed record as follows:

“Cross-Examination: By counsel to the 1st accused: it is true that the 1st accused was suspected on the ground of fresh wound on his hand. The 1st accused himself told me of the wound. There were other IPOs in the office namely, corporal Alkerli and Corporal Eldet Dalikon. I was enlisted into police force on 1 March 2001. There was no blood test to know whose blood on the sand.

The 1st accused’s statement was recorded on 8 November 2012. By counsel to 2nd accused: I made a statement in respect of this case. It is true that the complainant Alhaji Isa Adam (P.W.2) told me that he was suspecting 1st and 2nd accused. It is true that it was on the basis of the suspicion of P.W.2 that I arrested the 1st and 2nd accused.

By counsel to 3rd accused - Nil.”

Oga Agbaji testified as P.W.4. Learned counsel to the 1st - 3rd accused persons took objection that his name was not in the proofs of evidence. Upon hearing the prosecution, the objection was overruled by the learned trial judge. P.W.4 proceeded to testify and to tender the statements recorded from the 1st, 2nd and 3rd accused without objection. They were marked Exhibits “P5”, “P6” and “P7” respectively. P.W.4 further testified that the police visited the scene of crime and recovered three sticks, one from the house of the 2nd accused person.

Four sticks were admitted without objection and marked Exhibits “P8 (a), (b), (c) and (d)” respectively on 3 April 2014. The prosecution closed her case.

The evidence of the appellant (DW1), Ya’u Jauro (DW2) and Ya’u Isa (DW3) was a total denial of commission of the crime. None called any witness to support their respective defences. At the close of the prosecution and the defence case, the learned trial judge had the singular honour of whether to believe the evidence of the prosecution witnesses or the accused persons. The learned trial judge believed the prosecution witnesses, hence the conviction and sentence of the appellant and the other co-accused. The learned trial judge discharged the 3rd accused.

Issue 1:

Learned counsel referred to rule 3(2)(a) and (b) of the Criminal Procedure (Application for leave to prefer a charge in the High Court) Rules, 1970 of the Criminal Procedure Code; Ohwovoriole v. Federal Republic of Nigeria (2003) FWLR (Pt. 141) 2019, (2003) 2 NWLR (Pt. 803) 176 at page 189; Ibeh v. State (1997) 1 NWLR (Pt. 484) 632 at page 65, (1997) 1 SCNJ 256; Gboko v. State (2007) 17 NWLR (Pt. 1063) 272 at page 305 and Abacha v. State (2002) FWLR (Pt. 118) 1224, (2002) 11 NWLR (Pt. 779) 437 at page 497, (2002) 7 SCNJ 1, (2003) 3 ACLR 333. Learned counsel urged that the evidence of P.W.4 and exhibit “5” should be expunged from the record. Should that happen, counsel argued it would be found that no credible evidence existed to found the conviction and sentence of the appellant to death.

The learned counsel to the respondent relied on the authority of Federal Republic of Nigeria v. Wabara (2013) 2 SCNJ 849, paragraphs 25 - 35. Learned counsel drew attention to the fact that exhibit “P5” was not objected to by learned counsel representing the appellant in the court below, citing Shorumu v. State (2010) 12 SCNJ 47 at pages 55 - 456, paragraphs 30 - 35. Learned counsel urged this court to hold that even without exhibit “P5” and the evidence of P.W.4, there was ample evidence to uphold the conviction and sentence of the appellant by the learned trial judge.

Section 122(1) and (2) of the Criminal Procedure Code reads as follows:

“1. Nothing in any way included in or forming part of a case diary shall be admissible in evidence in any inquiry or trial unless it is admissible under the provisions of the Evidence Law or of this Criminal Procedure Code or of rules made thereunder, but;

(a) A court may if shall think fit order the production of the case diary for its inspection under the provisions of section 144;

(b) The Attorney-General may at any time order the submission of the case diary to himself;

(c) Any relevant part of the case diary may be used by a police officer who made the same to refresh his memory if called as a witness.

2. Save to the extent that:

(a) Anything in any way included in or forming part of a case diary is admitted in evidence in any inquiry or trial in pursuance of the provisions of subsection (1); or

(b) The case diary is used for the purposes set out in paragraph (c) of subsection (1), the accused or his agent shall not be permitted to call for or inspect such case diary or any part thereof but, where for the purposes of paragraph (a) or (b), any such inspection is permitted, such inspection shall be limited to the part of the case diary referred to in paragraph (a) or (b) as the case may be.”

See Alhaji Gaji v. The State (1975) NNLR 98, (1975) 5 SC 61 at page 77 per Coker JSC. In the light of the above provisions and authority, I shall refer to the Criminal Procedure (Application for leave to prefer a charge in the High Court) Rules, 1970, the relevant provisions which read as follows:

“3 (1) Every application, other than an application made under rule 2, shall be in writing signed by the applicant or his counsel; and,

(a) Shall be accompanied by the charge in respect of which leave is sought and, unless the application is made by or on behalf of the Attorney-General, shall also be accompanied by an affidavit by the applicant that the statement contained in the application are, to the best of the deponent’s knowledge, information and belief, true; and,

(b) Shall state whether or not any application has previously been made under these rules and whether or not any proceedings have been taken under Chapter XVII of the Criminal Procedure Code, and the result of any such applications or proceedings.

(2) Where no proceedings have been taken under Chapter XVII of the Criminal Procedure Code, the application shall state the reason why it is desired to prefer without such proceedings having been taken; and,

(a) There shall accompany the application proofs of the evidence of the witnesses whom it is proposed to call in support of the charge; and,

(b) The application shall include a statement that the evidence shown in the proofs will be evidence which will be available at the trial and that the case disclosed by the proofs is, to the best of the knowledge, information and belief of the applicant, a true case.”

The legislative intention is that to prefer a charge in the High Court of justice for trial of an accused person under section 185(b) of the Criminal Procedure Code, it is the “... proofs of evidence of the witnesses whom it is proposed to call in support of the charge” that shall accompany the application and “the application shall include a statement that the evidence shown in the proofs will be evidence which will be available at the trial and that the case disclosed by the proofs is, to the best of the knowledge, information and belief of the applicant, a true case.”

In Federal Republic of Nigeria v. Wabara (2013) 2 SCNJ 849 Mohammad JSC, held at pages 864, line 16 to page 868, lines 1 - 36 of the judgment as follows:

“The records, therefore, bears out the respondents that the witnesses, statements have not been attached to appellant’s application for leave. But this fact does not mean that learned counsel are correct in supporting the lower court’s finding that appellant’s failure to annex the statement of the witnesses is fatal.

A community reading of the clear and unambiguous provisions of section 185(b) of the Criminal Procedure Code and Order 3 rules (1) and (2)(a) and (b) reveals clearly that the appellant herein had complied with the criteria an applicant is required to fulfill to be entitled to the leave he seeks. Nowhere in the applicable rules has the annexture of the witnesses’ statements to the application for leave been made a necessary requirement. The court below initially seems to appreciate the essence of the adjectival provisions when it states at pages 229 - 230 of volume 2 of the record of appeal:

“The procedure whereby a trial on indictable offence will be initiated by an application whether in the judge’s chambers or in open, demands that the application be made ex-parte, at the back of the person to be tried, and this seeks discretion not an absolute right. There must be clear particulars and facts to be tried, and this seeks discretion not an absolute right.

There must be clear particulars and facts to justify the exercise of the discretion. Therefore it is not the law, neither is it justice, to say that once the application is made on information and all necessary documents are attached, without more the application to prefer a charge must be granted. There must be facts in the proofs of evidence to justify the grant of the application. Otherwise, indictments would be allowed to be tried where enough particulars are absent in the proofs of evidence.

However an accused person should not be indicted to face trial which from the outset he should not face. The Supreme Court in Abacha v. The State (2002) FWLR (Pt. 118) 1224, (2002) 11 NWLR (Pt. 779) 437, (2002) 7 SCNJ 1, (2003) 3 ACLR 333; Ikomi v. The State (1986) 5 SC 313, (1986) 3 NWLR (Pt. 28) 340; Egbe v. The State (1980) NCLR 341; Okoli v. The State (1997) 1 NWLR (Pt. 479) 115 ...”

The leave granted the appellant by the trial court, it must be appreciated, is on the basis of appellant’s exparte application to the court. Respondents are not put on notice. The extant procedure put in place only require the appellant to provide the court with adequate materials from which to infer whether or not it is just to put the respondents on trial. This court has insisted that it is oppressive and unconstitutional to put a person on trial unless the court approached to grant the leave is satisfied that the materials accompanying the application disclose enough facts to warrant a trial. Learned counsel for the respondents’ contention that there is the necessity to attach statements of witnesses and serve same on the respondents is therefore misconceived.

It is worth the while to know that proofs of evidence are not the same as the statements of the witnesses the appellant would call at the trial. Proofs of evidence are summaries of the statements of those witnesses to be called at trial by the appellant. It is for that reason that the rules require an affirmation from the applicant that the evidence against the respondents as summarized in the proofs of evidence prepared by the appellant will be the evidence against the respondents in respect of whose trial the court is urged to grant the leave to prefer a charge. Even at the trial, the respondents, on the authorities, are only entitled access to the statements of the prosecution’s witnesses on the fulfillment of certain conditions.

In the case at hand where trial is yet to commence, indeed its competency is being challenged by the respondents; it is premature for respondents to assert any entitlement to the statements of witnesses. The affirmation of respondent’s entitlement to the witnesses’ statements by the court below depicts a sad misunderstanding of the decisions of this court, inter alia, in Gaji v. State (supra); Milton P. Ohwovoriole v. F.R.N (supra) and Ikomi v. The State (supra). It is, therefore, necessarily rewarding to remind learned respondents’ counsel the decision of this court in these cases on this core issue which the instant appeal raises.

In Gaji’s case, on being appraised of the leave granted the respondent to prefer a charge for his summary trial, the appellant by a motion on notice urged the trial High Court for an order, inter alia, that he be supplied with the proofs of statements of the witnesses attached to respondent’s exparte application for the leave to prefer the charge against him. Appellant’s application was refused. The appellant in that case neither urged the trial High Court nor this court that the leave granted the respondent to prefer a charge for his summary trial be set aside following the trial court’s perverse exercise of its discretion in the grant of the leave.

Appellant however renewed his application several times for the supply of the statements of prosecution witnesses to him which the trial court persistently refused and dismissed by virtue of section 122 of the Criminal Procedure Code, which disentitled him to the supply of those statements.

At page 65 of the law report, this court, in relation to the trial court’s refusal to oblige the appellant the supply of the witnesses statements attached to the application for leave to prefer a charge against him pursuant to section 185(b) of the Criminal Procedure Code, remarked at page 64 of the report thus:

“It was not argued before us that in seeking the leave of the judge as stated, the appellant should be put on notice and therefore there cannot be any force in any argument that should have been the case and that at that stage the appellant should be supplied with the proofs of the evidence to be given by the witnesses.”

The court proceeded to observe obiter that its decision on the point that had not arisen before it though of considerable importance in an appropriate case, was of little or no effect “on the fortunes of the appellant before it”. It is in respect of appellant’s subsequent application during trial that this court’s decision has some utility. The court at page 75 of the report remarked as follows:

“Learned counsel instanced the failure to serve the appellant with copies of the deposition of the prosecution witnesses since there was no preliminary investigation proceeding his committal for trial at the High Court. We have already dealt with the issue and we are of the view that although it would be far more desirable that judges who exercise the powers of granting leave under the provisions of section 185 (b) of the Criminal Procedure Code should ask for and insist on seeing the proofs of evidence which it is intended to urge in support of the prosecution, it is not open at that stage to an accused person to be invited into the scene and moreover to be supplied with copies of the statements of potential witnesses.”

The foregoing obiter remarks have since become the principle on the point in this court’s subsequent decisions.

Now, the proofs of evidence, the statements of the accused persons and other relevant exhibits and documents to be tendered by the appellant, all of which are annexed to the application for leave, are at pages 118 - 187 of Vol. 1 of the record of appeal.

An examination of these discloses sufficient materials on the basis of which the trial court has exercised its discretion judiciously and judicially.

Learned respondents’ counsel and indeed the court below appear either not to have understood or are unimpressed by the decisions of this court in both Gaji v. The State (supra) and Milton P. Ohwovoriole v. F.R.N (supra). In the latter case, Kalgo JSC at pages 194 - 195 of the law report restated the decision of this court on the issue at hand as follows:

“I have earlier held in this judgment that I find no evidence linking the appellant with the offence charged against him and therefore no prima facie case has been established justifying the proceeding of the criminal trial against him. In Ikomi v. State (supra),this court clearly said that “no citizen should be put to the rigours of trial, in a criminal proceeding, unless available evidence points, prima facie, to his complicity in the commission of a crime”. And in the recent decision of this court on a similar issue in Abacha v. The State (2002) FWLR (Pt. 118) 1224, (2002) 11 NWLR (Pt. 779) 437 at page 499, (2002) 7 SCNJ 1 at page 35, (2003) 3 ACLR 333, this court reiterated this principle and in the leading judgment of Belgore JSC, in the majority decision of 4 to 1 held that:

“The court below as well as the trial court erred in finding prima facie case for the appellant to answer. At best, what is in the proofs of evidence amounted to serious suspicion that the appellant knows more than he adverts to?

Suspicion however well placed does not amount to prima facie evidence; more facts than are now in the printed record will be needed to nail the appellant to his being required to explain. The prosecution must be wary of being accused of persecution rather than prosecution.”

“From the foregoing, it is thus not the decision of this court in the two cases that leave pursuant to an application under and by virtue of section 185 of the Criminal Procedure Code and Order 4 rules (1) and 2(a) and (b) of the 1970 rules succeeds only where, in addition to the other requirements, the applicant has annexed to the application the statements of the prosecution witnesses. The court only insists that before the leave is granted, the judge to whom the application is made must ensure that the materials before him justify putting the person in respect of whose prosecution the leave is being sought to trial.

In the case at hand, from the proof of evidence and the cautionary statements of the respondents, the appellant annexed to its application, it must be reiterated, the applicant has fulfilled the conditions the law places on it. The judgment of the court below to the contrary is perverse.

It is for these reasons that I resolve the only real core in this appeal in favour of the appellant.”

Section 251(1) of the Evidence Act, 2011, provides as follows:

“251 (1) The wrongful admission of evidence shall not of itself be a ground for the reversal of any decision in any case where it shall appear to the court on appeal that the evidence admitted cannot reasonably be held to have affected the decision and that such decision would have been the same if such evidence had not been admitted.”

The appellant has not shown that the evidence of P.W.4 and exhibit “P5” were wrongly admitted. Even if so, that is not enough per se to reverse the decision of the learned trial judge.

I resolve issue one against the appellant.

Issue two:

The argument in the appellant’s brief is that there were inconsistencies in the evidence of P.W.1 - P.W.4. It is not in evidence that there was rainfall on the night of the crime which could have wiped out the blood stains the prosecution trailed to the bush that led to further investigation at the General Hospital, Barkin Ladi, where the appellant had been treated for the injury he had sustained. P.W.1’s evidence is that when the appellant was confronted to explain how he received the injury in his hand, he “ ... confessed that he and three others were the ones who killed the said Mohammadu AbdulKarim.” See page 89 lines 13 - 17 of the printed record. Sections 28 - 29 (1) - (5) of the Evidence Act, 2011 provides as follows:

“28. A confessional is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.

29 (1): In any proceeding, a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

(2) If, in any proceeding where the prosecution proposes to give in evidence a confession made by a defendant, it is represented to the court that the confession was or may have been obtained:

(a) By oppression of the person who made it; or

(b) In consequence of anything said or done which was likely, in the circumstances existing at the time to render unreliable any confession which might be made by him in such consequence, the court shall not allow the confession to be given in evidence against him except in so far the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this section.

(3) In any proceeding where the prosecution proposes to give in evidence a confession made by a defendant, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in earlier subsection (2)(a) or (b) of this section (4) Where more persons than one are charged jointly with an offence and a confession made by one of such persons in the presence of one or more of the other persons so charged is given in evidence, the court shall not take such statement into consideration as against any of such other persons in whose presence it was made unless be adopted the said statement by words or conduct.

(5) In this section, “oppression” includes torture, inhuman or degrading treatment, and the use or threat of violence whether or not amounting to torture.”

A confession may be oral or written and made by an accused to a police officer or for example, a person in authority such as a village head before a suspect is arrested, cautioned and arraigned in a court of competent jurisdiction to face trial for culpable homicide punishable with death. See Madu Fatumani v. The King (1950) 13 WACA 39, the facts of which were as follows:

“The appellant was convicted of the murder of a man named Muhammadu. The evidence disclosed that while the deceased was asleep, a thief attempted to steal his gown. His brother Kentu, who was nearby, awoke and saw the thief wrestling with the deceased, and then running away. Kentu noticed that he was wearing blue trousers and a blue shirt; he ran after him and raised a hue and cry; a large number of people joined in the chase, and the evidence is that they kept the man in sight until they caught him. The man they caught was the appellant. Having tied him up they brought him to where the boy was. The village head then arrived on the scene and asked who had killed the deceased. The people said the appellant had. The appellant denied this, and the village head then said to him that he should not trouble his fellows, and if he had done it he should say so.

It was submitted for the appellant that any statements made following that observation were inadmissible, as no caution had been given.”

In dismissing the appeal, Blackall, P. held at pages 39 – 40 of the judgment as follows:

“The law on this point is contained in section 28, et seq. of the Evidence Ordinance and is to effect that a confession is inadmissible if it is induced by a threat or a promise in relation to the charge, made by a person in authority. But in the present case, the remark of the village head was, in the opinion of this court, merely a moral adjuration. Moreover, the Judges’ Rules allow that when a police officer is endeavouring to discover the author of a crime, there is no objection to his putting questions to any person, whether suspected or not, from whom he thinks useful information can be obtained; it is only when he has made up his mind to charge the person that a caution must be administered. That proposition was laid down in the Judge’s Rules with reference to police officers, but we conceive the same principle applies to questions put by any other person in authority investigating a crime. In the present case, it is quite clear that when the village head spoke the words in question, he had not made up his mind as to the prisoner’s guilt, nor had the prisoner been charged.

This ground of appeal, therefore fails.

It was further argued that there was no evidence of identification. The answer to this is that Kentu, who was an eye-witness, kept his eye on the appellant until after the other persons had joined in the chase, and those persons did not lose sight of him; there was, therefore, abundant evidence of identification. The other points raised do not call for any observations. The appeal is dismissed.”

In Rex v. Udo Ebong (1947) 12 WACA 139, the facts were as follows:

“In this case it must, we think, be admitted that the conviction rests principally, if not solely, on the alleged confession of the accused. This confession took place in most peculiar circumstances. The deceased was murdered sometime in November 1994. The matter was reported to the police, whose investigations proved abortive.

The local chief, one Ibrahim, then invited eighteen villages in the vicinity of the crime, presumably, to investigate the death of the deceased. There was apparently some suspicion that the death was not as straightforward as it might appear to be as the investigation took the form of invoking “juju” to indicate whether the killing was due to “bush leopard” or “man leopard”; the object in the latter case being that the juju should make him go mad and confess.

Some eleven months later, the accused came to the house of the chief. “He was shaking and said he had killed the girls.” The chief was the principal witness as to this confession; but other witnesses were called to corroborate it but, owing to the mass of discrepancies, their corroboration is of little value as the learned trial judge pointed out. Learned counsel for the appellant argued that this statement as to guilt by the accused was not admissible by reason of the fact that it was not voluntary on the part of the accused, he being forced to make it owing to pressure put upon him as a result of his belief in “Juju”.

After referring to sections 26 and 27 of the Evidence Ordinance, the West African Court of Appeal held at pages 139 to 140 as follows:

“In Phipson on Evidence (8th Edition at page 248, we find the following:

“In criminal cases, a confession made by the accused voluntarily is evidence against him of the facts. But a confession made after suspicion has attached to, or a charge been preferred against him, and which has been induced by any promises or threat relating to the charge and made by, or with the sanction of, a person in authority, is deemed not to be voluntary, and is inadmissible.”

Stephen in his History of Criminal Law states that: “A confession is an admission made at any time by a person charged with a crime, stating, or supporting the inference, that he committed the crime.’

That the latter definition has been adopted, practically ipsissima verba, in section 27(1) of the Evidence Ordinance is obvious.

In our opinion, the confession in this case was voluntary from the legal point of view and was properly admitted. (The judgments of the learned judges of the court of Criminal Appeal in R. v. Baldry (1), at page 529 et seq.,are of interest in this connection). To find otherwise would be getting perilously near to the fallacious theory that a genuine belief in witchcraft might be a possible defence to a charge of murder, in so far as it might reduce the charge to manslaughter or even an acquittal by reason of self-defence.

Having found that the confession was admissible, we must now consider what value must be given to it in view of the fact that it is really the only evidence against the accused. We say the only evidence because the learned trial judge, to our minds, very properly took very little notice of the evidence as to the shouts of the sister of the deceased - “Udo Uko has killed Unwa.” Against the accused’s confession, we have his statement to the police and the line followed by the defence that what he said was not that he had killed the girls but that he had been accused of killing the girls. The latter version is borne out by a witness called by the court, Iwet Abong, and also by Udo Utuk Ayara.

As we have indicated above, the case for the Crown, on the facts found by the trial judge, rests on one reliable witness who states that appellant came to him trembling and said he had killed the girls.

The appellant admitted going to this witness but alleges that his words were that he was accused of killing the girls. (Several of the witnesses could see no difference in these two statements). It should further be noted that, when the accused was arrested by the police shortly after his alleged confession, he denied confessing and stated that what he had said was “it is said that I killed the two girls”, and that he wished to take an oath to prove his innocence.

A subtle defence (if untrue) to have been thought out by an unsophisticated, backward, native.

The crime was practically motiveless and in all the circumstances of this case, we are of the opinion that the appellant is entitled to the benefit of the doubt. The appeal is allowed - conviction quashed and sentence set aside.’

The fact that the appeal was allowed on other grounds did not render the oral confession by the appellant to the local chief inadmissible. See also Otufale v. State (1968) NMLR 262 and Uche & Ors. v. Rex (1964) 3 NSCC 139.

A conviction on a confessional statement of an accused alone, if believed by the learned trial judge, is good in law. See Gashi v. The State (1981) 2 PLR 343; Moses Jua v. The State (2010) All FWLR (Pt. 521) 1427, (2010) 4 NWLR (Pt. 1184) 217, (2010) 1-2 SC 96, (2010) 2 MJSC 152 at pages 177 - 178; Edet Obosi v. The State (1965) 1 NMLR 119 and Achabua v. The State (1976) 12 SC 63 at page 68. The learned trial judge held at page 151 line 12 to page 152 lines 1 - 18 of the printed record as follows:

“I have extensively reviewed the submissions of both learned counsel for 1st, 2nd and 3rd accused respectively. Their submission in respect of this issue is that exhibits “P3”, “P4”, “P5”, “P6” and “P7” do not qualify as confessional statements because none of the statements indicated that the accused killed Mohammadu AbdulKarim as appeared in the charge against the accused persons. That exhibit “P5” purportedly made by 2nd accused at Barkin Ladi police station could not have been made by the 2nd accused; and that it was not taken before a superior police officer. That because exhibits “P3”, “P4”, “P6” and “P7” did not name deceased, both the killers and the deceased or person alleged to have been killed was in doubt, which ought to be resolved in favour of the accused persons. And that the statements (Exhibits “P3”, “P4”, “P5”, “P6” and “P7”) were not confessional in law because they were not direct, positive, unequivocal and corroborated.

Let me quickly point out here that exhibit “P5” is the statement allegedly made by 1st accused at the State C.I.D. recorded by Inspector Oga Ogbaji, P.W.4 and does not relate to 2nd accused as submitted by learned counsel to 1st and 2nd accused. And that statement (Exhibit “P5”) was indeed endorsed by a superior police officer (NB. We are bound by the record of the court and not by the submission of learned counsel).

Now, in the light of the submissions of learned counsel to the 1st and 2nd accused, and learned counsel to the 3rd accused in respect in this issue, I have very carefully and closely looked at and considered exhibits “P3”, “P4”, “P5”, “P6” and “P7”. Exhibit “P3” is the statement allegedly made by the 1st accused at the police station, Barkin Ladi, which was recorded by CPL Yakubu Maji (P.W.3) and exhibit “P5” is the statement allegedly made by the 1st accused at the State C.I.D. recorded by inspector Oga Ogbaji (P.W.4).

Exhibit “P4” is the statement allegedly made by the 2nd accused at the police station, Barkin Ladi, which was recorded by CPL Yakubu Maji (P.W.3) and exhibit “P6” is the statement allegedly made by the 2nd accused at the state C.I.D., recorded by CPL Samuel Kumanga, who was not called to testify on the ground that he was away on a sergeant course.

Exhibit “P7” is the statement allegedly made by the 3rd accused at the State C.I.D. which was recorded by CPL Sunday Abu, who was not called as a witness on the ground that he was no longer in Jos, but with Anti-Terrorist Squad in Makurdi.”

At no time did the learned counsel to the appellant challenge the voluntariness of the extra-judicial statement of the appellant in the lower court. Neither did the learned counsel impugn or discredit the testimony of P.W.3 that the appellant made an oral confession to him before his arrest and arraignment in court. The learned trial judge was not called upon to hold a trial-within-trial. In Ogoala v. The State (1991) 2 NWLR (Pt. 175) 509, (1991) 3 SCNJ 61, Nnaemeka-Agu JSC held at pages 70 to 73 as follows:

“I must pause here to make some observations on the import of this voluntary statement, Exhibit “B”, on the whole case. It must be noted that, in law, a voluntary confession of guilt, if fully consistent and probable, and is coupled with a clear proof that a crime has been committed by some persons, is usually accepted as satisfactory evidence on which the court can convict: See Phillip Kanu & Anor. v. R. (1952) 14 WACA 30 at page 32; R. v. Abraham Erumesi (1959) NNLR 258; where, as in this case, the prosecution has proved some facts and/or circumstances outside the confession which made it probable that the confession was true, then there is a clear ground for conviction. See R.. v. Obiasa (1962) 1 All NLR 651, (1962) 2 SCNLR 402; Paul Onochie & Ors. v. The Republic (1966) NMLR 307. In this case, the statement, exhibit “B” was tendered and admitted without objection. The appellant was represented by counsel. In the witness box he admitted that the signature on exhibit “B” was his own. Exhibit “B” shows that it was read over to, and confirmed by, him before a superior police officer.

Although, in the witness box, he made a feeble denial of the confirmation of exhibit “B”, he admitted he signed it in two places: this was an implied admission of the confirmation. In any case, the learned trial judge did not believe the denial of the confirmation of the statement. Outside the confession, exhibit “B”, there was the evidence of P.W.1, P.W.2 and P.W.3 who observed the incident in a well-lit street. In particular, there was the evidence of the appellant brandishing a matchet: the matchet found under the seat of the snatched car was identified by P.W.1 and P.W.2 as the one the assailant was brandishing at P.W.1 a short time before the multiple collisions.

Important, too, is the fact that the appellant was shortly after the robbery found at the scene of the multiple collision which involved the snatched car and three other cars. So, putting all these together, it cannot be doubted either that the statement was duly proved and was consistent and probable but also that there were also proved, other facts and circumstances which go to show that the confession was probably true. These are very satisfactory grounds for the conviction.

In the above state of the facts, I shall make rather short points of other issues raised on behalf of the appellant. He complained that there were “irreconcilable contradictions” in the evidence of principal prosecution witnesses, i.e. P.W.1, P.W.2 and P.W.3, for which the Court of Appeal ought not to have confirmed the conviction of the appellant. The case of Arueyee v. The State (1967) NMLR 209 at page 211 was relied upon. What he regarded as “irreconcilable contradictions” in the evidence of P.W.1 and P.W.2 were summarized by the learned counsel for the appellant, as follows:

“(i). That there were three men or at least more than two men who drove away with the alleged stolen Peugeot car.

(ii). That the actual person who “brandished” a cutlass at P.W.3 was not the accused but the “Other Man”, according to P.W.1, who “Struggled with Mrs. Phillips at the door in front.”

(iii). The appellant did not brandish any cutlass, nor anything for that matter at P.W.3 for, according to P.W.1: “The accused was by the side of the car near me” whilst ... the other man struggled with Mrs. Phillips at the door in front.”

(iv). In corroboration with the views of P.W.1, P.W.2 stated as follows: “Another man whom I cannot recognise sat at the back.” this implying that more than two men committed the alleged offence.

(v). In the views of both P.W.1 and P.W.2, the men metamorphosed into two men in which one of them suddenly turned out to be the accused person (appellant).

(vi). That the alleged accident, according to P.W.2, took place at a “street nearby” and the car allegedly by stolen was found after a distance “at Ikorodu road.”

(vii). According to P.W.1, the appellant was being beaten up by a crowd, whilst P.W.2 insisted that “the accused was being held by a soldier and a policeman.”

I think the so-called contradictions as to the number of persons who took part in the robbery was amply explained by the appellant himself in his statement, exhibit “B”. According to him in exhibit “B”, those who accompanied him in the car which brought him to the scene of the robbery included not only Dagogo and Kenneth but also three others whom he did not know their names. They were supposed to play different roles at different stages in the nefarious operation. For obviously frightened, incensed, and shocked observers like P.W.1 and P.W.2 what each could observe in the entire episode would depend on the stage and the point from which he made his/her observation. It would be idle to expect that such frightened observers in a charged and fleeting scene as in an armed robbery would notice exactly the same as in an armed robbery would notice exactly the same thing with mathematical consistency. Some minor discrepancies must be expected. Indeed, when in such a situation such consistency has been achieved, it is often looked upon with suspicion as it may be indicative of the fact that the witnesses have been schooled and tutored. Also, the appellant himself in exhibit “B” admitted that a soldier appeared at the scene of the multiple collision. It was also admitted that a policeman took the appellant, the drivers of the other cars involved in the collision and P.W.1, P.W.2 and P.W.3 from the scene of the collision to Ilupeju police station. What purpose will be served now by the learned counsel for the appellant trying to show that according to P.W.2, the appellant was being held by a soldier and a policeman whereas P.W. did not say so?

On the whole, from the nature of what learned counsel for the appellant has referred to as “contradictions”, it appears to me that he did not quite appreciate what in law constituted contradictions in evidence. The word “contradiction” comes from two Latin words - contra, which means opposite, and dicere, which means to say. So, in ordinary parlance to contradict is to speak or affirm the contrary. Hence in the law of evidence, a piece of evidence is contradictory to another when it asserts or affirms the opposite of what the other asserts, and not necessarily when there are some minor discrepancies in, say, details between them. As I see it, contradiction between two pieces of evidence goes rather to the essentiality of something being or not being at the same time, whereas, minor discrepancies depend rather on the person’s astuteness and capacity for observing meticulous details. It is apt to recall what I had to say about this situation in Ayo Gabriel v. The State (1989) 5 NWLR (Pt. 122) 457, (1989) 12 SCNJ 33.

“A piece of evidence contradicts another when it affirms the opposite of what that other evidence has stated, not when there is just a minor discrepancy between them. It is useful to bear in mind the fact that the word “contradict” comes from two Latin words - contra (opposite) and dicere (to say). Two pieces of evidence contradict one another when they are by themselves inconsistent. On the other hand, a discrepancy may occur when a piece of evidence stops short of, or contains a little more than, what the other piece of evidence says or contains some minor differences in details. I think the law also looks at the two different situations differently. If a witness gives oral evidence which contradicts his previous statement in writing, his evidence should be treated as unreliable. See Onubogu v. State (1974) 1 All NLR (Pt. II) 561, (1974) 9 SC 1. On the other hand, minor discrepancies between a previous written statement and subsequent oral testimony are to be expected and do not destroy the credibility of the witness. Indeed when such occur, it may lead to a suspicion that the witness has been tutored.

From the totality of evidence of P.W.1, P.W.2, P.W.3 and Exhibit B, it is clear that:

1. P.W.1, P.W.2 and P.W.3 stopped over at No. 25, Sylvia Street, Anthony village, on the day in question, having arrived there in P.W.1’s 504 car;

2. A car pulled up at the scene out of which two or more persons emerged and snatched the 504 car from them by brandishing a matchet and a knife at P.W.1 and P.W.3;

3. The appellant was observed by them as one of the assailants during the operation in the clearly lit street;

4. The 504 car which was subsequently driven towards Ikorodu road was involved in a multiple collision involving three other vehicles somewhere around the junction of Anthony village road and Ikorodu road, a short distance away;

5. P.W.1 and P.W.2 who set out in pursuit of the bandits in a borrowed car arrived at the scene of the collision afterwards and saw the appellant whom they instantly recognized as one of those who snatched the car from them being beaten by some people. At one time or the other, a soldier and a policeman were present at the scene; and

6. On searching, they found the matchet which was being brandished at them by appellant moments earlier hidden under the seat of the 504 car. I do not agree that there were any contradictions in these essential facts, and they are sufficient to sustain the conviction. Assuming that the minor discrepancies that there were could be promoted to the realm of contradictions, a point I do not concede, they do not in the circumstances of this case entitle the appellant to an acquittal. For the law is that for contradictions in the evidence of witnesses for the prosecution to affect a conviction, they must be sufficient to raise doubt as to the guilt of the accused. See: Nwosisi v. The State (1976) 6 SC 109, (1976) 6 SC (Reprint) 72; Ejigbadero v. The State (1978) 9 -10 SC 81 and Atano v. Attorney-General, Bendel State (1988) 2 NWLR (Pt. 75) 201. But in this case, for the reasons I have given, there can be no doubt about the guilt of the appellant. It is when there are substantial contradictions on material points in the evidence called by the prosecution that an acquittal will result on the premises that it cannot be said that the case has been proven beyond reasonable doubt. See: Akosile v. The State (1972) 5 SC 332; Ngwo Kalu v. The State (1988) 4 NWLR (Pt. 90) 503 at page 510, (1988) 10 - 11 SCNJ 1. I should resolve this issue against the appellant.”

I have not seen any material and irreconcilable contradictions in the evidence of the prosecution witnesses to warrant the reversal of the decision of the learned trial judge in convicting and sentencing the appellant as charged. The defence should have confronted the prosecution witnesses with what they consider to be contradictory evidence during cross-examination when they were testifying in the witness box. See Nwobodo v. Onoh (1984) All NLR 1, (1984) 1 SCNLR 1 at page 88, (1984) 15 NSCC 1. Inconsistencies in the evidence of prosecution witnesses must be material and unexplained.

See Boy Muka v. The State (19761) 9 - 10 SC 305; Onubogu v. The State (1974) 1 All NLR (Pt. II) 561, (1974) 9 SC 1; Abu Ankwa v. The State (1969) 1 All NLR 129; Ateji v. The State (1976) 2 SC 79; Kalu v. The State (1988) 4 NWLR (Pt. 90) 503, (1988) 10 - 11 SCNJ 1. The findings of the learned trial judge are impeccable. See Barau v. Board of Customs & Excise (1982) 10 SC 48, (1982) 2 NCR 1. I resolve issue two against the appellant.

I affirm the decision of the learned trial judge. The appeal lacks merit and is dismissed.

**WILLIAMS-DAWODU JCA:**

I have had the privilege and opportunity to read the draft of the lead judgment just delivered by my learned brother, Joseph Tine Tur JCA.

I am in total agreement with the reasoning and conclusions of his lordship therein and have nothing else to add. Consequently, I hereby dismiss the appeal and affirm the decision of the court below.

**ABDULLAHI JCA:**

My learned brother, Joseph Tine Tur JCA, afforded me an opportunity of reading in advance, the judgment just delivered. I am in agreement with his reasoning and conclusion which I adopt as mine. The appeal is unmeritorious. I too, affirmed the decision of the court below and dismissed the appeal.

Appeal dismissed