**OWOLABI KOLADE**

**V**

**THE STATE**

SUPREME COURT OF NIGERIA

24TH DAY OF FEBRUARY 2017

SC. 579/2015

**LEX (2017) - SC. 579/2015**

OTHER CITATIONS

2PLR/2017/187 (SC)

**BEFORE THEIR LORDSHIP**

OLABODE RHODES-VIVOUR, JSC (Presided)

CLARA BATA OGUNBIYI, JSC (Read the Lead Judgment)

AMIRU SANUSI, JSC

AMINA AUGIE, JSC

PAUL ADAMU GALINJE, JSC

**BETWEEN**

OWOLADE KOLADE – Appellant

AND

THE STATE – Respondent

**ORIGINATING COURT**

1. COURT OF APPEAL, IBADAN JUDICIAL DIVISION

2. HIGH COURT OF OGUN STATE, ILARO JUDICIAL DIVISION

**REPRESENTATION/LAWYERS**

HENRY E. OMU - for the Appellant.

OLUMIDE AYENI [(Attorney-General, Ogun State), with O. A. SODEINDE Esq (SSC), OTENGHABUN EBOSE, Esq (Special Assistant to the Attorney-General), ADEKOLAPO A. ILORI Esq, (Special Assistant II to Attorney-General)] - for the Respondent.

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

CRIMINAL LAW AND PROCEDURE - CONFESSIONAL STATEMENT:- Meaning of - Nature of as best evidence.- Sufficiency of grounding conviction solely -Retraction of - Irrelevance of - How may be corroborated - Ways by which accused may resile from

CRIMINAL LAW AND PROCEDURE – DEFENCES:- Alibi – What connotes - Accused who relies on - Onus on to raise timeously - Corresponding duties of to give particulars of and of prosecution to investigate - Evidence fixing accused at scene of crime - Effect of

CRIMINAL LAW AND PROCEDURE – DEFENCES:- Alibi - Successful plea of – Effect

CRIMINAL LAW AND PROCEDURE – DEFENCES:– Provocation - Successful plea of - Effect - When avails accused

CRIMINAL LAW AND PROCEDURE - DEFENCES AVAILABLE TO ACCUSED:- Duty of trial court to consider all

CRIMINAL LAW AND PROCEDURE - GUILT OF ACCUSED:– Onus on prosecution to establish - Static nature of

CRIMINAL LAW AND PROCEDURE:- Doctrine of Last seen - Doctrine of - Applicability of

CRIMINAL LAW AND PROCEDURE – MURDER:– Essential ingredients of - Failure of prosecution to establish - Effect of

CRIMINAL LAW AND PROCEDURE - PROOF BEYOND REASONABLE DOUBT:- When would be deemed satisfied

CRIMINAL LAW AND PROCEDURE - PROOF OF GUILT OF ACCUSED PERSON:- Ways of

CRIMINAL LAW AND PROCEDURE – SUSPICION:– Insufficiency of as basis for conviction

CRIMINAL LAW AND PROCEDURE - INCONSISTENCY RULE:- Inapplicability of to statements of accused

**PRACTICE AND PROCEDURE ISSUES**

APPEAL - EVALUATION OF EVIDENCE AND ASCRIPTION OF PROBATIVE VALUE TO:- Primary duty of trial court to - Appellate court - Attitude of to findings based thereon.

APPEAL - FINDINGS OF FACT BY LOWER COURTS:- Where concurrent - Attitude of Supreme Court thereto.

EVIDENCE:- Confessional statement - Nature of as best evidence.

EVIDENCE - CONFESSIONAL STATEMENT:- Meaning of – Whether sufficient to ground conviction solely - Retraction of – Irrelevance of - How may be corroborated.

EVIDENCE - CONFESSIONAL STATEMENTS:- Ways by which accused may resile from.

EVIDENCE - EVALUATION OF EVIDENCE AND ASCRIPTION OF PROBATIVE VALUE TO:- Primary duty of trial court thereto - Appellate court - Attitude of to findings based thereon.

EVIDENCE - GUILT OF ACCUSED:- Onus on prosecution to establish - Static nature of.

EVIDENCE - INCONSISTENCY RULE:- Inapplicability of to statements of accused.

EVIDENCE - PROOF BEYOND REASONABLE DOUBT:- When satisfied.

EVIDENCE - PROOF OF GUILT OF ACCUSED:- Ways of.

WORDS AND PHRASES – “CORROBORATION” - Meaning of.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant is the son of the deceased and was staying with him. He was alleged to have strangled the deceased while the latter was sleeping which led to his death. He was therefore arraigned in the High Court of Ogun state on a count of murder. A confessional statement made by him was tendered in evidence.

The appellant in his defence resiled from the confessional statement and raised defences of alibi, self-defence and provocation. The trial court held that the defences raised did not avail the appellant and convicted him as charged.

Dissatisfied, the appellant appealed to the Court of Appeal where his conviction was upheld.

Dissatisfied still, he filed a further appeal to the Supreme Court contending that the lower court wrongly affirmed his conviction improperly, based on the confessional statement and when the charge against him was not properly proved as required.

**DECISION(S) APPEALED AGAINST**

The Court of Appeal entered judgment, affirming the decision of the trial court that convicted and sentenced the Appellant to death for the offences of murder. Dissatisfied, the Appellant appealed to the Supreme Court.

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

*BY APPELLANT:*

3.01. Whether the prosecution proved its case beyond reasonable doubt against the appellant to the effect that the appellant killed his father - Olaleye Kolade, to justify the affirmation of the conviction and sentence of death by hanging of the appellant for murder by the learned Justices of the Court of Appeal, Ibadan Division.

3.02. Whether the learned Justices of the Court of Appeal, Ibadan Division were right to have affirmed and adopted the learned trial judge’s admission of the appellant’s purported extra-judicial statements - exhibits “B” and “B1” as confessional statements in spite of the illiteracy of the appellant, the manner in which the said statements were obtained and the objection of the appellant to their admissibility by reason of the involuntariness of the process of their extraction and relied heavily upon same to affirm the conviction and sentence of the appellant for murder.

3.03. Whether the learned Justices of the Court of Appeal, Ibadan Division were right to have affirmed the conviction and sentence of death by hanging of the appellant for murder when the prosecution failed to disprove the appellant’s alibi of being far from the crime scene (at his maternal grandmother’s village) at the time of the incident.

*BY RESPONDENT:*

1. Whether the learned Justices of the Court of Appeal were right to have affirmed the decision of the trial court that the prosecution proved the offence of murder against the appellant.

2. Whether the learned justices of the Court of Appeal were right to have held that the learned trial judge was right in relying on the confessional statement of the appellant in convicting him.

3. Whether the learned justices of the Court of Appeal were right to have held that the defence of alibi raised by the appellant at the trial of this case cannot avail the appellant.

**MAIN JUDGMENT**

OGUNBIYI JSC: (DELIVERING THE LEAD JUDGMENT):

The appeal herein is against the judgment of the Court of Appeal, Ibadan Division delivered on 18 May 2015, wherein the court affirmed the conviction and sentence of the appellant to death by hanging. The High Court of Ogun State, Ilaro Division condemned the appellant herein for murder of his father, Kolade Olaleye on 3 December 2011. The appellant was arraigned on a one-count charge of murder. Being dissatisfied with the affirmation of the said conviction and sentence by the lower court, the appellant has now appealed to this court. In the judgment appealed against, the facts shows that the appellant, while his father slept, strangled him by holding him by the neck. The brief statement of the facts:

The facts of this case as testified by the prosecution’s witnesses at the trial court are that on or about 3 December 2011, the PW1 in this case was on his way to his father’s (deceased) house when he saw the appellant (who is also the PW1’s brother) on the deceased’s motorcycle. The appellant informed the PW1 that the deceased had died. When the PW1 got to where the deceased was, he noticed marks on the neck of the deceased. The PW1 then went to inform some others of the incident. The PW1 was later informed that the appellant had carried the deceased’s corpse and that the appellant had been arrested by immigration officers.

The appellant confessed to the murder of the deceased.

The case was reported to the police and an autopsy was carried out on the deceased’s corpse.

The PW2 was the doctor who examined the corpse of the deceased at General hospital, Ilaro while PW3 named Corporal Oyelakin Segun was the Divisional I.P.O who recorded the statement of the appellant at the divisional police station and admitted in evidence as exhibits B and B1. The statement of the appellant recorded also by the PW4, woman Sergeant Philomena Imhanria was admitted as exhibits D and E. The said exhibits D and E were however, disregarded by the learned trial judge.

The appellant on his part testified in his defence and denied the charge. In his evidence he stated that he was not with the deceased on the night that he (the deceased) died. Appellant said he slept at his maternal grand-mother’s house in another village on the night of the incident.

The appellant was found guilty and sentenced to death by the trial court. His appeal before the lower court was also dismissed and hence, the appeal now before us.

In accordance with the Rules of Court, briefs were exchanged between the parties. While the appellant’s brief of argument was settled by Chief Henry Eshijonam Omu and filed 25 August 2015, that of the respondent was settled by F. F. Fakolade Esq and filed on 23 November 2015.

On 8 December 2016, the date the appeal was called up for hearing, both counsel adopted their respective brief of argument. The appellant’s counsel urged in favour of allowing the appeal, while the respondent’s counsel submitted in favour of the dismissal, as lacking in merit.

Before this court, the appellant has raised three issues for determination from the ten grounds of appeal filed and are as specified at paragraphs 3.01, 3.02 and 3.03 of the appellant’s brief of argument as follows:

3.01. Whether the prosecution proved its case beyond reasonable doubt against the appellant to the effect that the appellant killed his father - Olaleye Kolade, to justify the affirmation of the conviction and sentence of death by hanging of the appellant for murder by the learned Justices of the Court of Appeal, Ibadan Division. (Grounds 1, 2, 4, 5 and 6).

3.02. Whether the learned Justices of the Court of Appeal, Ibadan Division were right to have affirmed and adopted the learned trial judge’s admission of the appellant’s purported extra-judicial statements - exhibits “B” and “B1” as confessional statements in spite of the illiteracy of the appellant, the manner in which the said statements were obtained and the objection of the appellant to their admissibility by reason of the involuntariness of the process of their extraction and relied heavily upon same to affirm the conviction and sentence of the appellant for murder. (Grounds 3 and 8).

3.03. Whether the learned Justices of the Court of Appeal, Ibadan Division were right to have affirmed the conviction and sentence of death by hanging of the appellant for murder when the prosecution failed to disprove the appellant’s alibi of being far from the crime scene (at his maternal grandmother’s village) at the time of the incident. (Ground 9).

I wish to state quickly, that there are no issues formulated on behalf of the appellant from grounds of appeal No. 7 and 10.

The grounds in the circumstance are hereby struck out.

On behalf of the respondent, the three issues formulated are similar to those raised by the appellant’s counsel. However and despite the similarity, I would seek to adopt the issues formulated by the respondent’s counsel in view of the precision:

1. Whether the learned Justices of the Court of Appeal were right to have affirmed the decision of the trial court that the prosecution proved the offence of murder against the appellant.

2. Whether the learned justices of the Court of Appeal were right to have held that the learned trial judge was right in relying on the confessional statement of the appellant in convicting him.

3. Whether the learned justices of the Court of Appeal were right to have held that the defence of alibi raised by the appellant at the trial of this case cannot avail the appellant.

1st issue:

Whether the Court of Appeal was right in affirming the conviction and sentence of the appellant by the trial court. In other words, whether the prosecution did prove the offence of murder against the appellant.

In order to substantiate the issue raised, the appellant’s counsel contends that the prosecution did not prove its case beyond reasonable doubt against the appellant to the effect that he killed his father - Olaleye Kolade. Thus, the learned counsel argued that there was therefore, no justification why the lower court should have affirmed the conviction and sentence of death passed on the appellant by the trial court; that what the justices of the lower court did was to summarily accept, adopt and affirm the various findings and conclusions by the trial court that the appellant killed his deceased father and relied merely on the confessional statements, exhibits “B” and “B1”. Counsel submits this as having prejudiced the appellant seriously.

The counsel restated and outlined the three essential ingredients of the offence of murder which must be proved as follows:

(1) That the deceased died;

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

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

The following authorities were cited by the learned counsel in support of his arguments: Chukwu v. State (2013) All FWLR (Pt. 666) 425 at 437, (2013) 4 NWLR (Pt. 1343) 1; Oshiba v. State (2011) 12 SCNJ 526, (2011) 17 NWLR (Pt 1277) 663, (2012) All FWLR (Pt. 608) 849; Uguru v. State (2002) 9 NWLR (Pt. 771) 90, (2002) FWLR (Pt. 103) 330 at 343-344 and Ogbu v. State (2007) All FWLR (Pt. 361) 1651, (2007) 28 WRN 1 at 8.

While submitting vehemently against the conviction and sentence passed on the appellant, his learned counsel reiterates the absence of any reasonable ground whatsoever, warranting the learned justices of the lower court in affirming the trial court’s conviction of the appellant for the murder of his father – Olaleye Kayode, considering the totality of the evidence elicited before the trial court. It is the submission of learned counsel further that the affirmation of conviction of the appellant is unsupportive in law as it is against the evidence adduced at the trial; that the said judgment is also a clear miscarriage of justice against the appellant.

Counsel cited the authority in the case of Nigerian Air Force v. Obiosa (2003) FWLR (Pt. 148) 1224, (2003) 4 NWLR (Pt. 810) 233, where the onus is placed on the prosecution always to prove its case beyond reasonable doubt. It is a further contention of the learned counsel that the prosecution at the lower court failed to prove its case as required by law; that the learned justices of the lower court in their judgment never carried out any confirmatory review of evidence elicited by the prosecution for the defence to justify the affirmation of the conviction and sentence of the appellant. Thus, the learned counsel submits, is in view of the absence of any eye witness to the purported murder; that the lower court placed far too much weight on the uncorroborated evidence of PW1.

The following authorities were relied upon by the learned counsel to support the defects in the evidence put forward by the prosecution. See Benson Obiakor v. State (2002) FWLR (Pt. 113) 299 at 313, (2002) 10 NWLR (Pt. 776) 612; Onah v. State (1985) 3 NWLR (Pt. 12) 236, (1985) 12 SC 59; Oforlete v. State (2000) FWLR (Pt. 12) 2081 at 2097, (2000) 12 NWLR (Pt. 681) 415; Udosen v. State (2007) All FWLR (Pt. 356) 669, (2007) 1 NWLR (Pt. 1023) 125 at 162 and Joseph Idowu v. State (2000) FWLR (Pt. 16) 2672 at pages 2702-2703, (2000) 12 NWLR (Pt. 680) 48.

Submitting on the question of medical evidence, the learned counsel for the appellant argued vehemently that there was no such evidence whatsoever linking the death of the deceased to the appellant. The counsel wasted no time in re-emphasizing the absence of any evidence placed before the court as to how the deceased actually died.

In view of the preceding arguments, the counsel urged this court to hold that this appeal is meritorious and consequently, same should be allowed on the 1st issue and the judgment of the trial court which was affirmed by the Court of Appeal, Ibadan division should be set aside and be substituted with orders of discharge and acquittal of the appellant.

In response to the 1st issue raised on behalf of the appellant, the learned counsel for the respondent restated emphatically, that the learned justices of the Court of Appeal rightly affirmed the decision of the trial court that the prosecution proved the charge of murder beyond reasonable doubt against the appellant; that from the evidence adduced by the PW1, PW2 and PW3, and also exhibit A (medical report), as well as the evidence of the appellant himself at the trial court, the fact that the deceased person died is not in issue.

In proof of the second ingredient, that death of the deceased was caused by the accused, the respondent’s counsel made copious reference and relied solidly on the testimony of PW1 at the trial court. In addition to exhibit A (supra), heavy reliance was also made on the appellant’s statement, exhibits “B”, “B1” and “B2”, wherein he confessed to strangling the deceased to death while he (the deceased) was sleeping on his mat. Counsel relied on the decision in the case of Akpa v. State (2008) All FWLR (Pt. 420) 644, (2008) 14 NWLR (Pt.1106) 72, (2008) 8 SCN 68 page 77 at 87 and reiterates that exhibits B and B1 gave a clear detail of the role played by the appellant in the murder of the deceased which only the appellant himself could have narrated.

The learned counsel urged the court to hold that the said confessional statement having been admitted, satisfies the burden of proof placed on the prosecution; that the court should not therefore, disturb the findings of the lower court, that the trial court was right to have held that the prosecution proved the second ingredients of murder against the appellant beyond reasonable doubt.

While urging this court to hold that the trial court was right to have relied on the medical report, exhibit A, this, counsel submits, is, notwithstanding the absence from the court, the medical officer who performed the autopsy on the deceased. See the case of Edoho v. State (2010) All FWLR (Pt. 530) 1262, (2010) 14 NWLR (Pt. 1214) 651, (2010) 6 SCM 52 at page 68; that the justices of the lower court were right by not disturbing the findings of the trial court in this regard.

In further submission to establish that the appellant intended the death of the deceased, the learned counsel related copiously to the content of exhibits “B” and “B1” to establish the third ingredients of murder against the appellant by the prosecution.

On the defences of provocation and self-defence, counsel submits that same do not avail the appellant in the circumstance of the case at hand. It is the contention of counsel further that even in the absence of any eye witness evidence to the murder of the deceased, the circumstantial evidence against the appellant is overwhelming. Cited in support of the argument is the case of Nigerian Navy & Ors. v. Lambert (2007) All FWLR (Pt. 396) 574, (2007) 12 SCM (Pt. 2) 433 at pages 434-435. Relying on the confessional statement made by the appellant, same, the learned counsel argues has rendered the evidence of an eye witness unnecessary because it is sufficiently corroborated by other pieces of evidence led by the prosecution at the trial court.

In seeking to re-establish the evidence of PW1, the respondent’s counsel argued that it is not hearsay evidence because he only gave evidence of what was within his knowledge during the trial; that the court should accord credibility to the witnesses’ evidence which was rightly relied upon by the trial judge.

In final submission on the first issue, the respondent’s counsel urged the court not to disturb the concurrent findings of the two lower courts but affirm same as having been proved beyond reasonable doubt.

The 1st issue raises the question thus:

“Whether the learned justices of the Court of Appeal were right to have affirmed the decision of the trial court that the prosecution proved the offence of murder against the appellant.”

As rightly submitted and conceded by both counsel, the law is well settled that in criminal trial cases the onus is placed always on the prosecution squarely to prove its case against an accused person. See the case of Abirifon v. State (2013) All FWLR (Pt. 707) 665, (2013) 13 NWLR (Pt.1372) 587, (2013) 9 SCM 1 at 5, where this court held that the onus of proof is always on the prosecution to prove the guilt of the accused person beyond reasonable doubt. It is also settled law that proof beyond reasonable doubt does not mean proof beyond every shadow of doubt, see also the case of Nwaturocha v. State (2011) 6 NWLR (Pt. 1242) 170, (2011) 12 SCM (Pt. 2) 265 at 269.

In a charge of murder for instance, the prosecution is required to establish the following three essential ingredients before it could secure the conviction of an accused person:

(a) There must be the proof that the deceased died;

(b) That the death was in fact caused by the accused’s act; and

(c) That the accused person intended to either kill the victim or cause him grievous bodily harm. See the case of Njokwu v. State (2013) All FWLR (Pt. 695) 301, (2013) 2 SCM 177 at 180.

On behalf of the appellant, his learned counsel rightly submitted that, for an accused person to be convicted of murder, the prosecution must prove each of the three ingredients listed above. The prosecution has the burden/duty to prove its case by evidence of such quality as to leave the court or no one in reasonable doubt as to the guilt of the accused person. It is also expected of the prosecution that all the ingredients of an offence must be proved or co-exist before a conviction could be secured. See Akpa v. State, supra at page 87.

The principle of all inclusive co-existence was also highlighted in the case of Ogbu v. State, under reference, supra. It is also pertinent to restate that failure to establish any of the ingredients would result in an acquittal of the accused under the said charge.

On behalf of the appellant, it was submitted that the prosecution did not prove any of the necessary ingredients, especially 2 and 3 - that the death of the deceased was caused by the appellant and also that the act or omission of the appellant which caused the death of the deceased was intentional with the knowledge that death or grievous bodily harm was its probable result.

Without having to belabour the point, I wish to state right away that the proof of the 1st ingredient is not in contention.

This I hold in view of the evidence adduced by the PW1, PW2, PW3, exhibit A (medical report), as well as the evidence of the appellant himself, at the trial court.

The areas of contention relate to the 2nd and 3rd ingredients.

While taking the 2nd ingredient, I seek to refer to the record wherein PW1’s testimony was relevant. The witness was appellant’s junior (younger) brother. In his evidence before the trial court, he testified that when he saw the deceased’s corpse, he noticed nail marks on the neck of the body; also to the best of his knowledge, only the appellant was with the deceased in the deceased’s house. It was also the appellant who announced the deceased’s death to the PW1.

It is pertinent to say further that exhibit A, the medical report which was issued to the police in respect of the deceased’s corpse, shows that the deceased’s death was due to respiratory failure as a result of strangulation. Exhibits B and B1 were extra-judicial statements made by the appellant to the police, wherein he confessed to strangulating the deceased to death while he (deceased) was sleeping on his mat.

As rightly submitted by the learned counsel for the appellant, there was no independent eye witness to the actual circumstances of the death of the deceased. The evidence given by PW1 was indeed circumstantial. However, by the evidence of the said witness, the appellant was to him, the last person seen with the deceased. The circumstances of the statement will be relevant when taken together with what the appellant himself said in exhibits B and B1, wherein he confessed to strangling the deceased to death while he (deceased) was sleeping on his mat.

In my view, on a community reading of PW1’s evidence and taken together with the statements of the appellant, exhibits B and B1, there is the strong proof that the appellant must have caused the death of the deceased in this case by strangling him.

By exhibits B and B1, the detail is clear of the role the appellant played in the murder of the deceased which only the appellant himself could have narrated and no one else. The explanation as to how the deceased met his death has been stated in exhibits B and B1. The absence of any direct eye witness will not affect, in my view, the circumstantial evidence already on ground. The learned counsel for the appellant was, I hold, in great error in his arguments in that behalf.

As rightly submitted by the counsel for the respondent, the confessional statement having been admitted did satisfy the burden of proof placed on the prosecution. The two lower courts, I hold, were on the right footing when they held that the prosecution proved the second ingredients of murder against the appellant beyond reasonable doubt. In other words, for all intents and purposes and taking together the entire circumstance surrounding the events of this case, there is ample evidence of close link between the act of the appellant in causing the death of the deceased. See the case of Patrick Oforlete v. State, supra at 2104-2105.

The 3rd and final ingredient required of the prosecution to prove is the guilty intention or grievous bodily harm as a probable result. See the cases of Chukwu v. State; Oshiba v. State; Uguru v. State, all under reference, supra.

It is firmly submitted by the learned counsel for the appellant that the conviction of his client borders on mere suspicion which no matter how strong, cannot constitute a crime or ground a conviction. Counsel submits further that the circumstantial evidence applied by the learned trial judge to convict the appellant was without any legal basis. The learned counsel related copiously to the decision of this court in the case of Alake v. State (1992) 9 NWLR (Pt. 265) 260 at 272.

It is the counsel’s submission therefore, that there is no evidence elicited by the prosecution to justify the conclusion by the lower court that the prosecution has proved the third ingredient of the offence of murder beyond reasonable doubt; that the lower court relied mainly on the purported confessional statement of the appellant per exhibit B1 in concluding and holding that the appellant had the intention of killing the deceased.

As rightly submitted on behalf of the appellant, allegation of mere suspicion, no matter how strongly presented, cannot displace the heavy duty placed on the prosecution to prove the accused’s guilt.

In his submission further, the learned counsel for the appellant faulted the lower court in finding the appellant guilty simply because PW1 testified that he was last seen with the deceased; that the doctrine which is centered on presumption is, by nature rebuttable.

The saying is well established and also true that even the devil does not know the state of a man’s heart. Rather he alone is the best person fully possessed of his own intention. This restatement has confirmed the adage why a confessional statement made by an accused person is always rated as the best form of evidence. It is no wonder therefore, that the law lays down the three ways to prove the guilt of an accused as follows:

(1) Through a confessional statement made by the accused;

(2) By circumstantial evidence;

(3) By evidence of an eye witness.

In the appeal now before us, even in the absence of any direct eye witness, the documents, exhibits A, B and B1 taken together and in collaboration with the evidence of PW1 are very weighty and much revealing.

While considering the appellant’s intention, the reason offered for the act ought to be taken into account alongside all possible defences raised and which may accrue to him. See the case of Al-Hassan Mai Yaki v. State (2008) All FWLR (Pt. 440) 618 at 647.

Exhibit B1 is the extra-judicial statement made by the appellant to the police. With reference made to same, this is what he had to say:

“Yesterday, 2 December 2011 at about 10.00pm, myself and my father were in our house at Bolankale village talking to each other in a harsh voice, so my father said he was going to kill me and I know he could do it that was how I hasten up in my own action and I strangled him to death pressing his neck while he was sleeping on his locally made bed. The bone of contention was because my wife father (sic) younger brother said it was my father who drove his wife away and he said his elder brother (sic) daughter will not stay in my house also.

I inform my father so as to settle the matter amicably but rather than settling it my father and wife father were just making jest of me, that was what prompt my annoyance with my father and since then he has been saying he would kill me.”

With specific reference to the phrase:

“My father said he was going to kill me and I know he could do it that was how I hasten up in my own action and I strangled him to death pressing his neck while he was sleeping on his locally made bed....”

It is clear from exhibit B1 (supra) that the appellant had the intention of killing his father when he pressed his neck while he as sleeping.

Also from the said phrase by the appellant supra, it would appear that he intends to raise the defence of self-defence whichin law is a complete answer to a charge of murder. However, in order to avail himself of this defence, the accused person must show:

(i) That his life was so much endangered by the act of the deceased;

(ii) That the only option left for him to save his own life was to kill the deceased; and

(iii) That he did not want to fight and was prepared to withdraw.

See the cases of Isaac Stephen v. State (1986) vol. 17bNSCC (Pt. 2) 1416 at 1421, (1986) 5 NWLR (Pt. 46) 978 and Oduak Daniel Jimmy v. State (2013) 18 NWLR (Pt. 1386) 229, (2014) All FWLR (Pt. 714) 103 at 118.

On a community reading of the evidence on the record, including exhibit B1, there is nothing to show:

(i) That the deceased acted in anyway thereby putting the life of the appellant in danger;

(ii) That the appellant did not want to fight and was prepare to withdraw; and,

(iii) That the only option left for the appellant to save his own life was to kill the deceased.

As a matter of fact, it is clearly stated by the appellant himself in his statement, exhibit B1, that the deceased was sleeping when he pressed his neck and killed him. It is obvious that the defence of self-defence did not avail the appellant and same therefore rightly failed.

It is pertinent to state further that the appellant by his statement also sought to raise the defence of provocation when he said thus: “The bone of contention was because my wife father younger brother said it was my father who drove his wife away and he said his elder brother daughter will not stay in my house also. I informed my father so as to settle the matter amicably but rather than settling it my father and my wife father were just making jest of me, that was what prompt my annoyance with my father and since then he was been saying he would kill me.”

The law is well pronounced on the character of the defence of provocation. In other words, where it succeeds, it has the effect of whittling down the punishment stipulated from the offence of murder to manslaughter. See Edoho v. State (2010) All FWLR (Pt. 530) 1262 at 1287, (2010) 14 NWLR (Pt. 1214) 651 and Ihuebeka v. State (2000) FWLR (Pt. 11) 1827 at 1850, (2000) 4 SC (Pt. 1) 203.

However, for provocation to constitute a defence in murder cases, It must consist of three elements which must co-exists, namely:

(a) That the act of provocation was done in the heat of passion;

(b) That the loss of self-control was both actual and reasonable, that is to say, the act was done before there was time for cooling down; and

(c) That the retaliation is proportionate to the provocation.

Again, see the case of Edono v. State (supra) at page 1286.

It is clear from exhibit B1 that the annoyance of the accused person with the deceased did not start on the night that the accused killed the deceased. Rather it started when the deceased and the accused person’s father in-law made jest of the accused person which was not on that particular night of the incident.

This is because there is no evidence on the record that the accused person’s father in-law came to their house on that night. Also, the statement in exhibit “B1” that: “Since then he has been saying he would kill me”, shows that the threat from the deceased to kill the accused person was not made just on the night of the incident alone. Assuming for granted that the accused was provoked by the father as alleged, the fact that he waited and only killed him while he slept shows that the act of provocation was not done in the heat of passion while the accused lost his self-control. The accused, I hold was in full control of himself and hence the defence of provocation did not avail him.

I hold also that the defence did not avail the appellant but fails. The totality of the 1st issue in the circumstance is resolved against the appellant.

2nd issue:

In summary, it raises the question whether the learned Justices of the Court of Appeal were in order when they endorsed as right, the trial judge’s finding in relying on exhibits “B” and “B1” as confessional statements of the appellant and thereby convicting him thereon.

The learned counsel for the appellant submits that the lower court fell into error when it affirmed and adopted the trial judge’s admission of the appellant’s purported extra-judicial statements - exhibits “B” and “B1” as confessional statements.

Thus, learned counsel argues is in spite of the illiteracy of the appellant, the manner in which the said statements were obtained and the objection of the appellant to their admissibility by reason of the involuntariness of the process of their extraction; that the court nevertheless relied heavily upon same to affirm the conviction and sentence of the appellant for murder. Counsel submits also that without exhibits “B” and “B1”, there would not have been any evidence or material for the prosecution to anchor the conviction of the appellant thereon. Counsel cited the case of State v. John Ogbubanjo (2001) FWLR (Pt. 37) 1097 at pages 1123 - 1124 in support of his contention.

On the totality of the submission, the learned counsel for the appellant challenges vehemently, the heavy reliance made on exhibits “B” and “B1” which counsel characterizes was purportedly made by the appellant and whose tendering was objected to due to the involuntariness in the process of its extraction. The counsel cites numerous authorities in support of his contention and urges this court to set aside the affirmation of conviction and sentence of the appellant by the Justices of the court below.

In response to the appellant’s counsel, an extensive reference was made to the record of proceeding by the counsel representing the respondent. Specific attention was drawn to exhibits “B”, “B1”, “D” and “E” because same were not read to the appellant in the language he understood after it was recorded by the PW4 in English Language; that exhibits “B” and “B1” were admitted into evidence without objection; that although the appellant retracted from making the statements, the effect on same would not affect its admissibility. Counsel cites the case of Nwachukwu v. State (2007) All FWLR (Pt. 390) 1380, (2007) 17 NWLR (Pt.1062) 31,(2007) 12 SCM (Pt. 2) 447 at 454; that the learned trial judge appropriately dealt with the issue and properly admitted and acted on the confessional statement and corroborative evidence which gave support to the truth of the confession.

On the absence of any eye witness to the actual murder of the deceased, the learned counsel reiterates that the guilt of an accused person can be established by his confessional statement and circumstantial evidence; that there is sufficient corroboration of exhibits B and B1 by the strong circumstantial evidence of PW1.

The learned counsel sought to rely on the principle of “last seen” and argues that it applies in this case where the appellant was the person last seen with the deceased. Counsel cites the case of Archibong v. State (2006) All FWLR (Pt. 323) 1747, (2006) 14 NWLR (Pt.1000) 349, (2006) 8-9 SCM 43 at pages 50-51; that the fact that the trial court disregarded exhibits “D” and “E” does not necessarily mean that exhibits “B” and “B1 ought to have been disregarded also.

The learned counsel urges us to affirm that exhibit “B” translated into “B1” is weighty in the eyes of the law and to affirm the decision of the lower court in this regard.

It is submitted on behalf of the appellant that the lower court erred when it relied on the appellant’s extra-judicial statement to the police which was admitted as exhibits “B” and “B1” to convict the appellant for murder; that this was in the absence of any independent, credible, cogent and good quality evidence.

The definitions assigned to the word/phrases, “confession” or “confessional statement” by the Evidence Act and the case law, refer to an admission made at any time by a person charged with a crime. See the case of FRN v. Iweka (2011) All FWLR (Pt.588) 960, (2011) 12 SCM (Pt. 2) 213 at 218.

The law is well settled in plethora of cases that an accused person can be convicted on his confessional statement alone where same is direct, positive and proved. Again see the case of Akpa v. State under reference, supra, wherein the principle is affirmatively restated that what is admitted needs no further proof. At page 74 for instance, it was held that:

“A confession is an admission made by an accused person. The duty of the court is to decide the weight to be attached to it.”

With reference made to the record of appeal, there was no objection to the admissibility of exhibits “B” and “B1”, which were the statements of the appellant. The court placed reliance on the said exhibits. I seek to add also that there was no objection of involuntariness at the time of tendering the exhibits. As rightly submitted by the learned counsel for the respondent, the court was right in admitting the exhibits and subsequently relying on same in its judgment. As rightly submitted also by the respondent’s counsel, the retraction of the statement made by the appellant will not affect same adversely once the court is satisfied as to its truth. See again the case of Nwachukwu v. State, supra.

It follows from the foregoing that a confessional statement properly made by an accused person as in the case at hand is the best guide to the truth of the part played by him - see the case of Salawu v. State (2011) All FWLR (Pt. 594) 35, (2011) 10 SCM 76. Once such statement is admitted therefore, it becomes part of the prosecution’s case which the court must consider as done in the present case. Again, see the case of Nwachukwu v. State, supra at 455. In the absence of any objection by the defence of involuntariness or any evidence suggesting that there was undue influence by the police at the time exhibits “B” and “B1” were being tendered, the lower court was right in affirming the admission and reliance made on the statements by the learned trial judge.

A confessional statement of this nature, regardless of its retraction can ground a conviction. See the case of Federal Republic of Nigeria v. Iweka (supra) at 218. For purpose of corroborating the confession, there could be direct or circumstantial evidence. See Dagayya v. State (2006) All FWLR (Pt. 308) 1212, (2006) 2 SCM 33 at 67.

For all intents and purposes, the confessional statements, exhibits “B” and “B1” made by the strong circumstantial evidence of the PW1. This I say, because the evidence of the said witness at pages 19 to 22 of the record of appeal was that he was coming from Oja-Odan in the morning at about 7.30am when he met the appellant close to the deceased’s house, where the appellant and the deceased were living. The appellant informed the PW1 that the deceased was dead; when the PW1 got to the deceased’s house, he saw him (deceased) on the mat with nail marks on his neck.

It is the witnesses evidence also that only the appellant and the deceased slept in the deceased’s house the night the deceased died and that there was nobody else with them. PW1 gave evidence of facts within his knowledge and as such his evidence is not hearsay as argued by the appellant’s counsel.

The foregoing piece of evidence is independent which serves as a corroborative fact to the confession of the appellant in exhibits “B” and “B1”wherein he said that he strangled the deceased by pressing his neck while he (deceased) was sleeping on his mat.

I seek to draw attention that the evidence of the PW1 and Exhibit “B1” also corroborate each other that the PW1 met the appellant on the way when the appellant informed the PW1 of the deceased’s death. It was held in the case of Musa v. State (2013) All FWLR (Pt. 692) 1688, (2013) 9 NWLR (Pt. 1359) 214, (2013) 3 SCM 79 at page 85 that corroboration means confirmation or support by additional evidence; the corroboration need not consist of direct evidence that the accused person committed the offence nor need it amount to a confirmation of the whole account given by the witnesses, provided it corroborates the evidence in some respects material to the charge in issue.

It is pertinent also to draw attention that the circumstances of this case suggest that the appellant is the person last seen with the deceased. The law presumes that the person last seen with the deceased bears full responsibility of the death of the deceased. See the case of Archibong v. State, supra.

The appellant in the circumstance of the case at hand had the opportunity to commit the offence for which he was charged and only him was in the best position to narrate the role he played in the murder of the deceased which he unequivocally stated in exhibits “B” and “B1”. The trial court found that the PW3 followed a proper procedure in recording the said exhibits “B” and “B1”. The trial court found that the PW3 followed a proper procedure in recording the said exhibit “B” in Yoruba language as volunteered by the appellant and later translated same into exhibit “B1”, the English version.

The extra-judicial statements, exhibits “B” and “B1” are very weighty in the eyes of the law because they are confessional in nature. The lower court was on a firm ground when it held that the trial court judge was right in relying on the confessional statement of the appellant, exhibits “B” and “B1” in convicting him.

The said issue two is hereby resolved also against the appellant.

3rd issue:

Whether the learned Justices of the Court of Appeal, Ibadan Division were right to have affirmed the conviction and sentence of death by hanging of the appellant for murder when the prosecution failed to disprove the appellant’s alibi of being far from the crime scene (at his maternal grandmother’s village) at the time of the incident.

The learned counsel for the appellant submits at great extent, that it is wrong for the lower court to conclude that the appellant killed the deceased simply because PW1 in his evidence testified that he (appellant) was “last seen” with the deceased; that the doctrine is a mere presumption which, like all other presumptions, are rebuttable. It is the appellant’s argument that he slept at his maternal grandmother’s house on the day before the deceased was killed; that in this case, the appellant raised the issue in his statement to the police and also in his evidence at the trial but counsel submits it was not investigated.

It is the appellant’s further contention that the lower court did not also consider the appellant’s defence of alibi in its judgment. In support of his submission, the counsel cited the case of Patrick Njovens & Ors. v. State (1973) NMLR 331, (1973) 8 NSCC 257. The learned counsel argued affirmatively that the lower court in its judgment at page 140 of the record erred and misdirected itself by affirming the view held by the trial court on the alibi raised; that the failure to consider the defence had greatly occasioned a serious miscarriage of justice to the appellant’s case. Numerous authorities were cited by counsel in support of his submission; that the prosecution failed to disprove the appellant’s alibi of being far from the crime scene at the time of the incident.

On the totality, the appellant urged the court to hold that this appeal is meritorious and consequently, same should be allowed and the judgment of the trial court as affirmed by the Court of Appeal, Ibadan division should be set aside and be substituted with orders of acquittal and discharge of the appellant.

In response to the appellant’s submission on issue 3, the counsel for the respondent restated the position of the law regarding the defence of alibi.

Learned counsel argued that for the defence to avail an accused person, it must be raised at the earliest opportunity which should be in the interrogation room.

This counsel argued, is to enable the police to investigate the alibi. There can be no investigation of an alibi raised for the first time at the trial. Counsel cited the case of Ndidi v. State (2007) All FWLR (Pt. 381) 1617, (2007) 13 NWLR (Pt. 1052) 633, (2007) 10 SCM 101 at page 105.

The learned counsel opined emphatically, therefore, that the defence of alibi raised for the first time during the trial in this case cannot avail the appellant. The court is urged to affirm the concurrent judgments of the two lower courts and thereby dismiss this appeal as lacking in merit.

Resolution of issue 3:

The law is well settled that it behooves on a court of law to consider any defence available to an accused person which is disclosed in evidence before the court. This duty is laden on a court whether or not it is raised by an accused person or his legal practitioner. See the cases of Nse Udo Nuta v. State (2008) All FWLR (Pt. 397) 1 and Shalla v. State (2008) All FWLR (Pt. 397) 25, (2007) 7 - 10 SC 107.

The defence of alibi connotes the physical impossibility of a person or an accused to be somewhere else and at the same time at the scene of a crime. As rightly submitted by the learned counsel for the appellant, alibi is a complete defence, which if proved in favour of an accused person, absolves him of any criminal liability.

The defence must be raised timeously at the earliest opportunity of contact with the investigating security agencies. The appellant must furnish the agencies with sufficient particulars about his whereabouts on the day in question. Thereafter, the duty shifts to the prosecution to investigate the alibi and affirm or disprove same. The defence is destroyed by a contrary evidence fixing the accused at the place of crime. However, if successfully disproved, the defence fails. See this court in Ikemson v. State (1989) 3 NWLR (Pt. 110) 455 at pages 479-780, (1989) 6 SCNJ 54.

In the instant case, contrary to the submission of the appellant’s counsel, both trial court and the Court of Appeal found that the appellant raised his alibi for the first time at the trial. He stated in evidence that he was not with the deceased the night he was murdered and that he (appellant) slept in his grandmother’s house but that no one was aware he slept there.

On the question of alibi raised at the trial, this is what the trial court had to say at pages 61 and 62 of the record of appeal: “It is ridiculous for the accused person to sleep in his maternal grandmother’s village without anybody knowing that he slept there, more so when it is not part of his case that there was no person at all in his maternal grandmother’s house where he slept. What is more, his evidence-in-chief reveals that his maternal grandmother is still alive. In the particular circumstances of this case, the accused person ought to, at least call a witness, Baba Folake, his mother’s junior brother, whom he said saw him the following morning. I do not believe the evidence of the accused person that he did not sleep in the same house with his father on the night of the death of his father. The evidence is incredible and it is hereby rejected. I believe and accept the evidence of PW1 that the accused person slept in the same house with their father in the night of their father’s death and with the rejection of the evidence of the accused person that he did not sleep in the same house with their father, I hereby draw the inference that the accused person was the one who killed their father, Olaleye Kolade.”

From the foregoing view held by the trial court, it is obvious that the court wasted no time in rejecting the defence of alibi raised by the appellant. Same was also endorsed by the lower court when their lordships held as follows at page 140 of the record: “On the last issue of alibi of the appellant set up for the first time at the trial, I agree with the learned trial judge that it was an afterthought as it was not set up before the police to enable investigation but at the trial and after the appellant had earlier made confessional statements as in exhibits “B”, “B1”, “D” and “E”. It certainly was an afterthought also bothering on the ridiculous as the appellant had to use a five-year old girl as his security escort detailed by his maternal relatives. I consider the story in his alibi as not only absurd but incredible.”

For all intents and purposes, I hereby also firmly endorse the findings and conclusion arrived at by the two lower courts that the defence of alibi sought to rely upon by the appellant is belated and a mere afterthought. The whole concept in conceiving such a concocted story is ridiculous and also incredible as rightly held by the two lower courts respectively.

The appellant’s evidence in court at the trial is very much inconsistent with his earlier extra-judicial statement made to the police. It is trite to state that the inconsistency rule does not apply to an accused person. In other words, it does not cover a case where an accused person’s extra-judicial statement is contrary to his testimony in court. See the case of Ogudo v. State (2011) 18 NWLR (Pt. 1278) 1, (2011) 12 SCM (Pt. 1) 209 at 223.

I seek to state further that the appellant’s alibi was not disclosed to the police at the time the appellant volunteered his statement as same is not contained in the said statement to the police. The appellant therefore, failed to afford the police the opportunity to investigate the alibi as requested by law. See the case of Tongo v. C.O. P. (2007) All FWLR (Pt. 376) 636, (2007) 12 NWLR (Pt. 1049) 525, (2007) 9 SCM 113.

It is not only incumbent on the appellant to inform the police of his alibi but he should also furnish the police with detailed articulars of his whereabouts so that same could be properly investigated. See the case of Okolo Ochemaje v. State (2008) All FWLR (Pt. 435) 1661, (2008) 10 SCM 103 at 107, where it was held that:

“The police in order to investigate a plea of alibi must have specific particulars of where the accused was at the material time .... It is not the law that the police should be involved in a wild goose chase for the whereabouts of an accused at the time the crime was committed... the accused must give specific particulars of where he was at the material time to enable the police move straight to that place to carry out the investigation required by law.”

It is the findings of both the trial court and the Court of Appeal, that the appellant did not raise any alibi at the earliest opportunity, which should have been at the investigation stage.

His alibi raised only at the trial stage was held as an afterthought and cannot be reckoned with. The lower court did not also waste time but rightly in my view also endorsed the trial court’s conclusion. This was based on sound legal principles in the absence of any evidence to disturb the concurrent findings. See the case of Ochiba v. State (2011) 12 SCM (Pt. 2) 284 at 289, (2011) 17 NWLR (Pt 1277) 663, (2012) All FWLR (Pt. 608) 849, where this court in reiterating the well settled principle of law said:

“Where the two courts below make concurrent findings of fact, as herein, this court will not interfere unless same is perverse or runs against current of evidence adduced or occasioned a miscarriage of justice....”

Contrary to the submission and the view held by the learned counsel for the appellant, I hold the firm view that the learned justices of the Court of Appeal were right when they affirmed the decision of the trial court judge that the appellant’s alibi was not raised at the appropriate time and as such, same cannot be recognized. The said issue three is also resolved against the appellant.

On the totality of all the three issues raised supra, same are resolved against the appellant and consequent upon which this appeal is hereby dismissed. The concurrent findings by the two lower courts are unassailable. The conviction and sentence of the appellant for murder by the lower court which affirmed the judgment of the trial High Court is hereby also endorsed by me.

The appeal is hereby dismissed, while the judgment of the lower court is affirmed.

The appellant was rightly convicted and sentenced to death by hanging for the murder of his father, late Mr. Olaleye Kolade. Appeal is dismissed while conviction and sentence are hereby affirmed.

**RHODES-VIVOUR JSC:**

I have had the benefit of reading in draft, the leading judgment of my learned brother, Ogunbiyi JSC, I agree that this appeal should be dismissed. I intend to comment on section 316 of the Criminal Code on which the appellant was charged for the offence of murder. I gratefully adopt the statement of facts in the leading judgment. For the prosecution to succeed under section 316 of the Criminal Code, the prosecution should prove beyond reasonable doubt that a person died (in this case, Olaleye Kolade died) and that he died as a result of an act by the appellant. The act of the appellant which caused the death of Olaleye Kolade must be one of the six circumstances in section 316 of the Criminal Code. If the act of the appellant which caused the death of Olaleye Kolade is not one of the six circumstances, the death of the deceased is no longer murder. The six circumstances are:

1. If the appellant intends to cause the death of Olaleye Kolade, or that of some other person;

2. If the appellant intends to do to the deceased or to some other person some grievous harm;

3. If death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such nature as to be likely to endanger human life;

4. If the appellant intends to do grievous harm to some person for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence;

5. If death is caused by administering any stupefying or overpowering things for either of the purposes last aforesaid; and

6. If death is caused by wilfully stopping the breath of any person for either of such purposes.

See Ilodigwe v. State (2012) All FWLR (Pt. 654) 1, (2012) 18 NWLR (Pt. 1331) 1, (2012) 5-7 SC (Pt. II) 143; Chukwu v. State (2012) 12 SC (Pt. vii) 60 Proof beyond reasonable doubt does not mean proof beyond all doubt or all shadow of doubt.

It simply means establishing the guilt of the accused person with compelling and conclusive evidence, a degree of compulsion which is consistent with a high degree of probability. See Osuagwu v. State (2013) All FWLR (Pt. 672) 1605, (2013) 5 NWLR (Pt. 1347) 360.

The deceased died as a result of a deliberate act by the appellant that could be either 1, 2, 3 or 6 above. The appellant’s confession of murder, i.e. exhibits B, B1 and B2 was free and voluntary and in itself fully consistent and probable and the inculpating statements were corroborated by exhibit A, the autopsy report and testimonies of PW1 and PW2 (the medical doctor). It shows that the confession was true, and the charge was proved beyond reasonable doubt as required by section 135 of the Evidence Act.

It is for these brief reasons, as well as those more fully given by my learned brother, Ogunbiyi JSC that I also dismiss the appeal.

**SANUSI JSC:**

I was opportune to read before now, the judgment prepared and read by my learned brother, Ogunbiyi JSC. I agree with the reason and conclusion arrived thereat, that this appeal is bereft of merit. I also dismiss it even though I wish to add some comments below in support of the judgment.

The present appellant was tried at the Ogun State High Court of Justice on a charge of murder of his own father, Kolade Olaleye on 3 March 2011. The Ogun State High Court (hereinafter referred to as “the trial court”), at the conclusion of the trial, found him guilty of the offence he faced trial on, convicted and sentenced him to death by hanging. The offence against which he was tried was contrary to section 316 of the Criminal Code.

The facts of the case which gave rise to this instant appeal as could be gathered from the testimonies of the witnesses are follows:

The appellant herein, was the son of the deceased and was staying with the latter in the farm house. The appellant happened to be the last person to be seen with the deceased (his father) as at 3 December 2011, when his dead body was recovered in the farm house. Evidence abound that on 3 December 2011 when PW1, a brother of the appellant and also son of the deceased, while on his way to the deceased’s farm house, he saw the appellant on the deceased’s motorcycle and the appellant informed him that their father died. On reaching where the dead body of the deceased was laying, PW1 stated that he observed marks on the neck of their father.

The PW1 thereupon informed their other sibling about the incident. Later, the appellant was arrested by the police and during investigation, he made a statement confessing that he was responsible for killing his father (the deceased). The confessional statement of the appellant was recorded by a woman police which was tendered at the trial and admitted in evidence by the trial court and marked as exhibits B and B1; PW2 was the medical doctor who examined the corpse of the deceased.

Another statement made by the appellant was also recorded by PW4, a woman police sergeant which was also admitted at the trial and marked as exhibits D and E. After the prosecution closed its case, the appellant testified for his defence of alibi when he stated while testifying for his defence, that he was not with the deceased on the night of the incident. He stated that on that fateful day, he slept in his maternal grandmother’s house in another village. At the conclusion of the trial, the trial court found the appellant guilty as charged, convicted him and sentenced him to death.

Aggrieved with the conviction and sentence by the trial court, the appellant appealed to the Court of Appeal (hereinafter called “the court below”) which dismissed his appeal and affirmed the conviction and sentence passed by the trial court.

Naturally, the appellant became dissatisfied with the affirmation of his conviction and sentence by the court below, hence, he further appealed to this court.

In keeping with the practice and rules of this court, learned counsel to both parties filed and exchanged briefs of argument.

On his part, the appellant filed his brief of argument, wherein, he raised three issues for determination out of ten grounds of appeal contained in his notice of appeal, which said issues are reproduced hereunder:

“(1) Whether the prosecution proved its case beyond reasonable doubt against the appellant to the effect that the appellant killed his father - Olaleye Kolade, to justify the affirmation of the conviction and sentence of death by hanging of the appellant for murder by the learned Justices of the Court of Appeal, Ibadan Division. (Grounds 1, 2, 4, 5 and 6).

(2) Whether the learned Justices of the Court of Appeal, Ibadan Division were right to have affirmed and adopted the learned trial judge’s admission of the appellant’s purported extra-judicial statements - exhibits “B” and “B1” as confessional statements in spite of the illiteracy of the appellant, the manner in which the said statements were obtained and the objection of the appellant to their admissibility by reason of the involuntariness of the process of their extraction and relied heavily upon same to affirm the conviction and sentence of the appellant for murder. (Grounds 3 and 8).

(3) Whether the learned Justices of the Court of Appeal, Ibadan Division were right to have affirmed the conviction and sentence of death by hanging of the appellant for murder when the prosecution failed to disprove the appellant’s alibi of being far from the crime scene (at his maternal grandmother’s village) at the time of the incident. (Ground 9).

On its part, the respondent also formulated three issues for determination of the appeal in its brief of argument. The three issues read thus:

1. Whether the learned Justices of the Court of Appeal were right to have affirmed the decision of the trial court that the prosecution proved the offence of murder against the appellant.

2. Whether the learned justices of the Court of Appeal were right to have held that the learned trial judge was right in relying on the confessional statement of the appellant in convicting him.

3. Whether the learned justices of the Court of Appeal were right to have held that the defence of alibi raised by the appellant at the trial of this case cannot avail the appellant.

Carefully perusing the two sets of issues for determination set out above, the issues raised in the respondent’s brief appear to me to be more apt and elegantly couched compared to the verbose issues raised by the appellant.

To utilise the issues raised in the respondent’s brief in determining in treating this appeal would be more convenient and useful. I will therefore, chose to be guided by them and will also consider them together.

For the prosecution to obtain conviction on charge of murder under section 316 of the Criminal Code, it is duty bound to prove beyond reasonable doubt the underlisted ingredients namely:

(1) That the deceased died;

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

All the aforementioned ingredients must be proved beyond reasonable doubt. See Ogba v. State (1992) 2 NWLR (Pt. 222) 164, (1992) 2 SCNJ (Pt. 1) 106. In the instant case, there is no iota of doubt, that the deceased person died as a result of strangulation of his neck as confirmed by PW2, the medical doctor who performed autopsy on his dead body and tendered the medical report, exhibit A at the trial.

The next question to ask is: “Who was responsible in causing the death of the deceased?”. There is no doubt that there was no eye witness account of anybody who witnessed the commission of the crime. However, the respondent led credible evidence to show that the appellant was the only person who used to live in the farm house with his father, the deceased. When he met PW1, he broke the news to him that their father was late and PW1 said he observed wound on his neck. The prosecution/respondent at the trial, therefore, relied on circumstantial evidence especially, the doctrine of last seen.

This doctrine simply means that the law always presumes that the person last seen with the deceased is presumed to be responsible for his death, provided the circumstantial evidence is overwhelming and leads to no other person or persons but him. As it has been confirmed by the available evidence that the deceased was with the appellant up to the time of his death then the doctrine of last seen obviously counts or applies against him. Moreso, there is a confessional statement voluntarily made by the appellant which supported the presumption of his guilt by the application of doctrine of last seen, as well as the evidence of his own brother, PW1 all of which corroborated and supported his responsibility in causing the death of their deceased father. See Moses Jua v. State (2010) All FWLR (Pt. 521) 1427, (2010) 4 NWLR (Pt. 1184) 217; Archibong v. State (2006) All FWLR (Pt. 323) 1747, (2006) 14 NWLR (Pt. 1000) 349, (2006) 8-9 SCM 43.

In his defence, the appellant while testifying for his defence raised alibi defence when he testified that on the day of the incidence he did not sleep in his father’s farm house with the father but rather he slept in his maternal grandmother’s home in another village. It is settled law that any evidence of alibi raised by an accused person cannot be brushed aside unless the prosecution produced a much stronger or greater and more convincing evidence to counter or neutralise it. The law is trite also, that where an accused person raises the defence of alibi, the law requires him to state at the earliest opportunity and to give information as to his whereabouts at the time of the commission of the offence and with who or in whose company he was with. In otherwords, he has to give detailed particulars of where he was other than at the scene of the crime. Such defence must also be raised at the earliest opportunity in order to give the police notice for them to investigate or verify the truth of his alibi defence. Failing to do this, such defence if raised, will not avail him. See Adisa Wale v. State (2013) 14 NWLR (Pt. 1375) 567; Esangbedo v. State (1989) 4 NWLR (Pt. 113) 57, (1989) 7 SCNJ 10.

In this instant case, the defence of alibi raised by the appellant cannot avail him as rightly affirmed by the court below because the appellant did not raise it at the earliest opportunity.

He also did not call the person or persons in whose company he was on the day or at the time of the incidence. The trial court was therefore right in rejecting the defence of alibi raised by appellant and the court below was equally right in affirming such finding of the trial court which I regard as unassailable.

The two issues raised by the respondent are therefore resolved against the appellant herein.

Apropos of the above discourse of mine and for the fuller and detailed reasons and conclusion arrived at in the lead judgment which I entirely agree with and adopt as mine, I also see no merit in this appeal. I accordingly dismiss it for being meritless.

I affirm the conviction and sentence of the appellant by the two lower courts. Appeal is hereby dismissed. AUGIE JSC: I had a preview of the lead judgment delivered by my learned brother, Ogunbiyi JSC, and I agree with him that the appeal lacks merit.

He dealt extensively with all the issues raised in the appeal and I will only say a few words on the issue of alibi and last seen doctrine.

The appellant’s conviction for the murder of his father, hinged on the testimony of his brother, PW1, who said he saw the appellant on their father’s motorcycle, as he was heading to their father’s house. The appellant told PW1 their father was dead. He got there and saw marks on the neck of their deceased father, and he informed others.

The appellant confessed to the murder but in his defence at the trial court, he put up a defence of alibi. He claimed he was not with the deceased on the said night but slept at his grandmother’s house.

The picture painted by the prosecution is that the appellant was the person last seen with his deceased father. The Last Seen Doctrine indicates that any accused charged with murder, would be required to offer some explanation as to how the deceased met his death. It has no statutory foundation, and the doctrine is a development of case law - see Archibong v. State (2006) All FWLR (Pt. 323) 1747, (2006) 14 NWLR (Pt. 1000) 349 SC, (2006) 8-9 SCM 43; Haruna v. Attorney-General, Federation (2012) 9 NWLR (Pt. 1306) 419 SC, where this court, per Adekeye JSC, explained the law as follows:

“The doctrine of “last seen” means that the law presumes that the person last seen with a deceased bears full responsibility for his death. Thus, where an accused person was the last person to be seen in the company of the deceased and circumstantial evidence is overwhelming and leads to no other conclusion, there is no room for acquittal.

In this case, there was more than enough evidence to establish that the appellant was the last person seen with his deceased father, and this includes his confessional statement, which forms part of the case for the prosecution, and corroborated the testimony of his brother, PW1.

But the appellant claimed that he was elsewhere, and alibi is Latin for “elsewhere”. The defence of alibi is based on the physical impossibility of an accused person being guilty by placing him in another location at the relevant time. It also means - “the fact or state of having been elsewhere when an offence was committed” - see Black’s Law Dictionary, 8th Edition, Shehu v. State (2010) All FWLR (Pt. 523) 1841, (2010) 8 NWLR (Pt. 1195) 112; Dagayya v. State (2006) All FWLR (Pt. 308) 1212, (2006) 7 NWLR (Pt. 980) 637 SC, (2006) 2 SCM 33; Ochemaje v. State (2008) All FWLR (Pt. 435) 1661, (2008) 15 NWLR (Pt. 1109) 57, (2008) 10 SCM 103. Once the defence is properly raised by an accused during investigations, it is the duty of the police to investigate it and for the prosecution to disprove it.

But it is not in all cases that failure to investigate an alibi will be fatal to the case of the prosecution. This court made this point clear in Olaiya v. State (2010) 3 NWLR (Pt. 1181) 423, wherein it adopted its decision in Hemyo Ntam v. State (1968) [2017] All FWLR Kolade v. State (Augie JSC) 485 NMLR 86, as follows:

There are occasions on which a failure to check an alibi may cast doubt on the reliability of the case for the prosecution, but in a case such as this where the appellants were identified by three eye witnesses, there was a straight issue of credibility and we are not able to say that the judge’s findings of facts were unreasonable or cannot be supported having regard to the evidence. If the alibi had been true, it would have been open to the appellant to call witnesses in support on them and neither of them did so. And also in Michael Hausa v. State (1994) 6 NWLR (Pt. 350) 281, (1994) 7 - 8 SCNJ 1:

Once the prosecution through its witnesses establish that they (the witnesses) saw the appellant committing the offence charged, a defence of alibi by the appellant raises the straight issues of credibility to wit; whether the evidence of the witnesses is believable and if believed, the alibi is logically demolished or fizzles into thin air and so doomed.

It is also settled that a defence of alibi, to be worthy of investigation, must be precise and specific in terms of the place that the accused was and the person or persons he was with and possibly what he was doing there at the material time – See Shehu v. State (supra) and Ochemaje v. State (supra), where Tobi JSC expatiated as follows:

It is not the law that the police should be involved in a wild goose chase for the whereabouts of an accused at the time the crime was committed. No. That is not the function or role of the police. The accused must give specific particulars of where he was at the time of the material time to enable the police move straight to that place to carry out the investigation required by law. Investigation is not a necessity if the evidence unequivocally points to the guilt of the accused person, either in the evidence of the witnesses or under cross-examination of the accused or his witness. The learned trial judge relied on the evidence of PW1, PW2, PW3 and PW6. I am of the view that the defence of alibi is a mere farce and an afterthought. It fails. After all, a trial judge will not take seriously, a defence of alibi which is porous and cosmetic. That is the way I see appellant’s defence of alibi.

In this case, the two lower courts found that the appellant raised his defence of alibi for the first time at the trial. It is settled that where there is sufficient evidence to support concurrent findings of fact by two lower courts, such findings will not be disturbed unless the findings are shown to be perversed, or some miscarriage of justice or some violation of principles of law or procedure is shown - See Ogoala v. State (1991) 2 NWLR (Pt. 175) 509, (1991) 3 SCNJ 61. In this case, there is more than enough evidence established by the prosecution to support the concurrent findings of the trial court and court below, and this court is, therefore, not in a position to intervene in any way.

It is for this and the other reasons in the lead judgment that I also dismiss the appeal and affirm the decision of the court below.

**GALINJE JSC:**

I have read in draft, the judgment just delivered by my learned brother, Ogunbiyi JSC, and I agree that the appeal lacks merit and should be dismissed.

The appellant was arraigned before the High Court of Ogun State, holden at Ilaro on 4 December 2013 on a one-count charge of murder under section 316 of the Criminal Code Law, revised Edition Laws of Ogun State and punishable under section 319 of the same Code. Appellant pleaded not guilty to the charge. In order to prove its case, the prosecution called four witnesses and tendered several exhibits in evidence. The appellant gave evidence in his own defence and called no further witnesses.

Parties filed written addresses which were adopted before the trial judge. In a reserved and considered judgment, delivered on 13 August 2014, Okunsokan J. found the appellant guilty as charged and sentenced him to death by hanging until he be dead.

The appellant’s appeal to the Court of Appeal, Ibadan was dismissed on 18 May 2015.

It is against the judgment of the Court of Appeal, Coram Obietombara Daniel Kalio, Mudashiru Nasiru Oniyangi and Nonyerem Okoronkwo JJCA, that the appellant has brought this appeal. His notice of appeal at pages 147-152 of the record of this appeal contains ten grounds of appeal.

Parties filed and exchanged briefs of argument. The appellant’s brief of argument, settled by Chief Henry Eshijonam Omu is dated 25 August 2015 and filed the same day. At page 5 of the said brief of argument, three issues are submitted for the determination of this appeal. They read as follows:

1: Whether the prosecution proved its case beyond reasonable doubt against the appellant to the effect that the appellant killed his father - Olaleye Kolade, to justify the affirmation of the conviction and sentence of death by hanging of the appellant for murder by the learned Justices of the Court of Appeal, Ibadan Division.

2: Whether the learned Justices of the Court of Appeal, Ibadan Division were right to have affirmed and adopted the learned trial judge’s admission of the appellant’s purported extra-judicial statements - exhibits “B” and “B1” as confessional statements in spite of the illiteracy of the appellant, the manner in which the said statements were obtained and the objection of the appellant to their admissibility by reason of the involuntariness of the process of their extraction and relied heavily upon same to affirm the conviction and sentence of the appellant for murder.

3: Whether the learned Justices of the Court of Appeal, Ibadan Division were right to have affirmed the conviction and sentence of death by hanging of the appellant for murder when the prosecution failed to disprove the appellant’s alibi of being far from the crime scene (at his maternal grandmother’s village) at the time of the incident.

Learned counsel for the appellant who did not tie the issues to the grounds of appeal, at the prompt of the court tied the 1st issue to grounds 1, 2, 4, 5 and 6, issue 2 to grounds 3 and 8, while issue 3 is tied to ground 9. Having failed to formulate issues from grounds 7 and 10, the said grounds 7 and 10 are deemed abandoned. They are accordingly struck out.

The respondent’s brief of argument, settled by F. F. Fakolade Esq of counsel for the respondent is dated 2 November 2015 and filed on 23 November 2015. At page 3, three issues are formulated for the determination of this appeal. They are reproduced hereunder as follows.

1. Whether the learned Justices of the Court of Appeal were right to have affirmed the decision of the trial court that the prosecution proved the offence of murder against the appellant.

2. Whether the learned justices of the Court of Appeal were right to have held that the learned trial judge was right in relying on the confessional statement of the appellant in convicting him.

3. Whether the learned justices of the Court of Appeal were right to have held that the defence of alibi raised by the appellant at the trial of this case cannot avail the appellant.

The prosecution’s case is that the appellant who is the son of the deceased lived in a farm with his deceased father and was the last person seen with the deceased before his dead body was discovered in the farm house by PW1, Olabisi Kolade, the appellant’s junior brother on 3 December 2011 with nail marks on his neck which suggested that the deceased might have been strangled to death. The appellant who was last seen with the deceased was subsequently arrested and during interrogation, he admitted killing his father in his statement which was admitted as exhibit B and its translated version, exhibit B1.

The issues formulated by parties are directed at the manner in which the lower court treated the reception of evidence at the trial court and ascription of probative value to such evidence. I am of the view that the issues as formulated by parties are similar. I have read through the appeal process and I am of the firm view that the only issue calling for determination of this appeal is whether the lower court is right to have affirmed the decision of the trial court on the round that the prosecution had proved its case beyond reasonable doubt In arguing the appeal, learned counsel for the appellant submitted that the prosecution did not prove its case beyond reasonable doubt as required by law at the trial court, and that the lower court did not carry out any evaluation of the evidence elicited by the prosecution and the defence before it reached its decision. Learned counsel enumerated the ingredients of the offence of murder which the prosecution must prove in order to succeed and contended that the prosecution did not connect the appellant with the offence with which the appellant was charged as in eye witness to the offence was called as a witness. In aid, learned counsel cited Chukwu v. State (2013) All FWLR (Pt. 666) 425 at 437 paragraphs E-H, (2013) 4 NWLR (Pt. 1343) 1; Ochiba v. State (2011) 12 SCNJ 526, (2011) 12 SCM (Pt. 2) 284, (2011) 17 NWLR (Pt 1277) 663, (2012) All FWLR (Pt. 608) 849; Uguru v. State (2002) FWLR (Pt. 103) 330 at 343- 344 paragraph H-B, (2002) 9 NWLR (Pt. 771) 90; Akpan v. State (2007) 2 NWLR (Pt. 1019) 500; Ogbu v. State (2007) All FWLR (Pt. 361) 1651, (2007) 28 WRN 1 at 8; Nigerian Air Force v. Obiosa (2003) FWLR (Pt. 148) 1224, (2003) 4 NWLR (Pt. 810) 233.

In a further argument, learned counsel submitted that since the prosecution did not call any eye witness, the evidence upon which the appellant was found guilty is hearsay which is not of high quality and credibility that could justify the affirmation of the conviction of the appellant who is charged with a serious offence such as murder that attracts a death penalty. In aid, learned counsel cited Benson Obiakor v. State (2002) FWLR (Pt. 113) 299 at 313 paragraphs E-F, (2002) 10 NWLR (Pt. 776) 612; Onah v. State (1985) 3 NWLR (Pt. 12) 236, (1985) 12 SC 59; Oforlete v. State (2000) FWLR (Pt. 12) 2081 at 2097 paragraphs C-E, (2000) 12 NWLR (Pt. 681) 415.

Still in argument, learned counsel referred to the evidence of PW12, a police officer, who according to him, concluded that the appellant killed the deceased without exploring other angles in the investigation process that might have resulted in the killing of the deceased by a third party as there was evidence of unresolved mysterious death of late Baba Toyin which occurred earlier in the community and the murderer was not found. Learned counsel also submitted that the failure of the prosecution to tender the weapon used in killing the deceased is fatal to the prosecution’s case and that the circumstantial evidence applied by the lower court to convict the appellant is not cogent, complete and unequivocal and does not lead to the irresistible conclusion that the appellant and no one else killed the deceased. Learned counsel urged this court not to believe the evidence of PW1 on the issue of the doctrine of last seen with the deceased, as there was no evidence that the appellant was the last person seen with the deceased.

Finally, learned counsel urged this court to allow the appeal.

Learned counsel for the respondent submitted that the learned justices of the Court of Appeal rightly affirmed the decision of the trial court on the ground that the prosecution proved the charge of murder beyond reasonable doubt against the appellant.

Having analysed the evidence before him, the learned trial judge had this to say:

“Therefore head or tail, in other words, whether by confessional statement of the accused person (exhibit B1) or circumstantial evidence, the prosecution has proved beyond reasonable doubt that the death of the deceased was caused by the accused person. As a result, I hold that the second ingredient of the offence has been proved by the prosecution.”

The learned trial judge also held that the third ingredient of the offence of murder was proved beyond reasonable doubt and in the final analysis, he held that the prosecutor had proved his case beyond reasonable doubt.

The lower court in its judgment upheld the decision of the trial court in the following words:

“As it is, it seems to me that all the four issues raised from grounds of appeal in the appellant’s brief were carefully dealt with in the judgment of the trial judge.

Specifically on the first issue raised, I hasten to agree with the trial judge that the prosecution proved all the elements of the offence of murder against the appellant.”

I wish to state clearly that assessment and/or appraisal of oral evidence and ascription of probative value to such evidence is the primary duty of the trial court. An appellate court has no jurisdiction to interfere with that duty unless there are special circumstances that warrant such interference. Learned counsel for the appellant has accused the lower court of failing to evaluate the evidence of the prosecution and the defence by the trial court. Has he shown any special circumstances that would warrant such interference? In Eyo v. Onuoha (2011) 11 NWLR (Pt. 1257) 1 at 38-9 paragraphs G-A, this court per Tabai JSC said:

“It is settled principle of law that the duty of evaluation of evidence is pre-eminently that of the trial court which alone has the benefit of seeing and hearing witness in the course of the testimonies; it is the trial court that has the singular benefit of watching the demeanour of witnesses in the course of their testimonies... As a general rule therefore, an appellate court would not disturb the findings of a trial court unless it is proved that the findings are not supported by the evidence on record and therefore perverse.

This is because of the appellate court’s disadvantage of not having seen or heard the witnesses.”

See Attorney-General, Oyo State v. Fairlakes Hotels Ltd (No. 2) (1989) 5 NWLR (Pt 121) 255, (1989) 12 SCNJ 1; Are v. Ipaye (1990) 2 NWLR (Pt. 132) 298, (1990) 3 SC (Pt. 11) 109; Onwuka v. Ediala (1989) 1 NWLR (Pt. 96) 182; Anaeze v. Anyaso (1993) 5 NWLR (Pt. 291) 1, (1993) 5 SCNJ 151; Abisi v. Ekwealor (1993) 6 NWLR (Pt 302) 643, (1993) 7 SCNJ 193.

In the course of this judgment, I will give reasons why there were no exceptional circumstances, where the lower court had to evaluate the evidence before the trial court. However, I wish to start by clearly pointing out that the offence for which the appellant was charged and convicted carries the maximum sentence known to our criminal jurisprudence. Even at the risk of repetition, I wish to reiterate that the appellant was sentenced to death. It follows therefore that before a judge will reach such a verdict in which someone’s life is at stake, he must be absolutely sure that the prosecution has proved beyond reasonable doubt, the guilt of the accused person. For the law is settled that if the commission of a crime by a party to any proceeding is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt. The burden of proving that any person has been guilty of a crime or wrongful act is on the person who asserts it, whether the commission of such act is or is not directly in issue in the action. See section 135(1)(2)(3) of the Evidence Act, 2011, Adamu v. Attorney-General, Bendel State (1986) 2 NWLR (Pt. 22) 284; Akpan v. State (1990) 7 NWLR (Pt. 160) 101; Khan v. State (1991) 2 NWLR (Pt. 172) 127.

Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999, provides that every person who is charged with a criminal offence shall be presumed innocent until he is proved guilty. Flowing from above therefore, the burden of proof in criminal cases is on the prosecution who must prove its case beyond reasonable doubt, and a general duty to rebut the presumption of innocence constitutionally guaranteed to the accused person. This burden never shifts. See Alabi v. State (1993) 7 NWLR (Pt. 307) 511 at 531 paragraphs A-C, (1993) 3 SCNJ 109; Solola v. State (2005) All FWLR (Pt. 269) 1751, (2005) 11 NWLR (Pt. 937) 460, (2005) 15 SC (Pt. 1) 135. In mufutau Bakare v. State (1987) 1 NWLR (Pt. 52) 579, (1987) 3 SC 1 at 32, Oputa JSC defined “proof beyond reasonable doubt” in the following words: “Proof beyond reasonable doubt stems out a compelling presumption of innocence inherent in our adversary of criminal justice. To displace this presumption, the evidence of the prosecution must prove beyond reasonable doubt, not beyond the shadow of any doubt the offence charged. Absolute certainty is impossible in any human adventure, including the administration of justice.” See Bolanle v. State (2005) 7 NWLR (Pt. 925) 431, (2005) 1 NSCC 342 at 359. Where the prosecution fails to prove the case beyond reasonable doubt, the accused must be discharged and acquitted.

In a case of murder such as the one herein, the prosecution must prove by credible evidence:

(i) That the death of a human being has actually taken place;

(ii) That such death was caused by the accused; and

(iii) That the act or omission of the accused which caused the death of the deceased was intentional or with knowledge that death or grievous bodily harm was its probable consequences. See Ogumo v. State (2011) NWLR (Pt. 1246) 314; Gira v. State (1996) 4 NWLR (Pt. 443) 375; Chukwu v. State (2013) All FWLR (Pt. 666) 425 at 437 paragraphs E-H, (2013) 4 NWLR (Pt. 1343) 1.

Both the appellant and the respondent have admitted that Olaleye Kolade is dead. They also agreed that the deceased died on or about 3 December 2011. However, the learned trial judge relied heavily on the evidence of PW1 and exhibits B and B1 in holding that the death of the deceased was caused by the appellant and that such death was intentionally caused. Was the lower court right in affirming such conclusion? PW1 is Olabisi Kolade, a junior brother of the appellant. He testified before the trial court that on 3 December 2011, he left Oja-Odan in the morning to see his father who was living in a farm house with the appellant. When he got close to the farm, he met the appellant on his father’s motorcycle. The appellant told him that their father had died. He could not believe the story. However, when he went into the house, he saw his father’s corpse on the mat. He noticed some nail marks on the deceased neck and suspected that his father did not die a natural death. Under cross-examination, PW1 admitted that it was only the appellant and the deceased that slept in the farm house that night and there was nobody else with them when the deceased died. In exhibits B and B1, appellant confessed to the crime and even took the police to the scene of the crime and demonstrated how he strangled his father to death. Exhibits B and B1, were admitted in evidence without any objection. In his evidence-in-chief, the appellant set up a defence of alibi, by testifying that he was in Baba Abiola’s house to buy cigarette after which he went to his maternal grandmother’s village to sleep. The defence of alibi was rightly in my view rejected by the trial court and the Court of Appeal was right in affirming the decision of the trial court on that score.

Whenever an accused person intends to set up a defence of alibi, he should do so at the earliest opportunity during the investigation to enable the investigation police officer to investigate the allegation of being elsewhere when the offence was committed. Where it is done for the first time in court, as in this case, the defence does not avail the accused person. This is so because at that stage, the investigation had been concluded and there is no way the truth of the defence could be tested. See Ikemson v. State (1989) 3 NWLR (Pt. 110) 455, (1989) 6 SCNJ 54; Idiok v. State (2006) All FWLR (Pt. 333) 1788, (2006) 12 NWLR (Pt. 993) 1; Dagayya v. State (2006) All FWLR (Pt. 308) 1212, (2006) 7 NWLR (Pt. 980) 637, (2006) 2 SCM 33.

The appellant was therefore, the last person seen with the deceased and this he admitted in his statement when he said:

“Many of us were living in my father’s house but we were going to Oja-Odan and coming back into the village. Some of us that were living with my father from time to time include my father’s wife, PW1 and PW1’s wife.”

At the early hours when PW1 met the appellant on their father’s motorcycle, the appellant could not have been coming elsewhere other than his father’s house where he slept. For this reason, he had the duty of explaining what happened to his father.

The next question is whether the appellant resiled from the confessional statement, exhibits B and B1, which he volunteered at the police station and which was admitted without objection. During his evidence-in-chief, the appellant was shown exhibits B and B1, as well as exhibits D and E by his counsel, and the appellant in answer said: “I do not know the documents now shown to me by my counsel.”

Could that mean that the appellant resiled from exhibits B and B1. An accused person can resile from his statement to police in one of two ways, that is:

1. He can say that he never made the statement at all; or

2. That he made the statement or signed it, but not voluntarily. See Nwangbomu v. State (1994) 2 NWLR (Pt. 327) 380, (1994) NACR 91, where this court held that the mere denial by an accused of having made a statement confessing to the crime charged is a question of fact that the trial court must decide. It does not make the statement inadmissible. It must however, be considered along with the entire evidence and circumstance of the case for the weight to be attached to it. Even if the statement by the appellant that he did not know the document shown to him by his counsel amounted to resiling from exhibits B and B1, it will appear that resiling from the said exhibits is negatived by the evidence that he was the person last seen with the deceased; something outside the confessional statement which shows that the confession is true. Indeed the confessional statement of the appellant is consistent with the facts established at the trial, To this extent, the lower court was on a strong wicket when it upheld the judgment of the trial court.

In the instant appeal, even though there was no eye witness to the killing of the deceased, exhibits B and B1, being the confessional statements of the appellant, freely and voluntarily made, is sufficient to ground the conviction and sentence passed on the appellant. For the law is settled that an accused person can be convicted solely on his confessional statement if same is made voluntarily. See Ntaha v. State (1972) 4 SC 1; Ikemson v. State (1989) 3 NWLR (Pt. 110) 455, (1989) 6 SCNJ 54; Saidu v. State (1982) 4 SC 41, (1982) 13 NSCC 70.

The last ingredients to be established by the prosecution is whether the act or omission of the accused which caused the death of the deceased was intentional with knowledge that death or grievous bodily harm was its probable consequence.

In his confessional statement, which was admitted and marked exhibit ‘B’, the appellant admitted that he strangled his father (the deceased) to death by pressing his neck while the deceased was sleeping on his locally made bed. The appellant further admitted in his second confessional statement, exhibit D that his father had participated in the conspiracy that sent his wife out of his house and had metaphysically killed two of his children. This is what he said:

“My wife had divorced me last month, being November 2011 and it was my father, now deceased that conspired together with some of the family members to drive my wife. My deceased father also conspired with my in-laws and killed my two children in a spiritual way.”

From the appellant’s admission, it is very clear he had formed intention to kill the deceased. By pressing the deceased neck, a vital part of the body, the appellant knew that his act would lead to the death of the deceased. For the law presumes that a man intends the natural consequences of his acts. See DPP v. Smith (1960) 3 All ER 161; Akinkumi & Ors. State (1987) 1 NWLR (Pt. 52) 608, (1987) 3 SC 152. There is therefore no doubt in my mind that the act of the appellant and his intention before the act have so correlated as to lead to the guilt of the appellant.

For the reasons I have set out in this judgment and the more elaborate reasons in the lead judgment of my learned brother, the sole issue formulated by me is resolved against the appellant. In the result, I find this appeal lacking in merit and same is dismissed by me. I abide by all the consequential orders made in the lead judgment.

Appeal dismissed