

IN THE HIGH COURT OF ANAMBRA STATE OF NIGERIA

IN THE HIGH COURT OF AWKA JUDICIAL DIVISION

HOLDEN AT AWKA

SUIT NO.A/26C/2014

BEFORE HIS LORDSHIP, HON. JUSTICE DENNIS C. MADUECHESI,
DELIVERED ON THE 10TH DAY OF APRIL, 2018.

BETWEEN

STATE

V

KINGSLEY NWABUEZE

JUDGMENT

The defendant was arraigned on information dated 20/6/14 but filed on the 13/8/14. He was charged with a two count charge of conspiracy and murder contrary to Sections 495 (a) and 274 (1) of the Criminal Code, Cap 36, Vol II, Revised Laws of Anambra State, 1991.

On the 11/6/15, when the defendant was to take his plea, it was discovered that he has no legal representation. Thereupon the court appointed E.N. Onyibor Esq. to take up the defence of the defendant. Mr. Onyibor accepted and volunteered to appear for the defendant on pro bono basis. Thereafter, the defendant pleaded not guilty to all the charges.

On the 15/9/15, trial commenced. The prosecution called five witnesses, namely:

1. Nnaemeka Obiageli Gift – PW1
2. Nnaemeka Adaeze Chisom – PW2
3. George Nwokike Oranekwulu – PW3

4. Inspector Ikpi Okoi – PW4
5. Dr. Chinonye Emmanuel Okafor – PW5

The prosecution also tendered the following documents as exhibits:

- (i) The extra judicial statement by PW1 – exhibit “P1”
- (ii) The extra judicial statement by PW3 – exhibit “P2”
- (iii) The extra judicial statement of the defendant – exhibit “P3”
- (iv) An additional extra judicial statement of the defendant – exhibit “P4”
- (v) The police Interim Investigation Report – exhibit “P5”
- (vi) Coroners report – exhibit “P6”
- (vii) Further extra judicial statement of the defendant – exhibit “P7”
- (viii) The Nigerian Police case file – exhibit “P8”

The defendant testified as DW1 and called no witness. At the close of evidence, learned counsel for the prosecution and that of the defendant filed their respective written addresses. On 24/1/18, both counsel adopted their respective addresses as their final submissions.

SUMMARY OF THE FACTS OF THE CASE

This case revolved around the death of one Ikenna Nnaemeka on the 1/01/14. The deceased was a native of Umuife village, Urum in Awka North Local Government Area, of Anambra State.

It was alleged that in the morning of the 1/01/14, some telephone handsets belonging to members of the deceased’s family were stolen. The deceased and his sisters went to the house of the Chairman, Vigilante Security outfit in Urum, one Charles Akwuobi, to report the theft of his sister’s Black Berry phone, his mother’s HTC, Tecno and Nokia handsets by unknown

persons. The deceased named the defendant as his suspect. While they were still within the vicinity of the premises of the said Vigilante Security Chairman, they heard the ringing tone or booting sound of one of the handsets near a bush adjacent to the said Vigilante's Chairman's house. The deceased went to the place to know who was using the phone. He saw the defendant who then ran away. The deceased pursued him. The deceased was not seen again. His corpse was later recovered a couple of days later.

The defendant was apprehended by Urum youths. He was nearly lynched by the youth but the police men from Area police command, Awka rescued him. The police took him to hospital for treatment. The defendant was subsequently arrested, interrogated and detained.

It was alleged that the defendant made confessional statements when he was arrested. In those statements, he stated that it was Emeka Eze, Ikcechukwu Onugbu and Nwa Odogwu Mgbakwu and himself that were responsible for the killing of the deceased. He was later transferred to SARS, Awkuzu for further investigation. He took policemen to a fenced compound where the remains of the deceased were recovered.

The defendant denied all the allegations and claimed that he was tortured to make the confessional statements.

Evidence of Obiageli Gift Nnaemeka – (PW1).

She is a sister to the deceased. She testified that in the morning of the 1/01/14, she was in their family house when her younger sister raised an alarm that her handsets comprising Black Berry and Nokia brands had been stolen. They searched for the phone handsets without success. Another of her younger sister came back from an errand and informed them that she saw somebody sleeping at a school near their house. They

and the deceased went to the school. The deceased woke up the defendant who was sleeping. They discovered that the defendant had injuries all over his body. Upon enquiry, the defendant told the deceased that he came to wash his clothes. That he was living with one Charles Akwuobi, alias Ozonma, who was the Chairman of the Vigilante Security outfit. The defendant denied taking the handsets. That their mother intervened and asked them to leave the defendant. The deceased compelled the defendant to leave the place. The defendant reacted by telling the deceased that he had done his worst.

Later that day, she was coming with the deceased from Nibo, when her younger sister called to notify her that the defendant came to their house to steal all their telephone handsets. The deceased went to the school to look for the defendant but he was not there. Then, they went to the house of the said chief Akwuobi, the Chief Vigilante Security to lodge a complaint.

That the vigilante chairman admitted knowing the defendant and promised to get him. As they were leaving the compound, one of the handsets rang. They looked at the direction where it rang and saw the defendant. The deceased pursued the defendant. That was the last time they saw the deceased alive. They kept vigil waiting for the return of the deceased on that day but he did not return. At about 1 am to 2 am the following day, the defendant came to their house to steal the deceased's car. They raised alarm and the defendant ran away. After four days, the deceased's body was recovered in a plot behind the compound of the said Chief Akwuobi alias Ozonma. The police also recovered the deceased's car key from the defendant. The Nokia handset was recovered from the President General of Urum town, while the HTC handset was recovered around the scene.

Under cross examination, PW1 admitted that she and her siblings did not see the defendant when he stole the handsets. She did not see the defendant when he killed her brother. She did not see the defendant fighting with the deceased. That on the day they went to the house of the Vigilante Security chairman, there was no electricity light but the Vigilante chairman was operating his electric generator that day. That the defendant was not in the house but when the telephone handset booted or rang, they saw the defendant. That distance from Chief Akwuobi's house to the place where they saw the defendant was not up to a pole. They saw the defendant when they were in front of Chief Akwuobi's house. She did not examine their brother's corpse to ascertain whether there are machete or gunshot wounds. That neither her late brother nor any member of the family had any dispute in the town and in the family. She admitted she made extra judicial statement to the police. The statement was admitted and marked as exhibit "P1"

Evidence of Adaeze Chisom Nnaemeka (PW2).

She is a sister to the deceased. On the 1/01/14 she was preparing to attend church service, she discovered that her handsets were no where to be found. After searching for the phones without seeing them, she left for the church. When she came back she resumed searching for the handsets.

One of her cousins notified them that she saw someone loitering at a school near their house. The deceased, herself and others went to the school and saw the defendant. He had wound all over his body. Her late brother enquired from the defendant the reason he was there and who he is. The defendant told the deceased his name and that he is from Nkanu Enugu State. The deceased wanted to compel the defendant to leave the school but for the intervention of their mother. The defendant threatened to

retaliate against the deceased but nobody took him seriously. That their aunt later told them that the defendant had earlier stolen a goat and was beaten up and was arrested by the police but was later granted bail. Thereafter, she left for Nibo with the deceased and her sister. Later, they were notified that someone had stolen her sister's phone and that of her mother. Upon their arrival, the deceased left with his car key for the school where they had earlier seen the defendant. She and her sister followed him. The defendant was not at the school. They went to the Chief Security Vigilante man, chief Akwuobi alias Ozonma, to lodge a complaint. He promised to bring the defendant. As they were leaving his house, the handset that belongs to their mother rang. Her late brother went to the spot where it rang to check who was with the handset. He saw the defendant who took to his heels. The deceased gave him a chase. They waited till very late in the night for their brother to come back but he did not. Chief Akwuobi then advised them to go back to their house that their late brother would return. He escorted them back home. At their house, they kept vigil waiting for their late brother to return. Between 1am to 2am the following morning, they noticed a movement in a bush near their house. They checked and saw the defendant. He ran away. The defendant was later arrested by the youths of the town on the 2-1-14. They found the deceased car key on the defendant. The defendant was handed over to the police. Four days after he was arrested, he took the police to the place where the remains of the deceased were recovered.

Under cross examination, PW2 admitted that she did not see the defendant when he stole the handsets. That they did not see the handsets on the defendant when her late brother confronted the defendant at the school. That their house is the only house near the school. That she did not witness when the defendant was beaten up. That the defendant was the last person

she saw with the deceased when the latter pursued him. That she did not see when the defendant fought with her late brother neither did she see when the defendant killed the deceased. That she saw the corpse of the deceased but did not examine him to check whether there was machete cut or gun injuries on him. The deceased's full name was Frederick Ikenna Nnaemeka.

GEORGE NWOKIKE ORANEKWULU (PW3).

He knows the deceased. The deceased was his nephew. On the 2/1/14, the deceased mother (who is the PW3's sister) called him on phone and narrated the incident of 1/01/14 to him. As a result of the information, he went to his sister's house and confirmed what he was told. He confronted chief Akwuobi who showed him the road on which the deceased pursued the thief. He assisted in organizing a search party. The Urum youths also joined in searching for any trace of the deceased. He was amongst those that reported the entire incident to the police. While he was at the police station, he was called and informed that the thief had been apprehended. He went with the police to Akaeze village square where the thief was held. There they saw it was the defendant and when the police conducted body search on the defendant, the deceased's car key and stolen handsets were recovered from him. The defendant was then arrested and taken to the hospital. After receiving treatment, the defendant was detained at Police Area Command. The Area Commander ordered that the defendant be transferred to SARS Awkuzu. At SARS office, the defendant volunteered information revealing where the remains of the deceased would be recovered. The defendant led the SARS operatives to a house near the said chief Akwuobi's house. He and others followed the operatives to that

place and the remains of the deceased were recovered. He was one of those that identified the corpse to be that of the deceased.

Under cross examination, PW3 denied that what he wrote in his extra judicial statement and the evidence he gave in court were based on what he was told by the deceased's sisters. He admitted that he was not present when the deceased pursued the defendant. He saw the deceased remains before it was buried. He saw a puncture around the deceased's neck but he did not know what was revealed in the autopsy report. He stated that it was the person the deceased was pursuing that killed him. That it was the defendant that killed him since the deceased's car key and his sister's and nieces' stolen handsets were recovered from him. The defendant also showed the police where the corpse of the deceased was recovered.

INSPECTOR IKPI OKOI (PW4)

He is the police officer attached to SARS Awkuzu. He was the Investigating Police Officer that investigated this case. According to him, a case of kidnapping, murder and stealing was transferred from Police Area Command Awka to SARS Awkuzu. One Ephraim Nnaemeka was the complainant and he made statement. Other independent witnesses also made statements. The defendant was re-arrested and charged. He made a confessional statement under caution. He took the defendant to his superior, one DSP Sunday Okpe who attested to the defendant's confessional statement. The defendant mentioned Samuel Anowai, the president general of Urum town. He was arrested. The defendant led the police to the place where the corpse of the deceased was recovered. That it was the PW1, PW2, and PW3 that narrated the facts of what happened to him. The following documents were tendered through PW4. The defendant's confessional statements to the police and the police

investigation report. The documents were received and marked as exhibits "P3", "P4" and "P5" respectively.

Under cross examination, PW4 admitted that he was not the first officer that investigated the case; the defendant was treated by a nurse when he was in detention. The defendant was treated of the wounds he received when he was beaten by the mob. The police found the decomposing body of the deceased in a fenced compound. The relations of the deceased identified him; there were marks of injury on the body of the deceased when he was found.

DR CHINONYE EMMANUEL OKAFOR PW 5

He is a medical practitioner. He performed post mortem on the deceased. He was invited by the police to perform the post mortem. He identified the body or corpse as that of Ikenna Nnaemeka. He was briefed by the police that the deceased was killed on the 1/01/14. He discovered that: (1) there were no marks on the body of the deceased except on the anterior aspect of the neck or the cervical of the neck; (2) there were punctuate lesions on the anterior aspects of the neck. Upon his enquiry, the morticians told him that they were not responsible. He concluded that the lesions were as a result of consistent pressures on the neck because there were no similar lesions on the body.

The pressure caused the trachea to close which affected the oxygen supply to the other parts of the body. He concluded that the cause of death was low oxygen tension in the brain otherwise called cerebral hypoxia and this triggered cardiac arrest suffered by the deceased. He reduced his conclusions in writing. The prosecution tendered the CTC of the PW5's report and it was received in evidence and was marked as exhibit "P6".

Under cross examination, the PW5 stated inter alia: Regina Caeli Hospital is a specialist hospital. He is not a forensic expert but as a doctor he can perform post mortem. He is not a consultant pathologist but post mortem is multi disciplinary work. He has practised as a forensic pathologist in many murder cases and in several hospitals and even in Republic of Seychelles. He has done over one hundred reports in the past thirty years. That post mortem and autopsies could be performed at the place where the corpse is kept and it must not be at the Teaching Hospital.

He conceded that exhibit "P6" did not contain the medical history of the deceased because he did not treat the deceased when he was alive. That he merely ascertained the cause of death. That medical history of the deceased was impossible to be ascertained because he saw the deceased when he was already dead. He conceded that the medical history of a deceased might be important but such history could be misleading particularly when performing a post mortem. He further conceded that he reached his conclusions based on his physical examination of the deceased. That it is the best practice adopted all over the world. That he performed the autopsy and post mortem thirteen days after the death of the deceased. That liquefaction usually sets in after eight hours until rigor mortis; and in four days, bloating of the abdomen starts and if arrested at this stage, further decomposition stops. That he did not dissect the body of the deceased. That there are many other factors that could have led to the cerebral hypoxia which the deceased suffered. The prosecution closed its case after PW5's cross examination.

In his defence, the defendant testified as follows: That before being taken to the prison, he was living at Akaeze village, Urum. He was cement block moulder. That on the day in question, he was doing his work at a school when rain started to fall. He took shelter in one of the classes of the school.

He fell asleep. He was woken up by a man who was accompanied by four women. That they told him that a thief stole their handsets. The man asked him whether he saw any person that came by the place he was. He told them he did not see any body. He was asked to stand. He complied. They searched him but nothing was found on him. He told them the name of the person that engaged him to mould the blocks. He gave the phone number of the man. He also told them the name of his landlord. They ordered him to leave the site. He pleaded with them to allow him finish moulding the blocks from the mixture of cement and sand he had already prepared but they refused. That they accused him of knowing the person that stole the phones. That the man amongst them slapped him. He left his equipment there and went to his landlord who was the chairman of the vigilante security service of the town. After laying his complaint, he was told to contact the person that gave him the job. He went to the man's house and could not find him. He, however, narrated the incident to his wife who then called her husband whose name is Sir Uche. He also narrated the problem to him. That Sir Uche lodged a complaint to the vigilante security chairman. The vigilante chairman took them to the deceased's family house. No body was present in that house. Then they went to the police at Mgbakwu to make a formal complaint. The next day, Sir Uche alongside with him took the police to the deceased's house but the police met his mother. The police requested her to tell her son that he was needed at the police station, Mgbakwu. In the evening of the same day, he was accosted by the youths of Akaeze village. He was beaten up and was taken to the village square in a wheel barrow. The policemen from Area Command, Awka came to his rescue. They asked about the thief that was caught. He was pointed out to them. He was arrested and taken to the station but was later taken to Regina Caeli, Hospital Awka for treatment. The next day, he

was taken back to the station, interrogated, tortured and subsequently taken to SARS, Awkuzu. At SARS, he was further interrogated and tortured. He was given an already written statement to sign. Initially, he declined to sign. He was told that if he refused to sign, he would be killed. He signed the statement after he was shot at his leg. That he did not write the statement but the police at SARS wrote the statement. That the vigilante security chairman, known as Ozomma, Anowia Obiorah and Angus Nkemdilim were equally arrested and detained. However, the vigilante chairman and Anowia Obiorah were later freed. The said Angus Nkemdilim later told him that he was the one that killed the deceased. The defendant denied making any statement at the Police Area Command, Awka. He stated that a bullet was extracted from his leg but does not know where the bullet was kept. That he did not know what led to the release of the vigilante security chairman and the said Anowai Obiorah from the detention.

Under cross examination, he admitted that at the time he had encounter with the deceased and the four women, he did not know that the deceased's name was Nnaemeka. That the stolen phones were not found on him. He admitted that it was policemen from the Area Command that rescued him from the youths. That he heard all the evidence of the prosecution witnesses because he was in court when they gave evidence. That his landlord's statement to the police did not agree with his. That his landlord whom he referred to as Ozomma is also known as Charles Akwuoba. That he was residing at Mbgakwu before he came to live in Urum. He denied that he told the court that he, Sir Uche and the police went to the deceased's house on 2/1/14. Rather that he told the court that he went to the deceased's house on the 1/01/14. That he was already detained on the 3/1/14.

He was remanded in prison by the orders of the Magistrate Court.

ISSUES FOR DETERMINATION.

The defendant's counsel: E.N.Onyibor Esq, raised the following issues for determination:

- (1) Whether the prosecution has put distinct evidence before the court to justify the inclusion of conspiracy as a separate count before the court and if yes, was conspiracy proved by the prosecution before the court with the evidence before the court.
- (2) Whether the prosecution has proved count II beyond reasonable doubt as to warrant a conviction?

The prosecuting counsel: F.C.Okeke Esq, formulated a lone issue for determination, to wit:

Whether the prosecution has in the special circumstances of this case proved the case of conspiracy and murder against the accused person by credible evidence adduced at the trial.

I have critically examined the issues for determination as formulated by both learned counsel, I am much inclined to adopt the one formulated by the prosecuting counsel. My reason for doing so is because of its brevity and, of course, it also captured the issues raised by the defendant's counsel.

THE ARGUMENT OF BOTH COUNSEL.

The learned defence counsel submitted that the prosecution failed to call evidence to establish the offence of conspiracy. He relied on the following cases Clark & Anor .v. The State (1986) 4 NWLR (pt.35) 381 @ 401 R.

v. Boulton & Ors (1971) 12 Cox C.C. 87, Aiyeola & Ors v. The State (1969) 1 All NLR 303; Njovens & Ors v. The State (1973) NNLR 76 @ 95; Abacha v. The State (2002) 9 MJSC, 1 @ 11, Ogugu v. State (1990) 2 NWLR (pt.134) 539.

It was contended that there is no evidence to show that the defendant, in the instant case, conspired with any body at large. That there was no evidence of meeting of minds between the defendant either by direct evidence or by way of statement implicating the defendant. The court was urged to discharge and acquit the defendant in count one.

Learned counsel further contended that the prosecution failed to prove the case of murder against the defendant. He submitted that the prosecution failed to prove the vital ingredients of murder, namely:

- (a) That the deceased actually died
- (b) That it was the defendant who actively and directly caused the death of the deceased
- (c) That the defendant had the intention or knowledge that his actions would kill the deceased or otherwise cause him bodily harm.

It was argued that where there is doubt in any of the ingredients, it should be resolved in favour of the defendant. Reliance was placed on Amechi v. State (2016) LPELR 40977 (CA). Alao v. The State (2015) 17 NWLR (pt.1488) 245 @ 247.

It was conceded that the deceased died but there are doubts as to whether or not the defendant was the person that actually killed the deceased. It was contended that PW1, PW2, PW3 and PW4 did not see or show that it was the defendant that killed the deceased. That the defendant was not one of those that ambushed the deceased on the day in question. That there is no nexus between the defendant and those that ambushed the deceased.

It was also contended that the evidence of PW4 and PW5 was contradictory with respect to when the corpse of the deceased was recovered. That PW5 gave speculative evidence as to the cause of death of the deceased. That PW5 was not sure of the cause of the death of the deceased. It was contended that the cause of the death and the person who actually killed the deceased was not proved beyond reasonable doubt. Reliance was placed on *Liman .v. State* (2016) LPELR 40260 CA.

It was further submitted that suspicion no matter how strong cannot ground conviction. It was contended that exhibit "P5" further created doubt on the guilt of the defendant. It was submitted that the evidence of PW1 and PW2 was contradictory. That where there is contradiction in the evidence of the prosecution witnesses, it should be resolved in favour of the defendant. Counsel referred to *C.O.P .v. Amuta* (2017) LPELR – 41386 *Aruna .v. State* (1990) 6 NWLR (pt.155) 125 @ 134.

Counsel submitted that the evidence of the defendant was clear, cogent, compelling and sufficient to exonerate him. He urged the court to discharge and acquit the defendant.

Responding to the above defendant's counsel's submissions, the learned prosecuting counsel F.C Okeke Esq, conceded that where commission of crime is in issue, it must be proved beyond reasonable doubt. He referred to *Nwabueze .v. The State* (1998) 4 NWLR (pt.86) 16 @ 27; *Kalu .v. State* (1998) 4 NWLR (pt.90) 503 @ 513 *Buba .v. State* (1992) 1 NWLR (pt.215) 1 @ 18. That the standard of proof cannot be proof beyond all shadow of doubt. He placed reliance on *Bolanle .v State* (2009) 18 NWLR (pt.1172) 1 @ 10; *Igabele .v. State* (2004) 15 NWLR (pt.896); *Ajayi .v. The State* (2014) 10 ACLR, 431. Counsel submitted that an agreement by two or more persons to commit an unlawful act coupled with the intent to achieve the agreement's objectives is conspiracy. He contended that the

prosecution placed sufficient materials before the court to convict the defendant of the offence of conspiracy. He referred to the evidence of PW4 as well as exhibits P3, P4, P5 and P7. He argued that conspirators to the crime were Ikechukwu Onugbu, Emeka Eze, Odogwu Mbgakwu (alias Pacco), Samuel Anowai and others. He relied on *Ahmed .v. State* (1998) 7 SCNJ, 60 to submit that “a common intention need not be based on direct evidence of an express agreement between the perpetrators of an offence charged. It can also be inferred on the circumstances of this case”

He submitted that conspiracy is complete upon an agreement by the conspirators and, in most cases, agreement is inferred or presumed. In all cases of conspiracy, the court must be satisfied with the evidence of complicity of the accused persons in the offence.

That best evidence of conspiracy is usually obtained from one of the conspirators or from inferences. He referred to *Osuagwu .v. State supra*, *Abacha .v. The State* (2003) 3 ACLR, 345 and *Njovens & Ors .v. The State supra*. Learned prosecuting counsel relied heavily on *Abacha .v. The State* where the Supreme Court held that “It is not necessary in order to establish conspiracy that the conspirators should know each other or like those who murdered Julius Ceaser, that they should be seen together coming out of the premises at the same time. They do not have to know each other so long as they know of the existence and intension of the conspiracy... the gist of the offence of conspiracy is the meeting of the mind of the conspirators”

Counsel urged the court to hold that the prosecution proved count 1.

On count 2, prosecuting counsel referred to Section 274 of the Criminal Code Cap 31 Revised Laws of Anambra State 1991. He submitted that the punishment for murder is death.

He contended that in proving offence of murder, three ingredients must be established namely:

- (i) The deceased died
- (ii) The act or omission of the accused which caused the death of the deceased was unlawful
- (iii) Act or omission of the accused which caused the death of the deceased must have been intentional with knowledge that death or grievous bodily harm was its probable consequence.

He referred to *Igabele .v. The State supra*, and *Igri .v. The State* (2012) 6 SCNJ 36.

That the prosecution can prove the case either by:

- (a) An eye witness
- (b) By confession or admission voluntarily made
- (c) By circumstantial evidence positive and compelling and pointing to one conclusion only that the accused committed the offence.

He referred to *Ilodigwe .v. The State* (2012) 7 SCNJ, 483 @ 485; *Abirifon .v. The State* (2013) 6 SCNJ, 501.

It was his contention that the prosecution established the above ingredients by credible evidence. That PW1 to PW5 adduced evidence to show that the deceased was killed on the 1//01/14, his corpse was found in a compound and this evidence was not challenged. He urged the court to accept same. He referred to *Omo .v. JSC, Delta State* (2001) 7 SCNJ 1; *Pascuto .v. Adecentro (Nig) Ltd* (1997) 12 SCNJ, 1; that it was the act of the accused that culminated into the death of the deceased on the ground that the defendant was in possession of the stolen phones and when one of the phones rang, PW1 and PW2 saw the accused before the deceased pursued him but did not return alive.

He submitted that contradictions must be material in order to be fatal to the prosecution's case. He referred to *Ononuju v. The State* (2013) 6 SCNJ, 458, *Peter v. State* (1997) 3 SCNJ, 48.

Counsel referred to exhibits P7, P3 and P4. He argued that the defendant and others strangled the deceased. He referred to exhibits P3 and P4 wherein the defendant admitted same. He contended that special circumstances of the case show pointedly at the acts of the defendant and his cohorts that resulted in the killing of the deceased. He referred to *Edoho v. The State* (2004) 5 NWLR (pt.865) 7, *Igbele v. State*, supra; *Igri v. The State*, supra. He conceded that none of the prosecution witnesses was an eye witness but from the evidence of the witnesses, particularly PW5 together with exhibit P6, the culpability of the defendant can be inferred. He referred to *Adekunle v. The State* (2006) 6 SCNJ 275. Learned counsel reiterated that in the case at hand, the defendant was seen loitering behind the deceased's house before the phone handsets were stolen; he was seen when one of the phones rang; PW1 and PW2 saw the defendant being pursued by the deceased and the deceased never came back alive. That the defendant admitted his involvement via exhibits P3, P4 and P7; the deceased's car keys were found and recovered from the defendant and that it was the defendant that led the police to the place where the remains of the deceased were found. It was contended that all the above established that the defendant and others killed the deceased.

It was contended that there were no contradictions in the evidence of the prosecution witnesses. He referred and relied on exhibit "P6". He submitted that medical evidence is not sine-qua-non to prove death and that the court can deduce same from evidence placed before it. Reliance was placed on *Adekunle v. The State*, supra. Learned counsel argued that the defendant made confessional statements in exhibits P3, P4 and P7. He

submitted that the court can convict the defendant based on his confessional statements. Reliance was placed on Francis Nkie .v. FRN (2014) 5 SCNJ, 103; Afolabi .v. The State (2013) 6 SCNJ, 151, Adekoya .v. The State (2012) 3 SCNJ, 179, Amachree .v. Nigerian Army (2003) 3 NWLR (pt.807) 256, Bature .v. State (1994) 1 NWLR (pt.32) 267. Counsel submitted that the law presumes that the person last seen with the deceased bears full responsibility if it turns that the person last seen with him is dead. He referred to Archibong .v. The State (2006) 5 SCNJ; Igabele .v. The State, supra, Madu .v. The State (2012) 6 SCNJ, 129, Maigari .v. The State (2013) 7 SCNJ, 137, Haruna .v. The State (2012) 3 SCNJ, 431.

He submitted that the deceased was last seen with the defendant coupled with the fact that the deceased's car keys were found on the defendant and it was the defendant that led the police to where the corpse of the deceased was found. It was contended that the evidence of the defendant that he was molding blocks for Sir Uche was not correct in view of his extra judicial statements to the police. That the defendant did not state that he was doing such job in his statements. That the extra judicial statements (ie exhibit P8) of Mr Charles Akwuobi, alias Ozonma, further showed that the deceased pursued the defendant on that 1/01/14. It was also argued that the defendant lied in his oral evidence before the court. That the lies of the defendant did not obviate the expectation of proof of his guilt. He referred to Anekwe .v. State (1976) 9 to 10 S.C 255; Boy Muka & Anor .v. The State (1976) 9 to 10 S.C, 305 @ 326. Counsel submitted that the lies by the accused lent credence to the fact that he committed the offence. Reliance was placed on Udo .v. State (2006) 7 SCNJ, 552, Agbo .v. The State (2006) 1 SCNJ 332. The court was urged to hold that the defendant's evidence was incredible and unreliable. More so, when the defendant

failed to bring Sir Uche and the said Mr Charles Akwuobi to testify on his behalf in order to ascertain the veracity of his (ie defendant's) assertions. Learned counsel urged the court to invoke Section 167 (d) of the Evidence Act against the defendant. He referred to NSC (Nig) Ltd .v. Innis Palmer (1992) 1 NWLR (pt.218) 442, Oguonze .v. The State (1998) 4 SCNJ, 226. He argued that the prosecution proved its case beyond reasonable doubt that the deceased died by strangulation; that it was the defendant that committed the offence and that his act was intentional knowing that death or grievous body harm will result there from. He referred to Omini .v. State (1999) 9 SCNJ, 1.

The court was urged to pronounce on the justice of the case in the light of the evidence before it. Reliance was placed on Josiah .v. The State (1985) 1 NWLR (pt.1) 125.

RESOLUTION OF THE ISSUE FOR DETERMINATION

In criminal proceedings, the prosecution must establish its case against the accused person beyond reasonable doubt. Proof beyond reasonable doubt does not mean proof beyond shadow of doubt. And where there is any doubt in the case presented by the prosecution, such doubt must be resolved in favour of the accused person. See the case of Botu .v. State (2018) 3 NWLR (pt.1607) 410 @ 434.

In order to prove its case, the prosecution relied on the evidence of the above prosecution witnesses. I have reviewed the evidence adduced by the prosecution witnesses and that of the defendant to ascertain whether the pieces of evidence have the potency to meet the standard of proof required in criminal trial.

It is settled that there are four ways to prove the commission of crime, viz:

- (a) By evidence of eye witness; or
- (b) By confessional statement; or
- (c) By circumstantial evidence where direct or confessional statements are lacking ; and,
- (d) Admission by conduct of the accused person.

See the *Ogogogevie .v. State* (2016) 12 NWLR (pt. 1527) 468 @ 486.

Apart from the judicial authorities referred by both counsel, in a charge of murder, the onus of proof is on the prosecution to establish by evidence and beyond reasonable doubt as follows:

- (a) That the deceased died;
- (b) That it was the unlawful act of the accused person that caused the death of the deceased; and
- (c) That the act of the accused caused the death of the deceased which act was intentional with the knowledge that death or grievous bodily harm would be the probable consequence of that act.

All the three conditions must co – exist without any missing or marred by doubt that it could be said that the charge has not been proved. See *Okoh .v. State* (2016) 10 NWLR (pt.1521) 455 @ 470. Also *Afolabi .v. State* (2016) 11 NWLR (pt.1524) 497 @ 525.

It is also imperative to state that offence of conspiracy is the agreement between two or more persons to do an unlawful act, or to do a lawful act by an unlawful means. In other words, the gist of the offence of conspiracy is the agreement between the parties focused towards the realization of their common criminal intent and purpose. See *Njovens .v. State* (1973) 5 SC 17 *Iboji .v. State* (2016) 9 NWLR (pt.1517) 216 @ 228.

In other to prove the offence of conspiracy it is not necessary that the accused persons should have concocted the scheme, the subject of the charge or that they originated or mooted it. Even in a situation where

conspiracy is formed and a person joins it later or afterwards, he is equally guilty with the original conspirators

Where a person or persons are charged with criminal conspiracy, it is usually required that the conspiracy as laid in the charge be proved and the persons charged be so proved to have been engaged in it.

As it is not always easy to prove the actual agreement, court usually consider it sufficient if it be established by evidence, the circumstances from which the court would consider it safe and reasonable to infer or presume the conspiracy. See *Iboji v. State*, supra @ 229; *Ogedengbe v. State* (2014) 12 NWLR (pt. 1421) 338 @ 364 - 365.

In the instant case, the prosecution also relied on the confessional statements made by the defendant, it becomes necessary to state the position of law as it concerns confessions. By the provision of Section 28 of the Evidence Act, the term confession denotes an admission made by a person charged with a crime stating or suggesting that he has committed an offence or a crime. See the case of *Effiong v. State* (2017) 2 NWLR (pt. 1549) 205 @ 225.

Put differently, confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed a crime. A confessional statement is the best evidence that an accused person committed that offence for which he is charged. A direct acknowledgement of such crime should be regarded as a confession. See *Asimi v. State* (2016) 12 NWLR (pt. 1527) 414 @ 431.

To determine the weight to attach to a confessional statement, the following tests can be adopted

- (a) Is there anything outside the confession to show that it is true?
- (b) Is it corroborated?

- (c) Are the relevant statements made in it of facts and true as far as they can be tested?
- (d) Was the prisoner one who had the opportunity of committing the murder?
- (e) Is his confession possible?
- (f) Is it consistent with other facts which have been ascertained and have been proved?

See *Egharevba .v. State* (2016) 8 NWLR (pt.1515) 433 @ 455 – 456; *Effiong .v. State*, supra @ 225.

Once the court is satisfied as to the truth of a confession properly admitted, the court is bound to act on it even if the confession was retracted during trial. See *Mbang .v. State* (2013) 7 NWLR (pt.1352) 48 @ 65.

In long line of cases, it has been held that a confession must be voluntary before it can be relevant and admissible. However, a confession does not become inadmissible merely because the accused person denies having made it; and in this case a confession contained in a statement made to the police by a person under arrest is not treated differently from any other confession.

There is nothing sacrosanct about retraction of a confession. Once a confession of guilt is shown to have been made freely and voluntarily, be it judicial or extra judicial, if it is direct, positive and properly established, it constitutes proof of guilt so long as the court is satisfied as to its truth. See *Dibie .v. State* (2007) 9 NWLR (pt.1038) 30 @ 51.

Apart from relying on the confessional statement made by the defendant in the instant case, the prosecution also relied on circumstantial evidence in its efforts to prove the case.

To sustain a conviction on the basis of circumstantial evidence, circumstances relied upon by the prosecution must be direct and must lead unequivocally and indisputably to the guilt of the accused.

Circumstantial evidence sufficient to support a conviction in criminal trials especially murder, must be cogent, complete and unequivocal. It must be compelling and lead to the irresistible conclusion that the accused and no one else, was the murderer. The facts must be incompatible with innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. Circumstantial evidence must be narrowly examined with utmost care. To be sufficient to ground a conviction, it must point to only one conclusion: namely that the offence has been committed and that it was the accused who committed it. See the case of *Shehu .v. State* (2010) 8 NWLR (pt.1195) 112 @ 143.

The court must consider the totality of the circumstantial evidence to ascertain whether it is compelling, unequivocal, conclusive and indisputable that it is the defendant that committed the crime. See Section 138 (3) of the Evidence Act.

Flowing from the above principles, the following conditions must be met before conviction based on circumstantial evidence can be sustained:

- (a) The evidence must irresistibly and unequivocally lead to the guilt of the accused person;
- (b) No other reasonable inference could be drawn from it;
- (c) There must be no co – existing circumstances which could weaken the inference.

All the conditions must exist in the adduced evidence. See *Ijioffor .v. State* (2001) 9 NWLR (pt.718) 371 @ 384 – 391.

Having set out the legal principles with respect to the respective offences, I would now determine whether the prosecution proved same in this trial.

With respect to the offence of conspiracy, the defendant is alleged to have conspired with others at large to commit the murder of the deceased on the 1/01/14. None of the prosecution witnesses adduced oral evidence to establish that there were other persons that committed the offence with the defendant. However, the prosecution relied on exhibits P3, P4, P5, and P7 to show that the defendant conspired with these persons: Ikechukwu Onugbu, Emeka Eze, and Odogwu Mgbakwu (alias Paco) to kill the deceased.

The defendant made three extra – judicial statements, to wit; exhibits P3, P4 and P7 on the 4/01/2014, 6/01/14, 13/01/14 respectively. For proper comprehension, let me reproduce the contents of exhibits P3, P4 and P7 verbatim,

Exhibit P3 –

“I Kingsley Nwabueze M states as follows: I am a native of Mburubu Village in Nkanu East Local Government Area of Enugu State. Am born to the family of late Mr Nwabueze Onu. I did not go to school due to the death of my parents.

Presently am a job man based in Akaeze village Urum in Awka North Local Govt. I was once living in Mgbakwu, Agu oye Chukwu’s house doing manson (sic) work for over three years before the community youths send (sic) me packing on the ground that am a criminal or thief. I later relocated to Akaeze village Urum in the same Awka North Local Govt. Presently am residing in the house of one Mr Nonso Ifebuche as a manson (sic) man. On the 1st day of January 2014 myself, Emeka Eze M, Ikechukwu Onugbu M and Nwa Odogwu Mgbakwu planned and stole four phones belonging to Ikechukwu Nnaemeka sisters in their house. I don’t know the names of Nnaemeka Ikechukwu sisters but I can identify

them if seen. It was I and Emeka Eze M who went inside their house and stole the four phones while Ikechukwu Onugbu and Nwa Odogwu Mgbakwu were waiting for us outside. The time myself and Emeka Eze M stoled (sic) the four phones, the said Nnaemeka Ikechukwu and his sisters were not around. It was only the mother of Ikechukwu that was around. And the mother did not see us. But when Ikechukwu Nnaemeka came back, he went to the house of Ozonma who is the chairman of Urum vigilante and complained to him that we stole his sisters phones. After the complaint made by Nnaemeka Ikechukwu to Ozonma, the said Ozonma told Nnaemeka Ikechukwu that let him wait for him to change his cloths and carry his gun so that both of them can go and look for us. As at the time the said Nnaemeka Ikechukwu was making the report to Ozonma myself and Emeka Eze where (sic) standing in another compound closed (sic) to Ozonma's house hearing them. When Emeka Eze who was holding the phones wanted to off (sic) one of the phones, in the process the phone rang and Nnaemeka Ikechukwu saw us with the phones and started pursuing us with Ozonma. But the said Ozonma did not know where Ikechukwu Nnaemeka pursued us to. The said Ozonma later returned back because he did not know the direction that Nnaemeka Ikechukwu pursued us to because it was in the night. While Nnaemeka was still pursuing us, Ikechukwu Onugbu and Nwa Odogwu Mgbakwu came out from the bush and joint (sic) us to fight Nnaemeka Ikechukwu inside the bush. As of the time we were beating Nnaemeka Ikechukwu in the bush he was shouting and crying for help until we killed him and put him inside that bush. We first of all put the said Nnaemeka Ikechukwu inside the house I took police to before we killed him and put him inside the bush of that

very fence house (sic). The person who hold the key to house (sic) I took police to yesterday being 04/1/2014 is the said Nwa Odogwu Mgbakwu with Onugbu. The reason which we killed the said Nnaemeka Ikechukwu is because he has (sic) identified us as the people who stole his sisters' phones. After killing Nnaemeka Ikechukwu, I personally earned his car key and went to his house and open (sic) his car to look for money but as of the time I open (sic) the vehicle I did not see any money. I was later arrested by one boy through the youth of the community who beat me to coma and inflicted injury on me before handing me to the police at Area Command Awka. After killing Nnaemeka Ikechukwu, I hard (sic) when Ozonma was telling the youth that he has reported the matter to Mgbakwu police station. Am living closed (sic) to Ozonma but not in his compound. No body sent us to killed (sic) the said Nnaemeka Ikechukwu and we did not plan to kidnap him. The only reason why we killed him is because he has identified us as the people who stole his sister's phones. The said Ozonma did not know what actually happened. It was myself, Emeka Ize, Ikechukwu Onugbu and Nwa Odogwu Mgbakwu that killed the young man Nnaemeka. I know what we did is not good for killing the man. I know all the houses of my gang members. The person keeping our gun is Paco that is Nwaodogwu Mgbakwu. I don't know the name of the gun but I saw that type of gun with police at Awka Area Command Awka."

Exhibit P4

"In addition to my former statement, I freely elect to state as follows; on 1/1/2014 at about 8:00 pm, along Mgbakwu road Urum, the former president General of Urum whose name I do not know could



be identified if seen met me and Ikechukwu Onugbu M and another popularly called Kpako the son of Odogwu Mgbakwu. He told us that he has a business to give to us. I then asked him the type of business. He told us that there is a business he did with one man and he want the man to die. At this point I told him that I will not be a party to such business. Kpako at this point said three of us will go to the native priest at Mgbakwu to take oath of secrecy. The former president General promised to give us One Million Naira (₦1M) after killing the man. He gave us the description of the man and where he lives at Urum. He gave the name of the man as Ikenna. The president General told us that the man has a white Kia car. It was the same former president General of Urum that gave us the description of the story building where the victim will be kept. It is true that I am the person who took the police to the bush where the corpse of Ikenna was recovered close to a storey building. It was when Ikenna was kidnapped that I recovered the key of his KIA car. I have to take the key to his house and as I was opening the sister/ relation raised alarm that was what led to my arrest.”

Exhibit P7 –

“I am a native of Mburubu Nkanu in Nkanu East Local Government Area of Enugu State. I did not attend school atal (sic) because I lost my mother at a very tender age while my father died in the year 2003. I do not know my exact age but my mother’s elder sister, named Onovo Nworji said I should be around eighteen years now. I came to; live in Mgbakwu in Awka North in the year 2010 in the house of Agu – Oye Chukwu of Amaezike. I lived there for about three years as a job man serving manson (sic). It was after three years that the youths of the community sent me packing on the

allegation that I am a thief. I then relocated to Akaeze village, Urum in the same Awka North. I am presently living in a room apartment of Mr. Nonso Ifebuche. It was on January 2013 that I packed into Nonso's house. Presently I am living at Nonso's house moulding blocks for people that engages (sic) my services. On 1/1/2014 at about 7 am, I was sleeping in the veranda of Sir Uche. He is one of the people I works (sic) for. While I was there sir Uche was not around and suddenly one man later known as IKENNA came and woke me up. He asked me that I am the one that stole handset (2) from his compound but I said No. He then searched me but found nothing. He then asked me to leave and never to enter Uche's compound again. I then left to (sic) my residence near Ozonma's place. I heard IKENNA complaining to Ozonma about the missing handsets and the same time demanding to see me as he strongly suspected me of stealing the handsets. I hide (sic) myself and was listening to all he was narrating to Ozonma. Suddenly he sighted me and started pursuing me and I started running with EMEKA EZE, a friend of mine. Prior to this time, Emeka Eze has shown me two phones he stole from a nearby compound which I suspected was the ones (sic) Ikenna was talking and accusing me of. It was at that point Ikenna sighted us and started pursuing us and both of us ran and escape (sic) through Ozonma's backyard. Ikenna was seriously pursuing Emeka Eze and self (sic). Along the road, two boys named PACO (Nwa Odogwu Mgbakwu) and Ikechukwu Onugbu emerged from the track and asked us the person that was pursuing us. Two of us narrated that somebody was pursuing us and they asked us to continue. They did not ask us what we did that caused our being chased. Immediately as we took off again, Ikenna ran to the spot and

PACO and his friend Ikechukwu Onugbu caught him. They held Ikenna and started dragging him to a nearby cashew tree while I continued running with Emeka Eze. I did not know exactly what happened next to Ikenna and the two boys. Emeka Eze and myself slept in the bush that night. As we are trekking from the bush in the morning of 2011/14 at about 7am, I sighted a car key and picked same.

It was along the route we ran from that I picked the key. I do not know the owner hence I picked it and kept it in my pocket. I then went and reported myself to one of Urum boys (sic) named Ik who blamed me for running and at the same time handed me to Urum youths. It was at that point I came to hear that Ikenna was been (sic) looked for (missing). Frankly speaking, I do not know where Paco and Ikechukwu Onugbu took Ikenna to but I can identify the two boys if seen.

At that time, the youths took me to the chairman of the village and started beating me in the presence of the man that handed me over- MR IKECHUKWU. I was beaten up by the Urum youths before police from Area Command came and intervened by taking me to hospital. It was in the hospital that police searched my pocket and recovered both my house key and the car key I picked on the route we ran from which was later identified as Ikenna's own. I did not know the where about of Ikenna but can take the police to where the two boys could be arrested and the spot they took Ikenna that night. Paco is a known thief, he recently returned from SARS for case of armed robbery. That's my statement."

In the course of trial when the extra – judicial statements exhibits P3 and P4 were sought to be tendered through PW4, the following episode transpired:

Mr Onyibor (ie defense counsel) to the defendant “Are you the one that made these statements?”

Defendant: “No sir”

Mr Onyibor: “Who made the statements?”

Defendant: “It was the IPO, SARS that wrote the statement and I did not sign them.”

There after learned defence counsel objected to the admissibility of the extra – judicial statements.

Nonetheless, the court gave a ruling admitting the documents as exhibits. During his examination in chief, the defendant’s counsel put the following question to the defendant:

Qtn: There are statements that were signed by you at Area Command, Awka on 3/1/14 and at SARS, Awkuzu on 4/1/14, what do you know about the two statements?

The defendant answered thus:

“At Area Command, Awka. I did not write any statement. At the SARS, Awkuzu, it was the policemen at SARS that wrote the statement and asked me to sign it otherwise I would be killed if I refuse to do so. Before then I had been shot at my leg by the policemen there”

In his cross examination, the defendant answered to the question put to him by the prosecution counsel, this way:

Qtn: Take a look at this document it was your statement at the Area Command is that correct?



Ans: The statement shown to me now was not the statement I made at Area Command.

The statement was tendered and was received in evidence marked as exhibit "P7" without an objection.

I deliberately reproduced the defendant's extra – judicial statements in order to determine whether circumstances exist to enable me infer or presume conspiracy.

Despite the posture of the defendant towards his extra – judicial statements marked as exhibit P3, P4 and P7, I hold that there is sufficient evidence for me to infer that the defendant indeed conspired with Emeka Eze, Ikechukwu Onugbu and Nwaodogwu Mgbakwu. It is clear that there was an agreement between them. Besides, the defendant in all his oral evidence did not deny that he knows the above mentioned persons.

It is trite that crime of conspiracy is usually hatched with utmost secrecy and the law recognizes the fact that in such a situation, it might not always be easy to lead direct and distinct evidence to prove it. Thus it is always open to the trial judge to infer conspiracy from the facts of the case.

Since the gist of the offence of conspiracy is embedded in the agreement or plot between the parties, it is rarely capable of direct proof. It is invariably an offence that is inferentially deduced from the acts of the parties thereto which are focused towards the realization of their common mutual purpose. See *Iboji v. State*, supra @ 229.

Conspirators need not all have started the conspiracy at the same time. A conspiracy started by some persons may be joined at a later stage or later stages by others. See *Njovens v. State*, supra. The other factors I took into consideration in deducing that there was conspiracy include the fact that, the defendant led the police to where the corpse of the deceased was found; the car keys of the deceased were found on the defendant. The

defendant was not able to adduce any oral evidence to explain how he was able to know where the corpse of the deceased was dumped. He did not explain how he came to have the deceased's car key. However, in the exhibits P3, P4 and P7, the defendant gave versions of the facts concerning the place the body of the deceased was dumped and how he came to have the car key. He further gave vivid explanation of how the deceased was killed and the reason for his killing. In all the exhibits, he mentioned the persons that were involved in the conspiracy. I am completely satisfied with the evidence of complicity of the defendant in the offence. I am in complete agreement with prosecuting counsel that from the circumstances of this case, the case of conspiracy between the defendant and those he mentioned in exhibits P3, P4 and P7 can be presumed. Each of the reasons the defendant mentioned in those exhibits, including the acts of the defendant himself, established the fact that there was common intention between the defendant and those persons he mentioned. Therefore the defendant is liable for that act in the same manner as if it were done by him alone. See *Asimi v. State*, supra @ 434.

I therefore hold that the prosecution proved the offence of conspiracy against the defendant.

The next question is: Did the prosecution prove or establish the guilt of the defendant in the murder of the deceased?

As I have held earlier, the prosecution must prove or establish all ingredients or conditions by evidence beyond reasonable doubt.

It is not in dispute that the deceased died in this case. Both the prosecution and the defendant agreed that Ikechukwu Nnaemeka died. The prosecution relied on exhibits P3, P4 and P7 which were being contended to be confessional statements. In addition, the prosecution relied on

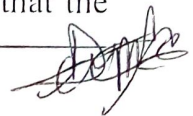
circumstantial evidence to prove that the defendant was one of the persons that caused the death of the deceased.

I have reproduced exhibits P3, P4 and P7 above, I asked myself this question: Do the exhibits amount to confessional statements? From the contents of the exhibits they constitute confessional statements.

I further asked myself the next question: Did the defendant voluntarily make the confessional statements? I am mindful of the facts that the confessional statements had been admitted as exhibits but to ensure that they were rightly so admitted, it becomes necessary for me to critically re-examine the documents. More so, taking into consideration the evidence of the defendant that he did not make exhibits P3 and P4 and that he was compelled to sign exhibit P7. To do that, I put the confessional statements to tests as given by the Supreme Court in *Egharevba .v. State supra* and host of other similar cases. I found that there are other facts and evidence which corroborated the confessional statements.

Firstly, the defendant did not deny that the key to the deceased's car was recovered from him. He actually admitted it in his evidence. It was the defendant that led the police to the place where the deceased body was recovered. The PW4's evidence corroborated the confessional statement. PW5 gave consistent and uncontradicted evidence of the cause of the death of the deceased. That is, the deceased was strangulated.

PW1 and PW2 testified that it was when one of the GSM handsets rang that the deceased saw the defendant and pursued him. The defendant profusely admitted this evidence particularly in exhibits P3, PW4 and P7. The defendant admitted being pursued by the deceased. The defendant appeared to have lured the deceased into the waiting hands of his gang members who assisted in killing the deceased. In other words, the defendant had the opportunity of committing the murder. I found that the



defendant was capable of committing the murder. His confession was possible and there are other facts which have been ascertained and have been proved. For example, the defendant's possession of the car key of the deceased and his leading the police to recover the body of the deceased. In other words, the defendant must have participated in killing the deceased and dumped the deceased's body where he led the police to recover same. PW1 and PW2 gave unchallenged evidence that the defendant was the person last seen with the deceased. Again the defendant impliedly admitted all this evidence in all his confessional statements.

The attempt by the defendant to retract the confessional statements was an after thought. The fact that an accused person had retracted or resiled from his confessional statement does not mean that the court cannot act upon it. See Muhammed .v. State (2017) 13 NWLR (pt.1583) 386 @ 420; Dibia .v. State (2017) 12 NWLR (pt.1597) 196 @ 216.

The retraction or denial cannot avail the defendant. More so, where there are other cogent, unequivocal and direct circumstances that led to guilt of the defendant.

I have considered all plausible defence put up by the defendant, I found none to be in favour of the defendant. In his oral evidence, the defendant appeared to be relying on total denial of the offence. In his extra – judicial statements, the only reason he gave for killing the deceased was that the deceased identified them as those who stole the handsets. By this, the defendant showed the motive behind the crime.

The defendant's denial cannot stand in the light of his confessional statements and circumstantial evidence led by the prosecution. The defendant fabricated a fanciful story in his evidence in chief but he deliberately omitted to say that he actually led the police to the place where the corpse of the deceased was recovered. Certainly I do not believe

the defendant. He gave evidence that the Urum Youths confronted him. However, he omitted to give reason for the confrontation.

The evidence the defendant gave before me was inconsistent with the extra – judicial statement he made to the police. His parole evidence is most unreliable. I took it with a pinch of salt.

From the totality of the evidence adduced in this case, I hold that the prosecution proved its case beyond reasonable doubt. In the final result, I found the defendant guilty of conspiracy in the murder of Mr. Ikechukwu Frederick Nnaemeka.

I equally found the defendant guilty of the murder of late Mr. Ikechukwu Frederick Nnaemeka.

I hereby convict the defendant for the offence of conspiracy and murder of late Mr. Ikechukwu Frederick Nnaemeka.

ALLOCUTUS


Mr. Onyibor prays that the defendant is a first offender and has no previous conviction. Prays that the court should tamper justice with mercy.

I have patiently listened to the plea in Allocutus. The law is clear and direct. The punishment for conspiracy is seven years, and that of murder is death.

From the facts of this case, the defendant and his gang members decided to kill a man because of mere GSM handsets. I do not think that the defendant deserves any mercy because he did not show any mercy to late Ikechukwu Frederick Nnaemeka when the deceased was pleading and crying for mercy.

The law must take its course in order for others who have similar intention to think twice.

In count 1, the defendant is hereby sentenced to seven years imprisonment for conspiracy. In count 2, the sentence of the court upon you, the defendant, is that you be hanged by the neck until you be dead and may the Lord have mercy on your soul.



Hon. Justice Dennis C. Maduechesi

Appearances;

F.C. Okeke, senior State counsel, for the prosecution

E.N Onyibor, Esq for the defendant.