

An Appraisal of the Admissibility of Confessional Statement in a Trial Court in Nigeria

Emokpae, Lugard Amadin^{1*}, Abdulsalami, Lucky Tijani²

¹Department of Business Law, College of Law, Igbinedion University Okada, Edo State Nigeria

²University Librarian Department of Library Science, Igbinedion University, Okada, Edo State Nigeria

DOI: [10.36348/sijlcj.2024.v07i04.003](https://doi.org/10.36348/sijlcj.2024.v07i04.003)

| Received: 23.02.2024 | Accepted: 29.03.2024 | Published: 09.04.2024

*Corresponding author: Emokpae, Lugard Amadin

Department of Business Law, College of Law, Igbinedion University Okada, Edo State Nigeria

Abstract

Confessional statements are important ingredients in criminal justice in Nigeria. A confession is an acknowledgment made by a person charged with a crime at any moment, admitting or implying that he committed that crime. Confessions are covered by sections 27 to 32 of the Evidence Act 1990 in Nigeria as well as section 28 to 31 of the Evidence Act of 2011. The specific goals are a critical examination of the circumstances under which confessional statements are admissible, to determine the effect of retracted confessional statements in criminal trials in Nigeria, as well as the circumstances under which confessional statements may be vitiated and to apply the findings in decided cases. To attain these goals, normative or doctrinal research is considered appropriate. This study found that where an inducement, threat, or promise was issued, any subsequent confessional statement obtained would be inadmissible. This study also reveals that a confession does not become inadmissible simply because the accused denies having made it; rather, the court must satisfy itself that the accused made the statement of his own free will and choice and without duress.

Keywords: Confession, Common Law, Utility, Retracted Confessional Statement.

Copyright © 2024 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0) which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

INTRODUCTION

Confession is a common law phrase for an adverse acknowledgment important to the issues of guilt in a criminal prosecution, and the Evidence Act in Nigeria, 2011 applies the same terminology in adjudication. Confessions are the most frequently encountered exception to the rules against hearsay in criminal cases. The Evidence Act has introduced fundamental changes in the law pertaining to confessions, but in order to understand the principles of admissibility as developed at common law to govern the admissibility of confessions, it is necessary to understand the principles of admissibility developed at common law to govern the admissibility of confessions. We will apparently summarize the most important aspects of the common law rules, we will then proceed to examine the new statutory definition and rules of admissibility of confessions.

While common law recognized that a confession could be both reliable and cogent as evidence of guilt, and indeed saw no objection to a conviction in cases where a confession was the only evidence against the accused, the law also recognized that a confession

could only be considered reliable when given freely and voluntarily. If the confession is coerced, the trustworthiness of the confession may be jeopardized, and the integrity of the justice administration system itself may suffer. The removal of evidence collected through torture, coercion, or other coercive tactics was created by judges in the eighteenth and nineteenth centuries, when the memory of a time when such practices were customary lingered. Its importance might be gauged by the fact that under English law, the rule that a confession gained by oppression must be omitted in circumstances likely to render it untrustworthy is the only instance of the mandatory exclusion of illegality or unfairly obtained evidence. Lord Sumner's speech in *Ibrahim* was the quintessential expression of the common law rule on admissibility of confession. *Ibrahim V. Rabi*

It has been established that no statement made by an accused is admissible in evidence against him unless it is demonstrated by the prosecution to have been a voluntary statement, in the sense that it was not obtained from him by fear, prejudice, or the hope of advantage exercised or held out by a person in authority."

At this point the definition of voluntary is expedient. 'Voluntary' simply means 'of one's own free will' in everyday usage. Lord Sumner's standard of voluntariness was supplemented by Lord Parker C.J in *Callis.V. Gunn's* statement that a confession must not have been acquired in an "oppressive manner" was strictly obiter - the issue challenged the admission of fingerprint evidence. It is a fundamental condition of the admissibility in evidence against any person equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercise or held out by a person in authority. However, when the Judges Rules were updated in 1964, it was stated the rules did not impact the concept that was overriding and applicable Surprisingly, Lord Sumner's expressions 'fear of prejudice' and 'hope of gain' are commonly referred to as 'threats' and 'inducements,' respectively. It raises certain issues in the application of common law admissibility criteria. For a time, the suggestion of some premeditated act in the words 'threats' and 'inducements' caused the courts to focus on the mind of the questioner rather than the mind of the suspect. Because the problem may reoccur, despite the seemingly unambiguous wording of the 1990 act, it is worth investigating briefly. *R.V. Iseguilla* the court of Appeal concluded that:

Under current law, the exclusion of a confession as a matter of law because it is not voluntary is always related to some unlawful or unjustified conduct on the part of authorities. The phrase 'wrong or unjustified' must, of course, include the providing of an enticement, because it is improper in this context for those in authority to try to convince a suspect to confess. "This interpretation of the law would have left the accused with no remedy in a circumstance where, without any unlawful aim and possibly even without recognizing it, the questioner instilled fear of prejudice or hope of advantage in the suspect's mind." In such a circumstance, the resulting confession could be damaging. In such a circumstance, the ensuing confession may be involuntary, yet it is admissible under the *Iseguilla* rule. In *D.P.P.V. Ping Lin*, the House of Lords was asked to decide whether the questioner's or the suspect's state of mind should control the question of voluntariness. The House was adamant that the latter ruled the question of whether or not the confession was voluntary, and hence should also govern the matter of admissibility.

Statement of Problem

The principles of admissibility applied only where there was arousal of fear of discrimination or hope of gain, or oppression produced by a "person in authority." However, the question of who was or was not a person in authority has been settled: a person in authority must have, or reasonably be thought to have, some influence over the suspect's arrest, detention, or persecution, or, in other words, be of a person from

whom a threat or inducement might appear credible. The limitation of the rule in this manner was not significant because the vast majority of confessions are given to police officers and others who are unquestionably individuals in authority, and it has been officially eliminated by the law. (Evidence Act 1990 and 2011).

However, it is still relevant to evaluate it in light of the common law rule that the fear of prejudice or the hope of gain must have been caused by the person in authority, with the result that self-generated fears and hopes do not invalidate the voluntariness of the confessions. However, even when the confession is made to a person who previously held authority, the outcome is different under the new statutory requirements. These differences under the statutory rules have resulted in experts holding opposing views on the definition and extent of confessional statements in Nigerian crime cases such as *Gbadamosi v. State* and *Sunday Onungwa v. State*. While the stated examples emphasized the importance of establishing a precise definition of the idea, this study would go further to clarify the situations under which confessional remarks are acceptable and the efficient use of confessional statements.

Objective of the Study

The study's overarching goal is to analyze the use of confessional statements in criminal prosecutions in Nigeria. The study's specific aims are as follows:

1. to analyze the circumstances under which confessional statements are admissible
2. to assess the impact of withdrawn confessional statements in Nigerian criminal prosecutions
3. to thoroughly evaluate the conditions under which confessional remarks may be tainted, as well as their application in certain cases

Nature and Scope of Confession

A confession was the designation given by common law to an adverse admission by the accused relevant to the issue of guilt in a criminal proceeding. Confessions are covered by sections 27 to 32 of the Evidence Act 1990 in Nigeria, for example. The term "confession" is derived from the Latin word "confessus," which means "completely speak or confess." Confession is defined under the Evidence Act as follows:

A confession is an acknowledgment made at any time by a person charged with a crime, expressing or implying that he committed that crime. A confession, like any other admission, can be given vocally, in writing, by conduct, or in any other way that allows a proper inference to be formed against the maker. Confessions are typically made to police officers or other investigators as a consequence of interrogation, although they can also be made to the victim of an offense, a friend or relative, or any other person.

Confessions are subject to the same law in all circumstances, and it makes no difference whether the

person to whom the confession is made is a person in power. Importantly, while the term 'confession' connotes a full admission of guilt in common law, it has no such meaning in law, either at common law or under the statutory definition. For the purposes of evidence law, any part of a statement that is adverse to the maker and has any relation to the issue of guilt is considered a confession.

Furthermore, according to the definition provided by the Evidence Act, acknowledgment of such guilt can be made "at any time" as long as it is made after the conduct of an offence. A confessional statement like this can even be made before the offender is indicted. The matter of Sunday Onungwa.V State. In this regard, the state is highly illustrative. The appellant was convicted of murder in that instance. It appeared from evidence accepted by the trial judge that, prior to being charged with the offence, the appellant admitted to owning a blood stained machet recovered near the scene of the murder, while also admitting that he had killed the deceased " as a result of the work of the devil".

The admissions were made in the presence of other members of his family, including his elder brother, who also testified, verifying the appellant's admission. The lower court ruled that these "extra judicial" confessions should have been rejected, and that when the admissions were made, it was not decided if the appellant should be charged with any offense, and that no caution was issued to the appellant before they were made. Overruling these arguments, the Supreme Court ruled that "any admission made by a person charged with a crime suggesting the influence that he committed the offence is a relevant fact against the maker, and if made voluntarily, it is admissible in evidence."

Confessions were also defined in Gbadamosi. V. State as follows: "Legally, the word 'confession' means an admission of an offence by an accused person; it means an acknowledgement of crime by an accused person." It is an admission made by a person charged with a crime at any moment expressing or implying that he did the act." A confessional statement must be given freely and voluntarily in order to be admissible as evidence. The accused must do so of his own free will and choice.

I. Characteristics of Confessional Statements

Confessions might be judicial or extrajudicial in nature. Confessions made in court during the course of the procedure are referred to as judicial confessions. Section 27 of the act is obviously broad enough to cover both, but judicial confessions are also directly addressed in sections 218 and 314 of the Criminal Procedure Act, as well as sections 37 of the Evidence Act and sections 157(1), 161(2), and 187(2) of the Criminal Procedure Code. If an accused individual confesses to the offence charged during his trial in court, and such a confession is in the form of a plea of guilt, Section 218 of the Criminal

Procedure Act defines the implications of such a plead ", Sections 161(2) and 187(1) of the Criminal Procedure Code deal with such effects in trials in magistrate courts and High Courts of the Northern State, respectively. It should be reminded that pleading guilty does not constitute an admission of the veracity of the facts included in the dispositions. He simply admits that he committed the cited offense and nothing else.

A statement made by an accused person at a preliminary inquiry is admissible without further proof under section 314 of the Criminal Procedure Act unless it is proven that the magistrate purporting to sign the statement did not in fact sign it, whereas any statement made by an accused person at such an inquiring or at a coroner's inquest may be given in evidence under section 37 of the Evidence Act.

In most cases, 'admission' refers to the admission of a fact pertinent to the crime, whereas 'confession' refers to the admission of guilt. However, the concept of confession appears to be broad enough to encompass an incriminating acknowledgment that falls short of a full confession. An admission made in a civil plea does not constitute a confession for the purposes of criminal proceedings. Furthermore, an extra-judicial acknowledgment of guilt made in a proceeding other than the one designed to prove the confession must have been made by the person and not his lawyer.

The accused in R.V. Asuquo Etim Inyang was a Calabar resident who went through a form of marriage in the church there. Some 18 months later, actions were brought against him in the magistrate court to enforce a support order made against him by the London magistrate's court in relation to a marriage contracted in England seven years before. Counsel for the defendants admitted the facts of the London marriage before the Calabar magistrate's court. The accused himself only testified about his financial situation. At the Calabar assizes, he was charged with bigamy, with the prosecution relying entirely on the two marriage certificates and admissions made before the Calabar magistrate the accused's counsel admitted the facts of the London marriage in Calabar magistrate's court. The accused himself only testified about his financial situation. At the Calabar assizes, he was charged with bigamy, with the prosecution relying entirely on the two marriage certificates and admissions made before the Calabar magistrate. It was decided that because the admissions were not made by the accused, they could not be considered confessions for the purposes of proving the criminal accusation. An extrajudicial confession given orally would carry the same weight as one made in writing.

A confession should be unequivocal and direct. In Raimi Adebisi Afolabi.V. Commissioner of Police, the accused worked as a storekeeper for an Ibadan-based enterprise. When a scarcity in his stores was detected and

brought to his attention by the firm's manager, he told the manager that he had removed several of the stores and sold them to help pay his election expenditures, but he did not specify how much he had sold. During a retrial, he denied the story. The supposed confession was ruled inadmissible since it was neither direct nor positive in relation to the accusations. R.V. Akpan Udo Essien, on the other hand, it was determined that a statement that merely amounts to a confession of implication in the crime cannot be considered a confession under this provision. A man can confess to his own deeds, knowledge, or intentions, but he cannot 'confess' to the acts of others that he has not witnessed and merely has knowledge or hearsay of. The failure of the prosecutor to prove an essential element in the offence charged cannot be cured by an admission of this kind." The question has also been raised as to whether section 27(1), which refers to "an admission made at any time by a person charged," means that a confession, if admissible, must have been made after the arrest.

It was held in R. V. Udo Eka Ebong that a statement can amount to a confession even if made before the accused was charged with the crime. A statement made prior to the conduct of an offense, on the other hand, cannot be considered a confession.

The fact that the accused denied making the confession does not automatically render it inadmissible. In R.V. John Agagariga Itule, the appellant provided a statement to police shortly after being arrested for murder, in which he admitted killing the dead but claimed circumstances that, if accurate, would amount to legal provocation. The following day, he denied making the statement and issued a fresh one in which he rejected all culpability for the deceased's death. His evidence at the trial was substantially in conformity with his second statement. Brett. Ag. C.JF said (at page 465 of the Report)

A confession does not become inadmissible just because the accused person denied making it, and in this regard, a confession contained in a statement submitted to the police by a person under arrest is treated the same as any other confession. The fact that the appellant previously denied making the comment lends weight to his denial, but it is not a basis to disregard the statement." It is now well established that once a confessional statement is allowed in evidence, it becomes part of the prosecution's case, and the judge is obligated to assess its probative value. Egboghonome, V. State. The state, according to Olatawura J.S.C, is instructive. He said inter alia:

"It will be an escape route freely chosen by an accused person without any impediment to evade justice." Allowing a man who has confessed to his crime

to walk out of court a free man simply because he changed his mind will be in the best interests of society; otherwise, the entire trial will be a farce."

II. The Importance of Confessional Statement

Concerning the relevance of confessional statements, the Evidence Act states: "Confessions, if voluntary, are deemed to be relevant facts only as to the persons who make them." As a result, such a confession is admissible. Section 28 specifies the circumstances in which a confession is irrelevant and inadmissible. It states that a confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by an inducement, threat, or promise relating to the charge against the accused person, proceeding from a person in authority, and sufficient, in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it, the accused person is giving up his right to a fair trial, to provide the accused individual grounds that would look reasonable to him if he believed that by doing so, he would obtain any advantage or prevent any temporary evil.

There is no doubt that the provisions apply only to admissibility of confession on behalf of the prosecution and that an accused person may, in order to exculpate himself, give in evidence a confession alleged to have been made by this co-accused, regardless of the method by which it was obtained [1]. Only voluntary confession is relevant and therefore admissible.

There is no definition of the word "voluntary" in the Act. But any confession obtained in any of the manner listed in section 28 is involuntary and thus inadmissible. Therefore the section is a guide as to when a confession is not voluntary.

The burden of proving affirmatively that a confession was made voluntarily is always on the prosecution by virtue of section 27(2) and 13a (1). The prosecution should first prove affirmatively to the satisfaction of the court that a confession was free and voluntary before tendering it in evidence [2]. The burden of proving this never shifts from the prosecution [3]. It is therefore wrong to admit a confessional statement through an accused person during his cross examination by the prosecution as in such a case there will be no positive evidence on which the voluntaries or accuracy of the statement can be founded. In Adekanbi .V. Attorney-Coneral of Western Nigeria [4], the prosecution failed to call the police constable who took the appellant's confessional statement because the judge refused an adjournment for him to be called. The prosecution in the course of the case did not tender that statement. But when the appellant gave evidence in his defence, he agreed

¹R.V. Thompson (1893)2 Q.B.2

²R.V. Martin Priestly 50 Cr. Ann. R. 183

³(1966) 1 All N.L.R 47

⁴Dandare and Majema .V. The state (1967) NMLR 56

under cross-examination that he could read and that he had signed the statement; where upon the prosecution tendered it through him, the appellant's counsel objected to the admissibility of the statement contending that the prosecution had not proved that it had been made voluntarily.

The appellant denied that he read the statement before signing it and protested that it did not represent what he said. The trial judge nevertheless admitted the statement saying that its voluntariness was not in issue but only its accuracy, which according to him, the appellant could still challenge. He also disbelieved the appellant's denials about the contents of the statement. On appeal, the Supreme Court held that the judge erred in admitting the statement. By so doing he seemed to have overlooked the fact that the burden of proving affirmatively that a confession was made voluntarily is always on the prosecution. The court further pointed out that the judge also overlooked the fact that there was no positive evidence on which he could have that the statement was an accurate record of what the appellant had said and that the judge disbelieved the appellant's denials about the contents of the statement, cannot in the case, make up for the lack of positive evidence, since there was no legitimate presumption for the appellant to rebut. It may be pointed out that failure by the prosecution to tender the statement of an accused person before closing its case is a most undesirable practice and one that should not arise through oversight, if in fact prosecuting counsel make it the practice, as they should, always to tender any statement an accused may have made regards to the offence as a matter of course whether or not such statement was in his favour or against him. Where a statement by an accused is tendered in evidence and objection made on the ground that it was not made voluntarily the judge first hear evidence on the point from both parties and make a ruling on the admissibility of the document before receiving or rejecting it in evidence [5].

One way in which a confession may not be voluntary is by inducement. The inducement necessary to render a confession inadmissible is an inducement to merely make a statement. It need not be an inducement to confess the truth or one which is calculated to make the confession an untrue one [6]. An inducement is usually a promise of advantage from confession or a threat of disadvantage from not confessing. The circumstances under which a statement was made may also determine whether not it was voluntary or induced. The inducement may be by words accompanied by conduct from which the promise or threat can be reasonably being implied [7]. A confession elicited from

an accused person as a result of physical violence inflicted on him or of threat of such violence is involuntary and therefore inadmissible [8].

More still, a mere moral adjuration not amounting to a threat or promise does not affect the admissibility of a confession [9]. Under the common law confessions produced by such statement as "you had better as good boys, tell the truth [10], and "Don't run you soul into more sin but tell the truth [11], have been admitted because they are mere admonitions on moral or religious grounds. Also a confession within the meaning of section 27(1) is voluntary and admissible even though it was made out of "juju" [12].

An inducement which renders a confession in admissible must be one "having reference to the charge against the accused person". It must relate to the charge and not to other collateral matters. For an inducement to make a confession inadmissible, section 28 stipulates that it must have been held not by a person in authority. If a confession is made after the impression caused by the inducement, threat or promise has, in opinion of the court been fully removed; it is relevant by virtue of section 30.

Section 31 provides that a confession, otherwise relevant, does not become irrelevant merely because it was made under a promise of secrecy, or consequence of a deception practiced in the accused person for the purpose of obtaining it, or when he was drunk or because it was made in answer to questions which he need not have answered, whatever may have been the form of these questions or because he was not bound to make such statement and that evidence of it be given. Section 32 states that confessional statements made in one proceeding may be used in another proceedings subject to the conditions laid down therein.

III. Circumstances in which confessional statement are admissible

To be admissible, confessional statements must be freely and voluntarily made. Section 27(2) [13], provides:

"Confession if voluntary are deemed to be relevant facts as against the person(s) who made them only". Flowing from this provision, only voluntary confession is relevant and therefore admissible. The "voluntary" is nowhere defined in the Evidence Act. But any confession obtained in any of the manners listed in section 28 of the Evidence Act is involuntary and therefore inadmissible. The section provides: "A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by inducement, threat or promise having

⁵R.V. Viapbong (1961) NRNL.R. 47

⁶Ebhomien and others. V. The Queen 9(1963) 1All N. L. R. 365.

⁷R.V. Bodom (1935)2 WACA 390

⁸Fatumarie V. The King (1950)13 WACA 39

⁹R.V. Reeve (1872)R.I.G.CR.362

¹⁰ R. V. Voison (1918) I. K.B.531; R.V.Wattam (1952)36. Cr App. R. 72

¹¹R.V. Richardson (1971) 2 Q.B, 484 (1971)2 All E.R. 77.3, 777

¹² ibid

¹³ supra

reference to the charge against the accused person proceeding from a person in authority and sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid evil of temporal nature".

Thus, section 28 of the Evidence Act provides a guide to the admissibility of a confessional statement. Voluntariness which section 27 of the Evidence Act stipulates means that for any confessional statement to be relevant and admissible, it must be made by the accused person out of his own freewill and choice.

"A confession, like any other admission may be made orally, in writing, by conduct or in any way from which proper inference may be drawn adverse to the maker. Usually, confession are made to police officers or other investigators as a result of interrogation, but may equally be made to the victim of an offence, a friend or relative or any other person, The law regarding confessions is now the same in all cases, and no longer matters whether the person to whom the confession is made is a person in authority [14].

"If an inducement is held out by someone not in authority in the presence of someone in authority the ensuing confession will be inadmissible unless the person in authority dissociates himself from the inducement [15].

"Other circumstances justifying the rejection of a confession include subjection of the accused to cross-examination directed at breaking down and destroying his answers and continued interrogation of an accused who is willing to answer questions, or to do so before seeing a solicitor [16]. It must be noted that is not easy threat or promise which will exchole a confession, According to section 28 of the Evidence Act, for a confession to be rendered inadmissible the promise or threat must have proceeded from a person in authority.

- A. "It has been long established as a positive rule of English Criminal law that no statement by an accused is admissible in evidence against him unless it has been shown by the prosecution to have been a voluntary statement in the sense that it has not been obtained from him either by Fear of prejudice or hope of advantage exercised or held out by a person in authority (Underlining mine). This principles has been approved by the House of Lords in Commissioner of Customs and Excise V Harz and Power [17], where it was held:

"That any piece of evidence which is been tendered as a confessional statement must satisfy the condition of being voluntarily before it can be rendered admissible" Voluntariness is therefore a condition sine qua non for the admissibility of a confessional statement. From the dicta above, it can obviously be said that for a confessional statement to be admitted as evidence before any court it must have been voluntarily made. Where such confessional statement is voluntary, the evidence is in itself sufficient for the judge to use as basis for convicting the offender who had admitted his "guilt. This is clear by manifest in the Latin maxim "confessus in judicio pro judicato habetur et quode modo sua sentential damnatur (a party who makes a confession is held to have the cause decided against him and has so to say, judgment given against him is in accordance with his own decision).

- B. Before a confessional statement can be admissible, the confessional statement must be made without any threat, inducement, torture, coercion on the person of the accused. On the admissibility of confessional statement the case of *The State .v. Ndukwe and Ors* [18], is instructive. In that case, one of the accused persons in the murder case had sworn that his statement was not voluntarily made. In support of this he said his hand and feet were tied together and latter subjected to severe beatings. He further testified that the police man instead of releasing him tightened the ropes more firmly and proceeded to write out" certain things on a paper and told him to agree that the persons mentioned in the said paper were the ones who killed the deceased" He denied the statement and any knowledge of the said murder. It was held" "Confessions obtained in circumstances as laid to own in section 28 of the evidence law are inadmissible as being involuntarily made that where an accused person has been forced to authenticate a statement got up by someone else the statement cannot be said to have been made by that accused person.

Under the present law a confession or an inculpatory statement is not admissible in evidence against an accused unless the prosecution establishes that it was voluntary, in the sense that it was voluntary, the sense that is was not obtained by fear of prejudice or hope of advantage exercised or held out by a person in authority or by oppression. For a confession to amount to an admission of guilt, it must be clear, precise, unambiguous and unequivocal. Where a confessional statement is not precise, clear and unequivocal it cannot

¹⁴Murphy P.; *A practical Approach to Evidence* (place of publication English language Book society. 2nd edition V 201.

¹⁵ Sur cross, R; *Evidence* (London: Butterworths)5th edition 1979 .P. 543.

¹⁶Patternden, R; *The judge, discretion and the creiminal trial*. Claradon press oxford: 1982 P.104

¹⁷ (1914) A. C. P. 609

¹⁸ (1982) P. L. R VOL. 3. P. 343 at 344

be admitted in evidence. In *Gbadamosi .V. state* [¹⁹], it was held "that a confessional statement must be clear, precise and unequivocal".

The burden of proving that a confessional statement was voluntarily, made lies on the prosecution. The prosecution must prove beyond all reasonable doubt that a confessional statement was a voluntary one. It is very important that the court should continue to insist that before confessional statement can be admitted in evidence, the prosecution must be made to prove beyond reasonable doubt that the statement was not obtained in any manner unfair to the accused person and was therefore in the truest sense voluntary. The accused for this reason should be made to feel free either of his own testimony or through his counsel challenge the voluntary character of the tendered statement seek to be relied upon by the prosecution.

Where inducement, threat or promise issued has ceased to exist, any subsequent confessional statement obtained would be admissible. For such confessional statement to be admissible it must be proved that the inducement, threat or promise does not operate in the mind of the accused person. Before the admission of such statement the duration which the threat, inducement or promise was made must be taken into consideration. However, if the courts finds that the threat, inducement or promise still operated in the mind of the accused when the confessional statement was made, the whole statement must be disregarded

Circumstances in Which Confessional Statements May Be Vitiating and Application in Decided Cases

Section 28 of the Evidence Act makes confessional statement irrelevant of the making of the confession have been caused by any inducement, threat or promise proceeding from a person in authority and the accused person believing in making the statement he would gain any advantage or avoid any evil of a temporal nature. "The first condition under which a confession will not be admissible is if it was obtained as a result of an inducement. To be effective an "inducement" for the present purpose need not be one to make the accused speak the truth. It is sufficient if it is an inducement to make him make a statement at all.

"The question raised by section 28 is not "was the confession proceeded by an inducement to confess the truth?" It is "was the confession proceeded by an inducement to make a statement" [29].

"A statement made as a result of the use or the threat of the use of actual violence to the body of the accused will dearly render the statement inadmissible as

a confession [²⁰]. An inducement is usually a promise of advantage from confessing or a threat of advantage from not confession. The circumstance under which a statement was made may also determine whether or not it was voluntary or induced. The inducement may be by words accompanied by conduct from which the promise or threat can reasonably be implied. In *Ebhomien and Ors .v. Oueen* [²¹], there was a murder in the defendant's village and the police took to another village a number of men, women and children some related to some of the defendants and kept them there. This distressed the defendants and a police officer told the elders of the village that those who had committed the offence should come forward so that the innocent ones taken to the other village might be released. Three of the defendants then made statements confessing to the complicity in the offence. Quashing the conviction, the Supreme Court held:

"That the confession was not free and voluntary for it was plain that the police had taken persons to the other village and were detaining them there so that it would operate on the minds of their fellow villagers".

A confession made in consequence of an offer of pardon is inadmissible. A confession elicited from an accused person as a result of physical violence is involuntary and therefore an admissible. In *R .v. Bodom* [²²], the accused persons were tied and beaten by their fellow villagers and told to confess by a man in authority in the village. It was held "that the confessions they made subsequently, even after caution by the police were wrongly admitted. Also in *Queen. v. Haske* [²³], "the appellant was charged with murder. There were circumstances giving cause for suspecting him and the chief of his village summoned the villagers and said to them that they would all be in the case and would be goaled if they did not tell the truth. He further told the appellant that he would inform the police of the circumstances of the suspicion against him.

Thereupon the appellant confessed to him that he killed the deceased. It was held:

"That the Chief's statement was clearly a threat and that it was also an inducement in that the converse was true if the guilty persons told the truth the other villagers would not be goaled. The confession was therefore inadmissible"

In the English decision of *R. v. Smith* [²⁴], a statement by sergeant - major that he would keep some soldiers on parade until the culprit was exposed was held to be a threat rendering inadmissible a confession made to the sergeant - major whilst the threat persisted". To be admissible, where a confessional statement is made through an interpreter, at the trial the interpreter must

¹⁹Workshop papers on eth reform of eth evidence of act organized by the Nigerian law reform commission.

²⁰*R. v. Nimiel Viapbong*, 1991 N.N.L.R 47

²¹ (1935)2 WACA 390

²²1963)1 All N.L.R 365

²³Supra

²⁴ (1961)1 All N.L.R 330

also testify. Failure for such an interpreter to testify at the trial will render the confessional statement made in such circumstances hearsay and will therefore be inadmissible.

In *Zemba Shivero. v. The state* [25], where a police officer testified as to the admission made to him by the appellant through an interpreter who failed to give evidence at the trial, on appeal it was held:

"That as the interpreter, who interpreted the alleged admission of the appellant to the police officer did not testify at the trial, the admission, in those circumstances was clearly hearsay and was therefore clearly inadmissible." Confessional statements extracted by threats are inadmissible in court. Where a statement is made as a result of the use of threat or the use of violence on the person of the accused, such threats would render the confessional statement made inadmissible in the law court by virtue of section 28 of the Evidence Act [26].

Although section 28 of the Evidence Act speak of inducement, threat or promise that could render a confession inadmissible, oppression in the form of physical violence, torture, denial of access to relatives and friends could render a confession inadmissible. Judicial approval of the above viewpoint can be found in the case of *state .v. Oloyede* [27], where the trial judge regarded as involuntary a confessional statement, which had been obtained in an "oppressive" manner. The accused had been in police custody for seven days without access to his relative before the confessional statement was taken. He was in poor physical and mental condition when the statement was taken and had to be rushed to hospital for treatment immediately after.

Other examples of condition, which would make confession involuntary rather than induced are given as where the confession was obtained by some underhand means such as by intoxicating the prisoner [28], by abusing his confidence? Or by falsely asserting that some of the prisoner's accomplices are already in custody [29]. Another example of a confession coming within this category would be where an accused or a suspect "confess" to complicity in a crime [30].

In Nigeria, many cases abound where the police in a bid to make them make confessional statement subjects accused persons to torture, threat and all sort of inhuman and degrading treatment. The police resort to so many practices, there is the shooting of the victim in the limbs; burns with lit cigarettes applied to various parts of the body, including the genitals, constant threats of death,

burning of sexual organs; insertion of sharp objects into the genitals of a male suspect or broken bottles or rough objects into the female vagina. The courts should always treat confessional statement made in such circumstances as inadmissible.

Most Nigerians have harrowing experience with the police daily. The case of *Maduforo* is a case in point *Maduforo* told Civil Liberties Organisation that he was taken to a room in the last floor of the one story building in Port-Harcourt. He was chained hands and feet. He was tied to a ceiling fan hook and suspended in the air with his head down. In this position he was flogged with a moter-bike break wire. The whipping according, to him; was intermittently suspended to make way for questioning until he "confessed?".

The case of *chukwube v. Okeke* [31], is also a case in focus. *Chukwube v. Okeke*, a trader resident at No. 179 Abarin Road Enugu, was alleged to be a receiver of stolen goods. On December 13, 1992 he was arrested and detained. In his statement he denied the allegation. But after visiting the "talk-true" room on two occasions, he was forced to make a confessional statement". The confessional statement obtained in such a manner must be disregarded altogether because it violates the provisions of section 27(2) of the Evidence Act.

Kayode Ogundamisi popularly called "Sankara" secretary - General of the student's Union of the University of Jos during the 1990/1991 academic session was arrested on June 1, 1991 at the expiration of the one month ultimatum given to the Federal Military Government by the National Association of Nigerian students (NANS). He was taken to the police CID torture chambers in Jos otherwise called "Disco Room" where he spent sex (6) agonizing days.

"I was tear gassed in my eyes. I was stripped naked and hand cuffed; I was chained and beaten with cudjel. All to make confessional statement" *Kayode* realled [45]. The police in trying to elicit confessional statements from them torture many of the accused persons to death. The case of *Mr. Anthony* is one of such Nigerians "*Mr. Anthony Nnaemeka Mbilitem* [22], was believed to have been tortured to death by the police at its Isheri post. Witnesses confirmed that Anthony walked into the police station alive and reliable information from sympathetic inside sources indicated that the victim died as a result of severe physical torture during interrogation by police officers to make him confess to the alleged crime of murder. Civil liberties investigation further

²⁵By *Don chukuremeka* in *stide* – the nature of confessional statement published in *law mirror* Vol.1No 40 Monday, October 26 – Nov. 1st, 1992 pg.

²⁶(1973) E.C.S.L R Pg 1005; *Itodo .V. state* (1968) NML. RP. 1

²⁷(1935)7 .C. R. V. . 187

²⁸For example by the goaler appropriating a letter which he had promised the accused to put into the port - *R. V.*

Derrington (182602 c and P. 418

²⁹*R. V. Burley* (1818) unreported

³⁰By *Dr. Oladepo Aremu* in an Article "the voluntariness of confession in Nigeria. *Law published in the Nigerian law Journal* Vol. 11 forth division pub. Coy.

³¹ 1999)5 NWIR P +243 C. AP. 450

revealed that the victim was stripped naked and, hanged to an iron rod [32].

In addition to the inducement, threat or promise stipulated by section 28 of the Evidence Act which could render confessional statement inadmissible, any actual application of violence and torture to the accused will render any confession made thereupon unfair and therefore inadmissible in evidence.

The Effect of Retracted Confessional Statement in Criminal Trials in Nigeria

As we have seen, confessional statement if freely and voluntarily made is admissible against the maker. However, there are situations where an accused person who had previously made free and voluntary statement resiles from it during trial. According to Gerald Nwagbogu (1994) [33], "Where an accused in his evidence retracts his previous confessional statement, thus, rendering his earlier confession inconsistent and in conflict with his testimony, the confession, of shown by the prosecution to be voluntarily made, is admissible irrespective of its belated retraction"

It is a settled principle of law that the fact that an accused person denies making a confession does not render it inadmissible. The case of *Rex .v. Itule* [34], is instructive in this respect. In that case, soon after the appellant was arrested for murder, he made a statement to the police in which he admitted killing the deceased, but described circumstances, which, if true, would amount to legal provocation. The next day he denied having made the statement and made a new one in which he repudiated all responsibility for the deceased's death. His evidence at the trial was substantially in uniformity with his second statement.

Brett Ag. C.J.F said:

"A confession does not become inadmissible merely because the accused person denied having made it and in this respect a confession contained in a statement made to the police by a person under arrest is not be treated differently from any other confession. The fact that the appellant took the earlier opportunity to deny having made the statement may lend weight to its denial but it is not itself a reason for ignoring the statement".

It is desirable to have outside the retracted confessional statement some evidence, which would make it probable that the confession was true. The effect of a denial of a confessional statement was clearly made by the Supreme Court in *Ikpasa .v. State* [35], where *Udoma J.s.C* said inter alia: "My Lords, it is well established practice in this country, that where on the

production of a confession it is challenged on the ground that an accused did not make it at all, ... whatever objection may be made by the counsel in such circumstance does not affect the admissibility of the statement and therefore it should be admitted in evidence as the issue of voluntariness or otherwise of the statement does not arise for consideration and decision"

The learned justice went further to say:

Where the confession is wholly retracted, the question as to whether or not the confession is admissible in evidence does not arise at all...

The position of our law is that the retraction of previous confessional statement does not absolve the accused person. The case of *Aremu. v. The state* [36], is quite instructive. The appellants made confessional statement wherein they narrated how they conceived out the armed robbery operation. These confessional statements were admitted in evidence. The appellants later retracted the confessional statements. The trial judge convicted them. On appeal to the Court of Appeal, the appeal was dismissed and affirmed the judgment of the High Court. On further appeal to the Supreme Court, the Supreme Court said:

"Once a confessional statement of an accused person was properly admitted in evidence, as was done in this case, no amount of retraction will vitiate its admission as a voluntary statement, but before a conviction can be founded on such a retracted confession, it is desirable to have some evidence outside the confession which would make it probable, that the confession was true. In the instant case, the confessional statements of the appellants corroborated the evidence of the prosecution witnesses in material details the appellants were rightly convicted and sentenced for the offence of armed robbery. In *Egboghomome.v. The state* [37], it was held inter alia:

"A voluntary confessional statement precedes the trial of the case in respect of which it is made and it is therefore part of the case for prosecution. The mere fact that it was retracted does not affect its admissibility. The court can act on it". Though situations often arise where a statement alleged by the prosecution to have been made by the accused is denied out rightly by the accused person as not having been made by him, the accused in so doing has no easy escape route. The words of per *Olatawura J.S.C.* in *Egbogbonome .v. The state* [38], is instructive; He said inter alia:

"It will be an escape route freely taken by an accused person without any hindrance to escape from

³²Annual report on human rights in Nigeria published by civil liberties organization 1992 pg. 7-8.

³³In an article title "Revisiting the consistency rule in criminal trails' published in *eth Guardian*, Wednesday May, 25 1994 pg. 23.

³⁴ (1961)9. S.C.P. 7

³⁵(1981)9 S. C. Pg. 7

³⁶ *ibid*

³⁷ *Supra* note

³⁸ *supra*

justice. It will not be in the interest of the society to allow a man who has confessed to his crime to walk out of court a freeman simple because he had a change of mind, the whole trial will be mockery". Therefore, a confession does not become inadmissible merely because the accused denies having made it. But the court in acting on such retracted confessional statement must satisfy itself that the accused in fact made the statement out of his own free will and choice. They should have some corroborative evidence, be it slight, which made it probable that the confession was true.

Tobi J.C.A in *Gbadamosi .v. The state* [³⁹], has this to say:

There are however certain situation where the law requires corroborations. As a matter of law, a confessional statement voluntarily made appears to me to be the strongest evidence because it comes out directly from the head and mouth of the accused person himself"

In *Nwaebonyi .v. The state* [⁴⁰], it was held:

In deciding the weight to be attached to a confessional statement, retracted, the test to be applied, are as follows:

1. Is there anything outside the confession to show it is true?
2. Is it corroborated?
3. Are the relevant statements made in it of facts, true as far as they can be tested?
4. Was the prisoner one who has the opportunity of committing the crime?
5. Is the confession possible?

Is it consistent with the other facts which have been ascertained and have been proved? If the confessional statement passes these tests satisfactorily, a conviction founded on it would be upheld unless other ground for objection exists. If on the other hand, the confessional statement fails to pass the test, no conviction can properly be founded on it, an appeal will be sustained thereon.

The retraction of a confessional statement does not call for a trial within trial'. Where a confessional statement is retracted at the trial by the accused person, the confessional statement is admissible without conducting a "trial within trial. The case of *Ikpasa.v. Bendel state* [⁴¹], is instructive. In that case, the appellant was charged with the murder of his wife, he denied ever making any confessional statement. He was convicted and his appeal to the Federal Court of Appeal sitting in Benin was dismissed. On appeal to the Supreme Court, it was held:

"A retracted confessional statement is admissible in evidence and the question whether the accused made it

or not will be decided by the trial court at the conclusion of the case, the issue of its voluntariness does arise for consideration and decision".

In *Ehot.v. State* [⁴²], the Supreme Court held:

"The Supreme Court has explained in a long line of cases that an accused person alleging that he did not make a statement should be under an illusion that *Non est factum* (underlining mine) amounts to involuntariness"

In the case of *The state.v. Okoro* [⁴³], the accused was charged with the unlawful killing of the deceased. The accused person's confession both in written statements to the police and his oral report to his boss, were denied by him during trial. It was held:

"The courts could and would act upon a confessional statement which had been retracted by the maker if there is an eye witness account which the court believed and which confirmed the content of the retracted statement.

Where the court is satisfied that the accused did make the retracted confessional statement, it can convict the accused solely on the confessional statement irrespective whether it is corroborated or not. But where the court is in doubt as to whether the accused person did make the retracted confessional statement or not, the doubt should be resolved in favour of the accused person.

A confession is not a defence. It only strengthens the case of the prosecution and in proper case reduces the problem of establishing the guilt of the accused person. Once a confessional statement is clear, precise and unequivocal, the accused can be convicted on it irrespective of its retraction. The case of *Stephens.v. C.O.P* [⁴⁴], is instructive. In the case the Court of Appeal said:

"That a conviction for murder can be based on the confessional statement of the accused"

The position of the law was also maintained in the case of *Ebagua.v. Attorney General Bendel State* [⁴⁵]. In that case, the appellant along with his four co-accused agreed with a man called Owun to kill one Anna Nun for N1,000.00k (One thousand) for refusing Owun's sexual advances to her after having taken N100 for him. While the deceased was coming from where she went to grind cassava at about 6.30pm. The appellant and the four co-accused persons waylaid her and killed her. After killing her, they removed part of the body, which they took to their hirer. Upon arrest, the appellant and his co-accused persons made confessional statement. However, the appellant later retracted his confessional statement,

³⁹ supra

⁴⁰ ibid

⁴¹(1955)2 WACA 399

⁴²(1991)6 NWLR P+196 P. 182

⁴³(1989)3 NWLR P+100 P. 540

⁴⁴(19925 NWLR P+244 P. 698

⁴⁵1995 NWLR P+244 P. 769

alleging that he was severely beaten and thereafter forced to sign certain documents the contents of which he did not know. The trial Court, based on their confessional statements sentenced the appellant and his co-accused to death. Aggrieved, the appellant and his confederates appealed to the Court of Appeal. The appeal was dismissed. They further appealed to the Supreme Court. The Supreme Court held:

"A confessional statement does not become inadmissible as evidence or liable to be discountenanced or disregarded merely because the accused retracted it in his evidence before the trial court. This is no longer the law. Indeed the court can still admit a confessional statement and convict on it notwithstanding that the accused person has resiled, from if it is satisfied:

That the accused person made the statement; and

That there are circumstances, which give credence to the contents of the confession. It is also desirable of the confession is subsequently retracted, as in this case that there should be some corroboration even if slight".

The accused person should not be allowed to use the retraction of his previous confessional statement as an escape route. Once an accused makes a confessional statement out of his own free will and choice without being coerced, forced or oppressed he must be bound by it. In *Bature .v. State* [46], it was held:

"Where extra-judicial confession has been proved to have been made voluntarily and it is positive and unequivocal and amounts to admission of guilt, it will suffice to ground a finding of guilt regardless of the fact that the maker resiled there from or retracted it altogether at the trial, such retraction does not necessarily make the confession inadmissible".

There are situations whereby an accused contends during trial that the confessional statement credited to him was not made by him voluntarily and so deny such confessions on the ground that he was tortured coerced or given a promise. It is pertinent to draw a distinction between objecting to the voluntariness of a confessional statement and retracting it. In *Okoro.v. State* [47], per Adio J.C.A has this to say:

"The positron is that objection on the ground that a statement was not voluntary, and objection on the ground that the accused never made the statement at all, because of their nature, are mutually exclusive. Certainly an accused cannot be contending that he never made the statement credited to him and at the same time be contending that he made the statement but is was not voluntary because he was tortured or given a promise that made him make it.

Where the only evidence available is the confessional statement of the accused person which is subsequently retracted, the court can convict the accused on the retracted confessional statement irrespective of the fact that- is not corroborated. The conviction of the accused can only be done if the court is satisfied that the accused made the confessional statement freely, voluntarily and not of his own free will [48].

The retraction of confessional statement is mostly pronounced in murder cases where the life of the accused is on the line. And so to save himself of the impending doom, the urge becomes greater in him to dissociate himself from his earlier which all but lends credence to his guilt. The retraction of previous confessional statement by the accused does not in any way avail him.

As we have seen, it is trite law that the fact that accused person after making a statement resiles from his confessional statement will not render it inadmissibility in order words it will not affect its admissibility. The learned trial judge Brett Ag. C.J.F in *Rex .v. Itule* [49].

"...A confession does not becomes inadmissible merely because the accused person denied having made it". Although it is desirable on the part of the prosecution to have outside such retracted confessional statement some evidence, which would make it probable that the confession was true.

Indeed, the apex court has in a long line of cases discussed earner on up held the rule that retraction of a previous confessional statements will not affect its admissibility and it does not absolve the accused person when such confessional statement has been properly admitted in evidence and no amount of retraction will vitiate its admission as a voluntary statement.

FINDINGS

According to the research findings, an accused individual has a high evidentiary value in the administration of justice. As a result, the court should not take it lightly. Certain criteria must be considered before an accused person's confessional statement is allowed in evidence.

1. The judge must be satisfied that the accused is not in his tender years or immature, and that he is capable of making a true confession.
2. The accused's state of mind at the moment of the confessional declaration must be considered. The judge must check that the accused individual is not under the influence of delusion or insanity when providing the confessional statement; otherwise, the confessional statement should be viewed as absolutely unreliable. Such confessional

⁴⁶(1981)9 S.C. P.7

⁴⁷(1984)2 NWLR P+25 PG. 673 C.A

⁴⁸ (1994)2 NWLR P+326 PG. 273 S.C

⁴⁹(1994)2 NWLR P+326 PG. 273 S.C

statement should be seen as made when the accused person was not in control of his mental statement.

3. The judge must be satisfied that the accused individual was not suffering from acute debility, distress, or mental disability at the time of making the confessional statement. The judge must also be convinced that the accused was not put at a significant disadvantage due to a misunderstanding of an important fact.
4. If the accused is drunk, he or she should not be forced to make a confessional statement. If the confessional statement was made when the accused was drunk, the judge must rule that it is inadmissible. It must be remembered that, according to the penal code, intoxication (drunkenness) can lead to insanity, even if it is of a temporary nature. As a result, it would be unjust and contradictory to apply on the confessional statement under a drunken state.

CONCLUSIONS

The judge must determine that no deception or trick was employed on the accused at the time he made the confessional statement. Any deception or trick employed on the accused could lead to his own incrimination. Section 28 of the Evidence Act of 1990 states that any inducement, threat, or promise must come from someone in authority and must be related to the charge against the accused individual. Any enticement threat or promise presented to the accused individual would suffice to render any confessional statement inadmissible. For example, if the accused is told, "If you confess, I will get you a wife" or "If you confess, I will make you rich" or "If you confess, I will buy you a car." Incentives or promises of this nature should be sufficient to render a confession inadmissible.

Under common law, mere adjuration does not affect the admissibility of confession; however, under our law, mere adjuration, whether on moral or religious grounds, affects the admissibility of confession. Section 28 of the Evidence Act 1990 states that any inducement, threat, or promise made to the accused person, and any confessional statement obtained as a result, is inadmissible. It is a well-established legal notion that a confession made freely and voluntarily is acceptable. When an accused person freely and voluntarily makes a

confessional statement and then retracts it, he cannot be excused from penalty since the confessional statement binds the maker.

A distinction must be made between a confession objected to because it was not freely and voluntarily made and a confession retracted. The two are not interchangeable.

When the voluntariness of a confession is called into question, a trial within a trial is held to investigate how the confession was received. During the course of the trial, the judge will be able to determine whether the making and receiving of such confessions was fair to the accused. If the judge believes that the circumstances in which the accused made the confession were fair to him, he will accept it. However, if he sees that the situation was unfair, he will reject the confession. A trial within a trial, on the other hand, is superfluous, unjustified, and inappropriate when a confession is retracted. When the accused person's confessional statement was obtained unfairly, the accused person has the right to object to its voluntariness when it is offered as evidence. Where the circumstances of the confession are very detrimental to the accused person, the statement should not deny making the statement but should raise a challenge to its voluntariness.

There may be instances where the sole proof is the accused's confessional statement, which is later retracted. The court can condemn the accused based on the retracted confession if the court is satisfied that the act confessed to genuinely occurred, that the confession was made of his own free will and choice, and that no force, coercion, oppression, or incentive was supplied to him. One significant reason why confessions must be free and voluntary is because an accused can be convicted purely on the basis of them³. Situations may also happen in which an accused person provides a confessional statement and, while on trial, a different confessional statement is presented to the court. It's possible that the accused was coerced into signing the alleged confessional statements. In such cases, the accused must and should disassociate himself from such confessional statements because they cannot be said to have been made by him. In such cases, the court may order the police officer in charge of the investigation to go and take a confessional statement from the accused in the right and proper manner.