STATUTORY RECOGNITION OF OPPRESSION AS AN ELEMENT THAT VITATES CONFESSION AND ITS IMPLICATIONS FOR NIGERIA'S CRIMINAL JURISPRUDENCE*

Abstract

All over the courts in Nigeria and indeed the world over which has jurisdiction to try offenders, the admissibility of extra judicial statements usually in the form of confession remains one of the most keenly contested issues. The interest usually manifested by the prosecution in confessional statements stem from the fact that once it is admitted in evidence, a conviction of a defendant can proceed upon such confession whether it has been retracted or not. However, both the law and practice relating to criminal trial has from the outset required that what should be admitted and acted upon as a confession must have proceeded voluntarily from the defendant. What constitutes involuntariness that would vitiate confession was as stipulated by the evidence Act. Oppression as a specie of involuntariness was not recognized statutorily in Nigeria until the enactment of Evidence Act 2011. It is however being speculated that interpreting the provisions of section 29 of the Evidence Act, 2011 literally will produce a result different from the intendment of the Legislature.

Introduction

Side by side with the overall developments as to the voluntariness of confessions under the English common law is the judicial recognition of oppression as a specie of

involuntariness. In the case of **Callis v Gunn**[1] Lord Parker C.J. said, with reference to statements made by an accused person to the Police, that:

> *It was a fundamental principle of law that no answer to a question and no statement is admissible unless it is shown by the prosecution not to have been involuntary in the sense that it has not been obtained by threats or inducement*.

In **R v Pragger**[2], the confession of a sergeant in the Royal Air Force on charges of espionage made after a prolonged though interrupted interrogation was held to have resulted from oppression. In that case, the Court of Appeal adopted a statement by Sachs J in **R v Priestly**[3] where he said inter alia:

> *To my mind, this word… imports something which tends to sap, and has sapped that free will which must exist before a confession is voluntary… Whether or not there is oppression in an individual case, depends upon many elements … They include such things as the length of time intervening between periods of questioning whether the accused person has been given proper refreshment or not, and the characteristics of the person who makes the statement…*

The effect of the judicial recognition of oppression was to broaden the nature of the concept of involuntariness at

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1 (1964) 1 QB 495

2 (1972)1 All E.R. 114.

3 (1966) 50 E.R. APP.Rep.133.

common law and render confession inadmissible without any ties to the qualifying requirements such as proceeding from a person in authority and having reference to the charge etc. The question of whether or not oppression was an element that vitiates confession was given statutory solution in England in 1964 through the enactment of the Judges Rule of that year which widened considerably the concept of involuntariness at common law by its provisions enlisting oppression as a specie of involuntariness[4]

Under that law, the admissibility of confessional statement was made subject to the qualifications placed on such by the common law but had oppressive conducts of investigating officers added specifically as vitiating element.

In Nigeria's criminal jurisprudence, the issue of confession was governed originally by the received Common Law of England. While Nigeria was still under British rule, the first Evidence Act came into force. Neither the common law nor the Evidence Acts that came thereafter recognized oppression specifically as a specie of involuntariness. Before the enactment of the Evidence Act, 2011, the law governing the admissibility of confessional statements was as seen in sections 27(2) and 28 of the Evidence Act[5]. None of these two sections of the Evidence Act provided for the inclusion of oppression as a factor that vitiates confession. It was, however, recognized that among the discretions inherent in our courts in their jurisdiction over criminal matters was the discretion to disallow the admissibility of a piece of evidence if the strict application of the laws made for the admissibility of such evidence will operate unfairly against the accused person.

[4] See Principle E of the Revised Judges Rule of England, 1964.

[5] Cap E14, Laws of the Federation of Nigeria, 2004.

There was a controversy raging among jurists in Nigeria then as to the actual contents and scopes of sections 27 and 28 of the Evidence Act[6]. The controversy centered on whether sections 27 and 28 of the Evidence Act then which never mentioned the word oppression would be interpreted to accommodate oppression by inference as a specie of the involuntariness mentioned inferentially in section 27 of the Act or whether the issue of oppression should be left within the latitude of judicial discretion. It did appear that there was a consensus of opinions among the said jurists in Nigeria that in addition to inducement threat or promise proceeding from a person in authority and held out to the accused person to propel him to make a confession, there were other circumstances that may make the admission in evidence of a purported confession unfair to the accused. In other words, it seems a view widely accepted that the provisions of section 28 of the Evidence Act[7] should be repealed to allow section 27 thereof to stand alone on that subject or in the alternative be construed as having provided for some and not all species of involuntariness. It was advocated that section 28 of the Evidence Act should be given a liberal interpretation to accommodate all the elements that vitiate voluntariness as envisaged by section 27 of the Evidence Act[8]. It was almost concluded that the section

[6] Cap 112, Laws of the Federation of Nigeria, 1990 which was repeated and replaced with Cap E14, L.F.N. but which contained similar provisions on admissibility of confessional statement.

[7] *Op cit,* note 6.

[8] See Aguda T.A: Law and Practice Relating to Evidence in Nigeria, M.I.J Publishers Ltd, Lagos(1998)2nd ed. P 78; Nwalialor F: Modern Nigerian Law of Evidence University of Lagos press (1990) 2nd ed. P103; M.A. Owoade in Afe Babalola ed. The Law and practice of Evidence in Nigeia, Sibon Books, Ibadan, (2001) P68.; Yomi Osibajo:

should be construed to include other acts proceeding from investigating officers which has the capacity to affect the mind of the accused in the same way as inducement threat or promise as to compel him to make a statement.

Judicial Activism and Recognition of Oppression as an Element that Vitiates Confession.

Though not provided for expressly in statutory enactments, in what appears like judicial activism, many landmark decisions had been handed down by the courts on that issue, which decisions strengthened the proponents of the view that oppression vitiates confession. In the case of the **State v Ayinla Olooyede**[9] it was held that:

> *alongside the provisions in the Evidence Act allowing for the reception of confessional statements must be set the following cases which recognizes the discretion of a judge in criminal cases to disallow evidence if the strict rules of admissibility would operate unfairly or oppressively against the accused person*.

The attitude of the courts then on this point was that a confession obtained from the defendant in circumstances which are oppressive may not be admitted in evidence against him even where such a statement may have passed the test of voluntariness prescribed by section 28 of the Evidence Act.

The Definition and Nature of Oppression

Some Proposals For Reforms In The Law Of Evidence in Omotola J.A. and Adeogun A.A eds.: Law and Development, Sibon Books, Ibadan (1987), P281 Aremu L.O. Voluntariness of confessions in Nigerian Law (1977-1980) 11 Nigerian Law Journal P. 33.

[9] (1973) E.C.S.L.R, 1006.

According to Blacks Law Dictionary[10]

> *Oppression is a misdemeanor committed by a public officer, who under the colour of his office, wrongfully inflicts upon any person, any bodily harm, imprisonment, or other injury. An act of cruelty, severity, unlawful extraction, or excessive use of authority. An act of subjecting to cruel and unjust hardship; an act of domination…*

It follows from this definition of oppression that every act of cruelty, severity, unlawful extraction or excessive use of authority or any act of subjecting to cruel and unjust hardship; any act of domination of the accused person in order to extract a statement from him is oppression which may render the statement inadmissible in evidence.

It worthy of note that the act of oppression may be in the form of mental torture or any other act but once the effect of such affects the mind of the accused person, the evidence obtained there from may be rejected. In the case of **Muftau Balogun v Attorney General of the Federation**[11] the court defined oppression in these words:

> *Oppression in the context of the circumstances surrounding the making of a confessional statement imports something which tends to sap*

[10] Garner A Bryan et. Al. (eds.) Blacks Law Dictionary 7th ed. St Paul, Minn (1999) P 100. Add However, in RV filing (1987) 2 All ER 65 the Court of Appeal held that the word oppression should be given its ordinary meaning as stated in the Oxford English Dictionary: The exercise of authority or power in a burdensome, harsh or wrongful manner; unjust or cruel treatment of subjects, inferiors etc; the imposition of unreasonable or unjust burdens".

[11] (1994) 5 NWLR (pt 345) 442.

> *and has sapped that free will which must exist before a confession is voluntary, and its presence or absence depends on many elements which includes such things as the length of time intervening between periods of questioning, whether or not the accused person had been given proper refreshment or not and the characteristics of the person who makes the statement*[12].

In Balogun's case in question, the matter was an appeal arising from the decision of the Federal High Court Lagos, where the appellants were convicted for offences under the Customs and Excise Management Act No. 55 of 1958.

They were arrested and detained by operatives of N.S.O who later called a Police officer to take their statements in the N.S.O detention office. They were convicted at first instance on the strength of their alleged confessional statements.

On appeal, it was held allowing the appeal of the 2nd and 3rd appellants, that the said NSO operatives had no basis upon which they deprived the Police of their constitutional right to immediately take over the case and take necessary statements from the defendants in their own office. The N.S.O operatives continued to detain for instance the 1st defendant even after they had made him to make a statement to Mr. X. If Mr. Salami could express that he was afraid when he was sent to the N.S.O headquarters, what is to be expected of a person whom they had arrested and kept in their custody? Mr. Salami was even treated as a suspect when he wanted to go to the toilet to ease himself. He was allowed to go under the watching eyes of an escort.

[12] See also Durugo v State (1992) 7 NWLR [pt 255] 312; Achabuah v State (1976) 12 S.C. 63.

The court stated further in paras H-D per Uwaifor J.C.A (as he then was):

I believe it is fair to say that we have a severe problem on our hands if we were to overlook the provisions of section 9 of the C.P.A as to the place and manner statements are made to the Police. First, it is against the law to shift the proper venue which is the Police station for taking statements from arrested persons and investigating cases to any place inherently lacking in, or not likely to be conducive to reasonable freedom for such arrested persons. Secondly, it is indefensible to arrest persons and take them say to Army Barracks or N.S.O offices over civil offences which the Police is by law empowered to handle and there, make them give their statements before they are release to the Police. It will be easy to read into that situation a condition of compulsion to make a statement before that release. It must be admitted that the N.S.O was notorious for its repressive methods. Its disbandment was received with much relief by those who were its victims; some of its records of activities which were revealed (and in some measures speculated) were greeted with general disbelief. It left an image of an institution nurtured in ruthless authoritarianism.

On the attitude of courts to the voluntariness of confessional statements, the court held that the issue of voluntaries of a statement to the Police is taken seriously by the courts. If the statement is not shown to have been voluntary, it is not received in evidence on the ground that it will not be safe to receive a statement made under any influence of fear or hope of advantage or by oppression. It would therefore not be admitted and if at all it is admitted without trial within trial, it should be expunged as inadmissible. Uwaifor J.C.A stated further at Paras D-F that:

> *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 to him by a police officer and any statement made by that person, that it should have been voluntary in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held by a person in authority or by oppression…I think it is an oppression for a state security agency to take a suspect or accused into its custody in respect of a matter having nothing to do with the security of the state and insists on statement being made particularly under conditions and in an atmosphere which instill fear not only in the suspect but also in a Police officer called in to take the statement. It is my view that the courts have a duty to discourage this. I have no doubt that the most effective way of doing this is to be satisfied that a trial within a trial as a result of objection to the voluntariness of the statement was satisfactorily conducted and the burden on the prosecution to establish voluntaries was fully discharged.*

In the case in question, the court defined "oppressive questioning" in law as questioning which by its very nature, duration or other attendant circumstances (including the fact of custody) excites hope (such as the hope of release) or fear or so affects the mind of the subject that his will crumbles and he speaks when otherwise he would have kept silent.

The court used the occasion of this case to restate the fact that in establishing the voluntariness of a confessional statement, the burden of proof is on the prosecution and it is a burden to prove beyond reasonable doubt that the confession was voluntarily made. The court of first instance in this case was held to have failed in its duty to place the burden where it belongs. It did not consider the case of the prosecution in the

light of the oppressive environment under which the alleged confessional statement was made.

In the case of the **State v Ayinla Oloyede**[13], the accused person was charged with murder. In the course of trial, the prosecution sought to put in evidence a second confessional statement said to have been made by the accused voluntarily in which the accused confessed to the offence for which he was standing trial. The defence counsel objected to the admissibility of the statement on the ground that the statement was not voluntary. To determine the voluntariness, trial within a trial was held during which it was discovered that:

(1) The accused person had been in Police custody for a period of seven days without access to his relatives before the alleged confessional statement was taken from him.

(2) Immediately before the said statement was taken the health of the accused was poor both physically and mentally.

(3) Immediately after the said statement was taken from the accused, he was rushed to the hospital for treatment for his health condition which has deteriorated. The accused was shivering excessively, behaving abnormally and shouting that he was not well. He was boxing into the air and maintained while doing so that he was fighting off some evil spirits which were constantly by his side and were worrying him. These were the conditions of the accused shortly

[13] *Op cit*, note 9.

> before and shortly after the said confessional statements were taken from him.

In arriving at his judgment, the trial judge quoted with approval some English authorities on oppression as well as unfairness. He stated *inter alia:*

> *In Kuruma v R*[14] *Lord Goddard in giving advice to the Board said, when it is a question of the admissibility of evidence, strictly it is not whether the method by which it is obtained is tortuous but excusable but whether what has been obtained is relevant to the issues being tried. No doubt in criminal cases the judges have discretion not to allow evidence if the strict rules of admissibility would operate unfairly against an accused.*

As regards what amounts to unfairness to the accused, **Lord Hodson in king (Herman) v R**.[15] said while delivering the opinion of the Privy Council that:

> *their Lordships agree with the judgment of the courts martial Appeal Court in holding that unfairness to the accused is not susceptible of closed definition … it must be judged of in the light of all the material facts and findings and all the surrounding circumstances. The position of the accused, the nature of the investigation and the gravity or otherwise of the suspected offence may all be relevant…*[16]

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[14] (1955) A.C. 197.

[15] 52 Cr. APP. Rep 353 at 364.

[16] It is surprising that in R v Miller (1986) 1WLR 1191. It was discovered in evidence that the style and length of questioning had produced a state of involuntary insanity (wherein his

As to what may constitute an oppression, the judge in Oloyede's case quoted with approval the statements of Sachs J. in **R v Priestly**[17]where he stated that:

Thus … to my mind, this word, in the context of the principles under consideration imports something which tends to sap and has sapped that free will which must exist before a confession is voluntary… whether or not there is oppression in an individual case depends upon many elements. I am not going into all of them. They include such things as length of time intervening between periods of questioning. Whether the accused person has been given proper refreshments or not, and the characteristics of the person who makes the statement. What may be oppressive as regards a child, an invalid or an old man or somebody inexperienced in the ways of this world may turn out not to be oppressive when one finds out that the accused person is of

language reflected hallucination and delusion) in the accused person (a paranoid schizophrenic) who confessed to killing his girl friend. However, the Court of Appeal held that although questions which were asked deliberately with the intention of producing a disordered state of mind would amount to oppression, the mere fact that questions addressed to the defendant triggered hallucinations was not evidence of oppression.

[17] *Op cit, note 3.*

> *a tough character and an experienced man of the world.*

The learned trial judge found as a matter of fact that the accused person was an invalid both physically and mentally at the time he made the confession. He summed up in these words,

> *I cannot help but in the light of these findings, state that I have before me evidence of something which tended to sap and sapped that freewill which must exist before a confession is voluntary or that I have before me circumstances which so affected the mind of the accused that his will crumbled at the time he made the confessional statement and spoke when he otherwise would have stayed silent.*

The judge applied the principles of law enunciated in the earlier authorities to the case and held that the admission of the confessional statement in evidence, if he was to go by the strict rules of admissibility, would operate unfairly or oppressively against the accused. He exercised his discretion to reject the admissibility of same in evidence.

Statutory Recognition of Oppression

As can be seen from judicial decisions, at the outset, the issue of oppression as an element that vitiates confession, because of its origin in common law, was left to the discretion of judges. Whether a defendant's statement would be admitted in evidence or not depended on judicial activism with its attendant lack of precision. The situation persisted in England until 1964 when the Revised Judges Rule of that year made specific provisions on the issue of oppression[18].

[18] See Article E of the Revised Judges Rule of England, 1964

In Nigeria, the issue of oppression waited till the enactment of the Evidence Act, 2011 to be accorded statutory recognition.

Section 29 of the Evidence Act, 2011 provides as follows:-

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

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

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

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

(3) In any proceedings where the prosecution proposes to give in evidence a confession made by the defendant, the court may of its own motion required the prosecution, as a condition for allowing it to do so, to prove that the confession

was not obtained as mentioned in either subsection (2) (a) or (b) of this section.

(4) Where more persons than one are charged jointly with an offence and a confession made by one of such persons in the presence of one or more of the other persons so charged is given in evidence, the court shall not take such statement into consideration as against any of such other persons in whose presence it was made unless he adopted the said statement by words or conduct.

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

The implications of the statutory recognition of oppression is that the rejection from admissibility of confessional statements obtained in oppressive circumstances does no longer depend on the discretion of the court. As a matter of law, a court in Nigeria has a duty to ensure that a statement obtained from a defendant in an oppressive circumstance is not admitted in evidence against him.

It is worthy to note that section 29(5) of the Evidence Act, 2011 does not make what constitutes oppression a closed shop. By the use of the word "includes" in defining the acts that would constitute oppression, the Evidence Act still left the courts with a measure of discretion to determine whether a particular treatment meted out to a defendant in the course of obtaining his confessional statement amounts to oppression or not.

It seems that by virtue of this discretion, treatments which exert pressure on a defendant but do not amount to inhuman or degrading treatment but yet made him to speak when he would have not spoken shall render his confession in- admissible in

evidence. Generally, it is believed that any act or threat of violence which was calculated to induce a defendant to speak will vitiate his confession. The reality of our present law is that assuming section 29 (2) (a) of the Evidence Act, 2011 is not protective enough of a defendant in respect of the admissibility of his confession, it appears that section 29 (2)(b) of the Act makes a sweeping provision to edge out from admissibility any confession coming from the defendant which he did not make of his free will[19].

In that regards, section 29(2) (b) of the Evidence Act, 2011 re-enacted the provisions of section 28 of the Evidence Act Cap E14, L.F.N. 2004 without putting in the requirements that the inducement, threat of or promise that would vitiate a confession must proceed from a person in authority and have reference to the charge etc. It appears that the confessional statements of defendants in those cases like **Fatumani v R[20]**.

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[19] See section 29(3) of the Evidence Act, 2011. Which allows the court to *suo motu* demand proof of voluntariness of confession tendered before it where the defendant fails to challenge its admissibility under section 29 (2) of the same Evidence Act.

[20] (1950)13 W.A.C.A 30; R v Udo Aka Ebong (1947) 12 WACA 139. In England, statutory recognition of oppression as a vitiating element in respect of the admissibility of confession was expanded under the Police and Criminal Evidence Act (PACE) of England 1984. Section 76 (1) of PACE provides that evidence of a confession made by an accused person may be given against him in any proceedings. Section 76 (2)(a) of PACE confers on the judges the discretion to exclude relevant evidence obtained by oppression. Section 76 (2) (b) allows the judge to exclude relevant evidence obtained in consequence of anything said or done which renders it unreliable. This discretion can be exercised under section 78 of PACE or triggered by breaches of the code of

When one considers the provisions of sections 29(2) (a) and (b) of the Evidence Act, 2011, one is tempted to believe that the law on admissibility of a confessional statements in Nigeria has been enacted to be too favourable to the accused. It is doubtful if when the present law is applied judiciously, whether any confessional statement would scale the hurdle of admissibility. We may have got to the point where the English Common Law on admissibility of confession found itself that made Professor Baker to refer to the earlier authorities in England as "liberalism run wild"[21].

In the present circumstance, the only time a confessional statement made by a defendant may be admissible is where he made a request to be assisted to make it, otherwise where he is asked probing questions that tend to put him under pressure and he caves in and makes a confession, it seems the confession will be treated as vitiated. That the provisions of the Evidence Act, 2011 in section 29(3) allows a court of law to *suo motu* demand proof beyond reasonable doubt that the confession was not obtained through a prohibited means is a boost to the chances of the defendant to escape the consequences of his confession. The said section 29 (3) provides:

> *In any proceedings where the prosecution proposes to give in evidence a confession made by a defendant in the court may if its own motion*

practice promulgated by the Home Secretary pursuant to section 66 of PACE or a combination of these provisions.

[21] Baker: The Hearsay Rule cited by Cross on Evidence, 5th ed. P. 536.

> *require the prosecution, as a condition of allowing it to do so, prove that the confession was not obtained as mentioned in either paragraph (a) or (b) of subsection (2) of this section.*

The position of the law under the previous Evidence Acts, was that it was the duty of the defendant personally or through his Legal Practitioner to challenge the admissibility of his confessional statement timeously. Where the defendant and his counsel slept on their right to raise objection to the admissibility of an alleged confession and it was admitted in evidence, the courts used to refuse to allow such objection to be raised during the evidence of the defendant. In the case of **Olalekan V State**[22] it was held that the proper forum to take objection to the voluntaries of a confessional statement is at the trial court and not at the appellate court.

Discretion to Exclude Unreliable Confession

Section 76(2)(b) of PACE gave the court a discretion to exclude from evidence a confession which was or might have been obtained "in consequence of anything said or done" which was "likely, in the circumstances" to render unreliable "any confession" which the accused might make "in consequence thereof".

The courts in Nigeria has not yet had the opportunity of pronouncing on the unreliability of confession as espoused in the term "in consequence of anything said or done" as used in section 29(2)(b) of the Evidence Act, 2011 but the English Courts have interpreted similar provisions in section 76(2)(b) of the Police and Criminal Evidence Act, 1984.

[22] (2001) 18 N.W.L.R (pt. 746) 793

The phrase has been interpreted as including anything said or done by someone other than the suspect, denial of access to a solicitor or a confession extracted from a drug addict suffering from drug withdrawal symptoms. As regards Nigeria, it is believed that cases of vitiated confessions for reasons of "inducement, threat or promise made by persons in authority…" as found by the courts based on the provisions of section 28 of the Evidence Act, Cap E14, LFN, 2004 and similar provisions before it, would still vitiate confession under these new provisions. However, section 29(2)(b) of the Evidence Act, 2011 seems to be wide than section 28 of the Evidence Act, Cap E14 and others to the extent that where such acts or statement proceeded from a person that are not in authority, they can still be considered by the court as sufficient under the present Evidence Act to render the confession unreliable.

In view of the provisions of section 29(3) of the Evidence Act, 2011 which allows a court to *suo motu* demand proof of voluntaries of confession before it is admitted in evidence, it seems that cases like **Osakwe v A.G. Bendel State**[23] which was followed in **Alarape v State**[24], would have been differently decided if they had come up under the present law. It is submitted that under the present law where the court fails in the duty imposed on it to demand for proof of voluntaries of a confessional statement, that failure on its own alone would provide the plank on which an appeal could rest because inadmissible evidence had been admitted.

In **Olalekan v State**[25] the Supreme Court held that the question of admissibility of a confessional statement can be

[23] (1994) 2 NWLR (pt. 326) 273.

[24] (2001) 5NWLR (pt. 705) 79.

[25] *Op cit*, note 22.

raised at the Supreme Court. The reason for the stand of the apex court was that a court of law is enjoined to decide a case on legally admissible evidence only. The decision in Olalekan's case was, seemingly, an exceptional decision when considered against the decisions of the courts in **Osakwe v A.G. Bendel State**[26], **Okaroh v State**[27] to the effect that the defendants could no longer challenge the admissibility of their confessional statements after they have been admitted in evidence. All those decisions came up under the Evidence Act, Cap 112 L.F.N 1990. The decision would be more justifiable today and is commended to the courts in Nigeria in view of the present Evidence Act. The wisdom in the decision of the Supreme Court in Olalekan's case lies in the fact that the defendant who failed to object to the admissibility of his confession may have attended his trial with counsel who may be naive on such matters as admissibility of confession or may lack commitment to the case he is doing[28].

Ordinarily, such a defendant will take his counsel as he has seen him. However, from the provisions of section 29 (3) of Evidence Act, 2011, a defendant may now escape the adverse consequences of his inability to raise objection to the admissibility of his confessional statement at the appropriate time. The import of these provisions of the Evidence Act is commendable since law and adjudication is targeted at doing substantial justice rather than securing conviction at all cost. However, that the law on admissibility of confession has been

[26] *Op cit*, note 23.

[27] (1988) 3 NWLR (pt 81) 214

[28] This carefree attitude was seen in the cases of Udo (1988) 3NWLR (pt. 92) 316 and Udofia V State (1988) 3NWLR (pt 89) 533.

whittled down tremendously does not need to be over emphasised. Criminal trials relying on alleged confessional statements will hardly end in conviction under the present law. When it is considered that in serious crimes like murder, armed robbery etc, the victim of the offence would have been killed and there may be no eye witness to the crime that will come to court to testify. Even where there is an eye witness, such a person may easily be scared away by the circumstances of the case. In such a situation, whether there will be conviction or not will depend so much on the confessional statement of the defendant. It is desirable that the consequences of the seemingly extra -wide latitude offered the defendant to escape from his confession should be mitigated by exercise of judicial discretion and a strict interpretation of the other sections of the Evidence Act relating to confession. Such sections include sections 30 and 32 of the Evidence Act, 2011 which if properly applied may assist in successful prosecution of serious offences where evidence may be in short supply.

Conclusion

Desirable as it is to scrutinize thoroughly what purports to be confession before they are admitted in court as evidence, care should be taken to ensure that prosecution of offenders, relying on confessional statements do not become fanciful. Society may have shot itself on the foot while trying to protect offenders who ought to be convicted, all in the name of liberalism and justice. We should remember that both society itself as well as victims of various offences to which such confessions relate, lay claim to the ideals of justice. The saving grace under the present law lies in strict interpretation of same,

otherwise we may have opened a floodgate. We cannot boast of the sophistry of England in crime detection and prevention. No doubt, to adopt and operate their laws on confession with the relative high rate of crime and lack-lustre approach to crime prevention and prosecution of crimes may embolden criminals down here and produce results that are both un-envisaged and unwanted.