IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DOTSE JSC (PRESIDING)
DORDZIE (MRS.) JSC
PROF. KOTEY JSC
LOVELACE-JOHNSON (MS.) JSC
PROF. MENSA-BONSU JSC

CRIMINAL APPEAL
NO. J3/01/2018

6TH APRIL, 2022

KWEKU ATTAH ..... APPELLANT

VRS

THE REPUBLIC ..... RESPONDENT

JUDGMENT

PROF. MENSA-BONSU (MRS.) JSC:-

This case arose out of a marital dispute that tragically ended up in violence, leaving one party dead, and the other awaiting capital punishment in prison. When a marriage which supposedly began with love ends with such vicious acts by one party against the other, then one is compelled to see the wisdom in the words the English poet Percy Bysshe Shelley who wrote, that there are,

"links of the great chain of things,

To every thought within the mind of man

Sway and drag heavily, each one reels

Under the load towards the pit of death: Abandoned hope,
and love that turns to hate:

And self-contempt, bitterer to drink than blood"

An unhealthy thought began with "love that turns to hate" in a husband, and birthed a chain of events aimed at blocking any future opportunity of the wife to start another relationship and another life. The result was this tragedy which now forms the basis of this appeal.

Background and Facts:

The appellant, a taxi driver, was married to one Akua Praba alias Sekina (now deceased). The couple lived at Nkanfoa near Cape Coast in the Central Region. They had one child, a three-year-old, between them whilst appellant had an older child as well.

On 5thFebruary, 2006, the appellant returned home from work at about 12.30am, having left for work the previous day. On account of this, the couple, who seemed to have a turbulent relationship already, began a bitter quarrel. This misunderstanding persisted for some days and so the wife, now deceased, left the matrimonial home to return to her mother's home at Assin Ngresi also in the Central Region. The appellant later went to the house of the in-laws and succeeded in bringing his wife back home, although the woman was reluctant to return. Her main complaint was that the appellant constantly abused her, and that on one occasion when they fought, he even stripped her stark naked in public.

Following upon her return, the appellant left for work the next day and returned to find that his wife had again left the house, this time leaving their only child behind. His enquiries showed that his wife had gone to her hometown at Assin Nsowyamuin the Central Region. After two days of hearing nothing from the wife, appellant followed up

to Assin Nsowyamu in his taxi cab and met the wife at her father's house. After some discussion, the father and his relations helped to resolve the issue and so the appellant was advised to return to Cape Coast and that his wife would follow. Three days later, she did return to the matrimonial home in Nkanfoa as promised.

However, the issue appeared not to have been satisfactorily resolved, for the very next Saturday, while the appellant was on an assignment out of Cape Coast, the woman packed up again and left Nkanfoa. On his return, his wife was nowhere to be found. He was then informed, that the woman had again packed all her belongings and returned to her father's home. So the next day the appellant again went to Assin Nsowyamu in search of his wife. This time, his father-in-law was not at home, so he went to see an elderly relation, one Opanyin Danso (the customary guarantor of the marriage). Opanyin Danso advised him to calm down and return to Cape Coast and that he would let him know when the father-in-law returned so that they could meet and attempt an amicable resolution.

On 3rd March 2006, the appellant received a phone call from his wife that her father was now available so he should come over so that the dispute could be amicably resolved. In consequence, the appellant went to Assin Nsowyamu for the resolution of the dispute. In the heated discussions that ensued in the attempt at settlement, the appellant asked that "all his things"(i.e. the traditional gifts made to the family at the marriage, and which were returnable upon divorce) be returned to him. The appellant is also alleged to have threatened his wife that if she did not return some GH¢65 she had taken from his room when she left him, he would teach her a lesson. These angry exchanges sparked off some violence, and one of the uncles of the wife allegedly slapped appellant. The appellant responded by lashing the in-law with a belt he was wearing. The uncle retaliated by lifting a coal pot and hitting the appellant on the head, injuring him. Opanyin Danso intervened and took the appellant to his house, nursed the wound and got him to leave the village. Thus ended the attempt at an amicable resolution of the marital dispute between the appellant and Akua Praba, now deceased.

That unfortunate event that ended with violence, however, was the beginning of the sad and tragic chain of events that gave birth to the prosecution of the appellant for murder. At the trial, it was alleged by the Prosecution that after the unfortunate events of that day, the appellant did return to the house later that night of 3rd March 2006, around 11.00pm and splashed the now deceased wife with acid he had carried in a plastic container to the premises. She was sleeping in a room with her children and so could not tell who her assailant was.

The circumstances of the arrest of the appellant were somewhat unclear as the appellant had a version different from that of the prosecution. The appellant alleged that on the following Monday, he received a phone call from Opanyin Danso asking him to come to Cape Coast and that upon getting to Cape Coast he was arrested allegedly on suspicion that he had killed his wife by splashing acid on her while she was sleeping. The prosecution, however, indicated that after the dastardly act, he went into hiding in the bush for three days, and that he later showed up in the house of a relation who then alerted the Police, leading to his arrest at Assin Nkran.

In a caution statement on 7th March, which was tendered in evidence and marked as 'Exhibit D', the appellant confessed to the crime, and admitted having splashed the woman with acid in order to teach her a lesson. He also indicated that he carried the acid in a plastic container, opened her door and threw the acid on her. This account seemed to be corroborated not only by the presence of a plastic container matching the description he had given, in the house; the fact that the children in the room also suffered minor burns from the splashing; and the post-mortem examination report that showed that the injuries were consistent with the deceased having been splashed with acid – a corrosive substance. In addition, the accused person, now appellant, himself had injuries on his hands, which, as he explained to the Magistrate during committal, had been caused by the acid. He was represented by counsel and tried at the Cape Coast High Court.

After the Prosecution had closed its case during the trial, the appellant denied the contents of Exhibit D. He claimed that he was somewhere else with a friend when the

crime allegedly occurred. However, he had not given notice to the police that he intended to set up the defence of alibi, nor did he give the particulars of his alibi to the police as required by section 131 of the Criminal Procedure Act, 1960 (Act 30).

He was subsequently convicted of the murder of his wife, Akua Praba alias Sekina and sentenced to death on 17th May 2012 on a unanimous verdict of guilty. On 15th January 2015, the appellant filed a Notice of Appeal which essentially argued that the admission of the supposed "Confession Statement" was wrongful. On 22nd July, 2015 the Court of Appeal affirmed the conviction.

Trajectory of the case.

The case has travelled a long road, sometimes zig-zagging at the appellate courts before finally culminating in the instant appeal. Grounds of appeal against conviction by the trial court were filed on 4th July 2012.

The grounds were as follows:-

i. That his conviction and sentence is not supported by evidence of facts adduced before the trial.

ii. That the trial High Court Judge erred in law in conviction of the accused/applicant without taking into consideration his denial of the offence which is contrary to sound legal jurisprudence.

iii. That, the trial High Court Judge misdirected himself, when he allowed the case to go on without considering the "Alibi" as put forward by the accused.

iv. That the trial court erred by convicting and sentencing the accused person when his tangible explanations which were not recorded amounted to a denial of the offence.

v. That, the conviction and sentencing is not supported by law, as there was no corroboration by witnesses on what happened or whether any witness saw the accused/appellant pouring the said acid on the deceased.

vi. That the purported confession statement was taken after the Police had intimated to the accused/applicant to confess for him to be given a lenient sentence.

Notice of Appeal was filed on 4th July 2012 by Petition by appellant. Then an appeal dated 12th March 2013 pursuant to Criminal Appeal under Section 326 of Act 30 was filed.On 3rd June 2013 Counsel filed an address on behalf of the Accused/Applicant. The document is headed "In the Court of Appeal, Central Region, Cape Coast." This was dated 20th February 2013.

It is unclear if this was the appeal that was struck out on 8th April 2014 as incompetent for being "woefully out of time" by Court of Appeal presided over by Honyenuga JA (as he then was.)On 9th June 2014, Motion for Extension of Time to file appeal was granted by Court of Appeal (Honyenuga JA (as he then was)(presiding). The appellant was granted 14 days within which to file his appeal. On 10th June 2014, a fresh Notice of Appeal was filed by "Law Consult at Court of Appeal, Cape Coast. On 9th December 2014, Court of Appeal granted Counsel, for appellant, Mr. Kwadwo Tuffour to put his house in order. Presided over by Honyenuga, with Dennis Adjei and Ackah-Yensu JJA. the Court was adjourned to the strange date of "**27/1/1025"** according to the Record (ROA pg. 96).

On 16/1/2015 appellant filed a petition pursuant to leave granted by Court of Appeal on 9th June 2014 dated 15th January 2015 by Law Consult (p. 98).

Eventually judgment was delivered on 22nd July, 2015, coram Honyenuga JA, (as he then was) (presiding) Alhaji Saeed Kwaku Gyan and G S Suurbareh JJA. Nothing more seems to have happened until almost two years later. On 20th April, 2017, there was a Notice of Appeal to Supreme Court but, oddly enough, the judgment that was to be appealed from cited the Court of Appeal panel as: Marful-Sau JA (presiding), Acquaye and Torkornoo (Mrs) JJA.(See ROA p142)

On this Notice of Appeal, grounds of Appeal were

"1. Having in accordance with law substituted itself for the trial Court, the Court of Appeal in considering and evaluating the entire record failed to observe that the part of the alleged handwriting of the Investigator stating the fact of an independent witness one William Bentil was inserted.

2. That by the insertion Exhibit D was made to appear a (sic) though during the caution of the Accused and the taking down of his statement one William was present as an independent witness.

3. That the Court of Appeal failed by having a critical examination and juxstaposition of the said insertion appearing to be that of the investigator and that of the written statement of William Bentil to find that the said William Bentil is not literate in English.

4. That the Court of Appeal if it had been more critical of the nature of the writing of each word attributable to William Bentil as independent witness would have come to the conclusion that the writer merely copied from another such statement.

5. The Court of Appeal in considering the nature of the offence and its resultant punishment ought to have come to the conclusion that the Accused would ordinarily not admit such guilt as contained in Exhibit D and that the said confession statement ought to be treated or considered with suspicion."

On 16th October 2018, J3/01/2018 appeal was struck out as withdrawn, for having been filed out of time.

At this point there appeared to be some confusion for it transpired that on 3rd March 2020, leave to appeal was granted by the Court of Appeal presided over by Ackah Yensu (Ms) JA. The grounds of appeal were four (4).

"(a) That the conviction and sentence of the appellant cannot be supported having regard to the evidence adduced at the trial.

(b) That the Court of Appeal erred when it failed to find and hold from a critical observation of the handwriting of the investigator that there was no independent witness present when the alleged confession contained in Exhibit D was made.

(c) That the Court of Appeal erred in law and thus occasioned for the appellant a grave miscarriage of justice when it failed to hold that the apparent absence of an independent witness rendered Exhibit "D" legally inadmissible.

(d) That by virtue of the absence of an independent witness during the taking of Exhibit D, the Court of Appeal misdirected itself when it relied on the said exhibit to uphold the conviction of the appellant."

He therefore sought reliefs in the nature of a reversal of the Court of Appeal judgment and an order acquitting and discharging the appellant.

Strangely enough, on 8th December 2020, the appellant applied for, and was again granted, leave by the Court of Appeal to file an appeal and given 7 days within which to appeal. On 14th December 2020 appellant filed a Notice of Appeal pursuant to the leave granted on 8th December 2020. However, this Notice of Appeal was subsequently substituted by another Notice of Appeal to this honourable court filed on 14th December 2020. This time, however, the judgment to be appealed against was the one of 2015 coram Honyenuga JA (as he then was) (presiding) G S Suurbareh, and Alhaji S.K. Gyan, JJA.

It is this Notice of Appeal of 14th December 2020, which has eventually landed before this honourable court.

Grounds Of Appeal:

"*(a) That the conviction and sentence of the appellant cannot be supported having regard to the evidence on record.*

(b) That the Court of Appeal erred when it failed to find and hold, from a critical observation of the handwriting of the investigator that there was no independent witness present when the alleged confession contained in Exhibit D was made.

(c) That the Court of Appeal erred in law by admitting Exhibit D into evidence.

PARTICULAR OF ERROR OF LAW

i. The absence of an independent witness at the time Exhibit D was allegedly taken rendered the exhibit legally inadmissible.

(d) That the Court of Appeal erred in relying on Exhibit D to uphold the conviction and sentence of the Appellant."

From a critical look at the grounds, three of them in (b); (c) with its "Particulars"; and (d) are essentially claiming that there was no independent witness to Exhibit D which was a Confession Statement as required under section 120(3) of the Evidence Act 1975, NRCD 323. Consequently, that Exhibit D was wrongfully admitted into evidence and relied upon to convict the appellant. We therefore proceed to discuss those grounds of appeal as one; following which ground (a) would also be discussed.

Grounds (b); (c); and (d)

It is clear from the tenor of the Statement of Case that much has been made of Ground (c)with its Particulars of Error: "*The absence of an independent witness at the time Exhibit D was allegedly taken rendered the exhibit legally inadmissible."*To prove that there was no independent witness, counsel sought to attack the Confession Statement by its appearance and to suggest that it was made by the same hand as the Investigator's. In paragraph 5 of Statement of Case counsel for the appellant states

"5. *My Lords will observe, that the handwriting of the investigator is same as that of the "fictitious" independent witness which therefore negatives the existence of an independent witness".*

In paragraph 10 he states forcefully thus:

"10 *Respectfully, we submit that these statutory requirements were not followed. This is apparent from the handwriting of the investigator. Your Lordships, Exhibit D was authored by the investigating officer. The said certificate demanded by Section 120 (3) (b) of NRCD 323, after a reading of the caution statement was done by the investigating officer.*

Your Lordships, there was no independent witness present when the accused person was making his statement as the statute obliges.

A critical examination of Exhibit D shows that there is no dissimilarity between the handwriting of the investigating officer and that of the "supposed independent witness William Bentil"

"12. On these grounds therefore, we pray that this court finds and holds, that the very investigator who wrote down the Appellant's statement also acted as the Independent witness. There was no independent witness when the Accused (Appellant herein was making the supposed statements contained in Exhibit "D"). This failure cannot be treated as a mere error for the trial and appellate courts heavily relied on the caution statement to convict and uphold the conviction of the appellant respectfully.

Counsel goes on and restates his allegations thus:-

"Respectfully, as has been demonstrated supra, the certification required of the independent witness was in the handwriting of the investigator. There is no difference in handwriting between the statements, taken down as being given by the accused person and that of the certification of the independent witness. From the comparison it cannot be said that an independent witness

referred to as William Bentil was actually present and certified that the statement was voluntarily given by the accused. Such impression clearly strips off the validity of the caution statement which same ought not to have been admitted by the trial Court nor should it have been relied on same and same confirmed by the Court of Appeal.

Having accused the Investigator of forging the signature of the supposed "Independent witness", Counsel did not go further to provide even a scintilla of evidence beyond the supposed ocular examination of the handwriting that is supposed to confirm that it is identical with that of the investigator. These are very serious allegations amounting to allegations of fraud, and made to impugn the integrity of the investigator, but Counsel fails to provide any credible evidence. Even if Counsel had acquired technical expertise as a handwriting expert, that would not entitle him to push his untested opinions on the appellate court. Upon what real evidence then, is an appellate court, such as this honourable Court, to make a determination of the veracity of counsel's allegations of fraud? In these circumstances, the statements are mere wild conjectures not worthy of consideration.

Counsel cites ***Frimpong alias Iboman*** v **The Republic** [2012] 1 SCGLR

297 in support of his case. However, had counsel considered the entire judgment of Dotse JSC in **Frimpong alias Iboman**, he would have spent less time on the appearance of the handwriting on the certificate and more on showing that his client had suffered a miscarriage of justice. At p.323 Dotse JSC said of the independent witness:

> "Finally, it is **desirable but not mandatory** that the certificate on the statement must be in the hand of the independent witness."

If it is "desirable but not mandatory", then it is possible, after all, for the

certificate made by a hand other than that of the independent witness, to be legally acceptable, though less desirable than if it was made in the hand of the independent witness. This throws the arguments on the handwriting out of the window. What then is the basis for the criticism of the judgment of the Court of Appeal?

Undaunted, counsel continues into the realm of the absurd and states in paragraph 14:

> *14. Your Lordships it is amazing as it is interesting to note, that the supposed independent witness if present at all never understood the language spoken and understood by the accused person. This is evident from the statements authored and attributable to him."*

Very surprising that Counsel alleges in one paragraph the following contradictory statements:

(a) 'William Bentil' does not exist or

(b) even if he exists that he was not present.

(c) Even if present he did not understand the language of the accused.

(d) He failed to explain to the accused in the language he could understand of the meaning of the statement he had made.

How could a person who was alleged not to be present also be accused of not having understood the language of accused; and also having failed to explain the content of the Statement to the appellant?

> *17. Humbly assuming without conceding, that the said William Bentil was even present at all, he was not fit and proper to have acted as an Independent Witness."*

How could Counsel comment on the personal qualities and qualification of a person whose very existence he denies; and whose presence during the taking down of the confession statement he seeks to cast doubt on?

If the person did not exist then, it could not be known whether he understood the language of the accused person or not. Nor could it be known whether he could understand, read and write in the language in which the statement was made" as required by S. 120 (3) of NRCD 323.

Counsel then blithely urges on this court

> *"It is humbly submitted therefore that this court finds and holds that the Independent Witness if he was present at all was disqualified to so act."*

This is an invitation this court rejects outright, for there is no basis to so hold. How could the court uphold criticism of the personal qualities and qualification of an independent witness who, according to counsel's submissions, does not to exist?

Counsel recognises the difficulty of the position he is urging on the court when it is clear that there was no objection raised when the statement was tendered and accepted as a Confession Statement. Even during the summing up of the trial Judge, he told the jury

> "*As I told you earlier it was not objected to at the time of tendering it in evidence so the need did not arise to conduct a mini-trial."* (ROA p. 38)

The Judge therefore discussed the law on confession statements, even though no objection had been raised at the tendering of this Exhibit D.

Instead of investing effort into establishing the legal bases for a 2nd appellate court to accept as fact an objection that should have been raised and proved or disproved at the trial court, counsel goes as to restate the allegations and accuses the Court of Appeal of "*Mechanistic application of the principle that once there was a failure to raise a timeous objection in respect of the tendering of a confession statement, then, the accused is forever forbidden from raising same even on appeal*."

Counsel quoted Section 6 (1) of NRCD 323

> *"6(1) In every action, and at every state thereof any objection to the admissibility of evidence by a party affected thereby shall be made at the time the evidence is offered."*

On the evidence, no objection was taken at the time the statement was offered. Counsel should, therefore, have supplied authorities to aid this court to go contrary to the statutory provisions if possible, and not to complain of adherence to statutory provision as "mechanistic approach". It is indeed, surprising that with such a huge legal hurdle to scale, counsel merely thought to accuse the Court of Appeal of "Mechanistic approach" to the application of the statute.

Counsel relied on ***Edward Nasser & Co. Ltd. v Mcvroom & Another [1996-97] SCGLR 468*** to indicate that a court may go contrary to Section 6 (1) if there has been a substantial miscarriage of justice. Counsel however does not do much by way of encouraging this court to see the substantial miscarriage of justice that had occurred.

Indeed Section 5 (2) sets out the grounds in determining whether there had been a miscarriage of justice as follows:-

> *"a. whether the trial court relied on that inadmissible evidence and*
>
> *b. whether an objection to or a motion to exclude or to strike out the evidence could and should have been made at an earlier stage in the action.*
>
> *c. whether the objection or motion could and should have been so stated as to make clear its ground or grounds; and*
>
> *d. Whether the admitted evidence should have been excluded on one of the grounds stated in connection with objection or motion; and*
>
> *e. whether the decision would have been overturn but for that erroneous admission of evidence.*

3. No finding, verdict, judgment or decision be set aside, altered or reversal on appeal or review because of the erroneous exclusion of evidence unless

(a) the substance of the excluded evidence was made known to the court by the questions asked, an offer of proof, or by any other means; and

(b) the court which decides on the effect of the error also determines that the excluded evidence should have been admitted and that the erroneous exclusion of the evidence resulted in a substantial miscarriage of justice.

At page 477 **of Edward Nasser & Co. Ltd**. v **Mcvroom & Another** supra, Acquah JSC stated that

> *"An appeal or review against the judgment may succeed only where it is established that the admission has occasioned a substantial miscarriage of justice."*

Counsel therefore had a responsibility to show that the effect of the supposed wrongful admission of the evidence amounted to a miscarriage of justice. He did nothing of the sort, but expected an appellate court to agree with him merely because he said so.

Again, counsel could not state with any degree of conviction that there was no independent witness as required by Section 120. The either/or proposition presented by counsel i.e. either there was no independent witness named William Bentil or that even if there was, the said William Bentil lacked the statutory qualifications as an independent witness is completely inappropriate. An appellate court cannot rely on speculation or supposition of a breach of statutory requirement to reverse a decision of both trial court and first appellate court.

Counsel seems to approbate and reprobate. In paragraph 30, Counsel states:-

> *"Very respectfully my Lords we urge you considering the charge, and the sentence, to interrogate, the issues of the presence or otherwise of the independent witness as well as if he was present at all, whether he was competent and qualified to so act."*

But he then concludes that same paragraph with "*Rightly so because, there was no such independent witness."*

Counsel is therefore unsuccessful even in establishing the facts of the main ground upon which the appeal is brought. Yet counsel had represented the appellant long enough to be able to state which of the options was the correct one.

It is true that without Exhibit D there was no eye witness as to who poured the acid on the deceased. The deceased did not tell Efua Foriwa PW2 who testified to meeting the deceased looking for help, while her skin was peeling off and her panties or "shredding" as she put it. This is to be expected as she was sleeping and did not see her attacker. It was nevertheless possible to surmise who could do it, and who had the opportunity and motive to harm her. The fact that there was no eye-witness did not mean no one could be suspected of the crime.

The pathologist testified that she suffered burns consistent with the known effect of acid. He also testified to the fact that the substance had been splashed on her judging by the nature of her injuries. Therefore, there was no doubt that she had suffered an attack by acid.

The appellant put in his denial of the contents of Exhibit D, after the prosecution had closed its case. He had not indicated that he intended to rely on the defence of alibi so that the prosecution would have opportunity to check out the witnesses named, as required by Section 131. He only mentioned some names but did not provide any other particulars for the people to be contacted. He did not call them in evidence either. Why did he not do so? It must be remembered that Alibi is a defence and so nothing stops an accused whose Alibi is not checked by the prosecution from calling such witnesses. In ***R v Val-Vannis (1957) 2 WALR*199**, an appellant made application the court halfway through the trial that he intended to rely on the defence of alibi. The application was refused by the court. It was held that the accused was not thereby inhibited from calling witnesses himself. In the instant case, the prosecution had already closed its case without notice of the defence. Despite the failure of the

appellant to comply with the requirements in section 131, the Judge in his Summing up specifically instructed the jury not to ignore the evidence of the accused. The jury still returned a verdict of guilty.

The timing of this line of attack on the conviction is also worthy of note. In the Notice of Appeal filed on 4th July 2012 to the Court of Appeal, appellant stated in ground VI that he had been induced to make the confession with the promise of a lenient sentence. However, this allegation was not repeated anywhere else. Indeed, in a subsequent Notice of Appeal again to the Court of Appeal filed on 15th January 2015, no mention was made of this ground at all. It is clear the appellant first sought to attack the Caution Statement on the grounds that it was not voluntary as having been procured by inducements as required under section 120 (5) (c), however, he abandoned this ground. It was only in December 2020, subsections (2) and (3) of section 120 (3) were thrown in. Why was this raised for the first time at this point? Considering that it is the same provision that sets out the requirement of an independent witness, it cannot be the case that neglecting to mention the absence of "independent witness" was born of ignorance. Hence, this issue of the supposed absence of an independent witness/the presence of an independent witness who did not meet the statutory qualifications set down in Section 120 (3) appear to be an afterthought. The appellant is fishing for a life-line and is throwing everything into the mix.

Counsel for the appellant cites the Supreme Court case of **Cpl *Ekow Russel*** v. ***The Republic,*** Crim Appeal No J3/5/2014 Unreported; judgment delivered on 13th July, 2016,to highlight the common law position that it is better for ninety-nine guilty persons to escape than that one innocent person should suffer punishment. However, he does little to show that the appellant is an innocent man who must come under this rule, in the face of damning evidence against him. Indeed, the substance of the case actually goes against his position. One of the issues that *Russel* case turned on, was the qualification of a supposed 'independent witness'. The identity of that independent witness was known and so his qualification could be challenged, as indeed it was during

the trial. Having been identified as a policeman who was on the team of investigators and therefore not a disinterested party, it was possible to assess his qualifications as such 'independent witness'. The situation in this case is different for the existence/identity of the 'independent witness' is denied. How then could his qualifications as such witness be disputed?

The court in *Russel* also took the opportunity to clarify its position in ***Frimpong alias Iboman*** v *The* ***Republic***, supra. The **Frimpong alias Iboman** case, is materially different from the instant one, for in that case, objection had been taken to the confession statement as provided under section 6 of NRCD 323. In consequence, a mini trial had been held to determine the veracity of the allegations, before the statement was admitted in evidence. This was not the situation in the instant case. Again, on the qualifications of an independent witness, the court had much to say, but none of it favoured the cause of the appellant. Dotse JSC restated the provisions on the qualifications of the independent witness as provided for under section 120 (3) of NRCD 323, in extenso. He summarized the law and concluded at p.322 of the report thus:

> "*In short, an independent witness must not be someone who is so closely connected to the police as to make him more or less dependent on the police. Such a scenario would defeat the purpose for which the law was enacted. Secondly the independent witness must not only understand the language in which the declarant spoke, but also understand the language in which the statement was written down if it was written by someone other than the declarant. Thirdly the independent witness must also be able to read and understand the language in which the statement was written so as to enable him explain the contents to the declarant*.

The appellant put himself outside the pale of these provisions when he denied the existence of the independent witness entirely. Having done so, he still speculated as to whether the person, if he existed, possessed or exhibited those attributes enumerated

above. This posture completely undermined his position. The appellant has thus failed to establish that the confession statement was wrongfully admitted in evidence; or that the requirement of independent witness was breached.

Ground (a)

The appellant contends that "*the conviction and sentence of the appellant cannot be supported having regard to the evidence on record.*

This ground of appeal hinges on the totality of the arguments in grounds (b),(c) and (d), for the confession statement was the strongest evidence against the appellant, hence the strenuous efforts to cast doubt on it. In **Cpl. *Ekow Russel*** v. ***The Republic,*** supra, which counsel cites in his submission, the Supreme Court speaking through Akamba JSC, stated the law on admissibility of confession Statements and said at p.15 of the judgment

> *" A confession is an acknowledgment in express words, by the accused in a criminal charge, of the truth of the main fact charged or of some essential part of it. By its nature, such statement if voluntarily given by an accused person himself, offers the most reliable piece of evidence upon which to convict the accused. It is for this reason that safeguards have been put in place to ensure that what is given as a confession is voluntary and of the accused person's own free will without any fear, intimidation, coercion, promises or favours.*

Thus the words of the appellant himself provided the strongest evidence against him. Since no objection was taken at the time of the trial, the Statement, 'Exhibit D' was properly admitted. In addition, there was circumstantial evidence which offered corroboration to the substance of the confession statement and confirmed its veracity:

(1) A plastic container found at the scene of the crime was consistent with the description given by appellant of the container he used to carry the acid in his confession statement.

(2) The appellant had wounds on his hands which were consistent with acid burns which the appellant admitted they were.

(3) The appellant went into hiding for a few days and was only handed to the Police when he made contact with a relation.

These strong pieces of evidence could not be lightly contradicted, and were not contradicted. Therefore the evidence on the record was sufficient to convict the accused and so the Court of Appeal was not wrong in upholding the conviction. We also affirm the judgment of the Court of Appeal and dismiss this ground of appeal.

Conclusion

The appellant has failed to mount a successful attack on the admissibility or content of Exhibit D. No objection was taken at the time the evidence was admitted and no effort has been made to show that such admission caused a miscarriage of justice. The attack premised on the absence of an independent witness falls flat on its face since counsel is unable to state his exact position on the independent witness. He oscillates between presence and absence and even purports to attack the eligibility of the independent witness whose very existence is denied. Having considered all the grounds of appeal, we affirm the judgment of the Court of Appeal.

There is no merit in this appeal, and it must fail in its entirety.

PROF. H. J. A. N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

A. M. A. DORDZIE (MRS.)
(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY
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