

**SUPREME COURT OF NIGERIA**

18TH JUNE, 1993. SC.145/1992

**CORAM:- M. L. UWAI, S. M. A. BELGORE, A. B. WALL,  
O. OLATAWURA, I. L. KUTIGI, JJSC**

CPL. ANDREW EMWENYA ..... APPELLANT

V.

ATTORNEY-GENERAL OF ..... RESPONDENT  
BENDEL STATE

*CRIMINAL LAW - Murder - Proof of cause of death - whether by  
medical evidence or by inference from surrounding  
circumstances*

*EVIDENCE - Murder charge - existence of special circum  
stances - absence of medical evidence - whether  
fatal to prosecution's case*

*EVIDENCE - Murder - conviction based on the uncorroborated  
evidence of a tainted witness - whether conviction is  
safe*

**FACTS**

The Appellant (a soldier) was tried for murder before the High Court, Benin - City. He was alleged to have slapped the deceased who fell down, hit her on the chest with a hammer, kicked and stamped on her stomach. The sister of the deceased (PW6) who was the only eye witness rushed to call their mother to the scene and on coming back they met the deceased unconscious. Carried to the hospital, she was pronounced dead. Appellant's act might have been under the mistaken belief that the deceased was the lady who drove a car that hit his daughter. On the contrary, the deceased and her sister (PW6) were sympathisers comforting Appellant's mother after the accident. This explanation was made by the deceased to the Appellant who still went ahead with inflicting injuries that led to her death.

The Appellant disappeared from Benin - City and could not be traced for three years. He was latter arrested and he denied the charge. The trial court convicted the Appellant for murder. His appeal to the Court

of Appeal was dismissed.

On further appeal to the supreme Court, it was asked to determine inter alia, whether in the absence of medical evidence as to cause of death, it is possible to infer same from surrounding circumstances.

**HELD** (unanimously dismissing the appeal)

1. In certain murder cases, the prosecution to prove its case must produce evidence that it was the act of the accused person that caused the death of the victim. (p. 173 L.15)
2. The cause of death is proved by evidence of witnesses who saw the very act that caused the death. Or where the victim sustained injuries, the medical evidence, if available, of the doctor that examined the corpse and presents opinion as to the cause of death. (p. 173 L.18)
3. Where the Appellant disappeared for three years after committing the murder and the foreign medical doctor that examined the corpse had left the Country finally thereby leading to absence of medical evidence, there must be other evidence to connect the Appellant with the death of the deceased. (p. 173 L.22)
4. In the circumstance of this case, medical evidence was not necessary as to cause of death since the hammer used by the Appellant on the deceased is a lethal weapon. (P.173 L.36)
5. There was no contradiction in the evidence of prosecution witnesses in spite of much emphasis to that effect. (P.174 L.3)
6. Although it is not safe to convict on the uncorroborated evidence of a tainted witness, nothing on record showed the only eye witness was confronted with the fact that she could be an interested party who wished somebody held responsible for her sister's death. (p. 174 L.11)
7. The cause of death could be inferred from the brutality of the Appellant's unprovoked attack on the deceased in using hammer, hand, kicking and the deceased falling unconscious right on the spot. (p. 174 L. 19)

**REPRESENTATION**

Chief Babashola Rhodes, SAN (with him, C. Ike and E. Bassey) For the Appellants

Belinda Kalu (Mrs.) Chief Legal Officer, Ministry of Justice Edo State  
For the Respondents

**CASES REFERRED TO**

1. Ikemson v. The State (1989) 3 NWLR (Pt. 100) 455
2. Bature v. The State (1991) 5 NWLR (Pt. 194) 697
3. Okolo v. The State (1974) SC 82
4. Idahosa & Anor. v. R. (1964) NMLR 85
6. Ogundipe & Ors v. R. XIV WACA 458
7. Ugo v. A.G. Bendel State (1986) 1 NWLR (Pt. 17) 418
8. Ukho v. The State (1971) 1 NMLR 130
9. Adamu v. Kano N.A. (1956) SCNLR 65
10. Onyejekwe v. The State (1992) LRCN 780
11. Adio & Anor v. The State (1986) NWLR (Pt. 24) 581
12. Akprenya v. The State (1976) 11 SC 269
13. Lori v. The State (1980) 8 -11 SC 81

**LEAD JUDGMENT BY BELGORE JSC**

On 31st day of December 1984, one lady by name Queen Ero, now deceased, was going to buy bread and was accompanied by her sister Esole Ero (P.W.6) As they were going on the road they got to a place by the front of the house of the appellant, Corporal Andrew Emwenya, when an accident occurred involving the daughter of the appellant and a car driven by a woman. The accident attracted a crowd including the mother of the appellant who came out of the house to see her grand-daughter who sustained a broken leg in the accident. The deceased and her sister (P. W.6) helped the woman driver of the accident car to dispatch the girl to the hospital. After the departure of the victim of the accident and the car from the scene, the mother of the girl was crying and the deceased followed her towards the house commiserating with her. At this juncture, the appellant who never saw the accident and probably only heard of it, arrived at the scene and asked the deceased whether she was the driver of the car involved in the accident that injured his daughter. The deceased answered in the negative and went further to explain that she and her

sister were only trying to help and as neighbours they were there trying to calm down the appellant's mother who was crying and to see her into the house. There and then the appellant slapped the deceased whereby she fell down; as she was on the ground the appellant hit her with a hammer he was holding on her chest, kicked her and stamped on her stomach. The deceased was shouting for help whereby her sister, P.W.6, rushed to their house nearby to inform their parents of what was going on. The P.W.6 returned to the scene with their mother, P.W.4 and people who were attempting to revive the deceased who was unconscious. There P.W.4 challenged the appellant who in turn threatened her after some altercations, with iron rod. P.W.6 and P.W.4 then carried the deceased to the hospital where she was pronounced dead.

The appellant, a soldier, disappeared for three years from Benin City and efforts to trace his unit was futile. When he sneaked into the city three years later, he was apprehended. He denied ever attacking anybody and said he could not remember seeing either the deceased or the P.W.6 at the scene of accident where his daughter was hit by a vehicle. All he remembered was that on 26th June, 1988, when he was at his house some persons came and alleged that he was the one that killed Queen Ero and they beat him up, tore his uniform and removed his army identity card after removing N343.00 from his pocket.

At his trial at the High Court, Benin City, learned trial Judge, Akpiroroh J, after a thorough review of the whole evidence for prosecution and defence found as follows:

*"After a careful review of the entire evidence as to how the accused beat the deceased to death. I am not satisfied that there was any conduct of the deceased which could provoke the accused to beat the deceased to death. There was no doubt that the intention of the accused was at least to cause grievous bodily harm to the deceased when he started to march, kick and hit her on her chest with a hammer he was holding as borne out from the evidence of P.W.6. In my opinion there was the clear intention by the accused to kill the deceased. I have no hesitation whatsoever in holding that it was the continuous assault of the deceased by the accused that caused her immediate death on the spot. I totally reject the defence of the accused person and I am quite satisfied that P.W.6, the only eye witness who testified for the prosecution spoke the truth when*

*she said that it was the accused person who beat the deceased to death on that fateful day."*

and thereby convicted him and sentenced him to death.

On appeal to Court of Appeal on the general ground, learned  
5 counsel formulated three issues all revolving around proof beyond reasonable doubt and the failure to prove with certainty the cause of death. The Court of Appeal dismissed the appeal and hence the appeal. Learned senior advocate, Orobiyi Rhodes argued what I regard as a general ground  
10 which runs as follows:

*"GROUND OF APPEAL*

*1. The Court of Appeal erred in affirming the judgment and conviction of the trial Court when the prosecution did not prove its case  
15 beyond reasonable doubt.*

**PARTICULARS OF ERROR**

*(i) The Learned Justices of the Court of Appeal erred when they  
20 affirmed the conviction and sentence of the accused person on evidence of P.W.6 a sister to the deceased whose evidence did not prove the cause of deceased's death neither did her evidence explain how the accused got the hammer which he used to attack the deceased.*

*(ii) The Learned Justices of the Court of Appeal erred when they  
25 stated that a weapon which an accused used in causing the death of a deceased is not material when it held thus*

*'IN MY VIEW, WHETHER THE INSTRUMENT USED TO HIT  
THE DECEASED IS CALLED A HAMMER OR IRON MAKES LITTLE  
30 DIFFERENCE AS ONE INSTRUMENT CAN BE DESCRIBED BY DIFFERENT WITNESSES WITH DIFFERENT NAMES. THERE IS NO REASON WHY A HAMMER MADE OF IRON CAN NOT EQUALLY BE CALLED AN IRON ROD'.*

35 In his Brief of Argument for the appellant he formulated the following issues for determination:

**ISSUES FOR DETERMINATION**

*1. Whether in the absence of medical evidence relating to the cause of death, the weapon used, and the nature of the wound inflicted*

*on the deceased, it is possible to infer the cause of death from the surrounding circumstances?*

2. *Whether the Court of Appeal was right when it ruled that the weapon used to cause death is immaterial?*

3. *Whether it is safe to convict the accused, when it was not shown that the deceased died on the spot and when the Court was shielded from knowing the truth, as the prosecution could not explain why the matter was not reported to the Police at the earliest possible time and when records of such report were not tendered in Court?* 5

4. *Whether it is safe for the Appeal Court, like the trial Judge to uphold the conviction of the accused person based on the sole evidence of P.W.6, when all other material witnesses were not called to testify before the trial court and especially as P.W.6 is a relative of the deceased?* 10

In a murder case, for the prosecution to prove its case in certain cases, it must produce evidence that the victim of the offence not only died but also the cause of death and it was the act of accused person that caused that death. The cause of death is easily proved by evidence of witnesses who saw the very act that caused the death or in some cases of injuries to the victim, the medical evidence if available, of the doctor who examined the corpse and proffers opinion as to the cause of death. This is a peculiar case that must be determined in its own circumstance. The appellant disappeared for over three years after the alleged offence and the medical officer who performed the post-mortem examination had left the country finally, he being a foreigner. But in the absence of medical evidence, there must be other evidence to connect the appellant with the death of the deceased. The appellant's behavior was completely unjustified. The deceased, a sympathetic passer-by when a vehicle hit the daughter of the appellant, without any provocation was attacked by the appellant. He first slapped her and she fell. Whilst on the ground he hit her with a hammer having sharp edges and the hitting was on the chest. He kicked or stamped his feet on her and by the time P.W.6 who witnessed all these could call the mother, P.W.4 to the scene, the deceased was unconscious. She died by the time she was rushed to the hospital. In a circumstance as this, no medical evidence, which would be at best strong opinion, was necessary as to the cause of death. By its nature a hammer is a lethal weapon, whatever the size. [See Ikemson v. The State 15 20 25 30 35

174 Emwenya v. A-G Bendel State (1993) 6 KLR Belgore JSC  
(1989) 3 NWLR (Pt.110) 455; Bature v. The State (1991) 5 NWLR  
(Pt.194) 697, 708]. Much emphasis seems placed on the alleged contra-  
diction in the evidence of P.W.6 and P.WA. There was no contradiction.  
P.W.6 saw the appellant's attack on the deceased and P.W.4 arrived at the  
scene after the attack when efforts were being made to revive the de-  
5 ceased who was unconscious. The P.W.6 saw a hammer, with sharp  
edge, used to hit the deceased on the chest; the P.W.4 went to the appel-  
lant at his door after the attack and she was threatened with an iron rod.

10 Much is made of the fact that P. W.6 a sister of the deceased is  
the sole witness of the attack by the appellant. It is true it is not safe to  
convict on uncorroborated evidence of a tainted witness. [See Okolo v.  
The State (1974) 2 SC.82; Idahosa & Anor. v. R. (1965) NMLR 85, 88].  
But nothing in the whole evidence on record showed the witness was  
15 confronted with the fact that she could be an interested party who wished  
somebody held responsible for the death of her sister.

From the brutality of the attack by the appellant on the deceased  
20 in an unprovoked manner and using of hammer, hand and kicking while  
she fell on the ground and her falling unconscious right on the spot, the  
cause of death could be inferred. [Ogundipe & Ors. v. R XIV (1954)  
WACA 458; Eric Uyo v. Attorney General Bendel State (1986) 1 NWLR  
(Pt. 17) 418, 432, Okoro v. The State (1998) 5 NWLR (Pt.94) 255]  
25

I find no merit in this appeal and I accordingly dismiss it. The  
decision of the Court of Appeal affirming the conviction of the appellant  
by the trial High Court is hereby upheld.

30

### UWAIS JSC

35 I have had the advantage of reading in draft the judgment read  
by my learned brother Belgore, J.S.C. For the reasons which he has  
given I too will dismiss the appeal and it is hereby dismissed.

## WALI JSC

I am privileged to have a preview of the lead judgment of my learned brother, Belgore, J.S.C. and I agree with his reasoning and conclusion for dismissing the appeal.

The facts of the case have been amply provided in the lead judgment of my learned brother Belgore, J.S.C. and therefore no need to restate them. 5

P.W.6 is the prosecution star witness in this case whose evidence-in-chief was:- *"I know one Queen Ero. She was my sister. She is now dead, she died on 31/12/84.*

*On 31/12/84, I went to buy bread with the deceased. We then saw a woman driving a vehicle from our front. The daughter of accused ran across the road and the vehicle collided with her. The driver of the car who was a woman came out and we joined her to carry the girl into a car and she took her to the hospital. The mother of the accused started to cry. The deceased told her not to cry because her daughter was alive.* 10 15

*The deceased told her to go into her house. As we were taking the mother of the accused to her house the accused came and asked the deceased whether she was in the vehicle with the woman who collided with his daughter. The deceased said no and told him that she did not know the driver of the car that collided with his daughter. She further told him that they were neighbors in the same street, hence she was taking his mother inside. The accused then slapped the deceased on her face and she fell down. He then hit the deceased with a hammer he was holding on her chest, and kicked her on her stomach. He started to march her on the ground and the deceased started to cry and she was shouting on me to go and call our parents. When the people who were around were pouring water on her, I went to call P.W.4. They put her in a taxi cab, and I followed her with P.W.4 when we got to the Central Hospital, Benin City we were told that she was already dead."* 20 25 30

When she was cross examined, P.W.6 said:-

*"There was no quarrel between the accused, myself and the deceased. There was no quarrel before the date of the incident between the accused, myself and the deceased.* 35

*When the deceased fell down, the accused hit her on her stomach with a hammer and started to march her on the ground. The accused left the deceased after beating her up. The hammer with which the accused used on the deceased has sharp edges. After the accused had*



*beaten up the deceased I observed that she was not talking again."*

Despite this vigorous cross examination, P.W.6 remained unshaken in her evidence. Even if P.W.6 is treated as a tainted witness there are other pieces of evidence which go to confirm the truth of her story. No reason was shown why she should pick the appellant out of many living in the  
5 same area with her, to concoct the story against him.

P.W.7 the Nigeria Police Inspector that handled the investigation of the case gave evidence of how he went to Military Unit (Supply and Transport) Ibadan, looking for the appellant but only to be told that he was not  
10 serving there. He then came to Lagos, went all round the Military Units in Lagos but could not find the appellant.

It was three years later that the appellant came out from hiding and returned to Benin. It was then that he was arrested.  
15

The defence of the appellant was that he did not beat the deceased to death. He however admitted that his daughter was involved in a motor accident with a vehicle being driven by a woman on the day the incident happened.

20 The learned Trial Judge considered the evidence adduced and concluded:-

*"In the instant case, the only solitary issue that calls for decision is, did the accused cause the death of the deceased? The prosecution having  
25 discharged this onus through P.W.6, there was no further obligation on it to call more witnesses who did not make statements to the Police or who were not present when the accused beat the deceased to death.*

*It is well settled law that an accused person particularly in murder cases  
30 which carry death sentence should be assisted by the court in considering defences not specifically raised if such defence ought to have been raised in the light of the evidence before the court. But in the present case, there was not enough evidence to make the court consider either defence. See  
35 Ukoh v. The State (1971) 1 NMLR 130 at 144. From the evidence adduced by the accused person he was raising the defence of alibi which was demolished by his own evidence and the evidence of D.W.1. The evidence of D.W.1 fixed him to the scene of crime. Although, his counsel submitted that his defence was not based on alibi but that no offence was*

*committed this submission to my mind is misconceived.*

*After a careful review of the entire evidence as to how the accused beat the deceased to death, I am not satisfied that there was any conduct of the deceased which could provoke the accused to beat the deceased to death. There was no doubt that the intention of the accused was at least to cause grievous bodily harm to the deceased when he started to march, kick and hit her on her chest with a hammer he was holding as borne out from the evidence of P.W.6 In my opinion there was the clear intention by the accused to kill the deceased. I have no hesitation whatsoever in holding that it was the continuous assault of the deceased by the accused that caused her immediate death on the spot. I totally reject the defence of the accused person and I am quite satisfied that P.W.6, the only eye witness who testified for the prosecution spoke the truth when she said that it was the accused person who beat the deceased to death on that fateful day."*

The Court of Appeal (as per Ogebe, J.C.A.) after considering the appellant's appeal also came to the following conclusion:

*"I have carefully looked at the record of the trial court and I am satisfied that there are no circumstances in the evidence led by the prosecution witnesses and the appellant and his only witness to mitigate the gravity of this callous offence of murder of an innocent woman by the appellant, an Army Corporal, who had no regard whatsoever for the sanctity of life. He took the law into his hands and killed a good Samaritan who was helping his wife home after the car injury to his daughter. The trial court gave him what he deserved"*

I have read both the printed record and the arguments of learned counsel contained in their respective briefs and have come to the same conclusion as the two lower courts did that the appeal has no merit.

It is not in all cases of murder that a medical report showing the cause of death is imperative. This is one of such cases. See Kato Dan Adamu v. Kano Native Authority (1956) SCNLR 65.

The concurrent findings on the evidence by the two lower courts are cogent and unimpeachable. See Arthur Onyejekwe v. The State (1992) 3 NWLR (Pt.230) 444; (1992) 19 LRCN 780 and Amusa Oppola Adio & Anor v. The State (1986) 2 NWLR (Pt.24) 581.

It is for these and the more elaborate reasons contained in the lead judgment of my learned brother, Belgore J.S.C, that I also hereby dismiss the appeal.

The conviction and sentence are hereby affirmed.

5

---

### OLATAWURAJSC

I had a preview of the judgment of my learned brother Belgore, J.S.C. just delivered. I agree that the appeal lacks merit and it should be dismissed.

10 I wish only to add that the learned counsel for the appellant had stated in his brief the principle of law be considered in a criminal trial when the cause of death is being considered. However these are authorities which have no bearing to the facts in this appeal. The evidence of  
15 P.W.6 - Esole Era who was an eye witness was believed by the trial court and also confirmed by the lower court. The submission of learned counsel did not take into account the defence of the appellant which was not simply a complete denial but that he was not at the scene as claimed by the prosecution witnesses. It is important to quote part of the evidence of  
20 the witness. She said inter alia:

*"The accused then slapped the deceased on her face and she fell down. He then hit the deceased with hammer he was holding on her chest, and kicked her on her stomach. He started to march her on the ground and the deceased started to cry and she was shouting on me to go  
25 and call our parents. When the people who were around were pouring water on her, I went to call P.W.4. They put her in a taxi cab and I followed her with P.W.4. When we got to the Central Hospital, Benin City we were told that she was already dead."*

30 There is no doubt that the appellant was under the mistaken impression that the deceased was the one who drove the car that collided with his child. But as at the time the deceased who was a good Samaritan was trying to take the appellant's mother to her home, the appellant pounced on the deceased. The learned trial Judge rightly described P.W.6 as the  
35 star witness and meticulously analysed her evidence and found that her evidence was credible.

Chief Shola Rhodes, S.A.N. had conceded that it is not essential that medical report should show causes of death where it can be inferred; but the learned Senior Advocate relied on exceptions. The learned

Senior Advocate described P.W.6 as a tainted witness. I regret to say there is nothing on record to show that P.W.6 is a tainted witness. The Court of Appeal agreed with the trial Judge's finding that "her evidence was clear and convincing and the trial court rightly believed her.

Starting from *Kato Dan Adamu v. Kano Native Authority* (1956) 5 SCNLR 65; (1956) 1 F.S.C. 25 and a host of other cases, this Court has repeatedly said that medical evidence is hardly necessary where the cause of death can be inferred from the circumstances, See also *Akpunya v. The State* (1976) 11 SC 269; *Lori v. The State* (1980) 8 -11 S.C. 81.

It is for these reasons and the fuller reasons well articulated in the judgment of my learned brother Belgore, J.S.C. that I have come to the conclusion that this is an appeal without a spark of merit. It is dismissed,

15

### **KUTIGI JSC**

I have had the opportunity of reading before now the judgment read by my learned brother Belgore, J.S.C. I agree that the appeal has no merit. Accordingly it is hereby dismissed.

25

30

35