

SUPREME COURT OF NIGERIA
15TH JULY, 1993. SC.87/1992
CORAM:- M. L. UWAIS, A. B. WALI, O.
OLATAWURA, U. OMO, M. E. OGUNDARE, JJSC

FRANCIS IDIKA KALU APPELLANT
V.
THE STATE RESPONDENT

- CRIMINAL PROCEDURE-* *Presumption that the accused is the perpetrator of the crime - whether the onus falls on the accused to rebut the presumption*
- EVIDENCE* - *Of the doctor that performed post mortem whether to be relied upon in inferring cause of death*
- EVIDENCE* - *Statement made by a witness to the police - additional explanation thereto during evidence - whether contradictory*
- EVIDENCE* - *Circumstantial evidence whether cogent and compelling enough - to ground conviction for murder*
- MURDER* - *No direct evidence against accused -whether the conviction based on circumstantial evidence is correct.*

FACTS

The Appellant was charged before the Imo State High Court, Ohafia, with the offence of murder, and he pleaded not guilty. The Prosecution called a total of 4 (four) witnesses towards proving the charge. The third prosecution witness (PW3) who was one of the inmates in the compound where the incident occurred testified that they heard a shout at about 2 a.m. and came out. They forced a window open and entered the room where the Appellant slept alone

with the deceased and saw that the Appellant had killed the deceased. He saw the matchet the Appellant used in killing the deceased. The pathologist that performed the post mortem testified that the deep matchet cut on the deceased's neck which led to his death could not be self inflicted. The Appellant admitted he slept alone with the deceased, denied killing him and suggested the deceased killed himself. Appellant denied his statement to the police which the trial court accepted as voluntarily made by him.

Appellant's said statement to police and evidence in chief reveal factors that show he had malice against the deceased over some controversies. The trial court found that though there was no direct evidence against the appellant, the circumstantial evidence against him was cogent, complete and unequivocal. He convicted the Appellant as charged. The Appellant's appeal to the court of appeal was dismissed. On further appeal, the Supreme Court had to determine whether the circumstantial evidence was cogent, positive and compelling so as to leave no doubt that it was the Appellant that murdered the deceased.

HELD (unanimously dismissing the appeal)

1. From the evidence of the doctor that performed the post mortem (PW1), it is clear the deceased was murdered by cutting his throat with a sharp instrument like a matchet, and that the type of wound found on the deceased could not be self inflicted thereby ruling out the possibility of a suicide. (p.33 L 24)
2. The learned trial Judge's acceptance of the evidence of the doctor was on firm ground as he was entitled to infer therefrom that the deceased met his death through a deliberate attack on him. (p .33 L29)
3. The additional explanation in the evidence of the PW3 as to the manner he saw the Appellant did not derogate from PW's statement to the police. Rather the evidence of the doctor (PW1) confirmed the evidence of PW3 that the deceased was slaughtered to death (p.34 L 39)
4. Since the tested, scrutinized and accepted evidence adduced by the prosecution conclusively pointed to the Appellant as the perpetrator of the crime, it is for the said Appellant to rebut the presumption or to cast a reasonable doubt in the

prosecution's case by preponderance of probabilities.
(p.39 L 19)

5. The learned trial Judge correctly found that the adduced evidence cogently, irresistibly and unmistakingly pointed to the Appellant as the murderer of the deceased. (p.39 L 25)

REPRESENTATION:

Chief Edwin Ume-Ezeoke For the Appellant

N.N. Chianakwalam (Miss) Ag, Director of Public Prosecutions, Ministry of Justice, Abia State For the Respondent

CASES REFERRED TO

1. Kim v. The state (1991) 2 N.W.L.R (pt. 125) 622
2. State v. Edobor (1975) 9-11 SC 69
3. Omogbodo v. State (1981) 5 SC 5
4. Ibina v. The State (1989) 5 N.W.L.R (pt. 20) 238
5. Worghiren v. The Queen (1962) 2 SCNLR 299
6. Lori v. The State (1980) 8 - 11 SC 81
7. Abieke & Anor v. The State (1975) 9-11 SC 104
8. Stephen Okafor v. The State (1990) 1 NWLR (pt 128) 614
9. Shazali v. The State (1988) 5 NWLR (pt. 93) 164
10. Beje v. The State (1991) 4 NWLR (pt 185) 281
11. Oladejo v. The State (1987) 3 NWLR (pt 61) 419
12. Ateji v. The State (1976) 2 SC 29
13. Ibrahim v. The State (1991) 4 NWLR 399
14. Enahoro v. The Queen NLR 125
15. Mohammed v. The State (1991) 5 NWLR 438
16. The State v. Nwaekerendu & 3 ors. (1973) vol. 2 ECSLR 75
17. The Queen v. Moses (1960) 5 FSC 187
18. Jimoh Ishola (alias Ejingbadero) v. State (1978) (9-10) SC 104
19. Ikebudu v. Bornu N.A (1966) NNLR 44
20. Onakoya v. The State (1959) 4 FSC 150
21. Esai & ors v. The State (1976) 11 SC 39
22. Ukoraie v. The State (1977) 4 SC 167
23. Atibunka & anor v. The State (1972) 1 SC 71
24. Shazali v. The State (1988) 5 NWLR (pt. 39) 164

STATUTES REFERRED TO

Criminal Code cap 30 Vol. 11 laws of Eastern Nigeria 1963 S. 318(1)
Evidence Act S. 137 (1) and (2)

LEAD JUDGMENT BY WALI JSC

The appellant, Francis Idika Kalu was arraigned before the High Court of Imo State holden at Ohafia, charged with the following offence:-

5 *"That you Francis Idika Kalu (m) on 30/1/84 at Atani Village, Ihechiowa, in the Arochukwu Magisterial District did murder one Uburu Abam (m) by matcheting him on his neck and thereby committed an offence contrary to section 318(1) of the Criminal Code, Cap. 30 Vol. II, Laws of Eastern Nigeria, 1963."*

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The appellant pleaded not guilty to the charge; and the trial proceeded.

To prove the charge against the appellant the prosecution called four witnesses while the appellant testified in his own defence
15 but called no witnesses.

At the end of the trial, the learned trial judge, Maranzu J, after a meticulous and painstaking review of the evidence concluded

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"My view ... has been necessitated by the gravity of the offence for which the accused is standing trial have convinced me without any shadow of doubt that the circumstantial evidence against the accused is very compelling and that the prosecution has proved its case against the accused person beyond reasonable doubt."

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He was accordingly convicted and sentenced to death by hanging.

Against the trial court's judgment, the appellant appealed to the Court of Appeal, Port Harcourt Division which also, after considering the case dismissed the appeal and affirmed the conviction and
30 sentence passed on him.

The appellant has now further appealed to this court. The substance of the case presented by the prosecution was that on the fatal night of 29/01/84 both the appellant and the deceased slept in the same room. P.W.3 who was one of the inmates in the compound
35 in which the incident occurred, narrated it as follows:-

"We were many people living in the compound. At about 2 a.m. one man called Bassey Ifeh heard a big noise and he shouted and we came out. One man called Mgborie Okon a

member of our compound refused to come out and those of us that came out were outside waiting. Bassey Ifeh used something like plywood to block the window so that the man may not come out. I joined Bassey Ifeh to push open one other window closed with ordinary mat and when we pulled 5 it we saw that the accused person had killed OBURU ABAM. The accused and the deceased were living in one room and when Bassey and I pushed open the window covered with mat we saw the accused standing by the side of the deceased. The accused had used a matchet to kill the deceased. I saw 10 the matchet. It was only two of them the accused and the deceased that were sleeping in that room. The deceased was lying down in bed. I observed that a matchet was used to cut his throat. I asked the accused what the deceased had done to him that he cut his throat. The accused talked to me and 15 stated that he did not know what happened to the deceased. Following his answer we referred the matter to the police. Our compound Chief called Nna Sunday Paul reported the matter to the police."

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Both the appellant and the respondent filed and exchanged briefs and in the appellant's brief, the following three issues were formulated-

- "I. Whether in the absence of any eye-witness to this offence, 25 the evidence of the prosecution witnesses can be treated as circumstantial, if this is so, is the evidence sufficient and compelling enough to found a conviction for murder.*
- II. Whether the mere fact that the appellant slept in one room with the deceased, was sufficient evidence to found a conviction 30 for murder, when there is no evidence directly linking the appellant with the death of the deceased.*
- III. Whether the prosecution has established the guilt of the appellant beyond reasonable doubt in the light of obvious 35 contradictions in the evidence of prosecution witnesses."*

The respondent also formulated in its brief 2 issues for determination which are as set down hereunder:-

"01. *Whether the learned justices of the Court of Appeal were right in upholding the trial court's finding that the circumstantial evidence adduced by the prosecution was sufficient to ground a conviction for murder.*

5 02. *Whether there were such contradictions in the evidence of the prosecution witnesses as to render their evidence unreliable."*

The three issues formulated by the appellant are sufficiently encompassed by the two issues formulated by the respondent. These may be stated as follows:-

- 10 1. Whether the circumstantial evidence relied upon by the court to find the appellant guilty is cogent, positive and compelling to leave no doubt that it was the appellant that murdered the deceased.
2. Whether the prosecution's evidence is so discredited by contradictions to render it unreliable.

On the issue of inadequacy of evidence, it was the contention of learned counsel for the appellant that none of the prosecution's witnesses [PWs. 1, 2, 3 and 4] was an eye witness to the incident and therefore there was no evidence directly linking the appellant with the killing of the deceased. He submitted that the circumstantial evidence given by PW3 fell far below the standard required to justify and sustain the conviction for murder. He said that the only evidence associating the appellant with the crime is that he slept with the deceased in the same room on the night the fatal incident happened.

25 He further submitted that based on some excerpts of P.W.3's evidence to which he referred, any one other than the appellant could have entered the room and murdered the deceased. He cited and relied in support of his submissions on *Worghiren v. The Queen* (1962) 2 SCNLR. 299; *Hyacinth Ibian v. The State* (1989) 5 NWLR (Pt.120) 238; *Lori v. The State* (1980) 8-11 S.C. 81 and *Abieke & Anor v. The State* (1975) 9-11 S.C. 104. Learned counsel further contended that the evidence of P.W.1 did not prove that the appellant used any of the objects mentioned in his evidence in perpetrating the offence. He cited and relied on *Stephen Okafor v. The State* (1990) 1 NWLR (Pt.128) 614.

As to the second issue which relates to contradictions in the prosecution's evidence, learned counsel did not refer to and enumerate these contradictions, but referred to the evidence of PWs. 1,

3 and 4 in general and submitted that it left some cracks in the prosecution's case and attributed that to the "very unsatisfactory investigation conducted by PW4 who could not recover the very object, as described by PW1 used in killing the deceased". He urged this court to intervene and allow the appeal in the interest of justice.

In the brief filled by the respondent who was not called upon to reply, she submitted as regards issue 1 that the onus imposed on the prosecution by Section 137(1) and (2) of the Evidence Act was successfully discharged and that it was left for the appellant to show that there was such a doubt. She contended that although there was no eye-witness to the tragic incident resulting in the deceased's death, there was however cogent and compelling evidence from which the court could infer that it was the solitary act of the appellant that caused the death of his innocent victim. She said that circumstantial evidence may ground a conviction where it is unequivocal, positive and irresistibly points to the guilt of the accused. In support she cited and relied on a host of authorities amongst which are *Shazali v. The State* (1988) 5 NWLR (Pt.93) 164; *Lori and anor v. The State* (1980) 8-11 S.C. 81; *Buje v. The State* (1991) 4 NWLR (Pt.185) 287 and *Oladejo v. The State*(1987) 3 NWLR F(Pt.61) 419. She referred to the evidence of P.W.3, P.W.4, P.W.1 and Exhibit E to support her submissions that it was the appellant that murdered the deceased.

On issue No.2, dealing with contradictions in the prosecution's evidence, learned counsel submitted that if there are any, they are not material and damaging to the prosecution's case, and that the learned trial Judge has adequately considered them and found them to be not substantial. In support she cited and relied on *Ateju v. State* (1976) 2 SC 29; *Ibrahim v. The State* (1991) 4 NWLR (Pt.186) 399; *Enahoro v. The Queen NLR* 125, and *Mohammed v. The State* (1991) 5 NWLR (Pt.192) 438.

She finally urged this court to dismiss the appeal and affirm the conviction and sentence passed on the appellant.

The whole appeal revolved on issues of fact while the case itself was based on circumstantial evidence. The 3rd prosecution witness who was an inmate of the compound in which the deceased was murdered testified thus-

"We were many people living in the compound. At about 2a.m. one man called Bassey Ifeh heard a big noise and he shouted and we came out. One man called Mgborie Okon a member of our compound refused to come out and those of us that came out were outside waiting. Bassey Ifeh Instructed us to block the doors and he Bassey Ifeh used something like plywood to block the window so that the man may not come out. I joined Bassey Ifeh to push open one other window closed with ordinary mat and when we pulled it we saw that the accused person had killed OBURU ABAM. The accused and the deceased were living in one room and when Bassey and I pushed open the window covered with mat we saw the accused standing by the side of the deceased. The accused had used a matchet to kill the deceased. I saw the matchet. It was only two of them the accused and the deceased that were sleeping in that room. The deceased was lying down in bed. I observed that a matchet was used to cut his throat. I asked the accused what the deceased had done to him that he cut his throat. The accused talked to me and stated that he did not know what happened to the deceased. Following his answer, we referred the matter to the police. Our compound Chief called Nna Sunday Paul reported the matter to the police."

Despite vigorous cross examination by the defence, the witness remained firm and unshaken in his evidence.

On the cause of death, P.W.1 testified that he performed a post mortem examination on the corpse of the deceased on 30th January 1984 at 12.40p.m in Arochukwu General Hospital. He said it was identified to him by P.W.2 as that of Oburu Abam. The witness gave his findings as follows:-

"that the corpse was fresh with rigour mortis setting in. I found the corpse to be a case of cut throat with esophagus; the trachea and the blood vessels of that region completely severed leaving a deep irregular ugly gapping wound. The cervical vertebrae could also be identified easily through the wound, certified the cause of death in my opinion to be cardiac arrest secondary to respiratory and circulatory failure. The primary cause of death is the severance of the trachea and the blood vessels of the neck. Any sharp object could

cause the severance of the trachea and the blood vessels. Such sharp object could be a matchet; a broken bottle or sharp edge of a metal. The wound on the corpse at the time I performed the post-mortem examination were still looking fresh, and could be about twelve hours old as at the time I performed the post-mortem examination. The wounds could not have been self-inflicted, In my opinion the deceased died on 30th January, 1984."

PW.1 excluded the possibility of suicide by the deceased when under cross examination he said -

"From experience many cases of suicide attempted in that manner by self inflicted would usually fail because the person usually loses his zeal soon after he starts to attempt suicide in that manner. If the anatomy of the neck is also considered one will find that it will take more than a human being to start severing from the neck anterior region down to the bone because in this case the bone was exposed."

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"It could be by one person and it could also be by more than one person."

Under re-examination, the witness said in the case in hand, it could be possible for one person to do both the holding of the victim as well as the cutting of the throat simultaneously.

From the evidence of P.W.1, one fact is clear - that the deceased was murdered by cutting his throat with a sharp instrument like a matchet, a broken bottle or sharp edge of a metal. It is also clear from the evidence that the type of wound found on the deceased could not be self inflicted. This ruled out the possibility of a suicide committal. Therefore the finding by the learned trial Judge after reviewing the evidence of P.W.1 that he accepted-

"the entire evidence of P.W.1, the Doctor in respect of the wounds found on the deceased and also the cause of death of the deceased."

was on firm ground. He was entitled to infer therefrom that the deceased met his death through a deliberate attack on him.

P.W.3 gave evidence that on the night of the incident the appellant and the deceased went to bed in the same room that had been occupied by them together for about one year, and that as a result of an alarm raised by one Bassey Ifeh, an inmate of the same

compound (but occupying a different room and who had since died before the trial of this case), all other occupants of the compound came out except Mgborie Okon. On Bassey Ifeh's instructions, P.W.3 continued.

5 *"Bassey Ifeh instructed us to block the doors and he Bassey Ifeh used something like plywood to block the window so that the man may not come out. I joined Bassey Ifeh to push open one other window closed with ordinary mat and when we pulled it we saw that the accused person had killed OBURU ABAM. The accused and the deceased were living in one*
10 *room and when Bassey and I pushed open the window covered with mat we saw the accused standing by the side of the deceased. The accused has used a matchet to kill the deceased. I saw the matchet. It was only two them, the accused and the deceased, that were sleeping in that room. The deceased was lying down in the bed. I observed that a matchet*
15 *was used to cut his throat."*

His statement of the police tendered as Exhibit "A" under cross examination substantially confirmed his evidence viva voce. An excerpt of Exhibit A reads thus

20 *"On 29/1/84 after all of us had taken our food, we all went to our respective rooms to sleep. The deceased and Idika are sleeping in the same room while (myself) have a room to myself. At about 2 a.m. of 30/1/84, I heard Bassey Ifeh calling one Mgborie Okon. On hearing Bassey Ifeh's noise, I*
25 *came out from my room to know what was happening because it was in the night. On coming out, I, in company of Bassey Ifeh, opened the window made up of mats where the deceased and Idika slept. When the window was opened, I*
30 *saw Uburu Abarn lying dead on his bed."*

P.W.3. in his evidence under cross examination affirmatively stated that no one could enter the room from outside in which the deceased was murdered through its only window which was firmly covered by a mat. He said -

35 *"The mat is firmly held in position by a stick from inside; some one inside could remove the stick and get out but no one from outside can remove the stick from outside."*

In my view, the additional explanation in his evidence in the manner

he saw the appellant did not derogate from his statement to the police - Exhibit A. The evidence of P.W.1, the pathologist confirmed the evidence of P.W.3 that the deceased was slaughtered to death. P.W.3 was also able to state under cross examination by means of what he was able to observe the conditions when he gained entry into the room. He said:

"There was light in the room. There was kerosene light in the room. The lamp was on when I entered the room occupied by the deceased."

The last witness called by the prosecution was P.W.4, He was Nigeria Police Inspector Samuel Akano attached to the Nigeria Police Station, Arochukwu. He investigated the case, visited the locus of the crime and also cautioned the appellant and recorded his voluntary statement after caution. He said -

"On my arrival at the scene of crime I saw the accused person being surrounded by villagers in order to prevent his escape. I entered the room occupied by the accused and one OBURU ABAM now deceased. I saw the deceased in a pool of blood lying in a wooden bed. I discovered that the deceased was killed with a sharp instrument suspected to be a knife. On this discovery I conducted a search in the room occupied by the accused person and the deceased. In one of the corners of the room I saw a knife and a cutlass covered with blood stains, I took possession of the cutlass and preserved it as an exhibit. I got a photographer to take photograph of the scene. I later conveyed the deceased and the accused in a police Landrover to the Police Station at Arochukwu, The deceased was later conveyed to the Public Mortuary at the General Hospital Arochukwu for post mortem examination. I served necessary corona's forms on Doctor U.K. Okwun (P.W.1) of the same hospital, and the doctor performed post mortem examination on the deceased and issued a report. During the course of my investigation I took blood specimen of the throat of the deceased and parcelled same along with the blood stained cutlass to Forensic Science Laboratory Oshodi Lagos, to determine whether the blood on the blood stained cutlass and the specimen blood I took from the throat of the deceased are the same. The Pathologist later issued his report, I discovered also during the course

of my investigation that the accused person and the deceased live in the same room and that the bed of the deceased is adjacent to that of the accused; that the 3rd P.W. and the complainant Bassey Ifeh now also deceased are tenants in the same building but live in separate rooms. I also discovered that the deceased hired the accused person to clear land for him for that year's current farming season. I also discovered that the deceased had not paid the accused person his wages until he was finally killed. During the course of my investigation I arrested, cautioned and charged the accused person with the charge of murder in English language and he volunteered a statement also in English language which I recorded in English language and read it over to him and he stated that the statement was correct and he then signed his signature. I also counter-signed the statement of the accused as the recorder. The house occupied by the accused and the deceased has two rooms by the corridor, that is, one room in each side of the corridor and then a parlour at the centre. It is this parlour at the centre that is occupied by the deceased and the accused person. The other two rooms were occupied each by P.W.3 and the late Bassey Ifeh. The parlour occupied by the accused person and the deceased has two windows covered with mats. Each of the two windows covered with mat could admit a human being. It is only one door that can lead into that parlour occupied by the deceased and the accused person. The windows were covered with native mat held in position by two nails at the top but is free below and someone can open it and come in and get out also from that same route. I did not check to see if any other thing besides the nails were used to hold the mat in position."

In his evidence-in-chief, the appellant denied making statement to the police, He denied ever sleeping with the deceased in the same room or ever worked for him. He said he knew nothing about the death of the deceased. But he further said:-

"I can read and write and I can sign my signature. I came to Uburu Abam from Calabar on 13th January, 1984 to collect from him the money a relation in the Camerouns gave to him to give me and also to collect my money from Amaekpu Ohafia through Ada Kalu my junior sister which money was

also in possession of Uburu Abam. The money I was expected to collect from Uburu Abam from my Cameroun relation was 1555: 15:50: I now say that the money was in Cameroun currency. Uburu Abam was also expected to deliver to me three French Peugeot 404 cars from the relation in the Camerouns. As for Ada Kalu she gave Uburu Abam 5 1500.00 for me."

In Exhibit E, the retracted statement of the appellant, and which the learned trial Judge accepted as free and voluntary, he corroborated the evidence of P.W.3 that he and the deceased had been living in one room for almost a year, and that on the night of the incident he and the deceased went to bed in the room being shared by them; that he had been working for the deceased as a labourer who refused to pay him and to give him food and money. He denied killing the deceased or causing any injury to him, he said:-

"...I am not the person who killed him. I am suspecting that the deceased killed himself because there was no any other person in the room other than myself."

After a meticulous examination and consideration of these pieces of evidence, the learned trial judge made the following finding:-

"There are certain facts that are not in controversy in this case. One of them is the fact of the death of the deceased UBURU ABAM. It is also established from the evidence of P.W.1 the doctor, P.W.2 the relation of the deceased; P.W.3 and P.W.4 the investigating police Inspector that late UBURU ABAM died on the 30th day of January, 1984 as averred in the charge preferred against the accused in this case.

X X X X X X X X X X X X X X X X

"It is therefore my view and I hold as a fact that when P.W.3 entered the room occupied by the deceased Abam and the accused he saw the accused holding a cutlass with which he cut the throat of the deceased. The fact that exhibit 'E' the purported matchet has been discredited by me for reasons which I have given above and the fact that the matchet used has not as a consequence been tendered as an exhibit has not distracted from my finding of fact that P.W.3 saw the accused holding a matchet with which he killed the deceased."

X X X X X X X X X X X X X X X X

"I have no doubt in my mind that exhibit "E" was the true

voluntary statement of the accused made to PW. 4 the investigating Police Inspector who also recorded the statement."

"With due respect to the learned defence counsel I wish to say however that the totality of the evidence led in this case do not to my mind merely cast suspicion on the accused.

There are no direct evidence against him either but it is my view and I so hold that the circumstantial evidence against the accused in this case is very 'cogent, complete and unequivocal'."

"My extensive review of the facts and the law and legal authorities cited by the contending counsel in this case which has been necessitated by the gravity of the offence for which the accused is standing trial have convinced me without any shadow of doubt that the circumstantial evidence against the accused is very compelling and that the prosecution has proved its case against the accused person beyond any reasonable doubt."

The Court of Appeal in the lead judgment of Onu, J.C.A. (as he then was) with which Omosun and Edozie, JJ.C.A. agreed, reviewed the evidence, the brief filed by learned counsel on both sides and the findings of the learned trial judge on the issues raised before them and concluded:-

"Suffice it to say that the learned trial Judge after carefully evaluating the evidence inclusive of appellant's defence and his statement to the police (Exhibit E), (the contradictions having been diligently scrutinized with a tooth comb) arrived at the conclusion, rightly in my view, that the circumstantial evidence against the appellant is overwhelming.

The appellant in Exhibit "E" points unequivocally to the fact that he was the only person that slept with the deceased in the room in which the crime was perpetrated. Immediately after the alarm was raised the windows to the room were surrounded by neighbours and they were intact. It was these neighbours who forced open one window and saw therein only the appellant with the deceased. The appellant gave no explanation as to who cut the throat of the deceased or about the noise from the room or as to any happening in the room. Rather, appellant's statement (Exhibit E) showed that he had malice against the deceased and therefore mo

tive for killing him. He said that the deceased had money and was very rich but had refused to pay him for the job he had done for him. In this wise, I am in full agreement with the learned state counsel for the respondent, that motive strengthens the respondent's case vide The state v.

Nwaekerendu & 3 Ors (1973) Vol. 2 ECLSR 75 and 79; Queen v. Moses (1960) SCNLR 433; (1960) 5 FSC 187 at 187 and Jimoh Ishola (Alias Ejingbadero) v. The State (1978) 9 & 10 S.C. at 104 -105."

"Furthermore, the evidence of P.W.1 confirmed the cause of death as to cut throat resulting in cardiac arrest which could not be self inflicted but by another with a not-too sharp weapon as the cut was irregular."

"True it is that Exhibit "D" did not show blood stain. This, in my view, is not fatal to the prosecution's case, moreso that it was examined after mould and rust had eaten the blood and adversely affected whatever test was carried out by the Forensic Laboratory, Oshodi, Lagos. It has not, in my view however, severed the link in the chain of proof."

With the evidence adduced by the prosecution, tested, scrutinized and accepted and which conclusively pointed to the appellant as the perpetrator of the crime, it is for the appellant to rebut the presumption or to cast a reasonable doubt in the prosecution's case by preponderance or probabilities. See Ikebudu v. Bornu N.A. (1966) NNLR 44 and Onakpoya v. R. (1959) SCNLR 384, (1959) 4 F.S.C 150.

It is my view that the learned trial judge was entitled to infer from the evidence before him that the deceased died as a result of a deliberate attack on him and from the surrounding circumstances correctly found that the evidence adduced cogently, irresistibly and unmistakingly pointed to the appellant as the murderer. See Esai & Ors v. The State (1976) 11 S.C. 39, Ukorah v. The State (1977) 4 S.C. 167, Atibunka & Anor v. The State (1972) 1 S.C. 71 and Shazali v. The State (1988) 5 NWLR (1988) 164.

On the whole I conclude that the appeal fails as it has no merit. It is accordingly dismissed.

The conviction and death sentenced passed on the appellant and affirmed by the Court of Appeal is hereby further confirmed.

UWAIS JSC

I have had the opportunity of reading in draft the judgment read by my learned brother Wali, J.S.C. I entirely agree that the appeal has no merit. Accordingly, it is hereby dismissed. The decision of the lower court is affirmed.

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OLATAWURA JSC

The main ground relied upon by the Appellant's counsel in urging us to allow the appeal is that the conviction of the appellant was based on circumstantial evidence. Chief Ezeoke, the learned counsel for the Appellant has submitted both in the Appellant's brief and in oral submission that the circumstantial evidence was not enough and compelling to ground a conviction and that the possibility of other persons committing the offence could not be ruled out. This in my view is the only issue worth considering. It appears to me that this submission overlooks the evidence of PW.3 - Eke Okereke whose evidence at the trial has been quoted copiously in the lead judgment of my learned brother Wali, J.S.C. In order to emphasise that the evidence of p.w.3 was cogent, compelling and unequivocal I reproduce part of his evidence which I consider material on this issue:

20 *"...The accused used his matchet to cut the throat of the deceased. The throat was cut very deep and only a small flesh held the throat. It was almost severed from the body.*

X X X X X X X X X X X X

25 *I noticed blood on the bed where the deceased was lying down and also the cutlass stained with blood which the accused was holding. The accused was holding the matchet stained with blood. The accused was wearing a white dress. The white dress was also stained with blood."*

30 The above quotation showed his observation and that he saw the appellant physically present in the room where the body of the deceased was found. The cross-examination of this witness and his answers excluded any possibility of another person other than the accused coming into the room through the window in the room where the deceased was savagely murdered. I agree with the learned Acting
35 Director of Public Prosecutions in her submission in her brief that where the evidence adduced by the prosecution is cogent and positive that it leaves no room whatsoever for any other conclusion other than it was the accused that omitted the offence the court can safely

convict on such evidence: Kim v. State (1991) 2 NWLR (Pt.175) 622/625.

From Exhibit E i.e. the statement made by the appellant, it was the appellant that was last seen with the deceased and the only one found with him immediately an alarm was raised. He was the one who opened the door when P.W.3 and other witnesses went to the scene. 5
 "There are no other co-existing circumstances which would weaken or destroy the inference" that it was the appellant that murdered the deceased: State v. Edobor (1975) 9-11 S.C 69; Omogodo v. State (1981) 5 S.C. 5.

It could not have been a coincidence that the accused was found in the room holding a matchet Exhibit D stained with blood and standing by the lifeless body of the deceased more so when he offered no rational or credible explanation of his presence in that room. 10

It is for these reasons and the fuller reasons in the lead judgment of my learned brother Wali, J.S.C. that I will also dismiss the appeal. It has no merit. 15

OMO JSC

When this appeal came up for hearing on the 6th of May 1993, counsel for the appellant addressed this court ending with the final submission that this appeal should be allowed. His main submissions are that there is no eyewitness to the offence of murder charged; and that the circumstantial evidence led is not enough to support the conviction of the appellant in the trial court, which the Court of Appeal wrongly affirmed. Furthermore, that the evidence before the trial court did not exclude the possibility that another person had killed the deceased; an act which the appellant completely denied in his evidence in court in his defence and also in his statement to the police earlier. At the end of his submissions, this court did not call for a response from respondent's counsel. 20 25 30

The circumstantial evidence before the trial court is very cogent and unequivocally points to the appellant, to the exclusion of any other, as the person who killed the deceased, vide Ibina VS. The State (1989) 5 NWLR (Pt. 120) 238. His denial is nothing but an after thought. 35

I have read in draft the judgment of my learned brother,

Wali, J.S.C. in which he came to the conclusion that there is no merit in this appeal. I entirely agree with and adopt same as mine.

Accordingly I also dismiss this appeal and affirm the judgment of the Court of Appeal.

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OGUNDARE JSC

I have had the advantage of reading in draft the judgment just delivered by my learned brother Wali, J.S.C. I entirely agree with his reasonings and conclusion arrived at by him which I adopt as mine. I
10 have nothing more to add. I also dismiss this appeal and affirm the judgment of the court below. Appeal dismissed.

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