

**SUPREME COURT OF NIGERIA**  
9TH SEPTEMBER, 1994. SC.209/1992.  
**CORAM:- M. BELLO CJN, M. L. UWAIS,**  
**A. B. WALI, E. O. OGWUEGBU, A. I. IGUH, JJSC.**

SATURDAY NDIKE ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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***APPEALS*** - Incompetent single original ground of appeal - In a murder case - Liberality of Supreme Court in allowing additional grounds - Towards doing substantial justice in capital offences.

***APPEALS*** - Murder - Finding of additional reason for conviction by Court of Appeal - Whether a substitution of its own finding to that of trial Court.

***CRIMINAL PROCEDURE***- Murder - Autopsy - Whether proved to have been performed on the body of the deceased.

***CRIMINAL PROCEDURE***- Murder charge against Appellant - Whether proved beyond reasonable doubt.

***EVIDENCE*** - Contradictions - In the testimony of prosecution witnesses - Whether fatal.

**FACTS**

The Appellant was arraigned for murder before the Port Harcourt High Court. Appellant was alleged to have come into a party being organized by the deceased. A fight ensued between them. They were separated and Appellant left the premises of the deceased promising to deal with him that day. At about 9 p.m. the same night, the deceased was heard shouting that the Appellant had killed him. PW1 rushed to the scene and saw the deceased lying dead. He stated that he saw the Appellant running into the bush. Appellant was later arrested by the Police. He made statements to the police in which he admitted hitting the deceased with an iron rod.

The Appellant in his defence agreed that the deceased refused him entry into his house during the party but told other stories in denying the charge. The trial Court found the Appellant guilty as charged and sentenced him to death. Appellant's appeal to the Court of Appeal was dismissed. He has

further appealed to the Supreme Court to determine

- (i) Whether the prosecution proved the case beyond reasonable doubt,
- (ii) Whether the Court of Appeal was right in substituting its own view for the finding of the learned trial Judge.

**HELD** (*Unanimously dismissing the appeal*)

***Incompetent single ground of appeal in a murder case***

1. This court no doubt granted the appellant leave to file additional grounds of appeal and as rightly observed by the learned counsel for the respondent, the original ground of appeal which was reproduced earlier in this judgment was clearly incompetent. A ground of appeal alleging that the decision appealed against is “*against the weight of evidence*” as in this case, is not a ground of appeal in a criminal case. This is so because criminal cases are not decided on weight of evidence or balance of probabilities. (P.393 L.36)

***Liberality in allowing additional grounds in capital offences***

2. In its effort to do substantial justice, this court has been liberal in allowing additional or amended grounds of appeal in cases of appeals against conviction in offenses carrying death sentence where the only original ground of appeal is incompetent in the interest of justice, I therefore hold that the additional grounds are valid. (P.394 L.4)

***Contradiction in testimony of prosecution witnesses***

3. It is not all contradictions in the testimony of the prosecution witnesses that are fatal to its case. For any conflict or contradiction to be fatal, it must be substantial and fundamental to the main issues in question before the court. What is material depends on the facts of each case. It is not material whether the victim died on the spot or at some other place. The important thing is whether the appellant unlawfully inflicted the injury on the deceased which resulted in his death soon after the attack. (P.394 L.19)

***Proof of performance of autopsy***

4. In a murder case, proof that the deceased died and that it was in respect of his body that an autopsy was performed is a legal requirement. Given the above facts and circumstances, there could be no doubt that the autopsy was performed on the body of Aminikpo Doodoo. There was sufficient direct and circumstantial evidence of identification of the corpse and that there was no doubt about the identity of the corpse. (P.395 L.27)

***Court of Appeal's additional reason for conviction***

5. The Court of Appeal did not substitute its own finding to that of the learned trial judge. From the passage reproduced above, the Court of Appeal found the appellant guilty under both sub-sections. It is the duty of an appellate court to examine the entire record before it in relation to the grounds of appeal filed and the issues for determination. It thereafter determines whether such issues were properly decided having regard to the evidence adduced by the parties and the applicable laws. Where an appellate court finds additional reasons for affirming the decision of the court below, it will not hesitate to do so. (P.396 L.27)

***Proof beyond reasonable doubt***

6. The case against the appellant was proved beyond reasonable doubt. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt.

**REPRESENTATION**

O. Doherty (Mrs.) for the Appellant.

Mr. K. Ogeh Appah Ag. D.P.P., Rivers State for the Respondent.

**CASES REFERRED TO**

Ogoala v The State (1992)2 NWLR (Pt. 175)509

Enewoh v. The State (1990)4 NWLR (Pt. 145)469

Ibe v. The State (1992)5 NWLR (Pt. 244) 642 642 at 645

Udo v. The State (1992)2 NWLR (Pt 224) 471

Sule v. The State (1993)1 NWLR (Pt.269)276

Enitan v. The State (1986)3 NWLR (Pt.30) 604

Adio & Or v. The State (1986) 2 NWLR (PT 24) 581

Adio v. The State (1986)2 NWLR (Pt 24) 581

Baridam v. The State (1994)1 NWLR (Pt 320)250

Ibrahim v. The State (1991)4 NWLR (Pt.186) 399

Mohammed v. The State (1994) NWLR (Pt 192) 438

Okoro v. The State (1985)5 NWLR (Pt 94) 255

Aladesuru v. The Queen (1955)3 NLR 515

Nasamu v. The State (1979)6-9 S.C. 153

Kalu v. The State (1988)4 NWLR (Pt.90) 503

Namsoh v. The State (1991)3 NWLR (Pt. 182)646

Sele v. The State (1993)1 NWLR (Pt.269)276

R. v. Laoye 6 WACA 6

Ukoh v. The State (1972)5 SC. 135

Miller v. The Minister of Pensions (1947)2 All E.R. 372 -i  
Akalezi v. The State (1993)2 NWLR (Pt 273)1 at 13  
Okonji v. The State (1987)1 NWLR (Pt 52)659  
The State v. Aibangbee (1988)3 NWLR (Part 84)548  
Wankey v. The State (1993)5 NWLR (Pt.295) 542 at 552  
Enahoro v. The Queen (1965)1 All NLR 125

**STATUTE REFERRED TO**

Criminal Code s. 316 (1) & (2)

**LEAD JUDGMENT BY OGWUEGBU JSC**

The appellant, Saturday Ndi ke was tried, convicted and sentenced to death by Ungbuku, J. as he then was in the High Court of River State, Port Harcourt Judicial Division. He was charged with the murder of one Aminikpo Dodoo on 1:8:81.

The facts of the case were that on 1:8:81, the deceased invited friends and relations to join him celebrate the roofing of his house with corrugated iron sheets. While the party was going on, the appellant arrived at about 8 p.m. uninvited. The deceased turned him out. As a result, a fight ensued between two of them. They were separated by P.W.1 and P.W.3 among others. The appellant thereafter left the premises of the deceased promising to show him something that day.

At about 9 p.m the same night, the deceased was heard shouting in Tai-El eme dialect to the effect that the appellant had killed him. P.W.1 rushed to the scene and saw Aminikpo Dodoo lying dead at the scene. He held the deceased who was his elder brother and tried to give him first aid. He later left the scene and went to the house of the appellant. P.W.1 stated that he saw the appellant running inside the bush.

P.W.3 - Dayor Ndaka in his evidence told the court how the appellant came to the house of the deceased that evening as they were having a party. The deceased told him not to enter his house because he was in the habit of beating his mother (appellant's mother) every day and to allow him in would give the impression that the deceased supported the behaviour of the appellant.

When the appellant refused to go, a fight ensued. He left after the fight promising that he would show the deceased something that day. P.W.3 heard the deceased shout in Tai dialect that the appellant was killing him. He, P.W.1 and others ran to the scene with a lantern. He saw the deceased on the ground. Blood was rushing from his head and the face. They took him to Okrika General Hospital in a vehicle. It was part of his evidence that the medi

cal officer admitted and treated the deceased. He later received a message from the hospital that the deceased had died. They later reported the incident at Ogu Police Station.

The appellant was arrested.

5 Under cross-examination, the witness testified that he was present during the fight in the premises of the deceased. He was about one hundred metres away from the scene of crime and that the deceased was shouting the name of the appellant: The witness further testified that the appellant confessed to the police that he hit the deceased.

10 The 2nd P.W. was one Dr. Bautista - a medical officer residing at the Doctors' Quarters in Ahoada General Hospital. He testified that on 2:2:81, a patient was brought to the Okrika General Hospital and he admitted him. He stated that the patient had a lacerated wound at the forehead which he treated; that it was an open wound caused by either a sharp or blunt object which  
15 caused serious damage to the brain and that the patient was semi-conscious at the time he was brought to the hospital. He testified further that the patient died in the evening. He performed the post mortem examination on the body at the request of the police. He gave the name of the deceased as Aminikpo Doodoo and that the name was given to him by the police and the relations of  
20 the deceased.

He stated that the cause of death was due to intercrania haemorrhage and secondary acute head injury and that the deceased was brought to the hospital some hours after the injury.

Police Sergeant - Sunday Sam testified as P.W4. He was on duty at the  
25 Okrika Police Station when the complaint was referred to him for investigation. The witnesses and the appellant were brought to him. He was present when the post mortem examination was performed by P.W.2. He testified that P.W.1 and P.W.3 identified the corpse and that at that stage, the appellant was on the run. He recorded the statement of the appellant-Exhibits "1", "2" and "5".

30 After Exhibit "2", the Divisional Crime Officer, the witness, the appellant and other prosecution witnesses left for Simi/Tai- the scene of crime. The appellant took them to a nearby bush where P.W4 recovered Exhibits "3" and "4" (an iron and a cable)." This was on 5:8:81. On their return to the Police Station, the appellant volunteered Exhibit "5".

35 The witness contacted Jacob Kinwi and Jacob Osime during his investigation. Their names were mentioned by the appellant in his statement and both of

them denied knowledge of the incident.

The appellant testified in his defence. He did not call any witness. He agreed that the deceased refused him entry to his house during the celebration; he asked the deceased his reason for refusing him entry. The deceased gave none and slapped him. A fight ensued and P.W.1 together with others present separated them. He went back to his house. 5

The appellant later went out to buy mosquito coil. On his return, his wife told him that the deceased came looking for him. He went to the police station to report the next morning. He was given two police constables to arrest the deceased. On their arrival at the premises of the deceased they were informed that the deceased was taken to Okrika General Hospital. 10

On Monday 3:8:81, he heard that the deceased died in the hospital. He testified that they used bare fists when they fought. He stated that he made only one statement to the police and that he saw Exhibits “3” and “4” for the first time at Okrika Police Station.

At the conclusion of the case, the learned trial Judge held that the prosecution proved the case of murder against the appellant beyond reasonable doubt. He convicted and sentenced him to death. His appeal to the Court of Appeal, Port Harcourt Division was dismissed. He has further appealed to this court. 15

Two issues were formulated in his brief of argument: 20

“(i) *Whether the prosecution proved its case beyond reasonable doubt; and*  
 (ii) *Whether the Court of Appeal was right in substituting its own view for the finding of the learned trial Judge.*”

In the respondent’s brief of argument, the following two issues were identified as arising for determination by the court: 25

“(i) *Whether in the circumstances of this case, the alleged contradictions are material enough to vitiate the prosecution’s case.*

(ii) *Whether there has been any miscarriage of justice.*

*The two sets of issues are complementary and will be dealt with as such.*

Mrs. Doherty, learned counsel for the appellant submitted in her brief of argument that there were material contradictions in the evidence of the prosecution. Instances of the contradictions were given as follows: 30

1. P.W.I testified that he rushed to the scene and found his brother lying dead and further testified that the corpse of the deceased was buried on the advice of the police. 35

2. P.W.3 testified that when he arrived at the scene, he saw the deceased on the ground. He carried him up; that blood was gushing from his head and face and that the deceased was taken to hospital.

She submitted that both witnesses were vital witnesses because they got to the scene shortly after the commission of the offence and that P.W.1 testified that he saw the accused running away from the scene. She referred the court to the case of Ogoala v. The State (1991) 2 NWLR (Pt. 175) 509 where contradictory evidence was defined by this court. She submitted that the  
5 evidence of P.W.1 materially contradicted that of P.W.3 and that no explanation was given by the prosecution for the contradiction.

Second instance of contradiction was where P.W1 testified that the deceased screamed that the appellant had “daggered him” and under cross examination, P.W.1 stated that P.W.3 told him that he caught the appellant with a dagger.  
10 It was submitted that this evidence of P.W.1. contradicted that of P.W.4 who testified that the appellant used motor cable and iron rod to inflict the head injuries on the deceased.

Learned counsel submitted that P.W.2 testified that nobody identified the deceased to him before he treated the deceased because he was still  
15 alive though semi-conscious and that this piece of evidence contradicted that of P.W. 3 who testified that he saw blood gushing from the head and face of the deceased. Learned counsel further submitted that the evidence of P.W.2 was in conflict with that of P.W.4 on the Identity of the corpse. Therefore, the person who identified the corpse was not called as a witness, she contended.

The case of Enewoh v. The State (1990) 4 NWLR (Pt. 145) 469 was  
20 relied upon by the appellant’s counsel. She argued that the absence of direct or circumstantial evidence of identification of the corpse to the doctor who performed the autopsy was fatal to the case of the prosecution. We were urged to set aside the conviction because of the material contradictions. The  
25 case of Ibe v. The State (1992) 5 NWLR (Pt. 244) 642, Udo v. The State (1992) 2 NWLR (Pt.224) 471 and Sele v. The State (1993) INWLR (Pt. 269) 276 were referred to us.

Counsel submitted on the second issue that while the court of trial found the appellant liable under s. 316(2) of the Criminal Code, the court below  
30 found him liable under s.316(1) of the said law. She contended that this inconsistent finding of the Court of Appeal was unwarranted and the error led to a miscarriage of justice.

Mr. Appah - the learned Acting Director of Public Prosecutions Rivers State, in his brief of argument observed that the appellant filed only one  
35 ground of appeal which reads:

*“That the conviction and sentence of the Honourable Justice of the High Court Port Harcourt and the confirmation by the Justices of the Court of Appeal Port Harcourt were unwarranted, erroneous and without sub*

*stance and therefore cannot be supported in law having regard to the weight of evidence adduced in court."*

He submitted that even though two additional grounds of appeal were later filed with the leave of this court, the additional grounds could not stand since there was no competent original ground of appeal. He cited the cases of Enitan v. The State (1986) 3 NWLR (Pt. 30) 604 and Adio v. The State (1986) 2 NWLR (Pt. 24) 581 and urged the court to hold that there was no competent appeal before it.

In her reply brief, Mrs. Doherty for the appellant conceded that the original ground of appeal was defective. She, however, submitted that courts aim at substantial justice and will not allow any technicality to prevent them from doing so particularly where the case involved capital punishment. She referred the court to the case of Baridam v. The State (1994) NWLR (Pt. 320) 250.

On the contradictions in the evidence of the prosecution witnesses, Mr. Appah submitted that only material contradictions as opposed to trivial contradictions are fatal to the case of the prosecution. He cited the cases of Ibrahim v. The State (1991) 4 NWLR (Pt. 186) 399 and Mohammed v. The State (1991) 5 NWLR (Pt.192) 438.

It was further submitted that what is material is that the deceased died as a result of head injuries inflicted on him by the appellant and not whether he died at the scene of crime or later in the hospital. On whether the corpse was properly identified or not, he contended that the purpose of identification is to ensure that the person allegedly killed was in fact the one on whom the post mortem examination was performed and to ascertain the cause of death. He cited the case of Okoro v. The State (1988) 5 NWLR (Pt. 94) 255.

Learned counsel further argued that death occurred soon after the attack by the appellant and even without medical evidence as to the cause of death, there were sufficient facts showing that the deceased died from injuries inflicted on him by the appellant.

On whether the court below substituted its own finding for that of the court of trial, counsel said that the finding of the court below was additional to that of the learned trial Judge and that the appellant was also liable under s. 316(1) of the Criminal Code. He finally submitted that it made no difference whether the appellant was found liable under sub-section (1) or (2) of section 316 of the Criminal Code.

This court no doubt granted the appellant leave to file additional grounds of appeal and as rightly observed by the learned counsel for the respondent, the original ground of appeal which was reproduced earlier in this judgment was clearly incompetent. A ground of appeal alleging that the deci

sion appealed against is “against the weight of evidence” as in this case, is not a ground of appeal in a criminal case. This is so because criminal cases are not decided on weight of evidence or balance of probabilities.

In its effort to do substantial justice, this court has been liberal in allowing additional or amended grounds of appeal in cases of appeals against conviction in offences carrying death sentence where the only ground of appeal is incompetent. See *Aladesuru v. The Queen*; (1955) 3 NLR 515, *Adio & Or. v. The State* (1986) 2 NWLR (Pt. 24) 581, *Enitan v. The State* (1986) 3 NWLR (Pt. 30) 604 and *Baridam v. The State* (1994) 1 NWLR (Pt. 320) 250. In the interest of justice, I therefore hold that the additional grounds are valid.

The complaint that the prosecution did not prove its case beyond reasonable doubt is based on the alleged material contradictions in the prosecution’s case and the absence of evidence of identification of the corpse during the autopsy.

In his evidence in Chief, P.W.1 (Johnson Dodoo) testified that when he rushed to the scene, he saw his brother lying dead whereas P.W.3 stated that he saw the deceased on the ground, carried him up and that blood was rushing from his head and face.

It is not all contradictions in the testimony of the prosecution witnesses that are fatal to its case. For any conflict or contradiction to be fatal, it must be substantial and fundamental to the main issues in question before the court. What is material depends on the facts of each case. See *Nasamu v. The State* (1979) 6-9 S.C. 153, *Kalu v. The State* (1988) 4 NWLR (Pt. 90) 503, *Akpan v. The State* (1991) 3 NWLR (Pt. 182) 646 and *Sele v. The State* (1993) 1 NWLR (Pt. 269) 276.

It is not material whether the victim died on the spot or at some other place.

The important thing is whether the appellant unlawfully inflicted the injury on the deceased which resulted in his death soon after the attack.

As to the instrument used in committing the offence, P.W.1 testified that he heard the deceased scream that the appellant had daggered him. P.W.4- the investigating police sergeant tendered exhibits “3” and “4” as what he recovered in a bush near the scene. The appellant took him to the spot where the exhibits were recovered. The appellant in Exhibits “1” and “5” admitted that he used the iron rod in hitting the deceased. In Exhibit “1”, the appellant also stated that he ran to his house and took a motor car cable with iron on one end. In exhibit “5” he stated:

*“The distance between the scene where Aminikpo Dodoo was beating me and my house where I ran and brought the iron rod was about 200 yards, came back to hit him. I was about to hit him on the shoulder but*

*mistakenly the iron hit (sic) on (the) (sic) fore head."*

P.W.2 (Dr. I Bautsita) who performed the post mortem examination on the deceased testified that there was a lacerated wound at the forehead which he treated, that it was an open wound caused by a sharp heavy object and that the wound itself was not serious but the damage it caused to the brain was serious.

The evidence of P.W.2 supported that of P.W.3 to the effect that the deceased had head injury. This head injury was inflicted by the appellant and the deceased died as a result of it.

Coming to the question of identification of the corpse, P.W.2 testified that he was in the hospital on 2:8:81 when a patient was brought to the hospital. He treated and admitted the patient in the hospital. This patient whom he admitted and treated of head injury later died in the hospital. He performed an autopsy on the body.

It was P.W.3 and others who took the deceased to the hospital. The name of the deceased was given to P.W.2 before he admitted him in a semi-conscious state.

P.W.3 and P.W.2 were also present when the autopsy was performed and P.W.3 was one of those who identified the corpse as that of Aminikpo Dodoo. P.W.2 certified the cause of death to be due to intercranial haemorrhage and secondary to acute head injury.

There was evidence that the deceased was taken to the hospital alive but in a semi-conscious state. P.W.3 was one of those who conveyed him to the hospital, P.W.2 treated and admitted him and he later died in the same hospital on the same day. It was this same P.W.2 who performed the autopsy in the presence of P.W.3 and P.W.4 among others. I do not know where the conflict in the identification lies.

In a murder case, proof that the deceased died and that it was in respect of his body that an autopsy was performed is a legal requirement. Given the above facts and circumstances, there could be no doubt that the autopsy was performed on the body of Aminikpo Dodoo. See *Enewoh v The State* (1990) 4 NWLR (Pt. 145) 469, *Okoro v. The State* (1988) 5 NWLR (Pt. 94) 255 R. v. *Laoye* 6 WACA and *Ukoh v. The State* (1972) 5 S.C. 135.

I agree with the learned counsel for the respondent that there was sufficient direct and circumstantial evidence of identification of the corpse and that there was no doubt about the identity of the corpse.

The other issue for determination is whether the court below was right in substituting its own view for the finding of the learned trial Judge. It was submitted that the trial Judge found the appellant liable under section 316(2) of the Criminal Code and the Court of Appeal found him liable under s.316(1) of the said code.

The court below held as follows:-

“From the foregoing I am quite satisfied that there was, ample material to justify the conviction of the appellant, accused in the court below for the murder of Aminikpo Dodoo. Appellant struck the latter with a selected (selected (sic) heavy weapon and with intent to cause his death or cause him  
5 grievous bodily (sic) harm as specified in section 316(1) and 316(2) of the criminal code. The judgment of the court below is accordingly hereby affirmed.”

Admittedly, the learned trial Judge found the appellant liable as follows:-

“In the present case, intent to murder is a necessary inference to be drawn  
10 from the acts committed by the accused, and the rule of law is that a man is taken to intend the natural and probable consequence of his own acts.

.....  
.....

*I therefore find the accused guilty as charged.”*

15 From the above finding and conclusion, the learned trial Judge found the appellant guilty of murder under section 316(2) of the criminal code. The offence of murder is defined in section 316 of the said code and sub-sections (1) and (2) therefore provide as follows:-

“316. Except as hereinafter set forth, a person who unlawfully kills  
20 another under any of the following circumstances, that is to say:-

(1) If the offender intends to cause the death of person killed, or that of some other person;

(2) If the offender intends to do the person killed or to some other person some grievous harm;’ .....

25 ..... is guilty of murder.”

The Court of Appeal did not substitute its own finding to that of the learned trial Judge. From the passage reproduced above, the Court of Appeal found the appellant guilty under both sub-sections. It is the duty of an appellate court to examine the entire record before it in relation to the grounds of  
30 appeal filed and the issues for determination. It thereafter determines whether such issues were properly decided having regard to the evidence adduced by the parties and the applicable laws. Where an appellate court finds additional reasons for affirming the decision of the court below, it will not hesitate to do so.

35 In my view the circumstances set out in section 316 which will amount to murder are not in water tight compartments. The court below made an additional finding. It could substitute its own finding if the facts and circum

stances justify such an action. The findings by both courts have not occa-

sioned any miscarriage of justice since the decision can be affirmed on any of the two sub-sections.

In conclusion, I do not find any merit in this appeal. The case against the appellant was proved beyond reasonable doubt. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. See *Miller v. Minister of Pensions* (1947) 2 All E.R. 372 and *Akalezi v. The State* (1993) 2 NWLR (Pt. 273) 1 at 13.

I therefore dismiss the appeal and affirm the decisions of the courts below.

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### **BELLO CJN**

I have had the opportunity of reading the judgment of my learned brother, Ogwuegbu, J.S.C. just delivered. For the reasons stated therein, I agree the appeal has no merits. I also dismiss it and affirm the judgment of the Court of Appeal.

20

### **UWAIS JSC**

I have had the opportunity of reading in draft the judgment read by my learned brother Ogwuegbu, J.S.C. I agree and for the reasons contained therein I too see no merit in the appeal. Accordingly, the appeal is hereby dismissed and the decision of the Court of Appeal, affirming that of the trial court, it confirmed.

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### **WALI JSC**

I have read before now the lead judgment of my learned brother, Ogwuegbu J.S.C. and I agree with the reasons he gave for dismissing this appeal, it is for those same reasons which I adopt as mine that I also hereby dismiss the appeal.

The sentence of death passed on the appellant by the trial court and affirmed by the Court of Appeal is hereby further confirmed.

35

### **IGUH JSC**

I had the privilege of reading in draft the lead judgment just delivered by my learned brother, Ogwuegbu, J.S.C. I agree with him that there is no merit whatsoever in this appeal.

There is abundant evidence on record that the appellant attacked the  
5 deceased, that the deceased was mortally wounded as a result of this attack  
and that the deceased died soon thereafter from the injuries he received in the  
attack. The deceased was heard shouting during the attack that the appellant  
was killing him and the said appellant was seen running away from the scene  
of the crime. He later confessed in his statement to toe police, Exhibits 1 and 5,  
10 that he hit the deceased with a cable and iron rod.

What seems to me material in this case is not whether as contended  
by learned appellant’s counsel, the deceased died at the scene of crime or  
subsequently in hospital but that he died as a result of the head injuries  
inflicted on him by the appellant.

15 On the submission of the learned appellant’s counsel with regard to  
conflictions in the evidence of the prosecution witnesses, it suffices to state  
that it is not in all cases where there are discrepancies or contradictions in the  
prosecution’s case that an accused person will be entitled to an acquittal. It is  
only when the discrep  
20 ancies or contradictions are substantial and fundamental to the main issues in  
question before the court or where they are on a material point or points in the  
prosecution’ s case which create some doubt in the mind of the court that the  
accused will be entitled to an acquittal. See *Okonji v. The State* (1987) 1 NWLR  
(Pt. 52) 659, *The State v. Aibangbee* (1988)3 NWLR (Pt. 84) 548, *Wankey v. The*  
25 *State* ( 1993) 5 NWLR (Pt. 295) at 542, *Ibe v. The State* (1992) 5 NWLR (Pt. 244)  
642 at 649, *Enahoro v. The Queen* (1965) 1 All NLR 125, *Nasamu v. The State*  
(1979) 6-9 S.C. 153 etc., etc.

The contradictions alluded to in the present case are in my view  
absolutely immaterial and trivial and cannot therefore be fatal to the  
30 prosecution’s case.

Accordingly I too, will dismiss the appeal and affirm the decisions of  
the courts below.