

**SUPREME COURT OF NIGERIA**  
13TH FEBRUARY, 1996. SC. 121/1993  
**CORAM:- S. M. A. BELGORE, I. L. KUTIGI,**  
**E. O. OGWUEGBU, U. MOHAMMED, S. U. ONU, JJSC.**

ADETOKUNBO OGUNTOLU ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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**CRIMINAL LAW** - Cause of death - Where deceased died on the spot - It would make no difference whether deceased died from strangulation - Or from matchet cuts by same appellant.

**EVIDENCE** - Medical Evidence - Absence thereof- When court will infer cause of death from circumstances.

**EVIDENCE** - Evaluation of evidence - Evidence adequately evaluated by lower courts - Conclusion thereon is right.

**FACTS**

The appellants and one Femi Ajewole were charged with the murder of one William Ojo before the High Court of Ondo State, Akure. They had lured the deceased and P. W. 1 into a bush in Iju under the pretext of going to show them where the remaining bags of cement which Femi Ajewole had attempted to sell to one Ademola Gbadebo could be found. In the bush, the appellant strangled and dealt several matchet cuts on the deceased who died on the spot.

P. W. 1 who was also raped, escaped from the bush. Femi Ajewole escaped from custody, and on these facts trial proceeded against the appellant. At the end of the trial, he was convicted as charged. He appealed to the Court of Appeal Benin City, which dismissed his appeal. Whereupon, the appellant appealed to the Supreme Court raising three issues.

**ISSUES FOR DETERMINATION**

“1. Whether the trial court and the Court of Appeal were right in convicting the appellant when the cause of death was not ascertained either by medical evidence or otherwise.

2. Whether the trial court or the Court of Appeal properly evaluated the evidence as not to have given the appellant, the benefit of doubt, thus reducing the sentence to manslaughter as no motive or

*intention to kill was established by the prosecution. Did the trial court and the Court of Appeal fully consider the appellant's case?"*

**HELD** (Unanimously dismissing the appeal per lead judgment of **KUTIGI JSC**)

***Medical evidence - Absence thereof***

1. It is settled that where there is no medical evidence, it is proper for the court to infer the cause of death from the circumstances. (p. 217 D)

***Cause of death***

2. In this case, the circumstances in which the deceased was killed by the appellant were clearly stated by the lone eye witness (P.W. 1). The learned trial judge after reviewing the entire evidence before him, believed the eye witness and disbelieved the appellant. The Court of Appeal agreed with the trial court. The appellant has not succeeded in showing us anything why we should interfere with that finding. I also agree with the lower courts that the deceased died as a result of the act of the appellant. There was evidence that one Doctor Akeredolu who performed the postmortem examination abroad and his whereabouts unknown. The witness though de-was not necessary in this case. The evidence was that the deceased died on the spot in the hands of the appellant who then dragged the dead body to one side of the road and heaped rubbish on it. In these circumstances I would also easily agree with the learned Director of Public Prosecution that it would have made no difference whether the deceased had strangulation by the appellant or from matchet cuts inflicted on the deceased by the same appellant moments after the act of strangulation. The vital point was that the appellant was responsible for the act of strangulation and act of inflicting matchet cuts on the body of the deceased who died instantly on the spot. Issue (1) is therefore answered in the affirmative (p. 217 E)

***Evidence adequately evaluated***

3. It is clear from the record that the learned trial judge himself critically examined the evidence of P.W. 1 amongst others, and preferred her version of evidence to that of the appellant. They were findings of fact made by the judge who saw and watched the witnesses testify before him. The Court of Appeal did not find it necessary to interfere with those findings. I have myself study the record carefully and in my view the lower courts had evaluated the evidence and rightly came to the conclu

sion which they did. It is significant to note that the only defence of alibi raised by the appellant was properly considered and rejected by the learned trial court. The Court of Appeal agreed with it. I also agree. Issues (2) and (3) are therefore also resolved against the appellant. (p. 218 C)

## **NOTABLE POINTS OF INTEREST**

### **KUTIGI JSC**

#### ***1. Consideration of any defence to which an accused is entitled***

While it is settled that any defence to which an accused person is on tin evidence entitled to should be considered however stupid or unreasonable for whatever it is worth, it is certainly not the role of any court of law to formulate or invent a defence for an accused person where on a consideration of the totality of evidence none is open or available to him. (p. 218 A)

### **OGWUEGBU JSC**

#### ***2. Cause of death - When medical evidence is not necessary***

In this case the deceased died in the circumstances described by P. W. 1 and the learned trial judge believed her evidence as to lift manner the victim died. Medical evidence though desirable to prove cause of death is not essential in this case because of other facts which sufficiently show the cause of death. In a case of this nature where the victim was strangulated, inflicted with matchet cuts and he died on the sport, it is hardly necessary to prove cause of death. (p. 219 B)

## **REPRESENTATION**

F. L. O. Akhidenor, Esq. for the Appellant.

Modupe Fasanmi (Mrs.), D.P.P. Ministry of Justice, Ondo State for the Respondent.

## **CASES REFERRED TO**

Umoru v. The State (1990)3 NWLR (Pt. 138) 363

Nwali v. The State (1991)3 NWLR (Pt. 182) 663

Adamu v. Kano (1956)1 FSC 25

Homman v. The State (1967) NMLR 23

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

Lori v. The State (1980) 8-11 SC. 81

R. v. Fadina 3 FSC 11

Oyo v. The State (1972) 12 SC. 47

Udofia v. The State (1984)12 SC. 139

(PT.432) 503

Sunday Ononuju v. The State (1976)5 S.C. 1

Onyenankeya v. The State (1964) N.M.L.R. 34.

### **STATUTE REFERRED TO**

Criminal Code Cap. 28 Laws of Western Nigeria 1959 ss. 254(2), 257(4)

### **LEAD JUDGMENT BY KUTIGI JSC**

The appellant and one Femi Ajewole were charged with the murder of one William Ojo contrary to section 254(2) and punishable under section 257(1) of the Criminal Code Cap.28 Laws of Western Nigeria, 1959 applicable to Ondo State. Femi Ajewole escaped from custody and the trial proceeded against the appellant only. He was tried and convicted as charged by the Akure High Court. His appeal to the Court of Appeal, Benin City was unanimously dismissed. Still aggrieved by the decision of the Court of Appeal, the appellant has now appealed to this Court.

The events which led to the murder charge as can be gathered from the evidence of P.W.1, the only eye witness, arose from an attempt by Femi Ajewole, the escapee, to sell some bags of stolen cement to one Ademola Gbadebo (P.W.3). The P.W.3 was arrested for being in possession of stolen property and was detained by the Police. On his release, P.W.3 found out that the appellant had called to see his wife on account of the stolen cement saying that he knew where to find the man who stole the cement. The appellant took Kikelomo Adeyeye (P.W.1) and William Ojo (the deceased) to the escapee's house at Iju. They travelled by taxi. At Iju the escapee's father, one Ajewole Otaki (P.W.7) showed them the room where the escapee lived. The appellant went into the room and came out with the escapee. Under the pretext of taking P.W.1 and the deceased to a place where the remaining bags of stolen cement were kept, the appellant and the escapee lured P.W.1 and the deceased into a bush. As they went deep inside the bush the escapee asked whether or not the deceased was the Police C.I.D. to which P.W.1 replied in the negative saying that the deceased worked with the Ministry of Education. As they went further, the appellant and the escapee slowed down and asked the deceased and P.W.1 to proceed and move ahead. As they moved ahead the escapee seized the scarf of P.W.1 which he tied across her face, tore her pants and raped her. At the same time the appellant held the deceased by the throat until he dropped nimbly on the ground without any more movement. Then the appellant asked the escapee to go for a matchet while he held to the throat of the deceased. When the escapee brought the matchet, the appellant took it from him and used it to inflict cuts on the head and body of the deceased. The deceased died on the spot and the appellant dragged the

body aside and heaped some rubbish on the corpse. He also took the scarf from P.W.1 and tied it around the neck of the deceased. P.W.1 finally escaped from the scene.

Mr. Akhidehnor learned counsel for the appellant has in his brief submitted the following issues for determination in the appeal -

*“1. Whether the trial court and the Court of Appeal were right in convicting the appellant when the cause of death was not ascertained either by medical evidence or otherwise.*

*2. Whether the trial Court or the Court of Appeal properly evaluated the evidence as not to have given the appellant, the benefit of doubt, thus reducing the sentence to manslaughter as no motive or intention to kill was established by the prosecution.*

*3. Did the trial court and the Court of Appeal fully consider the Appellant’s case?”*

Arguing all the issues together counsel referred to the evidence of the single eye witness (P.W.1) and submitted that even though death was proved, there was no evidence of what caused the death, and that the lower courts ought to have considered the offence of manslaughter because not every killing is murder especially in this case where there was no intention or motive on the part of the appellant to kill anybody.

He said no one could have said categorically whether it was the knock with a fist or the holding by the throat or strangulation or the fall on the ground that caused the death of the deceased, it was contended that the evidence showed that the deceased had died long before any matchet was used on him. He said cutting a dead person cannot be regarded as the cause of death while mere knocking of head or holding of a throat are merely assaults. The appellant was therefore entitled to the benefit of all these doubts which should have reduced the offence to that of manslaughter only. The following cases were cited in support -

R v. Church (1965) 2 All ER 72; Dogo & Ors v. The King 12 WACA 519; The Queen v. Ntah (1961) All NLR 590; R. v. IDIONG 13 WACA 30.

The Court was urged to set aside the conviction for murder and instead substitute a verdict of manslaughter.

Responding, the learned Director of Public Prosecution, Ondo State submitted that the Court can ascertain the cause of death without medical evidence where the deceased died on the spot as in this case. He referred to the evidence of P.W.1 and to a number of decided authorities. He said the record shows on page 19 that one Dr.

Akeredolu who performed the post mortem examination on the body of the deceased had left the country and that his evidence was not being withheld.

It was also submitted that the Court can reduce an offence of murder to manslaughter where the killing would not amount to murder. He said the act of the appellant fell clearly under section 254(2) of the Criminal Code as charged and that there was sufficient evidence on record showing that the appellant intended to kill the deceased. He said the evidence of P.W.1 showed that the appellant first strangled the deceased and then used a matchet to inflict several cuts on his head and body. It was submitted that it made no difference whether the deceased died of strangulation or from matchet cuts because the appellant was responsible for both of them and the deceased actually died on the spot. He referred to the cases of *Umoru v. The State* (1990) 3 NWLR (Pt. 138) 363; *Nwali v. The State* (1991) 3 NWLR (Pt. 182) 663. He said the evidence on record points clearly to murder and not manslaughter and that the case was proved beyond reasonable doubt. We were urged to dismiss the appeal and uphold the decisions of the lower courts.

Issue (1) of the appellant can be disposed of quickly. It is settled that where there is no medical evidence, it is proper for the court to infer the cause of death from the circumstances (See for example *Kato Dan Adamu v. Kano N. A.* (1956) 1 FSC 25, *Homman v. The State* (1967) NMLR 23; *Nasamu v. The State* (1979) 6-9 SC. 153; *Lori v. The State* (1980) 8 -11 SC.81.

In this case, the circumstances in which the deceased was killed by the appellant were clearly stated by the lone eye witness (P.W.1). The learned trial judge after reviewing the entire evidence before him, believed the eye witness and disbelieved the appellant. The Court of Appeal agreed with the trial court. The appellant has not succeeded in showing us anything why we should interfere with that finding. I also agree with the lower courts that the deceased died as a result of the act of the appellant. There was evidence though that one Doctor Akeredolu who performed the post mortem examination was abroad and his whereabouts unknown. The witness though desirable was not necessary in this case. The evidence was that the deceased died on the spot in the hands of the appellant who then dragged the dead body to one side of the road and heaped rubbish on it. In these circumstances, I would also easily agree with the learned Director of Public Prosecution that it would have made no difference whether the deceased had died from strangulation by the appellant or from matchet cuts inflicted on the deceased by the same appellant moments after the act of strangulation. The

vital point was that the appellant was responsible for the act of strangulation and the act of inflicting matchet cuts on the body of the deceased who died instantly, on the spot. Issue (1) is therefore answered in the affirmative.

Issues (2) and (3) will be taken together. While it is settled that any defence to which an accused person is on the evidence entitled to should be considered however stupid or unreasonable for whatever it is worth, it is certainly not the role of any court of law to formulate or invent a defence for an accused person where on a consideration of the totality of evidence, none is open or available to him (See *R v. Fadina* 3 FSC 11; *Ojo v. The State* (1972) 12 SC,47; *Udofia v. The State* (1984)12 SC 139.

Bearing this in mind, it is clear from the record that the learned trial judge himself critically examined the evidence of P.W.1 amongst others, and preferred her version of evidence to that of the appellant. They were findings of fact made by the judge who saw and watched the witnesses testify before him. The Court of Appeal did not find it necessary to interfere with those findings. I have myself studied the record carefully and in my view the lower courts had adequately evaluated the evidence and rightly came to the conclusion which they did. It is significant to note that the only defence of alibi raised by the appellant was properly considered and rejected by the learned trial court. The Court of Appeal agreed with it. I also agree. I think one can safely say that learned counsel for the appellant, tried as he did was unable to urge anything of substance in favour of the appellant because the facts are clear and unassailable. Issues (2) and (3) are therefore also resolved against the appellant.

On the whole, the appeal fails. It is accordingly dismissed. The judgments of the lower courts are hereby confirmed.

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### ***BELGORE JSC***

The evidence before trial Court leading to appellant's conviction for murder was clear that the Court of Appeal had no option than to uphold the conviction and sentence. Before us there is no substance to justify any interference with the concurrent findings of the two Courts below. I adopt the reasoning and conclusion of my learned brother, Kutigi, J.S.C. in dismissing this appeal. I uphold the conviction for murder and sentence of death passed by trial Court which Court of Appeal affirmed.

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### ***OGWUEGBU JSC***

I had a preview of the judgment which has just been delivered by

my learned brother, Kutigi, J.S.C. and I am in full agreement.

In a charge of murder, the cause of death of the deceased must be established unequivocally and the onus is on the prosecution. It is the law that the death of the victim must be caused by the act of the accused. See Sunday Ononuju v. The State (1976) 5 S.C.1. and Frank Onyenankaya v. The State (1964) NMLR 34. B

In this case the deceased died in the circumstances described by P.W.1 and the learned trial judge believed her evidence as to the manner the victim died. Medical evidence though desirable to prove cause of death is not essential in this case because of other facts which sufficiently show the cause of death. In a case of this nature where the victim was strangled, inflicted with matchet cuts and he died on the spot, it is hardly necessary to prove cause of death. See: Tonara Bakuri v. The State (1965) NMLR 163 and Lori & ors v. The State (1980) 8-11 S.C.81 at 97. C

Accordingly, I too would dismiss the appeal. The verdict of the High Court and the sentenced passed by the Court which have been affirmed by the Court of Appeal are hereby further affirmed. D

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**MOHAMMED JSC**

I have had a preview of the judgment just delivered by my learned brother, Kutigi, J.S.C. and I agree to dismiss this appeal. I have nothing more to add. The appeal is dismissed. E

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**ONU JSC**

I had the privilege of a preview of the judgment of my learned brother Kutigi, J.S.C. just read. I agree with his reasoning and conclusion that this appeal lacks merit and ought to fail. F

Accordingly, I too dismiss the appeal and affirm the decision of the two courts below. G

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