

SUPREME COURT OF NIGERIA
23RD APRIL, 1996. SC. 20/1995.
CORAM:- M. L. UWAIS CJN, A. B WALI, I. L. KUTIGI,
E. O. OGWUEGBU, Y. O. ADIO, JJSC.

ALEWO ABOGEDE APPELLANT

V.
THE STATE RESPONDENT

CRIMINAL LAW - Murder - What the prosecution must prove beyond reasonable doubt.

CRIMINAL PROCEDURE - No case submission - What court should consider at that stage - Whether a prima facie case is established.

EVIDENCE - Credibility of a witness - discrepancy between what a witness says at different times - Whether sufficient to destroy his credibility in every case - Duty of the judge in respect of such discrepancy.

EVIDENCE - Contradiction - Where prosecution witnesses gave evidence to the limit of what they observed individually - Whether they contradicted each other.

MURDER - Ingredients - Of the offence of murder - Whether established prima facie.

FACTS

Before the Enugu High Court, the appellant, an Assistant Superintendent of Police was charged with the offence of murder. Appellant and another Police Constable were on duty at a point at Udi sometime in 1989. The constable demanded money from a driver of a minibus wherein the deceased, a police constable was seated as a passenger. The deceased challenged the constable as to the propriety of demanding money. In the process of the misunderstanding that arose, the appellant held the deceased by the collar of his dress and slapped him. Appellant and the constable (PW8) continued to beat the deceased until at one stage the appellant shot the deceased with a gun. He died as he was being conveyed to the Hospital that same day.

Appellant gave no evidence at the trial as a no case submission was made by counsel on his behalf. The trial court overruled the submission

but

appellant rested his case on the no case submission. The trial court found him guilty as charged. His appeal to the Court of Appeal was dismissed. Appellant has further appealed to the Supreme Court raising four issues.

ISSUES FOR DETERMINATION

(1) *“Whether, ‘in the face of irreconcilable contradiction in the evidence for the prosecution’ the learned Justices of the Court of Appeal were right in law in affirming that the appellant had a case to answer.*

(2) *Whether the prosecution proved its case beyond reasonable doubt to warrant the confirmation of the conviction and sentence of the appellant by the Court of Appeal.* Etc see p. 788 C

HELD (Unanimously dismissing the appeal per lead Judgment of **ADIO JSC**)

Murder - What the prosecution must prove

1. Where the charge preferred against an accused is murder, the onus is on the prosecution to prove beyond reasonable doubt that:

(a) the deceased is dead;

(b) the act or omission of the accused which caused the death of the deceased was unlawful and

(c) the act or omission of the accused which caused the death of the deceased must have been intentional with knowledge that death or grievous bodily harm was its probable consequence.

A conviction for the offence of murder can be sustained only where the things mentioned in paragraphs (a), (b), and (c) above are proved beyond reasonable doubt. (p. 788 F)

Evidence - Contradiction

2. It should be noted that the eye-witnesses of the incident who testified for the prosecution were the p.w.2, p. w. 5, p.w. 7 and p. w.8. It should also be noted that as all that the p.w. 5 and p.w. 7 could testify about was that they heard the gun shot during the incident and no more, their evidence was of course, of little or no probative value. That was so, not as a result of their being discredited by cross-examination but as a result of the limited nature of what they knew about the incident. One could not reasonably say that they contradicted each other or that their evidence contradicted the evidence of the p.w. 2 who in addition to hearing a gun shot, like the p.w. 5 and p.w 7, told the court that he saw the appellant when he fired the gun shot at the deceased. The p.w. 2 might be telling the truth about what he heard and saw and the p.w.5 and p.w. 7 too might be telling the truth about what they heard only. (p. 790 G)

Credibility of a witness

3. It is not every discrepancy between what one witness says at one time and what he says at another that is sufficient to destroy the credibility of the witness altogether. However, where the discrepancy is at least of enough importance to call for a mention by the Judge, it should appear on the record that he adverted his mind to it and the reason for believing the witnesses in spite of the discrepancy should also be stated. That will enable the late court to determine whether the learned trial Judge overlooked the discrepancy or whether he adverted his mind to it and considered it but found the witness credible nevertheless. In this case, as there was still the credible evidence of the p.w. 2 on the point(s) on which the p.w. 8 testified at the trial of the appellant, the evidence of p.w. 8 at the trial of the appellant was not, therefore, absolutely necessary. (p. 791 F)

Murder - Ingredients

4. There was no evidence that the deceased was armed with a gun or any other lethal weapon. As the p.w.2 testified, the appellant fired a gun shot at the deceased who died as a result of the gun shot wound. A man intends the natural consequences of his conduct. By firing a gun shot at the deceased it could properly be inferred that the appellant intended to kill the deceased or wanted to inflict grievous bodily harm on him. The ingredients of the offence of murder had been prima facie established. (p. 792 F)

No case submission

5. When a court is giving consideration to a submission of no-case, it is not necessary at that stage of the trial for the learned trial Judge to determine if the evidence is sufficient to justify a conviction. The trial court only has to be satisfied that there is a prima facie case requiring at least some explanation from the accused person. Evidence is said to disclose a prima facie Case when it is such that if uncontradicted and if believed it will be sufficient to prove the case against the accused. On the whole, I think that the Court below was right in affirming the ruling of the learned trial Judge Overruling the no-case submission made for the appellant. (p. 792 G)

NOTABLE POINTS OF INTEREST***ADIO JSC******1. Inconsistency in prosecution's case - Effect***

The p. w. 8 was in another category and even in his own case the situation was not completely hopeless. In his own case he stated at first in his extra-judicial statement that he did not know the person who fired the pistol.

Later he said that he remembered that it was the deceased that fired the pistol. The foregoing at once apparently raised the issue of inconsistency in the prosecution's case because if the prosecution is to succeed, then its case, as presented, must be consistent. If there is inconsistency in the prosecution's case such as to cast a doubt on the guilt of the accused, the accused is entitled to be given the benefit of the doubt and he should be discharged and acquitted. (p. 791 B)

2. Evidence of one credible witness

The credibility of evidence does not ordinarily depend on the number of witnesses that testify on a particular point. The question is whether the evidence of one credible witness on a particular point, is believed and accepted. If the answer is in the affirmative, then it is sufficient to support a conviction. (p. 792 E)

REPRESENTATION

Dr. S. S. Ameh SAN with him Mr. Ibeobi for the appellant
C. C. Eneh, Chief Legal Officer for the respondent

CASES REFERRED TO

Ighen v. The State (1964) N.M.L.R. 184
Ohuka v. The State (No. 2) (1988) 4 N.W.L.R. (Pt. 86) 36
Onubogu v. The State (1974) 9 S.C. 1
Kalu v. The State (1988) 4 N.W.L.R. (pt. 90) 503
Ndebilie v. The State (1965) N.M.L.R. 253 at p. 257
Ali v. The State (1988) 1 N.W.L.R. (Pt. 68) 1
Irek v. The State (1976) 4 S.C. 65 at p. 67
Ajidagba v. I.G.P. 3 F.S.C. 5
Bakare v. The State (1987) 3 S.C. 1 at 5

STATUTE REFERRED TO

Criminal Code Cap. 36 of the Laws of Anambra State 1986 s. 274(1)

LEAD JUDGMENT BY ADIO JSC

In the High Court of the Enugu State of Nigeria, Enugu Judicial Division, the appellant was charged with murder contrary to section 274(1) of the Criminal Code. Cap. 36 of the Laws of Anambra State, 1986. applicable in Enugu State. The allegation was that he, the appellant, murdered one Francis Madu (M) on the 9th day of January, 1989 at Udi and Enugu Judicial Division.

The evidence led by the prosecution was that on the day of the incident, the deceased was a passenger in a mini-bus driven by the PW.2. The deceased, a police constable, wore police uniform and was sitting with the PW.2 in the front seat of the motor vehicle. When the aforesaid motor vehicle reached a check-point near Nkwo-Agu market at Udi a constable on duty with the appellant, who was a police officer of the rank of Assistant Superintendent of Police, demanded money from the PW. 2 before the motor vehicle being driven by the PW. 2 would be allowed to pass the check point. The deceased challenged the constable as to the propriety of demanding money. The said constable asked the deceased to accompany him to the appellant, his superior officer. The deceased complied but on getting to the place where the appellant was, the appellant shouted abuses on the deceased and followed the deceased back to his seat in the motor vehicle.

The appellant pulled out the pistol in his possession and threatened to “batter” the bus and the passengers if the motor vehicle moved an inch from the spot that it was. The appellant then moved to the side of the motor vehicle where the deceased was seated, opened the door, held the deceased by the collar of his dress and slapped the deceased. The appellant and the constable on duty with him (PW.8) continued to beat the deceased until at one stage the appellant shot the deceased with the gun in his (appellant’s) possession. The appellant and the PW.8 put the deceased in a motor vehicle and drove to an unknown destination. The appellant, PW.8 and the motor vehicle, with the deceased still in it, were later seen at the police station. The PW.5 and the PW.7 were also eye-witnesses of the incident. The deceased was being driven from the police station to the hospital when he died on the same way. The medical doctor who performed post mortem examination on the corpse of the deceased gave evidence that he extracted a bullet from the body of the deceased and that he died as a result of gun shot wounds.

At the end of the case for the prosecution, the learned counsel for the appellant made a no-case submission. The no case submission was overruled and the learned trial Judge called the appellant for his defence. The learned counsel for the appellant rested the appellant’s defence on the prosecution’s case. In a reserved judgment delivered by the learned trial Judge, he found the appellant guilty as charged, with the offence of murder. The learned trial Judge convicted him accordingly and sentenced him to death.

Dissatisfied with the judgment, the appellant lodged an appeal against it to the Court of Appeal. The court below dismissed the appeal.

The court affirmed the finding of the learned trial Judge that the charge preferred against the appellant was proved by the prosecution beyond reasonable doubt. The court below held, inter alia, that notwithstanding the alleged contradiction in the evidence of some of the prosecution's witnesses, there was credible evidence which showed beyond reasonable doubt that it was the appellant who shot the deceased with a gun and that the deceased died as a result of injury inflicted on him by the gun shot.

In accordance with the rules of this court, the parties duly filed and exchanged briefs. The appellant filed an appellant's brief and the respondent filed a respondent's brief.

Four issues for determination were set down in the appellant's brief and three issues were identified in the respondent's brief. I think that the four issues set down in the appellant's brief are sufficient for the determination of this appeal. They were as follows:-

(1) *"Whether, in the face of irreconcilable contradictions in the evidence for the prosecution, the learned Justices of the Court of Appeal were right in law in affirming that the appellant had a case to answer.*

(2) *Whether the prosecution proved its case beyond reasonable doubt to warrant the confirmation of the conviction and sentence of the appellant by the Court of Appeal.*

(3) *Whether the learned Justices of the Court of Appeal were right in law in extricating the evidence of P.W.2 and basing the conviction and sentence of the appellant on that evidence alone.*

(4) *Whether in the circumstances of this case it was safe to base the conviction and sentence of the appellant on the evidence of the "solitary witness" in the person of P.W.2"*

Where the charge preferred against an accused is murder, the onus is on the prosecution to prove beyond reasonable doubt that:

- (a) the deceased is dead;
- (b) the act or omission of the accused which caused the death of the deceased was unlawful; and

the act or omission of the accused which caused the death of the deceased must have been intentional with knowledge that death or grievous bodily harm was its probable consequence.

A conviction for the offence of murder can be sustained only where the things mentioned in paragraphs (a), (b) and (c) above are proved beyond reasonable doubt. See *Ogba v. The State*, (1992) 2 NWLR (Pt. 222) 164. The evidence led by the prosecution included the direct evidence of P.W.2 who was an eye-witness of the incident leading to the death of the deceased. He said that he saw the appellant when he brought out the pistol

in his possession and fired a shot from it at the deceased and that upon being hit by the bullet fired by the appellant with the pistol, the deceased fell down. There was evidence which was uncontradicted that the deceased, already injured by the gun shot fired at him by the appellant was put in a motor vehicle and driven first to the police station by the appellant and P.W. 8. Eventually, he was being conveyed by them on the same day from the police station to the hospital when he died on the way. The evidence of the medical doctor who performed the post mortem examination on the corpse of the deceased was that the death of the deceased was caused by the injury he suffered as a result of gun shot. There were other eye witnesses of the incident: P.W.5, P.W.7 and P.W.8.

In the case of the P.W.5 and P.W.7 their evidence was that at one stage during the incident they heard a gun shot but they did not know the person who fired the gun shot. With reference to the P.W.8, in the statement which he made to the police, he said at first that he could not say who exactly fired the pistol. He subsequently stated that he remembered that it was the deceased who fired the pistol. At the trial of the appellant, his oral evidence was that the appellant was the person who fired the gun shot at the deceased.

I have already referred to the evidence of the eye-witnesses of the incident. The questions raised by the 1st, 2nd, 3rd and 4th issues are in the light of the evidence of the prosecution witnesses interwoven and I will treat and consider them together. The learned trial Judge found, and the finding was affirmed by the court below, that the deceased died as a result of his being shot with a gun by the appellant; that the killing of the deceased by the appellant was unlawful; and that in firing the gun shot that killed the deceased, the appellant intended to kill the deceased or do him grievous bodily harm. Before coming to the conclusions and making the findings mentioned above, which were affirmed by the court below, the learned trial Judge duly considered, inter alia, the evidence of P.W.2, P.W.5, P.W.7 and P.W.8. In particular, he gave consideration to what the P.W.8 stated in his statement, that is, that it was the deceased that fired the gun shot and his oral evidence during the trial that it was the appellant that fired the gun shot. The learned trial Judge noted and considered the explanation given by the P.W.8 for the contradiction or discrepancy in his written statement to the police and his oral evidence in the court and the learned trial Judge was satisfied with it before he (the learned trial Judge) accepted the evidence of the P.W.8. The explanation given by the P.W.8 was that the appellant and himself belonged to the same ethnic group in Nigeria and as his former boss he urged him (P.W.8) to say what he stated in the written statement to cover up the involvement of the appellant in the shooting of the deceased.

The court below in relation to this aspect of the matter considered the evidence of the P.W.5, P.W.7 and P.W.8 and came to the following conclusion:-

"The trumpet card of the appellant in this appeal, in my view, is predicated on the strong submission by learned appellant's counsel that the accounts of the shooting as rendered by the prosecution's star witnesses were woefully in conflict and therefore unreliable to establish either a prima facie case against the appellant, or indeed, establish the guilt of the appellant Perhaps, in my view the most offending witness in this regard is P.W.8 The inevitable conclusion one is obliged to reach is that on the basis of the principle stated above the entire testimony of P.W.8 is unreliable and should be completely ignored for all intents and purposes..... Surely, in the face of the above, his evidence was tainted and rendered incapable of belief."

The court below was of the view that as the P.W.7 did not know the person who fired the gun when he heard the gun-shot, his evidence was of low probative value. The P.W.5 too did not know the person who fired the gun though he (P.W.5) heard the gun shot. The court also felt that there was inconsistency in the extra judicial statement of the witness and his oral evidence in the court. His own evidence too was ignored. The court below was of the view that as the P.W.7 did not know the person who fired the gun when he heard the gun-shot, his evidence was of low probative value. The P.W.5 too did not know the person who fired the gun though he (P.W.5) heard the gun shot. The court also felt that there was inconsistency in the extra judicial statement of the witness and his oral evidence in the court. His own evidence too was ignored.

The foregoing was the way the court below treated the evidence of the P.W.5., P.W.7. and P.W.8. The submission for the appellant was that it was wrong for the learned trial Judge to overrule the no-case submission made for the appellant because at that stage it was the whole evidence that should have been considered. The learned counsel for the appellant cited *Ighen & Ors v. The State*, (1964) NWLR 184 and *Ohuka v. The State (No.2)* (1988) 4 NWLR (Pt. 86) 36 and submitted that the evidence adduced by the prosecution had been so discredited as a result of cross-examination and had become so unreliable that no court would convict on it. The submission made for the respondent was that there was evidence before the learned trial Judge which prima facie established the charge preferred against the appellant. Therefore, it was contended, the learned trial Judge was right in overruling the no-case submission.

It should be noted that the eye-witnesses of the incident who testified for the prosecution were the P.W.2, P.W.5, P.W.7 and P.W.8. It should also be noted that as all that the P.W.5 and P.W.7 could testify about was that they heard the gun shot during the incident and no more, their evidence was, of course, of little or no probative value. That was so, not as a result of their being discredited by cross-examination but as a result of the limited nature of what they knew about the incident. One could not reasonably say that they contradicted each other or

that their evidence contradicted the evidence of the P.W.2 who in addition to hearing a gun shot, like the P.W.5 and P.W.7, told the court that he saw the appellant when he fired the gun shot at the deceased. The P.W.2 might be telling the truth about what he heard and saw and the P.W.5 and P.W.7 too might be telling the truth about what they heard only. The two versions are not contradictory or inconsistent. It would have been a different thing if the P.W.5 and P.W.7 had stated that they did not hear any gun shot. B

The P.W.8 was in another category and even in his own case the situation was not completely hopeless. In his own case, he stated at first in his extra-judicial statement that he did not know the person who fired the pistol. Later he said that he remembered that it was the deceased that fired the pistol. The foregoing at once apparently raised the issue of inconsistency in the prosecution's case because if the prosecution is to succeed, then its case, as presented, must be consistent. If there is inconsistency in the prosecution's case such as to cast a doubt on the guilt of the accused, the accused is entitled to be given the benefit of the doubt and he should be discharged and acquitted. See *Onubogu v. The State* (1974) 9 SC. 1 and *Kalu v. The State*, (1988) 4 NWLR (Pt.90) 503. The position in the case of P.W.8 would appear to be complicated because his oral evidence at the trial of the appellant was that it was the appellant that fired the gun shot. E However, the learned trial Judge, noted the inconsistency or discrepancy in the evidence of the P.W.8 and noted in the record the explanation given by the P.W.8 that he and the appellant came from the same ethnic area in Nigeria and that he stated what he said in the extra-judicial statement to cover up the appellant who had urged him to do so. He was worried by his conscience and by the fact that the incident happened in broad day light and his lie might be detected and that was why he spoke the truth when he gave evidence during the trial of the appellant. So, the learned trial Judge did all that needed to be done in a situation like this before he accepted the evidence of the P.W.8. It is not every discrepancy between what one witness says at one time and what he says at another that is sufficient to destroy the credibility of the witness altogether. However, where the discrepancy is at least of enough importance to call for a mention by the Judge, it should appear on the record that he adverted his mind to it and the reason for believing the witness in spite of the discrepancy should also be stated. That will enable the appellate court to determine whether the learned trial Judge overlooked the discrepancy or whether he adverted his mind to it and considered it but found the witness credible nevertheless. See *Ndebilie v. The State*. (1965) NMLR 253 at p. 257. In this case, as there was still the credible evidence of the P.W.2 on the point(s) on which the P.W.8 testified H

at the trial of the appellant, the evidence of PW.8 at the trial of the appellant was not, therefore, absolutely necessary.

In this case, the PW.2 told the court that the appellant brought out the pistol in his possession and fired a shot at the deceased. The deceased fell down. There was evidence that the deceased was carried away by the appellant and the constable and that the deceased died when he was being taken to the hospital on the same day. A policeman, PW.1., testified that the appellant was issued with a pistol for official duties. The pistol would not discharge or fire if it was not cocked. There was also evidence from the medical doctor who conducted the post mortem examination on the corpse of the deceased that he extracted a bullet from the body of the deceased and that he died as a result of gun not wound. On the basis of the evidence before the learned trial Judge, which included the foregoing, the learned trial Judge overruled the no-case submission made for the appellant. Affirming the ruling of the learned trial Judge, the court below stated, inter alia, as follows:-

“The totality of PW.2 evidence, in my opinion was sufficient to raise a prima facie case against the appellant. If believed by the learned trial Judge, as was the case here, it is the law that the evidence of a witness, particularly the uncontradicted evidence which is not incredible, is a matter which the trial Judge had no option but to accept.”

The credibility of evidence does not ordinarily depend on the number of witnesses that testify on a particular point. The question is whether the evidence of one credible witness, on a particular point, is believed and accepted. If the answer is in the affirmative, then it is sufficient to support a conviction. See *Ali v. The State* (1988) 1 NWLR (Pt. 68) 1. There was no evidence that the deceased was armed with a gun or any other lethal weapon. As the PW.2 testified, the appellant fired a gun shot at the deceased who died as a result of the gun shot wound. A man intends the natural consequences of his conduct. By firing a gun shot at the deceased, it could properly be inferred that the appellant intended to kill the deceased or want to inflict grievous bodily harm on him. See *Irek v. The State*, (1976) 4 SC 65 at p. 67. The ingredients of the offence of murder had been prima facie established.

When a court is giving consideration to a submission of no-case, it is not necessary at that state of the trial for the learned trial Judge to determine if the evidence is sufficient to justify a conviction. The trial court only has to be satisfied that there is a prima facie case requiring at least some explanation from the accused person. Evidence is said to disclose a prima facie case when it is such that if uncontradicted and if believed it will

be sufficient to prove the case against the accused. See *Ajidagba v. I.G.* (1958) 3 F.S.C. 5; (1958) SCNLR 60. On the whole, I think that the court below was right in affirming the ruling of the learned trial Judge overruling no-case submission made for the appellant.

The learned trial Judge, after the no-case submission was overruled, called on the appellant for his defence. The appellant rested his defence on the prosecution's case. In the circumstance, the learned trial Judge gave full consideration to the whole case to see whether the case for the prosecution was proved beyond reasonable doubt and whether any of the usual defences, such as provocation, self-defence, accident or insanity was available to the appellant. He came to the conclusion that the charge of murder preferred against the appellant was proved beyond reasonable doubt and that the circumstances were such that none of the usual defences was available to the appellant. He, therefore, found the appellant guilty of the charge. Accordingly, appellant was convicted and sentenced to death.

The court below, after due consideration of the appeal of the appellant, dismissed it. The court affirmed the finding of the learned trial Judge that the prosecution proved the charge preferred against the appellant beyond reasonable doubt. It also agreed that none of the usual defences was available to the appellant.

It affirmed the conviction and sentence passed on the appellant. With reference to the question whether the prosecution proved the charge preferred against the appellant beyond reasonable doubt, the court below stated, *inter alia*, as follows:-

"The question is, whether on the totality of the evidence led by the prosecution there was proof beyond reasonable doubt that the accused with the necessary intent pulled the trigger of the Bereta pistol which released the fatal bullet that hit the deceased? From the narration of the circumstances leading to the death of the deceased, I have no doubt whatsoever, so also was the trial Judge, that the unceremonious act of pulling the trigger of the Bereta pistol on the ill fated date was intended to cause the death of the deceased or intended to do the deceased some grievous harm."

The court below then referred again to the evidence of the P.W.2 which in its view was solid and unshaken and to the evidence of the medical doctor who performed the post mortem examination that the cause of the death of the deceased was gun shot wound. He then pointed out that, in the circumstance, there was ample evidence before the learned trial Judge, which he properly evaluated, to warrant the conclusion that the prosecution had proved its case or the guilt of the appellant beyond reasonable doubt.

The learned counsel for the appellant cited some authorities on

the onus of proof in criminal cases and argued that the charge preferred against the appellant was not proved beyond reasonable doubt. Again, on this point, he referred to what he described as contradiction and conflict in the evidence of P.W.5, P.W.7 and P.W.8. He could not understand why the evidence of the P.W.2 should be singled out and be given the probative value that it was given. In his view, the trial Judge could not pick and choose between conflicting evidence.

The learned counsel for the respondent referred, in the respondent's brief, to the evidence of P.W.1 who was the armourer that supplied the pistol and the live ammunition to the appellant for his official duties. He also referred to the evidence of the P.W.2 who saw the appellant when he fired a gun shot at the deceased and the evidence of the medical doctor who testified that the cause of the death of the deceased was gun shot wound. The learned counsel pointed out that the evidence of P.W.2 became outstanding because it provided the details needed to establish a case against the appellant.

I entirely agree with the views of the court below on this aspect of the matter. There was evidence that the appellant was supplied with a pistol together with live ammunition. P.W.2 saw the appellant when he fired a gun at the deceased and the deceased fell down. The deceased was conveyed by the appellant and one other person to the police station and he died while he was being conveyed from the police station to the hospital on the same day. There was the evidence of the medical doctor who performed post - mortem examination on the corpse of the deceased that the deceased's death was caused by gun shot wound. He extracted a bullet from the corpse of the deceased.

All the essential ingredients of the offence in the charge were proved. It was clear from the circumstances of this case that none of usual defences was available to the appellant. I have already examined and expressed my views on the alleged conflict or contradiction in the evidence of P.W.2, P.W.5, P.W.7 and P.W.8. In particular, I have pointed out that the court below was perfectly in order in affirming the probative value which the learned trial Judge ascribed to the evidence of P.W.2. The answer to the questions raised under the 1st, 2nd, 3rd and the 4th issues are in the affirmative.

The appeal does not succeed and it is hereby dismissed. The judgment of the court below is affirmed.

UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother Adio, J.S.C. I too agree that the appeal lacks merit and that it should be dismissed.

Accordingly the appeal is hereby dismissed and the decision of the Court of Appeal is affirmed.

B

WALI JSC

I have had a preview in draft of the lead judgment of my learned brother, Adio, J.S.C. and I agree with the reasons he gave for dismissing the appeal.

For those same reasons contained in the lead judgment, I also hereby dismiss the appeal and affirm the judgment of the Court of Appeal.

C

KUTIGI JSC

I read before now the judgment just delivered by my learned brother Adio, J.S.C. I agree with the conclusion that the appeal lacks merit and ought to be dismissed. It is accordingly dismissed.

D

OGWUEGBU JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother. Adio, J.S.C. I agree entirely with his reasoning and conclusion.

PW.2 was an eye witness. He gave evidence of what he saw. His evidence stood out clearly against the appellant. I am satisfied that the prosecution proved its case beyond reasonable doubt. In this case, it was established that the deceased died of a gunshot wound and the gun was carried to the scene by the appellant. PW.2 testified that the appellant fired and shot the deceased. See *Bakare v. The State* (1987) 3 SC 1 at 5; (1987) 1 NWLR (Pt.52) 579 at 594-595. From the evidence, no other person but the appellant committed the offence charged.

The appeal fails and is dismissed by me. I affirm the conviction of the appellant for murder and the sentence of death passed on him.

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