

SUPREME COURT OF NIGERIA
TUESDAY 9TH JULY, 1996. SC. 123/1995
CORAM:- S. M. A. BELGORE, M. E. OGUNDARE,
U. MOHAMMED, S. U. ONU, A. I. IGUH, JJSC

ALHAJI SALISU BABUGA APPELLANT

V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Medical reports - Whether property received in evidence - Seeing that the doctor was not called.

CRIMINAL PROCEDURE - Medical reports - Where not linked with the tin eased - They are irrelevant.

CRIMINAL PROCEDURE - Cause of death - In culpable homicide charge - When lack of medical evidence and non recovery of the corpse - Will not vitiate conviction.

CRIMINAL PROCEDURE - Proof beyond reasonable doubt - Whether this burden was discharged by the prosecution.

CULPABLE HOMICIDE - Intention to kill - Where there is evidence of deliberate desire to kill - Whether Lower courts' finding of no accident is proper.

EVIDENCE - Corroboration - Culpable homicide - Whether a single convincing evidence - Must be corroborated.

EVIDENCE - Withholding evidence from court - Whether failure to call a particular witness - Is tantamount to withholding evidence under s. 149 (d) Evidence Act.

FACTS

The deceased, one Mamuda Gambo, was a neighbour of the appellant and PW1. Appellant came to where PW1 and the deceased were having some drinks at a beer parlour, bought more drinks for them and took them out for a picnic in his car. While deceased and PW1 squatted by the road side to urinate, appellant suddenly accelerated the car towards them, knocked down the deceased and went over him. He used the reverse

gear in running over the deceased a second time. Appellant threw the dead body into a pond and warned the PW1 with threats of dire consequences not to reveal the incident to anyone.

PW1 who tried not to reveal the incident for about 9 months suited being troubled. His elder brother observed this situation and caused PW1 to tell him what happened. This led to PW1 being taken to the Police to report the incident. Appellant was consequently arrested, tried and convicted for culpable homicide before the Kano High Court. His appeal to the Court of Appeal was dismissed. Appellant has further appealed to the Supreme Court raising 4 issues.

ISSUES FOR DETERMINATION

(i) *“Whether the Court of Appeal was right in stating that the trial court rightly rejected the Medical evidence in this case in the light of the evidence of PW 1 the star prosecution witness.*

(ii) *Whether the failure on the part of the prosecution to call Yusuf Mohammed and the Medical Officer is fatal to the prosecution’s case.*

(iii) *Whether the Court of Appeal rightly held that the evidence of PW1 was properly assessed by the trial Court.*

(iv) *Whether the incident was an accident. “*

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

Withholding evidence from court

1. It must be explained clearly that there is a world of difference between a witness and the evidence a witness gives. The medical officer produced evidence i.e. Exhibits 2 and SB1 and those two documents as evidence were before the trial Court, one tendered by the prosecution, the other by the defence. The medical officer was a potential witness whose evidence in the form of the two reports was before the trial Court; he as a witness could not be called evidence as envisaged in section 149(d) (supra). The medical officer’s evidence was produced before the Court and was not withheld. (p. 1447 C)

Medical reports - Whether properly received in evidence

2. Exhibits 2 and SB1 were properly received in evidence and the Court never thought it fit to call the doctor because there could be no evidence to contradict the Exhibits. There was no disagreement on the Exhibits at the trial to justify invocation of s. 249(3) (c) of the Criminal Procedure Code (supra) as the two documents were tendered without objection. (p. 1448 A)

Medical report not linked with deceased

3. I have earlier adverted to the two medical reports – Exhibit 2 and SB1 and reiterate that the two have not been linked with the deceased person. None of the reports carries the name of the deceased nor the date of death and the only one carrying the date of the postmortem examination refers to days before the death of the deceased and cannot by any shred of imagination refer to the deceased and therefore irrelevant to this case. Again Exhibit SB1 was only tendered by leave at the Court of Appeal, it never help that Court either. (p. 1448 D)

Intention to kill

4. The P.W. 1 in his evidence in chief stated clearly what happened on the road to Bagauda on 13th October, 1989, leading to the death of the deceased. He saw how the appellant drove his car over the deceased; at that stage he could not say whether it was an accident or a deliberate act to kill. But with the deceased obviously on the ground and perhaps dead or seriously injured, the appellant engaged the car in reverse gear and went over the deceased a second time, whereby he obviously died, no reasonable inference other than a desire to kill could be had. Thus the trial Court as well as the Court of Appeal held the act of the appellant to be a deliberate act to kill and not an accident. These two concurrent findings of fact could not be assailed on the whole evidence in the record. (p. 1448 H)

Cause of death

5. In all cases where culpable homicide is in issue, it is very essential that the Court receive evidence, in very certain terms, that the deceased died as a result of the act of the accused person. Where the circumstances of the attack on the deceased are clear, the injuries inflicted upon him as a result of the attack are graphically described to lead to no other conclusion than that the deceased died as a result of the attack and the injuries, the Court can convict even if there is no medical evidence and even if the body of the deceased is not recovered. (1449 C)

Corroboration

6. The two medical reports in this trial are irrelevant to this case as I have earlier explained but the evidence of P.W. 1 is so clear and convincing that the trial Court that had the opportunity of listening to it believed it. No corroboration is necessary. The case of Onah vs. The State (1985) 3 NWLR (Pt 12) 236 has no relevance to this case as P.W. 1's evidence was not

based on ipse dixit of Yusuf Mohammed been called, his evidence would not have been more than what the P.W.1 told him that led him to take P.W.1 to the police to lodge a report. (p. 1449 E)

B *Proof beyond reasonable doubt*

7. It must be stated that the trial Court meticulously reviewed the evidence and came to a decision the Court of Appeal could not upturn. Nothing canvassed before this Court has changed that position. The prosecution's case was proved beyond reasonable doubt that the Court of Appeal had no reason to interfere with the verdict of the trial Court. Nothing advanced on this appeal has succeeded in changing the fate of this case. (p. 1449 G)

NOTABLE POINTS OF INTEREST

OGUNDARE JSC

1. Failure to call evidence that will be hearsay

D Whatever P.W.1 told Yusuf Mohammed in respect of what the Appellant did on the fateful day would only be hear-say if narrated by Yusuf Mohammed and would thus be inadmissible as evidence in Court. That Mohammed observed that P.W. 1 was disturbed would only be a matter of opinion of Mohammed. In sum, I cannot see how the failure to call Mohammed to E testify could be said to be fatal to the case for the prosecution. (p. 1451 B)

MOHAMMED JSC

2. Factors that determine credibility of a witness

F The credibility of a witness depends upon his knowledge of the facts to which he testified, his disinterestedness in the outcome of the trial, his integrity, his veracity and above all his ability to speak the truth. The fact that P.W.1, is the only eye witness to the incident which resulted in the death of the deceased is no barrier to die conviction of the appellant once the trail court believed his testimony. (p. 1451 H)

G ONU JSC

3. Number of witnesses to be called by the prosecution

H On the need to call witnesses generally, the law does not impose any obligation on the part of the prosecution as to the number of witnesses to call in order to prove its case. In discharging its burden of proof in this case the prosecution which had a discretion in the matter, called six witnesses who it deemed material to its case. (p. 1454 D)

IGUH JSC

4. Medical evidence is not a sine qua mm in homicide cases

It remains for me to stress that much as medical evidence is desirable to prove the cause of death in homicide cases, it is clearly not a sine qua non as death may be established by sufficient, satisfactory and conclusive evidence other than medical evidence, showing beyond reasonable doubt that the death in question resulted from the particular act of the accused person. (p. 1457 F)

REPRESENTATION

Olajide Ayodele, SAN, with Okpanachi, Esq. and S. Mohammed, Esq. for the Appellant
M.L. Aikawa, D.P.P. (Kano), with M. L. Ibrahim, C.S.C. S.B. Namallam, PS.C. and L.D.S. Yakasai, S.S.C. for the Respondent

CASES REFERRED TO

Onubogu v. The State (1974) 9 S.C. 1, 201
Ogundipe v. The Queen (1954) XIV WACA 65
Commissioner of Police v. Daniel Kwashie 14 WACA 319
Okosi v. The State (1989)1 N.W.L.R. (Part 100) 642 at 666
R v. Oledima 6 WACA 202
Ali v. The State (1988)1 NWLR (Part 68) 1 at 20
Okonofua v. The State (1981) 6-7 SC 1
Igbo v. The State (1975) 9-11 SC 129 at 135
Omogodo v. The State (1981) S.C. 5 at 22
Azu v. The State (1993) 9 KLR 43 p
Lori v. The State (1980) 8-11 S.C. 81 at 97
Edim v. The State (1976)4 S.C. 160
Essien v. The State(1984) 3 S.C. 14 at 18
Adekunle v. The State (1989) 5 N.W.L.R. (Part 123) 505 at 516
Ugwumba v. The State (1993) 7 KLR 190
Wankey v. The State (1993) 7 KLR 52

STATUTES REFERRED TO

Penal Code s. 221
Evidence Act ss. 149(d), 138(1)
Criminal Procedure Code s. 249(3)(c)

LEAD JUDGMENT BY BELGORE JSC

At the Kano High Court, the appellant was tried and convicted of culpable homicide punishable by death under section 221 of the Penal Code Law. The victim of the offence (hereinafter referred to as “the deceased”) Mamuda Gambo, was a neighbour of the appellant and P.W. 1, Haruna Mohammed at Fagge, Kano. The prosecution’s case at the trial Court is that on 13th October, 1989, along Hadejia Road, Kano at a beer parlour of a place called Lilly White Hotel, the P.W. 1 and the deceased were having some drinks and after a while the appellant, Alhaji Salisu Babuga came in and greeted them followed by his buying more drinks for them. Later, the appellant invited P.W. 1 and the deceased for a trip to Bagauda Lake Hotel on a “picnic”, which the two seemed to have enthusiastically accepted. This was after the two had some beer to drink at Lilly White Hotel. The appellant the P.W.1 and the deceased entered into the appellant’s car, driven by the appellant himself. The car is of Peugeot 505 Saloon make, in white paint and the three headed southwards out of Kano to Bagauda Dam. A few kilometres to Bagauda Dam, the appellant stopped and said he would like to ease himself, his two companions, i.e. P.W. 1 and the deceased also came out and walked a little in front of the car to urinate. As they squatted to do this, the appellant suddenly entered the car and put it into gear whereby it accelerated towards the deceased and P.W.1. The deceased was not fast enough to escape as the car knocked him down and went over him while P.W. 1 ran out of the way. After running over the deceased, the appellant halted and put the car into reverse gear whereby it ran over the deceased a second time. The appellant dragged the body of the deceased into the car and then pursued the P.W. 1. He caught up with the P.W.1 held him and dragged him back to the car all along with threat of dire consequences. The seats inside the car were smeared with the deceased’s blood; so were the dresses worn by the appellant and the P.W. 1.

With the corpse of the deceased on the front seat and the P.W.1 on the back seat, the appellant reversed and accelerated towards the Kano-Zaria highway. Getting to the junction of Bagauda and Kano-Zaria highway, the appellant never turned northwards to Kano but southwards along the highway going to Zaria. On getting to a place near the village of Kasuwar Dogo, the appellant stopped, dragged out the corpse of the deceased and threw it into a pond made out of an excavated ground. After doing this the appellant ordered P.W. 1 to come to the front seat and he had to seat on the blood of the deceased and they drove back to Kano. The appellant, all along the way warned P.W. 1 not to reveal the incident to anybody, otherwise he would have to deal with him too. At Fagge, Kano, the appellant

drove straight to the garage of his house and through it took the P.W. 1 into his house. How the P.W. 1 was taken to the appellant's house is graphically explained in the P.W. 1's evidence thus:-

"The accused told me that I should not tell what happened to anybody even my own brother. He threatened to kill me physically himself or through the native medicine men. When we reached the accused person's house at Faggae, the accused opened his garage and parked the car. He then opened the door to his house through the garage. The accused compelled me to follow him to his house for when I asked him to drop me on the way, the accused refused. I followed the accused to his house at Fagge. I agreed to follow the accused to his house for I was afraid for the accused had threatened to kill me. When I went into the accused person's house, he locked me in the house and went out. The accused then came back carrying some clothes with him. The clothes which I was wearing had been stained with blood and so the accused gave me a shirt to change the shirt. The accused asked me to wash my pair of trousers which had been stained at the bottom part. I washed the trousers in the tap at the centre of the house. It was the blood of the deceased that stained my clothes when I sat on the front seat. When I finished changing my clothes, the accused person refused me to go. He said that he would only allow me to go home after people had gone to bed. When most people had gone to bed the accused allowed me to go home at about 12 midnight. When I went home, I could not sleep and I wanted to get some sleeping tablets but I could not for it was already late in the night"

So the P.W. 1 was a virtual prisoner with the appellant on the day of the incident up to sometime late into the night when he was released to go home. He could not sleep with the tragedy fresh in his mind. In the morning, he summoned up courage and went to the appellant's father, the D.W. 2, Alhaji Umaru Babuga and told him of the incident whereby the deceased was killed by the appellant. He also told him of the threat of the appellant that he would kill him. In the evening the appellant went to the P.W. 1 and told him that D.W. 1 and his mother (appellant's mother) wanted to see him; the P.W. 1 never honoured the invitation. Three days after the gory killing, the appellant confronted the P.W. 1 again, accusing him of having reported the incident to his father (D.W. 2) and that D.W. 2 was very angry with him. He there and then advised that P.W. 1 should leave for foreign land, that he would foot the bill of his journey and sojourn. He obtained a passport for the P.W. 1, though in his elder brother's name but with his (P.W.1's) real photograph in it. The passport was exhibited at the trial. The appellant also got three documents signed by the P.W. 1 that

he lent to P.W. 1 the sum of N10,000.00 *“which he will use against the P.W. 1”*. The P.W. 1 was at the material period a student at College of Education, Kumbotso but the appellant had suggested to him the possibility of a transfer to Gumel Advanced Teachers College. Thereafter, P.W. 1 became restless and started all ploys to evade meeting with the appellant. The opportunity to be away from the appellant was offered when the P.W. 1 was to go on teaching practice; he left Kano area for Danbatta. The P.W. 1 then narrated his situation thereafter thus:-

“I chose to do my teaching practice at Government Girls Secondary School Danbatta and that was where I did my teaching practice. That period was the only peace I ever had when we came back from the teaching practice, I was a bit O.K. because the accused was not disturbing me at that time. I then started to nurse some feelings of fear that anything could happen to me. I started avoiding keeping companies. One day, I was with some people when the accused came to look for me. He was directed to one house where he was told that I was playing draught. The accused met me and told me that he was suspecting that I would reveal the secret anytime from then. I told him that I would not reveal the secret. He said that he did not trust me and so told me that if I wanted him to believe me, I should write another letter stating that I needed another loan of N10,000.00. I wrote the 3rd letter and gave to the accused person. I did not get the money from the accused. I was afraid and so that is why I was complying with the accused person’s orders of writing letters to him as he asked me to do.

Accused used to call some mallams. After all these I started to feel disturbed and so my elder brother realised that I was not all well things were not well with me. I began to have nightmares in my sleep. I started dreaming of having been charged with murder before a court. Sometimes I found myself in prison in the dream. When my elder brother realised that I was being disturbed, he asked me to tell him what happened. I then told my elder brother what happened. My elder brother said that we should report the matter to the police. I told him that we should not report the matter to the police because the family of the accused would kill me if we reported the matter to the police, my elder brother asked me to meet him in his place of work on the 8th of June, 1990. I went to my elder brother’s place of work on 8/6/90 as he asked me to do. When I went to my elder brother’s working place, we went to the State C.I.D. and made a report of the incident. When I told the police what happened they said that they had a similar case filed with them.”

P.W. 1 took the police to the scene of the killing and to the pond where the corpse of the deceased was thrown where it floated putrefied

three days later.

One would wonder whether the appellant acted in a sudden passion of sadism or had a motive for the killing. The grandfather of the deceased, P.W. 2 Alhaji Inda Mudi Mohammed, explained. Apparently there was no love lost between the appellant and the deceased, so is the evidence of P.W. 2. The appellant had bragged to the deceased that his father (D.W. 2) brought P.W. 2 to Kano. In the presence of D.W. 2, the deceased and the appellant, the P.W. 2 said openly that when in 1925 he came to Kano, D.W. 2 had no money to feed himself sufficiently much less to bring somebody to Kano, he said inter alia.

"I told the accused to call his father so that I would ask him the accused person's father. I told the accused that when I came to Kano in 1925 the accused person's father had no money to bring anybody to Kano at the time. At the time the father of the accused was only selling eight sticks of matches for a farthing. That time two packets were being sold for 1/2d. The father of the accused person was also there and I asked the accused to ask his father in his presence there. The accused was telling the late Gambo that the house in which I live was given to me free persons' father. I asked the father of the accused in the presence of the accused to tell me if I was owing him any money because of the house in which I live. The father of the accused told me in the presence of the accused that I was not owing any money. I told the deceased to keep off from the accused. If he wanted to converse with somebody, he should not go to the accused but that he should look for another person. I warned the deceased to keep off the accused for he, the accused, had at one time cut the vein in the hand of the deceased person's senior brother."

P.W. 2 then said he warned the deceased not to associate with the appellant due to the awkward behaviour of the appellant. It was three or four days after this that the deceased disappeared. It is remarkable that this witness, for all the damaging evidence he gave about the motive, was not cross-examined by the defence on the big issue but only as to the age of the deceased and how he searched for the deceased.

The defence of the appellant is a total denial. His father denied P.W. 1 ever told him anything about the killing of the deceased. The appellant himself denied ever going to Lilly White Hotel or to Bagauda. He had no answer to the documents purporting the P.W.1 owed him money or about the passport he procured for the P.W.1.

The P.W. 1 took the police to the scene of crime and to where the corpse of the deceased was thrown into a pond and found putrefied and floating the third day; but that was about nine months after the gruesome

killing took place. The medical reports, there are two of them - never mentioned the name of the person whose corpse was examined. The doctor who submitted the report was not called and the cause of death was not mentioned in any of the reports. It must be mentioned that the report the appellant now wishes to attack was tendered at the hearing of the appeal in the Court of Appeal, with leave, by the defence; but no foundation was laid to attach the report to the deceased because it was the report of an unknown person and the corpse was examined on 11th October, 1989, two days at least before the incident of the deceased's death. That medical report, Exhibit SB 1 could not have been referring to the deceased whose death was some days after the report. The second report did not give the date the post-mortem examination was performed and it bore no name of the person whose corpse was examined, it merely refers to "*unknown person, male.*"

The trial Judge, after a thorough review of all the evidence before him, came to the conclusion that the appellant indeed killed the deceased and did everything P.W. 1 attributed to him. He entered against him a verdict of guilty and sentenced him to death under S. 221 of the Penal Code. The Court of Appeal dismissed the appellant's appeal and thus the appeal to the Supreme Court.

The appellant raised the following issues for determination:-

- (i) "*Whether the Court of Appeal was right in stating that the trial Court rightly rejected the Medical evidence in this case in the light of the evidence of P.W. 1 the star prosecution witness.*"
- (ii) "*Whether the failure on the part of the prosecution to call Yusuf Mohammed and the Medical Officer is fatal to the prosecution's case.*"
- (iii) "*Whether the Court of Appeal rightly held that the evidence of P.W.1 was properly assessed by the trial court.*"
- (iv) "*Whether the incident was an accident.*"

The medical evidence at best referred to a dead body but there was no shred of evidence to link it with the deceased. The P.W. 1 gave clear evidence that the deceased was killed on 13th October, 1989. Exhibit 2 had no date on it and nobody identified the corpse as that of the deceased just like Exhibit 2, Exhibit SB 1 refers to an examination by the doctor of a corpse of an unknown person, but on 11th October, 1989. There was no evidence to link the two reports, one tendered by the prosecution, the other by the defence with the body of the deceased. The contention is that failure to call the medical officer to testify was fatal to the prosecution's case under S. 148(d) Evidence Act; now S. 149(d) Evidence Act 1990 (Cap. 112 Laws of the Federation of Nigeria 1990) which reads:

"149. The court may presume the existence of any fact which it

thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case, and in particular the court may presume:-

(a)

(b)

(c)

(d) that the evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(e)

The question this Court will address itself to is whether the evidence was withheld in this particular case. It must be explained clearly that there is a world of difference between a witness and the evidence a witness gives. The medical officer produced evidence i.e. Exhibits 2 and SB 1 and those two documents as evidence were before the trial court, one tendered by the prosecution, the other by the defence. The medical officer was a potential witness whose evidence in the form of the two reports was before the trial court; he as a witness could not be called evidence as envisaged in section 149(d)(supra). The medical Officer's evidence was produced before the court and was not withheld. The next question is whether the two medical reports could be admitted in evidence without the doctor himself being called. The answer is in S. 249 Criminal Procedure Code applicable in Kano State providing as follows:-

"249(1) The evidence of any medical officer or registered medical practitioner taken on oath before a court in the presence of the accused may be read in any inquiry, trial or other proceeding under this Criminal Procedure Code although he is not called as a witness.

(2) The court may if it thinks fit summon such medical officer or registered medical practitioner to appear before it as a witness.

(3)(a) A written report by any medical officer or registered medical practitioner may at the discretion of the court be admitted in evidence for the purpose of proving the nature of any injuries received by and the physical cause of death of any person who has been examined by him.

(b) On the admission of such report the same shall be read over to the accused and he shall be asked whether he disagrees with any statement therein and any such disagreement shall be recorded by the court.

(c) If by reason of any such disagreement or otherwise it appears desirable for the ends of justice that such medical officer or registered medical practitioner shall attend and give evidence in person the court shall summon such medical officer or registered medical practitioner to appear as a witness."

Exhibits 2 and SB 1 were properly received in evidence and the Court never thought it fit to call the doctor because there could be no evidence to contradict the Exhibits. There was no disagreement on the Exhibits at the trial to justify invocation of S. 249(3)(c) of the Criminal Procedure Code (supra) as two documents were tendered without objection.

As for the failure of the prosecution to call one Yusuf Mohammed, the brother of P.W.1 who took the P.W.1 to make a report to the Police in June 1990 one is at a loss to know what useful purpose his evidence would have served. P.W. 1 related vividly his situation since the date of the homicide and how his brother noticed his abnormal habit. He also testified that the appellant suggested the name of Yusuf Mohammed for the passport even though the photograph it carries is that of P.W. 1. The best evidence this Yusuf Mohammed could give would be a repetition of what P.W. 1 said to the Court about his role; perhaps he would do nothing more than relating what he noticed and that he took P.W. 1 to the police to lodge a complaint.

I have earlier adverted to the two medical reports - Exhibits 2 and SB 1 and reiterate that the two have not been linked with the deceased person. None of the reports carries the name of the deceased nor the date of death and the only one carrying the date of the post mortem examination refers to days before the death of the deceased and cannot by any shred of imagination refer to the deceased and therefore irrelevant to this case. Again Exhibit SB 1 was only tendered by leave at the Court of Appeal, it never helped that Court either.

As for the evidence of P.W. 1 the record is replete with the dilemma and fear he was put into. Here was a man who narrowly escaped being killed and was virtually a captive of the appellant both physically and psychologically. He was next door neighbour of the appellant and he tried to avoid him but the appellant kept on coming and threatening him. The opportunity he had to keep away never deterred the appellant who kept on stalking him. He started having nightmares and frightening dreams of being in prison for murder. He was withdrawing from the public and this attracted the attention of his elder brother who relieved him of the nine months old burden by taking him to the police to report. The trial Court assessed this evidence and that of the defence and came to the conclusion that the appellant indeed killed the deceased.

The P.W. 1 in his evidence in chief stated clearly what happened on the road to Bagauda on 13th October, 1989, leading to the death of the deceased. He saw how the appellant drove his car over the deceased; at that stage he could not say whether it was an accident or a deliberate act to

kill. But with the deceased obviously on the ground and perhaps dead or seriously injured, the appellant engaged the car in reverse gear and went over the deceased a second time, whereby he obviously died, no reasonable inference other than a desire to kill could be had. Thus the trial Court as well as the Court of Appeal held the act of the appellant to be a deliberate act to kill and not an accident. These two concurrent findings of fact could not be assailed on the whole evidence in the record. B

In all prosecution of criminal offences, the burden on the prosecution is to prove beyond reasonable doubt the guilt of the accused. See: Section 138(1) Evidence Act (Cap. 112) Laws of Federation of Nigeria 1990. Onubogu v. The State (1974) 9 SC 1 at 20. All material witnesses to prove a case and ingredients of the offence must be put in evidence before the trial court. In all cases where culpable homicide is in issue, it is very essential that the Court receive evidence, in very certain terms, that the deceased died as a result of the act of the accused person. Where the circumstances of the attack on the deceased are clear, the injuries inflicted upon him as a result of the attack are graphically described to lead to no other conclusion than that the deceased died as a result of the attack and the injuries, the Court can convict even if there is no medical evidence and even if the body of the deceased is not recovered. Ogundipe & Ors. v. The Queen (1954) XIV WACA 465. C D

The two medical reports in this trial are irrelevant to this case as I have earlier explained but the evidence of P.W. 1 is so clear and convincing that the trial Court that had the opportunity of listening to it believed it. No corroboration is necessary. The case of Onah v. The State (1985) 3 NWLR (Pt.12) 236 has no relevance to this case as P.W. 1's evidence was not based on ipse dixit of Yusuf Mohammed who was not a witness; had Yusuf Mohammed been called, his evidence would not have been more than what the P.W. 1 told him that led him to take P.W. 1 to the police to lodge a report. E F

It must be stated that the trial court meticulously reviewed the evidence and came to a decision the Court of Appeal could not overturn. Nothing canvassed before this Court has changed that position. The prosecution's case was proved beyond reasonable doubt that the Court of Appeal had no reason to interfere with the verdict of the trial Court. Nothing advanced on this appeal has succeeded in changing the fate of this case. I find no merit in this appeal and I accordingly dismiss it. The judgment of the Court of Appeal upholding the conviction of the appellant for culpable homicide under S. 221 of the Penal Code and the sentence of death passed by the trial Court are hereby affirmed. G H

OGUNDARE JSC

I have had a preview of the judgment of my learned brother Belgore, J.S.C. just delivered. I agree with him that this appeal is totally lacking in merit.

B The main issues raised in this appeal relate to the rejection of the medical evidence adduced at the trial and the failure to call P.W. 1's brother, Yusuf Mohammed and the Medical Officer who performed the post mortem to testify at the trial. On the issue of the medical evidence, both Exhibits SB 1 and 2 tendered at the trial and the Court of Appeal respectively are worthless. Neither of the two medical reports can be said to relate to the deceased and both appear to contradict each other, thus making it more difficult to conclude that they were made in respect of the same post mortem examination.

C Exhibit SB 1 was tendered at the trial without objection. In it the postmortem examination was said to have been conducted at D 5.15p.m. on 11/10/89 on the corpse of an unknown male person. The findings are stated as follows:-

"On examination, the entire body was bloated up, rotten and foul smelling. The face covered with dried altered blood with old laceration (stab) wounds on the forehead and media-sternal region. E The eyes were bulging and covered with dry altered blood. Abdomen had bursted and intestines bulging outside, gangrenous and some parts rotten" and the cause of death was put as "Multiple stab incisions inflicted on the body resulting to heamorrhage."

F In Exhibit 2 tendered at the Court of Appeal by the appellant the date of the holding of the post mortem was not stated all though the report itself was dated 24/10/89, the medical findings read:-

"Stab wounds on the forehead - sternal region, (sic). Entire face and body covered with dried altered blood. Abdomen bursted and intestine bulged outside."

G The date of death was said to be unknown nor was the cause of death as found by the Medical Officer stated. Both reports would appear to have been signed by the same Medical Officer. It is not surprising from the nature of these reports that the two Courts below found none of them of any assistance in the determination of the H guilt or otherwise of the appellant. I cannot see how it could be said that the failure to call the Medical Officer who made such useless reports could be said to occasion any miscarriage of justice.

From the evidence of P.W. 1, his brother Yusuf Mohammed noticed that his brother was disturbed and questioned him as to the cause of his disturbed mind. P.W. 1 told his brother certain things in consequence of which the latter took P.W. 1 to the police. At the trial Yusuf Mohammed was not called to testify. It is now being contended in the appeal before us that the failure to call him was fatal to the case for the prosecution. With profound respect to the learned leading counsel to the appellant, Ayodele SAN, I cannot subscribe to this submission. Whatever P.W. 1 told Yusuf Mohammed in respect of what the appellant did on the fateful day would only be hear-say if narrated by Yusuf Mohammed and would thus be inadmissible as evidence in Court. That Mohammed observed that P.W. 1 was disturbed would only be a matter of opinion of Mohammed. In sum, I cannot see how the failure to call Mohammed to testify could be said to be fatal to the case for the prosecution. P.W. 1 who was a witness to the events that led to the death of the deceased had testified in court. His evidence was accepted by the learned trial Judge. I do not see how Mohammed could have materially affected that evidence.

On the totality of the credible evidence before the court, I cannot see how this Court would justifiably interfere with the findings of facts made by the two Courts below. I therefore, find no merit in this appeal which I accordingly dismiss. I affirm the conviction of the appellant for murder and the sentence of death passed on him.

MOHAMMED JSC

I am of the same opinion with my Lord Belgore, J.S.C, that the Court of Appeal is right in affirming the decision of the trial High Court convicting the appellant of the offence of culpable homicide punishable with death contrary to S. 221 of the Penal Code. The appellant had no answer to the positive evidence adduced by P.W. 1. Haruna Mohammed, which established that the appellant deliberately murdered the deceased in a gruesome manner, with his car Haruna Mohammed saw everything and although he took some time before he reported the matter to the police it is without doubt that the trial court was not in error to believe him as a witness of truth.

The evidence of this witness remained unshaken after the rigorous cross-examination by the learned counsel for the defence, Mr. Ayodele, SAN. The credibility of a witness depends upon his knowledge of the facts to which he testifies, his disinterestedness in the outcome of the trial, his integrity, his veracity and above all his ability to speak the truth. The fact

that P.W. 1 is the only eye witness to the incident which resulted in the death of the deceased is no barrier to the conviction of the appellant once the trial court believed his testimony - See: Commissioner of Police v. Daniel Kwashie (1953) 14 WACA 319 and Okosi v. The State (1989) 1 NWLR (Pt.100) 642 at 666. My learned brother in the lead judgment, had adequately considered all the issues raised in this appeal and, in my view, the evidence is overwhelming that the appellant was the person who caused the death of the deceased. The conviction and sentence are quite proper and the Court of Appeal was right in affirming it.

I therefore agree that this appeal is devoid of any merit and it is dismissed.

ONU JSC

I had the advantage to read before now the judgment of my learned brother - Belgore, J .S.C. just delivered and I entirely agree with him that this appeal lacks merit and ought to fail.

I wish however, to comment on the case as follows:-

The facts constituting the dastardly act of the appellant in committing the culpable homicide punishable with death contrary to section 221(b) of the Penal Code when he was in the company of the deceased (Mamuda Gamba) and PW1 (Haruna Mohammed) after they had alighted from his (appellant's) car to urinate on Kano-Bagauda Road, on 13th October, 1989 when he knocked and ran over the deceased with his car and reversed to run over him the second time, do not need any repetition. They have been fully reviewed in the judgment of my learned brother. Suffice it to say in dealing with the four issues set out as calling for determination in their order of sequence which the respondent adopted, I wish to add in amplification thereto as follows:-

Issue 1: This issue questions whether the Court of Appeal was right in stating that the trial court rightly rejected the medical evidence in this case in the light of the evidence of P. W. 1, the star prosecution witness. I take the firm view that the respondent's submission that the court below rightly affirmed the decision of the trial court in rejecting the medical evidence (Exhibits SB 1, and '2') in the light of the evidence of P.W.1 and P.W. 4 (Sgt. Fidelis Aneke) of Nigeria Police, Bebeji as correct and fully justified. This is because:

(i) the evidence of P.W.1 and P.W.4 rendered the medical report even if properly made, immaterial.

(ii) the evidence of P.W. 1, the only eye-witness to the sordid and

cold-blooded killing of the deceased was that while he and the deceased had alighted from the appellant's car and were urinating, the appellant entered his car and drove towards the deceased, knocked him down; reversed his car and ran over him several times and that he thereafter put the deceased's body in the car and with him (PW.1) in the car drove to a pond where he (appellant) dumped the deceased's body.

(iii) the evidence of PW. 4 was to the effect that when he found the deceased's corpse in the pond, it was so rotten that it could not be removed to the hospital.

(iv) the position of the law as indeed conceded by the appellant in his brief, is that medical evidence is not a requirement in cases of homicide where the cause of death can be established by other evidence; in this case, a premeditated killing such as this. See: the cases of *Oko Agwu Azu v. The State* (1993) 6 NWLR (Pt.299) 303; *Kato Dan Adamu v. Kano N.A.* (1956) 1 SCNLR 65; *Akpan v. The State* (1992) 6 NWLR (pt 248) 439 and *Tonara Bakuri v. The State* (1965) NMLR 163.

As a matter of fact, conviction can properly be secured in the absence of a corpus delicti where there is a strong, direct evidence. See: *Rex v. Sala Sati* (1938) 4 WACA 10; *Commissioner of Police v. Robert Ogbame Cofie* (1941) 7 WACA 179 and *Edim v. The State* (1972) 4 SC 160 at 162 where, the Supreme Court following *Ogundipe & Ors. v. The Queen* (1954) 14 WACA 458 held:- *"It is true that the body of the deceased has not been recovered. But it is settled that where there is positive evidence that the victim had died, failure to recover his body need not frustrate conviction."*

Be it noted that it is not an immutable requirement of the law that the cause of death must be proved by medical evidence. See: *Kallo Dan Adamu v. Kano N.A.* (supra); *Akpan v. The State* (1972) 4 SC 6. All that is required to be proved is that the death of the deceased, as indeed happened in the instant case, was the direct result of the act of the accused to the exclusion of all other reasonable causes. See: *R. v. Nwokocha* (1949) 12WACA 453; *R. v. Owe* (1961) 2 SCNLR 354; (1961) 1 All NLR 680 and *Ogundiyan v. The State* (1991) 3 NWLR (Pt.181) 519.

The above is irrespective of the fact that the two post mortem examination reports - Exhibits SB 1 and SB 2 (Exhibit 2) issued and tendered at the instance of the prosecution and the defence respectively being in respect of an unknown male person, with the approximate date and hour of death being also unknown but with the dates of the examinations being 11/10/89 (two days to the deceased's death which allegedly took place on 13/10/89) and 29/10/89 (more than a fortnight after the deceased's death), they are worthless and no more than the paper on which they were written.

Finally, the knocking down of the deceased and his body being thrown into a pond, forming, as they did one unbroken transaction, it is immaterial how his death resulted but in respect of which P.W. 1's testimony was iron cast. This too was the path trodden by the trial court which was rightly upheld by the court below. See: *Thabo Meli v. The Queen* (1954) 1 WLR 228. The issue is answered in the affirmative.

Issue 2: This issue queries whether the failure on the part of the prosecution to call Yusuf Mohammed and the Medical Officer is fatal to the prosecution's case. As I have demonstrated in issue 1 above, one needs not call the Medical Officer to establish the cause of death. Provided positive evidence that the victim had died is adduced and there is evidence to link the accused with his death, proof beyond reasonable doubt is established. The evidence of P.W. 1 in the instant appeal provides that nexus, See: *R. v. Oledina* (1940) 6WACA 202; *Onyenakeya v. State* (1964) 1 All NLR 151 and *Onwumere v. The State* (1991) 4 NWLR (Pt.186) 428. In the instant case, the deceased was shown to have died on the spot where appellant's car crushed him.

On the need to call witnesses generally, the law does not impose any obligation on the part of the prosecution as to the number of witnesses to call in order to prove its case. See: *Alli v. State* (1988) 1 NWLR (Pt 68) 1 at 20. In discharging its burden of proof in this case the prosecution which had a discretion in the matter, called six witnesses who it deemed material to its case. Yusuf Mohammed is the elder brother of P.W. 1 who noticed his (P.W.1's) agitated state of mind and who questioned him closely to elicit why he was worried. He, it was too, who unburdened P.W.1's mind and freed him from the shackles of fear then hanging over his (P.W.1's) head like the "sword of damocles". After appraising his fear, he took him to report the act of culpable homicide of the deceased by the appellant to the police. His name was earlier used in the passport which the appellant procured for P.W. 1 with a view to sending him out of the country to prevent the detection of his (appellant's) crime. Thus, failure on the part of the prosecution to call Yusuf Mohammed is in my view, not fatal to the prosecution's case because it is not material. See *Okonofua v. The State* (1981) 6-7 SC 1. For as, *Obaseki, J .S.C.* observed in *Ali v. The State* (supra), "*it is the law supported by a long line of authorities that the evidence of one credible witness accepted and believed by a trial court is sufficient to justify conviction.*" See: also *Adelumola v The State* (1988) 1 NWLR (Pt.73) 683 at 691 and *Anthony Igbo v. The State* (1975) 9-11 SC 129 at 135. Nor do I agree with the appellant's submission that failure on the part of the prosecution to call these two witnesses should form the basis

of a presumption that their evidence is unfavourable to its (respondent's) case vide section 148(d) (now section 149(d) of the Evidence Act, Cap. 112, Laws of the Federation, 1990. I however, agree with the respondent's submission that the above section is in relation to failure to produce evidence and not witnesses. The learned trial Judge's view on this requirement of the law is as follows:-

".....Thus section 148(d) of the Evidence Act on which counsel relied does not refer to failure to produce witness but failure to produce evidence. If the prosecution produced evidence necessary for its case, it would have been open to any party who requires any contradictory evidence for his own case to have called any witness whom he thinks can give contradictory evidence I adopt this dictum as mine and it has answered that posit and so failure to call Yusuf Mohammed or the medical officer is not fatal to the prosecution's case."

The court below upheld this view. I have no cause to differ either. This issue is accordingly resolved against the appellant.

Issue 3: The question here is whether the Court of Appeal rightly held that the evidence of PW. 1 was properly assessed by the trial court.

In answering the question posed, having in issue 2 above considered the crucial role PW. 1's evidence played in the prosecution's case, it is enough to observe that the court below rightly upheld the decision of the trial court. The contention by the appellant therefore that PW. 1 is a liar, is unreliable and that his evidence lacks credibility and incapable of being relied upon, is unsustainable for the simple reason that PW1 was an eye-witness who saw all that happened and testified to what he saw. The learned trial Judge who heard, saw and observed his demeanour believed him. The court below affirmed that decision and unless it can be shown that it is demonstrably erroneous or perverse, it ought not to be interfered with or disturbed.

The fact that PW1 failed to disclose the whereabouts of the deceased and that a passport was procured in the name of his brother, Yusuf Mohammed, is immaterial to the fact in issue and even if it is material he had given his reasons for so saying. On the issue as to contradiction in the evidence of PW 1, the prosecution have at the trial given reasons or explanations as to such contradictions. See: Onubogu v. The State (1974) 9 SC 1 at 20. The Court below in considering the explanation given by PW1 said:-

"..... that the appellant was after him and that he never had any peace; if one does not take seriously the threat of a person who can knock down a fellow human being with a car and reverse the vehicle over him in any event one should have a heart of stone to ignore such a threat"

The court below therefore, in my view, rightly held that the trial court properly and duly assessed the evidence of PW 1. Upon that witness's evidence there was proof beyond reasonable doubt. See: Omogodo v. The State (1981) 5 SC 5. This issue is accordingly answered in the affirmative.

B Issue 4: This issue asks whether the incident was an accident. This issue which brings to the fore that appellant had motive and which was first raised in his address, neither having been mentioned in the appellant's statement to the police (Exhibits 3 & 3A) nor raised at the trial; that this is so, may be gleaned from the conclusion reached by the trial court on the point and which the court below upheld in the following excerpt from its judgment.

C "..... no doubt, accident does not happen in this way. There was no reason for the appellant not to ask the deceased and PW 1 to enter the car before he started driving away the car. There was also no reason for him to drive the car towards PW 1 and the deceased and then knocked
D down the deceased. Assuming that the knocking down of the deceased was an accident, will it also be assumed that putting the car in a reverse gear and reversing the car over the deceased whom he had knocked down is also an accident? The learned trial Judge carefully considered all the
E evidence before him and rightly arrived at the conclusion that this is not an accident and that it showed that the appellant had the animus occidendi to exterminate the deceased that the appellant also knew or had reason to know that his act was probable to cause the death of the deceased."

In addition to all these, the fact that appellant refused to report the matter to the Police and his issuance of threats to PW 1 not to disclose
F the incident to anybody further rule out accident as a possible defence in the face of his total denial of committing the offence of culpable homicide punishable with death in the first place. Besides, appellant had an old score to settle.

My answer to the issue is in the negative. For these and the more
G elaborate reasons proffered by my learned brother Belgore, J.S.C. I too dismiss this appeal and affirm the decision of the court below.

IGUH JSC

H I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Belgore, J.S.C. and I am in entire agreement with his reasoning and conclusion.

The prosecution's case as accepted by the trial court is that on or

about the 13th October, 1989, the appellant invited PW 1 and one Mamuda Gambo, the deceased, to a picnic at Bagauda Lake Hotel. They drove in the appellant's car. On their way, the appellant stopped his car ostensibly to ease himself by the road side. PW. 1 and the deceased also came out for the same purpose. Presently, the appellant re-entered his car, started and drove it towards the deceased whom he knocked down and ran over. He did not stop there. The appellant next engaged his reverse gear and with a reverse movement, ran over the body of the deceased for the second time with his car. B

At this juncture, P.W. 1 took to his heels but was pursued by the appellant who caught up with him, ordered him into the car and sternly warned that he would in turn murder P.W. 1 if he dared reveal to any one that he had killed the deceased. The appellant packed the corpse of the deceased in his car and dumped it in a pond along the Kano-Zaria road. C

For nine months, P.W.1 did not report this incident to anyone for fear that the appellant would murder him as he had threatened. It was only when he started having dreadful nightmares which seriously affected his health that his brother, Yusuf Mohammed questioned him whereupon he disclosed the entire incident to him. A report was consequently lodged with the police. D

The two medical reports tendered by the prosecution and the defence are the subject matter of the 1st issue raised by the appellant in this appeal. It was the view of the learned trial Judge that these reports were totally worthless and immaterial to the facts of the case, a conclusion which the court below affirmed. It is also fully endorsed by the leading judgment of my learned brother, Belgore, J.S.C. for reasons therein contained and with which I am in full agreement. It remains for me to stress that much as medical evidence is desirable to prove the cause of death in homicide cases, it is clearly not a sine qua non as death may be established by sufficient, satisfactory and conclusive evidence other than medical evidence, showing beyond reasonable doubt that the death in question resulted from the particular act of the accused person. See: *Oko Agwu Azu v. The State* (1993) 6 NWLR (Pt.299) 303; *Akpunya v. The State* (1976) 11 SC 269 at 278; *Lori v. The State* (1980) 8-11 SC 81 at 97; *Edim v. The State* (1972) 4 SC 160; *Essien v. The State* (1984) 3 SC 14 at 18; *Adekunle v. The State* (1989) 5 NWLR (pt.123) 505 at 516. F G

In the present case, the evidence accepted by the trial court is that the appellant lured the deceased out of his car and intentionally knocked him down with his car, ran over him engaged his reverse gear and, for a second time, ran over him once more in an obvious bid to ensure that the H

deceased was stone dead. Indeed the deceased, as a result, got stone dead at the scene of crime. Thereafter, the appellant dumped his dead body into a pond. In my view, the cause of death of the deceased in these circumstances is crystal clear and it will be idle to seek for any medical evidence to establish that the death of the deceased resulted from the direct brutal acts of the appellant as above described. The first issue will accordingly be resolved against the appellant.

The second issue questions whether failure by the prosecution to call Yusuf Mohammed and the medical officer who carried out post mortem examination on the body of the deceased is fatal to the prosecution's case. There is also the third issue which queries whether the court below rightly held that the evidence of P.W. 1 was properly assessed by the trial court. I will take both issues together.

I have already stated that no medical evidence in proof of the deceased's cause of death is necessary in the circumstances of this case. On the question of Yusuf Mohammed, I am at a total loss to appreciate what material or relevant evidence that was expected of him when he was neither an eye witness to the murder of the deceased nor had he any personal knowledge of the facts of the murder. At all events, the law does not impose any obligation on the part of the prosecution as to the number of witnesses it must call in order to prove its case. The prosecution only has the duty to prove facts in issue and is not obliged to call each and every witness on any particular point save, of course, where by law, corroboration is prescribed. Accordingly, a court of law can act on the evidence of one single witness if such a witness is believed, given all the surrounding circumstances, and a single witness may establish a case beyond reasonable doubt unless, as I have pointed out, the law requires corroboration for the prosecution to succeed. See: *Ogoala v. The State* (1991) 2 NWLR (pt.175) 509 at 533; *Ugwumba v. The State* (1993) 5 NWLR (Pt.296) 660 at 674; *Onafowokan v. The State* (1987) 3 NWLR (Pt.61) 538. The evidence of one credible witness whose testimony is accepted and believed by the trial court is sufficient to justify a conviction unless such a witness is an accomplice in which case his testimony would require corroboration. See: *Ali & Anor v. The State* (1988) 1NWLR (pt.68) 1; (1988) 1SCNJ 18 at 30; *Igbo v. The State* (1975) 9-11 SC 129 at 136 etc.

In the present case, the evidence of P.W.1 was thoroughly evaluated by the trial court and accepted as established. He was neither an accomplice to the brutal murder of the deceased nor did his evidence in any way require corroboration by law. The learned trial Judge was, in my opinion, acting within his rights when he believed the evidence of P.W.1 and

proceeded to convict the appellant as charged. I also entertain no doubt that the court below was right in affirming these findings of the trial court. Issues two and three must again be resolved against the appellant.

The last issue is whether the incident was an accident. The submission of learned appellant's counsel is that the evidence led by the prosecution at the trial did not rule out the possibility that the running over the body of the deceased up and down and forwards and backwards by the appellant with his car was an accident and that the court ought to have taken the view most favourable to the appellant in the circumstances. With very great respect to learned counsel, I find this submission entirely ridiculous, unbelievable and without substance, having regard to all the evidence accepted by the trial court in the case. Although the issue of accident was never raised by the appellant in his evidence, the learned trial Judge considered this defence and held thus:-

"No doubt, accident does not happen in this way. There was no reason for the appellant not to have asked the deceased and PW 1 to enter the car before he started driving away the car. There was also no reason for him to drive the car towards PW 1 and the deceased and then knocked down the deceased. Assuming that the knocking down of the deceased was an accident, will it also be assumed that putting the car in a reverse gear and reversing the car over the deceased whom he had knocked down is also an accident?"

The above finding was affirmed by the court below. This court will not normally interfere with the concurrent findings of the two lower courts unless there is some miscarriage of justice or a violation of some principles of law or procedure. See: *Osayeme v. The State* (1966) NMLR 388; *Sanyaolu v. The State* (1976) 5 SC 37; *Wankey v. The State* (1993) 5 NWLR (Pt.295) 542 at 552 etc.

The above finding is, in my view, totally justifiable and supported by the evidence before the trial court and I will for myself, fully endorse the same. The fourth issue is accordingly resolved against the appellant.

It is for the above and the more detailed reasons contained in the leading judgment of my learned brother, Belgore, J.S.C. that I, too, find no substance in this appeal which I hereby dismiss. The conviction and sentence passed on the appellant by the trial court and affirmed by the Court of Appeal are hereby further affirmed.