

SUPREME COURT OF NIGERIA
12TH DECEMBER, 1997. SC. 23/1996
CORAM:- A.B. WALL, I.L. KUTIGI, U. MOHAMMED, S. U. ONU,
A. I. IGUH, JJSC.

MICHAEL PETER	APPELLANT
V.		
THE STATE	RESPONDENT

CRIMINAL LAW - Insanity - Where the defence was not raised by the appellant - The issue cannot now be raised on appeal.

CRIMINAL LAW - Insanity - Where the pieces of evidence do not amount to a rebuttal of the presumption of sanity - Defence of insanity was rightly rejected.

CRIMINAL PROCEDURE - Plea - Section 215 of the CPL - Where there is nothing on the record - To indicate that appellant did not know the nature of the offence he was called to defend - Whether s. 215 was complied with.

CRIMINAL PROCEDURE - Charge - S. 33(6) of the constitution - Requirement that accused be informed of the charge in a language he understands - Was complied with.

CRIMINAL PROCEDURE - Preliminary investigation - Where not carried out before taking a child's evidence under oath - And no error was occasioned thereby - Concurrent findings of guilt will not be interfered with.

EVIDENCE - Competence - Of a child to testify, ss. 155(1) & 183(1) of the Evidence Act - Where trial court causes the child to be sworn - On the opinion that the child understands the nature of an oath - Preliminary investigation will not be necessary.

EVIDENCE - Circumstantial evidence - Though there be no direct evidence against appellant - Some aspects of the evidence - Sufficiently justified the finding of guilt.

EVIDENCE - Circumstantial evidence - That is overwhelming and leads to no other conclusion - Leaves no room for acquittal.

EVIDENCE - *Confessional statement - That is positive and direct - That is not made as a result of any threat or inducement - Is relevant and admissible.*

EVIDENCE - *Confessional statement - Admissibility - It does not become inadmissible - Merely because the accused denies having made it.*

EVIDENCE - *Contradiction - Where no doubt or contradiction was created - Nothing will be resolved in the appellant's favour.*

FACTS

Sometime in 1986 the deceased, Maria Jonah an infant and PW1 Rebecca Jonah (who was about 9 years old then) went down together towards the stream at their village in Agege Lagos State. PW1 saw a man she later identified to be the appellant who grabbed her and the deceased. She was able to disentangle herself and ran away while the deceased who was grabbed by the neck and taken into the bush by the appellant, was later found dead by the villagers who conducted a search. The appellant was handed over to the police by the villagers. He made a confessional statement mentioning two other persons with whom he committed the crime. They were arrested but died in the course of investigation and trial of the matter.

The appellant was charged before Hunponu-Wusu J. sitting at Lagos High Court with the murder of the deceased. He denied the charge outrightly and sought to establish that his confessional statement was made under torture. The trial Judge found the appellant guilty as charged and sentenced him to death. His appeal to the Court of Appeal was dismissed. Appellant has further appealed to the Supreme Court raising 6 issues.

ISSUES FOR DETERMINATION

1. Whether the Justices of Court of Appeal were right in holding that the trial Court complied with mandatory provisions of Section 215 of the Criminal Procedure Act having regard to the Supreme Court decisions in KAJUBO v. STATE (1988) 1 NWLR (Part 73) 721 SC. EWE v. STATE (1982) (sic) 6 NWLR (Part 246) 147 SC.

2. Whether the learned Justices of the Court of Appeal were right when they affirmed that the trial Judge complied with the provisions of Sections 154(1) and 182(1) of the Evidence Act before P.W.1, a child of 13 years testified as a competent witness for the prosecution.

3. Whether in the absence of the evidence of P.W.1, the remaining circumstantial evidence adduced by the prosecution at the trial and relied upon by the trial court irresistibly (sic) point to the guilt of the Appellant, as affirmed by the Court of Appeal.

4. *Whether the learned Justices of the Court of Appeal were right in holding that the defence of insanity does not avail the Appellant.*

5. *Whether the Appellant confessed to the commission of the Offence of murder in the circumstances of this case.*

6. *Whether the Justices of the Court of Appeal were right in holding that there were no contradictions in the case of the prosecution that vitiated the conviction of the Appellant.*

HELD (Unanimously dismissing the appeal per lead judgment of ONU JSC)
Plea - Section 215 of the CPL

1. I take the firm view that in the instant case, there was substantial compliance with the provisions of Section 215 of the Criminal Procedure Law as laid down in Kajubo v. The State (supra). There is nothing on the record to indicate that the appellant did not know the nature of the offence he was called upon to defend. Besides, too narrow an interpretation of the provisions and application of Section 215 of the Criminal Procedure Law would only serve to defeat the course of justice rather than enhance it. (p. 2008 C)

Charge - S. 33(6) of the Constitution

2. Furthermore, Section 33(6)(a) of the Constitution of the Federal Republic of Nigeria, 1979 whose provisions are that:

"33(6) Every person who is charged with a criminal offence shall be entitled - (a) to be informed promptly in the language that he understands and in detail of the nature of the offence;"

and which stipulation is identical to and complement Section 215 of the Criminal Procedure Law under consideration, would appear to me to have also been fully complied with. (p. 2011 A)

Competence - Of a child to testify

3. It was right of the learned trial judge in the instant case to ab initio cause the witness to be sworn since at 13 years, she would reasonably be expected to understand the questions put to her and to understand the nature of the oath even though she would still be considered a person of tender age by judicial interpretation. See Juliana Ode v. The State (1974) ANLR 902. The learned trial Judge's impression of 1st P.W.'s competence to give clear, cogent and compelling evidence from the record to the events that led to her sister's death from inception to the end of the case, was not in any way beclouded. I am of the opinion that he therefore took steps to satisfy himself that the relevant law was being complied with by the use of his discretion which was all he had to invoke, when he went ahead without entertaining any doubt of P.W.1's com-

petence to testify as if an adult witness, to get her to be sworn and her evidence accordingly recorded. Where, in the opinion of the court, a child understands the nature of an oath it is not necessary for the court to carry out further preliminary investigation for the purpose of ascertaining whether the child has sufficient intelligence to satisfy his giving such evidence and understands the duty of speaking the truth as prescribed by Section 183 of the Evidence Act, Cap. 112 Laws of the Federation of Nigeria, 1990. (p. 2012 D)

Preliminary investigation - Before taking a child's evidence

4. Thus, although in Sambo v. The State (supra) the appellant's appeal was allowed, in the instant case, I will be loath to interfere with the discretion exercised by the trial court which the court below, rightly in my view, affirmed - both findings which amount to concurrent findings of facts. By failing to carry out preliminary investigation before taking the evidence of P.W.1 in the instant case no error of a fundamental irregularity rendering the evidence so received worthless and of no use as in Sambo v. The State (supra) and Agenu v. The State (1992) 7 NWLR (Part 256) 749 respectively. (p. 2013 B)

Circumstantial evidence - Though there be no direct evidence

5. While I agree that there is no direct testimony or an eye-witness account of the actual killing, the following aspects of the evidence borne out by the record, put the matter beyond any reasonable doubt:-

- (a) that it was the appellant who grabbed the deceased by the neck and prevented her from running away as her sister, P.W.1 did;
- (b) that shortly after this fact of assault and restraint, the deceased was found brutally murdered;
- (c) that the appellant was arrested in the vicinity of the murder shortly after P.W.1 had reported the assault on her and the deceased; and
- (d) that it was the oral and written confession of the appellant that led to the arrest of the other two co-conspirators;

These facts, in my view, are clearly sufficient for the learned trial Judge to arrive at the conclusion of guilt on the part of the appellant, moreso that no other person was seen around the scene of crime apart from the appellant and his comrades in crime as disclosed in appellant's confessional statement (Exhibits 'D' and 'E'). (p. 2013 E)

Circumstantial evidence - That is overwhelming

6. Clearly in this case nothing was offered by the appellant by way of rebuttal except a bare denial. Indeed, where as in this case, the circumstantial evidence led is overwhelming and leads to no other conclusion, it leaves no room for

acquittal. (p. 2014 H)

Insanity - Where the defence was not raised

7. It is worthy of note, however, that in his evidence before the trial court, the appellant made a complete denial of his involvement in the killing of the deceased. It is my firm view that the issue of his possible insanity, let alone a B defence to that effect, goes to no issue. The provisions of Section 28 of the Criminal Code, in my respectful view, can only be relied upon by a person who accepts responsibility for the act complained of. In the instant case, the appellant raised neither the defence of insanity nor insane delusion and the learned trial Judge, in considering the issue was merely following the injunc- C tion that every element of a defendant's case, be it stupid, fanciful or doubtful should be considered in coming to a final conclusion. (p. 2016 C)

Insanity - Where the pieces of evidence do not amount to a rebuttal

8. These pieces of evidence, in my opinion, do not in any way amount to a D rebuttal, if any; the presumption of sanity at the time of the commission of the offence as provided by Section 27 of Criminal Code, nor do they establish the elements of legally cognizable insanity. The learned trial Judge was therefore right, in my view, in rejecting the weak and purported after-thought defence of insanity. Issue 4 is accordingly answered in the affirmative. (p. 2016 H) E

Confessional statement - That is positive and direct

9. Be it noted that a confessional statement becomes proof of an act when it is true, positive and direct. See Ofoha v. The State (1976)1 SC. 55-59. A voluntary statement stating or suggesting the inference that he committed the of- F fence for which he is charged is relevant and admissible against an accused, as in the instant case, provided that it was not made as a result of any threat, promise or inducement from a person in authority. See Ode v. The State (supra). Also, any voluntary information given by the accused at any time even during investigation which leads to the discovery of any fact material to G the charge against him is equally admissible. So stated Idigbe, JSC in Onungwa v. The State (1976) 2 SC. 169 at 173-174. (p. 2017 G)

Confessional statement - Admissibility

10. Thus, a confession, as in the instant case, does not become inadmissible H as evidence merely because the accused denies having made it. Even though the appellant herein seeks to impugn and reject Exhibit 'E', it is the law that a confession made to the police by a person under arrest is not to be treated differently from any other confession. What becomes manifest from the record

in the case in hand is that the learned trial Judge, in my view, followed all the laid down criteria in admitting and evaluating the confession which, having stood up to the tests enunciated in numerous earlier judicial precedents, I see no reason to disturb the finding thereon as well as the conviction of the appellant confirmed by the court below. (p. 2018 A)

B

Evidence - Contradiction

11. The fact that P.W.1 saw only one person just before she escaped does not amount to a contradiction, moreso that the fact revealed by the appellant himself showed unmistakably that there were two others involved in the dastardly act. Indeed, regard must be had to the fact that the events took place in a bushy area which could easily harbour the other miscreants. I see no irreconcilable evidence creating a doubt as to who or which persons killed the deceased. In effect, there were, in my view, no contradictions or doubt created to necessitate a resolution of same in the appellant's favour. (p. 2019 B)

D

NOTABLE POINTS OF INTEREST

IGUHJSC

1. Arraignment of accused was valid

It is my view therefore that the arraignment of the accused persons which, undoubtedly, was both a judicial and official act, having been carried out in a manner substantially regular, the maxim omnia praesumuntur rite esse acta became applicable in the matter of the validity of the arraignment. The omission by the trial Judge to record that he was satisfied that the accused persons understood the charge which was read over to them in the English language and explained and interpreted to them in their native language before they were invited to enter their plea thereto cannot, in my opinion, derogate from the validity of the arraignment. (p. 2021 G)

2. Section 155(1) of the Evidence Act is inapplicable

I am in entire agreement with the court below that Section 155 (1) of the Evidence Act is totally irrelevant and inapplicable in the present case because there is nothing to show that P.W.1 was prevented from understanding the questions put to her or from giving rational answers to those questions by reason of her tender age. I also agree that the finding of the learned trial Judge that P.W.1 understood the nature of an oath clearly took her evidence out of the ambit of Section 183 (1) of the Evidence Act. Nonetheless, the trial court ex abundanti cautela proceeded to consider the question of corroboration and, rightly in my view, found the same in the voluntary confessions of the appellant. In my view, this issue must be resolved against the appellant.

(p. 2022 H)

3. Circumstantial evidence led against appellant clarified

In my view, the strongest circumstantial evidence led against the appellant in the case is the fact that he forcibly grabbed the deceased by the neck and abducted her along the road to an unknown destination and that her body B was shortly afterwards found in the locality brutally murdered with her tongue extracted and her private parts excised. There is in the present case, therefore, adequate circumstantial evidence, sufficiently cogent and compelling as to convince a jury that on no rational hypothesis other than the inference that it was the appellant who, perhaps, a long with others, murdered the deceased, C can the facts be accounted for. (p. 2024 B)

REPRESENTATION

Olisa Agbakoba Esq. for the Appellant

Bisi Akinlade Esq. Principal Legal Officer, Lagos State, for the Respondent D

CASES REFERRED TO

Kajubo v. State (1988) 1 NWLR (Part 73) 721

Ewe v. State (1992) 6 NWLR (Part 246) 147

Erekanure v. The State (1993) 5 NWLR (Part 294) 385 E

Eyorokoromo v. The State (1979) 6-9 SC. 3

Okon v. The State (1991) 8 NWLR (Part 210) 424

7 Up Bottling Co. Ltd. v. Abiola & Sons Ltd. (1995) 8 NWLR 383 640

Funduk Engineering Ltd v. McArthur (1995) 5 NWLR (Part 392) 640

Yakubu v. Governor of Kogi State & Ors. (1995) 8 NWLR (Part 414) 386 F

Sambo v. The State (1993) 6 NWLR (Part 300) 399

Okoye v. The State (1972) 12 SC. 115, 125-126

Yongo v. C.O.P (1992) 8 NWLR (Part 257) 36

Adie v. The State (1980) 1-2 SC. 116 at 146

Ukorah v. The State (1977) 4 SC. 167 G

R. v. Barimah (1945) 11 WACA 49 at 50

Abasi v. The State (1992) 8 NWLR (Part 260) 383

STATUTES REFERRED TO

Constitution of Nigeria 1979 s. 33(6), H

Criminal Procedure Act s. 215

Evidence Act. ss. 150(1), 150(1), 183(1), 27, 28

Penal Code s. 283

LEAD JUDGMENT BY ONU JSC

The appellant, Michael Peter and one Sule Iro (the third suspect having died while on remand) were arraigned before Hunponu-Wusu, J. sitting at Lagos Judicial Division of the High Court of Lagos State, on a one-count charge of the murder of one Maria Jonah, an infant, at Moroga Village, B off Agege, Lagos State, an offence punishable under section 319(1) of the Criminal Code, Cap. 31 of Lagos State, 1973.

The appellant and the said Sule Iro, the latter against whom the charge laid was later withdrawn upon being reported dead, was accordingly struck out. In the trial that subsequently ensued, the prosecution called eight C witnesses while the appellant for his defence, denied killing the deceased and called four witnesses.

The learned trial Judge after considering the evidence adduced by both sides, found the appellant guilty as charged; proceeded thereafter to convict and sentence him to death, which sentence was affirmed by the Court D of Appeal (per Ayoola, JCA reading the leading judgment and concurred in by Kalgo and Pats-Acholonu, JJ.CA). Hence this appeal in which the following six issues were identified in the appellant's brief as arising for determination, to wit:

1. *Whether the Justices of Court of Appeal were right in holding E that the trial Court complied with mandatory provisions of Section 215 of the Criminal Procedure Act. Having regard to the Supreme Court decisions in KAJUBO v. STATE (1988)1 NWLR (Part 73) 721 SC. EWE v. STATE (1982) (sic) 6 NWLR (Part 246) 147 SC.*

2. *Whether the learned Justices of the Court of Appeal were right F when they affirmed that the trial Judge complied with the provisions of Sections 154(1) and 182(1) of the Evidence Act before P.W.1, and child of 13 years testified as a competent witness for the prosecution.*

3. *Whether in the absence of the evidence of P.W.1, the remaining G circumstantial evidence adduced by the prosecution at the trial and relied upon by the trial court irresistibly (sic) point to the guilt of the Appellant, as affirmed by the Court of Appeal.*

4. *Whether the learned Justices of the Court of Appeal were right in holding that the defence of insanity does not avail the Appellant.*

5. *Whether the Appellant confessed to the commission of the Offence H of murder in the circumstances of this case.*

6. *Whether the Justices of the Court of Appeal were right in holding that there were no contradictions in the case of the prosecution that vitiated the conviction of the Appellant.*

But for the respondent's issues 5 and 6 which in their setting are

juxtaposed to the appellant's issues 5 and 6, all the issues formulated by the respondent are similar in purport to the appellant's. Before I consider the issues formulated at the instance of the appellants which I adopt in my consideration of this appeal, it is pertinent, if only briefly, to set out the facts of the case as follows:-

That on April 11, 1986 the deceased and P.W.1, Rebecca Jonah, at the time a 9 year-old person went down together towards the stream at Moroga Village, Agege when she saw a man whom she later identified to be the appellant, carrying a bag. That the appellant asked for their names and she told him. That the appellant ran to the stream, left the bag there and ran back to grab the deceased by the neck. Whereupon, she (P.W.1) enquired what they (she and deceased sister) had done and then explained how her sister was snatched away and she went to call the police. She further described how she was still affected by the trauma of appellants grabbing of the deceased from behind by her neck which frightened her and how the distance between the stream and the village was about one mile. She further narrated how upon being herself grabbed, she struggled and extricated herself and ran away, adding that she was not present when the villagers searched for her sister, caught the appellant and brought him to the Bale's house at which many people including herself had gathered; that finally, while she identified him there and then as their attacker, although unable to identify the 2nd accused.

Issue one was argued first. The appellant's submission on it is that the procedure adopted in taking the pleas on the charge as read and explained to the two accused persons in the records upon arraignment failed to satisfy the requirements of the law. It is settled law, it is therefore argued, that for an accused to be properly arraigned before a trial Court the following procedure must be strictly followed:

- (i) *The accused shall be present in court*
- (ii) *That charge or information shall be read over to him in a language he understands.*
- (iii) *The charge or information after being read in such language should then be explained to him to his understanding.*
- (iv) *The trial court should satisfy himself (sic) that the explanation of the offence charged was adequate. It is after observing this procedure that he can then call upon the accused to make his plea thereon."*

The case of Kajubo v. State (1988) 1 NWLR (Part 73) 721 was cited to buttress the above propositions.

It is thereafter contended that in the instant case, there is nothing in the records to show that the learned trial Judge saw to it that the charge was understood by the accused persons to his satisfaction. Neither is there any-

thing in the record to show that the accused persons understood what the importance of the charge against them was all about before they made their plea, it is argued. This, it is submitted, constitutes a breach of the constitutional right of the appellant to fair hearing as provided under Section 33(6) of the Constitution of the Federal Republic of Nigeria, 1979 and contrary to the provisions of Section 215 of the Criminal Procedure Act. And where the trial court failed to comply strictly with these mandatory provisions of the law with regard to arraignment of an accused as in the instant case, the whole trial should be declared a nullity, it is argued. The cases of Ewe v. State (1992) 6 NWLR (Part 246) 147 and Kajubo v. State (supra), were cited to buttress the contention.

I take the firm view that in the instant case, there was substantial compliance with the provisions of Section 215 of the Criminal Procedure Law as laid down in Kajubo v. The State (supra). There is nothing on the record to indicate that the appellant did not know the nature of the offence he was called upon to defend. Besides, too narrow an interpretation of the provisions and application of Section 215 of the Criminal Procedure Law would only serve to defeat the course of justice rather than enhance it. The Section provides:

"The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order; and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information or he objects to the want of such service and the court finds that he has not been duly served therewith."

In Kajubo's case (supra) which is easily distinguishable from the case in hand, the glaring omission there in the taking of the plea of the accused by the trial Judge was as follows:-

*"Court: Registrar please take the plea of the accused.
Plea: Accused: Not guilty."*

And when the charge was amended on a subsequent date and the plea thereto taken, the learned trial Judge made the following notes:

"Court: Registrar take the plea of the accused on the amended charge."

Accused: 1st Count: Pleads not guilty 2nd Count; pleads not guilty."

From the above extract of the record, it is manifest that it could not be said that due process had been complied with; nor could the record be protected by the application of the principle of "presumption of regularity," because there was

nothing to indicate what was read to the appellant therein or that it was read to him in a language he understood at all. This Court was therefore justified, in my opinion, to have held that the trial was a nullity. For as Wali, JSC had the occasion to point out at page 479 of the judgment:

"There is nothing to show that the charges were even read to the appellant by the Registrar as directed by the learned Judge, much less to talk of explaining the same in a language he understood." B

More recently, this court had the opportunity to examine in further details a similar procedure governing the arraignment of an accused person in its consideration of the provisions of Section 215 of the Criminal Procedure Law of Bendel State in pari materia with identical provisions of the Lagos State Criminal Procedure Law and Section 33(6) of the 1979 Constitution (ibid) now under consideration, in the case of Samuel Erekanure v. The State (1993) 5 NWLR (Part 294) 385 among others, including Kajubo v. The State (supra), Ewe v. The State (supra), Eyorokoromo v. The State (1979) 6-9 SC. 3 and Okon v. The State (1991) 8 NWLR (Part 210) 424, which were followed. At pages 392 - 393 paragraphs H-E; page 396, in Erekanure (supra) wherein in allowing the appellant's appeal and ordering a retrial, this Court set out the requirements that must be satisfied thus: C D

(a) the accused must be present in court unfettered unless there is a compelling reason to the contrary; E

(b) the charge must be read over to the accused in the language he understands;

(c) the charge should be explained to the accused to the satisfaction of the court;

(d) in the course of the explanation technical language must be avoided; F

(e) after requirements (a) to (d) above have been satisfied the accused will then be called upon to plead instantly to the charge.

All the above requirements must co-exist and must be satisfied as they are mandatory. For as Olatawura, JSC pungently pointed out in the case (Erekanure G (supra)) at page 393, paragraphs B-E of the Report:

"In this case on appeal and according to the printed record, there is nothing to show that the court fully complied with these requirements. The five requirements must be satisfied. They are mandatory. The best that could be seen to have been done was that the charge was read to the accused, but in what language? If as it has been shown that it was read, was it explained to him? No. There is nothing on record to show also that it was even read by the registrar or an officer of the court. Where for instance no officer of the Court is capable of interpreting the charge in the language the H

accused person understands, a sworn interpreter is produced to explain the charge to the accused. As shown on page 26 of the printed record, the appellant spoke Urhobo language. The failure to comply fully or wholly with these requirements renders the trial a nullity. Egorokoromo v. The State (1979) 6-9 SC. 3. Quite apart from the requirements of Section 215 of the Criminal Procedure of the Bendel State of Nigeria 1976, the Constitution of the Federal Republic of Nigeria in Section 33(6) (a) provides:

'Every person who is charged with a criminal offence shall be entitled:

(a) to be informed promptly in the language that he understands and in detail of the nature of the offence.'

The Constitution safeguards the interest of those arraigned before the court by requiring strict compliance with this provision. The supremacy of the Constitution has never been in doubt and failure to follow its provision renders whatever was done contrary to it unconstitutional. It is so in this case."

The arraignment from the record in the instant case, (see page 13 thereof), was to the effect that -

"The charge was read to each of the two accused persons in English language. The charge was later interpreted to each of the two accused persons in Yoruba and each accused plead as follows:

1st Accused: I am not guilty

2nd Accused: I am not guilty."

Commenting on the arraignment of the two accused persons, in his judgment, the learned trial Judge stated as follows:-

"The only count was first read and explained to each of the two accused persons in English language, then interpreted to each of the accused in Yoruba and each of them pleaded as follows:-

1st Accused: I am not guilty

2nd Accused: I am not guilty."

What obtained or transpired in the cases reviewed or referred to above, cannot be said of the record in the instant appeal. Thus, applying the provisions of Section 150(1) of the Evidence Act, Cap. 112 Laws of the Federation 1990 which provide that:-

"150(1). When any judicial or official Act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with." (Underlining is mine for emphasis).

to page 10 of the record of proceedings, all the prerequisites for the validity of the proceedings as they relate to the procedure for the taking of a plea are in place and the mere omission by the trial Judge to state that he was satisfied

that the appellant understood the charge as interpreted to them in Yoruba before they pleaded not guilty cannot, in my view, derogate from the whole proceedings being proper. See Ogbuanyinya v. Okudo (No. 2) (1990) 4 NWLR (Part 146) 551.

Furthermore, Section 33(6)(a) of the Constitution of the Federal Republic of Nigeria, 1979 whose provisions are that:

"33(6) Every person who is charged with a criminal offence shall be entitled - (a) to be informed promptly in the language that he understands and in detail of the nature of the offence;"

and which stipulation is identical to and complement Section 215 of the Criminal Procedure Law under consideration, would appear to me to have also been fully complied with. See in this regard the recent decision of this court in Edet Effiom v. The State (1995) 1 NWLR (Part 373) 507 wherein Iguh, JSC rightly, in my view, observed at page 631, paragraphs B-D as follows:-

"It seems to me quite plain that the said mandatory condition laid down in Section 215 of the Criminal Procedure Law together with the provisions of Section 33(6)(a) of the 1979 Constitution have been specifically provided to guarantee the fair trial of an accused person and to safeguard his interest at such a trial. I should stress that it is the duty of a trial court to ensure strict compliance with the said provisions by reflecting such compliance in the court's record. See Josiah v. The State (1985)1 NWLR (Part 1) 125." (Underlining above is mine)

Similarly, failure to observe strictly these mandatory provisions could equally result in the want of fair trial or hearing mentioned in the above quotation of my learned brother and against which Section 33(1) of the 1979 Constitution (ibid) frowns as given expression in numerous decided cases by this court to wit: 7 Up Bottling Co. Ltd. v. Abiola & Sons Ltd (1995) 8 NWLR 383) 640; Provincial Liquidator, Tapp Industry v. Tapp Industry (1995) 5 NWLR (Part 393) 9; Funduk Engineering Ltd. v. McArthur (1995)5 NWLR (Part 392) 640; Yakubu v. Governor of Kogi State & ors. (1995) 8 NWLR (Part 414) 386 and Isiyaku Mohammed v. Kano N.A. (1968) 1 ALL NLR 424, to mention but a few.

Issue No. 1 is accordingly answered in the affirmative.

The complaint in issue No. 2 is whether the learned Justices of the Court below did not err in law when they sustained the trial Judge's judgment that P.W.1, a child of 13 years, is a competent witness to testify and give sworn evidence for the prosecution as required by Section 154(1) and 182 (1) of the Evidence Act.

I wish to point out straight away that the purports of Section 154(1) and 182(1) of the Evidence Act (now Sections 155(1) and 183(1) Cap. 112 Laws of the Federation of Nigeria, 1990) are clear and unequivocal enough to invoke

any confusion. Section 155(1) (ibid) provides that -

"All persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by reason of tender years, extreme old age, disease whether of body or mind, or any other cause of the same kind."

Section 183(1) (ibid), on the other hand, stipulates that:

"In any proceeding for any offence the evidence of any child who is tendered as a witness and does not in the opinion of the court, understand the nature of an oath, may be received, though not given upon oath, if, in the opinion of the court, such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth." (Underlining above is for emphasis).

The need for such inquiry in the underlined words of Sections 155(1) and 183(1) above only arises where the trial Judge is of the view that by his/her tender age a witness ought not to be sworn and his/her evidence would then require corroboration. **It was right of the learned trial judge in the instant case to *ab initio* cause the witness to be sworn since at 13 years, she would reasonably be expected to understand the questions put to her and to understand the nature of the oath even though she would still be considered a**

person of tender age by judicial interpretation. See *Juliana Ode v. The State* (1974) ANLR 902. The learned trial Judge's impression of 1st P.W.'s competence to give clear, cogent and compelling evidence from the record to the events that led to her sister's death from inception to the end of the case, was not in any way beclouded. I am of the opinion that he therefore took steps to

satisfy himself that the relevant law was being complied with by the use of his discretion which was all he had to invoke, when he went ahead without entertaining any doubt of P.W.1, 's competence to testify as if an adult witness, to get her to be sworn and her evidence accordingly recorded. See the decision of this court in *Isaac Sambo v. The State* (1993) 6 NWLR (Part 300) 399, a case

of rape contrary to Section 283 of the Penal Code wherein, in a similar situation, one of the issues that came up for determination was whether it was mandatory for a trial court to conduct the usual preliminary test as to the capability of a child to testify before receiving the child's evidence under Section 182(1) (now Section 183(1)) of the Evidence Act. That if the answer is

in the affirmative, whether the Court of Appeal should not have quashed the conviction of the appellant based on the evidence of P.W.1 who was a child, which evidence was received by the trial court without conducting the preliminary test. Expatiating on the purport of Section 183(1) of the Evidence Act (ibid), Ogundare, JSC quoting from G.B.A. Coker, JSC's decision in *Okoye v.*

The State (1972) 12 SC. 115, 125-126, observed that Section 183 of the Act is aimed at a child who does not understand the nature of an oath. **Where, in the opinion of the court, a child understands the nature of an oath it is not necessary for the court to carry out further preliminary investigation for the purpose of ascertaining whether the child has sufficient intelligence to satisfy his giving such evidence and understands the duty of speaking the truth** as prescribed by Section 183 of the Evidence Act, Cap. 112 Laws of the Federation of Nigeria, 1990. Thus, although in Sambo v. The State (supra) the appellant's appeal was allowed, in the instant case, I will be loath to interfere with the discretion exercised by the trial court which the court below, rightly in my view, affirmed - both findings which amount to concurrent findings of facts. By failing to carry out preliminary investigation before taking the evidence of P.W.1 in the instant case no error of a fundamental irregularity rendering the evidence so received worthless and of no use as in Sambo v. The State (supra) and Agenu v. The State (1992) 7 NWLR (Part 256) 749 respectively.

On issue 3, the appellant's contention is that the circumstantial evidence led by the prosecution was not conclusive, strong and irresistible enough as to leave no room for doubt as to the guilty of the appellant in respect of the alleged murder of the deceased. I am of the respectful view in the case in hand that formidable, complete and unbroken chain of events point unequivocally to the involvement of the appellant in the murder of the deceased. **While I agree that there is no direct testimony or an eye-witness account of the actual killing, the following aspects of the evidence borne out by the record, put the matter beyond any reasonable doubt:-**

(a) that it was the appellant who grabbed the deceased by the neck and prevented her from running away as her sister, P.W.1 did;

(b) that shortly after this fact of assault and restraint, the deceased was found brutally murdered;

(c) that the appellant was arrested in the vicinity of the murder shortly after P.W.1 had reported the assault on her and the deceased; and

(d) that it was the oral and written confession of the appellant that led to the arrest of the other two co-conspirators;

These facts, in my view, are clearly sufficient for the learned trial Judge to arrive at the conclusion of guilt on the part of the appellant, moreso that no other person was seen around the scene of crime apart from the appellant and his comrades in crime as disclosed in appellant's confessional statement (Exhibits 'D' and 'E'). This court has upheld the inference drawn by a trial court that the accused who was last seen with the deceased, as in the instant case, killed the deceased. See Peter Igho v. The State (1978) 3 SC. 87 and Uche

v. The State (1973) 1 ALL NLR (Part 11) 181. Indeed, a long line of cases beginning with R. v. Sala Sati (1938) 3 WACA 10 has laid it down that to support a conviction on the question of circumstantial evidence, it must not only be cogent, complete and unequivocal, but compelling and lead to irresistible conclusion that the prisoner and no one else is the murderer (see B Yongo v. C.O.P (1992) 8 NWLR (Part 257) 36 and Alake v. The State (1992) 9 NWLR (Part 265) 260). It must leave no room for reasonable doubt. See Joseph Lori & Anor v. The State (1980) 8-11 SC. 81; Uwe Esai & ors. v. The State (1976) 11 SC. 39; Paulinus Udedibia & ors. v. The State (1976) 11 SC. 133 at 138-139 and Ogwa Nweke Onah v. The State (1985) 3 NWLR (Part 12) 236. C As this court had occasion also to point out in Onah v. The State (supra), before a person can be convicted upon circumstantial evidence, such evidence must be so mathematically accurate that it points to the one and only irresistible conclusion that that person was the one responsible for the offence for which he has been charged. In the instant case, there is the evidence D of opportunity and the appellant by his statement (Exhibits 'D' and 'E') provided the motive.

Thus, in the case of Valentine Adje v. The State (1980) 1-2 SC. 116 at 146, Obaseki, JSC adopted with approval this court's earlier decision in Stephen Ukorah v. The State (1977) 4 SC. 167, (per Idigbe, JSC) quoting the dictum of E Humphrey, J. in Rex v. Miao from Wills Circumstantial Evidence 7th Edition (1936) page 224 which defines circumstantial evidence as follows:-

"Circumstantial evidence is as good and sometimes better than, any other sort of evidence and what is meant by it is that there are number of circumstances which are accepted so as to make a complete unbroken chain F of evidence. If that is established to the satisfaction of the jury, they may well and properly act on such circumstantial evidence."

And in the Privy Council case of Tepper v. The Queen (1952) AC. 480, their Lordships held at page 489 *inter alia* that:-

"It is also necessary before drawing the inference of the accused's G guilt from circumstantial evidence to be sure that there are no co-existing circumstances which would weaken or destroy the inference." See also Philip Omogodo v. The State (1981) 5 SC. 5 at 24; Igboji Abieke & Anor. v. The State (1975) 9-11 SC. 97/104 and Edobor v. The State (1975) 9-11 SC. 69/76."

H This was also the position adopted by this court in Kalu v. The State [(1993) 9 KLR 25] (1993) 6 NWLR (Part 300) 386, and significantly, the trial court in this case went further to stress the onus on an accused person to rebut the guilt based on circumstantial evidence by a preponderance of probabilities. **Clearly in this case nothing was offered by the appellant by way of rebuttal except a**

bare denial. Indeed, where as in this case, the circumstantial evidence led is overwhelming and leads to no other conclusion, it leaves no room for acquittal. See Edet Obosi v. The State (1965) NMLR 129; R. v. Taylor, Weaver v. Donovan 21 CR. APP.R. 20 at 21 and Okoro Mariagbe v. The State (1977) 3 SC. 47 at 52.

This issue is accordingly answered in the affirmative. The question B posed in issue 4 is whether the learned Justices of the court below were right in holding that the defence of insanity does not avail the appellant.

It is pertinent to point out here that a key element of the defence of insanity is missing in this case, namely an admission by the appellant that he committed the offence but that his liability ought to be mitigated by reason of C insanity. For instance, part of what he said in Exhibit 'E' (his confessional statement whose Yoruba original version is Exhibit 'D') clearly bereft of a defence of insanity, states as follows:-

"In the evening of 10th April, 1986, at about 6.00 pm a friend of mine named or called Baba Sule came to me at my working place at Oju-Ore D Otta, Ogun State. He Baba Sule told me that on the 11th April, 1986, I will accompany him to his farm to help him work. I agreed to accompany him, but I told him that if I follow him to his farm and work, I will collect N500 for the day. He Baba Sule agreed to pay me N500 for a day after work. Today being 11th day of April 1986, at about 7.30 am Baba Sule came to me in my E working place. He took me to a bush where he told me to be his farm, together with his son Sule, on our way when we go to the bush, Baba Sule hide me and his son sule inside the bush, as I and Sule were in the bush Baba Sule was still standing by the roadside. Not quite some minutes two young girls were passing along the road in the bush we were. Baba Sule was at the F road by then. Immediately the two girls get to the spot where we were in hiding. I, Michael was the one who hold one of the girl, while the other one girl ran forward. Baba Sule got hold of the girl from me, we both took the girl inside the bush. When we got inside the bush, Baba Sule brought out a knife from his armpit and murdered the girl by the neck. When the girl have G already dead, Sule brought out a knife and shave or remove the girl's Private part. He kept the private part removed in his left hand As we were going, we saw a crowd of villagers or "village people" coming toward us. Baba Sule gave another order that everybody should find his way. Baba Sule and Sule ran helter-skelter into the bush while I ran to the main road. H On my way going on the main road the villagers get hold of me. They ask from me where I am coming from, I told them I was coming from the farm, they ask from me further were am I going to. I told them I want to go and buy something. They held me and ask me to take them to were we work on the

farm. That is why I took them to where Baba Sule kept us in hiding. On getting there. They took me to where the girl's dead body was dump, getting there, we met the girl's dead body there. That is were the villagers started beating me. They took me before the village head "Baale's house. They sent for the second girl who identify me to be the one that held the murdered girl by the arm"

From the foregoing, there is therefore, in my firm view, no derogation from the story, as told by the appellant in Exhibit 'E' which is through and through confessional in nature vis a vis the account proffered by the prosecution, thus making the proof of the latter's case, albeit circumstantial, with the accuracy of mathematics. **It is worthy of note, however, that in his evidence before the trial court, the appellant made a complete denial of his involvement in the killing of the deceased. It is my firm view that the issue of his possible insanity, let alone a defence to that effect, goes to no issue. The provisions of Section 28 of the Criminal Code, in my respectful view, can only be relied upon by a person who accepts responsibility for the act complained of . In the instant case, the appellant raised neither the defence of insanity nor insane delusion and the learned trial Judge, in considering the issue was merely following the injunction that every element of a defendant's case, be it stupid, fanciful or doubtful should be considered in coming to a final conclusion.**

E See R. v. Barimah (1945) 11 WACA 49 at 50; R. v. Buraimoh 9 WACA 197; Bozin v. The State (1985) 2 NWLR 465 at 481 and Nwuzoke v. The State (1988) 1 NWLR (Part 72) 529. Put at its highest, the appellant's statement referred to above would appear to suggest amnesia but it is settled law that an appellant's ipse dixit cannot form the basis of a finding of insanity. See Onyekwe v. The State (1988) 1 NSCC (Vol. 19) 371 and Saliu v. The State (1984) 1 NSCC (Vol. 15) 640. In this respect also, the submission in relation to the testimony of D.W.2 - appellant's sister - that both she and appellant went to Church together; that appellant left before her, as well as appellant's own testimony tending to corroborate same as amounting to his (appellant) rebutting the presumption of

G sanity, are all, in my view, irrelevant. Nor was the heavy reliance placed on the evidence of the appellant's brother-in-law/herbalist (D.W.4) as to the appellant's alleged unbalanced state, of any avail since no where is any evidence given as to such mental state preceding the murder as required by law. See Onyekwe v. The State (supra). While D.W.4 (herbalist) stated that he treated the appellant

H in August, 1985 - a full nine months before the event - D.W.2 (appellant's sister) made no mention whatsoever of his (appellant's) mental state on the fateful day save to say baldly that she took him to Church and that he left her behind there during the service without her knowledge. **These pieces of evidence, in my opinion, do not in any way amount to a rebuttal, if any; the**

presumption of sanity at the time of the commission of the offence as provided by Section 27 of Criminal Code, nor do they establish the elements of legally cognizable insanity. The learned trial Judge was therefore right, in my view, in rejecting the weak and purported after-thought defence of insanity. Issue 4 is accordingly answered in the affirmative.

Issue No. 5 which is considered next enquires whether the appellant B confessed to the commission of murder in the circumstances of this case.

In arguing this issue appellant submitted inter alia that it is settled law that for a confession to be admissible and effective for the conviction of an accused, it must be shown to be direct, free and voluntary as well as positive and proved to be true. Section 27(1) of the Evidence Act and the case C of Abasi v. The State (1992) 8 NWLR (Part 260) 383 were called in aid. A confession made after threat, inducement or beating, it was contend, cannot be said to be voluntary, adding that where an accused made a confessional statement only after he had been beaten, the confessional statement thus made is involuntary and therefore cannot be admitted in evidence against the D said accused. The cases of The State v. Mati Audu (1971) NWLR 9 and Alhaji Isiyaka Mohammed v. Kano N.A. (1968) 1 ALL NLR 24 were cited to buttress the argument. In the instant case, the contention is that the alleged confessional statement made by the appellant failed to satisfy the requirement of the law with regard to admissibility of confessional statement vide Sections 27 E and 28 of the Evidence Act. It was maintained that in his defence, the appellant testified that the alleged confessional statement was made after being beaten by the villagers and at the two police stations that when the doctor saw him he advised that he be taken to the clinic. In reply, the respondent urges that it was not the complaint of the appellant during the trial-within-trial F on the admissibility of the statement (Exhibit D) on 16/4/86 when he made it that it was due to the beating he received from villagers five days earlier but rather, that he made it due to the beating he received from the police. I am inclined to accept the view that the learned trial Judge accepted neither the G fact that there was beating both by the villagers nor the police; rather he held that it was indeed the police that saved the appellant from the further beating and even took him to the police clinic for treatment.

Be it noted that a confessional statement becomes proof of an act when it is true, positive and direct. See Ofoha v. The State (1976)1 SC. 55-59. A voluntary statement stating or suggesting the inference that he committed H the offence for which he is charged is relevant and admissible against an accused, as in the instant case, provided that it was not made as a result of any threat, promise or inducement from a person in authority. See Ode v. The State (supra). Also, any voluntary information given by the accused at any

time even during investigation which leads to the discovery of any fact material to the charge against him is equally admissible. So stated Idigbe, JSC in Onungwa v. The State (1976) 2 SC. 169 at 173-174.

Thus, a confession, as in the instant case, does not become inadmissible as evidence merely because the accused denies having made it. Even though the appellant herein seeks to impugn and reject Exhibit 'E', it is the law that a confession made to the police by a person under arrest is not to be treated differently from any other confession. See The Queen v. John Agariga Itule (1961) 1 ALL NLR (part 3) 462; Stanley Idigun Egboghonome v. The State [(1993) 11 KLR 1] (1993) 7 NWLR (Part 306) 383. What becomes manifest from the record in the case in hand is that the learned trial Judge, in my view, followed all the laid down criteria in admitting and evaluating the confession which, having stood up to the tests enunciated in numerous earlier judicial precedents, I see no reason to disturb the finding thereon as well as the conviction of the appellant confirmed by the court below.

My answer to the issue considered above is therefore rendered in the affirmative.

Last to be argued is issue No.6 wherein the appellant's grouse is whether the Justices of the court below were right in holding that there were no contradictions in the case of the prosecution that vitiated his conviction.

The main complaint of the appellant here hinges on the point that the learned Justices of the court below erred in law when they convicted him in the face of irreconcilable contradictions in the testimonies of the prosecution witnesses - contradictions which ought to have raised reasonable doubts moreso, that they are fatal to the case of the prosecution.

It is enough to say that the appellant has attempted at pages 15 and 16 of his brief to raise the issue of material contradictions as between the evidence of P.W.1, P.W.2 and P.W.3 regarding the number of people who killed the deceased. There is, in my opinion no contradiction in the evidence of these witnesses. For, while P.W.1 gave evidence of the fact that she, saw only the appellant grabbing her sister (the deceased) by the neck before making her escape from the looming clutches of the appellant, P.W.2 and P.W.3 merely related their belief in the fact that the three original suspects (appellant inclusive) were those who killed their daughter (the deceased). At best, such evidence emotionally-laden as it could be, can be described as hearsay which could well be expunged even at the appeal stage in this court and not a material contradiction of the essential fact of the actions of the appellant prior to the killing as related by P.W.1. The direct evidence on which there is no contradiction is that the appellant grabbed the deceased while chasing her (P.W.1) and the deceased; that appellant grabbed the deceased by the neck;

that she was found murdered thereafter; that the appellant was the last person seen with the deceased before her corpse was discovered in a nearby lonely bush; that P.W.1 identified him immediately she saw him with the villagers after his arrest; that he confessed voluntarily orally and in writing to the commission of the crime and that he (appellant) spontaneously exposed and related the roles of the other two suspected persons. **The fact that P.W.1 saw only one person just before she escaped does not amount to a contradiction, moreso that the fact revealed by the appellant himself showed unmistakably that there were two others involved in the dastardly act. Indeed, regard must be had to the fact that the events took place in a bushy area which could easily harbour the other miscreants.**

I see no irreconcilable evidence creating a doubt as to who or which persons killed the deceased. In effect, there were, in my view, no contradictions or doubt created to necessitate a resolution of same in the appellant's favour. See Ikemson v. The State (1989) 3 NWLR (Part 110) 455.

This issue is also accordingly resolved against the appellant.

In conclusion, this appeal fails and it is dismissed by me. The decision of the Court of Appeal which affirmed the decision of the trial court is thereby confirmed.

WALI JSC

I have read in advance, the lead judgment of my learned brother, Onu JSC and I agree with the conclusion therein that the appeal lacks merit and should be dismissed. I accordingly dismiss it and affirm the judgments of the two courts below.

KUTIGI JSC

I have had a preview of the judgment just read by my learned brother, Onu, JSC., and I agree with him that the appeal fails completely. It is accordingly dismissed. The judgments of the lower courts are affirmed.

MOHAMMED JSC

I agree with my learned brother Onu, JSC that there is no mistrial in this case. The facts of the case can easily be distinguished from the decision of this court in the case of Erekanure v. The State [(1993) 6 KLR 180] (1993) 5 NWLR Part 294 at 385. It is quite clear from the proceedings that the trial court had the charge read and explained to the appellant before he entered his plea.

The learned trial judge had therefore complied with the provisions of section 215 of the Criminal Procedure Act as well as section 33(6) (a) of 1979 Constitution.

This appeal has failed. It is accordingly dismissed.

B

IGUHJSC

I have had the privilege of reading in draft, the leading judgment just delivered by my learned brother, Onu, J.S.C. and I agree entirely with his reasoning and conclusions therein. I desire however to make a short comment C in respect of some of the main issues that were canvassed before us in this appeal.

From the record of proceedings, it cannot be doubted that there was a substantial compliance with the provisions of section 215 of the Criminal Procedure Act as laid down by this court in Kajubo v. The State (1988) 1 D N.W.L.R. (Part 73) 721. As explained by Wali, J.S.C in the Kajubo case, there was nothing in that trial to establish that the charges were read to the appellant by the Registrar of court as directed by the learned trial Judge, never mind that the same were explained to him in a language he understood. It is therefore plain that such an arraignment was in gross contravention of the mandatory provisions of Section 215 of the Criminal Procedure Act and 33 (6) (a) of the Constitution of the Federal Republic of Nigeria, 1979.

In the present case, however, the arraignment from the record of proceedings, went thus:-

"The charge was read to each of the two accused persons in English language. The charge was later interpreted to each of the two accused persons in Yoruba and each accused pleads as follows:-

1st Accused: I am not guilty

2nd Accused: I am not guilty."

Indeed in the course of his judgment, the learned trial Judge, making G reference to the said arraignment of the accused person, repeated as follows:-

"The only count was first read and explained to each of the two accused persons in English language, then interpreted to each of the accused in Yoruba and each of then pleaded as follows:-

1st Accused: I am not guilty

H *2nd Accused: I am not guilty."*

It would appear that the complaint of learned counsel for the appellant against the above arraignment is that there is nothing on record to show "that the learned trial Judge saw that the charge was understood by the accused persons to his satisfaction" and "that the accused persons understood

the import of the charge against them "before they entered their plea. With the greatest respect to learned counsel, I cannot accept that there is any substance in this contention.

Dealing with this issue by the Court of Appeal, Ayoola, J.C.A. in his lucid judgment, with which Kalgo and Pats - Acholonu JJ.C.A. agreed, commented as follows:-

"The charge was read to the appellant in a language he understood and he pleaded "not guilty" thereto. Thereafter the prosecution led evidence in support of the charge and the appellant who was at all times represented by counsel gave evidence in his own defence and called several witnesses. In these circumstances, how can it be reasonably argued that he did not understand the import of the charge against him. Had the appellant pleaded guilty to the charge, an inquiry into whether he understood the purport of the charge would have been material. But here he pleaded not guilty. The charge itself was simple and uncomplicated and self-explanatory. Merely not recording that the charge was explained to the appellant, put at the highest, can only be a mere technicality which, in the circumstances of this case, has not occasioned a miscarriage of justice."

I agree entirely with the above observations of the Court of Appeal and fully endorse the same. In the present case the accused persons were before the court. The charge was read over to the accused persons in the English language. The same was interpreted to them in their language, the Yoruba language. Each was called upon to plead to the charge. Severally, they entered a plea of "Not Guilty" thereto. In my view, this was substantial compliance with the provisions of Section 215 of the Criminal Procedure Act.

In this connection, attention must be drawn to Section 150(1) of the Evidence Act which provides thus:-

"When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with". (Underlining supplied for emphasis)

It is my view therefore that the arraignment of the accused persons which, undoubtedly, was both a judicial and official act, having been carried out in a manner substantially regular, the maxim omina praesumuntur rite esse acta became applicable in the matter of the validity of the arraignment. The omission by the trial Judge to record that he was satisfied that the accused persons understood the charge which was read over to them in the English language and explained and interpreted to them in their native language before they were invited to enter their plea thereto cannot, in my opinion, derogate from the validity of the arraignment. Accordingly, I am in agreement with the court below that the arraignment of the appellant before the trial court was in sub-

stantial compliance with Section 215 of the Criminal Procedure Act and that the same was therefore unimpeachable.

Issue 2 questions the competence of the witness, P.W.1, a child of 13 years as at the date of her testimony. The provisions of Sections 155 (1) and 183(1) of the Evidence Act, Cap. 112, Laws of the Federation of Nigeria, 1990 were called in aid on behalf of the appellant in the contention that the procedure therein laid down was not followed by the learned trial Judge who should have conducted a "preliminary investigation" before taking the evidence of the child.

These Sections of the Act provide as follows:-

C *"155 (1) All persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by reason of tender years"*

D *"183 (1) In any proceeding for any offence, the evidence of any child who is tendered as a witness and does not, in the opinion of the court, understand the nature of an oath, may be received, though not given upon oath, if, in the opinion of the court, such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth."*

E The first point that ought to be stressed is that Section 155 (1) of the Evidence Act renders all persons competent witnesses unless the court is of the opinion that they are prevented from understanding the questions put to them, or from giving rational answers thereto by reason, inter alia, of tender age. In the present case, there is nothing to show that P.W.1 was prevented from understanding the questions put to her or from giving rational answers thereto by reason of her tender age. On the contrary, the record clearly indicates that she gave clear and intelligible evidence both in her examination-in-chief and under cross-examination. Said the learned trial Judge -

G *"I have had the benefit of watching the 1st prosecution witness testify before me. I have not only see her demeanour but have also put questions to her to test her understanding of the oath. I believe her testimony and hold her to be a competent witness for the prosecution."*

Earlier on, the learned trial Judge had described her sworn testimony before the court as "a vivid picture of what transpired" on the material date.

H I am in entire agreement with the court below that Section 155 (1) of the Evidence Act is totally irrelevant and inapplicable in the present case because there is nothing to show that P.W.1 was prevented from understanding the questions put to her or from giving rational answers to those questions by reason of her tender age. I also agree that the finding of the learned

trial Judge that P.W.1 understood the nature of an oath clearly took her evidence out of the ambit of Section 183 (1) of the Evidence Act. Nonetheless, the trial court ex abundanti cautela proceeded to consider the question of corroboration and, rightly in my view, found the same in the voluntary confessions of the appellant. In my view, this issue must be resolved against the appellant. B

Issue 3 deals with circumstantial evidence and whether, on the evidence, this was sufficiently compelling and irresistible to fix the appellant with guilt of the offence charged. In this regard, the learned trial Judge observed thus:-

"The circumstantial evidence that fixes the 1st accused to this offence were that he was found close to the scene of the crime, on being accosted he made a confession to the villagers, he was to be taken to the Bale where the 1st prosecution witness identified him, he was taken to the Police Station where he made a statement, in his statements he confessed to taking part in the commission of the offence and named his accomplices." C D

Of the above passage, the Court of Appeal commented:-

"What the trial Judge has grouped together and described as circumstantial evidence are not all circumstantial evidence. They are that the appellant was found close to the scene of the crime and that he confessed to the commission of the offence. It must be conceded that merely being found close to the scene of the crime, if that had been the only evidence, may not be adequate circumstantial evidence to fix the appellant with guilt. However, that he had confessed to the crime is not circumstantial but direct evidence. Notwithstanding that the judge misdescribed the confessions of the appellant as circumstantial evidence, the judge was still entitled to consider it as evidence against the appellant. On this issue the appeal fails". E F

Without doubt, the court below was entirely right in its above criticism of the observations of the trial court in question. In this regard, it is trite that where strong circumstantial evidence is led against an accused in a criminal trial and this gives rise to the drawing of a presumption or inference irresistibly warranted by such evidence, the criminal court will not hesitate to draw such a presumption or inference, so long as it is so cogent and compelling as to convince a jury that on no rational hypothesis other than the inference can the facts be accounted for. See Uwa Idighi Esai and others v. The State (1976) 11 S.C. 39, Peter Eze v. The State (1976) 1 S.C. 125 etc. And I ask myself what the circumstantial evidence led against the appellant in this case was? G H

Clearly, this was not the fact that the appellant was found close to the scene of the crime as any one could unwittingly, if not accidentally, be

close to a scene of crime. This, without more, as was found by the Court of Appeal, cannot be strong circumstantial evidence of the nature to fix the appellant with the guilt of the offence charged. It was also not the facts that the appellant on being accosted, made a confessional statement to the villagers and later to the Police, that P.W. 1 identified him at the house of the Bale as the person who asked for their names and violently grabbed the deceased subsequently from behind or that the appellant named his accomplices in the crime. These, as pointed out by the court below, are issues of direct evidence. In my view, the strongest circumstantial evidence led against the appellant in the case is the fact that he forcibly grabbed the deceased by the neck and abducted her along the road to an unknown destination and that her body was shortly afterwards found in the locality brutally murdered with her tongue extracted and her private parts excised.

The above circumstantial evidence in the present case are not too dissimilar with those in Peter Eze v. The State, supra, where this court held that if a man forcibly abducts another from his home and his body is later found murdered, the man who abducted him cannot escape the inference that he killed that person. There is in the present case, therefore, adequate circumstantial evidence, sufficiently cogent and compelling as to convince a jury that on no rational hypothesis other than the inference that it was the appellant who, perhaps, a long with others, murdered the deceased, can the facts be accounted for.

Apart from the above circumstantial evidence, however, there are other pieces of evidence which were accepted by the trial court and affirmed by the court below which established the guilt of the appellant beyond all reasonable doubt. These included the appellant's voluntary confessional statements to the Police, Exhibits C and D. The two Exhibits were confirmed by the appellant before a Superior Police Officer as his true and voluntary statements. They contain the clearest confessions of the appellant's guilt and were found by the trial court to be direct, positive and satisfactorily proved and therefore enough to sustain his conviction as charged. See Jafiya Kopa v. The State (1971) 1 All N.L.R. 150 Kalu and Another v. The King (1952) 14 W.A.C.A 30, Abasi v. The State (1992) 8 N.W.L.R (Part 260) 383 etc. In my view, there was sufficient evidence, both direct and circumstantial, on which the conviction of the appellant was based. Issue 3 must therefore be resolved against the appellant.

There is next issue 4 which poses the question whether the Court of Appeal was right in holding that the defence of insanity did not avail the appellant. In this regard, the Learned trial Judge after a close review of the evidence held thus:-

"This story of mental disorder I find to be an after thought moreso when it bordered on 'amnesia'."

He concluded:-

"The defence of insanity or amnesia has not been discharged by the 1st accused either by himself or through his witnesses. In the circumstances, therefore, the defence of insanity as provided for under Section 28 of the Criminal Code does not avail the 1st accused person." B

The Court of Appeal in affirming the above finding of the learned trial Judge commented:-

"The relevant question however is whether he was in such a state of mental disease or natural infirmity at the time of doing the act leading to a deprivation of the various capacities mentioned in section 28 of the Criminal Code. There really was no evidence of the state of the mind of the appellant at the time of the crime and the Judge was justified in coming to the conclusion in effect that the presumption of sanity had not been rebutted by the appellant on the totality of the evidence, including the confession." C D

I agree entirely with the above observations of the court below and fully endorse them. By Section 141 (3) (c) of the Evidence Act, Cap. 112, Laws of the Federation of Nigeria 1990, the burden of proving insanity is on the defence although this burden is merely as in civil cases, that it to say, by preponderance of evidence. See too R. v. Echem 14 W. A. C. A. 158, R. v. Onakpoya 4 F.S.C. 150, Emery v. The State (1973) 6 S.C. 215 at 226 Sanusi v. The State (1984) 10 S.C 166 at 167 - 169 etc. An accused person who contends that he is insane has the duty to rebut the presumption of law which presumes every person to be of sound mind at any time which comes in question until the contrary is proved. . E

In the present case, there was no evidence whatever as to the mental condition of the appellant at the time of the commission of the offence in issue. I think both courts below were perfectly in order in coming to the conclusion that the appellant had failed to rebut the presumption of sanity in his favour at all material times. Issue 4 is hereby resolved against the appellant. F G

On the whole, it is clear to me that there was abundant evidence, including the appellant's confession, upon which the learned trial Judge properly convicted the appellant, a conviction which the court below rightly, in my view, affirmed. It is for the above and the more elaborate reasons contained in the leading judgment of my learned brother, Onu, J.S.C. that I, too, dismiss this appeal and affirm the judgment of both courts below. H