

SUPREME COURT OF NIGERIA
7TH MARCH, 1997. SC. 130/1994
CORAM:- A. B. WALL, M. E. OGUNDARE, U. MOHAMMED,
S. U. ONU, A. I. IGUH, JJSC.

JOHN PETER APPELLANT
V.
THE STATE RESPONDENT

APPEALS - *Murder - Whether the Court of Appeal - Properly dismissed the appellant's appeal.*

CRIMINAL PROCEDURE - *Proof of prosecution's case - Whether inferred from the weakness of the defence.*

CRIMINAL PROCEDURE - *Alibi - Where raised by the accused - Onus of proof is on him.*

CRIMINAL PROCEDURE - *Contradictions - In the evidence for the prosecution - Whether properly resolved by the trial court.*

EVIDENCE - *Criminal procedure - Proof beyond reasonable doubt - Whether attained by the prosecution in this case.*

FACTS

Before the Rivers State High Court Ahoada, the appellant was charged with the murder of one Solomon Nwokocha. He pleaded not guilty. The deceased went into the bush to inspect whether his traps had entrapped wild animals. Appellant was seen going in the same direction thereafter with a gun and a knife. PW2 who was working in his nearby farm land heard a gun shot and the voice of the deceased shouting "Igiri has killed me." PW2 saw the appellant who is known as Igiri standing with a gun pointing at the deceased. It was in evidence that the appellant and the deceased's family had a dispute over the land (scene of crime) and that the appellant had earlier threatened to deal with members of the deceased person's family.

The trial court found the appellant guilty as charged and sentenced him to death. Appellant's appeal to the Court of Appeal was dismissed. He has further appealed to the Supreme Court raising 3 issues.

ISSUES FOR DETERMINATION

"3.00 *The issue for determination in this appeal is, in our humble opinion*

whether upon a calm view of the evidence adduced at the trial the decision reached by the trial court and affirmed by the Court of Appeal is justified having regard to the quantum of proof required in a criminal trial. Etc, see p. 491

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

Proof of prosecution's case

1. It was at this stage that the learned judge wrote the words that come under severe attack in this appeal. He wrote:

"I shall however examine the defence of the accused further before coming to a finding as to whether I believe PW2 or not."

It is this passage that is said to occasion a miscarriage of justice in that the trial judge would appear to put the cart before the horse. That is, that he - to use Appellant's word's - "inferred proof of the prosecution's case from the weakness of the defence and not from the cogency of the prosecution's case". I, respectfully, disagree with this view. (p. 496 A)

Alibi - Where raised by the accused

2. The law is that onus is on the accused person to establish, on the balance of probabilities, the plea of alibi raised by him. The proper approach to a consideration of a plea of alibi is laid down by this Court in Yanor v. The State (1965) 1 All NLR 193 at 199. (p. 496 D)

Contradictions in prosecution's evidence

3. I think the learned judge was right in his approach to this case. Learned counsel for the defence in her address had raised a number of issues tending to weaken the case for the prosecution. One of such issues is the question of contradictions in the evidence for the prosecution, particularly PW1 and PW2. The learned judge dealt and resolved the issue before ascribing credibility to the witnesses who testified before him. I think his approach is correct and does not in any way offend the decision of this Court in Sanusi v. Ameyogun cited to us by the Appellant. (p. 497 F & 498 C)

Proof beyond reasonable doubt

4. The learned trial judge scrupulously scrutinized the evidence of prosecution witnesses in the light of the criticisms of learned counsel for the defence and was satisfied, at the end, that they were witnesses of truth. ...

In the light of these findings which are adequately supported by credible evidence adduced at the trial, I do not agree that prosecution failed to prove

the charge against the Appellant beyond reasonable doubt. (p.498 F & 499 A)

Appeals - Murder

5. The Court below was right to dismiss his appeal and affirm the decision of the trial court. The latter court's decision on the Appellant's plea of alibi, its disregard of Exhibit E, the Ballistician's report and its resolution of the question of alleged contradictions are all unassailable. I accordingly find no substance in this appeal which is dismissed by me. (p. 499 A)

NOTABLE POINTS OF INTEREST

WALIJC

1. Failure to prove alibi

The only evidence to prove the appellant's alibi was his own ipse dixit despite the fact that he mentioned names of other people whom he said they saw him remained in his house throughout the day of the incident. None of these people was called by him to substantiate his alibi. There were also no other existing circumstances to show that what he said was true on the balance of probabilities. The appellant had failed to discharge this burden. (p. 499 G)

IGUHC

2. Whether alleged contradictions are substantial

I have myself given very close attention to the alleged contradictions in the evidence of the prosecution witnesses and agree entirely with both courts below that they are not of such significance for this court to interfere with the conclusion reached by the learned trial Judge, as affirmed by the Court of Appeal. For any conflicts or contradictions in the evidence of the prosecution witnesses to be fatal to its case, they must be substantial and fundamental to the main issues in question before the court. (p. 503 A)

3. Strong circumstantial evidence

The prosecution rested its case mainly on circumstantial evidence and partial admissions on the part of the appellant. But where strong circumstantial evidence is led against an accused person 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, compelling and conclusive as to convince a jury that on no rational hypothesis other than the inference, can the facts be accounted for. (p. 503 D)

4. Alibi - Onus on the prosecution

Where an accused sets up an alibi, he does not thereby assume the responsibility of establishing the same. The onus still lies on the prosecution to prove beyond reasonable doubt that the accused was not at the scene of crime but that he committed the offence for which he is tried. But this, notwithstanding, B if as in the present case, the prosecution adduces sufficient and accepted evidence to fix the accused at the scene of crime at the material time, his alibi is thereby, also, logically demolished. (p. 504 C)

REPRESENTATION

C A. O. Okpalah for the appellant
E. O. Joe (Mrs.) AG. DPP. Rivers State for the respondent

CASES REFERRED TO

Sanusi v. Ameyogun (1992) 4 NWLR (pt. 237) 527 at 546-547
D Gachi v. The State (1965) NMLR 333
Obiode v. The State (1970) 1 All NLR 35
Yanor v. The State (1965) 1 All NLR 193 at 199
Ntan v. The State (1968) NMLR 86 at 88
Njovens v. The State (1973) 5 SC 17 at 65
E Adele v. The State (1995) 2 KLR 426
Raji v. The State (1984) 10 SC 149
Onyejekwe v. The State (1992) 4 SCR (pt. 1) 19
Onyegbu v. The State (1995) 4 KLR 978
Azu v. The State (1993) 9 KLR 43
F Wankey v. The State (1993) 7 KLR 52
Kalu v. The State (1993) 9 KLR 25
Yanor v. The State (1965) All N.L.R. 193

STATUTES REFERRED TO

G Criminal Code s. 319
Constitution of Nigeria 1979 s. 33(4) & (5)

LEAD JUDGMENT BY OGUNDARE JSC

The Appellant was arraigned before High Court of Rivers State of H Nigeria in the Ahoada Judicial Division on a charge of murder contrary to section 319 of the Criminal Code in that he, on the 11th day of August, 1978 at Obagi Obigbo Bush in Omoku District, murdered one Solomon Nwokocha. He pleaded not guilty to the charge. 7 witnesses testified for the prosecution. After a 'no-case' submission by learned defence counsel, miss Oputa, had

been overruled, the Appellant gave evidence in his own defence and called a witness. Wellington Mba, the High Court Higher Registrar to tender the depositions taken at the preliminary investigation in the Magistrate's court, and closed his case.. Learned counsel for both the defence and the prosecution addressed the court in that order and in a reserved judgment, the learned trial Judge, Okara J. Found the Appellant guilty as charge and, convicted him of B murder and sentenced him to death

Being dissatisfied with the judgment, the Appellant appeal to Court of Appeal sitting in Port-Harcourt. The appeal was dismissed. He has now further appealed to this Court upon 3 grounds of appeal. In his brief of argument filed pursuant to the Rulers of this Court, he set out the following issues C as Calling for determination in the appeal, to wit:

"3.00 The issue for determination in this appeal is, in our humble opinion whether upon a calm view of the evidence adduced at the trial the decision reached by the trial court and affirmed by the Court of Appeal is justified having regard to the quantum of proof required in a criminal trial. D

3.01 Put more precisely the issue is whether the prosecution had proved beyond reasonable doubt that the Appellant murdered Solomon Nwakocha.

3.02 There is also the issue whether the procedure adopted by the E trial Court and affirmed by the Court of Appeal did not deny the Appellant the very essence of a fair hearing guaranteed to him under section 33(4) and (5) of the 1979 Constitution as enunciated by the Supreme Court in Sanusi v. Ameyogun (1992) 4 NWLR (pt. 237) p. 527"

The case for the prosecution is to the effect that on 11th August F 1978 which was the eve of the Egi yam festival in Obigbo village, the deceased Solomon Nwokocha, left the village for the farm in Ebukwu bush to inspect his traps which he had set to entrap wild animals. After the deceased had left for the bush, the Appellant was seen by PW1, deceased's son going in the direction of the Ebukwu bush armed with a gun and a knife. PW2 Ruben Eke who G had his farm in the same area as the deceased also went to his farmland to weed his plantain plantation. While PW2 was working in his farm he heard a gun shot close to his farm and the voice of the deceased shouting "Igiri has killed me". The Appellant is known in the village as Igiri or Ikiri. PW2 went in the direction of where the deceased's voice came from and saw the deceased H rolling on the ground and shouting "Igiri has killed me". He also saw the Appellant standing with a gun pointing at the deceased. PW2, for fear, could not move closer but exclaiming "Igiri, I have seen you", he ran away. While running away he heard two other gun shots; he hid the bush. The deceased

was not seen alive again but his corpse was discovered at the spot where PW2 had seen him rolling on the ground.

PW3 Edwin James Ile gave evidence and deposed as follows:

"I am An Accountant by profession. I know one Dickson Nwokocha (PW1). Now that I see the PW1 I say I know him. I did not know him as B Dickson Nwokocha. I know him as Solomon's son. I know PW2, Solomon was a native of Obigbor which is near mine. His full names were Solomon Nwancho Ogwu Nwokocha. He is now dead.

I know the accused. 11 August 78 was the eve of Egi native new yam festival. I arrived Obagi, my village, at 10 a.m. from Port Harcourt. About C 1 p.m., as a result of certain things I heard I sent for the accused. The accused is my first cousin and I am the head of our section of our family. He came into my room.

He looked depressed. I asked him what was wrong. He told me he went a hunting in the night in Ebukwu land and fired at an antelope but it D ran away. I told him I learnt that at that very spot one Solomon Okpu (the man called Nwokocha) died. He said he heard of it and that the man died in his attempt to make a trap. I told him I heard the man died of gun shot and that you were near there when he died.

I told him I know he had trouble with the dead man and suggested E to him 'Why not go and report yourself.'

The trouble he had was that he had farm land dispute with the deceased in the year before 1979 farming season - that is 1977/1978. Because it was reported to me I resolved the issues. The accused was not satisfied but I told him not to proceed with the matter. I told him he exceeded the F boundary between us and the Obigbo people. He said he would farm more into the area and that if Obigbo people came he would deal with them. The deceased was the head of the family in Obigbo who had the land in question. His exact threat was that if any members of that family entered the farm land he would deal with them.

When I suggested he should report himself he said nothing for about G 3 minutes, He bowed his head all the time. When he looked up he said 'Envi' (for that is how he calls me) 'I do not have licence for my gun.

I persisted and said he need not bother about the gun and that I would take care of it. Then he got up and walking towards the door he said H 'I won't go to the police - let them go and prove it'. That was the end of my interview with him."

One Audu Godwin also testified as PW4. He said"

"I am a saw-chain operator. I know the accused. His name is John Peter.

On 12 August 1978 which was Ogba Festival day I went to Iguebe. When I returned I was eating in my house when John Peter brought a gun - a native cartridge gun to my house. He gave it to me say (sic) I should keep it for him because he was going to Port Harcourt. He said he killed an animal like an antelope, and when he came back we would go to check whether it died. I told him to lean the gun at the wall as I was eating. After eating I put the gun inside my room.....

On the day police came I gave the gun to them. The Mr. Ile I mean is PW3.

Accused is a son of my first cousin. My mother is of the same family with the accused as well. The day he brought the gun to me I was with my children".

PW5, Fine Giri Eke saw the Appellant on the eventful day coming out from the bush; the Appellant had a gun and a knife on him. On being questioned by the witness, the Appellant claimed he had just killed an animal in the bush.

PW6, Dr. Honorio Reyes of the Ahoada General Hospital performed a post mortem examination on the corpse of the deceased. He found gun-shot wounds on the body and opined that death was due to the wounds.

PW7, Sergeant Aggray Chuku of the State Criminal Investigation Department (C. I. D.) Port Harcourt investigated the case. He arrested the Appellant and charge him with the murder of Solomon Nwokocha. The Appellant volunteered statement to the witness in English language which was taken down in writing and signed by the Appellant. This statement and two others previously made by the Appellant to another police officer were tendered in evidence without objection and admitted as exhibits. The witness also recovered a gun allegedly belonging to the Appellant and a pellet. He forwarded both to the Forensic Science Laboratory in Lagos and received a report which was admitted in evidence.

Both in his three statement to the police and his evidence at the trial, the Appellant denied the charge and pleaded alibi. He claimed he was in his house throughout the eventful day and did not go to the bush. He mentioned a number of people, including his mother, who saw him at home that day. He admitted that there was a land dispute between his family and the deceased's family which had been settled in favour of his family. He also admitted that PW3 is his cousin but said that the relationship between them was not cordial. He denied giving any gun to PW4 and denied owing a gun.

Appellant argued together the two issues formulated in his brief. He submits that the approach of the trial judge to the case was wrong in that the learned judge first 'demolished' the defence before considering the case for

the prosecution. "The result is that the trial court inferred proof of the prosecution's case merely from the weakness of the defence and having demolished the defence the court failed to scrutinize the prosecution's case with equal intensity so as to find out whether the prosecution actually proved the charge" against him.

B After citing a number of authorities it is argued in the brief "the ration in all these cases is consistent that an accused may lies, cut a poor a image or present a weak case. But the prosecution is not thereby relieved of the burden of proving the charge beyond reasonable doubt". Reference is made to two passages in the judgment of the trial court and it is then submitted-

C *"that the learned trial Judge put the cart before the horse. A defence does not arise for consideration until a case had been made out by the prosecution. Therefore it is the prosecution's case that must be considered and reviewed first".*

Reliance is placed on a passage in the judgment of this Court in D Sanusi v. Ameyogun (1992) 4 NWLR (pt. 237) 527 at 546-547 for submission. Finally, on the issue of fair hearing, it is submitted -

"The Supreme Court was here dealing with a Civil case but we submit that the enunciation of the law applies with greater force in a criminal trial were the accused should never be denied of his presumption of
E *innocence until a prima facie case is established requiring his defence.*

The lead judgement at the Court of Appeal below dealt with this issue at page 118 line 5 to page 119 line 4 of the record. We submit that the learned justices of the Court of Appeal failed to apply the settled principle of law as annunciated by the Supreme Court in Sanusi v. Ameyogun supra.

F *The pith of out contension is that from the start of Appellant as an accused person was placed in a position of dare disadvantage when his defence was taken in hand and demolished before the case against him was ever looked into. The procedure with respect gave an unfair advantage to the prosecution, and beclouded the trial judge's vision when he came to*
G *consider whether the prosecution had proved the case beyond reasonable doubt."*

The Appellant next deals with seeming inconsistencies in the evidence for the prosecution and submits that the case against him was not proved beyond reasonable doubt.

H It is the respondent's submission that the trial court did not base its decision on "the weakness of the defence but on the direct and clear evidence of the prosecution, which was not shaken by the defence". It is further submitted that the passages quoted from the judgment of the trial court and attacked "do not amount to a situation where the judge examined the evidence

of the accused before that of the prosecution". Respondent submits that there was no miscarriage of Justice occasioned by the two passages. It is finally submitted that the prosecution proved its case beyond reasonable doubt.

In his judgment, the learned trial judge reviewed the evidence on both sides and the addresses of learned counsel and went on to observe: B

"Now it is not disputed that the deceased died. It is also not disputed that he died in the Ebukwu bush. The crux of the matter then is what really happened in the Ebukwu bush - how the deceased met his death there."

The learned judge then highlighted the essentials of the case for the C prosecution as given in evidence. He considered the alleged contradiction in the evidence of the medical doctor that performed the autopsy on the corpse of the deceased and resolved it thus:

"The eventual post mortem examination puts the cause of death as the wounds received from gun shot (some pellets had been found embedded D in the body of the deceased both around his temple and on his stomach)".

Part of the accused's defence appears to be that the medical evidence is contradictory and therefore inconclusive as the doctor (PW6) had in the evidence in chief said the deceased died from the wounds he received from gun shot, but also said under cross-examination that he could well E have died of the shock of being shot at, considering the advance age of the deceased. The doctor's evidence is clear; it is that the deceased died of the gun shot, whether he dies of the wounds received or coupled with the shock of being shot at, he died by the act of the accused, according to the doctor's evidence. I fail to see the inconclusiveness of the evidence". F

The medical evidence apart, the learned judge considered other evidence from which cause of death could be inferred. He said:

"The direct evidence here on the cause of death is the evidence of PW2 who said he heard the gun shot and the following cry of agony of the deceased and upon going to see what was happening found the accused G standing with a gun over the deceased and pointing it at the deceased who was on the ground rolling and crying 'Ikiri' (meaning the accused) has killed me'. This declaration would qualify for a dying declaration if I believe PW2 for it was obviously a statement proceeding from a mind which believed in approaching death. If I believe this evidence then I would be H compelled to hold that the deceased's death was caused by the accused shooting him, for the deceased was never seen alive again but found dead on what can be presumed to be the spot where he had laid rolling. I say 'presumed' because PW2 who saw him on the ground was not one of those

who brought the dead body home, but there is the evidence that the body was found in the farm of the deceased where he had laid rolling on the ground in apparent pain."

It was at this stage that the learned judge wrote the words that come under severe attack in this appeal. He wrote:

B *"I shall however examine the defence of the accused further before coming to a finding as to whether I believe PW2 or not."*

C **It is this passage that is said to occasion a miscarriage of justice in that the trial judge would appear to put the cart before the horse. That is, that he - to use Appellant's word's - "inferred proof of the prosecution's case from the weakness of the defence and not from the cogency of the prosecution's case". I, respectfully, disagree with this view.** Appellant's only defence is alibi. He said he was not at the scene of crime at the time it took place. He claimed he went no where on the fateful day, that is that he was either in the village or his house on that day. But PW2 testified that he saw him in the bush **D** pointing a gun at the deceased who was writhing in pain on the ground and shouting 'Igiri (or Ikiri) has killed me". Both could not be speaking the truth; one or the other must be lying. To accept the evidence of PW2 without considering the Appellant's case would have been highly objectionable.

E **The law is that onus is on the accused person to establish, on the balance of probabilities, the plea of alibi raised by him - Gachi v. The State (1965) NMLR 333; Obiode v. The State (1970) 1 All NLR 35; Galidika v. The State (1977) 2SC. 21. **The proper approach to a consideration of a plea of alibi is laid down by this Court in Yanor v. The State (1965) 1 All NLR 193 at 199** where Idigbe JSC, delivering the judgment of the Court said:**

F *"On the defence of alibi, the law is that the jury should be directed that they should not disregard evidence of alibi unless there is stronger evidence against it. - See Chadwick (1917) 12 Cr. App. R.247. Therefore while the onus is on the prosecution to prove the charge against an accused person the latter has, however, the duty of bringing the evidence on which he **G** relies for his defence of alibi; when such evidence has been adduced the court should consider it in the light of the evidence adduced by the prosecution in support of the charge against the accused and if in the end the court is unable to reach a decision on question whether the evidence in support of the case for the prosecution is stronger than that produced in support of the **H** alibi, the accused must be acquitted."*

The learned trial judge followed this approach in the instant case. After the passage complained of, the learned judge observed:

"One of the defences of the accused was that he was not in that bush at all for he never left home. Here it is not clear whether he meant leaving is

house or the village. Taking the more favorable interpretation to him of this statement, there is opposed to it the evidence of PW7 the investigated police officer who said he questioned all the persons the accused mentioned in his statement as persons who saw him in town and each said he did not see the accused that day. This renders his alibi unreliable.

Now even if they had said they saw him in the village, it would yet be only if they had seen him in the village at the same period of time or hour of the day when PW1 and PW5 and PW2 said they saw him going to or being at the Ebukwu bush that their evidence would render his alibi to be challenging to the prosecution's story. On that point the alibi is silent.

Contradicting his alibi on the other hand is firstly the evidence of PW3 the cousin and family head of the accused who said when he called him and questioned him about what he was hearing concerning the manner of death of the deceased, the accused said he went to Ebukwu Bush where he shot an antelope. This, if believed, fixes the accused squarely in Ebukwu bush by his own statement and destroys his alibi. And, secondly, there are of course PW1, PW2 and PW5 who say they saw him either going to (PW1, PW5) or being in (PW2) in the Ebukwu Bush at the material time."

After quoting from Ntan & Anor. v. The State (1968) NMLR 86 at 88, per Brett JSC and Njovens v. The State (1973) 5 SC 17 at 65, per Coker JSC, the learned judge said.

"It is therefore, all a matter of accepting or not the evidence adduced by the prosecution as sufficient to fix the accused' presence at the Ebukwu bush. I shall come to that later."

This passage is the second of the "offensive passages" complained of in the judgment of the trial court.

I think the learned judge was right in his approach to this case. Learned counsel for the defence in her address had raised a number of issues tending to weaken the case for the prosecution. One of such issues is the question of contradictions in the evidence for the prosecution, particularly PW1 and PW2. The learned judge dealt and resolved the issue before ascribing credibility to the witnesses who testified before him. He dismissed the issue in these words:

"On the whole I would not say that any of the contradictions alleged, even if they really were such, is not the type that should in my view cause a substantial disparagement of the witnesses concerned (See dictum in the Enahoro's case)".

In ascribing credibility to the witnesses for the prosecution he observed;

"Having gone all the material issues in the defence and remember-

ing the nature of evidence given by the Prosecution witnesses and their demeanor in the witness box (which I had closely observed) I believe them to be witnesses of truth.

The accused had endeavored to brand all of them as his enemies. This is an after thought.

- B *Even if he could say that PW1, PW2 and PW5 were relations of the deceased what about PW4 with whom he left the gun and who he in fact did not include in the list of enemies; and what about PW3 who was his first cousin and family head and with whom he was on nickname calling relationship. The accused says this witness was also his enemy, but while the*
 C *witness was in the witness box the cause of enemy was never clearly put and the witness challenged about it."*

I think his approach is correct and does not in any way offend the decision of this Court in Sanusi v. Ameyogun cited to us by the Appellant. In that case this Court at pages 546 - 547 said:

- D *"What was expected of the learned trial Judge was that he should begin by considering the plaintiff's case and whether he had led evidence on all the material issues of fact which would, if accepted after evaluation, entitle him to succeed. To have descended on the main contentions of the defendant/respondent and demolished them before considering the plaintiff's*
 E *case is not only against established procedure. It also gave an unfair advantage to the plaintiff and resulted in unfair trial. Fair trial carries with it the necessary implication that the Court is fair to both parties to a suit. Where a Court demolished the case of the defendant before looking at the case of the plaintiff, it cannot be said to have been fair to the defendant."*
 F **The learned trial judge scrupulously scrutinized the evidence of prosecution witnesses in the light of the criticisms of learned counsel for the defence and was satisfied, at the end, that they were witnesses of truth.**

The learned trial judge made the following findings of act:

- G *"The prosecution has therefore adduced sufficient evidence to show beyond any reasonable doubt that the accused was at the Ebukwu bush on 11 August 78 armed with a cutlass and the gun (Exhibit A) in which bush was the deceased to (sic) the bush over which the accused had issue a threat to the deceased and members of his family; that he shot the deceased, thinking no one else was around, but was seen by PW2 who shouted at him 'Ikiri*
 H *I have seen you' to make him realized that he had been seen; and that the deceased, judging from the medical evidence the dying declaration and eye witness account of PW2, died out of the injuries he received from gun shot; that all his subsequent acts such as giving the gun to PW4 to keep and being agitated and depressed when PW3 questioned him and yet defiantly chal-*

lenging his accusers to prove it were acts of a guilty man".

In the light of these findings which are adequately supported by credible evidence adduced at the trial, I do not agree that prosecution failed to prove the charge against the Appellant beyond reasonable doubt. The Court below was right to dismiss his appeal and affirm the decision of the trial court. The latter court's decision on the Appellant's plea of alibi, its disregard of Exhibit E, the Ballistician's report and its resolution of the question of alleged contradictions are all unassailable. I accordingly find no substance in this appeal which is dismissed by me. I affirm the judgment of the Court below.

C

WALI JSC

I have read before now the lead judgement of my learned brother Ogundare JSC, and I entirely agree with all the reasons he gave for dismissing the appeal.

D

The only defence raised by the appellant both in his evidence and statement to the police is alibi. In Exhibit D1, the appellant's statement made to the police under caution, he said:-

"On the 11th August, 1978 I do not go anywhere..... On 11th August, 1978 I did not leave my house to any where. Neither going to the bush."

E

In Exhibit B, another cautioned statement made to the police on 12th August, 1978, he said:-

"Yesterday 11th August, 1978, I did not go for hunting in the bush".

And finally in Exhibit C made to the police under caution on 29th August, 1978, the appellant said:-

F

"Abayi Shadrack also saw me on that day throughout the day and knows that I did not go out of the village on 11th August, 1978. My wife and my mother saw me throughout that day the 11th August, 1978. Jacob Ume saw me throughout the day in question and Joe Ohia".

G

In his evidence in court, the appellant testified thus:

"11th August, 1978 was a festival day and I went no where. I was in my house when police arrested me. I was in my house throughout that day".

The only evidence to prove the appellant's alibi was his own ipse dixit despite the fact that he mentioned names of other people whom he said they saw him remained in his house throughout the day of the incident. None of these people was called by him to substantiate his alibi. There were also no other existing circumstances to show that what he said was true on the balance of probabilities. See Gachi v. The State (1965) NMLR 33 and Njovens &

Ors. v. The State (1973) NMLR 176. The appellant had failed to discharge this burden.

The evidence of P.W.2 in particular and who was an eye witness to the incident belied the appellant's alibi. Both trial court and the Court of Appeal were right in rejecting the unproved alibi raised by the appellant. The evidence of P.W.2 fixed the appellant at the scene of the crime and the perpetrator of it. See Adele v. The State (1995) 2 NWLR (pt. 377) 269; Akanbi v. The State (1984) 10 SC 272; Raji & Anor. v. The State (1984) 10 SC 149 and Umaru Biu v. The State (1973) NMLR 108.

The mere raising of the defence of alibi without proof of it by an accused person, will not entitle him to an automatic discharge of the offence he is charged with.

Both the trial Court as well as the Court of Appeal had painstakingly considered the evidence and had arrived at the unimpeachable conclusion that the brutal murder was committed by the appellant. No convincing reasons were advanced to warrant interference with the concurrent findings. See Adio & Anor v. The State (1986) 2 NWLR (pt. 24) 581 at 589 and Onyejekwe v. The State (1992) 4 SCR (pt. 1) 19.

It is for this and the more detailed reasons contained in the lead judgment of my learned brother Ogudare JSC with which I have already concurred, that I also hereby dismiss the appeal and confirm the sentence of death passed on the appellant.

MOHAMMED JSC

I have had the preview of the judgment of my learned brother, Ogundare, J. S. C., in draft and I agree that the conviction of the appellant was rightly affirmed by the lower court. There is overwhelming evidence supporting the information that the appellant caused the death of the deceased by shooting him with a gun at a close range. The appeal is dismissed.

ONU JSC

I have the advantage of reading before now the judgment of my learned brother Ogundare, J. S. C., I am in agreement with him that this appeal lacks merit and must therefore fail.

I only wish to say by way of expatiation that where evidence both for and against an accused has been adduced and it overwhelmingly discloses proof beyond reasonable doubt after his defence has been considered (See Philip Omogodo v. The State (1981) 5 S.C. 5 at 21) it will be futile hanging to the

'red herring' by seeking a haven in the Constitutional provisions of denial of fair hearing as guaranteed under Section 33 (4) and (5) of the Constitution of the Federal Republic of Nigeria, 1979. Nor is a resort to the defence of alibi, laid bare by proof fixing an accused to the scene of the crime as in the case in hand, afford him a saving grace. See this Court's recent decisions in Adele v. The State (1995) 2 NWLR (Part 377) 269 and Onyegbu v. The State (1995) 4 NWLR (part 391) 510 for the propositions that trial court's search lights must carefully point to where an accused raised the defence of alibi and the reciprocal onus on the prosecution to disprove same in the instant case, the alibi claimed collapsed in the face of overwhelming prosecution's case fixing the appellant at the scene of crime to merit any further serious consideration beyond what the learned trial Judge made of it. B C

For these and the more detailed reasons contained in the lead judgment of my learned brother Ogundare, J.S.C., I too dismiss this appeal and affirm the decision of the court below which confirmed the decision of the trial court. D

IGUHJSC

I have had the advantage of reading in draft the leading judgment just delivered by my learned brother, Ogundare, J.S.C. and I agree entirely that this appeal is without sustenance and should be dismissed. E

The facts of the case, accepted by the trial court and affirmed by the Court of Appeal, are that on Friday, the 11th August, 1978, the deceased, one Solomon Nwokocha, left his house for Ebukwu bush early in the morning to inspect the traps he had set to catch wild animals. This bush had been in dispute between the appellant, of the one part, and the deceased and members of his family, of the other part. The appellant had issued a death threat to the deceased and his family over this bush. F

P.W.1 saw the appellant armed with a gun and knife along the foot path that led into this bush. P.W.2 also went to Ebukwu bush that morning to weed his plantation. While there, he heard a gun shot close to his farm and the voice of the deceased shouting in agony - "Igiri has killed me, Igiri has killed me" - referring to the appellant as that was the name by which he was known in their village. He moved towards the place where the shot came from and saw the deceased rolling on the ground shouting. The appellant was standing with a gun which he saw pointing at the deceased. He could not go too near the scene because the appellant was armed with a gun but he shouted at the appellant thus - "Igiri I have seen you" and ran away. He heard some more gun shots as he ran away. The deceased was found dead with pellet wounds G H

from gun shots at the spot P.W.2 saw him before running away. On the evidence of P.W.6. Dr Reyes, who performed post mortem examination on the body of deceased, the cause of death was gun shot injuries.

At the conclusion of trial, the learned trial Judge on the 19th may, 1981 found as follows -

B *"Murder is the malicious killing of human being with the intent of doing so or with the intent of doing him or someone else grievous bodily harm. Here the prosecution has proved beyond reasonable doubt the commission of this heinous and grave offence by the accused including the intent to do so. I have no doubt in my mind that the accused is guilty of the offence*
 C *with which he is charge and for which he has been standing trial. I therefore find the accused guilty of the charge of murder contrary of section 319(1) of the criminal code."*

The appeal against this judgment of the trial court was on the 25th day of February, 1994 dismissed unanimously by the Court of Appeal, Port-D Harcourt Division, hence this further appeal.

The first issue canvassed before us is whether or not the prosecution was able to prove its case against the appellant beyond reasonable doubt in the face of alleged contradictions in the evidence of the prosecution witnesses.

E Dealing with the alleged contradictions, the learned trial Judge after some close analysis thereof concluded thus -

"On the whole I would say that any of the contradictions alleged, even if the really were such, is not the type that should in my view cause a substantial disparagement of the witnesses concerned."

F The Court of Appeal similarly had a close examination of the said contradictions and commented as follows -

"My understanding is that the pieces of evidence adduced by the prosecution cannot have mathematical accuracy or precision. What the law frowns at are material contradictions on important issues relevant to establish the ingredient of the offence. Much ado was placed on Exhibit F being the record of proceedings in the Preliminary Investigation forgetting that whether a point was made or not at the P1 depends on what questions and the points to be made by the prosecutor at the P.1. Usually to discredit a witness as apply previous statement made by him in a previous proceedings
 G *is to apply sections 199 and 209 EVIDENCE ACT Cap 112, 1990 laws of the Federation as applied in SAKA LAYONU & ORS V. STATE (1967) NMLR 411, ONUBOGU V. THE QUEEN (1974) 9 SC.1, MICHAEL OMISADE & ORS*
 H *V. THE QUEEN (1964) 1 ALL NLR 233"*

With respect the contradictions complained about in the appellant's

brief of argument are not of such magnitude which required interference by the Court of Appeal"

I have myself given very close attention to the alleged contradictions in the evidence of the prosecution witnesses and agree entirely with both courts below that they are not of such significance for this court to interfere with the conclusion reached by the learned trial Judge, as affirmed by the Court of Appeal. For any conflicts or contradictions in the evidence of the prosecution witnesses to be fatal to its case, they must be substantial and fundamental to the main issues in question before the court. See Queen v. Iyanda (1960) 5. F.S.C. 263, Enahoro v. Queen (1965) 1 All N.L.R. 125, Masamu v. The State (1979) 6-9 SC. 153, Ibe v. The State (1992) 5 N.W.L.R. (Part 244) 642 C at 649, Azu. v. The State (1993) 6 N.W.L.R (Part 299) 303 at 316, Wankey v. The State (1993) 5 N.W.L.R. Part 295) 542 at 552 etc. The alleged conflicts in the evidence of the prosecution witness in the case being unrelated to the material issues before the Court, must be dismissed as trivial and irrelevant and accordingly discountenanced.

I think I should mention that it is not disputed that no body actually saw the appellant fire his gun at the deceased. The prosecution rested its case mainly on circumstantial evidence and partial admissions on the part of the appellant. But where strong circumstantial evidence is led against an accused person 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, compelling and conclusive as to convince a jury that on no rational hypothesis other than the inference, can the facts be accounted for. See Uwe Idighi Esai and others v. The State (1976) 11 S.C. 39, Peter Nwachukwu Eze v. The State (1976) 1 S.C. 125, Kalu v. The State (1993) 6 N.W.L.R. (Part 300) 385 at 396, Ukorah v. The State (1977) 4 S.C. 167 etc.

In the present case, it is not in dispute that the appellant was seen going into Ebukwu bush with gun and knife. It is also contested that the said bush was in dispute between the appellant and deceased's family, that the deceased was the head of his family, that he had earlier on that morning gone to that bush to inspect his trap, and that the appellant had issue a death threat to the deceased and his family over the bush. P.W.2 who was in the same bush to weed his plantation then heard a gun shot close to his farm and the voice of the deceased shouting in agony, "Igiri (meaning the appellant) has killed me, H igiri has killed me". He immediately moved towards the scene and saw the deceased rolling on the ground shouting and the appellant standing with a gun which he was still pointing at the deceased. Having shouted at the appellant that he had seen him, P.W.2 took to his heels and disappeared as the

appellant was armed.

The dead body of the deceased was later recovered at the point where P.W.2 saw it before he ran way. The dead body was riddled with pellet wounds. In my view, there can be no stronger circumstantial evidence linking the appellant directly with this brutal and wicked murder of the deceased.

B The main defence of the appellant was that of alibi. His claims was that he never went to Ebukwu bush at all as he was at home all day on the material date and never went out. He mentioned the names of certain persons in his statement to the police, Exhibit C, who saw him in town on the material date.

C Where an accused sets up an alibi, he does not thereby assume the responsibility of establishing the same. The onus still lies on the prosecution to prove beyond reasonable doubt that the accused was not at the scene of crime but that he committed the offence for which he is tried. See Oyewunmi Adedeji v. The State (1971) All N.L.R. 77. The law, on the defence of alibi, is D that the jury should be directed that they should not disregard evidence of alibi unless there is stronger evidence against it. See Yanor v. The State (1965) All N.L.R. 193, R.v. Chadwick (1977) 12 Cr. Ap. R. 247.

In the present case, there is evidence from P.W.7, the investigating Police officer that he questioned all the persons mentioned by the appellant in E his statement, Exhibit C, and that they all denied seeing the appellant in their village on the material date. This seems to me a total demolition of the appellant's plea of alibi. But this, notwithstanding, if as in the present case, the prosecution adduces sufficient and accepted evidence to fix the accused at the scene of crime at the material time, his alibi is thereby, also, logically F demolished. See Njovens v. The State (1973) 5. S.C. 17 at 65, Ntam and An-other v. The State (1968) N.M.L.R. 68 at 88.

The appellant is well known to P.W.1 and P.W.2. in particular, clearly fixed the appellant at the scene of crime and with the commission of the offence charged. His evidence was accepted by the trial court and affirmed by G the court below. The appellant's alibi was thereby disproved. I am in total agreement with both courts below that the prosecution established its case against the appellant beyond reasonable doubt as required by law.

It is for the above and the more elaborate reasons contained in the leading judgment of my learned brother, Ogundare, J.S.C. that I, too, dismiss H this appeal. The conviction and sentence of the appellant by the trial court as affirmed by the court below are hereby further confirmed.