

SUPREME COURT OF NIGERIA

10TH JULY, 1998. SC. 176/1997

**CORAM:- A. B. WALI, I. L. KUTIGI, M. E. OGUNDARE,
U. MOHAMMED, S. U. ONU, JJSC**

OLUSOLA ADEPETU	APPELLANT
V.		
THE STATE	RESPONDENT

CRIMINAL PROCEDURE - Proof - The burden is on the prosecution to prove guilt beyond all reasonable doubt - No duty is on the accused to prove his innocence - Unless apparently damning circumstances are established against him.

MURDER - Circumstantial evidence - Where direct evidence of eye witness is not available - The court may infer from the facts proved the existence of other facts - That may logically tend to prove the guilt of an accused person.

MURDER - Circumstantial evidence - Conduct - Of the appellant after the deceased was last seen with him - Furnished cogent evidence of his guilt.

MURDER - Coroner's inquest - It is not true that because there was no coroner's inquest - The case against the appellant was not proved.

MURDER - Prima facie case - The facts proved in the instant case established a prima facie case - Requiring appellant as a matter of common sense to explain what he did with the deceased.

FACTS

The appellant at the High Court, Ibadan was charged with the offence of murder of one Ranti Moradeyo, contrary to, and punishable under Section 319 (1) of the Criminal Code cap 30 Laws of Oyo State 1978. He pleaded

not guilty to the charge. The appellant and the deceased were intimate friends. The appellant usually visited the deceased at her place of work and they were known to have gone out together on a number of times. On 21st November, 1990 the appellant called as usual at the place of work of the deceased. The appellant came with a peugeot 504 saloon car. The car was driven by P.W. 6 and P.W. 7 was also in the car. They picked the deceased who sat at the back with the appellant. They all drove to the appellant's office at Adegbayi area of Ibadan. On dropping the trio P.W.6 drove to his own office.

Thereafter, at about 6.30 p.m that evening the three of them, that is the appellant, the deceased and p.w.7 drove in the appellant's 505 saloon car to Mesiogo Hotel Ibadan where they had some drinks. P.W. 7 on finishing his drink left the couple behind and went away. Eventually at about 7.30 pm the couple, that is the appellant and the deceased left the hotel on foot leaving behind the appellant's car. Later at about 10.30p.m that night, the appellant came back to the hotel alone to pick his car and drove off. The deceased was never seen alive again. On 22/11/90, the appellant called at the place of work and asked from one of the deceased co-workers (P.W.1) about the deceased. P.W.1 told the appellant that it was he who took away the deceased the previous day and she had not been seen since then. On that same 22/11/90, the corpse of the deceased was found along Ibadan - Lagos expressway from where it was deposited at the mortuary. The medical report issued following the postmortem examination on the corpse of the deceased showed that the deceased died of head injury consistent with one caused by being hit on the head by a sharp object and also that all the lacerations found on the body were caused by a sharp object. The appellant made conflicting statements to the police in connection with the case. He also gave evidence on oath at his trial which again was different from all his statements to the police. He however denied responsibility for the death of the deceased.

At the close of the trial the learned trial judge in a well considered judgment found the case against the appellant proved and convicted him as charged; he was sentenced to death by hanging. Dissatisfied with the judgment of the High Court, the appellant appealed to the Court of Appeal,

Ibadan Judicial Division. The appeal was unanimously dismissed. The appellant has further appealed to the Supreme Court raising three issues.

ISSUES FOR DETERMINATION

"1. Whether the mere act of opportunity and the finding of telling of lie/lies by the appellant without more is a sufficient proof of criminal responsibility under the law.

2. Whether the court below was right in holding that the circumstantial evidence proffered by the prosecution is sufficient enough to ground the Appellant's conviction.

3. Whether the court below was right in holding that the prosecution has proved its case against the appellant beyond all reasonable doubt when the cause of the deceased's death was not linked to any act of the appellant."

HELD (Dismissing the appeal per lead judgment of **OGUNDARE JSC** KUTIGI JSC dissenting)

Murder - Circumstantial evidence

1. The law is clear on the point; where, as in the instant case, direct evidence of eye witness is not available, the court may infer from the facts proved the existence of other facts that may logically tend to prove the guilt of an accused person.⁴ In drawing an inference of a guilt of an accused person from circumstantial evidence, however, great care must be taken not to fall into serious error. It follows, therefore, that circumstantial evidence must always be narrowly examined as this type of evidence may be fabricated to cast suspicion on innocent persons. Before circumstantial evidence can form the basis for conviction the circumstances must clearly and forcibly suggest that the accused was the person who committed the offence and that no one else could have been the offender. See Fatoyinbo v. A.G. of W.N. (1960) WNLR 4,7; Udedibia v. The State (1976) 11 SC. 5. (p. 1798 B)

⁴ The Supreme Court also decided on when the conviction based on strong circumstantial evidence is correct in the following cases: Kalu v. The State (1993) 9 KLR 25; and Arichie v. The State (1993) 10 KLR 44

Criminal procedure - Proof

2. In a criminal case the burden is always on the prosecution to prove the guilt of the accused beyond all reasonable doubt. Generally, there is no duty on the accused to prove his innocence. Circumstances may however, arise where some explanation may be required from the accused person such as where apparently damning circumstances are established against the accused. (p. 1798 E)

Murder - Prima facie case

3. The facts proved in the case on hand established in my respectful view a prima facie case requiring the Appellant as a matter of common sense to explain what he did with the deceased that night when they both left Mesiogo Restaurant. Where did he take her to? What did he do with her there? The Appellant made false statements to the police which were admitted in evidence all of which are, in material particulars, inconsistent with his evidence at the trial. The learned trial Judge had no problem in rejecting his evidence and that of his witness. I see no reason to disturb or interfere with the findings of fact made by the learned trial Judge and affirmed by the court below as these findings were based on the credible evidence adduced at the trial. (p. 1803 G)

Circumstantial evidence - Conduct

4. The conduct of the Appellant after the deceased was last seen with him furnished, in my respectful view, cogent evidence of his guilt in the murder of the deceased. I am satisfied that the totality of the evidence accepted by the learned trial Judge points irresistibly to the Appellant, and no other person, as the perpetrator of the dastardly act meted to the deceased on or about 21/11/90 which led to the death of the latter. His conduct after the deceased was last seen alive with him was more consistent with his guilt than his innocence. The totality of the circumstantial evidence against him raised a case much higher than suspicion; it sufficiently proved the case against the Appellant beyond all reasonable doubt. (p. 1806 G)

Murder - Coroner's inquest

5. I have no hesitation in rejecting the submission of learned counsel for the Appellant that because there was no Coroner's inquest the case against the Appellant was not proved. I know of no law, nor has our attention been drawn to any authority, affirming this proposition. Section 4 of the Coroner's Law Cap 28 Laws of Oyo State is a complete answer to learned counsel's submission. (p. 1807 B)

NOTABLE POINTS OF INTEREST

KUTIGIJSC (dissenting)

1. Circumstantial evidence - Complete and unbroken chain

I think the High Court with due respect was wrong for holding that the appellant caused the death of the deceased by hitting her on the head with a sharp object when there was no evidence that the appellant had any sharp object or any object at all with him on the fateful day. That evidence was vital. It was missing. The omission is fatal. I believe the proper course for the learned trial judge is that after making his findings of fact above, he should then consider whether they form a complete and unbroken chain that leads irresistibly to the inference that the appellant is guilty beyond reasonable doubt. This he failed to do. The chain in this case, I must say is incomplete. There was no evidence, I repeat, there was no evidence, that the appellant was armed with a sharp object or any object at all on the fateful day. It is only when that is done, that you can infer that he killed her the way described in the Medical Report. (p. 1813 G)

2. Circumstantial evidence - Every case ought to be decided on its own particular facts

I think on circumstantial evidence alone, every case ought to be decided on its own particular facts and circumstances. The facts and circumstances do vary. Having made his findings of fact above, the learned trial judge was expected to have considered his findings carefully. It is not enough if it creates suspicion, even strong suspicion, it must be so cogent as to leave no room for reasonable doubt. My candid view is that the circumstances

of this case were no more than circumstances of suspicion which were again insufficient to support the finding that the appellant caused the death of the deceased by hitting her on the head with a sharp object, there being no evidence that the appellant was armed with any sharp object and therefore nothing to link the appellant with the death of the deceased. It was not enough for the learned trial judge to have merely said as he did above that:-

"The fact before the court which I accepted requires and calls for explanation from the accused where he took the deceased to from the hotel alone to drive away his vehicle."

and to have concluded that therefore the appellant must be the person who murdered the deceased. The inference is clearly unsupportable by the findings of fact above. It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence, to be sure that there are no other co-existing circumstances which would weaken or destroy the inference as in this case. (p. 1814 H)

REPRESENTATION

J. A. Olanipekun Esq. with A. A. Kareem for the Appellant
P. F. Olayiwola, Solicitor-General (Oyo State), with R. A. Olawuwo, (Legal Officer), for Respondent

CASES REFERRED TO

- Fatoyinbo v. A.G. of W.N. (1960) WNLR 4,7
Udedibia v. The State (1976) 11 SC. 133
Adie v. The State (1980) 1-2 SC 116
G Omogodo v. The State (1981) 5 SC.5.
Yango v. C.O.P. (1992) 8 NWLR (pt.257) pg.36 at p.74
Babalola v. The State (1989) 4 NWLR (pt.115) p. 264 at p.280
FABUMIYI V. OBAJE (1968) NWLR 242
H FASHANU V. ADEKOYA (1974)1 ALL NLR 35 AT 41
AKPAGBUE V. OGU (1976)6 SC.63
EBBA V. OGODO (1984)4 SC. AT 98.
LORI V. THE STATE (1980) 8-11 SC.11

ESAI V. THE STATE (1976)11 SC. 39

UDEDIBIA V. THE STATE (1976)11 SC.133 AT 138-139

STATUTES REFERRED TO

Criminal Code cap 30 Laws of Oyo State 1978, s.319(1)

B

Coroner's Law cap 28 Laws of Oyo State ss.4 and 11

Criminal Procedure Law Cap 21 Laws of Oyo State 1978, s. 459

LEAD JUDGMENT BY OGUNDARE JSC

C

This appeal raises the question as to what circumstantial evidence will suffice to ground conviction in a criminal trial, particularly in a murder case.

The Appellant was arraigned before the High Court of Oyo State of the Ibadan Judicial Division on a charge that he, on or about the 21st day of November 1990 at Sanyo area along Lagos-Ibadan expressway murdered one lady called Ranti Moradeyo and that he thereby committed an offence contrary to, and punishable under, section 319(1) of the Criminal Code Cap 30 Laws of Oyo State 1978. He pleaded not guilty to the charge. At the trial, prosecution called nineteen witnesses in support of its case. Following the overruling by the learned trial Judge of a no case submission made by the defence counsel, the Appellant gave evidence and called one other witness in his defence. At the close of the trial and after addresses by learned counsel for both the prosecution and the defence, the learned trial judge, in a well considered judgment, found the case against the Appellant proved and convicted him as charged; he was sentenced to death by hanging.

Being dissatisfied with his conviction and sentence, the Appellant appealed unsuccessfully to the Court of Appeal. He has now further appealed to this court upon two original and six additional grounds of appeal. Briefs of arguments were filed and exchanged by the Appellant and the Respondent. In the Appellant's Brief, three issues have been formulated as arising for determination in this appeal. They read as follows:-

"I. Whether the mere act of opportunity and the finding of telling of lie/lies by the appellant without more is a sufficient proof of criminal

responsibility under the law.

2. *Whether the court below was right in holding that the circumstantial evidence proffered by the prosecution is sufficient enough to ground the Appellant's conviction.*

B 3. *Whether the court below was right in holding that the prosecution has proved its case against the appellant beyond all reasonable doubt when the cause of the deceased's death was not linked to any act of the appellant."*

C The three issues for determination as formulated in Respondent's Brief are not, in substance, too dissimilar to the above even though differently couched. The three issues raised question, in the main, the quantum or sufficiency of circumstantial evidence upon which the learned trial Judge based the conviction of the Appellant. It is not in dispute that there was no
D direct evidence linking the appellant with the death of the deceased. His conviction was based primarily on circumstantial evidence.

The facts relied on by the prosecution run as follows: The Appellant and the deceased were intimate friends. The Appellant usually visited
E the deceased at her place of work at Samonda area along University road, Ibadan and they were known to have gone out together on a number of times. On 21st November 1990 the Appellant called as usual at the place of work of the deceased; he was accompanied by two other men who later
F gave evidence at the trial of the Appellant as PW6 and PW7. The three men came in a Peugeot 504 saloon car driven by one of the men (pw6). They picked the deceased who sat at the back with the Appellant. PW6 drove the car and came eventually to the Appellant's office where he dropped both the Appellant, the deceased and PW7. On dropping the trio, he drove
G to his own workshop in the Peugeot 504 saloon car. At about 6.30p.m that evening, the Appellant, the deceased and PW 7 left the Appellant's office at Adegbayi area of Ibadan and drove in the Appellant's Peugeot 505 saloon car to Mesiogo Restaurant also in Ibadan where the three of them had
H some drinks. PW7 left the Appellant and the deceased behind in the restaurant and went his own way. The couple, that is, the Appellant and the deceased too, later left the restaurant on foot leaving behind the Appellant's Peugeot 505. Three hours after they had left the restaurant at about

10.30p.m. the Appellant alone returned to the restaurant and without exchanging words with anyone entered his car and drove off. The deceased was never seen alive again.

On 22/11/90 the deceased did not turn up for work at her work place. Her co-workers waited in vain for her. At about 2.00p.m the Appellant called at the place of work and asked from one of the deceased's co-workers (PW1) about the deceased. PW1 told the Appellant that it was he who took away the deceased the previous day and she had not been seen since then. The Appellant gave no reply but went his way. On 23/11/90, he came to PW1 at the place of work and informed PW1 that the deceased had been killed. On further inquiry by PW1, the Appellant informed him and the other co-workers that the corpse of the deceased had been deposited at the Adeoyo State Hospital Mortuary.

The Medical report issued following the post mortem examination on the corpse of the deceased showed that the deceased died of head injury consistent with one caused by being hit on the head by a sharp object and also that all the lacerations found on the body were caused by a sharp object.

The defence was a denial of responsibility for the death of the deceased. The Appellant in his evidence in court at the trial admitted that on 21/11/90 he was driven by PW6 in a car other than his (Appellant's) car and that the deceased met him at an arranged place at 5.00p.m. that day. On arrival the deceased told him that she wanted to go to Challenge area (in Ibadan) to collect her money from one Nike Adebambo Ishola (pw13). He gave the following account in his evidence:

"I told her that my car was not in good condition and that I would not be able to carry her to Challenge. We later left for Secretariat Round-about where the deceased dropped from the car. She took a bus in our presence on her way to challenge. We later left for my office. Myself, Rotimi Jegede and Tajudeen Yinusa later left in the car for my office."

He denied being at Mesiogo Restaurant on 21/11/90. He said it was on 20/11/90 that he called at the restaurant with the deceased and his other friends, that is, PW6 and PW7. He gave the following account of his

movement on 20/11/90:

"On 20/11/90, I invited Tajudeen Yinusa, the 6th PW to carry me and Alakodi, the 7th PW to Agbowo Area. He carried us in the Peugeot 504 saloon No. KN 705 BC.

B *It was on the same 20/11/90 that Tajudeen Yinusa carried me, Alakodi and Moses Egba to a village behind I.I.T.A., Ibadan.*

On getting to the village we did not meet the man in the village. On our back (sic) we met the man on the way. We stopped and had discussion with him. On our way back we called at the office of Ranti
C *and we picked her from the office.*

From there we went to Oranyan where Alakodi said he wanted to see a man. From there we left for my office. On getting to my office Yinusa dropped me, Ranti and Alakodi in my office and went away in the
D *car.*

There and then I took my car and we all went to Mesiogo guest house where we were served by Chinyere. He served me a bottle of Gulder, a bottle of maltina was served to Ranti and a bottle of crush was
E *served to Alakodi.*

I do not know Sule as a worker at Mesiogo Guest House. Alakodi left Mesiogo guest house about ten minutes later. We later left Mesiogo guest house around 7.30 p.m. on 20/11/90.

On 21/11/90 I did not call at Mesiogo guest house. I left Mesiogo
F *with Ranti on 20/11/90 at about 7.30p.m. and we both joined a taxi cab in front of Mesiogo guest house. We went to Bodija together. We got there around 8-8.30p.m and we dropped from the taxi cab. I saw her up to her residence before I left for Mesiogo guest house where I met Ayoade*
G *Oluwuyi in front of the hotel. I greeted him and I left the note in my car and went straight to my house.*

I did not see Ranti alive again after I had dropped her at the round-about of the Secretariat on 21/11/90. She alighted on 21/11/90 at
H *the Secretariat round-about at about 5.30p.m."*

The Appellant admitted in his evidence that on 22/11/90 he called at the deceased's office and was told that she was not around. He left for his office and when at about 6.00pm that day he had not seen the de-

ceased, he went to the deceased's house at Bodija where her father told him that the deceased had not been seen since 21/11/90. On 23/11/90 when the deceased had not yet been found, the driver of the deceased's father reported to the Appellant in his office in consequence of which a report was made to the police. The Appellant made a statement to the police on 21/11/90 resulting in the arrest and detention of Nike Adebambo Ishola and her husband. As to how he got to know that the deceased had died and her corpse had been found, the Appellant testified thus:

"On 24/11/90 Alhaji Moradeyo suggested that we should go to Challenge Police Station to make enquiries.

At Challenge Police Station Moradeyo suggested we met one woman /Sergeant called Mary.

Sgt. Mary told me that on 23/11/90 the police at Challenge picked a dead woman around sanyo area. She directed us to New Adeoyo Ring road, Mortuary.

We later left for Sango Police Station and reported to the I.P.O. who followed us to Ring Road Hospital Mortuary. I went into the mortuary and discovered the corpse of Ranti.

We later left for Sango Police station where we reported back to the D.P.O. We later broke the news to Ranti's father.

The Appellant was arrested by the police on 27/11/90 in connection with the death of the deceased.

The learned trial Judge, based on the credible evidence before him, made the following findings of fact:

"(a) That the accused and Ranti were girl and boy friends.

(b) That the accused used to visit the working place of the deceased always.

(c) That on 21/11/90 the accused picked the deceased up in a Peugeot 504 saloon car driven by Yinusa on her (sic) way back from a village behind I.I.T.A. Ibadan.

(d) That it was 21/11/90 after the accused, Alakodi and Yinusa picked up the deceased in her office after 5.p.m that they both went to Oranyan before they later went back to the accused's office.

(e) That 1st PW saw the accused and two others on 21/11/90

when the deceased, Ranti was picked from her office.

(f) That after getting to the office of the accused on 21/11/90 then Yinusa left them and went back to his workshop with the peugeot 504 car.

B *(g) That thereafter the accused went with Ranti and Alakodi to Mesiogo hotel at about 6.30p.m. where they had some drinks.*

(h) That the accused had a bottle of Gulder beer while Ranti and Alakodi had maltex and soft drink.

(i) That the 3rd PW was the one who served the drinks.

C *(j) That Alakodi having finished his drinks left the accused and the deceased behind at Mesiogo hotel.*

(k) That later that evening the accused and the deceased left together from Mesiogo hotel and the accused's vehicle was left behind.

D *(l) That it was only the accused that came back alone to pick his peugeot 505 in the night of 21/11/90, without coming back with the deceased with him, he went away from the hotel.*

(m) That the deceased could not be found in her office when the accused went back there on 22/11/90 at about 10.30am.

E *(n) That Ranti was later found already dead in the public mortuary, Adeoyo, Ring Road hospital, Ibadan.*

(o) That by the doctor's report the cause of death was as a result of head injury consistent with one caused by being hit on the head by a sharp object. That all lacerations on her body were caused by a sharp object.

G *Having regard to the above findings of fact there is no doubt in my mind that the accused was not speaking the truth when he stated in his evidence that he did not call at Mesiogo on 21/11/90. I also find as a fact that the accused was not speaking the truth when he stated in his evidence that it was 20/11/90 that he went to Mesiogo hotel with Ranti."*

He also found:

H *"Both the statement of the accused and his evidence regarding his movement with the deceased on 20/11/90 is unreliable and they are both accordingly rejected.*

There is no doubt in my mind that the accused, Yinusa who drove

the Peugeot 504 saloon car No. KN 705 BC and Alakodi were together on 21/11/90 after they had visited a village behind I.I.T.A. Ibadan.

There is also no doubt on my mind that it was on 21/11/90 around 5.00p.m. when Yinusa the driver of Peugeot 504 car No. KN 705 BC, Alakodi and the accused picked Ranti Moradeyo from her office and drove together to Labo area before Yinusa later dropped Alakodi, the deceased and the accused in the accused's office And that thereafter the accused, Ranti (the deceased) and Alakodi went in the peugeot 505 car of the accused to Mesiogo hotel where the accused called for a bottle of Gulder beer, a bottle of mineral and one maltex.....

I therefore reject the evidence of the accused that on 21/11/90 the deceased dropped at the Secretariat Round-about and that the deceased went in a bus to Challenge area, Ibadan. There is no doubt in my mind that the accused had concocted that type of evidence in order to create a break in the chain of events which cumulated in the disappearance of Ranti Moradeyo, the deceased after the accused and Ranti the deceased left for Mesiogo hotel on 21/11/90 for an undisclosed place and that it was only the accused who returned to Mesiogo hotel that night before he drove away his vehicle from the said hotel."

All these findings of fact were affirmed by the Court of Appeal.

As earlier stated in this judgment, there is no direct evidence connecting the Appellant with the death of the deceased. The prosecution relied on the evidence of surrounding circumstances in support of its case against the Appellant. The learned trial Judge summarized the surrounding circumstances in these words:

"The silent facts relied upon by the prosecution to connect the accused with the death of the deceased are:-

1. The fact that the deceased and the accused were together in the evening of 21/11/90 when they both left Mesiogo hotel when the accused left his car behind.

2. That when the accused returned to the hotel he did not come back with the deceased.

3. That on the following day Ranti did not report at work.

4. That the body of the deceased was found around Sanyo area

on the following day.

5. That by the medical report the cause of death was due to injuries inflicted on the body of the deceased by a sharp object. and asked-

B "Are the above evidence enough to connect the accused with the unlawful killing of the deceased?"

The learned trial Judge was conscious all along that the prosecution's case was based on circumstantial evidence. After a consideration of the circumstances surrounding this case as elicited from the credible evidence before C him, the learned trial Judge came to the conclusion:

"The fact before the court which I have accepted requires and called for explanation from the accused where he took the deceased from the Hotel for about three hours before he later came back to the hotel D alone to drive away his vehicle. No explanation is forthcoming from the accused.

The circumstantial evidence before the court points to no other person that could have murdered the accused."

E The Court below, per Salami JCA. Who read the lead judgment of that Court (with which the other Justices agreed) held:

"The irresistible conclusion or inference to arrive at or draw from the welter of evidence is that the appellant was responsible or liable F for her death."

Salami JCA expatiated on this conclusion when in his judgment he observed:

"It is not beyond common sense to invite the appellant to proffer some explanations for his conduct soon after the disappearance of the G deceased. Did it not behove the appellant to explain why he chose to go out with the deceased in a taxi and left his car behind at Mesiogo hotel on 21/11/90? It is incumbent on him to explain how the deceased who was last seen with him alive came to be stone dead. The pieces of evi- H dence on the conduct of the appellant soon after the commission of the offence rather than derogate from it corroborated as well as strengthened the prosecution's case. The appellant corroborated and thereby strengthened the prosecution's case when he lied with reckless abandon

that he was not at Mesiogo hotel on 21/11/90 and when he said he escorted the deceased to her residence at Bodija in his evidence-in-chief contrary to his extra judicial statement, exhibit H, where he alleged that seventh p.w. escorted her to gate. The lie or lies amounted to corroboration. See Otufale & Others v. The State (1968) NMLR 261, 268 B

The appellant had opportunity to perpetrate the murder of the deceased and his various lies including the one that he visited Mesiogo restaurant or hotel with the deceased last on 20/11/90 as against 21/11/90 would not have placed innocent colouration on the matter."

The learned Justice of Appeal, on the issue of circumstantial evidence, concluded thus: C

"the circumstantial evidence led in the instant case is positive, direct and unmistakably as well as irresistibly points to the fact that the appellant had opportunity to and did commit the offence." D

Ogundare JCA in his concurring judgment observed:

"The questions that necessarily follow are:-

(1) Who dealt the deceased Ranti these serious injuries of which she died? E

(2) Where were the injuries dealt on her?

The answer to these questions could only be answered by the appellant. Where did he take the deceased to after they both left Mesiogo hotel, Ibadan? The appellant however lied and lied endlessly. The mere fact that an accused lied is not evidence that he committed the offence charged. F

But the applicable principle of law here is that the accused had the duty of leading some credible evidence as to where he took the deceased after they left Mesiogo Hotel together. This was the import of the decision of the Supreme Court in Peter Igho v. The State (1978)3 SC.87. The decision is in my view founded on good reasoning and is in consonance with common sense. If the appellant was not to explain where he took the deceased, who else could have done it? Appellant was the person last seen with the deceased. G H

It is a correct proposition of law that circumstantial evidence should be narrowly examined. See Udedibia v. State (1976) 11 SC. 133

at 138-139. But as made clear in *R. v. Taylor & Ors.* (1928) 21 C.A.R. 20 at 21, circumstantial evidence is capable of proving a proposition with the accuracy of mathematics.

I am satisfied that the circumstantial evidence available against the appellant is cogent and compelling in the absence of any credible explanation from the appellant as to where he took the deceased on 21/11/90 after they left Mesiogo Hotel, Ibadan."

The learned counsel for the Appellant Mr. Olanipekun both in his Brief of argument and in oral submissions has argued strenuously on the prosecution's case against the Appellant was founded on suspicion. He argued that apart from the availability of the opportunity and the lies told by the Appellant in his desperate bid to absolve himself the prosecution failed to link the Appellant to the cause of the death of the deceased. He submitted that mere lying without more could not be a substitute for the legal proof required to establish criminal responsibility against an accused. It is learned counsel's submission that all that the prosecution was able to do was to muster strong suspicion that no other person could possibly have killed the deceased apart from the Appellant. While conceding that the circumstances of this case were such of a character that might bring an element of suspicion, he submitted however that such suspicion could not be upgraded, transformed and or be a substitute for legal proof. Learned counsel relied on *Yango v. C.O.P.* (1992) 8 NWLR (pt.257) pg.36 at p.74; *Babalola v. The State* (1989) 4 NWLR (pt.115) p. 264 at p.280 in support of his submission.

On circumstantial evidence proffered, it is learned counsel's submission that the court below was in error to have concluded that there was abundant evidence to place the Appellant at the scene of the crime. I pause here to comment on this submission. Salami JCA in his lead judgment had said

"The prosecution having shown through the evidence of first, third, sixth and seventh prosecution witnesses that the Appellant was present at the scene of crime it serves no purpose for it to embark on the accused's plea of alibi, that he was elsewhere on the night of 21st November, 1990."

With profound respect to the learned Justice of Appeal, he was clearly in error. I have read the evidence of the witnesses mentioned in the passage above, I can find nothing in their evidence to justify the court in holding that the Appellant was proved to be present at the scene of crime. To this extent, therefore, I agree with the submission of learned counsel for the Appellant that the court below was in gross error. Having regard, however, to what I will say later in this judgment, I do not think this error occasions a miscarriage of justice. B

Learned counsel for the Appellant submitted that the circumstantial evidence proffered by the prosecution was weak and did not point to the Appellant alone as having been responsible for the death of the deceased. He submitted that the prosecution failed to prove its case beyond reasonable doubt. In his oral submission, learned counsel submitted that failure to hold a coroner's inquest cast doubt on the case for the prosecution. He referred us to Section 11 of the Coroner's Law of Oyo State and urged the Court to allow the appeal and discharge and acquit the Appellant. D

Mr. Olayiwola, learned Solicitor-General of Oyo state, who appeared for the Respondent proffered oral argument before us. He referred to Section 459 of the Criminal Procedure Law Cap 21 Laws of Oyo State 1978 which abolished trial pursuant to Coroner's inquisition and submitted that the failure to hold a coroner's inquest would have no effect on the case against the Appellant. He submitted that the totality of the circumstantial evidence adduced in this case was sufficient to convict. He referred to the evidence of PW1, PW3, PW6, PW7 and PW11 as overwhelming to show that the deceased was last seen alive with the Appellant on 21/11/90. He urged the Court not to disturb the concurrent findings of fact made by the two courts below and urged the court to dismiss the appeal. F G

As stated earlier in this judgment, the conviction of the Appellant was based on circumstantial evidence as there was no direct evidence linking the Appellant to the death of the deceased. The question arises: what are the circumstances relied upon by the prosecution in this case? On the evidence accepted by the learned trial Judge and on the concurrent findings of the two courts below (1) the deceased was last seen in the company of the H

Appellant (2) following the disappearance of the deceased the Appellant was know to have told various lies to various people in an attempt to exculpate himself from liability from the death of the deceased (3) he the Appellant tried to pin the death of the deceased on other people, that is Nike Adebambo Ishola. (4) He procured PW19 (Musibau Sulaiman) whom he met in the prison yard to pin the murder of the deceased on one Sade called Blessing. I shall presently elaborate on these in the course of this judgment.

The law is clear on the point; where, as in the instant case, direct evidence of eye witness is not available, the court may infer from the facts proved the existence of other facts that may logically tend to prove the guilt of an accused person. In drawing an inference of a guilt of an accused person from circumstantial evidence, however, great care must be taken not to fall into serious error. It follows, therefore, that circumstantial evidence must always be narrowly examined as this type of evidence may be fabricated to cast suspicion on innocent persons. Before circumstantial evidence can form the basis for conviction the circumstances must clearly and forcibly suggest that the accused was the person who committed the offence and that no one else could have been the offender. See Fatoyinbo v. A.G. of W.N. (1960) WNLR 4,7; Udedibia v. The State (1976) 11 SC. 133; Adie v. The State (1980) 1-2 SC 116; Omogodo v. The State (1981) 5 SC.5. In a criminal case the burden is always on the prosecution to prove the guilt of the accused beyond all reasonable doubt. Generally, there is no duty on the accused to prove his innocence. Circumstances may however, arise where some explanation may be required from the accused person such as where apparently damning circumstances are established against the accused. I will now give a few illustrations. A is charged with burglary, he was found in the hall of the house where the burglary took place without having been asked to come there. It is incumbent on him as a matter of common sense, though not as a matter of law to give a satisfactory explanation of his presence and if he fails to do this a court will be justified in inferring the existence of the requisite guilty intent - R. v. Wood

(1911) 7 Cr. App Rep 56. Again, X is charged with stealing, he is found in possession of a cheque drawn by the receiver of the stolen goods. X fails to give evidence. He may be convicted - R. v. Kelson (1909) 3 Cr. App. Rep, 230. In R. v. Nash (1911) 6 Cr. App. Re. 225 N was charged with the murder of her child whose body was found in a well. She had been seen near the well with the child for whom she could not find a home, and she also told lies concerning the child's whereabouts. She was convicted of the murder of the child. On appeal to the Court of Criminal Appeal, Lord Coleridge, CJ dismissing the appeal said:

"the facts which were proved called for an explanation, and beyond the admittedly untrue statements, none was forthcoming In view of the facts that the child left home well and was afterwards found dead, that the appellant was last seen with it, and made untrue statements about it, this is not a case which could have been withdrawn from the jury."

I may now mention a case where the court held that there was not sufficient circumstantial evidence to support conviction. It is the case of Stephen Ukorah v. The State (1977) 4SC. 167. There was evidence that the appellant and two others one night invaded the hut of PW1 in the latter's absence and beat up the deceased he found in the hut with his fists. PW2 who was with the deceased at the time escaped into the bush and remained there until the following morning when he reported the incident to the police. A policeman followed him to the scene where the body of the deceased was found with a deep long cut in the back. There was no medical evidence as to the cause of death, that is, as to whether the deceased died as a result of the beating with fists- in which case the deep long cut would have been inflicted post mortem or that the deceased died as a result of the deep long cut which would then have been inflicted ante mortem. There was no evidence that the appellant and/or his co-assailants were armed with any sharp instrument. The trial court convicted the appellant of murder. In parts of his judgment the learned trial Judge had said:

"I have no doubt in my mind that the deceased died between 17th and 18th August 1973. This together with the question on whether he died as a result of the beating or violence he received on the 17th of

August are matters of inference In the present case I recognize there is no medical evidence. Also the direct evidence as to how the deceased met his death is not complete. But if the evidence of the 2nd P.W. is believed, I do not think in the least that these are matters which will make the prosecution case less cogent If the evidence of the 2nd P.W. is believed, and I do believe it, it goes further to show that the deceased also knew the attacker. The questions which must be asked are if the deceased was later found dead in those circumstances, as indeed he was, did he die from natural causes? If not, was he murdered? I have no doubt that he was. Who, therefore is the murderer? If this is a further aspect on which inference will be drawn from the circumstances, then I think that the inference is unmistakable that it was the accused who murdered the deceased. The inference is irresistible; I regard it as conclusive, having already accept that it was the accused who attacked him There is no doubt therefore from the evidence that the deceased died at the hands of the accused - at least one can say from the circumstances that he died as a result of the beating or the violence"

he referred to a number of authorities on circumstantial evidence, such as Onufrejezyk (1955) 1 All ER 388 and Kato Dan Ahmadu (1956) 1 FSC 25.

On appeal on to this court, the appeal was allowed and the conviction set aside. Idigbe, JSC delivering the Reasons for judgment of the Court, gave at pages 175 -177 of the Report the reasons for allowing the appeal. He said:

"We would like to point out that in the cases of Onufrejezyk (supra) and Kato Dan Ahmadu (supra) there were other facts which point irresistibly to the accused person (and no one else) in each of the cases being the culprit (i.e. the murderer). In the case in hand the learned trial judge seemed to have over looked the following facts:

(i) that the evidence is that the appellant attacked the deceased and beat him up with his bare fists.

(ii) there is no evidence that the appellant or any of his associates was armed that evening with a matchet or any sharp instrument (or

any other kind of instrument capable of inflicting a cut on the human body).

(iii) that when well over some thirty hours since 'escaping into a near by bush' the PW2 (Joachim Ekwuobi) re-appeared at the scene of the crime (the village hut in which he and the deceased lived) he found the deceased already dead with 'a long deep cut' at the back of the body. B

(iv) that there is no evidence as to (i) the cause of death and (ii) whether the 'long deep cut' on the body of the deceased was produced ante mortem or post mortem; for 'in the later event the existence of such a cut may be irrelevant if, for instance, the cause of death was decidedly C
a result of a shock from a blow of the fist or asphyxia; and

(v) that at the Police Post the star witness Joachim Ekwuobi had already reported a case of murder before he and the police officer saw the corpse and he knew that the deceased had died. D

From the forgoing facts it is, we think, pretty clear that the circumstances surrounding the death of the deceased given in evidence when accepted (as, indeed, they were by the trial court) do not make such a 'complete and unbroken chain of evidence' as would justify a jury (or a trial court) E
in coming to the irresistible conclusion that the prisoner at the bar (in this case, the appellant) and no one else was the murderer. The case of Onufrejezyk (supra) is quite often misunderstood and, in the instant case, the analogy drawn by the trial court from that case is somewhat inappo- F
site; that case shows that the fact of death is provable by circumstantial evidence notwithstanding that neither the body nor any trace of the body has been found and that the defendant has made no confession of any participation in the crime. The issue here is different; there is no ques- G
tion of the body not having been found. What has to be established is the link between the appellant (or his action with the death of the deceased; and in the absence of clear unequivocal evidence (1) that the deceased died directly from the assault by the appellant on him or (2) that the H
appellant was armed with any sharp instrument during the assault on the deceased, it becomes necessary to have medical evidence on the cause of death so as to eliminate the problem raised by the existence of 'a long deep cut' on the body of the deceased. And until that problem is elimi-

nated we are of the firm view that it must be very unsafe to convict for murder, as charged, on the circumstantial evidence available."

I may observe that the facts of this case are clearly not the same as the facts of the case now on hand. Had there been no "long deep cut" found on the back of the deceased in UKORAH there would have been no difficulty in concluding that the deceased died of the assault, by fists, on him. And the appellant in that case would have been held rightly convicted. As it turned out that finding of "long deep cut" threw some doubt on the case for the prosecution as to what exactly killed the deceased - the first blows or the deep cut. In the absence of medical report of a post mortem examination this doubt remained unresolved. No such situation arose in the instant case.

Lastly, in peter Igho v. The State (1978) 3 SC.87, the Appellant was last seen alive with the deceased. His denial was rejected by the court. The court convicted him of murder on this circumstantial evidence. On appeal to this court, it was held that where the facts which were accepted by the court called for an explanation and none is forthcoming such circumstantial evidence, as in that case, is sufficient proof beyond reasonable doubt of the guilt of the accused. The undisputed facts in IGOH'S case are that the deceased left her house on Sunday 20th August 1972 for a religious service but never returned home alive. When the mother did not see her return in the evening, she made a report and a search party was organized by the villagers. Those who saw her last said she was riding at the back of a bicycle. The corpse of the deceased was later found that night. One of the witnesses identified the Appellant as the person giving a ride to the deceased on the back of his bicycle. The Appellant denied carrying the deceased on the back of his bicycle or even seeing her at all. Eso JSC delivering the judgment of this court said at pages 89-9- of the report:

"But then, this is not the only evidence relied upon to convict the appellant. Apart from the evidence of Phillip Umukoro, which has been criticized by the learned counsel for the appellant, there was the evidence of Ayeferherbe Okotie. She too saw the appellant carrying the deceased. The deceased was last seen alive with the appellant. This evidence was accepted by the learned trial Judge. He rejected the de-

nial of the appellant. The only irresistible inference from the circumstances presented by the evidence in this case is that the appellant killed the deceased. We can find no other reasonable inference from circumstances of the case. The facts which were accepted by the learned trial Judge, amply supported by evidence before him, called for an explanation, and beyond the untrue denials of the appellant (as found by the learned Judge) none was forthcoming. See R. v. Mary Ann Nash (1911) 6 Cr. 225, at p.228. Though this constitutes circumstantial evidence, it is proof beyond every reasonable doubt of the guilt of the appellant. For these reasons, we dismissed the appeal."

I may observe at this stage that the learned trial Judge relied on IGOH'S case in convicting the Appellant in this case.

As stated earlier the burden is always on the prosecution to prove the guilt of the accused beyond reasonable doubt and there is no onus on the accused to account for the death of the deceased. Where however, the facts proved in evidence constitute a prima facie case in the sense that they would justify, without in any way constituting any finding of liability, the absence of an explanation of facts which tell against the accused would be treated as evidence against him and where he fails to give an explanation, this failure will support an inference against him. In R. v. Burdett (1820) 4 B & Ald 95, 120; 106 E.R. 873, 883, Abbot CJ observed:

"No person is to be required to explain or contradict until enough has been proved to warrant a reasonable and just conclusion against him, in the absence of explanation or contradiction; but when such proof has been given, and the nature of the case is such as to admit of explanation or contradiction if the conclusion to which the prima facie case tends to be true, and the accused offers no explanation or contradiction, can human reason do otherwise than adopt the conclusion to which the proof tends?"

The facts proved in the case on hand established in my respectful view a prima facie case requiring the Appellant as a matter of common sense to explain what he did with the deceased that night when they both left Mesiogo Restaurant. Where did he take her to? What did he do with her there? The Appellant made false

statements to the police which were admitted in evidence all of which are, in material particulars, inconsistent with his evidence at the trial. The learned trial Judge had no problem in rejecting his evidence and that of his witness. I see no reason to disturb or
 B interfere with the findings of fact made by the learned trial Judge and affirmed by the court below as these findings were based on the credible evidence adduced at the trial. The Appellant rather than give explanation as required of him in the circumstance of this case resorted to lying. He was not satisfied with telling lies but also induced others like
 C PW6 to lie as well regarding his movements on 21/11/90. In his first statement to the police made on 27/11/90 the Appellant admitted being with the deceased on 21/11/90. He however, put a twist on the case by alleging in the statement that Nike Bambo beat up the deceased on 12/11/
 D 90 and that the deceased said she was going to Bambo on 21/11/90 to collect the money Bambo was owing her. He thereby cast suspicion on Bambo for the disappearance of the deceased. Bambo and her husband were consequently arrested by the police. In his second statement to the
 E Police in connection with the disappearance of the deceased (Exhibit G) made on 4/12/90, it was still his case that he dropped the deceased on 21/11/90 at the Secretariat Roundabout. In his 3rd statement to the Police (Exhibit F) made on 6/12/90, he still admitted meeting the deceased on
 F 21/11/90 but that he dropped her at the Secretariat Roundabout Ibadan. He made a fourth statement (Exhibit H) on 10/12/90. He stated therein that it was on 20/11/90 that he took the deceased to Mesiogo Restaurant and that on 21/11/90 he dropped her at the Secretariat Roundabout because the deceased said she was going to collect money from Nike Bambo.
 G In his evidence at the trial he denied completely going out with the deceased on 21/11/90. Adenike Bambo Ishola made statement to the police and gave evidence at the trial she denied having any monetary transaction with the deceased. She also denied seeing the deceased on 21/11/90.
 H The learned trial Judge accepted her evidence.

PW6 (Tajudeen Yinusa) in his evidence at the trial gave an account of how the Appellant induced him to make a false statement to the Police. He testified thus:

"On 23/11/90 the accused invited me to his office. There the accused told me that Miss Ranti Moradeyo had been murdered. He told me that he had arrested the murderers with the assistance of the police. He advised me that if the police should ask me as to where we took Miss Ranti Moradeyo, I should tell them that we dropped her at the Secretariat. He said if I should fail to say so he would use medicine to course me.

On the following Saturday the accused sent one man called Gbenga to me. On 28/11/90 the police came to my workshop in company of the accused. I was invited to the police station of Eleiyele.

At Eleiyele I narrated the whole story to the police and I later made a written statement to the police. I first made a statement to the police that he dropped Ranti Moradeyo at the Secretariat. I was put in the police cell where other occupants beat me up.

I later made a true statement to the police. "The balance in the deceased's passbook with the Union Bank (Exhibit J) gave a lie to the statement of the Appellant wherein he claimed that the deceased told him that her bank (Union Bank) was to sue her for the amount of N10,000.00 she was owing the bank hence she was going to Nike to claim what Nike was owing her. The last entry in the passbook shows that at the material time the deceased had a credit balance of over N12,000.00 in her account.

Not content with trying to implicate Adenike in the death of the deceased and inducing PW6 to lie as to his movements on 21/11/90 he also procured PW19 to implicate another person called Sade in the death of the deceased. PW19 (Musibau Abiodun Sulaiman) testified as follows:

"The accused then told me that he would want an assistance from me. I asked him to let me know the type of assistance he would want me to render.

The accused told me that his wife had been murdered. He said the police had investigated the case and found that he had hand in the murder of his said wife He said I should volunteer to tell the police that it was Shade called Blessing that organized thugs to kill Oluranti. He promised to give me N250,000.00 and a 505 Puegeot Evolution type and a block of four flats if I should tell the police accordingly. I refused to do

so. *The accused started to beg me to assist him. The accused threatened to kill me inside the prison yard. I begged him to let me get out and that I would assist him. The accused detailed another person awaiting trial to maltreat me by keeping me in the toilet for a long time.*

B *One Ajayi a warder in the prison yard approached me to assist the accused and I told him that I would co-operate in order to put an end to the maltreatment.*

Later Ajayi and the accused took me to the prison Superintendent by name Mr. Fashola who interviewed me. Mr. Fashola advised me to co-operate with the accused. I had to agree to make the statement. The accused told me that I should mention in the statement that Ranti was killed around Sanyo area. A tape recorder was taken from a prisoner called 'landlord' by the yard master, Mr. Ajayi. They then recorded my statement in a tape recorder. Mr. Fashola later gave us Gari and Kulikuli which we took into our cell.

When police came few days later I was taken to Mr. Fashola's office where I made the same statement as the one recorded in the tape recorder because the accused and Mr. Fashola were around then. I could not give the true account to the police.

The accused and the police told me that I was going to be only a witness to the police.

F *On 2/9/91 the police arrested me at the customary court for the offence of murder and I was taken to Eleiyele Police Headquarters where I made a true statement to the police having escaped from the undue influence of the accused and that of Mr. Fashola."*

The learned trial Judge accepted the evidence of this witness.

G *The question arises: why was it necessary for the Appellant to go all out not only to induce someone to lie about his movement on 21/11/90 but he too to attempt to implicate Adenike Bambo and to procure PW19 to implicate Sade Blessing? **The conduct of the Appellant after the deceased was last seen with him furnished, in my respectful view, cogent evidence of his guilt in the murder of the deceased. I am satisfied that the totality of the evidence accepted by the learned trial Judge points irresistibly to the Appellant, and no other person, as the***

perpetrator of the dastardly act meted to the deceased on or about 21/11/90 which led to the death of the latter. His conduct after the deceased was last seen alive with him was more consistent with his guilt than his innocence. The totality of the circumstantial evidence against him raised a case much higher than suspicion; it sufficiently proved the case against the Appellant beyond all reasonable doubt. B

I have no hesitation in rejecting the submission of learned counsel for the Appellant that because there was no Coroner's inquest the case against the Appellant was not proved. I know of no law, nor has our attention been drawn to any authority, affirming this proposition. Section 4 of the Coroner's Law Cap 28 Laws of Oyo State is a complete answer to learned counsel's submission. It states: C

4. Whenever a coroner is informed that the body of a deceased person is lying within his jurisdiction and that there is reasonable cause to suspect that such person has died either a violent or an unnatural death, or has died a sudden death of which the cause is unknown, or that such person has died whilst confined in a lunatic asylum, or in any place or circumstances which, in the opinion of the coroner, makes the holding of an inquest necessary or desirable, such coroner shall, subject as hereinafter in this section provided, hold an inquest on such body as soon as is practicable: D E

Provided that -

(a) Whenever it shall appear to the coroner, either from the report of a medical practitioner rendered under section 12 or otherwise, that the death is due to natural causes, and that the body shows no appearance of death being attributable to or of having been accelerated by violence or by any culpable or negligent conduct either on the part of the deceased or of any other person, it shall thereupon be lawful for the coroner at this discretion (except in the cases specified in section 6) to dispense with the holding of an inquest, and, in the case of a registrable death, he shall notify the registrar appointed under the provisions of the Burials Law; F G H

(b) Where the coroner is informed that criminal proceedings have been or are about to be instituted against any person already in custody

or about to be arrested in respect of such death, the inquest shall not be commenced, or if commenced shall not be continued or resumed, until such proceedings have been concluded."

In view of the provision of proviso (b) above coroner could not have conducted an inquest since criminal proceedings were to be taken against the Appellant.

In view of all that I have said above all the issues canvassed in this appeal in favour of the Appellant fail. I find no substance in the appeal which I hereby dismiss. I affirm the judgment of the court below.

WALI JSC

I have been privileged to read in advance, the lead judgment of my learned brother JSC; and I agree with the reasons given therein for dismissing the appeal.

For the same reasons I also find no substance in the appeal and I hereby dismiss it. The circumstantial evidence adduced by the prosecution is over-whelming and proved the case beyond reasonable doubt that it was the appellant that murdered the deceased. The concurrent findings of fact by the two lower courts have not been faulted.

Both the conviction and sentence are affirmed.

KUTIGI JSC (Dissenting)

The appellant at the High Court, Ibadan was charged with the offence of murder of one Ranti Moradeyo, contrary to section 319(1) of the Criminal Code of Oyo State. He pleaded not guilty.

At the trial the prosecution called some nineteen witnesses while the appellant testified in his own defence and called one other witness. In a reserved judgment the learned trial judge found the appellant guilty and convicted him accordingly. He was sentenced to death.

Dissatisfied with the judgment of the High Court, the appellant appealed to the Court of Appeal, Ibadan Judicial Division. In a unanimous judgment, his appeal was dismissed.

Further aggrieved by the decision of the Court of Appeal, the appellant has now appealed to this court.

The facts of the case which are not in anyway disputed may be stated thus-

The appellant and the deceased were boy and girl friends. The appellant used to visit the deceased at her working place at Samonda Area, Ibadan to pick her for outings. On the fateful day, 21/11/90, the appellant as usual picked up the deceased from her office in a puegeot 504 saloon. The car was driven by PW.6. PW7 was also in the car. PWs. 1 and 11 saw the appellant when he picked the deceased. After picking up the deceased at 5.00 p.m. They all drove to the appellant's office at Adegbayi area, Ibadan. At the appellant's office, PW.6 left the group for his own workshop in his 504 car. Thereafter at about 6.30 p.m., the three of them, appellant, deceased and PW.7 drove in appellant's 505 saloon car to Mesiogo Hotel, Ibadan, for relaxation where the appellant had a bottle of beer, while the deceased and PW7. had a bottle of soft drinks each. PW3 served the group in the hotel. PW.7 on finishing his drinks left the couple behind and went away. Eventually at about 7.30p.m the couple, appellant and deceased, left the hotel together while the appellant's car was left behind inside the hotel garage. Later at about 10.30p.m night, the appellant came back to the hotel alone to pick his car and drove out of the hotel. Since the appellant and the deceased were seen walking out of the hotel together, the deceased was never seen alive again.

On the following day, 22/11/90, the corpse of the deceased was found at Sanyo area along Ibadan-Lagos expressway from where it was deposited in the mortuary at Adeoyo State Hospital, Ring Road, Ibadan. Needless to say that the appellant had on the same 22/11/90, around 10.30.am. gone to ask of the deceased in her usual place of work. He was told by PWs. 1 and 11 that they had not seen her since she left with him the previous day, (21/11/90).

After his arrest, the appellant made four different conflicting statements to the Police in connection with the case. He also gave evidence on oath at his trial which again was different from all his statements to the police. The learned trial judge had no difficulty in rejecting the statements

as well as the evidence, as totally unreliable. I think he was right.

At the hearing of the appeal counsel on both sides adopted their briefs of argument filed in the case. Additional oral submissions were also made. In the appellant's brief, three issues were formulated for resolution.

B But in my view the crucial issue and which issue covers all the other issues therein is issue (2) which reads:-

"Whether the court below was right in holding that the circumstantial evidence proffered by the prosecution is sufficient enough to ground the appellant's conviction."

C The appellant contended that the prosecution's case against him was founded on mere suspicion. That the circumstantial evidence proffered was weak and did not point irresistibly at him. It was also contended that the prosecution had failed to prove its case against the appellant beyond all reasonable doubt. That there was no link between the appellant and what caused the death of the deceased. We were asked to allow the appeal and set aside the judgments of the lower courts and to discharge and acquit the appellant.

E The respondent on the other hand said the case of the prosecution has been proved beyond reasonable doubt. That the circumstantial evidence has been cogent, pungent and irresistible leading to no other conclusion than the fact that the appellant caused the death of the deceased. The court was urged to dismiss the appeal and affirm the judgment of the court below.

G Clearly there was no eye witness account of the circumstances in which the deceased, Ranti Moradeyo, met her death. The evidence against the appellant in the trial court is therefore indisputably circumstantial. That much was realized by the learned trial judge when he said:-

"There is no doubt that there is no direct evidence to connect the accused with the killing of the deceased. The evidence that can be relied on to determine the connection of the accused with the death of the deceased is limited to circumstantial evidence. In a murder charge evidence of surrounding circumstances may be used to find an accused guilty of the offence of murder."

I agree.

The question now is-Where and what is the evidence of surrounding circumstances available to be used against the appellant in this case? To me the answer is to be found on pages 101-102 of the record where the learned trial judge made his findings of fact. He said:-

"having considered the evidence led by the prosecution and the defence put forward by the accused together with the final submissions of both counsel, I hereby make the following findings of fact:-

(a) That the accused and Ranti were girl and boy friends.

(b) That the accused used to visit the working place of the deceased always.

(c) That on 21/11/90 the accused picked the deceased up in a Peugeot 504 saloon car driven by Yinusa on her way back from a village behind I.I.T.A. Ibadan.

(d) That it was on 21/11/90 after the accused, Alakodi and Yinusa picked up the deceased in her office after 5.p.m. that they both went to Oranyan before they later went back to the accused's office.

(e) That 1st p.w. saw the accused and two others on 21/11/90 when the deceased, Ranti was picked from her office.

(f) That after getting to the office of the accused on 21/11/90 then Yinusa left them and went back to his workshop with the peugeot 504 car.

(g) That thereafter the accused went with Ranti and Alakodi to Mesiogo hotel at about 6.30p.m where they had some drinks.

(h) That the accused had a bottle of gulder beer while Ranti and Alakodi had maltex and soft drink.

(i) That the 3rd p.w was the one who served the drinks.

(j) That Alakodi having finished his drinks left the accused and the deceased behind at Mesiogo hotel.

(k) That later that evening the accused and the deceased left together from mesiogo hotel and the accused's vehicle was left behind.

(l) That it was only the accused that came back alone to pick his peugeot 505 in the night of 21/11/90, without coming back with the deceased with him, he went away from the hotel.

(m) That the deceased could not be found in her office when the

accused went back there on 22/11/90 at about 10.30 a.m.

(n) *That Ranti was later found already dead in the public mortuary, Adeoyo, Ring Road hospital , Ibadan.*

(o) *That by the doctor's report the cause of death was as a result of head injury consistent with one caused by being hit on the head by a sharp object. That all lacerations on her body were caused by a sharp object."*

It is important to note that none of these findings of fact was challenged in the Court of Appeal nor in this court. They must therefore be taken as accepted on both sides. But I wish to make some observations immediately on the first and the last findings above.

First of all, as found by the High Court in No. (a) above, the appellant and the deceased were boy and girl friends. There is no evidence from any of the prosecution witnesses that the amorous relationship between the two was under any strain or in any danger of a break-up. They did not quarrel or fight or disagree with one another. Absence of motive one may say. And you will be right though this is not necessary in a charge of murder. The mother of the deceased testifying as PW.4 said in her evidence:-

"I know the accused. He used to come to my house to see my late daughter called Ranti. I asked my daughter the relationship between her and the accused. She told me that she wanted to marry him."

Secondly, the last finding No. (o) above, clearly stated beyond doubt that the deceased died as a result of head of injury consistent with being hit on the head with a sharp object, and that all laceration on her body were caused by a sharp object. Here again and this is very important, none of the prosecution witnesses said he or she saw the appellant armed with holding any sharp object on the fateful day (21/11/90).

Thirdly, there was evidence before the High Court that the appellant was a herbalist. During their investigation, the police recovered fifteen (15) assorted charms from the vehicle of the appellant. The charms were tendered in evidence as Exhibits M-M14. It is significant to observe that the Medical Doctor who examined the dead body in details did not show or state that any part of the body or organ of the deceased had been

removed or tampered with as would be expected of a herbalist! Absence of motive again one may say. And again I think you will be right.

Now, based on his findings of fact above, the learned trial judge had no difficulty in coming to the conclusion and I agree with him, that Ranti Moradeyo has died. He also held and I agree with him again, that the deceased met her death by being hit on different parts of her body by a sharp object. But when the learned trial judge came to consider the crucial question on page 109 of the record- "Was it the accused who did the killing of the deceased?" He said:-

"There is no doubt having regard to the evidence before the court that nobody saw the accused inflicting the type of injuries found by the doctor, the deceased was last found alive in company of the accused at Mesiogo Hotel before both of them went out together and the fact the accused alone came back to the hotel to take away his vehicle has not been contradicted. Where did the accused take the deceased to for about three hours before he came back alone.

The proof of the guilt of the accused depends on circumstantial evidence."

The learned trial judge then referred to the cases of PAULINUS UDEDIBIA & ORS. V. THE STATE (1976) 11 SC. 133 and PETER IGHO V. THE STATE (1978) 3 SC. 87; and continued:-

"The fact before the court which I have accepted, requires and called for explanation from the accused where he took the deceased to from the hotel for about three hours before he later came back to the hotel alone to drive away his vehicle. No. explanation is forth coming from the accused. The circumstantial evidence before the court points to no other person that could have murdered the deceased."

I think the High Court with due respect was wrong for holding that the appellant caused the death of the deceased by hitting her on the head with a sharp object when there was no evidence that the appellant had any sharp object or any object at all with him on the fateful day. That evidence was vital. It was missing. The omission is fatal. In PAULINUS UDEDIBIA & ORS. V. THE STATE (supra) this Court said:-

"Where as in this case, direct testimony of eye-witnesses is not

available, the court is permitted to infer from the facts proved the existence of other facts that may be legally inferred. But in drawing inferences of the guilt of an accused person from circumstantial evidence, great care must be taken not to fall into serious error based on fallibility of inference. Circumstantial evidence must always be narrowly examined, if only because this type of evidence may be fabricated to cast suspicion on innocent persons (See TEPER B. R (1952) A.C. 480 at 469.)"

I believe the proper course for the learned trial judge is that after making his findings of fact above, he should then consider whether they form a complete and unbroken chain that leads irresistibly to the inference that the appellant is guilty beyond reasonable doubt. This he failed to do. The chain in this case, I must say is incomplete. There was no evidence, I repeat, there was no evidence, that the appellant was armed with a sharp object or any object at all on the fateful day. It is only when that is done, that you can infer that he killed her the way described in the Medical Report.

I have also read the case of PETER IGHO V. THE STATE (supra) relied upon by the learned trial judge. It is a short judgment. It is distinguishable from this appeal in that although the corpse of the deceased was recovered as in this case, there was no evidence in that case as to the cause of death because there was no post mortem examination of the body of the deceased. I stress again, that there was no medical report or other evidence establishing the cause of death of the deceased in that case as in the instant appeal. I also stress that the condition of the corpse as to whether or not there were injuries or cuts or marks of violence on the dead body were nowhere stated or available in that case as herein now. The case of PETER IGHO is therefore not an authority in my view for finding against the appellant as the learned trial judge appeared to have done in this case.

I think on circumstantial evidence alone, every case ought to be decided on its own particular facts and circumstances. The facts and circumstances do vary. Having made his findings of fact above, the learned trial judge was expected to have considered his findings care-

fully. It is not enough if it creates suspicion, even strong suspicion, it must be so cogent as to leave no room for reasonable doubt. My candid view is that the circumstances of this case were no more than circumstances of suspicion which were again insufficient to support the finding that the appellant caused the death of the deceased by hitting her on the head with a sharp object, there being no evidence that the appellant was armed with any sharp object and therefore nothing to link the appellant with the death of the deceased. It was not enough for the learned trial judge to have merely said as he did above that:-

"The fact before the court which I accepted requires and calls for explanation from the accused where he took the deceased to from the hotel alone to drive away his vehicle."

and to have concluded that therefore the appellant must be the person who murdered the deceased. The inference is clearly unsupportable by the findings of fact above. It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence, to be sure that there are no other co-existing circumstances which would weaken or destroy the inference as in this case.

In the case of STEPHEN UKORAH V. THE STATE (1977) 4 SC. 167; where the conviction of the appellant was based on circumstantial evidence, this court allowing the appeal and setting aside the conviction and sentenced had this to say:-

"What has to be established is the link between the appellant (or his actions) with the death of the deceased, and in the absence of clear unequivocal evidence:

(1) that the deceased died directly from the assault by the appellant on him, or

(2) that the appellant was armed with any sharp instrument during the assault on the deceased, it becomes necessary to have a medical evidence on the cause of death so as to eliminate the problem raised by the existence of "a long deep cut" on the body of the deceased. And until that problem is eliminated we are of the firm view that it must be very unsafe to convict for murder as charged, on the circumstantial evidence available. The Romans had a maxim that it is better for a guilty person

to go unpunished than for an innocent one to be condemned" (see also TEPER V. R. (supra).

In this appeal the Medical Report is clear and unambiguous. But what has to be established is the link between the appellant and or his actions with the cause of death of the deceased. In other words, that the appellant was armed with a sharp object when he was together with the deceased at all material time. And until that problem is resolved, it must be unsafe in my view to convict the appellant of murder.

From the proved and accepted facts above, it is clear to me that the circumstances surrounding the death of the deceased do not make such a complete and unbroken chain of evidence as would justify the trial court, as confirmed by the Court of Appeal, in coming to the irresistible conclusion that the appellant and none else committed the offence. What has to be established here I repeat, is the link between the appellant and the cause of death of the deceased and in the absence of clear unequivocal evidence that the appellant was armed with any object on the fateful day, I am of the firm view that it would be very unsafe to convict the appellant of murder as charged on the circumstantial evidence available. (See UKORAH V. THE STATE (supra).

The appeal therefore succeeds. It is hereby allowed. The conviction and sentence of both the High Court and the Court of Appeal are hereby set aside. The appellant is discharged and acquitted.

MOHAMMED JSC

I have had the preview of the judgment just delivered by my learned brother, Ogundare, JSC, and I agree with his opinion that this appeal ought to fall. It is a fact that the conviction of the appellant has been based on circumstantial evidence.

Circumstantial evidence, in order to furnish a basis for conviction requires a high degree of probability, that is so sufficiently high that a prudent man, considering all the facts and realizing that the life or liberty of the accused depends upon the decision, feels justified in holding that the accused committed the crime. I know that for circumstantial

evidence to be relied upon and believed, justifying the inference of guilt of the accused, the inculpatory facts must be incompatible with the accused innocence.

I have therefore considered the circumstantial evidence adduced in his murder case and as my learned brother, Ogundare J.S.C, has evaluated the facts I am in no doubt whatsoever that the conviction of the appellant is right and proper. The appeal is dismissed.

ONU JSC

I had a preview of the judgement of my learned brother Ogundare, JSC just delivered. I am in entire agreement with it that this appeal lacks substance and it is accordingly dismissed by me.

Like many cases before it in the annals of the judicial history of this court, here is another glaring case wherein we are being called upon again to unhesitatingly uphold the conviction and sentence passed on an accused person (appellant herein) for murder based on CIRCUMSTANTIAL EVIDENCE.

The facts of this case have been most comprehensively set out admirably treated in the lead judgment of my learned brother that it will, in my respectful view, amount to repetition to review them all over here. Suffice it to say, that in confining myself to the law applied to those facts, I will make the following humble contributions of mine in expatiation:-

A long line of cases beginning with R. v. Sala Sati (1938) 3 WACA 10 has laid it down that to support a conviction based on circumstantial evidence it must not only be cogent, complete and unequivocal but compelling and lead to the irresistible conclusion that the accused and no one else is the murderer; it must leave no ground for reasonable doubt. See this court's decisions in Joseph Lori & Anor .v. The State (1980) 8-11 SC.11; Uwe Esai & Ors. v. The State (1976) 11 SC. 39 and Paul Udedibia & ors. v. The State (1976) 11 SC.133 at 138-139. Thus, the evidence must be cogent and compelling to convince a jury of the guilt of the accused and must also lead irresistibly to the guilt of the accused and

inconsistent with any other rational conclusion, to wit: there must be no other co-existing circumstances which can weaken such inference. See Philip Omogodo v. The State (1981)5 SC. 5 at 24; Igboji Abieke & Anor v. The State (1975) 9-11 SC. 97 at 104 and Edobor v. The State (1975) 9-11 SC. 69 at 75.

On circumstantial evidence as one of the modes to prove a case beyond reasonable doubt, this court (per Oputa, JSC) has had the occasion to state in Adio v. The State (1986) 2 NWLR (part 24) 585 at 593:

"It is often said that witnesses can lie. So in that sense, circumstantial evidence affords better proof beyond reasonable doubt."

See also Ikomi v. The State (1986)3 NWLR (part 28) 340; Buje v. The State (1991)4 NWLR (part 185) 287; Kim v. The State (1991)2 NWLR (part 175) 622; Yongo v. C.O.P. (1992)8 NWLR (part 257)36 and Lori v.

The State (supra). Thus, in Fatoyinbo v. Attorney General Of Western Nigeria (1966) NWLR 4, it was held that although there was no evidence that the appellant was seen striking the deceased with a matchet some circumstances clearly emerged from the evidence given by the prosecution, which resulted in the conviction of the appellant. The appellant was seen sitting astride the prostrate body of the deceased soon after the murder.

On the need to keep out suspicion and draw the proper inference of the accused's guilt from circumstantial evidence, this court has stated in such cases as Okoro Mariagbe v. The State (1977)3 SC. 47 and Edet Obosi v. The State (1965) NMLR 129, the latter cited with approval in the dictum of Lord Normand in Tepper v. Queen to the effect that-

"Circumstantial evidence may sometimes be conclusive but it must always be narrowly examined, if only because evidence of this kind may be fabricated to cast suspicion on another..... It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no-existing circumstances which would weaken or destroy the inference."

This is why Obaseki, JSC applying the same test in Onah v. The State (1985) 3 NWLR (part 12) 236 at 244 observed as follows:-

"The High Court and all courts of law are in duty bound to give

critical examination to evidence adduced before them and ensure that the innocent are not punished or the guilty set free. They should act on evidence and not on hunches, rumours or suspicion so as to ensure that justice in its purest form is administered in the courts to all and sundry."

In the light of the principles enunciated by this court therefore, where direct testimony of eye-witnesses is not available as to be commission of the crime, the court is permitted to infer from the facts proved the existence of other facts that may be logically inferred. In drawing inference of the guilt of an accused person from circumstantial evidence, however, great care must be taken not to fall into serious error based on fallibility of inference. See Udedibia v. The State (supra); Hyacinth Ibina v. The State (1989)5 NWLR (part 120) 238 at 250. Thus, absence of credible explanation from the appellant in whose company the deceased was last seen before her body was found with extreme violence done to it as a result of which she died, leaves no other inference than that the appellant killed the deceased. See Peter Igho v. The State (1978)3 SC. 87 and Patrick Efe v. The State (1976)11 SC. 75 at 79. This is why in the instant case, the inference of guilt attributable to be appellant became overwhelming (suspicion excepted) when the learned trial Judge who saw, heard and observed the demeanour of witnesses inclusive of the appellant arrived at the following inescapable findings of fact:-

"(a) That the accused and Ranti were girl and boy friends.

(b) That the accused used to visit the working place of the deceased always.

(c) That on 21/11/90, the accused picked the deceased up in a Peugeot 504 Saloon car driven by Yinusa on her way back from a village behind I.I.T.A., Ibadan.

(d) That it was on 21/11/90 after the accused, Alakodi and Yinusa picked up the deceased in her office after 5 pm that they both went to Oranyan before they later went back to the accused's office.

(e) That 1st PW saw the accused and two others on 21/11/90 when the deceased, Ranti was picked from her office.

(f) That after getting to the office of the accused on 21/11/90 then Yinusa left them and went back to his workshop with the Peugeot

504 car.

(g) *That thereafter the accused went with Ranti and Alakodi to Mesiogo hotel at about 6.30 pm where they had some drinks.*

(h) *That the accused had a bottle of gulder beer while Ranti and Alakodi had maltex and soft drink.*

(i) *That the 3rd PW was the one who served the drinks.*

(j) *That Alakodi having finished his drinks left the accused and the deceased behind at mesiogo hotel.*

(k) *That later that evening the accused and the deceased left together from mesiogo hotel and the accused's vehicle was left behind.*

(l) *That it was only the accused that came back alone to pick his Peugeot 505 in the night of 21/11/90, without coming back with the deceased with him, he went away from the hotel.*

(m) *That the deceased could not be found in her office when the accused went back there on 22/11/90 at about 10.30.am.*

(n) *That Ranti was later found already dead in the public mortuary, Adeoyo, ring road hospital, Ibadan.*

(o) *That by the doctor's report the cause of death was as a result of head injury consistent with one caused by being hit on the head by a sharp object. That all lacerations on her body were caused by a sharp object."*

Later down in the judgment, the learned trial Judge held:

"I therefore reject the evidence of the accused that on 21/11/90 the deceased dropped at the Secretariat round about and that the deceased went in a bus to challenge area, Ibadan. There is no doubt in my mind that the accused had concocted that type of evidence in order to create a break in the chain of events which cumulated in the disappearance of Ranti Moradeyo, the deceased after the accused and Ranti the deceased left for Mesiogo hotel on 21/11/90 for an undisclosed place and that it was only accused who returned that night before he drove away his vehicle from the said hotel. The invention of such a story led to the arrest of Nike Adebambo, the 13th PW and her husband before they were released by the police for want of evidence against them."

Continuing, the learned trial Judge held inter alia:

"The salient facts relied upon by the prosecution to connect the accused with the death of the deceased are:-

1. The fact that the deceased and the accused were together when the accused left his car behind.

2. That when the accused returned to the hotel he did not come back with the deceased.

3. That the following day Ranti did not report at work.

4. That body of the deceased was found around Sanyo area on the following day.

5. That by the medical report the cause of death was due to injuries inflicted on the body of the deceased by a sharp object."

He thereupon paused and asked:

"Are (sic) the above evidence enough to connect the accused with the killing of the deceased?"

In answering the above question, the learned trial Judge after examining microscopically some English as well as local authorities and asserting for instance, how in the case of R. v. Onufrejczyk (1955) 1QB 388 Lord Goddard had proposed that the charge of murder is provable by circumstantial evidence notwithstanding that neither the body, nor any trace of the body of the deceased had been found; not even when the accused made no confession, he could albeit be convicted as render the commission of the crime with certainty and yet leave no ground for reasonable doubt. He (learned trial Judge) then went on to enquire by stating as follows:-

"Where did the accused take the deceased to for about three hour before he came back alone? The proof of the guilt of the accused depends on circumstantial evidence."

See also Taylor & ors. v. R. 21 CAR 20 at 21 and The State v. Nafiu Rabi (1980)1 NCR 47. He proceeded to conclude:

"The facts before the court which I have accepted requires and called for explanation from the accused where he took the deceased from the hotel for about three hours before he later came back to the hotel alone to drive away his vehicle. No explanation is forthcoming from the accused.

The circumstantial evidence before the court points to no other person that could have murdered the accused (sic).

Though it is circumstantial evidence which is a proof beyond every reasonable doubt against the accused.

B *I therefore hold that on the totality of the evidence before the court, the prosecution has proved the charge of murder of the deceased Ranti Moradeyo against the accused beyond every reasonable doubt*"

In affirming the trial court's decision the Court Appeal (Coram: Mukhtar, Oguntade and Salami, JJ.CA) held among other things that:

C *"There is no suggestion before us that the evidence has been fashioned to cast suspicion on the appellant. So also is there no co-existing circumstance which destroys or weakens the inference. It is not beyond common sense to invite the appellant to proffer some explanations for his conduct soon after the disappearance of the deceased. Did it not behove the appellant to explain why he chose to go out with the deceased in a taxi and left his car behind at Mesiogo hotel on 21/11/90? It is incumbent on him to explain how the deceased who was last seen with him alive came to be stone dead. The pieces of evidence on the conduct of the appellant soon after the commission of the offence rather than derogate from it corroborated as well as strengthened the prosecution's case when he lied with reckless abandon that he was not at mesiogo hotel on 21/11/90 and when he said he escorted the deceased to her residence at Bodija in his evidence-in-chief contrary to his extra-judicial statement, Exhibit H, where he alleged that seventh PW escorted her to gate. The lie or lies amounted to corroboration. See Otufale & ors. v. The State (1968) NMLR 261 at 268 where the erstwhile Western State Court of Appeal per eso, J.A. (as he then was) said-*

"If that was established then the appellant would have lied on this issue and the lie might have amounted to corroboration..."

Continuing, the learned Justices added:

H *"The appellant had opportunity to perpetrate the murder of the deceased and his various lies including the one that he visited Mesiogo restaurant (sic) or hotel with the deceased last on 20/11/90 as against 21/11/90 would not have placed innocent colouration on the matter.*

Finally, on this issue, the learned Counsel seems to create the impression in his submission in the appellant's brief that in absence of a motive circumstantial evidence is weakened. That is not the law. It is immaterial to the prosecution's case whether or not motive or motives had been established. In fact, proof of motive for murder is not prerequisite for a successful prosecution. Absence of motive does not detract from the prosecution's case although presence of motive strengthens the case for the prosecution."

In conclusion, they asserted as follows:-

"I agree with the learned counsel that the criticism of the learned trial Judge's method of writing his judgment appears to be unfair. The learned trial Judge summarized the case of each party before reviewing or evaluating the evidence produced before him. He also reviewed the address of both counsel. The findings made by the learned trial Judge and which findings being strenuously attacked were mainly on issues upon which the parties are fairly agreed, or which are not seriously in controversy. Thereafter the learned trial Judge did the review and evaluation of evidence produced before him from line 32 of page 102 to page 111 particularly at pages 106 and 107 where he carefully examined the evidence of sixth and nineteenth prosecution witnesses."

In any case, the complaint goes to the choice of style adopted by the learned trial Judge in writing his judgment. A trial Judge is free or at liberty to employ his own style so far it is reflected in his judgment that his views are true reflection of evaluation of evidence adduced before him by both parties to the dispute. The rule enunciated in Mogaji & ors. v. Odofin (1978)4 SC. 91, 94 and Bello .v. Eweka (1981)1 SC. 101 have been adequately explained by the Supreme Court in the case of Amokomowo v. Andu (1985)1 NWLR (part 3) 530. The rule demanding weighing of evidence on an imaginary scale in Mogaji's case (supra) is not inflexible so says the Supreme Court in the recent case of Amokomowo (supra) that if it is shown that the trial Judge on the final analysis did consider the evidence of both parties then his judgment would be unassailable and would therefore, not be disturbed."

I cannot agree more.

The evidence of circumstances in the instant case could have been stripped of its shroud sooner but for the web of intrigues and lie-telling wound around it by the appellant. Once his contradictory statements and lies were exposed through and through, however, there was left in the after-
B math no hiding place; what we are left with concurrent decisions of fact of the two courts below. With their being shown not to be perverse, I see no reason to disturb what amounts in clear terms to proof beyond rea-
C Adekoya (1974)1 All NLR 35 at 41; Akpagbue &1 other v. Ogu & ors. (1976) 6 SC.63 and Ebba v. Ogodo (1984)4 SC. at 98.

For the above reasons and the fuller ones contained in the lead-
ing judgment of my learned brother Ogundare, JSC I too dismiss the
D appeal and make similar consequential orders as those contained therein.

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