

COURT OF APPEAL
PORT HARCOURT DIVISION
9TH APRIL, 1998. CA/PH/195/96
CORAM:- A. I. KATSINA-ALU, S. O.
UWAIFO, S. A. NSOFOR, JJCA

JAMES ALADU	APPELLANT
V.		
THE STATE	RESPONDENT

CONSTITUTIONAL LAW - Fair trial of an accused - Is guaranteed by s. 33 (b) (a) of the Constitution and s. 215 of the CPL - For a proper trial - The provisions ought to be complied with.

CRIMINAL PROCEDURE - Arraignment - Plea of the accused - Was properly secured in this case - In full compliance with s. 33 (b) (a) of the Constitution and s. 215 CPL

CRIMINAL PROCEDURE - Doubt - As to who killed the deceased - To be of any import ought to be a reasonable doubt.

CRIMINAL PROCEDURE - Identification parade - Is not necessary - Where the witness knew the accused previously.

CRIMINAL PROCEDURE - Proof beyond reasonable doubt - Is a basic necessity - The degree need not reach certainty - But must carry a high degree of probability.

CRIMINAL PROCEDURE - Statement from the dock - Being unsworn - Is not evidence that can be cross examined - But the jury can give to it such weight as they think fit.

EVIDENCE - Expert's opinion - Are admissible on a subject - Upon which competence to form an opinion - Can only be acquired by a course

of special study or experience.

MURDER - *Defences available to accused - Duty of court to consider them - Is limited to such defences that fairly arose from the evidence.*

FACTS

The appellant was charged before the Orlu judicial division of the Imo State High Court with the offence of murder. He pleaded not guilty to the charge. The prosecution called 5 witnesses towards proving its case. The star witness for the prosecution, PW 5, was the daughter of the deceased. It was in the cause of her harvesting cassava with her blind deceased father that the appellant came to the farm. He queried why they were harvesting his cassava in his farm. He was holding a gun which he fired at the deceased. PW5 ran home, reported the incident to her people and they lodged a report to the police. The appellant made a statement to the police which was confessional in nature. During the trial, appellant elected to give evidence from the dock and was not cross examined. He alleged that the deceased wanted to cut him with a machet and then he fired the deceased with his dane gun. He alleged that the deceased was not blind.

The trial court found the appellant guilty as charged, convicted him accordingly and sentenced him to death. Being dissatisfied, appellant has appealed to the Court of Appeal raising 3 issues.

ISSUES FOR DETERMINATION

"(i) Was the plea of the appellant a valid plea consistent with sec. 215 C.P.L. and sec. 33(6) (a) of 1979 Constitution?

(ii) Was the learned trial Judge right to have rejected the medical doctor's report and evidence as to the cause of the death?

(iii) Was the trial Judge right to say that the prosecution proved the guilt of the accused beyond reasonable doubt?

HELD (Unanimously dismissing the appeal per lead judgment of **NSOFOR JCA**)

Fair trial of an accused

1. Both section (33)(6) (a) of the Constitution and section 215 of the C.P.L. have been specifically provided to guarantee the fair trial of an accused person. Their provisions are mandatory. For a proper trial on arraignment of a person these provisions ought to be fully complied with. The rationale is that the language of the court in which the charge is drafted is English. But English is not the mother tongue of Nigerians. Majority of Nigerians are indeed illiterate in English and even those of them who are literate in English may not easily follow and comprehend the language of the court. It becomes, therefore, necessary that there be a valid and proper arraignment or else the whole trial and proceedings will be null and void. (p. 246 D)

Arraignment - Plea of the accused

2. From the plea as recorded in this particular case, it ought to be admitted impliedly that what was so read over and so explained to the accused, by the registrar or other officer of the court was read and explained to him before he pleaded "not guilty", was understood by him. For how otherwise would he have pleaded to the information if he never understood what he was pleading to? And how otherwise could he have understood what was read and explained to him unless it was explained to him in a language he understood? The accused it may be noted was represented in court by counsel. Besides, it was for the court or the Judge who is to be satisfied that the accused understood what was read to him and explained to him before he (the Judge) calls upon the accused to plead to the information. Having called upon the accused to plead to the information, it must be impliedly admitted that the court (or Judge) was "satisfied" that the accused understood what was read to him and explained to him before he pleaded to the information. All I am trying to say, perhaps imperfectly, is this. In my view of the plea as recorded in this particular case, I have no hesitation in holding that there was a compliance fully with the provisions of both section 215 of the C.P.L. and

section 33(6) (a) of the 1979 Constitution of Nigeria. My resolution of the issue becomes obvious. I have no hesitation in reaching the conclusion that the issue ought, *ex necessitate*, to be resolved in favour of the respondent and, eo ipso, against the appellant. The ground of appeal B from which the issue is distilled, therefore, fails. (p. 251 B)

Evidence - Expert's opinion

3. The opinions of experts are admissible whenever the subject is one C upon which competency to form an opinion can only be acquired by a course of special study or experience. See folks v. Chadd (1982) 3 Doug 157. Here, the dictum per study or experience. See Folks v. Chadd (1782) 3 Doug 157. Here, the dictum per Sanders, J. in Buckley v. Rico - Thomas (1554) 1 Plowd 118 at 124 merits my respectful quotation. D Said he:-

"If matters arise in our law which concern other sciences or faculties we commonly apply for the aid of that science or faculty which it concerns"

E Speaking for myself, Dr. Philip Ohieri (PW1) was less than candid in stating that a knife or sharp iron could be used to inflict a round wound 1/2 inch in diameter. But what are the facts as disclosed in evidence before the trial court? The trial Judge gave a reason for the basis of his F opinion. It is, in my respectful view, most unreasonable and illogical that any jury faced with these facts would accept "hook, line and sinker" the opinion of Dr. Ohieri that a knife could be used to inflict the round wound measuring 1/2 inch in diameter which he (PW1) observed on the de- G ceased and, "not a gun shot". In my view, the learned trial Judge, qua the jury, was absolutely justified in rejecting that opinion of the PW1 on the point, and forming his opinion based on the facts overwhelmingly in evidence before him. The criticisms made of the learned trial Judge, in my view, are "ab irato", unwarranted and unprovoked. (p. 254 G) H

Proof beyond reasonable doubt

4. It is our law, subject, of course, to any statutory exception there be or may be that one golden thread always to be seen in our criminal justice is

that no matter the charge or where the trial, it is the duty of the prosecution to prove the guilt of the accused beyond reasonable doubt. The duty is statutory. See section 138(1) of the Evidence Act. The burden never shifts. It rests on the prosecution throughout the trial. See Woolington v. D.P.P. (1936) 25 Cr App. R. 72, 95. It is, therefore, a basic necessity before a verdict of guilt in a criminal charge is pronounced that the jury be satisfied of the guilt of the accused beyond reasonable doubt. For what is proof beyond reasonable doubt, the apt and lucid dicta per Denning J. (as he then was) in Miller v. Minister of Pension (1947) 2 All E.R. 372 at p. 373, cited by the respondent's counsel, deserve and require my respectful quotation:

"That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, 'of course, it is possible but not in the least probable', the case is proved beyond reasonable doubt, but nothing short of that will suffice." (p. 257 D)

Statement from the dock

5. Secondly, I remind myself that the accused was not cross-examined. He did not give evidence on oath. He made a statement from the dock unsworn. That was his right. He exercised the right. Whether that is evidence or not is quite unnecessary to consider here. But it is clearly not evidence in the sense of sworn evidence that can be cross-examined to. On the other hand it is evidence in the sense that the jury can give to it such weight as they think fit and should take it into consideration in deciding whether the prosecution have made out their case so that they feel sure that the prisoner is guilty. See Anthony David Frost & anor (1964) 48 Cr. App. R. 284 290/293. (p. 258 B)

Identification parade

6. The inference I make is that the accused and the PW5 knew each other previously. The PW5 was not however questioned on her knowledge of the accused previously. Where, as in this case, there was no doubt that the witness knew the accused previously no immediate need arises conducting an identification parade for the PW5 to identify the accused. (p. 259 C)

Doubt - As to who killed the deceased

7. But it was submitted by the appellant that there was a doubt as to who killed the deceased. For doubt to be of any import it ought to be a reasonable doubt. Doubts did not arise in vacua. There is evidence overwhelming (a) in or by Exhibit B; (b) the statement by the accused unsworn from the dock, and (c) the evidence on oath by the PW5 who saw the accused fire the gun at the deceased to kill him; of who killed the deceased. I found the submission by the counsel for the appellant on the point unacceptable. I reject it accordingly. (p. 259 E)

Murder - Defences available to accused

8. In a case of murder as in the present case, it is the duty of the trial Judge to consider all the defences available to the accused whether or not counsel suggested them but provided that such a defence or defences fairly arise or arises on the evidence. Put in another form, it is no business of any court to speculate upon any possible defence open to an accused or for the court to scrounge for evidence which may have the effect of raising one type of defence or the other in answer to the charge. See William Hopper (1916) XI CR App. R. 136, 141; Ogumola Ojo v. The State (1972) 12 S.C. 147, 150. (p. 259 H)

NOTABLE POINT OF INTEREST**H NSOFOR JCA**

1. Receiving a document - Without proper foundation for its admissibility

Before I leave the point, I shall permit myself to express a view on the

admissibility of the medical report (Exhibit A) made by the PWI in evidence as evidence. Exhibit A was received in evidence without any proper foundation of its admissibility. The rule of the Law of Evidence is the "Best Evidence Rule". Such as the evidence which the PW1 offered "viva voce". The report which he prepared following the post mortem B examination, he could, of course, use to refresh his memory only. See section 216(3) of the Evidence Act Cap. 112 Laws of the Federation, 1990. If the PW1 used the medical report to refresh his memory the medical report should not be tendered to be received in evidence as evidence unless the defence (i.e. adverse party) cross-examined the PWI on his medical report. But the PWI was not cross-examined at all. He was not cross-examined on his medical report (Exhibit A). (p. 255 H) C

REPRESENTATION

Kate Enyieche (Mrs.) for the Appellant
J. C. Duru (DDPP) Imo State - for the Respondent D

CASES REFERRED TO

Folks v. Chadd (1782) 3 Dough 157
Buckley v. Rico - Thomas (1554) 1 Plowd 118 at 124
Woolington v. D.P.P. (1936) 25 cr App. R. 72, 95
Miller v. Minister of Pension (1947) 2 All E.F. 372 at p. 373
Anthony David Frost (1964) 48 CR. App. R. 284 290/293
William Hopper (1916) XI CR App. R. 136, 141
Ogumola Ojo v. The State (1972) 12 S.C. 147, 150 E

STATUTES REFERRED TO

Constitution of Nigeria 1979 s. 33(b) (a)
Criminal Code Vol II Cap 30 Laws of Eastern Nigeria 1963 ss. 286, 319
Criminal Procedure Law ss. 104, 215, 367 (2)
Evidence Act Cap 112 LFN 1990 s. 216 (3) G H

LEAD JUDGMENT BY NSO FOR JCA

The appellant, James Aladu, upon his arraignment on the information of the Attorney-General of Imo State before the Orlu High Court (A. A. Ononuju, J.) on a charge of murder contrary to section 319 of the Criminal Code Vol. II Cap. 30 Laws of Eastern Nigeria, 1963, pleaded not guilty.

The "Particulars of Offence" had alleged that the accused on the 1st of July, 1983 at Ugwu Awalla Isiekenesi in the Orlu Judicial Division murdered one Obialor Egbe.

The prosecution, in order to prove its case against the accused had summoned the evidence of five witnesses. At the conclusion of the case of the prosecution, the accused elected to make a statement from the dock. He was, therefore, not cross-examined by the prosecution. After receiving all the available evidence and the oral final address by the counsel, the learned trial Judge reserved his judgment to the 23/9/86.

In a reserved all well considered judgment, the learned trial Judge found the accused guilty as charged and convicted him accordingly. He was sentenced to death in accordance with the provisions of section 367 (2) of the Criminal Procedure Law (C.P.L.).

In reaching his conclusion, the learned trial Judge expressed himself at page 32 lines 11 to 14 of the record thus:-

"I believe the prosecution witnesses. I reject the evidence and defence of the accused which are tissues of lies. What he did was a deliberate act and his guilt has been proved beyond reasonable doubt."

Not satisfied, indeed dissatisfied and aggrieved with the "decision," the accused, naturally and logically, had appealed against his conviction and sentence to this court originally on two grounds of appeal (copied in page 34 of the record of proceedings).

It behoves me now to state the background facts of the case giving rise to the present appeal. The start witness for the prosecution, Elizabeth Obialor (PW5) was the daughter of the deceased. On the fateful day, 1st of July, 1983, she led the father to their cassava farm at Ugwu Awalla to harvest some cassava. The farm and the cassava belonged to them. The deceased was blind. He was completely blind -in

both eyes. He had only his walking stick that day. Elizabeth Obialor, it was, who had a knife with her.

In the cassava farm, the deceased was sitting down while Elizabeth Obialor was doing the actual harvesting of the cassava. She would take to the deceased where he sat the cassava stems and the deceased would be removing the cassava tubers from the stems. B

It was in the course of the exercise, that the accused appeared on the scene in the cassava farm where they were. Elizabeth Obialor saw the accused. The accused was carrying a gun. The accused queried them for why they were harvesting his cassava in his farm. The PW5 then told the deceased that the accused talking to them had a gun with him. C

The accused took an aim with the gun. He fired at the deceased. There was no exchange of any words between the deceased and the accused before the accused fired at the deceased. D

According to the witness, she fell down, got up and started running away. She turned to see if the deceased got up. From her stand point, she saw two other persons. They were from Umuaghoba. They were some relations of the accused. They were trying to carry the body of the deceased to a swamp near a stream. E

Elizabeth Obialor, then, ran home. She reported the incident to their people at home. Accompanied by Alexander Uzuoku (PW3), both went to the police and lodged a report to the police. Consequently, the police followed both the PW5 and the PW3 to the scene of crime. F

The police found those two persons whom the PW5 saw carrying the body of the deceased away, on the 13-7-83. The PW5 identified both persons to the police station. G

The accused and his people had earlier on threatened to shoot any of the people of the deceased they (the accused people) found in area of the cassava farm.

When Police Sergeant No. 60217 (Miller Ahuama) (PW4) together with some other police men and the PW5 and the PW3 arrived at the scene following the complaint made, he (PW4) saw the body of the deceased lying in a swamp near to a river, the walking stick of the de- H

ceased (Exhibit D), the walking stick of the accused (Exhibit C) lying about five yards apart, the towel belonging to the deceased (Exhibit E) the knife belonging to the deceased (Exhibit F) and the accused person's shirt (Exhibit F) and the accused person's shirt (Exhibit G). The PW4 took the body of the deceased to Dr. Ohiari's hospital for a post mortem examination.

The accused reported himself to the police on the same day of the incident leading to his prosecution. The PW4 arrested him, and charged him after cautioning him in English. The accused volunteered a statement (Exhibit B) Because it (Exhibit B) was confessional in nature, Police Sergeant Miller Ahumba took the accused and Exhibit B to the Divisional Crime Officer (Richard Omenu) called as the PW2. The PW2 read over Exhibit B to the accused in the presence of the PW4. The accused confirmed to the PW2 that it (Exhibit B) was his voluntary statement. The PW2 endorsed it accordingly.

Efforts by the PW4 to recover the gun which the accused said he used to kill the deceased and which he (the accused) told to the Police Sergeant (PW4) was in the bush were unsuccessful and fruitless.

Efforts by the PW4 to recover the gun which the accused said he used to kill the deceased and which he (the accused) told to the Police Sergeant (PW4) was in the bush were unsuccessful and fruitless.

Dr. Philip Ohiaeri (PW1) had performed the autopsy on the corpse of the deceased. The body was identified to him by the PW3 (Alexander Uzukwu). The deceased was an uncle to the PW3.

The PW3 confirmed that the deceased was blind.

Dr. Philip Obiaeri found, upon his examination of the body, that the deceased had,

'around wound about 1/2 inch diameter between the 4th and 5th left ribs. The lower part of the heart was pierced through. This resulted in acute internal bleeding.'

In the opinion of the doctor, the cause of the death of the deceased was:-
"as a result of internal bleeding."

Continuing in his evidence, Dr. Ohiaeri went further to state that the injuries he observed on the deceased could be caused as a result of,

"a sharp edged instrument that affected (sic) part of the body e.g. sharp iron or knife"

It ought to be mentioned that those two persons from Umuaghobe whom Elizabeth Obialor (PW5) saw carrying the body of the deceased to the swamp, and whom she identified to the police in the police station after their arrest on 13/7/83 were later released and discharged by the Director of Public Prosecution (D.P.P.) of Imo State. B

As it had been indicated earlier on, the accused made no statement on oath. He was, therefore, not cross-examined on his statement from the dock. The summary of his story is this. C

The accused admitted he knew the deceased and the PW5. According to him, he had gone to hunt bush fowls. He saw the PW5. She was clearing some vegetables. On seeing him, the PW5 alerted the deceased that he (accused) had a gun. The deceased then ran out from D the cassava farm. The deceased was carrying some cassava (tubers) and a knife.

He exchanged some greeting with the deceased. But as he (the accused) turned going away, the PW5 shouted at the deceased not to cut E him (accused) with his (deceased's) matchet. It was as he turned, hearing the PW5, that the matchet the deceased has "landed on my gun". Part of his testimony was:-

"Then I tried to run but fell down as my leg entered a ditch. The deceased came nearer to give me a matchet cut then I fired at him as he F wanted to kill me. After shooting him I left my walking stick and my gun and went to police to report. When I shot the deceased he fell down. I do not know if he died from the gun shot."

According to the accused, the deceased was not blind. He was G a palm wine tapper. He denied knowledge of any threats by his people to the deceased's people. He further denied being assisted by any two persons to dispose of the body of the deceased. There was no previous quarrel between him and the deceased. The gun he used to shoot the H deceased was a den gun. He denied any knowledge why the deceased would want to cut him with a matchet.. The above is the summary of the stories on both sides.

There had been filed in addition to the original grounds of appeal three (3) further grounds of appeal. Therefrom the following issues hereunder immediately set down were formulated for determination in the appellant's brief:-

B *"(i) Was the plea of the appellant a valid plea consistent with sec. 215 C.P.L. and sec. 33(6) (a) of 1979 Constitution?*

(ii) Was the learned trial Judge right to have rejected the medical doctor's report and evidence as to the cause of the death?

C *(iii) Was the trial Judge right to say that the prosecution proved the guilt of the accused beyond reasonable doubt?*

The respondent had formulated in page 2 of respondent's brief, the following issues for determination:-

D *"1. Is there anything in section 214 C.P.L. or section 33(6) (a) of the 1979 Constitution rendering the plea of the appellant in the court below invalid?*

ii. Did the learned trial Judge in the court below actually reject the medical doctor's report and evidence as to the cause of death of the deceased?

iii. Was the guilt of the appellant not proved beyond reasonable doubt in the court below?

Contention:

F The contention by counsel in the appellant's brief in support of Issue No. 1 was that the trial of the accused was a nullity because of non-compliance with the mandatory provision of section 215 of the Criminal Procedure Law (C.P.L.). The pleas of or, by the accused on his arraignment in page 13 lines 4 to 6, learned counsel submitted, was not a compliance with section 215 of the C.P.L. Counsel cited and relied on the cases of Edet Effiom v. The State (1995) 1 NWLR (pt. 373) 507 - 581; Erekanure v. The State (1993) 5 NWLR (pt. 294) 385 and Apav Agbanyi v. The State (1995) 1 NWLR (pt. 369) 1 at 25.

H In conclusion, counsel submitted that there was no substantial conformity with the provisions of both sections 215 of the C.P.L. and 33(6) (a) of the Constitution of the Federal Republic of Nigeria, 1979 (hereinafter to be referred to as the Constitution for short). The non-compliance has

occasioned a miscarriage of justice. Counsel urged the court, therefore, to allow the appeal and declare the trial of the appellant, his conviction and sentence a nullity.

The learned counsel for the respondent, relicando, had contended in the respondent's brief that the test to be applied whether or not there has been a compliance with section 215 of the C.P.L. is, (in the language of the brief) "subjective (not objective)". The provisions of the C.P.L. is subject to any particular judge being satisfied that there has been a compliance. As counsel argued, provided the charge be read and explained to the accused person "to the satisfaction of the trial Judge", there is a compliance with section 215 (supra).

It was further argued that from the plea of the accused person as recorded, it ought to be inferred that there was a compliance with the provisions of section 215 of the C.P.L. Besides, in the opinion of the counsel, the presumption of regularity, expressed in Latin: "Omnis presumptur rite esse acta" ought to apply until the presumption is rebutted.

Finally counsel submitted in the respondent's brief that there was nothing in the plea by the accused person as recorded that was or amounted to a non-compliance with either section 215 of the C.P.L. and/or section 33(b) (a) of the constitution.

Consideration:-

A good starting point for me in considering the learned submissions by the counsel on the argument on the issue is, firstly, to advert to section 215 of the Criminal Procedure Law (C.P.L.) and section 33(b) (a) of the Constitution, "sese ipse", to see what their provisions, respectively, are, thereafter to look at the plea of the accused person as recorded, lastly to examine the plea as recorded to ascertain whether or not there was a compliance either expressly or impliedly. If there be a compliance, then the counsel for the respondent is right. If there be a non-compliance, then, the counsel for the appellant is right.

What, then, does section 215 C.P.L. prescribe? It reads:-

"The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause other-

wise to order, and the charge of information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to want of such service and the court finds that he has not been served therewith."

I, now, advert to section 33 subsection (6) (a) of the 1979 Constitution, the "Suprema Lex". What does the section and subsection stipulates? It reads:-

"33(6) Every person who is charged with a criminal offence shall be entitled.

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

Both section (33)(6) (a) of the Constitution and section 215 of the C.P.L. have been specifically provided to guarantee the fair trial of an accused person. Their provisions are mandatory. For a proper trial on arraignment of a person these provisions ought to be fully complied with.

The rationale is that the language of the court in which the charge is drafted is English. But English is not the mother tongue of Nigerians. Majority of Nigerians are indeed illiterate in English and even those of them who are literate in English may not easily follow and comprehend the language of the court. It becomes, therefore, necessary that there be a valid and proper arraignment or else the whole trial and proceedings will be null and void.

Before I go further, I shall pause here for a while to consider some of the cases cited to us by the counsel in their brief for what guide they may afford me in reaching my conclusion. Apav Agbanyi v. The State (1995) 1 NWLR (pt. 369) 1 cited by counsel in the appellant's brief at p. 7 thereof was an appeal from the "decision" of the Benue State High Court (E. Ekpo, J) in charge No. KHC/17C/89 in which the appellant was convicted of an offence punishable under section 337 of the Penal Code and sentenced. On appeal to the Court of Appeal, Jos Division, against his conviction and sentence, the court unanimously allowed the appeal,

all the issues distilled from the grounds of appeal filed having been resolved in favour of the appellant.

Delivering the leading judgment of the court, Orah, J.C.A taking the question of plea on an arraignment of an accused person - the record of proceedings demonstrated that no plea was taken or recorded - said in page 25 of the report, acting suo motu and ex proprio motu:

"It is therefore, the law that for there to be a valid and proper arraignment of an accused person the following conditions as contained in Part XXIV, section 215 of the Criminal Procedure Act and section 33(6) (a) of the 1979 Constitution must be satisfied.

(i) The accused shall be placed before the court unfettered unless the court shall see cause to otherwise order.

(ii) The charge or information shall be read over and explained to him in a language he understands to the satisfaction of the court by the registrar or otherwise officer of the court; and

(iii) The accused shall then be called upon to plead instantly thereto (unless there are valid reasons to do otherwise as provided in section 100 of the Criminal Procedure Law). See Sunday Kajubo v. The State (1988) 1 NWLR (pt. 73) 721 at 723 para D-E",

Failure to comply with any of the conditions laid down in (i), (ii) and (iii) above in Kajubo v. The State (supra) will render the whole trial a nullity. See Eyoro Koromo v. The State (1979) 6-9 S.C. 3; Josiah v. The State (1985) 1 NWLR (pt. 1) 125 1 S.C. 406 at 146.

An arraignment consists of charging the accused and reading over and explaining to him in the language he understands to the satisfaction of the court followed with a plea. See Oyediran v. The Republic (1967) NMLR 122.

In Edet Effiom v. The State (1995) 28 LRCN 320; (1995) 1 NWLR (pt. 373) 507 the accused was charged with the offence of murder. He was convicted as charged and sentenced to death. On the appeal, the Court of Appeal affirmed the decision of the court below.

On a further appeal to the Supreme Court one of the issues for determination was -

"(1) Whether there had been a valid arraignment in accordance

with the provisions of section 215 Criminal Procedure Law (C.P.L.)"

On the plea of the accused, the record of the trial court (Effeng, J) on the 25/1/88 demonstrated thus:-

B *"Accused in court. Mrs. O. N. O. Mkpubre - State counsel for the State says - Accused needs Legal Aid.*

NB: The charge is read and interpreted to the accused. He says he understands same. He pleads - 'Not guilty.'"

C Delivering the leading judgment of the court, ONU, J.S.C. at pages 334 et sequentes said, inter alia, as follows:-

"Now, by virtue of section 215 of the Criminal Procedure Law Cap 32 Vol. II of Cross River State of Nigeria and section 33(6) (a) of the Constitution, upon arraignment of an accused person for his trial , the following requirements as decided by this court in the case of Samuel D Erekanure v. The State (1993) 13 LRCN (pt. A) 876 (1993) 5 NWLR (pt. 294) 385, following Kajubo v. The State (supra) and a host of other decisions where the same principle were established, must be satisfied, failing which any subsequent trial and conviction of him will be rendered E a nullity.

The requirements are that:-

- (a) the accused must be present unfettered unless there is a compelling reason to the contrary;.
- F (b) the charge must be read over to the accused in the language he understands;
- (c) the charge should be explained to the accused to the satisfaction of the court.
- (d) in the course of the explanation technical language must be avoided;
- G (e) after requirements (a) to (d) above have been satisfied the accused will then be called upon to plead instantly to the charge.

It is now trite that all the above requirements must co-exist and must be satisfied as they are mandatory.

H After a careful reading of the authorities cited to us, I must say with due respect to the learned counsel for the appellant that the case in hand is distinguishable from that in Erekanure v. The State (supra). While in the latter in the former i.e. in the case in hand, the plea I earlier set

out above seems to have been fully stated, explained and was adequately comprehended before the plea of 'Not Guilty' was recorded to set the stage for the trial to commence for any eye brows not to be raised in an expression of doubt. In the light of the foregoing, I take the firm view that there has been a full compliance with section 215 C.P.L. and section 33(6) (a) of the Constitution."

In Michael Peter v. State (1997) 12 NWLR (pt. 531) 1 the issue No. 1 on a further appeal to the Supreme Court was

"Whether the Justices of Court of Appeal were right in holding that the trial court complied with mandatory provisions of section 215 of the Criminal Procedure Act having regard to the Supreme Court decision in Kajubo v. The State (1988) 1 NWLR (pt. 73) 721"

The plea of the accused on arraignment was as follows:-

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

1st Accused: I am not guilty

2nd Accused: I am not guilty"

Delivering the leading judgment of the court, Onu, J.S.C. at page 14/15 said, inter alia:-

"I take the firm view, that in the instant case, there was substantial compliance with the provisions of section 215 of the Criminal Procedure Law as laid down in Kajubo v. The State (supra). These is nothing on the record to indicate that the appellant did not know the nature of the offence he was called upon to defend, More recently this court had the opportunity to examine, in further details a similar procedure governing the arraignment of an accused person in its consideration of the provision of section 215 of the Criminal Procedure Law of Bendel State in pari materia with identical provisions of the Lagos State Criminal Procedure Law and section 33(6) of the 1979 Constitution (ibid) now under consideration in the case of Samuel Erekanure v. The State (1993) 5 NWLR (pt. 294) 385 among others, At pages 392 - 393 paragraphs H-E; page 396, in Erekanure (supra) wherein in allowing the appellant's appeal and ordering a retrial, this court set down the require-

ments that must be satisfied thus:

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

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

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

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

(e) after the requirements (a) to (d) above have been satisfied the accused will then be called upon to plead instantly to the charge. All the above requirements must co-exist and must be satisfied as they are mandatory."

Now, guided by the principle immanent in the above discussed cases and, armed with it, I approach the plea in the instant case. This is all Issue No. 1 deals with. What plea was there recorded?

In page 13 of the record of proceedings appears the following note by the trial Judge:

"The plea of the accused is taken: The charge is read over and explained to him and he pleaded not guilty."

The all important question becomes this: was the plea of the accused as recorded in compliance or substantial compliance with section 215 of the C.P.L. and section 33(b) (a) of the 1979 Constitution? Counsel for the appellant says, nay. Counsel for the respondent says, yea. Who is right?

For the respondent it was submitted that the test to be applied in the determination whether or not there be a compliance with the sections of the law above is subject. There is a compliance if the charge is read and explained "to the satisfaction of the court."

There is no doubt that the mandatory requirements of section 215 of the Criminal Procedure Law (C.P.L.), as seen in the cases discussed above, must co-exist in order to render a plea of an accused person valid. But could these requirements not equally co-exist because they do co-exist impliedly? Of course, I have no hesitation in answering the poser affirmatively. Perhaps, by way of an illustration to make my-

self intelligible, in none of the cases discussed above where the provisions of section 215 of the C.P.L. Were held to have been complied with substantially was it shown or recorded that the information was read, as by the section require, by a "registrar, or other officer of the court." No. It is my view that the requirement that the information was so read by the registrar or other officer of the court was impliedly taken to have been so read. B

I had above set out the plea by the appellant, qua the accused person at the trial. I decline to reproduce the plea again and again. **From the plea as recorded in this particular case, it ought to be admitted impliedly that what was so read over and so explained to the accused, by the registrar or other officer of the court was read and explained to him before he pleaded "not guilty", was understood by him. For how otherwise would he have pleaded to the information if he never understood what he was pleading to? And how otherwise could he have understood what was read and explained to him unless it was explained to him in a language he understood? The accused it may be noted was represented in court by counsel** C D E

Besides, it was for the court or the Judge who is to be satisfied that the accused understood what was read to him and explained to him before he (the Judge) calls upon the accused to plead to the information. Having called upon the accused to plead to the information, it must be impliedly admitted that the court (or Judge) was "satisfied" that the accused understood what was read to him and explained to him before he pleaded to the information. F

All I am trying to say, perhaps imperfectly, is this. In my view of the plea as recorded in this particular case, I have no hesitation in holding that there was a compliance fully with the provisions of both section 215 of the C.P.L. and section 33(6) (a) of the 1979 Constitution of Nigeria. My resolution of the issue becomes obvious. I have no hesitation in reaching the conclusion that the issue ought, *ex necessitate*, to be resolved in favour of the respondent and, eo ipso, against the appellant. The ground of appeal from which the issue is distilled, therefore, fails. It is, therefore, dismissed. G H

Arguing Issue No. 2 the appellant's counsel had drawn attention to the evidence by Dr. Philip Ohieri (P.W.1). He also made a reference to Exhibit A (the medical) report by the (P.W.1). Counsel in the appellant's brief criticized the learned trial Judge for rejecting and disbelieving the evidence by the PW 1 that the round wound measuring 1/2 inch diameter observed on the corpse of the deceased was inflicted with a knife or sharp iron. It was the contention by the counsel in the appellant's brief that since the PW 1 was an expert and his evidence of the instrument with which the wound was inflicted was uncontradicted, the trial Judge ought to have believed that evidence. Counsel cited Rex v. Matheson (1958) 42 CR App. R. 145, 151.

Concluding counsel submitted that Exhibit A was not properly evaluated and that the prosecution failed to prove the cause of the death of the deceased. Counsel to the respondent in reply had submitted that the grouse of the appellant on this head was "grossly misplaced". It was contended that the trial Judge did not reject the expert evidence by the PW1 of the cause of the death of the deceased. That it was due to internal bleeding, was accepted by the trial Judge, counsel submitted.

Counsel drew attention to Exhibit B (the statement to the police by the accused) that the accused inflicted the wound with a gun. Further reference was made to the statement unsworn by the accused from the dock as to what instrument the accused used to inflict the wound that claimed the life of the deceased.

Now, at the risk of a repetition but necessary for the purpose of clarity, part of the evidence by the PW 1 was -

"The deceased from my examination had a round wound about 1/2 inch diameter between the 4th and the left ribs. This resulted in acute internal bleeding. I certify the cause of death in my opinion to be as a result of internal bleeding The injuries could be caused as a result of an application of a sharp edged instrument that effected (sic) part of the body e.g. sharp iron or knife." (The italic in mine for emphasis)

The learned trial Judge in page 32 lines 2 to 7 of the record of proceedings has expressed himself as follows:-

"I do not accept PW1's evidence that the round wound could be

caused as a result of an application of a sharp edged instrument on the affected part of the body such as a sharp iron or knife in view of the statement of the accused. Round wound in my opinion is consistent with gun shot wound. (The italic is mine)

It is clear to me from my study of the record of proceedings that at no time did the learned trial Judge reject the evidence by the PW1 that the death of the deceased was as a result of internal bleeding. And this was what the expert's opinion was called to establish.

Now, the question becomes this.

Q. Was the learned trial Judge justified in holding that "a round wound 1/2 inch diameter" observed on the deceased could be caused or was consistent with a gun shot and, not consistent with a knife or sharp iron?

Before I record my opinion on the above poser, I shall pause here for a while, to consider the Matheson case (supra) relied on by the appellant's counsel. The facts of the case shortly stated, are these.

The appellant (Albert Edward Matheson) was charged and convicted of the murder of a boy - Gordon Lockhart - aged fifteen years before Finnemore, J. The defence put forward was (1) that in killing the boy the appellant was suffering from diminished responsibility as defined by section 2 of the Homicide Act, 1957 and accordingly guilty not of murder but of manslaughter (2) that murder was not in the course of furtherance of theft so that if the defence of diminished responsibility was not accepted the murder was not capital.

The defence called three medical doctors - the senior prison officer of Durham prison who described the appellant as a psychopathic personality, a consultant psychiatrist and a third doctor who came to similar conclusion.

Delivering the judgment of the Court of Appeal allowing the appeal and substituting a verdict of manslaughter for that of murder, the Lord Chief Justice at page 151 said inter alia thus:-

"What when were the facts or circumstances which would justify a jury in coming to a conclusion contrary to the unchallenged evidence of these gentlemen? While it has often been emphasized and we would

repeat, that the decision in these cases as in those in which insanity is pleaded is for the jury and not for the doctors the verdict must be founded on evidence which will entitle a jury to reject or differ from the opinion of the medical men, this court would not indeed could not disturb their verdict, but if the doctor's evidence is unchallenged as there is no other on the issue a verdict contrary to their opinion would not be a true verdict in accordance with evidence.' "

But does the Matheson case (supra) really assist the appellant? It offers me no assistance. The medical gentlemen in the Matheson case (supra) testified in the area of their specialty or faculty i.e. of the mental health of the appellant, and nothing more. There were no facts on which the jury could come to a different view. Dr. Ohieri (PW1) did not limit himself to the area of his speciality.

Now, the judge in the Nigerian court sits in a dual capacity, as a Judge of law in matters of law and, a jury - those twelve reasonable men and women - qua the judge of facts in matters of fact. PW1 observed a round wound 1/2 inch diameter on the deceased. The word or term "round" as applied to the wound is in the adjective form. It qualified the noun, "wound". "Round" is a simple English word. It is defined in Oxford Advanced Learner's Dictionary of Current English, page 739, to mean:- "shaped like a circle or a ball".

At page 238, "diameter" is defined to mean:- Straight line drawn from side to side through the centre of a circular, spherical or cylindrical form." There was no evidence that the knife or sharp iron, if it were used to inflict the wound observed on the deceased, was turned round or scooped round so as to cause or form a circular or spherical cylindrical shape. No.

The opinions of experts are admissible whenever the subject is one upon which competency to form an opinion can only be acquired by a course of special study or experience. See folks v. Chadd (1982) 3 Doug 157. Here, the dictum per study or experience. See Folks v. Chadd (1782) 3 Dough 157. Here, the dictum per Sanders, J. in Buckley v. Rico - Thomas (1554) 1 Plowd 118 at 124 merits my respectful quotation. Said he:-

"If matters arise in our law which concern other sciences or faculties we commonly apply for the aid of that science or faculty which it concerns"

Speaking for myself, Dr. Philip Ohieri (PWI) was less than candid in stating that a knife or sharp iron could be used to inflict a round wound 1/2 inch in diameter. But what are the facts as disclosed in evidence before the trial court? The trial Judge gave a reason for the basis of his opinion.

Now, Exhibit B, (the voluntary statement by the accused to the police (PW4) confirmed by the accused before the PW2 as having been voluntarily made by him) read in parts thus:-

"I fired my gun at him. He fell back ward and died. The gun I used is a dane gun which I loaded with gun power. It was pellets I collected from a bicycle repairer's shade that I used in loading the gun."

Part of the evidence by Elizabeth Obialor (PW5) in chief was:-

Then I told my father that the person talking to us had a gun with him. Then the accused aimed his gun at my father and fired at him." In his statement unsworn from the dock the accused said inter alia:-

"When I shot the deceased he fell down. I used den gun in shooting the deceased."

It is, in my respectful view, most unreasonable and illogical that any jury faced with these facts would accept "hook, line and sinker" the opinion of Dr. Ohieri that a knife could be used to inflict the round wound measuring 1/2 inch in diameter which he (PWI) observed on the deceased and, "not a gun shot". In my view, the learned trial Judge, qua the jury, was absolutely justified in rejecting that opinion of the PW1 on the point, and forming his opinion based on the facts overwhelmingly in evidence before him. The criticisms made of the learned trial Judge, in my view, are "ab irato", unwarranted and unprovoked.

Before I leave the point, I shall permit myself to express a view on the admissibility of the medical report (Exhibit A) made by the PWI in evidence as evidence. Exhibit A was received in evidence without any proper foundation of its admissibility. The rule of the Law of Evidence is

the "Best Evidence Rule". Such as the evidence which the PW1 offered "viva voce".

The report which he prepared following the post mortem examination, he could, of course, use to refresh his memory only. See section B 216(3) of the Evidence Act Cap. 112 Laws of the Federation, 1990.

If the PW1 used the medical report to refresh his memory the medical report should not be tendered to be received in evidence as evidence unless the defence (i.e. adverse party) cross-examined the PW1 on his medical report. But the PW1 was not cross-examined at all. He was C not cross-examined on his medical report (Exhibit A). No.

For all I have tried to say and, from all that has been said by me above, issue No. 2 ought to be resolved and I do so resolve it against the appellant and, eo ipso, in favour of the respondent. The ground of appeal D from which it is distilled fails. It is dismissed accordingly.

The gist of the contention by counsel in the appellant's brief arguing lastly the last issue for determination is that the prosecution failed to prove the guilt of the accused beyond reasonable doubt a "sine quo E non" in all criminal trials subject of course to what statutory exceptions there be or may be. See section 138(1) of the Evidence Act.

The contention by the counsel is premised on the following, to wit:-

F (i) "The Police Investigation Report" credited to the PW5 as having said that the accused arrived the scene of crime (i.e. the cassava farm) in company of ten (10) others; (2) the PW5 failed to mention the accused by name to the police at the first opportunity, (3) there was no identifica- G tion parade to enable the accused be identified as the killer of the deceased. All these, counsel contended, created a doubt as to who, really, killed the deceased.

It was further contended that the failure of the police to send the shirt of deceased (Exh. G) for a forensic test to ascertain whether or not H the blood stains thereon were human blood was fatal to the case of the prosecution. It was further contended that the trial Judge failed to consider the defence of self-defence in favour of the accused.

In reply, the counsel for the respondent submitted that there

being evidence that the accused knew the PW5 previously and there was no evidence that the PW5 did not know the accused previously the demand for an identification of the accused in an identification parade was irrelevant. Similarly irrelevant, as counsel submitted, was the failure to send Exhibit G for a forensic test. Counsel further submitted that the evidence as led no doubt was created or ever arose, as to who killed the deceased. It was the accused person. B

Concluding, counsel contended, based on the evidence adduced that the defence of self defence was not available to the accused. The case of the prosecution against the accused, the counsel submitted, was proved beyond reasonable doubt. Cited and relied on was Miller v. Minister of Pensions (1947) 2 All E.R. 372, 373. C

A good starting for me in considering the submissions by counsel on the arguments on the issue is, firstly, to remind myself of the principle to guide me in reaching my conclusion. **It is our law, subject, of course, to any statutory exception there be or may be that one golden thread always to be seen in our criminal justice is that no matter the charge or where the trial, it is the duty of the prosecution to proved the guilt of the accused beyond reasonable doubt. The duty is statutory. See section 138(1) of the Evidence Act. The burden never shifts. It rests on the prosecution throughout the trial. See Woolington v. D.P.P. (1936) 25 cr App. R. 72, 95.** D E

It is, therefore, a basic necessity before a verdict of guilt in a criminal charge is pronounced that the jury be satisfied of the guilt of the accused beyond reasonable doubt. For what is proof beyond reasonable doubt, the apt and lucid dicta per Denning J. (as he then was) in Miller v. Minister of Pension (1947) 2 All E.F. 372 at p. 373, cited by the respondent's counsel, deserve and require my respectful quotation: F

"That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to G H

leave only a remote possibility in his favour which can be dismissed with the sentence, 'of course, it is possible but not in the least probable', the case is proved beyond reasonable doubt, but nothing short of that will suffice."

B Secondly, I remind myself that the accused was not cross-examined. He did not give evidence on oath. He made a statement from the dock unsworn. That was his right. He exercised the right. Whether that is evidence or not is quite unnecessary to consider here. But it is clearly not evidence in the sense of sworn evidence
C that can be cross-examined to. On the other hand it is evidence in the sense that the jury can give to it such weight as they think fit and should take it into consideration in deciding whether the prosecution have made out their case so that they feel sure that the
D prisoner is guilty. See Anthony David Frost & anor (1964) 48 CR. App. R. 284 290/293.

Now, it was contended based on the Police Investigation Report that there was on the scene of crime with the accused, ten others and, on
E that account, it was not proved who did kill the deceased. But the PW5 did testify, viva voce. She was cross-examined. Part of her evidence in chief at page 19 of the record was:-

*"At the scene I met two people who were trying to carry the body
F of the deceased I can not remember the names of the two people that came to the scene but if I see them I could identify them. The two men come from Umuaghobe. They are the brothers of the accused."*

Answering a question in cross-examination the PW5 further testified in page 20 of the record inter alia:-

G *"I made two statements to the police. The second one was when the said two people were found and arrested."*

Continuing in lines 11 and 12 ibidem, she said -

*"I did not tell PW4 that the accused came to the farm with ten
H people."*

It is worth nothing that the PW5 was not confronted with either of her previous statements to the police to contradict her on the question of the number of person she saw with the accused, assuming she said other-

wise to the police.

On the question of identification of the accused, there was evidence that the accused knew the PW5 previously. There was no evidence that the PW5 did not know the deceased previously. Part of Exhibit B by the accused read:-

"At about 4 O'clock p.m. I saw the man and his daughter pulling and digging cassava in his farm. The daughter told her father I was holding a gun. I began to ask the girl why she was telling her father as if she do not know me."

The inference I make is that the accused and the PW5 knew each other previously. The PW5 was not however questioned on her knowledge of the accused previously. Where, as in this case, there was no doubt that the witness knew the accused previously no immediate need arises conducting an identification parade for the PW5 to identify the accused.

I quite readily agree with the counsel for the respondent that there was no need to send the shirt the deceased wore when he was fired at for any tests to ascertain whether or not the blood stains on the shirt (Exhibit G) were human blood.

But it was submitted by the appellant that there was a doubt as to who killed the deceased. For doubt to be of any import it ought to be a reasonable doubt. Doubts did not arise in vacua. There is evidence overwhelming (a) in or by Exhibit B; (b) the statement by the accused unsworn from the dock, and (c) the evidence on oath by the PW5 who saw the accused fire the gun at the deceased to kill him; of who killed the deceased. I found the submission by the counsel for the appellant on the point unacceptable. I reject it accordingly.

Now, where a defence of self-defence is raised, the accused accepts that he killed the person killed and that the person killed was killed with requisite "mens rea" but that he killed the person killed in order not to be killed himself. In other words, he killed, "se defendendo." See section 286 of the Criminal Code.

In a case of murder as in the present case, it is the duty of

the trial Judge to consider all the defences available to the accused whether or not counsel suggested them but provided that such a defence or defences fairly arise or arises on the evidence.

Put in another form, it is no business of any court to speculate upon any possible defence open to an accused or for the court to scrounge for evidence which may have the effect of raising one type of defence or the other in answer to the charge. See William Hopper (1916) XI CR App. R. 136, 141; Ogunmola Ojo v. The State (1972) 12 S.C. 147, 150.

The question arises.

Q. On the evidence as led, was the defence of self-defence made out or available to the accused?

Alexander Uzukwu (PW3) stated in his evidence in page 15 lines 21 to 23:-

"He (deceased) was a blind man and had a little child as his lead called Elizabeth Obialor his daughter."

In her evidence, PW5 stated in page 18 lines 18 to 24 as follows:-

"While in the farm I saw the accused person at about 3 p.m. in the said farm. I was leading my father to the farm as he was blind. He was totally blind Then the accused came into the farm and stated if we know that where we were harvesting the cassava was his farm. Then I told my father that the person talking to us has a gun with him. Then the accused aimed his gun at my father and fired at him."

Continuing, still in-chief, the PW5 had this to say in page 19 lines 9 to 12:-

"There was no time my father had a matchet. I was the person accused did not exchange words with the deceased before he fired him." Testifying in cross-examination in page 20 of the record, the PW5 stated further as follows:-

"My father could not clear a farm. My father was completely blind in both eyes."

The learned trial Judge carefully considered the evidence before him not excluding the statement unsworn by the accused from the dock. In this fact finding capacity, as the jury, after directing himself, he be-

lieved the PW5 that the deceased was totally blind in both eyes; that the deceased had no knife with him and offered no threat to the accused. He disbelieved the story of the accused which he described as a "tissue of lies".

Each of these far reaching findings is supported by legal evidence. My Lords, I see no justifiable excuse to interfere with the findings. B

Now, the truth is that the jury must come to a verdict on the whole of the evidence that has been laid before them. Per Lord Chief Justice in Harry Lazarus Lobell (1957) 41 CR. App. R 100 at 104:-

"A convenient way of directing the jury is to tell them that the burden of establishing guilt is on the prosecution but that they must also consider the evidence for the defence, which may have one of these results: it may convince them of the innocence of the accused, or it cause them to doubt, in which case the defendant is entitled to an acquittal, or it may and some times does strengthen the case for the prosecution." C D

In my view of the evidence and the findings by the learned trial Judge, the conclusion I have reached is that the case of the accused had the third result. E

I am in agreement with the submission by the respondent's counsel that on the evidence before the trial court, the plea or defence of self-defence was not available to the accused.

I find the submission by the appellant's counsel that the guilt of the accused was not proved beyond reasonable doubt unacceptable. My conclusion is, therefore that issue No. 3 ought to be resolved against the appellant and on that account in favour of the respondent. I do hereby resolve the issue in favour of the respondent. F

In the result, all the grounds of appeal fail. They are dismissed. Accordingly, I affirm the judgment of the court below (A.A. Ononuju, J) on the 23-9-86. The appeal is, therefore, dismissed. G

KATSINA-ALU JCA

I have read in advance the judgment of my learned brother Nsofor, JC.A. in his appeal. I entirely agree with his reasoning and conclusion H

that the appeal lacks merit and must fail. I also dismiss the appeal and affirm the conviction and sentence of the appellant.

B UWAIFO JCA

I read in draft the judgment of my learned brother Nosfor, J.C.A just delivered. I agree entirely with him that the appeal lacks merit for the reasons he has fully stated. The facts of the case are so obviously incontestable that I find no reason to go over the issues in respect of them which have been adequately dealt with in the leading judgment.

On the issue of plea for which reliance was placed on Edet Effiom v. The State (1995) 28 LRCN 320; (1995) 1 NWLR (pt. 373) 507 and Michael Peter v. The State (1997) 12 NWLR (pt. 531) 1 the requirements of section 215 of the Criminal Procedure Law (CPL) therein as adumbrated and considered in the two cases by Onu, J.S.C. are reasonably clear to me. The five requirements are said by the learned Justice to co-exist, that is to say, they must all be observed or met. The question is whether in the present case on appeal that was satisfied. The requirements are stated to be.

(a) The accused must, for his plea to be taken, be present in court for his trial unfettered unless there is a compelling reason to have him fettered.

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

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

(d) In the course of the explanation technical language must be avoided.

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

The appellant has not complained of condition (a), nor indeed of condition (d). The real question is whether the charge was read over to the appellant in the language he understands and whether the court was satisfied with the explanation of the charge to the appellant. What is

recorded during the plea in the presence of the appellant's counsel is:

"The plea of the accused is taken. The charge is read over and explained to him and he pleaded not guilty to the charge."

I think there must be an inference from the nature of the plea proceeding as recorded above that the charge was read to the appellant (in the language he understands) and that the learned trial Judge was satisfied with the explanation of the charge to the appellant before he pleaded not guilty. After all, the necessity for 'strict' compliance with section 215 of the CPL is so that an accused person does not plead guilty in error or in great agitation of mind (if in fetters). In my view, there can be no other judicial reason for it. So it is enough if the plea is reasonably in compliance and I think a measure of reliance ought to be placed on the trial court that the conditions were met even if the record does not contain details that ought to be inferred. For example, it need not be stated in what language the charge was read and explained to the accused; nor does the record ought to show that the judge said he was satisfied with the way the charge was explained to the accused.

If I may add, in murder cases, even when an accused pleads guilty, a plea of not guilty is entered for him. I know that where his plea is not taken at all, the trial has been declared a nullity. There are many decided cases in this regard. I do not think we need to complicate that technicality by looking at the letters of section 215 instead of the spirit behind it.

I am satisfied that proper and adequate plea was taken in the present case. I too dismiss the appeal and affirm the conviction and sentence of the appellant.

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