

SUPREME COURT OF NIGERIA
3RD DECEMBER, 1999. SC. 68/1999
CORAM:- A. G. KARIBI-WHYTE, M. E. OGUNDARE,
S. U. ONU, A. I. IGUH, E. O. AYOOLA, JJSC

RICHARD IGAGO	APPELLANT
V.		
THE STATE	RESPONDENT

***APPEALS** - Concurrent findings of fact - When the Supreme Court will not interfere with such findings.*

***APPEALS** - Issues for determination - Essential consideration - In formulating issues for determination*

***APPEALS** - Judgment - Evidence - Improper evaluation of evidence - How to prove that the evidence was wrongly evaluated.*

***CRIMINAL PROCEDURE** - Evidence - Admissibility - Judges Rules - Observance of in the taking of statements - The nonobservance of the rules is not necessarily fatal - To the admissibility of the statement.*

***EVIDENCE** - Admissibility - Confession - Circumstances when a confession may be inadmissible.*

***EVIDENCE** - Evaluation of evidence - Where the trial court has satisfactorily performed its primary function - Of evaluating evidence and correctly ascribing probative value - Attitude of the appellate court to the findings on such evidence.*

***MURDER** - Proof - Charge of murder under section 319 (1) of the Criminal Code - What the prosecution is required to prove.*

FACTS

At the High Court of Edo State, holden at Benin-City, the appellant was charged with the murder of Isioma Okutu contrary to section 319(1) of the Criminal Code Law, Cap. 48, vol. II Laws of Bendel State applicable in Edo State. The appellant and the deceased who were both mechanics were friends. The deceased was working in a workshop managed by an Elf Petrol Station. Appellant worked in a neighbouring garage. They were engaged in a fight and after they had been separated the Manager of the Elf Petrol Station (P.W.1) arrived and started the process of resolving the dispute. Whilst the deceased was narrating the story to the Manager, the accused standing nearby hit the deceased on the head with a shovel. The deceased fell down immediately and became unconscious. He was rushed to the Police Station, and from there rushed to the Central Hospital Benin-City. The deceased did not regain consciousness but died on the third day. Hence the appellant was charged with the murder of the deceased. The prosecution during the trial called seven witnesses. P.W. 4, Dr. Suleiman Abu, the consultant pathologist performed the autopsy on the body of the deceased and gave evidence of the cause of death.

The appellant voluntarily made confessional statements Exhibits A and B to the investigating Police Officers, P.W. 5, P.W. 6 and P.W. 7. These statements were tendered and admitted with out objection. The appellant testified in his defence, but did not call any witness. He denied the charge. There are discrepancies between the evidence in the testimony of appellant in court and his extra judicial statements. At the conclusion of hearing, the learned trial judge held that the prosecution have proved the guilt of the appellant beyond reasonable doubt. He was accordingly convicted and sentenced to death by hanging. The appellant appealed to the Court of Appeal, Benin Division. The Court of Appeal unanimously dismissed the appeal. The appellant has further appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Whether from the nature of the evidence adduced by the prosecution, the charge of murder has been proved against the appellant.

HELD (Unanimously dismissing the appeal per lead judgment of **KARIBI-WHYTE JSC**)

Appeals - Issues

1. The purpose of formulating issues for determination is to isolate in the grounds of appeal filed, the critical issues relevant for the determination of the appeal. Hence an issue may be limited to one ground or traverse more than one ground of appeal - See Godwin v. C.A.C. (1998) 14 NWLR (pt. 584) 162. The essential consideration is the identification of the critical issues, whilst at the same time avoiding proliferation. - See Oladele v. Anibi (1998) 9 NWLR. (pt.367) 559 SC. It is important for counsel formulating issues to keep within the scope and confine the formulation to the grounds of appeal. It is not acceptable for counsel to formulate issues for determination not based on any grounds of appeal. Any such issues will not be countenanced and is liable to be struck out. - See Okoro v. State (1998) 14 NWLR (pt. 584) 181. SC. (p. 2948 A)

Evidence - admissibility

2. A confession, if voluntary is deemed to be relevant facts as against the person who make them only. Accordingly voluntary confessions per se are admissible. To be inadmissible a confession must be shown not to be voluntarily made, or caused by inducement, threat or promise. - See S. 28, See Saidu v. State (1982) 4 S.C. 41, See Ojegele v. State (1988) 1 NWLR (pt.71) 414. In the instant case apart from the fact that the voluntariness of Exhibits "A" and "B" was not raised at the trial or any other time, learned Counsel relying on it has not pointed to any evidence of circumstances which renders the statements inadmissible on that ground. It is pertinent to point out the substantial corroboration of Exh. A and B, with the evidence of PW1 and PW2 who were eye witnesses to the act. These are independent corroborative evidence. - See Udedibia v. State (1976)11 SC. (p. 2950 C)

Criminal Procedure - Admissibility - Judges Rules

3. Learned Counsel to Appellant has referred to the breach by PW5, 6 and 7 of the Judges Rules in the manner the statements were recorded.

There is no evidence that the statements were in breach of the rules, as Counsel did not refer to evidence of any breach. However, there is evidence that the statements Exhibits "A" and "B" were taken down after the usual caution had been administered. In any event these are rules of caution the non-observance of which is not necessarily fatal to the admissibility of the statement - See Uche v. Queen (1964) 1 All NLR 195. (p. 2950 G)

C ***Evidence - Evaluation***

4. Where the trial Court has satisfactorily performed its primary function of evaluating evidence and correctly ascribing probative value as was done in this case, the Appellate Court has no business interfering with the findings on such evidence. - See Abisi v. Ekwealor (1993) 6 NWLR (pt. 302) 643. (p. 2954 B)

Appeals - Judgment

5. In this case the criticism in this issue is essentially on the method adopted by the learned trial Judge, which traditionally is entirely within his discretion. There was no particularization of the evidence wrongly evaluated. - See Dakur v. Dapal (1998) 10 NWLR (pt.571) 578. Appellant has accordingly failed to discharge the onus on him that if properly evaluated the conclusion would have been favourable to him. (p. 2954 D)

Murder - Proof

6. In a prosecution on a charge for murder under section 319 (1) of the Criminal Code, as in the instant case, the prosecution is required to prove beyond a reasonable doubt

- (i) that the deceased had died
- (ii) that the death of the deceased resulted from the act of the appellant
- H (iii) that the act of the appellant was intentional with the knowledge that death or grievous bodily harm was its probable consequence. (p. 2956 C)

Appeals - Concurrent findings

7. I am satisfied there are sufficient evidence enabling the Court below to arrive at their conclusion. We now have concurrent findings of facts in both courts below. Learned Counsel to the Appellant has not given reasons why these findings of fact should be disturbed. This Court will not interfere with concurrent findings of facts which have neither been shown to constitute a miscarriage of justice nor to contain any procedural error or is indeed in any way perverse. - See Uzochukwu v. Eri (1997) 7 NWLR (pt.514) 535. (p. 2956 H)

NOTABLE POINTS OF INTEREST

KARIBI-WHYTE JSC

1. Need for counsel to avoid argument founded on irrelevant considerations

Learned counsel should avoid arguments founded on irrelevant considerations or relying on assumptions which are in no way related to the facts of the case as established before the trial court. The effort is the more absurd when the inference drawn cannot remotely be derived from the facts before the court. (p. 2952 G)

ONU JSC

2. The defence of accident - What it means

On the defence of accident on which a mountain would appear to have been made out of a molehill in this case, this defence was stated by Karibi-Whyte, J.S.C. in the case of Aliu Bello & 13 ors. v. Attorney General of Oyo State (1986) 5 NWLR 828 to connote:

"An accident is the result of an unwilling act, and means an event without the fault of the person alleged to have caused it". See section 24 of the criminal code.

It was held in Adelumola v. The State (1988) 1 NWLR (part 73) 633 that for an event to qualify as an accident under section 24 of the criminal code, it must be a surprise to the ordinary man of prudence, that is, a surprise to all sober and reasonable people. The test is always objective. See also Audu Umoru v. The State (1990) 3 NWLR 363 at 370. (p.2962D)

3. *Medical evidence is not always essential to prove the cause of death*

It is good law that medical evidence is not always essential though desirable to prove the cause of death. Thus, where medical evidence is lacking the court is perfectly entitled to infer the cause of death from the circumstances. See Kato Dan Adamu v. Kano N. A. (supra); Frank Onyemankeya v. The State (1964) NMLR 153; Lori v. The State (1980) 8-11 SC. 81 at 97. Indeed, where the cause of death is obvious, as in the instant case, medical evidence may be unnecessary or can even be dispensed with or inferred. See Tonara Bakuri v. The State (1965) NMLR 163 (p. 2964 C)

REPRESENTATION

Odje Mudiaga Okemute for the appellant

D Respondent is absent

CASES REFERRED TO

Godwin v. C.A.C. (1998) 14 NWLR (pt. 584) 162
 E Oladele v. Anibi (1998) 9 NWLR. (pt.367) 559 SC
 Okoro v. State (1998) 14 NWLR (pt. 584) 181. SC
 Ikemson v. State (1989) 3 NWLR (pt. 110) 455
 Saidu v. State (1982) 4 S.C. 41
 F Ojegele v. State (1988) 1 NWLR (pt.71) 414
 Udedibia v. State (1976)11 SC
 Uche v. Queen (1964) 1 All NLR 195
 Abisi v. Ekwealor (1993) 6 NWLR (pt. 302) 643
 Dakur v. Dapal (1998) 10 NWLR (pt.571) 578
 G Uzochukwu v. Eri (1997) 7 NWLR (pt.514) 535
 Audu v. The State (1990) 3 NWLR 363 at 370

STATUTES REERRED TO

H Criminal Code Law, Cap. 48, Vol. 11 Laws of Bendel State s. 319(1)
 Constitution of Nigeria 1979 (as amended) s. 33(4)
 Evidence Act s. 27 (1)

LEAD.JUDGMENT BY KARIBI-WHYTE

On the 21st December, 1995, Idahosa J of the High Court of Edo State, sitting at Benin City convicted Appellant for the murder of Isioma Okutu contrary to section 319 (1) of the criminal code law, Cap. 48, Vol. 11 Laws of Bendel State applicable in Edo State and sentenced B him to death by hanging.

On the 20th April, 1999 a unanimous Court of Appeal, Benin Division sitting at Benin City dismissed the appeal of Appellant against his conviction, and affirmed the conviction and sentence.

The appeal before us is against the decision of the Court of Ap- C
 peal above indicated.

The facts

The facts of this case are that Appellant and the deceased who D
 are both mechanics are friends. The deceased was working in a work-
 shop managed by an Elf petrol Station. Appellant worked in a neighbouring
 garage. They were on 4/7/94 engaged in a fight. They had been sepa-
 rated, before the Manager of the Elf petrol Station (PW.1) arrived. On E
 arrival, the Manager of the Elf Petrol Station where the deceased was
 working started the process of resolving the dispute and was talking to
 the deceased working under him to brief him on what was responsible
 for the fight. Whilst the deceased was narrating the story to the man-
 ager, the PW1, the accused standing nearby but separated by a concrete F
 wall fence and holding a shovel in his hand, hit the deceased on the head
 with the shovel. The deceased fell down immediately and unconscious.
 He was rushed to the police Station, and from there rushed to the Central
 Hospital, Benin City. The deceased did not regain consciousness. He G
 died no the third day i.e. the 6th July, 1991. It is pertinent to observe that
 Appellant reached the Police Station where the deceased was taken to
 carrying with him the shovel with which he hit the deceased, and re-
 ported himself and narrated the incident to the Police before the deceased
 was taken there. The arraignment and Trial. H

Appellant was charged with the murder of deceased. He denied
 the charge and was tried. The prosecution called seven witnesses. PW1
 and PW2 gave eye witness evidence of how the Appellant hit the de-

ceased with a shovel on his head, and that the deceased collapsed and was unconscious from the moment he was hit on the head by the Appellant PW3, Joseph Iwegbu identified the corpse of the deceased. He was the deceased from 5/7/91 till about 4 or 5 a.m. on 6/7/91 when the deceased died. PW4, Dr. Suleiman Abu, the consultant Pathologist performed the autopsy on the body on the deceased and gave evidence of the cause of death. PW5 and PW6 are Police Officers who investigated the offences allegedly committed by the Appellant, and obtained statements from him. These statements were tendered and admitted without objection. PW7, the Superintendent of police attested the statement of the Appellant who confirmed that it was voluntarily made.

The Appellant testified in his defence, but did not call any witness. There are discrepancies between the evidence in the testimony of Appellant in Court, and his earlier statements Exhibits A and B, to the investigating Police Officers.

At the trial, learned Counsel representing appellant, Mr. E. Omosagie raised the defence of provocation, self-defence and accident. It was also contended that it was not proved beyond reasonable doubt that the act of the Appellant caused the death of the deceased. Finally, it was submitted Appellant did not intend to kill the deceased or cause him grievous bodily harm when he hit him with the shovel. Learned Counsel referred to the medical report, and criticized it as having a lacuna. It was contended that a medical examination as to the cause of death should leave no room for any doubt as to cause of death. It was submitted that the medical report should show that the act of the appellant led to the death of the deceased. He commented on the medical evidence and suggested that there were other intervening factors between the incident and the time of the death of the deceased.

Learned Counsel argued that there were no contradictions between Appellant's testimony in court and Exhibits A and B, the extra judicial statements. The testimony in court was mere amplification of Exhibits A and B.

Counsel for the Prosecution referred to the evidence of PW1 and PW2 as eye witnesses and direct evidence, and the confessions of

the Appellant in Exhibits A and B. Counsel also referred to the evidence of PW4, i.e. the Medical evidence, and the nature of the injury found on the deceased. Exhibits A and B were voluntary and corroborated the evidence of PW1 and PW2. The prosecution rejected the defences of accident, which was not raised in Exhibits A and B. Self-defence did not B
avail Appellant who has not been able to show that there was a threat to his life or that he feared grievous bodily harm to him. The deceased was unarmed and the fighting had ceased. The evidence before the court did not support the defence of provocation. Finally, it was submitted the C
intention of the Appellant could be inferred from the nature of the instrument used and the extent of the injury inflicted resulting in the death of the deceased.

In his judgment the learned trial Judge carefully considered the evidence before him and made findings of facts. He found that PW1 and D
PW2 did not witness the fight between the deceased and appellant, but were both eye witnesses of the important act of the Appellant which led to the death of the deceased. Their evidence he found to be reliable unchallenged and were not shaken under cross-examination. Similarly, E
the evidence of PW5 and PW6 Police Officers who investigated the case, and who took the statements of Appellants Exhibits A and B. The learned trial Judge found that Appellant made the statements voluntarily. The statements were not challenged on the ground that they were not voluntarily F
obtained. He found that the testimony of Appellant before the court and Exhibits A and B are substantially the same. The learned trial Judge found the discrepancy between the testimony in court and Exhibits A and B and held that the testimony in court are not explanations of Exhibits A and B. Exhibits. A and B were made within a few hours and few days of G
the incident; when the events were still very fresh in his mind. He therefore preferred Exhibits A and B to the testimony in Court. The trial Judge accordingly found as follows -

*"(a) That the Accused hit the deceased on the head with Exhibit H
C on the 4th day of July, 1991, at the Elf Petrol Station at the junction of costain Road and Lawani Street, Benin City.*

(b) That the injury inflicted thereby on the head of the deceased

led to his being hospitalized at the Central Hospital, Benin City.

(c) That the injury eventually led to his death on 6/7/91 at the Central Hospital, Benin City.

The learned trial Judge considered the defences of provocation, self-defence and accident and accident raised by the defence and rejected each of them. He held that there was no evidence sufficient to support the defence of self-defence, he held relying on the evidence that there was no threat from the deceased to the life of the Appellant at the point when Appellant hit him on the head with the shovel. Accordingly the defence of self-defence was not available.

In rejecting the defence of accident, the trial Judge relied on the evidence of PW1 and PW2 who were eye witnesses which was corroborated by Exhibits A and B, to hold that it is clear that appellant intentionally hit the deceased from behind and aimed at the head of the deceased. On these facts the defence of accident is not available to the Appellant.

The learned trial Judge held that it was the act of the Appellant that caused the death of the deceased. The learned trial Judge did not recognize any intervening cause. There is the medical evidence that the deceased died from injury resulting from the act of the Appellant.

On the intention of the Appellant, the learned trial Judge found that Appellant intended to hit the deceased on the back. Relying on section 24 and section 316 (2), he held that the result intended to be caused is totally immaterial. What is material is what happened. The submission that there was no intention to cause the death of the deceased was rejected.

The prosecution was held to have proved the guilt of the Appellant beyond reasonable doubt.

Appeal to the Court of Appeal

Appellant appealed to the court below relying on the following two grounds.

"1. That the learned trial Judge erred in law in convicting appellant of murder when there was no direct evidence before the court that the appellant was responsible for the death of the deceased.

2. That the decision of the trial Judge is therefore unwarranted, unreasonable having regard to the weight of evidence."

It is necessary to observe that during argument in the court below the second ground of appeal stated above was struck out for incompetence, and as not a valid or proper ground of appeal in criminal cases. Appellant was only left with ground 1, which relates to the question that Appellant was convicted for murder of the deceased without direct evidence that he was responsible for the death of the deceased. B

The appellant formulated three issues for determination arising from the two grounds of appeal as follows - C

1. Whether the learned trial Judge was right in finding the accused/appellant guilty of murder upon illegal and inadmissible evidence as to the alleged confessional statement of the accused/appellant.

2. Whether the expert evidence of the Medical Officer, P.W.A. which was conflicting equivocating and/or favourable to the accused therefore unreliable was conclusive about the cause of death of the deceased and therefore the guilt of the accused/appellant as wrongly found by the trial Judge. D

3. Whether the trial Judge was right in convicting the appellant solely upon the prosecution evidence without first and foremost evaluating reviewing and/or ascribing probative value to the prosecutions case aforesaid and/or before even considering the defence open to the accused/appellant" E

The Court of Appeal properly struck out the third issue for determination as having not arisen from or related to any of the two grounds of appeal filed. Similarly, issue No. 1 without a supporting ground of appeal was also struck out. Appellant was left only with issue No.2. F

Issue No. 2 refers and relates to the nature of the testimony of P.W.4, the evidence of Suleiman Abu, the consultant Pathologist. At the trial, the Consultant Pathologist had testified that "with proper treatment a person with the type of injury sustained by the deceased can survive. Deficiency in some aspects of the body in the case of considerable loss of time before treatment. This is treatment in good health centres not in Nigeria..... It is true that there is a risk of other intervening factors G

because of considerable loss of time (Blood) by the visit to the Police Station. There is always the risk of blood and infection"

Appellant relied on this evidence to contend in the court below that the cause of death was inconclusive and this was supported by the
 B Medical evidence which suggested that there was a risk of other inter-
 vening factors because of the considerable loss of time by the visit to the
 Police Station. He emphasized the likelihood of survival of the deceased
 having regard to the nature of the injuries. Accordingly it was submitted
 C it had not been proved beyond reasonable doubt that death of the de-
 ceased resulted from the act of the accused.

The Court of Appeal referred to the finding of the trial Judge on this issue, and where it was held rejecting the submission that

*"It is true PW4 said under cross-examination that in places with
 D good health care systems, the injury inflicted upon the deceased would
 not have led to his death. In my view, that is beside the point. The main
 point is if the deceased had not been struck on the head he would not be
 in a position where he would need the advanced health care systems of
 E the industrialized countries to stay alive."*

The Court of Appeal considered the evidence of PW4, the Medical Doc-
 tor, and held after reviewing and distinguishing the decisions of this court
 in Adekunle v. The State (1989) 5 NWLR (pt.122) 505, 515-6, and Akpan
 F Esaidh Esssien v. The State (1984) 3 SC. 14.

*"It is not correct in my view, in the instant case to say that there
 is an inconclusive medical evidence as claimed by the learned counsel
 for the appellant as the case is clearly distinguishable from the cases of
 Adekunle and Akpan. All the doctor said in this case is that it is possible
 G for a person with the types of injuries sustained by the deceased to sur-
 vive in a country with an advanced health care system, but not in Nige-
 ria. The doctor in this case unlike the case of Adekunle (supra) did not
 give two "causes" of death. He in fact explained that the loss of blood
 H suffered by the deceased was not due to last medical attention but due to
 the nature of the injury inflicted on the deceased."*

The Court of Appeal agreed with the finding of the trial Judge who took into consideration the evidence before him and held as follows -

"... in the instant case too, the learned trial Judge resolved the issue raised regarding the medical evidence by drawing an inference from the evidence adduced before him in reaching his decision. I therefore have no hesitation whatsoever, in holding that the learned trial Judge was entitled to draw the inference from the evidence adduced and acted B rightly in my view in so doing."

The Court of Appeal considered the defences of provocation, self-defence and accident considered and rejected by the learned trial Judge. The Court of Appeal refrained from interfering with the findings of the trial Judge who saw and heard the witnesses and held that the conclusion C was not perverse.

Appellant has appealed against the judgment of the Court below which affirmed the judgment of the trial Court below which affirmed the judgment of the trial court, alleging five grounds of appeal made up by D four grounds of errors of law and a general ground. The grounds of appeal are as follows -

GROUND OF APPEAL

The learned Justices of the Court of Appeal erred in law in wrongly E affirming the trial courts several findings of fact and/or conclusions based upon the same which were manifestly insupportable and/or perverse as they did not arise from the evidence led by the prosecution and thereby reached a wrong decision as precipitated thereby a miscarriage of justice. F

PARTICULARS OF ERRORS IN LAW

When the learned Justices of the Court below adopted the said several erroneous findings of the trial Court to wit that:

(i) The prosecution proved its case of murder against the Appellant when the only available medical evidence PW4, Dr. Suleiman Abu G completely exonerated the Appellant from homicidal culpability.

(ii) There was a fatal lacunae of evidence of the treatment if any, was administered on the deceased by PW4 aforesaid in the light of H his evidence before the court that the injuries on the deceased were non-fatal and could have been treated successfully in proper health centres; not in Nigeria. (See pg. 10 lines 6-10, 12-15 of the Records of lower court.)

(iii) *The Nigerian factor - about which the medical officer testified about is not an ingredient of the grave Offence of murder for which the Appellant stood trial but rather exculpating evidence from the prosecution under the searing heat of cross-examination which the lower Courts ought to use to acquit rather than wrongly convict the Appellant.*

(iv) *There was therefore non-fulfillment of the mandatory provision of S.33 (4) of the 1979 Constitution as amended of proof of beyond reasonable doubt therefore entitling the Appellant to a verdict of discharge and acquittal in the circumstances. The learned Justices of the Court of Appeal erred in law in dismissing the Appellant's Appeal based upon an erroneous appraisal and/or evaluation of the prosecution's evidence on record and thereby reached a wrong decision.*

PARTICULARS OF ERRORS IN LAW

(I) *As contained in particulars in support of Ground I supra.*

(II) *When like the trial court it fell into the fatal error of woeful failure to assess, evaluate, review first and foremost before ascribing probative value to the prosecution's case which must be credible, compelling and cogent before the onus of proof would then shift to the Appellant who then must have a credible defence.*

(II) *The procedure adopted by both the trial court and the Court of Appeal after it, clearly reserved the constitutional burden of proof of innocence upon the Appellant which clearly produced a travesty of justice.*

The learned Justices erred in law in failing to set aside the obviously erroneous conviction of the Appellant whose trial was demonstrably and inherently unfair and unconstitutional and thereby reached a manifestly insupportable decision.

PARTICULARS OF ERRORS IN LAW

(I) *When the learned Justices were addressed in extenso about several binding legal authorities of the Supreme Court of Nigeria which were in pari materia with this present appeal but failed to consider, distinguish or discuss them in breach of the doctrine of stare decisis.*

(II) *Under this said sacrosanct doctrine of stare decisis the Court of Appeal, in the absence of any disabling feature, ought to have been*

Bound to follow the said binding decisions able cited in the Appellant's brief of argument at the hearing below.

(III) In the premises therefore this court of ultimate resort ought to set aside the indefensible non-compliance of the lower court with the said time-honoured doctrine of Judicial precedent which is a sine qua non of the maintenance of the dignity cohesion and esprit de corps of the Judiciary thereby commanding the undiluted confidence of all that comes before the citadel of justice.

The learned Justices of the Court of Appeal erred in law in upholding the conviction the Appellant on the ground of alleged confessional statement purportedly made admitting the alleged crime of murder when there was cogent, credible and compelling evidence ironically supplied by the prosecution against case against which exonerated the Appellant from the alleged confession and therefore decisioned wrongly.

PARTICULARS OF ERROR IN LAW

(I) As embedded in the Ground itself and/or as in particulars of errors in law in Grounds 1 & 2 of appeal supra.

The judgment is unwarranted, unreasonable and insupportable having due regard to the evidence."

Briefs of Argument and Formulation of Issues for determination

At the hearing learned counsel to the Appellants adopted and relied on his brief of arguments filed. Learned Counsel to Respondents was unfortunately absent at the hearing. However having filled a brief of argument, the Respondent is taken to have argued the appeal in terms of the brief filed - See Order 6 rule 8 (6) Rules of the Supreme Court, 1985 as amended. - See Imade v. Otabor (1998) 4 NWLR (pt. 544) 20 SC. Learned Counsel to the Appellant formulated four issues as arising from the five grounds of appeal filed. Respondent's counsel formulated two issues from the grounds of appeal. I have considered the two sets of issues formulated. I am satisfied the Appellant's formulation though a proliferation of issues and overlapping covers the grounds of appeal filed, and will despite its defect be appropriate for the determination of the issues raised in the grounds of appeal. The issues as formulated by the Respondent's counsel is too general in scope and will not adequately

meet the specific issues raised in Appellants grounds of appeal. **The purpose of formulating issues for determination is to isolate in the grounds of appeal filed, the critical issues relevant for the determination of the appeal. Hence an issue may be limited to one ground or traverse more than one ground of appeal - See Godwin v. C.A.C. (1998) 14 NWLR (pt. 584) 162. The essential consideration is the identification of the critical issues, whilst at the same time avoiding proliferation. - See Oladele v. Anibi (1998) 9 NWLR. (pt.367) 559 SC. It is important for counsel formulating issues to keep within the scope and confine the formulation to the grounds of appeal. It is not acceptable for counsel to formulate issues for determination not based on any grounds of appeal. Any such issues will not be countenanced and is liable to be struck out. - See Okoro v. State (1998) 14 NWLR (pt. 584) 181. SC**

Consideration of the arguments

(1) Issue 1 In my consideration of the issues for determination, I will deal with the first issue, which seems to me to have arisen from ground 4 of the grounds of appeal. The discussion of this issue will accommodate issue I of the Respondent's Counsel's formulation. This issue is based on the admissibility of the Statements of the Appellant, Exhibits A and B in the trial and reliance on them by the learned trial Judge for the conviction of the Appellant for murder of the deceased. Presentation of the argument of learned Counsel for the Appellant both in his brief of argument and his oral expatiation before us seems to me confused. The formulation which is based entirely on the admission of inadmissible confession of the Appellant went on to argue the issue of the effect of the medical evidence of PW4 which is not a ground of appeal.

The contention of learned counsel on this issue is that Exhibits "A" and "B" dated 4th and 8th July, 1991 respectively and allegedly made by Appellant to PW5, 6, and authenticated by PW7, Messrs.. Andrew Oluwafemi, Police Sergeant Amos Nkanta and Inspector of Police Deborah Edgal, Superintendent of Police were not in conformity with the Judge Rules. The attestation of the statements dated 22nd July, 1991, tendered as Exhibits "A", "B" and "E" were not legally admissible confes-

sional statements. The basis for this submission, according to learned Counsel is that since the evidence of proof of death was in favour of the Appellant he could not have confessed to the crime of Murder. The evidence in proof of death relied upon is that of PW4, Dr. Suleiman Abu, that the alleged injuries were not promptly and/or properly tended with medical treatment and were also not life-threatening to the victim (deceased). Learned Counsel submitted that the trial Judge convicted Appellant on the strength of the confessional statement. The Court of Appeal also erroneously affirmed. It was submitted that since Appellant was wrongly convicted on inadmissible and illegal evidence, he is entitled to an acquittal. The decisions of Mohammed v. State (1997) 9 NWLR (pt. 520)169, Arum v. State (1979) 11 SC, 91 , Adekunle v. The State (198) 5 NWLR (pt.123) 505; The State v. Okoro (1988) 5 NWLR (pt.94) 255 and Onwe v. State (1975) 9-11 SC. 23 were cited and relied upon.

It was urged on us that the findings of fact of the trial Judge were perverse since the alleged confession was based on the illegal evidence of PWs 5, 6 and 7.

A careful perusal of the record of proceedings and examination of the reasoning of the trial Judge and the affirmation of the Court of Appeal discloses the misconception of the approach of learned Counsel to the Appellants on the issue. It is strange to contend that because evidence of proof of death was favourable, appellant could not have confessed to the act resulting in death of the deceased. It is a non sequitur. Learned Counsel based his argument on the ground that Exhibits "A" and "B", the extra judicial statements of the Appellant were confessions which are inadmissible.

The learned trial Judge in accepting Exhibits "A" and "B" as made voluntarily, that Appellant did not say either expressly or by implication that they were not made by him or not signed voluntarily (see p. 46, lines 22-24). Again learned counsel, in his address, did not allude to the issue of involuntariness. Consequently the issue whether the statements Exhibits "A" and "B", were the voluntary statements of the Appellant were not in dispute did not arise, and are irrelevant to the consideration of the admissibility of the statements.

The Court of Appeal affirming this view, accepted the submission of counsel to the Respondent that at the trial it was not contended that the confessional statements were not voluntarily made, and that the statements were in fact duly admitted without any objection by Appellants counsel.

Learned counsel to the Appellant has misconceived the provision of section 27 (1) of the Evidence Act, which states that a confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime - See Ikemson v. State (1989) 3 NWLR (pt. 110) 455, Shazali v. State (1988) 5 NWLR (pt.93) 164, Udo Akpan v. State (1986) 3 NWLR (pt.27) 258 Nwosu v. State (1998) 8 NWLR (pt.562) 443. **A confession, if voluntary is deemed to be relevant facts as against the person who make them only. Accordingly voluntary confessions per se are admissible. To be inadmissible a confession must be shown not to be voluntarily made, or caused by inducement, threat or promise. - See S. 28, see Saidu v. State (1982) 4 S.C. 41, See Ojegele v. State (1988) 1 NWLR (pt.71) 414. In the instant case apart from the fact that the voluntariness of Exhibits "A" and "B" was not raised at the trial or any other time, learned Counsel relying on it has not pointed to any evidence of circumstances which renders the statements inadmissible on that ground. It is pertinent to point out the substantial corroboration of Exh. A and B, with the evidence of PW1 and PW2 who were eye witnesses to the act. These are independent corroborative evidence. - See Udedibia v. State (1976)11 SC. 133, Ntaha v. State (1972) 4 SC. 1.**

Learned Counsel to Appellant has referred to the breach by PW5, 6 and 7 of the Judges Rules in the manner the statements were recorded. There is no evidence that the statements were in breach of the rules, as Counsel did not refer to evidence of any breach. However, there is evidence that the statements Exhibits "A" and "B" were taken down after the usual caution had been administered. In any event these are rules of caution the non-observance of which is not necessarily fatal to the admissibility of

the statement - See Uche v. Queen (1964) 1 All NLR. 195.

The important consideration in cases of this nature and category is that the court before admitting the evidence should be satisfied that the statement was really made voluntarily and was not induced by any promise or threat or by actual violence. In any event this question arises only when voluntariness velnon of the statement is an issue. See Queen v. Igwe (1960) 5 FSC. 55. It is not in issue in this case.

Appellant's counsel has relied on the testimony of PW4, Dr. Suleiman Abu as evidence exculpatory of the Appellant. It is argued that based on this evidence Appellant ought to have been acquitted. The evidence relied upon is where PW4 said;

"With proper treatment a person with the type of injury sustained by the deceased can survive. Deficiency in some aspects of the body in the case of considerable loss of time before treatment. This is treatment in good health centres not in Nigeria... It is true that there is a risk of other intervening factors because of considerable loss of time and blood by the visit to the police station. There is always a risk of blood and infection."

It is difficult to conceive how learned counsel can infer exculpatory evidence of the act of the Appellant from the above quoted passage. This is not an intervening act, but a result from the consequences of appellant's acts. The learned trial Judge at P. 53 rejected the contention and stated that it was beside the point. In his view, "The main point is if the deceased had not been struck on the head, he would not be in a position where he would need the advanced health care systems of the industrial countries to stay alive."

The Court of Appeal endorsed this finding and went further to reject the contention that the evidence of PW4 was fatal to the case of the Prosecution, and that the medical evidence was inconclusive. The Court of Appeal distinguished Adekunle v. The State (supra) Where the medical evidence referred to two possible causes of death. There the evidence referred to death by starvation or multiple injuries. Even in that case the proper inference based on the evidence was drawn. The Court of Appeal came to the following conclusion - at p. 91.

"It is not correct in my view, in the instant case, to say that there is an inconclusive medical evidence as claimed by the learned counsel for the appellant as the case is clearly distinguishable from the cases of Adekunle and Akpan. All the doctor said in this case is that it is possible for a person with the type of injuries sustained by the deceased of survive in a country with an advanced health care system but not in Nigeria. The doctor in this case unlike the doctor in Adekunle (supra) did not give two causes of death."

This conclusion of the evidence is impeccable. The doctor, PW4 was not referring to the cause of death, but the different circumstances between industrialized countries and the circumstances of the deceased.

The first issue, and accordingly ground 4 of the grounds of appeal is resolved against the Appellant.

Issue No. 2 which claims to be based on ground 2 is completely erroneous. Ground 2 speaks of erroneous appraisal and evaluation of the prosecution evidence. Issue 2 which is concerned with the error in not acquitting the Appellant after a favourable medical evidence of the cause of death is not related to the issue purported to have been derived from it. Beside this fundamental fault, this issue is based on the assumption that the evidence of PW4 was favourable to the Appellant. Having held that this is not the case the bottom of the proposition falls and there is nothing further to be considered. The considerations of contributory negligence alleged on the part of unknown and unnamed persons in the hospital is not evidence before the trial Judge. There is no ground of appeal on which the allegation is based. Similarly erroneous is the allegation of fatal omission and negligence against PW4, the medical doctor, whose only connection with the case was his performance of an autopsy on the body of the deceased. The arguments on this issue is entirely irrelevant, misconceived and lacking in merits. Learned counsel should avoid arguments founded on irrelevant considerations or relying on assumptions which are in no way related to the facts of the case as established before the trial court. The effort is the more absurd when the inference drawn cannot remotely be derived from the facts before the court.

Issue 3 claims to be related to ground 3 of the grounds of appeal. The

issue in 3 is concerned with the procedure adopted by the trial judge in evaluating or considering the case of the prosecution or the defences put forward or open to the Appellant in this case. The ground of appeal on which the issue is based is a criticism of the of the conviction on the ground that the trial was demonstrably and inherently unfair and unconstitutional. There is no reference in the particulars of error of the procedural or substantive errors which were committed at the trial. Or the method adopted which rendered the trial "inherently" unfair. Learned Counsel did not refer to the violation of any provision in relation to the trial. All that was done in the particulars of errors of law to the ground of appeal is to allege that the court below refused to follow the binding decisions cited to them in the Appellant's brief. B C

However, notwithstanding the defect pointed out I shall deal with the criticism of the evaluation of evidence by the trial judge. The contention before us and in appellant's brief was that the trial Judge considered the defence after reviewing and evaluating the evidence of the prosecution witnesses, and made damaging findings and in that regard was biased and prejudiced. Learned counsel pointed out nine specific findings to support his contention. The Court of Appeal affirmed these findings. This is what learned counsel considered as unconstitutional and a violation of the presumption of innocence in Section 33 (4) of the constitution 1979. As I have already stated, the criticism is against the method adopted by the learned trial Judge in the evaluation of the evidence before him. D E F

It is elementary principle that the function of the evaluation of evidence is essentially that of the trial Judge. See Onuoha v. The State (1985) NWLR (pt.548) 118. Where the trial Judge has unquestionably evaluated evidence and justifiably appraises the facts it is not business of an appellate court to interfere, and to substitute its own views for the view of the trial court. - See Woluchem v. Gudi (1981) 5 SC. 291, Enang v. Adu (1981) 11-12 SC. 25. The order in which a trial Judge considers the evidence before him having heard the witnesses at the trial is entirely within the discretion of the Judge who has heard the evidence. It is a matter of style. He may begin with the case of the defence or the prosecution. He may compare the the evidence of one witness as against the G H

other. The important consideration is that the trial Judge has evaluated all the evidence before him in respect of the prosecution and the defence before coming to his decision. This is what the trial Judge did in this case and the Court of Appeal accepted as valid and proper. I agree with them.

Where the trial Court has satisfactorily performed its primary function of evaluating evidence and correctly ascribing probative value as was done in this case, the Appellate Court has no business interfering with the findings on such evidence. - See Abisi v. Ekwealor (1993) 6 NWLR (pt.302) 643 Okolo v. UBN Ltd. (1998) 2 NWLR (pt.539) 618. UBN Plc. v. Borini Prono Co. Ltd. (1998) 4 NWLR (pt.547) 640. It is accepted that Appellant who relies on improper evaluation of evidence to set aside the judgment has the onus to identify or specify the evidence improperly evaluated or not evaluated and to show convincingly that if the error complained of had been corrected, the conclusion reached would have been different and in favour of the party, complaining of wrong evaluation. In this case the criticism in this issue is essentially on the method adopted by the learned trial Judge, which traditionally is entirely within his discretion. There was no particularization of the evidence wrongly evaluated. - See Dakur v. Dapal (1998) 10 NWLR (pt.571) 578. Appellant has accordingly failed to discharge the onus on him that if properly evaluated the conclusion would have been favourable to him.

The argument addressed to us founded on the presumption of innocence in Section 33 (4) of the Constitution 1979 appears to me strange. The presumption of innocence safeguarded for the accused on his arraignment enures throughout the trial. -See Ibeziako v. Commissioner of Police (1964) NMLR. 10. It is not taken away, even if it is conceded, by an isolated incident. It is the more absurd to speak of the violation of the constitutional provision where the issue is that of ascribing probative value to the evidence already properly admitted after observing the constitutional safeguards. The trial Judge did not contravene the provisions of Section 33 (4) by the procedure he adopted in considering the evidence before him. The method did not shift the onus of proof from the

prosecution to the Appellant - See Onyeachimba v. State (1998) 8 NWLR (pt.563) 587. The argument on this issue is to say the least trivial and completely devoid of any merits.

The fourth issue for determination which arose from grounds 1 and 5 of the grounds of appeal, attacked the specific findings of fact of the learned trial Judge which were affirmed by the Court of Appeal. It was submitted that the findings are manifestly insupportable and therefore perverse and ought not stand. Learned Counsel to the Appellant enumerated the findings of fact which are as follows -

1. That the Prosecution witnesses were not discredited or shaken by cross-examination. C

2. The evidence of the Prosecution was not contradictory

3. The Judge had watched the said witnesses who appear to him as persons who have no axe to grind with the Appellant. D

4. The prosecution witnesses appeared to the Judge as truthful witnesses.

5. The PW1 and PW2 and no reason to lie against the Appellant.

6. The trial Judge accepted and believed the evidence of PW1 and PW2. E

7. The trial Judge believed that Exhibits A and B were made voluntarily by the Appellant. He also believed the evidence of PW5, PW6.

8. He ruled that failure to call the attesting officer of Exhibit B was not fatal to the document. F

9. He found that Appellant agreed and admitted as true and correct.

Without giving reasons why the above findings should be rejected learned Counsel submitted that the findings are perverse and not borne from the evidence. It was submitted that the inference and conclusions made from the evidence on record could not be made by any reasonable tribunal. Learned Counsel submitted, cited several decided cases urging this Court not to accept, but reverse the concurrent findings of fact on which the conviction of the Appellant now stands. G H

Learned Counsel to the Respondent in the brief filed has argued that there are concurrent findings of fact of the guilt of the Appellant. It

was pointed out that PW1 and PW2 gave eye witness account of the event leading to the death of the deceased PW4 who conducted the autopsy on the deceased, also certified the cause of death. At the earliest opportunity when the event was fresh in Appellants memory, he made
 B confessional statements to the Police voluntarily. These are Exhibits "A" "B" and "E". Appellant reported himself to the police on the day of the incident. The medical evidence was that the deceased died as a result of the injuries inflicted on him by the Appellant. Appellant gave evidence at
 C his trial but did not call any witnesses. The defence of Appellant raised the possible defences of provocation, self-defence and accident. All these defences were adequately considered by the trial Judge and rejected on the evidence before the Court.

In a prosecution on a charge for murder under section 319
 D **(1) of the Criminal Code, as in the instant case, the prosecution is required to prove beyond a reasonable doubt**

- (i) that the deceased had died
- (ii) that the death of the deceased resulted from the act of
 E the appellant
- (iii) that the act of the appellant was intentional with the knowledge that death or grievous bodily harm was its probable consequence.

F It is difficult to appreciate the criticism of learned Counsel to the Appellant of the findings fact made by the learned trial Judge in this case and of the Court of Appeal affirming the findings. The evidence of the event resulting in the injury which led to the death of the deceased were given by PW1 and PW2, Eye witnesses to the event. The cause of death
 G which occurred only on the third day of the incident was given by PW4 a Consultant Pathologist. The defence of the Appellant was found to exclude provocation, self-defence or accident. Appellant was held to have caused the injury resulting in the death of the deceased intentionally.
 H The Court of Appeal has affirmed the findings of the trial Judge. **I am satisfied there are sufficient evidence enabling the Court below to arrive at their conclusion. We now have concurrent findings of facts in both courts below. Learned Counsel to the Appellant has**

not given reasons why these findings of fact should be disturbed. This Court will not interfere with concurrent findings of facts which have neither been shown to constitute a miscarriage of justice nor to contain any procedural error or is indeed in any way perverse. - See Uzochukwu v. Eri (1997) 7 NWLR (pt.514) 535. Mohammed v. B Hussein (1998) 14 NWLR (pt.584) 108 SC.

The argument of learned Counsel to the Appellant seems to me clearly misconceived. The submissions on the fourth issue for determination and the 1st and 5th grounds of appeal on which it is based accordingly fail.

All the issues for determination formulated having been resolved against the Appellant, the Appeal fails and is accordingly fails.

All the issues for determination formulated having been resolved against the Appellant, the Appeal fails and is accordingly hereby dismissed.

The Judgment of the Court of Appeal Division, Benin city, dated 20th April, 1999, affirming the judgment of Idahosa J, of Edo State High Court, at Benin City dated 21st December, 1995 convicting Appellant of the offence of Murder contrary to section 319 (1) of the criminal Code of Bendel State 1976 01. 11 Cap. 48 applicable in Edo State is hereby affirmed.

OGUNDARE JSC

I have read in advance the judgment of my learned brother Karibi-Whyte, JSC just delivered. I agree with his reasonings and the conclusions reached by him on all the issues canvassed before us in this appeal. I adopt them as mine.

Consequently, I too dismiss this appeal and affirm the judgment of the Court of Appeal, Benin Division.

ONU JSC

I have had the privilege of a preview of the judgment just delivered by my learned brother Karibi-Whyte, JSC. I am in entire agreement

with him that this appeal lacks merit and must perforce fail.

I wish to expatiate on the case briefly as follows:-

The dominant issue in this appeal as contested in the two courts below is, in my view, whether from the nature of the evidence adduced by the prosecution, the charge of murder has been proved against the appellant.

The facts of the gruesome case have been so ably reviewed and so well taken care of in the leading judgment of my learned brother, that I do not deem it necessary to embark on any further review of them here. Suffice it to say, that I adopt all four issues formulated by the appellant in my treatment of the appeal, as condensed into the two overlapping ones formulated by the respondent as follows:-

I. Whether the learned Justices of the court below were right or justified to affirm the decision of the trial court when it was obvious that the alleged confessional statements extracted from the appellant did not provide the commission of the offence of murder against the appellant warranting his conviction and sentence for murder on that basis: Ground 4 of Appeal.

II. Whether the learned Justices of the Court of Appeal were justified to have affirmed the several manifestly insupportable findings of fact and/or conclusions based on the same which were therefore perverse since the same did not arise and/or were not deductible from the evidence proffered by the prosecution as contained in the cold print of record: Grounds 1 & 5 of Appeal.

III. Whether the learned Justices of the Court of Appeal were justified in basing their judgment dismissing the appellant's appeal on the earlier trial Judge's erroneous appraisal, evaluation and/or ascription of probative value to the case of the prosecution which evidence was mixed, conflicting and full of gaps and lacunae and particularly the medical evidence as to the cause of death which was favourable to the appellant who thereby was ex debito justicia entitled to a verdict of discharge and acquittal: Grounds 2 of Appeal.

IV. Whether the learned Justices of the Court below were justified in upholding the judgment of the trial court when ex-facie the trial leading up to the appellant's conviction was manifestly and/or inherently

unfair and therefore unconstitutional and ought to have been accordingly declared a nullity by an Order quashing rather than affirming the appellant's conviction and sentence: Grounds 4 of Appeal.

Having regard to the exhaustive consideration given by my learned brother to all four issues submitted as arising for our determination, I consider my humble comments on issues I separately and issues II, III and IV together of the appellant's as sufficient to dispose of this appeal as follows:-

ISSUE NO.1: The argument proffered here was to the effect that as ably canvassed in the appellant's brief in the court below and as clearly discernibly from the evidence of PW5, PW6 and PW7 (all three investigating police officers), through whom the three confessional statements Vide Exhibits 'A', 'B', and 'E' received in evidence did not constitute proof of the offence of murder contrary to Section 319 (1) of the Criminal Code.

It was in addition submitted that appellant could not have confessed to murdering the deceased as made out in the testimony of PW4, Dr. Suleiman Abu. We were referred to what was termed the illuminating piece of exculpating evidence as borne out under cross-examination as to how the deceased's life could have been saved had time not been lost and treatment procured at good health centres.

It was further contended that the sole and singular evidence of the cause of death being that of PW4 which indeed exculpated the appellant, exonerated him in the light of the shadow of doubt over the fluttering prosecution's case. This notwithstanding, it was argued, the trial court believed the confessional statement which although not objected to at the time, was tendered and appellant's conviction based thereon with the court below affirming that perverse finding of fact in violation of the Judge's Rules. After maintaining that the procedure adopted which was objected to by the defence is manifestly illegal and contrary to statute; that being essentially a mis-carriage of justice, rendered the entire proceedings incurably defective and incompetent. Courts of this land, it was further maintained, have been enjoined time and again to act upon only credible, compelling and admissible evidence; that they should nei-

ther speculate, conjure and/or make a case for either of the parties nor descend from their exalted pedestal of neutrality and impartiality imposed by the Constitution. It was next pointed out that the trial court in the first instance fell far short of this duty while the lower court perpetuated the error and therefore equally decided the case wrongly as to amount to a clear and flagrant abortion of justice. The cases of Mohammed v. The State (1997) 9 NWLR (Part 520) 169; Arum v. The State (1979) 11 SC. 91; Adekunle v. The State (1989) 5 NWLR (part123) 505; The State v. Okoro (1988) 5 NWLR (part 94) 255 and Onwe v. The State (1975) 9-11 SC.23 at 31-52 were cited and relied on.

It is my firm view that Exhibits A, B and E were made by the appellant, one out of which was attested to at the earliest opportunity when matters were fresh in appellant's memory. No objection whatsoever was taken as to their admissibility especially on ground of voluntariness. In the instant case, I am satisfied that Exhibits A, B, and E are direct and positive, duly made and satisfactorily proved. See Ironsi v. The State (1969) 1 NMLR 203 at 204; Obasi v. The State (1965) NMLR 119 at 723. In the latter case it was held that "A free and voluntary confession of guilt by an accused if it is direct and positive and is duly made and satisfactorily proved is sufficient to warrant a conviction without any corroborative evidence." Thus is the case of Achabua v. The State (1976) 12 SC. 63 at 68, it was observed that -

"the secrecy with which criminals perpetrate their crimes has tended to deprive the prosecution in some cases of eye-witnesses, hence confession alone even without corroboration can support a conviction as long as the court is satisfied of the truth." See also Udo v. The State (1972) 6-9 SC. 234 at 240; Afolabi v. C.O.P. (1961) 1 All NLR 654. In a case such as the one in hand where the cause of death is known or is obvious from the nature of the injury inflicted (See Kato Dan Adamu v. Kano N. A. (1956) 1 FSC 25), the free, direct, unfettered, positive and voluntary confessions made by an accused such as Exhibits A, B, and E, the court may convict on them without the need for medical evidence. See Okegbu v. The State (1980) 5 SC. 65; and Yesufu v. The State (1976) 6 SC. 167 at 173. Indeed, it is settled law the where a confession is

objected to - not as in the instant case where no objection was raised as to the voluntariness of these extra-judicial statements- a judge sitting alone must hear and determine its admissibility, see R. v. Onabanjo (1936) WACA 43 and R. v. Kass (1939) 5 WACA 154. Where, however, an accused is merely disputing the correctness of the contents of the written statement or that he made no statement at all, it is not necessary to have a trial-within-trial. See R. v. Igwe (1960) 5 FSC. 55; The Queen v. Eguabor (1962) 1 All NLR and Obidioso v. The State (1987) 4 NWLR (part 67) 760-762. See also S. 316 (2) of the Criminal Code and the case of Irek v. The State (1976) 4 SC. 65 at 67. As the appellant in the case in hand made Exhibits 'A', 'B', and 'E' contemporaneously to the time of his act of brutal wielding the blow with Exhibit 'C' and the deceased's death resulted within 3 days of his being unconscious from the time the blow occurred, I see no merit in the argument of learned counsel that both courts below were in error in their Conclusions that the appellant is guilty of the offence of murder as charged.

Issue 1 is accordingly answered in the affirmative.

ISSUE NOS. II, III AND IV: To prove a case of murder such as the instant one and succeed, the prosecution must prove:

- (a) the death of the deceased
- (b) the cause of death; and
- (c) the identity of the person murdered.

See Duru v. The State (1993) 3 NWLR (part 281) 283 at 290.

At the trial the appellant testified and called no witness. In his defence which was far from articulate, he tried to raise all the possible defences to murder such as provocation, self defence and accident irrespective of his earlier confessional statements (Exhibits 'A', 'B' and 'E'). The learned trial judge adequately and painstakingly considered and reviewed these defences alongside the prosecution's case.

Contrary to the learned counsel for the appellants's contention that the learned Justice of the court below affirmed the several manifestly insupportable findings of fact and/or conclusions based on the same which were perverse, since the same did not arise and were not deducible from the evidence proffered by the prosecution, I am of the

firm view that the learned trial Judge apart from summarizing the evidence of the prosecution witnesses, also reviewed, appraised, evaluated and ascribed probative value to it. There is nothing damaging in the findings of fact of the learned trial Judge especially as he eventually considered all the possible defences that might avail the appellant and they all collapsed like "a pack of cards". Consequently, he rejected them all. The issue of lack of fair hearing would not, in my opinion, arise.

The Court below therefore, rightly in my view, held thus:-

"In the instant case, I am of the firm view that since the findings of the learned trial Judge are neither perverse nor insupportable by evidence and that the learned trial Judge having fully considered, reviewed and evaluated the evidence adduced, before arriving at his decision, there is no reason whatsoever to disturb the judgment."

I cannot agree more.

On the defence of accident on which a mountain would appear to have been made out of a molehill in this case, this defence was stated by Karibi-Whyte, J.S.C. in the case of Aliu Bello & 13 ors. v. Attorney General of Oyo State (1986) 5 NWLR 828 to connote:

"An accident is the result of an unwilled act, and means an event without the fault of the person alleged to have caused it". See section 24 of the criminal code.

It was held in Adelumola v. The State (1988) 1 NWLR (part 73) 633 that for an event to qualify as an accident under section 24 of the criminal code, it must be a surprise to the ordinary man of prudence, that is, a surprise to all sober and reasonable people. The test is always objective. See also Audu Umoru v. The State (1990) 3 NWLR 363 at 370.

The manner in which the appellant was shown clearly in the evidence of PW1 and PW2 to have wielded Exhibit "C" on the deceased portrayed a willed deliberate act and such an act in law negates the defence of accident. See Adelumola v. The State (supra). Thus, while in the case of Ozaki v. The State (1990) 1 NWLR. 92 at page 108 this court held (per Obaseki, JSC) that:-

"..... it is settled law that there is no burden of proof imposed on an accused to establish an issue affording justification or excuse at

common law such as accident, self defence or alibi as an answer to the charge". See also Ukwunnenyi v. The State (1989) 4 NWLR 131 at page 144-145. In the instant case, where there was overwhelming evidence and the two courts below so held that appellant hit the deceased on the head with Exhibit 'C' knowing that the act would be the probable cause of his death, the defence of accident would not avail the appellant. This is because the defence of accident, like all other defences, presupposes that the accused physically committed the offence but should be acquitted because it was an accident. See Chukwu v. The State (1992) 1 NWLR (Part 217) 255; Daniels v. The state (1991) 8 NWLR (part 212) 715 and Nwodo v. The State (1991) 4 NWLR (part 185) 341. B C

On the issue as to whether any aspect of the medical evidence that is favourable to the appellant as to warrant his acquittal, the appellant's contention is based the evidence of PW4, Dr. Suleiman Abu. He said during cross-examination inter alia as follows:- D

"With proper treatment, a person with the type of injury sustained by the deceased can survive. Deficiency in some aspects of the body in the case of considerable loss of time before treatment. This is treatment in good health centres - not in Nigeria. Before I saw the body, it had silk sutures on the wound. I would not be surprised to know that the incident that led to his death happened two days before I examined the corpse. It is true that there is a risk of other intervening factors because of the considerable loss of time by the visit to the Police Station. There is always the risk of loss of blood and infections". E F

I cannot see how the above piece of evidence can be said to be an exculpatory piece of evidence favourable to the appellant as to warrant his acquittal when the point was not an issue before the Court. What is more, the trial Judge rightly held that this is beside the point and that the main issue before the court is that the appellant struck the deceased on the head with Exhibit 'C' as a result of which he died. Had the deceased not been struck on the head with Exhibit 'C', he would not have been in a position where he would need good health care or proper treatment obtainable in good health centres outside Nigeria. The reasoning here therefore is non-sequitur. Albeit, PW4 in his concluding evidence said:- G H

"The loss of blood in this case was not due to lack of fast medical care but due to the nature of the wound."

The medical evidence is clear and unambiguous leaving no shadow of doubt as to the cause of death. It admits of no other probable cause of death other than the injury inflicted by the appellant. Section 312 Criminal Code settles it all. It provides as follows:-

"When a person causes bodily injury to another from which death results, it is immaterial that the injury might have been avoided by proper precaution on the part of the person injured or that his death from that injury might have been prevented by proper care on treatment."

It is good law that medical evidence is not always essential though desirable to prove the cause of death. Thus, where medical evidence is lacking the court is perfectly entitled to infer the cause of death from the circumstances. See Kato Dan Adamu v. Kano N. A. (supra); Frank Onyemankeya v. The State (1964) NMLR 153; Lori v. The State (1980) 8-11 SC. 81 at 97.

Indeed, where the cause of death is obvious, as in the instant case, medical evidence may be unnecessary or can even be dispensed with or inferred. See Tonara Bakuri v. The State (1965) NMLR 163; Adamu Kumo v. The State (1968) NMLR 227, and Okon v. The State (1991) 8 NWLR (Part 210) 424. In the not-too-dissimilar case of The State v. Ayo Adegbam

(1968) NMLR 347 at 349, it was held that it is not an immutable requirement that the cause of death should be proved by medical evidence. It was therein further held that "Where a man is struck with a lethal weapon and he falls down there and dies, it does not require medical evidence to say that the cause of death is the wound inflicted with the lethal weapon; an eye-witness who sees the attack (in the instant case the evidence of PW1 and PW2 fits into this scheme) can give such evidence and from such evidence, the court can infer the cause of death." See Bakare v. The State SC. 615/64 (unreported) and Oguntolu v. The State (1987) 1 NWLR (Part 50) 464 at 469. (parenthesis is mine for emphasis.)

The decisions by the two courts below clearly, in my view, constitute concurrent findings to which this court's attitude has been one of

non-interference or non-disturbance, unless there is some miscarriage of justices or a violation of some principles of law or procedure. See Nwuzoke v. The State (1988) 2 SCNJ 344 at 346; Sobakin v. The State (1981) 5 SC. 75; Nwangu v. Okonkwo (1987) 3 NWLR (part 60) 314 at 321, and Nwadike v. Ibekwe (1987) 4 NWLR (part 67) 718. B

In the light of the foregoing, I resolve issues II, III and IV, against the appellant.

For the above reasons and those contained in the leading judgment of my learned brother Karibi-Whyte, J. S. C. I too dismiss this appeal and affirm the conviction and sentence passed on the appellant. C

IGUHJSC

I have the privilege of reading in draft the leading judgment just delivered by my learned brother, Karibi-Whyte, J. S. C. and I agree that there is no merit in this appeal and that the same ought to be dismissed. D

It is crystal clear from the evidence and the findings of the trial court thereupon as affirmed by the court below that the deceased died as a direct result of the injury inflicted on him by the appellant. The said appellant, after the fight between him and the deceased had been separated and without any justification whatsoever attacked the deceased and hit him with a shovel on the head. The deceased immediately fell down and became unconscious until he later died in the hospital. E F

This attack on the deceased by the appellant was clearly intentional. The possible defences of provocation, self defence and accident raised on behalf of the appellant were adequately considered by both courts below and were, rightly in my view rejected as unavailable to the appellant. G

It is for the above and the more detailed reasons contained in the leading judgment that I, too, dismiss this appeal as entirely frivolous and affirm the judgments of both courts below. H

AYOOLA JSC

All the issues that need to be considered in this appeal have been very exhaustively considered in this judgment of Karibi-Whyte, JSC. I am in complete agreement with the reasons he gives for dismissing the appeal. I too would dismiss it accordingly.

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