

SUPREME COURT OF NIGERIA

14TH APRIL, 2000. SC. 157/1999

**CORAM:- A. G. KARIBI-WHYTE, M. E. OGUNDARE,
U. MOHAMMED, A. I. KATSINA-ALU, E. O. AYOOLA, JJSC**

MOHAMMED GARBA & ORS.	APPELLANTS
V.		
THE STATE	RESPONDENT

APPEALS - Issue - Incompetent issue - An issue for the determination of appeal - Must relate to and be distilled from any of the grounds of appeal - If it does not it is incompetent and must be struck out.

MURDER - Culpable homicide punishable with death - Under s. 221 of the Penal Code - When a person is guilty of an offence under the section.

MURDER - Culpable homicide punishable with death - Murder weapon - Failure to produce the murder weapon during the trial - Is inconsequential in the circumstances of the present case.

FACTS

The appellant and two others were charged of with criminal conspiracy, contrary to section 97 and punishable under Section 221 (b) of the Penal Code; and for culpable homicide punishable with death under section 221 (b) of the Penal Code. There was a wrestling contest at Yandoji village in Wudil Local Government Area of Kano State. The deceased, who hailed from Wanbantu village attended the contest. He was at that time in company of P.W.1 and P.W.2. During the contest, the deceased wrestled with one Nuhu of Yandoji village. The deceased defeated Nuhu. PW2 wrestled with 2nd accused who also was from Yandoji village and defeated him. There were many people including girls watching the wrestling match. The defeat of Yandoji People angered the appellant and the other two accused persons. They carried sticks and threatened to beat the deceased, PW1 and PW2 but they were prevented from

attacking them by spectators at the match. After the match while the deceased, PW 1 and PW 2 were walking back to their village at about midnight in the guinea corn plantation the appellant suddenly emerged from behind a tree and struck the deceased with a stick on the head. The deceased fell down and started bleeding from the head. He subsequently died on the spot. PW 1 and PW 2 who had torch lights with them identified the appellant as the assailant. PW 1 chased him in the guinea corn plantation but he escaped. PW 2 told the trial court that the 2nd and 3rd accused also emerged from the southern part of the road holding sticks. But when PW 2 called for the aid of PW 1, the two accused persons ran away. PW1 and PW 2 carried the corpse of the deceased to their village. On the following day the appellant and the other two accused persons were arrested. The body of the deceased was examined by a medical officer. The medical report stated that the cause of death was hemorrhage due to fracture of the skull. The police investigation officer recorded statements from the accused persons.

The learned trial judge considered the evidence adduced by both the prosecution and the defence. And in a considered judgment, he convicted the three accused persons of criminal conspiracy and sentenced all of them to death. The appellant was, in addition, found guilty of culpable homicide punishable with death, contrary to section 221 (b) of the Penal Code. He was convicted of the offence and sentenced to death. They all appealed to the Court of Appeal. The Court of Appeal, found that the offence of criminal conspiracy was not proved. It therefore allowed the appeal on that charge and discharged and acquitted all the accused persons. It however dismissed the appeal of the appellant on the culpable homicide charge. The appellant has further appealed to the Supreme Court raising two issues

ISSUES FOR DETERMINATION

"1. Whether the Court of Appeal was right in holding, inter alia, that issues raised by the appellant relating to:

- (i) non production of the murder weapon, and;*
- (ii) the effects of that non-production were incompetent.*

2. Whether, having regard to all the circumstances, the Court of

Appeal was right in holding that the eye witness accounts of PW1 PW2 were alone sufficient to establish the guilt of the appellant for culpable homicide punishable with death".

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

Appeals - Issue

1. It is a mandatory requirement that an issue for the determination of appeal must relate to and be distilled from any of the grounds of appeal. If it does not it is unarguable and incompetent. Such an issue must be struck out. See Ogunjumo v. Ademolu (1995) 4 NWLR (pt. 389) 254 and Onagbemi v. Guinness (Nig). Ltd. (1995) 2 NWLR (pt. 377) 258. Learned counsel for the respondent replied that issues 4 and 5 formulated at the Court of Appeal were not related to the ground of appeal which I reproduced above. I quite agree that those issues could not be distilled from the ground of appeal. (p.1042 F)

Murder - Culpable homicide

2. In the definition of culpable homicide punishable with death under Section 221 (b) of the Penal Code it has been made clear that whether death was the probable or only a likely consequence of an act or of any bodily injury, is a question of fact. Thus where body injuries, intended to be inflicted are sufficient in the ordinary cause of nature to cause death the offence falls under Section 221 (b) of the Penal Code. If from the intentional act of injury committed the probability of death resulting is high, the finding should be that the accused intended to cause death or injury sufficient in the ordinary cause of nature to cause death. If the probability of death is very great, as for example, where as in this case, the accused struck the deceased with a stick with such a force on the head that the deceased collapsed and died on the spot the offence under Section 221 (b) of the Penal Code has been established. A person is clearly guilty of an offence under Section 221 if he does an act which causes death with intention to cause death or if he knew or had reason to know that death would be the probable consequence of his act. See

Nyam and ors. v. The State (1964) 1 All N. L. R. 356. (p.1045 C)

Culpable homicide - Murder weapon

3. The failure to produce the murder weapon during the trial is, in my
B view, inconsequential. It is the intentional murderous assault on a vital
part of the body which leads to conviction for culpable homicide punish-
able with death. There can be no doubt that a person delivering a violent
C blow with a stick or club on a vulnerable part of the body such as the
head must be deemed to have intended to cause such bodily injury as he
knew that death would be the probable consequence of his act. (p.1046A)

NOTABLE POINTS OF INTEREST

MOHAMMED JSC

D 1. *How to properly frame issues for determination*

When framing issues for the determination of appeal care should be taken
because it is a very serious part of a brief. Each issue must be framed in
a clear language and must arise and relate to the grounds of appeal which
E represent the questions in controversy in the particular appeal. In
Olowosago v. Adebajo (1988) 4 NWLR (part. 88) 275 at 283. (p.1043B)

KATSINA-ALU JSC

F 2. *A man intends the natural and probable consequences of his acts*

The law presumes that a man intends the natural and probable conse-
quences of his acts. And the test to be applied in these circumstances is
the objective test namely, the test of what a reasonable man would con-
template as the probable result of his acts. The appellant in this case
G emerged from his hideout and dealt the deceased a blow on the head with
a stick. The deceased fell down and died on the spot. The sole question
here is whether the unlawful and voluntary act of the appellant was of
such a kind that grievous bodily harm was the natural and probable result
H - DPP v. Smith (1960) 3 All E. R. 161; Akinkunmi & Ors. v. The State
(1987) 3 SC. 152. On the state of the evidence, it must be observed that
the appellant must at least have appreciated that the blow with a stick on
the head of the deceased, which resulted in instant death, would at least

occasion serious harm to him. That would undoubtedly lead to a conviction of a charge of murder. (p.1047 A)

REPRESENTATION

M. D. Belgore - for the 1st Appellant

Rilwanu M. Aikawa, Solicitor General, Kano State; M. L. Ibrahim, DPP., S. B. Na Mallam, Ag. ADPP, and J.S. Suleiman, C.S.C., with him, for the Respondent

CASES REFERRED TO

Ogunjumo v. Ademolu (1995) 4 NWLR (pt. 389) 254

Onagbemi v. Guinness (Nig). Ltd. (1995 2 NWLR (pt. 377) 258

Olowosago v. Adebajo (1988) 4 NWLR (part. 88) 275 at 283

Nyam v. The State (1964) 1 All N. L. R. 356

DPP v. Smith (1960) 3 All E. R. 161

Akinkunmi v. The State (1987) 3 SC. 152

STATUTE REFERRED TO

Penal Code, S. 221 (b)

LEAD JUDGMENT BY MOHAMMED JSC

Mohammed Garba is the only appellant in this appeal. He was convicted jointly with Yahaya Shuaibu Audu of criminal conspiracy, contrary to Section 97 and punishable under Section 22 (b) of the Penal Code. On appeal to the Court of Appeal the Conviction for the offence of conspiracy was quashed. The appellants Yahaya Shuaibu and Ibrahim Audu were discharged and acquitted of that offence. The conviction of the appellant under section 221 (b) for culpable homicide punishable with death was however confirmed. Hence this appeal.

The facts as given by the prosecution were narrated briefly as follows:

There was a wrestling contest at Yandoji Village in Wudil Local Government Area of Kano State. The deceased, Usman Audu who hailed from Wanbantu Village attended the contest. He was at that time in

company with Sule Dantsoho who gave evidence during the trial as PW1 and Dantsoho Salau, PW2. During the contest, the deceased wrestled with one Nuhu of Yandoji Village. The deceased defeated Nuhu. PW2 wrestled with 2nd accused who also was from Yandoji Village and defeated him. There were many people, including girls watching the wrestling match. The defeat of Yandoji people angered the appellant, Yahaya Shuaibu and Ibrahim Audu. They carried sticks and threatened to beat the deceased, PW1 and PW2 but they were prevented from attacking them by spectators at the match.

After the match, while the deceased, PW1 and PW2 were walking back to their village at about midnight, in the guinea corn plantation the appellant suddenly emerged from behind a tree and struck the deceased with a stick on the head. The deceased fell down and started bleeding from the head. He subsequently died on the spot. PW1 and PW2 who had torch lights with them identified the appellant as the assailant. PW1 chased him in guinea corn plantation but he escaped. PW2 told the trial court that the 2nd and 3rd accused also emerged from the southern part of the road holding sticks. But when PW2 called for the aid of PW 1, the two accused persons ran away. PW1 and PW2 carried the corpse of the deceased to their village. On the following day the appellant and the two accused persons who were discharged at the Court of Appeal were arrested.

The body of the deceased was examined by a medical officer. The medical report stated that the cause of death was haemorrhage due to commuted fracture of the skull. The police investigating officer recorded statements from the accused persons.

The learned trial judge considered the evidence adduced by both the prosecution and the defence. At the end of the trial, and in a considered judgment, he convicted the three accused persons of criminal conspiracy and sentenced all of them to death. The appellant was, in addition, found guilty of culpable homicide punishable with death, contrary to section 221 (b) of the Penal Code. He was convicted of that offence and sentenced to death.

They all appealed to the Court of Appeal. The Court below after

hearing submissions in respect of the appeal, and in a well considered judgment, found that the offence of criminal conspiracy was not proved. It therefore allowed the appeal on that charge and discharged and acquitted all the accused persons. It however dismissed the appeal of the appellant, on the culpable homicide charge. It affirmed his conviction B under section 221 (b) of the Penal Code and the sentence of death imposed by the trial High Court

It is against the conviction and sentence which the Court of Appeal affirmed that Mohammed Garba has appealed to his court. Learned C counsel for the appellant, M.D. Belgore, identified the following two issues for the determination of the appeal.

"1. Whether the Court of Appeal was right in holding, inter alia, that issues raised by the appellant relating to:

(i) non production of the murder weapon, and;

(ii) the effects of that non-production were incompetent.

2. Whether, having regard to all the circumstances, the Court of Appeal was right in holding that the eye witness accounts of PW1 PW2 were alone sufficient to establish the guilt of the appellant for culpable E homicide punishable with death".

In the respondent's brief the Director of Public Prosecutions Kano State, formulated three questions which he said were the proper issues for the determination of this appeal. They read as follows

"1. Whether the Court of Appeal is right in holding that issues raised relating to the Non-production of the murder weapon were incom- F petent because they were not linked with the grounds of Appeal filed by the Appellants.

2. Whether issues raised relating to the non-production of the murder weapon if competent were of relevance in the circumstance of this case as to warrant allowing the Appeal.

3. Whether the Court of Appeal was right in holding that the testimonies of PW 1, and PW .2 taken along with other evidence ad- H duced before the trial court were sufficient to affirm the judgment against the first appellant". xxxxxxxxxxxx

Learned counsel for the appellant submitted that the Court of

Appeal was in error to hold that issues 4 and 5 were incompetent because they were not covered by any ground of appeal. The said issues 4 and 5 before the Court of Appeal are as follows:

B "4. *Whether it was necessary and relevant in the circumstances of this case to produce the alleged murder weapon or to adduce evidence of its description.*

C 5. *If it is found that the murder weapon ought to have been produced or a description of it given, whether the non-production or lack of evidence of its description was fatal to the case of the prosecution".*

Learned counsel, M. D. Belgore, referred to the ground of appeal which was filed in the Court of Appeal and argued that it adequately covered the issues reproduced above. The ground of appeal reads:

D "1. *The learned trial judge erred in law in convicting the 1st accused person of the offence of murder when on the evidence available no reasonable tribunal would convict.*

PARTICULARS OF ERROR

E (a)
(b)
(c) *There was no evidence at all or any sufficient evidence of cause of death of the deceased in that;*

F (i)
(ii)
(iii) *There was not any or sufficient evidence of the murder weapon or a description of it".*

It is a mandatory requirement that an issue for the determination of appeal must relate to and be distilled from any of the grounds of appeal. If it does not it is unarguable and incompetent. Such an issue must be struck out. See Ogunjumo v. Ademolu (1995) 4 NWLR (pt. 389) 254 and Onagbemi v. Guinness (Nig). Ltd. (1995 2 NWLR (pt. 377) 258. Learned counsel for the respondent replied that issues 4 and 5 formulated at the Court of Appeal were not related to the ground of appeal which I reproduced above. I quite agree that those issues could not be distilled from the ground of appeal. It is clear that issue 4 was couched on the question whether it

was necessary to produce the murder weapon and issue 5 was questioning whether the non-production of the murder weapon or lack of evidence of description of the weapon was fatal to the case of the prosecution.

The ground of appeal however was referring to lack of evidence B to support the conviction for the offence of murder. This court has said a number of times that when framing issues for the determination of appeal care should be taken because it is a very serious part of a brief. Each issue must be framed in a clear language and must arise and relate C to the grounds of appeal which represent the questions in controversy in the particular appeal. In Olowosago v. Adebajo (1988) 4 NWLR (part. 88) 275 at 283 Karibi-Whyte JSC, observed thus:

"It is necessary to emphasize the purpose of formulating issues D for determination in briefs. Like pleadings to a litigation between the parties, the issues formulated are intended to accentuate the real issues for determination before the court. The grounds of appeal allege the complaints of error of law, fact of mixed law and fact against the judgment appealed against. The issues for determination accentuate the issues E in the grounds of appeal relevant to the determination of the appeal in the light of the grounds of errors alleged. Hence the issues for determination cannot and should not be at large, but must fall within the purview of the grounds of appeal filed". xx

F Learned counsel for the appellant queried the finding of the Court of Appeal that the eye witnesses's accounts of PW1 and PW2 "fixed the appellant at the scene of the crime and that the said accounts were sufficient to ground the conviction, even in the absence of medical evidence." G Learned counsel made reference to excerpts from the testimonies of PW1 and PW2 before the trial court and questioned; can conviction of the appellant be supported under Section 221 (b) of the Penal Code? In other words, did the appellant know or had reasons to know that death would be the probable and not likely consequence of his act or of any bodily H injury which the act was intended to cause?

Counsel further referred to Section 19 (2) of the Penal Code which defines a probable act as follows:

An effect is said to be a probable consequence of an act if the occurrence of that consequence would be considered by a reasonable man to be the natural and normal effect of the act".

B Appellant's Counsel, thereafter submitted that from the foregoing, the mere fact that the bodily injury caused resulted in death does not necessarily mean that the accused intended to cause death or that death was in the natural and normal consequence of events a probable consequence of his act. The intention or knowledge with which the act which caused death was committed is a matter of fact and not law. Belgore C now referred to the finding of the trial High Court which the Court of Appeal affirmed. It reads:

" the injury inflicted on the head of the deceased with a stick by the first accused person that caused the death of the former was done D with the intention of causing such bodily injury sufficient in the ordinary cause of nature to cause death. I also hold that death was probable in the circumstances rather than likely within the meaning of section 19 (a) of the Penal Code".

E Learned counsel concluded that the issue of what was sufficient or probable in the ordinary cause of nature to cause death did not and could not have risen from the said eye witness accounts which merely stated that the deceased was hit on the head with a stick. This is why the appellant contended in the Court of Appeal that production of the stick or F some description of it was necessary.

The respondent's counsel replied to M. D. Belgore's submission and argued that the Court of Appeal came to right conclusion in view of the overwhelming evidence from the testimonies of PW1 and PW2. I G think the learned D.P.P. of Kano State is right in his submission here. If I take the evidence of PW2 and analyze it, the gravity of the attack on the deceased and the identity of the appellant as the assailant will be very clear. PW2 in his testimony said as follows

H "On our way home from Yandoji Usman was in front, PW1 was immediately following him and I was following PW 1, and was the last in the row. We were so close to each other. The distance between each one of us to the other he was following was about one metre long. The three

of us were holding torch-lights only and none of us was carrying any stick or weapon of whatever description. It was the 1st accused who came out from behind the tree just by the road side and beat the deceased with a stick on the head and he fell down. PW1 then lighted the face of the person who did the beating and he and myself identified him to be the 1st accused. PW1 then attempted to grab the 1st accused but the 1st accused slipped away and PW1 fell down because some herbs held his feet. The 1st accused entered into guinea corn plantation and disappeared. I also identified the 1st accused person as the one who beat Usman with a stick on the head".

In the definition of culpable homicide punishable with death under Section 221 (b) of the Penal Code it has been made clear that whether death was the probable or only a likely consequence of an act or of any bodily injury, is a question of fact. Thus where body injuries, intended to be inflicted are sufficient in the ordinary cause of nature to cause death the offence falls under Section 221 (b) of the Penal Code. If from the intentional act of injury committed the probability of death resulting is high, the finding should be that the accused intended to cause death or injury sufficient in the ordinary cause of nature to cause death. If the probability of death is very great, as for example, where as in this case, the accused struck the deceased with a stick with such a force on the head that the deceased collapsed and died on the spot the offence under Section 221 (b) of the Penal Code has been established. A person is clearly guilty of an offence under Section 221 if he does an act which causes death with intention to cause death or if he knew or had reason to know that death would be the probable consequence of his act. See Nyam and ors. v. The State (1964) 1 All N. L. R. 356.

The evidence from PW1 and PW2 is overwhelming against the appellant. Both the trial High Court and the Court of Appeal Believe the testimonies of the two witnesses. It is very clear from the testimonies of those witnesses that the appellant had been identified as the person who struck the deceased with a stick on the head with such a force that the deceased collapsed and died on the spot. I agree that the two lower courts

are right to believe that PW1 and PW2 are witnesses of truth. There is therefore a concurrent finding of the two lower courts. The appellant has not disclosed any special circumstances for me to interfere with those decisions. **The failure to produce the murder weapon during the trial is, in my view, inconsequential. It is the intentional murderous assault on a vital part of the body which leads to conviction for culpable homicide punishable with death. There can be no doubt that a person delivering a violent blow with a stick or club on a vulnerable part of the body such as the head must be deemed to have intended to cause such bodily injury as he knew that death would be the probable consequence of his act.**

This appeal has therefore failed and it is dismissed. The judgment of the Court of Appeal affirming the conviction of the appellant of culpable homicide punishable with death under Section 221 (b) of the Penal Code is hereby further affirmed by me.

E **KARIBI-WHYTE JSC**

I have read the leading judgment of my learned brother Uthman Mohammed, JSC in this appeal. I agree with his decision that this appeal lacks merit and ought to be dismissed. I have nothing more useful to add.

F I too, hereby dismiss the appeal. I affirm the decision of the Court below, convicting and sentencing appellant of culpable homicide punishable with death under Section 221 (b) of the Penal Code.

G **OGUNDARE JSC**

I have had the advantage of a preview of the judgment of my learned brother, Mohammed JSC just delivered. I agree, for the reasons given by him, that this appeal is completely bereft of any substance. Consequently, I too dismiss it and affirm the judgment of the Court below.

KATSINA-ALU JSC

I entirely agree with the judgment of my learned brother Mohammed, JSC that this appeal lacks merit and must be dismissed. The law presumes that a man intends the natural and probable consequences of his acts. And the test to be applied in these circumstances is the objective test namely, the test of what a reasonable man would contemplate as the probable result of his acts. B

The appellant in this case emerged from his hideout and dealt the deceased a blow on the head with a stick. The deceased fell down and died on the spot. The sole question here is whether the unlawful and voluntary act of the appellant was of such a kind that grievous bodily harm was the natural and probable result - DPP v. Smith (1960) 3 All E. R. 161; Akinkunmi & Ors. v. The State (1987) 3 SC. 152. C

On the state of the evidence, it must be observed that the appellant must at least have appreciated that the blow with a stick on the head of the deceased, which resulted in instant death, would at least occasion serious harm to him. That would undoubtedly lead to a conviction of a charge of murder. D

I also find no merit in this appeal which is hereby dismissed. I affirm the decisions of the two courts below. E

AYOOLA JSC

I have had the privilege of reading in draft the judgment delivered by my learned brother, Uthman Mohammed, JSC. For the reasons he gives I too will dismiss the appeal. I do not desire to add to the reasons he gives. F

H