

SUPREME COURT OF NIGERIA
9TH FEBRUARY, 2001. SC. 85/2000
CORAM:- A. B WALI, M. E. OGUNDARE, S. U. ONU,
O. ACHIKE, S. O. UWAIFO, JJSC.

PIUS NWEKE APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Circumstantial Evidence - On the facts of the case - No coexisting circumstances exist - To whittle down the cogency - Of the circumstantial evidence led in the case

CRIMINAL PROCEDURE - Murder - Identification of corpse - Will be sustained despite error in witness's testimony - If sufficient identification is established - And there is no miscarriage of justice.

EVIDENCE - Expert Evidence - Opinion evidence - Is rightly rejected if it is inconsistent with the evidence at trial.

EVIDENCE - Murder - Circumstantial evidence - The facts proved are cogent, unequivocal and conclusive - With unbroken chain of circumstances - Suggesting guilt of the appellant.

FACTS

The Appellant had stood trial in the High Court of Ogun State and had been found guilty of the murder of his wife Josephine Nweke and sentenced to death by hanging. According to the case of the prosecution, the Appellant and his wife had lived together at Oribe village until the death of the deceased in November 1992, and they had a kolanut farm in Odoliwu village. On the 11th of November 1992 the appellant and his wife left their village together for their farm and on their way passed by the third and fourth prosecution witnesses with whom they exchanged greetings being members of the same town. After about an

hour, third and fourth prosecution witnesses hearing an unusual noise from the farm of the Appellant moved towards the farm to find out the cause of the noise. On their way they met the Appellant coming back alone and being asked about the noise replied that his wife was a troublesome woman and was carrying a pregnancy that did not belong to him and that he had asked her to take the pregnancy to the owner but she has refused. He further replied to their questions that she had left the farm from another route.

The third and fourth prosecution witnesses walked with the Appellant to a hut and gave him some water at his request. On putting down the load and the matchet he was carrying in order to drink the water, the third and fourth prosecution witnesses noticed that this load contained the same clothes and pair of slippers his wife wore in the morning when she passed them on the way to the farm and thereby became suspicious. The witnesses on the departure of the Appellant had proceeded to his farm and discovered the dead body of the deceased wife with her throat slashed, naked and lying in a pool of blood and reported to the police who commenced investigation, took snapshots of the deceased, and conducted a post-mortem on deceased, culminating in the arrest of the Appellant who made a statement to the police. Dissatisfied with the judgment of the trial court, the Appellant appealed to the Court of Appeal and his appeal having been dismissed he further appealed to the Supreme Court raising two issues for determination.

ISSUES FOR DETERMINATION

“ 1. Whether the court below was not wrong when it confirmed the conviction of the Appellant for murder considering the quality of circumstantial evidence adduced by the prosecution at the trial.

2. Whether the court below was not wrong when it confirmed the Appellant’s conviction for the murder of his deceased wife when there was no certainty as to the identity of the body on which a post-mortem examination was performed by PW1.”

HELD: (unanimously dismissing the appeal per lead judgement of OGUNDARE JSC)

Evidence - Murder - Circumstantial evidence

1. In my respectful view, the facts proved against the Appellant are so cogent, unequivocal, and conclusive that they point irresistibly to the Appellant, as the person who killed his wife on 11/11/92. There is here a complete and unbroken chain of evidence disclosing circumstances accumulation of which clearly and forcibly suggests that it was the Appellant who committed the offence with which he was charged, and no one else could have been the murderer of his deceased wife. (p. 510 D)

Evidence - Expert evidence

2. I think the learned trial Judge was right in rejecting the opinion of PW1 that it was possible for the deceased to sustain the wound by a fall on a sharp object. This opinion is inconsistent with the evidence at the trial. (p. 511 A)

Circumstantial evidence - No coexisting circumstances

3. The irresistible presumption must be that it was the clothes and slippers she wore that morning that the Appellant carried in his luggage after the deceased had been stripped naked and murdered. There can, therefore, be no co-existing circumstance that whittled down the cogency of the circumstantial evidence led in this case against the Appellant. (p.511D)

Murder - Identification of corpse

4. It is true that PW1 must be mistaken in his evidence when he testified that it was the Appellant who identified the corpse on which he (PW1) performed an autopsy as that of his (Appellant's) wife. The examination was performed on 14/11/92; the Appellant was on the run then as he was not arrested until 20/11/92. But this error, in my respectful view, does not occasion any miscarriage of justice. That it was on the body of Appellant's deceased wife that PW1 performed an autopsy is borne out by the following –

(a) PW3 and PW4 who knew her before the date of the incident saw her body lying naked in Appellant's farm with a deep cut to her throat. She was pregnant at the time.

(b) They reported to the police. The police brought a photographer to the farm who took the picture of the deceased while lying on the ground dead. The police, together with PW3 and PW4 on 12/11/92 conveyed the corpse of Appellant's deceased wife to the hospital mortuary where PW1 performed an autopsy.

On the facts above, there can be no doubt that it was on the corpse of Appellant's deceased wife, Josephine that PW1 performed an autopsy. I do not think this is a case where identification of the deceased could be said to be in issue or in doubt. (p. 511 G)

NOTABLE POINT OF INTEREST

ONUJSC

The use of evidence of motive in a murder case

D 1. It remains for me in this brief comment of mine to observe how some element of motive was imputed in the case. In law, evidence of motive is not an essential ingredient in the case of murder. If there was indeed a motive for the Appellant's killing of his eight-month pregnant wife, was shown to nurse a grudge against her that the pregnancy was not his and that eo ipso strengthened the case of the prosecution and became part of it. See the Queen v. Moses (1960) 5 F.S.C. 187 – 189. (p. 515 D)

REPRESENTATION

N.O.O. Oke (I.A. Adeniyi with him), for the Appellant
Chief O. Oyebolu A.-G. Ogun State, (Mrs. O.A. Asenuga, D.P.P.
Ogun State with him), for the Respondent.

CASES REFERRED TO

Fatoyinbo v. Attorney-General of Western Nigeria (1966) W.N.L.R.4
Adie v. The State (1980) 1-2 SC.116;
Ukorah v. The State (1997) 4SC. 167
H Aigbadion v. The State (2000) 7 NWLR 689;
Benson Ikolu v. Enoch Oli (1962) 1 ALL NLR 194 at 199
Nwankwerre v. Adewunmi (1966) 1 ALL NLR 129 at 132
Peter Loknan & Anor. v. The State (1972) 1 ALL NLR (Part II) 62 at page

73

Okoro Mariagbe v. The State (1977) 3 SC.47 - 52

The State v. Dr. Muhtari Kura (1973) 2 SC.83

Miller v. Minister of Pension (1947) 2 AER 372

R. v. Ani Nwokafor & Sons (1944) 10 WACA 5

B

BOOK REFERRED TO

Wills on circumstantial Evidence (7th Edition) p. 324

LEAD JUDGMENT BY OGUNDARE JSC

C

The Appellant stood trial in the High Court of Ogun State in the Ijebu-Igbo Judicial Division for the murder of his wife, Josephine Pius Nweke. Having pleaded not guilty to the charge, the prosecution called seven witnesses in proof of its case. At the close of the case for the prosecution, the defence opened its case by calling the Appellant to testify. Thereafter, counsel for both the defence and the prosecution addressed the Court. In a reserved judgment, the learned trial Judge accepted the case for the prosecution and found –

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1. That the prosecution had proved the death of the deceased;
2. That the corpse deposited at the State Hospital Ijebu-Ode and on which PW1, Dr. O.O. Oyekan performed a post mortem examination was that of Josephine Pius Nweke, the late wife of the Appellant;
3. That “the death of the deceased was a result of the cut that was given her in her throat”;
4. That the wound that killed the deceased was not self inflicted.

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On these findings the learned Judge found the Appellant guilty of the murder of Josephine and sentenced him to death by hanging.

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The Appellant appealed unsuccessfully to the Court of Appeal and has now further appealed to this Court on two grounds of appeal. In the brief filed on behalf of the Appellant and pursuant to the Rules of this Court, the following two issues are posed as calling for determination in this H appeal, they are:

“ 1. Whether the court below was not wrong when it confirmed the conviction of the Appellant for murder considering the quality of

circumstantial evidence adduced by the prosecution at the trial.

2. *Whether the court below was not wrong when it confirmed the Appellant's conviction for the murder of his deceased wife when there was no certainty as to the identity of the body on which a post mortem examination was performed by PW1."*

Before I go into a consideration of these issues, I need set out the facts. The case for the prosecution is that the Appellant and the deceased, Josephine Pius Nweke were husband and wife; they both lived together at ORIBE village, via AGO-IWOYE, Ogun State, until the death of the deceased (Appellant's wife) on November 11, 1992. The couple had a kolanut farm at ODOLIWU Village, via Ago-Iwoye. In the morning of 11th November 1992, the appellant and his wife left their ORIBE village together for their farm at Odoliwu village. This was at about 10 a.m. They passed by Tairu Hassan and Olusola Kadiri (PW3 and PW4 respectively) in the Oribe village and exchanged greetings with them. They all knew each other before that day as they lived in the same village – ORIBE. About an hour after the Appellant and his wife had left PW3 and PW4 for their kolanut farm, the latter heard an unusual noise from the direction of the farm of the Appellant. They moved towards the farm in order to find out what was the cause of the noise. On their way to the Appellant's farm they met the Appellant coming back from the farm; he was alone. They inquired from the Appellant the cause of the noise from his farm. The Appellant replied that his wife (the deceased) was a troublesome woman and that she was carrying a pregnancy that did not belong to him. He added that he had asked the deceased to take the pregnancy to the owner but the deceased refused to do so. When PW3 and PW4 asked the Appellant the whereabouts of the deceased, he replied that the deceased had left the farm through another route. PW3 and PW4 walked with the Appellant to the former's hut where, at Appellant's request, they gave him water to drink. The Appellant who was all the time carrying a load on his head had a matchet in his hand, put the load down in order to drink the water they gave him. It was at this stage PW3 and PW4 noticed that the Appellant had in the luggage the same clothes and pair of slippers the deceased wife wore that morning when she passed them on her way to the farm. They became

suspicious. The Appellant noticing the curiosity of these two witnesses for the prosecution lifted up his load, put it on his head and went away.

PW3 and PW4 decided to find out what happened in the farm and left for the Appellant's farm. On reaching there they found the dead body of his deceased wife with her throat slashed. She was naked and lying in a pool of blood. They made a report to the police who then commenced investigation into the death of the deceased. Police took a photographer to the scene and the latter took some snapshots of the deceased. The corpse of the deceased was later conveyed to Ijebu-Ode, where PW1 performed a post mortem examination on the corpse. According to the evidence of PW1 which the learned trial Judge accepted, the corpse of the deceased *"had a deep cut in the front of the neck. On the chest there was nothing significant. The examination of the abdomen revealed that the deceased was pregnant. On opening the abdomen I found a dead male baby. There was no fracture of the leg. My opinion as to the cause of death was loss of blood due to the cut throat."*

The Appellant was arrested some days after the incident and on his arrest by the police, he made a statement in which he denied killing his wife. In his evidence at the trial he denied going together with his wife to the kolanut farm. He testified that it was the wife who went alone to the farm to pick kolanuts; he went to another farm to work. On his return from the farm he went to, he inquired from neighbours if his wife had returned from the kolanut farm. He was told she had not returned. It was then night time and he could not do anything that night. The following morning, however, he set out in search of his wife. Here is what he said in evidence:

"The following day I went to look for her at Odoluu. When I asked some villagers if they had seen my wife in the village, they told me they did not see her and that she never came to that village the previous day. When I did not find her after a thorough search I returned to Origbe village from Origbe I went to Imodi-Mosan. When I got to Imodi-Mosan, I went to my wife's senior sister's house to report to her that I could not find her sister, my wife. The sister was not at home. When I looked around for her sister at Imodi-Mosan I did not find her, I went to our home town. I did not know that my wife was already dead, I had thought she had

travelled home that is why I went home to look for her. In our home town I inquired from people if my wife had come home. They told me they had not seen her. I went to look for her from her (my wife's) relative. They said they did not see her. Her relative inquired from me if there was a quarrel between me and my wife. I told them there was no quarrel between us. It was when I returned from our home town and went to Imodi-Mosan that I went to report to the police at the police station that I did not see my wife, that was the time the police arrested me."

I now turn to the issues raised in this appeal beginning with Issue (1).

Issue (1)

This issue relates to the quality of the circumstantial evidence relied on by the prosecution and on which the learned trial Judge convicted the Appellant. It is the submission of learned counsel for the Appellant that the evidence accepted by the trial Judge was not positive, cogent and compelling to justify a conviction being based on it. It is learned counsel's submission that the evidence raised, at best, suspicion. He also submitted that the evidence did not rule out the possibility of someone else committing the offence. Relying on the evidence of PW1 under cross-examination, learned counsel also submitted that the possibility of the deceased committing suicide could not be ruled out either.

The sum total of the submissions of learned Attorney-General of Ogun State, both in his brief and in oral submission, is that the circumstantial evidence adduced at the trial was cogent, compelling and positive enough to sustain the conviction of the appellant. He urged the Court not to disturb the verdict of the Courts below.

The law on circumstantial evidence is now well settled and is beyond dispute. It is its application that is often the cause of dispute between the prosecution and defence. The law is as stated by Hewart Lord Chief Justice of England in R v. Taylor & Ors. (1928) 21 CAR 20 at p. 21:

"It has been said that the evidence against the applicants is circumstantial: so it is, but circumstantial evidence is very often the best. It is evidence of surrounding circumstances which, by undesigned coincidence, is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial."

This statement of the law was approved by this Court in Fatoyinbo v. Attorney-General of Western Nigeria (1966) WNLR 4; See also Adie v. The State (1980) 1-2 SC.116; Ukorah v. The State (1977) 4 SC. 167; Aigbadion v. The State (2000) 7 NWLR 686; Wills on Circumstantial Evidence (7th edition). At p. 324.

In the case on hand, the following facts emerge from the evidence accepted by the learned trial Judge, particularly that of PW3 and PW4:

1. On 11/11/92 at about 10 a.m., the Appellant and his wife were seen together at Oribe village going to their kolanut farm at Odoliwu village; the Appellant was holding a matchet.
2. At about 11 a.m. of that day the Appellant and his wife were heard quarrelling; the wife was shouting and screaming in the farm.
3. As PW3 and PW4 were going to the Appellant's farm to find out what was happening between the Appellant and his wife, they met the Appellant returning alone carrying a load on his head and holding his matchet.
4. On enquiring from the Appellant the whereabouts of his wife, he told PW3 and PW4 that his wife was a troublesome woman and that they quarrelled over the pregnancy she was carrying in that the pregnancy belonged to another man. He added that he had told his wife to take the pregnancy to the owner but that she refused to do so. He finally told PW3 and PW4 that his wife has left the farm through another route.
5. The Appellant followed PW3 and PW4 to their hut in the village where he asked for water. He was given water to drink. He put the load on his head down in order to drink the water. PW3 and PW4 saw among the load the clothing and pair of slippers Appellant's wife wore to the farm that morning.
6. The Appellant on observing that PW3, PW4 and others around focussed their gaze at his load, got up, carried the load on his head and left.
7. PW3 and PW4 then left for the Appellant's farm to find out what had actually happened. On getting to the farm, they discovered the naked corpse of the Appellant's wife; her throat had been slashed and she was lying in a pool of blood.
8. A report was made to the police who went to Appellant's house at Imodi to look for him but the Appellant had disappeared. He was arrested nine

days after the incident following information given to the police by a clergyman with whom the Appellant stayed for about 4 days after the incident.

9. Post mortem examination confirmed that Appellant's wife was carrying a pregnancy at the time of her death and that she died from loss of blood from the cut to her throat.

The facts above, no doubt, called for some explanation from the appellant. But what explanation did he give? First, he lied to PW3 and PW4 that the deceased wife had left the farm by another route. Secondly, he lied to the police that when he did not see his wife return home, he went in search of her at her sister's place and later in their home town. The learned trial Judge had no hesitation in rejecting his stories, both in his statement to the police and in oral evidence in court.

In my respectful view, the facts proved against the Appellant are so cogent, unequivocal, and conclusive that they point irresistibly to the Appellant, as the person who killed his wife on 11/11/92. There is here a complete and unbroken chain of evidence disclosing circumstances accumulation of which clearly and forcibly suggests that it was the Appellant who committed the offence with which he was charged, and no one else could have been the murderer of his deceased wife.

A lot of fuss has been made of the evidence, under cross examination of PW1 to the effect that –

“It is possible for anyone to sustain the cut I found on the corpse by falling on a sharp object.”

The learned trial Judge after a consideration of the evidence before him observed:

“... I do not believe that the wound that killed the deceased was self-inflicted. The wife died on the spot after the wound had been inflicted. If it had not been so, there would have been some evidence of some struggle before the death. If the deceased died on the spot, then the weapon used to cut her throat would have been found, at the scene. The weapon must have been removed by the killer; hence it could not be found and produced in court.”

I think the learned trial Judge was right in rejecting the opinion of PW1 that it was possible for the deceased to sustain the wound by a fall on a sharp object. This opinion is inconsistent with the evidence at the trial.

It is equally argued on behalf of the Appellant that the fact that PW3 testified that he did not know what was in the luggage carried by the Appellant when he and his wife were going to the farm on the morning of the fateful day disclosed a co-existing circumstance which ought to have made the Court below slow to affirm the decision of the trial court. It is argued that the possibility could not be ruled out that the Appellant was having in his luggage when he and his wife were going to the farm clothing and slippers similar to the ones worn by the wife. Surely learned counsel, with respect, cannot intend that this submission be taken seriously. The overwhelming evidence was that the deceased was found in the farm NAKED. **The irresistible presumption must be that it was the clothes and slippers she wore that morning that the Appellant carried in his luggage after the deceased had been stripped naked and murdered. There can, therefore, be no co-existing circumstance that whittled down the cogency of the circumstantial evidence led in this case against the Appellant.**

In conclusion, I resolve Issue (1) against the Appellant.

Issue (2)

This puts in question the identity of the body on which PW1 performed an autopsy as that of the deceased wife of the Appellant. It is submitted that as the Appellant was still on the run when autopsy was performed, he could not have identified the body to PW1 as that of his wife.

It is true that PW1 must be mistaken in his evidence when he testified that it was the Appellant who identified the corpse on which he (PW1) performed an autopsy as that of his (Appellant's) wife. The examination was performed on 14/11/92; the Appellant was on the run then as he was not arrested until 20/11/92. But this error, in my respectful view, does not occasion any miscarriage of justice. That it was on the body of Appellant's deceased wife that PW1 performed an autopsy is borne out by the following –

(a) PW3 and PW4 who knew her before the date of the incident saw her body lying naked in Appellant's farm with a deep cut to her throat. She was pregnant at the time.

B (b) They reported to the police. The police brought a photographer to the farm who took the picture of the deceased while lying on the ground dead. The police, together with PW3 and PW4 on 12/11/92 conveyed the corpse of Appellant's deceased wife to the hospital mortuary where PW1 performed an autopsy.

C (c) The corpse PW1 performed a post mortem examination on had a deep cut to the throat and the deceased was in an advanced stage of pregnancy at the time of her death.

(d) The Appellant admitted his late wife was carrying an eight-month pregnancy at the time he saw her last.

D **On the facts above, there can be no doubt that it was on the corpse of Appellant's deceased wife, Josephine that PW1 performed an autopsy. I do not think this is a case where identification of the deceased could be said to be in issue or in doubt.**

E I therefore, resolve issue 2 against the Appellant.

Finally, the two issues raised in this appeal having been resolved against the Appellant, I must conclude that his appeal fails and it is hereby dismissed by me. I affirm the judgment of the Court below which, in turn, affirmed the conviction of the Appellant for the murder of Josephine Pius Nweke and the sentence of death passed on him.

WALI, JSC

G I have had the privilege of reading in advance the lead judgment of my learned brother Ogundare, JSC and I entirely agree with his reasoning and conclusion for dismissing the appeal. I adopt them as mine.

H

ONU JSC

An old adage has it that the horse ran past my house; the bruised dead body of a child lay helplessly on the floor; who does not know that

the horse killed the child? While the commission of a crime in the criminal law concept as inherited from the British into our laws is not as simplistic as exemplified in the old adage set out above, there is some commonsense derivable from this saying. At least, it provides a setting for proof where the received English law requires that if the commission by a party to any proceeding civil or criminal, is directly in issue, it must be proved beyond reasonable doubt. See Section 137(1) of the Evidence Act. This Section was interpreted in the cases of Benson Ikoku v. Enoch Oli (1962) 1 All NLR 194 at 199 and Nwankwerre v. Adewunmi (1966) 1 All NLR 129 at 132. Proof therefore must be consistent with:

(1) active participation in the commission of the crime. See Peter Loknan & Anor. V. The State (1972) 1 All NLR (Part II) 62 at page 73. Be it noted that if only culpatory evidence of participation in a crime is given and which is equally open to an interpretation consistent with innocence, it must be construed in appellant's favour. See Okoro Mariagbe v. The State (1977) 3 SC. 47 – 52 and The State v. Dr. Muhtari Kura (1973) 2 SC. 83. In a criminal trial the onus is on the prosecution to prove the guilt of the accused person beyond reasonable doubt. See Miller v. Minister of Pension (1947) 2 AER 372 and R. v Ani Nwokafor & Sons (1944) 10 WACA 5. In murder cases, the burden is not discharged unless the prosecution establishes not only the cause of death but also that the act of the Appellant caused the death of the deceased. See Philip Omogodo v. The State (1981) 5 SC.5 at page 26 – 27; R. v. Samuel Abengowe 3 WACA 85 and Raymond Ozo v. The State (1971) 1 All NLR 111 AT PAGE 115.

(2) circumstantial evidence which arises when there is no eyewitness to the perpetration of crime. See Ntibunka & Anor. v. The State (1972) 1 SC. 71. To secure a conviction in a criminal trial, circumstantial piece or pieces of evidence must be cogent, complete and unequivocal. Such evidence too, must be compelling and must lead to the irresistible conclusion that the accused and no one else must have committed the crime. Indeed, the facts must be incompatible with innocence of the accused and incapable of explanation upon any reasonable hypothesis than that of his guilt. See Joseph Lori & Anor. v. The State (1980) 8-11 SC.81, 86 – 87; Igboji

Abieke & Anor v. The State (1976) 10 SC. 255 at 264; Paulinus Udedibia & Ors. V. The State (1976) 1 SC.133 at 139; Valentine Adie v. The State(1980) 1 – 2 SC. 11 at 22; Stephen Ukorah v. The State (1977) 4 SC. 167 and Teper v. R. (1952) A.C. 480.

B On insufficiency or where particulars given are insufficient or incomplete, see Okoyen v. Commissioner of Police (1964) 1 All NLR 305. Where the defence is not misled and there has been no miscarriage of justice, conviction proceeding therefrom will be upheld. So also, where the defence has not been misled, for which see the cases of Omisade & Ors. v. The Queen (1964) 1 All NLR 233 and Enahoro v. The Queen (1965) ANLR 132. See also Sections 166 and 168 Criminal Procedure Law. Thus, where circumstantial evidence is cogent, conclusive and strong, conviction thereon can be secured leaving no room for other explanations
C
D except the accused person’s guilt – see Iyaro v. The State (1988) 1 NWLR (Part 69) 256; Mbenu v. The State (1988) 3 NWLR (Part 84) 615 at 630 and Onochie v. The Republic (1966) NMLR 307.

In the instant appeal, my learned brother Ogundare, JSC has so
E meticulously considered the two issues that arose for determination as well as dexterously resolved them that I do not wish to say any more than that I entirely agree with him. The two questions both postulate as follows:

“(1) *Whether the court below was not wrong when it confirmed
F the conviction of the Appellant for murder considering the quality of circumstantial evidence adduced by the prosecution at the trial.*

(2) *Whether the court below was wrong when it confirmed the Appellant’s conviction for the murder of his deceased wife when there was no certainty as to the identity of the body on which post mortem
G examination was performed by PW.1.”*

In the prosecution evidence of PW.3 and PW4 it was incontrovertibly established:-

- i. that not long after the appellant and his deceased pregnant wife passed
H by these two witnesses in Oribe Village of Ogun State heading for their farm, they (the witnesses) heard some noise coming from the direction of the appellant’s farm;
- ii. that the appellant on his way back from the farm alone stopped over at

these witnesses to ask for and was given water to drink;

iii. that from his load he carried which he put on the ground, the two witnesses aroused by curiosity peeped into same appellant's load and found embedded therein some clothes and the slippers appellant's wife wore on their way to the farm;

iv. that on their curiosity being further whetted, they proceeded to the place from whence the noise earlier emanated, only to discover to their horror, the deceased's corpse lying there naked with her throat slashed.

From the evidence of the Doctor (PW.1) and the above pieces of evidence, the guilt of the appellant for the murder of the deceased, in my opinion, was established with the accuracy of mathematics. He was thus rightly, in my view, convicted on the evidence of circumstances adduced at the trial and unimpeachably confirmed by the Court of Appeal.

It remains for me in this brief comment of mine to observe how some element of motive was imputed in the case. In law, evidence of motive is not an essential ingredient in the case of murder. If there was indeed a motive for the Appellant's killing of his eight-month pregnant wife, was shown to nurse a grudge against her that the pregnancy was not his and that eo ipso strengthened the case of the prosecution and became part of it. See the Queen v. Moses (1960)5 F.S.C. 187 – 189; Adamu Kumo v. The State (1967) 1 All NLR 289 at 292 and Ugiaka v. The State (1984) 2 SC.1 and 2. In Jimoh Ishola (alias Ejingbadero v. The State (1978) 9 and 10 SC. 81 at pages 104 – 105 Idigbe, JSC said:

“We would like, also, to add that although proof of motive on the part of an accused on a charge of murder is not a sine qua non to his conviction for the offence, yet if evidence of motive is available it is not only a relevant fact but also admissible under Section 9 of the Evidence Act (also Section 9 Cap. 30 Laws of Lagos State Vol. 2 of 1973 Edition). Surely, the general rule in criminal as well as in civil cases that the evidence must be confined to the point in issue cannot be applied where the facts which constitute distinct offences are at the same time part of the transaction which is the subject of the charge... Surely, in ordinary prosecution for murder you can prove previous acts or words of the accused to show he entertained feelings of enmity towards the deceased,

and that is evidence not merely of the malicious mind with which he killed the deceased, but of the facts that he killed him...”

On the other hand, absence of motive is no justification or excuse for murder. See R. v. Ashi-Gifumo 12 WACA 389 at 390; Dele Akerele v. The State (1984) 10 SC. 75 at 77. Thus, as this Court observed in Omama Uzoyare v. The State (1984) 10 SC. 157:

“..., motive in law is not necessarily an essential ingredient in proof of murder, as the motive may be safely anchored in the mind of the accused person. In proving murder the court looks at what the accused actually does.”

Finally, as the judgments of the two courts below constitute concurrent findings of facts and they have not been shown to be perverse, I see no reason to interfere with them.

It is for the above reasons and the fuller and more comprehensive ones set out in the leading judgment of my learned brother Ogundare, JSC that I, too, dismiss this appeal.

E

ACHIKE JSC

I have had the privilege of reading in advance the leading judgment of my learned brother, Ogundare, JSC. I am at one with him that this appeal is devoid of substance and the same ought to be dismissed.

The leading judgment has stated the facts of this appeal in some detail and there is no intention to do so again in this judgment. Suffice it to state that the appellant was tried at the Ogun State High Court in the Ijebu-Igbo Judicial Division for the murder of his wife, Josephine Pius Nweke. After due trial, the appellant was found guilty of the offence as charged and sentenced to death accordingly. It is common ground that there was no direct eye-witness account of the murder and the trial Judge reached his verdict relying on circumstantial evidence. Appellant unsuccessfully appealed to the lower court, and still undaunted, has now appealed to this Court. He anchored the appeal on two issues for determination, to wit,

“(1) Whether the court below was not wrong when it confirmed

the conviction of the Appellant for murder considering the quality of circumstantial evidence adduced by the prosecution at the trial.

(2) Whether the court below was not wrong when it confirmed the Appellant's conviction for the murder of his deceased wife when there was no certainty as to identity of the body on which post mortem examination was performed by PW1."

Issue 1

Issue 1 is a grievance against the quality of circumstantial evidence relied upon by the trial Judge in convicting the appellant and which was affirmed by the Court of Appeal. Appellant's counsel submitted that the evidence on which appellant's conviction was based was not positive, cogent and compelling to support or justify the conviction, particularly as there was room for the possibility of someone having been responsible for the offence. Furthermore, learned counsel submitted that the possibility of the deceased committing suicide could not be ruled out.

For the respondent, its learned counsel, the Attorney-General of Ogun State submitted that the circumstantial evidence led by the prosecution at the trial and accepted by the learned trial judge – with PW3 and PW4 as its star witnesses – was compelling, irresistible and unequivocal. Counsel identified the following facts proved and accepted by the trial court which were also confirmed by the lower court, namely:

"(a) On 11/11/92 at about 10 a.m., the Appellant and his wife were seen together going to their kolanut farm at Odoliwu Village, with the Appellant holding a cutlass.

(b) At about 11. a.m., the Appellant and his wife were heard (by PW3 and PW4 who saw them earlier) quarrelling, with the wife shouting and screaming in the farm.

(c) As the PW3 and PW4 were going to enquire, they met ONLY the Appellant with a machet in his hand who stopped them and told them that his wife was troublesome and that they had quarrelled on the PREGNANCY SHE WAS CARRYING because the pregnancy was not his, that he had told her to carry it to the owner and that the wife had refused to do so and that the wife had left the farm through another route.

(d) While the Appellant was drinking the water he asked for, he put down the luggage he was carrying and PW3 and PW4 saw among the contents of the luggage, the clothes And pair of slippers *THEY SAW THE ACCUSED'S WIFE WEARING WHEN THEY MET HER AND THE APPELLANT EARLIER ON THAT MORNING.*

(e) The Appellant immediately disappeared with his luggage on being aware of the curiosity his luggage attracted.

(f) On enquiry in the farm, the same PW3 and PW4 who saw and heard the foregoing, found the body of the Appellant's wife *NAKED* (i.e. with no clothes on – *THE CLOTHES WERE SEEN IN THE LUGGAGE OF THE APPELLANT BEFORE HE DISAPPEARED*) with her throat cut.

(g) Post mortem examination confirmed that the Appellant's wife had died from loss of blood from a cut throat consistent with the one inflicted by a sharp object, possibly a cutlass.

(h) Soon after the murder, the Appellant went into hiding and was not located and arrested until 20/11/92 (9 days after the event)"

After a review and evaluation of the evidence of both parties, the learned trial judge said:

"I do not believe the story of the accused. The evidence of the 3rd and 4th PWs as to how the deceased was killed is sufficiently positive and irresistible. I believe the evidence of the two witnesses and hold that it was the accused who killed his wife, Josephine Pius Nweke. I do not believe that wound that killed the deceased was self inflicted."

I have had a closer look at the catalogue of facts accepted by the learned trial judge. There is no challenge on the ground of perversity raised against any of the accepted findings made by the trial judge. On the contrary, he found the testimonies of the two star witnesses, PW3 and PW4, credible, positive and irresistible.

I am however bound to observe, as earlier noted in this judgment, that the circumstances surrounding the death of the deceased were not supported by direct evidence but circumstantial. Not only did the trial judge believe the evidence adduced by the two key witnesses, it is worthy of note that he found their evidence sufficiently positive and irresistible. Alluding to circumstantial evidence in R V Tepper (1952) A.C. 480 at 489,

Lord Normand, delivering the address of the Judicial Committee of the Privy Council (which also included Lord Oaksey and Lord Tucker) in an appeal from the Supreme Court of British Guiana cautioned:

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

I myself find the maze of circumstantial evidence relied upon by the trial judge and confirmed by the lower court overwhelming. If believed, as they were in fact accepted and believed by the trial judge, I would without any hesitation hold that they were positive and irresistible to establish appellant’s guilt in relation to the murder of the deceased. I find the evidence of PW3 and PW4 regarding the contents of appellant’s luggage that he was carrying which included the deceased’s pair of slippers and the clothes that she wore that morning during the appellant’s brief stop to drink water at his request at the residence of PW3 and PW4, having put down his luggage as well as the appellant’s unsolicited and voluntary narration to PW3 and PW4 that his deceased’s wife was troublesome and that they had quarrelled on the pregnancy she was carrying which he said was not his, sufficiently telling, positive and irresistible to the inference of the guilt of the appellant. I am unable to discover any other co-existing circumstances which weakened or reduced the effect of the irresistibility of the circumstantial evidence placed before the lower court by the prosecution.

In the result, I would resolve Issue 1 against the appellant.

Issue 2

The complaint under Issue 2 revolves on whether there was proper identity of the body on which PW1 performed a post mortem examination.

There was some glaring mix-up in the evidence of PW1 when he testified that appellant identified the corpse of the deceased on which this witness performed the autopsy and confirmed it to be that of his wife, the deceased. It would be remembered that autopsy was conducted on 14/

11/92 and the appellant, whose whereabouts after the deceased's death were unknown, could not be arrested until 20/11/92. The learned trial judge on the available evidence however resolved the issue of identity. There was evidence that at the locus in quo, the 3rd PW and 4th PW identified the corpse of the deceased as that of the wife of the appellant. PW6 testified she took photograph of the deceased – vide Exhibits B and B2. PW7 also testified that when appellant was arrested he took him to the State Hospital, Ijebu-Ode where he identified the corpse of the deceased as that of his wife. The appellant further identified he photographs of the corpse as those of his late wife when they were shown to him. From these pieces of evidence, the learned trial judge reached the conclusion that the prosecution proved that the corpse of the deceased deposited at the Ijebu-Ode Hospital on which PW1 performed autopsy was the corpse of the deceased. On these overwhelming facts, it was manifest that the autopsy by PW1 was conducted on the corpse of the deceased, notwithstanding the mix-up on the part of PW1. Be that as it may, it was not the complaint of the appellant that this discrepancy on the question of date of autopsy has occasioned a miscarriage of justice.

In the result, the 2nd issue also is resolved against the appellant. In conclusion, the appeal fails and the conviction of the appellant for the murder of his wife Josephine Pius Nweke is affirmed, so also the sentence of death passed on the appellant.

UWAIFO JSC

I read in advance the judgment of my learned brother Ogundare JSC. I agree with it and respectfully adopt it as mine. The facts of the case are very plain and have been lucidly stated. There is no doubt at all that the appellant murdered his wife and that the two courts below reached the right conclusion. I, too, find no merit in this appeal. I accordingly dismiss it and affirm the conviction and sentence of death.