

SUPREME COURT OF NIGERIA
25TH MAY, 2001. SC. 210/1999
CORAM: A. B. WALI, M. E. OGUNDARE, A. I. IGUH, A. I.
KATSINA-ALU, A. O. EJIWUNMI, JJSC.

LATEEF ADENIJI	APPELLANT
V.		
THE STATE	RESPONDENT

CRIMINAL PROCEDURE - Arraignment - A valid arraignment must satisfy certain requirements - As set out in the judgment (H 1)

CRIMINAL PROCEDURE - Arraignment - All the conditions for its validity - Must be satisfied as shown by the record of trial - And nothing should be left to speculation (H 2)

CRIMINAL PROCEDURE - Arraignment - Not every requirement for its validity - Must appear on the record - And the judge need not record his satisfaction - As to the reading and explanation of the charge to the accused (H 3)

CRIMINAL PROCEDURE - Arraignment - Where the accused understands the language of the court - The need to record that the charge was read to him - In a language he understands - Is obviated (H 4)

CRIMINAL PROCEDURE - Arraignment - Validity - The omission of the trial judge - To state that he was satisfied that the appellant understood the charge - Would not constitute non compliance - With the constitutional and procedural requirement (H 5)

EVIDENCE - Criminal Procedure - Circumstantial evidence - In the absence of any satisfactory explanation - To the evidence led at trial - The trial judge was justified - In inferring the existence of a guilty intent - And returning a finding of guilty - Based on the circumstantial evi-

1800 Adeniji v. State (2001) 5 KLR (pt. 123) 1799; (2001) 13 NWLR
dence (H 8)

STATUTES - *Jurisdiction - S.12(1)(2)(b) Criminal Code Laws of Lagos State - Where an offence is committed outside Lagos State - And the appellant afterwards enters Lagos State - The entry confers jurisdiction - On the Lagos High Court to try him (H 6)*

STATUTES - *Applicability - S.12(4) Criminal Code Laws of Lagos State - Cannot avail the appellant - As the place of death of the accused - Was not certain (H 7)*

FACTS

The appellant was charged with the murder of one Regina Alozie at the Lagos High Court and was found guilty of murder and sentenced to death accordingly. His appeal to the Court of Appeal was dismissed and the sentence of death affirmed. He has further appealed to the Supreme Court.

The facts are that the deceased, Regina Alozie went to the home of appellant on 20th May 1984 and was last seen alive leaving with the accused in her car for Otta that morning. The appellant who did not testify or call any witness, in his statement to the Police said that he went with the deceased to the Clinic of a medical doctor in Agege area of Lagos State on the day in question for pregnancy tests and on failing to meet the doctor drove back. Evidence showed however that on the 21st May 1984 he drove the deceased's car to his uncle (PW6) at Mushin claiming he had bought it at Apapa and wanted to keep it for safe keeping at the uncles house. The uncle however later reported the matter to the Police on 25th May which enabled the police to link the accused with the car of the deceased. Also in July 1984 the appellant took (PW9) a police officer and the relatives of the deceased to a place at Sango Otta where he showed them the remains of the deceased.

The appeal of the accused to the Supreme Court are predicted on the following issues.

ISSUES FOR DETERMINATION

- (1) *Whether the plea was properly taken and recorded.*
- (ii) *Whether the High Court of Lagos State had jurisdiction to try the offence.*
- (iii) *Whether the circumstantial evidence sustained by the Court of Appeal was conclusive, compelling or irresistible.*
- (iv) *Whether the evidence of intention to kill was proved.*

HELD (Unanimously dismissing the appeal per lead judgment of **KATSINA-ALU JSC**)

Criminal procedure - Conditions for valid arraignment

1. By the combined effect of these provisions a valid arraignment of an accused person must satisfy the following requirements:

- 1. The accused shall be placed before the court unfettered unless the court shall see cause to the contrary or otherwise order:
- 2. The charge or information shall be read over and explained to him in the language he understands to the satisfaction of the court by the Registrar or other officer:
- 3. He shall then be called upon to plead instantly thereto.

(p. 1808 F)

Conditions for a valid arraignment

2. This Court has held in a number of cases that these requirements must be satisfied. Nothing should be left to speculation. The records of the trial must show that these conditions are complied with. This is so because the object of the Constitution is to safeguard the interest and fair trial of those arraigned before the court. See Kajubo v. State (supra); Erekanure v. State (supra). (p. 1808 H)

Arraignment - Every requirement need not appear on the record

3. It must however be said that each case must be treated on its peculiar facts. The mode of compliance will differ from case to case. Let me explain. It is not every requirement that must appear on record. For example the requirement that the Judge should be satisfied that the charge has been read and explained to the accused need not appear on the

record. It is however good practice to so indicate. There is nothing in Section 215 of the CPL which says that the trial Judge must put on record his satisfaction. No. It is a matter of common sense really. For once the record of the court shows that the charge has been read over B and explained to the accused, and the accused plea to it before the case proceeded to trial, it is to be presumed that everything was regularly done; that the Judge was satisfied. (p. 1809 A)

C *Reading of the charge in a language understood by the accused*

4. Secondly, the requirement that the charge must be read and explained to the accused in the language he understands, in my opinion, presupposes that the accused does not understand English which is the language of the Court. If he does not the court has a duty to put on record D the language spoken by the accused. However, if the accused understands English, then it is not necessary to record this fact. See Idemudia v. State (supra). (p. 1809 D)

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Arraignment - Noncompliance with the requirements

5. This complaint, in my judgment, has no foundation whatsoever. The F record shows that the court ordered that the charge be read and explained to the accused in the language he understands. It is presumed that that was done. The record bears nothing to the contrary. It will be clearly seen that the person the court ordered to read the charge to the appellant was the Registrar. Yet the appellant says that this is not apparent on the record. See page 34 of the trial court's record which I have G earlier on reproduced. Thirdly, the appellant understands English. This is evident in the record. He made his plea and also gave his evidence in English. The omission by the learned trial Judge to state that he was H satisfied that the appellant understood the charge is of no moment. Where the accused understands the language of the court - English, it becomes unnecessary to record that fact. It is however good practice to ask the accused the question whether he understood the charge as read and ex-

plained and to record his answer. But the omission to do so would not constitute non-compliance with the constitutional and procedural requirements. I am therefore in agreement with the Respondent that the appellant was properly arraigned. I resolve this issue against the appellant. (p. 1810 C)

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Statutes - Jurisdiction

6. Section 12(1)(2)(b) of the Criminal Code Laws of Lagos State of Nigeria states as follows:

“(1) Where by the provision of any law of Lagos State the doing of an act or the making of any omission is made an offence, those provision shall apply to every person who is in Lagos State at the time of his doing the act or making the omission”

C

(2)(b) If the act or omission occurs elsewhere than in Lagos State and the person who does the act or makes that omission afterwards enters Lagos State, he is by such entry guilty of an offence of the same kind and is liable to the same punishment, as if that act or omission had occurred in Lagos State and had been in Lagos State when it occurred.”

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This shows clearly that even if the offence was committed outside Lagos State, and afterwards the appellant comes into Lagos State that entry of the appellant into Lagos State confers jurisdiction on the Lagos High Court to try him of the offence. As this Court held in Patrick Njovens v. The State (1973) 5 SC. 50:

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“ Whether the offender be apprehended in the State or be in custody in the State, his entry is complete within the purpose and intent of the sub-section and is triable in the State.” (p. 1811 E)

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Statutes - Applicability

7. Section 12(4) relied upon by the appellant state as follows:

“ The provisions of subsection (2) do not extend to a case in which the only material event that occurs in Lagos State is the death of a person whose death is caused by an act or omission at a place outside and at a time when that person was outside Lagos State.”

H

This provision, in my view, does not avail the appellant. It is not very

clear where exactly the offence was committed. Whereas the prosecution says that the offence was committed in Mushin in Lagos State, the appellant says that the deceased died at Otta in Ogun State.

So where exactly did the deceased die? It is only the appellant who could have said exactly when and where the deceased had died. He chose not to testify and the court was left with no option but to draw conclusions from the available evidence before it. This issue too fails and is resolved against the appellant. (p. 1812 A/ 1813 B)

C Evidence - Circumstantial evidence

8. The facts which were proved called for an explanation from the appellant. He was last seen with the deceased.

After, two months he took the police and the relatives of the deceased to a place he dumped her remains. It is only a matter of common sense that on the state of the facts and circumstances, the appellant should offer some explanation as to how Regina died. Regrettably beyond the admittedly untrue statements, none was forthcoming.

In the absence of any satisfactory explanation, the court will be justified in inferring the existence of the requisite guilty intent. Although there was no direct evidence, the circumstantial evidence presented leads to only one conclusion that the appellant killed the deceased. It proved beyond reasonable doubt the guilt of the appellant.

Circumstances of this case clearly show that the appellant knew all along what had happened to the deceased. He did not testify at the trial. He offered no explanation. The trial court in the circumstances was justified in inferring the existence of a guilty intent, and in his finding that the appellant killed the deceased. The court below was also justified in affirming the guilt of the appellant. In the result this appeal fails. I dismiss it and affirm the conviction and sentence of the appellant.

(p. 1815 F/1817 F)

H REPRESENTATION

Chief A. A. Aribisala with him F. N. Njoku for the Appellant.

Prof. Yemi Osinbajo - Attorney-General, Lagos State with him Yinka

Badamosi PSC for the Respondent.

CASES REFERRED TO

Kajubo v. State (1988)1 NWLR (Part 73) 721	
Ewe v. State (1992) (Part 246) 147	B
Eyorokomo v. State (1976)6-7 SC.3	
Erekanure v. State (1993)5 NWLR (Part 294) 385	
Idemudia v. State (1999)7 NWLR (Part 610) 202	
Kalu v. State (1998)13 NWLR (Part 583) 531	C
Patrick Njovens v. The State (1973)5 SC. 50	
Peter Igbo v. The State (1978)3 SC.87	
R. v. Ann Nash (1911)6 C.A.R. 255 at page 228	
Adepetu v. State (1998)9 NWLR (Part 565) 185 at 207	
Fatoyinbo v. A.G. of W.N. (1966) 4,7	D
Udedibia v. The State (1976)11 SC.133	
Adie v. The State (1980)1-2 SC.116	
Omogodo v. The State (1981)5 SC.5	
R. v. Wood (1911)7 Cr.App. Re.225N	E

STATUTES REFERRED TO

Criminal Procedure Law of Lagos State s.215	
Constitution of Nigeria 1979 s.33(6)(a)	F
Criminal Code Laws of Lagos ss.12(1)(2)(b) & 12(4)	

LEAD JUDGMENT BY KATSINA-ALU JSC

At the Lagos High Court the appellant Lateef Adeniji was charged with the murder of one Regina Alozie contrary to Section 319(1) of the Criminal code. The case was heard by Oshodi J. who on 28th February, 1986 in a reserved judgment found the appellant guilty of murder and sentenced him to death accordingly. His appeal to the Court of Appeal was dismissed on 28 October, 1999. He has further appealed to this Court. The facts of this case are sufficiently embodied in this judgment.

The appellant, before us, raised four issues for determination in this appeal. These read:

(1) Whether the trial, conviction and sentence passed on the Appellant are not a nullity in view of the failure of the trial court to comply with the mandatory provisions of Section 215 of the Criminal Procedure Act, Cap. 32, Laws of Lagos State.

B (2) Whether the trial, conviction and sentence passed on the Appellant and affirmed by the Court of Appeal are not a nullity in view of the fact that the offence was committed outside the jurisdiction of the High court of Lagos State.

C (3) Whether in the circumstances of this case, the circumstantial evidence upon which the appellant was convicted and which conviction was affirmed by the Court of Appeal irresistibly points to the guilt of the Appellant.

D (4) Whether in the circumstances of this case, and the evidence led, the learned Justices of the Court of Appeal were right in affirming the judgment of the trial court, which found the Appellant guilty of murder.

The respondent also formulated four issues, which read:

E (1) Whether the plea was properly taken and recorded.

(ii) Whether the High Court of Lagos State had jurisdiction to try the offence.

F (iii) Whether the circumstantial evidence sustained by the Court of Appeal was conclusive, compelling or irresistible.

(iv) Whether the evidence of intention to kill was proved.

It is to be observed that the issues raised by the parties are identical. I however prefer the formulation by the respondent.

ISSUE ONE

G It was the submission of the appellant, on this issue, that the trial and conviction of the appellant were a complete nullity on the ground that:

H 1. The plea of the appellant was not properly taken in accordance with the mandatory provisions of section 215 of the Criminal Procedure Act and Section 33(6)(a) of the Constitution of the Federal Republic of Nigeria 1979 as amended.

2. The appellant's plea in respect of the said charge was not

properly recorded to show the mandatory compliance with the aforesaid provisions of the law.

Learned counsel for the appellant referred to page 34 of the Record of Proceedings where the court recorded the following:

“Court: Registrar please read and explain the charge to the accused and then take his plea. B

Plea: Accused pleads not guilty to the charge.”

It was the contention of the appellant that the plea of the appellant as recorded fell far short of the requirements of the law. It was submitted that the plea of the appellant was neither taken in accordance with the provisions of Section 215 of the Criminal Procedure Act nor did it comply with the provisions of Section 33(6)(a) of the 1979 Constitution as amended. For this submission learned counsel relied on: C

1. Kajubo v. State (1988) 1 NWLR (Part 73) 721 D

2. Ewe v. State (1992) (Part 246) 147

3. Section 215 of the Criminal Procedure Act, Cap. 80, Laws of the Federation.

4. Section 33(6)(a) of the Constitution of the Federal Republic of Nigeria 1979 (as amended). E

It was said that there is nothing in the record of proceeding to show among other things that:

1. The charge or information, upon which the appellant was arraigned before the trial court, was read over and explained to the appellant to the satisfaction of the court. F

2. The charge was read to the appellant by the Registrar or other officer of the court.

3. That the charge was read over and explained to the appellant in the language that he understands, or G

4. That the charge was read in detail and the nature of the offence was sufficiently explained to the appellant.

It was contended that the plea was defective and in consequence rendered the trial and conviction a nullity. H

For the respondent, it was submitted that the arraignment of the appellant complied with and met the standard set by the provision of

Section 215 of the Criminal Procedure Law of Lagos State and Section 33 (6)(a) of the 1979 Constitution. It was conceded that a strict observance of and compliance with the constitutional and procedural provisions of arraignment have always been demanded by the appellate courts.

For this see:

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1. Kajubo v. State (supra)
2. Eyorokomo v. State (1979) 6-7 SC.3
3. Erekanure v. State (1993) 5 NWLR (Part 294) 385
4. Idemudia v. State (1999) 7 NWLR (Part 610) 202

C

5. Kalu v. State (1998) 13 NWLR (Part 583) 531

In the present case, it was said that there was a valid arraignment. It was pointed out that the appellant who was a soldier in the Army Ordinance Depot, Matori, Isolo, Lagos is literate in English which is the language of the court.

D

Section 215 of the Criminal Procedure Law provides as follows:

“The person to be tried upon any charge or information shall be placed before the court and the charge or information shall be read over and explained to him to the satisfaction of the court by the Registrar or other officer of the court.”

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And Section 33(6)(a) of the 1979 Constitution provides that:

“Every person who is charged with a criminal offence shall be entitled:

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(a) To be informed promptly in the language that he understands and in detail of the nature of the offence.”

By the combined effect of these provisions a valid arraignment of an accused person must satisfy the following requirements:

G

1. The accused shall be placed before the court unfettered unless the court shall see cause to the contrary or otherwise order:

2. The charge or information shall be read over and explained to him in the language he understands to the satisfaction of the court by the Registrar or other officer:

H

3. He shall then be called upon to plead instantly thereto.

This Court has held in a number of cases that these requirements must be satisfied. Nothing should be left to speculation. The records

of the trial must show that these conditions are complied with. This is so because the object of the Constitution is to safeguard the interest and fair trial of those arraigned before the court. See *Kajubo v. State* (supra); *Erekanure v. State* (supra). It must however be said that each case must be treated on its peculiar facts. The mode of compliance will differ from case to case. Let me explain. It is not every requirement that must appear on record. For example the requirement that the Judge should be satisfied that the charge has been read and explained to the accused need not appear on the record. It is however good practice to so indicate. There is nothing in Section 215 of the CPL which says that the trial Judge must put on record his satisfaction. No. It is a matter of common sense really. For once the record of the court shows that the charge has been read over and explained to the accused, and the accused pleads to it before the case proceeded to trial, it is to be presumed that everything was regularly done; that the Judge was satisfied. Secondly, the requirement that the charge must be read and explained to the accused in the language he understands, in my opinion, presupposes that the accused does not understand English which is the language of the Court. If he does not the court has a duty to put on record the language spoken by the accused. However, if the accused understands English, then it is not necessary to record this fact. See *Idemudia v. State* (supra). In that case this Court observed as follows:

“The language of the court is English. A vast majority of the people in this country are not literate in the English language. I believe and indeed I am convinced that the person the lawmaker had in mind to protect by these provisions was the illiterate Nigerian. If this were not so the phrase “in the language he understands” would become meaningless. This phrase surely presupposes that the accused person does not understand the language of the court which is English.”

At page 34 of the Record of the trial court, the learned trial Judge recorded the following:

“Court: Registrar please read and explain the charge to the ac-

cused and then take his plea.

Plea: Accused pleads not guilty to the charge."

It has been contended for the appellant that there is nothing in the record of the trial court to show that:

- B 1. The charge or information was read over and explained to the accused to the satisfaction of the court.
- 2. The charge was read to the appellant by the Registrar or other officer of the court.
- C 3. The charge was read over and explained to the appellant in the language that he understands; or
- 4. The charge was read in detail and the nature of the offence was sufficiently explained to the appellant.

This complaint, in my judgment, has no foundation whatsoever.

- D The record shows that the court ordered that the charge be read and explained to the accused in the language he understands. It is presumed that that was done. The record bears nothing to the contrary. It will be clearly seen that the person the court ordered
- E to read the charge to the appellant was the Registrar. Yet the appellant says that this is not apparent on the record. See page 34 of the trial court's record which I have earlier on reproduced. Thirdly, the appellant understands English. This is evident in the record.
- F He made his plea and also gave his evidence in English. The omission by the learned trial Judge to state that he was satisfied that the appellant understood the charge is of no moment. Where the accused understands the language of the court - English, it becomes unnecessary to record that fact. It is however good practice to ask
- G the accused the question whether he understood the charge as read and explained and to record his answer. But the omission to do so would not constitute non-compliance with the constitutional and procedural requirements. I am therefore in agreement with the
- H Respondent that the appellant was properly arraigned. I resolve this issue against the appellant.

ISSUE TWO:

It is the contention of the appellant that the High Court of Lagos

State acted without jurisdiction when it tried and convicted him for murder. It was submitted that the offence of murder for which the appellant was charged occurred in Otta, Ogun State outside the jurisdiction of the Lagos High Court. That being so, it was said that the trial was a nullity. Learned counsel for the appellant relied on Section 12(1)(2)(a)(b)(c), (3) and (4) of the Criminal Code Law Cap. 32 Vol. 2 Laws of Lagos State 1973. He also referred to the charge at page 1 of the Record and argued that the death of the deceased did not occur at Mushin but at Otta, Ogun State. He urged us to allow the appeal.

The respondent refers to Section 12(1)(2)(b) of the Criminal Code Laws of Lagos State 1973 and contended that even if the offence was committed outside Lagos State, the appellant came into Lagos State after committing the crime and this was enough to confer jurisdiction on the Lagos State High Court to try him.

It was the further submission of the respondent that Section 12(4) does not avail the appellant because it is not very clear where exactly the offence was committed.

Section 12(1)(2)(b) of the Criminal Code Laws of Lagos State of Nigeria states as follows:

“(1) Where by the provision of any law of Lagos State the doing of an act or the making of any omission is made an offence, those provision shall apply to every person who is in Lagos State at the time of his doing the act or making the omission”

(2)(b) If the act or omission occurs elsewhere than in Lagos State and the person who does the act or makes that omission afterwards enters Lagos State, he is by such entry guilty of an offence of the same kind and is liable to the same punishment, as if that act or omission had occurred in Lagos State and had been in Lagos State when it occurred.”

This shows clearly that even if the offence was committed outside Lagos State, and afterwards the appellant comes into Lagos State that entry of the appellant into Lagos State confers jurisdiction on the Lagos High Court to try him of the offence. As this Court held in Patrick Njovens v. The State (1973) 5 SC. 50:

“ Whether the offender be apprehended in the State or be in custody in the State, his entry is complete within the purpose and intent of the sub-section and is triable in the State.”

Section 12(4) relied upon by the appellant state as follows:

B *“ The provisions of subsection (2) do not extend to a case in which the only material event that occurs in Lagos State is the death of a person whose death is caused by an act or omission at a place outside and at a time when that person was outside Lagos State.”*

C This provision, in my view, does not avail the appellant. It is not very clear where exactly the offence was committed. Whereas the prosecution says that the offence was committed in Mushin in Lagos State, the appellant says that the deceased died at Otta in Ogun State.

D It was in evidence that the appellant took the deceased to his father at Eredo. She laid unconscious in the car. The father of the appellant told him to take the woman away. See the evidence of P.W.6 Tajudeen Akinyombo the appellant's uncle. In his evidence-in-chief, he testified
E thus:

“ I went to his father at Eredo. On getting to Eredo I narrated the story to him and the father told him that the accused carried the woman to him on 20/5/84 and she was unconscious as she laid down in the car. The father further said that the accused should carry the woman away.....”
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This evidence was not challenged. In fact this witness was not cross-examined. It adds weight to the contention of the respondent that the deceased in could have died before they got to Ogun State.

G There was also evidence that the appellant took the police and relatives of the deceased to the place where he dumped the remains of the deceased in Otta, Ogun State. P.W. 4 Everist Onyewuchi gave evidence to this effect. He said:

H *“ The Investigating Police Officer Sgt. Olaniyan informed us that the accused has confessed and agreed to show us where he dumped the remains of our sister Regina Alozie.*

We, the Investigating Police Officer and Police Photographer

and the accused went to the place known as Atan in Otta. The place is after a river which we crossed and after about 300 meters from the bridge the accused showed us where he dumped her body. There we found the skull and some bones and the lace material confirmed that they were bones of Regina.”

So where exactly did the deceased die? It is only the appellant who could have said exactly when and where the deceased had died . He chose not to testify and the court was left with no option but to draw conclusions from the available evidence before it. This issue too fails and is resolved against the appellant.

ISSUE THREE

This issue is to the effect that the substantial evidence led by the prosecutor was not conclusive, strong and irresistible to lead to the conviction of the appellant. It was submitted that the evidence led was not sufficient to link the appellant with the offence with which he was charged. It was said that the only evidence before the court was that the appellant took the deceased to Otta for treatment.

The undisputed facts of this case are that the deceased, Regina Alozie went to the home of the appellant on 20/5/84. They both left in the deceased's car for Otta that morning. That was the last time the deceased was seen alive.

In his statement to the Police Exhibits "B" and "B1" made on 25/5/84, the appellant said:

“ I could recollect sometime above (sic) seven months ago, that was around November, 1983 one of my wife' Bola's friend and the woman in question Regina, brought Regina to me. Reasons why Regina (was) brought to me was that, my wife, Bola - was the one who sent her friend to bring Regina to me for an assistance so that the woman may have a child of her own and I prepared HANTUN for the woman and I got only five Naira from her. After these I took the woman to an English Doctor. The Doctor said that he would take a sum of (380.00) three hundred and eighty Naira as his charged (sic) for the job.

This said doctor has Clinic at Alimosho Area. I do not know this Doctor's name. I can take the Police to the place. I remember the last

Sunday which was the 20th day of May, 1984. Myself and Regina went together to this said doctor at Alimosho Area because the doctor has instructed her to bring her X-Ray which she look for further actions. When we got there, we could not meet the doctor at his Clinic and we returned home. When we got to Ikeja at about few minutes past two O'clock.

There I was dropped at Agege, Ikeja Bus Stop. She further told me that she was going to Maroko, Lagos. The HANTUN which I prepared for Regina was for her to be seeing her menstruation regularly which after she can be pregnant.

After I have done the job for her but which failed, made me to take her to a Medical Doctor which we had mentioned earlier. I have never taken this woman to Otta before because I have nobody there.”

D It must be pointed out that the appellant at his trial elected not to testify. He did not call any witness. No other statement by the appellant was tendered in evidence.

The appellant, in his statement said that he went with the deceased to the clinic of a medical doctor at Alimosho in Agege Area of Lagos State. The doctor was not at his clinic. The deceased and the appellant drove back. The deceased dropped him off at Ikeja Bus Stop. The deceased, appellant said, headed for Maroko, Lagos.

F However, the facts that emerged at the trial showed that the story by the appellant was false. On 21/5/84, the appellant drove the vehicle of the deceased to the house of his uncle the P.W.6 at Mushin. He represented to P.W.6 that he bought the vehicle at Apapa. For lack of adequate security at his home he asked to keep the vehicle with P.W.6 who demanded to see the receipt for the sale of the car. The appellant had none. P.W.6 advised him to obtain the receipt. The applicant however left the car at the workshop of P.W.6 until 25/5/84 when P.W.6 reported the matter at Mushin Police station. This enabled the police to link the appellant with the car of the deceased.

In July, 1984 however, the appellant took the P.W.9, a policeman and three relatives of the deceased to a place at Sango Otta where he showed them the remains of the deceased.

The question that calls for resolution is: How did the deceased Regina, come to this tragic end? In finding an answer to this question, the trial court reasoned thus:

“ The accused later manufactured the story that they both came back on 20th May, 1984 and that he was dropped from her car at Ikeja B Bus Stop for this could not be true because the accused was found with the deceased's car on 21st May, 1984. Evidence of 6th P.W. who accused' uncle that the accused brought the car to his workshop and later left it in his house on 21st May, 1984 remains unchallenged.

When the accused was later arrested on or about 23rd May, 1984, C he remained undaunted until about 19th July, 1984 when he chose to take the police and some of the deceased's relations to Otta and they crossed a stream into a bush where he pointed to them the human skull, the piece of bones gathered, the piece of lace material and the neck chain with the D pendant having insignis 'R'..... No doubt these facts inevitably and irresistibly pointed towards the accused being the person who knows what happened to Regina Alozie and who disposed of her in one way or another. I am of the opinion that there is abundant evidence that Regina E did meet her death and that she is dead, and if she is dead, the circumstances of this case point to the fact that her death is not a natural one. From above I have come to the conclusion that the deceased was murdered and that the accused is the murderer.”

The facts which were proved called for an explanation from the appellant. He was last seen with the deceased.

After, two months he took the police and the relatives of the deceased to a place he dumped her remains. It is only a matter of common sense that on the state of the facts and circumstances, G the appellant should offer some explanation as to how Regina died. Regrettably beyond the admittedly untrue statements, none was forthcoming.

In the absence of any satisfactory explanation, the court H will be justified in inferring the existence of the requisite guilty intent. Although there was no direct evidence, the circumstantial evidence presented leads to only one conclusion that the appellant

killed the deceased. It proved beyond reasonable doubt the guilt of the appellant.

In Peter Igbo v. The State (1978) 3 SC. 87 the facts as set out in the judgment were that the deceased, Ifoto Oboluke, left her house on Sunday 20th August, 1972 for a religious service but never returned alive. When the mother did not see her return in the evening she made a report and a search party was organised by the Villagers. Those who saw her last said she was riding at the back of a bicycle. The corpse of the deceased was later found that night.

This Court per Eso JSC upholding the verdict of the trial court on the conviction of the appellant said:

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

Also in Adepetu v. State (1998) 9 NWLR (part 565) 185 at 207 this Court per Ogundare, JSC in a situation similar to that in Igbo v. State (supra) said:

“The law is clear on the point; where, as in the instant case, direct evidence of eye witness is not available, the court may infer from the facts proved the existence of other facts that may logically tend to prove the guilt of an accused person. In drawing an inference of a guilt of an accused person from circumstantial evidence, however, great care must be taken not to fall into serious error. It follows, therefore, that circumstantial evidence must always be narrowly examined, as this type of evidence may be fabricated to cast suspicion on innocent persons. Before circumstantial evidence can form the basis for conviction the circumstances must clearly and forcibly suggest that the accused was the person who committed the offence and that no one else could have been

the offender: See Fatoyinbo v. A.G. of W.N. (1966) 4, 7; Udedibia v. The State (1976) 11 SC.133; Adie v. The State (1980) 1-2 SC.116; Omogodo v. The State (1981) 5 SC.5. In a criminal case the burden is always on the prosecutor to prove the guilt of the accused beyond all reasonable doubt. Generally, there is no duty on the accused to prove his innocence. Circumstances may, however, arise where some explanation may be required from the accused person such as where apparently damning circumstances are established against the accused. I give a few illustrations. A is charged with burglary, he was found in the hall of the house where the burglary took place without having been asked to come there. It is incumbent on him as a matter of common sense, though not as a matter of law, to give a satisfactory explanation of his presence and if he fails to do this a court will be justified in inferring the existence of the requisite guilty intent - R. v. Wood (1911) 7 Cr. App. Re.225N was charged with the murder of her child whose body was found in a well. She had been seen near the well with the child for whom she could not find a home, and she also told lies concerning the child's whereabouts. She was convicted for murder of the child. On appeal to the Court of Criminal Appeal, Lord Coleridge, CJ dismissing the appeal said:

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

Circumstances of this case clearly show that the appellant knew all along what had happened to the deceased. He did not testify at the trial. He offered no explanation. The trial court in the circumstances was justified in inferring the existence of a guilty intent, and in his finding that the appellant killed the deceased. The court below was also justified in affirming the guilt of the appellant. In the result this appeal fails. I dismiss it and affirm the conviction and sentence of the appellant.

WALI JSC

I have had the privilege of reading before now, the lead judgment of my learned brother Katsina-Alu, JSC and I agree with him that the appeal lacks merit.

B For the same reasons contained in the lead judgment I also hereby dismiss the appeal and affirm the conviction and sentence by the lower courts.

C **OGUNDARE JSC**

I have read in advance the judgment of my learned brother, Katsina-Alu JSC just delivered. I agree entirely with his reasoning and conclusion which I adopt as mine. This appeal is completely bereft of any substance. I, too, dismiss it and affirm the conviction and sentence of death passed on the Appellant.

E **IGUH JSC**

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Katsina-Alu, JSC and I agree entirely with him that this appeal is devoid of merit and should be dismissed.

F The facts of this case are fully set out in the leading judgement of my learned brother and no useful purpose will be served by my recounting them all over again. It suffices to state that the prosecution in the present case relied on circumstantial evidence, as there was no eyewitness to the murder of the deceased.

G It is trite law that where, as in the present case, no direct evidence of an eyewitness to the commission of an offence is available, the court may infer from the facts proved the existence of other facts which logically and conclusively establish the guilt of the accused person beyond reasonable doubt. See Adepetu v. The State (1993) 9 NWLR (Part 566) 185. Accordingly, when strong circumstantial evidence is led against an accused person in a criminal trial and this gives rise to the drawing of a presumption or inference irresistibly warranted by such evidence, the

criminal court will not hesitate to draw such a presumption or inference so long as it is so cogent and compelling as to convince the jury that on no rational hypothesis other than the inference can the facts be accounted for. See Uwe Idighi Esai and others v. The State (1976) 11 S.C. 39, Peter Nwachukwu Eze v. The State (1976) 1 S.C. 125 e.t.c. The onus is on the accused person to rebut the guilt based on circumstantial evidence but this is merely on basis of preponderance of probabilities. See Micheal Peter v. The State (1997) N.W.L.R. (Part 531) 1.

On the facts accepted by the trial court and affirmed by the court below, it cannot be disputed that this is a case with the strongest possible circumstantial evidence against the appellant. On the 20th day of May, 1984, the deceased was known to have driven to Otta with the appellant in the deceased's car. That was the last time the deceased was seen alive. She had been seen to be in a perfect health when she left for Otta with the appellant.

The following day, the appellant was seen cruising around with the car owned and driven by the deceased on the said 20th May, 1984. He was not only seen with appellant's said car, he claimed to be the owner. On the finding of the trial court, the appellant when he was questioned "manufactured the story" that the deceased and himself returned from Otta on the same 20th May, 1984 and that the deceased dropped him at Ikeja Bus Stop and then drove home. Said the trial court:-

"... this could not be true because the accused was found with the deceased's car on the 21st May, 1984.

It continued:-

"Evidence of 6th PW. who is accused's uncle that the accused brought the car to his workshop and later left it in his house on 21st May 1984 remains unchallenged. When the accused was later arrested on or about 23rd May, 1984 he remained undaunted until about 19th July, 1984 when he chose to take the police and some of the deceased's relations to Otta and they crossed a stream into a bush where he pointed to them the human skull, the pieces of bones gathered, the piece of lace material and the neck chain with the pendant having insignia 'R'. This evidence was given by the 1st P.W., 3rd, 4th and 9th P.W. 1st P.W. gave

evidence that the pelvic bone was that of a female. The 3rd P.W. who had been the deceased's friend for more than five years before the event of 20th May, 1984 recognised the lace material and the neck-chain to be that of Regina Alozie, the deceased. 4th PW also recognised the piece of lace material as well as the neck-chain. 3rd PW said the insignia 'R' on the pendant is for 'Regina', the name of the deceased. 5th PW said that his mummy, meaning the deceased, wore a lace material wrapper and buba when she went out on 20th May, 1984."

The learned trial Judge concluded:-

"No doubt these facts inevitably and irresistibly pointed towards the accused being the person who knows what happened to Regina Alozie and who disposed of her in one way or another. I am of the opinion that there is abundant evidence that Regina did meet her death, and that she is dead, and if she is dead, the circumstances of this case point to the fact that her death is not a natural one. From above, I have come to the conclusion that the deceased was murdered and that the accused is the murderer."

The Court of Appeal, for its own part reasoned thus:

"In the instant case, the appellant was the person known to have been seen last with the deceased. Appellant was the person seen on 21/5/84 with the car driven by the deceased on 20/5/84. The deceased had been seen to be in good health when she left her home on 20/5/84. Certainly, these circumstances imposed on the appellant the need to tell where he had taken the deceased and the circumstances which enabled him, the appellant, to be in possession of the car of the deceased a day after she was found missing.

Rather than explain the situation the appellant resorted to lying. He said that the deceased had said she was going to Maroko from Alimosho and that he had been dropped at Ikeja bus stop when clearly this could not have been the truth. Further, as it turned out, it was the appellant who in July, 1984, over two months after the deceased had been missing, took the police and the deceased's relatives to the bush near the stream at Sango Otta where the skull and bones of the deceased were found. This clearly showed that the appellant had all along known what had hap-

pened to the deceased.”

The above reasonings of both courts below seem to me sound and well founded.

At the trial, the appellant did not testify or call any witness to rebut his guilt based on the over-whelming circumstantial evidence before the court against him. As I have observed, the appellant was perfectly entitled to rebut the irresistible evidence against him in the matter of the murder of the deceased on a preponderance of probabilities. This, however, he did not do. In my view, both courts below were right by holding that the circumstantial evidence relied on by the court in convicting the appellant for the murder of the deceased was absolutely so cogent and compelling and led to no other conclusion than that it was the appellant who killed the deceased.

It is for the above and the more detailed reasons contained in the leading judgment that I, too, dismiss this appeal. The conviction and sentence passed on the appellant by the trial court and affirmed by the Court of Appeal are hereby further affirmed.

EJIWUNMI JSC

I have had the privilege of reading in advance the judgment just delivered by my learned brother, Katsina-Alu, JSC. For the reasons given in the said judgment, I also dismiss this appeal. I therefore affirm the conviction and sentence passed on the appellant.