

SUPREME COURT OF NIGERIA
MONDAY 27TH MAY, 2002. SC. 209/2000
CORAM:- M. L. UWAIS CJN, I. L. KUTIGI, A. I. IGUH,
A. I. KATSINA-ALU, E. O. AYOOLA, JJSC

1. JEROME AKPAN
2. MONDAY IMO
3. PETER NYAUDOH APPELLANTS
4. PETER JOB
V.
THE STATE RESPONDENTS

CRIMINAL PROCEDURE - Charges - Failure to record - Though it is good for court to record that charge was read and explained to accused - But failure to do so does not render trial a nullity (H1)

ALIBI - Particulars of - Proof - Accused must disclose the particulars at the earliest time - So as to put the burden on police - To deal with them with some finality (H2)

CRIMINAL PROCEDURE - Discharge & acquittal - Co accused - Where there is joint trial of accused persons on a clearly interwoven case - Conviction of one cannot stand - Where the other was discharged & acquitted (H3)

CRIMINAL PROCEDURE - Identification - Correctness of - Trial Judge rightly relied on the evidence of PW 3 - As he had foreknowledge of the accused - And did properly identify them (H4)

FACTS

During a visit to one of his farm land, the deceased, Sampson Etim was accosted by some 20 persons as to his mission on the land. Fracas ensued which eventually led to the shooting and death on the spot of the deceased. The matter was reported to the police and identification parade was thus conducted in which PW2, PW3 and PW4 identified some of the accused persons. Appellants along with some other accused persons were therefore arraigned before the High Court of Abia State, Umuahia for murder. At the trial, PW3

stated clearly that he knew appellants very well and also correctly gave their names to the police when the matter was reported at the police station.

At the end of the trial, the learned trial Judge found the case against 1st accused person not proved. Accordingly, he was discharged and acquitted. However, appellants and some others were found guilty of murder and thus were sentenced accordingly. They appealed against the conviction to the Court of Appeal. The court discharged and acquitted one of them and dismissed the appeals of present appellants. Aggrieved, appellants separately filed appeal at Supreme Court contending inter alia, that the discharge and acquittal order made in favour of 1st accused shall also be exercised in their favour.

ISSUES FOR DETERMINATION

1. Whether the defence of the appellant was properly considered by the two courts below.

2. Whether the discharge and acquittal of the 1st accused on the same piece of evidence which incriminated the appellant, should not have resulted in the discharge and acquittal of the appellant.

3. Whether the court below could believe the evidence of P.W. 3 as against that of P.W. 2 and 4, on the identification of the appellant.

4. Whether the trial of the appellant was valid in law.

HELD (Unanimously dismissing the appeals per **KATSINA-ALU JSC**)

Charges - Failure to record

1. In the instant case, it is on record that after the information was read over and explained to the appellant, he pleaded thereto. Surely, if the trial Judge was not satisfied he would not proceed to take the plea of the appellant. In the circumstance it must be presumed that he was satisfied that the information was properly explained to the appellant and that he understood it. Unless the contrary is shown, all acts are presumed to have been rightly and regularly done. Section 150(1) of the Evidence Act buttresses this point. The section provides:

“150(1) when any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with.”

I am of the strong view that the authorities do not say that it must be recorded that the charge was read and explained to the accused to the satisfaction of the court before proceeding to record his plea thereto. Without doubt, it is good practice for trial courts to record that “the charge was read and fully explained to the accused to the satisfaction of the court.” But I do not think the failure to so record will render the trial a nullity. (p. 1288 G)

ALIBI - Particulars of - Proof

2. I must observe that the statement of the appellant to the police exhibit “P” does not contain necessary particulars in order to put the police on inquiry. The bare fact that the appellant was in his farm called Usung Abam from 6.30 a.m. to 6.30 p.m. on 22/4/88 is clearly not sufficient. Alibi is a radical defence and simply means an accused was somewhere else at the time of the commission of an offence and could not possibly be at the scene to partake in it.

The facts of the alibi are peculiarly within the appellant’s knowledge and such witnesses as may be available. He has the onus therefore to disclose such facts with necessary details and particulars at the earliest opportunity so as to put the burden on the police to check on them and deal with them with some finality. If he does not, as in this case, the police cannot be expected to go on a wild goose chase.

The case against the appellant was very strong and clearly proved. The eye witness evidence of PW. 3 Ben Friday clearly fixed the appellant at the scene of crime. His testimony completely broke down the weak defence of alibi put up by the appellant. (p. 1289 F)

CRIMINAL PROCEDURE - Discharge & acquittal

3. Now, the law on this point is clear. It is this. When the evidence against two or more accused persons in a criminal case

is in all material respect the same, and a doubt is resolved by the trial Judge in favour of one of the accused persons, the same doubt should be resolved in favour of the other or others. Consequently, if one is acquitted and discharged, the other or others should also be acquitted and discharged. Differently put, where an accused is jointly tried with another or other accused persons and their case is clearly interwoven and inseparable from one another, the conviction of one cannot stand where the other accused person was acquitted and discharged. Now, the doubt that was resolved in favour of the 1st accused did not arise in the case of the appellant. It has not been suggested that the appellant too was arrested with the 1st accused long before the others were arrested and had been exposed at the Bende Police Station before the identification parade was conducted. This issue therefore has no merit and it fails. (pp. 1290 G/1291 F)

CRIMINAL PROCEDURE - Identification - Correctness of

4. Issue 3. The third issue is whether the court below could believe the evidence of P.W. 3 as against that of P.W.2 and 4 on the identification of the appellant. The simple answer is "Yes". We must not lose sight of the fact that although P.W. 2, P.W.3 and P.W. 4 saw the deceased's assailants, only P.W. 3 had known them before that fateful morning. He said he recognized them. It was in broad daylight. In his evidence at the trial, he stressed the fact that he knew the accused persons (including the appellant) before the day of the incident. That they sold and bought in the same market. P.W. 3 also disclosed that he gave their names to the police soon after the incident in his statement to the police.

The learned trial Judge gave reasons for not relying on the evidence of P.W. 2 and P.W. 4. What is more, the evidence of P.W. 4 that "P.W. 3 mentioned those whom we saw" justifies the trial court's finding that P.W. 3 knew the deceased's assailants very well before the day of the incident. He was amply justified in relying on the evidence of P.W. 3. My answer to issue 3 is in the affirmative. (pp. 1291 H/1293 A)

REPRESENTATION

Alhaji F. A. Oso, Chief Kola Babalola, Olawale A. A. Solagbade, Esq.,
Chief Dona Ibezim Udogu, for the Appellants
Enyinnaya Okezie, Esq. (Chief State Counsel, Abia State Ministry of
Justice, Umuahia), for the Respondents

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CASES REFERRED TO

Eyorokoromo v. State (1979) 6-9 SC 3
Kajubo v. State (1988) 1 NWLR (pt. 73) 721
Eyisi v. State (2000) 15 NWLR (pt. 691) 555
Durwode v. State (2000) 15 NWLR (pt. 691) 467
Kalu v. State (1998) 13 NWLR (pt. 583) 531
Nwabueze v. State (1988) 4 NWLR (pt. 86) 16
Ozaki v. State (1990) 1 NWLR (pt. 124) 92
Ntam v. State (1968) NMLR 86
Ibor v. State (1983) 3 SC 1
Njovens v. State (1973) 5 SC 17
Abudu v. State (1985) 1 NWLR (pt. 1) 55
Dibiamaka v. Osalewe (1986) 3 NWLR (pt. 107) 101

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STATUTES REFERRED TO

Criminal Procedure Act Cap 80 LFN 1990, s. 215
Evidence Act, s. 150(1)

LEAD JUDGMENT BY KATSINA-ALU JSC

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The appellants were convicted at Umuahia High Court of the murder of Sampson Etim on November 30, 1990 and sentenced to death. The case for the prosecution was that on April 22, 1988 the deceased, his wife Alice Sampson (PW 2) and two friends of his named Friday Ben (P.W. 3) and James Okoro (PW. 4) went to harvest cas-sava from the deceased's farm. After a while on the farm, the de-ceased decided to go to the portion of his cassava farm which was harvested by thieves from Ndiwo village. He was soon after halted by about 20 persons as to what he was doing on the farm. A noisy argument soon ensued when one of the persons ordered "shoot him! shoot him!". Immediately the deceased was shot and he fell and died on the spot. The matter was reported to the police and after investigation the appellants together with three other persons

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were put on trial.

The appellants were in the gang that killed the deceased. PW 3 had known them before this incident; he mentioned their names in his statement to the police and also in the court. The police conducted an identification parade in which PW 2, PW 3 and PW 4 identified some of the accused persons.

The learned trial Judge found the case against the 1st accused, Okechukwu Benedict not proved. Accordingly he was acquitted and discharged. He however found the appellants, Damian Etim and Boniface Iseh guilty of murder as charged.

They appealed against the conviction to the Court of Appeal. The appeal of Boniface Iseh who was the 2nd appellant before that court was allowed. He was accordingly acquitted and discharged. The appeals of the appellants and Damian Etim were dismissed. The appellants Jerome Akpan, Monday Imo, Peter Uyaudoh and Peter Job have further appealed to this court. The appellants filed separate briefs of argument. I shall, therefore, deal with the four appeals separately.

1st appellant: First appellant is Jerome Akpan. In his brief of argument, this appellant raised 4 issues for determination which read:

1. Whether the defence of the appellant was properly considered by the two courts below.

2. Whether the discharge and acquittal of the 1st accused on the same piece of evidence which incriminated the appellant, should not have resulted in the discharge and acquittal of the appellant.

3. Whether the court below could believe the evidence of P.W. 3 as against that of P.W. 2 and 4, on the identification of the appellant.

4. Whether the trial of the appellant was valid in law.

The respondent, for its part, adopted the issues for determination formulated by the appellant.

The appellant, in his brief of argument dealt with the last issue (issue no. 4) first. Under this issue it was submitted that a charge or information as framed and filed must be read to an accused person in a proper and lawfully approved arraignment proceedings. It was pointed out that section 215 of the Criminal Procedure Act governs arraignment proceedings. Under the provisions of s. 215 of the Criminal Procedure Act the requirements for a valid arraignment

consists of:

“1. The accused must be placed before the court unfettered. Simply put, the accused person shall be present in court.

2. The charge or information shall be read over and explained to him in a language that he understands to the satisfaction of the court by the registrar or other officer of the court; and B

3. The accused person shall then be called upon to plead instantly thereto. Failure to comply with these conditions would render the whole trial a nullity.

4. The record of the court must show that this procedure is followed. It is good practice for trial court to specifically record that: “Charge was read and fully explained to the accused to the satisfaction of the court”. C

It was the submission of the appellant that the proceedings of 20/9/88 did not comply with conditions (2) and (4). It was contended D that there is nothing on record to show in which language the charge was read to the appellant before he was asked to plead thereto. It was also said that there was nothing on record to show that the charge was fully read and explained to the appellant to the satisfaction of the court. It was submitted that non-compliance with these requirements E rendered the trial a nullity. The appellant relied on the following cases: Eyorokoromo v. The State (1979) 6-9 SC. 3; Kajubo v. The State (1988) 1 NWLR (Pt. 73) 721.

For the respondent it was contended that it is sufficient if on F the face of the record of the court, it was clear that the charge was explained to the appellant before he pleaded to it. The fact that the trial court proceeded to take the plea of the appellant is an indication that it was satisfied with the explanation of the charge to the appellant. For this contention the respondent relies on Eyisi v. The State G (2000) 15 NWLR (Pt. 691) 555 and Durwode v. State (2000) 15 NWLR (Pt. 691) 467 at 485.

The arraignment of the appellant is contained on page 32 of the record. The trial court recorded the following:

“Accused present. H

Ejelonu E. J. Legal Adviser for the state.

Kalunta C. A. for the accused.

Court: Information is read and explained to the accused

Plea of 1st Accused I am not guilty

Plea of 2nd Accused I am not guilty

Plea of 3rd Accused ... I am not guilty

Plea of 4th Accused I am not guilty

Plea of 5th Accused I am not guilty

Plea of 6th Accused I am not guilty

B *Plea of 7th Accused I am not guilty*

Court: Case is adjourned to 12th October for hearing. Accused shall remain in prison custody."

As I have already pointed out, it was said for the appellant that the mandatory requirements laid down for a valid arraignment in section 215 of the Criminal Procedure Law were not complied with. Specifically it was argued that there is nothing on record to show in what language the charge or information was read to the appellant before he was asked to plead thereto. In addition it was D said that there is nothing on record to show the charge was fully read and explained to the appellant to the satisfaction of the court.

Section 215 of the Criminal Procedure Law provides:-

"The person to be tried upon any charge or information, shall be placed before the court unfettered unless the court sees cause E otherwise to order, 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, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service F of a copy of the information he objects to the want of such service and the court finds that he has not been duly served therewith."

The application of section 215 of the Criminal Procedure Law had come up for consideration by this court in a number of cases. See Eyorokoromo v. The State (1979) 6-9 Sc. 3; Kajubo v. The State G (1988) 1 NWLR (Pt. 73) 721; Kalu v. The State (1998) 13 NWLR (Pt. 583) 531; Eyisi v. The State (2000) 15 NWLR (Pt. 691) 555; Durowode v. The State (2000) 15 NWLR (Pt. 691) 467.

In the instant case, it is on record that after the information was read over and explained to the appellant, he H pleaded thereto. Surely, if the trial Judge was not satisfied he would not proceed to take the plea of the appellant. In the circumstance it must be presumed that he was satisfied that the information was properly explained to the appellant and that he understood it. Unless the contrary is shown, all acts

are presumed to have been rightly and regularly done. Section 150(1) of the Evidence Act buttresses this point. The section provides:

“150(1) when any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with.” ^B

I am of the strong view that the authorities do not say that it must be recorded that the charge was read and explained to the accused to the satisfaction of the court before proceeding to record his plea thereto. Without doubt, it is good practice for trial courts to record that “the charge was read and fully explained to the accused to the satisfaction of the court.” But I do not think the failure to so record will render the trial a nullity. See *Eyisi v. The State* (supra); *Durwode v. State* (supra). ^D

I turn now to issue no. 1. The gist of the complaint under this issue is that the defence of alibi put up by the appellant was not considered by the trial court. In his statement to the police on the day in question i.e. 22/4/88 exhibit ‘P’ the appellant said he went to his farm. In his evidence in court the appellant testified thus: ^E

“I do not know the witnesses for the prosecution. I do not know anyone called Samson Etim. On 22nd April, 1988 I went to my farm. I did not kill anybody. My farm is called USUNG ABAM. I went to my farm about 6.30 a.m. I returned 6.30 p.m. After I had eaten, my wife told me that some of our people were arrested at Bende...” ^F

I must observe that the statement of the appellant to the police exhibit “P” does not contain necessary particulars in order to put the police on inquiry. The bare fact that the appellant was in his farm called Usung Abam from 6.30 a.m. to 6.30 p.m. on 22/4/88 is clearly not sufficient. Alibi is a radical defence and simply means an accused was somewhere else at the time of the commission of an offence and could not possibly be at the scene to partake in it. *Nwabueze v. State* (1988) 4 ^G NWLR (Pt. 86) 16; *Ozaki v. State* (1990) 1 NWLR (Pt. 124) 92. ^H

The facts of the alibi are peculiarly within the appellant’s knowledge and such witnesses as may be available. He has the onus therefore to disclose such facts with necessary de-

tails and particulars at the earliest opportunity so as to put the burden on the police to check on them and deal with them with some finality. See Eyisi v. The State (supra). **If he does not, as in this case, the police cannot be expected to go on a wild goose chase.**

B The case against the appellant was very strong and clearly proved. The eye witness evidence of P.W. 3 Ben Friday clearly fixed the appellant at the scene of crime. His testimony completely broke down the weak defence of alibi put up by the appellant. See Ntam & Anor v. The State (1968) NMLR 86; **C Ekpe Ibor v. The State (1983) 3 Sc. 1; Patrick Njovens & Ors. v. The State (1973) 5 SC. 17.**

Issue No. 2. It was submitted under this issue that where an accused is jointly tried with another or other accused persons and **D** their case is clearly interwoven with and inseparable from one another, the conviction of one cannot stand where the other accused person was acquitted and discharged. For this submission counsel for the appellant relied on the cases of Abudu v. The State (1985) 1 NWLR (Pt. 1) 55; Kalu v. The State (1988) 4 NWLR (Pt. 90) 503. It **E** was pointed out that the evidence of P.W. 4 which was rejected by the trial court identified the 1st accused, the appellant and sundry suspects. It was therefore submitted that if P.W.4 implicated the appellant and the 1st accused and the 1st accused was at the end of the trial acquitted and discharged, the appellant is also entitled to a verdict of acquittal and discharge - see Abudu v. the State (supra). **F**

For the respondent it was pointed out that the acquittal and discharge of the 1st accused rested on the doubtful identification of the 1st accused by P.W. 2 and P.W. 3. The case of each accused person was considered separately. And the same doubt which was resolved in favour of 1st accused did not arise in the case of appellant. **G**

Now, the law on this point is clear. It is this. When the evidence against two or more accused persons in a criminal case is in all material respect the same, and a doubts is resolved by the trial Judge in favour of one of the accused persons, the same doubt should be resolved in favour of the other or others. Consequently, if one is acquitted and discharged, the other or others should also be acquitted and discharged. Differently put, where an accused is jointly tried with another **H**

or other accused persons and their case is clearly interwoven and inseparable from one another, the conviction of one cannot stand where the other accused person was acquitted and discharged. See *Abudu v. The State* (supra); *Kalu v. State* (supra).

In acquitting the 1st accused, the learned trial Judge said:

“Now, P.W. 2 and P.W. 3 identify 1st accused during the identification parade but it would appear to me that the 1st accused who was arrested long before the others had been very much exposed at the Bende Police Station and I have asked myself if P.W. 2 and P.W. 3 were not thereby influenced to believe that he was among the hostile crowd that killed the deceased. It appears to me that his presence would have registered in their minds as one of the culprits. I have my doubt if they know him, the 1st accused is therefore entitled to the benefit of my doubt which in law must be resolved in his favour and I find that the case against him has not been proved beyond all reasonable doubt and I enter a verdict of not guilty for him. He is acquitted and discharged.”

It can be seen clearly that the reason for the acquittal of the 1st accused was his doubtful identification by P.W. 2 and P.W. 3. The learned trial Judge was of the view that because the 1st accused was arrested long before the others, and had been very much exposed at the Bende Police Station, this fact could have influenced P.W. 2 and P.W. 3 in believing that he was one of the gang that killed the deceased. I also believe that the circumstances leading to the identification of the 1st accused was unsatisfactory. The proper thing to do was for the police to have shielded him from members of the public before the identification parade was conducted.

Now, the doubt that was resolved in favour of the 1st accused did not arise in the case of the appellant. It has not been suggested that the appellant too was arrested with the 1st accused long before the others were arrested and had been exposed at the Bende Police Station before the identification parade was conducted. This issue therefore has no merit and it fails.

Issue 3. *The third issue is whether the court below could believe the evidence of P.W. 3 as against that of P.W. 2 and 4 on the identification of the appellant. The simple answer is “Yes”. We must not lose sight of the fact that although P.W. 2, P.W. 3*

and P.W. 4 saw the deceased's assailants, only P.W. 3 had known them before that fateful morning. He said he recognized them. It was in broad daylight. In his evidence at the trial, he stressed the fact that he knew the accused persons (including the appellant) before the day of the incident. That they sold and bought in the same market. P.W. 3 also disclosed that he gave their names to the police soon after the incident in his statement to the police.

Part of the evidence of P.W. 3 runs thus:

"I was watching what was going on and I saw the accused. I knew them before. They come from a neighbouring village and we sell in the same market."

Continuing his evidence this witness said:

"The matter was reported to the police. Police asked me questions that same day and I gave the names of those I saw when Sampson was shot dead. They were Peter Nyaudoh, Peter Job, Jerome Akpan, Mathew Eyineche, Monday Imoh and Damian Etim. These people except Matthew Eyineche are here in court."

P.W. 4 in his evidence under cross-examination said:

"I did not know any of the accused before this incident. I had not seen them before that date. However when the police was investigating this case P.W.3 mentioned those whom we saw."

In the course of his judgment, the learned trial Judge stated as follows:

"The question still remains however, who were the persons who murdered the deceased? I have summarized the evidence of P.W. 2 Alice Sampson, P.W. 3 Friday Ben and P.W 4 James Okoro. I accept their evidence that they saw the persons. From the demonstration in court before me, I am not satisfied that P.W. 2 Alice Sampson knew the persons very well. She saw them alright. Indeed from close quarters but she did not appear to know the persons very well and certainly not by name. She identified some of them during the identification parade. When she was asked to point out those she identified she mixed up two of the accused persons - 3rd and 6th. I will not therefore rely very much on her evidence.

P.W 4 James Okoro clearly saw the people but he too did not appear to know them by name and during the identification, he identified 5 of them viz 1, 2, 3, 4 and 5. But the case of PW 3 Friday Ben

was totally different. He knew the persons he saw very well before and by name and gave the names to the police. He even mentioned Ndaraeke Etim which turned out to be 7th accused. He said he did not see 1st accused. “

The learned trial Judge gave reasons for not relying on the evidence of P.W. 2 and P.W. 4. What is more, the evidence of P.W. 4 that “P.W. 3 mentioned those whom we saw” justifies the trial court’s finding that P.W. 3 knew the deceased’s assailants very well before the day of the incident. He was amply justified in relying on the evidence of P.W. 3. My answer to issue 3 is in the affirmative.

In the result the appeal of first appellant fails and I dismiss it. I affirm his conviction and sentence for the murder of Sampson Etim.

2nd Appellant: The second appellant is Monday Imo. The lone issue raised by this appellant is as follows:

“Whether the evidence of the PW 3 on which the High Court based its judgment and on which the Court of Appeal affirmed the sentence and conviction of the appellant is reliable and convincing enough to a charge of murder.”

I adopt what I have said on this issue as it affects the first appellant. P.W. 2, P.W. 3 and P.W. 4 were eye witnesses to the incident that led to the death of the deceased Sampson Etim. With respect to their evidence the learned trial Judge observed as follows:

“The question still remains however, who were the persons who murdered the deceased? I have summarized the evidence of P.W. 2 Alice Sampson, P.W.3 Friday Ben and P.W. 4 James Okoro. I accept their evidence that they saw the persons. From the demonstration in court before me, I am not satisfied that P.W. 2 Alice Sampson knew the persons very well. She saw them alright. Indeed from close quarters but she did not appear to know the persons very well and certainly not by name. She identified some of them during the identification parade. When she was asked to point out those she identified she mixed up two of the accused persons - 3rd and 6th. I will not therefore rely very much on her evidence.

PW 4 James Okoro clearly saw the people but he too did not appear to know them by name and during the identification he identified 5 of them viz. 1, 2, 3, 4 and 5. But the case of PW 3 Friday Ben was totally different. He knew the persons he saw very well before

and by name and gave the names to the police. He even mentioned Ndaraeke Etim which turned out to be 7th accused. He said he did not see 1st accused. “

The learned trial Judge continued thus:

“I am satisfied that P.W. 3 Friday Ben knew them very well before. He told the court that they all buy and sell in the same market and he mentioned their names to the police that same day.”

In the course of its judgment, Court of Appeal observed that:

“I have looked at the record of appeal scrupulously and it is clear that the incident occurred in daylight after 7 a.m. P.W. 3 gave very clear evidence of what transpired at the scene on the 22nd day of April, 1988. He saw the crowd that attacked the deceased and was able to identify some of them whom he had known before... The trial Judge heavily relied on the evidence of this witness.”

The contention of the appellant is that the evidence of P.W. 3 is not sufficient to convict him for murder. I find no merit whatsoever in this contention. There is evidence that P.W.3 knew the 2nd appellant before the date of the incident that led to the death of the deceased. P.W. 3 was at the farm the scene of the incident. He clearly saw and identified the appellant and the others among the persons that attacked and killed Sampson Etim. The time was 7am. The circumstances under which appellant was identified were not difficult.

Apart from the bare denial, the appellant proffered no evidence that discredited the testimony of P.W. 3. The evidence clearly fixed him at the scene of crime. Moreover, it is the policy of the Supreme Court not to disturb concurrent findings of the trial High Court and the Court of Appeal unless it is shown that either they were perverse or that there was a substantial error either in substantive or procedural law which if uncorrected will lead to a miscarriage of justice - see *Dibiamaka v. Osalewe* (1986) 3 NWLR (pt. 107) 101. I have shown that the findings in this regard were not perverse. They were amply supported by the evidence before the trial court.

The appeal of the second appellant Monday Imo is without merit. I dismiss it and affirm his conviction and sentence.

3rd Appellant: The third appellant is Peter Uyaudoh. In his brief of argument this appellant raised three issues for determination in this appeal which read:

1. Whether the court below was right in selecting which of the

evidence of the three eye witnesses, P.W. 2, P.W. 3 and P.W. 4, to believe and which one not to believe and proceeding thereof to affirm the conviction and sentence of the appellant by the trial court on the evidence of one of them, P.W. 3.

2. Whether the prosecution has proved its case beyond reasonable doubt against the accused person. B

3. Whether the trial, conviction and sentence passed on the appellant were not a nullity in view of the failure of the trial court to comply with the provisions of section 215 of the Criminal Procedure Act, Cap. 80, Laws of the Federation of Nigeria, 1990. C

These issues have been exhaustively dealt with in the appeals of the 1st and 2nd appellants. There is no need for me whatsoever to repeat what I have said in the appeals of the 1st and 2nd appellants.

The appeal of the 3rd appellant also is without merit and I dismiss it. I affirm his conviction and sentence for the murder of D Sampson Etim.

4th Appellant: The fourth appellant is Peter Job. The lone issue formulated for determination of this court reads:

“On the evidence of the trial, was the murder charge against the appellant proved beyond reasonable doubt as to be confirmed by the Court of Appeal.” E

This issue has been adequately covered by the preceding appeals. I do not see any need for repeating what I have said in this connection here. Let me add this. The trial Judge gave reasons for not relying on the evidence of P.W. 2 and P.W.4. The reasons are unimpeachable. F

P.W. 4 himself testified that he did not know the appellants before the date of the incident. In his evidence under cross-examination P.W. 4 said: G

“When Sampson and those who killed him were quarrelling P.W. 3 and I stood about 48ft. from them I did not know any of the accused before this incident - I had not seen them before that date. However when the police was investigating this case, P.W. 3 mentioned those whom we saw.” H

It can be seen that from the testimony of P.W. 4, the learned trial Judge was justified in relying on the evidence of P.W. 3 who knew the appellants very well before the date of the incident. The appeal of the 4th appellant too has no merit and I dismiss it. I affirm

his conviction and sentence. In the result, the appeals of the four appellants have failed. Accordingly I dismiss the appeals and affirm the convictions and sentences of the appellants.

B

UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother, Katsina-Alu, J.S.C. I entirely agree that the appeals by all the appellants have no merit and that they should be dismissed.

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Accordingly, I too dismiss all the appeals and affirm the conviction and sentence passed by the trial court against each appellant and confirmed by the Court of Appeal.

D

KUTIGI JSC

I read in advance the judgment just rendered by my learned brother, Katsina-Alu, J.S.C. I agree with his reasoning and conclusions. I will also dismiss the appeal of each and every appellant herein and confirm the decisions of the lower courts.

E

IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Katsina-Alu, J.S.C. and I agree with the reasoning and conclusions therein reached have nothing more to add. These appeals are totally unmeritorious and lack substance and they are hereby dismissed. The conviction and sentence passed on the appellants are hereby further affirmed.

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AYOOLA JSC

I have had the privilege of reading in draft, the judgment just delivered by my learned brother, Katsina-Alu, J.S.C. For the full and detailed reasons he gives, I too would dismiss the appeals of all the appellants. Appeal dismissed.

H