

**SUPREME COURT OF NIGERIA**

23RD APRIL, 2004. SC. 45/2002

**CORAM:- U. MOHAMMED, A. O. EJIWUNMI, N. TOBI, D.  
MUSDAPHER, I.C. PATS-ACHOLONU, JJSC.**

1. OTUNBA F. E. SOWEMIMO ..... APPELLANTS/  
2. BABATUNDE SOWEMIMO ..... CROSS-RESPONDENTS  
V.  
THE STATE ..... RESPONDENT/CROSS-APPELLANT

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CRIMINAL PROCEDURE - Alibi - Time of raising - Apart from not being at the earliest opportunity - There is contradiction - Showing the alibi to be false (H1)

CRIMINAL PROCEDURE - Alibi - Statement to the Police - Shows appellant was present at the scene of crime (H2)

CRIMINAL PROCEDURE - Alibi - Implication of the plea - Is not known to the appellant - And the court's below - Rightly rejected his no serious story about alibi (H3)

APPEALS - Cross appeal - Leave of court to cross appeal - Where not obtained - Brief based on an incompetent appeal is worthless (H4)

**FACTS**

The appellants were charged with the murder of one Tunde Oredipe. The story was that the son of the 1st appellant was said to have stolen the sum of N310,000.00 belonging to his father. 1st appellant said that N80,000.00 was given to the deceased out of the stolen money. As the deceased who was warned to run away came to clear himself from the crime, he was tied up in the 1st appellant's house. He was beaten mercilessly by the appellants with plastic hose-pipe, electric cable and horsetail. They were warned that deceased was not of strong health and might die if they continued beating him, but they ignored the warning.

He died and was seen in the mortuary the next morning. PW4 who did the postmortem testified in court. The 2nd appellant set up a defence of alibi during his evidence in court whereas his statement to the police (Exh K) contained no such defence but showed he was at the scene of crime.

The trial court found the appellants guilty of murder and sentenced them to death by hanging. Their appeal to the court of Appeal was partly successful as that court found them guilty of manslaughter. Being dissatisfied, they have further appealed to the Supreme Court and the respondent filed a cross appeal.

**ISSUE FOR DETERMINATION**

*Whether the learned justices of the Court of Appeal were right when they affirmed the decision of the trial court that the defence of alibi properly set up by the 3rd appellant Babatunde Sowemimo (herein refer (sic) to as 2nd appellant) was not proved by the appellant.*

**HELD** (Unanimously dismissing the appeal and striking out the cross appeal per lead judgment of **PATS-ACHOLONU, JSC**)

***Alibi - Time of raising***

1. In the present case it is manifestly evident that apart from the fact that the defence of alibi was not raised at the earliest opportunity the 2nd appellant's evidence in court was completely at variance with and seriously contradicted the statement he made to the Police which when tendered was not objected to. What the accused was putting on as a defence was falsity manufactured in the course of the trial to gain reprieve. The evidential proof of this witness to rebut the charge that he was one of those who beat the deceased was a sham and watery. (p. 943 A & C)

***Alibi - Statement to the Police***

2. It should be observed that the graphic manner the 2nd appellant described in a most detailed form what transpired in the 1st appellant's house shows that he was present. He admitted pushing the father of the deceased down stairs when the father objected to the beating his son was being subjected to. I really fail to see how this court would seriously consider the so-called defence of Alibi of the 2nd appellant when;

- (a) He never raised his defence at the earliest opportunity he had;
- (b) When during his evidence he tried to disown his statement Exhibit K stating that he was an illiterate and could neither read nor write, yet he admitted having read up to standard 6;
- (c) When his defence of alibi contradicts in material particulars in fact completely at variance with - Exhibit K. (p. 943 E)

### ***Alibi - Implication of the plea***

3. The attempt by the 2nd appellant to hoodwink the court by his mumbo-jumbo story, which seeks to show that he was not at the scene of the crime was designed to divert the mind of the court which was an effort that did not seriously understand the implication of the plea of the Alibi. It is a defence, which seeks to persuade the court that the accused could not possibly be at the scene of the crime as he was somewhere else where most probably there were people who could testify that at the time of the alleged incident or act he was not at the scene of the crime unless he was capable of being in two places at the same time. To my mind there is nothing to fault the judgment of the Court of appeal in affirming the rejection of the most puerile defence of alibi set up which is just a ruse. (p. 944 B)

### ***Leave of court to cross appeal - Where not obtained***

4. There was no reasonable or discernible defence or answer to this obvious lapse on the part of the cross appellant. Counsel for the cross appellant admitted that the cross appellant did not obtain the required leave. That being the case there is no cross-appeal and the brief based on an incompetent appeal is worthless being equally incompetent. (p. 944 H)

## **NOTABLE POINT OF INTEREST**

### **NIKI TOBI JSC**

#### ***1. When defence of alibi will no more avail***

It is elementary law that where an accused person is unequivocally pinned to the locus in quo as one committing the offence, the defence of alibi no more avails the accused. This is because the defence by the accused that

he was elsewhere at the material time the offence was committed is destroyed by the unequivocal evidence of witness or witnesses tying him to the locus in quo as one who committed the offence. Both the trial judge and the Court of Appeal were not convinced of the defence of alibi by the  
B 2nd appellant. I am not convinced too. (p. 950 G)

### **REPRESENTATION**

Chief Ajibola Aribisala and George Ibekwe for the appellants.  
C Fola Arthur-Worrey [Solicitor-General, Lagos State Ministry of Justice]  
and Hakeem O. Yusuf [State Counsel ] for the respondent.

### **CASES REFERRED TO**

Adisa v. The State [1991] 1 N.W.L.R. (pt. 168) 490  
D Odili v. The State [1997] 4 S.C. P. 1  
Gabriel Madukolu & Ors. V. Johnson Nkemdilim [1962] AII N.L.R. 581.  
Wambeni v. Kano Native Authority [1965] N.M.L.R. 15  
Mgboko v. The State [1972] 2 S.C. 123  
E Oforlete v. The State [2000] 2 N.W.L.R. (pt. 681) 415

### **LEAD JUDGMENT BY PATS-ACHOLONU JSC**

The appellants were charged with the murder of one Tunde Oredipe,  
F tried, convicted and sentenced to death by hanging. They appealed to the  
Court of appeal, which reduced the conviction of murder to that of man-  
slaughter in which that court imposed some sentence. The appellants not  
obviously still satisfied with the judgment of the Court of Appeal there-  
upon appealed to this court and framed two issues for determination.  
G The state equally cross – appealed.

However in arguing the appeal, the learned counsel for the appel-  
lants dropped issue one and relied on issue two which is,

Whether the learned justices of the Court of Appeal were right  
H when they affirmed the decision of the trial court that the defence of alibi  
properly set up by the 3rd appellant Babatunde Sowemimo (herein refer  
(sic) to as 2nd appellant) was not proved by the appellant.

The respondent equally framed two issues for determination, which

are:

1. Whether the Court of appeal was right to have affirmed the decision of the trial court that P.W. 4 was an expert in determining the cause of death of the deceased.

2. Whether the Court of appeal was right when it affirmed the decision of the trial court rejecting the alibi set up by the 3rd appellant. Of course with the appellant's counsel having dropped issue on (1) it goes without saying that the corresponding issue No. 1 that features in the respondent's brief equally goes.

The cross appellant not satisfied with judgment of the Court of Appeal appealed and framed two substantial issues to wit;

1. Whether it is the correct position of the law as held by the court of appeal that there is a legal or evidential burden on the prosecution in all cases to establish through evidence the use of a knife, cutlass, axe or other heavily weighted object and to tender those items before an intention to kill can be proved.

2. Whether it is the correct position of law as stated by the Court of appeal that lack of knowledge that a particular act might cause death or that ignorance about the precocious state of a deceased person's health or ignorance that torture could kill, is a mitigating circumstance in a charge of murder.

The cross-appeal is in respect of the 3 appellants whose convictions for murder were reduced to that of manslaughter. The 2 cross-respondents equally adopt the same issues as framed by the cross-appellant. I shall come to this later and examine the substance and competence of the cross-appeal.

By dropping the issue in respect of the 1st appellant there is therefore no appeal to be urged on the 1st appellant. In other words, the judgment of the court of appeal against him is not being pursued on the appeal in this court.

Now facts being the fountainhead of law, I shall set down in synopsis the facts of this case. The prosecution in its case had stated that the 1st appellant/cross-respondent's son one Ayo Ola Sowemimo had stolen a sum of N310,000.00 belonging to his father and escaped. The

deceased's connection with the theft of the money was that Otunba Sowemimo had said that Tunde Oredipe was given a sum of N80,000.00 out of the money stolen. In spite of the effort by one Omolara Samuel to warn Tunde of the presence of the appellants who were looking for him, B he Tunde voluntarily went to them to supposedly clear himself. Some-time later when no one could see Tunde again, Omolara Samuel, the parents of Tunde and his sister went to the house of the 1st appellant where they saw Tunde with his hands and feet tied and was being beaten C mercilessly by the appellants with plastic hose-pipe, electric cable and horsetail. Omolara said that he warned the 1st appellant that Tunde was not of strong health and therefore if they continued to beat him, he tuned D might die. The parents of the deceased also corroborated the evidence of P.W. 1 on how he was being mercilessly beaten and went further to state that in morning following the beating which took place at bout midnight previously, the body of Tunde was seen in the mortuary. P.W. 4 who did the postmortem examination testified as follows:

"On the 10/1/96 at 4.30 p.m. I examined the body of late Tunde E Oredipe. The body was identified to me by Frances Bisuga a family friend at the mainland Hospital mortuary Yaba. I found a well nourished male adult with multiple abrasives on the left check bon, (2) extensive abra- sion over both left and right anterior chest wall with three lineal mulb on F the left side (3) lineal abrassia right and left lateral chest wall lineal mulb about 10 c.m (4) Lineal abrasions right and left flanks (5) wide abrasion both shoulders (6) wide and lineal abrasion lateral right and left upper halves of the arms (7) Abrasions left anterior auxiliary fold (8) abrasions over the right scapular (9) Abrasions over right posterior chest wall (10) G Dark hupes pigmented patches soft over the right ankle anteriorly.

All the internal organs appear normal except the spleen which is moderately enlarged.

In summary I found a well nourished healthy looking male adult H with multiple extensive abrasions over the body. However all the internal organs appear intact with no internal bleeding or brides. (SIC)  
My findings are (SIC) consistent with physical violence. The cause of death is nexogenic(s) shock. Shock is a service of complex systemic

reaction of the body done to external or internal stimulies. In case of nerogenic shock, it is due to traumatic external injury on the body resulting in the stopping of sympathetic nervous system leading to reduced cardiac out put hypotension and invariably lack of oxygen in the brain and the heart. Depending in the duration of the external injury the shock B would lead to a complete brain death and cardiac arrest leading to death. The injuries led to nerogenic shock I do not think the injuries can be self-inflicted.

The injuries are not consistent with a fall.”

The 2nd appellant whose appeal is still on course apart from deny- C ing the accusation of being one of those who murdered the deceased set up a defence of alibi-claiming that he was never present on the date the act was perpetrated at Ilorin but rather he was at Ijebu-Ode. The 1st D appellant denied killing the deceased but rather said that it was the beating he had from the crowd who lynched him that was responsible for his death.

Now, the only issue I have to consider in response to the appel- E lants brief is whether the Court of Appeal was right to have affirmed that the defence of alibi set up buy the 2nd appellants 3rd cross-respondents was no proved.

In all, therefore, the issues before the court to determine are:

- (a) The proof of the defence of alibi F
- (b) Whether in all cases the prosecution must prove and tender as exhib- its such G
- items as knife, cutlass, axe or other heavily weighted objects before an intention to kill can be proved. And
- (c) That lack of knowledge of the victim’s state of health or ignorance that torture could kill is a mitigating circumstance in a charge of murder.

The 2nd appellant/cross-appellant in his testimony in court said:

*“From the 1st December – 31st December 1995, I was at Ijebu- H Ode. From 1st January 1996-13th January 1996, I was at Ijebu-Ode. I have never been to Ilorin anytime.”*

Under cross-examination he said:

*“I told the police that I was in Ijebu-Ode when (the) incident*

*happened .....I do not know why the Police should be looking for me 2 days after my arrival at Lagos from Ijebu-Ode ..... it was Yekini who wrote down my name for the Police to arrest me. I do not know why Yekini should put down my name. I do not know the 2nd accused."*

B In his submission, the learned counsel for the appellants submitted that the trial judge did not satisfactorily evaluate the defence of Alibi raised by the 2nd appellant. The word "*alibi*" is a Latin expression meaning, "*I was elsewhere*". Exhibit K which was said to be the statement of the 2nd appellant Jude Sowemimo when tendered in the court below was not objected to by the counsel for the accused persons in the court of 1st instance. Because of the alibi he now set up at the trial, I would reproduce some portions of his statement to the Police, which is Exhibit K;

C "I later left Ijebu-ode I then went back to my uncle's house Rtd. D Capt. Funso Sowemimo at No. 13 Akowojo till the time of the incident I was living with my uncle Rtd. Capt. Emmanuel Funso Sowemimo. On 30th of December 1995. I was sleeping, when they came and woke me up with the other people sleeping in the compound. During the interroga- E tion my uncle Rtd. Capt. Emmanuel Funso Sowemimo, Engineer and Mutiu were the people that tied Tunde and the three of them started beating Tunde as they were asking questions from Tunde. As Tunde's father was from his son and said that they should not beat Tunde again that he will ask from Tunde whether he took the money the Rtd. Capt. F Emmanuel Funso Sowemimo started beating Tunde's father and I dragged Tunde's father to the down stair Tunde later called Sidi to come, and told Sidi that he did not share any money that Ayo was telling lies against him that Sidi should go and ask from him. The two captain's wives did not G beat Tunde but they were sitting down there. It is Engineer, Mutiu and Rtd. Capt. Emmanuel Funso Sowemimo that beat Tunde."

It is evident that his testimony in court was at variance with the statement tendered, which was not objected to at all when tendered in H court. To buttress his case that the defence of alibi was made at an earliest opportunity the learned counsel for the appellant cited the case of *Otti v. The State* [1993] 4 N.W.L.R. (pt. 290) at 675 on the importance of the necessity of the plea of alibi being raise at an earliest opportunity.



**In the present case it is manifestly evident that apart from the fact that the defence of alibi was not raised at the earliest opportunity the 2nd appellant's evidence in court was completely at variance with and seriously contradicted the statement he made to the Police which when tendered was not objected to.** In expatiating the issue of the so-called alibi and its worthiness or substantiality the appellant's counsel cited the case of Adisa v. The State [1991] 1 N.W.L.R. (pt. 168) 490 in which the Court of appeal stated the necessity of the prosecution to seek for an adjournment to investigate an alibi. It could have been the case if the court below did not conceive that **what the accused was putting on as a defence was falsity manufactured in the course of the trial to gain reprieve. The evidential proof of this witness to rebut the charge that he was one of those who beat the deceased was a sham and watery** and is comparable to the case Riu Biggs 1839 2M and Robb 199 where the prisoner on a charge of robbery the prosecution was allowed to rebut the alibi by proving that shortly before the attack on him the prisoner had robbed another person. See also R v. Rooney [1936] 7C.P. 517. **It should be observed that the graphic manner the 2nd appellant described in a most detailed form what transpired in the 1st appellant's house shows that he was present. He admitted pushing the father of the deceased down stairs when the father objected to the beating his son was being subjected to. I really fail to see how this court would seriously consider the so-called defence of Alibi of the 2nd appellant when;**

(a) He never raised his defence at the earliest opportunity he had;

(b) When during his evidence he tried to disown his statement Exhibit K stating that he was an illiterate and could neither read nor write, yet he admitted having read up to standard 6;

(c) When his defence of alibi contradicts in material particulars in fact completely at variance with – Exhibit K.

In the case of Odili v. The state [1997] 4 S.C. P. I, the Supreme Court had held thus particularly in repudiating the defence that sought to strengthen the plea of Alibi raised so late in the day;

B “We also reject accused’s vague attempt to raise the defence of alibi since the alibi lacks condor. Accused at nowhere in his statements Exhibits 1 and 2 mentioned his wife D.W. 2. Had the accused wanted police to investigate his purported defence of alibi he should have at the earliest opportunity furnished the police with full details of the alibi to enable the police check on the details. Failure of the accused to furnish the particulars of his alibi in our view, weakens the defence of the accused.”

C **The attempt by the 2nd appellant to hoodwink the court by his mumbo-jumbo story, which seeks to show that he was not at the scene of the crime was designed to divert the mind of the court which was an effort that did not seriously understand the implication of the plea of the Alibi. It is a defence, which seeks to persuade the court that the accused could not possibly be at the scene of the crime as he was somewhere else where most probably there were people who could testify that at the time of the alleged incident or act he was not at the scene of the crime unless he was capable of being in two places at the same time. To my mind there is nothing to fault the judgment of the Court of appeal in affirming the rejection of the most puerile defence of alibi set up which is just a ruse.**

F The respondent in this case had filed a cross-appeal and indeed went to the extent of addressing the court on the nuances of the cross-appeal in a brief. The appellant filed an objection to the competence of the cross-appeal arguing that the cross appellant did not obtain the leave of the court for the cross-appeal. In the cause of proceedings, the court found as facts that;

- G (a) the cross-appellant did not apply for an extension of time for leave to cross-appeal and  
(b) did not equally seek the leave of the court to file the cross-appeal.

H **There was no reasonable or discernible defence or answer to this obvious lapse on the part of the cross appellant. Counsel for the cross appellant admitted that the cross appellant did not obtain the required leave. That being the case there is no cross-appeal and**

**the brief based on an incompetent appeal is worthless being equally incompetent.**

In the final result the main appeal is dismissed and the judgment of the court of appeal is affirmed. The cross-appeal being incompetent is hereby struck out.

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**MOHAMMED JSC**

I have had the privilege of reading, in draft, the judgment of my learned brother; Pats-Acholonu, J.S.C. and I agree that the appeal against the conviction of the appellants which the Court of appeal affirmed should be dismissed.

On the cross-appeal, the learned Solicitor-General for Lagos state has conceded that he did not apply and or obtained leave to file it. One of the conditions, which gives a court jurisdiction, is that the action is initiated by due process of law. See Gabriel Madukolu & Ors. V. Johnson Nkemdilim [1962] AII N.L.R. 581. We permitted Mr. Arthur – Worrey to argue the cross-appeal, which the Lagos State filed against the judgment of the Court of Appeal. After the submissions by respective counsel of the parties had been closed and the court adjourned for judgment, Mr. Aribisala filed a notice of Objection to the competency of the cross-appeal because the state did not obtain leave before filing it.

At the hearing of the notice of Preliminary Objection, Mr. Arthur Worrey conceded that he did not obtain leave before filing the cross-appeal. The undoubtedly has made the cross-appeal incompetent. The cross appeal is for the above reason hereby struck out. As stated above, the main appeal is dismissed and the cross-appeal, being incompetent, is struck out. The judgment of the Court of appeal is hereby affirmed.

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**EJIWUNMI JSC**

I have had the privilege of reading the draft of the judgment of my learned brother, Pats-Acholonu, JSC, which has just been read. The ap-

pellants were originally charged for the offence of murder contrary to section 319(1) of the Criminal Code, Cap. 31 of the Laws of Lagos state and were each convicted for that offence by the learned trial judge. However following their appeals to the Court of appeal, their conviction for murder was reduced to that of manslaughter contrary to section 317 of Criminal Code. The 1st appellant was sentenced to ten years imprisonment with hard labour. His term to be computed from the date of the judgment of the trial court. Each of the 2nd and 3rd appellants was sentenced to 7 years imprisonment with labour, and their sentences were also ordered to be from the date of the judgment of the trial court.

It is against the judgment and orders of the court below that they have now appealed to this court. It is manifest to me from the facts and the applicable law relevant to the question raised on appeal that this appeal lacks merit. Consequently, I also dismiss the appeal for all the reasons given in the lead judgment of my brother, Pats-Acholonu, JSC.

**TOBI JSC**

Tunde Oredipe, the deceased, was accused of having a share of stolen money by Ayo-ola, the son of the 1st appellant. The evidence is that the deceased was beaten by the three accused persons with plastic hose pipe, electric cable and horse tail. The accused persons took him to the Ikeja general Hospital after the beating for treatment. Tunde Oredipe did not survive. He died in the hospital.

The three accused persons were charged with murder of Tunde Oredipe. The trial judge convicted them for the offence and sentenced them to death. The Court of Appeal reduced the conviction to manslaughter. The 1st and 2nd appellants were sentenced to ten years and seven years imprisonment, respectively. They have appealed to this court.

The State filed a cross-appeal on the reduction of murder to manslaughter. The appeal was struck out on the ground that it was filed without leave of either the Court of appeal or this court. And so, we are left with only the main appeal.

The appellant raised two issues, viz:

“(1) Whether the learned justices of the Court of appeal were right when they affirmed the decision of the trial court that P.W. 4 who was not a qualified Pathologist is an expert in the circumstances of this case.

(2) Whether the learned justices of the Court of appeal were right when they affirmed the decision of the trial court that the defence of alibi B properly set up by the 3rd appellant Babatunde Sowemimo (herein refer (sic) to as 2nd appellant) was not proved by the appellant.

It was the contention of learned counsel for the appellants, Chief Aribisala, that P.W. 4 was not an expert witness as he was not a qualified pathologist. Both the trial judge and the Court of Appeal held that in view C of the fact that he is a medical practitioner, he qualified as an expert.

I have no problem with that decision. But I have a problem with the contradictory claims of P.W. 4, claims which made him a liar. P.W.4 claimed in examination-in-chief that he is a pathologist. He said at page D 85 of the record:

*“I am a pathologist. I perform autopsy and postmortem. I have two degrees – B.Sc. Chemistry and MBS. I started working as a Pathologist with the Lagos state government in 1992 and I am still working there E as a pathologist.”*

Under cross-examination, witness said at page 159 of the Record:

*“I began residence programme in pathology in April, 1997 with the Lagos state Post-graduate College. It is equally true that I was an F associate pathologist with the Lagos state government since 1992. I have to take my present course because I want to become a Consultant Pathologist. In 1992, I was a General Medical Practitioner. I worked as Medical Practitioner since 1992 and I am just starting to become a pathologist. I was not a pathologist in 1992. My present course will take me G four years from April 1997 to become a pathologist. I practise under a Consultant Pathologist.”*

At page 160 of the Record, witness said:

*“I signed Exhibit O as Chief Consultant Pathologist, but I am not H a Chief Consultant Pathologist, I signed exhibit O on 10/1/96 which was the date of performing the examination.”*

The above is a most unstable evidence. In one breath, witness

claimed that he was a pathologist and in another breath, he claimed that he is not and that he was undergoing training to become a pathologist. What is the correct version and how can the court pick and choose such version?

B Has the court the competence to pick and choose the correct version? I think not. P.W. 4 by the above has exposed himself as a witness whose evidence cannot be trusted or relied upon. In *Wambeni v. Kano Native authority* [1965] N.M.L.R. 15, it was held that in certain cases, evidence of opinion of an expert is relevant, but he must be called as a witness and must state his qualifications and satisfy the court that he is an expert on the subject in which he is to give his opinion and he must state clearly the reasons for his opinion.

D Is this court or any other court bound by the evidence of P.W. 4? Again, I think not. In *Mgboko v. The state* [1972] 2 S.C. 123 this court held that a court is not bound by the evidence of a medical doctor, particularly when the evidence is contradictory in some material particular. In my view, P.W. 4 who lied on his qualifications clearly betrayed the veracity or authenticity of his evidence in the matter. I therefore reject it, as I do not have the competence to pick and choose what aspects or areas of his evidence I must believe. I entirely agree with chief Aribisala that the testimony of the witness “*impeached and destroyed his credibility as a witness of truth*”. Counsel got the point properly.

F Does this mean victory for the appellants? I think not. There is no law known to me that an accused person cannot be convicted for manslaughter where medical evidence is discredited or where there is no medical evidence at all. And that takes me to the evidence of P.W. 1, P.W. 2 and P.W. 3.

P.W. 1 in his evidence-in-chief said:

H “*All the three accused persons were all beating Tunde. All the three persons were beating Tunde with plastic hose pipe and electric cable and horse tail. While they were beating him they were pouring water on him. Tunde’s parents then queried the 1st accused as to why he was beating Tunde. The 1st accused ignored the query and continued beating Tunde..... I told him (1st accused) that Tunde was not a strong person*

*and that if the torture continued he could die. The 1st accused said that torture could not kill. At around 2 a.m. on 31/1/95 and when I got down stairs, I went to the back of the house in an uncompleted house because I could not leave Tunde in the condition he was. In this place I was still hearing the voice of Tunde shouting for help .... I called Tunde when he was carried into the bus but he did not answer me. Then the 1<sup>st</sup> accused drove the bus off."*

P.W. 2, the mother of the deceased, said in her evidence-in-chief:

*"after sometime, myself, my husband a relation and Siji went to the house of the 1<sup>st</sup> accused. I met my son naked and he was been (sic) beaten on the 3rd floor. Blood was coming from his body. He was tied hands and legs. The accused persons were among those beating Tunde, including Yeye the 1st accused's wife. They were using pipe and electric wire to beat Tunde and pouring water on him. I stripped myself naked screaming that my son was not a thief. My husband also protested and they started to beat my husband, calling him Baba ole."*

P.W. 3, father of the deceased, said in his evidence-in-chief;

*"After sometime, P.W. 1 took us to the house of the 1st accused. When we got there we went upstairs and we saw Tunde tied hand and foot. The three accused persons were met beating my son Tunde with wire. As I started to bend down to untie Tunde the three accused persons pound (sic) on me and intended beating me with wire and horse pipes and they threatened to throw me downstairs."*

There is one thing in common in the evidence of the three witnesses and it is that the appellants beat the deceased with some materials. P.W. 1 named the materials as plastic hose pipe, electric cable and horse tail. P.W.2 named the materials as pipe and electric wire. P.W. 3 named the materials simply as were.

To sustain a conviction for the offence of manslaughter, it must be established beyond reasonable doubt that it was the act of the accused that caused the death of the deceased. In every case where it is alleged that death has resulted from the act of a person, a causal link between the death and the act must be established and proved in a criminal proceeding beyond reasonable doubt. See *Oforlete v. The state* [2000] 2 N.W.L.R.

(pt. 681) 415.

In locating the cause of death, the learned trial judge said:

“It would appear from the evidence before the court that the deceased died of beating but that the said beating was not done by the three  
B accused persons but by a mod at Dadeyi when the deceased was trying to run away from the bus of the 1st accused person .... I am of the view that the material facts are that the deceased was beaten as a result of which he died. It appears to me that both the defence and the prosecution  
C are on common ground as to the cause of death – to wit both sides accept that the cause of death was by beating... The defence tried to paint a picture that the deceased was beaten in the house of his parents – P.W. 2 and P.W. 3.... The 1st accused said he only smacked the deceased when he was trying to disengaged him from his mother, P.W. 2 I  
D therefore have no hesitation to say that the deceased died from injuries on him by the three accused persons.”

The Court of appeal said:

“From the evidence of P.W.s 1 and 2 and 3, one sees that they  
E were all agreed that the three appellants were beating the deceased. The argument by the defence that there were some others perhaps implied that the prosecution should also have charged those other persons. It did not mean that the appellants were not seen beating the deceased... I have no  
F doubt on the accepted evidence before the trial judge, he was right to have found; (1) that the acts of the appellants led to the death of the deceased. (2) That the appellants were engaged in the prosecution of the unlawful purpose when they employed torture and violence in an attempt to extract a confession from the deceased.”

G I do not see any reason to disagree with the conclusions of both courts on the cause of death. And here, I should say that the defence of alibi by the 2nd appellant is a mere farce. It is elementary law that where an accused person is unequivocally pinned to the locus inquo as one  
H committing the offence, the defence of alibi no more avails the accused. This is because the defence by the accused that he was elsewhere at the material time the offence was committed is destroyed by the unequivocal evidence of witness or witnesses tying him to the locus inquo as one



who committed the offence. Both the trial judge and the Court of Appeal were not convinced of the defence of alibi by the 2nd appellant. I am not convinced too.

One thing worries me in this case and it is in respect of the professional and social status of the 1st appellant in relation to the raw details of the offence. It is on record that the 1st appellant is by profession an accountant. He doubles as holder of a diploma in automobile engineering, which means that he has some smattering in the profession of automobile engineering. The 1st appellant is therefore by any standard a high 'flier' in our society as he belongs to a very prestigious profession of accountancy. I did not expect a person of such standing in society to get himself to the level of causing the death of a young man who happened to be his son's friend in a most bizarre, wicked and uncouth manner. It is sad, very sad indeed that an accountant can take the law into his hands, tie the hands and legs of fellow human being and started beating him with the help of others with plastic hose pipe, electric cable and horse tail because of an allegation that his son gave him N80,000.00 as part of his share of the stolen money. What of the son who stole the money? Did he undergo such a barbaric action? Things happen in this country. This is a most primitive action, one too many for a Nigerian accountant. I think I can stop here.

It is for the above reasons and the fuller reasons given by my learned brother, Parts-Acholonu, J.S.C., in the leading judgment that I too dismiss the main appeal and strike out the cross-appeal on the ground of incompetence.

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### MUSDAPHER JSC

I was honoured with the preview of the judgment of my lord, Acholonu, J.S.C., just delivered in this matter. I entirely agree with the reasoning and the conclusions arrived at.

For the same reasons, I too dismiss the appeal as unmeritorious. I also agree that the cross-appeal is incompetent and is accordingly struck out.