

**SUPREME COURT OF NIGERIA**  
13TH MAY, 2005. SC. 268/2003  
**CORAM:- S. M. A. BELGORE, S. U. ONU, U. A. KALGO,**  
**N. TOBI, D. O. EDOZIE, JJSC**

1. MONSURU SOLOLA ..... APPELLANTS  
2. JAMIU OLOYEDE

V.

STATE ..... RESPONDENT

---

CRIMINAL PROCEDURE - Arraignment - Plea - Object of s.215 CPL - Charge - When read to accused to the Judge's satisfaction - Then record of explanation is not necessary (H1)

EVIDENCE - Oath - Where not administered on a witness before giving evidence - Amounts to mere irregularity (H2)

CRIMINAL PROCEDURE - Evidence - Concurrent findings - Confessional Statement - Where made voluntarily by accused person - Is sufficient to sustain conviction (H3)

APPEALS - Judgments - Mistake in Judgment - Appeal will not be allowed in all cases - Except there is miscarriage of justice (H4)

CRIMINAL PROCEDURE - Trial - Evidence - Proof - Where trial commences with the case of defence - It does not amount to shifting of burden of proof (H5)

CRIMINAL PROCEDURE - Verdict - Where separate persons are tried together - Separate verdicts must be returned - Error in doing this - May not amount to miscarriage of justice (H6)

EVIDENCE - Criminal procedure - Corroboration - Witnesses - Competence of a child - Where he understands questions put to him - And also understands nature of oath - Corroborative evidence is not needed (H7)

### **FACTS**

Before the High Court of Abeokuta, Ogun State, the accused/appellants were arraigned on a two count information with conspiracy to murder, and murder. Charges against the 4th accused, a 12 year old child, was withdrawn for his being innocent. The 12 year old child (PW2) was sent by the appellants to call the deceased, his playmate who had hunch back in a pretence to send him on errand. Later PW2 discovered the absence of the deceased and asked his father (3rd appellant) who told him the deceased had left. PW3 a neighbour, perceived some offensive odour from the appellants' house and also saw him dropping the corpse of the deceased. She gripped the accused and raised an alarm.

The 3rd appellant made a confessional statement to PW6 an investigating police Sergeant, who took it with caution. A postmortem examination was performed on the deceased by PW1, a doctor who stated that the death of the deceased was caused by haemorrhagic shock due to acute loss of large volume of blood as a result of the removal of the hunch back. The appellants were convicted as charged by the trial court. The conviction was upheld by the Court of Appeal. The 1st & 2nd appellants have further appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

*“1. Whether the Court of Appeal was right in holding that the trial court had substantially complied with the provisions of Section 215 of the Criminal Procedure Law (Cap.30) Laws of Ogun State of Nigeria, 1978, and Section 33(6)(a) of the 1979 Constitution.*

*2. Whether the Court of Appeal was right in holding that the trial court had rightly admitted and relied on Exhibits D-D1 and G-G1 being the confessional and additional statements of the 1st appellant.*

*3. Whether the Justices of the Court of Appeal were right when they held that the evaluation and appraisal of the evidence of the defence before that of the prosecution by the trial court had not shifted the burden*

*of proof on the 1st appellant and other accused persons.*

*4. Whether the Court of Appeal was right in holding that the pronouncement of the trial Judge on the offences of conspiracy and murder was not substantial to warrant a reversal of the decision of the court”*

**HELD** (Unanimously dismissing the appeal per **ONU JSC**)

***Arraignment - Plea - Object of s.215 CPL***

1. For there to be a valid trial, there must be a proper arraignment in terms of the procedure laid down in Section 215 of the CPL *supra*. The requirement of this provision or identical provision has been judicially considered in a plethora of the decisions of this court. These requirements are to the effect that the charge must be read over to the accused in the language he understands; and the charge must be explained to the accused in the language he understands to the satisfaction of the court before he is called upon to plead to the charge. In the instant case, the record shows that the 1st and 2nd appellants were arraigned on 20th March, 1995, in the absence of their counsel and they pleaded not guilty. The charge was subsequently amended and they pleaded not guilty in the presence of their counsel. Although it is not recorded that the charge was explained to them, it does not seem that the record to that effect is contemplated by the provision of Section 215 CPL. In the absence of any evidence to the contrary, when the charge is read to the accused person and he makes his plea and thereafter proceeds to trial, the presumption is that the court is satisfied that the charge was explained to the accused to its satisfaction.

The object of an arraignment in terms of Section 215 of the CPL is to ensure that justice is done to the accused by ensuring that he understands the charge against him and so as to enable him to make his defence. But it must be borne in mind that justice is not a one way traffic. Justice must be done to the State as well as the victim of the brutal murder. In this case, the deceased was murdered on 12/4/94.

Thereafter the appellants were arrested and charged with the murder. They made statements in that regard and had been in custody till the 20th March, when they were arraigned. It would be absurd to suggest

that when the charge was read to them they did not understand what it was all about. To capitalise on the absence of a record of the explanation of the charge is to cling on unnecessary technicality to defeat the ends of justice. This will not be allowed to occur in this appeal. I agree with the court below B that there was a substantial compliance with Section 215 of the CPL and Section 36(6)(a) of the 1979 Constitution. (pp. 1442 G & 1443F)

***EVIDENCE - Oath***

C 2. By Section 4(3) of the Oaths Act, the failure to administer oath on a witness before giving evidence is a mere irregularity which does not affect the decision arrived at on that evidence unless it has been shown to occasion a miscarriage of justice: see the case of *Anatogu v. Iweka II* (1995) 8 NWLR (Pt.415) 547. The mere fact that DSP David Aremu D (P.W.7) gave unsworn evidence during the mini trial in respect of the admissibility of the confessional statements is immaterial. (p. 1444 E)

***Confessional Statement - Where made voluntarily***

E 3. Learned counsel for the 1st appellant dealing with the 4th issue in his brief had submitted that the trial court was in error to have used the 1st appellant's statements, Exhibits D-D 1, G-G1 and those of the 2nd appellant that is, Exhibits E-E1 and H-H1 as corroborating each other. It F is well settled that a voluntary confession of an accused is deemed to be relevant and admissible against its maker and not against another. The trial court stated the law correctly that a conviction can be sustained on a free and voluntary confession of an accused notwithstanding that he retracted the confession. It then found that the charges against the appellants were G established from their confessional statements. The statement that the confessional statement of the 1st appellant corroborates those of the 2nd appellant is merely an innocuous mistake . A confessional statement if made voluntarily by an accused person even if subsequently retracted is H sufficient to sustain a conviction. The two courts below have found as a fact that the 2nd appellant participated or acted in concert with the others in the murder of the deceased. It is not the practice of this court to interfere with such concurrent findings of the two lower courts except where such

findings are perverse or unsupported by evidence or occasioned a miscarriage of justice. (pp. 1445 A/G & 1449 D)

### ***Mistake in Judgment***

4. It is the law that it is not every mistake that will lead to the reversal of a judgment. It is only where such a mistake is substantial and has occasioned a miscarriage of justice that it becomes fatal to the judgment: see *Onajobi v. Olanipekun* (1965) 4 S.C. (Pt.2) 156 at 163, *Oje v. Babalola* (1991) NWLR (Pt. 185) 267 at 282. For the foregoing reasons, the 1st appellant's issues 2 and 4 fail. (p. 1446 A)

### ***Trial - Evidence - Proof***

5. There can be no doubt that the onus is upon the prosecution to prove a charge against an accused person and that onus is one beyond reasonable doubt: See Section 38(1) and (2) of the Evidence Act, Section 33(5) of the 1979 Constitution (in force at the material time), *Areh v. C.O.R* (1959) WRNLR 230, 231.

In the evaluation of the evidence called by the parties, it is at the discretion of the trial court and this is a matter of style for it to commence with the case of the prosecution or the defence and that procedure without more does not amount to shifting the burden of proof: There is nothing on record to show that the trial court shifted the burden of proof on the appellants. On the contrary, the learned Judge of the trial court was conscious of the fact that the burden of proof was on the prosecution to prove beyond reasonable doubt the guilt of the appellants. I, therefore, find no merit in the 1st appellant's 3rd issue for determination. (p. 1446 D)

### ***Verdict - Where separate persons are tried together***

6. The trial court at p. 128 of the record said:-

*"I find the 1st, 2nd and 3rd accused persons guilty of conspiracy and murder of one Semiu Ogboyega as charged in counts 1 and 2 and convict them accordingly."*

Admittedly the verdict as recorded is wrong. Where several persons are tried together, separate verdicts must be returned in respect

of each of the accused persons and where there are several counts on the information, separate verdicts must be delivered in respect of the several counts: Oyediran v. The Republic (1967) NMLR 122 at 125. However, the error in failing to return a separate verdict on each count against each accused will not result in the quashing of the verdict where, as in the instant case, no miscarriage of justice has occurred. (p. 1446 H)

***Witnesses - Competence of a child***

7. By Section 155(1) of the Evidence Act, “*all persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by reason of tender years, extreme old age, disease, whether of the body or mind or any other cause of the same kind.*” The effect of the section is that all persons irrespective of age are competent to testify in court provided they have the mental capacity and the intelligence to understand questions put to them. A “*child*” is defined by Section 2(1) of the Criminal Procedure Law (Cap.30) Laws of Ogun State 1978 as a person who has not attained the age of 14 years. By this definition, P. W.2 is a child and therefore under Section 155(1) of the Evidence Act, a competent witness subject to his possessing, in the opinion of the court, the mental capacity to understand questions put to him. Competency is not a matter of age but that of intellectual capacity: see Onyegbu v. The State (1995) 4 NWLR (Pt.391) 510 at 529. It is on record that the trial court tested the P.W.2 and found that he knew the purpose of speaking the truth and also ‘knew the purpose of oath taking’ before being sworn on the Holy Quoran. It is not a requirement of the law that the questions put to a child witness in order to test his ability to testify must be recorded in the proceedings. What is important is that the trial Judge should be satisfied that the child could rationally answer questions put to him and able to understand the nature of taking an oath. As the evidence of P.W.2 was given on oath, it needed no corroborative evidence. It is therefore, my view that the complaints agitated on behalf of the 2nd appellant under this issue are misconceived. (p. 1447 H)

**NOTABLE POINTS OF INTEREST****EDOZIEJSC***1. Stage when prerogative of mercy can be exercised*

In the introductory part of this judgment, I mentioned that of the three appellants whose appeal was dismissed by the Court of Appeal, the 1st and 2nd appellants lodged appeal to this court which is the subject matter of this judgment. The 3rd appellant did not file any appeal. Upon enquiry as to his whereabouts, Mrs. B. O. Asenuga, the learned Solicitor-General, Ministry of Justice, Ogun State who represented the State, in her letter of 16th March, 2005, to this court stated that the 3rd appellant, Latifu Sololu, was released by the then Head of State in 1999. It needs to be stressed for future guidance that a person convicted for murder and sentenced to death by a High Court and whose appeal is dismissed by the Court of Appeal is deemed to have lodged a further appeal to this court and until that appeal is finally determined the Head of State or the Governor of a State cannot, pursuant to Section 125 or Section 212 of the 1999 Constitution, as the case may be, exercise his powers of prerogative of mercy in favour of that person. In the same vein, such person cannot be executed before his appeal is disposed of. It is hoped that the prison authorities will be guided by this advice (p. 1450 A)

**ONUJSC***2. Requirements of a valid arraignment, s.215 CPL*

In *Ogunye v. The State* (1999) 4 S.C. 30; (1999) 5 NWLR (Pt.604) 548 where the provisions of Section 33(6)(a) of the 1979 Constitution and Section 215 of the Criminal Procedure Law of Lagos State (in pari materia as in the case in hand) were considered in the instant case the requirements of a valid arraignment pursuant to Section 21 5 of the C.P.L (ibid) were stated as follows:

*“For there to be a valid arraignment of an accused person, the following three essential requirements must be satisfied, to wit:*

*(a) the accused must be placed before the court unfettered unless the court shall see cause otherwise to order;*

*(b) the charge or information must be read over and explained to*

*the accused to the satisfaction of the court by the registrar or other officer of the court; and*

*(c) the accused must be called upon to plead thereto unless there exists any valid reason to do otherwise such as objection to want of service where the accused is entitled by law to service of a copy of the information and the court is satisfied that he has in fact not been duly served therewith.”*

The above stated requirements of the law are mandatory and not directory and must therefore be strictly complied with in all criminal trials. Since these requirements have been specifically provided to guarantee the fair hearing of an accused person and to safeguard his interest at such a trial, failure to satisfy any of them will render the whole trial incurably defective and null and void.

In the instant case, I am satisfied that the requirements of the law were followed by the trial court. (p.1456D)

### **TOBIJSC**

#### *3. Technicality will not defeat justice*

It is the position of this court that in the administration of justice, mere technicalities should not becloud the doing of substantial justice on the merits of the matter before it. Putting it relevantly, in the administration of criminal justice, a murderer accused cannot be discharged on mere procedural technicality such as the one canvassed before us in this matter. This court will rather look at the naked facts which gave rise to the murder in the determination of the criminal responsibility of the accused. Where the court finds that there is mens rea and actus reus in the commission of the offence of murder, an accused cannot be heard to hang on the technicality that the appellants are now parading in this appeal. (p.1458E))

#### *4. Compliance with s. 215 CPL on proper arraignment*

While I entirely agree that Section 215 of the Criminal Procedure Law, Cap.30, Laws of Ogun State, 1978, like all other statutory provisions, must be complied with, this court, and indeed all the courts of the land, have no jurisdiction to extend the provisions of the Section beyond their ordinary



meaning. It is an elementary law that the provision of a section should be interpreted in the light of the factual situation in the matter before the court and not in vacuo or in a vacuum.

A Judge is a man of law and therefore an expert in the construction or interpretation of the law. In the circumstances, our adjectival law can rightly presume that the learned trial Judge complied with the provision of Section 215 of the Criminal Procedure Law, 1978. While I agree that the presumption is rebuttable, the rebuttal in this case falls on the appellants. I do not think they have rebutted the presumption, and here mere assertion that the provision was not complied with, without more, is not such rebuttal.

There is one other aspect. If a charge is read to an accused and he does not understand it, he cannot make a plea. It is natural at that stage for the accused to say he does not understand the charge read to him. This situation may arise even after the charge has been explained to the accused. If the accused still says he does not understand the charge explained to him, the court has a duty to repeat the explanation until accused has understood the charge against him.

There is no evidence before the court that the appellants told the court that they did not understand the charge read to them. With the greatest respect to the counsel, that seems to be their own thinking and this court cannot, in the absence of evidence, go along with them. (p. 1459B)

*5. When confessional statement will be best evidence for conviction*

A confessional statement is the best evidence in our criminal procedure. It is a statement of admission of guilt by the accused and the court must admit it in evidence, unless it is contested at the trial. If a confessional statement is contested at the trial, our procedural law requires that the trial Judge should conduct a trial within a trial for purposes of determining the admissibility or otherwise of the statement. Once a confessional statement is admitted, the prosecution need not prove the case against the accused person beyond reasonable doubt, as the confessional statement ends the need to prove the guilt of the accused.

Before a confessional statement could result in the conviction of an

accused, it must be unequivocal in the sense that it leads to the guilt of the maker. Where a so-called confessional statement is capable of two interpretations in the realm of guilt and non-guilt, or wayward, a trial Judge will not convict the accused but give him the benefit of doubt. But where  
B a confessional statement is unequivocal, as it is in this case, a trial Judge can convict on it. After all, there cannot be a more appropriate human being to give evidence of the guilt of the accused more than the accused himself. Therefore, if an accused says that he committed the offence and the court comes to the conclusion that he made the statement in a stable mind and  
C not under duress, the accused must be convicted. That is what the trial Judge did in this case and I cannot fault him. (p. 1459H)

#### D **REPRESENTATION**

N. O. O. Oke, Esq., for the 1st Appellant.  
Mrs. A. O. Asenuga, Solicitor-General/Permanent Secretary, Ministry of Justice, Ogun State, (with her, K. J. Kashimawo, Esq., Senior State  
E Counsel), for the Respondent.

#### **CASES REFERRED TO**

- Erekanure v. State (1993) 5 NWLR (Pt.294) 385  
F Kajubo v. State (1988) 1 NWLR (Pt.73) 721.  
Okoro v. The State (1998) 12 S.C. 134; (1998) 14 NWLR (Pt.594) 181  
Anatogu v. Iweka II (1995) 8 NWLR (Pt.415) 547  
Queen v. Sapele (1957) 2 FSC 24  
G Durugo v. The State (1992) 7 NWLR (Pt.225) 525 at 541  
Ikemson v. The State (1989) 3 NWLR (Pt.110) 455 at 476  
Onajobi v. Olanipekun (1965) 4 S.C. (Pt.2) 156 at 163  
Oje v. Babalola (1991) NWLR (Pt. 185) 267 at 282.  
H Oyediran v. The Republic (1967) NMLR 122 at 125

**STATUTES REFERRED TO**

Constitution of the Federal Republic of Nigeria 1979, s.33(5)(6)(9)

Constitution of the Federal Republic of Nigeria 1999, ss. 125 and 212

Criminal Procedure Law of Ogun State 1978, ss. 2(1) and 215

Evidence Act, ss. 38 (1) &amp; (2), 155 and 183 (1)

B

**LEAD JUDGMENT BY EDOZIE JSC**

The 1st and 2nd appellants as 1st and 2nd accused persons respectively, together with two others, namely: Latifu Solola (3rd accused) and Kabiru Solola (4th accused) were initially jointly arraigned at the High Court of Justice. Abeokuta on a two count information with the offences of conspiracy to murder in count one and murder in count two contrary to Sections 324 and 316 respectively of the Criminal Code Law (Cap.29). Laws of Ogun State of Nigeria 1978. The particulars of the offences alleged that they with others at large on or about 12th April, 1994 at Igbore in the Abeokuta Judicial Division conspired to murder and did murder one Semiu Gboyega. Each of the four accused persons pleaded not guilty to the charge. Before the trial, the charges against the 4th accused Kabiru Solola were withdrawn and he was used as witness for the prosecution No.2. Thereafter, the trial against the 1st, 2nd and 3rd accused persons continued at the end of which they were all convicted as charged and sentenced to death. Their appeals to the Court of Appeal, Ibadan Division were dismissed. Thereupon, each of the 1st and 2nd appellants, herein has lodged a further appeal to this court. Latifu Solola the 3rd accused at the trial court and 3rd appellant at the court below filed no appeal before this court. Nevertheless, he will be referred to hereinafter as the 3rd appellant.

As stated above, the charges against the 4th accused were withdrawn and he was used as a witness for the prosecution apparently because he was an innocent agent in the commission of the offences charged. As a child of 12 years of age, he is a relation to the appellants, in that, he is a junior brother of the 1st appellant, cousin of the 2nd appellant and the son of the 3rd appellant. Giving evidence as the star witness for

the prosecution, he, Kabiru Solola (P.W.2), a child of 12 years of age, gave a sworn evidence to the effect that on the fateful day, that is, 12th April, 1984, he was sent by the 1st, 2nd and 3rd appellants to go and call Semiu Gboyega, the deceased his playmate and a boy with a hunch back under the pretext that they wanted to send him on an errand. The message was conveyed to the deceased in the presence of his father and the unsuspecting deceased was allowed to accompany the P.W.2 who subsequently delivered the deceased to the appellants and was asked to leave. P.W.2 later left the scene after arranging with the deceased for both of them to meet in the house of Buraimoh their common friend. After waiting for sometime without seeing the deceased, the P.W.2 approached the 3rd appellant, his father, to enquire about the deceased but was told that the deceased had left for his home. The following day, the father of the deceased confronted the P.W.2 on the whereabouts of the deceased. A report was made to the police and the report was recorded as one of a missing child. The P.W.2 observed that his father, the 3rd appellant, who used to give him N5 for school then gave him N10.00.

In the night of 14/4/94 between 10 p.m. and 11 p.m., a woman Bolajoko Oshundeyi, (P.W.3), who lived near the appellants smelt an offensive odour and heard the sound like the opening of the roof of the house from the direction where the appellants lived. She looked out and saw the 1st appellant as he dropped the corpse of the deceased. She gripped the 1st appellant and raised an alarm which attracted other neighbours including Oludotun Awaye (P.W.4) alias Baba Ese. She observed that the head of the deceased had been shaved and the hunch at his back severed.

Sergeant Jasper Agamagrah, (P.W.5), was the Investigating Police Officer (IPO) at Divisional Crime branch, Ibara, who on 13/4/94 received, the report made by Dauda Adegboyega that his son, the deceased was missing. In the company of other police detectives he searched the houses of the 3rd appellant at 42, Igboire Road. All the rooms in the house were searched except one room which the 1st and 3rd appellants told them the occupant was in Lagos. The following day, the case was transferred to Elewera police station where another IPO, Sergeant Alfred Adeleke,

(P.W.6) took over the investigation of the case. He, P.W.6, took, the Statement of the 3rd appellant under caution. The English and Yoruba versions were admitted as Exhibits C-C1. On 15/4/94, the 1st appellant was arrested and after being charged and cautioned he volunteered a statement and this being a confessional statement, it was endorsed by a superior police officer as having been made voluntarily. The Yoruba and English versions of the statement were admitted as Exhibits D-D1 respectively after a mini trial. The statements of the 2nd appellant were admitted in similar circumstances as Exhibits E-E1.

The 1st and 2nd appellants on 19/4/94 made additional statement admitted in evidence after a mini trial as Exhibits G-G1 and H-H1 respectively. On investigation of the case, the IPOs discovered the corpse of the deceased by the side of the house of the 3rd appellant. Post mortem examination of the deceased was performed by Dr. Ekundayo Adefenwa Sobowale (P.W. 1). In his opinion, the cause of the death of the deceased was due to haemorrhagic shock as a result of acute loss of large volume of blood due to the removal of the deceased's hunch back.

As noted earlier on, all the three appellants were convicted as charged by the trial court and their convictions were affirmed by the court below. Before this court, each of the 1st and 2nd appellants has, pursuant to his appeal, filed separate briefs of argument and in response, the respondent has filed separate briefs. For the consideration of the appeals, I will adopt the issues as formulated in the respondent's briefs which I consider encompasses the issues contained in the 1st and 2nd appellants' briefs.

The issues identified by the Respondent in respect of the 1st appellant's appeal are:-

*"1. Whether the Court of Appeal was right in holding that the trial court had substantially complied with the provisions of Section 215 of the Criminal Procedure Law (Cap.30) Laws of Ogun State of Nigeria, 1978, and Section 33(6)(a) of the 1979 Constitution.*

*2. Whether the Court of Appeal was right in holding that the trial court had rightly admitted and relied on Exhibits D-D1 and G-G1 being the confessional and additional statements of the 1st appellant.*

3. *Whether the Justices of the Court of Appeal were right when they held that the evaluation and appraisal of the evidence of the defence before that of the prosecution by the trial court had not shifted the burden of proof on the 1st appellant and other accused persons.*

B 4. *Whether the Court of Appeal was right in holding that the pronouncement of the trial Judge on the offences of conspiracy and murder was not substantial to warrant a reversal of the decision of the court”*

C In respect of the 2nd appellant’s appeal, the issues as identified in the respondent’s brief which are identical with those formulated in the 2nd appellant’s brief are as follows:-

“1. *Whether the 2nd accused was lawfully arraigned in accordance with the mandatory provisions of Section 215 of the CPA.*

D 2. *Whether by virtue of Section 155 of the Evidence Act, P.W.2 was a competent person to testify in the trial of the 2nd accused?*

3. *Whether the evidence relied upon by the Court of Appeal was sufficient to affirm the conviction of the 2nd accused for the murder of the deceased?*

Respondent’s first issues in both briefs are identical and relate to compliance with the mandatory provisions of Section 215 of the Criminal Procedure Law (CPL) of Ogun State (Section 215 CPA).

F The submission on behalf of the 1st appellant is that the record did not indicate in what manner or language the charge was read to the 1st appellant and whether or not he understood same. In respect of the 2nd appellant, it was contended that although he was an illiterate who could only communicate in Yoruba language, the charge against him was read  
G in English language at a time he had no legal representatives. **For there to be a valid trial, there must be a proper arraignment in terms of the procedure laid down in Section 215 of the CPL supra. The requirement of this provision or identical provision has been judicially**  
H **considered in a plethora of the decisions of this court. These requirements are to the effect that the charge must be read over to the accused in the language he understands; and the charge must be explained to the accused in the language he understands to the**

satisfaction of the court before he is called upon to plead to the charge: see the cases of Erekanure v. State (1993) 5 NWLR (Pt.294) 385; Kajubo v. State (1988) 1 NWLR (Pt.73) 721. In the instant case, the record shows that the 1st and 2nd appellants were arraigned on 20th March, 1995, in the absence of their counsel and they pleaded not guilty. The charge was subsequently amended and they pleaded not guilty in the presence of their counsel. Although it is not recorded that the charge was explained to them, it does not seem that the record to that effect is contemplated by the provision of Section 215 CPL. In the absence of any evidence to the contrary, when the charge is read to the accused person and he makes his plea and thereafter proceeds to trial, the presumption is that the court is satisfied that the charge was explained to the accused to its satisfaction: see Okoro v. The State (1998) 12 S.C. 134; (1998) 14 NWLR (Pt.594) 181 where the court per Wali, JSC, put the matter succinctly thus:-

*“The provision of the law should not be stretched to a point of absurdity by reading into it that the Judge must record that the charge was explained to the accused to his satisfaction before taking his plea. It will be impeaching the integrity of the Judge to do that, as no Judge will take the plea of an accused if he is not satisfied that the charge was read and explained to the accused to his satisfaction.”*

The object of an arraignment in terms of Section 215 of the CPL is to ensure that justice is done to the accused by ensuring that he understands the charge against him and so as to enable him to make his defence. But it must be borne in mind that justice is not a one way traffic. Justice must be done to the State as well as the victim of the brutal murder. In this case, the deceased was murdered on 12/4/94.

Thereafter the appellants were arrested and charged with the murder. They made statements in that regard and had been in custody till the 20th March, when they were arraigned. It would be absurd to suggest that when the charge was read to them they did not understand what it was all about. To capitalise on the absence of a

**record of the explanation of the charge is to cling on unnecessary technicality to defeat the ends of justice. This will not be allowed to occur in this appeal. I agree with the court below that there was a substantial compliance with Section 215 of the CPL and Section 36(6)(a) of the 1979 Constitution.** The appellants' appeals on this issue fail.

The respondent's second issue in respect of the 1st appellant's appeal relates to the admissibility of Exhibits D-D1 and G-G1 being the confessional and additional statement of the 1st appellant. The contention under issue 2 of the 1st appellant's brief is that the P.W.2 (DSP Aremu) and the 1st appellant did not testify on oath at the mini trial before Exhibits D-D1 were admitted and similarly, that none of the prosecution witnesses testified on oath before the additional statements of the 1st appellant were admitted.

Furthermore, issue 4 of the 1st appellant's brief complained about the statements, Exhibits D-D1, G-G1, E-E1 and H-H1 being used as corroborative evidence of one another. The printed record shows clearly that Sergeant. Alfred Adeleke (P.W.6), who testified throughout the mini trial did so on oath. Admittedly, DSP Aremu who testified as P.W.2 in the mini trial was not sworn nor was the 1st appellant.

**By Section 4(3) of the Oaths Act, the failure to administer oath on a witness before giving evidence is a mere irregularity which does not affect the decision arrived at on that evidence unless it has been shown to occasion a miscarriage of justice: see the case of Anatogu v. Iweka II (1995) 8 NWLR (Pt.415) 547. The mere fact that DSP David Aremu (P.W.7) gave unsworn evidence during the mini trial in respect of the admissibility of the confessional statements is immaterial.** In reaction to this aspect of the complaint, the court below at p. 224 lines 12 and 18 reasoned thus:-

*"The only limitation in this event, even where the testimony of P.W.7, D. S. P. Aremu is for the court below to treat the confessional statement with considerable caution: see Queen v. Sapele (1957) 2 FSC 24."*

That statement represents the correct statement of the law, that is,



that it is not a rule of law that the confessional statement of the accused person should be taken to a superior police officer in order that the accused may deny or admit making the statement: See *R. v. Omerewure Sapele* (1957) 2 FSC 24.

**Learned counsel for the 1st appellant dealing with the 4th issue in his brief had submitted that the trial court was in error to have used the 1st appellant's statements, Exhibits D-D 1, G-G1 and those of the 2nd appellant that is, Exhibits E-E1 and H-H1 as corroborating each other. It is well settled that a voluntary confession of an accused is deemed to be relevant and admissible against its maker and not against another:** See *Durugo v. The State* (1992) 7 NWLR (Pt.225) 525 at 541; *Ikemson v. The State* (1989) 6 S.C. (Pt. I) 114; (1989) 3 NWLR (Pt.110) 455 at 476. In the instant case, the trial court considered the effect of the confessional statement of the appellants and at p. 120 lines 1 to 10 held:

*"I am satisfied that the confessions of the 1st and 2nd accused as contained in Exhibits D-D1 and G-G1 on the one hand and E-E1 and H-H1 on the other hand are free and voluntary confessions which are direct and positive.....and same have been properly proved to be so and that each of the 1st and 2nd appellant could be convicted on them. The simple fact that the confessional statements were later retracted by these accused persons is not a ground for rendering the statements inadmissible on evidence as canvassed on their behalf: see Ojegele v. State (1988) 1 NWLR (Pt.71) 414, 415-417.*

*I am also satisfied that the statements, Exhibits D-D1 and G-G1 and Exhibits E-E1 and H-H1 of these 1st and 2nd accused persons have corroborated one another as well as the testimony of P.W.2 as they all had the ring of truth."*

In the above excerpt, the trial court stated the law correctly that a conviction can be sustained on a free and voluntary confession of an accused notwithstanding that he retracted the confession. It then found that the charges against the appellants were established from their confessional statements. The statement that the confessional statement of the 1st appellant corroborates those of the 2nd appel-

lant is merely an innocuous mistake. It is the law that it is not every mistake that will lead to the reversal of a judgment. It is only where such a mistake is substantial and has occasioned a miscarriage of justice that it becomes fatal to the judgment: see *Onajobi v. Olanipekun* (1965) 4 S.C. (Pt.2) 156 at 163, *Oje v. Babalola* (1991) NWLR (Pt. 185) 267 at 282. For the foregoing reasons, the 1st appellant's issues 2 and 4 fail.

The 1st appellant's 3rd issue complains about misplacement of burden of proof. The complaint is that the trial court wrongly shifted the burden of proof on the defence when in reviewing the evidence led at the trial, it started first with the case of the defence. With profound respect to the learned counsel for the 1st appellant, this complaint is not borne out from the record which clearly shows that the trial court dealt with the case for the prosecution before that of the defence. There can be no doubt that the onus is upon the prosecution to prove a charge against an accused person and that onus is one beyond reasonable doubt: See Section 38(1) and (2) of the Evidence Act, Section 33(5) of the 1979 Constitution (in force at the material time), *Areh v. C.O.R* (1959) WRNLR 230, 231.

In the evaluation of the evidence called by the parties, it is at the discretion of the trial court and this is a matter of style for it to commence with the case of the prosecution or the defence and that procedure without more does not amount to shifting the burden of proof: see *Onuoha v. The State* (1985) 5 NLWR (Pt.54) 118 at 137; *Igogo v. The State* (1994) 14 NWLR (Pt.637) 1.

There is nothing on record to show that the trial court shifted the burden of proof on the appellants. On the contrary, the learned Judge of the trial court was conscious of the fact that the burden of proof was on the prosecution to prove beyond reasonable doubt the guilt of the appellants. I, therefore, find no merit in the 1st appellant's 3rd issue for determination.

The 1st appellant's 5th issue which is covered by the respondent's 4th issue to 1st appellant's appeal related to the verdict or pronouncement of guilt made by the trial court. In this connection, the trial court at p.

**128 of the record said:-**

***“I find the 1st, 2nd and 3rd accused persons guilty of conspiracy and murder of one Semiu Ogboyega as charged in counts 1 and 2 and convict them accordingly.”***

Admittedly the verdict as recorded is wrong. Where several persons are tried together, separate verdicts must be returned in respect of each of the accused persons and where there are several counts on the information, separate verdicts must be delivered in respect of the several counts: **Oyediran v. The Republic (1967) NMLR 122 at 125.** However, the error in failing to return a separate verdict on each count against each accused will not result in the quashing of the verdict where, as in the instant case, no miscarriage of justice has occurred: see *City Engineering (Nig.) Ltd. v. N.P.A. (1999) 6 S.C. (Pt. II) 41; (1999) 11 NWLR (Pt.625) 76 at 89, Eyisi v. The State (2000) 12 S.C (Pt. I) 24; (2000) 5 NWLR (Pt.690) 555 at 574 to 575.*

There is no merit in the issue under consideration.

The 2nd appellant's second issue for determination which is the same as the respondent's second issue in the 2nd appellant's appeal relates to the evidence of P.W.2, a boy of 12 years of age. The contention of the 2nd appellant is firstly that by the combined effect of Sections 155(1) and 183(1) of the Evidence Act, Cap. 112, Laws of the Federation, 1990, P.W.2 was not a competent witness to testify in court and secondly, that no preliminary test was conducted to determine his competence as required by law. On those premises, it was submitted that the evidence of P.W.2 was inadmissible and ought to have been expunged and in the alternative, that it was of little or no probative effect and needed corroborative evidence but none was adduced. Section 183(1) of the Evidence Act deals with the evidence of a child who does not understand the nature of an oath and provides that such a child is competent to give unsworn evidence if in the opinion of the court such a child is possessed of sufficient intelligence to justify the reception of such evidence. This section has no relevance in the instant appeal as the record of proceedings shows clearly that P.W.2 was sworn on the Holy Quoran before giving his evidence. **By Section 155(1) of the Evidence Act, “all persons shall be competent to**

*testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by reason of tender years, extreme old age, disease, whether of the body or mind or any other cause of the same kind.”* The

B effect of the section is that all persons irrespective of age are competent to testify in court provided they have the mental capacity and the intelligence to understand questions put to them. A “child” is defined by Section 2(1) of the Criminal Procedure Law (Cap.30) Laws of Ogun State 1978 as a person who has not attained the age C of 14 years. By this definition, P. W.2 is a child and therefore under Section 155(1) of the Evidence Act, a competent witness subject to his possessing, in the opinion of the court, the mental capacity to D understand questions put to him. Competency is not a matter of age but that of intellectual capacity: see *Onyegbu v. The State* (1995) 4 NWLR (Pt.391) 510 at 529. It is on record that the trial court tested the P.W.2 and found that he knew the purpose of speaking the truth and also ‘knew the purpose of oath taking’ before being sworn on the E Holy Quoran. It is not a requirement of the law that the questions put to a child witness in order to test his ability to testify must be recorded in the proceedings. What is important is that the trial Judge should be satisfied that the child could rationally answer F questions put to him and able to understand the nature of taking an oath. See *John Okoye v. The State* (1972) 12 S.C. (Reprint) 77; (1972) 12 S.C. 115 at 125, *Peter v. The State* (1991) 12 NWLR (Pt.531) 1 at 11-10. As the evidence of P.W.2 was given on oath, it needed no corroborative evidence. It is therefore, my view that the complaints G agitated on behalf of the 2nd appellant under this issue are misconceived. The 2nd appellant’s appeal on the issue under consideration fails.

In the 2nd appellant’s 3rd issue, that is, the respondent’s 3rd issue in respect of the 2nd appellant’s appeal, the contention on behalf of the 2nd H appellant is that the totality of the evidence relied upon by the court below was insufficient to sustain his conviction. With respect to the learned counsel to the 2nd appellant, I do not share that view. There is overwhelming evidence to the effect that the 2nd appellant in concert with the other

appellants murdered the deceased with a view to remove his hunch back for ritual purposes. Evidence revealed that on the fateful day, that is, 12/4/94, the 2nd appellant was in the company of the 1st and 3rd appellants when the deceased was sent for and was delivered by the P.W.2, a playmate of the deceased. They were the last persons that saw the deceased alive: see the case of Emeka v. The State (2001) 6 S.C. 227; (2001) 14 NWLR (Pt.734) 666. The I. P.O., Sergeant Jasper Ajamagrah (P.W.5) who on 13/3/84 first visited the scene of crime in company with appellants searched all but one of the rooms of the 3rd appellant's house. The 1st and 3rd appellants told him then that the room not searched was occupied by someone resident in Lagos. However, on 15/4/94, when P.W.5 visited the scene again, the 2nd appellant confided in him that the deceased was hidden in the room which he was prevented from opening by the 1st and 3rd appellants on the previous occasion. The 2nd appellant made confessional statements which leaves no one in doubt as to his complicity in the dastardly and gruesome murder of the deceased. **A confessional statement if made voluntarily by an accused person even if subsequently retracted is sufficient to sustain a conviction:** Monday Nwaeze v. The State (1996) 2 NWLR (Pt.428) 1 at 13; Obosi v. the State (1965) NMLR 119; R. v. Sykes 8 CAR p. 233.

**The two courts below have found as a fact that the 2nd appellant participated or acted in concert with the others in the murder of the deceased. It is not the practice of this court to interfere with such concurrent findings of the two lower courts except where such findings are perverse or unsupported by evidence or occasioned a miscarriage of justice:** see Theophilus v. The State (1996) 1 NWLR (Pt.423) 139, 150; Balogun v. Labiran (1988) 3 NWLR (Pt.80) 66; Chinwendu v. Mbamali (1980) 3-4 S.C. (Reprint) 21; (1980) 3-4 S.C 31; Enang v. Adu (1981) 11-12 S.C (Reprint) 17; (1981) 11-12 at 25. That is not so in this case. I will also dismiss the 2nd appellant's appeal based on his 3rd issue for determination.

On the whole, the appeals by the 1st and 2nd appellants lack merit and are hereby dismissed. I uphold the judgment of the court below affirming their conviction and sentence.

In the introductory part of this judgment, I mentioned that of the three appellants whose appeal was dismissed by the Court of Appeal, the 1st and 2nd appellants lodged appeal to this court which is the subject matter of this judgment. The 3rd appellant did not file any appeal. Upon enquiry as to his whereabouts, Mrs. B. O. Asenuga, the learned Solicitor-General, Ministry of Justice, Ogun State who represented the State, in her letter of 16th March, 2005, to this court stated that the 3rd appellant, Latifu Sololu, was released by the then Head of State in 1999. It needs to be stressed for future guidance that a person convicted for murder and sentenced to death by a High Court and whose appeal is dismissed by the Court of Appeal is deemed to have lodged a further appeal to this court and until that appeal is finally determined the Head of State or the Governor of a State cannot, pursuant to Section 125 or Section 212 of the 1999 Constitution, as the case may be, exercise his powers of prerogative of mercy in favour of that person. In the same vein, such person cannot be executed before his appeal is disposed of. It is hoped that the prison authorities will be guided by this advice.

E \_\_\_\_\_

### BELGORE JSC

I read beforehand, in draft form, the judgment of my learned brother, Edozie. JSC., and I agree that this appeal totally lacks merit. I also dismiss it.

The three accused persons convicted and whose appeal was dismissed by the Court of Appeal were normally expected to be all before this court on appeal. But that was not to be as we are told the third accused was pardoned. We heard this only from the Solicitor-General of Ogun State speaking from the Bar. The third accused was the arrow-head of the conspiracy leading to the murder of the victim and I am disturbed at this development. The principal accused who led the conspiracy and supervised the murder of the poor infant hunchback has been let loose. The murder, no doubt, was a ritual one. The rules as to grant of prerogative of the mercy must be re-examined.

## ONUJSC

I have been privileged to read before now the judgment of my learned brother, Edozie, JSC., just delivered and I am in entire agreement with him that the appeal lacks substance and ought therefore to fail.

In adding a few comments of mine, I wish to say in expatiation as follows:

In the annals of the judicial and legal history of Nigeria, this type of bizarre criminal case where the crave for riches has led the perpetrators of ritual murder to go on the prowl to extract the hunch in the backs of their victims, is regrettably and slowly gaining frequency in occurrence and dastardliness. See the Supreme Court case of Ojegele v. The State (1988) 1 NWLR (Pt.71) 414 SC - a case which at the Court of Appeal level I was privileged to be a member of the panel which minced no words in dismissing the appellants' appeals from the trial High Court upon their conviction and eventual sentence to death on appeal to the Supreme Court. See also the recent Supreme Court case of Ozana Ubierho v. The State (2005) 5 NWLR (Pt.919) 644 where only the 14 year old child accused ended up being convicted of the murder of the deceased with four of the accused persons having died in custody with three of those who eventually faced trial apart from the appellant (4th accused), being discharged on a no - case submission.

In the instant appeal whose facts are no less despicable, horrifying and dastardly, I have no hesitation in equally agreeing with my learned brother, Edozie, JSC., to dismiss the appeals of the appellants as lacking in substance. Besides, I hold that there was substantial compliance in the trial court's reading of the pleas to the appellants as not to warrant my disturbance of same herein on appeal.

My learned brother, has so graphically and ably stated the facts of the case and those that arose on appeal, that I do not intend to repeat them in my contribution hereof except to add as follows: having regard to the grounds of appeal couched from the judgment of the lower court, the underlisted are the five and three questions that arose for determination in respect of the 1st and 2nd appellants respectively (3rd appellant was declared to have been released from prison custody by the Head of State

in 1999 by granting him pardon)

For the 1st appellant they are:

1. Whether failure to comply at arraignment with the mandatory provisions of Section 215 of the Criminal Procedure Law, Cap.29, Laws of Ogun State did not occasion miscarriage of justice against the appellant.

2. Whether the Court of Appeal was right in its reliance on Exhibits “D” - “D1” and “G” - “G1” (1st appellant’s statements) to convict the appellants.

3. Whether the Court of Appeal was right in holding that the first consideration given to the case of the defence by the learned trial Judge before considering the case of the prosecution did not amount to shifting the burden of proof on the defence.

4. Whether the Court of Appeal was right when it held that once the court cautions itself against the usage of evidence of an accused against a co-accused, the requirement of the law is fulfilled and conviction can be safely based on it.

5. Whether the Court of Appeal was not wrong in holding that the joint pronouncement of the trial court on the offence of conspiracy and murder against the 1st appellant and others is not fatal to the case of the prosecution and thus vitiates the proceedings.

For the 2nd appellant the issues state as thus:

(i) Whether the 2nd accused was lawfully arraigned in accordance with the mandatory provisions of Section 214 (sic) of the C.P.A?

(ii) Whether by virtue of Section 155 of the Evidence Act, P.W.2 was a competent person to testify in the trial of the 2nd accused?

(iii) Whether the evidence relied upon by the Court of Appeal was sufficient to affirm the conviction of the 2nd accused for the murder of the deceased?

On behalf of the respondent, the three issues proffered for the determination of this appeal are:

“1. Whether the Court of Appeal was right in holding that the trial court had substantially complied with the provisions of Section 215 of the Criminal Procedure Law (Cap.30) Laws of Ogun State of Nigeria, 1978 and Section 33(6)(a) of the 1979 Constitution.



2. *Whether the Court of Appeal was right in holding that P.W.2 was a competent witness whose evidence was rightly relied upon by the trial court.*

3. *Whether the Court of Appeal was right in affirming the decision of the trial court that the prosecution proved its case against the 2nd appellant beyond reasonable doubt."*

I have pried into the issues submitted by either side each of the appellants and the respondent respectively set out above and have come to the irresistible conclusion that for the argument of the appeal, the first two issues submitted as arising for our determination by the respondent, will, in my view, do to dispose of the appeal. I accordingly, adopt and consider each of appellant's issues 1 and 2 together all embracing in my consideration of this appeal as follows:

#### Issue No. 1

Asks whether the Court of Appeal was right in holding that the trial court had substantially complied with the provisions of Section 215 of the Criminal Procedure Law (Cap.30) Laws of Ogun State of Nigeria, 1978 and Section 33(6)(a) of the 1979 Constitution.

In this issue which is identical with 2nd appellant's Issue No. 1, the learned counsel for the 2nd appellant although had admitted that the charges were read to the appellants, argued that it was not shown on record to have been explained to them in the language they understood. The learned counsel also contended that in respect of 2nd appellant who was an illiterate and who testified in the Yoruba language, the proceedings at the arraignment were null and void and a contravention of the law as cited under this issue.

Now, page 27 of the Record of proceedings on the 20th day of March, 1995 shows that the 2nd appellant (as the 2nd accused) was arraigned with the others as follows:

*"Accused persons are not represented.*

*Charge is read to the accused persons.*

*1st Accused - Not Guilty on 1st Count.*

*2nd Accused - Not Guilty on 1st Count.*

*3rd Accused - Not Guilty on 1st Count.*

*4th Accused - Not Guilty on 1st Count.*

*1st Accused - Not Guilty on 2nd Count.*

*2nd Accused - Not Guilty on 2nd Count.*

*3rd Accused - Not Guilty on 2nd Count.*

B *4th Accused - Not Guilty on 2nd Count.”*

The Record of proceedings, as can be seen, also shows that the charges against the 4th accused had been withdrawn on 29th March, 1995, and he was later made P.W.2. See pages 37 and 38 of the Record herein. The Record, besides, also shows that the section of the Criminal Code Law (Cap.29, Laws of Ogun State) concerning conspiracy to murder in count 1 contained in the earlier Information, was amended to read Section 324 of the same Law. The amended charge in count 1 was read to the accused persons on page 42 of the Record as follows:-

D *“The amended charge is read to the accused persons.*

*1st accused pleaded not guilty.*

*2nd accused pleaded not guilty.*

*3rd accused pleaded not guilty.”*

E As earlier pointed out, 3rd appellant had been granted a reprieve by the Head of State in 1999.

While it is conceded that the provisions of Section 215 of the Criminal Procedure Law are mandatory and must be strictly complied with, when an accused person is being arraigned – See *Erekanure v. State* (1993) 5 NWLR (Pt.294) 385; *Kajubo v. State* (1988) 1 NWLR (Pt.73) 721 at 732 paragraph ‘A’ - the test as to whether the provisions of the Section had been complied with is an objective one. Although words were not manifest on the record to show that the charge was explained to the accused persons, there is evidence that the charge was read subsequent to which the pleas were taken. The 2nd appellant knew the offences for which he was being arraigned before the charges were read and he pleaded thereto. Be it particularly noted that before the amended count 1 (conspiracy) was read to the appellant and the other accused persons, the P.W. 1' Dr. Ekundayo Adefenwa Sobowale, the Pathologist who carried out the autopsy on the corpse of the deceased had already testified. The P.W.2 whose oral testimony implicated the appellant had also testified, adding that

the complaint of the learned counsel for the 2nd appellant that charges were read to him when he had no legal representation is totally misleading. The learned Justices of the Court of Appeal adverted their minds to this and the fact that the appellant and the other accused persons understood the charges read to them before their pleas were taken led it to further hold as follows:-

*“Although each of the accused persons had pleaded not guilty earlier to a charge of murder, the new charge of conspiracy was read to each of the accused persons who pleaded not guilty to the new charge which was read to the accused persons in the presence of their counsel. It is true that the provision of the Law, Section 215 is mandatory, the imputation of the requirement to explain the charge to the accused persons is not imposed on the trial court by the law, though it is desirable so to do. In reality, the accused persons had made confessional statements on the crime to the police.”*

For the view of the court below that the appellant and the other accused persons knew and understood the charge, is supported by the fact that they denied the offences in their defence - a fact which supports the view that 2nd appellant understood the charges read to him in court before his pleas were taken and I so hold.

The issue of the correct interpretation to be put on the provisions of Section 215 of the C.P.L. and Section 33(6)(a) of the 1979 Constitution was decided by this court in *Okoro v. The State* (1998) 12 S.C. 134; (1998) 14 NWLR (Pt.584) 181 where Wali, JSC., stated thus:

*“The provision of the Law should not be stretched to a point of absurdity by reading into it that the charge was explained to the accused to his satisfaction before taking his plea. It will be impeaching the integrity of the Judge to do that as no Judge will take the plea of an accused if he is not satisfied that the charge was read and explained to the accused to his satisfaction.”*

Be it noted that the mere fact that the charges were not indeed explained to the other accused persons does not necessarily mean that the charges were not understood before their pleas were taken. The court below adopted this interpretation of the law in its judgment at page 226,

lines 5-21 of the record.

Accordingly, that court, in my view, therefore rightly applied the pronouncement of Wali, JSC (*supra*) as the correct interpretation of the law in the circumstances of this case. I therefore am of the firm view that the plea of the 2nd appellant was valid in law and in accordance with the provisions of Section 215 of the C.P.L (Cap.30) Laws of Ogun State, 1978. Should I be wrong on this premise, I hold in the alternative that there has been a substantial compliance with the provisions of Section 215 of the C.P.L. (Cap.30) and Section 33(6)(a) of the 1979 Constitution, the latter which complementarily reads, *inter alia*, that:

"33 .....

(6) Every person who is charged with a criminal offence shall be entitled -

(a) to be informed promptly in the language that he understands and in detail of the nature of the offence:

....."

In Ogunye v. The State (1999) 4 S.C. 30; (1999) 5 NWLR (Pt.604) 548 where the provisions of Section 33(6)(a) of the 1979 Constitution and Section 215 of the Criminal Procedure Law of Lagos State (in *pari materia* as in the case in hand) were considered in the instant case the requirements of a valid arraignment pursuant to Section 21 5 of the C.P.L (*ibid*) were stated as follows:

"For there to be a valid arraignment of an accused person, the following three essential requirements must be satisfied, to wit:

(a) the accused must be placed before the court unfettered unless the court shall see cause otherwise to order;

(b) the charge or information must be read over and explained to the accused to the satisfaction of the court by the registrar or other officer of the court; and

(c) the accused must be called upon to plead thereto unless there exists any valid reason to do otherwise such as objection to want of service where the accused is entitled by law to service of a copy of the information and the court is satisfied that he has in fact not been duly served therewith."

The above stated requirements of the law are mandatory and not

directory and must therefore be strictly complied with in all criminal trials. Since these requirements have been specifically provided to guarantee the fair hearing of an accused person and to safeguard his interest at such a trial, failure to satisfy any of them will render the whole trial incurably defective and null and void.

B

In the instant case, I am satisfied that the requirements of the law were followed by the trial court vide *Kajubo v. State* (1988) 1 NWLR (Pt.73) 721; *Erekanure v. State* (supra); *Kalu v. State* (1988) 10-11 S.C. 19; (1988) 13 NWLR (Pt.583) 531; *Okoro v. State* (1988) 12 S.C (Pt. II) 83; (1988) 14 NWLR (Pt.584) 181.

C

In a criminal trial, the charge must be read over and explained to the accused person in a language which he fully understands before he is called to plead thereto, failure to do this will amount to a most flagrant breach of the mandatory provisions of both Section 215 of the Criminal Procedure Act and Section 33(6)(a) of the 1979 Constitution which would render the arraignment and any subsequent trial null and void and of no effect..... See also *Kajubo v. State* (supra); *Erekanure v. State* (supra) at page 385; and *Effiom v. State* (1995) 1 NWLR (Pt.373) 507.

E

In *Ogunye v. State* (supra) this court dismissed the appeals of 1st, 2nd, 3rd and 4th appellants while allowing the appeal of the 5th appellant. In the instant appeal of the appellant, the appeal must perforce fail having regard to the circumstances of the case.

F

Having reached the foregoing conclusion I see no reason to disturb it but to unequivocally and inevitably arrive at the view to resolve the issue herein against the appellants.

As Issues 2 and 3 which overlap Issue No.1 query whether the Court of Appeal was right in holding that the P.W.2 was a competent witness whose evidence was rightly relied upon by the trial court and whether Court of Appeal was right in affirming the decision of the trial court that the prosecution proved its case against the 2nd appellant beyond reasonable doubt, having been adequately covered by Issue No.1. my answers to H the two issues are rendered in the affirmative.

For these reasons and the more comprehensive reasons contained in the judgment of my learned brother, Edozie, JSC., with which I entirely

agree, this appeal lacks merit and it is also accordingly dismissed by me.

---

**KALGO JSC**

B I have had a preview of the judgment of my learned brother, Edozie,  
JSC., just delivered in this appeal and I entirely agree with his reasoning  
and conclusions. He has painstakingly considered all the issues for  
determination raised by the appellants and I have nothing useful to add  
C thereto. I agree with him that there is no merit in the appeal. I accordingly  
dismiss it and affirm the convictions and sentences passed on the  
appellants by the trial court and confirmed by Court of Appeal.

---

D **TOBI JSC**

I have read in draft the judgment of my learned brother, Edozie,  
JSC., and I agree with him that this appeal should be dismissed for lacking  
merit.

E It is the position of this court that in the administration of justice,  
mere technicalities should not becloud the doing of substantial justice on  
the merits of the matter before it. Putting it relevantly, in the administration  
of criminal justice, a murderer accused cannot be discharged on mere  
F procedural technicality such as the one canvassed before us in this matter.  
This court will rather look at the naked facts which gave rise to the murder  
in the determination of the criminal responsibility of the accused. Where  
the court finds that there is mens rea and actus reus in the commission of  
the offence of murder, an accused cannot be heard to hang on the  
G technicality that the appellants are now parading in this appeal.

In this matter, the 1st and 2nd appellants were first arraigned on  
20th March, 1995 without counsel. They pleaded not guilty to an amended  
charge, this time in the presence of counsel. The argument of counsel is  
H that the record did not show that the charge was duly explained to the  
appellants.

A trial Judge qua adjudicator is a man of honour and integrity and  
the administration of justice should see him and respect him as such. Can

a trial Judge take a plea of an accused and record same without satisfying himself that the charge was duly explained to the understanding of the accused? This was the point made by Wali, JSC., in *Okoro v. The State* (1998) 12 S.C. 134; (1998) 14 NWLR (Pt.594) 181, which my learned brother, Edozie, JSC., has quoted in his judgment. I entirely agree with the judgment of Wali, JSC.

While I entirely agree that Section 215 of the Criminal Procedure Law, Cap.30, Laws of Ogun State, 1978, like all other statutory provisions, must be complied with, this court, and indeed all the courts of the land, have no jurisdiction to extend the provisions of the Section beyond their ordinary meaning. It is an elementary law that the provision of a section should be interpreted in the light of the factual situation in the matter before the court and not in vacuo or in a vacuum.

A Judge is a man of law and therefore an expert in the construction or interpretation of the law. In the circumstances, our adjectival law can rightly presume that the learned trial Judge complied with the provision of Section 215 of the Criminal Procedure Law, 1978. While I agree that the presumption is rebuttable, the rebuttal in this case falls on the appellants. I do not think they have rebutted the presumption, and here mere assertion that the provision was not complied with, without more, is not such rebuttal.

There is one other aspect. If a charge is read to an accused and he does not understand it, he cannot make a plea. It is natural at that stage for the accused to say he does not understand the charge read to him. This situation may arise even after the charge has been explained to the accused. If the accused still says he does not understand the charge explained to him, the court has a duty to repeat the explanation until accused has understood the charge against him.

There is no evidence before the court that the appellants told the court that they did not understand the charge read to them. With the greatest respect to the counsel, that seems to be their own thinking and this court cannot, in the absence of evidence, go along with them.

The second issue I should take briefly is the confessional statement. A confessional statement is the best evidence in our criminal procedure.

It is a statement of admission of guilt by the accused and the court must admit it in evidence, unless it is contested at the trial. If a confessional statement is contested at the trial, our procedural law requires that the trial Judge should conduct a trial within a trial for purposes of determining the admissibility or otherwise of the statement. Once a confessional statement is admitted, the prosecution need not prove the case against the accused person beyond reasonable doubt, as the confessional statement ends the need to prove the guilt of the accused.

Before a confessional statement could result in the conviction of an accused, it must be unequivocal in the sense that it leads to the guilt of the maker. Where a so-called confessional statement is capable of two interpretations in the realm of guilt and non-guilt, or wayward, a trial Judge will not convict the accused but give him the benefit of doubt. But where a confessional statement is unequivocal, as it is in this case, a trial Judge can convict on it. After all, there cannot be a more appropriate human being to give evidence of the guilt of the accused more than the accused himself. Therefore, if an accused says that he committed the offence and the court comes to the conclusion that he made the statement in a stable mind and not under duress, the accused must be convicted. That is what the trial Judge did in this case and I cannot fault him.

I think I can stop here with the two issues I have taken. It is for the above reasons and the more comprehensive reasons given by my learned upholds the judgment of the Court of Appeal affirming the conviction of the appellants.

G

H