

SUPREME COURT OF NIGERIA
17TH FEBRUARY, 2006. SC. 233/2004
CORAM:- S. U. ONU, A. I. KATSINA-ALU, G. A OGUNTADE,
W. S. N. ONNOGHEN, I. F. OGBUAGU, JJSC

GODWIN IGABELE APPELLANT
V.	
THE STATE RESPONDENT

MURDER - Proof - Identification of the corpse - Where the identification is valid - The murder is proved beyond reasonable doubt (H1)

CRIMINAL PROCEDURE - Murder - Proof - Contradictions in prosecution's evidence - Where a mere inaccuracy in narration - The Conviction will not be disturbed (H2)

MURDER - Proof - Circumstantial evidence - Where conclusive - And deceased was last seen with appellant - Guilt is proved - Though there be no eye witness account (H3)

MURDER - Cross examination - Source of information - Where defence elicited proof of ritual murder vide cross examination - Police witness is not bound - To give source of his information s. 166 EA (H4)

FACTS

Before the Enugu High Court, the appellant was charged with the murder of one Gerald Chikezie Ozo Okeke pursuant to s. 319(1) of the Criminal Code. He pleaded not guilty to the charge. The prosecution called a total of nine witnesses. But the appellant who had earlier made conflicting statements to the Police tendered as exhibits, made a no case submission thereby resting his case on that of the prosecution. Appellant and the deceased were employees of PW3 as driver and conductor, respectively, of a lorry. On 13-1-1985 they travelled out in the said lorry but did not return on that day as usual. Rather, another driver in the employ of PW3

drove back the lorry on 17-1-1985 after discussing with appellant who said nothing about the deceased. This led PW3 to lodge a report of the missing person at the Abakaliki Police Station on 18-1-1985, and appellant was on 29-3-1985 arrested in his home town, Nimo.

Various information led to the exhuming of a body at the Enugu Cemetery on 11-7-1985, which was identified by PW2 (mother of the deceased) to PW1 (medical officer) who performed the post mortem examination. The medical evidence, and cross examination of PW9 revealed that the deceased person's tongue and external genital organs were removed. At the close of the case, the trial court found the appellant guilty of murder and sentenced him to death by hanging. Appellant's appeal to the Court of Appeal was dismissed. He has further appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Whether the Court of Appeal was right in confirming the conviction of the Appellant for murder having regard to the evidence before the court.

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

MURDER - Proof - Identification of the corpse

1. From the foregoing, I agree with the submission of the prosecution that it met the legal requirements of proof of murder through credible evidence acceptable by the courts as proof beyond reasonable doubt.

In this respect, I am left in no doubt that there could be any better identification than that made by the PW2 and PW3. Consequently, I hold that the Court below was therefore right in affirming the identification as valid and proper in the circumstance. It is therefore, in my view, of no moment whether the PW2 saw the same corpse or another along Abakaliki - Ogoja Road with or without the PW3. Seeing the same or another corpse by the PW2 would appear rather speculative and mere inaccuracy which goes to no issue.

This Court has decided that it is trite law that court should not speculate on evidence but decide on the evidence presented before it. See *Okoko v. State* (1964) 1 All NLR 423 at 428. The court is only entitled to rely on the evidence before it and not on speculations. (pp. 645 D/ 646 E)

Contradictions in prosecution's evidence

2. The apparent conflict in the testimony of PW2 and PW3 as to whether they jointly embarked on the search for and or saw any other corpse along Abakaliki/Ogoja Road does not affect the justice of the case. PW2 was very emphatic that he did not see any other corpse while PW2 asserted she saw one along the road with PW3. That was a mere inaccuracy in the narration of the event as to how the search for the deceased was conducted by the two interested persons. I therefore hold that whether or not the PW2 saw the same or another corpse on the road, cannot derogate from the proven or established fact that the exhumed and properly identified corpse to the PW1 was that of the deceased and none other.

The minor inaccuracy by the PW2 in her momentary confused situation while testifying was in my view of no moment as it does not go to the root of the charge of murder. See *EHOT v. STATE* (1993) 5 SCNJ 65 at page 80 where this Court held that minor inaccuracies and discrepancies that do not touch the justice or substance of a case should not be sufficient ground to disturb a judgment. Both the trial court and the court below felt that the suggestion of a different corpse from the one exhumed was so irrelevant and inconsequential, hence they glossed over same. I therefore have no option but to uphold both convictions of the two courts below - their decisions being those on concurrent findings of facts - devoid of any contradictions in the testimony of the prosecution witnesses. Indeed for any conflict or contradiction to be fatal to the prosecution's case, it must be substantial and fundamental to the main issue. (p. 646 H)

MURDER - Proof - Circumstantial evidence

3. I hold that it is not a condition or legal imperative that there must be an eye - witness before a murder charge could be proved beyond reasonable doubt. Proof of the commission of the offence may proceed on circumstantial evidence. See *Ilori & Anor v. State* (1980) 8 - 11 S.C 81.

And as I had occasion to show in *Emeka v. State* (2001) 14 NWLR (Part 734) 666 at 683, the guilt of an accused may be proved by (a)

confessional statement, (b) circumstantial evidence or (c) evidence of eye - witnesses.

On the further attack that the conviction was based on the fact that the Appellant could not give a satisfactory explanation of the whereabouts of the deceased, I hold the view that the decision by the trial court and its subsequent affirmation by the court below was proper. This Court went on to hold in *Emeka v. State* (supra) that “*where the accused person was the last person to be seen in the deceased’s company and circumstantial evidence is not only overwhelming but leads to no other conclusion, it leaves no room for acquittal. ...*”

The deceased therefore left with the Appellant but was never seen alive again until his body was exhumed at the cemetery in a state of decomposition or mutilation. There is no other rational conclusion one could arrive at other than that the Appellant murdered him. The possibility of a fall from the moving lorry having been discounted or falsified by medical evidence proof of innocence no longer avails the Appellant as a defence or cover. (p. 648 A/ H)

MURDER - Cross examination - Source of information

4. Moreover, it was the defence that conjured or elicited the fact of ritual murder from the PW9 under cross - examination. That same defence was at liberty to probe further details to disprove the ritual murder. PW1 testified as to the cause of death thus:

“*And in my opinion, the cause of death was due to shock from loss of vital organs of the body. The organs were the tongue and the external genital organs.*”

The deduction that the deceased was a victim of ritual murder is therefore supported by evidence. In this wise, I agree with the prosecution that the police officer (IPO) who testified as PW9 whose evidence was earlier referred to by me in this judgment, was not bound to disclose his source of information. See the purport of section 166 of the Evidence Act which states that “*No magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence.*”

In conclusion, I hold that this appeal ought to fail as unmeritorious

and it stands dismissed. (p. 649 A)

NOTABLE POINTS OF INTEREST

ONNOGHENJSC

1. Various ways of proving guilt of an accused

B

It is settled that the guilt of an accused person can be proved by

- (a) The confessional statement of the accused person;
- (b) circumstantial evidence, or,
- (c) Evidence of eye - witness of the crime - see *Emeka v. State*

C

(2001) 14 NWLR (pt. 734) 668 at 683.

It should be noted that one does not always need an eye witness account to convict an accused for murder, if the charge can otherwise be proved. The present case is based on circumstantial evidence. (p. 657 H)

D

2. When circumstantial evidence can ground conviction

It has long been settled that great care must be taken by the court in drawing an inference of guilt of an accused person from circumstantial evidence so as not to fall into serious error. Circumstantial evidence therefore, must be narrowly examined so that a possibility of fabrication to cast suspicion on innocent persons is ruled out. Therefore, for circumstantial evidence to form the basis of conviction, the circumstances must clearly and forcibly suggest that the accused was the person who committed the offence and that no one else could have been the offender .

F

The law is not only that the circumstantial evidence must be cogent, complete and unequivocal but must equally be compelling and lead to the irresistible conclusion that the accused and no one else is the murderer. The evidence must leave no ground for reasonable doubt particularly as any such doubt must, by law, be resolved in favour of the accused. What then are the relevant facts of this case. (p. 658 A)

G

H

3. When failure to offer explanation by accused may support guilt

I agree that in a criminal trial, the burden is always on the prosecution to prove the guilt of the accused person beyond all reasonable doubt.

Generally speaking therefore, there is no duty on the accused to prove his innocence. However, where circumstances arise, as in this case, some explanation may be required from the accused person as the facts against him are strong. Where he fails to offer such explanations as happened in this case, his failure will support an inference of guilt against him. The facts proved by the prosecution in this case clearly established a prima facie case requiring the appellant to explain on oath what happened to the deceased who left home that day alive in his company, and with all his body parts complete but was much later found dead and buried in a grave with some of his body parts missing and no fracture or broken bones.

I hold the view that the circumstantial evidence adduced by the prosecution in this case proved beyond; reasonable doubt that it was the appellant who murdered the deceased and no one else. (p. 658 H)

OGBUAGUJSC

4. Murder - Doctrine of "last seen"

This brings me to the doctrine of “*LAST SEEN*”. It means in effect, that the law presumes that the person last seen with the deceased, bears full responsibility for his death if it turns out that the person last seen with him, is dead. This doctrine, was well articulated in the case of *The State v. Godwin Nwakerendu & 3 ors.* (1973) 3 ECSLR (Pt. II) 757 where the 1st accused person, was convicted of the death of the deceased who was seen in his company, by many people.

It must be stressed and this is settled, that in view of the said doctrine of “last seen”, it is the duty of the accused person to give an explanation relating to how the deceased met his or her death. Surely, in the absence of an explanation by an accused person (as in the instant case leading to this appeal), a trial court and even an Appellate Court, will be justified in drawing the inference that the accused person, killed the deceased. (p. 665 B)

REPRESENTATION

Chief Dona Udogu, S.A.N with him, A. C. Okafor and L. C. Udogu (Miss) for the Appellant.

Respondent not represented.

CASES REFERRED TO

- Seismograph Service (Nigeria) Ltd v. Ogbeni (1976) 4 S.C at 101
 Onubogu v. State (1974) 9 SC 1 at 20 B
 Okeke v. State (1995) 4 NWLR (Pt.392) 676 at 703
 Emeka v. State (2001) 14 NWLR (Part 734) 666 at 683
 Obosi v. State (1965) NMLR 140
 Abogede v. State (1996) 5 NWLR (pt. 448) 270 C
 Udedibia v. State (1976) 11 S.C 133
 Adie v. State (1980) 1-2 S.C 116
 Omogodo v. State (1981) 5 S.C 5
 Lori v. State (1980) 9-11 S.C 81
 Esai v. State (1976) 11 S.C 39 D
 Abieke v. State (1975) 9 -11 S.C 97
 Edobor v. State (1975) 9 -11 S.C 69
 Adepetu v. State (1998) 9 NWLR (pt. 565) 185
 Utteh & anor. v. The State (1990) 3 NWLR (Pt. 138) 301 @ 311 C.A. E
 Okoro v. The State (1988) 5 NWLR (Pt. 94) 255. (1988) 12 SCNJ. (Pt. 2) 191

STATUTE REFERRED TO

Criminal Code of Eastern Nigeria s. 319(1)

LEAD JUDGMENT BY ONUJSC

This is an appeal against the judgment of the Court of Appeal, Enugu Division sitting at Enugu, delivered on the 18th day of March, 2004 wherein the Court of Appeal (hereinafter referred to as the Court below) affirmed the conviction and sentence to death passed on the Appellant as earlier pronounced by the trial court - the High Court, Enugu. G

The relevant facts of this case may be succinctly stated as follows: H

The Appellant was on 7th day of February, 1990 arraigned before the Enugu High Court in a charge of murder of one Gerald Chikezie Ozo Okeke pursuant to the provisions of section 319(1) Criminal Code Cap.30

Vol.11 Laws of Eastern Nigeria, 1963 applicable to Enugu State.

The Appellant pleaded not guilty to the charge. The prosecution thereafter called nine witnesses in proof of its case, the summary of which was that the Appellant, a professional motor driver was in the employ of
B PW3 (Mr. Orakwulu) while the deceased who was then living with PW3 as a motor conductor also in the latter's employ, were sent on a journey together by him.

That the Appellant and the deceased, both employees of PW3, were
C the driver and conductor respectively of lorry Registration Number AN 8850 B that on 13/1/85 they travelled out in the said lorry but did not return on that day as usual; that rather, another driver in the employ of PW3 by name Patrick Mbang (PW4), drove back the lorry on 17/1/85 with PW1. That Appellant informed PW1 that he (Appellant) would go to eat at a place
D near SPERA IN DEO Petrol Filling Station, Abakaliki and thereafter visit his brother in town on 18/1/85, with nothing being heard about the deceased. This then led PW3 to lodge a report of the missing person at Abakaliki Police Station on 18/1/85, subsequent to which the Appellant
E was on 29/3/85 arrested in his hometown Nimo.

PW2 (Mrs. Roseline Enekwechi) later saw the corpse of the deceased somewhere along Abakaliki - Ogoja Road and identified it to PW1 on 11/7/85 before it was buried at Enugu Cemetery.

PW6 then described how he saw and removed a corpse lying at the
F River bank on 27/2/85 at Abakpa Nike, which he buried the same day at Enugu Cemetery. A body was thereafter exhumed at the Enugu Cemetery on 11/7/85 and the same was identified by PW2 (mother of the deceased) to PW1 (medical officer) who performed the post mortem examination.

G At the close of the case for the prosecution, the Appellant made and relied solely on circumstantial evidence. The trial court however found the Appellant guilty of murder and sentenced him to death by hanging.

Wherefore, he (Appellant) appealed to the Court below which in its
H considered judgment affirmed the judgment of the trial court in its entirety following which he appealed to this apex Court on two grounds of appeal as appearing in the Notice of Appeal at pages 183 - 184 of the Record of Appeal.

The lone issue formulated on behalf of the Appellant for our consideration reads:

(i) In view of the evidence as contained in the Record of Appeal, was the Court of Appeal justified in holding that the charge of murder against the Appellant was proved beyond reasonable doubt? B

The lone issue submitted as arising on behalf of the Respondent on the other hand goes thus:

Whether the Court of Appeal was right in confirming the conviction of the Appellant for murder having regard to the evidence before the court. C

As there is hardly much to choose between the lone issue filed by either party to this case, I prefer the Respondent's as being enough to dispose of this appeal which I duly adopt as follows:

ARGUMENT

In arguing the lone issue, it is clear that the duty on the prosecution D in a murder charge is to establish.

(i) That the deceased died.

(ii) The act or omission of the accused which caused the death of the deceased was unlawful and E

(iii) That act or omission of the accused which caused the death of the deceased must have been intentional with knowledge that death or grievous bodily harm was its probable consequence.

See Alewo Abogede v. State (1996) 5 NWLR (Part 448) 270, a case F of murder whereupon the affirmation of his conviction and sentence to death by the Court of Appeal, the Appellant contended inter alia whether the prosecution proved its case beyond reasonable doubt as to warrant the confirmation of the conviction and sentence passed on him. It was held G that the prosecution met the above legal requirements through credible evidence accepted by the courts. See also Edwin Ogba v. State (1992) 2 NWLR (Part 222) 164 at 198 C - D, where this court held:

"These three conditions must co-exist and where one of them is H absent or tainted with doubt the charge is not said to be proved. The onus of proof is on the prosecution throughout and does not shift." See also Obudo v. State (1991) 6 NWLR (Pt.198) 435 at 456.

Although the above case is a Court of Appeal decision, it so

reiterates the principles exemplified in the case in hand that I hereby adopt it. That the above three legal requirements are neither absent nor tainted with doubt, has been settled by this Court in a number of cases particularly in *Felix Nwosu v. State* (1986) 4 NWLR 348 at 359 per Eso, JSC who held inter alia -

B “a judgment sending a man to the gallows must be seen to be the product of logical thinking based upon admissible evidence, which the facts leading to conviction are clearly found and the legal deductions therefrom carefully made. It cannot be allowed to stand if founded upon C scraggy reasoning or perfunctory performance. It is so in all cases and moreso in criminal cases; and particularly in capital offences.”

See also *Daniels v. The State* (1991) 8 NWLR (Part 212) 71 3 at 732 where it was held that “the Appellant is now a condemned prisoner and a D charge of murder is established when the prosecution proves the following “beyond reasonable doubt.”

(a) that the deceased has died;

(b) that the death of the deceased has resulted from the act of the E Appellant; and

(c) that act of the Appellant was intentional with the knowledge that death or grievous bodily harm was its probable consequences.

See *Ogaba v. The State* (1992) NWLR (Part 222) 164 at 198 C - D where the Court of Appeal reiterated the law thus;

F “These three conditions must co - exist and where one of them is absent or tainted with doubt the charge is not said to be proved. The onus of proof is on the prosecution throughout and does not shift.” See *Obudo v. The State* (1991) 6 NWLR (Part 198) 435 at 456. (Underlining is for G emphasis).

From the foregoing background, I shall now proceed to ascertain how the prosecution has striven to prove the three ingredients of the charge of murder leading to the guilt of the Appellant beyond reasonable H doubt as to warrant his conviction and sentence to death;

(A) That the deceased died.

From the trial court record there is no evidence that the deceased was seen alive since he left PW3's house on 13/1/85; hence there is a strong

presumption that he was dead:

Be that as it may, PW1 endeavoured to clarify whether the body exhumed on 17/7/85 (an interval of six months) from the Enugu Cemetery and post mortem examination performed on it by him (PW1) after it had been identified to him by PW2, was the body of the deceased Chikezie Ozo Okeke or the body of another person. He (PW1) stated at page 32 from line 19 to line 28 - 30 of the Record as follows:

“From the state of decomposition it seems that many events had supervened between the date of death and that of the post mortem examination.”

At page 33, lines 5-9 of the Record PW1 stated in his Report as follows:

- (i) *“I found that certain of the sub - tissues were not easily identifiable”*
- (ii) *“The body was hardly recognizable, going by the physiognomy”;*
- (iii) *“I am definite that a person falling from a height of a moving 911 lorry will sustain fracture - injury.”*

From the foregoing, I agree with the submission of the prosecution that it met the legal requirements of proof of murder through credible evidence acceptable by the courts as proof beyond reasonable doubt.

On the corpse identified by PW2, Mrs. Roseline Enekwechi to PW1 on 11/7/85, the submission for the defence was that the body identified to PW1 by PW2 and the one found along Ogoja/Abakaliki Road were different corpses. This, in my view, is very erroneous as PW2 being the mother of the deceased should be in no doubt as to the physical features and external morphology of her son. After all, she gave a vivid description of the dress her son was used to wearing and which he actually wore during the ill -fated trip proximate to the time of his death. The deceased also had a broken upper tooth from his childhood following a fall. Under cross - examination she stated poignantly *“the face was not easily recognizable in his state of decomposition but I easily recognized the body with aid of that broken upper tooth and the dress he wore. The deceased also had tribal marks at the cheeks. The tribal marks were still on the*

cheeks when I saw the corpse.” See page 34, line, 19-23 of the Record.

The evidence of PW2 was corroborated in this regard by the testimony of PW3, the master to the deceased who in his evidence in chief stated inter alia thus:

B *“Upon examination I recognized the body as that of my conductor late Ozo Okeke. I recognized the corpse from the dress which the deceased wore on the day he left home last 13/1/85. The deceased lived with me and he had left with the accused on 13/1/85 wearing gins (sic) and black flowing shirt or polo. I also recognized the body from the mark on the*
C *deceased’s cheek; he also had a broken tooth.”*

Under cross - examination PW3 had restated his position when he said:

D *“I deny the suggestion that the body exhumed was not that of my late conductor Gerald Ozo Chikezie Okeke. It was the body and I recognized it very well.”*

From the foregoing facts and circumstances there could be no doubt that the autopsy was performed on the body of Ozo Okeke. See
E *Ndike v. The State (1994)9 SCNJ 46 at 50.*

In this respect, I am left in no doubt that there could be any better identification than that made by the PW2 and PW3 Consequently, I hold that the Court below was therefore right in affirming the identification as valid and proper in the circumstance. It is therefore, in my view, of no moment whether the PW2 saw the same corpse or another along Abakaliki - Ogoja Road with or without the PW3. Seeing the same or another corpse by the PW2 would appear rather speculative and mere inaccuracy which goes to no issue.
F

G **This Court has decided that it is trite law that court should not speculate on evidence but decide on the evidence presented before it. See *Okoko v. State (1964) 1 All NLR 423 at 428.* The court is only entitled to rely on the evidence before it and not on speculations. See H *Seismograph Service (Nigeria) Ltd v. Ogbeni (1976) 4 S.C at 101.***

The apparent conflict in the testimony of PW2 and PW3 as to whether they jointly embarked on the search for and or saw any other corpse along Abakaliki/Ogoja Road does not affect the justice

of the case. PW2 was very emphatic that he did not see any other corpse while PW2 asserted she saw one along the road with PW3. That was a mere inaccuracy in the narration of the event as to how the search for the deceased was conducted by the two interested persons. I therefore hold that whether or not the PW2 saw the same or another corpse on the road, cannot derogate from the proven or established fact that the exhumed and properly identified corpse to the PW1 was that of the deceased and none other. B

The minor inaccuracy by the PW2 in her momentary confused situation while testifying was in my view of no moment as it does not go to the root of the charge of murder. See *EHOT V. STATE* (1993) 5 SCNJ 65 at page 80 where this Court held that minor inaccuracies and discrepancies that do not touch the justice or substance of a case should not be sufficient ground to disturb a judgment. Both the trial court and the court below felt that the suggestion of a different corpse from the one exhumed was so irrelevant and inconsequential, hence they glossed over same. I therefore have no option but to uphold both convictions of the two courts below - their decisions being those on concurrent findings of facts - devoid of any contradictions in the testimony of the prosecution witnesses. Indeed for any conflict or contradiction to be fatal to the prosecution's case, it must be substantial and fundamental to the main issue. See *Ndike v. State* (supra) at page 54 per Ogwuegbu, JSC. *Onubogu v. State* (1974) 9 SC 1 at 20 and *Okeke v. State* (1995) 4 NWLR (Pt.392) 676 at 703. D E F

In the *Ndike* case, the complaint was that whilst PW1 testified that he met the deceased lying on the ground already dead other prosecution witnesses stated that the deceased was taken to the hospital. The doctor in that case (PW2) who admitted the deceased, later performed autopsy without any further formal identification of the corpse. G

The court overlooked the inconsistencies and held that formal admission of the deceased by the doctor in the presence of witnesses amounted to sufficient identification of the deceased. See *Ndike's case* (supra) at pages 54-56. H

In the case in hand, the Appellant consistently attacked his conviction for murder on the ground that there was no eye - witness to the event leading to the murder of the deceased. **I hold that it is not a condition or legal imperative that there must be an eye - witness before a murder charge could be proved beyond reasonable doubt. Proof of the commission of the offence may proceed on circumstantial evidence.** See *Ilori & Anor v. State* (1980) 8 - 11 S.C 81.

And as I had occasion to show in *Emeka v. State* (2001) 14 NWLR (Part 734) 666 at 683, the guilt of an accused may be proved by (a) confessional statement, (b) circumstantial evidence or (c) evidence of eye - witnesses.

On the further attack that the conviction was based on the fact that the Appellant could not give a satisfactory explanation of the whereabouts of the deceased, I hold the view that the decision by the trial court and its subsequent affirmation by the court below was proper. This Court went on to hold in *Emeka v. State* (supra) that *“where the accused person was the last person to be seen in the deceased’s company and circumstantial evidence is not only overwhelming but leads to no other conclusion, it leaves no room for acquittal. In the instant case the courts below were, in my view, right in relying on findings of fact that the Appellant was guilty as charged.”* See *Obosi v. State* (1965) NMLR 140. Indeed, whereas in the instant case evidence points irresistibly to the guilt of the accused, it can ground a conviction. See *Ukorah v. State* (1977) 4 SC 167; *Daniel v. State* (supra). In his evidence in chief PW3 testified inter alia *“on the said 13/1/85 the accused took the lorry and departed my premises for the clay’s run of business, He left with the aforesaid Ozo Okeke Chikezie who served as conductor on the lorry AN 8850 B; incidentally the accused unlike on other occasions, did not run (sic) that day 13/1/85. The said Ozo Chikezie Okeke did not return either.”* (Underlining is mine). See page 37, lines 25 - 30 of the Record.

The deceased therefore left with the Appellant but was never seen alive again until his body was exhumed at the cemetery in a state of decomposition or mutilation. There is no other rational conclusion one could arrive at other than that the Appellant mur-

dered him. The possibility of a fall from the moving lorry having been discounted or falsified by medical evidence proof of innocence no longer avails the Appellant as a defence or cover.

Moreover, it was the defence that conjured or elicited the fact of ritual murder from the PW9 under cross - examination. That same defence was at liberty to probe further details to disprove the ritual murder. PW1 testified as to the cause of death thus:

“And in my opinion, the cause of death was due to shock from loss of vital organs of the body. The organs were the tongue and the external genital organs.”

The deduction that the deceased was a victim of ritual murder is therefore supported by evidence. In this wise, I agree with the prosecution that the police officer (IPO) who testified as PW9 whose evidence was earlier referred to by me in this judgment, was not bound to disclose his source of information. See the purport of section 166 of the Evidence Act which states that *“No magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence.”*

In conclusion, I hold that this appeal ought to fail as unmeritorious and it stands dismissed because -

(i) a prima facie case of murder was established against the Appellant as all the ingredients of murder had been proven; the cause of death had been established through circumstantial evidence. See Uguru v. State (2002) 4 SCNJ 282 at 293.

(ii) The Appellant was last seen alive with the deceased and as the identification of the deceased was proper, his conviction ought therefore to be upheld vide *Emeka v. State* (supra) especially ratio 3.

(iii) Concurrent findings of the two courts below should be respected and affirmed since being a judgment supported by evidence and also not being perverse had not occasioned any miscarriage of justice. It therefore ought to be upheld. See *Osayeme v. State* (1966) NMLR 399 and *H Sanyaolu v. State* (1976) 6 S.C 37.

(iv) Besides, proof beyond reasonable doubt as has been shown in this case, is not synonymous with proof beyond any shadow of doubt but

ought to be proof beyond reasonable doubt and it is accordingly upheld by me. See *Oteki v. A. G. of Bendel State* (1986) 2 NWLR (Part 24) 648.

I accordingly dismiss this appeal and affirm the decisions of the two courts below.

B

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment delivered by my learned brother Onu JSC. I entirely agree with it.

This appeal clearly lacks merit. The appellant's conviction has been criticized on the ground that the body exhumed on 11/7/85 from the Enugu Cemetery and examined by PW1 Dr. Anyatagu and identified by PW2 Rosaline Enekwechi was not the body of the deceased Chikezie Ozo Okeke.

I think there is no ground for this criticism. PW2 is the mother of the deceased.

She gave evidence and said inter alia:

"I was able to identify the corpse from the following factors -
(i) He had a broken upper tooth from childhood following a fall;
(ii) the gins (sic) and polo he wore when leaving home last. I identified the corpse of the deceased to PW1; The Medical Doctor."

PW 2 added under cross-examination that *"The deceased also had tribal marks at the cheeks. The tribal marks were still on the cheeks when I saw the corpse."*

The evidence above was given by PW2 the mother of the deceased who identified her deceased son to PW1 Dr. Anyatagu. No body, it would seem, was in any doubt that the body that was examined by PW1 was that of Chikezie Ozo Okeke. Thus the prosecution had shown clearly that Chikezie Ozo Okeke was dead.

No doubt the evidence against the appellant was circumstantial evidence. There was no direct evidence. However there is evidence that the deceased was last seen alive with the appellant. This was not in dispute. I think good sense and indeed common sense demands that the appellant should and must put forward some explanation as to what happened to the

deceased. But no explanation was forthcoming. Infact the appellant called no evidence in his defence but rather rested his case on the case of the prosecution. The only irresistible inference from the circumstances presented by this evidence is that the appellant killed the deceased. See Peter Igbo v. The State (1978)3 SC 87; where the deceased, as in this case, B was last seen with the appellant. The Supreme Court held at p. 90 as follows:

“We can find no other reasonable inference from the circumstances of the case. The facts which were accepted by the learned trial Judge, C amply supported by the evidence before him, called for an explanation, and beyond the untrue denials of the appellant, none was forthcoming. Though this constitutes circumstantial evidence, it is proof beyond any reasonable doubt of the guilt of the appellant.”

See also Udo v. The State (1981) 11-12 SC 91. D

This appeal lacks merit. I also dismiss it.

OGUNTADEJSC

On 7-2-90, the appellant was arraigned upon information before the High Court sitting at the Enugu High Court of Enugu State. The charge brought against the appellant reads:

“That you Godwin Igabele, ‘M’ on the 16th day of January, 1985 F along Enugu/Agbani Road in Enugu Magisterial district murdered one Chikezie-Ozo Okeke ‘M’ and thereby committed an offence punishable under section 319(1) of the Criminal Code Cap.30 Vol. II, Laws of Eastern Nigeria, 1963.”

The appellant pleaded not guilty to the charge and the case was G heard by Achi-Kanu J. The prosecution called nine witnesses in all. The appellant’s counsel made a no-case submission on his behalf and thereafter restsed his case on prosecution’s. In other words, the appellant elected not to call any evidence. On 09-05-91, the trial judge in his judgment found the H appellant guilty as charged; and sentenced him to death. Dissatisfied the appellant brought an appeal before the Court of Appeal, Enugu Division (hereinafter called the ‘court below’). The court below on 18-03-04

dismissed the appellant's appeal and affirmed the sentence of death imposed on him by the trial judge. The appellant has come before this court on a final appeal. In the appellant's brief filed, the issue for determination in the appeal was identified as the following.

B *"In view of the evidence as contained in the Record of Appeal, was the Court of Appeal justified in holding that the charge of murder against the appellant was proved beyond reasonable doubt."*

C As the above solitary issue conveys, the appellant is contending before us that upon the evidence available against him, the court below ought not have confirmed the verdict of the court of trial which found him guilty on the offence of murder. What then was the evidence against the appellant? Before I examine the evidence called, it is important to observe here that as against the evidence by the prosecution the appellant did not D call any evidence. The facts of the case as presented by the prosecution are these:

The appellant worked under P.W.3 as a motor driver. P.W.3 owned a vehicle No. AN 8850B. It was a commercial vehicle. The deceased E Gerald Chikezie Ozo Okeke was P.W.3's conductor attached to the vehicle. He worked with the appellant under the employ of P.W.3. As they did on a daily routine, the appellant and the deceased on 13-1-85 went out together in P.W.3's vehicle on their run. They were expected back at the home of P.W.3 in the evening of the same day at the end of the day's run. F They did not return. Rather on 17-1-85, P.W.4, another driver working for P.W.3 drove the vehicle to the house of P.W.3. He told P.W.3 that he saw the appellant at a Petrol Filling Station called SPERA IN DEO at Abakaliki. The appellant was seen alone by P.W.4. Pie told P.W.4 to help him drive G the vehicle home as he wanted to eat at a place near the Filling Station and that he would later visit his brother in Abakaliki. P.W.3 was worried. On 18-1-85, he lodged a report with the Police at Abakaliki. The appellant was at large until 29-3-85 when he was arrested in his hometown Nimo.

H The corpse of the deceased was later discovered at a riverbank in Abakpa Nike on 27/2/85. The body was buried the same day. For the purpose of post mortem examination the body was exhumed on 11/7/85. P.W.I performed post-mortem examination. The result of the examination

was stated in the judgment of the court of trial thus at pages 81-82 of the judgment: -

- “(a) *The body was completely decomposed;*
- (b) *There were no fractures, either of the skull-bone, the long-bones of the limbs (upper and lower); or (of) the ribs;* B
- (c) *The tongue and the external genital organs were not seen;*
- (d) *Also not seen, were other sub-tissues of the body;*
- (e) *The absence of the tongue and external genital organs and the sub-tissues could be attributed to the advanced stage of decomposition of the corpse; or to some other factor;* C
- (f) *Police reference suggested 16/1/85 as the probable date of death; and P.W. 1 stated that - ‘If deceased died as a result of a fall from a moving 911 Mercedes Benz Lorry, he would be expected to suffer the fracture of some part of the body; more particularly the skull-bones which are very vulnerable to fracture’”.* D

P.W.I gave the cause of death as due to shock from the loss of vital organs of the body. The organs were the tongue and external genital organs. E

When arrested, the appellant was asked the whereabouts of the deceased. The appellant said that the deceased disembarked from the vehicle somewhere on the explanation that he wanted to see his brother. The appellant did not say exactly where the deceased disembarked. Later F the appellant changed his story. He stated that the deceased fell off the vehicle somewhere and died.

The appellant’s counsel has in his written brief submitted that the prosecution had failed to prove the guilt of the appellant beyond reasonable G doubt as required by law. He relied on *Nwosu v. The State* [1986] 4 NWLR (Pt. 35) 348 at 359; *Daniels v. The State* [1991] 8 NWLR (Pt. 212) 713 at 732; *Akin v. The State* [1988] 3 NWLR (Pt. 85) 72 at 74. Respondent’s counsel on the other hand submitted that as the appellant was the last H person to have seen the deceased alive and as he failed to give a satisfactory explanation as to the whereabouts of the deceased, the appellant was rightly found guilty. Counsel relied on *Emeka v. State* [2001] 14 NWLR (Pt. 734) 666 at 683; *Obosi v. State* [1965] N.M.L.R. 140; *Uguru v. State* [2002]

4 SCNJ 282 at 293.

In this judgment, it is necessary to emphasize that there was no eye witness account as to how the deceased was killed. The evidence against the appellant was mainly circumstantial. It consists of the fact that the appellant and the deceased with whom he worked under P.W.3 left the house of P.W.3 together on 13-1-85. They were expected back in the house of P.W.3 on the same day at the close of the day's run. The appellant did not show up on the said 13-1-85. He was not seen again until he was arrested by the police on 29-3-85. He gave conflicting accounts as to what had happened to the deceased. The first version was that the deceased had excused himself to visit his brother. The second was that the deceased fell off the vehicle and died. He was however not able to show anybody the point or place where the deceased fell and died. At a stage the appellant said that P.W.7 witnessed the accident. P.W.7 however denied this. Now, what did all these strange stories by the appellant amount to?

In *Lori v. State* [1980] 8-11 SC 81 at pp.86-87, this Court per Nnamani J.S.C. said:

"It is conceded that circumstantial evidence is very often the best evidence. It is said to be evidence of surrounding circumstances which by undersigned coincidence is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial. R v. Taylor and 2 Ors. 21 Cr. App. R. 20 See also Rex v. Chung Yi Miao 1928 Shetland Re. Cited in Wills on Circumstantial Evidence, Seventh Edition (1936) P.324 per Humphreys J. But the circumstantial evidence sufficient to support a conviction in a criminal trial, especially murder, must be cogent, complete and unequivocal. It must be compelling and must lead to the irresistible conclusion that the prisoner and no one else is the murderer. The facts must be incompatible with innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt."

(underlining mine)

It is compelling to ask myself the questions - Are the facts of this case compatible with the innocence of the appellant? Are the facts capable of explanation upon any other reasonable hypothesis than the guilt of the

appellant? Now in *Alonge v. Inspector General of Police* [1959] 4 FSC, Ademola C.J.F. discussing the nature of the burden of proof on the prosecution in a criminal case said:

“Now, the commission of a crime by a party must be proved beyond reasonable doubts. The burden of proving that any person is guilty of a crime rests on the person who asserts it and this is the law as laid down in section 137 of the Evidence Ordinance, Cap. 62. The burden of proof lies on the prosecution and it never shifts; and if on the whole evidence the court is left in a state of doubt, the prosecution would have failed to discharge the onus of proof which the law lays upon it and the prisoner is entitled to an acquittal. But this does not mean, as argued before us, that the prosecution must call every available piece of evidence to prove its case; it is enough if sufficient evidence is called to discharge the onus which the law lays upon the prosecution.”

On the facts of this case, whatever had happened to the deceased was within the peculiar knowledge of the appellant. The appellant had to explain how the deceased, a healthy young man who had left the house of P.W.3 with him on 13-1-85 came to be found dead on 27/2/85 with his tongue and genital organs missing from his body. It seems to me in consonance with common sense that the appellant in this circumstance ought to be called upon to offer a minimum of explanation on the matter. See *Okoko & Anor. V. The State* [1964] 1 All N.L.R. 423.

A case, *Peter Igbo v. The State* [1978] 3 SC. 61 (Reprint) deserves special mention here. In that case, the deceased Ifoto Oboluke had left her house on 20-8-72 for a religious service. She never returned home alive. Her corpse was later found the same night. There was however the evidence that the appellant was seen before the corpse of the deceased was found giving the deceased a ride on his bicycle. The appellant denied carrying the deceased on the back of his bicycle. An appeal came before this Court on these facts after the appellant was found guilty by the trial court. This Court per Eso J.S.C. at pages 62-63 said:

“The complaint of learned counsel against the judgment is that the circumstantial evidence adduced in this case did not point irresistibly to the guilt of the appellant and also the evidence of the 3rd prosecution

witness - Phillip Umukuro, should not have been accepted having regard to the fact that it took him eleven days before he came out with the information leading to the arrest of the appellant.

But then, this is not the only evidence relied upon to convict the appellant. Apart from the evidence of Phillip Umukuro, which has been criticized by the learned counsel for the appellant, there was the evidence of Ayeferherbe Okotie. She too saw the appellant carrying the deceased who was last seen alive with the appellant. This evidence was accepted by the learned trial judge. He rejected the denial of the appellant. The only irresistible inference from the circumstances presented by the evidence in this case is that the appellant killed the deceased. We can find no other reasonable inference from the circumstances of the case. The facts which were accepted by the learned trial judge, amply supported by evidence before him, called for an explanation, and beyond the untrue denials of the appellant (as found by the learned Judge) none was forthcoming. See *R v. Mary Ann Nash (1911) 6 CAR. 225, at p.228. Though this constitutes circumstantial evidence, it is proof beyond every reasonable doubt of the guilt of the appellant. For these reasons, we dismissed the appeal.*"

I think that the appellant in this case having failed to give a satisfactory explanation as to his movements in the company of the deceased and how the deceased met his death in these strange circumstances was rightly convicted.

I therefore agree with the lead judgment by Onu, J.S.C. I would also dismiss this appeal and affirm the conviction of and sentence imposed on the appellant.

G

ONNOGHENJSC

I have had the privilege of reading in draft, the lead judgment of my learned brother ONU, JSC just delivered. I agree with his reasoning and conclusion that the appeal is without merit and should be dismissed.

The facts of this case once again bring out the callous nature of man as evidenced in the conduct of some of us as we go about the business of our day to day existence.

It is the duty of the prosecution in a charge of murder, to establish the following ingredients of the offence:-

- (a) That the deceased died;
- (b) That it was the unlawful act or omission of the accused person which caused the death of the deceased; and B
- (c) The act or omission of the accused which caused the death of the deceased must have been intentional with knowledge that death or grievous bodily harm was its probable consequence - see *Abogede v. State* (1996) 5 NWLR (pt. 448) 270. C

From the facts as revealed in evidence, it is not in dispute that the appellant and the deceased were employees of PW3, who engaged them as driver and conductor in PW3'S lorry with registration NO. AN 8850 B, respectively. On the 13th day of January 1985 appellant, together with the deceased, left the premises of PW3 in the said lorry for their usual transport runs but did not return at the close of the business of that day. The lorry was however returned some days later, 17/1/85, by another driver, PW4, to whom the appellant had handed over the keys thereto. PW3 was very concerned and reported the matter to the police. When arrested by the police some months later in his village, appellant first denied seeing the deceased but later on said that the deceased fell off their moving vehicle and died. He neither reported the incident to the police nor to their employer, PW3. Appellant also never disclosed where the corpse of the deceased was. It is therefore not in dispute that the deceased died either by falling off their moving lorry as alleged by the appellant or by being murdered as alleged by the prosecution. That apart, the exhumed mutilated body of the deceased was positively identified by PW2 and PW3 to PW1 who performed the post mortem examination. D
E
F
G

What is, however, disputed is whether it was the appellant who killed the deceased, it must be noted that appellant though given the opportunity, never testified in his defence at the trial.

It is settled that the guilt of an accused person can be proved by H

- (a) The confessional statement of the accused person;
- (b) circumstantial evidence, or,
- (c) Evidence of eye - witness of the crime - see *Emeka v. State*

(2001) 14 NWLR (pt. 734) 668 at 683.

It should be noted that one does not always need an eye witness account to convict an accused for murder, if the charge can otherwise be proved. The present case is based on circumstantial evidence.

B It has long been settled that great care must be taken by the court in drawing an inference of guilt of an accused person from circumstantial evidence so as not to fall into serious error. Circumstantial evidence therefore, must be narrowly examined so that a possibility of fabrication to cast suspicion on innocent persons is ruled out. Therefore, for C circumstantial evidence to form the basis of conviction, the circumstances must clearly and forcibly suggest that the accused was the person who committed the offence and that no one else could have been the offender - see Udedibia v. State (1976) 11 S.C 133; Adie v. State (1980) 1-2 S.C D 116; Omogodo v. State (1981) 5 S.C 5.

The law is not only that the circumstantial evidence must be cogent, complete and unequivocal but must equally be compelling and lead to the irresistible conclusion that the accused and no one else is the murderer. E The evidence must leave no ground for reasonable doubt particularly as any such doubt must, by law, be resolved in favour of the accused. What then are the relevant facts of this case.

The appellant was the last person to be seen in the company of the deceased. The appellant stated that the deceased fell off their lorry which F was in motion and died but PW1, who examined the mutilated body of the deceased, found no fracture on the head, ribs or any other part of the body which would have been the case if the deceased actually fell off the moving lorry as claimed by the appellant; appellant never reported the alleged G accident to the police or to PW3 - their employer. It is clearly impossible for the deceased to have fallen off a moving vehicle resulting in his death without breaking any bone in his body. That apart, it was the duty of the appellant to have offered explanations as to the circumstances H leading to the death of the deceased who was last seen alive in his company but he failed and or refused to do so. PW1, upon examination of the corpse, found certain vital body parts missing.

I agree that in a criminal trial, the burden is always on the

prosecution to prove the guilt of the accused person beyond all reasonable doubt. Generally speaking therefore, there is no duty on the accused to prove his innocence. However, where circumstances arise, as in this case, some explanation may be required from the accused person as the facts against him are strong. Where he fails to offer such explanations as B happened in this case, his failure will support an inference of guilt against him. The facts proved by the prosecution in this case clearly established a prima facie case requiring the appellant to explain on oath what happened to the deceased who left home that day alive in his company, and with all C his body parts complete but was much later found dead and buried in a grave with some of his body parts missing and no fracture or broken bones.

I hold the view that the circumstantial evidence adduced by the prosecution in this case proved beyond; reasonable doubt that it was the D appellant who murdered the deceased and no one else - see *Lori v. State* (1980) 9-11 S.C 81; *Esai v. State* (1976) 11 S.C 39; *Abieke v. State* (1975) 9-11 S.C 97; *Edobor v. State* (1975) 9-11 S.C 69; *Adepetu v. State* (1998) 9 NWLR (pt. 565) 185. E

Much heavy weather has been made by the appellant about inconsistencies in the evidence of some of the prosecution witnesses as to whether the corpse allegedly seen by PW2 along Abakaliki - ogoja Road was the very body allegedly exhumed from a cemetery in Enugu; whether F PW3 was in the company of PW2 when PW2 allegedly saw the corpse along the said road. I hold the view that the alleged inconsistencies are not material to the facts of this case, in the first place PW2 and PW3 positively identified the body exhumed from the cemetery as that of the deceased. G They were able to identify the deceased from the tribal marks on his cheek, the clothes he wore that day and his broken tooth which he had from childhood. There is nothing in evidence to suggest that the corpse so identified was that of another person so as to create any doubt. It is trite H law that for contradiction in the evidence of prosecution witnesses to be material and capable of rendering the evidence unreliable and not capable of being acted upon, such contradictions or inconsistencies must relate to the material ingredients of the offence charged, it is not every inaccuracy

in the testimonies of witnesses that will render such testimonies unreliable. I therefore find no material contradictions in the evidence of the witnesses which would have rendered the evidence unreliable.

In conclusion, I too find no merit in this appeal which is accordingly dismissed. The conviction of and sentence on the appellant are hereby affirmed. Appeal dismissed.

OGBUAGU JSC

I have had the privilege of reading before now, the lead Judgment of my learned brother, Onu, JSC, just delivered. I entirely agree with him that the appeal should be dismissed. By way of emphasis, I will however, make my own contribution.

It is noted by me, that at the close of the prosecution's case on 3rd December, 1990, the Appellant, through his learned counsel, after the trial court informed the appellant of the three (3) options open to him, "elected to defend himself on oath". The case was accordingly adjourned for defence. See page 58 of the Records. On 26th December, 1990, when the case came up for the hearing of the defence, the learned counsel for the appellant, told the trial court, that he intends to make and rely on a No Case submission. In other words, he rested the case/defence of the Appellant on the prosecution's case. For reasons that appear in the Records, the case was adjourned, and on 31st January, 1991, the learned counsel for the Appellant, made lengthy submissions since he was entitled to do so, having rested their case on that of the prosecution.

I will pause here, to state and this is also settled, that an accused person, has the constitutional right, to remain silent and leave the trial to the prosecution, to prove the charge against him. This is because, the citizen's right to remain silent even when arraigned for a criminal offence, is an inviolable one. The prosecution, is bound to prove its case, beyond reasonable doubt. See *Utteh & anor. v. The State* (1990) 3 NWLR (Pt. 138) 301 @ 311 C.A. which went on appeal and it is reported in (1992) 2 SCNJ. (Pt. 1) 183 @ 194 - per Nnaemeka-Agu, JSC. But he runs a risk. He will be obliged to make his defence to the charge, if his remaining silent, will

result in his being convicted on the case made against him by the prosecution as will be shown presently/subsequently in this Judgment. See Okoro v. The State (1988) 5 NWLR (Pt. 94) 255. (1988) 12 SCNJ. (Pt. 2) 191.

In the instant case, although there was/were no eyewitness or witnesses, in my respectful but firm view, the circumstantial evidence, is overwhelming and consuming so to say. For instance,

1. There is the uncontroverted evidence of the PW3 -(the Master of both the Appellant and the deceased), that on 13th January, 1985, the Appellant who is his driver, as usual, drove out his lorry with registration No. AN 8850 B for the day's run, in the company of his (PW3's) conductor of the said lorry - i.e. the deceased. Said he at page 37 to 39, inter alia, as follows:

"Incidentally the accused, unlike other occasions did not run (sic) (meaning return) that day, 13/1/85. The said Ozo Chikezie Okeke did not return either, the lorry No. AN 8855 B was returned on 17/1/85 by one Patrick Mbam. The said Patrick Mbam is one of my lorry drivers. When Mbam brought the lorry back I asked him about the accused person. In answer to my enquiries about the accused person, Mbam informed me that the accused gave him (Mbam) the lorry to drive back to my premises on ground (sic) the (accused) was going to see his (accused person's) brother in the town".

He went on thus

"After expecting the accused's return in vain, I began to look for him; and the next time I saw him since after departing my premises on 13/1/85 was the day I took the police to the accused person's home town (NIMO) and arrested him there. The accused was arrested in his home town Egbengwu, Nimo on 29/3/85".

He further testified as follows:

".....I arrested the accused with the help of the police command at Abagana, after I had searched for him unsuccessfully for about three months. At Abakaliki Police Station I asked the accused persons (sic) about the conductor (Ozo Chikezie Okeke) and his earnings from the runs he made on 13/1/85. In reply the accused person said that the conductor

got down somewhere along the road to see his brothers’ (sic) and that he gave his earnings for 13/1/85 to Patrick Mbam who drove back my lorry AN 8850 B. On the following day 30/3/85, the accused changed his story as to the whereabouts of the conductor - Ozo Chikezie Okeke. This time B the accused said that the conductor did not get down somewhere along the road as he had claimed the previous day; but that the conductor fell-off the lorry and died”.

Said he further

“..... When I asked the accused person to name the place where C the deceased fell-off the lorry and died, the accused prevaricated; and could not name any specific place. In one tongue the accused said it was at the Fly-over at Enugu; in yet another he said it was not there but at a place he could not name or specify.Subsequently, the police at D Enugu invited me to call at the State CID, Enugu,. At the State CID the accused claimed that the corpse was somewhere at the Coal Camp, Enugu- But on going to the spot, nothing was found.....”. [the underlining mine]

The PW4, is Patrick Mbam who confirmed that in the evening of E 17/1/85 as he was going to see PW.3 after returning from his village, that the Appellant requested him to drive his (Appellant’s) lorry to the PW3’s yard to enable him eat and that he - the Appellant, would meet him in the PW3’s premises after eating. He obliged the Appellant, but that the F Appellant never showed up. The following day, he and the PW.3, went and reported to the police that the deceased was missing. He stated that on that 17/1/85, the Appellant, was alone and that he did not see the deceased in company of the Appellant. He was not cross-examined by the learned counsel for the appellant. In other words, he accepted as true and correct, G in its entirety, the evidence of this witness. See the case of Okasi & anor. v. The State (1988) 2 SCNJ. 183.

PW.1, is the Medical Officer who performed the post mortem examination on the body of the deceased. He testified and stated that in his H opinion, “the cause of death, was due to shock from loss of vital organs of the body. The organs were The tongue and the external genital organs”.

P.W.2 - the mother of the deceased, substantially, corroborated the evidence of PW.3 as to where the Appellant was eventually arrested with

the assistance of the police in his home town Nimo, the Appellant's statement firstly, of not seeing the deceased and later, that the deceased fell from the lorry and died. See pages 33 to 35 of the Records.

Then, there is the evidence of the P.W.7 who the Appellant stated in Exhibit 1, that she witnessed the deceased falling from the said lorry. She denied ever witnessing any passenger or person, falling from the said lorry driven by the Appellant. Remarkably, she was not cross-examined by the learned defence counsel. See pages 49 - 50 of the Records.

The evidence of the (IPO) Investigating Police Officer -P.W.9 at pages 52 to 55 of the Records is very devastating/crushing. In fact, under cross-examination, at page 55 of the Records, he stated as follows, inter alia:

“(v) My findings showed strongly that the accused used the deceased for ritual purposes; so the deceased did not die the way the accused alleged. I did not believe the accused person's story”.

As regards the identity of the body of the deceased, the evidence of the P.WS 2, 3 and 9, are clear. The PWS 2 and 3, identified the cloth the deceased wore, the tribal marks on his cheek and his broken tooth which the P.W. 2, stated that the deceased had from his childhood as a result of a fall he had. I wish to note or add here, that I see no inconsistency or contradiction, in the evidence of the P.W.2 and PW.3.

Now, it is now firmly established, that in order to ground a conviction, circumstantial evidence, must lead to only one conclusion and that is, the guilt of the accused person. See *The State v. Nde Ifu* (1964) 8 ENLR 28; *Queen/R v. Onufrezyk* (1955) 1 Q.B.388, (1956) 39 CAR 231. 315; *Udo Akpan Essien v. The State* (1966) NMLR 229. *Popoola v. Commissioner of Police* (1964) NMLR 3, *Lori & anor. v. The State* (1980) 8-11 S.C. 81@ 86 - 88; and *The Queen v. Ororosokode* (1960) 5 FSC. 208 @ 210, just to mention but a few.

Also settled, is that in order to sustain a conviction on it, it must lead to one and only one irresistible conclusion, namely, the guilt of the accused person. It must be cogent and compelling as to convince a jury or Judge, that upon no rational hypothesis other than the guilt of the accused person, can the facts be accounted for. See the New Zealand case of *R v. Harry*

(1952) NZLR 111; and the cases of Oladejo v. The State (1987) 7 SCNJ. 218. (1987) 3 NWLR (Pt.61) 419 and Beje v. The State (1995) 4 NWLR (Pt. 185)281.

Indeed, in the case of R. v. Percival Leonard Taylor & ors. i.e. -
 B James Weaver and George Thomas Donovan (1930) 2 CAR 20 @ 21 -also referred to in Lor v. The State (supra) - per Nnamani, JSC, (of blessed memory), Lord Hewart, stated as follows:

*“It has been said that the evidence against the applicants is
 C circumstantial. So it is, but circumstantial evidence is very often the best. It is evidence of surrounding circumstances which by undersigned coincidence, is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial”.*

In other words, or put in another way, circumstantial evidence,
 D may ground a conviction, where it is unequivocal, positive and irresistibly, points to the guilt of the accused person. See Atibunkya & anr. V. The State (1972) 1 S.C. 71; Esai & ors. v. The State (1976) 11 S.C. 39 and Ukarai v. The State (1977) 4 S.C. 167 and many others. It is the evidence that fixes
 E the accused person to the crime with sufficient cogency and which excludes, the possibility that someone else had committed the crime. See Fatoyinbo v. Attorney-General Western Nigeria (1966) NWLR 4 (1960) WNLR 4, 7

I am satisfied that the evidence adduced by the prosecution, was
 F tested, scrutinized and accepted by the trial court, and that it conclusively, pointed to the Appellant, as the perpetrator of the murder of the deceased. It was for him to rebut the presumption that he committed the crime, at
 G least, to cast a reasonable doubt on the prosecution’s case by preponderance of possibilities. But remarkably and significantly, his learned defence counsel, refused (as he was entitled to do as the master of his client’s case), to cross-examine some of the vital witnesses for the prosecution. He also refused the Appellant testifying and rested the case of the defence
 H on that of the prosecution and thereby, “drowning” the Appellant or letting him “stew in his own juice” so to speak/say. See the cases of Onakoya v. R. (1959) 4 FSC 150, Ikebuda v. Borno N.A. (1966) NNLR 44; The State v. Stephen Ogbuebuna (1966-67) 10 ENLR 190 and Idika Kalu v. The

State (1993) 7 SCNJ. (Pt. 1) 113 @ 124 -125. I therefore, hold that the evidence adduced by the prosecution, cogently, irresistibly and unmistakably, pointed to the Appellant, as the murderer of the deceased. See also the cases of Ariche v. The State (1993) 7 SCNJ. (Pt. II) 457, @ 468, 470 - per Belgore, JSC, 477 - 478 - per Olatawura and Kutigi, JJSC. and R. V. B Robertson (1913) Q.C.R. App. R. 189.

This brings me to the doctrine of “*LAST SEEN*”. It means in effect, that the law presumes that the person last seen with the deceased, bears full responsibility for his death if it turns out that the person last seen with him, is dead. This doctrine, was well articulated in the case of The State v. Godwin Nwakerendu & 3 ors. (1973) 3 ECSLR (Pt. II) 757 where the 1st accused person, was convicted of the death of the deceased who was seen in his company, by many people. See also the case of Nwaeze v. The State (1996) 2 SCNJ. 47 @ 61 - 62 - per Iguh, JSC, and the cases of Igbo v. The State (1978) 3 S.C. 87 @ 254; (1978) 3 S.C. 61 @ 63 (Reprint); (by Lawbreed Ltd.) and Gabriel v. The State (1989) 5 NWLR (Pt. 122)457; (1989) 12 SCNJ. 33 - per Belgore, JSC.

It must be stressed and this is settled, that in view of the said doctrine of “last seen”, it is the duty of the accused person to give an explanation relating to how the deceased met his or her death. Surely, in the absence of an explanation by an accused person (as in the instant case leading to this appeal), a trial court and even an Appellate Court, will be justified in drawing the inference that the accused person, killed the deceased. See Obosi v. The State (1965) NMLR 140, Adepetu v. The State (1998) 7 SCNJ. 83, and recently, Adeniji v. The State (2001) 5 SCNJ. 371 & 386; Emeka v. The State (2001) 14 NWLR (Pt. 734) 666 @ 683 also cited and relied on by the learned counsel for the Respondent (it is also reported in (2001) 6 SCNJ. 259), and Uguru v. The State (2002) 4 SCNJ. 282 @ 293.

The Appellant and his learned counsel, had all the opportunity for the Appellant, to testify on oath in his defence and give whatever explanation he liked or conceived, as to how the deceased, met his untimely death, and thereafter, be subjected to cross-examination. May be, he was conscious of his statement in exhibit 1 and did not want to give evidence

that will be at variance with the same, the consequence of which in law, is known by his learned counsel. May be. It is my speculation and I am not entitled to speculate anything. But what is plain to me, is that the Appellant, being the last person to be seen with the deceased and with his “*tongue in his cheek*”, stated firstly, of the deceased disembarking in order to visit an alleged brother/brothers whose identity or residence, he did not say and then, making a U-turn, to say that he fell out from his lorry which he said was in motion at the time and the deceased, dying as a result, murdered the deceased and decided, albeit woefully, to fabricate the said conflicting stories.

The P.W.I, stated unchallenged and uncontroverted, that if the deceased died as a result of a fall from a moving 911 -Mercedes Benz lorry, he would be expected to suffer the fracture of some part of the body and more especially/particularly, the skull-bones which according to him, are very vulnerable to fracture. Under cross-examination, he said he was definite that a person falling from the height of a moving 911 lorry, would sustain fracture injury. This evidence completely debunked or destroyed, the Appellant’s story both to the PWS 2 and 3 and in exhibit 1 that the deceased allegedly, fell out from his moving lorry.

There is also, the evidence of the PW.9, that the Appellant, did not report at all, the alleged incident to the police who were stationed at five (5) Operational Road Blocks along the Agbani Enugu Express Road where he the Appellant, alleged that two (2) persons who were with him in the said lorry, saw when the deceased allegedly fell-off the lorry. Not only did the Appellant, not show either the PWS 2, 3 and 9, where or the point or place, where the deceased disembarked, he did not say, that when the deceased allegedly fell-out from the lorry, he stopped his vehicle since he said that the deceased died.

Again, there is the evidence that instead of going to report the alleged incident to his master - the PWS, he disappeared and was later seen in his home village (on 29th March, 1985) - three months after killing the deceased and removing some parts of his body for ritual purposes. No doubt, he was hiding there.

There is again, the evidence of his mother-in-law - the P.W.8 - Janet

Nkwo who swore, that the Appellant, had visited them (herself and his wife who had been staying with her for the past eight (8) years), only once. She also stated that the Appellant, told her that he was in trouble. She was not cross-examined. The cross-examination of PW6 (the staff in charge of the cemetery where the deceased's body, was later exhumed for B autopsy) at page 48 of the Records, to say the least, and with respect, was/ is very ridiculous.

Lastly, the body of the deceased was seen and later removed by the P.W.6 on the instructions of his Senior Officer at a river bank in Abakpa Nike, Enugu only on 27th February, 1985. Not surprising to me, the C learned trial Judge, had no difficulty in convicting and sentencing the Appellant to death. Said he, at page 109 of the Records, inter alia, as follows:

"..... This is a doleful story of a ruthless and most callous act D for which the accused deserves no mercy and sympathy in the hands of the law: his crime cries to heaven for vengeance (sic) (meaning vengeance); and it was cowardly of the accused to deny his act in order to dodge the rigorous arms of the law. A man so ruthless and brutal as to offer for ritual E killing a youth entrusted to him for care, safety and instruction should be brave enough to face the consequences of his dastardly act. The accused should meet the deceased where he sent him or caused him to be sent, so untimely, with the draconic violence of ritual killing. Though the facts F constitute circumstantial evidence, I am satisfied that they are proof (sic) (meaning proved) beyond reasonable doubts of the guilt of the accused person. Accordingly I find the accused guilty of the murder of Gerald Chikezie Ozo-Okeke".

The court below - per Fabiyi, JCA, came to the conclusion that the G appeal lacks merit. I too, find no substance or merit in this appeal. I hold that, the Appellant was/is a callous, ruthless and heartless murderer. He showed no remorse whatsoever because, even after being convicted, he still stuck to his fabricated story that the deceased fell-off from the lorry. H The learned trial Judge, was right and justified when before he sentenced the Appellant to death, he stated as follows:

"The Biblical dictum is that the wicked shall never go unpunished;

and that they who live by the sword shall perish by the sword”.

In fact and indeed, while in Exodus 20:13 and Deuteronomy 5:17 it is stated “Thou shalt not kill, in Genesis Chapter 9 verse 6, it is clearly and unambiguously stated as follows.-

B *“Whoso sheddeth man’s blood, by man shall his blood be shed: for in the image of God made he man”.*

So be it with the Appellant.

C It is from the foregoing and the fuller lead Judgment of my learned brother, Onu, JSC, that I too, dismiss this appeal with ignominy. I also, affirm the decision of the court below affirming the judgment of the trial court.

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