

SUPREME COURT OF NIGERIA

4TH APRIL, 2008 SC. 150/2005

**CORAM:- S. U. ONU, D. MUSDAPHER, G. A. OGUNTADE,
M. A. MUKHTAR, W. S. N. ONNOGHEN, JJSC**

EME ORJI	APPELLANT
V.		
THE STATE	RESPONDENT

APPEALS - Issues - Proliferation - Grounds of appeal - Should not be outnumbered by the issues - As was the case in respondent's brief - Issue that is not tied to any ground - Will not be tolerated (H1)

CRIMINAL PROCEDURE - Conviction - Circumstantial evidence - Though may be conclusive sometimes - Surrounding circumstances must be considered - For they may affect the inference of guilt - To ground conviction - It must inter alia - Point irresistibly to the guilt of accused (H2)

CRIMINAL PROCEDURE - Conviction - Murder - Proof beyond reasonable doubt - Must be achieved before accused can be convicted - Present case is riddled with doubt - Lower courts convicted - Without considering all prevailing factors (H3)

CRIMINAL PROCEDURE - Murder - Conviction - Where court entertains doubt on guilt of accused - It should be resolved in his favour - As in this case (H4)

FACTS

The appellant and one Peter Enwereji were charged on three counts before the Aba High Court of Abia State. Appellant was the 2nd accused. They were charged with murder of three person. Both accused persons pleaded not guilty to the charges, and witnesses testified. At the close of hearing, the trial court found both accused persons guilty and convicted them for murder. They appealed to the Court of Appeal which allowed the appeal of the 1st accused but dismissed that of the appellant.

Still dissatisfied, appellant has further appealed to the Supreme

Court. The major accusation against him was that as a security man on duty, he led the four strange men who killed the deceased persons into PW1's house without following the laid down procedure of making them fill forms. That he led them through the back entrance, and did not lie down save when prompted by another that was lying down, as commanded by the strange assassins. But appellant in his statement to Police and evidence in court consistently explained the circumstances that led to all the steps he took. The strange men pointed their gun at him with a threat to kill him if he fails to take them to PW1's house (his boss). The apex court had to consider whether the circumstantial evidence was sufficient proof of appellant's guilt.

ISSUES FOR DETERMINATION

"(1) Having regard to the facts of this case whether the fact that the appellant did not immediately lie down when ordered to do so was enough circumstantial evidence against the appellant, cogent and compelling enough to lead to the irresistible conclusion that he was a party to the offence.

(2) Whether having regards to the facts of this case the fact that the appellant led the assassins to the P.W.1 and the fact he failed to follow the prescribed procedure of communicating with his employer after 8p. (sic) points to the guilt of the appellant in facilitating the unlawful act of aiding in the committal of the murders of the three deceased persons.

3) Whether the fact that the appellant went into hiding and/or failed to raise alarm connotes the aiding or facilitating escape of the strange men thereby making him a party to the crime."

HELD (Unanimously allowing the appeal per **MUKHTAR JSC**)
APPEALS - Issues - Proliferation

1. I have already stated earlier on that the appellant appealed on three grounds, and there is nothing in the documents before me to show that the grounds were increased vide the order of this court, to warrant the raising of issues that surpass the grounds of appeal. Issues for determination are supposed to be distilled from the grounds of appeal filed by an appellant and not raised capriciously. They must not outnumber the grounds of appeal, for where they so outnumber them, there is the danger that some of the issues do not derive their source from the grounds of appeal, and therefore are not related to one

another. It is trite that an issue that does not so relate will not be tolerated.

Proliferation of issues as in the instant case must be discouraged.

The issues in the respondent's Brief of Argument being in excess of the grounds of appeal, I will adopt the issues in the appellant's Brief of Argument. (p. 1850 D)

Conviction - Circumstantial evidence

2. Though circumstantial evidence may sometimes be conclusive, all other factors and surrounding circumstances must be considered carefully for they may be enough to adversely affect the inference of guilt.

According to Iguh, JSC., in the case of Iko v. State (2001) 7 S.C. (Pt. II) 115; (2001) 14 NWLR (Pt. 732) 221; "..... suspicion, no matter how high, cannot ground criminal responsibility". The sight of the guns, the threat to his life were enough to unsettle the appellant and make him confused. That he did not lie flat "when the others lay down as instructed by the intruders is not a score in favour of the prosecution, as it did not irresistibly point to the guilt of the appellant. The position of the law on circumstantial evidence is that before it can ground a conviction the evidence must be strong, cogent and point irresistibly to the guilt of an accused person. (p. 1854 E)

Conviction - Murder - Proof beyond reasonable doubt

3. With due respect, the lower courts did not give all the prevailing factors and circumstances careful consideration before arriving, at their conclusions of conviction. The law is that before an accused person can be convicted of a criminal offence most especially one of such gravity as the instant case i.e. murder, the prosecution must prove its case beyond reasonable doubt. See Section 138 of the Evidence Act, Cap. 112, 1990, Laws of the Federation of Nigeria. Although beyond reasonable doubt has been said to be not beyond a shadow of doubt, the present case to my mind is riddled with doubt. (p. 1855 D)

Where court entertains doubt on guilt of accused

4. Clearly, prosecution has not proved its case beyond reasonable doubt, and it should have failed.

Where a court entertains doubt on the guilt of an accused, the law demands that such doubt should be resolved in favour of the accused.

In the light of the above discussions I resolve these three issues in favour of the appellant, and all the grounds of appeal to which they are married succeed. I am satisfied that the case against the appellant was not proved beyond reasonable doubt, and the court below erred in affirming the judgment of the learned trial court. I hereby allow the appeal and set aside the judgments of the lower courts. (p. 1856 H)

NOTABLE POINTS OF INTEREST
MUSDAPHER JSC

1. Foolish act or high suspicion is not proof of guilt
 In a charge of murder, like all other criminal offences, it is the duty of the prosecution to prove the allegations against the accused beyond all reasonable doubt. It is not enough that the accused was present or that he acted merely foolishly or stupidly. All the evidence adduced by the prosecution merely raised suspicion that the appellant was guilty. In *Iko v. The State* (2001) 7 S.C (Pt. II) 115; (2001) 14 NWLR (Pt. 732) 221, this court held that "xxxxxxxxxxx suspicion, no matter how high, cannot ground criminal responsibility."

The circumstances and the facts of this case were sufficient to disorganize and dislodge the thinking of the appellant to make him confused and/or to act stupidly or foolishly and not necessarily criminally. (p. 1862 C)

OGUNTADE JSC
2. Reaction of individuals vary at gun point

It seems to me that the evidence called by the prosecution was insufficient to lead to the conclusion that the appellant had been acting in league with the gun-trotting intruders. The reaction of the individual to threats of the nature faced by the appellant varies from person to person. There are individuals who are lion-hearted who would dare the intruders notwithstanding that they carried guns. On the other hand there are those who easily melt under the minutest of threats. It is inherently unsafe to determine the guilt of an accused in a criminal case based on his reaction to a threat of the type faced by

the appellant. (p. 1864 A)

ONNOGHEN JSC

3. Proof of guilt - Court to consider totality of evidence

It is settled law that it is the duty of the prosecution to prove the charge against an accused person by calling or producing credible admissible evidence to establish the ingredients of the offence with which the accused person stands charged. Also settled principle of law is with respect to the standard of proof required of the prosecution in proving the charge against the accused person, the principle being that the prosecution must establish the guilt of an accused person beyond reasonable doubt. In order for the trial court to determine whether the legal duty imposed on the prosecution has been duly discharged, the trial court must consider the totality of the evidence before the court after which the court determines the issue as to whether or not the case against the accused person was made out or established beyond reasonable doubt. (p. 1867 F)

4. Implication of circumstantial evidence being capable of two interpretations

It is also trite law, that where circumstantial evidence is capable of two possible interpretations, one of which is against, while the other in favour of the accused, then in that circumstance, there has been no proof beyond reasonable doubt and as such the charge is said not to have been proved in which case the accused person is entitled to be found not guilty, discharged and acquitted of the offence charged. (p. 1868 C)

REPRESENTATION

Ike Inegbu, for the Appellant.

Chief Okey Amechie (Hon. Attorney-General, Abia State), (with him: U. T. Nwachukwu, (D.L.D.), I.C. Nwachukwu, (C.S.C.), Emenike Okoro (A.C.S.C.) and Nkiru Akinola (P.S.C.). for the Respondent.

CASES REFERRED TO

Adepetu v. State (1998) 7 S.C. (Pt. 1) 117

Chima Ejiofor v. The State (2001) 86 LRCN 1318

- Oyekan v. Akinrinwa (1996) 1 NWLR (Pt. 459) 128
 Francis Dorwede v. The State (2000) 82 LRCN 3038
 Nnolin v. State (1993) 3 NWLR (Pt. 283) 569
 Lateef Adeniji v. The State (2001) 5 S.C. (Pt. II) 100
 Fatoyinbo v. A.G. Western Nigeria (1966) WNLR 4
 B Lori v. The State (1980) 8-11 S.C. 81
 McGreevy v. D. P. P. (1973) 1 All ER 503
 Kalu v. State (1988) 10-11 S.C. 19; (1988) 4 NWLR (Pt. 90) 503
 Igabele v. The State (2006) 2 S.C. (Pt. II) 61; (2006) 139
 Paulinus Udedibia & Ors. v. The State (1976) 11 S.C. 133; (1976)
 C 11S.C

STATUTES REFERRED TO

- Criminal Code, Vol. II, Cap. 30, Laws of Eastern Nigeria, 1963 s.
 D 319
 Evidence Act, Cap. 112, Laws of the Federation of Nigeria, 1990 s.
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LEAD JUDGMENT BY MUKHTAR JSC

- E The appellant together with one Peter Enwereji were charged on three counts in the High Court of Abia State, holden at Aba as follows:

"Count 1: Statement of Offence

- Murder - Contrary to Section 319 of the Criminal Code, Vol.*
 F *II, Cap. 30, Laws of Eastern Nigeria, 1963, applicable in Abia State.*
Particulars Of Offence

Peter Enwereji and Eme Orji on the 9th day of July, 1994, at No. 1, Ukwu Road, Aba, in Aba Judicial Division, murdered Chima Obi Joel.

- G *Count 2: Statement Of Offence*
Murder - Contrary to Section 319 of the Criminal Code, Vol.
II, Cap 30, Laws of Eastern Nigeria, 1963, applicable in Abia State.
Peter Enwereji and Eme Orji on 9th day of July, 1994 at No. 1,
 H *Ukwu Road, Aba, in Aba Judicial Division murdered Monday Okon.*

Count 3: Statement Of Offence

Murder - Contrary to Section 319 of the Criminal Code, Vol.
II, Cap. 30, Laws of Eastern Nigeria, 1963, applicable in Abia State.
Particulars Of Offence

Peter Enwereji and Eme Orji on the 9th day of July, 1994 at No. 1, Ukwa Road, Aba, in Aba Judicial Division murdered Ogba Aju."

Both accused persons pleaded not guilty to the charges, and witnesses gave evidence. The learned trial Judge after evaluating the evidence, and carefully considering the address of learned counsel, found both accused persons guilty of the offences they were charged and convicted them thus:-

"Finding/Verdict - On a calm view of the evidence before the court and the submissions of learned counsel for the parties, I find as a fact and hold that the prosecution have proved their case beyond reasonable doubt. I find each of the accused persons guilty of the murder of Chimaobi and in the process, the killing of Monday Okon and Ogbati Aju - on 9th July, 1994 as charged. Each of them is accordingly convicted of murder."

The convicted persons appealed to the Court of Appeal, which in the case of the present appellant found as follows:

"I agree and affirm the conclusion of the learned trial court that the circumstantial evidence concerning the 2nd accused convict, lead to the irresistible conclusion that is compelling of the guilt of Eme Orji and the court below was right to convict him; and to sentence as the judgment of 6/5/2002, show. The appeal is refused. It is dismissed."

Now, the 2nd accused has appealed to this court on 3 grounds of appeal. Briefs of Argument were exchanged by learned counsel who adopted their Briefs at the hearing of the appeal. Both learned counsel raised issues for determination in their Briefs of Argument. In the appellant's Brief of Argument are the following issues formulated for determination:

"(1) Having regard to the facts of this case whether the fact that the appellant did not immediately lie down when ordered to do so was enough circumstantial evidence against the appellant, cogent and compelling enough to lead to the irresistible conclusion that he was a party to the offence."

(2) Whether having regards to the facts of this case the fact that the appellant led the assassins to the P.W.1 and the fact he failed to follow the prescribed procedure of communicating with his employer after 8p. (sic) points to the guilt of the appellant in facilitating the

unlawful act of aiding in the committal of the murders of the three deceased persons.

3) *Whether the fact that the appellant went into hiding and/or failed to raise alarm connotes the aiding or facilitating escape of the strange men thereby making him a party to the crime."*

B In the respondent's Brief of Argument are the following issues formulated for determination:

"(1) Whether the circumstantial evidence led in this case points irresistibly to the guilt of the appellant.

C *(2) Whether the defence of compulsion avails the appellant in this case.*

(3) Whether the prosecution proved the case against the appellant beyond reasonable doubt.

D *(4) Whether the Court of Appeal was right in affirming the conviction of and sentence of the appellant by the learned trial Judge."*

I have already stated earlier on that the appellant appealed on three grounds, and there is nothing in the documents before me to show that the grounds were increased vide the order of this court, to warrant the raising of issues that surpass the grounds of appeal. Issues for determination are supposed to be distilled from the grounds of appeal filed by an appellant and not raised capriciously. They must not out-number the grounds of appeal, for where they so out-number them, there is the danger that some of the issues do not derive their source from the grounds of appeal, and therefore are not related to one another. It is trite that an issue that does not so relate will not be tolerated. See Chime v. Chime (2001) 1 S.C. (pt. II) 1; (2001) 3 NWLR (Pt. 701) 527, Western Steel Works v. Iron and Steel Workers (1987) 1 NWLR (Pt. 49) 284 and Salami v. Mohammed (2000) 6 S.C. (Pt. II) 37; (2000) 9 NWLR (Pt. 673) 469. ***Proliferation of issues as in the instant case must be discouraged.*** See Oyekan v. Akinrinwa (1996) 1 NWLR (Pt. 459) 128. ***The issues in the respondent's Brief of Argument being in excess of the grounds of appeal, I will adopt the issues in the appellant's Brief of Argument*** for the treatment of this appeal, and will treat them together.

In proffering argument learned counsel for the appellant has contended that circumstantial evidence relied upon by the learned

Justices against the appellant was not cogent and compelling and does not lead to the irresistible conclusion that the accused committed the offence. He argued that before circumstantial evidence can form the basis of conviction the circumstances must clearly and forcibly suggest that the accused committed the offence. Reliance was placed on the cases of Lateef Adeniji v. The State (2001) 5 S.C. (Pt. II) 100; (2001) 13 NWLR (Pt. 730) 375, and Adepetu v. State (1998) 7 S.C. (Pt. 1) 117; (1998) 9 NWLR (Pt. 565) 185. In Reply the learned counsel for the respondent has argued that the guilt of an accused person can be proved by circumstantial evidence, and in this case the prosecution was at liberty to fall back to the best evidence available in the circumstance, (which was circumstantial evidence in this case). He referred to the cases of Chima Ejiogor v. The State (2001) 86 LRCN 1318, Paulinus Udedibia & Ors. v. The State (1976) 11 S.C. 133; (1976) 11 S.C. (Reprint) 74. Learned counsel submitted that the circumstantial evidence against the appellant is cogent, compelling and points irresistibly to his guilt. He referred to the cases of Fatoyinbo v. A.G. Western Nigeria (1966) WNLR 4, Lori v. The State (1980) 8-11 S.C. 81; (1980) 8-11 S.C. (Reprint) 52, Adetutu v. The State (1998) 61 LRCN 45 19, Mcgreevy v. D. P.P. (1973) 1 All ER 503, Igabelle v. The State (2006) 2 S.C. (Pt. II) 61; (2006) 139 LRCN 1831 and Francis Dorwede v. The State (2000) 82 LRCN 3038.

The pertinent question, at this juncture is, what are the circumstantial evidence in this case? It is on record that in his evidence-in-chief, PW.1 said the following inter alia:

"The second accused person opened the curtain or blind to my parlour or sitting room, he pointed at me to these strangers saying "See Chief. I then saw them the strangers bring out a rifle gun and brandishing the same, the person holding the rifle gun ordered saying "Lie down all of you". The second accused on that material time was still standing, where he had stood after opening the curtain of the parlour. I saw him clearly and he saw me and others."

In the course of cross-examination PW.1 testified thus:

"It is by 8. o'clock p.m. that the gate is officially closed. But this does not prevent any visitor who want to see me from coming in, provided the security men on duty allow such a visitor to come in after filling the visitors' form that is always passed on to me for my

indication as to whether to allow such a visitor or visitors in. As there is also an inter-com, the security men or man on duty, also call me after the official closing of the gate to inform me of any visitors around."

But on that day the 2nd accused person did not call me. Rather he brought the strangers into my parlour

B Q:- *Did you provide the security men or any of them with gun?*

Ans:- *We have no gun.*

Q:- *The two strangers who came to your parlour were armed with gun?*

C Ans:- *That is correct.*

Q:- *And they were following the 2nd accused person behind while they were coming?*

Ans:- *That is correct.*

D Put:- *I suggest to you that the 2nd accused person was under arrest by those strange men when he brought them into your sitting room.*

Ans:- *I did not see them until they came into the parlour led by the 2nd accused person as I was sitting in my parlour.*

E Put:- *The 2nd accused person, was under compulsion or duress to bring the strangers into my (sic) parlour.*

Ans:- *I don't know. They did not tell me so I don't know."*

Perhaps the above scenario may have been better explained by the 2nd accused/appellant himself when in his evidence he said:-

F *"When I was asking them to come and sign our visitors' book, one of them wearing a coat and putting on a tire (sic) also pulled out his own pistol and pointed it at me and told me to move. It was that fair one who had police gun she barater who gave me a slap and told me that if I talked again, that he would shoot me. So, I moved on*

G *and when we got to the P.W.1's house, there is a place where visitors usually wait. I told them to wait there. I followed the backyard, and the (sic) followed me, I went through the backyard to enable me pass on a word or give a message through that person to P.W.1 to alert him as to what was going on. But at the said backyard, I did not see anybody. The door was open at the residence of P.W.1. It was at that time that the one wearing a coat and tire (sic), told me that he is an Ibo man and that he knows Eleke and Freeman and that if I took them to somewhere else other than P.W.1's house or residence, that*

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they will shoot me dead. Eleke and Freeman are the sons of P.W.1. As I did not see anybody to give the message, we passed or moved to one of the rooms and there was nobody there. We then moved into another room and there was nobody there. We then entered into the dining room and there was nobody there. Then finally we entered into the parlour of P.W.1's sitting room B
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(Underlining is mine)

Under cross-examination the 2nd accused/appellant virtually reiterated this evidence-in-chief, and expatiated on some points especially on the suspicion of taking the strangers through the backdoor and his motive for doing so. In his testimony he said inter alia thus; C

"When they pointed their guns at me and I went with them to the house of P.W.1, we got to his waiting room where I asked them to stay so that I could pass through the back or backyard in order to inform those at the backyard that there are some people looking for our master, so, while I was going the armed robbers followed me. D

Put:- You purposely went through back door so as not to give the occupants no chance to escape

Ans:- Not true. E

Q:- When the visitors ordered everybody to lie down, you did not follow the others to lie clown because you Felt that you were not included?

Ans:- Not true. I was gripped with fear.

Put:- You know the visitors quite well. That was why being a part of the deal, you fell you were not included and that was why you did not also lie down. F

Ans:- Before God and man, I did not know the visitors."

It is instructive to note that the above pieces of evidence were given on 3/2/99 and 18/3/2000. over five years after the 2nd accused/appellant made his cautionary statement to the police, as follows:- G

"I told them to come and feel (sic) the visitors book. At this juncture two of them drew their guns one was holding a pistol while the other had a barneter (sic) gun and fenced (sic) it on me. They ordered me to take them to my Director or they kill me. When we were going, as I have decided to take them. They warned me not to take them to any other persons house other than the Director's house. H

They informed me that they know Eleke and Freeman the sons of the Director. When I got to the house of the Director Chief Ogba Chukwu in their company. I decided to take them through the back door. I did so because I was looking if I can find any person to pass information to the backyard I did not see any of the maids. I took
 B *them into the house through the backyard door. When we got into the first room we did not see anybody. We then entered into the dining room and lastly into the parlour where the Director and others were viewing the television and watching the World match going on. At this stage, I called the Director and told him that the men with*
 C *me wanted him."*

Perhaps I should point out here that my reason for reproducing these latter pieces of evidence is to show that the appellant was consistent in the story of his travails right from the period of the incident to when he testified in court some five years later. His narration of what happened right from when the robbers came in, to the fear of imminent threat to his life which they subjected him to, and the reason why he took them through the back door was consistent. The evidence of P.W.1 also corroborates the 2nd accused/appellant's evidence on the mode of the appellant's entry to P.W.1's residence through the back door. P.W.1's evidence on the motive of the appellant in taking that entrance was punctured by the explanation of the appellant who told the court of his motive for doing so. ***Though circumstantial evidence may sometimes be conclusive, all other factors and surrounding circumstances must be considered carefully for they may be enough to adversely affect the inference of guilt*** See *Lori v. State*, *Udedibia v. State* and *Adepetu v. State*, supra, cited by learned counsel for the appellant. ***According to Iguh, JSC., in the case of Iko v. State (2001) 7 S.C. (Pt. II) 115; (2001) 14 NWLR (Pt. 732) 221; "..... suspicion, no matter how high, cannot ground criminal responsibility". The sight of the guns, the threat to his life were enough to unsettle the appellant and make him confused. That he did not lie flat "when the others lay down as instructed by the intruders is not a score in favour of the prosecution, as it did not irresistibly point to the guilt of the appellant. The position of the law on circumstantial evidence is that before it can ground a conviction the evidence must be strong, cogent and point irresistibly to the***
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guilt of an accused person. See *Anekwe v. State*, supra and *Aigbadion v. State* (2000) 4 S.C (Pt. I) 1; (2000) 7 NWLR (Pt. 666) 686.

In the instant case, the appellant gave a lucid account of what happened from the moment the intruders entered the house, and that account in no uncertain terms was corroborated by the evidence of P.W.1 i.e. his motive of taking them through the backdoor etc. The reason why he ran away from the house and hid himself until they had left the premises. The appellant was also consistent in his evidence that he did not know the intruders. The pertinent question here is, what would a reasonable and normal man do in the circumstance? Instinctively, the natural thing that comes to mind is the act of self preservation, most especially on the face of the confusion that preceded the callous act. The case of *Abbott v R* (1976) 3 AELR 140, referred to by learned Attorney-General in the course of the hearing of the appeal in this court may be relevant to a certain extent, but in the instant case, and looking at the surrounding circumstances and factors it cannot apply. ***With due respect, the lower courts did not give all the prevailing factors and circumstances careful consideration before arriving, at their conclusions of conviction. The law is that before an accused person can be convicted of a criminal offence most especially one of such gravity as the instant case i.e. murder, the prosecution must prove its case beyond reasonable doubt. See Section 138 of the Evidence Act, Cap. 112, 1990, Laws of the Federation of Nigeria. Although beyond reasonable doubt has been said to be not beyond a shadow of doubt,*** (See *Miller v. Minister of Pensions* (1947) 2 All ER 377, as was discussed in *Akalezi v. The State* (1993) 10 LRCN 264); ***the present case to my mind is riddled with doubt.*** It is my view that the lower court was wrong when it found thus in its judgment:-

"In the instant appeal it is inconceivable that a security guard will meet people he had never seen before and lead the men holding a gun to his employer. In doing so the employee failed to follow the prescribed procedure of communicating with his employer after 8 p.m. The conclusion of a reasonable man which is vindicated by the compelling circumstantial evidence is that Eme Orji knew the strangers, (2) that he knew why they looked for P.W.1 or knew their pur-

pose. The conclusion leads to no other conclusion and point irresistibly to the guilt of the 2nd accused person in facilitating the unlawful act of aiding the committal of the murder of the three deceased persons or in any case the flight of the murderers after their acts of killing.

B The 2nd arm of the circumstantial conclusion of guilt against Eme Orji is act of facilitating the flight of the assassins. By his testimony, the accused Eme Orji went to announce the departure of the assassins. The accused person not only heard the gun shot by the strangers, he saw it when the assassins shot Chumaobi Joel in the head. The accused convict did not raise an alarm to prevent the safe departure of the assassins, his testimony show that he went into hiding till the assassins departed. By this act Eme Orji who led the assassins or murderers cannot claim ignorance of the heinous offence. The person D who facilitated the commission of murder, is guilty as is the person who facilitated the flight of such a person who committed murder is according to the law equally guilty. The assassins are at large: the appellant led the assassins to the scene of murder. I have no reason therefore to disturb the conclusion of the learned trial Judge, except E to say that there is no direct or circumstantial evidence of the conspiracy before the court below. I agree and affirm the conclusion of the learned trial court that the circumstantial evidence concerning the 2nd accused convict lead to the irresistible conclusion that is compelling of the guilt of Eme Orji and the court below was right to F convict him, and to sentence as the judgment of 6/5/2002 show." (Underlining above is mine).

As at the time the appellant was arrested and cautioned, and at the time he was arraigned and eventually tried, he must have perceived the danger he was in and the gravity and seriousness of the charge against him, and yet he did not at any of those stages divulge the names of the assassins. If truly he was in concert with them as it was alleged the very instinct of self preservation and protection would have forced him to rope them in, and not face the consequences alone, when in fact he did not do the actual shooting. I mean I find H this situation inconceivable. **Clearly, prosecution has not proved its case beyond reasonable doubt, and it should have failed.** See Woolmington v. DPP (1935) A.C 462. **Where a court entertains doubt on the guilt of an accused, the law demands that**

such doubt should be resolved in favour of the accused. See Kalu v. State (1988) 10-11 S.C. 19; (1988) 4 NWLR (Pt. 90) 503, Ikemson v. State (1989) 6 S.C (Pt. II) 114; (1989) 3 NWLR (Pt. 110) 455, and Nnolin v. State (1993) 3 NWLR (Pt. 283) 569.

In the light of the above discussions I resolve these three issues in favour of the appellant, and all the grounds of appeal to which they are married succeed. I am satisfied that the case against the appellant was not proved beyond reasonable doubt, and the court below erred in affirming the judgment of the learned trial court. I hereby allow the appeal and set aside the judgments of the lower courts. The appeal succeeds in its entirety, and the conviction of the appellant is quashed. The appellant is discharged and acquitted.

ONU JSC

I have been privileged to read the judgment of my learned brother, Aloma Mukhtar, JSC., just delivered, I am in entire agreement with her that the appeal is meritorious and must perforce succeed.

I adopt the facts of the case as clearly elucidated in the leading judgment of my learned brother.

I wish to comment on the three issues the appellant has submitted as arising from the three grounds of appeal whose purports, are in my view, enough to dispose of the appeal herein respectively, as follows:

1. Having regard to the facts of this case, whether the fact that the appellant did not immediately lie down when ordered to do so was enough circumstantial evidence against the appellant, cogent and compelling enough to lead to the irresistible conclusion that he was a party to the offence.

2. Whether having regards to the facts of this case the fact that the appellant led the assassins to the PW.1 and the fact that he failed to follow the prescribed procedure of communicating with his employer after 8p. (sic) points to the guilt of the appellant in facilitating the unlawful act of aiding in the committal of the murders of the three deceased persons.

3. Whether the fact that the appellant went into hiding and/or

failed to raise alarm connotes the aiding or facilitating escape of the strange men thereby making him a party to the crime.

Issue 1: Legal Argument

Under issue 1, the argument proffered on behalf of the appellant is that the learned Justices of the Court of Appeal were in error in confirming the conviction of the appellant by holding that the effect of circumstantial evidence of the failure of the accused person to lie face down when the men so ordered until he was prompted by Jeff, show that the strange men held no threat to him and as such enough to convict him of the offence of murder.

The circumstantial evidence relied upon by the learned Justices to convict the appellant was not in my view cogent and compelling and does not lead to the irresistible conclusion that the appellant committed the offence. It has been held in a number of cases that drawing an inference of guilt from circumstantial evidence, great care must be taken not to fall into serious error. It follows therefore that circumstantial evidence must always be narrowly examined as that type of evidence may be fabricated to cast suspicion on innocent persons. Accordingly, before circumstantial evidence can form the basis of conviction, the circumstances must clearly and forcibly suggest that the appellant committed the offence.

In similar cases such as *Lateef Adeniji v. The State* (2001) 5 S.C. (Pt. II) 100; (2001) 13 NWLR (Pt.730) 375 and *Adepetu v. The State* (1998) 7 S.C. (Pt.1) 117; (1998) 9 NWLR (Pt. 565) 185, it was submitted that the fact that the appellant did not lie face down immediately when ordered by the strange men does not show any link between the strange men and the appellant.

The appellant in his evidence during his trial said that P.W.1's son-in-law -one Jeffery Akwiwu and husband to his (P.W.1's) daughter, called him and told him not to panic. He (appellant) further testified that he was afraid and did not know what to do and so lay-down behind a chair.

The appellant's answer under cross-examination why he did not lie down immediately when ordered to do so was because he was gripped with fear and confusion rather than that, the explanation offered by the appellant weakened or destroyed the inference that the strange men held no threat to him and therefore was himself (appellant) a party to the commission of the crime.

The law is trite that, circumstantial evidence of this kind may be fabricated to cast suspicion on another. It is therefore, in my view, necessary before drawing the inference of the guilt of the appellant to be sure that there is no other co-existing circumstance which would weaken or destroy the inference. See the cases of *Lorijt. The State* (1980) 8-11 S.C. 81; (1980) 8-11 S.C. (Reprint) 52; *Udedibia v. The State* (1976) 11 S.C 133; (1976) 11 S.C. (Reprint) 74; *Adepetu v. The State* (1998) 7 S.C. (Pt. I) 117; (1998) 9 NWLR (Pt.565) 185. In the light of my consideration of the above cases, I am of the firm view that the circumstantial evidence relied upon by the court below against the appellant was doubtful and does not lead to the conclusion that the appellant killed the deceased persons. He cannot, in my view, rightly be said to be a party to the offence. See *Igboji Abieke v. The State* (1975) 10 S.C. 255 at 264; (1975) 9-11 S.C. (Reprint) 60.

Issue 2: Legal Argument

The learned Justices of the Court of Appeal were, in my view, in error when they dismissed the appeal of the appellant and held that it is inconceivable that a security guard will meet people he had never seen before and lead the men holding a gun to his employer and that in doing so, the employee failed to follow the prescribed procedure of communicating with his employer after 8p.m and that the conclusion of a reasonable man which is vindicated by the compelling circumstantial evidence is that the appellant knew the strangers and why they were looking for the P.W.1 or knew their purpose. That, as the conclusion leads to no other conclusion and point irresistibly to the guilt of the 2nd accused person in facilitating the unlawful act of aiding the commission of the murders of the deceased persons or in any case the flight of the murderers after the acts of killing. There is evidence that on the date of the incident three men drove in a Peugeot car to the only gate of the factory of P.W.1 and demanding to see him (P.W.I). That the appellant met the strange visitors and one of them produced a gun and demanded to see Chief Ogba Chukwu (P.W.1). That even though prior to that date there was a standing rule made by the management of the factory that anyone demanding to see Chief Ogba Chukwu after 8p.m should await contact with the Chief by intercom installed in the house.

The appellant did not use this device because the strange men

pulled out his gun at their head, telling him that if he talked more they would shoot and that they followed up by telling the appellant that if he talked more they would shoot and they in addition asked appellant to take them to P.W. 1's place.

There is evidence by the appellant that when he asked them to come and sign the visitors' book one of them wearing a coat and putting on a tie also pulled out his own pistol and pointed it at the appellant and told him to move.

That this evidence explained why the appellant failed to follow the prescribed procedure of communicating the P.W.1 and that the Court of Appeal failed to take cognizance of this fact; hence under the circumstance, the appellant was not acting in a normal situation at the time of the incident wherein he would have communicated with his employer. Appellant as indeed transpired, was constrained to take directive from the strange men who posed as policemen from Abuja, giving him (appellant) any opportunity to communicate with his employer.

Having regard to these facts, I am in agreement with the appellant's submission that the learned Justices of the Court of Appeal were in error when they held that the failure of the appellant to follow prescribed procedure of communicating with his employer shows that the appellant knew the strangers and that he knew why they were looking for P.W.1 or knew their purpose.

It is pertinent to emphasis that there is no evidence to contradict the testimony of the appellant. The appellant himself reiterated this evidence in his cross-examination when he said that the strange men pointed their guns at him and it was at gunpoint that he took them to the house of P.W.1. He further stated under cross-examination that he did not know the strange men. Appellant in addition further stated these facts in his statement (Exhibit "D") to the police.

I find myself inexorably in agreement with the appellant that he found himself in a situation where he would not argue or challenge the authority of the unknown persons who later shot the deceased persons.

I therefore agree with the submission on appellant's behalf that his (appellant's) failure to follow the prescribed procedure for communicating with his employer (P.W.1) after 8p.m is not such act that would justify the court in coming to the irresistible conclusion that he

(appellant) is guilty of aiding the murderers. See *Ukoruh v. State* (1977) 4 S.C. 167; (1977) 4 S.C. (Reprint) 111. There is no evidence that the appellant knew the murderous strangers before hand. Nor was there evidence that he knew how they were looking for P.W.1 or knew their purpose.

The evidence that the appellant went with the stranger/visitors through the back door to the house of Chief Ogba Chukwu; through the sitting room of his wife where he met him seated watching national league football match with her, his son in-law, his daughter and the deceased persons, was also explained by the appellant when he said that he followed the back door to enable him pass on a word or give message to P.W. 1 to alert him as to what was going on.

As regards the door that was open at the residence of P.W.1, the appellant under cross-examination denied going through the back door purposely so as to give the occupants a chance to escape. This testimony was not contradicted in any manner whatsoever. The learned Justices of the Court of Appeal were therefore in error when they held that the conclusion of a reasonable man is that the appellant knew their purpose and therefore points to the guilt of the appellant.

Rather, I am of the view that the testimony of P.W.1 is bereft of any iota of evidence to show that the act of the appellant in bringing the strange men to his sitting room was voluntary, deliberate or intended to cause the death of the deceased persons.

As the evidence against the appellant is not so cogent and compelling to lead to the irresistible conclusion that appellant aided the strange men in the commission of the murder vide *Locknan v. The State* (1972) 5 S.C. (Reprint) 13; (1972) 1 All NLR (Pt. 2) 62.

In the case in hand, appellant is pure and simple, in my view, a victim of circumstance. The mere presence at the scene of crime does not, as a matter of law, render the person so present guilty of the crime. There must be clear evidence that either prior to or at the time of the commission of the offence, the person present did something or omitted to do any act such as aiding or abetting to facilitate the commission of the offence. See: *Yakubu Mohammed v. The State* (1980) 3-4 S.C. (Reprint) 56; (1980) FNR 155 and *Adetokunbo Ogunlana v. The State* (1995) 5 SCNJ 189.

Issues 3 - Legal Argument

The argument proffered on this issue by the appellant is accordingly adopted.

Having arrived at the conclusion as my learned brother, Mukhtar, JSC., that the appeal is meritorious, I too allow the appeal, discharge and acquit the appellant accordingly.

B

MUSDAPHER JSC

I have read before now the judgment of my noble colleague. A. M. Mukhtar, JSC., with which I entirely agree. The offence of murder is a very serious matter and should not be taken lightly. In a charge of murder, like all other criminal offences, it is the duty of the prosecution to prove the allegations against the accused beyond all reasonable doubt. It is not enough that the accused was present or that he acted merely foolishly or stupidly. All the evidence adduced by the prosecution merely raised suspicion that the appellant was guilty. In *Iko v. The State* (2001) 7 S.C (Pt. II) 115; (2001) 14 NWLR (Pt. 732) 221, this court held that "xxxxxxxxx suspicion, no matter how high, cannot ground criminal responsibility."

C

D

E

The circumstances and the facts of this case were sufficient to disorganize and dislodge the thinking of the appellant to make him confused and/or to act stupidly or foolishly and not necessarily criminally. I accordingly set aside the judgment of the lower courts convicting the appellant for the offence of murder and in its place, enter a verdict of discharge and acquittal.

F

I allow the appeal and order the release of the appellant forthwith.

G

OGUNTADE JSC

The appellant and one other person were charged on three counts for the offence of murder at the High Court, Aba. He was on 6/5/2002, found guilty and sentenced to death. Dissatisfied, he brought an appeal before the Court of Appeal, Port Harcourt (hereinafter referred to as the court below). The Court below dismissed his appeal. He has therefore come before this court on a final appeal.

H

The evidence against the appellant was mainly circumstantial. He was one of the gatekeepers in the factory premises of P.W.1, who

also had his residential quarters within the complex. Ordinarily, the practice followed by the gatekeepers of the complex was that if a visitor wanted to see P.W. 1, the gatekeeper would put a call to P.W.1 on the intercom which was provided for such purpose to tell him he had a visitor. P.W.1 then decided whether he wanted to see such visitor or not. However, on 9-7-94, when the offence was alleged to have been committed, the appellant, a gate keeper took four intruders who were carrying guns to the residence of P.W.1 without first alerting him of the presence of these strangers as was the standard practice. B

The appellant, who was the 2nd accused before the trial court however explained the circumstances which made him skip the normal practice. He said:- C

"When I was asking them to come and sign our visitors' book, one of them wearing a coat and putting on a tire (sic) also pulled out his own pistol and pointed it at me and told me to move. It was that fair one who had police gun she barater (sic) who gave me a slap and told me that if I talked again, that he would shoot me. So, I moved on and when we got to the P.W.1's house, there is a place where visitors usually wait. I told them to wait there. I followed the back-yard, and the (sic) followed me. I went through the backyard to enable me pass on a word or give a message through that person to P.W.1 to alert him as to what was going on. But at the said backyard, I did not see anybody. The door was open at the residence of P.W.1. It was at that time that the one wearing a coat and tire (sic), told me that he is an Ibo man and that he knows Eleke and Freeman and that if I took them to somewhere else other than P.W.1's house or residence, that they will shoot me dead. Eleke and Freeman are the sons of P.W.1. As I did not see anybody to give the message, we passed or moved to one of the rooms and there was nobody there. We then moved into another room and there was nobody there. We then entered into the dining room and there was nobody there. Then finally we entered into the parlour of P.W.1's sitting room" D E F G

The explanation given by the appellant in the passage reproduced above was not shown by the prosecution to be untrue. There was no evidence that the appellant had been known or seen to be consorting with the intruders concerning the murders committed in P.W.1's house on 9-7-94. At the end of the day, the explanation of H

the appellant was unchallenged.

It seems to me that the evidence called by the prosecution was insufficient to lead to the conclusion that the appellant had been acting in league with the gun-trotting intruders. The reaction of the individual to threats of the nature faced by the appellant varies from person to person. There are individuals who are lion-hearted who would dare the intruders notwithstanding that they carried guns. On the other hand there are those who easily melt under the minutest of threats. It is inherently unsafe to determine the guilt of an accused in a criminal case based on his reaction to a threat of the type faced by the appellant.

In *State v. Edobor* (1975) 9-11 S.C. 69 at 77; (1975)9-11 S.C. (Reprint) 44, this court per Fatayi-Williams, JSC., (as he then was), observed on the nature of circumstantial evidence:

"In order to sustain a conviction based on circumstantial evidence, the circumstances relied upon by the prosecution must lead conclusively and indisputably to the guilt of the accused person. As Lord Normad, has rightly pointed out in *R v. Tepper* (1952) A.C 480 at page 489-

"It must always be narrowly examined, if only because evidence of this kind may be fabricated to cast suspicion on another..... It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference."

In the instant appeal there was plainly the co-existing inference that the appellant's mind was unhinged by fear or fright such that he was led to show the gun-trotting intruders to the residence of P.W.1 in the belief that he might himself be killed if he did not co-operate with the intruders. I think that the two courts below were in error to have come to the conclusion that the appellant acted in concert with the intruders.

It is for this reason and the more elaborate reasons in the leading judgment of my learned brother, Mukhtar, JSC., that I would also allow the appeal.

ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal,

holden at Port Harcourt, in appeal No. CA/PH/95/2003, delivered on the 11th day of November, 2004 in which it dismissed the appeal of the appellant against the judgment of the High Court of Abia State in charge No. A/21C/9406/5/2600, which convicted and sentenced the appellant to death for the offence of murder.

The appellant who was the second accused in the aforesaid charge, was charged with three counts as follows:-

"Count 1: Statement Of Offence

Murder - Contrary to Section 319 of the Criminal Code, Vol. 11, Cap. 30, Laws of Eastern Nigeria, 1963, applicable in Abia State. Particulars of Offence

Peter Enwereji and Eme Oji on the 9th day of July, 1994, at No. 1, Ukwa Road, Aba in Aba Judicial Division murdered Chima Obi Joel.

Count 2: Statement of Offence

Murder - Contrary to Section 319 of the Criminal Code, Vol. 11, Cap 30, Laws of Eastern Nigeria, 1963, applicable in Abia State Particulars of Offence

Peter Enwereji and Eme Oji on the 9th day of July, 1994, at No. 1, Ukwa Road, Aba, in Aba Judicial Division murdered Monday Okon.

Count 3: Statement of Offence

Murder - Contrary to Section 319 of the Criminal Code, Vol. 11, Cap. 30, Laws of Eastern Nigeria, 1963, applicable in Abia State. Particulars of Offence

Peter Enwereji and Eme Oji on the 9th day of July, 1994, at No. 1, Ukwa Road, Aba in Aba Judicial Division murdered Ogba Aju."

The appellant was in the employment of. P.W.1, Chief Ogba Chukwu, an industrialist, as a security man. P.W.1 owns a garment factory at No. 1, Ukwa Road, Aba, where he manufactures singlets. P.W.1 and others reside at the factory premises.

On the 9th day of July, 1994, the appellant was on duty together with other security men at the gate of the premises. At about 8.30 p.m. four strange men drove to the gate of the premises in a 504 station wagon car and told the appellant, upon inquiry, that they were policemen who wanted to see P.W.1. They subsequently pointed a gun at him. Appellant stated that he was thereby ordered, at gun

point to take the strange men to the residence of P.W. 1 which he did; that at that time, P.W.1 and some members of his household including his visiting son-in-law and his daughter were watching a football match on television in P.W.1's sitting room. The appellant entered the house of the P.W.1 through the back door which, was known to all staff and residents to be always open, with the strange men in tow.

On entering the house and coming face to face with P.W.1 and the others, the appellant pointed out P.W.1 to the armed strange men who brought out their gun and pointed same at P.W. 1 and demanded that P.W.1 gave them some money but P.W.1 told the men that he had nothing except ten naira on him. The strange men ordered everyone to lie down and later opened fire and killed the three boys who were the servants of P.W.1 namely Chima-Obi Joel, Ogba Aju and Monday Okon. It is the contention of the prosecution that the appellant did not obey the orders of the strange men for everyone to lie down on the floor until shouted upon by the in-law of P.W.1. Following the shooting of the three young men, the appellant ran away from the scene in P.W.1's house but returned later from his hiding place to inform P.W.1 and others that the strange men had left the premises.

It is the case of the prosecution that the standing instructions in the premises to the security men or gate men is that anybody wishing to see the P.W.1 after 8 p. m should fill the visitors' form and await the reply of P.W.1 through the intercom installed at the security house; that the procedure was not followed on the day of the incident; that prior to the incident, one Peter Enwereji who was charged along with the appellant as 1st accused and convicted and sentenced but was discharged and acquitted by the Court of Appeal upon appeal, had threatened, in the presence of witnesses, to kill Chimaobi Joel, one of those killed that day for implicating the said Peter Enwereji in the theft of singlets at the factory of P.W.1. It is for the above facts that the appellant and the said Peter Enwereji were charged with the offences, the conviction and sentence of which resulted in the instant appeal to this court.

The issues for determination, as identified by learned counsel for the appellant, C. Ike Inegbu, Esq., in the appellant's Brief of Argument deemed filed on 17/1/07, are as follows:-

"(1) Having regard to the facts of this case whether the fact

that the appellant did not immediately lie down when ordered to do so was enough circumstantial evidence against the appellant, cogent and compelling enough to lead to the irresistible (sic) conclusion that the he (sic) was a party to the offence.

(2) Whether having regards to the facts of this case the fact that the appellant led the assassins to the P.W.1 and the fact that he failed to follow the prescribed procedure of communicating with his employer after 8p. (sic) points to the guilt of the appellant in facilitating the unlawful act of aiding in the committal of the murders of the three deceased persons.

(3) Whether the fact that the appellant went into hiding and/or failed to raise alarm connotes the aiding or facilitating escape of the strange men thereby making him a party to the crime."

It is very clear, judging from the facts contained in the record, that the case against the appellant is based completely on circumstantial evidence. It has to be pointed out also that the appellant is not charged with the offence of conspiracy; it is not alleged that the appellant conspired with the strange men and Peter Enwereji to commit the offence of murder. It is also not alleged that the appellant, in any way, had any reason why he would, on his own, wish the deceased persons dead neither is it alleged that he hired those strange men to kill the deceased persons. The facts, which are straight forward, are also not in dispute. What appears to be in dispute is the inferences drawn therefrom by the lower courts. Most importantly the appellant has consistently maintained his innocence of the crime - he has not confessed to the crime.

It is settled law that it is the duty of the prosecution to prove the charge against an accused person by calling or producing credible admissible evidence to establish the ingredients of the offence with which the accused person stands charged. Also settled principle of law is with respect to the standard of proof required of the prosecution in proving the charge against the accused person, the principle being that the prosecution must establish the guilt of an accused person beyond reasonable doubt. In order for the trial court to determine whether the legal duty imposed on the prosecution has been duly discharged, the trial court must consider the totality of the evidence before the court after which the court determines the issue as to whether or not the case against the accused person was made out

or established beyond reasonable doubt - see *Obue v. State* (1976) 2 S.C (Reprint) 79; (1976) All NLR 139

As stated earlier in this judgment, in the instant case, the case of the prosecution against the appellant is based on circumstantial evidence. It is however, settled law that for circumstantial evidence to
 B ground a conviction in a criminal trial, especially a trial for a charge of murder as in the instant case on appeal, the circumstantial evidence must be cogent, complete and unequivocal. It must be compelling and lead to the irresistible conclusion that the prisoner or in the instant case, appellant, and no one else is the murderer. The facts must
 C therefore be incompatible with the innocence of the accused and also, incapable of explanation upon any other reasonable hypothesis than that of his guilt. It is also trite law, that where circumstantial evidence is capable of two possible interpretations, one of which is
 D against, while the other in favour of the accused, then in that circumstance, there has been no proof beyond reasonable doubt and as such the charge is said not to have been proved in which case the accused person is entitled to be found not guilty, discharged and acquitted of the offence charged - see *State v. Kura* (1975) 2 S.C 83;
 E (1975) 2 S.C. (Reprint) 76 .

In the instant case, can it be said that the prosecution proved the charge of murder against the appellant beyond reasonable doubt having regard to the facts and circumstances of the case? As stated earlier in this judgment, the appellant is not charged with conspiring
 F with the strange men who actually killed the deceased persons as testified to by the eye witnesses of the incident, neither did the prosecution allege any conspiracy between the appellant and the original 1st accused person, Peter Enwereji. The absence of a charge of conspiracy is not the only thing militating against the establishment of the
 G offence, there is also no iota of evidence suggesting any conspiracy between the strange men, the appellant and the said original 1st accused. In other words the appellant is charged with actually committing the murders in person or facilitating the commission of the said
 H murders though eye witness accounts testify to the contrary. It appears the reason for the appellant being charged with the murders, even though he never actually shot them dead, is simply due to the circumstance prevailing at the relevant time and place, to wit the appellant was a security man in charge of security duties in the fac-

tory premises of P.W.1, which also doubled as his residential premises, and had a standing instructions not to allow in any visitor after 8 p. m without the visitor filling the visitors' form which is then forwarded to P.W.1 who would then indicate his intention to see the visitor vide an intercom installed at the gate house or security post or whatever, which instructions were not followed by the appellant on the night in question when the appellant opened the gate to let in the armed strange men into the premises; that on getting to the main entrance to P.W.1's quarters, rather than knock on the main entrance and wait for the door to be opened to let the appellant and the strange men in, the appellant chose to enter the house through the back door or kitchen door which the appellant knew was always open and entered the house with the strange men thereby giving the P.W.1 and others no chance to escape; that on getting to where P.W.1 and others were seated the appellant pointed P.W.1 out to the strange men who then brought out their guns and ordered everyone to lie down which those present obeyed except the appellant who later had to do so after being shouted upon to obey the order by the in-law of P.W. 1 who was on a visit with his wife, the daughter of P.W.1, that the appellant later disappeared from the scene after the deceased persons had been killed by the strange men and only re-appeared to inform P.W.1 and others of the departure of the assassins.

On the other side of the scale is the story of the appellant which is that while he was on duty at the gate of the premises on the night in question a car with three men inside pulled up and when he approached the occupants to inquire of their mission, one of them pulled out a gun and pointed same at the appellant and demanded to be taken to P.W.1 with a threat that if he failed he would be shot; the visitors refused to sign the visitors book as requested by the appellant which made the appellant to take the strange armed visitors to P.W.1, that on getting to the house of P.W.1 appellant requested the visitors/ strange men to wait at the main entrance while he proceeded to the back door to request for the main door to be opened but the men refused to wait there and followed the appellant and entered the house through the kitchen door; that on getting to where P.W.1 was, appellant pointed P.W.1 out to the strange men who brought out their guns and ordered everyone to lie down but appellant was gripped with fear and could not obey immediately; that after the shooting of

the deceased persons appellant escaped from the house of P.W.1 and hid himself for fear of the armed men and only re-appeared to inform P.W.1 and the others of the departure of the armed strange men after they had left.

B There is no evidence on record to show or even suggest that the appellant knew the armed strange men nor their mission that night. In fact appellant denies knowing them. It is very clear and I hereby hold that the facts and circumstances of this case fall far short of the standard required by law for circumstantial evidence to ground
C a conviction for a charge of murder, the said circumstances being equally consistent with the innocence of the appellant. There is no disputing the fact that the strange men who carried out the serious crime, apparently for no reason at all, were armed and did not hesitate to use their weapons. To have disobeyed them would surely
D have spelt disaster for the appellant. It is true that appellant did not follow the laid down security procedures in the premises but the circumstances in which the default was made must be taken into consideration in assessing his culpability. The question is whether the failure or negligence of the appellant to follow the laid down procedure
E which resulted in the death of the unfortunate persons in the hands of the strange armed men is enough to ground his criminal liability for the said murders. I do not think so and hold the view that it is unsafe, in the circumstances of the case to have convicted and sentenced the appellant for the offence of murder and that the lower
F court was in grave error in affirming the said conviction and sentence.

In the circumstance and having regards to the more detailed reasons contained in the leading judgment of my learned brother,
G Mukhtar, JSC., which I had the privilege of a preview, I agree that the appeal is meritorious and ought to be allowed. I therefore order accordingly. I set aside the conviction and sentence of the appellant by the trial Judge as confirmed by the lower court and in its place enter a verdict of not guilty and discharge and acquit the appellant accord-
H ingly.