

SUPREME COURT OF NIGERIA
27TH JUNE, 2008. SC. 79/2007
CORAM:- N. TOBI, G. A. OGUNTADE, A. M. MUKHTAR,
F. F. TABAI, P. O. ADEREMI, JJSC

OKOLO OCHEMAJE	APPELLANT
V.		
THE STATE	RESPONDENT

CRIMINAL LAW - Murder - Conviction - Absence of corpus delicti - Accused can be convicted for murder - If there is strong unequivocal evidence that the victim is dead - Notwithstanding the absence of corpus delicti (H1)

CRIMINAL PROCEDURE - Alibi - Failure to investigate - Effect - Not every failure of police to investigate an alibi raised - Is fatal to the case of prosecution - Court rightly rejected plea in this case - In view of eye witness accounts (H2)

EVIDENCE - Proof - Contradictions - Resolution by court - It is a demonstration of proper evaluation of evidence before it - When court resolves apparent contradictions in testimony of witnesses - As done by the trial court herein (H3)

FACTS

The Appellant was tried at the High Court of Kogi State holden at Idah for the offences of criminal conspiracy, culpable homicide, hurt without provocation and mischief contrary to sections 97, 221, 246 and 307 of the Penal Code. At the end of trial, Appellant was found guilty as charged and sentenced accordingly. Not satisfied, he went on appeal to the Court of Appeal, which appeal was dismissed. He has brought this further appeal to Supreme Court.

It is the contention of the Appellant that the case against him was not proved beyond reasonable doubt for the reason that death of the alleged victim of culpable homicide was not proved as his body was not found. He also contends that the failure of the police to investigate his defence of alibi was fatal to prosecution's case and

that there were contradictions in the evidence of the prosecution that ought to have been resolved in his favour.

ISSUES FOR DETERMINATION

“1. Whether there are such material contradictions in the case of the prosecution which render it unsafe to sustain the conviction of the appellant?”

2. Whether the appellant’s defence of alibi was adequately considered and rightly rejected by the courts below?

3. Whether the prosecution proved the death of the deceased beyond reasonable doubt having regard to the facts and circumstances of this case?”

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

Murder - Conviction - Absence of corpus delicti

1. The P.W.6 was the only witness of the killing. Even without the evidence of the P.W.6, the evidence of the P.W.s 1, 2 and 3 that the group of persons who attacked him on the 29/11/98, with weapons took him away with his hand tied behind him and that he has, since that day, not been seen again alive leads irresistibly to one and only conclusion that he was dead. It is therefore inconceivable for learned counsel for the appellant to proffer the sustained argument that because there was no medical evidence certifying the death of Alhaji Umaru Bameyi the charge of culpable homicide has not been proved. The irresistible unequivocal and compelling evidence is that Alhaji Umaru Bameyi is dead, the absence of medical evidence of his death notwithstanding.

The correct legal principle therefore is that the absence of a corpus delicti notwithstanding, a person can still be convicted for murder if there is strong unequivocal and compelling evidence that the victim of the alleged crime is dead. This is the situation in this case. The result is that there is no basis for interfering with the concurrent findings of the two courts below about the death of Alhaji Umaru Bameyi. (pp. 2615 A/2616 A)

Alibi - Failure to investigate

2. It is part of the contention of learned counsel for the appellant that the trial court failed to adequately consider the alibi raised by the

appellant. That contention is not supported by the record. At pages 108-112 of the record, the defence was examined in considerable details before it was rejected.

The settled principle of law is that it is not every failure of the Police to investigate an alibi raised by an accused person that is fatal to the case of the prosecution.

It is my view that although there is no evidence of the investigation of the alibi set up by the appellant, the trial court's rejection of the plea in view of the eye witness accounts of the P.W.I, P.W.2, P.W.3 and P.W.6 cannot be faulted. (pp. 2616 B/H/2617 G)

EVIDENCE - Proof - Contradictions - Resolution by court

3. The appellant complained that by the above statement the trial court was only providing explanation for a contradiction and submitted that the duty of giving explanation for contradictions in the prosecution's case is that of the prosecution witnesses and not that of the court. I do not, with respect, agree with that opinion of learned counsel for the appellant. In making the statement, the court was only demonstrating its proper evaluation of the evidence before it. The reasoning of the trial court was consistent with the scenario created at the scene in the wake of the attack. If on seeing the assailants' approach the P.W.I and P.W.2 ran away from the house of the deceased to hide in a nearby bush, the P.W.3 would not see them on his arrival at the scene from the house of Alhaji Abu Bameyi. While the P.W.s 1 and 2 would see him from where they were hiding. There was, therefore, no contradiction of any sort between the evidence of the P.W.s 1 and 2 on the one hand and that of the P.W.3 on the other. As a matter of fact, the evidence highlighted as a major contradiction goes to lend more credence to the case of the prosecution.

There is simply no basis for any interference on the issue of contradictions. (p. 2618 D)

NOTABLE POINT OF INTEREST

TOBIJSC

Reply brief - Definition of

A Reply Brief is not one for the repetition of the arguments in the appellant's Brief. It is not a forum for emphasizing the arguments in

the appellant's Brief. On the contrary, a Reply Brief, as the name implies, replies to the respondent's Brief. In the exercise, an appellant need not repeat an argument in the appellant's Brief. If the respondent's Brief has joined issues with the appellant's Brief, as expected, the appellant need not repeat the issue joined either by emphasis or by expatiation. That is what I see in the Reply Brief. I shall therefore not summarise it here, as the contents are already comprehensively treated in the appellant's Brief. (p. 2624 E)

C REPRESENTATION

Dorothy Ufot, for the Appellant.

Joe Abrahams, Attorney-General, Kogi State (with him; A.B. Akogu, D.P.P. Ministry of Justice, Kogi State), for the Respondent.

D CASES REFERRED TO

Onubogu v. State (1974) ALL NLR 561 at 571

Ubani v. The State (2003) 12 S.C. (Pt. II) 1; (2003) 18 NWLR (Pt. 851) 224 at 245

State v. Emine (1992) 1 NWLR (Pt. 256) 658 at 671

E Felix Nwosu v. The State (Pt. 35) 348 at 349

Samuel Bozin v. The State (1985) 2 NWLR (Pt.8) 465 at 471

Ozaki v. The State (1990) 1 S.C. 109; (1990) 1 NWLR (Pt. 124) 92 at 109

F Onuchukwu & Ors. v. The State (1998) 4 S.C. 49; (1998) 4 NWLR (Pt. 547) 576 at 570

Ahmed v. The State (2001) 12 S.C. (Pt. I) 135; (2001) 18 NWLR (Pt. 746) 622 at 641-642

Kada v. The State (1991) 11-12 S.C. 1; (1991) 8 NWLR (Pt. 208)

G 134 at 144

Agbo v. The State (2006) 1 S.C. (Pt. II) 73; (2006) 6 NWLR (Pt. 977) 545 at 564

Sele v. The State (1993) 1 SCNJ 15 at 22-23

Dagayya v. The State (2006) 1 S.C. (Pt. II) 1; (2006) 1 SCNJ

H Ugwumba v. The State (1993) 6 SCNJ 217 at 225

Hausa v. The State (1994) 7-8 SCNJ 144

Udo v. The State (2006) 7 S.C. (Pt. II) 83

STATUTES REFERRED TO

Evidence Act, cap 112, L.FN, 1990 ss. 138 & 144 (1)

Penal Code Laws, cap 89, Laws of Northern Nigeria, ss. 221, 246, & 307

LEAD JUDGMENT BY TABAI JSC

B

The appellant, Okolo Ochemaje, was tried at the Idah High Court for the offences of criminal conspiracy, culpable homicide punishable with death, hurt without provocation and mischief contrary to Sections 97, 221, 246 and 307 of the Penal Code Laws, Cap 89, Laws of Northern Nigeria as applicable in Kogi State. At the end of the trial, the appellant was found guilty of the offences and accordingly convicted and sentenced to death by hanging. This was in the trial court's judgment on 19/12/2002. C

Not satisfied, the appellant went on appeal to the Court of Appeal. By its judgment on the 8/12/2005, the appeal was dismissed for lack of merit. The conviction and sentence of the trial court were affirmed. D

Still not satisfied the appellant has come on further appeal to this court. Briefs have been filed and exchanged. The appellant's Brief was prepared by Mrs. Dorothy Ufot. She also prepared the appellant's Reply Brief. The respondent's Brief was prepared by Joe A. Abrahams, Attorney-General Kogi State. E

From the grounds of appeal filed each of the parties formulated three issues for determination. Apart from differences in phraseology, they are, in substance, the same. I appreciate however, that the appellant's issues one and two contain some assumptions. With respect to issue one, learned counsel for the appellant assumed that there were material contradictions. And with respect to issue two, she assumed that the alibi raised was not investigated and therefore not rightly rejected. These are the very issues for determination by the court. It is only the court that determines whether these are material contradictions. Similarly, it is the court that determines whether the alibi raised was investigated and properly rejected. I would therefore reframe the appellant's issues one and two without the assumptions and take the issue three as formulated. These issues are:- F G H

"1. Whether there are such material contradictions in the case

of the prosecution which render it unsafe to sustain the conviction of the appellant?

2. Whether the appellant's defence of alibi was adequately considered and rightly rejected by the courts below?

3. Whether the prosecution proved the death of the deceased beyond reasonable doubt having regard to the facts and circumstances of this case?"

On the first issue of contradictions in the case of the prosecution, learned counsel for the appellant, Mrs. Ufot referred to various statements and conclusions of the Court of Appeal confirming the decision of the trial court and submitted that the court erred. According to counsel, the learned trial Judge was preoccupied with offering explanations for the unexplained contradictions and submitted that it was the duty of the prosecution and its witnesses to offer the explanations and not that of the trial court to do so. In support of this submission, learned counsel relied on Onubogu v. State (1974) 9 S.C. (Reprint) 1; (1974) ALL NLR 561 at 571, Ubani v. The State (2003) 12 S.C. (Pt. II) 1; (2003) 18 NWLR (Pt. 851) 224 at 245, State v. Emine (1992) 1 NWLR (Pt. 256) 658 at 671, Felix Nwosu v. The State (Pt. 35) 348 at 349. It was the further submission of learned counsel that the prosecution's evidence was so riddled with material contradictions and inconsistencies that it was clearly unsafe to convict upon it. Counsel referred further to the conclusion of the Court of Appeal to the effect that there were no material contradictions and submitted that the finding was perverse same, not having been supported by the evidence. She urged this court to re-evaluate the evidence in the printed record and make the appropriate finding of there being material contradictions fatal to the prosecution's case. In support of this contention, counsel 1 referred further to Felix Nwosu v. The State (supra).

Learned counsel then went in details to highlight the contradictions which she submitted, were material and therefore fatal to the prosecution's case. Learned counsel identified contradictions in the evidence of the P.W.s 1, 2 and 3 with respect to those present when the incident occurred, their evidence as to the neighbours who were present when the incident occurred, contradictions in the evidence of the P.W.s 1 and 2 as to the manner in which the deceased

was carried away on a local stretcher and the people to whom they reported the incident when they came out of hiding and argued that they are material contradictions that create doubts in the case of the prosecution. Still highlighting the contradictions in the prosecution's case, Mrs. Ufot referred to contradictions in the evidence of the P.W.I, P.W.2 and P.W.5 regarding the hospitalisation of Madam Bameyi, the wife of the deceased, contradictions in the evidence of the P.W.s 5 and 6 with respect to the statements of the P.W.6 and Chief John Okolo and submitted that the contradictions were material and their totality therefore casts doubts in the case of the prosecution and which doubts should be resolved in favour of the appellant. Learned counsel drew our attention to the principles of re-evaluation by appellate courts in Onuchukwu & Ors. v. The State (1998) 4 S.C. 49; (1998) 4 NWLR (Pt. 547) 576 at 570 and Felix Nwosu v. The State (supra) at 349 and invited us to re-evaluate the evidence of the prosecution witness to appreciate the doubts created by the contradictions highlighted and to resolve same in favour of the appellant.

The second issue relates to the alibi raised by the appellant. It was the contention of learned counsel Mrs. Ufot, that the alibi which details were given by the appellant in his very first opportunity in his statement to the Police, Exhibit 6, was found by the trial court not to have been investigated by the prosecution and submitted that the finding was itself fatal to the case of the prosecutions. Reliance was placed once more on Onuchukwu v. The State (supra). Learned counsel conceded the principle as restated in Aiguoreghian v. The State (2004) 1 S.C. (Pt. 1) 65; (2004) 3 NWLR (Pt. 860) 367, that the non-investigation of an alibi will not be prejudicial to the case of the prosecution if there is strong evidence implicating the accused person. She submitted however, that given the material contradictions in the evidence of the prosecution witnesses, there is no credible evidence that fixes the appellant at the scene of the crime. Counsel cited Onuchukwu v. The State (supra) and Dogo v. The State (2001) 1 S.C. (Pt. II) 30; (2001) 3 NWLR (Pt. 699) 192 at 206. She argued that in view of the plea by the appellant that he was nowhere near the locus criminis at the material time and the evidence of the P.Ws. 1,2,3, and 6 who identified the appellant at the scene of crime, a court minded to do substantial justice cannot believe one version in

preference to the other without investigation. Learned counsel urged us to be guided by previous decisions of this court in Nwosu v. The State (supra), Onuchukwu v. The State (supra), Samuel Bozin v. The State (1985) 2 NWLR (Pt.8) 465 at 471. Ozaki v. The State (1990) 1 S.C. 109; (1990) 1 NWLR (Pt. 124) 92 at 109. Counsel urged us to
 B resolve this issue of alibi in favour of the appellant.

With respect to the third issue for determination, learned counsel referred to Ahmed v. The State (2001) 12 S.C. (Pt. I) 135; (2001) 18 NWLR (Pt. 746) 622 at 641-642, Kada v. The State (1991) 11-
 C 12 S.C. 1; (1991) 8 NWLR (Pt. 208) 134 at 144, the Penal Code and three ingredients to sustain a charge for culpable homicide and submitted that proof of the death of the person alleged to be killed is mandatory. Learned counsel contended that the prosecution failed to establish the actual death of Alhaji Umaru Bameyi and which, she
 D submitted is fatal to the case of the prosecution. Counsel urged in conclusion that the appeal be allowed.

On his part, Joe A. Abrahams, learned Attorney-General of Kogi State proffered the following arguments. With respect to whether there were such material contradictions in the evidence of the prosecution which made it unsafe upon which the learned Attorney-General submitted that it is not all contradictions and inconsistencies that are capable of vitiating the case for the prosecution. He relied on
 E Ejeka v. The State (2003) 4 S.C. (Pt. I) 147; (2003) 4 SCNJ 161 at 168. On the distinction between a contradiction and a discrepancy
 F the learned Attorney-General referred to Agbo v. The State (2006) 1 S.C. (Pt. II) 73; (2006) 6 NWLR (Pt. 977) 545 at 564, and submitted that what the appellant highlighted as material contradictions were, at best, mere discrepancies which do not relate to the material ingredients of the offence charged. He relied on Garko v. The State (2006).
 G 6 NWLR (Pt. 977) 524, Agbo v. The State (supra) at 563-564, Igabelle v. The State (2006) 2 S.C. (Pt. II) 61; (2006) 6 NWLR (Pt. 975) 100 at 130-131, 135-136, Sele v. The State (1993) 1 SCNJ 15 at 22-23, Dagayya v. The State (2006) 1 S.C. (Pt. II) 1; (2006) 1 SCNJ. With
 H respect to the complaint by the appellant about the prosecution's failure to call certain named persons and the effect of such a failure on the prosecution's case, the learned Attorney-General submitted that there was no Rule of Law which imposes an obligation to call a

host of witnesses, contending that the prosecution has the discretion to call only such number of material witnesses to prove its case. In support of this submission, the learned Attorney-General relied on Ugwumba v. The State (1993) 6 SCNJ 217 at 225, Hausa v. The State (1994) 7-8 SCNJ 144, Udo v. The State (2006) 7 S.C. (Pt. II) 83; (2006) 15 NWLR (Pt. 1001) 179 at 193, Garko v. The State (supra).

On the issue of the alibi raised by the appellant, it was the contention of the learned Attorney-General that the trial court duly considered and rightly rejected the alibi. According to him, where the alibi raised is by its nature incapable of being investigated, it will be unnecessary to investigate it. He relied on Ukwenyi v. The State (1989) 7 S.C. (Pt. I) 64; (1989) 7 SCNJ 34 at 43. It was a further submission of the learned Attorney-General that where the evidence of the prosecution witnesses has fixed the accused person to the scene of crime, any alibi raised by him is thereby logically demolished. For this submission, he relied on Ebri v. The State (2004) 5 S.C. (Pt. II) 29; (2004) 5 SCNJ 216 at 227, Hausa v. The State (1994) 7-8 SCNJ 144, Njovens v. The State (1993) 5 S.C. 12; (1973) 5 S.C. (Reprint) 12; (1973) ACLR 244 at 261, Balogun v. Attorney-General Ogun State (2002) 2 S.C. (Pt. II) 89.

With respect to the 3rd issue of whether the prosecution proved the death of Alhaji Umaru Bameyi, it was the submission of the learned Attorney-General that death of the victim of a crime may be proved by circumstantial evidence if it leads irresistibly to the conclusion that he is dead. He relied on Egbohonome v. The State (supra), Ehot v. The State (supra) and Musa v. The State (1986) 3 NWLR (Pt. 30) 536 at 542-543. The learned Attorney-General argued that from the evidence of the P.W.s. 1, 2, 3 and 6, the irresistible conclusion is that Alhaji Umaru Bameyi is dead. He urged in conclusion that the appeal be dismissed.

In the appellant's Reply Brief, Mrs. Dorothy Ufot proffered arguments in response to the respondent's issues 1 and 3. It was the contention that the starting point in the inquiry should be the unequivocal proof that the death of the alleged victim of the crime, Alhaji Umaru Bameyi was caused by the appellant and others at large without first the establishment that he is actually dead. Learned coun-

sel pointed out that the P.W.6 is the star and only witness to the actual killing by drowning victim Alhaji Umaru Bameyi, beheading him and his remains thrown into the River Niger. She submitted however, that his testimony on which the conviction was mainly based is so rife with material contradictions that it is manifestly unreliable and untruthful
B requiring great caution before basing the affirmation of the conviction thereon, She submitted again that the contradictions in the prosecution's case were not merely minor inconsistencies and discrepancies but rather fundamental enough to create a reasonable
C doubt which should be resolved in favour of the appellant, Learned counsel then embarked on another extensive re-evaluation of the case of the prosecution with respect to contradictions and finally urged that the appeal be allowed.

I have carefully considered the evidence on record, the judgment of the trial court dated the 19th December, 2002, the judgment of the Court of Appeal dated the 8th December, 2005, and the address of counsel for the parties. Let me now deliberate on the three issues submitted to us for determination, starting with the third issue of whether the death of the victim of the alleged crime, Alhaji
D Umaru Bameyi is established.

As a starting point, let me take the liberty to commend counsel for both parties for their meticulous analysis of the facts and the useful legal submissions. They very ably carried out their duties as ministers in the temple of justice.
E

On the third issue of whether the prosecution established the death of Alhaji Umaru Bameyi, it is my respectful view that learned counsel for the appellant, Mrs. Ufot, should have spared herself, the respondent's counsel and the court, the time and space expended
F on it. It is an issue which ought not to have been raised at all, given the uncontroverted evidence on record.

The aspect of the evidence of the prosecution which is not contested by the appellant is that on the 29/11/98, an Odogu market day, a group of persons armed with dangerous weapons such as
H guns, cutlasses, rods and sticks went to the house of the deceased and attacked him with these weapons apparently to inflict injuries and/or kill him. When they did not succeed in killing him at his house, they took him away with his hands tied at his back. None of the P.W.s

1,2, and 3, knew the exact spot to which he was taken. The P.W.6 said he was drowned at the River Niger by the group of persons, beheaded and his remains thrown into the River Niger. The learned trial Judge made a finding that Alhaji Umaru Bameyi is dead. The lower court accepted that finding. ***The P.W.6 was the only witness of the killing. Even without the evidence of the P.W.6, the evidence of the P.W.s 1, 2 and 3 that the group of persons who attacked him on the 29/11/98, with weapons took him away with his hand tied behind him and that he has, since that day, not been seen again alive leads irresistibly to one and only conclusion that he was dead. It is therefore inconceivable for learned counsel for the appellant to proffer the sustained argument that because there was no medical evidence certifying the death of Alhaji Umaru Bameyi the charge of culpable homicide has not been proved. The irresistible unequivocal and compelling evidence is that Alhaji Umaru Bameyi is dead, the absence of medical evidence of his death notwithstanding.***

In *Joseph Ogundipe & Ors. v. The Queen* 14 WACA 458, the appellants were convicted of the murder of one Apalara whose body was not found. There was evidence accepted by the trial court that he was attacked at his house along Tapa Street in the night of the 3rd of January, 1953, by the appellants. There was evidence of human blood found from the place of attack to the foreshore. The absence of corpus delicti notwithstanding, the West African Court of Appeal confirmed the conviction. In *Edim v. State* (1972) 4 S.C. 160 at 162; (1972) 4 S.C. (Reprint) 141, the Supreme Court held thus:-

“It is true that the body of the deceased has not been recovered. But it is settled that where there is positive evidence that the victim has died, failure to recover his body need not frustrate conviction.”

And in *Ayinde v. State* (1972) 3 S.C. 153 at 158-159; (1972) 3 S.C. (Reprint) 142, the Supreme Court per Coker, JSC., said:-

“The law as regards the absence of a corpus delicti is that a court may still convict an accused person for murder even though the dead body cannot be found; provided that there is sufficient compelling circumstantial evidence to lead to the inference that the man had been killed.”

The correct legal principle therefore is that the absence of a corpus delicti notwithstanding, a person can still be convicted for murder if there is strong unequivocal and compelling evidence that the victim of the alleged crime is dead. This is the situation in this case. The result is that there is no basis for interfering with the concurrent findings of the two courts below about the death of Alhaji Umaru Bameyi.

Let me take the 2nd issue of the alibi raised by the appellant. ***It is part of the contention of learned counsel for the appellant that the trial court failed to adequately consider the alibi raised by the appellant. That contention is not supported by the record. At pages 108-112 of the record, the defence was examined in considerable details before it was rejected.*** At page D 110 of the record, the trial court relying on the principle in Salami v. The State (1988) 7 S.C. (Pt. III) 89; (1988) 3 NWLR (Pt. 85), on the need for particulars of an alibi considered the details of the alibi contained in Exhibit 6 and the evidence of the appellant and D.W.1 under cross-examination that there are two Allah Villages in the area E and expressed the opinion that the appellant failed to give sufficient particulars of the alibi raised.

The above notwithstanding, the trial court at page 111 held that the Police failed to investigate the alibi.

However, the court adopted the principle in Njovens v. The State (supra), the evidence of the P.W.I, P.W.2, P.W.3 and P.W.6 and Exhibits 1 and 1A, Exhibit 2, Exhibit 3 and Exhibit 6 and concluded thus:-

“Considering the evidence of these eye witnesses (P.W.I, P.W.2, P.W.3 and P.W.6), I am left in no doubt that they have properly identified the accused and other participants at the scene of crime and clearly linked them with the commission of the crime. Therefore, the evidence of alibi put forward by the accused person has a big hole. It cannot hold water; I consider the prosecution witnesses (P.W.I, P.W.2, P.W.3 and P.W.6) very credible witnesses.”

The court below accepted this finding of the trial court on the alibi raised in Exhibit 6. Can these concurrent findings on the alibi be faulted in view of the evidence on record? ***The settled principle of***

law is that it is not every failure of the Police to investigate an alibi raised by an accused person that is fatal to the case of the prosecution. In Patrick Njovens & Ors. v. The State (1973) 5 S.C 12 at 47; (1973) 5 S.C. (Reprint) 12, this court said of the principle:-

“There is nothing extraordinary or exoteric in a plea of alibi. Such a plea postulates that the accused person could not have been at the scene of crime and only inferentially that he was not there. Even if it is the duty of the prosecution to check on a statement of alibi by an accused person and disprove the alibi or attempt to do so, there is inflexible and/or invariable way of doing this. If the prosecution adduces sufficient and acceptable evidence to fix the person at the scene of crime at the material time surely his alibi is thereby topically and physically demolished....”

(Underlining mine)

In the earlier case of Hemyo Atam & Anor. v. The State SC.632/66 decided on the 11/1/67, this court applying this same principle stated:-

“Each of the appellants made a statement under caution after his arrest setting upon alibi. The Police Officer who took the statements was asked whether he had done anything to check their truth and said that he had not and it was submitted that for this reason, justice had been denied to the appellants and there should at least have been a reasonable doubt as to their guilt. There are occasions on which a failure to check on an alibi may cast a doubt on the credibility of the case for the prosecution, but in a case such as this where the appellants were identified by three eye witnesses there was a straight case of credibility and we are not able to say that the Judge’s finding of facts were unreasonable or cannot be supported having regard to the evidence.”

(Underlining mine)

In view of the principle in these cases, **it is my view that although there is no evidence of the investigation of the alibi set up by the appellant, the trial court’s rejection of the plea in view of the eye witness accounts of the P.W.1, P.W.2, P.W.3 and P.W.6 cannot be faulted.** The result is that i also resolve this issue against the appellant.

This takes me to the last issue of whether the evidence of the prosecution is so replete with material contradictions as to render it unsafe to sustain the conviction of the appellant. On this issue the learned trial Judge considered the various aspects of the contradiction highlighted by learned counsel for the appellant. The first was the contradiction between the evidence of the P.W.1 and P.W.2 as against that of the P.W.3. On this aspect of the contradiction the learned trial Judge at page 107 of the record reasoned:-

“On the issue of the evidence of P.W.1 and P.W.2 contradicting that of the evidence of P.W.3, I do not see any contradiction there. By the time P.W.3 came out from Alhaji Abu Bameyi’s house to the deceased compound on hearing the noises of people, P.W.1 and P.W.2 had already ran into hiding in the bush. That is why P.W.3 stated under cross-examination that those he saw at the deceased compound were the deceased, his wife and Itoduma people.”

The appellant complained that by the above statement the trial court was only providing explanation for a contradiction and submitted that the duty of giving explanation for contradictions in the prosecution’s case is that of the prosecution witnesses and not that of the court. I do not, with respect, agree with that opinion of learned counsel for the appellant. In making the statement, the court was only demonstrating its proper evaluation of the evidence before it. The reasoning of the trial court was consistent with the scenario created at the scene in the wake of the attack. If on seeing the assailants’ approach the P.W.1 and P.W.2 ran away from the house of the deceased to hide in a nearby bush, the P.W.3 would not see them on his arrival at the scene from the house of Alhaji Abu Bameyi. While the P.W.s 1 and 2 would see him from where they were hiding. There was, therefore, no contradiction of any sort between the evidence of the P.W.s 1 and 2 on the one hand and that of the P.W.3 on the other. As a matter of fact, the evidence highlighted as a major contradiction goes to lend more credence to the case of the prosecution.

The trial court also examined the contradictions as to the number of persons who attacked the deceased and the manner and dates of arrests and at page 108 concluded thus:-

"In this case, I see no contradiction material enough to raise an eye brow in the evidence of the P.W.1, P.W.2, P.W.3, P.W.4 and P.W.7."

On this issue of contradictions, the court below at page 182 of the record had this to say:-

"I am of the view that in the instant case, the learned trial Judge had properly adverted its mind to the contradiction complained of and came to the right conclusion. I find no sufficient reasons to interfere with his findings which I uphold."

I agree with the above view of the court below about the contradictions in the case of the prosecution. **There is simply no basis for any interference on the issue of contradictions.** The first issue of contradictions is therefore also resolved in favour of the respondent.

In the light of the foregoing considerations, I hold that the appeal is devoid of any merit and is accordingly dismissed. The judgment, conviction and sentence of the trial court and affirmed by the court below is also hereby affirmed.

TOBI JSC

This is yet another murder appeal. It arose from Okumaji in Ibaji Local Government Area of Kogi State. The name of the deceased is Alhaji Umaru Bameyi. On 29th November, 1998, at about 4.00 p.m, the deceased, his wife and their two children were in front of their house at Okumaji. The deceased was saying his prayers when a group of persons armed with dangerous weapons came to the house. The appellant was alleged to be among the group of people. According to the prosecution, they shot, stabbed and beat the deceased. On seeing that the gun shots could not penetrate the body of the deceased, they made a local stretcher and carried him away to River Niger where he was drowned and thereafter beheaded. The headless body of the deceased was thrown into the river and the severed head was taken away by one of the members of the group. Neither the severed head nor the body of the deceased was found throughout the investigation of the case and the trial of the appellant. The prosecution charged the appellant of conspiracy, culpable ho-

micide punishable with death, hurt without provocation and mischief contrary to Sections 97, 221, 246 and 327 of the Penal Code. The learned trial Judge convicted the appellant as charged. His appeal to the Court of Appeal was dismissed. He has appealed to this court.

B Briefs were filed and exchanged. The appellant formulated three issues:-

“3.1 Whether the prosecution proved its case beyond reasonable doubt having regard to the material contradictions in the evidence of all the prosecution witnesses?”

C *3.2 Whether the appellant’s defence of alibi which was not investigated by the Police was properly rejected by the lower courts?*

3.3 Whether the prosecution proved the death of the deceased beyond reasonable doubt having regard to the facts and circumstances of this case?”

D The respondent also formulated three issues:-

“3.1 Whether from the totality of the evidence adduced at the trial court, the Court of Appeal rightly confirmed and affirmed that the charge of culpable homicide punishable with death against the appellant was proved beyond reasonable doubt?”

E *3.2 Whether the lower courts considered and rightly rejected the defence of alibi put forward by the appellants in the face of credible evidence adduced by the prosecution?*

F *3.3 Whether the Court of Appeal was right in confirming and affirming that the prosecution proved the actual death of the deceased beyond reasonable doubt?”*

G Learned counsel for the appellant, Mrs. Dorothy Ufot submitted on issue No. 1 that to establish a case of culpable homicide punishable with death under Section 221 of the Penal Code, the prosecution must prove the following beyond reasonable doubt:-

*“(a) that the death of a human being has actually taken place;
(b) that such death was caused by the person being accused;
(c) that the act was done with the intention of causing such bodily injury as:-*

H *(i) the accused knew or had reason to know that death would be the probable and not only the likely consequence of his act; or
(ii) that the accused knew or had reason to know that death would be the probable and not only the likely consequence of any*

bodily injury which the act was intended to cause.”

He cited *Kada v. The State* (1991) 11-12 S.C. 1; (1991) 8 NWLR (Pt.208) 134. *Akinfe v. The State* (1988) 7 S.C. (Pt. II) 131:(1988) 3 NWLR (Pt. 85) 729, *Ahmed v. The State* (2001) 12 S.C. (Pt. I) 135; (2001) 18 NWLR (Pt. 746) 622.

Submitting that there were material contradictions in the evidence of P.W.I, P.W.2, P.W.3, P.W.4, P.W.5, P.W.6 and P.W.7, learned counsel contended that the Court of Appeal fell into grave error on the issue of contradictions in the evidence of the prosecution witnesses when they held that the learned trial Judge properly adverted his mind to the contradictions complained of and that he came to the right conclusion, consequently they found no sufficient reason to interfere with his findings. B C

Citing *Onugbogu v. The State* (1994) 9 S.C. (Reprint) 1; (1974) 1 All NLR 561, *Ubani v. The State* (2003) 12 S.C. (Pt. II) 1; (2003) 18 NWLR (Pt.851) 224, *State v. Emine* (1992) 7 NWLR (Pt.256) 671, *Nwosu v. The State* (1986) 4 NWLR (Pt.35) 348, learned counsel argued that even if the inconsistencies in the testimonies of two witnesses can be explained, it is not the function of the trial Judge to *suo motu* provide the explanation; it is the duty of one of the witnesses to furnish the explanation and thus give the defence the opportunity of testing by cross-examination the validity of the proffered explanation. Counsel took time to deal with what she regarded as contradictions in the evidence of the witnesses at pages 16 to 26 of the Brief. She cited some cases to substantiate her argument on contradictions at pages 26 to 32 of the Brief. D E F

Taking issue No. 2, learned counsel submitted that the concurrent findings of the two lower courts on the defence of *alibi* is perverse, requiring the interference of this court for eleven reasons she gave at pages 35 to 37 of the Brief. She cited *Onuchukwu v. The State* (1998) 4 S.C. 49; (1998) 4 NWLR (Pt. 547) 570, *Dogo v. The State* (2001) 1 S.C. (Pt. II) 30; (2001) 3 NWLR (Pt. 699) 192, *Bozin v. The State* (1985) 2 NWLR (Pt. 465) 471 and *Ozaki v. The State* (1990) 1 S.C. 109; (1990) 1 NWLR (Pt 124) G H

On issue No. 3, learned counsel submitted that contrary to the concurrent findings of the two lower courts, the evidence of the prosecution witnesses in respect of the death of Alhaji Bameyi fell far

short of being cogent and compelling and the same did not lead to an irresistible conclusion that Alhaji Bameyi is dead, as required by law. He submitted further that the prosecution did not prove the death of Alhaji Bameyi beyond reasonable doubt. She urged the court to allow the appeal.

- B Learned counsel for the respondent. Mr. J. A. Abrahams, learned Attorney-General of Kogi State, submitted on issue No. 1 that the onus is on the prosecution to prove all the ingredients of the offences charged beyond reasonable doubt. He cited Section 138 of the Evidence Act, 1990 and the following cases: Obiakor v. The State (2002) 6 S.C. (Pt. II) 33; (2002) 6 SCNJ 193, Ahmed , v. The State (2003) 3 ACLR 148, Anekwe v. The State (1998) 1 ACLR 426, Muka v. The State (1998) 1 ACLR 141, Ndiike v. The State (1994) 9 SCNJ 46, Igbi v. The State (2000) 2 S.C. 67; (2001) 1 SCNJ 274 and D Garko v. The State (2006) 6 NWLR (Pt. 977) 524.

- E Learned counsel submitted that although all the burden of proof on the prosecution in criminal cases is to establish its case beyond reasonable doubt, it must be recognized that not all doubt are reasonable and reasonable doubts necessarily excludes unreasonable or speculative doubt or a doubt that is not borne out ; by the particular circumstance of the case. He argued that proof beyond reasonable doubt means no more than what it says and needs not attain a high degree of probability. He cited Ahmed v. The State, supra, and Udo v. The State (2006) 7 S.C. (Pt. II) 83; (2006) 15 NWLR (Pt. 1091) 179.

- F Counsel submitted that for the case of culpable homicide punishable with death to be established, the prosecution must prove the following ingredients of the offence beyond reasonable doubt:-

- G *“(i) that the death of the deceased has actually taken place;*
(ii) that such death has been caused by the accused;
(iii) that the act was done with the intention of causing bodily injury as the accused knew or know that death would be the probable and not only the likely consequence of his act; or
H *(iv) that the accused knew or had reason to know that death would be the probable and not only the likely consequence of any bodily injury which the act was intended to cause.”*

He cited Omonga v. The State (2006) 14 NWLR (Pt. 1000) 532, Adekunle v. The State (2006) 6 S.C. 218; (2006) 14 NWLR (Pt.1000) 717. Referring to the evidence of P.W.I, P.W.2, P.W.3 and P.W.6, learned counsel submitted that the prosecution proved that the death of Alhaji Bameyi actually occurred or took place. He contended that death need not be proved by medical evidence. He cited Adekunle v. The State, supra, Ben v. The State (2006) 7 S.C. (Pt. II) 133; (2006) 16 NWLR (Pt. 1006) 582 and Aiguorehian v. The State (2004) 1 S.C. (Pt. I) 65; (2004) 1 SCNJ 65. B

Although the corpse of the deceased was not found, learned counsel submitted that Alhaji Bameyi is dead as there is enough circumstantial evidence of the death. He cited Egboghonome v. The State (1993) 5 SCNJ 1, Ehot v. The State (1993) 5 SCNJ 65, Azu v. The State (1993) 7 SCNJ 151, Archibong v. The State (2006) 5 S.C. (Pt. III) 1; (2006) 14 NWLR (Pt. 1000) 349, Igabele v. The State (2006) 2 S.C. (Pt. II) 61; (2006) 6 NWLR (Pt. 975) 100 and Udoeбре v. The State 6 NSCQR 755. C

On the issue of contradictions, learned counsel submitted that contradictions can only render the evidence of the prosecution unreliable and incapable of being acted upon when they relate to the material ingredients of the offence charged. He cited Ejeka v. The State (2003) 4 S.C. (Pt. I) 147; (2003) 4 SCNJ 161, Agbo v. The State (2006) 1 S.C. (Pt. II) 73; (2006) 6 NWLR (Pt. 977) 545, Garko v. The State, supra, Igabele v. The State, supra, Sele v. The State (1993) 1 SCNJ 15 and Dagayya v. The State (2006) 1 S.C. (Pt. II) 1; (2006) 1 SCNJ 251. He submitted that the contradictions in the case of the prosecution are not material enough to vitiate the case of the prosecution. E

On whether the prosecution ought to have called some persons mentioned by the prosecution witnesses, learned counsel submitted that there is no Rule of Law which imposes an obligation on the prosecution to call a host of witnesses and that all the prosecution needs do is to call enough material witnesses to prove its case. He cited Ugwumba v. The State (1993) 6 SCNJ 217, Hausa v. The State (1994) 7-8 SCNJ 144, Udo v. The State (2006) 7 S.C. (Pt. II) 83; (2006) 15 NWLR (Pt.1001) 179 and Garko v. The State, supra. F

Learned counsel submitted on issue No. 2 that the Court of G

Appeal rightly rejected the defence of alibi as put forward by the appellant because the defence cannot be considered in isolation from the evidence of the crime charged. He cited Esangbedo v. The State (1989) 7 S.C. (Pt. I) 36; (1989) 7 SCNJ 1, Ukwunenyi v. The State (1989) 7 S.C. (Pt. I) 64; (1989) 7 SCNJ 34, Udoebre v. The State,
 B supra, Hausa v. The State, supra, Ebri v. The State (2004) 5 S.C. (Pt. II) 29; (2004) 5 SCNJ 216, Njovens v. The State (1973) 5 S.C. 12; (1973) 5 S.C. (Reprint) 12; (1973) 1 ACLR 244 and Balogun v. Attorney-General Ogun State (2002) 2 SCNJ 196.

C On issue No 3, learned counsel submitted that the Court of Appeal was right in confirming and affirming the death of the deceased as having been proved beyond reasonable doubt. He relied on the evidence of P.W.I, P.W.2, P.W.3 and P.W.6. He urged the court to disregard the submission of counsel for the appellant, that based
 D on the evidence of P.W.4 and P.W.5 the prosecution expressed doubt as to the actual death of Alhaji Bameyi. Counsel did not see the applicability of Section 144(1) of the Evidence Act, 1990. He urged the court to dismiss the appeal.

E In her Reply Brief, learned counsel for the appellant merely repeated her arguments in the appellant's Brief. This she did by repeating the ingredients of the offence of culpable homicide punishable with death and the evidence of the prosecution witnesses, particularly those of P.W.I, P.W.2, P.W.3 and P.W.6 in respect of contradictions.
 F The issue of defence of alibi was also repeated.

A Reply Brief is not one for the repetition of the arguments in the appellant's Brief. It is not a forum for emphasizing the arguments in the appellant's Brief. On the contrary, a Reply Brief, as the name implies, replies to the respondent's Brief. In the exercise, an appellant need not repeat an argument in the appellant's Brief. If the respondent's Brief has joined issues with the appellant's Brief, as expected, the appellant need not repeat the issue joined either by emphasis or by expatiation. That is what I see in the Reply Brief. I shall therefore not summarise it here, as the contents are already comprehensively treated in the appellant's Brief.
 H

There is agreement by the parties on the ingredients of culpable homicide punishable with death. The appellant put the ingredients as follows, and I do so in repetition:-

*“(a) That the death of a human being has actually taken place;
(b) That such death was caused by the person being accused;
(c) That the act was done with the intention of causing such
bodily injury as:-*

*‘(i) the accused knew or had reason to know that death would
be the probable and not only the likely consequence of his act; B
(ii) that the accused knew or had reason to know that death
would be the probable and not only the likely consequence of any
bodily injury which the act was intended to cause. Kada v. The State
(1991) 11-12 S.C. 1; (1991) 7 NWLR (Pt. 208) 134 at 144 paras. C
E-H.”*

The respondent put the ingredients in similar language as follows and again, I do so in repetition:-

*“(i) That the death of the deceased has actually taken place;
(ii) That such death has been caused by the accused; D
(iii) That the act was done with the intention of causing death
or that it was done with the intention of causing bodily injury as the
accused knew or had reason to know that death would be the probable
and not only the likely consequence of his act; or
(iv) That the accused knew or had reason to know that death E
would be the probable and not only the likely consequences of any
bodily injury, which the act was intended to cause. See the cases of
Ornonga v. State (2006) 14 (Pt. 1000) NWLR 532 at 551, Adekunle
v. The State (2006) 6 S.C. 218; (2006) 14 NWLR (Pt.1000) 717 at F
736-737.”*

I entirely agree with both counsel. I accordingly endorse the above ingredients.

The thrust of the case of the appellant is that there were material contradictions in the evidence of the prosecution witnesses. She G dealt with the issue in great detail and scholarly too. The two courts equally dealt with the issue in most admirable detail. I think I should pause here to quote what the courts said on the issue of contradictions, and I will do so in some detail.

The learned trial Judge examined the evidence of the witnesses H at page 107 of the record: -

*“On the issue of the evidence of P.W.1 and P.W.2 contradicting
that of the evidence of P.W.3, I do not see any contradiction there. By*

the time P.W.3 came out from Alhaji Abu Bameyi house to the deceased compound on hearing the noises of people, P.W.1 and P.W.2 had already ran into hiding in the bush. That is why P.W.3 stated under cross-examination that those he saw at the deceased compound were the deceased, his wife and Itoduma people.

B *On the contradiction regarding the manner and dates, the accused, was said to have been arrested, it is clear from the evidence of P.W.4 and P.W.7 all Policemen who investigated the case that the accused person was arrested on two different occasions and from different places including the one along the road side and the other*
 C *when the chief of the place assembled them for Police to re-arrest them after they were first released on bail, pending further investigation."*

He then examined the law of contradictions at pages 107 and
 D 108 of the record:-

"Let me state clearly that in law of evidence, a piece of evidence is contradictory to another when it asserts or affirms the opposite of what the other asserted and not necessarily where there are some discrepancies in details between them. I refer to the case of
 E *Babatunde v. The State (1969) 1 NMLR 227, Gabriel v. The State (1989) 12 S.C. 129; (1989) 5 NWLR (Pt. 112) 457 and Attah v. The State (1993) 4 NWLR (Pt. 288) 403.*

While contradiction between two pieces of evidence goes to the essentiality of something being or not being, discrepancy does
 F *not. The nature of contradiction which will avail an accused person must be contradiction in the evidence of the prosecution witnesses which are substantial and leave the evidence of the prosecution in some confusion and disarray which the court considers unsafe to*
 G *convict the accused person in the light of the contradiction. Where contradictions are not material or substantial, as in this case to the issue before this court they will not avail the accused"*

The learned trial Judge then concluded admirably thus:-

"In this case, I see no contradiction material enough to raise an
 H *eyebrow in the evidence of P.W.1, P.W.2, P.W.3, P.W.4 and P.W.7."*

The Court of Appeal took over from where the learned trial Judge stopped. That court also did not find any material contradictions in the evidence of the witnesses for the prosecution. The Court

of Appeal stated the law of contradiction at pages 178 and 179 of the record:-

"It is trite law that where there are material contradictions and inconsistencies in the evidence of the prosecution, the accused is entitled to be given the benefit of doubt so created as a result of the inconsistencies. See Onubogu v. State (1974) 9 S.C. 1; (1974) 9 S.C. (Reprint) 1, Nwabueze v. State (1988) 7 S.C. (Pt. II) 157; (1988) 3 NWLR (Pt. 86) 16.

However, it should be noted that it is not in all cases that where there are discrepancies or contradictions in the case of the prosecution that an accused person will be entitled to an acquittal. It is only when such discrepancies or contradictions are on a material point or points in the prosecution case that they create doubt in its case that the accused is entitled to benefit therefrom. Where the contradictions in the evidence of the prosecution raise no doubt as to the guilt of the accused as in this case, the only duty of the trial court is to observe and pronounce on them as such. See Okoniji v. State (1987) 1 NWLR (Pt. 52) 659, State v. Aigbangbee (1988) 7 S.C. (Pt. I) 96; (1988) 3 NWLR (Pt. 84) 548, Onubogu v. State (1974) 9 S.C. 1; (1974) 9 S.C. (Reprint) 1, 31, Akpuenya v. State (1976) 11 S.C. 269; (1976) 9-10 S.C. (Reprint) 246."

Relating the law to the facts, the Court of Appeal said at pages 179 and 180 of the record:-

"A careful examination of what learned counsel for the appellant considered to be contradictions reveals that they are only so in his own personal assessment. Take for instance the evidence of P.W.s 1, 2 and 6 where he argued that while P.W.s 1 and 2 said that a local stretcher was made by the accused persons and the deceased was carried away on it, while P.W.6 said he saw the deceased among the accused persons."

I am in grave difficulty to disagree with the two courts. Their findings are not perverse. They are clearly borne out of the record and the appellate Judge that I am, the law will not allow me to interfere and I will therefore not interfere. Contradictions definitely arise in evidence of witnesses in court. That explains the human nature and the humanity in witnesses. Although witnesses see and watch the same event, they may narrate it from different angles, in their indi-

vidual peculiar focus, perspective or slant. This does not necessarily mean that the event they are narrating did not take place. It only means most of the time that the event took place, but what led to the event was given different interpretations, arising from the senses of sight and mind dictated by their impressions and idiosyncrasies. That is why the law says that contradictions which are not material or substantial will go to no issue. The main interest of the court is that the witnesses are in union or unison as to the happening of the event, but give different versions in respect of the peripheral surrounding the event, in our context, the event is the murder of Alhaji Bameyi and where P.W.1 and P.W.2 were on the day of the incident. The number of persons who participated in the murder and the date and manner of the arrest of the appellant, are merely peripheral. Talking seriously, what has date of arrest of the appellant to do with the act of murder committed by the appellant?

And that takes me to the defence of alibi. The expression, alibi, simply means elsewhere. By the defence, the accused claims or says that he was in a place other than the scene of crime. It is the case of the appellant that failure to investigate the defence of alibi by the prosecution was fatal to the case of the prosecution.

Taking the issue, the learned trial Judge said at pages 110 and 111 of the record: -

“..... The particulars supplied should be such that if accepted, the conclusion should be that the accused could not have been both at the place where the offence was committed and this other place where he claims to be. In his evidence-in-chief and his statement to Police, Exhibit 6 the accused stated that he visited Idichi (D.W.I) at Allah but failed to give detailed particulars of which of the two Allahs he visited. I wish to recall that the accused person under cross-examination even admitted that there are two Allah villages in the area, and even named them as "Allah Okwuje" and "Allah Ofukpoju." The witness he said, he visited (D.W.I) confirmed that there are two Allah villages in the area and also named them as Allah Okwuje and Allah Ofukpoju and concluded that she lives at Allah Okwuje. With this, I am strongly of the opinion that the accused has failed to give particulars of where he was at the particular time when the offence was committed. Let me leave that yet.

...It is not in all cases where the Police failed to investigate an alibi that an accused person is entitled to an acquittal. For the story of alibi may break down under cross-examination or the accused may be unable to produce cogent evidence in support of alibi.

....Considering the evidence of these eye-witnesses, (PW.1, PW.2, PW.3 and PW.6) I am left in no doubt that they have properly identified the accused and other participators at the scene of crime and clearly linked them with the commission of the crime. Therefore, the evidence of alibi put forward by the accused person has a very big hole. It cannot hold water. I consider the prosecution witnesses (PW.1, PW.2, PW.3 and PW.6) very credible witnesses...

Agreeing with the decision of the learned trial Judge, the Court of Appeal said at page 186 of the record:-

"I do agree with the learned trial Judge that the defence of alibi put forward by the appellant has a very big hole in the light of the accused's failure to give detailed particulars and also considering the contradiction in the evidence of the defence witness."

I am in entire agreement with the two courts. A defence of alibi, to be worthy of investigation should be precise and specific in terms of the place that the accused was and the person or persons he was with and possibly what he was doing there at the material time. The appellant, in his alibi, said:-

"On the day i was alleged to be among the persons that kidnapped Alhaji Umaru, I was at Ala village with Idichi, 'F' my relation."

The learned trial Judge pointed out that there are two Allah villages in the area, a fact the appellant admitted under cross-examination. Unfortunately, appellant did not say which of the villages he was at the material time. He did not even say what he was doing with his relation, Idichi, 'F'

It is not the law that the Police should be involved in a wild goose chase for the whereabouts of an accused person at the time the crime was committed. No. That is not the function or role of the Police. The accused must give specific particulars of where he was at the material time to enable the Police move straight to that place to carry out the investigation required by law. That was not the situation in this case.

The above apart, investigation is not a necessity if the evidence

unequivocally points to the guilt of the accused person, either in the evidence of the witnesses or under cross-examination by the evidence of the accused or his witnesses. The learned trial Judge relied on the evidence of P.W.1, P.W.2, P.W.3 and P.W.6. I also rely on the evidence of the witnesses. I am of the view that the defence of alibi is a mere farce and clearly an afterthought. It fails. After all a trial Judge will not take seriously a defence of alibi which is porous and cosmetic. That is the way I see appellant's defence of alibi.

I now take the final issue and it is whether the prosecution proved the death of Alhaji Bameyi beyond reasonable doubt. Both the learned trial Judge and the Court of Appeal held that the prosecution proved the death of Alhaji Bameyi beyond reasonable doubt. I agree with the two courts. The evidence of the witnesses clearly proved the death of Alhaji Bameyi beyond reasonable doubt and also that the appellant was part of the killers.

Learned counsel for the appellant urged this court to disbelieve the evidence of P.W.1 and P.W.2 on the ground that they were the children of the deceased. It is not the law that, evidence of children of a deceased should not be believed merely because of their relationship with the deceased. If the evidence is credible, a trial Judge cannot disbelieve the evidence merely because the deceased was their father.

Counsel also submitted that the failure of the prosecution to recover the body of Alhaji Bameyi is prejudicial to their case. With respect, I do not agree with her. An accused can be convicted on the evidence of eye witnesses of the death of a person, even if the body is not found. If the position taken by counsel should be the law, then most murderers will find a way to destroy the body or hide it away from the sight of the Police and other persons. Like in this case, the headless body of Alhaji Bameyi was thrown into the River Niger.

It is in the light of the above and the more detailed reasons given by my learned brother, Tabai, JSC., in his judgment that I too dismiss the appeal.

H

OGUNTADE JSC

I have had the advantage of reading in draft a copy of the

leading judgment by my learned brother, Tabai, JSC. The two courts below have in my view given thought and attention to the germane issues in this case. They came to the conclusion that the prosecution established the case against the appellant beyond reasonable doubt. It is my firm view that the two courts below were right in their conclusion. B

I would also dismiss this appeal as unmeritorious as in the leading judgment of my learned brother, Tabai, JSC. I affirm the judgments of the two courts below.

C

MUKHTAR JSC

The appellant as an accused in the High Court of Justice of Kogi State was convicted of the offences of conspiracy, culpable homicide punishable with death, hurt without provocation and mischief D contrary to Sections 97, 221, 246 and 327 of the Penal Code as follows:-

“Having been satisfied that the prosecution have proved their case beyond reasonable doubt as required by law, I find the accused persons guilty of the offences charged and he (sic) is convicted accordingly.” E

The appellant appealed to the Court of Appeal which confirmed the judgment of the trial court. Dissatisfied, the appellant has appealed to this court on four grounds of appeal. In his Brief of Argument before this court the following issues were raised for determination:- F

“1. Whether the prosecution proved its case beyond reasonable doubt having regard to the material contradictions in the evidence of all the prosecution witnesses? G

2. Whether the appellant’s defence of alibi which was not investigated by the Police was properly rejected by the lower courts?

3. Whether the prosecution proved the death of the deceased beyond reasonable doubt having regard to the facts and circumstances of this case?” H

The issues raised in the respondent’s Brief of Argument are virtually the same as the above issues. I will by way of emphasis highlight issues (2) and (3) supra, starting with issue (1). The quarrel of

learned counsel for the appellant in this issue is the rejection of the defence of alibi by the learned lower courts, without a proper investigation of the alibi. According to learned counsel, the appellant raised the defence of alibi at the earliest opportunity as is contained in his caution statement to the Police, Exhibit 6, an excerpt of which reads:-

B *"I was not aware about the kidnapping of the said Alhaji Umaru. I was not at the village (when) for the past 13 days I returned (9) nine days ago..... I know that David had a pending case of land dispute with John Okolo 'M,' the Ichalla Achayiwo, the Chief of Ichalla-Ibaji*
 C *..... I also do not know whether the land (sic) in the cause of the dispute between John Okolo and David Nwadike..... On the day I was alleged to be among the persons that kidnapped Alhaji Umaru, I was at Allah village with it Idichi (sic Didi) 'I' my relation. I went there to help her plant pepper and returned now about nine days ago I*
 D *don't know anything about this allegation. That is all."*

In the course of cross-examination during the trial, the appellant said inter alia:-

E *"I cannot tell when I went to Allah Okweje. I cannot say the month either....."*

The said Idichi mentioned above gave the following evidence inter alia:-

F *"Some time in November, 1998, the accused came to me at Allah to help weed grass in my pepper farm..... The accused person spent thirteen days with me before I heard the news that he killed somebody."*

It is instructive to note that none of the defence witnesses, either the appellant or Idichi gave the exact date the appellant visited Allah and returned to his village from Allah. No sufficient particulars
 G to solidify the defence of alibi raised by the appellant was supplied by him. In a situation like this, detailed particularisation of the alibi is never too much, for to clarify and sustain the defence, the accused must give specific details. It is after such defence has been properly
 H pleaded that investigation may be warranted. As I have said earlier on the appellant's statement on alibi in Exhibit '6' was bereft of such specifics and particulars, so the necessity of investigation was obviated. See *Udoebre & Ors v. The State* 6 NSCQR 755.

Besides, the evidence of the prosecution witnesses were so over-

whelmingly specific and unequivocal on the issue of identifying the appellant as one of the persons that was present at the scene of the crime, and as those that caused the death of the deceased by his acts. In the circumstances, the rather vague nature of the plea raised in the appellant's voluntary statement to the Police and equally vague evidence in court is not sufficient or credible enough to sustain the alibi plea raised by him, and so the learned trial Judge and the court below were right to reject it. Authority abound that to succeed in such a defence that may lead to an acquittal the accused must support and substantiate the defence with unassailable credible evidence that is not riddled with holes. See R. v. Rooney 1936 7 CP 517, and Sowemimo v. The State (2004) 4 S.C. (Pt. II) 20; (2004) 11 NWLR (Pt. 885) page 515. B C

The lower court was to my mind correct when it rejected the defence thus:- D

"It is settled law that when an accused raises defence that his alibi was not investigated, he can still be convicted if there is stronger and credible evidence before the court which falsified the alibi. See Aiguoreghian v. State (2004) 1 S.C. (Pt.) 65; (2004) 3 NWLR (Pt. 860) p. 367....." E

I do agree with the learned trial Judge that the defence of alibi put forward by the appellant has a very big hole in the light of the accused's failure 'to give detailed particulars and also considering the contradiction in the evidence of the defence witnesses....." F

Issue No. (3) supra is on the element of proof in criminal cases which I would say is governed by Section 138 of the Evidence Act, Cap. 112, 1990, Laws of the Federation of Nigeria. This provision stipulates thus:-

"138. (1) If the commission of a crime by a party to any proceeding is directly in issue in any proceeding, civil or criminal; it must be proved beyond reasonable doubt.

(2) The burden of proving that any person has been guilty of a crime or wrongful act is, subject to the provisions of Section 141 of this Act, on the person who asserts it, whether the commission of such act is or is not directly in issue in the action.

(3) If the prosecution prove the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is

shifted on to the accused.”

A careful perusal of the evidence of the prosecution witnesses does not leave me in any doubt that the ingredients laid down by a plethora of authorities to successfully establish the guilt of the crime of culpable homicide punishable with death have been proved by the prosecution. These ingredients are:-

“1. That the death of the deceased has taken place;

2. The death was caused by the act of the accused;

3. The act was done with the intention of causing death or that it was done with the intention of causing bodily injury as the accused knew that death would be the probable and not only likely consequence of his act.”

The above ingredients were considered in the cases of Ahmed v. The State (2001) 12 S.C. (Pt.I) 135; (2001) 18 NWLR (Pt.746) page 641, Kada v. The State (1991) 11-12 S.C. 1;(1991) 8 NWLR (Pt. 208) page 134.

The evidence of PW.6 in particular, and PW.s 1, 2 and 3 definitely assisted the court in arriving at the conclusion that the guilt of the appellant has been proved in accordance with the requirements of Section 138 of the Evidence Act supra. Proof beyond reasonable doubt have in a number of cases been described as not being beyond the shadow of doubt. See Miller v. Minister of Pensions (1947) 2 All ER 377, and Alkalezi v. The State (1993) 10 LRCN page 264.

In the light of this I resolve this last issue in favour of the respondent and dismiss grounds (1) and (4) of appeal tied to it. I have had the advantage of reading in advance the leading judgment delivered by my learned brother, Tabai, JSC. I agree entirely with him that the appeal is devoid of any merit and deserves to be dismissed.

I also dismiss the appeal and affirm the conviction of the appellant.

ADEREMI JSC

This is an appeal against the judgment of the Court of Appeal (Abuja Division) delivered on 21st December, 2005, wherein the conviction and sentence of the appellant by the trial court (the High Court of Justice, Idah, Kogi State) in a judgment delivered on the 19th of December, 2002, were affirmed.

Initially, nine persons including the appellant were charged before the Chief Magistrate Court, Lokoja on a four count charge. But before investigation was completed, all the accused so charged had disappeared except the appellant and they are yet to be re-arrested. Suffice it to say that on an official tour of Kotunkarfe Prison, the Chief Judge of Kogi State had ordered the release of all the accused persons including the appellant on bail and further ordered the Police to conduct an immediate and thorough investigation into the case. It was only the appellant that was re-arrested as all the other suspects had disappeared and have not been re-arrested. The Chief Legal Officer therefore decided to continue with the prosecution of the appellant. He was accordingly charged with four offences in the following terms: -

"(1) Conspiracy with other persons still at large to it commit offences contrary to Section 97 of the Penal Code. D

(2) Causing the death of one Alhaji Umaru Bameyi of Okumaji village in Ibaji Local Government contrary to Section 221 of the Penal Code.

(3) Voluntarily causing bodily pains to one; Ramatu Umaru by beating her, leading to her being hospitalised contrary to Section 246 of the Penal Code. E

(4) Causing destruction to the properties of Alhaji Umaru Bameyi, his wives and children all at Okumaji village in Ibaji Local Government Area contrary to Section 327 of the Penal Code." F

The case proceeded to trial at the court of first instance with the prosecution calling seven witnesses. The accused/appellant also testified and called two witnesses. After taking the addresses of both counsel and the prosecution respectively, the learned trial Judge, in a reserved judgment delivered on the 19th of December, 2002, found the accused/appellant guilty of the offences charged and accordingly sentenced him to death. Dissatisfied with the judgment, the appellant appealed to the court below (Court of Appeal - Abuja Division) which as I have said, affirmed the conviction and sentence of the appellant.

Briefly, the facts of the case are as follows:- H

On 29th November, 1998, at about 4.00 p.m, the deceased (one Alhaji Umaru Bameyi) and his wife - Madam Ramatu Bameyi and two of their children who later turned out to P.W.I and P.W.2

respectively were in front of their house at Okumaji in Ibaji Local Government Area of Kogi State. The deceased was said to be performing ablution when a group of persons, among whom was the appellant, all armed with dangerous weapons, came to their house; they shot, stabbed and beat the deceased. When they observed that the gun shots, the cutlasses and knives would not penetrate the body of the deceased, they made a local stretcher with which they carried the deceased away to River Niger where he was drowned. They (these people) had earlier tied the hands and legs of the deceased before carrying him away on the stretcher. They (the suspects including the appellant) later brought out the drowned body of the deceased from the river, beheaded him and finally threw his headless (deceased) body into the river. Perhaps, it is necessary to say that neither the severed head nor the body of the deceased was found throughout the investigation of the case and of course the trial of the appellant. It should be noted that the appellant set up the defence of alibi.

As I have said, the court below affirmed the conviction and the sentence of the appellant. Dissatisfied with the judgment of the court below, the appellant appealed to this court via a Notice of Appeal dated and filed on the 9th of December, 2005. The said notice carries four grounds of appeal. Distilled from the said four grounds of appeal are three issues for determination and as set out in the appellant's Brief of Argument filed on 5th July, 2007, are in the following terms: -

- "(1) Whether the prosecution proved its case beyond reasonable doubt having regard to the material contradictions in the evidence of all the prosecution witnesses?"*
- "(2) Whether the appellant's defence of alibi which was not investigated by the Police was properly rejected by the lower courts?"*
- "(3) Whether the prosecution proved the death of the deceased beyond reasonable doubt having regard to the facts and circumstances of this case?"*

On its part, the respondent who raised three issues for determination by this court, and as set out in its Brief of Argument dated 31st of January, 2008, as filed on 6th February, 2008, they are as follows:

- "(1) Whether from the totality of the evidence adduced at the*

trial court, the Court of Appeal rightly confirmed and affirmed that the charge of culpable homicide punishable with death against the appellant was proved beyond reasonable doubt?

(2) Whether the lower courts considered and rightly rejected the defence of alibi put forward by the appellant in the face of credible evidence adduced by the prosecution? B

(3) Whether the Court of Appeal was right in confirming and affirming that the prosecution proved the actual death of the deceased beyond reasonable doubt?"

When this appeal came before us on the 3rd of April, 2008, C for argument, Mrs. Dorothy Ufot, the learned counsel for the appellant referred to, adopted and relied on her client's Brief of Argument dated 2nd July, 2007, but filed on 5th July, 2007 and the Reply Brief dated 1st April, 2008, but filed on the 2nd April, 2008; she urged that the appeal be allowed. Mr. Abrahams, learned counsel for the respondent referred to, adopted and relied on his client's Brief filed D on 6th February, 2008, he urged that the appeal be dismissed.

I have had a careful reading of the issues raised by the parties for determination by this court and it is my view that issues Nos. 1 and 3 on the appellant's Brief can be taken together, along with issues E Nos. 1 and 3 on the respondent's Brief; while issue No. 2, on each of the two Briefs shall thereafter be taken together. On issue No. 1, the appellant having reviewed the evidence led by the prosecution, submitted that the court below fell into a serious error of law on F the issue of contradictions as they occur in the evidence led when that court held that the learned trial Judge properly adverted his mind to those contradictions and therefore came to the wrong conclusion, when it was submitted, there were a lot of inconsistencies in the testimonies of P.W.1, P.W.2 and P.W.3 on the one hand and also G material contradictions in the evidence of P.W.5 and P.W.6 on the other hand and while relying on the decisions in such cases as (1) Onubogu & Anor. v. The State (1974) 9 S.C. (Reprint) 1; (1974) All NLR 561, (2) Ubani v. The State (2003) 12 S.C. (Pt. II) 1; (2003) 18 NWLR (Pt.851) 224 and (3) Nwosu v. The State (1986) 4 NWLR H (Pt. 35) 348. He urged that this issue be resolved in favour of the appellant. On issue No. 3 which raises the question as to whether the prosecution proved the death of Alhaji Umaru Bameyi beyond rea-

sonable doubt; while calling in support of his contention, he submitted that the evidence led by the prosecution failed to substantiate the three ingredients of offence of culpable homicide punishable with death. On the other hand, in treating issues Nos 1 and 3 on its Brief, the respondent after reviewing the evidence led, submitted that the prosecution has proved the death of Alhaji Umaru Bameyi beyond all reasonable doubt. Evidence of P.W.6 gives the destination to which the deceased (Alhaji Umaru Bameyi) was finally taken to; adding that the combined effect of the testimonies of P.W.I, P.W.2 and P.W.3 on one hand and that of P.W.6 proved that the death of Alhaji Umaru Bameyi took place and that by a plethora of judicial decisions, death need not be proved by medical evidence before the court can safely conclude that the death of the deceased occurred. While placing reliance on such judicial decisions the like of Buba v. The State (1994) 7 SCNJ 472 and Igbele v. The State (2006) 2 S.C. (Pt. II) 61; (2006) 6 NWLR (Pt.975) 100. Advancing its argument, the respondent submitted that it is not all contradictions and inconsistencies that are capable of vitiating the case of the prosecution while calling in support the decision of this court in Ejeka v. The State (2003) 4 S.C. (Pt. I) 147; (2003) 4 SCNJ 161. While dovetailing its argument into issue No.3, the prosecution in its Brief, submitted that from the evidence led, Alhaji Umaru Bameyi is dead, the fact that the body of the deceased was not found did not mean that he was not dead. The evidence of P.W.I, P.W.2, P.W.3 and P.W.6 is overwhelming on the issue of the death of Alhaji Umaru Bameyi adding that death can, in law, be proved by circumstantial evidence while relying on the decisions in (1) Azu v. The State (1993) 7 SCNJ 151, (2) Egbohonome v. The State (1993) 5 SCNJ and (3) Amusa v. The State (1986) 3 NWLR (Pt.30) 536. Finally, on this issue, the prosecution submitted that the provisions of Section 144 (1) of the Evidence Act, 1990, (as amended) do not apply to the present case, as, according to it, that section envisages a situation where a person disappears under a normal situation whereas in the instant case, the deceased was captured by the appellant and his partners in crime after using lethal weapons on him - therefore the deceased was last seen alive with the appellant and his co-travellers in crime - evidence of P.W.6 is very germane on this issue, it was submitted.

On issue No. 2 relating to the defence of alibi the appellant in his Brief, after reviewing the evidence led on this point, submitted that the concurrent findings of the court below and the trial court thereon are perverse for the reasons that the defence was set up at the earliest opportunity, it (the defence) was never investigated by the prosecution; the case of Onuchukwu v. The State (1998) 4 S.C. 49; (1998) 4 NWLR (Pt.547) 576, was relied upon. It was urged on us, through the Brief of Argument, that we should hold that the defence of alibi was wrongly rejected by the lower courts and that the conviction and death sentence of the appellant be set aside and the appellant be discharged and acquitted. On a similar point issue No. 2 on the respondent's Brief, it was submitted that the defence of alibi put forward was rightly rejected by the two courts below as the defence cannot be considered in isolation from the evidence of the crime charged and having regard to the nature of this defence as put forward by the appellant, it was incapable of being verified because of the improbability of the facts and therefore, in law, it was further submitted, it was not necessary to investigate it, reliance was placed on the decisions in (1) Esangbedo v. The State (1989) 7 S.C. (Pt. I) 36; (1989) 7 SCNJ 1, (2) Ukwunenyi v. The State (1989) 7 S.C. (Pt. I) 64; (1989) 7 SCNJ 34. It was again argued that the evidence led by the prosecution has fixed the accused person at the scene of crime thus demolishing, logically, the defence of alibi: the decisions in (1) Ebri v. The State (2004) 5 S.C. (Pt. II) 29; (2004) 5 SCNJ 216, (2) Balogun v. A-G Ogun State (2002) 2 S.C. (Pt. II) 89; (2002) 2 SCNJ 196, were relied upon. The respondent finally urged that the appeal be dismissed.

I shall start the consideration of this appeal by saying that it is a well settled principle of our law that to secure a conviction on a charge of murder, the prosecution must establish: -

"(1) that the deceased had died;

(2) that the death of the deceased had resulted from the act of the appellant; and

(3) that the act or omission of the accused which caused the death of the deceased was intentional with the full knowledge that death or grievous bodily harm was its probable consequences."

See (1) Nwaeze v. The State (1996) 2 NWLR (Pt.428) 1 and (2)

Daniels v. The State (1991) 8 NWLR (Pt.212) 713. The three ingredients stated above must co-exist and where one of them is absent or tainted with some doubt, the charge is not proved. See (1) Obudu v. The State (1991) 6 NWLR (Pt.198) 433 and (9) Ogba v. The State (1993) a NWLR (Pt. 222) 164. I shall now proceed to examine the evidence led by the prosecution in proof of the charge. P.W.I - Mohammed Abu Bameyi, the son of the deceased, (Alhaji Umaru Bameyi) in his testimony-in-chief said he saw some people carrying dangerous weapons coming towards their house; among them was the 5th accused/appellant. He and his senior brother had to run away and hid themselves, from their hiding point they were able to see what was going on at the scene and also heard exchange of words; one David Nwadike (1st accused) said to the deceased that they were meeting that day and he (1st accused) charged at the deceased and shot him with his (1st accused) gun but the shot could not penetrate his body; he (1st accused) tried in vain, to cut the deceased with his knife. The others joined in stabbing the deceased with their knives to no avail. They then tied the hands of the deceased; at this point, their mother, the wife of the deceased stood up and started begging them; they instantly beat her up while the accused/appellant beat her with a big stick and she fell down. They pushed the deceased into a local stretcher and carried him away. He was not shaken under cross-examination. P.W.2 - Yahaya Umaru another son of the deceased and P.W.3 - one Mulano Ogundare who was living in the house of Alhaji Abu Bameyi, the brother of the deceased all corroborated the evidence of P.W.I in all material respects and they were not shaken under cross-examination.

P.W.6 - one William Ogwu - an independent witness said in his evidence-in-chief inter alia: -

*“On the 29/1 1/98, at about 5.00 p.m I was travelling from Ogwo Ojibo to Ottan when I heard the noises of people. I could hear someone saying ‘Me ya gbami O’ meaning ‘Come and rescue me’. I then hid inside the bush. I was hiding in the bush when I saw Alhaji Umaru Bameyi with his two hand (sic) tied to the back and with Itoduma people.....
While I was hiding at the place the people of Itoduma I mentioned descended down the River Niger. I saw when Alhaji Umaru Barneyi*

knelt down pleading with them not to kill him; as Alhaji Umaru Bameyi was pleading with them to spare his life one of them advised that they should leave the man alone as he was pleading passionately but they threatened that he should take time also they kill him along with Alhaji Umaru Bameyi. After that they threw Alhaji Umaru Bameyi into the river and started pressing him down the river so as to drown him. After he was drowned he was brought down from the river, it was Emmanuel Emaloka Egbu that cut off his head saying he will use the head as a cup to drink with it. After that the people threw the remaining body down into the river."

Again, the evidence-in-chief of P.W.6 was not shaken as to its substance under cross-examination. On the face of the uncontradicted evidence of the prosecution witnesses, particularly the very relevant ones which I have set out above, it is my view that the three ingredients that ought to be established have been proved beyond reasonable doubt. I am not unmindful of the fact that the appellant had set up a defence which is a plea of alibi a latin word meaning 'Elsewhere.' It is plea by a person accused of an offence that he was 'elsewhere' that having regard to the time and place when and where he is alleged to have committed the offence, he could not have been present. Indeed, the plea of alibi postulates the physical impossibility of the presence of the accused at the scene of his presence at another place.

What then is the evidence led by the accused/appellant to substantiate this defence?

In his testimonies, the accused/appellant said inter alia: -

"About three years ago, I was invited by Didi (D.W.I) to Allah to work for her. I went to Allah to help Ididi (sic) (D.W.I) to cultivate pepper, sweet potato and okro. I spent thirteen days in Allah and after three days I heard that they were arresting people in our village at Itoduma. I heard that they were arresting the people of Itoduma because they killed someone. I do not know the person they said was killed. It was after nine days I heard this news of the death of the person that I returned home. It was after I returned home that I heard that it was Umaru Bameyi that was killed. The following day at about 4 p.m that I returned home I saw some Policemen at the palace of our Chief and they said I am among those who kill (sic) Alhaji

Umaru Bameyi. It was the Police who said so. They said I should be arrested and brought down. The Chief advised me to follow them so I followed them down to Lokoja. At Lokoja I made statement to the Police I told the Police that I travelled to Allah and that I was not in. I mentioned the name of Ididi (sic) (D.W.1) as the person I visited at Allah. I was not taken to Allah to see Didi (D.W.I) in the course of the/ their investigation. I did not hit any Ramatu Umaru at all. I did not kidnap Alhaji Umaru neither did I kill him. I did not see anyone involved in the kidnapping and killing of Alhaji Umaru Bameyi. ”

C D.W.1 - Didi Akor the person whom the appellant said he stayed with testified thus: -

“Sometime in November, 1998, the accused came to me at Allah to help weed grass in my pepper (sic) farm..... It was at Egah market day that the accused person accused me D While the accused person was with me they said he killed a person but he did not kill any person. The accused person spent thirteen days with me before I heard the news that he killed somebody.

E *As at the time I heard of the news of the death of Alhaji Umaru Bameyi, the accused person had already spent thirteen days with me.”*

The above is the evidence of alibi. Suffice it to say that in the statement of the appellant to the Police, he described the D.W.1 as his relation. I have given the legal definition of the defence of alibi above. I wish to further add to that definition by saying that the burden on the accused to establish his alibi is not as heavy as that which lies on the prosecution in criminal cases. The burden is one which is to be discharged by preponderance of evidence of probability as in a civil case. The burden is on the prosecution to disprove the alibi and it can only be disproved by adducing evidence which establishes beyond reasonable doubt that the accused was not absent from the scene of the crime as alleged. It is true in law, that once a defence of alibi is raised, the Police have a standing duty to investigate it. I pause H to say that the evidence of P.W.I and P.W.2 - both sons of the deceased - and the evidence of D.W.1 - a relation of the accused/appellant - must be treated with caution having regard to the relationship which I have just pointed out. But PW.3 and PW.6 are independent

witnesses. On the testimonies of these witnesses, the trial Judge had this to say:-

"PW.1, PW.2 and PW.3 only saw from their hiding place how the deceased was attacked with dangerous weapons, became unconscious and was carried away by the attackers to a place unknown to them and has since then not been seen. It was PW.6, William Ogwu who said he met the attackers on his way between Ogwo Ojibo and Allah and went into hiding but saw how the deceased was drowned and subsequently beheaded and his corpse thrown into the river.

Considering the evidence of PW.1, PW.2, PW.3 and PW.6 all eye-witnesses account to the commission of the crime, I am left with no other impression that the accused and all others involved have been properly identified as not only present "at the scene, but actually participated in the commission of that offence. Their evidence together with all others to the commission of the offence is clear and strong. Their evidence is believed on that point.

There can be no greater manifestation of the intention to kill or cause grievous bodily harm than the use of guns, sticks, rods, matchets on the deceased person and followed by plunging him into the river and drowning him and cut off his head and dropped the remaining of him back into the water. Death has therefore resulted."

On the evidence led by the accused in proof of his defence of alibi, the trial Judge said: -

"The accused together with his witnesses, D.W.1 and D.W.2 all concocted their story of alibi so as to extricate the accused from his doom. D.W.2 stated in his evidence that the incident happened on Odogwu market day which is Afor market day. It was the same Odogwu market day PW.2 said the accused told him he was travelling and concluded that accused travelled out on Egoh market day which is an Ukwo market day. D.W.1 admitted that the accused arrived her place on Ukwo market day which D.W.1 referred to as Egoh Market. The accused on the other hand stated that the day he travelled down to Allah was not on any market day."

The court below in dealing with the evaluation of the evidence by the trial Judge said: -

"I do agree with the learned trial Judge that the defence of alibi put forward by the appellant has a very big hole in the light of

the accused's failure to give detailed particulars and also considering the contradiction in the evidence of the witness I too find it difficult to hold that the defence of alibi raised by the appellant can hold any water."

Where, as in the instant case, an independent witness in the
B like of P.W.6, saw and testified to the commission of the offence and
was able to identify the offender, the rule that alibi must be investi-
gated is therefore inapplicable in the face of the credible evidence of
the witness. See Njovens & Ors. v. The State (1973) S.C. 17; (1973)
C 5 S.C. (Reprint) 12. There is on record, cogent and believable evi-
dence linking the accused/appellant with the murder of Alhaji Umaru
Bameyi. The accused/appellant's defence of alibi is thus logically and
physically demolished. Consequently, issue No. 2 on the appellant's
Brief of Argument and issue No.2 on the respondent's Brief are hereby
D answered in the affirmative.

In the final analysis, I hereby agree with the judgment of my
learned brother, Tabai, JSC., that the appeal is devoid of merit. It
must be dismissed and I hereby dismiss it while affirming the convic-
tion and sentence of the appellant by the two courts below.
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