

**SUPREME COURT OF NIGERIA**  
5TH JUNE 2009, S.C. 256/200  
**CORAM:- N. TOBI, G. A. OGUNTADE, I. F. OGBUAGU, I. T.**  
**MUHAMMAD, J. O. OGEBE, JJSC**

SILAS SULE ..... APPELLANT

V.

THE STATE ..... RESPONDENT

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CRIMINAL PROCEDURE - Conviction - Sufficiency of evidence - Court can convict on evidence of one credible witness - Unless where the law requires corroboration (H1)

EVIDENCE - Appeals - Concurrent findings - Attitude of Supreme Court - It will not interfere with such findings - Where such is not shown to be perverse (H2)

CRIMINAL PROCEDURE - Admissions - Exhibit 'B' - Self defence - Applicability - Exhibit B is an admission by appellant - That he did the act for which he was charged - So also his plea of self-defence (H3)

EVIDENCE - Confessional statement - Admissibility - Any contention that Exhibit 'B' is inadmissible is misconceived - In view of the evidence on record - And the absence of objection by defence counsel (H4)

EVIDENCE - Inconsistency rule - Application of - If appellant retracts Exhibit 'B' by giving inconsistent testimony at trial - Such testimony is to be treated as unreliable - While Exhibit 'B' is not regarded as evidence on which the court can act (H5)

CRIMINAL PROCEDURE - Conspiracy - Discharge and acquittal - Propriety - Decision of trial judge acquitting and discharging other accused persons - Is perverse - Having regard to the circumstances of this case (H6)

CRIMINAL PROCEDURE - Conspiracy - Conviction of one person

alone - Propriety - Conviction of one suggests the guilt of the others  
- As it takes two to conspire - But each case must be considered on its own facts (H7)

COURTS - Mistakes - Effect on appeal - Mistake by court will not lead to nullification of proceedings - Or result in appeal being allowed - Unless it has occasioned miscarriage of justice (H8)

### **FACTS**

The appellant and five others were arraigned before the High Court of Kogi State on two counts of conspiracy to murder and the murder of one Jibrin Umoru Okpanachi. The case of the prosecution was that appellant and his siblings, including their mother, had conspired to murder the deceased. Consequent upon, and in furtherance of the conspiracy, appellant had accosted the deceased and during a scuffle with him, stabbed the deceased in his thigh, thereby causing his death from haemorrhage. After hearing, the trial court found appellant guilty as charged and sentenced him accordingly. But it discharged and acquitted the other five accused persons of both counts.

Dissatisfied, appellant appealed to Court of Appeal against his conviction and sentence. His appeal was dismissed. Court of Appeal also held that trial court was in error to have discharged and acquitted some of the other accused persons. Nonetheless, it held that the conviction of appellant was proper despite the error. Still dissatisfied, appellant has brought this further appeal to the Supreme Court.

### **ISSUES FOR DETERMINATION**

*“(i) Whether or not the Lower Court was right when she held that the statement of the Appellant to the police was a confessional statement rather than one raising a defence of self defence and accident.*

*(ii) Whether or not the Lower Court was right when she relied on the inconsistent and unreliable evidence of the prosecution witnesses, especially PW1 to hold that the defence of self defence was not open to the Appellant.*

*(iii) Whether or not the Lower Court was right when she invoked section 150 (1) of the Evidence Act, Laws of the Federation 1990 to justify the outright violation of the express and compulsory*

*provision of section (sic) 167 and 185 of the Criminal Procedure Code.*

*(iv) Whether or not the Lower Court was right when she held that lack of objection by the Appellant (sic) Counsel to the lumping of his plea and the knowledge and understanding of the charges by the Appellant are sufficient to justify the violation of the mandatory and compulsory provision of section (sic) 161 and 212 of the of the Criminal Procedure Code.*

*(v) Whether or not the Lower Court was right when she ignored section (sic) 161 and 212 of the Criminal Procedure Code which was canvassed before her, but went ahead to consider section 215 of the Criminal Procedure Act, a section of the law neither canvassed before her nor applicable to this case. Etc. See p. 1744*

**HELD** (Unanimously dismissing the appeal per **OGBUAGU JSC**)  
**Conviction - Sufficiency of evidence**

1. It has also to be borne in mind always as it is also settled that a court, can act on the evidence of one single witness if the witness can be believed given all the surrounding circumstances of the case. A single credible witness, can establish a case, beyond reasonable doubt unless where the law requires corroboration. (p. 1751 A)

**Concurrent findings - Attitude of Supreme Court**

2. The duty of evaluating and appraising evidence, is that of the trial court that saw and heard the witnesses and an Appellate court, may not interfere or disturb a finding or conclusion in a judgment except in certain circumstances which have been stated and restated in many decided authorities of this Court. In this case, there are the concurrent findings of fact and holdings by the two lower courts in respect of the said issues referred to above in this Judgment. As I find as a fact and hold that they are not perverse, the attitude of this Court in that regard, is now firmly settled i.e. it cannot disturb or interfere. (p. 1751 E)

**Admissions - Exhibit 'B' - Self defence - Applicability**

3. A dispassionate perusal of Exhibit "B" - the Statement of the Appellant to the Police by me, puts me in no doubt whatsoever, that it is a confessional statement voluntarily made by the Appellant. It is an

unequivocal admission by the Appellant, that he stabbed the deceased with a knife on his left thigh. In fact, by raising the plea of self-defence or accident in his Amended Brief and Reply Brief, it is an admission that he did the act for which he was charged, convicted and sentenced, but that it was by self-defence and that it was justified, or that it was an accident. (p. 1751 H)

**EVIDENCE - Confessional Statement - Admissibility**

4. In my humble and respectful view, any contention, suggestion or submission that Exhibit “B” is inadmissible even in spite of the evidence I have reproduced above and the absence of any objection by the defence counsel, will be grossly misconceived in the extreme. I therefore, hold that Exhibit “B” was admissible in evidence. Even if it was retracted by the Appellant in his evidence at the trial, it was of no moment. I say so because, in the first place, a court can still convict on a confessional statement alone even if the accused person resiles from it. A confessional statement, is part of the evidence adduced by the prosecution. (p. 1753 D)

**EVIDENCE - Inconsistency rule - Application of**

5. If Exhibit “B” is not that of the Appellant, then of course, this amounts to a retraction of Exhibit “B”. In such a situation, there arises, an inconsistency. The inconsistency Rule is that such testimony at the trial, is treated or it is to be treated as unreliable while the earlier statement, is not regarded as evidence on which the court can act.

It is therefore, with respect, another gross misconception when it is submitted in paragraph 2.4 of the Appellant’s Reply Brief, that the testimony of the Appellant before the trial court, is the only reliable evidence or statement of the Appellant before this Court. (p. 1754 E/G)

**Conspiracy - Discharge and acquittal - Propriety**

6. The decision of the learned trial Judge acquitting and discharging the other accused persons on the count of conspiracy, was/is perverse having regard to the circumstances of this case leading to this appeal. I agree with the court below when it stated at page 186 of the Records, that there is overwhelming evidence to convict the Appellant, 2<sup>nd</sup> and 4<sup>th</sup> accused persons, of conspiracy and culpable homi-

cide. It gave its reasons for so holding. As it rightly stated, it was the Appellant, in furtherance of the agreement of the accused persons to kill the deceased, who struck or stabbed the deceased. (p. 1755 B)

### ***Conspiracy - Conviction of one person alone - Propriety***

7. I concede that generally, as it takes two to conspire, a person cannot be convicted of conspiracy, if the others are acquitted and discharged. However, each case, must be considered on its own facts. To convict only one for conspiracy, suggests that the others, were equally guilty of conspiracy though acquitted and discharged. (p. 1756 H)

### ***COURTS - Mistakes - Effect on appeal***

8. The above is why, I agree with the court below that the trial court, was in error in acquitting and discharging some of the accused persons. But the law is settled that the error or mistake by a trial Judge or court, will not, lead to the nullification of the entire proceedings or necessarily determine an appeal in favour of an appellant or automatically, result in the appeal being allowed. It is only when the error is so substantial, that it has occasioned a miscarriage of justice, that an Appellate Court will interfere. (p. 1758 A)

### ***NOTABLE POINTS OF INTEREST***

#### ***OGBUAGU JSC***

1. *Once there is common intention a blow by one is a blow by all* F  
I take it that it regarded and treated any contradiction and quality of investigation, as not being substantial to affect the case of the prosecution and I say that it was entitled to do so. I so hold. This is why it concluded that, G

*“Where common intention is established a fatal blow as in this case with a knife given by one of the parties is deemed in the eyes of the law to have been given by all those present and participating.*

*The person who delivered the fatal blow in such a case is no more than the hand by which others struck”.* (p. 1757 G) H

#### ***TOBI JSC***

2. *Of two different statements the judge may take the less favourable*  
In his evidence in court, appellant said that the knife entered the

thigh of the deceased in the course of struggle between them for the knife. That was not the story he told the Police in Exhibit B. In Exhibit B, he admitted stabbing the deceased with the knife. Where an accused person makes two statements, in sanity, a trial Judge will be right to take the one which is less favourable to him, all things being equal; and particularly when that one is first in time” (p. 1760 A)

### **OGUNTADE JSC**

3. If defence of accident is raised prosecution needs to disprove it  
In Sholuade V Republic (1966) 1 All N.L.R. 134 at 139, Lewis J.S.C. discussing nature of the defence of accident said:

“We rather note, though it was not a ground of appeal that when the learned trial judge left to the jury, as the prosecution suggested, he might, the determination whether the death was accidental he also wrongly put the onus on the accused rather than as he should have done on the prosecution to disprove accident.”

The law is well settled that when in a criminal trial, an accused raises the defence of accident, the onus is on the prosecution to disprove it. (p. 1765 B)

### **REPRESENTATIONS**

James Ocholi, Esqr., (SAN), for the Appellant with him, C.U. Ekomaru, Esqr. and Yakubu Mekasuwa, Esqr.  
Joe Abrahams, Esqr., (Attorney-General, Kogi State) for the Respondent with him, A.B. Akogu, Esqr., (DPP, Ministry of Justice, Kogi State).

### **CASES REFERRED TO**

Isaso v. The State (1999) 12 SCN.J. 140 @ 162. 166  
G Ueuru v. The State (2002) 4 SCN.J. 282 @ 293  
Bakare v. The State (1987) 1 NWLR (Pt.52) 579  
R v. Nwokocha (1949) 12 WACA 453 @,455  
Adie v. The State (1980) 1-2 S.C. 116 @ 122 -123  
Princewill v. The State (1994) 7 - 8 S.C. (Pt.II) 226 @ 240  
H Ogoala v. The State (1991) 2 NWLR CPU75) 509 @ 523  
Akalezi v. The State (1993) 3 NWLR (Pt.273 1 @ 13: (1993) 2 SCN.J. 19 @ 29-30  
Egboghonome v. The State (1993) 7 NWLR (Pt.306) 382) (1993) 9 SCN.J. (Pt.1) 1 @ 29, 32, 48

Niovens v. The State (1973} 3 ECSLR 17 @ 18

Francis Tole Lawson & ors. v. The State (1975) 1 ANLR (Pt. 1) 175

Balogun v. Attorney-General of Ogun State (2002) 2 SCNJ. 196 @ 209

Ogugu & 4 ors. v. The State {1990} 2 NWLR (Pt.134) 539 @ 555

Odukwe v. Mrs. Osunbiyi (1998) 8 NWLR 339 @ 351

B

### **STATUTES REFERRED TO**

Evidence Act, ss. 27 (1) & 150 (1)

Criminal Procedure Code, ss. 161 & 212

Penal Code, ss. 97 (1) 221

C

### **LEAD JUDGMENT BY OGBUAGU JSC**

This is an appeal against the decision of the Court of Appeal, Abuja Division (hereinafter called “the court below”) delivered on 4th April, 2007, affirming the conviction and sentence to death of the Appellant, by Musa, J. of the High Court of Kogi State for culpable homicide under Sections 97(1) and 221 of the Penal Code in his Judgment delivered on 5th May, 2003.

Dissatisfied with the said decision, the Appellant, has appealed to this Court on ten (10) grounds of appeal as contained in his Amended Notice of Appeal filed on 12th September, 2008. The facts briefly stated, are that the Appellant and five others, were charged and arraigned before the trial court, sitting at Ankpa on two counts of conspiracy to murder and the murder of the deceased-one Jibrin Umoru Okpanachi. At the trial, five witnesses were called by the prosecution while each of the accused persons, testified in his defence. Thereafter, learned counsel for the parties, submitted written addresses. In a considered Judgment, the learned trial Judge, found and held, that the charge of conspiracy, was not made out against the other five accused persons who were accordingly discharged and acquitted. The Appellant, was found guilty and was convicted and sentenced to death. Dissatisfied with the said conviction and sentence, the Appellant appealed to the court below which affirmed the said decision of the trial court, hence the instant appeal to this Court.

On 17th March, 2009, when this appeal came up for hearing, the learned leading counsel for the parties, adopted their respective Amended Brief. While learned counsel for the Appellant - Ocholi

James, Esq., (SAN) urged the Court to allow the appeal, Abrahams, Esq., (Attorney-General, Kogi State) leading learned counsel for the Respondent, urged the Court, to dismiss the appeal. Thereafter, Judgment was reserved till to-day.

B In the Appellant's Amended Brief of Argument, nine (9) issues have been formulated for determination. They read as follows:

*"(i) Whether or not the Lower Court was right when she held that the statement of the Appellant to the police was a confessional statement rather than one raising a defence of self defence and accident. (Distilled from Ground One of the Notice and Grounds of Appeal).*

*(ii) Whether or not the Lower Court was right when she relied on the inconsistent and unreliable evidence of the prosecution witnesses, especially PW1 to hold that the defence of self defence was not open to the Appellant (Distilled from Ground Two of the Notice and Grounds of Appeal).*

*(iii) Whether or not the Lower Court was right when she invoked section 150 (I) of the Evidence Act, Laws of the Federation 1990 to justify the outright violation of the express and compulsory provision of section (sic) 167 and 185 of the Criminal Procedure Code. (Distilled from Ground Three of the Notice and Grounds of Appeal).*

*(iv) Whether or not the Lower Court was right when she held that lack of objection by the Appellant (sic) Counsel to the lumping of his plea and the knowledge and understanding of the charges by the Appellant are sufficient to justify the violation of the mandatory and compulsory provision of section (sic) 161 and 212 of the Criminal Procedure Code. (Distilled from Ground Four of the Notice and Grounds of Appeal).*

*(v) Whether or not the Lower Court was right when she ignored section (sic) 161 and 212 of the Criminal Procedure Code which was canvassed before her, but went ahead to consider section 215 of the Criminal Procedure Act, a section of the law neither canvassed before her nor applicable to this case. (Distilled from Ground Five of the Notice and Grounds of Appeal).*

*(vi) Whether or not the Lower Court was right when she held that, since the Medical Officer on duty at the General Hospital Ankpa, Kogi State, when a corpse alleged to be that of the deceased in this*



case was brought, did not complain of identifying the corpse brought to the hospital on the 24th June 1999, identification of the said corpse was not necessary. (Distilled from Ground six of the Notice and Grounds of Appeal).

(vii) Whether or not the Lower Court was right when she held that Christopher Sule and Jibrin Umoru ought to have been convicted for conspiracy and culpable homicide along with the appellant, when the said accused persons were discharged and acquitted of the said offence by the trial Court due to the inconsistency and unreliability of the evidence adduced by the prosecution at the trial and no cross appeal was filed before the Court of Appeal challenging the finding/verdict of the trial Court in this regard. (Distilled from Ground seven of the Notice and Grounds of Appeal). <sup>B</sup>

(viii) Whether or not the Lower Court, haven (sic) held that there are contradictions in the prosecution evidence and poor quality of investigation was right in dismissing the appeal. (Distilled from Ground Eight of the Notice and Grounds of Appeal). <sup>C</sup>

(ix) Whether exhibit B, the statement of the Appellant before the trial Court is admissible in law, the same haven (sic) being obtained through an interpreter who did not testify before the trial Court (Distilled from Ground 10 of the Notice of Appeal, Newly raised in this Appeal) “. <sup>E</sup>

On its part, the Respondent formulated six issues for determination, namely,

"(i) Whether the Lower Court was correct in holding that from the facts of this case, the defence of self defence -was not open to the Appellant. (See Grounds 1 and 2). <sup>F</sup>

(ii) Whether the Lower Court was correct in holding that the Appellant and his Counsel having acquiesced in an irregular procedure that did not lead to a miscarriage of justice, they cannot be heard to complain against the irregularities on appeal. (See Grounds 3,4, and 5). <sup>G</sup>

(iii) Whether the prosecution has proved the guilt of the Appellant beyond reasonable doubt as required by law (see Grounds 1,2,6,8 and 9). <sup>H</sup>

(iv) Whether the Lower Court was correct to affirm the conviction and sentence of the Appellant on view of the finding of the trial Court that the evidence of the prosecution did not establish the charge

of criminal conspiracy. (See Ground 8).

(v) Whether Exhibit “B” is admissible in evidence in this case (see Ground 10).

(vi) Whether or not the remarks of the Lower Court that Christopher Sule and Jibrin Umoru ought to have been convicted alongside the Appellant for the offences of culpable homicide and criminal conspiracy being obiter dicta and not relating to the Appellant, he can challenge them in this Appeal). (See Ground 7)”.  
B

Before going into the merits of this appeal, I note that in grounds 1,2,3,4,5,6 and 7, the Appellant equated, treated or regarded His Lordship - Adekeye, JCA (as he/she then was now JSC) who wrote the lead Judgment, with or as the Court of Appeal. I say so because, in grounds 1,4, 6, the following appear:  
C

“The Court of Appeal erred in law when she held.....”.

In ground 2, it is “The Court of Appeal erred in law “When she relied on.....”.

In ground 3, it is “The Court of Appeal erred in law “when she invoked.....”.

In ground 5, it is “The Court of Appeal erred in law “when she ignored”.....”.

In ground 7, it is “The Court of Appeal erred in law when in spite of the fact that there was no cross appeal before her, held.....”.

Also in issues for determination Nos (i), (iv), (vi) and (vii) it is stated thus -  
F

“Whether or not the Lower Court was right when she held.....”, while in issue (ii) it is stated, “Whether or not the Lower Court was right When she relied on .....”; Issue (iii) “Whether or not the Lower Court was right when she invoked .....”, and issue (v) it is stated, inter alia, “Whether or not the Lower Court was right when she ignored..... which was canvassed before her .....”, a section of the law neither canvassed before her ..... “  
G

I have ignored some typing errors both in the Amended Notice of Appeal and in the issues for determination such as typing “having” as “haven”. It need not be over-emphasised that learned counsel who file or cause the filing of court processes in an Appellate Court and especially in this Court, should please vet and ought to vet, those processes, before they are filed.  
H

It is noted by me with respect, that Issues (i) and (ii), (iv), (vii),

(viii) and (ix) respectively of the Appellant, are substantially similar to Issues (i), (ii), (iii), (iv) and (v) of the Respondent respectively although differently couched.

Now, in a murder case, it is now firmly established that what the prosecution must prove beyond reasonable doubt are -

*“(i) that the deceased had died*

*(ii) that the death of the deceased resulted from the act of the Appellant.*

*(iii) that the act of the appellant, was intentional with the knowledge that death or bodily harm was its probable consequence”.*

See the cases of Ogba v. The State (1992) 2 NWLR (Pt.222) 164; (1992) 2 SCNJ. 106; Nwaeze v. The State (1996) 2 NWLR (Pt.428) 1 @ 11; (1996) 2 SCNJ. 42; Gira v. The State (1996) 4 NWLR (Pt.443) 375 @ 383; (1996) 4 SCNJ. 94; Igago v. The State (1999) 12 SCNJ. 140 @ 162, 166 and Uguru v. The State (2002) 4 SCNJ. 282 @ 293 just to mention but a few.

In the instant case leading to the appeal, the Appellant, does not dispute the death of the deceased. What is in dispute, is that the death of the deceased, was not from the act of the Appellant. While the prosecution maintain that it was the Appellant who had a knife, and who stabbed the deceased with it. That when all the accused persons saw that the deceased had died, they all ran away. See the evidence of the PW1 at page 24 and PW3 at page 26 of the Records. The Appellant in his evidence, denied the assertions of the said prosecution witnesses. He testified in-chief at pages 11 and 12 of the Records inter alia, as follows:

*“..... Before I could talk, deceased brought out his knife. He wanted to stab me but I dodged the knife, and held him. Then his leg fell into the gultur (sic) (meaning gutter). When he fell down the knife in his hand fell. He was struggling to pick the knife to stab me by all means but I first picked the knife before him. I wanted to run away with the knife so that he won't stab me but he was bigger than me and I am not as powerful as the deceased. As deceased was struggling to collect the knife from me the knife then entered his tie. Deceased then shouted that he had been wounded and I then ran away....”*  
*(the underlining mine)*

From the above, in my respectful view, the crucial issue to be

determined by this Court or by me, is whether the Appellant, actually and deliberately stabbed the deceased with the knife or whether the said knife “entered” the tie of the deceased by the act of the Appellant by way of self defence as has been canvassed by the learned Counsel for the Appellant in their Amended Brief or that the entry  
 B was accidental. This issue, is covered by Issues (i) and (ii) of the Appellant and issues (i) and (iii) of the Respondent. I will take the said issues together.

PW1 in her Statement to the Police at page 10 of the Records,  
 C stated inter alia, that the Appellant was carrying a knife with which he stabbed the deceased twice on his left thigh “deeply” and that the deceased shouted that he had been killed and so fell down and died. That after the accused persons had made sure that the deceased was dead, they said that they have killed him and that whoever had any  
 D question, should come and ask them and that they ran away. Her evidence in court, was substantially not different from her said statement to the police.

PW2 in his evidence in-chief at page 25 of the Records, testified that when he arrived at the scene, he saw the deceased lying  
 E down in a pool of blood. He held the deceased thinking he would survive, but after a while, he died.

The Appellant his statement to the Police - Exhibit “B” made by him on 19th July, 1999, - the very and same day he was arrested and which he signed, stated at page 12 of the Records inter alia, as  
 F follows:

“..... Then on the 24/6/99 in the evining (sic) I went to go and buy something on the road side then Jibrin Umaru Okapanchi (i.e. the deceased) stop me and he told me that God has catch me  
 G today then from there he (refuse) removed knife in order to stab me with it, I then dogged, (sic) and grip him and he fall down as the leg enter gotter (sic) and the knife fall away from his hand. I then pick the knife. I then told him that I am going to stab you with the knife since you have miss me. I then stabbed him on his left thigh the knife  
 H I use on the Jibrin Umoru Okpanachi now deceased the knife is not among the knife here with the police, and when I stabbed him with the knife I ran away from the place before I drop the knife. I cannot identified (sic) the knife I use on him.....”  
 [the underlining mine]

I note that the Appellant testified in court on 20th November, 2001 and was cross-examined on 9th July, 2002. In fact, at page 33 of the Records, he stated that he had been in prison custody for two years and five months. So that at the time he was cross-examined, he had been in prison custody for about three years. I have earlier in this Judgment reproduced/stated that the Appellant denied deliberately stabbing the deceased. He maintained this stance even in his evidence under cross-examination at page 36 of the Records. B

The learned trial Judge at page 64 of the Records, referred to the case of Bakare v. The State (1987) 1 NWLR (Pt.52) 579 (it is also reported in (1987) 3 SCNJ. 1) cited to him by the learned defence counsel about the essential ingredients of the offence of culpable homicide punishable with death and at page 65, His Lordship, found as a fact and held or stated inter alia, as follows: C

“..... The death of Jibrin Umoru Okpanachi took place on 24/6/99 shortly after he was stabbed by the first accused knowing the consequence of his act took to his heels and took refuge in Kwara State”.

[the underlining mine]

His Lordship also, referred to the case of Uguru v. The State (2002) 4 SCNJ. (page not stated but it is at page 282 @ 293 (supra) where it was held that the cause of death in the case, was the injury inflicted on the deceased by the accused who was found guilty as charged, and stated inter alia, thus - E

“From the foregoing, it is my view that the Prosecution has proved the guilt of the 1st accused beyond reasonable doubt having regard to the overwhelming evidence of the prosecution witnesses.....” F  
[the underlining mine]

The court below in dealing with Issue 1 of the Appellant which is the same with issues 1 and 2 of the Respondent in this appeal, found as a fact and stated at page 171 of the Records, inter alia: G

“In the circumstance the defence of self defence was not open to the appellant”.

The court cited and relied on some decided authorities in respect thereof- i.e. Queen v. Adelodun 1959 WRNLR 114, State v. Agbo 1973 3 ECLR Pt. 1 pg 4, Duru v. The State 1993 3 NWLR Pt. 281 pg 283, Laoye v. The State 1985 2 NWLR Pt.10 pg 832, Nungu v. Queen 1953 14 WACA 379, Aganmonyi v. A - G Bendel State H

1987 1 NWLR Pt.47 pg 26, Stephen v.The State 1986 5 NWLR Pt.47 pg 26, Audu v. The State 2003 7 NWLR Pt.820 pg 516.

At page 186 thereof, it found as a fact and held or stated inter alia as follows:

*The appellant inflicted the deep cut on the left thigh of the deceased which caused the haemorrhage that resulted in his instantaneous death. The knife used which the appellant admitted he threw away was a lethal weapon. A man is presumed to intend the natural consequences of his act. Where a man causes another person grievous bodily harm, he is presumed to have intended to kill that person and he would be guilty of murder irrespective of his intention. The learned trial judge was right when it (sic) convicted the appellant of murder “.*

In my respectful view, these findings of fact and holdings by the two lower courts, are borne out from the Records. It is now firmly settled and this is trite law that to secure a conviction for murder, the prosecution, must prove beyond reasonable doubt, that the death of the deceased, was caused directly or indirectly, by the act of the accused. It is incumbent on the prosecution to establish not only that the act of the accused person have caused the death of the deceased, but that in actual fact, the deceased died as a result of the act of the accused person to the exclusion of all other possibilities. See the cases of R. v. Nwokocha (1949) 12 WACA 453 @ 455; The State v. Omoni (1969) 2 ANLR 537; Adie v. The State (1980) 1-2 S.C. 116 @ 122 -123; R. v. Owe (1981) ANLR 680 and Princewill v. The State (1994) 7 - 8 S.C. (Pt.II) 226 @ 240 just to mention but a few.

Thus, where a person is attacked with a lethal weapon (such as a knife as in the instant case leading to this appeal) and he died on the spot (again as in the instant case), it is reasonable to infer that the injury inflicted on him, caused the death. See the case of Bakuri v. The State (1965) NMLR 163.

It need be stressed and this is also settled that the role of a trial court, is to hear evidence, to evaluate the evidence, to believe or disbelieve a witness or witnesses, to make findings of fact based on the credibility of the witness or witnesses who testified and to decide the merits of the case based on the findings. See the cases of The State v. Aigbangbee & anor. (1988) 3 NWLR (Pt.84) 548; (1988) 7 SCNJ. 128; (1988) 2 NSCC 192 and Grace Akpabio & ors. v. The

State (1994) 7-8 SCNJ. (Pt.III) 429).

***It has also to be borne in mind always as it is also settled that a court, can act on the evidence of one single witness if the witness can be believed given all the surrounding circumstances of the case. A single credible witness, can establish a case, beyond reasonable doubt unless where the law requires corroboration.*** In other words, the evidence of one credible witness, accepted and believed by the court, is sufficient to justify a conviction unless of course, such a witness is an accomplice in which case, his testimony would require corroboration. See the cases of Ogoala v. The State (1991) 2 NWLR (Pt.175) 509 @ 523; (1991) 3 SCNJ. 61; Akalezi v. The State (1993) 3 NWLR (Pt.273 1 @ 13; (1993) 2 SCNJ. 19 @ 29-30; Ugwumba v. The State (1993) 5 NWLR (Pt.296) 660 @ 674; (1993) 6 SCNJ. 217; Alhaji Babuga v. The State (1996) 7 SCNJ. 217 @ 231 and too many other authorities in this respect.

A trial Judge can or could, under certain circumstances, accept part of the testimony of a witness and reject the rest. See the case of Obiora & ors. v. The State (1970) 1 All NLR 35; (1970) ANLR 36 referred to in the case of Ibeh v. The State 1997) 1 SCNJ. 256.

Finally, ***the duty of evaluating and appraising evidence, is that of the trial court that saw and heard the witnesses and an Appellate court, may not interfere or disturb a finding or conclusion in a judgment except in certain circumstances which have been stated and restated in many decided authorities of this Court. In this case, there are the concurrent findings of fact and holdings by the two lower courts in respect of the said issues referred to above in this Judgment. As I find as a fact and hold that they are not perverse, the attitude of this Court in that regard, is now firmly settled i.e. it cannot disturb or interfere.*** See the cases of Ibeh v. The State and Ugwumba v. The State (supra); Ejelikwu v. The State (1993) 7 NWLR (Pt.307) 554 @ 586; (1993) 9 SCNJ. 52; Princent v. The State (2002) 12 SCNJ. 280 @ 300 citing some other cases therein and Amusa v. The State (2003) 1 SCNJ. 218 also citing some other cases therein.

This should have been the end of the appeal, but before concluding this Judgment, I will touch/deal briefly with issue (ix) of the Appellant and issues (v) and (vi) of the Respondent. ***A dispassion-***

***ate perusal of Exhibit “B” - the Statement of the Appellant to the Police by me, puts me in no doubt whatsoever, that it is a confessional statement voluntarily made by the Appellant. It is an unequivocal admission by the Appellant, that he stabbed the deceased with a knife on his left thigh. In fact, by raising***  
 B ***the plea of self-defence or accident in his Amended Brief and Reply Brief, it is an admission that he did the act for which he was charged, convicted and sentenced, but that it was by self-defence and that it was justified, or that it was an accident.***

C See the case *of Isaac Stephen v. The State (1986) 5 NWLR (Pt.46) 726 S.C.* In the first place, the two defences are contradictory or inconsistent. This is because, for an act to qualify as an accident, it must be a surprise to the ordinary man of prudence. That is, a surprise to all sober and reasonable people. In the case *Aliu Bello & 13*  
 D *ors. v. Attorney-General of Oyo State, (1986) 5 NWLR (Pt.45) 828*, Karibi-Whyte, JSC, stated inter alia;

*“An accident is the result of an unwilling act, and means an event without the fault of the person alleged to have caused it”.*

The test is always objective. See the cases of *Adulumola v. The State*  
 E *(1988) 1 NWLR (Pt.23) 683 @, 692-693; (1988) 83 SCNJ. 68 and Umoru v. The State (1990) 3 NWLR (Pt.138) 363 @ 370 C.A.* Again, the act leading to the accident, must be a lawful act done in a lawful matter. See the case *of Abdulbaki v. Katsina N.A. (1961) NNCU 12*.  
 F I note however, this defence was not canvassed or seriously canvassed. Self defence means that the accused person did the act while in the process of defending himself, but with no intention to kill or cause grievous bodily harm.

However, Section 27 (I) of the Evidence Act defines a confession as an admission made at any time by a person charged with a  
 G crime, stating or supporting the inference that he committed that crime. I note that at page 31 of the Records, that there was no objection by the learned defence Counsel - Mr. Ugwuarchukwu when Exhibit “B” was tendered. Said he -

H *“My Lord, we have no objection as he (meaning the Appellant) agreed to have signed the statement”.*

I noted this fact of the Exhibit “B” being signed by the Appellant earlier in this Judgment. The consequence is that the Appellant agreed or admitted that he made Exhibit “B”. There is the evidence



of PW5 - the Investigating Police Officer before it was tendered, inter alia, as follows:

“..... After his confessional statement I read same to him in English language and was interpreted to him by P C Baba Abdullahi. (a Police Constable). He said the statement is correct and signed. The interpreter signed and counter signed as a recorder. Based on the confession he made I took him before my officer in charge Homicide Mr. Bitrus Ali for attestation. Bitrus is an ASP. My O.C. read the statement to the accused and was interpreted by P C Baba Abdullahi and the accused said it was correct and he signed. My O.C. endorsed the confessional statement and signed.....”

In any case, the failure to object and the later retraction, it is settled, cannot vitiate the proceedings. See the cases of Obidiozo & ors. v. The State (1987) 1 NWLR (Pt.67) 748; (1987) 11-12 SCNJ. 103; Okaroh v. The State (1988) 3 NWLR (Pt.81) 220; (1988) 1 SCNJ. 124 and Ikemson & 2 ors. v. The State (infra).

***In my humble and respectful view, any contention, suggestion or submission that Exhibit “B” is inadmissible even in spite of the evidence I have reproduced above and the absence of any objection by the defence counsel, will be grossly misconceived in the extreme. I therefore, hold that Exhibit “B” was admissible in evidence. Even if it was retracted by the Appellant in his evidence at the trial, it was of no moment. I say so because, in the first place, a court can still convict on a confessional statement alone even if the accused person resiles from it. A confessional statement, is part of the evidence adduced by the prosecution.*** See the cases of Obosi v. The State (1965) NMLR 119; Ikemson & 2 ors. v. The State (1989) 3 NWLR (Pt. 110) 455, @, 467-468; (1989) 6 SCNJ. 54; Ejinsima v. The State (1991) 6 NWLR (Pt. 200) 637; (1991) 7 SCNJ. 318; Durugo v. The State (1992) 7 NWLR (Pt.255) 525; (1992) 9 SCNJ. 46; Egboghonome v. The State (1993) 7 NWLR (Pt.306) 382; (1993) 9 SCNJ. (Pt.1) 1 @ 29, 32, 48 and Princewill v. The State (supra) and too many other cases.

Secondly, a confession it is settled, does not become inadmissible, merely because an accused person, denies having made it and in this respect, a confession contained in a statement made to the Police by a person under arrest, is not to be treated differently from

any other confession. In other words, all the usual tests put forward in the case of *R v. Kanu* (1952) 14 WACA 30 in the principles in *R. v. Sykes* (1913) 8 C.A.R. 233 were adopted, would have to be considered. See the cases of *Ejinima v. The State* (supra) and *Aiguoreghian & anor. v. The State* (2004) 3 NWLR (Pt.860) 367; (2004) 1 SCNJ. 65; (2004) 1 S.C. (Pt.I) 65. For purposes of emphasis, the denial of a statement made by the accused person to the Police is not only an issue of fact to be decided in the Judgment, but an issue, which does not affect admissibility of the statement.

It is submitted in the Appellant's Amended Reply Brief that the statement contained in Exhibit "B" is not that of the Appellant and that it is in fact a hearsay evidence. With the greatest respect, this submission is grossly misconceived. I have already noted in this Judgment that Exhibit "B", was admitted in evidence without objection and that the Appellant signed it. In my respectful and firm view, in the circumstances of the evidence of PW5, the calling of PC Abdullahi was unnecessary. PW5, was the Recorder and he produced it. The Appellant in his evidence under cross-examination, stated thus:

*"I remember I made statement to the state CID in Lokoja".*

It is that statement he made and which he signed both before the PW5 and the Superior Officer - Mr. Bitrus Ali, that was produced, and tendered without objection and marked Exhibit "B". Period!

***If Exhibit "B" is not that of the Appellant, then of course, this amounts to a retraction of Exhibit "B". In such a situation, there arises, an inconsistency. The inconsistency Rule is that such testimony at the trial, is treated or it is to be treated as unreliable while the earlier statement, is not regarded as evidence on which the court can act.*** see cases of *Egboghonome v. The State* (supra); *Bature v. The State* (1994) 1 NWLR (Pt.320) 267; (1994) 1 SCNJ. 19 @ 32 citing several other cases therein; *Nemi & ors. v. The State* (1997) 10 SCNJ. 1 and *Emoga v. The State* (1997) SCNJ. 518 citing several other cases therein.

***It is therefore, with respect, another gross misconception when it is submitted in paragraph 2.4 of the Appellant's Reply Brief, that the testimony of the Appellant before the trial court, is the only reliable evidence or statement of the Appellant before this Court.*** It cannot and could not be on the decided authorities including the cases of *Nwankwoala v. The State* (2007) 2

*NCC 107; John Agbo v. The State (2007) 2 NCC 158* and *Aibangbee v. The State (2007) 2 NCC 648* cited and relied on in the Respondent's Brief which regrettably it is submitted in the said Appellant's Amended Reply Brief, that the issue of the Appellant making conflicting statement to the Police and before the trial court, does not arise. B

In respect of Issue (vii) of the Appellant and Issue (iv) of the Respondent, I note that the court below held at page 185 of the Records, that ***the decision of the learned trial Judge acquitting and discharging the other accused persons on the count of conspiracy, was/is perverse having regard to the circumstances of this case leading to this appeal. I agree with the court below when it stated at page 186 of the Records, that there is overwhelming evidence to convict the Appellant, 2nd and 4th accused persons, of conspiracy and culpable homicide. It gave its reasons for so holding. As it rightly stated, it was the Appellant, in furtherance of the agreement of the accused persons to kill the deceased, who struck or stabbed the deceased.*** C  
The learned trial Judge found as a fact at page 63 of the Records, inter alia, that, D

*"Evidence of the prosecution witnesses show that there are elements of conspiracy by the accused persons to kill the deceased.....".*

*[the underlining mine]* E

This fact, is borne out in the Records. I however, with respect, do not agree with the court below when it absolved the 6th accused person - Titi Sule - the mother of the Appellant from the charge of conspiracy. She in fact, instigated and masterminded the murder of the deceased. There is the evidence of her open boast at the Chief Magistrate's Court, Inye, to deal with the deceased after the acquittal and discharge of the deceased of a charge of causing hurt to the 5th accused person Timothy Sule who is a brother of the Appellant. Shortly thereafter, a meeting was held in the house of the 4th accused person to eliminate the deceased. There is the evidence of the PW1 at page 24 of the Records, that it was Titi Sule their mother, who accompanied the other accused persons, to carry out the act. In her statement to the Police, at pages 5 and 10 of the Records, she stated that it was the 6th accused person, who led the other accused F  
G  
H

persons to the compound or scene and in fact, ordered them to attack the deceased.

Conspiracy to commit an offence, is quite often, inferred from circumstantial evidence. It is based on common intent, or purpose. See the case of *Aigbe v. The State* (1976) *NMLR* 184. When once there is such evidence to commit the substantive offence, it is settled that it does not matter, what any of the conspirators did what. See the case of *Alegba & ors. v. The King* (1950) *19 NLR* 129. That was why, the court below, stated rightly in my view that,

*“the appellant struck on behalf of all the others in furtherance of the agreement to attack the deceased on 24/6/99”.*

Afterwards, the Appellant, was not convicted by the trial court of conspiracy, but only of the substantive charge of murder. See page 65 of the Records. However, an accused person, can be discharged on a charge of conspiracy, but convicted on the substantive offence. See the case of *Njovens v. The State* (1973) *3 ECSLR* 17 @ 18; (1973) *5 S.C.* 7.

As I have stated, the offence of conspiracy, can even be inferred from circumstantial evidence. It is settled that it is not necessary in order to prove conspiracy, that the conspirators, should be seen like those who murdered Julius Caesar, to be coming out of the same place at the same door. See the case of *Francis Tole Lawson & ors. v. The State* (1975) *1 ANLR* (Pt. 1) 175 @ 181 - 182.

An offence of conspiracy can be committed, where persons have acted either by an agreement or in concert. Bare agreement to commit an offence, is sufficient. The actual commission of the offence, is not necessary. See the case of *Ikemson & 2 ors. v. The State* (supra). See also the discussion on conspiracy in the case of *Mumini & ors. v. The State* (1975) *6 S.C.* 79 @ 92-93. However, it is a known principle of law that conspiracy to commit an offence, is a separate and distinct offence and it is independent of the actual commission of the offence to which the conspiracy is related. See the case of *Balogun v. Attorney-General of Ogun State* (2002) *2 SCNJ.* 196 @ 209 - per Uwaifo, JSC. ***I concede that generally, as it takes two to conspire, a person cannot be convicted of conspiracy, if the others are acquitted and discharged. However, each case, must be considered on its own facts. To convict only one for conspiracy, suggests that the others, were equally guilty***

**of conspiracy though acquitted and discharged.** See the case of Ogugu & 4 ors. v. The State {1990} 2 NWLR (Pt.134) 539 @ 555 - per Awogu, JCA.

I am aware that the Court of Appeal, Lagos Division, in the case of Kenneth Clark & anor. v. The State (1986) 4 NWLR (Pt.35) 381 - per Kolawole, JCA (of blessed memory) stated that if there are substantive charges which can be proved, it is in general undesirable, to complicate and lengthen the trial by adding a charge of conspiracy. That it is undesirable to combine a charge of conspiracy, with a charge of the substantive offence - it gave its reasons for so stating. That the courts have deprecated the practice of including a count of conspiracy to commit an offence in an Information as well as a count for actually committing it, where the evidence to support the two counts, is the same. I note that the court below, dealt with the issue of conspiracy adequately in my respectful view at pages 183 to 185 of the Records and referred to the cases of Clark v. State (supra); Gbadamosi v. State 1991 6 NWLR (Pt.196) pg 182; Njovens v. State (supra); Majekodunmi v. Queen 14 WACA 64; Daboh v. State 1977 5 S. C. 167; Onochie v. Republic 1966 1 All NLR 86, Nwankwo v. FRN 2003 4 NWLR Pt 809 pg 1 and Abacha v. State 2002 11 NWLR Pt. 779 pg. 437.

It concluded at page 185 thereof, inter alia, thus:

*“In the surrounding circumstance of the evidence available on the record of proceedings about the incident and regardless of the contradiction or quality of the investigation in this matter - I regard the evidence of the prosecution as more convincing and credible in arriving at the truth of the matter”.*

It referred to the cases of Woluchem v. Gudi 1981 5 S.C. 291; State v. Usman 2005 1 NWLR Pt.906 pg 80 and State v. Ajie 2000 11 NWLR Pt.678 pg 434. I take it that it regarded and treated any contradiction and quality of investigation, as not being substantial to affect the case of the prosecution and I say that it was entitled to do so. I so hold. This is why it concluded that,

*“Where common intention is established a fatal blow as in this case with a knife given by one of the parties is deemed in the eyes of the law to have been given by all those present and participating.*

*The person who delivered the fatal blow in such a case is no more than the hand by which others struck”.*

It referred to the cases of *Offor v. Queen* 1955 15 WACA 4; *Adekunle v. State* 1989 5 NWLR Pt. 123 pg 505; *Nwakwala v. State* and *Ikemson v. State* supra.

***The above is why, I agree with the court below that the trial court, was in error in acquitting and discharging some of the accused persons. But the law is settled that the error or mistake by a trial Judge or court, will not, lead to the nullification of the entire proceedings or necessarily determine an appeal in favour of an appellant or automatically, result in the appeal being allowed. It is only when the error is so substantial, that it has occasioned a miscarriage of justice, that an Appellate Court will interfere.*** There are too many decided authorities in this regard. See the cases of *Gwonto v. The State* (1983) 1 SCNLR 142 and *Odukwe v. Mrs. Ogunbiyi* (1998) 8 NWLR 339 @ 351; (1998) 6 SCNJ. 102 @ 113, just to mention but a few. I have gone this far, because of the apparent fuss demonstrated in the two Briefs of the Appellant. I need not therefore, go into the other issues which I regard as unnecessary and most irrelevant in the determination of this appeal.

In concluding this Judgment, I have no hesitation whatsoever, in holding and I so hold that this appeal, lacks substance and merit. I accordingly dismiss it and hereby, affirm the decision of the court below affirming the conviction and sentence to death of the Appellant by the trial court,. The rest of the accused persons in my respectful but firm view, are lucky, as there is no cross-appeal in this Court by the Respondent as regards their unwarranted and unjustified acquittal and discharge by the trial court in respect of the charge of conspiracy.

G

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### TOBI JSC

The appellant made two different statements: one at the Police Station and the other in court. In his statement to the Police, Exhibit H B, appellant said:

*“... Then on the 24/6/99 in the evening (sic) I went to go and buy something on the road side then Jibrin Umoru Okpanachi (i.e. the deceased) stop me and he told me that God has catch me today then from there he (refuse) removed knife in order to stab me with*

*it, I then dogged (sic) and grip him and he fall down as the leg enter gotter (sic) and the knife fall away from his hand. I then pick the knife. I then told him that I am going to stab you with the knife since you have miss (sic) me. I then stabbed him on his left thigh the knife I use on the Jibrin Umoru Okpanachi now deceased the knife is not among the knife here with the police, and when I stabbed him with the knife I ran away from the place before I drop (sic) the knife. I cannot identified (sic) the knife I use (sic) on him...”* <sup>B</sup>

In his evidence in court, appellant said:

*“... Before I could talk, deceased brought out his knife. He wanted to stab me but I dodged the knife, and held him. Then his leg fell into the gutter (sic) (meaning gutter). When he fell down the knife in his hand fell. He was struggling to pick the knife to stab me by all means but I first picked the knife before him. I wanted to run away with the knife so that he won’t stab me but he was bigger than me and I am not as powerful as the deceased. As deceased was struggling to collect the knife from me the knife then entered his tie. Deceased then shouted that he had been wounded and I then ran away...”* <sup>C</sup>

Which of the statements is correct? Which of the statements should a court of law believe? When the matter was fresh in the mind of the appellant, he made a clean breast of the role he played in the murder of the deceased. He said unequivocally that he stabbed the deceased on his left thigh with a knife and ran away, apparently for his life. I do not agree that the statement is tantamount to self defence. No. There was no evidence of self defence. I entirely agree with my learned brother that “it is an unequivocal admission by the Appellant that he stabbed the deceased with a knife on his left thigh.” I also agree with my learned brother that raising self defence presupposes that the appellant committed the offence. This is because self defence in the administration of criminal justice admits of the offence by the accused. All he says that I committed the offence in self defence. In other words, I had no choice in the matter than to commit the offence because if I did not do that, the deceased could have killed me. <sup>D</sup> <sup>E</sup> <sup>F</sup> <sup>G</sup> <sup>H</sup>

In law, an accused must make out a clean and clear case of self defence. Self defence is the protection of one’s person against some injury attempted by another person. In law, self defence, in order to

exculpate the accused must be commensurate or proportional to the act of the deceased. In my view, the evidence that it was the deceased who first attempted to stab the appellant with a knife is clearly an afterthought.

In his evidence in court, appellant said that the knife entered the thigh of the deceased in the course of struggle between them for the knife. That was not the story he told the Police in Exhibit B. In Exhibit B, he admitted stabbing the deceased with the knife. Where an accused person makes two statements, in sanity, a trial Judge will be right to take the one which is less favourable to him, all things being equal; and particularly when that one is first in time.

The statement of the appellant to the Police apart, the evidence of the prosecution witnesses clearly proved that the appellant killed the deceased with a knife. PW1 in his evidence in-chief said at page 24 of the Record:

*"On 24/6/99 in the evening after our dinner between 7 to 8 p.m. Jibrin Umoru Okpanachi got up and said he wanted to go and urinate. I was sitting down on the bench outside when I saw Jibrin Umoru and Silas Sule, Christopher, Timothy Sule, Jonah Sule. Those I have mentioned are the accd. persons before the court. The fourth accd. Jibrin Umoru held my deceased brother Jibrin Umoru Okpanachi to his chest. Silas Sule was holding a knife which he used in stabbing Jibrin Umoru Okpanachi twice...."*

PW3 said in his evidence in-chief at page 26 of the Record:

*"On 24/6/99 at about 8 p.m. I was in my room which is about 10 metres away from the compound of Jibrin Umoru Okpanachi when I heard a shout. On hearing the shout I ran from my house to scene of incidence. On my way to the scene, I saw Silas Sule, Jibrin Umoru, Jonah Sule, Timothy Sule, Christopher Sule and one Mutari Umoru (now at large) All of these people I mentioned were all running from Jibrin Umoru Okpanachi's compound. Silas Sule was armed with a knife. Christopher Sule was also with a knife. Jonah Sule was with a gun and Jibrin Umoru was with a stick. Christopher Sule was shouting that he has now stabbed Jibrin Umoru Okpanachi. I immediately pursued the accd. persons to their compound. In their compound, Silas Sule told their mother that he has now stabbed Jibrin Umoru Okpanachi to death and their mother shouted haliloya and that she could now eat freely."*



PW4 also said in his evidence in-chief at page 28 of the Record:

*"... When we left the court for our village on the same date in Ika Efofe around 7 to 8 p.m under moonlight, Titi Sule (6th accd.) and six of her children came to Jibrin Umoru Okpanachi's compound. On reaching the compound Jibrin Umoru hold Jibrin Umoru Okpanachi firmly to his body and Silas Sule (1st accd.) in company of other four brothers of his stabbed the deceased Jibrin Umoru Okpanachi to death in his compound. Deceased as confirmed dead by the accd. and they all started jubilating. Jibrin Umoru said that whoever that has any question over the death should ask him and tht case needs nothing other than money. That they have the money and ready for any case..."*

The confessional statement of the deceased, Exhibit B, and the evidence of the above witness point unequivocally to the fact that the appellant participated in the murder of the deceased, and he cannot get out of it.

I am therefore in entire agreement with my learned brother, Ogbuagu, JSC, that the appeal lacks substance and merit. I accordingly dismiss it.

E

### **OGUNTADE JSC**

The appellant and five others were charged and arraigned before the Ankpa High Court of Kogi State on two counts of conspiracy to murder and the murder of one Jibrin Umoru Okpanachi. At the trial, the prosecution called five witnesses. Each of the accused persons testified in his defence. The trial High Court found the five persons charged with the appellant not guilty. They were discharged and acquitted. The appellant was however found guilty and sentenced to death.

Dissatisfied with his conviction and sentence, the appellant filed an appeal against his conviction and sentence before the Court of Appeal, Abuja (hereinafter referred to as the Court below). On 4 - 04- 07 the Court below dismissed the appeal and affirmed the conviction of the appellant and the sentence imposed. The appellant has come before this court on a final appeal. In the appellant's brief filed nine issues were identified as arising for determination in the appeal.

My Learned brother Ogbuagu JSC has in his lead judgment

exhaustively discussed the germane issues in this appeal. I agree with his reasoning and conclusion. I am adding a few words of mine. There was evidence that the deceased, Jubrin Umoru Okpanachi died following an encounter with the appellant.

B PW. 1 was an eye witness to the killing of the deceased. Before the trial courts, he testified thus:

*"On 24/6/99 in the evening after our dinner between 7 to 8 p.m. Jibrin Umoru Okpanachi got up and said he wanted to go and urinate. I was sitting down on the bench outside when I saw Jibril Umoru and Silas Sule, Christopher Timothy Sule, Jonah Sule, Those I have mentioned are the accd. Persons before the court. The fourth accd. Jibrin Umoru held my deceased brother Jibrin Umoru Okpanachi to his chest. Silas Sule was hoiding a knife which he used in stabbing Jibrin Umoru Okpanachi twice. Jonah Sule was with a D gun. Christopher Sule Was with a stick. Timothy Sule was also with a stick. It was Titi Sule their mother was the person who accompanied them to carry out the act.*

*After they now discovered that they have killed Jibrin Umoru Okpanachi, they all took to their heels. As they were running away, E they said they have killed Jibrin Umoru Okpanachi and that anybody who like could come and ask them. Thereafter Jibrin Umoru Okpanachi shouted they have "killed me" and he fell down and died. Akpai Umoru then came and held Jibrin Umoru Okpanachi on the ground. I then went to Abu Adaji to report the incidence (sic) to him. F That is all. Silas Umoru stabbed Jibrin Umoru Okpanachi on his left thigh."*

Pw.3 testified that he heard the appellant announce jubilantly to his mother Titi Sule that he had stabbed Jibrin Umoru Okpanachi G to death. P.W.3 testified thus:

*"I immediately pursued the accd. persons to their compound. In their compound, Silas Sule told their mother that he has now Stabbed Jibrin Umoru Okpanachi to death and their mother Shouted Haleloya (sic) and that she could now eat freely.*

H At the trial the appellant at page 34/35 of the record testified thus:

*"On 24/6/99 when we arrived home from court, around after 8 p.m. I went to buy soap from the road side close to our house on my way back the deceased was waiting and I was alone. When the*

*deceased came out he held me unaware and I did not know where to run to. Deceased told me that God has caught me and that do I think that he pay the money court asked him to pay? Before I could talk deceased brought out his knife. He wanted to stab me but I dogged the knife, and held him. Then his leg fell into the gutter. When he fell down the knife in his hand fell. He was struggling .....to stab me by all means but I first picked the knife he was bigger than me and I am not as powerful as the deceased. As deceased was struggling to collect the knife from me the knife then entered his tie. Deceased then shouted that he had been wounded and I then ran away. On my way as I was running I dropped the knife.”* B C

The evidence given by the appellant at the trial court was a departure from the statement he had made to the Police on 19 -7-99 exhibit B. D

In the statement the appellant said:

*“Then the accused Jibrin Umoru Okpanachi promise that he was going to pay the expenses in the court. On the 24/6/99 as we finishing from court on our way coming home Jibrin Umoru Okpanachi started saying that I was the person behind the people that took him to court. And he refused to pay the money that he promised. Then on the 24/6/99 in the evening I went to go and buy something on the road side then Jibrin Umoru Okpanachi stop me and he told me that God has catch me today then From there he (refuse) removed knife in order to stabbed me with it I then dogged, and grip him and he fall down as the leg enter gutter and the knife fall away from his hand I then pick the knife I then told him that I am going to stabbed you with the knife since you have miss me. I then stabbed him on his left thigh the knife I use on the Jibrin Umoru Okpanachi now deceased the knife is not among the knife here with the police. And when I stabbed him with the knife I ran away from the place before I drop the knife.”* E F G

In his appraisal of the evidence the trial judge at page 65 of the record said: H

*“Confession is defined in Section 27 of the evidence Act Cap 112 Laws of the Federation 1990 as follows:*

*1) A confession is an admission made at any time by a person charge (sic) with a crime, stating or suggesting the inference that he*

*committed that crime.*

*2) Confession if voluntary, are deemed to be relevant facts as against the persons who make them only.*

*There is no argument as to whether the 1st accd. statement is Voluntary or made under duress. The only argument is that it was meant to be self defence and not confession and so “Exhibit “B” is not in dispute. The medical report Exhibit C confirmed that injuries inflicted on the deceased by the accused. Are those that caused the death of the deceased. In the case of: Uguzu Vs The State (2002) 4 SCN the Supreme Court held that medical evidence is not essential in all cases to prove the cause of death for example where a person was attacked and he or she dies immediately after the infliction of the injury on him or her, medical evidence is not necessary to prove the cause of the persons death. The cause of death in that case is the injury inflicted on the person and the accused who inflicted the injury is guilty of the offence charged.*

*From the foregoing, it is my view that the Prosecution has proved the guilt of the 1st accused beyond reasonable doubt having regard to the overwhelming evidence of the prosecution witnesses. Accordingly I hereby convict you Silas Sule for the offence of culpable Homicide punishable with death under Section 221 of the Penal Code.”*

The Court below in affirming the conviction of the appellant said at page 186 of the record:

*“The appellant inflicted the deep cut on the left thigh of the deceased which caused the haemorrhage - that resulted in his instantaneous death. The knife used which the appellant admitted he threw away was a lethal weapon. A man is presumed to intend the natural consequences of his act. Where a man causes another person grievous bodily harm, he is presumed to have intended to kill that person and he would be guilty of murder irrespective of his intention. The Learned trial judge was right when he (sic) convicted the appellant of murder. I concluded earlier that the finding on the offence of conspiracy as perverse and this court has every reason to interfere with it.*

*Woluchem V Gudi 1981 5 SC 291*

*State V Usman 2005 1 NWLR pt 906 pg 80*

*State V Ajie 2000 11 NWLR pt 678 pg 434*

*In the final analysis there is overwhelming evidence to convict*

*Silas Sule, Christopher Sule and Jubrin Umoru of the offences of conspiracy and culpable homicide, while the benefit of doubt should be resolved in favour of Jonah Sule, Timothy Sule and Titi Sule respectively."*

It seems to me that from the evidence available against the appellant the trial court had a very clear duty. There was the confessional statement made by the appellant from which he resiled in his evidence in court. But the evidence of P.W.1, an eye witness to the killing of the deceased clearly supports the confessional statement made by the appellant and the medical evidence. In *Sholuade V Republic* (1966) 1 All N.L.R. 134 at 139, Lewis J.S.C. discussing nature of the defence of accident said:

*"We rather note, though it was not a ground of appeal that when the learned trial judge left to the jury, as the prosecution suggested, he might, the determination whether the death was accidental he also wrongly put the onus on the accused rather than as he should have done on the prosecution to disprove accident."*

The law is well settled that when in a criminal trial, an accused raises the defence of accident, the onus is on the prosecution to disprove it. See *Dangari Vs State* (1968) 1 All N.L. R. 249 at 256.

There was in this case clear and cogent evidence which the trial court accepted that the defence of accident put up by the appellant was untrue. The court accepted the evidence of P.W.I which is supported by the appellant's confessional statement that the death of the deceased was caused by the wilful act of the appellant who stabbed the deceased. The finding of the trial court cannot be faulted. The court below in my view correctly affirmed the judgment of the trial court.

It is for this and the more elaborate reasons in the lead judgment of my learned brother Ogbuagu JSC that I would also dismiss this appeal as unmeritorious.

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**MUHAMMAD JSC**

My learned brother, Ogbuagu, JSC, afforded me an opportunity to read in draft the judgment he has just delivered. I agree with his reasoning and conclusion. I abide by all consequential orders contained in the judgment

**OGEBE JSC**

I read before now the lead judgment of my learned brother  
B Ogbuagu, JS just delivered and I agree with his reasoning and con-  
clusion that the appeal lacks merit. I also dismiss it and affirm the con-  
viction and sentence of the two lower courts.

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