

SUPREME COURT OF NIGERIA
29TH JANUARY, 2010. SC. 36/2009
CORAM:- A. I. KATSINA-ALU, M. MOHAMMED,
W. S. N. ONNOGHEN, C. M. CHUKWUMA-ENEH,
M. S. MUNTAKA-COOMASSIE, JJSC

RASHEED OLAIYA	APPELLANT
V.	
THE STATE	RESPONDENT

APPEALS - Grounds - Not covered by formulated issues - Fate of - Such ground - Like the instant ground 3 - Is deemed to have been abandoned - Even where argument has been preferred on it (H1)

CRIMINAL PROCEDURE - Alibi - Failure to investigate - Effect - It may cast doubt on the prosecution's case - But where accused is identified at scene of crime by eye witnesses - His alibi is demolished if the judge believes the witnesses (H2)

EVIDENCE - Murder - Tainted witnesses - PW.s 2 to 4 - Whether tainted - A witness is tainted where he is an accomplice - Or has some personal purpose to serve by his evidence - None of PW.s 2 to 4 has been shown as such (H3)

FACTS

Appellant was arraigned and tried before the High Court of Oyo State for the offence of murder contrary to section 319 of the Criminal Code Law of Oyo State. The case of the prosecution was that appellant had murdered one Ramoni Ibrahim, the 5 month old baby of appellant's younger brother - PW1 - by smashing it on the floor thereby causing fatal injuries to it. It was in evidence that appellant and P.W.1 had quarrelled as a result of the latter's refusal to aid the former in the former's bid to remove the title document of a land belonging to the estate of their late half-brother. It was against the background of this quarrel that appellant went into the house of P.W.1 on the fateful day at about 11.00pm after verbally threatening to deal with him on several occasions.

On gaining entrance into the house, appellant slapped one of

the wives of P.W.1 who opened the door for him and whom he accused of meddling in their family affairs. He then grabbed P.W.1 who managed to extricate himself from appellant's grip and ran out of the house to seek help. It was at this point that appellant grabbed the sleeping baby and threw it hard on the ground in the presence of P.W.1's wives. Though appellant pleaded alibi in his statement to the police, which alibi was not investigated by the police, the wives of P.W.1 who witnessed the dastardly act of appellant gave evidence, fixing him at the scene of crime, in addition to evidence of P.W.1. After trial, appellant was found guilty as charged and sentenced accordingly. He appealed against the judgment to Court of Appeal which appeal was dismissed. Appellant has brought this further appeal to Supreme Court contending that the failure to investigate his plea of alibi was fatal to prosecution's case.

ISSUES FOR DETERMINATION

“Whether the learned Justices of the Court of Appeal were right, in law, to affirm the conviction and sentence of the Appellant, even though the prosecution failed, altogether, to investigate the Appellant’s defence of alibi raised in good time.”

HELD (Unanimously dismissing the appeal per **MOHAMMED JSC**)
APPEALS - Grounds - Not covered by formulated issues

1. Indeed, close examination of the 3 grounds of appeal filed by the Appellant and the single issue formulated from them in the Appellant’s brief of argument, it is quite clear that ground 3 which complained in the main on the use of medical report to prove the cause of death, no issue for determination had been formulated from that ground of appeal. The law is well settled that where an Appellant does not formulate an issue in his brief of argument to cover a ground of appeal, that ground would be deemed to have been abandoned even where argument has been preferred on it. In the present case therefore, ground 3 of the grounds of appeal having been abandoned shall be ignored in the determination of this appeal. (p. 362 D)

Alibi - Failure to investigate - Effect

2. On the effect of the failure of the prosecution to investigate the defence of alibi as complained by the Appellant in this appeal, the answer can be found in the case of *Michael Hause v. The State* (1994)

6 N.W.L.R.(Pt. 350) 281, Onu JSC had this say on the issue of failure of the prosecution to investigate a defence of alibi raised by an accused at pages 301 - 302 as follows:-

“Thus once the prosecution through its witnesses establish that they (the witnesses) saw the Appellant committing the offence charged, a defence of alibi by the Appellant raises the straight issues of credibility to wit; whether the evidence of the witnesses is believable and if believed, the alibi raised is logically demolished or fizzles into thin air and so doomed.” (pp. 364 H/365 C)

Murder - Tainted witnesses - PW.s 2 to 4 - Whether tainted

3. The question to be asked therefore is whether or not these witnesses could be described as tainted. A ‘tainted’ witness has been described as a witness who is either an accomplice or who by the evidence he gives may and could be regarded as “having some purpose of his own to serve.

In the case at hand, the learned Counsel to the Appellant duly cross- examined all the three prosecution witnesses as shown on record and I fail to find anywhere in the record where any of the three witnesses was directly or by any implication, accused of being an accomplice or one whose evidence could be regarded as having some purpose of his or her own to serve. (p. 367 D/F)

REPRESENTATION

Olusegun Fowowe Esq. for the Appellant

Respondent absent and not represented but duly served

CASES REFERRED TO

Ishola v. The State (1978) 9-10 S.C. 73 at 100

Ajar v. Koori (1991) 7 N.W.L.R. (Pt. 203) 260

Adedeji v. The State (1971) 1 All N.L.R. 75 at 79

Ozaki v. The State (1990) 1 N.W.L.R. (Pt. 124) 92

Ogboodu v. The State (1987) 2 N.W.L.R. (Pt. 54) 20

Opayemi v. The State (1985) 2 N.W.L.R. (Pt. 5) 102

Patrick Njovens v. The State (1973) 5 S.C. 17 at 65

State v. Dominic Okolo & Ors. (1974) 2 S.C. 73 at 82

Nwabueze v. The State (1989) 4 N.W.L.R. (Pt. 86) 16

Adetola v. The State (1992) 4 N.W.L.R. (Pt. 235) 267 at 273

Obakpolor v. The State (1991) 1 N.W.L.R. (Pt. 165) 113 at 133
 Onyelokwo v. The Sate (1992) 8 N.W.L.R. (Pt. 230) 444 at 447
 Jerome Akpan & 3 Ors. v. The State (2002) F.W.L.R. (Pt. 110) 1845
 at 1853

Monday Odu & Anor. v. The State (2001) 10 N.W.L.R. (Pt. 722)
 B 668 at 674
 Baker v. Lagos State Civil Service Commission (1992) 8 N.W.L.R.
 (Pt. 262) 641

C **STATUTE REFERRED TO**

Criminal Code Cap 30 Laws of Oyo State, s. 319

LEAD JUDGMENT BY MOHAMMED JSC

The Appellant in this appeal who is a senior brother of the 1st
 D prosecution witness who was the complainant at the Police Station,
 was arraigned before the High Court of Justice of Oyo State sitting at
 Ibadan on an information filed by the State on 15th October, 2002
 for the offence of murder contrary to Section 319 of the Criminal
 Code CAP 30 of the laws of Oyo State of Nigeria 1978, in that the
 E accused person on or about the 3rd day of November, 2001 at No.
 10 Ogunleye Avenue, Liberty Road Ibadan murdered one Ramoni
 Ibrahim. On taking the plea of the accused person who pleaded not
 guilty to the offence on 19th November, 2003, the case proceeded to
 F trial before Ige J. In the course of the trial, the prosecution called a
 total number of 6 witnesses who testified in support of the case for
 the prosecution. The accused person on the other hand, gave evi-
 dence in his own defences but declined to call any other witness to
 testify in support of his defence.

G The case for the prosecution was that the accused and PW 1
 Ibrahim Sanusi, were children of same parents whose father Alhaji
 Abdullahi Sanusi was deceased. One Mufutau Sanusi who was also
 deceased, was of the same father but different mothers with the ac-
 cused and PW 1. The accused had once approached PW 1 to sup-
 H port him in removing the title document of the landed property left
 behind by their deceased brother Mufutau, but PW 1 refused to grant
 the request and advised the accused not to remove the title docu-
 ment. All the same, the accused went ahead to remove the docu-
 ment and was subsequently reported to the Police. Since then the

accused had been threatening to deal with PW 1, his junior brother.

It was with the background of these events that the accused on 3rd November, 2001 at about 11 p.m, came to the house of his junior brother PW 1, where he found PW 1 with his two wives and three children. On coming into the house, the accused slapped one of his brother's wives who opened the door for him and whom he accused of intermeddling into their family affairs. He also slapped PW 1 who extricated himself from the grip of the accused and ran out of the house to seek help from their brother who also lived in the same family house. It was at this point that the accused, in the presence of his brother's two wives, grabbed his brother's 5 months old baby who was sleeping on the bed, and smashed him on the floor causing him injuries which resulted in his death that same night before the matter could be reported to Alhaji Tajudeen Sanusi, one of the elders of the family. The incident was then reported to the Police who deposited the corpse of the deceased child in the mortuary of the hospital where it was examined and a medical report on the cause of death was prepared and issued.

The case of the accused in his defence on the other hand, was a complete denial of ever being to the house of his younger brother PW 1 on the night of 3rd November, 2001, not to talk of having engaged in the alleged act that caused the death of the deceased child Ramoni Ibrahim. He said it was his brother PW 1, who broke into the accused room that night and accused him of having killed the deceased child and threw the child on the ground. He explained that he was alone in the room when PW 1 his brother accompanied by his wife carrying the deceased child, came to his room that night as following a misunderstanding between him and his brother PW 1 earlier on. He claimed that PW 1 had driven the accused's wives and his 9 children out of the house before that date. The accused finally asserted that his own two wives, one Tajudeen whose room is opposite that of the accused and three other named persons could testify in support of his defence of alibi.

The learned trial Judge after taking addresses from the learned Counsel to the accused and the prosecution, in a well considered judgment delivered on 6th February, 2004, found the accused guilty as charged, convicted and sentenced him to death in accordance with the law. Not satisfied with his conviction and sentence, the ac-

cused appealed to the Court of Appeal Ibadan Division which after hearing the appeal, dismissed the same and affirmed the conviction and sentence on the accused in its judgment delivered on 16th June, 2008. Still aggrieved by that judgment, the accused whom I shall henceforth in this judgment call the ‘Appellant’; is now on a further
 B and final appeal to this Court by a Notice of Appeal containing three grounds of appeal from which only one issue for determination was raised in the Appellant’s brief of argument. The lone issue reads -

“Whether the learned Justices of the Court of Appeal were
 C right, in law, to affirm the conviction and sentence of the Appellant, even though the prosecution failed, altogether, to investigate the Appellant’s defence of alibi raised in good time.”

In the Respondent’s brief of argument, the single issue formulated from the three grounds of appeal filed by the Appellant was
 D adopted by the learned Respondent’s Counsel who also observed that since no issue for determination was raised from the 3rd ground of appeal, the ground is deemed to have been abandoned.

**Indeed, close examination of the 3 grounds of appeal filed by the Appellant and the single issue formulated from them in the Appellant’s brief of argument, it is quite clear that ground 3 which complained in the main on the use of medical report to prove the cause of death, no issue for determination had been formulated from that ground of appeal. The law is well settled that where an Appellant does not formulate an
 F issue in his brief of argument to cover a ground of appeal, that ground would be deemed to have been abandoned even where argument has been preferred on it.** See Baker v. Lagos State Civil Service Commission (1992) 8 N.W.L.R. (Pt. 262) 641; Labiyi v. Anretiola (1992) 8 N.W.L.R. (Pt. 258) 139 Ajar v. Koori (1991) 7
 G N.W.L.R. (Pt. 203) 260; and Modupe v. The State (1988) 4 N.W.L.R. (Pt. 87) 130. **In the present case therefore, ground 3 of the grounds of appeal having been abandoned shall be ignored in the determination of this appeal.**

H In support of the lone issue for determination, the learned Counsel to the Appellant has submitted that the prosecution had failed to prove its case against the Appellant beyond reasonable doubt having failed to investigate and disprove the defence of alibi clearly raised by the Appellant in his statement to the Police in which he

listed the names of 6 persons including his two wives who could have given evidence in support of his defence of alibi. He argued that failure of the prosecution and the Court to consider and examine the defence, is a failure to perform a vital duty and is likely to lead to miscarriage of justice resulting in the decision being set aside and conviction quashed. The cases relied upon by the learned Counsel to the Appellant in support of this argument include *Opayemi v. The State* (1985) 2 N.W.L.R. (Pt. 5) 102; *Bozin v. The State* (1995) 7 S.C. pg. 472 - 473; *Obakpolor v. The State* (1991) 1 N.W.L.R. (Pt. 165) 113 at 133; *Dogo v. The State* (2001) 1 S.C. (Pt. 11) 30 at 46 and *Akpar Ikono & Anor. v. The State* (1973) 5 S.C. 231; 5 S.C. (Reprint) 167 where this Court stated that a person who puts forward an alibi as an answer does not assume any burden of proving the answer; that in the present case where the accused Appellant has disclosed an alibi before the trial and the Police had taken no steps available to verify or disprove the defence, the trial Court should have held that the prosecution had failed to prove its case to justify the acquittal and discharge of the accused learned Counsel argued placing reliance on *Adedeji v. The State* (1971) 1 All N.L.R. 75 at 79. Learned Appellant's Counsel concluded that since the trial Court simply relied on the evidence of PWs 2, 3 and 4 and rejected the evidence of the Appellant setting up his defence of alibi which was neither investigated nor disproved, the trial Court ought to have found the Appellant not guilty and as such the Court below was wrong in affirming his conviction and sentence. Counsel therefore urged this Court to allow the appeal.

Learned Attorney General of Oyo State Mr. Lana in his argument in the Respondent's brief, had observed that the prosecution had adduced credible evidence in support of the case which demolished the Appellant's defence of alibi showing clearly that the Appellant actually committed the offence with which he was charged; that the learned trial Judge had carefully evaluated the evidence adduced at the trial before coming to the conclusion that the prosecution's evidence had demolished the alibi of the Appellant and had proved its case against the Appellant beyond reasonable doubt; that the contention of the Appellant that his alibi was not investigated before the trial and as such the prosecution cannot be said to have proved its case beyond reasonable doubt, cannot stand on the face of the cred-

ible evidence led by the prosecution fixing the Appellant to the scene of the crime. In support of this submission, learned Attorney General called in aid the cases of *Monday Odu & Anor. v. The State* (2001) 10 N.W.L.R. (Pt. 722) 668 at 674; *Nigeria Air Force v. Ex. Squadron Leader A. Obiosa* (2003) F.W.L.R. (Pt. 148) 1224 at 1225 and *Ogbodu v. The State* (1987) 2 N.W.L.R. (Pt. 54) 20. Finally, learned Respondent's Counsel concluded that the positive identification of the Appellant at the scene of the crime by PW2, PW3 and PW4, unequivocally destroyed the Appellant's alibi thereby making any investigation of the alibi by the prosecution unnecessary having regard to the decisions in *Patrick Njovens v. The State* (1973) 5 S.C. 17 at 65; *Adebayo Adetola & Sons v. The State* (1992) 4 N.W.L.R. (Pt. 235) 267; *Madgawa v. The State* (1988) 5 N.W.L.R. (Pt. 92) 60; *Ifedjere v. The State* (1984) 9 S.C. 59; *Jerome Akpan & 3 Ors. v. The State* (2002) F.W.L.R. (Pt. 110) 1845 at 1853 and *Hausa v. The State* (1994) 6 N.W.L.R. (Pt. 350) 281. After quoting and relying on part of the judgment of the Court below now on appeal, learned Respondent's Counsel urged this Court to agree with the Court below in its judgment that the evidence adduced by the prosecution had completely flawed the defence of alibi put up by the Appellant and consequently dismiss the appeal as the complaint of the Appellant that since the evidence supporting the conviction of the Appellant came from members of his family who were not in good terms with him, his appeal ought to have been allowed by the Court below, has no basis at all in law having regard to the decision of this Court in *Akpan v. The State* (1972) 1 N.S.C.C. 201. Learned Attorney-General therefore urged this Court to dismiss the appeal.

The law is indeed well settled that the defence of alibi once it has been properly raised by the accused person in the course of the investigation of the offence for which he is charged, it is the duty of the Police to investigate it and for the prosecution to disprove it. This principle of law had been applied in a number of cases including *Salami v. The State* (1988) 7 S.C. (Pt. 11) 89; (1988) 3 N.W.L.R. (Pt. 85) 670; *Nwabueze v. The State* (1989) 4 N.W.L.R. (Pt. 86) 16; *Okoduwa v. The State* (1990) 1 N.W.L.R. (Pt. 76) 333 and *Ozaki v. The State* (1990) 1 N.W.L.R. (Pt. 124) 92. ***On the effect of the failure of the prosecution to investigate the defence of alibi as complained by the Appellant in this appeal, the answer can***

be found in the case of Hemyo Ntam & Anor. v. The State (1968) N.M.L.R. 86 at 87 where this Court said -

“There are occasions on which a failure to check an alibi may cast doubt on the readability 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 issue of credibility and we are not able to say that the Judge’s findings of facts were unreasonable or cannot be supported having regard to the evidence. If the alibi had been true it would have been open to the Appellant to call witnesses in support of them and neither of them did so.”

Similarly, in the case of **Michael Hause v. The State (1994) 6 N.W.L.R. (Pt. 350) 281**, Onu JSC had this say on the issue of **failure of the prosecution to investigate a defence of alibi raised by an accused at pages 301 - 302 as follows:-**

“Thus once the prosecution through its witnesses establish

that they (the witnesses) saw the Appellant committing the offence charged, a defence of alibi by the Appellant raises the straight issues of credibility to wit; whether the evidence of the witnesses is believable and if believed, the alibi raised is logically demolished or fizzles into thin air and so doomed.”

See also the case of Patrick Njovens v. The State (supra). In other words, once a defence of alibi has been raised, the burden is on the prosecution through the agency of the Police to investigate and rebut such evidence in order to prove its case against the accused beyond reasonable doubt. See Adedeji v. The State (1971) 1 All N.L.R. 75. However, the prosecution does not have to investigate every alibi however improbable although where the story of the accused person if believed is capable of providing a defence, there is a duty upon the prosecution to investigate the story and failure on the part of the prosecution to do so may amount to an admission. See Ozulonye v. The State (1980) 2 N.C.R. 343 and Akpar Ikono v. The State (1973) 5 C. C. 231.

Coming back home to the instant case, there is no doubt whatsoever that the Appellant had raised a defence of alibi in his statement to the Police under caution which was in evidence as Exhibit ‘B’ and ‘Bl’ where he stated the names of 6 persons including his two wives who could give evidence to support this defence. However, in

the course of his evidence on oath before the trial Court in support of his defence, the Appellant also said at page 25 of the records as follows -

"I am 60 years old. I am married. I have nine children. My wives and children have been driven out of my house by the 1st Prosecution Witness. I live in a family house and I am not the eldest in the family on my mother's side because the one who was older than me could not be found again. I Was alone in the parlour the night 1st Prosecution witness came with the dead child. There were people on that day and they all came out. There are 16 rooms in the house. I occupy three of the rooms with members of my family."

It is significant to note that the Appellant did not repeat his assertion in his cautioned statement to the Police Exhibit B that he had 6 witnesses to support his defence of alibi throughout his oral evidence on oath before the trial Court where he not only told the Court that at the time of the incident on 3rd November, 2001, his two wives and nine children were not living with him in his three rooms occupied by him in the family house, but the Appellant also clearly stated that he was alone in the parlour that night when PW 1 and his wife brought the dead child to the house. As the Appellant did not tell the trial Court where his two wives and children were staying at the time of the incident, at least the evidence of his two wives he mention who were clearly not with him in the house that night of 3rd November, 2001, would not have assisted the Appellant to prove his defence of alibi. Furthermore, there could not have been any question of mistaken identification of the Appellant by his own brother PW 1 and his two wives PW2 and PW3 who not only put the Appellant squarely at the scene of the crime but also vividly described the acts of the Appellant of grabbing the deceased child Ramoni Ibrahim from his bed and smashing him on the floor resulting in his death that same night before he could be taken to the hospital. Therefore the defence of alibi raised in the present case by the Appellant merely raised a straight issue of credibility between the Appellant's evidence in support of his defence of alibi and the overwhelming evidence adduced by the prosecution clearly fixing the Appellant at the scene of the crime, the defence of alibi raised by the Appellant had logically been effectively crushed as rightly found by the learned trial Judge and affirmed by the Court below.

The learned Counsel to the Appellant in his argument in support of the lone issue of alibi raised for determination in this appeal also dropped in a further argument that since the charge of the Appellant for the offence of murder in this case was made against the Appellant in the background of animosity between PW1 and the Appellant who were feuding brothers in their family which allegedly polarised the family into two camps one on the side of the Appellant and the other on the side of PW1, this fact ought to have been a source of lingering doubt in the evidence of the prosecution fixing the Appellant at the scene of the crime and which the trial Court ought to have resolved in favour of the Appellant. This argument to me raises an issue which is tantamount to the Appellant accusing the prosecution's eye witnesses PW2, PW3 and PW4 of being tainted witnesses whose evidence ought to have been treated with considerable caution by the trial Court. ***The question to be asked therefore is whether or not these witnesses could be described as tainted. A 'tainted' witness has been described as a witness who is either an accomplice or who by the evidence he gives may and could be regarded as "having some purpose of his own to serve."*** See *The State v. Dominic Okolo & Ors.* (1974) 2 S.C. 73 at 82; (1974) 1 ALL N.L.R. 466 at 474; *Ishola v. The State* (1978) 9-10 S.C. 73 at 100; *Mbenu v. The State* (1988) 3 N.W.L.R. (Pt. 84) 615 and *Adetola v. The State* (1992) 4 N.W.L.R. (Pt. 235) 267 at 273. The law in this respect is trite that the evidence of a tainted witness should be treated with considerable caution and be examined with a fine toothed comb. See *Mbenu v. The State* (supra) per Nnamani, JSC of blessed memory at page 626 of the report.

In the case at hand, the learned Counsel to the Appellant duly cross-examined all the three prosecution witnesses as shown on record and I fail to find anywhere in the record where any of the three witnesses was directly or by any implication, accused of being an accomplice or one whose evidence could be regarded as having some purpose of his or her own to serve. In any case there is no evidence anywhere on record that the family of the Appellant and his brother PW1 was polarised into two camps in the course of the trial of the Appellant. This unfounded allegation against the prosecution witnesses therefore has no basis whatsoever in the present case to raise any doubt in

the direct evidence of these witnesses to justify the trial Court in resolving the alleged doubt in favour of the Appellant.

Finally, I may observe at this stage that this appeal being one against concurrent findings of facts of two Courts below, the Appellant is very far from discharging the burden the law places on him of showing that the decisions of the Courts below were perverse or cannot be supported having regard to the evidence adduced by the prosecution. In situation such as this in the present case, I see no reason whatsoever to disturb the findings of the trial Court which were affirmed by the Court below that the Appellant was indeed guilty of the charge of murder and therefore liable to have been convicted and sentenced to death. See *Bakare v. The State* (1984) 1 N.W.L.R. (Pt. 52) 597; *Onyelokwo v. The Sate* (1992) 8 N.W.L.R. (Pt. 230) 444 at 447.

On the whole, having resolved the only one issue of the defence of alibi for determination in this appeal against the Appellant, the appeal itself must fail. Accordingly the appeal is hereby dismissed. The conviction of the Appellant for the offence of murder and the sentence of death passed upon him by the trial Court and affirmed by the Court below are further affirmed by me.

KATSINA-ALU JSC.

I have had the privilege of reading in draft the judgment of my learned brother Mahmud Mohammed JSC in this appeal. I entirely agree with his reasoning and conclusion. There is nothing I can usefully add. I also, in the circumstance dismiss the appeal. I affirm the appellant's conviction and sentence.

ONNOGHEN JSC

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

The appellant who raised a defence of alibi, which if sustained is a complete answer to the charge, as the appellant is not expected to be at two places at the same time, was, however, positively identi-

fied by PW2, PW3 and PW4 to have been, not only at the scene of crime, but the one who committed the offence. It is clear that such an unequivocal identification of the appellant as the person who committed the offence completely destroys the defence of alibi particularly as the learned trial judge believed the evidence of PW2, PW3 and PW4 on the issue. B

I hold the view that in the circumstance there was no need for the prosecution to carry out any investigation of the alleged alibi. The witnesses saw the appellant commit the offence and fled the scene of crime. However, see *Njovens vs The State* (1973) 5.SC 17 at 65; *Adetola vs The State* (1992) 4NWLR (Pt. 233) 267; *Maoagawa vs State* (1988) 9.SC59; *Akpan vs State* (2002) FWLR (Pt. 110) 1854 at 1853; *Hausa vs State* (1994) 6NWLR (Pt.350) 281. C

The lower courts have found concurrently that the prosecution proved the charge of murder preferred against the appellant beyond reasonable doubt. It is settled law that this court does not make a practice of interfering with such concurrent findings of fact unless the findings are perverse or there are special circumstances to warrant same. The appellant has not demonstrated to this court how the finding by the lower courts can be said to be perverse to warrant the intervention of this court. In the circumstance the findings cannot be disturbed by this court, see *Onyejokwo vs State* (1999) 3NWLR (Pt.230) 447; *Bakare vs State* (1984) INWLR (Pt.52) 597. D E

In conclusion, I too find no merit in the appeal which is accordingly dismissed by me. F

Appeal dismissed.

CHUKWUMA-ENEH JSC

I have read in draft the judgment prepared by my learned brother Mohammed JSC. I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed. G

Upon the collapse of the defence of alibi put up by the defence in this case, the trial court rightly accepted the strong testimonial evidence of eye-witnesses account of Pw.2, Pw.3 and Pw.4, which has proved the guilt of the accused conclusively committing this heinous offence at the scene of crime. Additionally, there is a concurrent finding of law and facts by the two lower courts. And the accused has H

not made out a case in this court dislodging these findings. Therefore, I too dismiss the appeal and endorse all the orders in the lead judgment.

B

MUNTAKA-COOMASSIE JSC

I have had the privilege of reading in advance the lead judgment as rendered by my learned brother Mahmud Mohammed JSC just delivered.

C

His Lordship has admiringly and painstakingly too dealt with all the issues raised in this appeal. I agree with his reasons and conclusions. I agree that the appeal lacks merit and I hereby dismiss same.

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