

SUPREME COURT OF NIGERIA
19TH MARCH 2010. SC. 317/2008
CORAM:- N. TOBI, I. F. OGBUAGU, J. O. OGEBE,
J. A. FABIYI, O. O. ADEKEYE, JJSC

P. C. O. OLUDAMILOLA APPELLANT
V.
THE STATE RESPONDENT

MURDER - Intent to kill - Whether proved - The finding that deceased was shot intentionally - Made by trial court and confirmed by Court of Appeal - Having not been shown to be perverse - Will not be interfered with (H1)

FACTS

The appellant was arraigned and tried at the High Court of Kogi State for the offence of culpable homicide punishable with death contrary to section 221 (a) of the Penal Code Law of Kogi State. The case for the prosecution was that appellant, a police officer shot one Solomon Omopariola (“the deceased”) with a revolver pistol when the deceased had gone to police station to sympathize with an arrested person. PW.2 a retired police officer, gave an eye witness account in his testimony. He gave evidence of how appellant had gripped the deceased and was dragging him into the police station, at which time PW.2 heard the sound of the gun shot and the shout of the deceased that appellant had killed him. PW.2 rushed to the scene and saw the deceased in a pool of blood. When appellant refused to arrange for a vehicle to take the deceased to hospital, PW.2 did so. It was at the hospital that the deceased eventually died.

On the other hand, appellant testified that the shot from the pistol was an accidental discharge which came when the deceased and others were beating him and trying to snatch the pistol from him. After hearing, trial court found appellant guilty as charged and sentence him according. Aggrieved, appellant appealed to Court of Appeal but his appeal was dismissed. Still dissatisfied, he has brought this further appeal to the Supreme Court. In line with his story of accidental discharge, appellant is contending that the defence of accident should avail him.

ISSUES FOR DETERMINATION

i. Whether the case against the appellant was proved as required by the law.

ii. Whether the defence of accident was available to the appellant in this case.

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

MURDER - Intent to kill - Whether proved

1. This case turns entirely on facts and the critical question is whether or not the gun shot which killed the deceased was fired intentionally by the appellant or it was an accidental discharge. The trial court believed the evidence of PW2 a former Inspector of Police who was a witness to the event and who was not seriously challenged under cross-examination. The Court of Appeal confirmed the finding of the trial court that the appellant intentionally shot the deceased at close range. It is not the duty of this court to interfere with the concurrent findings of fact made by the trial court and the Court of Appeal unless such findings are perverse or are not supported by the evidence or are reached as a result of a wrong approach to evidence.

I see no cause whatsoever to disturb the findings of fact made by the 2 lower courts. (pp. 942 F/943 A)

REPRESENTATION

Chief O.J. Onoja with F. Adedamola, E.O. Agada and Omachi A. Daniel for appellant.

Mr. B. Dambo with U.A. Nwangwu for respondent.

CASES REFERRED TO

The State v Nwabueze (1980)1 NCR 41 at 44

George Ukwa v. COP (1977) NNLR 90 @ 104

Akpa v. State (2007) 2 NWLR pt. 1019 pg. 500

Effiong v. State (1998) 8 NWLR pt. 562 pg. 362

Mufutu Bakare v. The State (1987) 3 S.C. 1 @ 15

Daniels v. The State (1991) 8 NWLR (Pt. 212) 715

Uwagboe v. State (2007) 6 NWLR pt. 1031 pg. 606

Thomas v. The State (1994) 4 SCNJ. (Pt. 1) 102 @ 119

Kaza v. The State (2008) 7NWLR (Pt 1085) 125 at 163

Oforlette v. The State (2000) FWLR (Pt. 12) 2081 @ 2102

Umoru v. The State (1990) 3 NWLR (Pt. 138) 363 @ 370
 Ugwumba v. The State (1983) 5 NWLR (Pt. 291) 660 @ 671
 Garba & ors v. The State (2000) FWLR (pt. 24) page 1405 at 1459
 Aliu Bello & 13 Ors. v. Attorney-General of Oyo State (1986) 5 NWLR (pt. 45) 828

STATUTE REFERRED TO

Penal Code Law of Kogi State, ss. 48 and 221

BOOK REFERRED TO

Black's Law Dictionary, 7th Edition, page 15

LEAD JUDGMENT BY OGEBE JSC

This is an appeal against the judgment of the Court of Appeal Abuja which dismissed the appellant's appeal from his conviction and sentence to death by Otta J. of Kogi State High Court of culpable homicide punishable with death contrary to Section 221 (a) of the Penal Code by causing the death of one Solomon Omopariola. The case for the prosecution was that the appellant, a Police Officer shot with a revolver pistol at the deceased who had gone to a police station in sympathy with an arrested person. There was evidence that prior to this incident, the appellant and another colleague had been drinking illicit gin. PW2 Samuel Olowu was an eye witness to the event. He gave evidence of how the appellant gripped the deceased and was taking him into the Police Station at Efo-Amuro when he heard the sound of a gun shot and the deceased shouted that the appellant had killed him. He went and saw the deceased in a pool of blood and asked the appellant to look for a vehicle to convey him to the hospital but he refused. He personally arranged for a vehicle to convey the deceased to the hospital. PW2 was a retired Inspector of Police and gave a graphic account of what happened in his presence.

The appellant testified on his own behalf that the shot from the pistol was an accidental discharge when the deceased and others were beating him and tried to snatch the pistol from him.

The trial court disbelieved him and found the case of the prosecution proved beyond reasonable doubt. His appeal to the Court of appeal was dismissed and that court confirmed the finding of the trial court that the appellant shot the deceased to death. The

appellant has further appealed to this Court and the learned counsel for him filed a brief on his behalf and raised 2 issues for determination as follows:

"i. Whether the case against the appellant was proved as required by the law. (Ground 1 of the notice and grounds of appeal.)"

B ii. Whether the defence of accident was available to the appellant in this case (Ground 3 of the notice and grounds of appeal)"

The learned counsel for the respondent also filed a brief and identified 2 issues for determination as follows:-

C "(a) Whether the case against the appellant was proved as required by the law;

(b) Whether the defence of accident was available to the appellant in this case."

The learned counsel for the appellant submitted that there is *D* no evidence that the gun shot was fired intentionally by the appellant with the knowledge that death or grievous bodily harm would be the probable consequence. He argued that if both lower courts had properly evaluated the evidence they would have found that the shot was an accidental discharge and the defence of accident was clearly made *E* out.

In reply the learned counsel for the respondent submitted on the 2 issues raised by him that the prosecution proved its case beyond reasonable doubt and the defence of the accident did not avail *F* the appellant.

This case turns entirely on facts and the critical question is whether or not the gun shot which killed the deceased was fired intentionally by the appellant or it was an accidental discharge. The trial court believed the evidence of PW2 a former Inspector of Police who was a witness to the event and who was not seriously challenged under cross-examination. The Court of Appeal confirmed the finding of the trial court that the appellant intentionally shot the deceased at close range. It is not the duty of this court to interfere with the concurrent findings of fact made by the trial court and the Court of Appeal unless such findings are perverse or are not supported by the evidence or are reached as a result of a wrong approach to evidence or as a result of a wrong application of any principle of substantive law or procedure resulting in miscarriage of

justice. See the case of Albert Afegbai V. Attorney-General of Edo State & Anor. (2001) 14 NWLR (Pt. 733) 425.

I see no cause whatsoever to disturb the findings of fact made by the 2 lower courts. The appellant who was employed as a Police Officer to protect the lives of fellow citizens and maintain peace in the society, abused his authority and snuffed the life out of an innocent citizen. He was rightly convicted by the two lower courts. B

Accordingly, I see no merit in this appeal and I hereby dismiss the appeal and affirm the appellant's conviction and sentence to death as passed by the two lower courts. C

TOBI JSC

I have read in draft the judgment of my learned brother, Ogebe, JSC and I agree entirely with him that the appeal lacks merit and should be dismissed. D

This is a bizarre case of murder of an innocent citizen by a police officer. Visiting the police station is not an offence. Visiting the police station in sympathy with an arrested person is not also an offence. And so the appellant had no right to shoot Solomon to death. There is evidence that the appellant was drunk at the time he shot the deceased. This brings to the fore the need to check police officers immediately before and during duty of drinking alcohol. I am sure that if the appellant was checked before he was posted for duty, there was the possibility of dropping him from the beat. E F

In recent time, there are cases of drunken police officers shooting innocent citizens to death. This is very serious and the Inspector General of Police should do something about it.

Like my learned brother, the police are employed to protect the persons not to kill them. This is one barbaric murder that the family of the Solomon Omo will not forget for a life time. The murder is one big shame to the Police. I totally condemn it. G

OGBUAGU JSC

This is an appeal against the Judgment of the Court of Appeal, Abuja Division (hereinafter called "the court below") delivered on 14th December, 2007 affirming the well considered Judgment of the H

Kogi State High Court, sitting at Kabba - per Otta, J. convicting and sentencing the Appellant to death.

Dissatisfied with the said Judgment, the Appellant has appealed to this Court on three grounds of appeal. The Appellant formulated two issues for determination, namely,

B “(i) *Whether the case against the appellant was proved as required by the law. Ground 1 of the notice and grounds of appeal).*

(ii) *Whether the defence of accident was available to the appellant in this case (Ground 3 of the notice and grounds of appeal)”.*

C The above issues, have been adopted by the Respondent. In my respectful view, the crucial issue therefore, to be decided, is whether the death of the deceased was caused by a gun shot deliberately and intentionally fired by the Appellant as contended by the prosecution or it was caused by an accidental discharge of the gun or pistol in the hands of the Appellant as pleaded as a defence by the Appellant.

D The evidence of PW2 - Samuel Olowu - a retired Inspector Police is at page 24 and part of page 25. He was an eye witness to the incident, the learned trial Judge believed his evidence and noted at page 58 of the Records that he was not effectively cross-examined and referred to the cases of *George Ukwu v. COP (1977) NNLR 90 @ 104* and *Oforlette v. The State (2000) FWLR (Pt. 12) 2081 @ 2102* as to the effect of such failure. He stated at page 59 of the Records that PW2, impressed him as a truthful witness. He disbelieved the Appellant. There is also the evidence of PW1 - Dada Ara - a driver. This witness testified that before the incident, the Appellant - a Police Constable and another Police Constable - P.C. Amodu Olorundare, had indulged themselves with the drinking of “Ogogoro”- a local gin which they had sent a young “small” boy to buy for them.

F At page 61 of the Records, the learned trial Judge, stated inter alia, as follows:

G *“The story of accidental discharge during the struggle is manufactured. I do not believe it. Also I don’t believe the Accused that he did not know that the gun was loaded”.*

H At pages 63 and 64, the following appear, inter alia:

“I have not been left in any doubt as to the guilt of the Accused.

Nevertheless, I commend the learned counsel (i.e. for the Appellant) for his industry. In this regard, J. adopt the following words

of Esq., JSC, in *Alhaji Isiaka Dosunmu v. Beatrice Joto* (1987) 9–10 SCNJ. 45 @ 57. “It is true, a good advocate could make a bad case look good..... But the search for justice transcends the veil that good advocacy might produce. When a case is thoroughly bad no good advocacy Could change its true essence”. So be it with this case. B

Thus the sum total is that I hereby hold that the Accused caused the death of the Deceased and he shot him with a gun with the intention of causing his death.

Thus the prosecution has proved the case beyond reasonable doubt. See *Edike v. The state* (sic) (1994) 9 SCNJ. 46 @ 57 *Mufutu Bakare v. The State* (1987) 3 S.C. 1 @ 15 (it is also reported in (1987) 3 SCNJ 1) and section 138 of the Evidence Act”. C

The court below – per Aboki, JCA at page 167 of the Records, stated inter alia, as follows: D

“The misconduct of the Appellant resulted in his shooting the deceased which he said was caused by an accidental discharge. It is trite that a willed and deliberate act such as in this instant case negates the defence of accident. See *The State v Nwabueze* (1980)1 NCR 41 at 44. E

I am in no doubt that the Appellant was on his own frolic when he shot and killed the deceased.

The trial court has subjected the evidence adduced before it to merciless scrutiny and had meticulously considered the defence put forward by the Appellant. There is no reason to fault the findings of fact made by the trial court”. F

I agree. Thus, there are concurrent findings of fact and holdings by the two lower courts and the attitude of this Court in such circumstances, is that it cannot and will not interfere or disturb. See G the cases of *Sobakin v. The State* (1981) 5 S.C. 75; *Igwe v. The State* (1982) 9 S.C. 174 and *Ugwumba v. The State* (1983) 5 NWLR (Pt. 291) 660 @ 671; (1993) 6 SCNJ. 217 just to mention but a few.

Before concluding this Judgment, I will briefly deal with the defence of accident by the Appellant. Section 48 of the Penal Code, H provides as follows:

“Nothing is an offence which done by accident or misfortune and without any criminal intention or knowledge in the course of doing a lawful act in a lawful manner and with proper cause and

caution”.

In order words, for a defence of accident to avail the Appellant, he must establish that,

(i) *the act was done by accident*

(ii) *there was no criminal intention or knowledge*

B (iii) *the act was done in the course of doing a lawful act in a lawful manner by a lawful means and with proper care and caution.*

For the avoidance of doubt, I will reproduce part of the evidence of the PW.2 appearing at page 24 of the Records inter alia, as follows:

C “..... I am a civil servant. I know the Accused. On 3rd November, 1999 at about 5.30 p.m. I was in front of my house which was opposite the Police Post at Efo-Amuro when I saw P.C. Amodu serving at the Police Post Efo-Amuro dragging the PW.1 to D enter the Police Station. The deceased Omopariola told the P.C. Amodu not to drag him that he would not escape, that he was his driver. Both Amodu and the driver (PW. 1) entered the Police Station. Later the Accused brought out a revolver pistol. The Accused gripped Omopariola, the deceased taking him to go inside the Police Station. E Then I heard the sound of the gun. Then the deceased said that the Accused has killed him.

I went to the scene, I saw the deceased with blood coming out from the rib side of the deceased. I told the Accused to go and look F for a vehicle to convey the deceased to the hospital, but he refused. I then personally went to the main road and stopped a vehicle being driven by one Tuesday Barnabas of Itedo-Amuro, Isanlu...

When the deceased was taken to the hospital, the Accused ran into the bush... When the Accused escaped into the bush, he was G pursued and brought to the Police Station”.

Under cross-examination, he testified that he was a recorder at the Federal Medical Centre, Lokoja. That he was in the Police Force in 1993. Thereafter, there was no material question ever asked by the learned defence counsel. In other words, PW2 was never cross- H examined at all about his material evidence as to what he saw happened. It was never suggested to him that he was not a truthful witness. Indeed, at page 58 of the Records, the learned trial Judge stated or observed inter alia, as follows while reviewing the evidence of PW2.

“PW.2 is an independent eye-witness. He gave an account of

how the incident happened PW.2 was not cross-examined on this vital part of his testimony. It is the duty of Counsel to cross-examine a witness, if he intends to invite the Court to disbelieve his evidence. See *George Ukwa v. C.O.P. (1977) NNLR 90 @ 104*”.

His Lordship also referred to the case of *Oforlette v. The State (2000), FWLR (Pt. 12) 2081 at 2102* as to the effect of the failure to cross-examine a witness on a particular matter in respect of which it is proposed to contradict him or impeach his credit. He concluded at page 59 thereof, thus:

“..... PW.2 impressed me as a truthful witness. And guided by the above authorities, I believe him”.

The court below at page 156 of the Records, stated inter alia, as follows:

“Where a party fails to Cross-examine a witness on a particular matter the implication is that he accepts the truth of that matter as led in evidence. See *Oforlette v. State (supra)* at 2098 - 2099.....the trial court was right in accepting the evidence of PW.2 and PW.5 which were unchallenged under cross-examination..... A party who fails to cross-examine a witness will not be entitled to invite the Court to disbelieve the witness on the evidence he gave”.

The above is the position of the law. The court below, had also in fact, reproduced the material parts at page 158 and 159 of the Records, the evidence of PW1 and PW2 and stated as follows:

“The deceased was shot on the side of the stomach at close range. It would cause no surprise to a reasonable man if death resulted. The likely consequence of the act of the Appellant is death to the victim and a reasonable man will consider such an act to be the natural and normal effect of the Appellant’s act. The law is that a person intends the natural consequence of his act. See *Garba & ors v. The State (2000) FWLR (pt. 24) page 1405 at 1459; Ala Chukwu v. The State (1990) 12 SCNJ. 71*”.

Again the above is settled law.

This brings me to the defence of accident or accidental discharge which is now a notorious and an often and regular or usual after-thought defence of almost all the policemen charged with deliberately using their guns in silencing and mercilessly and recklessly, terminating untimely, the lives of their unfortunate victims. The court below held that the trial court rightly dismissed the Appellant’s de-

fence and that it was satisfied that the prosecution, successfully, proved the ingredients of the offence against the Appellant at the trial court. I agree.

In Black's Law Dictionary 7th Edition at page 15, "accident" is defined as,

B *"An unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated"*.

In the case of Umoru v. The State (1990) 3 NWLR (Pt. 138) 363 @ 370 C.A; it was held that for an event to qualify as accidental under Section 24 of the Criminal Code, it must be a surprise to the ordinary man of prudence, that is, a surprise to all sober and reasonable people. The test is always objective. The case of Adelumola v. The State (1988) 1 NWLR (pt. 73) 683 @ 692-693, was referred to (it is also reported in (1988) 3 SCNJ. 68). In other words, Section 24 Criminal Code does not deal with an 'act' but an 'event' and an event within the meaning of that section, is what apparently follows from an act. In the case of Igago v. The State (1999) 12 SCNJ. 140 at 167, Onu, JSC, referred to the case of Aliu Bello & 13 Ors. v. Attorney-General of Oyo State (1986) 5 NWLR (pt. 45) 828, where Karibi-Whyte, JSC, stated that an accident is the result of an unwilling act, and means an event without the fault of the person alleged to have caused it. It must be stressed that the defence of accident, like all other defences, presupposes that the accused person, physically committed the offence, but should be acquitted because it was an accident. See the cases of Chukwu v. The State (1992) 1 NWLR (Pt. 217) 255 @ 265; (1992) 1 SCNJ. 57; Daniels v. The State (1991) 8 NWLR (Pt. 212) 715; Nwodu v. The State (1991) 4 NWLR (Pt. 185) 341 and Braide v. The State (1997) 5 NWLR (Pt. 185) 141; (1997) 5 SCNJ. 178.

However, in the case of R v. Larkin (1944) 29 CAR 18 @ 23 - per Humphreys, J. referred to by Iguh, JSC in the case of Thomas v. The State (1994) 4 SCNJ. (Pt.1) 102 @ 119, It was held that an accused person (as in the instant case), cannot take refuge on a defence of accident for a deliberate act even if he did not intend the eventual result.

It is from the foregoing and the fuller lead Judgment of my learned brother, Ogebe, JSC, just delivered and which I had the ad-

vantage of reading before now and I humbly agree with the reasoning and conclusion therein, that I too, see no merit in this appeal which fails abysmally or in its entirety. I too dismiss the appeal and affirm the Judgment of the court below affirming that of the trial court.

B

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother, Ogebe, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal lacks merit and should be dismissed.

C

The appellant was charged at the trial court for the offence of culpable homicide punishable with death contrary to section 221 (a) of the penal code by causing the death of one Solomon Omopariola. D

It has been restated times without number by this court that the ingredients of the offence which must be proved beyond doubt by the prosecution are as follows:-

1. That the death of a human being has actually taken place.
2. That such death was caused by the accused.
3. That the act was done with the intention to cause death or that the accused knew or had reason to know that death should be the probable and not only the likely consequence of his act.

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For the above ingredients, see: *Kaza v. The State* (2008) 7 NWLR (Pt 1085) 125 at 163; *Musa v. The State* (2009) 7 SCNJ 329 at 340.

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In this matter, it is not seriously in contention that the death of a human being to wit: Solomon Omopariola has taken place. The appellant put up a defence of accident. This court in *Braide v. The State* (1997) 7 SCNJ 178 at 189 per Onu, JSC said a defence of accident, like all other defences presupposes that the accused physically committed the offence, but he should be acquitted because it was an accidental act'. And so, the appellant, by implication admitted that the lethal shot that snuffed life out of the deceased emanated from him.

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Black's Law Dictionary, Eighth Edition at page 15 defines accident as 'an unintended and unforeseen injurious occurrence, something that does not occur in the usual course of events or that could

be reasonably anticipated. An unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct’.

P.W.2 gave a graphic account of how the appellant gripped deceased, dragged him into the police station and a gun shot immediately followed. The deceased shouted that the appellant had killed him. P.W.2 rushed in and saw blood gushing out from the side of deceased’s stomach and he later died in the hospital as a result of the gun shot injury as confirmed by the medical officer.

P.W.2 was not cross-examined on the vital part of his testimony. The appellant’s counsel should have cross-examined P.W.2 if he intended to invite the court to disbelieve his evidence. See: *Ukwa v. C.O.P.* (1977) NWLR 90 at 104; *Oforlette v. The State* (2000) FWLR (pt. 12) 2081.

The learned trial judge was right in placing credence on the evidence of P.W.2 and disregarding volte-face put up by the appellant in his ‘invented’ defence of accident. The court below did not believe the story concocted by the appellant. I cannot see my way clear in disturbing the concurrent finding of fact made by the two courts below. See: *Kale v. Coker* (1982) 12 SC 252; *Oduntan v. Akibu* (2000) 7 (Pt. 2) 106.

It is clear that ‘the man died’. The death was caused by the act of the appellant. The injurious occurrence was not unforeseen by the appellant. The gun shot that terminated the deceased’s life was pre-meditated, deliberate and not unintended. The appellant failed to extricate himself from culpability. The charge against him was proved beyond reasonable doubt as all the three ingredients of the offence charged were clearly established. See: *Alabi v. The State* (1993) 7 NWLR (Pt. 307) 511 at 523. It will certainly be an eye wash to find otherwise.

For the above reasons and the fuller ones adumbrated in the lead judgment, I too, feel that the appeal lacks merit and should be dismissed. I order accordingly and affirm the appellant’s conviction and sentence to death. It has the semblance of ‘an eye for an eye’. But such serves the appellant right in the prevailing circumstance of his wanton and unsavoury act. It will also deter others in his group.

ADEKEYE JSC

I was privileged to read before now the judgment just delivered by my learned brother, Ogebe JSC. The facts of the case are as reproduced by my Lord in the leading judgment. The trial court convicted and sentenced the appellant to death for the offence of culpable homicide punishable with death contrary to Section 221 (a) of the Penal Code by causing the death of one Solomon Omopariola-his colleague. The Court of Appeal affirmed the judgment of the trial court. I agree with the reasoning and conclusion of my brother in the leading judgment. B

In order to sustain a charge of murder under Section 221 of the Penal Code, prosecution must prove beyond reasonable doubt toe following - C

- (a) That the death of a human being took place.
- (b) That such death was caused by the accused. D
- (c) That the act of the accused that caused the death was done with the intention of causing death/or that the accused knew that death would be probable consequence of his act.

All the ingredients must be proved, or co-exist before a conviction could be secured. Any failure on the part of the prosecution to establish any of the foregoing ingredients would result in an acquittal. The onus of proof is on the prosecution. E

Adara v. State (2006) 9 NWLR pt. 984 pg. 152.

Akpa v. State (2007) 2 NWLR pt. 1019 pg. 500

Uwagboe v. State (2007) 6 NWLR pt. 1031 pg. 606 F

R. Nwokocha (1949) 12 WACA 453

Oye v. The Queen (1961) 2 SCNLR 354

In the instant case, the learned trial judge believed the evidence of an eyewitness of the incident, PW2. He watched the event due to his proximity to the police station. The deceased came to the station in sympathy with somebody molested and harassed by the accused and another colleague and was consequently dragged down to the police station. Coincidentally, the accused remained at that village after completing his authorized assignment to apprehend a culprit. He was there on the pretext of further investigation in a case of stealing. There was evidence before the court that the appellant and another police officer went on a drinking of illicit gin spree. PW 2 witnessed how the accused gripped the deceased, dragged him into G
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the police station, this was followed by a gun shot. He heard the deceased's shout that the accused had killed him. He got there immediately to find the deceased in a pool of blood. When he suggested to the accused to look for a vehicle to convey the deceased to the hospital, he refused. This witness personally made the arrangement to convey the deceased down to the police station.

The appellant, a sole witness at the hearing described what happened as a mere accident, when certain people attacked him, the gun dropped and exploded. The sum total of his defence was that he did not intentionally kill the deceased but he was hit in "*an accidental discharge.*"

The learned trial judge who saw the witnesses and watched their demeanour preferred and believed the case of the prosecution. The trial court believed the evidence of PW2, Samuel Olowu and eye witness of the incident that the accused killed the deceased. I must say that the need to call witnesses arises from the duty the law imposed on the prosecution to prove the essential ingredient of a crime. In a case of murder, the material question for resolution is to establish whether the accused killed the deceased. The evidence of a single eyewitness like in the case in hand if believed can establish this.

Usufu v. State (2007) 3 NWLR pt. 1020 pg. 94

Effiong v. State (1998) 8 NWLR pt. 562 pg. 362

Garko v. State (2006) 6 NWLR pt. 977 524

The State v. Ajie (2006) 1 SCNQL pg. 231

In my opinion, the trial court was right in believing the case of the prosecution and convicting the appellant on the evidence available. Where an appeal revolves around issues of fact and there is nothing on the record to show that the findings of the trial court is erroneous or perverse, it ought not to be disturbed or interfered with by an appellate court.

With the fuller reasons given by my Lord in the leading judgment, I also see no merit in this appeal and I hereby dismiss same and affirm the appellant's conviction and sentence.

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