

SUPREME COURT OF NIGERIA
8TH JULY, 2011. SC. 85/2009
CORAM:- A. MUKHTAR, F. F. TABAI, I. T. MUHAMMAD,
J. A. FABIYI, B. RHODES-VIVOUR, JJSC

RABI ISMAI'L APPELLANT
V.
THE STATE RESPONDENT

MURDER - Ingredients - Proof - Under s. 221(b) Penal Code - Prosecution must establish death of deceased - And that the death was caused by accused - Whose act was intentional (H1)

CRIMINAL PROCEDURE - Confession - Denial of - Effect - Where accused denies making the statement - Court will admit such statement in evidence - And may determine its probative value - At end of trial (H2)

CRIMINAL PROCEDURE - Confession - Obtained under duress - Effect - Where accused admits making such statement - Court must conduct a trial within trial - To test the voluntariness of same (H3)

CRIMINAL PROCEDURE - Conviction - Based on circumstantial evidence - Propriety - Where such evidence is positive and direct - An accused can be properly convicted (H4)

APPEALS - Concurrent findings - Since the evidence was properly evaluated by the lower courts - Supreme Court will not disturb the findings (H5)

CRIMINAL PROCEDURE - Conviction - Based on confession - Validity of - Where it is proved that the statement is made voluntarily - Accused can properly be convicted (H6)

FACTS

Accused/appellant was arraigned before the High court of Kano State, Holden at Kano on one count charge of culpable homicide contrary to section 221(b) of the Penal Code. Appellant was charged

for causing the death of her deceased boyfriend - Auwalu Ibrahim in a dam in Kano State. Prosecution presented several exhibits and called a total of nine witnesses including P.W.6 who was the taxi driver that drove appellant and the deceased to the dam on the fateful day.

Appellant testified in her self defence. She admitted seeing the deceased in exhibit 1 (her confessional statement to the police) and denied making exhibit 7 – also her confessional statement. Appellant raised the issue of contradiction in evidence of prosecution witnesses, especially that of P.W. 6 and 7. At the end of the trial, the court found appellant guilty as charged. She was thus convicted and sentenced to death. Being dissatisfied, appellant appealed to Court of Appeal, Kaduna. The court dismissed her appeal and confirmed the judgment of the trial court. Aggrieved further, appellant has appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the Court of Appeal was right in affirming the conviction of the Appellant, when the alleged cause of death of the deceased by the Appellant was not established.
4. Whether from the totality of the evidence adduced the Prosecution proved its case against the Appellant beyond reasonable doubt.

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

MURDER - Ingredients - Proof

1. I have considered the totality of the evidence before the court, the judgments of the two courts below and the address of counsel in their respective briefs of arguments. I would like to reiterate the principle canvassed by the Appellant's counsel that to secure a conviction or culpable homicide under Section 221 (b) of the Penal Code the Prosecution must prove:-

- (a) That the deceased has died;
- (b) That the death of the deceased was caused by the Accused; and
- (c) That the act or omission of the Accused which caused the death of the deceased was intentional with knowledge that death or grievous bodily harm was its probable consequence.

It is settled principle of law that all the three ingredients must be proved beyond reasonable doubt. With respect to the first ingredient of establishing the death of the deceased, the Appellant rightly conceded the death of Auwalu Ibrahim (Alias Zazu). His body was

identified by the P.W. 4 and the Appellant herself. The ingredient of the death of the deceased therefore needed no further proof, same having been firmly established. (p. 2182 G)

Confession - Denial of - Effect

2. The above opinion shows that the trial court was properly guided by the correct principle of law. By the objection of learned counsel for the Accused/Appellant Mr. Ishola which I have reproduced above, the Appellant was saying that she did not make the statement and that she was tortured and forced to sign the statements. In other words, she denies ever making the statements in Exhibit 7 and 8. In such circumstances, the statements were admissible in evidence and were rightly in my view, so admitted by the trial court. It would be left, at the end of the trial, for the court to determine if she made it and if it so holds, to assess the probative value of the evidence therein. (p. 2188 C)

Confession - Obtained under duress - Effect

3. Where however, an Accused person admits making an extra-judicial statement but goes further to allege that he or she made the statement under duress or any form of inducement or promise it become inadmissible in evidence, it is only in such a situation that a trial-within-trial is conducted to test the voluntariness of the statements and not the truthfulness of the contents therein. (p. 2188 E)

Conviction - Based on circumstantial evidence - Propriety

4. This brings me to the last but fundamental issue of whether from the totality of the evidence the Prosecution proved its case against the Appellant beyond reasonable doubt. The P.W.6 gave detailed accounts of what he saw on their first trip to the Tiga Dam. That account however revealed nothing more than his suspicion of the Appellant's ill motives. On their second visit to the dam, he, for reasons which I have earlier restated, abandoned the Appellant and the deceased there and drove away. He did not therefore see what actually caused the death of the deceased. There is no other eye witness account. The evidence is therefore circumstantial.

The settled principle of law is that an Accused person can properly be convicted upon circumstantial evidence only if it is cogent,

positive and points unequivocally to him or her as the perpetrator of the offence.

In other words, the evidence should eliminate the possibility of some other person also as the perpetrator of the offence. If such a possibility is not eliminated, then the evidence admits of more than one conclusion. In such a situation, a doubt or doubts would be created and such doubts must necessarily be resolved in favour of the Accused. (p. 2190 A)

APPEALS - Concurrent findings

5. In her evidence in court however, the Appellant told yet another completely different story about the whereabouts of the deceased. She thus gave three different accounts. In view of these conflicting accounts in her statements to the police in Exhibits 1 and 7 and her testimony in court, the trial court disbelieved her evidence and rejected it, describing it as unreliable. This unreliability (sic) was the opinion which the trial court was labouring to express in its judgment at Page 182 of the record and which learned counsel for the Appellant misconstrued as a rejection of Exhibits 1 and 7. The court below also re-evaluated the evidence and came to the same conclusion as the trial court. And in view of the nature of the Appellant's complaint about improper evaluation, I also embarked upon a thorough re-appraisal of the evidence and I do not see any reason whatsoever to disturb the concurrent findings of the two courts below. I entirely agree with their findings. I hold that the circumstantial evidence leads pointedly and unequivocally to only one conclusion which is the guilt of the Appellant. (p. 2193 C)

Conviction - Based on confession - Validity of

6. It is also trite law that an Accused person can be properly convicted on his or her confessional statement if it is proved to have been made voluntarily and it is and amounts unequivocally to his or her of guilt.

In my view, the combination of the Appellant's statements in Exhibits 1 and 7 without more, established such standard of proof strong enough to support the Appellant's conviction. I agree with Mr. Umar Attorney General of Kano State that having regard to the confessions and/or admissions Exhibit I and 7, corroboration was not strictly re-

quired to sustain the Appellant's conviction. That situation notwithstanding the Prosecution still avail the court other pieces of evidence that further the confessions and/or admissions. Such pieces of evidence include the I, D Card, his room key and his Nokia ill found In the Appellant's possession. (p. 2193 G)

B

NOTABLE POINT OF INTEREST **MUKHTAR JSC**

1. Rebuttable presumption of law – Meaning

The evidence was not successfully challenged, and when one reads the above pieces of evidence together, it points to the fact that the doctrine of last seen was appropriately applied, even if the later piece of evidence is circumstantial. In Halsbury's Laws of England's, Fourth Edition Reissue Volume 11(2), Paragraph 10089 Page 883, which deals with rebuttable presumptions of law, the authors encapsulated the presumption thus:-

“A rebuttable presumption of law is one which leads to a decision on a particular issue in favour of the party who establishes it or relies upon it, unless it is rebutted. Rebuttable presumptions of law may be created by statute, or may exist as common law, and may cast either a legal or an evidential burden on the party seeking to rebut the presumption, except that it is a rule of the common law that (save in the case of a defence of insanity) the Accused cannot be required to discharge the legal burden of proof.” (p. 2195 H)

F

REPRESENTATION

Taiwo E. Taiwo with N. E. Ngele and E. M. Igboke for appellant Aliyu Umar – A-G Kano State with Shuaibu U. Sule (D.P.P.), Ibrahim Musa (A.DCL), Binta Lawal (A.D.P.P.), Hafsat Yahaya Sani and Zakariyya M. Garba (SSC., M.O.J., Kano) for respondent

CASES REFERRED TO

Godwin Igabele v. The State (2006) 2 S.C. (Pt. II) 61
 Bassey Akpan Archibong v. The State (2006) 5 S.C. (Pt. III) I
 Nwaeze v. The State (1996) 2 NWLR (Pt. 428) 1
 Patrick Ibeneme v. State (2003) FWLR (Pt. 170) 1447
 Patrick Ikemson & 2 Ors. v. The State (1989) 6 S.C (Pt. I) 114
 State v. Azeez (2008) 4 S.C. 188

H

Ifeanyi Chukwu v. The State (1996) 7 NWLR (Pt. 463) 686

Adebayo v. Ighodalo (1996) 5 NWLR (Pt. 450) 509

Kalu v. The State (1988) 10-1 1 S.C. 19

Ebere v. The State (2001) 12 NWLR (Pt. 728) 617

Dickson Moses v. The State (2003) FWLR (Pt 141) 1909

B Reuph Bello Oseni & Ors v. Bajulu (2009) 12 S.C. (Pt. II) 81

Oteki v. A.G, Bendel State (1986) 2 NWLR (Pt. 24) 648

Edet Effiong Ekpe v. The State (1994) 9 NWLR (Pt. 368) 263

Oguonzee v. The State (1998) 4 S.C. 110 at 133

C **STATUTES REFERRED TO**

Penal Code, s. 221(b)

Evidence Act Cap. 112 LFN 1990, s. 138

D **BOOK REFERRED TO**

Halsbury's Laws of England's, 4th Edition Reissue Vol. 11(2) para. 10089 p. 883

LEAD JUDGEMENT BY TABAI JSC

E The Appellant was tried at the Kano Judicial Division of the High Court of Kano State on a one count charge which reads as follows:

F "That you Rabi Isma'il on or about the 25th December, 2002 at Rurum Dam along Tiga Road did commit culpable homicide punishable with death, in that, you caused the death of one Auwalu Ibrahim (Alias Zazu) by doing an act to wit drugging him by means of giving him a doped Eclairs sweet as a result of which the deceased lost consciousness and you later pushed him into the dam with the knowledge that death will be the probable consequence of your act and you thereby committed an offence punishable under Section 221 (B) of the Penal Code."

H The actual trial commenced on the 18th of November, 2003, when a fresh charge was substituted for the old one and the plea of the Accused taken. The Prosecution called a total of 9 witnesses. The Appellant alone testified in self defence. In its judgment at the end of the trial, the Appellant was found guilty as charged and convicted. She was sentenced to death. This was by its judgment on the 5th of December, 2004.

The Appellant was not satisfied with the said judgment and proceeded on appeal to the court below. In its unanimous judgment on the 3rd of March, 2008, the judgment of the trial court was affirmed and the appeal was dismissed.

The appellant was not satisfied with that decision and has come on further appeal to this court. On behalf of the parties, briefs of argument have been filed and exchanged. The Appellant's brief was prepared by Taiwo E. Taiwo and it was filed on the 11th of February, 2011. He also prepared Appellant's reply brief which was filed on 22nd of April, 2010. The Respondent's brief was prepared by Aliyu Umar, learned Attorney General of Kano State. It was filed on the 30th of March, 2011.

On the 12th of May, 2011 when this appeal was heard, learned counsel for the parties adopted their arguments contained in their respective briefs.

In the Appellant's brief, Mr. Taiwo proposed four issues for determination and which he formulated as follows:-

1. Whether the Court of Appeal was right in affirming the conviction of the Appellant, when the alleged cause of death of the deceased by the Appellant was not established.

2. Whether the lower court was right when in spite of the rejection of Exhibits 1 and 7, the purported confessional statements of the Appellant by the trial court for inherent contradictions. It still relied on same to convict the Appellant.

3. Whether the material contradictions in the evidence of the Prosecution witnesses ought to have been resolved in favour of the Appellant; and

4. Whether from the totality of the evidence adduced the Prosecution proved its case against the Appellant beyond reasonable doubt."

In the Respondent's brief, Aliyu Umar, the learned Attorney General Kano State formulated only two issues as follows:

"1. Whether the lower court only relied on the oral confession of the Appellant in affirming the conviction of the Appellant.

2. Whether from the totality of the evidence adduced at the trial, the lower court is right in holding that the Prosecution had proved its case against the Appellant beyond reasonable doubt."

I have examined the issues as formulated and it is my view that

the Appellant's 1st and 4th issues and the Respondent's second are one and the same and the determination of those issues effectively decides the appeal. Under the said all pervading issues every other issue can very well be considered. I shall however restate the substance of the arguments of counsel as they are set out in their respective briefs.

With respect to the Appellant's first issue of whether the cause of death of the deceased by the Appellant was established, learned counsel Mr. Taiwo E. Taiwo referred to the reasoning and findings of the trial court at Page 181 of the record relying on the evidence of the P.W. 6, the affirmation of the findings by the court below at Page 308 of the record relying on the evidence of the P. W. 1 , P.W. 6, P. W. 7 and P. W. 8 and the doctrine of last seen at Pages 324-325 of the record and submitted that both courts were wrong in their evaluation of the evidence. He contended that the doctrine of last seen was wrongly applied to the circumstances of this case. In support of these submissions, learned counsel relied on *Godwin Igabele v. The State* (2006) 2 S.C. (Pt. II) 61; (2006) 6 NWLR (Pt. 975) 100 at 121; *Bassey Akpan Archibong v. The State* (2006) 5 S.C. (Pt III) I; (2006) 14 NWLR (Pt. 1000) 349 and *Nwaeze v. The State* (1996) 2 NWLR (Pt. 428) 1. Learned counsel referred to the finding of the trial court at Page 183 of the record to the effect that the death of the deceased was drowning, and contended that drowning could have been accidental and that there is no evidence of whatsoever that the drowning was caused by anybody, let alone Appellant.

Learned counsel pointed out from the evidence of the P.W.6 that after alleged first pushing of the deceased into the water, he still alive (sic). He referred to the evidence of the P.W.6 who said that on their return to the dam, he ran away abandoning the deceased and the Appellant and contended that the P.W.6 did not actually see what caused the drowning. It was his submission therefore that the evidence available is merely that of suspicion which cannot ground a conviction. He relied on *Patrick Ibeneme.v. State* (2003) FWLR (Pt. H 170) 1447 at 1457. The decision of the court below was perverse, learned counsel argued.

On the Appellant's second issue, learned counsel referred to the judgment of the trial court at pages 182 and 183 and contended that the passage amounted to a rejection of the purported confes-

sional statement of the Appellant in Exhibits 1 and 7. He referred to the judgment of the lower court at Page 309 of the record which he contended affirmed the rejection of the said confessional statements. He submitted therefore that it was wrong for the court below to rely on the selfsame confessional statements to affirm the conviction.

It was counsel's further submission that the so called confessional statements ought not to have been admitted same having been retracted by the Appellant. By its findings on the confessional statements counsel argued, the court below substituted its own views for those of the trial court.

With respect to the third issue of whether there were material contradictions in the evidence of the Prosecution which ought to have been resolved in favour of the Appellant, learned counsel argued that the evidence of the P.W.6 on which the trial court relied heavily contained material contradictions. According to counsel, the said evidence of the P.W.6 also contradicted that of the P.W. 2 as to whether he (P.W. 6) left the deceased and the Appellant at the Rock Castle Hotel Tiga or at the Tiga Dam and that there was no explanation for the contradiction. According to counsel, if the Taxi driver P.W.6 lied about where he left the deceased and the Appellant he would also have lied about other aspects of the case and argued that the evidence of the P.W.6 is manifestly unreliable and ought not to have been relied upon for the Appellant's conviction.

Still on contradictions, learned counsel argued that the evidence of the P.W. 1, P.W. 2, P.W.6 and P. W. 7 were contradictory regarding Exhibits 2 and 3 and that the two courts below were wrong to rely on same to support the Appellant's motive for the alleged offence. On the effect of material contradictions, learned counsel cited Patrick Ikemson & 2 Ors. v. The State (1989) 6 S.C (Pt. I) 114; (1989) 3 NWLR (Pt. 110) 455 at 466. Learned counsel argued that instead of commenting on the unexplained material contradictions, both courts below ignored them to justify the Appellant's conviction. On the duty of the court to advert its mind to unexplained material contradictions, learned counsel cited Nwachukwu v. The State (supra), State v. Azeez (2008) 4 S.C. 188; (2008) All FWLR (Pt. 424) 1423; Ifeanyi Chukwu v. The State (1 996) 7 NWLR (Pt. 463) 686 at 70 1 ; Adebayo v. Ighodalo_(1996) 5 NWLR (Pt. 450) 509 and Kalu v. The State (1988) 10-1 1 S.C. 19; (1988) 4 NWLR (Pt. 90) 503.

As regards the Appellant's fourth issue of whether from the totality of the evidence, the Prosecution proved its case against the Appellant beyond reasonable doubt, learned counsel referred to the findings and conclusions of the trial court at Page 183 of the record and submitted that to secure a conviction under Section 221(b) of the Penal Code, the Prosecution had a duty to prove all the three ingredients of (a) death of the deceased, (b) that the death was caused by the Accused; and (c) that the act or omission of the Accused that caused the death was intentional and with knowledge that death or grievous bodily harm was a probable result. It was contended that while the first ingredient of death of the deceased may have been proved the second and third ingredients have not been proved. With respect to the second ingredient of whether it was the Appellant that caused the drowning of the deceased, it was submitted that the evidence to sustain a conviction must be cogent, complete, unequivocal and lead to only one conclusion. He cited again *Archibong v. State* (supra), *Nwaeze v. State* (supra).

Learned counsel referred to the evidence-in-chief of the Appellant at page 71 of the record and contended that under cross-examination at page 74 of the record and contended that the defence of alibi is raised therein and which ought to have been investigated. He submitted that the failure to investigate the alibi is fatal to the Prosecution's case. It was Counsel's further submission that the court was obliged to avail an Accused person of a defence whether or not it was specifically raised. Reliance was placed on *Ebere v. The State* (2001) 12 NWLR (Pt. 728) 617; *Dickson Moses v. The State* (2003) FWLR (Pt 141) 1909. He described the P.W.6 and P.W. 7 as tainted witnesses who tried to exonerate themselves from complicity and deliberately distorted facts.

The substance of the arguments of Aliyu Umar, learned Attorney General of Kano State run as follows:-

With respect to the Respondent's first issue, he referred to portions of the judgment of both the trial court and the court below and part of the evidence of the P.W. 8 and submitted that neither of the two courts used Exhibits 1 and 7 as the only reason for finding the Appellant guilty. The facts of the Prosecution's case, he contended, were such that needed no corroboration. The findings of the trial court were not proved by the Appellant to be perverse and the court

below was right not to interfere with same, he argued. In the circumstances, he urged that this court should also not interfere with the concurrent findings of the two courts below. He relied on *Reuph Bello Oseni & Ors v. Bajulu* (2009) 12 S.C. (Pt. II) 81; (2009) 12 SCNJ 74 at 85. He contended that the trial court did not reject Exhibits 1 and 7 and referred to the relevant portion of the judgment at Page 182 of the record. He referred to the evidence of the P.W. 8 and pointed out that his act of recording the statement of the Appellant in his office is distinct from his evidence as to what the Appellant said when they visited the alleged scene of crime. And that, he contended, justified the comments of the court below at Pages 309-310 of the record.

As regards to the second issue, it was the submission of the learned Attorney General that based on the entire evidence for the Prosecution and the defence, the only conclusion that can be reached is that the deceased drowned and that it was the Appellant that caused the drowning by pushing the deceased into the running water in the dam. He drew attention to the review of the evidence by both courts below and submitted that the Appellant failed to establish any doubt in the case to be resolved in her favour. He relied on *Oteki v. A.G, Bendel State* (1986) 2 NWLR (Pt. 24) 648 and *Edet Effiong Ekpe v. The State* (1994) 9 NWLR (Pt. 368) 263.

The learned Attorney General pointed out what he considered to be material pieces of evidence which learned counsel for the Appellant ignored. He referred to the evidence of the P.W.6 as to what happened when the Appellant and deceased were having their bath at the dam, her request for petrol and acid, her request to abandon the deceased in the wilderness; her false claim of having forgotten her handbag and what happened on their return to the dam after their purchase of fuel at Rurum. The learned Attorney General further argued that the culpability of the Appellant was contained in the evidence of the P.W. 1, and other pieces of evidence. Those include the Appellant's non-disclosure of where the deceased was, her false representation to the P.W. 1 that the deceased was not allowed to leave where he was shooting a film by the director and the fact that she sold the deceased's properties. According to the learned Attorney, no person other than the Accused caused death of the deceased.

With respect to whether there were material contradictions, it was the submission of the learned Attorney General that there were no material contradictions in the case of the Prosecution which touched the substance of its case. On proof of the death of the deceased, the learned Attorney General referred to the recovery of the body in the dam in the presence of the P.W. 4, P.W. 8 and P.W. 9 and the identification of the body by the Appellant herself. It was his further submission that the P.W.6 and P.W. 7 were not tainted witnesses as it was not shown that they had any purpose of their own to serve. Reliance was placed on *Oguonzee v. The State* (1998) 4 S.C. 110 at 133 and *Okosi v. The State* (1989) 2 S.C. (Pt. I) 126 at 142. He finally urged that the concurrent findings of the two courts below be affirmed.

In the Appellant's brief reply, Taiwo E. Taiwo learned counsel for the Appellant insisted that the purported confessional statement in Exhibit 1 and 7 were rejected by the trial court at Page 182 of the record. He referred to the evidence of the P.W. 8 under cross-examination to the effect that the distance between the point of bath and the point where the Appellant allegedly pushed the deceased into the water was about 2 kilometres and argued that going by the state of near unconsciousness of the deceased and having regard to his size as against that of the Appellant, it was impossible for the Appellant to have carried or dragged the deceased for a distance of about 2 kilometers.

On the Appellant's second issue, learned counsel argued that even if drowning was proved, the evidence stopped short of who caused the drowning of the deceased. He argued that there are many unanswered questions and that the evidence is that of mere suspicion which cannot ground the Appellant's conviction. He urged finally that the appeal be allowed.

I have considered the totality of the evidence before the court, the judgments of the two courts below and the address of counsel in their respective briefs of arguments. I would like to reiterate the principle canvassed by the Appellant's counsel that to secure a conviction or culpable homicide under Section 221 (b) of the Penal Code the Prosecution must prove:-

(a) That the deceased has died;

(b) That the death of the deceased was caused by the Accused;

(c) That the act or omission of the Accused which caused the death of the deceased was intentional with knowledge that death or grievous bodily harm was its probable consequence.

It is settled principle of law that all the three ingredients must be proved beyond reasonable doubt. With respect to the first ingredient of establishing the death of the deceased, the Appellant rightly conceded the death of Auwalu Ibrahim (Alias Zazu). His body was identified by the P.W. 4 and the Appellant herself. The ingredient of the death of the deceased therefore needed no further proof, same having been firmly established.

The crucial question is whether the death of the deceased was caused by the Appellant? The trial court found that it was the Appellant that caused the death of the deceased. The court below affirmed the finding of the trial court. Is there such evidence to justify the finding that necessitates a very careful examination of the entire evidence before the court?

The facts are set out in the judgment of the trial court and comprehensibly restated in the judgment of the court below. And for the purpose of rendering my judgment more comprehensible, I would also recapitulate the essential facts of the case in some chronological order, starting with the evidence of the P.W.6.

The P.W. 6, Ado Muhammad was a Taxi driver. On the 25th of December, 2002, the Appellant hired him at the rate of N250.00 per hour. On the instructions of the Appellant, he took her, first to the Farm Centre Police Station where the deceased was detained and got his release. They then proceeded to the house of a friend of the deceased and from there to the deceased's house. The deceased there changed his dress the day being Christmas. On the instructions of the deceased, he took the deceased and the Appellant to the Tiga Dam. There the deceased and the Appellant had their bath. According to the P.W. 6, the deceased appeared at the material time to be drunk and almost unconscious. He was described to be in a state of stupor: While they were bathing, the Appellant twice pushed the deceased into the water. At a stage the deceased complained of cold and was shivering. The Appellant prepared fire to warm him. During this first visit, the Appellant asked for battery acid and petrol from him but he refused to give her. She also suggested that the deceased be left behind but he became apprehensive and refused.

Later, the Appellant instructed that they be taken back to Kano. He started their journey back to Kano. The deceased was still in the near unconscious state and lay at the back seat while the Appellant was at the front with him. He stopped somewhere along the road and bought petrol. After that the Appellant directed that they be
 B taken back to the dam site her reason being that she had forgotten her hand bag. He therefore returned to the place as directed. At the site instead of the Appellant to go in search of the hand bag which she claimed to have forgotten, she insisted that the deceased also
 C alighted from his Taxi cab. She thus aided him to alight from the car. At this stage, he turned and drove away leaving behind the Appellant and the deceased.

In Kano while in the course of cleaning the car he saw the Appellant's hand bag which she claimed to have forgotten at the
 D dam site. On the 26th of December, 2002 at about 7:00 am accompanied by some of his colleagues, he went to the house of the deceased so as to return the Appellant's hand bag and also to collect the money for the hire of his services on the 25th of December, 2002. The Appellant also went there on a motorcycle. He handed
 E over her hand bag to her and she took same after she checked and was satisfied that the contents were intact. The contents included the deceased's Nokia handset. He then demanded for the N2,000.00 representing the total for the hire or his services the previous day. The Appellant replied that he should wait for Auwalu (the deceased)
 F to collect the money. He then insisted on the Appellant taking him to Auwalu where he was for him to collect his money. Instead of taking him to Auwalu (deceased), the Appellant took him to a house along Dam Kura Road, off Zoo Road, from where she gave him the
 G N2,000.00.

Still on the facts of the 25/12/2002 and the 26/12/2002, the testimony of the P. W. 1 is also very material. The P.W. 1, Umma Ibrahim, described herself as a sister of the deceased and lived with him in his house. According to her, the deceased left the house on
 H the 24/12/2002 and never came back until the 25th of December, 2002 when he returned to the house. He never told her where he spent the night. He took his bath and dressed up wearing a brown shirt and a pair of black trousers which he occasionally wore. He said he was going out and that he would be back. He left and never came

back.

On the 26th December, 2002 in the early hours, the Appellant came to the deceased's house accompanied by a man whom she described as the Taxi driver whose services the deceased hired. She told the Appellant and the said Taxi driver that Auwalu (deceased) did not sleep in the house. Later that same day, the Appellant came to the deceased's house having in her possession his I. D. Card, his vehicle particulars and the key to his room. She (Appellant) represented to her that she had been sent by Auwalu (deceased) to bring his video C.D and Television set. She believed the Appellant because of the I. D. Card, vehicle particulars and the room key of the deceased in her possession and handed over the Video C.D. and Television set to her. Later on that same day, the Appellant came back to her to request for the release of the deceased's C.D recorder. This time she (P.W. 1) refused and insisted that she would like to accompany her to where the deceased was. The Appellant pleaded with her to be patient and that she would secure the release of the deceased from the film director.

The P.W. 7, Yahaya Usman was the person to whom the Appellant sold the deceased's Fuji VCD for N4,000,00 and the Sony T.V set for N8,000.00. And still with respect to the properties of the deceased, the P.W. 5 Police Constable Isyaku Isah testified to the effect that the Appellant led them to one Halima to whom the Appellant had pledge the deceased's Nokia handset. And according to the P.W. 8, the Appellant described the deceased as wearing a pair trousers without under pant and that when the corpse was recovered it was with the trousers without under pant as described by the Appellant.

The above is the synopsis of the case for the Prosecution. The substance of the evidence of the Appellant is as follows:

She admitted going to the house of the deceased on the 26th December, 2002, and she met the P.W. I who was preparing breakfast. According to her, she went there alone and never met the Taxi driver (P.W. 6) there. On the 25/12/2002 she went to the Police Station to deliver food to Auwalu (deceased) who was detained there. She met Auwalu sitting on a car outside with somebody whom she later identified as the P.W. 2. She also admitted removing the deceased's T.V. set, video and C.D on the 25/12/2002 but that she did

so on the directives of Auwalu the deceased. She admitted that she engaged the services of the Taxi driver. The driver took her and the deceased first to the mechanic and from there he took them to Auwalu's residence where he changed his dress the day being Christmas day. They went first to Tiga Rock Castle Hotel. The driver later
 B took them to the Tiga Dam with the direction of some Fulani men. She admitted that the deceased had his bath but she refused to join him in swimming in the water. She denied pushing Auwalu into the water as he was swimming. She said she was in the picture pointing at
 C the corpse because she was forced to be photographed in that position. She said the corpse was not that of Auwalu. After Auwalu had his bath they ate and at about 6:00 pm they commenced driving back home.

She admitted the evidence of the P.W.6 about fire set up but
 D said it was the deceased that made the fire. She denied ever requesting for battery acid and petrol from the Taxi driver. She admitted their going back to the place for the second time but said that it was at the instance of the deceased who claimed that he had forgotten his bunch of keys. At the scene while the deceased was searching for the
 E keys she sat in the car. At a stage the driver told her to alight from the car so that he could turn the car. As she alighted from the car, the driver turned the car and drove away.

Having been abandoned in the bush, she and the deceased
 F trekked a long distance before they came across a motorcyclist. They pleaded with him to carry them to the highway but the cyclist insisted on carrying only one of them. On agreement with the deceased the cyclist carried her to the junction on the highway. He said he carried her free but refused to go back to carry Auwalu. The people at the
 G road junction stopped a vehicle for her which took her back to Kano.

On the 26th December, 2002 she sighted the driver. She mounted a motorcycle and pursued him. She got him and he (driver) gave her all their properties with which the driver drove away on the 25/12/2002. She paid the driver N2,250.00 and went to the house
 H of the deceased to deliver all his properties in the car.

According to the Appellant, she was arrested on the 27th of December, 2002 but denied she was being mobbed when she was arrested. On the 28th of December, 2002 on the instructions of the DPO, herself, the P.W. 2, some Policemen and some relations of the

deceased went to the scene but Auwalu was no where to be found . According to her, some Fulani men told them that Auwalu slept with a guard in the night and left the following morning.

The above is the gist of the defence of the Appellant as contained in her testimony. As I stated earlier, the two courts below carefully examined the above evidence of the parties including the statements of the Appellant in Exhibits 1, 7 and 8 and found that the Appellant caused the death of the deceased. The question is whether there is such legal and credible evidence justifying the concurrent findings of the two courts below. This is the ultimate question posed in the Appellant's first and fourth issues and the respondent's second issue.

But before resolving the said question, let me examine the Appellant's Issues two and three. The question in Appellant's Issue two is whether the trial court rejected Exhibits 1 and 7 and nevertheless, relied on same to convict the Appellant? In its judgment, the trial court reasoned as follows:

"As regards Exhibits 1 and 7 their purport to be confessional. But which is contradictory to each other in that Exhibit 1, shows the Accused as having gone back to bring back Auwalu from the wilderness, while in Exhibit 7 the Accused is said to have admitted drowning the deceased. The positions in both Exhibits 1 and 7 were jettisoned by the Accused in her testimony in court. The result is that her evidence becomes unreliable."

Learned counsel for the Appellant construed the above text to be a rejection of Exhibits 1 and 7. It is my view, with respect that, that construction being urged is misplaced. In the first place Exhibit 1 was, for reasons stated in the trial court's ruling, admitted in evidence on the 6th of April, 2004. (See Pages 40-41 of the record). There was therefore no question of its rejection by the trial court.

There was equally no question of the rejection of Exhibit 7. During the proceedings on the 10th of May, 2004, two statements allegedly made by the Appellant were sought to be tendered in evidence through the P.W. 8. One was dated 6th January, 2003 and the other dated 11th January, 2003. Learned counsel for the Accused, Mr. M. O. Ishola reacted as follows:-

"We object to the admission of the statements as it was not made by the Accused as the signature of the Accused was forced.

She was also tortured before she signed, that's all" (See Page 52 of the record). Mr. A. A. Umar, learned Attorney General of Kano State contended that the statements were in the circumstance admissible. The trial court reacted and ruled as follows:-

B *"In the circumstances since the objection rests on complete denial of the statements, the statements are admissible as the court is left with the duty of assessing the probative value to be attached to it in considering the statement. Consequently, the statements dated 6th January, 2003 and 11th January, 2003 are hereby, admitted in evidence and marked as Exhibits 7 and 8 respectively."* (See Page 52 of the record).

D ***The above opinion shows that the trial court was properly guided by the correct principle of law. By the objection of learned counsel for the Accused/Appellant Mr. Ishola which I have reproduced above, the Appellant was saying that she did not make the statement and that she was tortured and forced to sign the statements. In other words, she denies ever making the statements in Exhibit 7 and 8. In such circumstances, the statements were admissible in evidence and were rightly***
 E ***in my view, so admitted by the trial court. It would be left, at the end of the trial, for the court to determine if she made it and if it so holds, to asses the probative value of the evidence therein.***

F ***Where however, an Accused person admits making an extra-judicial statement but goes further to allege that he or she made the statement under duress or any form of inducement or***
 G ***promise it become inadmissible in evidence, it is only in such a situation that a trial-within-trial is conducted to test the voluntariness of the statements and not the truthfulness of the contents therein.*** See: Saidu v. State (1982) 4 S.C. 41; (1982) 4 S.C. (Reprint) 26; Owie v. State (1985) 1 NWLR (Pt. 3) 470; R v. Igwe (1960) SCNLR 158; Godwin Ikpasa v. A.G. Bendel State (1981) 9 S.C. 7 at 28; (1981) 9 S.C. (Reprint) 5; Pele Ogunye v. The State (1999) 4 S.C. 30; (1999) 5 NWLR (Pt. 604) 548 at 570.

With respect to the text of the trial court's judgment reproduced above, I hold that it was not a rejection of Exhibits 7 and 8. Rather the trial court was only trying to say that the statements apart

from being contradictory to each other were also contradicted by the Appellant's evidence in court.

On the Appellant's third issue of whether there are such material contradictions in the evidence of the Prosecution, the court below in its judgment at Page 311 of the record had this to say:-

"It appears to me that the issue of contradictions was not rigorously pursued before the trial court and this court. In any event, having studied the evidence adduced by the Prosecution, I am of the view that there is no contradiction in the evidence of the Prosecution witnesses as his attention has not been drawn to any by the Appellant"

Before this court however, the issue of contradictions was pursued considerably. In particular, learned counsel referred to the evidence of the P.W. 8 under cross-examination on visit to the locus where he said:-

"The distance between the point of bath and where the Accused pushed the deceased is about 2 kilometers if not more." (See Page 59 of the record).

Learned counsel argued that this was a material contradiction. Superficially it looks like a material contradiction. But on a careful examination of the entire evidence of the P.W. 8 and the court's notes of the visit to the locus, it is not. Earlier at Page 50 of the record, the P.W. 8 said:-

"On 9th we booked and went to Hadejia, Jama'are River Basin where the Accused showed us where they swim and she pushed the deceased into the river. We searched the dam and recovered the corpse of the deceased, i.e. about a kilometer away from the point where the deceased was pushed."

This was confirmed by the court's inspection notes at page G (sic) of the record where the court noted:

P.W. 8 shows the court another side of the stream which the Accused mentioned to the P.W. 8 as the place the Taxi driver left her and the Accused and where she said she pushed the deceased and that from the place, the Police trekked about a kilometer where the deceased corpse was found"

It is clear from the general trend of the evidence that it is the place where they had their bath that the Accused allegedly pushed the deceased into the water. It is my view therefore, that what looks

like a material contradiction is nothing more than a misdescription (sic), a discrepancy or even a slip and so I hold. I have also examined each of the other alleged contradictions, it is my view and I hold that there is no material contradiction in the case of the Prosecution.

This brings me to the last but fundamental issue of whether from the totality of the evidence the Prosecution proved its case against the Appellant beyond reasonable doubt. The P.W.6 gave detailed accounts of what he saw on their first trip to the Tiga Dam. That account however revealed nothing more than his suspicion of the Appellant's ill motives. On their second visit to the dam, he, for reasons which I have earlier restated, abandoned the Appellant and the deceased there and drove away. He did not therefore see what actually caused the death of the deceased. There is no other eye witness account. The evidence is therefore circumstantial.

The settled principle of law is that an Accused person can properly be convicted upon circumstantial evidence only if it is cogent, positive and points unequivocally to him or her as the perpetrator of the offence. See: *Kalu v. State* (1993) 6 NWLR (Pt. 300) 385 at 396-398; *Esai v. State* (1976) 11 S.C. 39; (1976) 11 S.C. (Reprint) 24; *Ukorah v. State* (1977) 4 S.C. 167; (1977) 4 S.C. (Reprint) 111; *Omogodo v. State* (1981) 5 S.C. 5; (1981) 5 S.C. (Reprint) 4; *Ibina v. State* (1989) 5 NWLR (Pt. 120) 238. ***In other words, the evidence should eliminate the possibility of some other person also as the perpetrator of the offence. If such a possibility is not eliminated, then the evidence admits of more than one conclusion. In such a situation, a doubt or doubts would be created and such doubts must necessarily be resolved in favour of the Accused.***

Now back to the crucial and decisive question. Does the evidence in this case lead to one and only one conclusion that it was the Appellant that caused the death of Auwalu, the deceased? I wish to state, at the risk of repetition, that from the totality of the evidence, the following facts are uncontroverted and/or established.

The Appellant and the deceased had a relationship prior to the 25/12/2002. As at the 25/12/ Auwalu, the deceased was detained at the Farm Center Police Station Kano, for a traffic related offence. Sometimes on the 25/12/2002 the Appellant hired the service of the

P.W.6 a Taxi driver, at the rate of N250.00 per hour. She proceeded with him first to the Farm Centre Station and secured the release of the deceased. On their instruction, the Taxi driver (P.W. 6) took them to the residence of the deceased wherein the deceased had his bath and changed his dress to a pair of black and a brown shirt, the day being Christmas day. On the Instructions of the deceased and the Appellant, the driver (P.W. 6) took them to the Tiga Dam. At all material times the deceased looked drunk and unconscious. The Appellant and the deceased had their bath in the cause of which the Appellant pushed the deceased twice into the water. She even suggested that the deceased be abandoned there. He (P.W. 6) became apprehensive of the appellant's motive. At a stage, the deceased complained of cold and was shivering and in response to which the Appellant prepared fire to warm him.

At a stage, the Appellant instructed that they be taken back to Kano and they got into the vehicle. The deceased who still looked drunk and almost unconscious lay at the back seat while the Appellant sat at the front. On their way back to Kano, the Appellant complained that she had forgotten her hand bag at the Tiga Dam spot and instructed that they be taken back there and the driver (P. W. 6) took them back there. She was expected to disembark from the vehicle and go in search of the hand bag she claimed to have forgotten. The deceased himself also requested that she alone went for the hand bag. But the Appellant insisted on the deceased going with her and pursuant thereto she assisted him against his will to alight from the vehicle. As they left the vehicle, the P.W.6 drove away and back to Kano leaving behind the Appellant and the deceased. In the course of washing his vehicle, he saw the hand bag of the Appellant under the front seat where she sat.

On the 26th of December in an attempt to return the hand bag to the Appellant and also to collect his car hire amount of N2,000.00, he drove to the house of the deceased and saw the Appellant also arriving there on a motorcycle. The Appellant received the hand bag, examined the contents and certified that the contents were intact. The contents included the Nokia Telephone hand set of the deceased. When he asked for his money for the hire of the car, the Appellant replied that the deceased would pay. He insisted, on his being taken to the deceased wherever he was so that he could get

money. Instead of taking him to where the deceased was, the Appellant took him to a house along Dan Kura Road, on Zoo Road from where she gave him the sum of N2,000.00.

Later on that day, the Appellant went back to the house of the deceased having in her possession the deceased's I. D. Card, his vehicle particulars and the key to his room and falsely represented to his sister P.W. 1, Umma Ibrahim, that she had been sent by the deceased to bring his Video CD and Television set. On seeing the deceased's I. D. Card, vehicle particulars and room key with her, the (P.W. 1) was convinced and so handed over the properties to her. Still later on that day, the Appellant went back to the deceased's house and again falsely represented to the P.W. 1 that she had been sent by the deceased to get the CD recorder. This time P.W. 1 refused and insisted that she would like to accompany her to where the deceased was. The Appellant pleaded with the P.W. 1 to be patient, promising that she would secure the release of the deceased from the film director.

The Appellant sold the deceased's Sony Television Set and the Fuji-VCD to the P.W. 7, Yahaya Unman, for N8,000.00 and N4,000.00 respectively. She sold or pledged the deceased's Nokia handset to one Halima for N1,000.00. She took the deceased's car stereo and 2 speakers to one Adebayo Abdulkarim. All those were recovered by the Police through the Information given by the Appellant.

The above shows clearly that the one and only person who knew the whereabouts of the deceased is the Appellant. Just as she gave the clue that led to the recovery of the deceased's properties she had sold, she had bounden duty to tell the police where Auwalu (deceased) was. Her first description of the deceased's whereabouts was in her statement in Exhibit 1 dated 30/12/2002. She said she told one Ibrahim Shuru (alias Kura) that she left the deceased in the bush. She got there with the said Ibrahim and met the deceased. According to her, the said Ibrahim carried the deceased to PDP house and that the deceased was sleeping in the inner room of the said PDP house. Following this information, the DCP Supol Adekoya and P.W. 5 went to the PDP office and searched every room but Auwalu (deceased) was nowhere to be found.

In her statement to the police Exhibit 7 dated 6th of January, 2003, she stated that when the Taxi driver (P.W. 6) dropped them at

the Tiga Dam side and drove away in annoyance, leaving behind herself and her drunk and almost unconscious boy friend, she pushed him into the water. Following this revelation in Exhibit 7, the P.W. 8, P.W. 4, some other relation of the deceased and all led by the Appellant went to the dam site on the 10th of January, 2003. There the Appellant showed them the spot where she pushed the deceased into the water. They saw coal and other traces of the fire she made on the 25th of December, 2002. From that point, they conducted a search for Auwalu, her boy friend, until they saw his body in an advanced state of decomposition about a kilometer away.

In her evidence in court however, the Appellant told yet another completely different story about the whereabouts of the deceased. She thus gave three different accounts. In view of these conflicting accounts in her statements to the police in Exhibits 1 and 7 and her testimony in court, the trial court disbelieved her evidence and rejected it, describing it as unreliable. This unreliability was the opinion which the trial court was labouring to express in its judgment at Page 182 of the record and which learned counsel for the Appellant misconstrued as a rejection of Exhibits 1 and 7. The court below also re-evaluated the evidence and came to the same conclusion as the trial court. And in view of the nature of the Appellant's complaint about improper evaluation, I also embarked upon a thorough re-appraisal of the evidence and I do not see any reason whatsoever to disturb the concurrent findings of the two courts below. I entirely agree with their findings. I hold that the circumstantial evidence leads pointedly and unequivocally to only one conclusion which is the guilt of the Appellant.

It is also trite law that an Accused person can be properly convicted on his or her confessional statement if it is proved to have been made voluntarily and it is and amounts unequivocally to his or her of guilt. See: Egbohonome v. State (1993) 7 NWLR (Pt. 306) 383 at 411-412; R v. Kanu (1952) 14 WACA 30 ; Mumuni v. State (1975) 6 S.C. 79; (1975) 6 S.C (Reprint) 66; Apkan v. State (1992) 6 NWLR (Pt. 248) 439; Onwumere v. State (1991) 5 S.C. 148; (1991) 4 NWLR (Pt 186) 428. ***In my view, the combination of the Appellant's statements in Exhib-***

its 1 and 7 without more, established such standard of proof strong enough to support the Appellant's conviction. I agree with Mr. Umar Attorney General of Kano State that having regard to the confessions and/or admissions Exhibit I and 7, corroboration was not strictly required to sustain the Appellant's conviction. That situation notwithstanding the Prosecution still avail the court other pieces of evidence that further the confessions and/or admissions. Such pieces of evidence include the I, D Card, his room key and his Nokia ill found In the Appellant's possession.

In conclusion and having regard to all I have said above, I shall also resolve these issues against the Appellant. I hold that the Prosecution established the guilt of the Appellant beyond reasonable doubt. In the final result, I affirm the concurrent decisions of the two D courts below and dismiss the appeal for lack of merit.

MUKHTAR JSC

The charge preferred against the Appellant in the High Court E of Kano State reads as follows:-

“That you Rabi Isma'il, Female, on or about the 25/12/2002 at Rurum Dam along Tiga Road in Bebeji Local Government area of Kano State within Kano Judicial Division did commit culpable homicide punishable with death in that you caused the death of one Auwalu F Ibrahim (alias Zazu) by doing an act to wit drugging him by means of giving him a doped Eclairs Sweet as a result of which the deceased lost consciousness and you later pushed him into the dam with the knowledge that death will be the probable consequence of your acts G and you thereby committed an offence punishable under Section 221 (b) of he Penal Code.”

The Accused/Appellant pleaded not guilty to the charge, and witnesses testified. The learned trial judge convicted the Appellant, as charged. In exercise of her constitutional right the Appellant appealed H to the Court of Appeal, which affirmed the conviction and sentence. The Appellant has again appealed to this court on six grounds of appeal, from which four issues for determination were raised in the Appellant's brief of argument, and two issues were raised in the Respondent's brief of argument. The issues have been set out in the

leading judgment and they have been thoroughly dealt with therein. I will however analyze some crucial points raised in this appeal by way of emphasis. The most crucial point is the doctrine of last seen, which the Appellant profess was wrongly applied to the circumstances of this case. In a case of culpable homicide, as in this present one where the doctrine of last seen has been applied, the law presumes that the person last seen with the deceased before his death was responsible for his death, and the Accused is expected to provide an explanation of what happened. The following piece of evidence of PW.6 necessitated the application of this doctrine:-

“PW. 6..... so we reached the 1st point we went. Immediately the Accused and (sic) she assisted the dropping of the deceased. I made a U-turn and ran away. At the time the Accused and the deceased were (sic) drop he wanted to remain in the car and asked her to go and get the bag but she insisted on his getting out. I returned to Kano.....”

The above evidence was not debunked by the defence in the cause of cross-examination. Even though in her defence in court she said she left the deceased at a junction. PW. 1, the sister of the deceased gave the following testimony:-

“The woman who went to our house for Auwalu is the Accused person. The incident of her visit happened around 12.00 noon and did not go back to us that day. The Accused then went back to our house with his identity card and the key to his room and told us that she was sent by Auwalu to collect his video C.D. and Television..... I allowed her to collect the items. She again came back on the same

Day she collected the items at night and request to receive his C.D. recorder but

I refused and insisted to go with her and see where Auwalu was but the Accused refused asking me to exercise patience... I did not give her the C.D.

recorder or follow her. Auwalu never came back as the Accused promised to secure his release from the film director.”

The evidence was not successfully challenged, and when one reads the above pieces of evidence together, it points to the fact that the doctrine of last seen was appropriately applied, even if the later piece of evidence is circumstantial. In Halsbury’s Laws of England’s,

Fourth Edition Reissue Volume 11(2), Paragraph 10089 Page 883, which deals with rebuttable presumptions of law, the authors encapsulated the presumption thus:-

B “A rebuttable presumption of law is one which leads to a decision on a particular issue in favour of the party who establishes it or relies upon it, unless it is rebutted. Rebuttable presumptions of law may be created by statute, or may exist as common law, and may cast either a legal or an evidential burden on the party seeking to rebut the presumption, except that it is a rule of the common law that (save in the case of a defence of insanity) the Accused cannot be C required to discharge the legal burden of proof.”

In the instant case, the Prosecution has established the presumption of the doctrine of last seen, but the Appellant has not succeeded in rebutting the presumption. As a matter of fact, some other D circumstantial evidence adduced by the Prosecution have not helped the Appellant’s case. Such circumstantial evidence as the ones reproduced above and those of P.W. 7, P.W. 8 and the Appellant’s confessional statement, Exhibit 7 are pointers. The law is settled that to ground a conviction on circumstantial evidence, such circumstantial E evidence must be cogent and point irresistibly and unequivocally to the guilt of the Accused person. See: *Ukorah v. State* (1977) 4 S.C. 67; (1977) 4 S.C. (Reprint) 111; *Ansha v. State* (1998) 2 NWLR (Pt 537) 246; and *Ogidi v. State* (2005) 1 S.C. (Pt. 98; (2005; 5 NWLR F (Pt. 918) 286.

It is abundantly clear in the present case that the circumstantial evidence is cogent, positive and overwhelming, to sustain the conviction of the Appellant by the two lower courts. I am satisfied that the prosecution proved its case beyond reasonable doubt, as required G by section 138 of the Evidence Act, Cap. 112, Law of the Federation of Nigeria, 1990.

Proof beyond reasonable doubt does not conjure proof beyond all shadows of doubt for if it does many guilty person will go unpunished. See: *Miller v. Minister a* (1947) All ER 372. This may H negate the essence of Prosecution and the legal principle that a man must pay the wages of his sins, especially where the life of another human is involved. See: *Alake v. State* (1991) 7 NWLR (Pt. 205) 567; and *Abadan v. State* (1997) 1 NWLR (Pt. 479) 1.

I dismiss the appeal.

MUHAMMAD JSC

I was afforded an opportunity by my learned brother, Tabai, JSC, to read his judgment in draft. The facts of this case as contained in the record of appeal reveal a sordid episode. The actions were against both morality and legality. The law must be allowed to take its normal course. I too, dismiss this appeal as it lacks merit. I affirm the decision of the court below. B

FABIYI JSC

This is an appeal against the judgment delivered by the Court of Appeal, Kaduna Division ('the court below' for short) on 3rd of March, 2008. Therein, the judgment of the trial high court delivered on 5th December, 2004 in which the Appellant was convicted and sentenced to death by hanging was affirmed. D

The Appellant was arraigned at the trial high court, Kano for the offence of culpable homicide by causing the death of one Auwalu Ibrahim by giving him doped Eclairs Sweet as a result of which he lost his consciousness and later pushed him into the dam and thereby committed an offence punishable under Section 221 (b) of the Penal Code, Laws of the Kano State, 1991. At Page 7 of the record of appeal, the charge was read to the Appellant and she pleaded not guilty to same E

The Prosecution called a host of nine (9) witnesses. P.W.6. a taxi driver saw when the Appellant pushed the deceased who was unconscious into the Tiga Dam in the evening of 25th December, 2002. Thereafter, the Appellant went to P.W. 1, deceased's sister to deceive her to part with deceased's properties to wit: video CD. and a television which she sold to P.W. 7. The Appellant also represented to P.W. 1 that the deceased was prevented from coming home by the deceased's film director. P.W. I requested that she should follow the Appellant to see her brother but the Appellant dissuaded her not to worry. The Appellant was the last person seen with the deceased by P.W.6. F

The Appellant admitted that she was with the deceased on the fateful day. Both of them went to swim at Tiga Dam but that she left him at Zoo Road, Kano. She showed where she pushed the deceased into the water but thereafter denied same. The deceased was discov- G H

ered dead in the river.

The learned trial judge garnered evidence and was properly addressed on salient points of law. In his considered judgment of 5th December, 2004, the Appellant was found guilty as charged and sentenced as dictated by the law to death by hanging. Her appeal to the court below was dismissed on 3rd of March, 2008. This is a further appeal to this court.” On 12th May, 2011 when the appeal was heard, learned counsel on both sides of the divide adopted and relied on briefs of arguments filed by each of them. Each counsel made oral submissions to further buttress his standpoint.

The salient issues as formulated by the Respondent read as follows:-

- “(A) Whether the lower court only relied on the oral confession of the Appellant in affirming the conviction of the Appellant.
- (b) Whether from the totality of the evidence adduced at the trial, the lower court is right in holding that the Prosecution had proved its case against the Appellant beyond reasonable doubt.”

The offence for which the Appellant was charged is a capital one. The Prosecution had the abiding duty to prove three basic ingredients beyond reasonable doubt. They are:-

- 1. The death of the deceased,
- 2. That the death of the deceased was as a result of the voluntary act of the Accused;
- 3. That the Accused had the intention of causing the death of the deceased or to cause him grievous bodily injury.

See: Ahmed v. The State (2001) 12 S. C. (Pt. I) 135; (2001) 18 NWLR (Pt 746) 622; Oba v. The State (1992) 2 NWLR (Pt. 222) 164; Jua v. The State (2010) 1-2 S.C. 96; (2010) 4 NWLR (Pt. 1184) 217 at 237; Akinfe v. The State (1988) 3 NWLR (Pt. 85) 729; Onah v. The State (1985) 3 NWLR (Pt. 12) 236.

At the trial court, PW.6 stated that he saw when the Appellant pushed the deceased into the water at a time the deceased was unconscious. The Appellant went to the deceased’s sister -P. W. 1 thereafter to collect the deceased’s properties which she sold to P.W. 7., P.W. I requested that she would follow the Appellant to see the deceased but was dissuaded by the Appellant not to worry.

It is clear to me that from the scenario depicted above, it goes without saying that the learned trial judge rightly found that the act of

the Appellant caused havoc to the deceased and caused his death. And same was rightly affirmed by the court below. See: Onubogu v. The State (1994) 9 S.C. 1.

Apart from the above, the Appellant was last seen with the deceased by P.W.6. Instead of explaining the whereabouts of the deceased to the sister - P.W. 1, the Appellant kept mute. She made away with deceased's properties and sold them to P.W. 7. And more significantly, she refused to take P.W. 1 to where she could see and assist the deceased, if possible. The circumstantial evidence in this respect, as established by the Prosecution, is compelling and leaves no room for any iota of doubt. See: Nwaeze v. The State (1996) 2 NWLR (Pt. 428) 1; Peter Igho v. The State (1978) 3 S.C. 87; (1978) 3 S.C. (Reprint) 61; R. v. Mary Ann Nash (1911) 6 CAR 225 at 228.

To put it mildly, I am of the opinion that the Appellant, in the prevailing circumstance, was enmeshed in the web of the 'last seen doctrine'. There is justification to draw the conclusion that it was the Accused who killed the deceased.

See: Adeniji v. The State (2001) 5 S.C. (Pt. II) 100; (2001) 13 NWLR (Pt. 730) 375; Adeotu v. The State (1988) 7 S.C. (Pt. I) 117; (1988) 7 SCNJ 83; (1988) 9 NWLR (Pt. 565) 185.

We have concurrent findings by the two courts below in most material respects. This court will generally not interfere unless exceptional reasons have been established. None has been depicted. I see no reason to Interfere.

See: Princet & Anor. v. The State (2002) 12 S.C. (Pt. II) 137; (2002) 18 NWLR (Pt. 798) 48; Amusa v. State (2003) 1 S.C. (Pt. III) 14; (2003) 4 (Pt. 811) 595.

I strongly feel that the case against the Appellant was proved beyond reasonable doubt as dictated by Section 138 of the Evidence Act. All the ingredients of the offence charged were satisfactorily proved. See: Alabi v. The State (1993) 7 NWLR (Pt. 307) 745

For the above reasons and those set out in the judgment of my learned brother, Tabai, JSC., I come to the conclusion that the appeal is devoid of merit and should be dismissed. I order accordingly and hereby affirm the judgment of the court below.

RHODES- VIVOUR, JSC

Both courts below relied on circumstantial evidence to convict and sentence the Appellant to death murder of Auwalu (deceased).

Before a conviction for murder can be sustained on circumstantial evidence such evidence must satisfy the following.

- B 1. The circumstances from which an inference of guilt is relied on must be cogently and clearly established.
2. The circumstances must point towards the guilt of the Accused person.
- C 3. When all the circumstances are taken together the only reasonable conclusion would be that it was the Accused person who committed the crime and no one else.

See: Shehu v. State (2010) 2-3 S.C. (Pt. I) 158; Mustapha Mohammed & Ors. v. The State (2007) 30 NSCQR 364.

D The Appellant and the deceased went to the dam. The Appellant was unable to give any credible explanation as to where the deceased was when she returned from the dam. Instead she told the deceased's sister lies, thereby succeeding in taking away some of his property.

E The rebuttable presumption is that the person last seen with the deceased before his death was responsible for his death. In the absence of any credible evidence to exculpate the Appellant from guilt the circumstantial evidence is overwhelming and points to the Appellant and no one else.

F Both courts below found as a fact that it was the Appellant who killed Auwalu (deceased). The trial court came to this finding after listening to nine witnesses for the Respondent/Prosecution, and the Appellant Defendant. These are concurrent findings of fact. This court rarely upset concurrent findings of fact except they are found to be perverse, there is a miscarriage of justice, or violation of some principle of law or procedure.

See: Oba v. The State (1992) 2 NWLR (Pt. 222) 164; Igago v. The State (1999) 10-12 S.C. 84; (1999) 14 NWLR (Pt. 637) 1; H Adeyemi v. The State (1991) 2 S.C. 93; (1991) 1 NWLR (Pt. 170) 679.

Findings of fact are made by a trial judge. The trial judge receives evidence that is perception. He proceeds to weigh the evidence in the context of the circumstances of the case that is evalua-

tion. A finding of fact involves both perception and evaluation. Since the appellate court does not have that advantage of the trial court, such findings should not be treated lightly.

In the instant case nothing stops an appellate court from examining the circumstantial evidence rolled on by the trial court to convict the Appellant for murder. I have done so, and found that the evidence rolled on satisfies the three conditions earlier alluded to. For this reason the concurrent findings of fact are not perverse, neither was there miscarriage of justice or violation of any principle of law or procedure.

For this and the reasoning in the leading judgment that this appeal should be and draft, I would dismiss the appeal.

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