

**SUPREME COURT OF NIGERIA**  
FRIDAY 12TH APRIL, 2013. SC. 205/2009  
**CORAM:- W. S. N. ONNOGHEN, M. S. MUNTAKA-  
COOMASSIE, J. A. FABIYI, O. ARIWOOLA,  
M. D. MUHAMMAD, JJSC**

ODUAK DANIEL JIMMY ..... APPELLANT  
V.  
STATE ..... RESPONDENT

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MURDER - Evidence - Contradictions in respondent's case cannot avail appellant - As evidence of murder of deceased by appellant remains uncontroverted (H1)

MURDER - Ingredients - Proof - Conviction of appellant for the offence - Can be sustained by the testimonies of respondent's witnesses - Medical report - And appellant's statements (H2)

MURDER - Defence - Accident - Sustainability - Appellant failed to discharge the onus on him to prove the defence - And his words of threat attest to the intentional killing of the deceased (H3)

**FACTS**

Accused/appellant and Aniefiok Joseph Bassey i.e. the deceased, belonged to rival political parties that sponsored candidates in one of the elections held in ushering the new democratic dispensation in 1999. On the fateful day, both men went to cast their votes at their respective voting centres. Disagreement erupted between members of appellant's party i.e. PDP and members of the deceased's party i.e. AD. Thereafter, appellant laid ambush and attacked the deceased with a machete. The deceased died instantly. His lifeless body was taken to the compound of appellant's father. Appellant further threatened to kill PW3 while still at the same compound.

Appellant was later arrested and arraigned before the High Court of Akwa-Ibom State for murder contrary to section 319 (1) of the Criminal Code Cap 31 Vol. 2 Laws of the Cross River State as applicable to Akwa-Ibom State. Appellant raised the defence of accident to the charge. At the end of trial, the court found appellant

guilty as charged and sentenced him to death. Appellant not being satisfied filed appeal at the Court of Appeal. The court dismissed the appeal and affirmed the judgment of the trial court. Aggrieved, appellant appealed to Supreme Court.

**ISSUE FOR DETERMINATION**

Whether in spite of the contradictions in the testimonies of respondent's witnesses, if any, the respondent can be said to have discharged the burden the law places on it of proving the offence the appellant stands trial for beyond reasonable doubt and whether the appellant is entitled to the defence of accident in the light of the evidence before the court.

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

*Evidence - Contradictions*

**1. Learned respondent's counsel is right that contradiction only avails the appellant herein who raises it if the contradiction is material. Conversely, where the contradiction is not material and/or substantial it will not tilt the appeal in favour of the party relying on the contradiction. Again, learned counsel is correct that in the instant case the appellant who relies on the contradictions in the evidence of respondent's witnesses does not succeed by merely showing the existence of those contradictions. He must further show that the trial court did not advert to and considered the effect of the contradictions. Appellant succeeds on the ground of the contradictions in the evidence of the witnesses if he convinces the court that substantial disparagement of the evidence of the particular witnesses has ensued thereby making reliance on their evidence unsafe, dangerous and likely to occasion miscarriage of justice.**

**I cannot agree more with the lower court on the issue. Whether or not contradictions in the prosecution's case are material depends on the effect such contradictions have on the proof of the ingredients of the offence the appellant stands trial for. In the case at hand where in spite of the alleged inconsisten-**

**cies in the respondent's case, the evidence of death of the deceased, the act of the appellant and his intention to kill or inflict bodily harm on the deceased remains uncontroverted, the appellant stands no chance. The contradictions relied upon by the appellant not being substantial or material is incapable of ensuring appellant's success in his appeal. It is for this very reason that I resolve appellant's 1st issue against him.**

(pp. 1708 G/1710 G)

*MURDER - Ingredients - Proof*

**2. It must also be answered from the evidence before the two courts which has just been further found to be bereft of any contradictions, it can be inferred that the respondent has discharged the burden the law places on it of proving the offence of murder under Section 319 (1) of the Criminal Code against the appellant beyond reasonable doubt and that the defence of accident or self defence the appellant alludes to does not avail him.**

**Flowing from the resolution of appellant's 1st issue against him and the affirmation of the lower court's finding that the contradictions the appellant relies on are immaterial, is the fact that the testimonies of the respondent witnesses sought to be maligned are reliable and same can sustain appellant's conviction if they establish the ingredients of the offence of murder. Beyond these very testimonies, one notes, there are the trial court's further inferences from exhibits 'C', the medical report, E, F and G, appellant's own statements, on all the ingredients of the offence under Section 319 of the Criminal Code the appellant is charged and convicted for.**

(p. 1711 B)

*MURDER - Defence - Accident*

**3. It is indeed the principle that the appellant is only liable for his intentional acts. The combined effect of Sections 24 and 316 of the criminal code is that the appellant is absolved from criminal liability once evidence reveals that his act of killing the deceased, which would otherwise be criminal, is unintended. In the case at hand, it is contended that appellant's act being**

*a mistake and/or accident, done without the intention of killing the deceased, the two lower courts are wrong to have found him liable. Do facts before these courts bear out learned appellant's counsel? I think not and all the reasons for this holding are in the lower court's findings on the point at pages*  
 B *236-237 of the record where it inter-alia states:-*

*"Appellant claimed that the slaughter of the deceased was not intended and that it was a mistake. The onus is on him to prove what he asserted and he failed so to do.*

C *In the circumstances of this case the threat issued by the appellant to the PW3 who brought the corpse of the deceased to the house of the appellant's father 'It is your own that remains' - eloquently attests to the intentional killing of the deceased as well as intent to kill the PW3 also..."*

D (p. 1712 B)

## NOTABLE POINTS OF INTEREST

### MUHAMMAD JSC

#### E *1. Contradictory statement – Definition of*

1. In *Sale Dasayya v. State* (2000) NSCQLR (Vol. 25) 780 at 797 – 798, this court has defined a contradictory statement to be that which states the opposite of what is being contradicted. It is an affirmation of the contrary of what was earlier stated. Thus, for a statement to be  
 F contradictory, it must be a direct and clear opposite of what was earlier stated or spoken. (p. 1708 E)

### FABIYI JSC

#### *2. Murder – Ingredients of*

G The ingredients that the prosecution required to sustain the charge of murder are:-

- (a) the death of the deceased,
- (b) the act or omission of the accused which caused the death;

H and

(c) that the act or omission of the accused was intentional with the knowledge that the death or grievous bodily harm was its probable consequence. (p. 1715 H)

## **REPRESENTATION**

E. C. Onumajuru, for the Appellant

U. Udom, for the Respondent

## **CASES REFERRED TO**

Agbo v. State (2006) ALL FWLR (pt. 309) 1380	B
Ubani v. State (2004) ALL FWLR (pt. 191) 1533	
Udosen v. State (2007) ALL FWLR (pt. 356) 669	
Sowemimo v. State (2004) 11 NWLR (pt. 885) 515	
Nausoh v. State (1993) 5 NWLR (pt. 292) 129	C
Adekunle v. State (2006) ALL FWLR (pt. 332) 1452	
Omonsa v. State (2006) ALL FWLR (pt. 306) 930	
Uwaekweghinya v. State (2005) 9 NWLR (pt. 930) 227	
Enahoro v. State (1965) NSCC (Vol. 4) 98	
Okeke v. State (1996) 2 NWLR (pt. 590) 246	D
Sule v. State (2009) 17 NWLR (pt. 1169) 33	
Onungwa v. State (1976) 3 SC 169	
Ogedengbe v. Balogun (2007) 9 NWLR (pt. 1039) 380	
Dasayya v. State (2000) NSCQLR (Vol. 25) 780	
Ogunbayo v. State (2007) NSQLR (Vol. 29) 806	E

## **STATUTES REFERRED TO**

Criminal Code Cap 31 Vol. 2 Laws of Cross River State (as applicable to Akwa-Ibom State), ss. 24, 316, 319(1)	
Evidence Act, ss. 137, 149(c)	F

## **LEAD JUDGMENT BY MUHAMMAD JSC**

This is an appeal against the judgment of the Calabar Division of the Court of Appeal, hereinafter referred to as the court below, affirming the conviction and sentence of the appellant by the Akwa-Ibom State High Court of Justice,

I hereinafter referred to as the trial court. The trial court's judgment was delivered on the 30th day of March, 2006 while the lower court's affirmation of the said judgment is dated 27th May, 2009. The appellant was tried and convicted for the offence of murder contrary to Section 319 (1) of the Criminal Code Cap 31 Vol. 2 Laws of the Cross River State as applicable to the Akwa-Ibom State. Let me supply, very briefly, the facts of the case that brought about

the appeal.

In the late 1990's, the military which, before then, had ruled the country for almost a quarter of a century out of its thirty two years post-independence existence, decided to return the country to democratic rule. The instant case is one of the many dark and unfortunate shades in the course of the country's laudable resolve and march towards a fresh democratic culture and means of governance.

The appellant, Oduak Daniel Jimmy and Aniefiok Joseph Bassey, the deceased, belonged to rival political parties that sponsored candidates in one of the elections held in ushering the new democratic dispensation in 1999. The particular elections took place on the 5th day of December, 1998. The two who hailed from Effoi Village in Eket Local Government Area of Akwa-Ibom State, had gone to cast their votes in their respective voting centres.

It is respondent's further case that after casting his vote at the Effoi Village Hall voting centre, the appellant rather than go home, proceeded to another voting centre located at the Mary Slessor Health Centre, Effoi. There, following a disagreement between members of the PDP, appellant's party, and members of the deceased's party, the AD, voting had to be delayed for some time. After the voting, as the crowd of voters walked back to their respective residences, the appellant who had laid an ambush emerged with a machete and dealt a fatal blow on Aniefiok Joseph Bassey leaving him with a deep cut on the left side of his neck. Bassey died instantly. His lifeless body was moved to the compound of the appellant's father. Even there, asserts the respondent, appellant further threatened to kill PW2 with the very machete he earlier killed Bassey. Appellant was later arrested and charged to court.

Appellant's case is that Bassey's death was accidental. He claims that it was the deceased who, on their way home from the Mary Slessor Health Center, first attacked him with a machete. A struggle, the appellant further avers, ensued and the machete accidentally cut the deceased in the neck. While the respondent called five witnesses in making out its case, the appellant gave evidence on his own behalf and called an additional witness in his defence. At the end of the trial, the court having found that the respondent has proved its case beyond reasonable doubt, found appellant guilty and sentenced him to death. Dissatisfied, the appellant appealed to the court

below which court in dismissing the appeal on 27th May, 2009, affirmed the appellant's conviction and sentence by the trial court. The appellant has further appealed to this Court on seven grounds.

In compliance with the rules of court, parties have filed and exchanged their briefs of argument which briefs were adopted and relied upon, at the hearing of the appeal, as their respective arguments. B

The four issues distilled at paragraph 3.00 of the appellant's brief as having arisen for the determination of the appeal read:-

*"1. Did the learned Justices of the Court of Appeal sitting in Calabar, properly avert their minds to the contradictory evidence of the prosecution witnesses in convicting the Appellant for murder?"* C

*2. Did the Honourable Justices of the Court of Appeal properly evaluate the "intent to kill" as a mandatory ingredient of the offence of murder before convicting the Appellant?"* D

*3. In view of the entire evidence, was the learned Justices right when they held that the prosecution had proved the offence of murder beyond reasonable doubt?"*

*4. Whether the defence of accident or self defence does not avail the appellant."* E

The respondent, see page 5 of its brief of argument, has adopted the four issues formulated by the appellant for the determination of the appeal.

On the 1st issue, learned appellant's counsel refers to the testimonies of PW1, PW2 and PW3 as well as their statements to the police and contends that the contradictions in their evidence make the evidence unreliable. In particular, learned counsel dwells on PW1's testimony at page 49, PW2's evidence at page 54, PW3's at pages 57-58 as well as the latter's two statements to the police at pages 8 and 10 of the record of appeal in contending that the contradictions in the evidence of the three witnesses have rendered the evidence significantly unsafe. Respondent's case so founded on material and fundamental contradictions, learned appellant's counsel submits leaves the trial court with nothing to rely on in arriving at the decision it has. He relies on *Agbo V. The State* (2006) ALL FWLR (part 309) 1380 at 1385, *Ubani V. State* (2004) ALL FWLR (part 191) 1533 at 1539, 1550, *Udosen V. State* (2007) ALL FWLR (part 356) 669 at 699, and *Sowemimo V. State* (2004) 11 NWLR (part 885) 515 at 520 F  
G  
H

particularly at 532 and urges that we hold that the court below's affirmation of the trial court's decision is wrong. The logical inference to make from the totality of the evidence led by the respondent is that there was no eye witness on what actually took place between the appellant and the deceased thereby creating doubt as to how the deceased sustained the injury alleged to have led to his death. Once there exists the slightest doubt in respondent's case, on the authority of *Nausoh V. State* (1993) 5 NWLR (part 292) 129, learned appellant's counsel submits, respondent's case automatically collapses. The concurrent findings of the two lower courts to the contrary, contends learned counsel, are erroneous. He prays that the issue be resolved against the respondent.

On the 2nd issue, learned appellant counsel submits that the respondent has the legal burden of proving all the ingredients of the offence appellant stands trial for beyond reasonable doubt. The respondent, it is contended, must establish not only the fact of death of the deceased and that same is a result of the act or omission of the appellant but that appellant's act or omission that caused the death of the deceased was intentional as same was done with the knowledge that death or grievous bodily harm was its probable consequence. The three Ingredients of the offence of murder appellant is convicted for, learned appellant counsel submits, must conjunctively be established by the respondent through cogent evidence. Counsel supports his submission with the decisions in *Adekunle v. State* (2006) ALL FWLR (Pt 332) 1452 at 1456, *Omonsá V. State* (2006) ALL FWLR (Pt 306) 930 at 933.

By Section 24 of the Criminal Code, learned counsel further argues, since the death of the deceased is accidental, the appellant is absolved from liability for same. The Evidence of PW4, the medical doctor, which the two lower courts rely on to find that appellant's act of killing the deceased is intentional does not offer a conclusive proof of that fact. The appellant, learned counsel submits, having given uncontroverted evidence that the injury the deceased sustained was consequent to a struggle between the two in accessing and keeping control over the weapon, cannot be presumed, to know that the injury will ensue in the first place let alone the probable consequence of the injury. In the absence of any intention to injure the deceased, the appellant, by virtue of S. 316 of the Criminal Code, cannot be



held liable for the death of the deceased. Counsel further relies on *Agbo V. State* (supra), *Amayo V. State* supra and urges that appellant's 2nd issue be resolved in their favour as well.

Responding to appellant's arguments under the 1st issue, learned respondent's counsel submits that it is not every contradiction or inconsistency that is fatal to the prosecution's case. Only such conflict, contradiction or mix-up in the prosecution's case that is substantial and fundamental that avails an appellant. In the case at hand, learned counsel further contends, the contradictions, if any, are not material. Besides, the two courts below have fully adverted their minds to the seeming contradictions and correctly concluded that they are insignificant. The contradictions, it is argued, are therefore, unhelpful to the appellant's cause. Learned counsel relies on *Uwaekweghinya V. The State* (2005) 9 NWLR (Part 930) 227 at 250; *Udosen V. State* (supra); *Agbo V. State* (supra); *Enahoro V. The State* (supra) (1965) D NSCC (Vol. 4) 98 at 113 and *Okeke V. State* (1996) 2 NWLR (Part 590) 246 at 273, and prays that appellant's arguments be discountenanced and the issue be resolved against the appellant.

In their reply under the 2nd issue, learned respondent counsel concedes that appellant's conviction can only be sustained where all the ingredients of the offence under S. 319 of the criminal code have been proved beyond reasonable doubt by the respondent. Counsel commends the cases of *Sule V. State* (2009) 17 NWLR (Part 1169) 33 at 53-54 and *Abosede V. State* (1996) 5 NWLR (Part aa8) (sic) 270 at 276-277 in support of his position. Exhibit 'C', learned counsel further argues is only one out of the many pieces of evidence from which both courts below inferred the proof of all the ingredients of the offence the appellant is convicted for. The appellant has himself in Exhibit 'G', stated the magnitude of the injury he inflicted on the deceased and this is in addition to the evidence of PW1, PW2, and PW3 who saw the appellant emerged from the bush and dealt the deceased the injury that caused his immediate death. These pieces of solid and unchallenged evidence the trial court rightly accepted, justifies appellant's conviction as affirmed by the court below. Learned counsel to the respondent refers to the lower court's findings at pages 232-233 of the record and concludes that the court's inference as to the guilt of the appellant at pages 236-237 cannot be faulted. Relying on *Onungwa v. State* (1976) 3 SC 169 and *Ogedengbe V. Balogun*

(2007) 9 NWLR (Part 1039) 380 at 409, learned counsel submits that the appellant whose appeal is against the concurrent findings of fact of the two courts below has not discharged the burden the law places on him to merit the intervention of this Court. Learned counsel concludes by urging that the 2nd issue be resolved against the  
B appellant.

Arguments on both sides relation to the 3rd and 4th issues for the determination of the appeal are repetitive of the very arguments so far recounted. You are saved the drudgery.

C It appears obvious that the real issues the appeal raises are whether in spite of the contradictions in the testimonies of respondent's witnesses, if any, the respondent can be said to have discharged the burden the law places on it of proving the offence the appellant stands trial for beyond reasonable doubt and whether the appellant is entitled to the defence of accident in the light of the evidence before the  
D court.

Now, what does contradiction in the testimonies of prosecution witnesses connote? What degree of contradiction, where same exists, destroys the prosecution's case? What, in criminal jurisprudence  
E is the effect of the defence of accident, where same has been established, on the culpability of an accused person? These are no new questions as this Court has over the years repeatedly addressed the same questions in a string of cases.

F In Sale Dasayya V. State (2000) NSCQLR (Vol. 25) 780 at 797 – 798, this court has defined a contradictory statement to be that which states the opposite of what is being contradicted. It is an affirmation of the contrary of what was earlier stated. Thus, for a statement to be contradictory, it must be a direct and clear opposite  
G of what was earlier stated or spoken.

***Learned respondent's counsel is right that contradiction only avails the appellant herein who raises it if the contradiction is material. Conversely, where the contradiction is not material and/or substantial it will not tilt the appeal in favour  
H of the party relying on the contradiction. Again, learned counsel is correct that in the instant case the appellant who relies on the contradictions in the evidence of respondent's witnesses does not succeed by merely showing the existence of those contradictions. He must further show that the trial court did***

**not advert to and considered the effect of the contradictions. Appellant succeeds on the ground of the contradictions in the evidence of the witnesses if he convinces the court that substantial disparagement of the evidence of the particular witnesses has ensued thereby making reliance on their evidence unsafe, dangerous and likely to occasion miscarriage of justice.** See also Agbo V. State (Supra) and Ogunbayo V. State (2007) NSQLR (Vol. 29) 806 at 831 - 833. B

On the contradictions learned appellant's counsel raises in relation to the evidence of respondent's witnesses, the trial court at page 151 of the record of appeal states firstly thus:- C

*"In this case, there is overwhelming evidence which I have gathered from the evidence of PW1, PW2, PW3, PW4 as well as Exhibit C, H & H1 that the deceased was attacked and he died on the spot. He was attacked by the accused with a machete. PW4, the medical Doctor under cross-examination on 14/11/2001 said the machete cut on the neck was deliberate because the cut was very deep. The accused counsel had on 9/6/2005 during his address told the court that the said PW4 made a vital contradiction in his testimony during cross-examination that the corpse of the deceased was received in the hospital on 5/12/97. In such a situation the evidence of PW4 would not be reliable. But the accused counsel did not consider what the witness said under reexamination on 14/11/2001 that the corpse was brought into the hospital on 5/12/98. I therefore have no reason to disbelieve the evidence of PW4, the medical Doctor."* D  
E  
F

The court at page 156 of the record of appeal continues thus:-

*"The accused counsel argued in his address that there was contradiction in the evidence of PW1 and PW3 on who carried the deceased to the accused compound after the deceased had died. He therefore asked the court to treat their pieces of evidence as unreliable and contradictory..."* G

*...In this case, the contradictions if any on who and who carried the deceased after he had died, to the compound of the accused are not capable of disparaging any of the witnesses."* H

On the trial court's foregoing findings, the court below after correctly restating the principles regarding the vexed issue finds at pages 228 - 229 as follows:- .

“Bearing the above in mind, I am of the view that the contradictions or discrepancies demonstrated in the appellant’s brief do not go to any element in the charge. They relate to minor peripheral matters... Who gave the wrapper to whom to mop the blood, or to cover the body of the deceased has really no bearing to any element of the offence charged. There is no contradiction or discrepancy in the evidence of a witness who made a statement to the Police to the effect that he saw the deceased pick a machete, pursue the deceased and cut him on the neck and told the Court that he saw the deceased “collapses” on the ground. The latter is a direct result of the former. PW4 said he examined the body on 8/12/98 by 12 noon but later in his testimony said the body was received in the mortuary on 5/12/97. The error in stating 1997 in place of 1998 was corrected by the witness under cross-examination. The defence was not misled. There is no contradiction or discrepancy in the evidence of the prosecution relating to any of the ingredients the prosecution is bound to prove to sustain a charge a murder.”

The court then concludes at pages 229 - 230 thus:-

“A Court should be wary of the testimonies of witnesses which tally even in inconsequential particulars. Such evidence could be massaged for no two people can reproduce identical details of the same event they observed. One may appreciate and record a point which the other one did not appreciate as material. It is for the trial Court to determine whether the contradiction is material or not. The Court below rightly held that the alleged contradictions are not material to the fact in issue on the facts of the case. There was therefore no need for explanation as such explanations will arise only where there are material contradictions. See *Ikemson v. State* (1989) 1 CLRN 1 at 20 paragraph G: 21 Para B, *Nasamu v. State* (1976) 6 SC 153 at 158-159.”

**I cannot agree more with the lower court on the issue. Whether or not contradictions in the prosecution’s case are material depends on the effect such contradictions have on the proof of the ingredients of the offence the appellant stands trial for. In the case at hand where in spite of the alleged inconsistencies in the respondent’s case, the evidence of death of the deceased, the act of the appellant and his intention to kill or inflict bodily harm on the deceased remains uncontro-**

**verted, the appellant stands no chance. The contradictions relied upon by the appellant not being substantial or material is incapable of ensuring appellant's success in his appeal. It is for this very reason that I resolve appellant's 1st issue against him.**

***It must also be answered from the evidence before the two courts which has just been further found to be bereft of any contradictions, it can be inferred that the respondent has discharged the burden the law places on it of proving the offence of murder under Section 319 (1) of the Criminal Code against the appellant beyond reasonable doubt and that the defence of accident or self defence the appellant alludes to does not avail him.***

***Flowing from the resolution of appellant's 1st issue against him and the affirmation of the lower court's finding that the contradictions the appellant relies on are immaterial, is the fact that the testimonies of the respondent witnesses sought to be maligned are reliable and same can sustain appellant's conviction if they establish the ingredients of the offence of murder. Beyond these very testimonies, one notes, there are the trial court's further inferences from exhibits 'C', the medical report, E, F and G, appellant's own statements, on all the ingredients of the offence under Section 319 of the Criminal Code the appellant is charged and convicted for.***

At page 230 of the record of appeal, the court below affirms the trial court's findings on appellant's culpability at pages 231– 232 thus:-

*"The evidence of who caused the death of the deceased is unequivocal. Apart from the evidence of PW1 and PW2 the appellant said he struggled for a machete with the deceased, and that in that struggle 'the knife went straight to his neck and cut him straight inside.' The above statement is contemporaneous with the death of the deceased. There is no doubt from the evidence as found by the learned trial judge that the act of the appellant directly caused the death of the deceased."*

The findings of the two courts on the proof of all the ingredients of the offence appellant is convicted for are concurrent findings of fact. This Court can only interfere with these findings if the appel-

lant shows that the two are perverse. I am unable to see what injustice these findings which clearly flow from the lawful evidence of respondent's witnesses has occasioned. Beside, the appellant has not made bare the extraneous matters the two courts took into account in arriving at these findings. And it does not stop at that.

***It is indeed the principle that the appellant is only liable for his intentional acts. The combined effect of Sections 24 and 316 of the criminal code is that the appellant is absolved from criminal liability once evidence reveals that his act of killing the deceased, which would otherwise be criminal, is unintended.*** See *Adelumola v. State* (1988) NSCC (Vol. 19 - Pt. 1) 465. ***In the case at hand, it is contended that appellant's act being a mistake and/or accident, done without the intention of killing the deceased, the two lower courts are wrong to have found him liable. Do facts before these courts bear out learned appellant's counsel? I think not and all the reasons for this holding are in the lower court's findings on the point at pages 236-237 of the record where it inter-alia states:-***

***"Appellant claimed that the slaughter of the deceased was not intended and that it was a mistake. The onus is on him to prove what he asserted and he failed so to do. See Sections 137 and 149 (c) of the Evidence Act and UBA PLC & ANOR V. IDRISU (1999) 7 NWLR (Pt 609) 105.***

***In the circumstances of this case the threat issued by the appellant to the PW3 who brought the corpse of the deceased to the house of the appellant's father 'It is your own that remains' - eloquently attests to the intentional killing of the deceased as well as intent to kill the PW3 also..."***

The evidence on record, see the testimony of PW1, PW2, PW3 and appellant's statements in exhibits E, F and G, the degree of injury inflicted by the appellant on the deceased as well as his attitude towards PW3 as evaluated by the trial court and dwelt upon by the court below in its foregoing finding leave one in no doubt that the death of the deceased is neither a mistake nor an accident. It is pre-meditated. Appellant by these pieces of evidence is shown to have deliberately concealed himself in the bush armed with the machete resolved on killing the deceased. He actualized this intention in his emergence from the bush, at the appropriate time to deal on the

deceased the fatal blow that led to his instant death. These concurrent findings of the two courts cannot also be interfered with. See *Omini v. State* (1999) 12 NWLR (Pt 630) 168 SC, *Karimu v. State* (1999) 13 NWLR (pt. 633) 1 SC. It is for the foregoing that I resolve appellant's 2nd issue as well as those other collateral matters raised within the two issues addressed in this judgment against the appellant. B

Issue as well as those other collateral matters raised within the two issues addressed in this judgment against the appellant.

On the whole I hold that the appeal is unmeritorious and accordingly dismiss same. The judgment of the court below is hereby affirmed. C

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### **ONNOGHEN JSC**

I have had the benefit of reading in draft the lead judgment my learned brother, MUHAMMAD, JSC just delivered. D

I agree with his reasoning and conclusion that the appeal devoid of merit and should be dismissed.

This is a most worthless appeal I ever heard. There is no doubt that appellant killed the deceased by giving him machete cuts in the presence of witnesses - a crowd of voters returning from an election. Also in evidence is the fact that appellant, after a disagreement with the deceased, laid an ambush for the deceased in a bush along the road, the deceased and others were walking home. E F

The machete cut was inflicted on the deceased on the left side of the neck from which the deceased bled to death, on the spot.

Appellant claims that the death of the deceased was accidental and also that it was by way of self defence as the deceased allegedly attacked him with a machete. G

It is settled law that for an accused person to avail himself of the defence of self defence, he has to establish the following:-

i. that the nature of the attack by the deceased was such as to cause a reasonable apprehension of death or grievous harm to the accused, and H

ii. that the accused in fact apprehended death or grievous harm - See *Ekpenyong v. State* (1991) 6 NWLR (Pt. 200) 683 at 707; *Uwagboe v. State* (2008) 12 NWLR (Pt. 1102) 621 at 648.

The accused person must show that his life was so much endangered by the act of the deceased that the ONLY option open to him to save his life was to kill the deceased that he did not want to fight and that he was at all material time prepared to withdraw - See Akpugo v. State (2006) 16 NWLR (Pt. 1002) 227 at 256. Going through the record, there is no evidence to support the claim that there was a fight between the deceased and the appellant on the date in question neither is there evidence that the deceased attacked the appellant to warrant appellant defending himself by killing the deceased.

From the evidence particularly the testimony of PW2, the deceased was not armed but appellant suddenly emerged from the bush and cut the deceased on the neck and that there was no quarrel or struggle between the parties at the time of the incident. See also the evidence of PW2 and PW3.

From the facts on record also, it is clear that the defence of accident does not avail the appellant. This court has held, in the case of Uwagboe v. State (2008) 12 NWLR (pt. 1102) 621 at 639 - 640 that:-

*“An accident is an unpleasant event that happens unexpectedly and not planned in advance. It negatives intention to cause what happened. An accident is the result of an un-willed act, an event which occurs without the fault of the person alleged to have caused it. A willed deliberate act therefore negatives the defence of accident”.*

From the facts, it is clear that the action of the appellant was a deliberate act clearly with the intention to either kill the deceased or cause him a grievous bodily harm.

I need to state that by the nature of the defence of self defence and accident, they are clearly odd bed fellows; they cannot operate side by side in single case as the facts needed to support one are not the same with the facts needed to establish the other.

It must be noted that the appeal is on concurrent findings of fact by the lower courts which findings, it is the practice of this court, cannot be disturbed except upon established exceptional circumstances, such as perversity of the findings etc, which circumstances have not been demonstrated by appellant to exist in this case.

Appeal is consequently dismissed by me.



**MUNTAKA-COOMASSIE JSC**

This is an appeal against the decision of the Court of Appeal Calabar Division herein after called the lower court which affirmed the conviction and sentence against the appellant by the State High Court of Justice Akwa-Ibom State herein referred to as the trial court. B  
The lower court affirmed the judgment of the trial court on 27/5/2009. The trial court tried and found the accused/appellant guilty of the offence of murder contrary to section 319 (1) of the criminal code Cap. 31 Vol. 2 Laws of the Cross-River State as applicable to the Akwa-Ibom State. He was accordingly convicted as charged. The C  
facts were concisely supplied by the lead Judgment as delivered by noble lord Hon. Justice Dattijo Muhammad JSC. I was privileged to have a preview of this judgment and I entirely agree with the reasons and conclusions therein adumbrated. I adopt his lordship's reasoning and conclusions as mine. The lead judgment admirably has dealt D  
with the live issues as presented to us by both parties.

The two concurrent decisions of the High Court and lower court were correctly decided. There is no way this court can even attempt to disturb same. I have nothing more useful to chip in. I too E  
agree with my learned brother that this appeal is devoid of any merit and same is hereby dismissed. The judgment of the lower and the trial courts are hereby restored and affirmed.

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**FABIYI JSC**

I have read before now the judgment just delivered by my learned brother - M. D. Muhammad, JSC. I completely agree with the reasons therein advanced to arrive at the conclusion that the G  
appeal is devoid of merit and deserves to be dismissed.

I seek leave to chip in a few words of my own in support. The facts have been well set out in the lead judgment. I do not need to restate them in full.

The appellant was tried and convicted for the offence of murder contrary to section 319 (1) of the Criminal Code, Cap. 31 Vol.2 Laws of Cross River State as applicable to the Akwa-Ibom State. H

The ingredients that the prosecution required to sustain the charge of murder are:-

- (a) the death of the deceased,
- (b) the act or omission of the accused which caused the death;

and

- (c) that the act or omission of the accused was intentional with the knowledge that the death or grievous bodily harm was its probable consequence.

The above stated ingredients have been restated in many judgments of this court. See *Okeke v. The State* (1996) 2 NWLR (pt. 590) 246 at 223, *Aderunle v. The State* (2006) All FWLR (332) 1452; just to mention a few.

In the two lower courts, point touching on contradiction in the evidence of prosecution witnesses was canvassed at length on behalf of the appellant. It must be pointed out that the contradiction in the evidence of the prosecution that will be fatal must be substantial. Minor or miniature contradiction which did not affect the credibility of witnesses or which did not touch on any of the ingredients of the offence charged will not be of any moment. Contradiction must relate to substance; in the main. Trivial contradiction should not vitiate a trial. See: *Anka v. The State* (1969) 1 All NLR 133; *Queen v. Iyanda* (1960) SCNLR 595; *Omisade v. Queen* (1964) 1 All NLR 233; *Sele v. The State* (1993) 1 SCNJ 15 at 22-23; (1993); 1 NWLR (Pt.269) 276.

To my mind, the surmised inconsistencies as to who used PW2's wrapper to stop the flow of blood from the deceased's neck or who helped to carry the deceased's body to the house of the appellant's father do not touch on the main ingredients of the offence of murder. They peripheral matters. The court below was right in placing any serious premium on same. See *Enahoro v. The State* (1965) NSCC (Vol.4) 98 at 113. On behalf of the appellant, the defences of accident and self defence were rolled up as if they are co-terminous. It occurs to me that once a defence of accident is put up, self defence can hardly be invoked.

It is extant in the record that from the evidence of P.W.2 and P.W.3 which was believed by the trial court and affirmed by the court below, the appellant was the assailant who emerged from the bush to attack the deceased. As the assailant, it is incomprehensible for the appellant to attempt to hide under the canopy of self defence or accident. He cannot do so. As it pertains to defence of accident, the

deliberate act of the appellant also negated same. See: the case of Uwagboe v. The State (2005) 12 NWLR (pt. 1102) 621 at pages 639 - 640.

As it is common in most criminal trials, it was submitted on behalf of the appellant that the prosecution failed to prove their case beyond reasonable doubt. Proof beyond reasonable doubt is not proof to the hilt or proof beyond all iota of doubt. See: Nasiru v. The State (1999) 1 SC (1999) 1 NWLR (Pt. 589) 87 at 98. B

Simply put, where the prosecution duly established all essential ingredients of the offence of murder, as herein same is proved beyond reasonable doubt. See: Alabi v. The State (1993) 7 NWLR (pt. 301) 511 at 523; Abogede v. The State (1996) 5 NWLR (pt. 445) 270 at 276. C

Finally, the determination of this appeal rests on concurrent findings of fact by the two courts below which have not been shown to be perverse in any respect. This court cannot interfere with same in the prevailing circumstance. See: Kale v. Coker (1982) 12 SC 252; Shorumo v. The State (2010) 12 SC (pt. 1) 73 at 96, 102; Igwe v. The State (1952) 9 SC 114. D

For the above reasons and the detailed ones carefully set out by my learned brother, I too feel that the appeal lacks merit and should be dismissed. I order accordingly and affirm the judgment of the court below, without any shred of equivocation. E

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### **ARIWOOLA JSC**

I had the privilege of preview of the lead judgment of my learned brother, Dattijo Muhammad, JSC just delivered, and I am in total agreement with the reasoning therein and the conclusions arrived thereat. I have nothing more to add. The appeal is, to say the least, lacking in merit and substance. I also dismiss same and affirm the decision of the court below. G

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