

SUPREME COURT OF NIGERIA
FRIDAY 12TH APRIL, 2013. SC. 486/2011
**CORAM:- W. S. N. ONNOGHEN, M. S. MUNTAKA-
COOMASSIE, N. S. NGWUTA, O. ARIWOOLA,
M. D. MUHAMMAD, JJSC**

LUKMAN ADEYEMI APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - Appeals - Retrial - Conditions for - Appellate court will inter alia grant retrial - Where apart from irregularity in the proceeding - Evidence discloses a substantial case against appellant (H1)

CRIMINAL PROCEDURE - Appeals - Retrial - Confession - As Exhibit C upon which trial court can solely convict appellant - Has made out prima facie case against him - It is necessary that he offers explanations at the trial de novo ordered by CA (H2)

CRIMINAL PROCEDURE - Appeals - Retrial - Improper arraignment - Retrial was rightly ordered by CA - After it nullified the trial of appellant - Since the trial Judge did not take his plea upon arraignment (H3)

CRIMINAL PROCEDURE - Appeals - Retrial - Contradictions in prosecution's evidence in aborted trial - Is immaterial when considering whether the case should be retried (H4)

FACTS

Appellant and two others were alleged to have had sexual intercourse with the deceased one Maria Adeniyi a.k.a. Iya Ibeji (a labourer at appellant's block making site) before beheading her and cutting off her private parts which included her breast. They were subsequently said to have buried her body in a grave around the site. When the deceased failed to return home after close of work, her husband (PW1) organized a search party after reporting the matter to the police. Appellant and the others were subsequently arrested in

connection with the missing of deceased. Appellant made confessional statements in exhibit C which created a nexus with the murder of the deceased.

Appellant and the others were thus arraigned before the High Court of Ogun State for conspiracy to murder and murder of the deceased. At trial, the confessional statement was objected to by appellant, which led to a trial within trial. After the trial within trial, the court admitted the confession in evidence. In its judgment, the court convicted and sentenced appellant and the others to death by hanging. Appellant being dissatisfied lodged an appeal at the Court of Appeal, Ibadan Division. Appellant contended that he did not plea to the charges. On this fact, the court set aside the judgment of trial court. The court being of the opinion that a substantial case has been made out against appellant in exhibit C, ordered that the case be tried de novo by another Judge of the trial High Court. Aggrieved, appellant appealed to Supreme Court, contending that he is entitled to an order of discharge and acquittal.

ISSUE FOR DETERMINATION

“Whether from the circumstances and evidence led at trial, it is proper and appropriate to order the appellant to go through a fresh trial on this charge”

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

Appeals - Retrial - Conditions for

1. The conditions that must be fulfilled before an order of retrial can be made by an appellate court include:

(a) that leaving aside the error or irregularity in the proceeding, the evidence taken as a whole discloses a substantial case against the appellant;

(b) that the offence(s) of which the appellant was convicted or the consequences to the appellant or any other person of the conviction or acquittal of the appellant are not merely trivial;

(c) that to refuse an order for retrial would occasion a greater miscarriage of justice than to grant it;

(d) that there are no such special circumstances as would render it oppressive to put the appellant on trial a second time; and,

(e) the reason for declaring the trial a nullity and the overall interest or justice are also relevant. (p. 1777 D)

Appeals - Retrial - Confession

2. It is not in doubt that appellant made a confessional statement to the police which was later tendered and admitted in court as Exhibit "C" which is copied at pages 18 and 19 of the record. Exhibit "C", clearly established a nexus between appellant and the commission of the offence(s) charged and it is trite law that a trial court can convict solely on the confessional statement of an accused person. With the said Exhibit "C", there is clearly a prima facie case made out against appellant which necessarily calls on appellant to offer some explanations. He can only do that at the trial de novo as ordered by the lower court. (p. 1779 A)

Appeals - Retrial - Improper arraignment

3. In the circumstance, I hold the considered view that the lower court was right in ordering a retrial of the charge after holding that the trial leading to the conviction and sentence of appellant was a nullity due to the failure of the trial judge to take the plea of appellant upon arraignment. The order of retrial was not based on insufficiency of evidence which might have influenced the court to consider the possibility of discharging and acquitting appellant as urged by counsel for appellant. (p. 1779 C)

EVIDENCE - Contradictions - Effect

4. It should be noted that the fact there exists contradictions in the evidence of the prosecution in an aborted trial cannot be relevant to a consideration as to whether the case should be retried after the first trial has been declared a nullity as everything that took place in the earlier trial goes with the nullity.

Secondly it is very strange and irrelevant for appellant

to contest the admissibility of a confessional statement upon appeal when same was admitted without objection and when the trial in which the said statement was admitted had been declared null and void!! Even if the confessional statement is held to have been wrongly admitted in an aborted trial, of what use would that be to the appellant? (p. 1779 E)

NOTABLE POINTS OF INTEREST

ARIWOOLA JSC

C 1. Charges – “Give a plea” – Meaning of

What then is it to give a plea? It is trite law that to give a plea is for an accused person to formally respond personally to a criminal charge, either of “guilty”, “not guilty” or “no contest”. (p. 1783 H)

D 2. Arraignment – Requirement under CPA s. 215

There is no doubt that the plea of an accused person must be taken by the trial court before his trial commences. This is in obedience to and in compliance with section 215 of the Criminal Procedure Act. Therefore, where the trial court failed to take the plea of an accused person before he is tried, the entire proceedings are vitiated and liable to be declared a nullity. What it means is that the accused person could not have been said to be properly arraigned and this is fatal to the prosecution’s case. (p. 1784 A)

F REPRESENTATION

Olusola Idowu Esq., for the Appellant

Dr. Muiz Banire, Tayo Olatubosun Esq., Dare Oketade Esq., for the Respondent

G CASES REFERRED TO

Kajubo v. State (1988) 1 NWLR (pt. 73) 721

Ogunsi v. State (1994) 1 NWLR (pt. 322) 583

Uche v. State (1999) 7 NWLR (pt. 609) 1

H Okewu v. Federal Republic of Nigeria (2012) 4 SCM 118

Amala v. State (2004) 12 NWLR (pt. 888) 520

Okosun v. State (1979) 3 - 4 SC 24

Eyorokoromo v. State (1979) 6 - 9 SC 3

Erekanure v. State (1993) 5 NWLR (pt. 294) 385

Ikhane v. COP (1977) 6 SC 78

STATUTE REFERRED TO

Criminal Procedure Act, s. 215

B

LEAD JUDGMENT BY ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal, Holden at Ibadan delivered on the 16th day of November, 2011 allowing the appeal of appellant but ordering a retrial after declaring the trial a nullity due to the fact that the accused persons, including appellant, did not plead to the charge before trial. C

It is the case of the prosecution that appellant together with two others conspired to murder and did murder one Maria Adeniyi on the 15th day of July, 2000. Appellant made a confessional statement which was tendered and admitted at the trial though appellant denied making it. The deceased was invited by appellant to work for them in their block making site as a labourer on 15th July, 2000 but when the deceased failed to return home after close of work her husband, PW1 organised a search party, after reporting the matter to the police but the search yielded no positive result. D E

The deceased was subsequently declared missing. The prosecution contends that appellant and his co-accused persons, including appellant in SC/485/2011, had sex with the said Maria Adeniyi, a.k.a. Iya Ibeji before cutting off her head and private parts which included her breast, after which they buried her body in a grave around the site. Appellant's confessional statement was admitted, along with those of the co-accused persons after a trial within trial as they objected to their admission, though appellant later withdrew his objection. F G

As stated earlier, appellant and the co-accused persons were convicted of the offences and sentenced to death by hanging. The judgment of the trial court was however set aside on appeal giving rise to the instant further appeal, the issue for the determination of which has been identified in the appellant brief filed by learned counsel for appellant OLUSOLA O. IDOWU ESQ., as follows:- H

“Whether from the circumstances and evidence led at trial, it is proper and appropriate to order the appellant to go through a

fresh trial on this charge”

In arguing the appeal, learned counsel submitted that the order of retrial made by the lower court is not supported by the circumstances of the case, the evidence led and the principles laid down in judicial decisions; that the principles for ordering retrial is as laid down in *Abodunde v. The Queen* 4 FSC 70 and *Kajubo v. State* (1988) 1 NWLR (Pt.73) 721. Which the lower court wrongly applied to the facts of this case; that no prima facie case was made against the appellant; that the confessional statement, Exhibit “C” ought not to have been admitted.

It is the further contention of learned counsel that the evidence adduced at the trial by the prosecution was riddled with conflicts and inconsistencies; that the brother-in-law and IPO at Sango-Otta who first saw the corpse were not called to testify, which, counsel submitted “left a doubt in the case of the prosecution”, and that the doubt ought to have been resolved in favour of appellant, relying on the case of *Ogunsi v. State* (1994) 1 NWLR (Pt. 322) 583.

It is also the contention of learned counsel that a second trial will work injustice on the appellant as it will give the prosecution an added advantage; that the only/sole witness available to the prosecution is PW1, the husband of the deceased, and that appellant should not be subjected to an oppressive retrial that would serve no useful purpose; that it will be oppressive to retry appellant ten years after he was first charged to court and urged the court to resolve the issue in favour of appellant and allow the appeal.

On his part, learned counsel for respondent submitted that the lower court took the correct decision by ordering a retrial in the circumstance of the case; that the non-taking of plea of appellant and the other co-accused rendered the first trial and conviction a nullity which nullity cannot ground an order of discharge and acquitted at the same time; that Exhibit “C”, the confessional statement of appellant was admitted without objection at the first trial.

It is the further submission of counsel that a prima facie case was made out against appellant at the trial and that Exhibit “C” was properly admitted.

Learned counsel also contended that the offences with which appellant was convicted are very grievous ones, the punishment of which is death; that the interest of justice would be served if the order

of retrial is affirmed by this court; that the fact that it is ten years since appellant was first charged is irrelevant having regards to the gravity of the offence charged, relying on the decision in *Yahaya v. The State* 9 NSCQR at 36, per UWAIS CJN and urged the court to resolve the issue against appellant and dismiss the appeal.

It is not disputed that no plea of appellant and his co-accused persons was taken upon arraignment by the trial court before the court proceeded to hear evidence and conduct a full trial and entered judgment convincing and sentencing appellant and his said co-accused persons to death for the offences of conspiracy to commit murder and murder. The judgment resulted in an appeal in which it was contended by the appellant, inter alia, that the entire proceeding was vitiated by the failure of the trial court to take the plea of appellant and his co-accused persons which contention was upheld by the lower court as a result of which the court ordered a retrial. The instant appeal and the sole issue for determination is on whether the lower court was right in ordering a retrial instead of discharging and acquitting appellant.

The conditions that must be fulfilled before an order of retrial can be made by an appellate court include:

(a) that leaving aside the error or irregularity in the proceeding, the evidence taken as a whole discloses a substantial case against the appellant;

(b) that the offence(s) of which the appellant was convicted or the consequences to the appellant or any other person of the conviction or acquittal of the appellant are not merely trivial;

(c) that to refuse an order for retrial would occasion a greater miscarriage of justice than to grant it;

(d) that there are no such special circumstances as would render it oppressive to put the appellant on trial a second time; and,

(e) the reason for declaring the trial a nullity and the overall interest or justice are also relevant. See the case of: *Kajubo v. State* (1988) 1 NWLR (pt. 73) 721; *Uche v. The State* (1999) 7 NWLR (pt. 609) 1.

Upon considering the appropriate order to be made upon the trial being declared a nullity, the lower court held at page 79 of

the record as follows:-

“Having gone through the record of proceeding, it is clear from the evidence of PW1 and PW2 that there, is nexus between the acts of the appellants and the death of the deceased. Appellant made confessional statements admitting the offence. In my humble opinion a prima facie case has been made against all the appellants and this has satisfied condition (a).

On condition (b), the fact that the appellants have been in custody since the date of arrest till now cannot amount to sufficient punishment for the offences to render a retrial oppressive. If the circumstances of both the appellants and the deceased are considered together, the order of retrial should not be regarded as oppressive.

On condition (c), the offence or offences of which the appellants have been convicted and sentence are not trivial. The offence of murder carries capital punishment. The years stayed in custody awaiting trial cannot be regarded as sufficient punishment for the offence of murder.

On condition (d), to order their acquittal will not meet the justice of the case.

On condition (e), the appellants’ right to freedom has to be weighed against the security of the general public who are entitled to be protected from murderers. Justice is not to the appellants alone, it is also for the deceased who is crying in her lonely grave for justice to be done to those who killed her in a gruesome manner and also to the public at large. In the case of Yahaya v. The State 9 NSCQR at 36, the learned justice UWAIS C.J.N as he then was said on page 18 (sic) thus:

“I accept that to remain in prison custody for ten years awaiting trial is outrageous and is such a long period that should undoubtedly evoke sympathy and concern. However the nature of the offence with which the appellant is accused is murder, is so grave that there is no offence under our laws which carries heavier sentence. As it has been stated elsewhere, Justice is not for the accused only. Therefore, if the circumstances of both the accused and the victims are considered together, the order of fresh trial should not in my opinion be regarded as oppressive. Besides in our laws, a sentence of 10 (ten) years is not regarded as sufficient punishment for murder.”

Can it be said that the above finding/holding is not supported

by the facts and circumstances of this case? I do not think so.

It is not in doubt that appellant made a confessional statement to the police which was later tendered and admitted in court as Exhibit “C” which is copied at pages 18 and 19 of the record. Exhibit “C”, clearly established a nexus between appellant and the commission of the offence(s) charged and it is trite law that a trial court can convict solely on the confessional statement of an accused person. With the said Exhibit “C”, there is clearly a prima facie case made out against appellant which necessarily calls on appellant to offer some explanations. He can only do that at the trial de novo as ordered by the lower court.

In the circumstance, I hold the considered view that the lower court was right in ordering a retrial of the charge after holding that the trial leading to the conviction and sentence of appellant was a nullity due to the failure of the trial judge to take the plea of appellant upon arraignment. The order of retrial was not based on insufficiency of evidence which might have influenced the court to consider the possibility of discharging and acquitting appellant as urged by counsel for appellant.

It should be noted that the fact there exists contradictions in the evidence of the prosecution in an aborted trial cannot be relevant to a consideration as to whether the case should be retried after the first trial has been declared a nullity as everything that took place in the earlier trial goes with the nullity.

Secondly it is very strange and irrelevant for appellant to contest the admissibility of a confessional statement upon appeal when same was admitted without objection and when the trial in which the said statement was admitted had been declared null and void!! Even if the confessional statement is held to have been wrongly admitted in an aborted trial, of what use would that be to the appellant?

I consequently find no merit in the issue which is accordingly resolved against appellant.

In conclusion I find the appeal devoid of any merit and is consequently dismissed by me.

MUNTAKA-COOMASSIE JSC

This is an appeal by the Appellant Lukman Adeyemi, against the decision of the Court of Appeal, Ibadan Division, delivered on the 16/11/2011, in which the Court of Appeal, herein called the lower court, allowed the appeal of the appellant. That could have made the lower court's decision acceptable by the appellant. However that court i.e., the lower court ordered the retrial of the appellant before another trial court. The appellant herein together with other accused persons, vehemently denied being asked to plead guilty or otherwise to the charge before the trial court.

Consistently with the above the prosecution alleged that the accused now appellant with two others conspired to murder and in fact did murder one Maria Adeniyi on the 15/7/2000.

The appellant herein, according to the prosecution made a confessional statement admitting killing the deceased. However, during the trial the appellant retracted the said statement and totally denied making such a statement.

The prosecution story showed that the appellant employed the deceased to work as a labourer in their block making site on 15/7/2000. It was when the husband, now Pw1, saw that the deceased could not return home after the close of work that he reported the matter to the police after having unsuccessful search. The prosecution further maintained that the appellant and his two co-accused persons had a group sex with the said deceased, Maria Adeniyi, a. k. a. Iya Ibeji, before mercilessly cutting off her head and private parts, together with her breast. After making this dastard act buried her in a grave around the site.

After conducting a trial-within-trial the confessional statement was admitted in evidence. The appellant though withdrew his objection and or retraction of the said confessional statement of his other co-accused persons were adamant and sustain their objection to their own confessional statements.

The trial court, after trial and addresses by the accused persons counsel, found them guilty of the offence charged, convicted them and passed sentence of death by hanging.

On Appeal, the lower court set aside the judgment of trial court and ordered a re-trial before another trial court. The appellant

maintained, through his counsel, that the order for retrial was not proper. He criticized the lower court for being wrong by applying the principles of ordering a retrial as enunciated in *Abodunde v. The Queen* 4 FSC 70, and *Kajubo v. State* (1988) 1 NWLR (pt. 73) p. 271. He still insisted that the prosecution could not establish any prima facie case against the appellant and therefore the said confessional statement of the appellant in court Exhibit 'C' ought not to be admitted in the first place. B

In addition, learned counsel further submitted that the prosecution evidence was surrounded by conflict and inconsistencies, and above all, the prosecution deliberately failed to call some vital witnesses to come and testify in court. That created some doubt which should have been resolved in favour of the appellant. He all along contended that a second trial will work injustice to the appellant and at the same time give the prosecution unjustifiable added advantage. D He said that to order afresh retrial after 10 years of his first charge would render the whole trial oppressive and would serve no useful purpose. He then urged this court to resolve the sole issue in favour of the appellant and to allow this appeal.

The respondent supported the lower court in ordering the retrial in the circumstance of this case. Learned respondent's counsel agreed that the non-taking of the accused persons' plea rendered the trial, conviction and sentence by the learned trial Judge, a nullity but that alone should not make the court ordering a discharge and acquitted at the same time. He added that a prima facie case was made out against the appellant and that Exhibit 'C' was admitted without any objection at the first trial. That offence of murder as grievous one it would not serve the overall interest of justice if the order of the retrial is not confirmed by this court. He heavily relied on the case of: - *Yahaya V. The State* 9 NSCQR at 36 per Uwais CJN, as he then was. Learned counsel then urged this court to dismiss the appeal. E F G

I have read in advance the lead judgment of my learned brother Onnoghen, JSC just delivered and I have no cause to hold otherwise. In fact I adopt, with respect, the reasons that led to his conclusion that the appeal lacks merit. I therefore also dismiss this particular appeal. Sentiment aside, the appellant must in this particular case, face another trial before a trial court in view of what had H

happened in this case. I say no more on this issue.

NGWUTA JSC

I read in draft the lead judgment just delivered by My Lord,
B Onnoghen, JSC. I entirely agree with the reasoning and conclusion therein.

Appellant was tried together with the appellant in SC.485/
2011 in Charge No. HCT/9C/2002 in the High Court of Ogun State,
C holden at Ota. Appellant and his co-accused at the trial Court were convicted as charged and sentenced to death. On appeal, the lower Court found that the trial Court committed a fundamental procedural error by proceeding to trial without taking the plea of the accused/appellants.

D I have the same views I expressed in appeal No. SC.485/2011.

I adopt the reasoning and conclusions in the lead judgment and consequently, I also dismiss the appeal as bereft of merit.

E

ARIWOOLA JSC

I had the opportunity of reading in draft the lead judgment of my learned brother, ONNOGHEN, JSC just delivered. I agree
F entirely with the reasoning and conclusion arrived thereat.

The appeal is against the judgment of the Ibadan Division of the Court of Appeal delivered on 16/11/2011. The court below had allowed the appeal but ordered a retrial of the appellant having declared the earlier trial a nullity.

G Before the trial Court, the appellant and three others had been charged with the offences of conspiracy to commit murder and murder.

Both were arraigned, tried, convicted and sentenced to death by hanging, having been found guilty of the offence of murder of
H their victim, Maria Adeniyi, a.k.a. Iya Ibeji. The appellant and his cohorts had had sex with the deceased after which they killed her by cutting off her head and dismembered her by removing her breasts before she was buried in a shallow grave.

Based on the confessional statements of the appellant and

that of other co-accused which were admitted after trial within trial, the trial court found him guilty as charged and after being convicted was sentenced to death. However, on appeal, the judgment of the trial court was declared a nullity and a retrial order was made by the court below which has led to the instant appeal.

In the appellant's brief of argument, the following sole issue was formulated for determination of this appeal, B

"Whether from the circumstances and evidence led at trial, it is proper and appropriate to order the appellant to go through a fresh trial on this charge."

In arguing the appeal, learned counsel contended that the order of retrial of the court below does not have the support of the evidence led, and the circumstances of the case. He referred to the guiding principles as laid down in judicial decisions, such as *Abodunde Vs. The Queen* 4 FSC 70 and *Kajubo V. State* (1988) 1 NWLR (pt. D 73) 721. Learned counsel submitted that the court below misapplied the said principles to the instant case. He contended that there was no prima-facie case against the appellant as the confessional statement - exhibit C ought not to have been admitted by the trial court. C

Learned counsel further contended that it will be oppressive to retry the appellant for the same offence, ten years after he was first charged. He urged the Court to allow the appeal, discharge and acquit the appellant. E

In responding, learned counsel for the respondent submitted that the non taking of plea of the appellant and the other co-accused was the reason why the court below declared their trial a nullity but that that should not entitle the appellant to a discharge and acquittal order as his confessional statement was admitted without objection before the trial court. F

It is instructive to note that the main complaint of the appellant against the trial was that his plea was not taken before the trial court proceeded to hearing and found him guilty, convicted and sentenced him. G

What then is it to give a plea? It is trite law that to give a plea is for an accused person to formally respond personally to a criminal charge, either of "guilty", "not guilty" or "no contest". See; *Elijah Ameh Okewu V. The Federal Republic of Nigeria* (2012) 4 SCM 118; (2012) 2 SC (pt. 11) 1, (2012) 49 NSCQR 330. H

There is no doubt that the plea of an accused person must be taken by the trial court before his trial commences. This is in obedience to and in compliance with section 215 of the Criminal Procedure Act. See also; Sunday Amala V. The State (2004) 12 NWLR (pt 888) 520; (2004) 6 SCM 55; (2004) 18 NSCQR 834.

- B Therefore, where the trial court failed to take the plea of an accused person before he is tried, the entire proceedings are vitiated and liable to be declared a nullity. What it means is that the accused person could not have been said to be properly arraigned and this is fatal to the prosecution's case. See; Joseph Okosun V. The State (1979) 3 - 4 SC 24; (1979) All NLR 26; (1979) LPELR 2501. It is for the failure of the trial court to take the plea of the accused that proved fatal to the case of the prosecution in the following cases; Kajubo v. The State (1988) 1 NWLR (pt 73) 721; (1988) 3 SC 132 at 154, D Eyorokoromo v. The State (1979) 6 - 9 SC 3; Samuel Erekanure V. The State (1993) 5 NWLR (pt 294) 385; (1993) 6 SCNJ 73.

- E It is clear from the record of appeal in this case and it is not being contested by the respondent that the plea of the appellant was not taken by the trial Court which rendered the trial and the entire proceedings nullity. But was the retrial of the appellant properly ordered by the Court below? This question will be answered anon.

- F The guiding principles to enable the appellate court make an order of retrial or fresh trial has been settled in long line of cases with the locus classicus being Abodunde & Ors. Vs. The Queen 4 FSC 70. In that case, the Federal Supreme Court of Nigeria restated the five guiding principles as follows:

"We are of the opinion that before deciding to order a retrial, this court must be satisfied:

- G (a) *that there has been an error in law (including) or an irregularity in procedure of such a character that on the one hand the trial was not rendered a nullity and on the other hand this Court is unable to say that there has been no miscarriage of justice, and to invoke Section 11(i) of the Ordinance;*
- H (b) *that leaving aside the error, or irregularity, the evidence taken as a whole discloses a substantial case against the appellant.*
- (c) *that there are no such special circumstances as would render it oppressive to put the appellant on trial a second time.*
- (d) *that the offence or offences which the appellant was con-*

victed or the consequences to the appellant or any other person of the conviction or acquittal of the appellant are not merely trivial; and (e) that to refuse an order for a retrial would occasion a greater miscarriage of justice than to grant it.” See also; James Ikhane vs. Commissioner of Police (1977) 6 SC 78; (1977) All NLR 234 per Obaseki, JSC. B

The instant case as shown earlier is a murder case. The appellant and his co-accused with whom he was so charged with the offence made confessional statements. There was evidence that they not only killed the deceased but first had sex with her and later dismembered her before she was buried in a shallow grave. This was barbaric, to say the least, and the people involved should be properly tried and brought to justice. C

There is no doubt that the proceeding at the trial court was vitiated by the failure to take the plea of the appellant and that has rendered the trial a nullity. But murder is a serious crime that carries death penalty. Is this court then to merely declare the trial a nullity, as done by the court below, without a consequential order? See; Samuel Erekanure V. The State (supra) per Olatawura, JSC, I will say No! D

I am not in the slightest doubt and I am therefore convinced that, in view of the circumstances and the evidence available including the confessional statement of the appellant which was admitted and marked Exhibit c, with the above guiding principles in mind, it will be most inappropriate and will be injustice to both the deceased and the public as a whole to discharge and acquit the appellant simply because his plea was not taken. In other words, in view of the nature and the gravity of the offence, I agree that the fresh trial or retrial was appropriately ordered in this case by the court below. There is nothing oppressive in it. The appellant should be properly arraigned and tried by yet another Judge of the High Court. E F

For the above and the fuller reasons of my learned brother with which I am in total agreement, I too find the appeal lacking in merit and substance. Accordingly, it is dismissed by me. G

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MUHAMMAD JSC

I have read in draft the lead judgment of my learned brother Onnoghien JSC. I entirely agree with his reasoning's and conclusion

that the appeal lacks merit and same is, on the basis of his lordship's reasoning's which I am unable to improve, hereby dismissed. I abide by the consequential orders decreed in the lead judgment.

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