

SUPREME COURT OF NIGERIA
FRIDAY 5TH JULY, 2013. SC. 395/2010
**CORAM:- M. MOHAMMED, M. S. MUNTAKA-
COOMASSIE, N. S. NGWUTA, M. U. PETER-ODILI,
O. ARIWOOLA, JJSC**

USMAN MAIGARI APPELLANT
V.
THE STATE RESPONDENT

APPEALS - Issues - Grounds - Abandoned - Fate - Grounds not utilized in the raising of issues - Are taken as abandoned - And court may strike them out (H1)

MURDER - Ingredients - Proof - It must be proved that deceased died - As a result of the act of accused - Which was intentional or with knowledge that death or grievous bodily harm will occur (H2)

MURDER - Proof - Confession - Exhibits C & C1 tendered without objection - Along with evidence of PWs and the medical report - Settled question of the fact of death of the deceased (H3)

MURDER - Proof - Means of - Prosecution can establish that accused caused death through - Confessional statement - Circumstantial evidence - And evidence of an eye witness (H4)

MURDER - Proof - Doctrine of last seen - Presumption of the doctrine operates - Since appellant was the last to see deceased alive - And he had not proffered evidence of anything to the contrary (H5)

CRIMINAL PROCEDURE - Proof - Circumstantial evidence - In the absence of direct testimonies of eye witnesses - Evidence of circumstances that can prove a proposition with accuracy of mathematics - Is sufficient to prove the offence charged (H6)

MURDER - Conviction - Contradictions - Effect - Minor difference in evidence of prosecution witnesses - Are not of a serious nature to vitiate the conviction (H7)

FACTS

Before the High Court of Sokoto State Holden at Sokoto, accused/appellant was arraigned on one count charge of culpable homicide punishable with death contrary to section 221(b) of the Penal Code. Appellant pleaded not guilty to the charge. The case for prosecution/respondent is that appellant was suspected to have caused the death of the deceased (his wife) by strangulation with intention to use her for ritual purpose. Respondent further stated that appellant after committing the murder and in an attempt to cover up his crime, dumped the deceased's body in a culvert along a village road in Sokoto. Seven months after the death of the deceased, appellant was arrested in connection with the offence. He made confessional statements in Exhibits C & C1. There was also Exhibit B - a medical report on the corpse of the deceased.

At the trial, respondent called seven witnesses and tendered several documents including the aforesaid Exhibits to prove its case against appellant. In his defence, appellant contended that there was no direct evidence establishing the fact of his intention to kill the deceased. Appellant stated that the deceased died of an ailment. Appellant further contended that he dumped the corpse in the culvert in self-defence. In its judgment, the court convicted appellant and sentenced him to death by hanging. Appellant in reaction, appealed unsuccessfully to the Court of Appeal. Aggrieved further, appellant appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Whether the learned Justices of the Court of Appeal were right in holding that the prosecution proved its case beyond reasonable doubt.

HELD (Unanimously dismissing the appeal per **PETER-ODILI JSC**)

APPEALS - Grounds - Abandoned - Fate

1. The respondent had urged the court to strike out grounds three, four and five of the appellant's grounds of appeal since the sole issue drafted was from grounds one and two in the

notice of appeal. This fact needs no beating about the bush or to waste precious time with since it is a settled matter that grounds of appeal not utilized in the raising of issues for determination are taken as abandoned and the court may strike them out. It is a trite point and such that even if the court is not called upon to strike such a ground or grounds out or on its own does not so strike out, the fact remains that the ground being abandoned is in effect dead and of no use to anyone. However, since the learned counsel for the respondent has brought the matter up, I will just as well strike out grounds 3, 4 and 5 of the grounds of appeal from the record and move on to the important matter of the appeal and the live issues at hand. (p. 3260 F)

MURDER - Ingredients - Proof

2. The matter of the nature of the burden of proof of the offence having been stated above, the question that would crop up are what elements of the offence as contained in section 221 of the Penal Code which must meet that standard of proof prescribed under section 138 (1) of the Evidence Act. The ingredients that make up the offence and which are conjoined and must co-exist none missing are as follows:

1. That the deceased had died.

2. That the death of the deceased had resulted from the act of the accused person.

3. That the act or omission of the accused which caused the death of the deceased was intentional or with the knowledge that death or grievous bodily harm was its probable consequence. (p. 3261 F)

MURDER - Proof - Confession

3. In respect of the first element of the offence, that is that the deceased had died, the two extra judicial statements of the appellant, exhibits C & C1 which were tendered without objection and admitted in evidence on themselves settled the question of the fact of the death of Sa'adatu, the wife of the appellant otherwise known as the deceased for our purpose herein.

The testimony of the appellant at the trial as DW1 was along the same lines as the confessional statements exhibits C & C1, which themselves were complementary, C1 filling the details that were not covered in exhibit C. Again establishing the death were evidence of all the prosecution witnesses including the medical report which showed that the death was by strangulation. It was from all the above stated that the trial court had no difficulty in making a finding on the first ingredient that indeed Sa'adatu died. This the Court of Appeal agreed with and I see nothing holding back my hand in going along with that finding.

Taking the evidence of DW1, the appellant himself together with the two confessional statements which pieces of evidence showed the cogency and I dare say the accuracy of narration which left no doubt that the act of the appellant was the cause of the death. (pp. 3262 A/3263 B/G)

MURDER - Proof - Means of

4. On the second ingredient which has to do with the act of the appellant being the cause of that death. It has to be pointed out that in seeking to establish that element, the prosecution has several options which are as follows:

- (a) Confessional statement**
- (b) Circumstantial evidence**
- (c) Evidence of an eye witness** (p. 3263 D)

MURDER - Proof - Doctrine of last seen

5. Again the presumption of last seen operates since the appellant was the last to see the deceased alive and he had not proffered any evidence of anything to the contrary and so he bears the responsibility for the death. These facts juxtaposed with the appellant's concealment of the whereabouts of his deceased wife. With the different tales on where she was and her absence from home. (p. 3263 H)

CRIMINAL PROCEDURE - Proof - Circumstantial evidence

6. On the matter of the circumstantial evidence in existence which the appellant is seeking to denigrate as insufficient in

the attempt to wriggle out, anchoring on the lack of eye witness evidence. It is to be said that where the possibility of proving a criminal matter charged by the direct and positive testimony of eye witnesses or by conclusive documents is absent but there exists evidence of surrounding circumstances which by undesigned coincidence is capable of proving a proposition with the accuracy of mathematics then it is no derogation of the evidence when it is said to be circumstantial. It is nonetheless sufficient as proof of the offence charged. (p. 3264 B)

MURDER - Conviction - Contradictions - Effect

7. The appellant's counsel had made issues of what he termed contradictions in the evidence of the prosecution enough to create doubt serious enough to affect the conviction. It is indeed trite that where the evidence of prosecution witnesses have discrepancies weighty enough to bring about doubts, then a conviction cannot be sustained. I have no difficulty in seeing a few of the discrepancies such as the exact date the relevant prosecution witnesses found the corpse at the culvert and the exact spot of the culvert. These are minor differences which are explainable in human testimonies and are not of a serious nature to vitiate the conviction or make it impossible for the prosecution to be said not to have proved the ingredients of the offence beyond reasonable doubt. (p. 3265 D)

REPRESENTATION

Tajudeen Oladoja with Muritala Abdul-Rasheed, Muhammad Tukur Rashid, for the Appellant
 Nuhu Adamu; Attorney-General of Sokoto State with Mrs. Hadiza Jaredi, Senior State Counsel, Ministry of Justice Sokoto State and Habiba Ahmed Usman, Senior Counsel II Ministry of Justice Sokoto State for the Respondent

CASES REFERRED TO

Ochemaje v. State (2008) 15 NWLR (pt. 1109) 57
 Maiyaki v. State (2008) 15 NWLR (pt. 1109) 173
 Ogba v. State (1992) 2 NWLR (pt. 222) 164

- Abogede v. State (1996) 4 SCNJ 223
- Omonga v. State (2006) ALL FWLR 930
- Kunle v. State (2006) 6 SCNJ 275
- Adekunle v. State (2006) 14 NWLR (pt. 1000) 717
- Aruna v. State (1990) 6 NWLR (pt. 155) 125
- B Agbo v. State (2006) 6 QCCR 48
- Emoga v. State (1997) 1 NWLR (pt. 483) 615
- Igabele v. State (2004) 34 WRN 83
- Emeka v. State (2001) 14 NWLR (pt. 734) 666
- C Akinmoju v. State (1995) 7 NWLR (pt. 406) 204
- Archibong v. State (2007) 10 WRN 21
- Ijiofor v. State (2006) 6 NSGQR (pt. 1) 209

STATUTES REFERRED TO

- D Penal Code, s. 221(a)(b)
- Evidence Act, s. 138(1)

LEAD JUDGMENT BY PETER-ODILI JSC

This is an appeal from the Court of Appeal, Sokoto Judicial Division, Coram: M. D. Muhammed, A. O. Belgore, M. A. Oredola JJCA. The appellant was arraigned before the Sokoto State High Court Holden at Sokoto presided over by Abbas Bello J. on a one count charge of culpable homicide punishable with death contrary to section 221 (b) of the Penal Code. On the 22nd February 2006, leave was granted to the respondent to amend the charge. The appellant pleaded not guilty to the charge and at the trial, the respondent called seven witnesses and tendered several exhibits. The appellant testified in his own defence and did not call any other witness.

Counsel on both sides addressed the court and in a considered judgment, the trial court per Hon. Justice Bello Abbas convicted the appellant and sentenced him to death by hanging. Dissatisfied with the judgment the appellant appealed to the Court of Appeal which court upheld the conviction and sentence.

H Again not satisfied, the appellant has approached the Supreme Court by notice of appeal dated 13th May 2010.

The facts giving rise to this appeal are that on or about the 11th day of January 1999 at his house in Yabo, Yabo Local Government Area of Sokoto State, the appellant was suspected of committing

culpable homicide punishable with death of causing the death of his wife, Sa'adatu by strangulating her to death for ritual reasons then conveyed her corpse and dumped it in a culvert near Janzomo village along Kajiji-Shagari road.

On the 13th day of July 2000, the appellant was arraigned before the Sokoto State High Court on a charge of the offence of culpable homicide punishable with death under section 221(b) of the Penal Code. The charge was later amended by leave of court to section 221 (a) of the Penal Code and the matter finally got to this court.

At the hearing of this appeal on the 11th day of April, 2013, learned counsel for the appellant, Tajudeen O. Oladoja Esq. adopted the brief of argument of the appellant settled by him and filed on 14th September 2011 and deemed filed on 20/3/12. In the brief was raised a single question, viz:

Whether the learned Justices of the Court of Appeal were right in holding that the prosecution proved its case beyond reasonable doubt.

For the respondent, Nuhu Adamu Esq. Attorney-General of Sokoto State adopted their brief of argument he settled and filed on 9th April 2013 and which brief was deemed filed on the 11th April 2013. He formulated two issues for determination as follows:

1. Whether the two lower courts were right in holding that the charge of culpable homicide under section 221 (b) of the Penal Code against the appellant had been proved beyond reasonable doubt by the respondent. (Ground one of the notice of appeal).

2. Whether the Court of Appeal had not considered the appellant's submissions before it in reaching its decision affirming the conviction and sentence of the appellant by the trial court (Ground two). The sole issue as crafted by the appellant encapsulates the two issues couched by the respondent and so answering the issue of the appellant settles the questions raised by the respondent and so it is best to utilize the issue as distilled by the appellant.

Sole Issue

Whether the learned Justices of the Court of Appeal were right in holding that the prosecution proved its case beyond reasonable doubt.

Canvassing their position, learned counsel for the appellant,

Mr. Oladoja referred to the conditions upon which a conviction can be secured on a charge of murder which ingredients must co-exist. He cited *Ochemaje v. State* (2008) SCNJ 143, reported as *Ochemaje v. State* (2008) 15 NWLR (Pt. 1109) 57; *Maiyaki v. State* (2008) 15 NWLR (Pt. 1109) 173; *Ogba v. State* (1992) 2 NWLR (Pt. 222) 164
B etc.

He stated that in the case at hand that the sum total of evidence led by the prosecution merely showed that the accused probably committed the offence and so the standard of proof was not
C attained to justify his conviction. He referred to section 19 of the Penal Code, for the definition of “*likely*” and “*probable*”.

That it is not enough that the death of somebody occurred since there is a need to prove that the appellant intentionally caused the death of the deceased knowing that the death is the probable
D cause of his action and not a likely consequence. That the evidence of the witnesses PW2 and PW6 did not aid the testimonies of the prosecution witnesses who neither knew nor stated who they found and buried by the culvert as the decomposed body found was not identified to be Sa’adatu’s corpse.

E Learned counsel for the appellant said the evidence of PW4 & PW6 failed to link the acts of the appellant to the death of corpse they found. He cited *Alewo Abogede v. State* (1996) 4 SCNJ 223 at 231, (1996) 5 NWLR (Pt. 448) 270. They stated on, that the prosecution failed to establish that it was the act of the appellant that
F caused the death of the unidentified corpse on which an autopsy was carried out. That it is trite law that the prosecution must prove in a murder case that the death of the deceased was the direct result of the act of the accused person to the exclusion of all other reasonable
G probable causes. He relied on *Okokon Omonga v. State* (2006) ALL FWLR 930, (2006) 14 NWLR (Pt. 1000) 532.

For the appellant was further contended that PW1, PW3 and PW5 confirmed that the corpse found in exhibit B had decomposed thus making the identification of same impossible. That the position
H of the appellant was the more probable in that he testified Sa’adatu died seven months prior to 11th January 1999 when the police found the corpse and so within that length of time the decomposed body was beyond the state as described in exhibit B. He pointed at discrepancies in the evidence of PW5 which made it unreliable.

Mr. Oladoja stated on, that the facts and scenario showed circumstantial evidence relied on by the prosecution to prove the guilt of the appellant but was not positively and unequivocally or irresistibly pointing to appellant to such an extent that no other rational hypothesis can be inferred other than the guilt of the accused. That in the prevailing circumstance the appellant was entitled to a discharge and acquittal. He referred to *Kunle v. State* (2006) 6 SCNJ 275 at 287 reported as *Adekunle v. State* (2006) 14 NWLR (Pt. 1000) 717; *Aruna v. State* (1990) 6 NWLR (Pt. 155) 125. B

That there was no evidence that appellant intended to kill Saadatu and neither was any direct or circumstantial evidence positively showing that the appellant intended killing of the deceased. That the ingredients of the offence had not been made out. C

In response, learned counsel for the respondent, Nuhu Adamu Esq. stated that it is conceded that in any criminal trial, the burden of proof lies with the prosecution and which proof must be beyond reasonable doubt and not beyond all shadow of doubt. He cited section 138(1) Evidence Act, *Agbo v. State* (2006) 6 QCCR 48 at 88, (2006) 6 NWLR (Pt. 977) 545; *Emoga v. State* (1997) 1 NWLR (Pt. 483) 615 at 622 etc. D

That all the necessary ingredients of the offence of culpable homicide punishable by death had been established. He cited *Yaki v. State* (2008) 7 SC 128 at 129 reported as *Maiyaki v. State* (2008) 15 NWLR (Pt. 1109) 173. E

Mr. Adamu of counsel contended that the extra-judicial statements C & C1 which were confessional in content were corroborated by the medical report (exhibit B) and other pieces of evidence. He referred to *Igbele v. State* (2004) 34 WRN 83 at 98, (2004) 15 NWLR (Pt. 896) 3-14; *Emeka v. State* (2001) 14 NWLR (Pt. 734) 666 at 683; *Akinmoju v. State* (1995) 7 NWLR (Pt. 406) 204 at 212. F

The learned Attorney-General stated on that the appellant as DW1 from his evidence was the last to see the deceased alive and the presumption of the law that he bears full responsibility for the death of such a deceased if it turns out that the person last seen by him is dead. He cited *Archibong v. State* (2007) 10 WRN 21, (2006) 14 NWLR (Pt. 1000) 349. G

He stated that the appellant's concealment of the whereabouts of his deceased wife even from his in-laws, who out of trust and H

confidence gave out their daughter to the appellant. That appellant when asked about the whereabouts of the deceased told several lies to cover up. That there is no doubt that, a court of law can infer from circumstantial evidence the culpability of the appellant. He referred to *Ijiofor v. State* (2006) 6 NSGQR (Pt. 1) 209 at 212, (2001) 9 NWLR (Pt. 718) 371.

For the respondent was submitted that it is trite law that medical report is not always necessary in ascertaining the cause of death in a given case and so the attempt by the appellant to impugn the testimony of the prosecution witnesses on the identity of the corpse was a failed venture.

That for contradiction in the evidence of the prosecution witnesses to affect conviction they must be sufficient to raise a doubt as to the guilt of the appellant. He cited *Iko v. State* (2001) ALL FWLR (Pt. 68) 1161 at 1175 - 1176, (2001) 14 NWLR (Pt. 732) 221, *Uwagboe v. State* (2007) ALL FWLR (Pt. 350) 1323 at 1339, (2007) 6 NWLR (Pt. 1031) 606; *Ehot v. State* (1993) 4 NWLR (Pt. 290) 644 etc. Mr. Adamu, learned counsel for the respondent said a conviction can be sustained even in the absence of the '*corpus delicti*' that is without actually seeing or recovering or producing the body of the deceased provided as in this case there is a link between the accused person to the death and thereby justify such a conviction. He placed reliance on *Igabelle v. The State* (2004) 15 NWLR (Pt. 896) 314.

The respondent had urged the court to strike out grounds three, four and five of the appellant's grounds of appeal since the sole issue drafted was from grounds one and two in the notice of appeal. This fact needs no beating about the bush or to waste precious time with since it is a settled matter that grounds of appeal not utilized in the raising of issues for determination are taken as abandoned and the court may strike them out. It is a trite point and such that even if the court is not called upon to strike such a ground or grounds out or on its own does not so strike out, the fact remains that the ground being abandoned is in effect dead and of no use to anyone. However, since the learned counsel for the respondent has brought the matter up, I will just as well strike out grounds 3, 4 and 5 of the grounds of appeal from the record and move on

to the important matter of the appeal and the live issues at hand. I hereby refer to the case decided by this court on the point being Attorney-General Bendel State v. Aideyan (1989) 9 SC 127 at 136, (1989) 4 NWLR (Pt. 118) 646.

Now getting back on track to the salient question raised as to whether the court below was right to have held that the trial court was correct in holding that the prosecution carried out the burden of proof beyond reasonable doubt in finding for culpability of the accused/ appellant of culpable homicide contrary to section 221 of the Penal Code.

It has to be reiterated that proof beyond reasonable doubt is not synonymous with proof beyond the shadow of doubt. In this regard, I would go to the case of Miller v. Minister of Pensions (1947) 2 ALL ER 372 at 373 where Denning L. J. held thus:

“The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only remote possibilities in his favour which can be dismissed with the sentence, “of course it is possible, but not in the least probable” the case is proved beyond reasonable doubt, but nothing short of that would suffice.”

See also section 138 (1) of the Evidence Act; Emoga v. State (1997) 1 NWLR (Pt. 483) 615 at 622 which are sufficient for our purpose on the point even though numerous authorities abound which are not necessary to cite here.

The matter of the nature of the burden of proof of the offence having been stated above, the question that would crop up are what elements of the offence as contained in section 221 of the Penal Code which must meet that standard of proof prescribed under section 138 (1) of the Evidence Act. The ingredients that make up the offence and which are conjoined and must co-exist none missing are as follows:

- 1. That the deceased had died.***
- 2. That the death of the deceased had resulted from the act of the accused person.***
- 3. That the act or omission of the accused which caused the death of the deceased was intentional or with the knowledge that death or grievous bodily harm was its probable consequence.***

I place reliance on *Ochemeja v. The State* (2008) SCNJ 143, reported as *Odumaje v. State* (2008) 15 NWLR (Pt. 1109) 57; *Daniel v. The State* (1991) 8 NWLR (Pt. 212) 715; *Obade v. State* (1999) 6 NWLR (Pt. 198) 435; *Gira v State* (1996) 4 NWLR (Pt. 443) 375. **In respect of the first element of the offence, that is that the deceased had died, the two extra judicial statements of the appellant, exhibits C & C1 which were tendered without objection and admitted in evidence on themselves settled the question of the fact of the death of Sa'adatu, the wife of the appellant otherwise known as the deceased for our purpose herein.**

In exhibit C, he stated among other things thus:

“Sa'adatu died about seven months ago here in Sokoto. I can remember on that day Sa'adatu was bleeding from her private part then I took her on my motorcycle from Yabo in order to bring her to Usman Dan Fodio University Teaching Hospital. However on our way to the hospital at a junction opposite Paula restaurant near Giginya Hotel Sokoto, Sa'adatu fell down from my motorcycle. On seeing that, I conveyed her to the hospital i.e. UDUTH. When I entered the hospital premises I did not take her to see any doctor, I, only dropped her at the hospital's car park and went away and at that time she was already dead. I concluded that she was dead because at the time I left her, she was not breathing. I can remember also that I noticed when Sa'adatu fell from my motorcycle that she sustained injury on her head. When I left Sa'adatu's body at UDUTH's premises I went back (home) to Yabo but I did not inform anybody about her death because I was afraid of myself being killed by her parents. I did not inform my first wife, Hauwa'u about Sa'adatu's death because on the day of the incident she was in her parents' house although after the incident she was brought back to my house but I told her nothing about the death of Sa'adatu. At times Sa'adatu's parents and relatives used to come to me after her death... I still went back to the hospital and picked up the body and took it on my motorcycle and dumped it that same night at Maraki village by the side of the main road near a culvert...”

Exhibit C1 was an additional voluntary confessional statement of the appellant which is thus:

“I can remember that sometime in January 1999 my wife Sa'adatu fell sick one night. Then I conveyed her on my motorcycle

from Yabo in order to take her to hospital in Sokoto. However, on our way to Sokoto after we have passed Milgoma village she died. When I noticed that she had died I put her body in a sack then conveyed the corpse on my motorcycle and went and dumped it under a culvert along Shagari Kajiji Road near one village called Janzomo...” B

The testimony of the appellant at the trial as DW1 was along the same lines as the confessional statements exhibits C & C1, which themselves were complementary, C1 filling the details that were not covered in exhibit C. Again establishing the death were evidence of all the prosecution witnesses including the medical report which showed that the death was by strangulation. It was from all the above stated that the trial court had no difficulty in making a finding on the first ingredient that indeed Sa’adatu died. This the Court of Appeal agreed with and I see nothing holding back my hand in going along with that finding. C D

On the second ingredient which has to do with the act of the appellant being the cause of that death. It has to be pointed out that in seeking to establish that element, the prosecution has several options which are as follows: E

- (a) Confessional statement
- (b) Circumstantial evidence
- (c) Evidence of an eye witness

I place reliance on the cases of Igabele v. State (2004) 34 WRN 83 at 98, (2004) 15 NWLR (Pt. 896) 314; Akinmoju v. State (1995) 7 NWLR (Pt. 406) 204 at 212. F

In the case at hand, the third option which is evidence of an eyewitness on the act of the accused which resulted in the death is not in existence. However, the two other options (a) & (b) exist, even though either of them could be utilised to ground a conviction once conditions for such use are available. G

Taking the evidence of DW1, the appellant himself together with the two confessional statements which pieces of evidence showed the cogency and I dare say the accuracy of narration which left no doubt that the act of the appellant was the cause of the death. H

Again the presumption of last seen operates since the

appellant was the last to see the deceased alive and he had not proffered any evidence of anything to the contrary and so he bears the responsibility for the death. These facts juxtaposed with the appellant's concealment of the whereabouts of his deceased wife. With the different tales on where she was

and her absence from home. See the case of Archibong v. State (2007) 10 WRN 21, (2006) 14 NWLR (Pt. 1000) 349.

On the matter of the circumstantial evidence in existence which the appellant is seeking to denigrate as insufficient in the attempt to wriggle out, anchoring on the lack of eye witness evidence. It is to be said that where the possibility of proving a criminal matter charged by the direct and positive testimony of eye witnesses or by conclusive documents is absent but there exists evidence of surrounding circumstances which by undesigned coincidence is capable of proving a proposition with the accuracy of mathematics then it is no derogation of the evidence when it is said to be circumstantial. It is nonetheless sufficient as proof of the offence charged.

See Ijiofor v. State (2006) 6 NSCQR (Pt. 1) 209 at 212, (2001) 9 NWLR (Pt. 718) 371.

It is necessary in the abundance of caution to restate the pieces of evidence which culminatively are circumstantial, albeit cogent and rock solid and these are:

1. Sa'adatu Torankawa, the deceased was the wife of the appellant up-to her death and who had been subjected to numerous acts of violence by the appellant.

2. The appellant was the last person to see the deceased alive and also the only person with the pre-knowledge of where her body was concealed which place of concealment tallied with what those who saw a corpse under the culvert and buried her said.

3. The appellant had no difficulty spinning several versions of the whereabouts of the deceased to her relations.

4. The appellant at no time was interested in seeking medical help for the deceased before her death and her being conveyed to the hospital motor park and the final dumping at the culvert along the road.

5. The damning fact of the appellant, a police officer at the time of incident did not make a report of the death of the deceased

either to the police officially or her parents and relatives who ought to know as of right.

6. No evidence as to any burial rites performed on the deceased rather by the dumping, the appellant had left her body there to rot like that of a wild animal and he had no compunction in leading PW5 to the spot of dumping. B

7. No evidence of any other body kept at the culvert.

Apart from those seven power points above, there is the medical report exhibit which showed that the death of the deceased was caused by strangulation. The evidence of PW1, PW2 and PW5 was that they saw the corpse of an unknown female in a culvert at Janzomo junction on 11/1/99, the same spot that the appellant dumped the corpse of Sa'adatu thereby conclusively showing the cause of the death which the appellant left unchallenged. Even though a medical report is not a necessity to ascertain the cause of death, in this instance it has assisted the court with a great degree of certainty of the cause of death and the age of the deceased to be between 11-13 years. See Ogunro v. The State (2012) 7 NCC 449 at 455. C D

The appellant's counsel had made issues of what he termed contradictions in the evidence of the prosecution enough to create doubt serious enough to affect the conviction. It is indeed trite that where the evidence of prosecution witnesses have discrepancies weighty enough to bring about doubts, then a conviction cannot be sustained. I have no difficulty in seeing a few of the discrepancies such as the exact date the relevant prosecution witnesses found the corpse at the culvert and the exact spot of the culvert. These are minor differences which are explainable in human testimonies and are not of a serious nature to vitiate the conviction or make it impossible for the prosecution to be said not to have proved the ingredients of the offence beyond reasonable doubt. See: Iko v. State (2001) All FWLR (Pt. 68) 1161, (2001) 14 NWLR (Pt. 732) 221, Uwagboe v. State (2007) ALL FWLR (Pt. 350) 1323 at 1339, (2007) 6 NWLR (Pt. 1031) 606; Ehot v. State (1993) 4 NWLR H (Pt. 290) 644. E F G

In respect of the third ingredient of the offence, that is, that the act or omission of the accused which caused the death of the deceased or that the deceased's death was intentionally caused or with

the knowledge that death or grievous bodily harm was its probable consequence. There is a basket full of materials on which the conclusion could be made that the act of the appellant caused the death of the deceased and that he so intended that result.

From the appellant's account, whether from his two confessional statements, exhibits C and C1 and even as DW1 in court, he had seen his wife bleeding profusely before carrying her on his motorcycle to the hospital and this without asking for assistance from anyone or even informing anyone nearby of the challenge he had. This coming from a serving police officer who if his mind was clean would have had all the facilities his place of work and colleagues would have activated on his behalf to save his ailing wife. He did not do any of those. He conveyed her by himself on his motorcycle knowing her poor health condition. And again if his mind was clean, he would not have been of such a calm disposition to embark on the journey all alone, driving a machine and then the matter of her falling down while the machine was in motion and his picking her up. Again, according to him, getting to the hospital he did not seek any medical help nor take her beyond the car park. There is no evidence that appellant was medically trained to be able to certify the death of his wife at that park. He went ahead to determine she was dead and again conveyed the corpse to the culvert where he dumped her and went away. He then went on with the passage of time to tell various stories on where his wife could be, all being lies as he knew what had happened to her. All these point to only one conclusion and that is that from the beginning, the appellant intended the death of the deceased and if in her earlier position before he set out to transport her away from his house she did not die with the passage of time, then he had to facilitate her death with the so called falling off the motorcycle and if all those did not kill her, her being dumped and abandoned at that culvert would ensure the finality of her demise and without a link to him.

I would here pause to reproduce the exact words of the trial court in respect of this third ingredient of the offence and it is as follows:

"From the peculiar facts and circumstances of the case, regard being had to the evidence adduced before the court which was quite credible and acceptable and the fact that, the accused did not chal-

lence the evidence offered, but instead admitted dumping the corpse of his wife Sa'adatu, the deceased, under a culvert at Janzomo junction and went on his own way only to be approached at a later date other than the date of the incident and accused did not also challenge the voluntaries (sic) or otherwise of his confessional statements, exhibits C and C1, wherein accused gave detailed account of what transpired between him and the deceased, though he setup self-defence which however is not available to him and same is therefore rejected forthwith as an afterthought, it is fairly obvious that from the entire evidence led by the prosecution, strengthened by his own act admitting dumping of the corpse of his wife Sa'adatu Torankawa in a culvert, the accused in the circumstances will be fixed with knowledge that death would be the probable consequence of his act, the question whether death was likely or probable consequence of the act of the accused being one of fact having been determined from the facts and surrounding circumstances of the case.

In the circumstance, I believe and accept that the evidence of the prosecution as the truth and therefore hold that the third ingredient of the offence has also been proved beyond reasonable doubt.

Any husband, who dumped the corpse of his wife in such a callous, depraved and despicable manner as in the instant case and kept mum about it on her whereabouts for weeks when asked, must have intended and or caused her death, hence the callous concealment of the dastardly act with conflicting versions of what actually happened to her. For months, whenever parents or relations of Sa'adatu asked after and or of her whereabouts, the appellant serially gave one story or the other. Thus, for months on end, nobody saw the deceased."

Clearly, just as the trial court found and the Court of Appeal affirmed, the entire evidence presented including the consideration of the possible defences open to the accused, the defences did not avail him. For how could he raise self defence as an option with the tender age of the deceased who was neither equipped for marriage nor prepared for partnership with so violent a man? What is sure is that there is enough circumstantial evidence, cogent, compelling, unequivocal and irresistible leading to the conclusion that the appellant and no other caused the death of his wife Sa'adatu, a young person of between 12 - 13 years by strangulating her to death and

dumping her corpse in a culvert at Janzomo junction along Kajiji - Shagari Road, Sokoto.

It is also to be said that the proof put forward by the prosecution was beyond reasonable doubt in tragic circumstances most especially in the present situation where the perpetrator of this heinous, animalistic crime is an officer of the Nigeria Police Force who donned the uniform of State not with pride and dignity of a law enforcement personnel but wore the uniform which he was unworthy to be seen in. To say the least, the appellant displayed a complete disregard for human life with the archetypal characteristics of a beast dressed in police uniform with which he set about the abuse of that office and had thought he had enough expertise to cover up the dastardly acts with the impunity that went along with persons of such genre, best kept away from human society especially as he held nothing sacred.

The circumstances are such that I see no redeeming feature available to the appellant and therefore no basis to either fault what the trial court and the Court of Appeal did, rather this court has no choice but to affirm the concurrent findings of the two courts below which were supported by the evidence on record and nothing on which a deviation can be hung. I rely on *Ezigbo v. The State* (2012) 7 NCC 426, (2012) 16 NWLR (Pt. 1326) 318; *Patrick Efe & Ors V. The State* (1976) 11 SC 75.

In conclusion therefore, I have to state that this appeal lacks merit and I dismiss it. I affirm the judgment of the Court of Appeal which affirmed the decision, conviction and sentence of the appellant for culpable homicide punishable by death. I order that the sentence as passed by the trial High Court be carried out.

G _____

MOHAMMED JSC

I have been privileged before today of reading in draft the judgment just delivered by my learned brother Peter-Odili, J.S.C. I am in complete agreement with the lead judgment that this appeal is without merit and ought to be dismissed.

From the overwhelming evidence on record revealed from the confessional statements of the appellant supported by his oral evidence in court and the evidence of the prosecution witnesses, I see

no grounds at all upon which I can interfere with the concurrent finding of the trial court and the Court of Appeal that the charge of culpable homicide punishable with death under section 221(b) of the Penal Code, had been proved beyond reasonable doubt against the appellant.

Accordingly, I also dismiss this appeal and affirm the conviction and sentence of death passed on the appellant by the trial court and affirmed by the Court of Appeal.

MUNTAKA-COOMASSIE JSC

I read before now, in draft form, the judgment of Peter-Odili J.S.C. and I agree that this appeal totally lacks merit. I also dismiss it. Accordingly, I also dismiss this appeal and affirm the conviction and sentence of death passed on the appellant by the trial court and affirmed by the Court of Appeal.

NGWUTA JSC

I read in advance the lead judgment just delivered by my Lord, Peter-Odili, JSC, CFR and I adopt the reasoning and the conclusion reached.

The facts of this case depict the appellant as a dangerous beast in human form. In his sworn testimony at his trial he said, inter alia:

“...Before I got married to her, she had an illness unknown to me. When she was in my home that sickness used to attack her. Sometime in the month of December, 1998... that sickness attacked her seriously. I then came back and took her to the hospital here in Sokoto. I was carrying her on my motorcycle and on reaching a point at Wilgoma, S’adatu fall (sic) down. I applied brake, made a U-turn and went back to the spot where she fell down and found her dead.... as I had no money to hire motor vehicle I dropped the corpse... at Janzomo culvert and went back on my way back home (sic) Yobo. I did that in self-defence. The following day his brother came... to inquire about her. I informed him that Sa’adatu and her mate Kulu Abdullahi went to Sokoto for a ceremony. I did that in self-defence...” (see page 61 of the record).

Why did he dump the corpse of his wife in the culvert? His

reason is that he had no money to hire a motor vehicle, but rather than carry the corpse to the culvert, he could have taken the body home on the same motorcycle. He went back home to Yobo and failed for reasons known to him, to inform his neighbours, relations and friends of the death of his wife.

B He lied to his brother-in-law that his deceased wife traveled with her mate to Sokoto for a ceremony. He said he did all the above in self-defence. Self-defence against who or what: the dead body of his wife or the relations of his wife who, according to him, knew of their daughter's illness or sickness?

C All the above constitute spontaneous express of consciousness of guilt. This is a premeditated murder, an act with a simple motive based on the passion of hatred or greed or both. Appellant, by his own account, was the last person seen with the deceased. The circumstantial evidence adduced at the trial is such that by undersigned coincidence, capable of proving the guilt of the accused with the accuracy of mathematics. See *R. v. Taylor & Ors.* (1928)21 CAR 20 at 21; *Adie v. The State* (1980) 1-2 SC 116.

E There is no coexisting circumstance, which would weaken or destroy the inference that the appellant murdered his wife in cold blood. See *Pius Nweke v. The State* (2001)84 LRCN at 506, (2001) 4 NWLR (Pt. 704) 588. The facts adduced in evidence are incompatible with the innocence of the appellant and incapable of explanation upon any other hypothesis than that of the guilt of the appellant. See F *Joseph Lori & Anor. v. The State* (1980) 8 -11 SC 81 at 87; *Iyaro v. The State* (1988) 1 NWLR (Pt. 69) 256; *Mbenu v. State* (1988) 3 NWLR (Pt. 84) 615 at 630.

G For the above and the fuller reasons in the lead judgment, I also dismiss the appeal as devoid of merit. I affirm the decision of the court below. Appeal dismissed.

ARIWOOLA JSC

H I had the opportunity of reading in draft, the lead Judgment of my learned brother Mary Peter-Odili, J.S.C. just delivered. I am in total agreement with the reasoning therein and the conclusion arrived thereat.

From the confessional statements of the appellant, who was a

police officer, and the other credible circumstantial evidence adduced by the prosecution, the prosecution creditably proved the charge against the appellant beyond any iota of doubt. The appellant actually behaved worse than a beast and is therefore not fit to live in the community of man. He was therefore properly found guilty by the trial court which convicted and sentenced him. The court below was also in order in its concurrent findings. Accordingly, I shall also dismiss this appeal for seriously lacking in merit. It is dismissed while the decision of the court below is affirmed. Appeal dismissed.

C

D

E

F

G

H