

**SUPREME COURT OF NIGERIA**  
FRIDAY 15TH MAY, 2015. SC. 237/2011  
**CORAM:- I. T. MUHAMMAD,**  
**M. S. MUNTAKA-COOMASSIE, O. RHODES-VIVOUR,**  
**N. S. NGWUTA, K. B. AKA'AH, JJSC**

GODWIN ALAO ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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MURDER - Ingredients - Proof - Prosecution must prove that the victim died - That the death resulted from act of accused - With intention that death or grievous bodily harm was probable effect (H1)

MURDER - Proof - Dangerous object - Where one stabs with a sharp object on vulnerable part of the body - He is deemed to have intended to cause bodily injury - Knowing that death could result (H2)

CRIMINAL PROCEDURE - Conspiracy - Proof - Where more than one person is accused of joint commission of crime - It is enough to prove that they all participated in the crime (H3)

EVIDENCE - Contradiction - Weight - It is not every discrepancy in evidence of PW - That leads to rejection of such evidence - As it must be shown that the inconsistency is so material to cause doubts (H4)

***FACTS***

Accused/appellant and one other were charged before the Edo State High Court Sabongida-Ora for conspiracy to murder and murder contrary to sections 516 and 319(1) of the Criminal Code Cap. 48 Vol. II Laws of Bendel State 1976 (as applicable in Edo State), respectively. The deceased (one Edwin Asaba Ovie) was murdered during a serious fracas between his (deceased's) brothers and appellant's brothers. Appellant and two other persons stabbed the deceased to death. Prosecution/respondent called witnesses and tendered exhibits to prove its case. Appellant and the other pleaded not guilty to the charge.

After considering the evidence and exhibits presented in the matter, the court in his judgment, found appellant and the other guilty as charged. Appellant was however convicted alone of murder and sentenced to death. A mere verdict of guilty was entered for the other accused for being a minor. Not satisfied, appellant lodged appeal in the Court of Appeal Benin Division. The appeal was dismissed. Aggrieved further, appellant has approached the Supreme Court.

**ISSUE FOR DETERMINATION**

*“Whether the Lower Court’s affirmation of the trial Court’s decision that the charge of murder was proved against the Appellant beyond reasonable doubt was predicated on perverse findings of fact and liable to be quashed.”*

**HELD** (Unanimously dismissing the appeal per **MUNTAKA-COOMASSIE JSC**)

*MURDER - Ingredients - Proof*

**1. Even at the peril of being repetitive. I shall state the elements that the law made trite a non. (sic,) Those ingredients to be proved in charge of murder are thus:-**

- i. that the victim died;**
- ii. that the death of the deceased resulted from the act (s) of the accused person or persons; and**
- iii. that the act of the accused was intended or done with the knowledge that death or grievous bodily harm was the probable consequence.**

**Perhaps, it is apt to stress here that the above listed elements or ingredients must co-exist and where one of them is missing or tainted with some doubt (s) then the charge is not proved. Now reflecting on the evidence adduced in the instant case, there is no any iota of doubt that the prosecution had sufficiently proved the death of the deceased victim and that is beyond any dispute.**

**From the above piece of evidence, there is no gain saying that death of the deceased was established, as well as the fact that what caused the (sic death of the) deceased victim were the wounds he sustained on the left side of the chest around the**

**ribs which said wound was deep enough to have affected the heart tissue leading to severe loss of blood, ultimately resulting to death of the victim.**

**This piece of evidence of Pw2 was uncontroverted or unshaken during cross-examination. However, in murder cases, it is not enough for the prosecution to simply prove that a human being is dead or that death of a human being was caused. It is more than that. The prosecution is required also to prove beyond reasonable doubt, that it was the act of the accused, in this case the appellant, that had actually caused the death of the latter if there is any possibility, for instance, that the deceased died of a different cause or act. This is because if there is the possibility showing that the deceased died from cause (s) other than the act of the accused, then the prosecution has not established the case against the accused person.**  
(p. 1422 C)

*MURDER - Proof - Dangerous object*

**2. I think it is a matter of common knowledge, that if one deals stab or stabs with a sharp object on vulnerable part of the body, such person could be deemed to have intended to cause such bodily injury as he knew death could result from his action.** (p. 1425 E)

*CRIMINAL PROCEDURE - Conspiracy - Proof*

**3. It is trite, that where more than one persons are accused of joint commission of a crime, it is enough to prove that they all participated in the crime. What each of the participant did in furtherance of the commission of the crime is immaterial. The mere fact that the common intention manifesting in the execution of the common object is enough to render each of the accused persons in the group, guilty of the offence.**  
(p. 1425 F)

*EVIDENCE - Contradiction - Weight*

**4. I must emphasize here again, my noble lords that it is not every discrepancy or contradiction in the evidence of the prosecution witnesses that would lead to the rejection of such evi-**

***dence. It must be shown that the alleged contradictions or inconsistencies are so material and are adequate enough to cause doubts in the case of the prosecution.***

***On the whole, considering the surrounding circumstance of the instant case, the evidence led by the prosecution on the point were consistent and in consonance with each other, rather than contradictory or conflicting as being suggested or argued by the Appellant's counsel.*** (p. 1427 G)

## C NOTABLE POINT OF INTEREST

### **MUNTAKA-COOMASSIE JSC**

#### ***1. Contradiction – Meaning of***

With due deference to the learned appellant's counsel to my mind, the word "Contradiction", "Discrepancy" or "Inconsistency" in evidence of a witness generally connotes the act of reversing oneself or changing a course from what he stood for earlier. It is a deviation or retraction of what one had earlier said.(p. 1426 H)

### **REPRESENTATION**

E. Ohwovoriole; with E. O. Afolabi, E. Mudiaga-Odje, Miss E. O. Adun, for the Appellant  
Mr. A. O. Adewale Atake, with Arnold Ushiagi, for the Respondent

## F **CASES REFERRED TO**

- Adava v. State (2006) 9 NWLR (pt. 984) 152
- Obada v. State (1991) 6 NWLR (pt. 198) 430
- Aigworeghian v. State (2004) 3 NWLR (pt. 860) 367
- Ugbeneyorwe v. State (2005) All FWLR (pt. 245 ) 1006
- G Nwosu v. State (1986) NSCC (pt. 11) 1029
- Ifejirika v. State (1999) 3 NWLR (pt. 593) 79
- Adeyemi v. State (1991) 4 LRCN 363
- Udosen v. State (2007) All FWLR (pt. 356) 669
- Abdullaisi v. State (2008) All FWLR (432) 1047
- H Esangbedo v. State (1989) NWLR (pt. 113) 57
- Idemudia v. State (1999) 69 LRCN
- Igabele v. State (2000) NWLR (pt. 795) 100
- Akinyemi v. State (2001) 2 ACLR 32

Ogba v. State (1992) 2 NWLR (pt. 222) 109

Kalu v. State (1993) 6 NWLR (pt. 279) 59

***STATUTES REFERRED TO***

Criminal Code Cap 48 vol. II Laws of Bendel State 1976, ss. 319(1),  
516 B

Criminal Code Act, s. 7

Evidence Act, Cap 112, LFN of 1990, s. 138

Children & Young Persons Law, s. 12

***LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC*** C

This is an appeal against the decision of the Court of Appeal Benin Division, herein called court below, which judgment was delivered on 10th day of March, 2011.

The appellant herein Godwin Alao was tried along with his D  
younger brother, Omokhefe Alao. The Appellant stood as the 2nd  
accused person. Both accused persons were tried for the offence of  
murder on 19th June, 2007.

The facts are clear, that prior to the 14th day of February, E  
2005, the deceased brothers and the appellant and his brothers had  
some mis-understanding which led the PW1 Ovie Julius and his brothers  
including the deceased to report the matter to the police notwithstanding that, the mis-understanding generated into serious fracas  
where the appellant, herein, his younger brother, 1st accused person F  
and one Edemoses stabbed the deceased to death.

**CHARGES**

**COUNT 1**

Conspiracy to murder punishable under Section 516 of the  
Criminal Code Cap. 48 Vol. II Laws of Bendel State of Nigeria, 1976 G  
applicable in Edo State of Nigeria.

**PARTICULARS OF OFFENCE**

Omokhefe Alao and Godwin Alao on or about the 14th day  
of February, 2005 at Sabongida-Ora in Sabongida-Ora Judicial Division  
conspired with one another to commit a felony to wit. Murder H

**COUNT 2**

Murder punishable under Section 319(1) of the Criminal Code  
Cap 48 Vol. II Laws of Bendel State of Nigeria, 1976 applicable in  
Edo State of Nigeria.

## PARTICULARS OF OFFENCE

Omokhefe Alao and Godwin Alao on or about the 14th day of February, 2005 at Sabongida-Ora in Sabongida-Ora Judicial Division murdered one Edwin Asaba Ovie (M).

The prosecution called four (4) witnesses and tendered four Exhibits to prove the two count-charge. The charges were framed at the High Court of Justice Edo State in the Sabongida - Ora Judicial Division at Sabo. It was the Hon Justice E. A. Edigun J.

The two count-charge of conspiracy and murder, contrary to Section 516 and 319 (1) respectively of the Criminal Code 48 Vol. II Laws of Bendel State of Nigeria, 1976 applicable in Edo State of Nigeria. Each of the two accused persons pleaded NOT GUILTY and testified in his defence and called witnesses in his defence. After considering the testimonies of the five (5) prosecution witnesses and the four exhibits tendered by the prosecution, the two accused persons, including the appellant herein, were found guilty as charged and the present appellant (2nd accused) was convicted alone of murder and sentenced to death. See (pp 100-47) of the record. Here the learned Judge of the High Court Edigun J, on P.145 held.

*“The offence of murder having been proved against the 1st and 2nd accused persons beyond reasonable doubt, I hereby find the 1st and 2nd accused persons guilty as charged of the offence of murder as stated in count 2. I convict the 2nd accused person accordingly. Section 16 of the children and young persons law states that the words “convicted” and “sentence” shall not be used in relation to a child or young person so I can only enter a verdict of guilty for the 1st accused which I have already done above”.*

Dissatisfied with the judgment of the trial High Court the appellant has unsuccessfully appealed to the court of appeal Benin Division. The appellant filed a Notice of Appeal containing three grounds of appeal, additional ground of appeal inclusive. They are stated without their particulars:-

a) That the learned trial judge erred in law in convicting the appellant of murder/robbery when there was no direct evidence before the court, that the appellant was responsible for the death of the deceased.

b) That the decision of the trial judge is therefore un-warranted, unreasonable having due regard to the weight of evidence.

c) The learned trial judge erred in law and caused grave and serious mis-carriage of justice when he convicted the appellant of the offence of murder when the totality of the case of the prosecution was completely filled with doubts and contradiction.

After serious arguments and submissions by both counsel on behalf of the defence and prosecution in the court below and after considering all the issues raised, the court below dismissed the appeal. The court below in a unanimous decision dismissed the appeal before it and affirmed the decision of the trial High Court.

Amiru Sanusi JCA as he then was, on p.30 of the record of proceedings has this to say:-

*“from the surrounding circumstances of this case and as an appellate court, the law does not permit me to interfere with or disturb the findings and conclusions arrived at by the trial court which I feel the trial court based such findings and conclusions on credible credence adduced before it as would warrant or justify the conviction of the appellant of the offence charged.*

*In conclusion therefore, and having resolved all the issues against the appellant, herein, I am unable to see any merit in the instant appeal. This appeal therefore fails and is accordingly dismissed by me for being devoid of any substance. The judgment of the Lower Court delivered on 19th of June, 2007 in suit No. HSO/IC/2005 convicting the appellant of the offence of murder and sentencing him to death are hereby affirmed”.*

The other two learned Justices George Oladeinde Shoremi and Chioma Egondy Nwosu-Iheme JJCA agreed with the lead judgment, making any appeal a difficult hurdle to cross.

Nonetheless, the appellant being aggrieved by the above decision of the court below filed an appeal to this court and filed a Notice of Appeal containing three (3) grounds of appeal.

The three grounds of appeals without their respective particulars are hereunder stated:-

#### GROUND 1

The learned justices of the Court of Appeal, Benin City erred in law in affirming my conviction and sentence of death by hanging by the trial court when it is manifest on the face of the record before the court that the prosecution failed woefully to prove its case beyond all reasonable doubts as required under the law in view of the

serious doubt and non credible nature of the case of the prosecution.

GROUND 2.

The learned justices of the Court of Appeal Benin City erred in law in affirming my conviction and sentence of death by hanging passed on me by the trial court when they attached weight to the  
B viva voce evidence of the star witnesses Pw1 and Pw3 who gave evidence before the trial court that I held the deceased before he was stabbed by the 1st accused at the trial court.

GROUND 3.

C The learned justices of the Court of Appeal, Benin City erred in law affirming my conviction when it was clear from record that from the totality of the case of the prosecution and the case presented by the appellant, the prosecution case was laden with serious doubt which ought to be resolved in my favour.

D In accordance with the practice and accepted procedure of the Supreme Court, parties filed and exchanged briefs, appellant raised and adopted alone issue to which the respondent agreed and relied on it. It reads:

E *“Whether the Lower Court’s affirmation of the trial Court’s decision that the charge of murder was proved against the Appellant beyond reasonable doubt was predicated on perverse findings of fact and liable to be quashed.”*

F While it is clear that both parties agreed with the formulation of the above sole issue, they disagreed on the arguments to be forwarded to this Court or the mode of treatment vis-a-vis the said issue.

G The Appellant while arguing the issue submitted that in a murder case, the prosecution has the burden to prove the guilt of the accused person beyond reasonable doubt and that such burden does not shift. He cited the three judgments of this Court in the following cases:

- i. Mrs. Patience Ayo v. The State un-reported decision of the Supreme Court delivered on 9/7/2000 case No.CA/B/156/2003.
- H ii. Ochuko Tegwonor V The State No.CA/B/33/2005 delivered on 28/6/2008 and
- iii. Lori V The State (1980) 8 - 11 SC.81 at 95/96.

As part of his argument learned Appellant’s counsel submitted that in order to secure and obtain conviction in a murder trial, the



prosecution is bound to prove the following ingredients of the offence of murder which includes:

- a). That the death of a human being took place
- b). That such death was caused by the accused - and no other, and
- c). That the act of the accused was intentional or with knowledge that death would be the probable consequence of his act, see the case of *ADAVA v. STATE* (2006) 9 NWLR (Pt.984) 152 at 167 paragraphs F - H, 171 paragraph B - C. The learned Appellant's counsel added that the above three ingredients must co-exist and when one is missing or tainted with doubt, the charge of murder is not proved. See *Obada V State* (1991) 6 NWLR (Pt.198) 430, *Aigworeghian V. State* (2004) 3 NWLR (Pt.860) 367 at 373.

In addition the learned Appellant's counsel though conceded that the death of human being was proved to have been caused he however submitted that it had not been established that such death was caused by the act of the Appellant. Expatriating on this, the learned Appellant's counsel made copious reference to the testimonies of Pw3 and Pw1 at the Lower Court and the former's statement to the police. According to the counsel, the Pw3 told the Lower Court that it was the Appellant and one Ele that helped the deceased before the 1st Accused Person stabbed the deceased victim as shown on pp 66 -67 of the record.

He posited Pw3 did not however admit that he made such revelation in his statement to the police on 29/3/2005.

With regard to the evidence of Pw1, the Appellant's counsel argued also that Pw1 also testified in Court that it was the appellant and one Ele who help the deceased before the accused stabbed the deceased as shown on pages 62 66 of the record, but, alas under cross examination he admitted never saying so in his statement to the police. If I may digress a little, to the learned appellant's counsel these pieces of evidence amounted only to contradictions, yet the learned trial judge ignored them to the disfavour of the appellant. In support of his submissions he cited the case of *Ugbeneyorwe V. State* (2005) All FWLR (pt.245 ) 1006 at 1032, *Nwosu V. State* (1986) NSCC (Pt.11) 1029 at 1038.

Learned Appellant's counsel brilliantly in my view, further submitted that where a set of facts is capable of two interpretations, the

trial Court should go for such interpretation which is favourable to the accused person only. He refers to *Ifejirika V. State* (1999) 3 NWLR (Pt.593) 79; *Adeyemi V. State* (1991) 4 LRCN 363 at 1138; *Udosen V. State* (2007) All FWLR (Pt.356) 669 at 669.

The learned appellant's counsel while urging this court to discharge and acquit his client, also submitted that a glance at the evidence adduced by the prosecution clearly revealed that the appellant ought not to be charged with the offence of murder as the police had earlier advised the Dpp's office as shown in the record of appeal and he therefore urged this court to take judicial notice of such investigative report contained in the case file which courts have right to suo-motu do so. See *ITAINTER LTD v. M B PLC* (2005) 9 NWLR (pt.930) 274.

Counsel finally submitted that the standard of proof in criminal cases is one beyond reasonable doubt and where any doubt exists, the same must be resolved in favour of the accused person adding that the evidence adduced by the prosecution in the case is short of such standard of proof hence the appellant should be acquitted. See the case of *Abdullaisi V. State* (2008) All FWLR (432) 1047 at 1064.

Respondent on the other hand, submitted that it led evidence to prove the offence of murder against the appellant beyond reasonable doubt at the trial court as required of them by Section 138 of the Evidence Act, Cap 112, LFN of 1990, adding that they did prove the offence against him beyond reasonable doubt and not beyond every iota of doubt. It cited and relied on the case of *Esangbedo V. State* (1989) NWLR (Pt.113) 57 or (1989) SCNJ 140; *Idemudia V. State* (1999) 69 LRCN 1043 at 1063 and *Igabele V. State* (2000) NWLR (Pt.795) 100 at 127. As if it is not enough learned appellant's counsel also submitted that to prove a case beyond reasonable doubt does not mean or imply that the case against the accused must be proved beyond all shreds of doubt. See *Akinyemi v. State* (2001) 2 ACLR 32 at 44.

The learned counsel for the respondent in further submission endorsed the appellant's counsel's list of the three ingredients to be proved by prosecution in order to obtain conviction in a charge of murder under Section 319 (1) of the Criminal Code. He also relied on the authorities of:

- a) Edwin Ogba V. State (1992) 2 NWLR (Pt.222) 109
- b) Kalu V. State (1993) 6 NWLR (Pt.279) 59 at 90; and
- c) Okeke V. State (1992) 2 NWLR (pt 246) at 273.

Again the learned respondent's counsel submitted that the prosecution has proved beyond any doubt that the victim Edwin Asaba Ovie died as a result of stab wounds on his chest vide the evidence given by Pws 1, 2, 3 and 4 more particularly the evidence of Pw2, the medical doctor who performed post mortem examination on his body. He further argued that it was the act of the appellant and his younger brother, the 1st accused, that caused the death of the deceased due to the wounds inflicted on his chest, adding that pw1, pw3 and pw4 gave eye witness account of all that had happened on the fateful day.

Another submission made by the learned respondent's counsel is to the effect that by virtue of the provisions of Section 7(c) of the Criminal Code, every person who aids another in the commission of an offence is deemed to have taken part in committing the offence and is to be guilty and may also be charged with the actual offence. He relied on the following authorities:-

- i) Enwoenye V. The Queen (1955) 15 WACA 1 at 3;
- ii) The State V. Ede (1972) 15 SC 140;
- iii) Iyaro V. State (1988) 1 NWLR (pt.69) 256 at 263;

He added that where two or more persons as in this case, form an intention to prosecute an unlawful act in conjunction with another, and in prosecution of such act, an offence was committed of such a nature, commission was a probable consequence of the prosecution of such purport each of them is deemed to have committed the offence. See *State v. Oladimeji* (2003) Vol. 109 LRCN 1298 at 1308; *Fatai Alani V. State* (1993) 7 NWLR (pt. 303) 113 R 1 and 2.

Furthermore, submitted the learned respondent's counsel, witnesses called by the prosecution were consistent with and confirmatory of each other and not contradictory and even when asked about his failure to state what he testified in court in his earlier statement to the police, Pw1 explained under cross examination that he was not himself on that day because the incidence was still very fresh in his memory.

On the issue of credibility of witnesses, it was submitted that such was solely within the province of the trial court and as an appel-

late court; this court has no duty to reverse findings of facts of a trial court unless and until they are shown to be perverse which was not the case here. See:-

1. Mufutau Bakare V. State (1987) 11 NWLR (pt.52) 575 at 580;

B 2. Military Governor of Western Region V. Afolabi Laruba (1974) 10 SC 227 at 233.

He finally urged this court to resolve the two issues in favour of the respondent.

C Both learned counsel to the parties are ad idem on the ingredients of the offence of murder under Section 319 of the Criminal Code which the prosecutions are required to establish in order to obtain conviction. ***Even at the peril of being repetitive. I shall state the elements that the law made trite a non. Those ingredients to be proved in charge of murder are thus:-***

***i. that the victim died;***

***ii. that the death of the deceased resulted from the act (s) of the accused person or persons; and***

E ***iii. that the act of the accused was intended or done with the knowledge that death or grievous bodily harm was the probable consequence.***

I am fortified by the following authorities, namely;

a) Akinfe V. State (1988) 3 NWLR (Pt.85) 729.

b) Oneh V. State (1985) 3 NWLR (Pt.12) 236.

F c) Oguonze V. State (1998) 5 NWLR (Pt.557) 51; and

d. State V. Mabaruji (2002) 2 CLRN 107.

***Perhaps, it is apt to stress here that the above listed elements or ingredients must co-exist and where one of them is missing or tainted with some doubt (s) then the charge is not proved. See Ochaemmuaye V. State (supra). Now reflecting on the evidence adduced in the instant case, there is no any iota of doubt that the prosecution had sufficiently proved the death of the deceased victim and that is beyond any dispute.***

H The testimony of Pw2, the medical doctor who performed autopsy on the deceased person's body had this to say on pp 66-67 of the record.

*"The autopsy was subsequently done, it shows that there was a penetrating wound on the left side of the chest precisely around the*

*ribs. The wound was deep enough to have affected the heart tissue leading to severe bleeding and death. The cause of death in my opinion was a stale wound penetrating”.* (Italics mine).

**From the above piece of evidence, there is no gain saying that death of the deceased was established, as well as the fact that what caused the deceased victim were the wounds he sustained on the left side of the chest around the ribs which said wound was deep enough to have affected the heart tissue leading to severe loss of blood, ultimately resulting to death of the victim.**

**This piece of evidence of Pw2 was uncontroverted or unshaken during cross-examination. However, in murder cases, it is not enough for the prosecution to simply prove that a human being is dead or that death of a human being was caused. It is more than that. The prosecution is required also to prove beyond reasonable doubt, that it was the act of the accused, in this case the appellant, that had actually caused the death of the latter if there is any possibility, for instance, that the deceased died of a different cause or act. This is because if there is the possibility showing that the deceased died from cause (s) other than the act of the accused, then the prosecution has not established the case against the accused person.**

I refer to:-

- i. Audu v. State (2003) 7 NWLR (pt.820) 576.
- ii. Uguru v. State (2002) 9 NWLR (pt.771) 90.
- iii. R. v. Owe (1961) 2 SCNLR 354.
- iv. Nwokocha V. State (1949) 12 WACA 453.

This is so, and in fact it is trite and also settled law, that whenever it is alleged that death has resulted from the act of a person, a causal link between the death and the act of the accused/appellant must be established and proved beyond reasonable doubt too, that it was the act of the accused/appellant that caused the death of the victim. See Sowemimo V. State (2004) LEN 414 at 415 paragraph P. U., see also Oforlete V. The State (2003) FWLR (pt.12) 208 at 269 RE-F. And where there is any intervening factor as could create some doubts on the actual cause of the death of the deceased, such doubts created must be resolved in favour of the accused/appellant. See Oforlete V. State (supra). In the case at hand, the prosecution led

credible evidence through Pws1 and 3 to show that it was the second accused who held the deceased for the co-accused to stab him twice on the chest on the fateful day.

Also Pw2, the medical doctor's testimony corroborated their testimonies that the deceased died of the wound he sustained on his chest region near the heart which led to his death. No evidence whatsoever was led by the defence to suggest that there was any intervening factor that could have led to the death of the deceased beside the chest injuries he received from the stabbing by the 1st accused person. The evidence adduced by the prosecution at the Lower Court (i.e. trial court) had therefore clearly established that it was the injury inflicted on the chest of the deceased by the 1st accused person and the appellant herein that caused the death of the deceased. In my humble view, what is material and is relevant too, is that it was the said injury on the chest of the deceased that ultimately led to the death of the victim as rightly found by the trial judge and affirmed by the Court of Appeal. I am therefore unable to see any justifiable reason to disagree with the conclusion of the Lower Court in that regard, since such conclusion is supported or based on the unchallenged testimonies of the prosecution witnesses especially Pws1, 2 and 3. I therefore have no reason to disturb the finding of the learned trial judge which the court below also affirmed. I bear in mind the conclusion of the trial judge which the Court of Appeal also affirmed. The trial judge had concluded thus on the issue of contradictions in the case of the prosecution as follows:-

*"...The evidence of the witnesses were not materially discredited under cross-examination to render them incapable of belief. They were eye witnesses of the act of the 1st and 2nd accused persons in which the 2nd accused person held the deceased down for the 1st accused to stab. They gave convincing account of what had happened from the time they got to the scene and what they saw. Their evidence is direct cogent and convincing. They all spoke with assurance and such confidence that I find it difficult not to believe them. So I believe their evidence..."*

The above finding of fact to my mind has not been shown by the appellant to be perverse. From the evidence adduced in the case, there is in my view no dispute whatsoever, that the 1st accused stabbed the deceased after the appellant herein, held him (the deceased).

Pws1 and 3 who were eye witnesses to the event testified in that regard and their testimonies were no contradiction and therefore unassailable and uncontroverted at all. There is equally no doubt that the deceased victim died as a result of the act of the 1st accused and the appellant herein.

The next point to consider is whether the act of the appellant and the 1st accused was intentional or with knowledge that death or grievous bodily harm was the probable consequence. It is always the gravity of the act/assault (say on vital part of the body) that could lead to conviction of either murder or manslaughter. As I posited above, evidence abounds in the instant case that the appellant and the 1st accused jointly caused grievous body harm on the deceased by dealing stabs on his (deceased) chest which is certainly a vital part of his body. To establish a charge of murder it must not only be proved that the act of the accused/person could have caused or led to the death, but that it actually did. See the case of R. V. Williams Oledima, 6 WACA 202. I am not un-mindful of the fact that it is difficult, if not impossible to prove common intention. However, I feel its existence can be inferred from the surrounding circumstances disclosed in a given case. See Nwankwoala V. State, *supra*.

***I think it is a matter of common knowledge, that if one deals stab or stabs with a sharp object on vulnerable part of the body, such person could be deemed to have intended to cause such bodily injury as he knew death could result from his action.*** See Garba V. The State (2000) 4 SCNJ 315.

***It is trite, that where more than one persons are accused of joint commission of a crime, it is enough to prove that they all participated in the crime. What each of the participant did in furtherance of the commission of the crime is immaterial. The mere fact that the common intention manifesting in the execution of the common object is enough to render each of the accused persons in the group, guilty of the offence.*** See Nwankwoala V. State (2006) 14 NWLR (Pt.1000) 663; Ikemson v. State (1989) 3 NWLR (Pt.110) 455; Oyakhire V. State (2001) 15 NWLR (Pt.1001) 157. In the instant case, Pw1 in his testimony in court stated as follows:-

*“As we were running, 2nd accused person (sic) and Elle Moses held Asaba (deceased) down. Suddenly 1st accused person brought*

*out a dagger and stabbed Asaba twice on the chest and stomach and fell down. When Friday Ojeogba saw that the mission has been completed he took John Adebe and drove away. We rushed Asaba to the General Hospital, Sabongida-Ora on our way to hospital, Asaba died”.*

B Similarly, the Pw3, Emmanuel Josiah testified in court in line with the above testimony of Pw1, when he stated that:-

*“I was holding Julius Ovie not to fight. The 2nd accused person gripped Asaba (deceased) on the neck from the back then Elle Moses held Asaba’s hand. Then 1st accused person pick a dagger and stabbed him on his chest”.*

C Also, the Pw4 in his testimony stated thus:-

*“Elle Moses and 2nd accused person held Asaba and 1st accused person come from an uncompleted building and stabbed Asaba twice beneath his breast...”*

D And during rigorous cross-examination by the defence, the witness remained adamant, rigid and resolute by maintaining his earlier stance when he said:-

*“It is correct to say that it was the 2nd accused person that held the deceased for the 1st accused person to stab...”* (Italics mine)

E All these pieces of evidence by these witnesses were neither assailed nor shaken during cross-examination by the defence. They were accepted by the trial court and affirmed by the court below. I also, with tremendous respect to appellant’s counsel, accept same.

F Furthermore, it was the submission of the learned counsel for the appellant that there was contradiction in the testimony of Pw1 that in his testimony in court he stated that it was the appellant and one Ele who held the deceased before the 1st accused person stabbed the deceased. He argued that he did not say so in his statement recorded by the police. To the learned appellant’s counsel, that amounted to a contradiction, since such piece of evidence was not so stated to the police. Similarly, added the learned appellant’s counsel, Pw3 also in his testimony in court equally stated that the appellant and one Elle Moses held the deceased for the 1st accused to stab the former. He also argued that the fact that he did not make such revelation in his statement earlier recorded by the police such according to the learned counsel, also amounted to contradiction. With due deference to the learned appellant’s counsel to my mind, the word “Contradiction”, “Discrepancy” or “Inconsistency” in evidence of a



witness generally connotes the act of reversing oneself or changing a course from what he stood for earlier. It is a deviation or retraction of what one had earlier said. See *Ike V. Ofokoja* (1992) 9 NWLR (Pt.263) 42; *Odibe v. Azeg* (11) 7 NWLR (Pt.200) 724; *Dawaki General Enterprises Ltd & Anor V. Ainaf Co. Enterprises Ltd & Ors* (1999) 3 NWLR (pt. 594) 224. B

In the case at hand, the learned Appellant's counsel admitted, rightly too, that none of the two witnesses mentioned above made a statement regarding the holding of the deceased by the appellant for the 1st accused to stab the former. Where then is the contradiction since no mention of that in whatever form was made by them in their respective statements to the police. A contradiction can only arise where an earlier remark or statement was made later. This is not the case here. On that piece of evidence, the witnesses therefore neither contradicted themselves nor contradict one another. C D

Even if such amounted to contradiction, it is settled law that a contradiction in the evidence of the prosecution's case is not a minor or immaterial contradiction which merely scratches the surface of an inconsequential or innocuous point. It is even noted by me, that Pw1 even when cross-examined on his failure to state in his statement to the police what he told the court on the issue of holding the deceased by the appellant, he explained by saying that he was not himself on the day because the incident was still fresh in his memory, I think we should not disregard the fact that human beings differ in their nature likewise their memories. That is part of the law of nature. My lords, I apologize if I sound philosophical. As I said earlier on, I do not even regard as a contradiction or inconsistency as the learned counsel for the appellant harped upon with regard to the a failure of Pw1 and Pw2 to state that in their earlier statements to the police. Even so, the statement of Pw4 clearly supported or corroborated the testimonies of Pws 1 and 3 on the point. ***I must emphasize here again, my noble lords that it is not every discrepancy or contradiction in the evidence of the prosecution witnesses that would lead to the rejection of such evidence. It must be shown that the alleged contradictions or inconsistencies are so material and are adequate enough to cause doubts in the case of the prosecution.*** E F G H  
*Onubogu Vs. Sate* (1974) 1 All NLR (pt. 11) 5, *Namsoh v. State* (1993) 5 NWLR (pt. 244) 642 at 649, *Effia V State* (1999) 8

NWLR (pt. 613) 1.

I also do not share or agree with submission of the learned counsel for the appellant, herein, that the present scenario is capable of bringing to the fore, two possible interpretations as being suggested by the learned counsel for the appellant. The same scenario  
 B did not or could not create any gap or lacuna in the prosecution's case since even one of the witnesses clearly explained that he did not state in his statement to the police the point he mentioned in his testimony and such point was emphatically stated or covered by the  
 C testimony of Pw1 which was also not contradicted or challenged by the defence.

***On the whole, considering the surrounding circumstance of the instant case, the evidence led by the prosecution on the point were consistent and in consonance with each other, D rather than contradictory or conflicting as being suggested or argued by the Appellant's counsel.***

For the avoidance of any possible doubt, it needs to be stressed again here that whether that the appellant, herein, had held the deceased for the 1st accused person to stab him or not is even immaterial. This is because as I said earlier in this judgment, where common  
 E intention, among several participants in a crime is established against those who are jointly charged of committing such crime it is enough to prove that they all participated in the crime. What each did in furtherance of the commission of the crime is immaterial. The mere  
 F fact of the existence of the common intention manifesting in the execution of the common object is enough to render each of the members of the groups of the accused person guilty of the offence by virtue of the provisions of Section 7 of The Criminal Code Act. By  
 G the provision of Section 7 of Criminal Code, every person who aids another in the commission of an offence is deemed to have taken part in committing the offence and could be charged with the actual offence. See the following: i) The State V. Edede (1972) 1 SC.140, ii) Iyaro Vs. State Supra, iii) Enwoenye V. The Queen (1955) 15  
 H WACA 1 at 3, iv) Akran V. I.G.P. (1960) 5 FSC 3, v) R V. Akpunonu (1942) 8 WACA 107.

My lords, having duly considered the arguments and submissions of learned counsel on the issues, I am of the firm view that same ought to be resolved against the Appellant and in favour of the re-

spondent. I, accordingly do so.

In considering the totality of the evidence adduced I have not seen any cogent reason to fault the un-perverse decision of the trial Court which was ably and correctly affirmed by the Court below. The effect of this is that the appeal is devoid of merit and same is deserved to be dismissed. I dismiss this appeal and uphold the powerful decision of the Court below.

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**MUHAMMAD JSC**

I read in advance the judgment just delivered by my learned brother Coomassie, JSC. I agree with him that there is no merit in the appeal. Same is dismissed by me. I abide by orders made in the lead judgment.

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**RHODES-VIVOUR JSC**

My lords, I agree that this appeal should be dismissed for the reasons given by my learned brother Muntaka-Coomassie, JSC.

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**NGWUTA JSC**

I read in draft the lead judgment just delivered by my learned brother, Muntaka-Coomassie, JSC and I agree with the conclusion that the appeal is bereft of merit.

The facts of the case have been set out in the lead judgment and I have no reason or need to repeat them herein.

This appeal is against the concurrent findings of facts of the two Courts below.

In the first instance, the Court of Appeal will not disturb the finding of the trial court except on the showing of the appellant that the trial Court, in the performance of its primary duty to appraise the evidence before it and ascribe probative value to same made improper use of the opportunity of hearing and seeing the witnesses or has drawn wrong conclusions from accepted or proved facts not supported by those facts or has approached the determination of those facts in a manner which the facts cannot and do not support. See *Okolo v. Uzoka* (1378) 4 SC 77, *Abba v. Ogodo* (1984) 1 SCNLR

372, *Idundun v. Okumagba* (1976) 1 NMLR 700.

The Court of Appeal examined the findings of the trial Court and found no reason to disturb same and therefore affirmed the findings. This is concurrent findings of facts of the two Courts below.

B Now before this Court there is sufficient evidence to support the concurrent findings of the Court below. The appellant failed to show that the findings are perverse or that there is substantial error either in substantive or procedural law which if not corrected will lead to miscarriage of justice to the appellant.

C There is therefore no basis for the Court to disturb the findings of fact of the trial Court which were endorsed by the Court below. See *Kalu v. Coker* (1982) 12 SC 952 at 271, *Obisanya v. Nwoko* (1974) 6 SC 69, *Efe v. State* (1976) 11 SC 75. The said findings are primary facts as distinct from inferences drawn from primary facts.

D There being no perversity in the judgment of the trial Court as affirmed by the Court below, this Court cannot disturb the said judgment. I also dismiss the appeal for want of merit.

E **AKA'AH S JSC**

I was privileged with a preview of the judgment just delivered by my learned brother, Muntaka Coomassie JSC. I am in full agreement that the appeal lacks merit and is liable to dismissal.

F The appellant was the 2nd accused arraigned alongside his younger brother who was the 1st accused before the Edo State High Court, Sabongida-Ora on a two - count charge of conspiracy to commit murder and murder of one Edwin Asaba Ovie on or about the 14th day of February, 2005. The two accused persons pleaded not guilty to the charge and the case went to trial. The prosecution called five witnesses and tendered four exhibits which were admitted as Exhibits A, P1, P2 and P3. The defence called four witnesses consisting of the two accused and two other witnesses.

H At the end of the trial, the learned trial Judge dismissed the charge of conspiracy but found the accused guilty of murder. He thereafter convicted the 2nd accused and sentenced him to death but relied on Section 12 of the Children and Young Persons Law to order that the 1st accused be detained at the Auchi Prison at the pleasure of the Governor of the State on account of his age.

Being dissatisfied with his conviction and sentence the 2nd accused (now appellant) appealed to the Court of Appeal, Benin Division but the appeal was dismissed on 10th March, 2011. The conviction and sentence were affirmed. This is a further appeal from the judgment of the Court below. Three grounds were raised in the Notice of Appeal from which lone issue was distilled for determination in the appellant's amended brief of argument. The issue raised is:-

*"Whether the Lower Court's affirmation of the trial court's decision that the charge of murder was proved against the appellant beyond reasonable doubt was predicated on perverse findings of fact and liable to be quashed".*

Learned counsel for the appellant stated that the findings made by the trial Judge and affirmed by the court below which are not perverse are:

The deceased died of stab wounds inflicted by the 1st accused and no other person. But the perverse finding of the Lower Court liable to be upturned is that the appellant assisted the 1st accused by holding down the deceased for the 1st accused to stab.

While acknowledging the fact that this court is loath to interfere with concurrent findings of fact made by the Lower Courts, learned counsel submitted that the court will not hesitate to set aside concurrent findings where such findings are shown to be perverse citing *Ndidi v. State* (2007) 13 NWLR (Pt.1052) 633. Learned counsel invited the court to take a look at the evidence of PW3 vis-à-vis his extra judicial statement admitted as Exhibit A. He said that in Exhibit A which was made on 29th March, 2005, PW3 did not make any mention of appellant holding the deceased for 1st accused to stab but this story came up during his examination in-chief when he said:-

*"I was holding Julius Ovie not to fight then the 2nd accused gripped Asaba on the neck from the back then Ele Moses held Asaba's hands. Then the 1st accused person picked up dagger and stabbed him on the breast".*

Learned counsel argued that aside the extra judicial statement that the appellant allegedly held the deceased, PW3 was not consistent as to where the appellant held the deceased namely was it on the back or the neck? That PW3 was also inconsistent as to where the deceased was stabbed - was it on the two sides or the breast? Learned

counsel submitted that the forgetfulness and inconsistency in the testimony of PW3 is sufficient to render his evidence as unreliable and therefore not worthy to be acted upon in convicting the appellant and sentencing him to death. He relied on Akalono v. State (2000) 12 NWLR (Pt.643) 174; Onwe v. State (1975) 9-11 SC 23 and  
 B Queen v. Joshua (1964) 1 All NLR 1 for the submission.

Learned counsel for the respondent filed an amended respondent's brief and argued that it is not every contradiction or variance in the evidence of witnesses for the prosecution that is fatal  
 C to its case. To be fatal the contradictions must be material contradiction which strike at the basis or root of the case and is sufficient to raise a doubt in the mind of the trial court. He cited Jimmy v. State (2013) 18 NWLR (Pt.1386) 229 at 245 and Musa v. State (2013) 9 NWLR (Pt.1359) 214 at 236 to submit that it is not every miniature  
 D contradiction that can vitiate the case of the prosecution and that it is difficult to imagine the cogent and material contradiction in the evidence of the PW3 or any of the prosecution witnesses warranting a merit in the appeal.

In considering the evidence called by the prosecution the  
 E learned trial Judge said at pages 135-136 of the record:-

*"The defence tried to show under cross-examination that the evidence of PW3 was not reliable and so he should not be believed in that in his statement to the Police exhibit "A", PW3 said that after  
 F Ojeaga's instructions, Ene Tony, 1st and 2nd accused persons started to fight with the deceased and PW1 and before he knew it 1st accused person brought out a dagger and stabbed the deceased but in his evidence-in-chief, he said that 2nd accused person held the deceased by the neck, one Efe Moses held his hands and the 1st accused  
 G person brought out a dagger and stabbed the deceased. Learned counsel for the defence submitted that PW3's evidence in-chief is inconsistent with his statement Exhibit "A" and so he should not be believed. PW3 in my view was consistent in Exhibit "A" and his evidence-in-chief with the fact that 1st and 2nd accused persons fought  
 H with PW1 and the deceased. That the 2nd accused held the deceased down is a matter of details which in my view is not material enough to declare him an unreliable witness or that this constitutes a major contradiction that should bedevil the prosecution case. It does not affect the root of the prosecution's case. That the 2nd accused held*

*the deceased down by the neck is part of fighting the cause of which the 1st accused person murder (sic) the deceased.*

*Even if I am to agree that PW3 was inconsistent and I reject both Exhibit "A" and his evidence-in-chief, what about the evidence of PW1 and PW4 who have said the same thing. Learned counsel for the defence submitted that the evidence of PW1 and PW4 should be treated with caution because they are blood relations of the deceased but there is no law which prohibits blood relations from testifying for the prosecution where such relation is an eye-witness of the crime committed. See Oguonzee v. State (1999) 2 LRCN (CC) 232 at 237. So it is immaterial that PW1 and PW4 are blood relations of the deceased. What is important is the nature of their evidence as eye witnesses which I find convincing. I believe that PW1, PW3 and PW4 spoke the truth that 2nd accused person and Efe Moses held the deceased down for 1st accused to stab him. I want to state here that PW3 is not a blood relation of the deceased and so his evidence is likened to that of an independent witness".*

At page 212 of the record, the Lower Court referred to the findings of the trial court based on the evidence led by the witnesses which he believed wherein the trial court said:-

*"...the evidence of the witnesses were not materially discredited under cross-examination to render them incapable of belief. They were eye witnesses of the act of the 1st and 2nd accused persons in which the 2nd accused person held the deceased down for the 1st accused to stab. They gave convincing account of what happened from the time they got to the scene and what they saw. Their evidence is direct, cogent and convincing. They all spoke with assurance and such confidence that I find it difficult not to believe them. So I believe their evidence".*

To this finding the Lower Court said:-

*"The above finding of fact, to my mind, has not been shown by the appellant to be perverse. From the evidence adduced in the case, there is in my view, no dispute whatsoever, that the 1st accused stabbed the deceased after the appellant herein held him (deceased). PW1 and PW3 who were eye witnesses to the event testified in that regard and their testimonies were not contradicted or assailed or controverted at all. There is equally no doubt that the deceased victim died as a result of the act of the 1st accused and the appellant herein".*

There is a concurrent finding of the two Lower Courts that the deceased died of the stab wounds inflicted by the 1st accused assisted by the appellant who held the deceased while the 1st accused stabbed him during the fight. The Lower Court stated that the conclusion reached by the trial Judge flowed from the eye witness  
 B account of PW1, PW3 and PW4. Having examined the record, I, too, have come to the inevitable conclusion that the findings of the Lower Courts are not perverse. The learned trial Judge gave reasons why he believed the evidence of PW1, PW3 and PW4. He was in a  
 C vantage position to see the witnesses and their demeanour. If at all there was need to corroborate the evidence of PW1 and PW4 (which in this case was not necessary) PW3 who is an independent witness supplied the corroboration. Any doubt that PW3 made up the story that the appellant held the deceased when the 1st accused stabbed  
 D the deceased was cleared under cross-examination when he maintained that when he made his statement on 29/3/2005, he told the Police what he had given in evidence i.e. that the 2nd accused person held deceased on the neck and that Asaba was stabbed on the breast. He said he was not happy with what happened and even if it  
 E had happened to the accused persons he would not have been happy too. PW1 who is a relation of the deceased explained under cross-examination that he was not himself when he made his statement on 16/2/2005 because the incident was still fresh.

The prosecution proved its case beyond reasonable doubt  
 F against the 1st accused and the appellant. It is clear that it was the 1st accused who stabbed the deceased. The appellant assisted by holding the deceased on the neck while 1st accused dealt the fatal stab wound on his breast. He should therefore share in the consequences  
 G that followed the action carried out by the 1st accused who turned out to be under 17 years of age.

It is for this reason and the fuller reason contained in the leading judgment of my Lord, Muntaka-Coomassie JSC that I, too, dismiss the appeal as lacking in merit. I further affirm the decision of the  
 H Lower Court which had dismissed the appeal against the conviction and sentence of the appellant to death by the Edo State High Court, Sabongida-Ora on 19th June, 2007 in Charge No.HOS/IC/2005. Appeal is dismissed.