

SUPREME COURT OF NIGERIA
FRIDAY 15TH MAY, 2015. SC. 259/2011
CORAM:- J. A. FABIYI, C. B. OGUNBIYI,
K. M. O. KEKERE-EKUN, J. I. OKORO, C. C. NWEZE, JJSC

MICHAEL ADEYEMO APPELLANT
V.
THE STATE RESPONDENT

ACCIDENTS - Dangerous driving - Proof - Exhibit C was prima facie evidence of dangerous driving - And a sufficient circumstantial evidence required to sustain a conviction (H1)

ACCIDENTS - Proof - Witnesses - Appellant was at liberty to call any of the surviving passengers - As witness to support his case - And should not dictate to prosecution how to carry out its job (H2)

ACCIDENTS - Dangerous driving - Ingredients - Proof - Prosecution must prove that manner of driving was reckless - That the dangerous driving caused death - And that accident occurred on federal highway (H3)

ACCIDENTS - Dangerous driving - Death - Proof - From evidence adduced by PW2 and the medical report - Cause of death could be inferred to be due to the accident (H4)

ACCIDENTS - Dangerous driving - Federal highway - Proof - The accident occurred along a road - Which was taken judicial notice of by both lower courts - As federal highway (H5)

FACTS

Before the High Court of Ogun State sitting at Ilaro, accused/appellant was arraigned on a two count charge of causing death by dangerous driving and dangerous driving contrary to sections 5 and 6(1) respectively of the Federal Highways Act Cap. F.13 LFN 2004. Appellant pleaded not guilty to the charges. At the trial, prosecution/respondent called three witnesses and tendered exhibits including exhibit C (a map reading of the highway). Appellant testified for

himself and called no witness.

The parties adduced evidence before the court in support of their cases. At the end of trial in the matter, the court in its judgment found appellant guilty of causing death by dangerous driving and dangerous driving. The court therefore sentenced appellant to three years imprisonment with an option of N50,000 fine. Dissatisfied with the judgment of the trial court, appellant appealed to the Court of Appeal. The court heard the appeal and dismissed same. Aggrieved further, appellant appealed to Supreme Court.

ISSUE FOR DETERMINATION

“Whether the Court of Appeal was right in affirming the judgment of the trial court that found the appellant guilty of causing death by dangerous driving and dangerous driving”

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

ACCIDENTS - Dangerous driving - Proof

1. I do not see why the two courts below should agree with the reasoning process of the appellant’s counsel. It was a matter of map reading. I have taken a close look at the said Exhibit ‘C’. Clearly, the point of impact is on the deceased’s lane. The two courts below were right in finding that it was the appellant who left his own lane to collide with the deceased’s own vehicle on his lane. It would have been preposterous to have found otherwise.

Let me say it right away that the trial court upon a correct reading of Exhibit ‘C’ wherein appellant’s mode of driving is evinced, found that the appellant left his own lane of the road to collide with the vehicle driven by the deceased on his own side of the road. That was a dangerous piece of driving. Such is a sufficient circumstantial evidence required to sustain a conviction. It was prima facie evidence of dangerous driving. Same irresistibly and unequivocally leads to the guilt of the appellant. No other reasonable inference can be drawn from it. As well, there are no other co-existing circumstances which could weaken the inference drawn therefrom.

(pp. 1597 G/1599 D)

ACCIDENTS - Proof - Witnesses

2. Another point tacitly raised by the appellant's counsel was that the respondent did not deem it necessary to take the statement of any of the passengers in respect of what happened. He felt that the court below should not have affirmed the judgment of the trial court.

Let me say it that if the appellant wanted to call some of the surviving passengers, he was at liberty to call them to prop his case. He should not dictate to the prosecution how they should carry out their job. The appellant had the free volition to call any of the passengers who survived the accident to testify on his behalf. (p. 1598 A)

ACCIDENTS - Dangerous driving - Ingredients - Proof

3. It is of moment to now state the ingredients of the offences of causing death by dangerous driving and dangerous driving which must be proved beyond reasonable doubt as follows:-

(a) That the accused's manner of driving was reckless or dangerous;

(b) That the dangerous driving substantially caused the death of the deceased; and

(c) That the accident occurred on a Federal Highway.
(p. 1598 C)

ACCIDENTS - Dangerous driving - Death - Proof

4. The proof of the second ingredient that the dangerous driving caused the death of the deceased Jelili Adekoba is not far fetched. The evidence adduced by PW.2 and PW.3 as well as the medical report in Exhibit B clearly established that the injuries found on the body of the deceased were consistent with road accident. Exhibit B confirmed the cause of death to be as a result of severe head injury and internal hemorrhage. The cause of death could be inferred to be due to the accident. The act of the appellant resulted in the death of the deceased. The court below, in affirming the stance of the trial court, so found. They were right. (p. 1599 G)

ACCIDENTS - Dangerous driving - Federal highway - Proof

5. It is extant in the record that the accident occurred along Sango/Idiroko road which was taken judicial notice of by the trial court and affirmed by the court below as a Federal Highway.

By the Federal Highways (Declaration) Order No.101 of 1971, a Subsidiary Legislation made under Section 24 of the Federal Highways Act, the said road is grouped under the number of highways as A.1 at page 5818 of Cap. 135 of vol. VIII of the Laws of the Federation of Nigeria (LFN) 1990 Edition.

I support and accordingly affirm the position taken by the court below as pragmatically expressed by it. The said road was rightly found to be a Federal Highway; to say the least. (p. 1600 C)

NOTABLE POINT OF INTEREST

FABIYI JSC

1. Charges – Prove beyond reasonable doubt

Perhaps, I should also say it briefly that the two count charges framed against the appellant have been clearly proved beyond reasonable doubt. After all, proof beyond reasonable doubt is not proof to the hilt. In this matter wherein all the ingredients of the offences charged have been clearly established, the case is proved beyond reasonable doubt. (p. 1601 A)

REPRESENTATION

Ikenna Okoli with C. Okpala (Miss.), for the Appellant
G J. K. Omotosho, DDPP Ogun State with O. A. Abodunrin, SC), for the Respondent

CASES REFERRED TO

Lambert v. Nigerian Navy (2006) 7 NWLR (pt. 980) 514
H Awuse v. Odili (2005) 16 NWLR (pt. 952) 416
Aigbadion v. State (2000) 7 NWLR (pt. 666) 686
Ekpenyong v. State (1991) 6 NWLR (pt. 2000) 683
Amusa v. State (2003) 13 N.S.C.Q.R 173

Aruwa v. State (1990) 6 NWLR (pt. 155) 125
 Idowu v. State (1995) 11 NWLR (pt. 574) 354
 Omogodo v. State (1981) 4 SC 16
 State v. Ejenabe (1976) 1 NMLR 135
 Moses v. State (2006) All FWLR 1437
 Isibor v. State (1970) All NLR 248
 Onyekwere v. State (1973) 5 SC 14
 Shorumo v. State (2010) 12 SC (pt. 1) 73
 Igwe v. State (1982) 9 SC 174
 Victor v. State (2013) 12 NWLR (pt. 1369) 465

B

C

STATUTE REFERRED TO

Federal Highways Act Cap. F.12 LFN 2004, ss. 5, 6(1)

LEAD JUDGMENT BY FABIYI JSC

D

This is an appeal against the judgment of the Court of Appeal, Ibadan Division (the Court below) delivered on 28th March, 2011. Therein, the appellant's conviction for causing death by dangerous driving and dangerous driving by the trial High Court of Ogun State, Ilaro Judicial Division was affirmed.

E

On 27th April, 2006, the appellant was arraigned before the trial court upon a two count charge of causing death by dangerous driving and dangerous driving contrary to Sections 5 and 6(1) respectively of the Federal Highways Act, Cap. F.13 LFN, 2004. He pleaded not guilty to both counts.

F

Before the trial court, the prosecution called three witnesses and tendered certain exhibits to prop their case. The appellant testified for himself but called no witness. The learned trial Judge, Dipeolu, J. garnered evidence from both sides of the divide and was duly addressed by counsel to the parties. In his considered judgment handed out on 24th April, 2007, the appellant was convicted on both counts and sentenced to three years imprisonment with an option of N50,000 fine.

The appellant felt unhappy with the stance of the trial court and appealed to the court below which heard the appeal on 27th January, 2011. In its own judgment, which was delivered on 28th March, 2011, the appeal was dismissed. The court below affirmed the conviction and sentence as pronounced by the trial court.

H

The appellant felt dissatisfied with the judgment of the court below and has further decided to appeal to this court. On 26th February, 2015 when the appeal was heard, learned counsel for the parties respectively adopted and relied on briefs of argument filed on behalf of their clients. As usual, the appellant's counsel urged the court to allow the appeal while the respondent's counsel urged that the appeal should be dismissed.

The sole issue couched for determination of the appeal on behalf of the appellant reads as follows:-

"Whether the Court of Appeal was right in affirming the judgment of the trial court that found the appellant guilty of causing death by dangerous driving and dangerous driving"

On behalf of the respondent, a similar issue was decoded for determination in different words as follows:-

"Whether from the totality of evidence adduced at the trial, the Court of Appeal rightly affirmed the conviction of the appellant for the offences charged."

The learned counsel for the appellant contended that the learned Justices of the Court below were wrong in affirming the judgment of the trial court which found the appellant guilty of the offences charged. He maintained that Exhibit 'C', the rough sketch of the scene of accident, was not the joint act of P.W.3, WPC Sarah Oladipo and one Sgt. Mudashiru as found by the two courts below. Learned counsel maintained that P.W.3 admitted that Sgt. Mudashiru drew Exhibit 'C'. He asserted that it is trite that the court will not accord any probative value to a document where its maker is not called upon to tender it and give evidence at the trial. In support, he cited the cases of Lambert v. Nigerian Navy (2006) 7 NWLR (Pt. 980) 514 at 547 and Awuse v. Odili (2005) 16 NWLR (pt. 952) 416 at 509.

Learned counsel maintained that despite the fact that Sgt. Mudashiru was not called, the court below wrongly affirmed the trial court's finding that based on the said Exhibit C, the appellant left his own lane and crossed over to the deceased's lane where he hit the deceased's vehicle.

Learned counsel felt, that if the court below had not made the error of wrongly holding that PW3 participated in making Exhibit C, it would not have placed any probative value on same and would,

therefore not have affirmed the decision of the trial court.

On this crucial point, the learned counsel for the respondent maintained that having regard to the evidence of P.W.3 on record, the prosecution did not need to call Sgt. Mudashiru. He referred to page 23 lines 22-24 of the record where the witness stated as follows:-

“Sgt. Mudashiru and I went to the scene of the accident at Ogosa Area along Idiroko and Owode Road. There we drew a rough sketch of the scene and took photographs...”

With the above, I do not see how the appellant’s counsel could, with confidence, say that the drawing of Exhibit ‘C’ was not a joint act of P.W.3 and Sgt. Mudashiru. It is beside the point that the act was not a joint one. It does not tally with gumption that Sgt. Mudashiru would take measurement of the scene of accident all by himself alone. The two courts below were right in finding that the drawing of the sketch - Exhibit ‘C’ was a joint act of P.W.3 and Sergeant Mudashiru. I have no hesitation in affirming the position taken by the two courts below. They were right in placing premium on the stated Exhibit ‘C’.

Learned counsel further contended that there was no basis whatsoever from the record for holding that the appellant left his lane for the deceased’s lane without any proof of any emergency or sudden uncontrollable mechanical defect and same was prima facie evidence of dangerous driving. He maintained that both in his oral evidence and his extra-judicial statement - Exhibit D, the appellant maintained that it was the deceased who left his own lane to cause the accident’ He referred to the case of Aigbadion v. The State (2000) 7 NWLR (Pt.666) 686 at 702.

Learned counsel asserted that it was surprising that the court below followed the trial court to wrongly find that based on Exhibit ‘C’, it was the appellant who left his lane for the deceased driver’s lane to cause the accident.

I do not see why the two courts below should agree with the reasoning process of the appellant’s counsel. It was a matter of map reading. I have taken a close look at the said Exhibit ‘C’. Clearly, the point of impact is on the deceased’s lane. The two courts below were right in finding that it was the appellant who left his own lane to collide with the deceased’s own vehicle on his lane. It would have been preposterous to

have found otherwise.

Another point tacitly raised by the appellant's counsel was that the respondent did not deem it necessary to take the statement of any of the passengers in respect of what happened. He felt that the court below should not have affirmed the judgment of the trial court.

Let me say it that if the appellant wanted to call some of the surviving passengers, he was at liberty to call them to prop his case. He should not dictate to the prosecution how they should carry out their job. The appellant had the free volition to call any of the passengers who survived the accident to testify on his behalf. See: Ekpenyong v. The State (1991) 6 NWLR (pt. 2000) 683.

It is of moment to now state the ingredients of the offences of causing death by dangerous driving and dangerous driving which must be proved beyond reasonable doubt as follows:-

(a) That the accused's manner of driving was reckless or dangerous;

(b) That the dangerous driving substantially caused the death of the deceased; and

(c) That the accident occurred on a Federal Highway.

For the above, the cases of Amusa v. The State (2003) 13 N.S.C.Q.R 173 at 179; Aruwa v. The State (1990) 6 NWLR (Pt.155) 125 at 135 are of moment and quite apt.

Learned counsel for the appellant asserted that there was no evidence whatsoever on record as to how the accident occurred. He felt that there was no evidence that the manner in which the appellant drove his vehicle was reckless or dangerous. He felt that the trial court merely relied on circumstantial evidence of the relative position of the two vehicles at the point of impact in establishing the guilt of the appellant which position was also affirmed by the court below.

Learned counsel cited the case of Idowu v. The State (1995) 11 NWLR (Pt.574) 354 at 370 where it was held that circumstantial evidence can only ground a conviction if and only if:-

(1) it irresistibly and unequivocally leads to the guilt of the appellant;

(2) no other reasonable inference can be drawn from it; and

(3) there are no co-existing circumstances which could weaken the inference. See: also Omogodo v. The State (1981) 4 S.C. 16.

Learned counsel submitted that the court below was wrong to hold that the circumstantial evidence in this case points irresistibly to no other conclusion but to the guilt of the appellant.

Learned counsel for the respondent submitted that dangerous driving is proved by the slightest negligence on the part of a driver so charged. He stressed the point that driving from one side of the road to the other, amounts to driving to the danger of the public. In support, he cited the case of The State v. Stephen Ejenabe (1976) 1 NMLR 135.

Learned counsel for the respondent further submitted that to leave one's lane to the other lane when another vehicle is approaching from the opposite direction, as in the instant matter, and thereby causing one's vehicle to hit that other, in the process, is dangerous driving. In support, he cited the case of Moses v. The State (2006) All FWLR 1437 at 1472.

Let me say it right away that the trial court upon a correct reading of Exhibit 'C' wherein appellant's mode of driving is evinced, found that the appellant left his own lane of the road to collide with the vehicle driven by the deceased on his own side of the road. That was a dangerous piece of driving. Such is a sufficient circumstantial evidence required to sustain a conviction. It was prima facie evidence of dangerous driving. See: Isibor v. The State (1970) All NLR 248 at 256. **Same irresistibly and unequivocally leads to the guilt of the appellant. No other reasonable inference can be drawn from it. As well, there are no other co-existing circumstances which could weaken the inference drawn therefrom.** See the case of Omogodo v. The State (supra).

The proof of the second ingredient that the dangerous driving caused the death of the deceased Jelili Adekoba is not far fetched. The evidence adduced by P.W.2 and P.W.3 as well as the medical report in Exhibit B clearly established that the injuries found on the body of the deceased were consistent with road accident. Exhibit B confirmed the cause of death to be as a result of severe head injury and internal hemorrhage. The cause of death could be inferred to be due to the accident.

See Numo-Mallam Ali v. The State (1988) 1 NWLR (pt. 68) 1. ***The act of the appellant resulted in the death of the deceased. The court below, in affirming the stance of the trial court, so found. They were right.***

The 3rd ingredient of the offences charged is that the accident occurred on a Federal Highway. Learned counsel for the respondent submitted that the trial court took judicial notice of the road as a Federal Highway. The court below also affirmed same. He asserted that the law is settled that proof of a matter of which judicial notice is taken, is not necessary. He cited the case of Onyekwere v. The State (1973) 5 SC 14 in support. He submitted that the affirmation accorded same by the court below was rightly done.

It is extant in the record that the accident occurred along Sango/Idiroko road which was taken judicial notice of by the trial court and affirmed by the court below as a Federal Highway. The court below went a step further to refer to Section 74(1)(a) of the Evidence Act wherein the court is empowered to take judicial notice of -

“(a) all laws or enactments and any subsidiary legislation made thereunder having the force of law now and heretofore in any part of Nigeria.”

By the Federal Highways (Declaration) Order No.101 of 1971, a Subsidiary Legislation made under Section 24 of the Federal Highways Act, the said road is grouped under the number of highways as A.1 at page 5818 of Cap. 135 of vol. VIII of the Laws of the Federation of Nigeria (LFN) 1990 Edition. See: Moses v. The State (2006) 4 SCNJ 190 at 222.

I support and accordingly affirm the position taken by the court below as pragmatically expressed by it. The said road was rightly found to be a Federal Highway; to say the least.

The two courts below made concurrent findings on various points canvassed in this appeal. It is not in the character of this court to interfere with same when they are not shown to be perverse. As well, no compelling reasons have been shown by the appellant to justify any form of interference. I shall not interfere. See: Shorumo v. The State (2010) 12 SC (Pt.1) 73 at 96; Igwe v. The State (1982) 9 SC 174, Victor v. The State (2013) 12 NWLR (Pt.1369) 465 at 485.

Perhaps, I should also say it briefly that the two count charges framed against the appellant have been clearly proved beyond reasonable doubt. After all, proof beyond reasonable doubt is not proof to the hilt. In this matter wherein all the ingredients of the offences charged have been clearly established, the case is proved beyond reasonable doubt. See *Alabi v. The State* (1993) 7 NWLR (pt. 307) 511 at 523; *Abogede v. The State* (1996) 5 NWLR (pt. 448) 270 at 276. B

I come to the inevitable conclusion that the appeal, no doubt, lacks merit. It is accordingly hereby dismissed. The judgment of the court below which affirmed that of the trial court wherein the appellant was convicted and rightly sentenced, is hereby confirmed by me. C

OGUNBIYI JSC

The appellant was on 27th April, 2006, arraigned before the High Court Ogun State Ilaro Judicial Division upon a two count charge (which charge was consequently amended and re-read to the appellant who pleaded not guilty on 5th December, 2006) of causing death by dangerous driving and dangerous driving contrary to Section 5 of the Federal High Way Act, Cap. 135 LFN 1990 and Section 6(1) (Now Cap. F.13 LFN 2004) of same. D

The trial court on 24th April, 2007 convicted the appellant of the offences of causing death by dangerous driving and also dangerous driving and sentenced him to 3 years imprisonment with an option of fine. An appeal to the Court of Appeal was also dismissed on 28th March, 2011 and the judgment of the trial court was affirmed. The appellant who is dissatisfied again with the outcome at the Lower Court has now come before this court. From the notice of appeal and the four grounds filed, a lone issue was raised on behalf of the appellant in his brief of argument as follows:- E

Whether the Court of Appeal was right in affirming the judgment of the trial court that found the appellant guilty of causing death by dangerous driving and dangerous driving? F

The subject of contention by the appellant in this appeal is Exhibit 'C' the rough sketch drawn of the scene of accident. In other words the appellant's counsel is seriously contesting the legal effect of Exhibit C which he submits was erroneously relied upon by G H

the two Lower Courts without the calling of one Sgt. Mudashiru to give evidence on the making of the exhibit. The totality of the appeal before us is therefore begging the question whether in the circumstance of the case, the prosecution has proved the charge levied against the appellant beyond reasonable doubt.

B For the prosecution to succeed on a charge of causing death by dangerous driving as it is in the case at hand, consideration has to be given to a number of factors which are incidental either directly or otherwise having regard to all circumstances surrounding the hap-
C pening of the event. In otherwords, it is not sufficient to consider Exhibit C, the sketch map of the scene of accident in isolation to all other circumstantial relating events. Doing so without more, may not necessarily prove that the appellant drove dangerously. For instance, the rough sketch - exhibit 'C' has indicated clearly the point of im-
D pact and resultant positions of the two vehicles which the accused/appellant admitted in his evidence to be correct.

It is settled that the three ways of proving the commission of a crime are: by direct evidence, by confessional statement of the ac-
E cused and by circumstantial evidence. With the situation of the case at hand in the absence of either a direct evidence or a confessional statement by the accused person, recourse can be had to circum-
stantial evidence which can be deduced from the rough sketch of the scene of incident.

F It is the evidence of the accused on his statement that he was coming from Idiroko going towards Sango, while the C20 bus was coming in the opposite direction. A careful look at Exhibit C will re-
veal that the Iveco truck driven by the accused/appellant left its lane for that of the deceased with the point of impact clearly marked on
G the deceased's lane; the resultant position of the two vehicles how-
ever is on the accused person's lane. It was the consensus of both parties that the accused was not present when the sketch was drawn.

Under cross examination however, the accused admitted that the resultant position of the two vehicles after the accident is as stated
H in the rough sketch. It is a matter of common sense that for one vehicle to leave its lane and enters that of the other when a vehicle was approaching from the opposite direction and thereby causing one's vehicle to hit that other in the process, is a conclusive evidence of dangerous driving. The very act of demarcating lanes for on-com-

ing and on-going vehicles is clearly the reason for avoiding such confusion and collusion. See *Sanusi Abdullahi V. The State* (2003) 13 NSCCR 173 at 180. For the accused/appellant to leave his lane for the deceased's lane without any proof of any emergency or sudden uncontrolled mechanical defect in the vehicle is *prima facie* evidence of dangerous piece of driving. See the case of *Vincent Isibor V. The State* (1970) All NLR 248 at 256. It is left to the appellant to debunk that presumption. B

Exhibit B is the medical report on the deceased which states the cause of death as severe head injury and internal hemorrhage. The death was caused instantaneously following the accident. The cause could easily be inferred that it was due to the accident. See *Numo-Mallam All V. The State* (1988) 1 NWLR (Pt.68) 1. C

The fact that Sango/Idiroko road is a Federal High Way is a matter of common knowledge and which needed no further proof. My learned brother Fabiyi, JSC has exhaustively considered the lone issue raised thoroughly. With the few words of mine and more particularly on the comprehensive reasoning and conclusion arrived thereat in the lead judgment, I agree without more that the appeal is devoid of any merit and I also dismiss same and affirm the judgment of the Court below which affirmed that of the trial court. The conviction and sentence of the appellant is hereby affirmed by me, also. D E

KEKERE-EKUN JSC

I have had the benefit of reading in draft the lead judgment of my learned brother, Fabiyi, JSC just delivered. I agree entirely with his reasoning and conclusion that the appeal lacks merit and should be dismissed. F

The appellant was charged before the High court of Ogun State, Ilaro Judicial Division on a two count charge of causing death by dangerous driving contrary to sections 5 and 6 of the Federal Highways Act, Cap. 135, Laws of the Federation of Nigeria 1990. He pleaded not guilty to both counts. G H

At the conclusion of the trial, he was found guilty on both counts and sentenced to three years imprisonment with an option of N50,000.00 fine.

His appeal to the Court of Appeal, Ibadan Division was unsuc-

cessful hence the further appeal to this court. My learned brother, Fabiyi, JSC has fully captured the facts of the case in the lead judgment.

In order to secure a conviction for the offences of dangerous driving and causing death by dangerous driving under Sections 5 and 6(i) of the Federal Highways Act, Cap.F13, Laws of the Federation of Nigeria 2004, the prosecution must establish the following beyond reasonable doubt:

- (i) That the accused's manner of driving was reckless or dangerous.
- (ii) That the dangerous driving caused the death of the deceased; and
- (iii) That the accident occurred on a Federal Highway.

The appellant's main complaint in this appeal is that the first ingredient of the offence was not proved. It was argued that the Lower Court was wrong to have relied on Exhibit C, the rough sketch of the accident, in affirming the decision of the trial court on the ground that its maker was not called to testify and that the witness through whom it was tendered could not be cross-examined on it.

The said Exhibit C was tendered through PW3, Sarah Oladipo a woman police corporal who testified thus at page 23 of the record:

"I know the accused person. On 12/1/2004, I was on duty at M. T. D. Idiroko when the accused reported a motor accident involving a 7-Up truck driven by the accused and a Nissan C20 bus driven by the deceased.

Sgt. Mudashiru and I went to the scene of the accident at Ogosa Area along Idiroko/Owode Road. There we drew a rough sketch of the scene and took photographs".

Under cross-examination at page 24 of the record, she stated: 'Sgt. Mudashiru drew Exhibit C'.

The appellant contends that Sgt. Mudashiru ought to have been called to testify. A careful perusal of Exhibit C reveals that the point of impact occurred in the lane maintained by the deceased. The appellant did not challenge the contents of Exhibit C and admitted that the resultant position of the vehicles was as indicated thereon.

PW3 testified clearly that both she and Sgt. Mudashiru visited the scene of the accident. She stated further, "we drew a rough sketch of the scene and took photographs". Having regard to this evidence,

there was no reason why she could not have been cross-examined on the document since it is a depiction of what she and Sgt. Mudashiru saw at the scene. Having failed to challenge Exhibit C at the trial, I agree with my learned brother, Fabiyi, JSC that the two Lower Courts were right to have placed reliance on it.

Exhibit C having shown that the appellant left his lane and collided with the deceased in his own lane, the first ingredient of the offence was established beyond reasonable doubt. B

The offences created in Sections 5 & 6 of the Federal Highways Act are strict liability offences. In other words, the crime does not require proof of mens rea. Proof of the actus reus is sufficient to ground a conviction. On what constitutes a strict liability offence, see *Odunlami Vs The Nigerian Army* (2013) 12 NWLR (Pt.1367) 20 @ 50-51 H-A, 68-69 F-C. C

The prosecution having proved beyond reasonable doubt that the appellant left his lane and collided with the deceased in the deceased's lane, the only explanation is that the appellant's manner of driving was reckless and dangerous. D

The decisions of the two Lower Courts in this regard cannot be faulted. E

I agree with my learned brother that the other two ingredients of the offence were proved beyond reasonable doubt.

This appeal accordingly lacks merit. It is hereby dismissed. The judgment of the Lower Court affirming the conviction and sentence of the appellant is affirmed. F

OKORO JSC

I have had the privilege of reading in draft the illuminating lead judgment of my Noble and learned brother John Afolabi Fabiyi, JSC just delivered. I entirely agree with the reasons ably marshalled therein to reach the inevitable conclusion that this appeal is devoid of any modicum of merit and deserves to be dismissed. My Lord and brother has meticulously and quite efficiently resolved with admiration the sole issue nominated for the determination of this appeal. I shall resist the temptation to glean where my Lord has excelled except to make a few comments as hereunder stated in support of the judgment only. G
H

Appellant herein was arraigned before the High Court of Ogun State, Ilaro on a two count charge of causing death by dangerous driving and dangerous driving contrary to Sections 5 and 6(1) respectively of the Federal Highways Act Cap F 13 Laws of the Federation of Nigeria, 2004. Based on evidence before the learned trial judge, appellant was convicted and sentenced to three years imprisonment with an option of fine assessed at N50,000.

The Court of Appeal, to which the appellant filed an appeal, dismissed same as lacking in merit. Appellant is before this Court on one issue for determination which states:

“Whether the Court of Appeal was right in affirming the judgment of the trial court that found the appellant guilty of causing death by dangerous driving and dangerous driving”.

The respondent also distilled a similar issue.

Let me state clearly that for the prosecution to succeed in proving that an accused person caused death of the deceased by dangerous driving, and that he drove the vehicle dangerously on a Federal Highway, the following must be proved beyond reasonable doubt. That is to say:

1. that the accused person’s manner of driving was reckless and/or dangerous.

2. that the dangerous driving was the substantial cause of the death of the deceased, and

5. that the accident occurred on a Federal Highway. See *Amusa V State* (2003) 4 All NWLR (Pt.811) 595, *State V Usifor* (1974) 1 NMLR Page 72; *Adewale Joseph V The State* (2011) LPELR 1630 (SC)

The main contention in this appeal was the argument of the learned counsel for the appellant that Exhibit C, the rough sketch of the accident scene was tendered by a person who was not the maker. At the trial, Pw3, one WPC Sarah Oladipo tendered the said document. Counsel for the appellant contended that Pw3 testified that it was one Sgt. Mudashiru who made the sketch. However, the record of the court proves otherwise. On page 23 lines 22 -24, the Pw3 states as follows:-

“Sgt. Mudashiru and I went to the scene of the accident at Ogosa Area along Idiroko and Owode Road. There was drew a rough sketch of the scene and took photographs.”

There is nowhere in the record which the Pw3 testified that the sketch was made by Sgt. Mudashiru only. I agree with the position adopted by the two courts below that the sketch was properly admitted and relied upon.

I have carefully traced the drawings on Exhibit C and have no hesitation in agreeing with the two courts below that the point of impact was at the deceased's lane. The question is what was the appellant looking for in the lane of the deceased while both vehicles were in motion? Herein lies the recklessness or negligence of the appellant. I have no hesitation in affirming the judgment of the two courts below that the appellant recklessly drove his truck into the lane of the deceased and caused his death therein. I so hold.

On the whole, I am at one with my learned brother Fabiyi, JSC that this appeal is unmeritorious and is hereby dismissed. I affirm the judgment of the court below which upheld the conviction and sentence of the appellant for reckless and dangerous driving which caused the death of the deceased.

NWEZE JSC

I had the advantage of reading the draft of the leading judgment which my noble Lord, Fabiyi, JSC, just delivered now. I agree with the reasoning and conclusion.

The appellant couched his lone issue for determination thus:

Whether the Court of Appeal was right in affirming the judgment of the trial court that found the appellant guilty of causing death by dangerous driving?

As, amply, demonstrated in the leading judgment, the Lower Court and the trial court [hereinafter referred to as "the courts below"] made concurrent findings to the effect that it was the appellant who left his own lane and, in the process, collided with the deceased person's vehicle on his [deceased person's] lane. Somewhat, curiously, learned counsel for the appellant never made any attempt to expose the perversity (if any) of these concurrent findings of the courts below.

He must, however, be reminded that this court is always slow at interfering with concurrent findings unless they have been, demonstratively, shown to be perverse, *Braimah v. Abasi and Anor*

(1998) LPELR -801 (SC); *Ometa v. Numa* (1935) II NLR 18; *Okonkwo v. Okagbue* [1994] 9 NWLR (pt. 368) 301 or unsupported by the evidence before the trial court or were reached as a result of a wrong approach to the evidence or a wrong application of the principles of substantive law or procedure. *Enang v. Adu* [1981] 11-12 SC 25, 42; *Nwadike v. Ibekwe* [1987] 4 NWLR (Pt.67) 718; *Igwego v. Ezeugo* [1992] 6 NWLR (Pt.249) 561, 576; *Lamai v. Orbih* [1980] 5-7 SC 28; *Woluchem v. Gudi* [1981] 5 SC 291, 326; *Ike v. Ugboaja* [1993] 6 NWLR (Pt.301) 539, 569; *Chinwendu v. Mbamali* [1980] 3 - 4 SC 31 etc. He has not been able to convince this court that the said findings are perverse or erroneous.

This approach stems from the premise that, as the making of findings of fact is a matter, pre-eminently, within the province of the trial court which had the opportunity of seeing, hearing and observing the witnesses testify, its conclusions on the facts are presumed to be right, The onus, therefore, is on the person seeking to upset the judgment on those facts to displace this presumption. Where, in addition, an appellate court has confirmed such conclusion or findings, the presumption becomes even stronger and may only be reversed upon special circumstances shown. *Ogunjumo and ors v Ademolu and Ors* (1995) LPELR -2337 (SC) 22; *Williams v. Johnson* (1937) 2 WACA 253; *Balogun v. Agboola* (1974) 1 All NLR (pt. 2) 66; [1974] 10 SC 111; *Ibodo v. Enarofia* [1980] 5-7 SC 42, 55-58; *Eholor v. Osayande* [1992] 6 NWLR (Pt.249) 524, 548. This, the appellant has, woefully, failed to do.

Against this background, I, too, endorse the concurrent findings of the courts below. Surely, there is authority for the view that it amounts to dangerous driving for a driver to leave his lane for another lane when another vehicle is approaching from the opposite direction and, thereby, causing his vehicle to hit that other vehicle in the process. *Sanusi Abdullahi v. The State* (1985) LPELR -29 (SC).

What is more, it is even settled that driving from one side of the road to the other side amounts to driving to the danger of the public. *Dickson Moses v. State* (2006) LPELR -1915) 46, C-D, approvingly, citing *Laurie v. Raglan Building Co. Ltd.* (1941) 3 All ER 332; *Ayo Richards v. Inspector General of Police* (1959) LL.R 88; *The State v. Felix Ibeneme* (1965) ENLR 26.

In all, I endorse the conclusion of the trial court which the

Lower Court affirmed that the prosecution proved the ingredients of the offences charged, that is, causing death by dangerous driving, *Adewale Joseph v. The State* (2011) LPELR -1630 (SC) 13, D-G; *Amusa v. The State* (2003) LPELR -474 (SC) 7; *Aruna v. The State* [1990] 6 NWLR (Pt.155) 125, 135-137; *State v. Usifor* (1974) 1 NMLR 72 and dangerous driving, *Adewale Joseph v. The State* (supra).

For these, and the more detailed, reasons in the leading judgment, I, equally, hold that this appeal is, wholly, unmeritorious. I hereby dismiss it. I abide by the consequential orders in the leading judgment.

D

E

F

G

H