

**SUPREME COURT OF NIGERIA**  
FRIDAY 15TH MAY, 2015. SC. 264/2011  
**CORAM:- J. A. FABIYI, C. B. OGUNBIYI,**  
**K. M. O. KEKERE-EKUN, J. I. OKORO, C. C. NWEZE, JJSC**

ALHAJI MUAZU ALI ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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MURDER - Death - Proof - From evidence of PW2 which corroborated that of PW1 - And the medical report presented by PW4 - There is no contradiction that the deceased is dead (H1)

MURDER - Actus reus - Proof - Credible evidence adduced by PW1 - Who was the only direct eye witness to the incident - Is sufficient proof that act of appellant caused the death (H2)

MURDER - Mens rea - Proof - The use of axe on very sensitive part of the body - Is a confirmation that appellant intended death as the natural consequence of his act (H3)

APPEALS - Crime - Evidence - Re evaluation - Is only done where trial court erred in evaluating facts - Thereby empowering appellate court to re examine the whole facts - And come to an independent decision (H4)

EVIDENCE - Crime - Admission - Relevancy - Court in trial proceedings will admit in evidence - Only material facts for the just determination of the case before it (H5)

EVIDENCE - Contradictions - Weight - Inconsistencies in evidence of PW1 are insignificant - And not substantial to have occasioned a miscarriage of justice (H6)

EVIDENCE - Evaluation - Credibility of witness is a matter for trial court - And once conviction is based on credible evidence of single witness - The same shall not be open to question (H7)

CROSS EXAMINATION - Extent of - Provided crucial facts raised in evidence in chief are examined and addressed upon - Cross examination needs not be extensive - Before it could be relevant (H8)

MURDER - Evidence - Witnesses related to deceased - *Nkebisi v. State* - Such relationship does not disqualify them as prosecution witnesses - As what is vital is their credibility (H9)

MURDER - Evidence - Credibility of - Tainted witness - PW1 was not tainted witness but a witness of truth - Whose evidence was properly evaluated by trial court and affirmed by CA (H10)

MURDER - Proof - Cause of death - Instrument used - It is enough that deceased was struck with a heavy weapon at the head - Hence it did not matter whether the instrument was an axe or machete (H11)

### ***FACTS***

Before the High Court of Katsina State, accused/appellant was arraigned for the offence of culpable homicide punishable with death contrary to section 221 of the Penal Code. Appellant was said to have caused the death of the deceased, one Alhaji Garba Namuri. He was thus arrested and subsequently charged before the court for the crime. At the trial, prosecution/respondent tendered several exhibits and called five witnesses including PW1 who was the only eye witness to the gruesome incident. PW1 testified to the fact that on the fateful date, PW1 and the deceased were lying under a tree when appellant suddenly hit the deceased with an axe at the middle of his head. The deceased died instantly. PW1 twisted the hand of appellant, collected the axe and pushed him into the stream.

In his defence, appellant denied killing the deceased. He testified for himself and called two other witnesses in support. The learned trial judge assessed the testimony of PW1 and found same to be a credible piece of evidence. At the end of the trial, appellant was convicted as charged and sentenced to death by hanging. Aggrieved, appellant lodged appeal at the Court of Appeal Kaduna Division. The court heard the appeal, dismissed it and affirmed the judgment of the trial court. Aggrieved further, appellant appealed to Supreme Court.

**ISSUES FOR DETERMINATION**

A) Whether the totality of evidence placed by the prosecution before the trial court was enough to convict the appellant for the offence of culpable homicide under Section 221 Penal Code.

B) Whether the evidence of P.W.1 who qualifies in circumstances of the case as a tainted witness was enough to sustain a charge of culpable homicide under Section 221 Penal Code against the appellant?

C) Whether the Court of Appeal erred in law when it held that *“in this appeal, the findings of the trial court are overwhelming and not a shred of evidence was adduced by the Appellant to dislodge the eye witness account of P.W.1...”*?

D) Whether the Court of Appeal erred in law when it held that *“Even if Exhibit B the lethal weapon used was not recovered or that no forensic analysis was carried out on it, it would not have negated the findings of the trial court as to use of the axe on the deceased’s skull.*

**HELD** (Unanimously dismissing the appeal per

**OGUNBIYI JSC)**

*MURDER - Death - Proof*

***1. The 1st ingredient required is to prove the death of the deceased; the evidence by P.W.1, reproduced earlier in the course of this judgment is direct and sacrosanct. He was categorical that in his presence, the accused/appellant hit the deceased with an axe and he died instantly. P.W.2, one Alhaji Sani Barume was the father of the deceased. His evidence corroborated that of P.W.1 to the effect that he visited the scene of incident at Kadde and confirmed the death of his son Alhaji Garba Namuri and witnessed the burial of the corpse. P.W.4, Imadudden Zakariya was the medical officer who performed the post-mortem examination of the deceased’s body at the General Hospital Funtua.***

***It was the doctor’s evidence that the corpse was accompanied by a policeman. The most possible cause of death in the doctor’s opinion was the neutrogena and hemorrhagic shock***

**which led to cardio-vascular and respiratory arrest. Based on the evidence of P.W.1, P.W.2 and P.W.4 supra, there is therefore no doubt or contradiction that the deceased Alhaji Garba Namuri is in fact dead. (p. 1628 C)**

**B MURDER - Actus reus - Proof**

**2. The second ingredient is to prove that it was the act of the accused/appellant that must have caused the deceased's death. The key prosecution witness on whose evidence the trial court relied for the conviction of the appellant was P.W.1 whom I said earlier was in fact the only direct eye witness to the incident. The law is well settled that no particular number of witnesses is required to prove the accused guilty of the offence charged. In other words, proof can be satisfied even on the testimony of only one witness, provided the witness is credible, cogent and believable.**

**P.W.1 gave a detailed evidence of the callous and brutal murder of Alhaji Garba Namuri by the accused person. His evidence was very direct and exact. He was neither discredited nor cross examined specifically on the facts of his evidence in a material particular. He witnessed everything relating the incident from beginning to the end. He was physically present and did engage the accused/appellant by seizing the axe which the appellant used in hacking the late Alhaji Garba Namuri to death.**

**Suffice it to say that although P.W.1 was the only eye witness to the hacking of the deceased with an axe (Exhibit 'B'), his evidence is sufficient as proof against the appellant. This is because under Section 179(1) of the Evidence Act, no particular number of witnesses shall be required for proof of any fact in any case. It is the quality of evidence adduced that matters and not the number of witnesses called.**

**(pp. 1628 H/1631 B)**

**H**

**MURDER - Mens rea - Proof**

**3. The 3rd and last ingredient has to do with the intention of the accused wherein the prosecution has to prove that the accused intended to cause the death of his victim or had the**

**knowledge that death or grievous bodily harm was a probable consequence of his act.**

**The interpretation of the accused's intention on the fateful day in question can be known and better explained if the salient features of the account of the evidence by P.W.1 is again recapitulated and dutifully analyzed. I need to say that the detailed evidence had been stated earlier in the course of this judgment. It is in evidence by the witness P.W.1, for instance, that the accused came suddenly and hit the deceased with an axe while they were lying down; the part of the body hit was right in the centre of the deceased's head and he died instantly.**

**By the use of the axe (Exhibit B) a lethal weapon on a very sensitive and vital part of the body, it is a confirmation that the accused intended the natural consequences of his act. In other words, death is the natural consequence of the circumstance of the accused's act. This is obvious when regard is had to the extent of the force used which resulted in the death of the victim instantly.**

**The presumption is true that a person intends the natural and foreseeable consequences of his act; an intention to kill can also be deduced from the nature and type of weapon used.** (pp. 1629 G/1631 E)

*Evidence - Re evaluation*

**4. It is the appellant's submission also that the lower court failed to re-evaluate properly the evidence of P.W.1. As rightly submitted by the respondent's counsel, re-evaluation of evidence by an appellate court is only done where the trial court has erred in evaluating the facts found by it. This is where the appellate court can re-examine the whole facts and come to an independent decision from the court of trial.**

**It is the submission by the appellant's counsel for instance that the witness P.W.1 never explained how the appellant came about the axe allegedly used to hit the deceased. The counsel therefore has called upon this court to re-evaluate the evidence of the witness P.W.1. It is pertinent to state firmly that the condition calling for re-evaluation of evidence as called for by the appellant has been stated and spelt out clearly in**

**the case of Anyegwu v. Onuche supra. The submission by the appellant's counsel would have held water and proper if the circumstance existed in the instant case to have warranted the re-evaluation by the lower court. In my view, that circumstance did not arise in this case. (p. 1632 C)**

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*EVIDENCE - Crime - Admission - Relevancy*

**5. On the failure by the prosecution to tender the appellant's cap and wrist watch as exhibits, the appellant's counsel submits that it is detrimental to the respondent's case I hasten to say at this point that the court in trial proceedings will admit in evidence only material facts for the just determination of the case before it. On the totality of the items recovered from the appellant therefore, what was relevant and material was the axe. With reference made to the case of Jibril v. Mil. Admin cited by the appellant's counsel supra, same as rightly submitted by the respondent's counsel is very much distinguishable from the instant case. This is because that case relates to an evidence given in favour of an adverse party by a witness who was not declared hostile witness and which created doubt in the prosecution's case and therefore gave the benefit to the accused. Comparatively, the items in the case at hand are not material and the reason why they were not tendered before the trial court. The reliance sought to make on the case of Jibril v. Mil. Admin does not therefore assist the appellant's case. (p. 1633 A)**

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*EVIDENCE - Contradictions - Weight*

**6. It is material to state that minor inconsistencies that are not fundamental should not operate to vitiate the whole judgment.**

**Contrary to the contention held by the learned counsel for the appellant therefore, the inconsistencies alleged in the evidence of P.W.1 before the trial and the one as evaluated by the said court are insignificant and not substantial to have occasioned a miscarriage of justice. (pp. 1633 F/1634 A)**

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*EVIDENCE - Evaluation*

**7. Furthermore and on the credibility of the witnesses before the trial court especially P.W.1, it is well established that the trial court has the singular opportunity of seeing, watching, assessing and observing the witness in the box. In other words, the creditability of witnesses is a matter for the trial court. In the case before us, the trial court believed and accepted P.W.1.'s evidence in preference to that of the appellant; the court of appeal also examined the evidence of P.W.1 and found no reason why it should disturb the findings by the trial court and thus affirmed the decision.**

**The law is well settled again that it is safe for the court, in the circumstance at hand, to convict on an evidence of a single witness who proffers credible evidence and whose testimony does not, by law require corroboration. Once the court is satisfied with the quality and credibility of the evidence of such a witness and accepts, conviction based on the evidence thereon should not be open to question. (p. 1634 B)**

*CROSS EXAMINATION - Extent of*

**8. I wish to state at this point that for cross examination to stand its worth, it needed not be extensive before it could be relevant and sufficient provided the crucial facts raised in the evidence in chief are examined and addressed thereon. It is only when a party completely refuses or fails to cross examine a witness that such a party will be deemed to have accepted the testimony of the said witness. Therefore the submission by the appellant's counsel on the absence of cross examination of the appellant by the respondent does not have a legal backing, I hold. (p. 1636 F)**

*MURDER - Evidence*

**9. The appellant further challenges the relationship between P.W.1 and the deceased and accosted him a tainted witness. The law is well settled on treatment of evidence of blood relations of deceased in murder cases. For instance this court had held thus in the case of Nkebisi v. State (2010) 5 NWLR (pt. 1188) p.411 at p. 492:-**

*“A case is not lost on the ground that those who are witnesses are members of the same family or community. What is important is their credibility and they are not tainted witnesses. The mere fact that witnesses are relations of the deceased does not mean that they are not competent witnesses for the prosecution. Thus evidence of a relation can be accepted if cogent enough to rule out the possibility of deliberate falsehood or bias. There is no law which prohibits blood relations from testifying for the prosecution where such a relation is the victim of the crime committed.”* (p. 1640 A)

*Evidence - Credibility of*

**10. The appellant in his submission sought to equate the case at hand with the one held in Imhanria v. Nigeria Army (2007) 14 NWLR (Pt.1053) page 76 at 104. As rightly observed by the respondent’s counsel, the case of Imhanria v. Nigeria Army (supra) is greatly distinguished from the one under review. In other words, while the case under reference relates to an accomplice, i.e. a person knowingly, voluntarily and with common intent united with the principal offender in the commission of crime, there is no iota of any evidence that P.W.1, in the present case, ever united with the appellant to kill the deceased. The act of conceiving and killing the deceased was solely performed by the appellant. Therefore, contrary to the contention held by the appellant’s counsel, P.W.1 was never a tainted witness or an accomplice but is a witness of truth, credible and whose evidence was properly evaluated by the trial court and affirmed by the lower court. The said issue B is therefore also resolved against the appellant.** (p. 1641 A)

*MURDER - Proof - Cause of death - Instrument used*

**11. The appellant herein is very particular about the actual instrument used in striking the deceased i.e. to say, the exact specification as to whether it was an axe or cutlass/machete that was used. What is of relevant significance is the fact that the deceased was struck with a heavy weapon (axe) in the middle of the head, which got broken and caused his instant death. It is well taken that the prosecution has proved beyond**



***reasonable doubt that the accused used the weapon on the deceased and caused his death. The medical doctor PW.4 in his report did confirm and corroborate the use of weapon on the deceased's head, which I say again is a vital part of the body. The question whether the instrument used was an axe or machete did not in the least matter. What is relevant is that the instrument was heavy and lethal. It was also applied very forcefully and caused instant death.*** (p. 1642 F) B

## NOTABLE POINTS OF INTEREST C

### **OGUNBIYI JSC**

#### ***1. Criminal procedure – Proof – Burden of***

The general principle of law is well entrenched and also enunciated in our Constitution that proof of criminal responsibility is solely placed on the prosecution who is accusing the accused person of having committed an offence. The underlying reason is to ensure that the prosecution satisfies for certainty that the accused and no other person committed the alleged offence. It is not therefore required of an accused person to prove his innocence or that he did not commit the offence with which he is charged. Section 36(5) of our Constitution is very clear that every person who is charged with commission of an offence shall be presumed innocent until proven guilty. He who asserts must prove and that must be beyond reasonable doubt. By Section 138(3) of the Evidence Act however, once the proof of a crime beyond reasonable doubt is discharged, then the burden of proving reasonable doubt is shifted on to the accused person. (p. 1625 G) D  
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#### ***2. Murder – Ingredients – Proof*** G

Our criminal justice system is well entrenched that except in the circumstances mentioned in Section 222 of the Code, culpable homicide is punishable with death if the act by which death is caused is done with the intention of causing death, or if the doer of the act knew or had reason to know that death would be the probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause. For purpose of securing conviction under Section 221 of the Code therefore, the onus is squarely placed H

on the prosecution, who must as a matter of duty establish by credible and cogent evidence the following three ingredients:

- 1) The death of the deceased in question,
- 2) That the death must have been caused by act of the accused, and

B 3) That the said act which caused the death was intentional with the accused having the knowledge that death or grievous bodily harm was probable consequence of his act.

C For the prosecution to discharge the onus placed on it therefore, the proof must be beyond reasonable doubt through direct oral evidence or testimony of a witness/witnesses who saw and heard and believed. Proof beyond reasonable doubt can also be by means of a circumstantial evidence as well as by confessional statement, which is proved to be free from all form of impediments such as duress, D inducement or favour which existence will discredit the statement and render it inadmissible in evidence. It is pertinent to restate that the three ingredients must be satisfied for purpose of conviction for murder. (p. 1627 E)

### E ***3. Respondent should focus on his own case***

It is worth noting that the appellant in his evidence (final address) at page 33 of the record, before the trial court, raised the defence of self defence and that of provocation. The defences were not made an issue in the appeal before us as there is no ground of appeal F raised thereon by the appellant. The respondent in his brief however took it upon himself and advanced submission thereon at paragraph 4.20 page 7 of his brief of argument. The respondent by law is expected to defend the judgment of the court except where he cross-appeals or files Respondent's notice. This is not the case at hand. G Appellant, in his own wisdom did not allude to the defence in his brief of argument. The respondent is not to take upon himself to do the appellant's case or he will be working outside his limitation or be seen to cry more than the bereaved. The respondent in the circumstance is well advised to keep his peace. (p. 1635 H)

### **REPRESENTATION**

M.A. Kazeem with O. Olanrewaju, and Tobi Bolarinwa Safuja; For the Appellant

S.B. Umar DPP Katsina State with Hassan Yusuf ADPP and Halima Bajida PSC; For the Respondent

### **CASES REFERRED TO**

- Jibril v. Mil. Admin. Kwara State (2007) 3 NWLR (pt. 1021) 357  
 Aigbadion v. State (2007) NWLR (pt. 666) 686 B  
 Olayinka v. State (2007) 9 NWLR (pt. 1040) 561  
 Safeti v. Safeti (2007) 2 NWLR (pt. 1017) 56  
 Jua v. State (2010) 4 NWLR (pt. 1184) 217  
 Anyegwu v. Onuche (2009) 3 NWLR (pt. 1129) 659 C  
 Stephen v. State (1986) 5 NWLR (pt. 46) 978  
 Igabele v. State (2006) 6 NWLR (pt. 975) 100  
 Akinmoju v. State (2000) 6 NWLR (pt. 552) 608  
 Akpan v. State (1991) 3 NWLR (pt. 182) 664  
 Egberetamu v. State (2014) 22 WRN 166 D  
 Michael v. State (2008) 9 MJSC 61  
 Ummaru v. Gwandu N. A. (1961) 1 All NLR 545  
 Adamu v. Kano N. A. (1956) SC NLR 65  
 Bakuri v. State (1965) NMLR 164 E

### **STATUTES REFERRED TO**

- Penal Code, s. 221  
 Evidence Act 2011, s. 135(1)

### **LEAD JUDGMENT BY OGUNBIYI JSC**

The appeal is against the judgment of the Court of Appeal, Kaduna Division delivered on the 27th day of May, 2011. The court affirmed the conviction and sentence of the appellant by the trial court for the offence of culpable homicide punishable with death contrary to Section 221 of the Penal Code. G

By a charge dated the 9th day of February, 2005, the appellant was arraigned before the High Court of Katsina State for the offence of culpable homicide punishable with death contrary to Section 221 of the Penal Code. H

Briefly, the facts of the case were that the appellant had, on 17th April, 2004 caused the death of one Alhaji Garba Namuri by striking his head with an axe which is an offence punishable under Section 221 of the Penal Code.

At the trial, 5 (five) witnesses testified for the prosecution (respondent) and two Exhibits (A and B) being the post mortem report and the axe used respectively, were tendered in evidence. The accused/appellant testified for himself as D.W.1 and called 2 other witnesses, D.W.2 and D.W.3 but did not tender any exhibit. At the conclusion of the trial, the appellant was found guilty as charged and was convicted and condemned to death by hanging on the 19th March, 2009.

Dissatisfied with the judgment, the appellant appealed to the Court of Appeal, Kaduna Division. In its judgment delivered on 27th May, 2011 the lower court affirmed the decision of the trial court. Again the appellant was dissatisfied with the said judgment and hence the appeal now before us.

In consonance with the rules of court, briefs were filed and exchanged between parties. While the appellant's brief was settled by Adeniyi Kazeem, Esq., that of the respondent was settled by S.B. Umar (Mrs.), the DPP Katsina State. On the 26th February, 2015, both counsel adopted and relied on their respective briefs of argument. The appellant's counsel urged in favour of allowing the appeal while the respondent argued that same should be dismissed as it lacks merit.

The four issues raised on the appellant's brief of argument are hereby reproduced as follows:-

A) Whether the totality of evidence placed by the prosecution before the trial court was enough to convict the appellant for the offence of culpable homicide under Section 221 Penal Code. (Ground 1)

B) Whether the evidence of P.W.1 who qualifies in circumstances of the case as a tainted witness was enough to sustain a charge of culpable homicide under Section 221 Penal Code against the appellant? (Ground 2)

C) Whether the Court of Appeal erred in law when it held that *"in this appeal, the findings of the trial court are overwhelming and not a shred of evidence was adduced by the Appellant to dislodge the eye witness account of P.W.1..."*? (Ground 3)

D) Whether the Court of Appeal erred in law when it held that *"Even if Exhibit B the lethal weapon used was not recovered or that no forensic analysis was carried out on it, it would not have*

negated the findings of the trial court as to use of the axe on the deceased's skull. (Ground 1)

On behalf of the respondent, the four issues formulated by the appellant were also adopted. The appeal will therefore be determined in the order of the formulation by the appellant's counsel. In other words, issues A and C will be taken together, while issues B and D will be considered separately and in that order.

The totality of the submission by appellant's counsel on issues A and C can vividly be summarized in the following arguments; that the account by the appellant of the incident of 17th April, 2004 raises doubts on the Respondent's case, hence, the respondent has not been able to establish beyond reasonable doubt that the deceased died as a result of the act of the appellant; that the eye witness account of P.W.1 principally and which was relied upon by the trial court and the Court of Appeal in convicting the appellant is unreliable because P.W.1 is not a witness of truth. Counsel therefore urged that the decision of the Court of Appeal which confirmed the sentence of the trial court on the appellant should be overturned and set aside. This, counsel submits principally because the lower court's affirmation of the trial court's findings that P.W.1 was a witness of truth and also a credible eye witness stem from want of proper evaluation of the evidence before that court. It is the counsel's further submission that the appellant's account also faults the decision of the lower court that the evidence against the appellant was overwhelming and that a shred of evidence was not adduced by him. It is counsel's argument also that the respondent did not in any way discredit the evidence by the appellant, hence, the court should in the circumstance accept his account as the true story of the event of 17th April, 2004. The counsel cites in support the cases of *Jibril v. Mil. Admin, Kwara State* (2007) 3 NWLR (Pt.1021) page 357 at 383 and *Alfred Aigbadion v. State* (2007) NWLR (Pt. 666) page 686.

Further still, that the failure by the lower court to re-evaluate properly the account of the appellant concerning the incident of 17th of April, 2004 has occasioned a miscarriage of justice against the appellant as it was held in the case of *Olayinka v. State* (2007) 9 NWLR (Pt. 1040) page 561 at 586-587; that there are lots of unanswered questions in the evidence by the P.W.1 which should cast doubts on the respondent's case. Again, the case of *Jibril v. Mil. Admin, Kwara*

State under reference supra is a point of reference; that inconsistency exists between the evidence of P.W.1 relied on by the trial court and the actual evidence given at the trial; that the trial court's evaluation of the evidence of P.W.1 was not borne out of evidence given by the said witness. In the circumstance therefore, that the Court of Appeal B ought not to have affirmed such decision based on wrong evaluation of evidence. See the view held in the case of *Safeti v. Safeti* (2007) 2 NWLR (Pt. 1017) page 56; that where any doubt exists in a criminal case as to the culpability of an accused person, it should be resolved C in favour of the appellant.

The counsel urged that the court should, in the circumstance, resolve the issues in favour of the appellant and allow the appeal.

In response to the appellant's four issues, the respondent's counsel also submits in the same order taken on behalf of the appel- D lant. In response to issues A and C therefore, the respondent's counsel submits that, reasonable doubt which will justify an acquittal is a doubt based on reason arising from evidence or lack of it; that it is a doubt which a reasonable man/woman might entertain; that it is nei- E ther a fanciful doubt nor an imaginary one. Rather, it is one that would cause prudent men to hesitate before acting in matters of importance to themselves. Reference in support was made to the case of *Jua v. State* (2010) 4 NWLR (Pt. 1184) p. 217 at 243; that the Court of Appeal does not engage in re-evaluation of evidence by the F trial court, unless such evaluation was seen to be perverse. See also the case of *Anyegwu v. Onuche* (2009) 3 NWLR (Pt. 1129) p. 659.

On a clarion call made by the appellant to re-evaluate the evidence of P.W.1, the respondent's counsel re-emphasizes that there is no reason warranting the lower court to re-evaluate the evidence of G the said witness P.W.1; that the inconsistency (if any) in the evidence of the witness at the trial and the one actually evaluated by the trial court are not substantial to have occasioned a miscarriage of justice; that, what was fundamental and which the trial court relied on to convict the appellant was, whether it was the act of hitting the de- H ceased with an axe by the appellant, that caused the death of the deceased.

On the defence of self defence and that of provocation raised by the appellant (in final address before the trial court), the respondent's counsel submits that the defences cannot be raised at

one and the same time on the same facts. The counsel relied on the case of *Stephen v. State* (1986) 5 NWLR (Pt.46) p.978 at 981.

In summary and in respect of the foregoing issues A and C, the respondent's counsel concludes that the totality of the evidence adduced by the prosecution before the trial court was enough to convict the appellant for the offence of murder as charged; that the lower court was therefore right when it held that *"in this appeal the findings of the trial court is overwhelming and not a shred of evidence was adduced by the appellant to dislodge the eye witness account of P.W.1"*; that the Court of Appeal does not engage in re-evaluation of evidence by the trial court, unless such evaluation was seen to be perverse. See *Anyegwu v. Onuche* (supra); that the trial court properly evaluated the evidence of the appellant (pp. 50-55 of the records) which the Court of Appeal saw no reason to disturb before affirming the decision of the trial court. The learned Counsel urges us to resolve issues A and C against the appellant and in favour of the respondent.

The two issues A and C raised by the appellant on the totality are questioning vehemently:

(1) Whether the evidence placed by the prosecution before the trial court was sufficient for the conviction of the appellant for the offence of murder?

(2) Whether the lower court erred in law when it held and affirmed overwhelmingly the findings of the trial court against the appellant upon the eye witness account of P.W.1.?

It is pertinent to restate that, while the learned counsel for the appellant emphatically discredits as a sham the evidence adduced by the respondent in its totality, the respondent's counsel however submits the evidence as sufficient and enough for the conviction of the appellant for the offence charged and sentenced.

The general principle of law is well entrenched and also enunciated in our Constitution that proof of criminal responsibility is solely placed on the prosecution who is accusing the accused person of having committed an offence. The underlying reason is to ensure that the prosecution satisfies for certainty that the accused and no other person committed the alleged offence. It is not therefore required of an accused person to prove his innocence or that he did not commit the offence with which he is charged. Section 36(5) of

our Constitution is very clear that every person who is charged with commission of an offence shall be presumed innocent until proven guilty. He who asserts must prove and that must be beyond reasonable doubt. By Section 138(3) of the Evidence Act however, once the proof of a crime beyond reasonable doubt is discharged, then  
 B the burden of proving reasonable doubt is shifted on to the accused person. This is what this court had to say for instance in the case of Igabele v. State (2006) 6 NWLR (pt. 975) p.100 per Onnoghen, JSC at 131:-

C *“The burden is always on the prosecution to prove the guilt of the accused person beyond all reasonable doubt. Generally speaking, there is no duty on the accused to prove his innocence. However, where circumstances arise, as in this case, some explanation may be required from the accused person as the facts against him are*  
 D *strong. Where he fails to offer such explanations as happened in this case, his failure will support an inference of guilt against him...”*

At page 136 of the said reference, his Lordship Ogbuagu, JSC, observed also and said:-

E *“I am satisfied that the evidence adduced by the prosecution was tested, scrutinized and accepted by the trial court, and that it conclusively pointed to the Appellant, as the perpetrator of the murder of the deceased. It was for him to rebut the presumption that he committed the crime, at least, to cast a reasonable doubt on the*  
 F *prosecution’s case by preponderance of possibilities.”*

The same consideration and conclusion was further reached in the case of Akinmoju v. State (2000) 6 NWLR (Pt. 552) p.608 per Iguh, JSC at page 629. The duty of casting doubt on the case of the prosecution is on the accused person who can rebut the presumption of guilt against him.  
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The key star witness for the prosecution was P.W.1 who was the only eye-witness to the commission of the crime. The learned trial court judge was convinced beyond reasonable doubt that the appellant, and indeed non other, was the murderer of the deceased,  
 H Alhaji Garba Manuri. At page 53 of the record of appeal for instance, the trial court having assessed and evaluated the evidence proffered by the prosecution had this to say at the last paragraph.

*“I believe P.W.1 that the accused person had sneaked to where the deceased was lying down and inflicted the fatal blow on his head*



*with the axe after which he tried to do the same to PW.1 if not for the latter's prompt unsheathing of his machete and facing the accused which the accused person found overwhelming and therefore decided to retreat and escape."*

The witness PW.1 is one by name Muhammadu Jabba a cattle rearer and knew both the accused and the deceased Alhaji Garba Namuri. The witness therefore gave a detailed vivid account of the incident that took place on the 17th April, 2004. This was PW.1's evidence in chief at page 9 of the record:-

*"As we were lying under the tree, the accused suddenly hit Alhaji Garba with an axe and the latter died instantly. The accused hit Alhaji Garba with axe right in the centre of his head. I got hold of the axe and took it from him by twisting his hand and pushed him into the stream. I also got his cap and his wrist watch."*

PW.1 was not cross examined specifically on the crucial facts of his evidence in chief. The basis for the trial court's believe in PW.1's testimony was predicated on his evidence given in chief as reproduced supra. This was very clear on the record at page 53 wherein the trial judge did evaluate the evidence of both prosecution and defence thoroughly and eventually narrowed on that by PW.1 whose evidence had proved beyond reasonable doubt, the prosecution's case.

Our criminal justice system is well entrenched that except in the circumstances mentioned in Section 222 of the Code, culpable homicide is punishable with death if the act by which death is caused is done with the intention of causing death, or if the doer of the act knew or had reason to know that death would be the probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause. For purpose of securing conviction under Section 221 of the Code therefore, the onus is squarely placed on the prosecution, who must as a matter of duty establish by credible and cogent evidence the following three ingredients:

- 1) The death of the deceased in question,
- 2) That the death must have been caused by act of the accused, and
- 3) That the said act which caused the death was intentional with the accused having the knowledge that death or grievous bodily harm was probable consequence of his act.

For the prosecution to discharge the onus placed on it therefore, the proof must be beyond reasonable doubt through direct oral evidence or testimony of a witness/witnesses who saw and heard and believed. Proof beyond reasonable doubt can also be by means of a circumstantial evidence as well as by confessional statement, which is proved to be free from all form of impediments such as duress, inducement or favour which existence will discredit the statement and render it inadmissible in evidence. It is pertinent to restate that the three ingredients must be satisfied for purpose of conviction for murder.

***The 1st ingredient required is to prove the death of the deceased; the evidence by P.W.1, reproduced earlier in the course of this judgment is direct and sacrosanct. He was categorical that in his presence, the accused/appellant hit the deceased with an axe and he died instantly. P.W.2, one Alhaji Sani Barume was the father of the deceased. His evidence corroborated that of P.W.1 to the effect that he visited the scene of incident at Kadde and confirmed the death of his son Alhaji Garba Namuri and witnessed the burial of the corpse. P.W.4, Imadudden Zakariya was the medical officer who performed the post-mortem examination of the deceased's body at the General Hospital Funtua. On his examination of the corpse he said:-***

***"I found a big cut wound on the skull and in (sic) culminated fracture of the skull. There was also a brain injury... The owner of the corpse is one Garba."***

***It was the doctor's evidence that the corpse was accompanied by a policeman. The most possible cause of death in the doctor's opinion was the neutrogena and hemorrhagic shock which led to cardio-vascular and respiratory arrest. Based on the evidence of P.W.1, P.W.2 and P.W.4 supra, there is therefore no doubt or contradiction that the deceased Alhaji Garba Namuri is in fact dead.***

***The second ingredient is to prove that it was the act of the accused/appellant that must have caused the deceased's death. The key prosecution witness on whose evidence the trial court relied for the conviction of the appellant was P.W.1 whom I said earlier was in fact the only direct eye witness to***

***the incident. The law is well settled that no particular number of witnesses is required to prove the accused guilty of the offence charged. In other words, proof can be satisfied even on the testimony of only one witness, provided the witness is credible, cogent and believable.***

***P.W.1 gave a detailed evidence of the callous and brutal murder of Alhaji Garba Namuri by the accused person. His evidence was very direct and exact. He was neither discredited nor cross examined specifically on the facts of his evidence in a material particular. He witnessed everything relating the incident from beginning to the end. He was physically present and did engage the accused/appellant by seizing the axe which the appellant used in hacking the late Alhaji Garba Namuri to death.***

It is the evidence of P.W.1 that the deceased and himself were lying under a tree at the time when suddenly, the appellant hit the deceased with an axe at the centre of his head and the deceased died instantly. An axe is by nature a very lethal weapon. The sudden use of it on the deceased's head caused his death instantly. Common sense will dictate, in the circumstance, that there cannot be any other cause of death of the victim in this case other than the unexpected sudden and wicked act inflicted on him by the appellant. This is more so when regard is had to the evidence of P.W.4, the medical doctor, who in his report gave a vivid findings of the nature of the injury inflicted on the deceased and the cause of death thereof. In other words, he said, on physical examination of the deceased's corpse, he found a big cut wound on the skull and in culminated fracture of the skull.

***The 3rd and last ingredient has to do with the intention of the accused wherein the prosecution has to prove that the accused intended to cause the death of his victim or had the knowledge that death or grievous bodily harm was a probable consequence of his act.*** It has been pronounced times over that even the devil do not know the intention of a man. The Bible says that the heart of man is desperately wicked and who can understand it? It is safe to say therefore that man's intention would be better inferred from the manifestation of his overt act.

***The interpretation of the accused's intention on the fateful***

**day in question can be known and better explained if the salient features of the account of the evidence by P.W.1 is again recapitulated and dutifully analyzed. I need to say that the detailed evidence had been stated earlier in the course of this judgment. It is in evidence by the witness P.W.1, for instance,**  
 B **that the accused came suddenly and hit the deceased with an axe while they were lying down; the part of the body hit was right in the centre of the deceased's head and he died instantly.**

The accused was represented at the trial court by a counsel Lawal Amah. The accused who spoke Hausa was also provided with an  
 C interpreter by name Bala Ibrahim, a court clerk. There was no cross examination of the witness P.W.1 on any relevant specifics or on the crucial facts of his evidence. The cross examination was general and had no bearing on any serious point which would discredit P.W.1.'s  
 D testimony.

The accused gave his evidence as D.W.1 at pages 22-23 of the record. His evidence related to an earlier incident of animosity between him and the deceased person, which same had to involve the intervention of the Divisional Police Officer (D.P.O.). It was the  
 E evidence of the accused that on the day in question he was waylaid at the stream by the deceased and Mamman Jabbo (P.W.1); that while P.W.1 was holding a machete and an axe, the deceased was holding a stick and an axe; that the duo challenged him (accused)  
 F while he was giving water to his cattle. That it was the duo who first attacked him, the accused; that he saw P.W.1 drew his machete from its sheath and when he missed hitting the accused, he struck the deceased with the machete.

Under cross examination by the prosecution, the accused  
 G affirmed that the deceased was not killed with an axe.

D.W.2 is by name Ali Umaru. He knew both the accused and the late Alhaji Garba Na-muri. He testified and confirmed the persisting animosity that existed between the deceased and the accused prior to the incident which had to involve the intervention of the  
 H Divisional Police Officer (D.P.O.).

D.W.3 is by name Sani Abdullahi who also knew both the accused and the deceased. The witness, like D.W.2 and the accused confirmed the prior outstanding misunderstanding between the accused and the deceased. It is pertinent to state that the testimony of

D.W.2 and D.W.3 had no relation whatsoever with the present case. They relate to some instances in the past relating certain misunderstanding over farm crops which the accused person's cattle were suspected to have destroyed. In my opinion, the cumulated effects of the chains of events could have established a sinister motive behind the killing of the deceased by the accused person. **Suffice it to say that although P.W.1 was the only eye witness to the hacking of the deceased with an axe (Exhibit 'B'), his evidence is sufficient as proof against the appellant. This is because under Section 179(1) of the Evidence Act, no particular number of witnesses shall be required for proof of any fact in any case. It is the quality of evidence adduced that matters and not the number of witnesses called.** See Akpan v. State (1991) 3 NWLR (Pt.182) p.664; see also Egberetamu v. State (2014) 22 WRN p.166.

It is pertinent to state further that the witness P.W.1 is very consistent in his evidence and did not mince his words, or confuse his testimony at any time. It is paramount, I repeat, that he was not cross examined at all on the specifics of his testimony. His evidence was unchallenged and the law is trite and settled on unchallenged evidence.

**By the use of the axe (Exhibit B) a lethal weapon on a very sensitive and vital part of the body, it is a confirmation that the accused intended the natural consequences of his act. In other words, death is the natural consequence of the circumstance of the accused's act. This is obvious when regard is had to the extent of the force used which resulted in the death of the victim instantly.**

**The presumption is true that a person intends the natural and foreseeable consequences of his act; an intention to kill can also be deduced from the nature and type of weapon used.** This court in the case of Michael v. State (2008) 9 MJSC 61 at page 73 had this to say:-

*"In a charge of culpable homicide, the nature of the weapon used, its weight and size are in the circumstance of the case essential in determining whether the conviction should be one of culpable homicide punishable with death or not."* See also Ummaru v. Gwandu N. A. (1961) 1 All NLR 545.

The use of Exhibit 'B' an axe in striking the head, as it is in

the case at hand, will in no doubt cause the havoc resulting in death which in this case was instant. The doctor's report was also a corroborative factor confirming the lethal nature of the weapon used. Also in the case of Michael v. State *supra*, at the same page 73, it was held further that:-

B *"where the deceased died on the spot soon after the injury inflicted by an accused person, the accused person will be guilty of causing the death."* See also a related view in the case of Adamu v. Kano N. A. (1956) SC NLR 65 and Bakuri v. State (1965) NMLR 164.

C ***It is the appellant's submission also that the lower court failed to re-evaluate properly the evidence of P.W.1. As rightly submitted by the respondent's counsel, re-evaluation of evidence by an appellate court is only done where the trial***  
D ***court has erred in evaluating the facts found by it. This is where the appellate court can re-examine the whole facts and come to an independent decision from the court of trial.*** See the case of Ebenechi v. State (*supra*). This court has also held in the case of Anyegwu v. Onuche (*supra*) and said:-

E *"Appeal Court can exercise the power/jurisdiction to re-evaluate evidence. Appeal Court can do so where the trial court fails, neglects or refuses to do so or does it in an improper way. The appeal court can conveniently embark on such re-evaluation where for instance:*

F *(a) The trial court's evaluation of the evidence is clearly perverse;*

*(b) The trial court drew wrong inferences from the totality of the evidence;*

G *(c) The trial court applied wrong principles of the law to accepted facts in the case."*

***It is the submission by the appellant's counsel for instance that the witness P.W.1 never explained how the appellant came about the axe allegedly used to hit the deceased.***  
H ***The counsel therefore has called upon this court to re-evaluate the evidence of the witness P.W.1. It is pertinent to state firmly that the condition calling for re-evaluation of evidence as called for by the appellant has been stated and spelt out clearly in the case of Anyegwu v. Onuche supra. The submission***

*sion by the appellant's counsel would have held water and proper if the circumstance existed in the instant case to have warranted the re-evaluation by the lower court. In my view, that circumstance did not arise in this case.*

*On the failure by the prosecution to tender the appellant's cap and wrist watch as exhibits, the appellant's counsel submits that it is detrimental to the respondent's case and cited in reference the case of Jibril v. Mil. Admin, Kwara State reference supra. I hasten to say at this point that the court in trial proceedings will admit in evidence only material facts for the just determination of the case before it. On the totality of the items recovered from the appellant therefore, what was relevant and material was the axe. With reference made to the case of Jibril v. Mil. Admin cited by the appellant's counsel supra, same as rightly submitted by the respondent's counsel is very much distinguishable from the instant case. This is because that case relates to an evidence given in favour of an adverse party by a witness who was not declared hostile witness and which created doubt in the prosecution's case and therefore gave the benefit to the accused. Comparatively, the items in the case at hand are not material and the reason why they were not tendered before the trial court. The reliance sought to make on the case of Jibril v. Mil. Admin does not therefore assist the appellant's case.*

The next point for consideration is whether or not there are inconsistencies in the evidence of PW.1 relied upon by the trial court and the actual evidence given at the trial. ***It is material to state that minor inconsistencies that are not fundamental should not operate to vitiate the whole judgment.*** The trial court in the case at hand relied on the evidence of PW.1 that it was the act of hitting the deceased with an axe by the appellant that caused the death of the deceased. On treatment of a mistake caused by a trial court, it is the view of this court in the case of Tanko v. State (2009) 4 NWLR (Pt. 1131) p.430 at 473-474 that:-

*"It is not every mistake by a trial court in its judgment that will vitiate the said judgment. In other words, a mistake or an error in a judgment is immaterial. It is only when the error is substantial, in that it has occasioned a miscarriage of justice or injustice that the appellate*

*court is bound to interfere...*"

**Contrary to the contention held by the learned counsel for the appellant therefore, the inconsistencies alleged in the evidence of P.W.1 before the trial and the one as evaluated by the said court are insignificant and not substantial to have occasioned a miscarriage of justice.**

**Furthermore and on the credibility of the witnesses before the trial court especially P.W.1, it is well established that the trial court has the singular opportunity of seeing, watching, assessing and observing the witness in the box. In other words, the creditability of witnesses is a matter for the trial court.** See *R. v. Omisade* (1964) 1 All NLR 233. See also the case of *Attah v. State* (supra). **In the case before us, the trial court believed and accepted P.W.1.'s evidence in preference to that of the appellant; the court of appeal also examined the evidence of P.W.1 and found no reason why it should disturb the findings by the trial court and thus affirmed the decision.**

**The law is well settled again that it is safe for the court, in the circumstance at hand, to convict on an evidence of a single witness who proffers credible evidence and whose testimony does not, by law require corroboration. Once the court is satisfied with the quality and credibility of the evidence of such a witness and accepts, conviction based on the evidence thereon should not be open to question.** See the case of *Ogunzee v. State* (1998) 5 NWLR (Pt. 551) p. 521 per Iguh, JSC where it was held as safe to convict on single witness provided however that he is neither an accomplice nor a tainted witness, which will in the circumstance require a corroboration.

It is the submission by the appellant's counsel that out of the three ingredients necessary to prove an offence of culpable homicide punishable with death, only the 1st, that is the death of the deceased was proved and is therefore not in contention; that the second and third ingredients were however not proved beyond reasonable doubt as required by law. The learned counsel proceeded to relate graphically and also challenges the judgment of the lower court at pages 164 and 165 of the record where it affirmatively endorsed the evaluation of P.W.1's evidence at the trial court; that the evidence by P.W.1 was not conclusive as to who actually killed the deceased and the real



circumstances under which the deceased died; that, had the lower court taken a deeper or more critical look at trial court's evaluation of the evidence by the prosecution especially that of P.W.1 regarding the event of 17th of April, 2004 as against the appellant's evidence, it would have discovered that P.W.1's evidence which was relied on was largely incredible so as to cast doubt on the veracity of the story told by him. It is a further submission by the appellant's counsel that the lower court erred in affirming the trial court's basis for disbelieving the story told by the accused/appellant and believing that by the witness P.W.1. On the failure of trial court to properly consider an issue before it, the counsel cited the case of Odutola Holdings Ltd. v. Ladejota (2006) 7 NWLR (Pt. 322) page 1393 at 1419. B  
C

On a careful review of the record of appeal before us it is clearly specified that the trial court took evidence from all available witnesses, both for the prosecution and the defence, who were represented by counsel. The accused in particular gave evidence on his own behalf and called his witnesses. The defence counsel had ample opportunity to cross examine the prosecution witnesses without any inhibition. The accused, even though he spoke in Hausa, he was however provided a service of an interpreter. The trial court, no doubt had the opportunity of assessing the credibility of all the witnesses before it. D  
E

The law is settled on the attitude of appellate court on the findings of a trial court as it was held by this court again in the case of Anyegwu v. Onuche supra at page 674 as follows:- F

*"When a trial court has carried out its assignment satisfactorily, an appeal Court shall be left with no option but to affirm such a decision. To do otherwise will institutionalize what the appellant is complaining of that is miscarriage of justice."* Therefore, an appellate court will only interfere with the findings of a trial court on credibility of witnesses where it is manifestly seen to be unreasonable or otherwise faulted. See the decision of this court in the case of Kazeem v. Mosaku (2007) 17 NWLR (Pt. 1064) p.523 at 545-546. G

It is worth noting that the appellant in his evidence (final address) at page 33 of the record, before the trial court, raised the defence of self defence and that of provocation. The defences were not made an issue in the appeal before us as there is no ground of appeal raised thereon by the appellant. The respondent in his brief H

however took it upon himself and advanced submission thereon at paragraph 4.20 page 7 of his brief of argument. The respondent by law is expected to defend the judgment of the court except where he cross-appeals or files Respondent's notice. This is not the case at hand. Appellant, in his own wisdom did not allude to the defence in his  
 B brief of argument. The respondent is not to take upon himself to do the appellant's case or he will be working outside his limitation or be seen to cry more than the bereaved. The respondent in the circumstance is well advised to keep his peace.

C It is also the submission by counsel for the appellant further that the respondent failed to discredit or dislodge the evidence of the appellant under cross examination as to the incident of 17th April, 2004 and which the Court of Appeal failed to consider or avert its attention thereto; counsel contends further that the neglect by the  
 D respondent to cross examine the appellant fully has led to the failure of the Respondent to discharge the burden of proof beyond reasonable doubt against the appellant; that the effect of the failure has created doubt on the culpability of the appellant, which must be resolved in his favour.

E In the course of this judgment, the salient feature of the evidence given by the accused (appellant) have been examined carefully and considered. As a witness, the accused gave a vivid background of the genesis of his relationship with the deceased which had  
 F continued to deteriorate to the level of intervention by the Divisional Police Officer (D.P.O.). He also gave account of the incident that took place on the 17th April, 2004 on the fateful day. He was duly cross examined by the prosecution on the relevant issues. ***I wish to state at this point that for cross examination to stand its worth, it***  
 G ***needed not be extensive before it could be relevant and sufficient provided the crucial facts raised in the evidence in chief are examined and addressed thereon. It is only when a party completely refuses or fails to cross examine a witness that such a party will be deemed to have accepted the testimony of***  
 H ***the said witness.*** See the case of Agbo v. State (2006) 6 NWLR (pt. 977) p. 545. ***Therefore the submission by the appellant's counsel on the absence of cross examination of the appellant by the respondent does not have a legal backing, I hold.***

In the circumstance of this case, the totality of the evidence

placed by the prosecution before the trial court was greatly sufficient and supporting the conviction of the appellant for the offence charged. In other words, the Court of Appeal was on the right footing when it held that *“in this appeal, the findings of the trial court is overwhelming and not a shred of evidence was adduced by the appellant to dislodge the eye witness account of P.W.1...”* B

I also endorse the view held by their Lordships and resolve issues A and C against the appellant.

#### Issue B

Whether the evidence of P.W.1 who qualifies in circumstances of the case as a tainted witness was enough to sustain a charge of murder against the appellant? C

It is the submission by the appellant’s counsel that the affirmation of the trial court’s finding by the lower court that, P.W.1 was a witness of truth and a credible eye witness stems from want of proper evaluation of the evidence before them; that a proper analysis of P.W.1’s testimony will reveal that he is not truthful but a tainted witness; for instance and that contrary to the narration of the witness, there is enough evidence to show that there was indeed animosity not only between the appellant and the deceased but also between the appellant on one part and the deceased and P.W.1 on the other part which necessitated the attack on the appellant; that the appellant’s account at page 24 of the record of appeal is a reference point through which he sought to confirm that he was the person attacked by P.W.1 and that it was in the process of his avoiding being struck by the witness, P.W.1, that the deceased was hit on the skull; that it was not true that P.W.1, was an observer as contemplated in the definition of an eye witness by the Black’s Law Dictionary, 6th Edition; rather he was an active participant who voluntarily and with common intention connived with the deceased in the attack of the appellant. In support of his submission, the learned counsel cited the case of Imhanria v. Nigeria Army (2007) 14 NWLR (Pt. 1053) page 76 at 104. D E F G

It is the contention of counsel therefore that P.W.1 qualifies as a tainted witness whom the trial court should have taken his evidence with caution as provided in Section 198 of the Evidence Act 2011. P.W.1, counsel submits, is serving a purpose by indicting the appellant for the death of the deceased in order to escape punishment. H

See the cases of *Olalekan v. State* (2001) 18 NWLR (Pt. 746) p.793 and *Imhanria v. Nigeria Army* (supra) at page 104. Counsel submits therefore that the two lower courts ought to have warned themselves that it was unsafe to rely on the evidence of P.W.1 for the conviction and sentence of the appellant; that the findings by the lower courts  
 B that P.W.1 is a witness of truth and an eye witness to the incident were both erroneous. Counsel urged that the issue be resolved in favour of the appellant.

In response to the said issue, the learned counsel for the respondent recapitulates P.W.1's vivid account of the incident as to what  
 C he saw, observed and heard on the 17th April, 2004; that is to say the encounter between the deceased and the appellant which led to the death of the former. Counsel submits further that the trial court properly evaluated the evidence of P.W.1 and found him to be a  
 D witness of truth and credible eye witness which the lower court considered and also affirmed. Counsel submits further that the existence of blood relationship between deceased and P.W.1 does not qualify him (P.W.1) a tainted witness; that contrary to the contention held by the appellant's counsel, P.W.1 was not a tainted witness as alleged  
 E and that the lower court was therefore right in affirming the finding of the trial court that he was a witness of truth and credible.

On the call made by the appellant's counsel to discredit the witness P.W.1 for being a relation of the deceased, the respondent's  
 F counsel cited the judicial authority of the case of *Nkebisi v. State* (2010) 5 NWLR (Pt.1188) p.411 at 492. It is a further contention of counsel that the fact that P.W.1 did not report the incident to the police or any other authority should not be made a subject of heavy weather by the appellant and thus accrediting to the witness an act of bad faith  
 G for purpose of discrediting his integrity as a credible witness. On burden of proof on accused in criminal trials, counsel cites the view held by this court in the case of *Jua v. State* (supra). The counsel concluded that P.W.1 did not qualify in the circumstance of the case as a tainted witness, but that his evidence was enough to sustain a charge  
 H of murder against the appellant.

The appellant, in the issue at hand is questioning vehemently the credibility of P.W.1, whom he brands a tainted witness. In other words, whether in the circumstance of the case the evidence by the witness was safe and enough to sustain the charge of murder levied

against the accused/appellant? The proof as to whether PW.1 qualifies as a tainted witness is a question of fact and also the definition thereof. This court has held in the case of *Olaiye v. State* (2010) 3 NWLR (pt. 1181) p. 423 at 437-438 that:-

*“A tainted witness is a witness who is an accomplice or who by the evidence he gives may and could be regarded as having some purpose of his own to serve...”* B

It is pertinent to state that the issue of PW.1 being an accomplice was raised only during the defence of the appellant at pages 23 and 24 of the printed record. I have said somewhere in the course of this judgment that in his evidence in chief, PW.1 gave a vivid account of what he saw, observed and heard on 17th April, 2004 between the deceased and the appellant which led to the death of the deceased. He was duly cross examined by the appellant, who did not deem it necessary to establish before the trial court that the witness PW.1 was either an accomplice or that he had a purpose of his own to serve. As rightly submitted by the learned counsel for the respondent, the raising of the issue by the appellant in his defence was clearly an after thought and which is sought to dislodge the credibility, and integrity of the evidence given by the witness PW.1. C D E

The question of proper evaluation of PW.1's evidence by the trial court and which the lower court also approves was an issue which was considered extensively in the first set of issues resolved earlier. I only seek to emphasize further the position of the law which is well entrenched that evaluation of evidence is the primary duty of the trial court who saw and heard the witnesses testify in the witness box; the said court therefore, has the duty to assess the credibility of the witnesses. See again the decision of this court in the case of *Attah v. State* (supra). It was the trial court who assessed PW.1 and properly evaluated his evidence before approving him as a witness of truth and also credible. The Court of Appeal did not find any cause why the trial court's evaluation should be disturbed in the absence of any reason discrediting him by the appellant. F G

Ample evidence on the record reveal certain animosity between the appellant and the deceased. There is no corresponding evidence of such which existed between the appellant and PW.1. Evidence of Appellant himself and also that of his witnesses D.W.2 and D.W.3 are all at consensus that there was a misunderstanding H

between the deceased and the appellant prior to the event of 17th April, 2004 and not between P.W.1 and the appellant.

***The appellant further challenges the relationship between P.W.1 and the deceased and accosted him a tainted witness. The law is well settled on treatment of evidence of blood relations of deceased in murder cases. For instance this court had held thus in the case of Nkebisi v. State (2010) 5 NWLR (pt. 1188) p.411 at p. 492:-***

***“A case is not lost on the ground that those who are witnesses are members of the same family or community. What is important is their credibility and they are not tainted witnesses. The mere fact that witnesses are relations of the deceased does not mean that they are not competent witnesses for the prosecution. Thus evidence of a relation can be accepted if cogent enough to rule out the possibility of deliberate falsehood or bias. There is no law which prohibits blood relations from testifying for the prosecution where such a relation is the victim of the crime committed.”*** See also the case of Omotola v. State (2009) 7 NWLR (pt. 1139) p. 148 at 195-196.

In his evidence before the trial court, the appellant did mention the names of a number of individuals whom he said accompanied him to Faskari police station to lodge a complaint: these are people like Abbas Machika, Nasiru Abubakar Maduka, one Hardo Dogo and Umaru Iya whom the accused said conveyed him on a motor cycle to the village head's house. As rightly submitted by the respondent's counsel, none of the people mentioned was called by the appellant to testify and support his assertion. There is no evidence either that all or any of them is out of reach. The appellant under cross examination confirmed that Hardo Dogo is in fact alive. The reason for their absence will certainly work against the appellant who is presumed to have refused calling them as witnesses. This is not to say however that general burden of proof had shifted away from the prosecution. Rather, with the prosecution having made a strong case against the appellant through P.W.1, the testimony of those witnesses, who were left out by the appellant, would have served as evidence of rebuttal of the presumption either that he committed the crime or to cause doubt on the prosecution's case by preponderance of probabilities as held out in *Jua v. State* (supra).

***The appellant in his submission sought to equate the case at hand with the one held in Imhanria v. Nigeria Army (2007) 14 NWLR (Pt.1053) page 76 at 104. As rightly observed by the respondent's counsel, the case of Imhanria v. Nigeria Army (supra) is greatly distinguished from the one under review. In other words, while the case under reference relates to an accomplice, i.e. a person knowingly, voluntarily and with common intent united with the principal offender in the commission of crime, there is no iota of any evidence that P.W.1, in the present case, ever united with the appellant to kill the deceased. The act of conceiving and killing the deceased was solely performed by the appellant. Therefore, contrary to the contention held by the appellant's counsel, P.W.1 was never a tainted witness or an accomplice but is a witness of truth, credible and whose evidence was properly evaluated by the trial court and affirmed by the lower court. The said issue B is therefore also resolved against the appellant.***

#### Issue D

Whether the Court of Appeal erred in law when it held that *"Even if Exhibit 'B' the lethal weapon used was not recovered or that no forensic analysis was carried out on it, it would not have negated the finding of the trial court as to use of the axe on the deceased's skull."*

The appellant's counsel submits on this issue that a proper forensic analysis of both Exhibit 'B' (the axe) and the cutlass (machete) would have been germane in determining what instrument was actually used in striking down the deceased; that in the absence of such forensic analysis, the instant case could not have been proved beyond reasonable doubt. This, learned counsel submits especially where the appellant under cross-examination responded that:-

*"No the deceased wasn't killed with an axe."*

In the circumstance therefore, the appellant contends strongly that the finding by the trial court as to the cause of the deceased's death, which was endorsed by the Court of Appeal are both erroneous.

In response to the foregoing issue, the learned counsel for the respondent submits with approval the position taken by the lower court in respect of Exhibit 'B' being a lethal weapon and also the

absence of carrying out any forensic analysis of both Exhibit 'B' (the axe) and the cutlass (machete). The counsel cites the case of Ben v. State (2006) 16 NWLR (Pt. 1006) 582; that the submission by the appellant's counsel on the view held by the two lower courts in arriving at the conclusion *"that such injury could have only been inflicted by an axe,"* is unreasonable and misconceived; that such injury could not have been caused by any other instrument or weapon other than the axe (Exhibit 'B').

It is the totality of the respondent's submission that the lower court was right when it held that even if Exhibit 'B' was not recovered or that no forensic analysis was carried out on it, it would not have negated the judgment of the trial court. The counsel urged against overturning the concurrent findings of the High Court and the Court of Appeal where they are neither erroneous nor perverse. The counsel urged in favour of dismissing the appeal as lacking in merit.

The said last issue poses a question whether the failure to conduct forensic analysis of both the axe and cutlass, casts reasonable doubt on the respondent's case. See Ben v. State (2006) 16 NWLR (Pt.1006) p.582 wherein this court said thus at 595:-

*"Where a man is attacked with lethal weapon and died on the spot, cause of death can properly be inferred that the wound inflicted caused the death. In other words, where the cause of death is obvious, medical evidence ceases to be of any practical or legal necessity, where death is instantaneous or nearly so."*

***The appellant herein is very particular about the actual instrument used in striking the deceased i.e. to say, the exact specification as to whether it was an axe or cutlass/machete that was used. What is of relevant significance is the fact that the deceased was struck with a heavy weapon (axe) in the middle of the head, which got broken and caused his instant death. It is well taken that the prosecution has proved beyond reasonable doubt that the accused used the weapon on the deceased and caused his death. The medical doctor P.W.4 in his report did confirm and corroborate the use of weapon on the deceased's head, which I say again is a vital part of the body. The question whether the instrument used was an axe or machete did not in the least matter. What is relevant is that the instrument was heavy and lethal. It was***



**also applied very forcefully and caused instant death.**

P.W.1's evidence on the use of heavy object on the head was corroborated therefore by P.W.4, the medical doctor. In the course of the examination of the corpse, he found a big cut wound on the deceased's skull and also a culminated fracture of the skull. The appellant expects P.W.4 to state the specific instrument used and inflicted the big cut wound on deceased's skull which caused the eventual death. As rightly submitted on behalf of the respondent, the said witness is not under any obligation to state the kind of instrument used on the deceased. This is more so especially when the witness P.W.4 was not at the scene of incident. It was sufficient that his testimony and findings are corroborative of P.W.1, the star witness. In the light of the decision in the case of *Ben v. State* (supra) it was held that medical evidence is not essential in establishing the cause of death where the deceased was attacked with lethal weapon and died instantly, as it is in the appeal before us. The same principle was held in a number of related authorities in the following:- *Bakuri v. State* (1965) NMLR p.163, *Uyo v. A-G Bendel State* (1986) 1 NWLR (Pt.17) 481; *Onwumere v. State* (1991) 4 NWLR (Pt.188) 428; and *Nwachukwu v. State* (2002) 12 NWLR (Pt.782) p.543.

On a community reading of the foregoing authorities, it is overwhelming that the lower court was on a very sound footing when it held that *"Even if Exhibit 'B' the lethal weapon used was not recovered or that no forensic analysis was carried out, it would not have negated the finding of the trial court as to the use of the axe on the deceased's skull."*

The said issue D like all previous issues is also resolved against the appellant.

Briefly and on the position of the law relating to concurrent findings of the trial court and Court of Appeal, it is clear that this court cannot tamper with, or interfere therewith or overturn the said decisions of the two lower courts where they are neither erroneous nor perverse or are supported by credible evidence. See the decision of this court in the cases of *Kazeem v. Mosaku* and *Attah v. State* (supra). The concurrent findings of the two lower courts are supported by credible evidence and did not result in any miscarriage of justice on the appellant and I so hold.

On the totality of this appeal and with all issues A, B, C and D

resolved against the appellant, the same is hereby dismissed as lacking in merit.

The judgment of the Court of Appeal Kaduna division delivered on the 27th May, 2011 which affirmed the conviction and sentence of the appellant by the trial court is hereby affirmed. The death  
B sentence pronounced on the appellant is hereby affirmed.

### ***FABIYI JSC***

C I have had a preview of the comprehensive judgment just delivered by my learned brother - Ogunbiyi, JSC. I agree with all the reasons therein adumbrated to arrive at the conclusion that the appeal is, no doubt, devoid of merit and should be dismissed.

The appellant was arraigned for the offence of culpable homicide punishable with death contrary to Section 221 of the Penal Code before the Katsina State High Court of Justice. PW1, the sole eye-witness, stated how the appellant hit the deceased on the head with an axe and he died instantly on 17th April, 2004. The trial court believed PW1's evidence and found the appellant culpable and sentenced him to death. On appeal to the Court of Appeal, Kaduna Division, the judgment of the trial court was affirmed. This is a further  
E and final appeal to this court.

My learned brother considered very carefully all the issues canvassed in this appeal. Before I adopt same, let me make a few  
F points; albeit briefly.

It should be stressed that a host of witnesses is not required by the prosecution in a bid to attain proof beyond reasonable doubt. A single witness who gives cogent and credible account of the incident will suffice. See: Odili v. The State (1977) 4 SC 1. Once the  
G court is satisfied with the quality and credibility of the evidence of such a witness and accepts same, conviction based on the evidence thereon can hardly be open to question. See: Oguonzee v. The State (1998) 5 NWLR (Pt.551) 521.

H PW1, at the trial court, stated how the appellant suddenly emerged to hit the deceased on the head with an axe- a lethal weapon and he died instantly on the spot of incident. The trial judge believed the evidence which nailed the appellant. The Court of Appeal affirmed same. I form the view that they were right.

Further, the learned counsel for the appellant tried to prop the idea that PW1 was a tainted witness. To say the least, he was not shown to be an accomplice or a person who had a purpose of his own to serve. Above all, there is nothing which inhibits PW1, a relation of the deceased present during the incident, from testifying on what happened, provided that he does not appear to be biased or out on a vengeance mission. See: *Nkebisi v. The State* (2010) 5 NWLR (Pt. 1188) 411. B

The two courts below made concurrent findings of facts on all crucial points canvassed. It is not in the character of this court to interfere as the findings have not been demonstrated to be perverse. I shall not interfere. See: *Victor v. The State* (2013) 12 NWLR (Pt. 1369) 465 at 485. C

Finally, let me state it briefly that all the essential ingredients of the offence of culpable homicide punishable with death contrary to Section 221 of the Penal Code have been clearly demonstrated in the lead judgment. The prosecution proved their case beyond reasonable doubt. See: *Abogede v. The State* (1996) 5 NWLR (Pt.448) 270 at 276. D

For the above remarks and the detailed reasons carefully set out in the lead judgment which I hereby adopt, I too, feel that the appeal is clearly devoid of any atom of merit and should be dismissed. I order accordingly and abide by all the consequential orders contained in the lead judgment. E

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### **KEKERE-EKUN JSC**

I have had the benefit of reading in draft the judgment of my learned brother, OGUNBIYI, JSC just delivered. I agree with the reasoning and conclusion that the appeal lacks merit and should be dismissed. I proffer a few comments in support of the lead judgment. G

This is an appeal against the concurrent finding of facts made by the two lower courts. The appellant was charged before the High Court of Katsina State with the offence of culpable homicide punishable with death under Section 221 of the Penal Code. He was alleged to have caused the death of one Alhaji Garba Namuri on or about 17th April 2004 by cutting his head with an axe. He pleaded not guilty to the charge. Five witnesses testified for the prosecution. A H

post-mortem report was tendered as Exhibit A and the axe allegedly used to kill the deceased was tendered as Exhibit B. The appellant testified in his own defence and called two other witnesses. At the conclusion of the trial he was found guilty as charged. He was convicted and accordingly sentenced to death on 19th March 2009. His appeal to the Court of Appeal, Kaduna Division was unsuccessful. The judgment of the trial court was affirmed on 27th May 2011, hence the further appeal to this Court.

The time-honoured standard of proof in criminal cases is proof beyond reasonable doubt. The court must be fully satisfied that the facts established by the evidence, by virtue of their probative value, establish the guilt of the accused. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. See: Section 135(1) of the Evidence Act 2011; *Miller v. Minister of Pensions* (1947) 2 ALL ER 373; *Woolmington v. D.P.P.* (1935) AC 462; *Esangbedo v. The State* (1989) 4 NWLR (Pt.113) 57; *Udo v. The State* (2006) 15 NWLR (Pt.1001) 179; *Michael v. The State* (2008) 13 NWLR (Pt.1104) 361; *Ani v. The State* (2009) 16 NWLR (Pt.1168) 443.

The evidence led at the trial was to the effect that on the fateful day, PW1, the deceased and a few others were sitting under a tree near the stream where they had gone to water their cattle. According to PW1 when the appellant arrived, the deceased refused to allow him to use the trough to water his cattle. There was a brief altercation between them. Later, as they were resting under the tree, the appellant suddenly sneaked up and hit the deceased on the head with an axe causing him to die on the spot. He (PW1) narrowly escaped the same fate as he was able to dispossess the appellant of the axe by twisting his hand and pushing him into the stream. He said he also seized his cap and wristwatch in the process. The post-mortem examination of the deceased performed by PW4 confirmed that there was a large wound on the skull of the deceased, which culminated in a fracture of his skull and brain injury and that the most probable cause of death was the “neutrogena and hemorrhagic shock, which led to cardio vascular and respiratory arrest”.

Both the trial court and the court below found the evidence led by the prosecution to be credible and convincing, particularly the evidence of PW1 who was the only eye witness to the commission of the offence. In order to dislodge the concurrent findings of fact, the

appellant must show that the findings are perverse, not supported by the evidence or that a miscarriage of justice has occurred. Learned counsel for the appellant argued that reasonable doubt was created by the appellant's account of events, which in his view remains unshaken and uncontroverted. The first duty of the court is to determine whether the prosecution has established its case against the accused person beyond reasonable doubt. B

The ingredients of the offence of culpable homicide punishable with death under Section 221 of the Penal Code are: 1 .  
That the deceased died. C

2. That his death was caused by the accused.

3. That the act of the accused which caused the death was intentional having the knowledge that death or grievous bodily harm was the probable consequence of the act.

I agree with the finding of the two lower courts that the prosecution established all the ingredients of the offence, I agree with the finding that the evidence against the appellant was overwhelming having regard to the fact that the deceased died immediately he was struck on the head with an axe by the appellant. The post mortem report confirmed the cause of death. The father of the deceased identified the corpse of his son lying at the scene. The striking of the deceased on the head with an axe was shown to be intentional. By inflicting such a grievous injury on the deceased, the appellant must have known that death or grievous bodily harm were the probable consequences of his act. E F

In my view, the attempt by the appellant to inject some doubt in the prosecution's case did not succeed. The law is that the court may convict on the evidence of a sole witness where it is satisfied of its cogency, high quality and credibility. A conviction based on such evidence should not be interfered with unless such evidence by law requires corroboration. See: *Oguonzee v. The State* (1998) 5 NWLR (Pt. 551) 521; *Alonge v. I.G.P.* (1959) 4 FSC 203; *Igbo v. The State* (1975) 9-11 SC (Reprint) 80. In the instant case, although PW1 was the only eye witness, both lower courts considered not only the evidence of all the prosecution witnesses as a whole, they also considered the evidence proffered by the appellant suggesting that the deceased and PW1 had a grudge against him prior to the incident of 17th April 2004. The trial court, which had the opportunity of seeing H

and hearing the witnesses testify, believed and preferred the evidence of PW1 to that of the appellant and his witnesses. This is the prerogative of the trial court, which was in a better position to assess the demeanor and credibility of the witnesses. The court also noted that the evidence of the defence witnesses had no bearing on the events of 17th April 2004. Having failed to show that the finding of the trial court was perverse, the lower court was right in refusing to interfere.

It was also contended that PW1 was a tainted witness whose evidence could not be relied upon because the appellant had testified that PW1 and the deceased had a grudge against him. It has been held that a tainted witness is a witness who may or may not be an accomplice but who, by the evidence he gives (whether as witness for the prosecution or for the defence) may be regarded as having some purpose of his own to serve. See: *Ogunzee v. The State* (1998) 5 NWLR (Pt.551) 521 @ 554 F; *Ishola v. The State* (1978) NSCC 499 @ 509; *Omotola & Ors. v. The State* (2009) 2-3 SC 7; (2009) 7 NWLR (Pt.1139) 148. The contention in this case seems to be an afterthought. This is because PW1 was never cross-examined on the issue. No attempt was made to show that he had an interest to serve.

The lower court painstakingly examined all the issues before it before reaching the inevitable conclusion that the prosecution established its case against the appellant beyond reasonable doubt. The appellant has failed to show any reason why this court should interfere with that decision. I join my learned brother, Ogunbiyi, JSC in declining to do so.

For these and the more detailed reasons comprehensively adumbrated in the lead judgment, I also find no merit in this appeal. I dismiss it accordingly and affirm the judgment of the court below, which affirmed the conviction and sentence of the appellant.

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### **OKORO JSC**

I was obliged in advance, a copy of the judgment of my learned brother, Clara Bata Ogunbiyi, JSC just delivered. I agree with the reasons advanced to reach a conclusion that this appeal is devoid of merit and deserves an order of dismissal.

Evidence against the appellant as gleaned from the record of appeal shows that PW1 was the only eye witness in this case. He

testified to the fact that the deceased had objected to the appellant using his (appellant's) trough. On the eventful date, the PW1 and the deceased were lying under a tree when the appellant suddenly hit the deceased with an axe on his head and he died instantly. The PW1 twisted the hand of the appellant, collected the axe from him and pushed him into the stream. Appellant was arraigned in court for culpable homicide punishable with death contrary to Section 221 of the Penal Code. B

At the close of trial, the learned trial judge found the appellant guilty as charged. He was thus convicted and sentenced to death by hanging. C

Not being satisfied with the said judgment, the appellant appealed to the Court of Appeal which dismissed the appeal. The appellant has further appealed to this court.

A threshold issue of the four submitted by learned counsel for the appellant for determination appears to be issue No. 1 which states:

*"Whether the totality of evidence placed by the prosecution before the trial court was enough to convict the appellant for the offence of murder?"*

The main plank of the argument of the learned counsel for the appellant on this issue is that the trial court based its decision on its belief of the evidence of the PW1 and disbelief of the evidence of the appellant and that the court below ought to have re-evaluated the evidence of PW1 before affirming the decision of the trial court. E

Without much ado, I find it difficult to accept the above submission of counsel for the appellant as this is capable of standing trite principle of law on its head. It is elementary principle of law that the function of the evaluation of evidence is essentially that of the trial judge. In other words, where the trial judge has unquestionably evaluated evidence and justifiably appraises the facts, it is not the business of an appellate court to interfere and to substitute its own views for the view of the trial court. See *Onuoha v. The State* (1998) 5 NWLR (Pt. 548) 118, *Igago v. The State* (1999) 14 NWLR (Pt. 637) 1, (1999) 10-12 SC 84, *Woluchem v. Gudi* (1981) 5 SC 291, *Enang v. Adu* (1981) 11-12 SC 25. However, where a trial court failed to properly evaluate the material evidence before it, an appellate court will, in the interest of justice, take over that function. See *Okunzua v. Amosu* (1992) 7 SCNJ 243, *Ozigbe v. Aighe* (1977) 7 SC 1, Samuel F G H

Ola Oladehin v. Continental Textile Mills Ltd. (1978) 2 SC 23 at 28.

In the instant case, having read the judgment of the learned trial judge, I am satisfied that the court below acted properly and reasonably in accepting the standard of evaluation of evidence made by the learned trial judge. It is trite that the court can convict on the evidence of a sole witness if that witness can be believed given all the surrounding circumstances. Truth, it has been held, is not discovered by a majority vote. One solitary credible witness can establish a case beyond reasonable doubt. See *Abeke Onafowoon v. The State* (1987) NWLR (Pt.61) 538. This court held in *Akpabio v. The State* (1994) 7 NWLR (Pt. 359) 635 that a single credible witness can establish a case beyond reasonable doubt unless where the law requires corroboration. In other words, the evidence of one credible witness, accepted and believed by the court, is sufficient to justify conviction unless, of course, such a witness is an accomplice in which case his testimony would require corroboration.

In the instant appeal, the PW1 is not shown to be an accomplice. His evidence was cogent, direct and very unwavering. The learned trial judge was on a sound footing when he accepted, believed and relied on it to convict the appellant. There is no reason why the court below should have rejected the evidence. The appellant knew or ought to have known that hitting the deceased on the head with a heavy metal as the axe would result in death or grievous bodily harm. The evidence adduced against the appellant was cogent enough to nail him. It is not the number of witnesses that matter but the quality of the evidence given. See *Usiobaifo v. Usiobaifo* (2005) 3 NWLR (Pt. 913) 665.

On the whole, I have no reason to fault the decision of the lower court on any issue. I uphold the decision of the Court of Appeal which also affirmed the decision of the trial court. There is no merit in this appeal and it is accordingly dismissed.

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H **NWEZE JSC**

My Lord, Ogunbiyi, JSC, obliged me with the draft of the leading judgment just delivered now. I endorse the conclusion that this appeal is unmeritorious and should be dismissed.

The Court of Appeal, Kaduna Division [hereinafter, simply,



referred to as “the lower court”], affirmed the conviction of, and sentence on, the appellant by the High Court of Katsina State [the trial court], for the offence of Culpable Homicide punishable with death. The charge was laid under Section 221 of the Penal Code. The ingredients of the said offence, consistently, outlined in such cases like, *Maigari v. State* [2013] 6-7 MJSC (Pt.11) 109, 125, citing *Ochemeje v. The State* [2008] SCNJ 143; *Daniel v. The State* [1991] 8 NWLR (Pt. 443) 715; *Obudu v. State* (1999) 6 NWLR (Pt. 198) 433; *Gira v. State* [1996] 4 NWLR (Pt. 428) 1, 125, are: (1) that the deceased died; (2) that his/her death was caused by the accused; (3) that she/he intended to either kill the victim or cause her/him grievous bodily harm.

The trial court found that the Prosecution succeeded in proving these ingredients beyond reasonable doubt. The lower court affirmed these findings. Although the appellant inveighed against the lower court’s said affirmation of the trial court’s findings on the proof of these constitutive ingredients, he failed to impress this court with his anaemic arguments that his case comes within the circumference of principles that impel an interference with these concurrent findings, *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; *Ike v. Ugboaja* [1993] 6 NWLR (Pt. 301) 539, 569; *Chinwendu v. Mbamali* [1980] 3-4 SC 31 and so on.

Having, fastidiously, perused the gamut of the records in this appeal, I am satisfied, just like the lower court found, that the Prosecution proved the above ingredients beyond reasonable doubt; that is, has proved all the ingredients of the offence the appellant [as accused person] was charged with, *Jamani v. State* (2005) 21 WRN 191, 212; *Bakare v. State* (1987) 1 NWLR (Pt. 52) 579, 587; *Akalasi v. State* (1993) 2 SCNJ 19, 29-30; *Adekunle v. State* (1989) 12 SCNJ 184, 198; *Brown v. State* (2005) 31 WRN 13, 158; *Abogede v. The State* [1996] 5 NWLR (Pt. 448) 270, 276.

It is for these, and the more elaborate, reasons in the leading judgment that I, too, shall enter an order dismissing this appeal. I abide by the consequential orders in the leading judgment.