

SUPREME COURT OF NIGERIA
FRIDAY 15TH MAY, 2015. SC. 496/2012
**CORAM:- I. T. MUHAMMAD, M. S. MUNTAKA-
COOMASSIE, O. RHODES-VIVOUR, N. S. NGWUTA,
K. B. AKA'AH, JJSC**

MUSA ZUBAIRU APPELLANT
V.
THE STATE RESPONDENT

EVIDENCE - Crime - Inadmissible evidence - Rejection of - Even where no objection is raised to its admission - Court is bound to reject inadmissible evidence - In the interest of justice (H1)

EVIDENCE - Withholding of - It is presumed in this case - That evidence of police investigation and medical report - Were deliberately withheld by prosecution - Because if produced they would adversely affect its case (H2)

MURDER - Proof - Date of death - Contained in the charge cannot be presumed - As it is an ingredient of the charge to be proved beyond reasonable doubt (H3)

MURDER - Proof - Medical report - Is needed in this circumstance to identify body of the deceased - As the death did not occur instantly after injury was inflicted (H4)

FACTS

Before the High Court of Katsina State, 3rd accused/appellant and three others were arraigned for culpable homicide punishable with death under section 221 of the Penal Code. The facts as alleged by prosecution/respondent is that the deceased - one Murtala Mohammed had a misunderstanding with 1st to 3rd accused persons who beat him up and inflicted injuries on him. Allegation is that as the beating was going on, the deceased said that he would break the windscreen of the car belonging to 4th accused (i.e. the father of 1st to 3rd accused persons). The next morning, it was discovered that the windscreen was broken. The deceased was brought to the house of

4th accused, where he was beaten and detained for the arrival of the police. When the police came to take the deceased to the station, he resisted and fell into the gutter wherein he started bathing with the filthy water therein. He was eventually taken to the station in a wheelbarrow and from the police station he was taken to a hospital where he was alleged to have died the same day.

Other than that the deceased died in the hospital nothing was said about what transpired in the police station or the hospital before he died. Appellant and the others were arrested and charged for the murder of the deceased. During the trial, respondent called several witnesses and tendered the statements of appellant and the others in evidence. Confessional statement of 4th accused was admitted without objection, while that of appellant and the rest were challenged. After the conduct of trials within trial, the court rejected their statements as not voluntarily made. Appellant and the others called several witnesses to support their defence. At the end of the trial, the court convicted them of culpable homicide not punishable with death. They were sentenced to ten years imprisonment with each person to pay a fine of N20,000.00. Aggrieved, appellant appealed to the Court of Appeal, Kaduna Division. The appeal was dismissed. Aggrieved further, appellant appealed to the Supreme Court.

ISSUE FOR DETERMINATION

“(a) Whether the prosecution (i.e. Respondent herein) proved the offence of culpable homicide not punishable with death to warrant the Court of Appeal upholding and sustaining the conviction of the Appellant under s.222 (7) of the Penal Code and sentence passed on the appellant under s.224 of the Penal Code by the learned trial Judge. This is distilled from grounds A, B and C of the Notice and Grounds of Appeal.

HELD (Unanimously allowing the appeal per **NGWUTA JSC**)

EVIDENCE - Inadmissible evidence - Rejection of

1. Even where no objection is raised to its admission as it appears to be the case herein, the Court is bound to reject inadmissible evidence in a criminal case in the interest of jus-

tice. Where, as in this case, inadmissible evidence has been admitted the appellate Court has power to reject same and decide the case on available legal evidence.

I therefore reject and expunge from the record the evidence given by PW1 as to what happened between her deceased son and the accused persons in the house of the 4th accused in the evening of 7th April, 2002. (p. 1933 A)

EVIDENCE - Withholding of

2. I agree with His Lordship. Quality and not quantity is what matters in evidence in proof of a case.

Be that as it may, the learned trial Judge did not meet the challenge posed by learned Counsel for the appellant. The issue raised is not the quantity or number of witnesses called but rather the quality of evidence which is at its lowest without the evidence of Police investigation which should have been given by the officer who investigated the case. That evidence is available but for no reason apparent from the record it was not called irrespective of the fact that it is vital to the case against the appellant.

Another important omission in the chain of evidence led by the prosecution is the evidence of the deceased's medical record. There is evidence that he was taken, first to the Police Station and from there to the hospital. In fact, the proof of evidence has a list of exhibits in which Item 2 is "Medical Report of Murtala Muhammed (the deceased)". The report was not tendered in Court nor was the doctor who issued it and who must have attended to the deceased called to give evidence.

Without the evidence of the Police investigation, it is a matter of conjecture to say that the person who was taken to the Police Station from the scene of crime was also the person who was taken to the hospital and was the person who died thereat.

Medical evidence if tendered would have established the identity of the person who died, the date of death, the cause of death which is a medical question and the manner of death to be determined from the nature and location of injuries on

the body of the deceased; that is the question whether the injuries the deceased died of could have been inflicted on him by another person or was self-inflicted. These are issues the Court cannot assume. Specifically what happened to the person taken to the Police Station before he was taken to the hospital is a matter for speculation.

I will leave the matter here because a little digging may turn up a stone that does not belong in the soil. Suffice it to say that the evidence of Police investigation as well as the evidence of what happened between the Police Station and the hospital, the medical report showing the identity of the deceased and the date of death and the cause and manner of death are pieces of evidence available but were deliberately withheld by the prosecution.

It is safe to presume that the said pieces of available evidence were deliberately withheld by the prosecution because if produced they would have had adverse effect on its case. (p. 1933 E)

MURDER - Proof - Date of death

3. With profound respect to the learned DPP the charge did not say that the deceased died on 8th April, 2003 and even if it did say so the date of death contained in the charge cannot be presumed. It is an ingredient of the charge to be proved beyond reasonable doubt.

From the evidence of the prosecution witnesses the deceased, whoever that may be, did not die instantaneously or nearly so, as the learned DPP would want the Court to believe. PW5 swore, inter alia, that "he fell down on spot and he was not breathing." However D2 in his defence said that "We were moving with him when he fell by a gutter, he began to put water from the gutter and putting it on his body thinking that the Policemen will let him go." The DW2 was not cross-examined on this point and since the evidence is not challenged or rebutted by the prosecution who had the opportunity to do so, the court is bound to act on it. (p. 1935 A)

MURDER - Proof - Medical report

4. Medical Certificate as to the cause of death may be dispensed with where death occurred instantly or almost immediately from the voluntary act of the accused.

Another, and a most serious break in the evidence of the prosecution is the absence of the corpus delicti, that is the body of the crime charged which includes, in the case of homicide, the corpse of the murdered person. It is the gist of the offence, the substance or foundation of the offence. It is the essential facts of the crime charged. The Corpus delicti in murder has two components - death as the result and criminal agency of another as the means of death. Where there is a direct proof of the one, the other may be established by circumstantial evidence. None of the two components of corpus delicti has been proved in this case.

As I stated earlier in this judgment, the deceased did not die instantly or soon after the injury allegedly inflicted on him. There is every need for medical evidence to identify the body, the injuries inflicted on him, whether the injuries could have been self inflicted and whether or not the injuries caused the death of the deceased. The medical evidence was withheld and so was the evidence of the Investigating Police Officer. It follows therefore that the first element, death, was not proved and so the criminal agency as the means of death is a moot question. (p. 1935 E)

NOTABLE POINTS OF INTEREST

NGWUTA JSC

1. Appeals - Reply brief - Purpose of

The reply brief contemplated in Order 6 Rule 5 (3) of the Supreme Court Rules, as amended, is not intended to give the appellant a second bite at the cherry, as it were.

Appellant in his reply brief cannot repeat the argument in his brief or emphasise argument therein. As the name implies a reply brief replies to the respondent's brief but if the respondent merely replied to the appellant's brief as in this case, there is no need for appellant to reply to a reply to his own argument. I will not consider

the appellant's reply brief which is a reply to the respondent's reply to his own argument and, *ipso facto*, a repetition of the argument in the appellant's brief as the respondent raised no new issues in the respondent's brief. (p. 1931 D)

B 2. Judgment to be based on evidence

Courts should remain detached and no matter the appearance of the facts of the case, resist the pull of soap-opera emotion as it were and base the verdict on hard evidence.

C The Courts below appear, with due respect, to have forsaken the process for the product. It is as if they jumped to the conclusion without having articulated all the steps necessary to ensure the validity of the conclusion reached. I have no hesitation in resolving Issue A in favour of the appellant and that being the case, it is not necessary to determine Issue B. (p. 1936 G)

REPRESENTATION

C. I. Enweluzo, Esq for the Appellant
S. B. Umar (Mrs.), DPP Katsina State with Aminu Garba, ACSC and
E Abu Umar, SSC for the Respondent

CASES REFERRED TO

Uwa v. State (2002) 4 SCNJ 282
F Ochiba v. State (2011) 17 NWLR (pt. 1277) 663
Oguonzee v. State (1998) 5 NWLR (pt. 551) 521
A-G Rivers State v. Ikenta Best Nig. Ltd (2005) 2 NWLR (pt. 911) 1
Uguru v. State (2002) 9 NWLR (pt. 771) 90
Mba v. Ibeneme (2004) 14 NWLR (pt. 894) 617
G Ada v. State (2008) 13 NWLR (pt. 1103) 149
Ben v. State (2006) 16 NWLR (pt. 1006)
Akindipe v. State (2012) 16 NWLR (pt. 1325) 94
Ali v. State (2012) 7 NWLR (pt. 1299) 209
Ochemaje v. State (2008) 6-7 SC (pt. 11) 1
H Zaki v. Magayaki (2002) FWLR (pt. 135) 798
Onochie v. Odogwu (2006) 2 SC (pt. 11) 153
Mogaji v. Odofoin (1978) 4 SC 91
Ilori v. State (1980) 8-11 SC 99

STATUTES & RULES REFERRED TO

Penal Code, s. 221, 222, 224

Evidence Act 2011, s. 167(d)

Supreme Court Rules, O. 6 rr. 2 and 5(1)(a)

LEAD JUDGMENT BY NGWUTA JSC

Appellant was the third of four persons charged with the offence of culpable homicide punishable with death, an offence punishable under Section 221 of the Penal Code. The charge was brought before the Katsina Judicial Division of the High Court of Katsina State On 5th November, 2002. B
C

The chain of events leading to the charge started on the 7th day of April, 2002. The alleged deceased, Murtala Mohammed, was alleged to have had a misunderstanding with the 1st to the 3rd accused persons who beat him up and inflicted injuries on him. It was alleged that as he was being beaten by the 1st to 3rd accused, the deceased said he would break the windscreen of the car belonging to the 4th accused, the father of the 1st to 3rd accused. It was discovered in the morning of the following day, 8th April, 2002, that the windscreen of the said car was broken. D
E

On getting the report of the damage to his car, the 4th accused sent the other accused persons to fetch the deceased to him. He was brought to the home of the 4th accused where he was beaten and detained in the 4th accused person's house to await the arrival of the Police who had been sent for. When the Police came to take him to the station, the deceased resisted and fell into the gutter wherein he started bathing with the filthy water therein. F

He was eventually taken to the station in a wheelbarrow and from the Police Station he was taken to a hospital where he was alleged to have died the same day. Other than that the deceased died in the hospital nothing was said about what transpired in the Police Station or the hospital before he died. G

At the trial, the prosecution fielded ten witnesses including three Police witnesses. The Hausa and English versions of the Statement of the 4th accused were admitted in evidence without objection and marked Exhibits A1 and A2, respectively. A challenge to the voluntariness of the statements of the 1st to 3rd accused persons led to trials within trial in which the trial Court rejected the said statements H

as not voluntarily made.

The defence called seven witnesses and rested its case.

Having considered all the materials placed before him, the learned trial Judge held, *inter alia*:

"In view of the foregoing, I hereby convict all the accused persons who are charged jointly before this Court with culpable homicide not punishable with death under s.222(7) of the Penal Code which provides: 'Culpable homicide is not punishable with death when a person causes the death of another by doing any rash or negligent act... I hereby sentence each of the four accused persons to 10 (ten) years imprisonment and in addition each one will pay a fine of N20,000 (Twenty thousand naira)."

Not satisfied with the judgment, appellants appealed to the Court of Appeal, Kaduna Judicial Division. Four separate notices of appeal each containing three grounds of appeal were filed, presumably one for each of the four appellants. It would appear that the four appeals were argued together and judgment rendered in the following terms:

"These two issues have been also resolved against the appellants and in favour of the Respondent and I have no difficulty in dismissing this appeal as lacking in merit and sentences made by the Court below."

Issue one of the three issues formulated by the appellant had earlier been resolved against the appellants. The appellant herein, Musa Zubairu, was not satisfied with the judgment of the Court of Appeal. He appealed to this Court on four grounds, numbered A to D in the notice of appeal filed on 5th January, 2011.

In compliance with Order 6 Rule 5 (1) (a) and 2 of the Supreme Court Rules as amended, the parties through their respective Counsel, filed and exchanged briefs of argument. From the four grounds of appeal, learned Counsel for the appellant formulated the following two issues in his brief for resolution:

"(a) Whether the prosecution (i.e. Respondent herein) proved the offence of culpable homicide not punishable with death to warrant the Court of Appeal upholding and sustaining the conviction of the Appellant under s.222 (7) of the Penal Code and sentence passed on the appellant under s.224 of the Penal Code by the learned trial Judge. This is distilled from grounds A, B and C of the Notice and

Grounds of Appeal.

(b) Whether the lower Courts could be said to have properly evaluated the evidence of all the prosecution witnesses when some of them gave merely hearsay and contradictory evidence which are of no probative value in law. This is distilled from Grounds D of the Notice and Ground of Appeal.” B

In her own brief of argument, the learned Director of Public Prosecution (DPP), Katsina State Ministry of Justice, adopted the two issues formulated by the appellant.

Arguing Issue one in his brief, learned Counsel for the appellant enumerated the ingredients constituting the offence of culpable homicide, whether or not punishable with death, as follows: C

“(a) That the person in question is dead.

(b) That the death was unlawfully caused by act of the accused, and D

(c) That the accused intended to kill the deceased or to cause him grievous bodily harm.”

He relied on *Young Uke Uwa v. State* (2002) 4 SCNJ 282 at 293.

He submitted that the burden of proof on the prosecution never shifts and that the prosecution has to prove not only that the act of the accused could have caused the death of the deceased, but that it certainly did cause the death of the victim. He contended that if there was the possibility that the deceased died from cause other than the act of the accused, the accused is entitled to an acquittal. Learned Counsel referred to the evidence of PW2, PW3, PW5 and PW6 relied on by the trial Court to convict the appellant and argued that none of the witnesses who testified to the alleged beating of the deceased was able to link his death with the beating. F G

In response to the decision of the learned trial Judge that the prosecution is not bound to call every witness listed in the proof of evidence, learned Counsel conceded the point but argued that the prosecution, in order to secure a conviction has to call all vital witnesses whose evidence is germane to the prosecution’s case. He relied on *Ochiba v. State* (2011) 17 NWLR (Pt. 1277) 663 at page 696, paras A-B, *Oguonzee v. State* (1998) 5 NWLR (Pt. 551) 521 at 571 paras A-B. H

He said that while PW8 - PW10 recorded the statements of the

accused, the prosecution did not call the Investigating Police Officer nor the Medical Doctor who attended to the deceased before he died or the doctor who performed post mortem examination on the body of the deceased. He relied on *A-G Rivers State v. Ikenta Best (Nigeria) Ltd* (2005) 2 NWLR (Pt. 911) 1 at pages 23-25 and contended that the finding of facts made by the trial Judge and endorsed by the Court of Appeal did not arise different from the evidence before the trial Court and therefore a speculation.

He argued that while there is evidence as to what happened up to the point the deceased was taken to the Police Station nothing is known of what happened between that time and the time of death of the deceased at the hospital, adding that any finding of what transpired between the Police Station and the hospital is not based on fact and so is perverse. He relied on *Aiguoreghian & Anor v. The State* in his contention that there was a gap in the chain of evidence as the prosecution failed to give evidence of the treatment given to the deceased as well as the medical certificate of death. He relied on *Uguru v. State* (2002) 9 NWLR (Pt. 771) 90 at 108 paras D-G where, though two witnesses saw the appellant inflicting matchet blows on the deceased until he fell down, it was held to be a wrong assumption not based on evidence, that the deceased must have died as a result of the matchet blows. There was need for medical evidence of the cause of death.

Learned Counsel impugned the determination of the Court of Appeal that:

“Although medical evidence of the cause of death is desirable, it is not a necessity. The trial Court is competent to infer the cause of death in the circumstance such as the one at hand.”

He argued that the facts of this case are similar to the facts in *Aimed v. State* (2007) FWLR (Pt. 90) 1358 in which this Court faulted the decision of the Court of Appeal in absence of the description of the injury inflicted on the deceased or evidence from which it can be inferred as a matter of certainty rather than suspicion, that the deceased died as a result of injuries. He urged the Court to apply the same principle in this case.

In Issue 2, he said that there was material contradictions in the evidence of the prosecution witnesses creating a doubt that ought to be resolved in favour of the appellant. He contrasted the evidence

of PW1 who said that the 1st, 2nd and 3rd accused persons beat and dragged the deceased from her house with his earlier testimony that the deceased was not in the house at the time the accused person came.

He contrasted this piece of evidence with the testimony of PW5 who said he saw only the 1st and 3rd accused beating the deceased and the testimony of the PW6 who said he saw only the 1st accused dragging, and not beating the deceased. He referred to the evidence of PW3 that he saw the 1st and 3rd accused beating and dragging the deceased and said that the witness contradicted himself under cross examination when he said only the 3rd accused (now appellant) was carrying the deceased but did not beat him.

He relied on *Eze Mba v. Ibeneme* (2004) 14 NWLR (Pt. 894) 617 at 654 in his contention that the witnesses are not credible. He urged the Court to reject the conflicting pieces of evidence. He concluded that a proper evaluation of the contradictory and inconsistent evidence of the witnesses would have cast serious doubts on the prosecution's case and the doubt so cast should have been resolved in favour of the appellant. He summarized his argument and urged the Court to allow the appeal and vacate the decisions of the Courts below.

In Issue one, learned Counsel for the Respondent stated the obvious that the burden of proving the ingredients of the offence of culpable homicide punishable or not with death is on the prosecution and never shifts. However, she relied on *Young Uke Uwa v. State* (*supra*) and submitted that the respondent led evidence which established that it was the act of the appellant that caused the death of the deceased.

Learned Counsel, in support of the contention that the appellant was responsible for the death of the deceased reproduced in full the evidence of PW3, PW4, PW5 and PW6 who he said were eye-witnesses to the beating by the appellant and his co-accused persons. He relied on *Ada v. State* (2008) 13 NWLR (Pt. 1103) 149 at 166 and urged the Court to act on the evidence of the witnesses as the same was neither contradicted nor challenged in cross-examination.

In response to the argument of learned Counsel for the appellant that the cause of death was not proved, learned Counsel said that the cause of death was positively proved at the trial. She then

relied on *Ben v. The State* (2006) 16 NWLR (Pt. 1006) and argued that the cause of death can be inferred from the circumstances of the case.

B She argued that “*the deceased died on 8th April, 2013 as per the charge*” and since according to the evidence death was instantane-
ous or nearly so, medical evidence ceases to be of any practical or
legal necessity. She urged the Court to follow the decision in *Ben v. State (supra)*. She relied on *Akindipe v. State* (2012) 16 NWLR (Pt. 1325) 94 at 116 and submitted that the learned trial Judge stated
C the law correctly when he held that the prosecution was not obliged to call a lot of witnesses to discharge the onus of proof.

According to learned Counsel, the fact that PW8, PW9 and PW10 did not testify as to the date of death of the deceased or the cause of death was not fatal to the prosecution’s case in view of the
D evidence before the Court, there being enough evidence by PW3, PW4 and PW5 that the cause of death was the act of the appellant and his co-accused.

E Relying on the evidence of PW3 that “*They were holding him, he fell down on the spot and he was not breathing then they got wheel burrow (sic) and took him to Central Police Station*” she said that the deceased died the same day or even on the spot, thereby making any medical evidence of the time and cause of death unnecessary. She urged the Court to hold that the trial Court relied on the
F direct evidence of PW3, PW4, PW5 and PW6 to convict the appellant and not on circumstantial evidence as claimed by the appellant. She urged the Court to resolve issue A in favour of the respondent.

In issue 2, learned Counsel conceded the fact that in criminal cases, doubts are resolved in favour of the accused persons but sub-
G mitted that there was no contradiction and ipso facto no doubt in the prosecution’s case. She conceded what she called minor discrepancies in the evidence of PW6 as to who he saw beating the deceased but said that his testimony corroborated the others in some respect material to the charge. She relied on *Ali v. State* (2012) 7 NWLR (Pt. 1299) page 209 at 260 to the effect that corroboration need not
H consist of direct evidence that the accused committed the offence nor need it amount to confirmation of the whole account given by the witness.

She said that corroboration need not go beyond corroborating the evidence in some respect material to the charge. Having summarized his arguments learned Counsel urged the Court to hold that the act of the appellant and his co-accused led to the death of the deceased. She urged the Court to dismiss the appeal and affirm the decision of the Courts below. B

Learned Counsel for the appellant filed a reply brief in which he reacted to every point argued in the Respondent's brief. The respondent's brief is in itself a reply to each issue argued in the appellant's brief. Other than responding to various issues raised and argued in the appellant's brief, learned Counsel for the Respondent did not introduce any new issues in his brief that could warrant an answer by the appellant. C

The respondent is expected to, and did in fact join issue with the appellant's brief. Appellant need not repeat the issue joined either by emphasis or expatiation as the appellant's Counsel has done in the reply brief. See *Ochemaje v. The State* (2008) 6-7 SC (pt. 11) page 1. D

The reply brief contemplated in Order 6 Rule 5 (3) of the Supreme Court Rules, as amended, is not intended to give the appellant a second bite at the cherry, as it were. E

Appellant in his reply brief cannot repeat the argument in his brief or emphasise argument therein. As the name implies a reply brief replies to the respondent's brief but if the respondent merely replied to the appellant's brief as in this case, there is no need for appellant to reply to a reply to his own argument. I will not consider the appellant's reply brief which is a reply to the respondent's reply to his own argument and, *ipso facto*, a repetition of the argument in the appellant's brief as the respondent raised no new issues in the respondent's brief. F G

My Lords, I have carefully considered the facts of this case, the issues raised in the briefs and learned Counsel's argument therein. In determining the appeal, I will deal with Issue A first. I will consider Issue B only if Issue A is resolved in favour of the respondent. H

For ease of reference, I take the liberty to reproduce Issue A once more. It reads:

"(a) Whether the prosecution (i.e. Respondent herein) proved

the offence of culpable homicide not punishable with death to warrant the Court of Appeal upholding and sustaining the conviction of the Appellant under s.222 (7) of the Penal Code and sentence passed on the Appellant under s.224 of the Penal Code by the learned trial Judge..."

B Let me start with the two fold aim of criminal justice: that guilt shall not escape or the innocent suffer. See *Berger v. US* 1942 cited in *US v. Nixon*, President of USA 418 US 683. The charge preferred against the appellant and his co-accused reads:

C *"That you, (1) Aminu Zubairu, (2) Ibrahim Zubairu, (3) Musa Zubairu and (4) Alh. Zubairu Maigoro all of Unguwan Alkah quarters, Katsina on or about the 8th day of April 2002 at the same address, committed the offence of culpable homicide punishable with death in that you caused the death of one Murtala Mohammed by*
D *doing an act to wit: severely beating him jointly with the knowledge that his death would be the probable consequence of your act; and thereby committed an offence punishable under Section 221 of the Penal Code."*

E The trial Court was of the view that the prosecution failed to establish the intention required under s.221 of the Penal Code and rather convicted the appellant and his co-accused on the lesser offence of culpable homicide not punishable with death under s.227 of the Penal Code. My task is to determine whether the totality of the evidence on record justifies a conviction of the lesser offence under
F s.227 of the Penal Code.

The learned trial Judge started his judgment by summarising the testimony of the witnesses for the prosecution, beginning with the PW1, the mother of the deceased. She testified as to what happened in the night of 7th April 2002 at the house of the 4th accused even though she was in her house. Evidence of PW1 of what happened to the deceased in the house of the 4th accused in the evening of 7th April 2002 does not derive its veracity solely from the credit given to the PW1 herself but rests wholly on the veracity and competence of her daughter who is the source of her information. That
H part of her evidence is hearsay and inadmissible as its object is to establish the truth of what is contained in the statement made to her by her daughter concerning the event that took place in the evening of 7th April 2002 in the house of the 4th accused. See *Zaki v.*

Magayaki (2002) FWLR (Pt. 135) 798 ratio 10.

Even where no objection is raised to its admission as it appears to be the case herein, the Court is bound to reject inadmissible evidence in a criminal case in the interest of justice. See Onochie v. Odogwu (2006) 2 SC (Pt. 11) 153. ***Where, as in this case, inadmissible evidence has been admitted the appellate Court has power to reject same and decide the case on available legal evidence.*** See Onochie v. Odogwu (supra). B

I therefore reject and expunge from the record the evidence given by PW1 as to what happened between her deceased son and the accused persons in the house of the 4th accused in the evening of 7th April, 2002. C

From the judgment of the learned trial Judge, learned Counsel for the appellant consistently submitted that the testimony of the Investigating Police Officer is vital to the prosecution's case but the learned trial Judge dismissed this submission thus: D

"...on this issue I disagree with the Counsel because it is not necessary for the prosecution to call all witnesses listed in the proof of evidence..."

I agree with His Lordship. Quality and not quantity is what matters in evidence in proof of a case. See Mogaji v. Odofin (1978) 4 SC 91 at 94. E

Be that as it may, the learned trial Judge did not meet the challenge posed by learned Counsel for the appellant. The issue raised is not the quantity or number of witnesses called but rather the quality of evidence which is at its lowest without the evidence of Police investigation which should have been given by the officer who investigated the case. That evidence is available but for no reason apparent from the record it was not called irrespective of the fact that it is vital to the case against the appellant. F G

Another important omission in the chain of evidence led by the prosecution is the evidence of the deceased's medical record. There is evidence that he was taken, first to the Police Station and from there to the hospital. In fact, the proof of evidence has a list of exhibits in which Item 2 is "Medical Report of Murtala Muhammed (the deceased)". The report was not tendered in Court nor was the doctor who issued it and H

who must have attended to the deceased called to give evidence.

Without the evidence of the Police investigation, it is a matter of conjecture to say that the person who was taken to the Police Station from the scene of crime was also the person who was taken to the hospital and was the person who died thereat.

Medical evidence if tendered would have established the identity of the person who died, the date of death, the cause of death which is a medical question and the manner of death to be determined from the nature and location of injuries on the body of the deceased; that is the question whether the injuries the deceased died of could have been inflicted on him by another person or was self-inflicted. These are issues the Court cannot assume. Specifically what happened to the person taken to the Police Station before he was taken to the hospital is a matter for speculation.

I will leave the matter here because a little digging may turn up a stone that does not belong in the soil. Suffice it to say that the evidence of Police investigation as well as the evidence of what happened between the Police Station and the hospital, the medical report showing the identity of the deceased and the date of death and the cause and manner of death are pieces of evidence available but were deliberately withheld by the prosecution.

It is safe to presume that the said pieces of available evidence were deliberately withheld by the prosecution because if produced they would have had adverse effect on its case. See s. 167(d) of the Evidence Act 2011 which provides that the Court may presume that:

“(d) evidence which could be and is not produced would, if produced, be unfavourable to the person who withhold it ... “

The learned DPP Katsina State Ministry of Justice who appeared for the respondent argued in the Respondent’s brief, inter alia: More so the deceased died on 8th April, 2003 as per the charge. Furthermore by the authority of Ben v. State (supra) where death is instantaneous or nearly so, medical evidence ceases to be of any practical or legal necessity.”

With profound respect to the learned DPP the charge did not say that the deceased died on 8th April, 2003 and even if it did say so the date of death contained in the charge cannot be presumed. It is an ingredient of the charge to be proved beyond reasonable doubt. See Ilori v. State (1980) 8-11 SC 99; Onyejekwu v. State (2000) FWLR 971. B

From the evidence of the prosecution witnesses the deceased, whoever that may be, did not die instantaneously or nearly so, as the learned DPP would want the Court to believe. PW5 swore, inter alia, that "he fell down on spot and he was not breathing." However D2 in his defence said that "We were moving with him when he fell by a gutter, he began to put water from the gutter and putting it on his body thinking that the Policemen will let him go." The DW2 was not cross-examined on this point and since the evidence is not challenged or rebutted by the prosecution who had the opportunity to do so, the court is bound to act on it. See Omoregbe v. Lawani (1980) 3-4 SC 108, Odulaja v. Haddad (1973) 11 SC 357. C D

On the evidence led on both sides death was not "instantaneous or nearly so". Even if the deceased died later, he was alive when the Police took him from the scene to the Police Station and from there to the hospital. ***Medical Certificate as to the cause of death may be dispensed with where death occurred instantly or almost immediately from the voluntary act of the accused.*** E F
Aiguoreghian v. State (2004) 1 SC (Pt. 1) 65, Ihuebeka v. State (2000) 4 SC (pt. 1) 203, Uguru v. State (2002) 9 NWLR (pt. 771) 90.

Another, and a most serious break in the evidence of the prosecution is the absence of the corpus delicti, that is the body of the crime charged which includes, in the case of homicide, the corpse of the murdered person. It is the gist of the offence, the substance or foundation of the offence. It is the essential facts of the crime charged. The Corpus delicti in murder has two components - death as the result and criminal agency of another as the means of death. Where there is a direct proof of the one, the other may be established by circumstantial evidence. See Advanced Law Lexicon Book 1, page 1071. None of the two components of corpus delicti has been proved in this case. G H

As I stated earlier in this judgment, the deceased did not die instantly or soon after the injury allegedly inflicted on him. There is every need for medical evidence to identify the body, the injuries inflicted on him, whether the injuries could have been self inflicted and whether or not the injuries caused the death of the deceased. The medical evidence was withheld and so was the evidence of the Investigating Police Officer. It follows therefore that the first element, death, was not proved and so the criminal agency as the means of death is a moot question.

In the circumstances of this case, the relevance placed on Adamu v. Kano N.A. (1956) 1 FSC 25 by the court below to say that "the trial court is competent to infer the cause of death in circumstances such as the one at hand" is as misplaced as it is unfortunate. Not only the cause of death, but also the fact of death which precedes the cause of death cannot be ascertained from the totality of evidence before the trial court.

I repeat, for emphasis, that the period between the time the alleged deceased was taken to the police station by the police and the time of the alleged death after that police had taken him from the police station to the hospital is completely blank as it were. The evidence was completely shut out as neither the Investigating Police Officer nor the medical doctor who prepared a medical report on Murtala Mohammed both of whose evidence is vital to the prosecution's case, testified in court.

I have reviewed the authorities cited in the judgments of the two courts below as well as those in the briefs filed by the parties. It is to be noted that in a vast majority of criminal cases, there are so many complexities, ambiguities and questions of both law and fact that no clear precedent can be found in which to base the entire decision.

Courts should remain detached and no matter the appearance of the facts of the case, resist the pull of soap-opera emotion as it were and base the verdict on hard evidence.

The Courts below appear, with due respect, to have forsaken the process for the product. It is as if they jumped to the conclusion without having articulated all the steps necessary to ensure the validity of the conclusion reached. I have no hesitation in resolving Issue

A in favour of the appellant and that being the case, it is not necessary to determine Issue B.

Consequently, I allow the appeal, set aside the decision of the Court of Appeal affirming the judgment of the trial Court. It is hereby ordered that the charge against the appellant in the trial Court be, and is hereby dismissed. The appellant is acquitted and discharged forthwith. B

MUHAMMAD JSC

I have had the opportunity of reading the judgment of my learned brother Ngwuta, JSC; before now. I am in agreement with his reasoning and conclusion that the appeal be allowed. I allow the appeal I abide by the orders made therein. C

MUNTAKA-COOMASSIE JSC

This is an appeal against the decision of the Court of Appeal Kaduna Division which affirmed the conviction of the appellant by the trial court for the offence of culpable homicide punishable with death under Section 222(7) and punishable under section 224 of the Penal Code of Northern States of Nigeria. D E

I was opportuned to have read in advance the lead ruling rendered by my learned brother Ngwuta JSC. I entirely agree with his reasoning and conclusion namely: the appeal is pregnant with some merits, same deserves to be allowed. I have nothing more to add. I too hold that the appeal is meritorious same is hereby allowed. The appellant should be acquitted and discharged. F

RHODES-VIVOUR JSC

My lords, having had the advantage of reading in advance the leading judgment of my learned brother, Ngwuta, JSC, I agree that for the reasons given by him, the appeal should be allowed. The appellant is entitled to an acquittal. He is hereby acquitted and discharged. G H

AKA’AHS JSC

I was privileged to read in draft the leading judgment of my learned brother, Ngwuta JSC and it is with regret that I must allow the appeal.

B The case of the prosecution was built on suspicion. Just as the
 accused suspected it was the deceased that broke the windscreen of
 the vehicle belonging to the 4th accused, the prosecution concluded
 that it was the beating the deceased received from the 1st, 2nd and 3rd
 C accused on 7th April 2002 that resulted in his death on 8th April,
 2002. As there was no post- mortem report on the person that died,
 neither was the corpse identified as that of the deceased who was
 admitted to the hospital the previous day, the evidence leading to the
 conviction rested in the realm of conjecture and mere speculation.
 The law is that suspicion no matter how strong can never ground a
 D conviction. See: *Al-Mustapha v. State* (2013) 17 NWLR (Pt. 1383)
 350, *Ikomi v. State* (1986) 3 NWLR (Pt. 28) 340.

The argument of Mrs. Umar, DPP Katsina State pointed to-
 wards circumstantial evidence on the cause of death. For a convic-
 E tion to be based on circumstantial evidence, such evidence must point
 to only one rational conclusion namely that the offence had been
 committed and that it was committed by the accused. In other words
 the circumstantial evidence must point un-equivocally and irresistibly
 to the fact that the offence was committed by the accused person.
 F And in order to draw the inference of the accused’s guilt based on
 circumstantial evidence, there must not be any other coexisting cir-
 cumstances which would weaken or destroy the inference. See: *State*
v Edobor (1975) 9-11 SC 69, *Eze v State* (1976) 1 SC 125.
Mohammed v State (2007) 13 NWLR (Pt. 1050) 186. Since the
 G deceased did not die instantly or the death was not shown to have
 occurred less than twenty-four hours after.

H