

**SUPREME COURT OF NIGERIA**  
FRIDAY 8TH JULY, 1994. SC. 177/1992  
**CORAM:- M. L. UWAI, M. E. OGUNDARE,**  
**E. O. OGWUEGBU, Y. O. ADIO, A. I. IGUH, JJSC**

JEMINABO A. PRINCEWILL ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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MURDER - Proof - Identity of deceased - Where evidence of autopsy is called - Failure to identify body of deceased is fatal - Save there is cogent evidence identifying deceased as killed by appellant (H1)

MURDER - Proof - Autopsy - Identity of deceased - Where prosecution identifies body of deceased via autopsy - Separate witness on issue of deceased's identity is not vital (H2)

MURDER - Proof - Conviction - Absence of autopsy - Where evidence abound that deceased had died - But autopsy was not conducted - Accused may be convicted on circumstantial evidence (H3)

EVIDENCE - Material facts - Contradictions in - Where conflicts exist in material facts - The same must be explained to satisfaction of court - Otherwise court cannot speculate on explanations not supported by evidence (H4)

MURDER - Proof - Standard of - To secure conviction for murder - Prosecution must prove beyond reasonable doubt - That the death of deceased was caused directly or indirectly by act of accused (H5)

**FACTS**

The trial of accused/appellant was before the High Court of Rivers State Port Harcourt Judicial Division. He was arraigned for murder contrary to section 319 of the Criminal Code. Appellant pleaded not guilty to the charge. Prosecution/respondent's case based on the testimonies of eye witnesses is that appellant killed his wife i.e. the deceased at home. Following the discovery of the murder of the deceased, appellant's house was surrounded by people. On noticing

the presence of people around his house, appellant escaped through the back window and disappeared. A case of murder was consequently reported to the police. The dead body was subsequently conveyed to hospital for an autopsy.

Thereafter, appellant was arrested and taken to Police station based on information received by the Police. He made confessional statement in Exhibit B to the effect that the deceased died while he was fighting with her. However, at the trial, appellant gave a conflicting statement that the deceased met her death while being in a state of intoxication. The learned trial Judge Ungbuku J. (as he then was), after a review of the evidence adduced by both sides, found appellant guilty of murder as charged. Appellant was therefore sentenced to death by hanging. Dissatisfied with the judgment, appellant appealed to the Court of Appeal, Port Harcourt Division. The court unanimously dismissed the appeal and affirmed the conviction and sentence passed on appellant by the trial court. Appellant being further aggrieved has appealed to the Supreme Court.

### **ISSUE FOR DETERMINATION**

*“Was the Court of Appeal legally justified based on the evidence to affirm the conviction and sentence of the appellant.”*

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

*MURDER - Proof - Identity of deceased*

**1. On the issue of the identity of the deceased, it cannot be over emphasized that where evidence of an autopsy is called by the prosecution, failure to identify the body on which the post mortem examination was carried out by the Doctor as the body of the person allegedly killed by the accused person in cases of homicide is a fatal omission. Such evidence is not only necessary but vital as otherwise the accused may not have been conclusively connected with the killing of the deceased person named in the charge for whose murder he is standing trial. The matter will of course, be different if there is other cogent and conclusive evidence which identifies the deceased as the person named in the charge as killed by the accused**

**person. It is therefore one of the essential elements the prosecution must prove conclusively in homicide cases that the body examined during the post mortem examination is that of the deceased named in the charge. Where, however the corpus delicti is not discovered or there was no autopsy on the deceased's body, the prosecution to succeed, must identify the deceased named in the charge as the person allegedly killed by the accused person. This is vital so as to eliminate any possible mistake in convicting an accused person over a death he is not connected with and it will also ensure that no miscarriage of justice arises at the trial. (p. 2811 A)**

*MURDER - Proof - Autopsy*

**2. Where however, the totality of the evidence of the prosecution shows unmistakably that the body on whom a Doctor performed a post mortem examination was that of the deceased, a separate witness on the issue of the deceased's identity, though desirable, is not a necessity. (p. 2811 F)**

*MURDER - Proof - Conviction - Absence of autopsy*

**3. So too, where there is positive evidence that the deceased named in the charge had died but the body was not discovered or there was no autopsy on the dead body, the accused may still be convicted of murder based on his confessional statement or other circumstantial evidence which conclusively points to the fact that the accused caused the death.**

**The learned trial judge was satisfied from the totality of the evidence before the court that the deceased died a violent death as a direct result of the appellant's violent attack on tier. The Court of Appeal, rightly in my view, affirmed these findings. A close study of the record of proceedings reveals that there is abundant evidence in support of the proof of the death of the deceased's Ebitenyefa Clifford in the hands of the appellant. There is also no doubt that the facts of this case as presented to and accepted by the court are such that it is clearly unnecessary for the prosecution to call further evidence in proof of the identity or the death of the deceased Ebitenyefa Clifford. In the circumstance, it seems to me that the**

*speculative aspects of the decision of the trial court as affirmed by the court below notwithstanding, no miscarriage of justice was thereby occasioned as the death and identity of the deceased are otherwise satisfactorily established in the case.*

- B** *There can be no doubt that the best possible way of establishing the cause of death is by medical evidence. But it is equally true that the cause of death may be inferred from the circumstances of a case by the court. In other words, where the victim died under circumstances which leave no doubt as to the manner and cause of death, medical evidence may be dispensed with. Thus where a person is attacked with a lethal weapon and he died on the spot, it is reasonable to infer that the injury inflicted on him caused the death. Where however the circumstances of the death are not of that nature, the prosecutor must establish the cause of death beyond reasonable doubt. But much as medical evidence is described to prove issue of death in homicide cases, it is not a sine qua non as the same may be established by sufficient evidence, other than medical evidence, showing beyond reasonable doubt that such death resulted from the acts of the accused complained of.*

(pp. 2811G/2815 G/2816 F)

**F** *EVIDENCE - Material facts - Contradictions in*

- 4. I must, in this connection, observe that where, as in the present case, there are contradictions in the evidence of the prosecution witnesses on material facts as pointed out above, such contradictions ought to be explained to the satisfaction of the court by the prosecution in default of which the court cannot speculate on possible explanations which are not supported by any evidence.**

- H** *There can be no doubt from various areas of the above observations of the learned trial judge that he appreciated the seriousness of the issue under consideration. He was however able to rationalise the situation as a result of which he came to the conclusion that the body on which P.W.3 performed autopsy was that of the deceased Ebitenyefa Clifford. He carried out this rationalisation by offering explanations which ex facie*

**appear ingenious and plausible but are totally unsupported by evidence. I think it is in this unfortunate exercise, if I may say with profound respect, that the learned trial judge slipped and fell into a serious error in law. This is because it is not the function of a trial Judge by his own exercise or ingenuity to supply or imagine evidence or to work out the mechanics or mathematics of arriving at answers which only evidence tested under cross examinations can supply. I may mention that the court below in its judgment also set out the above observations of the learned trial judge and agreed with the same. I can only emphasis with due respect, that the exercise embarked upon by the learned trial judge as aforementioned is a definite and serious error of law.** (pp. 2812 E/2813 F)

*MURDER - Proof - Standard of*

**5. The second arm of the sole issue that arises for determination is whether there is conclusive evidence that the appellant caused the death of the deceased. In this regard, it is trite law that to secure a conviction for murder, the prosecution must prove beyond reasonable doubt that the death of the deceased was caused directly or indirectly by the act of the accused. It is incumbent on the prosecution to establish not only that the act of the accused could have caused the death of the deceased but that in actual fact the deceased died as a result of the act of the accused to the exclusion of all other possibilities.** (p. 2816 C)

### **REPRESENTATION**

E. C. Ukala Esa, for the Appellant

I. I. D. Opuminji Esq., Chief State Counsel, River State - for the Respondent

### **CASES REFERRED TO**

State v. Uzoagwu (1972)2 E.C.S.L.R. (pt. 11) 429

Enewoh v. State (1990) 4 NWLR (pt. 145) 469

Edim v. State (1972) 4 SC 160

Efe v. State (1976) II SC 75, (1954) 14 WACA 458

Ukorah v. State (1977) 4 SC 167

- Ariche v. State (1993) 6 NWLR (pt. 302) 752
- State v. Okoko (1964) 1 All NLR 423
- Onwe v. State (1975) 9-11 SC 23
- Arehia v. State (1982) 4 SC 78
- Onubogu v. State (1974) 9 SC 1
- B Akosile v. State (1972) 5 SC 332
- Adie v. State (1980) 1-2 SC 116
- Bakuri v. State (1965) NMLR 163
- Lori v. State (1980) 8-11 SC 81
- C Essien v. State (1984) 3 SC 14

### **LEAD JUDGMENT BY IGUH JSC**

The appellant, Jeminabo A. Princewill, was on the 8th day of March, 1985 arraigned before the High Court of Rivers State holden D at Port Harcourt, charged with the offence of murder contrary to section 319 of the Criminal code. The particulars of the charged are, as follows:-

*“That you, Jeminabo Adokiye Princewill, on the 24th day of December, 1982 at 37, Ibadan Street, Waterside Port Harcourt in E the Port Harcourt Judicial Division murdered Ebitenyefa Clifford”*  
The appellant pleaded not guilty to the charge and the case proceeded to trial.

The substance of the case as presented by the prosecution is F that the deceased at all material times was the wife of the appellant. At about 8 p.m. of the 24th December, 1982, P.W.4. Okoritei Amachree, who is the appellant’s brother heard him ask the deceased for his key. The deceased replied that she misplaced the key where- G upon the appellant ordered her to move to the window and open it. The deceased had put one leg on the window in an attempt to enter the room when the appellant struck her with a piece of plank about two feet long, alleging that she, the deceased, had stolen and sold all his glasses. On noticing what had happened, one Perere Stanley went immediately and reported to P.W.1 Chief Princewill, the father of the H appellant, that the appellant was killing his wife. P.W.1 came out and saw the appellant on top of the deceased beating her. When P.W.1 tried to intervene, the appellant, threatened to deal with him. According to P.W.4, the appellant threw bottles at co-tenants who tried to come to the scene. P.W.1 was obliged to lodge a report at the

Borokiri Police Station and subsequently at the Central Police Station, Port Harcourt. The D.P.O. and 14 Policemen who accompanied him to the scene saw the appellant's door padlocked and returned to the station.

It seemed that P.W.1 on a closer look into the appellant's room saw him and also noticed that his wife was dead. Following this discovery, the appellant's house was surrounded by people, some of whom were knocking at his door. It was at this stage that the appellant escaped through his back window and disappeared. The appellant's door was forced open and the dead body of his wife was seen inside the room in a pool of blood. Consequently P.W.1 returned to the Central Police Station, Port Harcourt and reported a case of murder.

Another batch of policemen visited the scene. They included the D.P.O, P.W.5 Inspector Wadai Ibetei who was the Investigating Police Officer (I.P.O.) and others. At the scene, P.W.1 took them to the back of the appellant's room. There, they saw blood stains which were trailed right into the appellant's room. They also saw the deceased lying dead on the floor of the appellant's room with wounds on her head and bruises on her back. The deceased's sister, Joycie Ogiligi, who is P.W.2 was also at the scene. The I.P.O. in company of other policemen including one Assistant Superintendent of Police (A.S.P), Robinson Obuebite. who is a relation of the deceased, P.W.1 and P.W.2 conveyed the dead body of the deceased to the General Hospital, Port Harcourt for autopsy.

On the 26th December, 1982, P.W.3 Dr. Dax Uzu, performed a post mortem examination on a certain dead body whose name he could not remember. According to him, the deceased was identified to him by one Joyce. The body was that of a young woman with multiple abrasions on the face and around the neck. She had lenial fracture of the parietal skull. The fracture measured 3-4 centimetres in Length. Underlying this fracture was extensive cerebral contusion associated with haemorrhage. In his opinion, the cause of death was due to cerebral contusion and haemorrhage. P.W.5 was present when the post mortem examination was performed by P.W.3. P.W.2 Joycie Ogiligi denied however, that she was sent for when post mortem examination on the deceased was performed by P.W.3.

Following some information received by the Police, P.W.5 with three other police men proceeded to Iwofe village where the appellant

was sighted inside an uncompleted building. They surrounded the building. The appellant when he came out and saw them attempted to escape by running but he was pursued, arrested and taken to the Central Police Station, Port Harcourt. He was charged and cautioned and he volunteered the statement Exhibit B. In it, the appellant claimed  
 B that it was while he was fighting with the deceased that she fell on top of on iron and fainted, He admitted that it was himself that killed the deceased. Exhibit B was confirmed as a true and voluntary statement of the appellant to the police before a Superior Police Officer. In his  
 C viva voce evidence before the court, however, the appellant alleged that the deceased met her death when in state of intoxication she jumped out of their window and hit her head against some sticks used for the embankment.

The learned trial Judge, Ungbuku, J., as he then was, after a  
 D review of the evidence on the 2nd day of March, 1987 found the appellant guilty of murder as charged and sentenced him to death by hanging.

Dissatisfied with this judgment of the trial court, the appellant appealed to the Court of Appeal, Port Harcourt Division, against his  
 E conviction and sentence. On the 6th day of July, 1992, the Court of Appeal unanimously dismissed the appeal and affirmed the conviction and sentence passed on the appellant by the trial court. It is against that judgment of the lower court that the appellant has now further  
 F appealed to this court.

The appellant on the 22nd day of July 1992 filed fin omnibus ground of appeal and this reads as follows:

*“That my conviction and sentence by the Hon. high Court Judge and confirmed by the judges of Court of Appeal is unreasonable, unwarranted and cannot be supported having regard to the evidence”*  
 G

Both the appellant and the respondent filed and exchanged their respective written briefs of argument. In the appellant’s brief, the under-mentioned issue was formulated for the determination of  
 H this court, namely:-

*“Was the Court of Appeal legally justified based on the evidence to affirm the conviction and sentence of the appellant.”*

The respondent, for its own part, identified a similar issue in its brief for determination. This is couched as follows:-



*“Whether the Court of Appeal was right in affirming the conviction and sentence of the appellant by the trial court”.*

At the hearing of the appeal on the 5th day of May, 1994 both learned counsel for the parties adopted their briefs and made oral submissions in amplification thereof.

The main thrust of the appellant’s complaint is that there was no conclusive proof the corpse examined by P.W.3 during his post mortem examination was the body of Ebitenyefa Clifford in respect of which the appellant was tried and convicted. It is the argument of learned counsel for the appellant, E.C. Ukala Esq. that any doubt as to the body examined and for which the appellant stood could be fatal to the prosecution’s case. He explained that the learned trial judge in his judgment conceded that failure to identify the body examined by the Doctor as that of the person allegedly murdered by the appellant is a fatal omission. He pointed out that in order to make up for this omission, the learned trial judge-resorted to a combination of some pieces of evidence which, at best, merely tended to suggest that the body examined by P.W.3 could be that of the deceased. He submitted that the Court of Appeal rightly observed that in the face of the denial by P.W.2. Joyce Ogilogi, that she identified the body of the deceased to the Doctor, the evidence of the said Doctor and P.W.5 to the contrary is valueless. He claimed that it was unfortunate for the trial court to have come to the conclusion which was’ accepted by the Court of Appeal that there is ample evidence from which the prosecution established that the body examined by the Doctor (P.W.3) was that of the deceased.

Learned appellant’s counsel next referred to what he described as discrepancies between the injuries on the body of the corpse examined by P.W.3 as against the injuries on the body of the deceased as testified to by P.W.5. He also referred to some discrepancies in connection with the mode the deceased was dressed. P.W.5 testified that the deceased was dressed in blouse and wrappers whereas P.W.3 claimed that the body which he examined in the mortuary was dressed in a skirt and blouse. Learned counsel submitted that in the absence of any evidence, the trial court was not entitled to speculate, as he did, on the possibility of a change in the deceased’s dress or hairdo. He concluded by stressing that there was no conclusive evidence-that the appellant caused the death of the deceased Ebitenyefa

Clifford or that the corpse examined by P.W.3 was that of the said Ebitenyefa Clifford.

Learned counsel for the respondent, I.I.D Opuminji, Esq. in his brief contended that the issues now under consideration are exactly the same two issues canvassed both before the trial court and the court below in respect of which concurrent findings have been made against the appellant. These are firstly, the question of the identity of the corpse examined by P.W.3 and secondly, whether there is any nexus between the death of the deceased and the appellant. He conceded that there was a serious lapse in the identification of the deceased at the post mortem examination on her body. He pointed out that it was P.W.5 who in company of P.W.2 the deceased's relation, A.S.P. Robinson Obuebite and other policemen conveyed the body of the deceased to the mortuary. He observed that it is note-worthy' that P.W.5 was present when P.W.3 performed post mortem examination on the body of the same corpse. He therefore submitted that there is evidence in support of the concurrent findings of the trial court and the court below to the effect that the body P.W.3 examined was that of the deceased. He referred to the seeming discrepancies in the prosecution's case with regard to what the deceased wore and her hairdo and dismissed these as immaterial as fading human memory with lapse of time must be recognised.

On the second arm of the issue under consideration, learned counsel submitted that the cause of death of the deceased was established by the post mortem report of P.W.3 and the direct evidence of P.W.1 and P.W.4. He referred to the appellant's statement of the police. Exhibit B, wherein he admitted that it was himself that killed the deceased. Learned counsel concluded his arguments as follows:-

*"In the premises, the respondent submits that on the issue of there being a causal link between the death of the deceased and the appellant, both the High Court and the Court of Appeal made concurrent findings that the unlawful act of the appellant caused the death of Ebitenyefa Clifford. And since there is no miscarriage of justice, the Supreme Court is urged to uphold the said findings. It is further submitted that the Court of Appeal was right in affirming the conviction and sentence of the appellant by the trial court".*

He therefore urged the court to find that, this appeal lacks merit and should be dismissed.

***On the issue of the identity of the deceased, it cannot be over emphasized that where evidence of an autopsy is called by the prosecution, failure to identify the body on which the post mortem examination was carried out by the Doctor as the body of the person allegedly killed by the accused person in cases of homicide is a fatal omission. Such evidence is not only necessary but vital as otherwise the accused may not have been conclusively connected with the killing of the deceased person named in the charge for whose murder he is standing trial. The matter will of course, be different if there is other cogent and conclusive evidence which identifies the deceased as the person named in the charge as killed by the accused person. It is therefore one of the essential elements the prosecution must prove conclusively in homicide cases that the body examined during the post mortem examination is that of the deceased named in the charge. Where, however the corpus delicti is not discovered or there was no autopsy on the deceased's body, the prosecution to succeed, must identify the deceased named in the charge as the person allegedly killed by the accused person. See R. v. Momodu Laoye (1940) 6 W.A.C.A. 6; State v. Nicholas Uzoagwu & Ors (1972) 2 E.C.S.L.R. (Pt. 11) 429. This is vital so as to eliminate any possible mistake in convicting an accused person over a death he is not connected with and it will also ensure that no miscarriage of justice arises at the trial. Where however, the totality of the evidence of the prosecution shows unmistakeably that the body on whom a Doctor performed a post mortem examination was that of the deceased, a separate witness on the issue of the deceased's identity, though desirable, is not a necessity. See Ukwa Enewoh v State (1990) 4 NWLR (Pt. 145) 469. So too, where there is positive evidence that the deceased named in the charge had died but the body was not discovered or there was no autopsy on the dead body, the accused may still be convicted of murder based on his confessional statement or other circumstantial evidence which conclusively points to the fact that the accused caused the death. See Edim v. State (1972) 4 SC 160, Efe v. State (1976) II SC 75, (1954) 14 WACA 458; Ukorah v. State (1977) 4 SC. 167; and Ariche v. State (1993) 6 NWLR (Pt.***

302) 752. I will now examine the extent to which the prosecution established the identity of the corpse on which P.W.3 performed his post mortem examination.

On the evidence of the Doctor, it was P.W.2, Joycie Ogiligi, the sister of the deceased, who identified the body to him as that of the deceased's Ebitenyefa Clifford, P.W.2, on the other hand, testified that she joined in conveying the body of her deceased sister to the mortuary, that the Doctor examined the body but that she was not present at the post mortem examination. There is therefore a lacuna in the evidence of the prosecution as to who identified the body examined by P.W.3 as that of the deceased Ebitenyefa Clifford. As if this unfortunate avoidable situation was not complicated enough, P.W.4 claimed that the body of the deceased was dressed in a brown lace blouse with a wrapper and that her hair was plaited. P.W.3, on the other hand, testified that the woman on whom autopsy was performed wore a dark blue skirt and a *blouse* and that her hair was permed. It seems to me plain that, in the face of the above contradictions, a reasonable doubt is bound to exist in the mind of any impartial tribunal on the question of whether the body on which the autopsy was carried out was indeed that of the deceased Ebitenyefa Clifford for which the appellant was convicted.

***I must, in this connection, observe that where, as in the present case, there are contradictions in the evidence of the prosecution witnesses on material facts as pointed out above, such contradictions ought to be explained to the satisfaction of the court by the prosecution in default of which the court cannot speculate on possible explanations which are not supported by any evidence.*** See State v. Udo Okoko & Anor (1964) 1 All NLR 423; R. v. Gabriel Adagu Wilcox (1961) 1 All NLR 631; (1961) 2 SCNLR 296 and Iteshi Onwe v. State (1975) 9-11 SC 23 at 31. See too Arehia v. State (1982) 4 SC. 78 at 88-89; Boy Muka & Ors v. State (1976) 9-10 SC 305; Onubogu v. State (1974) 9 SC 1 at 23-24 and Akosile v. State (1972) 5 SC 332 at 333.

The contradiction set out above received considerable attention from the learned trial judge who in accepting the fact that the body on which P.W.3 performed post mortem examination was that of the deceased Ebitenyefa Clifford observed as follows:-

*"The first issue raised by the learned defence counsel, is the*

identity of the deceased. He drew the attention of the court to contradictions in the evidence of the Doctor P.W.3 011 one side and that of P.W.4 and the accused on the other side and on what the deceased put on that day. Both the accused and P.W.4 in their testimony in court said the deceased had a blouse and wrappers on. P.W.3 said the woman on whom he performed the post mortem examination had a blouse and skirt on. There is no contradiction that is worth contending here. Both P.W.4 and the accused were not present at the mortuary when the Doctor P.W.3 examined the deceased. It is possible for them (P.W.4 and accused) to say what deceased had on before the incident but they cannot say what was put on her thereafter. It is in evidence that before his escape, the accused himself had tried to change her dress in the room. P.W.5, the I.P.O. testified that he saw the deceased lying dead on the floor with only brassier and under skirt. That it was P.W.2; who put clothes on her before he (P.W.5) carried the body to the hospital. Similar observation is made about the hairdo of the deceased, Both P.W.4 and the accused said the deceased had her hair plaited. P.W.3 said the deceased's hair was permed. I again do not see any contradictions here. P.W.3 has just given evidence of how he saw the deceased at the mortuary. None of the other two persons was in the mortuary at the time he P.W.3, examined her. It is not impossibility that her hair was loosened because of the head injuries before she was taken to the mortuary."

**There can be no doubt from various areas of the above observations of the learned trial judge that he appreciated the seriousness of the issue under consideration. He was however able to rationalise the situation as a result of which he came to the conclusion that the body on which P.W.3 performed autopsy was that of the deceased Ebitenyefa Clifford. He carried out this rationalisation by offering explanations which ex facie appear ingenious and plausible but are totally unsupported by evidence. I think it is in this unfortunate exercise, if I may say with profound respect, that the learned trial judge slipped and fell into a serious error in law. This is because it is not the function of a trial Judge by his own exercise or ingenuity to supply or imagine evidence or to work out the mechanics or mathematics of arriving at answers which only evidence**

**tested under cross examinations can supply.** See too George Ikenye & Another v. Akpala Ofume & Ors. (1985) 2 NWLR (Pt. 5) 1.

**I may mention that the court below in its judgment also set out the above observations of the learned trial judge and agreed with the same. I can only emphasis with due respect, that the exercise embarked upon by the learned trial judge as aforementioned is a definite and serious error of law.**

I will now consider the question whether this error of law has occasioned any miscarriage of justice to warrant a reversal of the judgment of the court below.

It cannot be disputed that the best and perhaps, the simplest way of establishing the identity of a deceased person, the subject of a charge of murder or manslaughter, is evidence of identification by someone who knew the deceased while he was alive. No such evidence was called by the prosecution in the present case. But as I have already observed, evidence that a witness identified the body of a deceased person to a Doctor at a post mortem examination on such a body is not a sine qua non in all murder cases, if there is evidence from which it can be inferred conclusively that the corpse examined by the Doctor is that of the deceased named in the charge, the evidence of the person said to have identified the corpse is certainly not indispensable. Indeed a conviction for murder is sustainable in cases where the corpus delicti is not discovered, that is to say, where the dead body of the person murdered is not recovered, so long as there is positive and conclusive evidence that the deceased named in the charged was killed by the prisoner. In short, the need to identify the body of a deceased person to a Doctor in a post mortem examination is not really a sine qua non in all murder cases. See Edim v. State (1972) 4 SC. 160; Ndu v. State (1990) 7 NWLR (pt. 164) 550 at 571; Enewoh v. State (1990) 4 NWLR (Pt. 145) 469 at 477 and R. v. Onufrejezyk (1955) 1 Q.B. 388. I will now consider whether from the totality of the evidence led in this case, there is sufficient evidence which conclusively establishes that the deceased Ebitenyefa Clifford was unlawfully killed by the appellant under circumstances which make it unnecessary for the prosecution to call further evidence of her identification.

It must in all fairness be said that the learned trial Judge was completely right when in reconciling the apparent contradiction as to

how the deceased was dressed observed that P.W.4 was not present at the mortuary when P.W.3 examined her body. He thus observed that it was possible for the said P.W.4 to describe what the deceased wore at the time of the assault on her by the appellant but not how she was dressed when her body was taken to the mortuary. This is particularly so because there was evidence that the appellant himself tried to change the deceased's dress in his room. After her death and that the body of the deceased had only brassier and pant at the time the appellant bolted away from his room and disappeared, it was P.W.2 who dressed the body of her late sister before P.W.5 and others conveyed it to the hospital. I am therefore prepared to endorse the finding of the learned trial judge as affirmed by the court below that the seeming discrepancy on the issue of the deceased's mode of dress cannot be said to be any matter of great moment in this case.

In the second place, the learned trial judge accepted the evidence of both P.W.1 and P.W.4 who saw the vicious violent attack on the person of the deceased by the appellant. P.W.4 also saw the appellant hit the deceased with a piece of plank about two feet long. The deceased virtually died on the spot. Both P.W.1 and P.W.4 knew the deceased and the appellant very well and are in fact related to each other. P.W.1 is the father and father-in-law of the appellant and deceased respectively. P.W.4 on the other hand, is the brother and brother-in-law of the appellant and the deceased respectively. There is evidence that they all lived in the same premises at all material times. There is also Exhibit B, the voluntary statement of the appellant to the Police which was confirmed before a Superior Police Officer, Mr. Franklyn Lele. In it the appellant admitted that he killed his wife. He said -

*"...I also told Tonye Princewill that I killed my wife ...it was myself that killed my wife Ebitenyefa Clifford... As I was beating her, she fell and hit her head on a piece of iron and died... My father came when my wife was at the point of death..."*

***The learned trial judge was satisfied from the totality of the evidence before the court that the deceased died a violent death as a direct result of the appellant's violent attack on tier. The Court of Appeal, rightly in my view, affirmed these findings. A close study of the record of proceedings reveals that there is abundant evidence in support of the proof of the***

*death of the deceased's Ebitenyefa Clifford in the hands of the appellant. There is also no doubt that the facts of this case as presented to and accepted by the court are such that it is clearly unnecessary for the prosecution to call further evidence in proof of the identity or the death of the deceased*  
 B *Ebitenyefa Clifford. In the circumstance, it seems to me that the speculative aspects of the decision of the trial court as affirmed by the court below notwithstanding, no miscarriage of justice was thereby occasioned as the death and identity of*  
 C *the deceased are otherwise satisfactorily established in the case.*

*The second arm of the sole issue that arises for determination is whether there is conclusive evidence that the appellant caused the death of the deceased. In this regard, it is trite*  
 D *law that to secure a conviction for murder, the prosecution must prove beyond reasonable doubt that the death of the deceased was caused directly or indirectly by the act of the accused. It is incumbent on the prosecution to establish not*  
 E *only that the act of the accused could have caused the death of the deceased but that in actual fact the deceased died as a result of the act of the accused to the exclusion of all other possibilities.* See *State v. Christopher Omoni* (1969) 2 All NLR 317; *Valentine Adie v. State* (1980) 1-2 SC 116 at 122-123, *R. v. Johnson*  
 F *Nwokocha* (1949) 12 W.A.C.A. 453 at 455 and *R. v. Izobo Owe* (1961) All NLR 680.

*There can be no doubt that the best possible way of establishing the cause of death is by medical evidence. But it is equally true that the cause of death may be inferred from the*  
 G *circumstances of a case by the court. In other words, where the victim died under circumstances which leave no doubt as to the manner and cause of death, medical evidence may be dispensed with. Thus where a person is attacked with a lethal weapon and he died on the spot, it is reasonable to infer that*  
 H *the injury inflicted on him caused the death.* See *Bakuri v. State* (1965) NMLR 163. *Where however the circumstances of the death are not of that nature, the prosecutor must establish the cause of death beyond reasonable doubt.* See too *Kato Dun Adamu v. Kano Native Authority* (1956) 1 F.S.C. 25; (1956) SCNLR



65 and State v. Baruri (1965) NMLR 163. ***But much as medical evidence is described to prove issue of death in homicide cases, it is not a sine qua non as the same may be established by sufficient evidence, other than medical evidence, showing beyond reasonable doubt that such death resulted from the acts of the accused complained of.*** See Azu v. State (1993) 6 NWLR <sup>B</sup> (Pt. 299) 303; Akpuenya v. State (1976) 11 SC. 269 at 278, Lori v. State (1980) 8-11 SC. 81 at 97; Essien v. State (1984) 3 SC 14 at 18 State v. Edobor (1975) 9-11 SC 69 and Edim v. State (1976) 4 Sc. 160 at 162. What has to be decided however is whether from the <sup>C</sup> legal point of view, the death of the deceased was caused by the injuries he sustained through the act of the accused and not whether from the medical point of view the deceased's death was caused by such injuries. See Archibong Effiong Effanga v. State (1969) 1 All NLR 339. <sup>D</sup>

In the present case, there is abundant evidence which the trial court accepted as established to the effect that the appellant violently attacked the deceased and hit her with a piece of plank. The deceased apparently died on the spot. The appellant was seen in his room with the dead body of the deceased who had head injuries. It <sup>E</sup> is also established that the said appellant escaped through the window of his room and fled to Iwofe village when sympathisers tried to break into his room to arrest him. He remained at Iwofe until he was finally arrested by the Police.

The learned trial judge after a painstaking evaluation of the <sup>F</sup> facts and circumstances of how the deceased met her death rejected the accused's story that the deceased jumped to her death and accepted the prosecution's version of the case holding as follows:-

*"A proper appraisal of the facts and circumstances so far <sup>G</sup> reviewed convince me that the injuries the deceased had were not self inflicted. I believe that the said injuries were by direct acts of the accused. I further accept as proved that the deceased died as a result of the head injury inflicted by the accused."*

A little later in his judgment, the learned trial judge continued <sup>H</sup> as follows:-

*"These same facts and circumstances can also justify a finding of guilt even without medical evidence .....there is evidence which I have accepted as true that the accused beat and gave head*

*injuries to the deceased. There is the undisputed evidence that the deceased bled from the said injury and died on the spot ..... I find that the deceased Ebitenyefa Clifford died a death of violence as a direct result of the accused's action of beating her and inflicting on her, a serious head injury. This finding is independent of any medical evidence in view of the eye-witnesses account as to how the deceased came by her death."*

The court of Appeal in reviewing the above facts and the circumstances of the case described the findings of the trial court as "sound" and concluded as follows:-

*"Giving the foregoing circumstances, it would have been perverse for the learned trial judge not to have found the appellant guilty."*

I endorse the above observations of both courts below and hold that there is abundant conclusive evidence on record which establish that it was the intentional and unlawful act of the appellant that caused the death of the deceased. Accordingly it is my firm view that the sole issue for determination in this appeal must be answered in the affirmative.

On the whole, I find no merit in this appeal and it is accordingly dismissed. The conviction and death sentence passed on the appellant by the trial court and affirmed by the court of appeal is hereby further affirmed.

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### **UWAIS JSC**

I have had the advantage of reading in draft the judgment read by my learned brother Iguh J.S.C. For the reasons and conclusion reached in the said judgment, I too find no merit in the appeal. Accordingly, it is hereby dismissed. The decision of the court of appeal is confirmed.

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### **OGUNDARE JSC**

I have been privileged to read in advance the judgment of my learned brother Iguh J.S.C. just read. I agree entirely with him and I have nothing useful more to add. I too dismiss the appeal and affirm the judgment of the courts below.

### **OGWUEGBU JSC**

I have the privilege of reading the draft of the judgment just delivered by my learned brother Iguh, J.S.C. and I entirely agree with his reasoning and conclusion.

In this case, there were facts from which the courts below inferred that the corpse examined by P.W.3 was that of the deceased- Ebitenyefa Clifford. The need for someone to identify the body of a deceased to a Doctor is not a sine qua non in all cases of murder: *Edun v. State* (1972) 4 S.C. 160 and *Enewoh v. State* (1990) 4 N.W.L.R. (Pt. 145) 469 at 482.

The evidence of P.W.1 and P.W.4 and the fact that the deceased died on the spot established the identities of the deceased and that of the appellant in relation to the offence. There was also conclusive evidence adduced by the prosecution that it was the unlawful and intentional act of the appellant which resulted in the death of Ebitenyefa Clifford. The appeal fails. It is accordingly dismissed.

### **ADIO JSC**

I have had the advantage of reading, in draft, the judgment just read by my learned brother, Iguh J.S.C. and I agree with it. The appeal lacks merit and I dismiss it.

There was evidence that the deceased died while the appellant was with her in the room previously occupied by them as husband and wife. It was after her death that her corpse was removed from the room to the hospital for post mortem examination. One of the main questions was whether her death was caused by the act of the appellant. The learned trial judge found that it was. The court below justifiably upheld the aforesaid finding. The conviction of the appellant for the offence of murder and the sentence of death passed on him were justified as none of the usual defences, such as provocation or self defence, was available to the appellant.

It is for the foregoing reasons and the detailed reasons given in the lead judgment that I hold that the appeal lacks merit. I too dismiss it.