

SUPREME COURT OF NIGERIA
FRIDAY 18TH MARCH, 2016. SC. 159/2012
CORAM:- W. S. N. ONNOGHEN, C. B. OGUNBIYI, K. B.
AKA'AH, K. M. O KEKERE-EKUN, C. C. NWEZE, JJSC

OLUWATOYIN ABOKOKUYANRO APPELLANT
V.
STATE RESPONDENT

CRIMINAL PROCEDURE - Conviction - Circumstantial evidence -
For such evidence to ground a conviction - It must be positive and
point to the guilt of the accused person (H1)

MURDER - Proof - From totality of the evidence and the fact that
appellant was fixed at the crime scene - It can be concluded that he
murdered or was one of the murderers of the deceased (H2)

EVIDENCE - Single witness - Weight - Evidence of single witness
when found credible is sufficient without more - To secure conviction
of the accused (H3)

EVIDENCE - Contradiction - Effect - It is not every inconsistency in
prosecution's case - That warrants a reversal of the decision of court
- As such inconsistency must be material (H4)

FACTS

Before the High Court of Ekiti State sitting at Ikole, accused/
appellant was arraigned with three others on a three-count charge of
conspiracy to murder, murder and attempted murder. They pleaded
not guilty to the charge. Prosecution/respondent's case is that appel-
lant and his cohorts murdered the deceased - Mayowa Adeleye and
attempted to murder PW2 – Folade Ojo. PW2 was a member of one
of the search parties constituted to look for the deceased. In the
course of the search at night, he was accosted in the bush by appel-
lant and the other accused persons. PW2 further stated that during
the encounter with appellant and his cohorts, they not only pre-
vented him (PW2) from searching the building where they were found
but that appellant brought out a sword to slay him but in the ensuing

2246 Abokokuyanro v. State (2016) 3 KLR (pt. 384) 2245; (2016) struggle, he (PW2) managed to escape from the scene after snatching the sword.

PW2 reported the incident to the king who directed the arrest of appellant and the others. The headless corpse of the deceased was eventually found in the bush the following morning, near the house of one of the suspects and was partly covered by curtains belonging to the said suspect. To prove its case, respondent called six witnesses and appellant testified in his own defense. Appellant denied committing any of the offence. At the end of the hearing, the court convicted and sentenced appellant and the others accordingly. Dissatisfied, appellant appealed to the Court of Appeal Ekiti Division. The court dismissed the appeal and affirmed the decision of the trial court. Aggrieved further, appellant has appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the learned trial judge was right in holding that the prosecution proved a case of murder and attempted murder against the appellant beyond reasonable doubt and whether the Court of Appeal was right in holding that decision?

2. Whether the contradiction in the evidence of prosecution as to the date of the arrest of the appellant is not fatal to the prosecution's case and whether the Court below was not wrong to have held otherwise?

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

CRIMINAL PROCEDURE - Conviction - Circumstantial evidence

1. The law is trite and well settled that for circumstantial evidence to ground a conviction, it must lead only to one and only one conclusion, namely, the guilt of the accused person. However and where there appear to be other probabilities in the case that could give a possible likelihood that another person other than the accused, was likely to have committed the offence, i.e. to say suggesting that another person different from the accused had the opportunity of committing the offence with which the accused was charged, the conviction of the accused for murder cannot be sustained.

In other words, in order for the prosecution to succeed

in proof of an offence based on circumstantial evidence, it must be found to be positive, compelling and also with scientific precision, point to the guilt of the accused person.

(p. 2254 G)

MURDER - Proof

2. From the communal summary of the above, it goes to show that the appellant knew about the building of the human head before Mayowa went missing: the appellant was in company of the late Sunday Jegede armed with a sword the night of the incident when PW2 encountered them in the bush; the appellant was actively engaged in discussion with Sunday Jegede on building of human head but he did not deem it imperative and a reason to report such heinous intention by Sunday Jegede to the police: the same Sunday Jegede's window blind was of the same design as the material covering the headless body of Mayowa Adeleye in the bush close to where the appellant and the other three accused persons were hiding, close to the house of Sunday Jegede; all these factors are pointing irresistibly to nothing else than the confirmation that the appellant murdered or was one of those that murdered the deceased Mayowa Adeleye. The appellant's presence was fixed at the scene of crime and he was one of those called out from their hiding by Sunday Jegede that night on sighting the PW2. In my opinion, the lower Court concluded rightly in endorsing the view held by the trial Court. I also agree with the decision arrived at, that the appellant and his companions in crime failed to explain the activities they engaged in and why they were at the scene that time of the night. The only explanation is, from all indication, that they were at the scene for an evil and wicked purpose and not for anything profitable. (p. 2257 C)

EVIDENCE - Single witness - Weight

3. The evidence of PW2, had convincingly fixed the appellant at the scene of crime on the night of 29/11/98. The law is trite on evidence of single witness when found credible is sufficient without more to secure conviction of the accused.

In the appeal under construction, there is nothing to

create doubt in the evidence or conduct of the PW2 to warrant discountenancing his evidence as uncorroborated or doubtful. (p. 2259 F)

EVIDENCE - Contradiction - Effect

B 4. In resolving whether or not there was contradiction in the evidence of the prosecution witnesses, particularly by PW2, PW3 and PW4 concerning the date the appellant was arrested, I seek to state that the PW2 in his evidence testified that the appellant was arrested on the night of 29th November, 1998 while the PW3 and PW4 gave evidence that the appellant was arrested on 30th November, 1998. The law is trite that where two or more pieces of evidence seem to contradict each other or vary, and the discrepancy is minor, the difference cannot destroy the credibility of the witnesses.

D The law is also well settled and is rightly submitted by the counsel for the respondent that, it is not every inconsistency or contradiction in the case of the prosecution that would warrant a reversal of the decision of a Court; such inconsistency must be material to the extent of casting serious doubt on the case presented by the prosecution against the accused before it can be countenanced.

E Earlier in the course of this judgment, it was restated clearly that the appellant had been fixed at the scene of the attempted murder and close to the spot where the deceased Mayowa Adeleye's body was found. It is immaterial therefore whether the appellant was arrested the night of the incident being 29/11/98 or the next morning which was 30/11/98. F Consequently, I hold the view that the perceived seeming discrepancy or contradiction alleged if any, is indeed immaterial. G In other words it is evident per PW2 that the presence of the appellant was fixed at the scene of crime on the night of 29/11/98. It is immaterial therefore whether he was arrested on H 29/11/98 or on 30/11/98. (p. 2262 B)

NOTABLE POINT OF INTEREST
OGUNBIYI JSC

1. Criminal procedure – Standard of proof

It is elementary to restate that by Section 36 (5) of the Constitution of the Federal Republic of Nigeria 1999, any person charged with a criminal offence is presumed innocent until he/she is proved guilty; the law places the burden of proving the guilt of a person accused of committing a criminal offence on the prosecution. Both statute and case laws are settled that the burden placed on the prosecution is not discharged until the guilt of an accused person is established beyond reasonable doubts. B

The provision of Section 135(1) of the Evidence Act 2011 is also in support that the standard of the burden of proof required in a criminal trial is proof beyond reasonable doubt with Sub-sections (2) and (3) of the said Act placing this burden on the prosecution which does not shift in general terms. (p. 2253 G) C

REPRESENTATION

Olakunle Agbebi, Esq. with him, John Kpaku, for the Appellant
Owoseni Ajayi, Esq. (A-G, Ekiti State) with him, L. B. Ojo, Esq. (S-G, Ekiti State), S. B. J. Bamise (DCL), Gbemiga Adaramola (DPP), and Femi Onipede (PLO), for the Respondent D E

CASES REFERRED TO

Kalu v. State (1993) 3 NWLR (pt. 297) 20
Amadi v. State (1993) 8 NWLR (pt. 314) 644 F
Abacha v. State (2002) 11 NWLR (pt. 779) 437
Ogba v. State (1992) NWLR (pt. 22) 16
Ozuloke v. State (1965) NWLR 125
Idemudia v. State (1999) 7 NWLR (pt. 610) 202
Esangbedo v. State (1989) 4 NWLR (pt. 113) 57 G
Nwosu v. State (1998) 8 NWLR (pt. 562) 433
Aigbagbon v. State (2000) 7 NWLR (pt. 666) 704
Okoro v. State (1998) 14 NWLR (pt. 584) 181
Gabriel v. State (1989) 5 NWLR 457
Princet v. State (2002) 18 NWLR (pt. 798) 49 H
Isibor v. State (2002) 3 NWLR (pt. 754) 250
Akalezi v. State (1993) 2 NWLR (pt. 273) 1
Nweke v. State (2001) 4 NWLR (pt. 704) 588

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, s. 36(5)
Evidence Act, s. 135

LEAD JUDGMENT BY OGUNBIYI JSC

B The appeal is against the judgment of the Court of Appeal
Ekiti division, delivered on 25th day of March, 2011, unanimously
affirming the judgment of Ikole High Court, delivered on 25th Octo-
ber, 2006, which convicted and sentenced the appellant to death
and life imprisonment for murder and attempted murder respec-
C tively.

The appellant was arraigned with three other accused persons
(Sunday Jegede, Sunday Udor and Olanrewaju Ayan) before the
trial High Court on the 11th day of July, 2001 on a three-count
D information of conspiracy to murder, murder of one Moyowa Adeleye
and the attempted murder of one Folade Ojo.

The appellant and his co-accused pleaded not guilty but be-
fore the commencement of hearing, one of them, by name Sunday
Jegede (the then 1st accused) died and the appellant became the 1st
E accused throughout the trial.

PROSECUTION CASE:- in the afternoon of 29th November,
1998, the deceased victim, Mayowa Adeleye was sent by his mother,
PW1, Alice Adeleye, to deliver food to his father, who worked as a
security guard at Fiyinfolu Odindun Comprehensive High School
F Oke-Ayedun Ekiti. The deceased Mayowa Adeleye, never returned
home as expected, consequent upon which his parents raised an
alarm which resulted in a search - party being organized by the town
for him on the order of the king.

G PW2, Falade Ojo, was a member of one of the search parties
constituted to look for the missing boy and in the course of the search
that night, he was accosted in the bush by the late Sunday Jegede
and three other, the appellant inclusive.

H It was the testimony of PW2 that during the encounter with
the appellant and his cohorts, they, not only prevented him from
searching the building where they were found but that the appellant
brought out a sword to slay him but in the ensuing struggle, he (PW2)
managed to escape from the scene after snatching the sword.

The PW2 promptly reported the incident to the king who di-

rected the apprehension of the appellant and the others.

The headless corpse of Mayowa Adeleye was eventually found in the bush the following morning, near the house of the late Sunday Jegede, and partly covered by curtains belonging to the said Sunday Jegede. The prosecution called six witnesses and the appellant gave evidence in his defence but called no witness. He denied committing B any of the offence.

The trial Court, after a painstaking evaluation of the evidence, found the case proved beyond reasonable doubt by direct and circumstantial evidence against the appellant and his co-accused and consequently convicted and sentenced them accordingly. C

On appeal to the Court of Appeal, Ekiti Division, the trial Court judgment was affirmed by a unanimous decision and dismissing the appeal; hence a further appeal now before us.

In accordance to the Rules of Court, briefs were filed and exchanged by parties. While Mr. Olakunle Agbebi settled the appellant's D brief filed 14th November, 2013, Mr. Olawale Fapohunda settled the respondent's brief, filed on the 10th December, 2013.

The appellant raised three issues originally but applied to abandon the 1st issue which same along with submission thereon were E struck out accordingly. The surviving two issues will be renumbered as 1 and 2 as follows respectively:-

1. Whether the learned trial judge was right in holding that the prosecution proved a case of murder and attempted murder against F the appellant beyond reasonable doubt and whether the Court of Appeal was right in holding that decision?

2. Whether the contradiction in the evidence of prosecution as to the date of the arrest of the appellant is not fatal to the prosecution's case and whether the Court below was not wrong to have held otherwise? G

The two issues will be taken separately and serially.

ISSUE 1

Whether the prosecution proved the appellant guilty beyond reasonable doubt and whether the Court below was right in upholding that decision? H

It is the appellant's contention that the prosecution case was riddled with fatal inconsistencies and contradictions which counsel submits were founded on a mere suspicion: that the entirety of the

case at hand is circumstantial and counsel cites the case of *Kalu V. State* (1993) 3 NWLR (Pt 297) 20 at 32, in support: that for the prosecution to succeed in a case of this nature, the evidence must point only in the direction of the appellants guilt in a manner that obviates other possibilities: that there was no evidence whatsoever, at all before the trial Court which pointed to an act, direct circumstantial or even indirect, by the appellant which led to the death of the deceased. Counsel submits further that none of the prosecution witnesses, that is to say PW1, PW2, PW3, PW4, PW5 and PW6 gave evidence of any direct act, or other act/omission that he (appellant) killed or participated in the killing of the deceased that the consequential effect on the prosecution's case for not tendering the weapon allegedly used for the attempted murder of PW2 and also the failure to explain the reason why it was not produced at the trial have rendered PW2's evidence without any corroboration. Counsel submits further that the prosecution having failed to explain the contradictions in the evidence of PW2 and PW3 must be held to have failed to establish any association from which the Court may infer common purpose or common intention. Counsel relied copiously on the authority in the case of *Amadi V. The State* (1993) 8 NWLR (Pt 314) 644 wherein it was held that a finding of the fact in a criminal trial must be based on credible evidence or reasonable inference drawn from the fact presented by the prosecution.

It is also the submission of counsel that the trial judge's call on the appellant to prove his innocence is in complete breach of Section 36(5) of the Constitution which enshrines the appellant's fundamental Right and also Section 135 of the Evidence Act: that the procedure adopted should entitle the appellant to an acquittal: that he learned trial judge was in error when he admitted Exhibit D1 to D6 also E1 to E6 and relied on same in reaching a decision that the appellant was guilty as charged. Counsel cites the case of *Abacha V. State* (2002) 11 NWLR (Pt 779) 437 in support of his submission and urged that the issue be resolved in favour of the appellant.

In response to the issue raised on behalf of the respondent, his learned counsel submits that the respondent at the trial adduced sufficient direct and circumstantial evidence to prove the alleged offence against the appellant; that the ingredients of the offence of murder are well stated as spelt out in plethora of cases decided by this Court

inclusive of *Ogba V. State* (1992) NWLR (Pt 22) P. 16: and also *Ozuloke V. State* (1965) NWLR 125 at 126 to mention a few.

The counsel submits further that the learned trial judge evaluated properly, the evidence of the prosecution witnesses and testimony of the appellant in his defence and then decided to believe the prosecution witnesses which linked the appellant with the crimes. The counsel re-iterates the practice by the Court in not interfering with the concurrent findings of the lower Courts except where such findings are found to be perverse. Copious reference was also drawn to a sister appeal in SC.192/2011, *Olanrewaju Ayan V. State* (Unreported). (Filed by 3rd accused, *Olanrewaju Ayan*) which was dismissed unanimously by this Court in its judgment on 12th July, 2013.

On this note, the respondent's case is urging this Court therefore to reject the invitation by appellant's counsel to revisit the evidence which has been subject of concurrent findings of both the lower Courts and also affirmed by this Court in the sister case cited above.

On the effect of the failure by the prosecution to tender the sword recovered by the PW2, counsel submits that same did not render the testimony of the witness as unreliable: and it is also not fatal to the prosecution case. Counsel urged that the issue be resolved against the appellant.

The contention of the appellant in this issue is that the prosecution did not prove beyond reasonable doubt, any of the ingredients of the offence of conspiracy, murder or attempted murder against the appellant as required by law. This notion, the appellant's counsel conceives, is because the evidence adduced by the respondent at the trial Court was riddled with fatal inconsistencies, contradictions and founded on mere suspicion.

On behalf of the respondent however its counsel argues vehemently to the contrary and submits that the prosecution had produced sufficient evidence, direct and circumstantial in prove of the alleged offence against the appellant.

It is elementary to restate that by Section 36 (5) of the Constitution of the Federal Republic of Nigeria 1999, any person charged with a criminal offence is presumed innocent until he/she is proved guilty; the law places the burden of proving the guilt of a person accused of committing a criminal offence on the prosecution. Both statute and case laws are settled that the burden placed on the pros-

ecution is not discharged until the guilt of an accused person is established beyond reasonable doubts. See the cases of Idemudia V. State (1999) 7 NWLR (pt 610) 202 at 215; and Esangbedo V. State (1989) 4 NWLR (Pt 113) 57.

The provision of Section 135(1) of the Evidence Act 2011 is also in support that the standard of the burden of proof required in a criminal trial is proof beyond reasonable doubt with Sub-sections (2) and (3) of the said Act placing this burden on the prosecution which does not shift in general terms. See the case of Nwosu V. State (1998) 8 NWLR (pt 562) 433, and also the case of Aigbagbon V. State (2000) 7 NWLR (pt 666) at 704 where this Court reiterates that:-

“In a criminal trial, the onus lies throughout upon the prosecution to establish the guilt of the accused beyond reasonable doubt. Even where an accused in his statement to the police admitted committing the offence, the prosecution is not relieved of that burden.”

Also in the case of Nwaeze V. State (1996) 2 NWLR (Pt 428) 1 at 11 in a charge of murder, this Court held thus and said:-

“In a charge of murder, the burden is on the prosecution to prove that:- (a) the deceased has died; (b) the death of the deceased was caused by the accused; and (c) the act or omission of the accused which caused the death of the deceased was intentional with knowledge that death or grievous bodily harm was its probable consequence.”

In buttress to the foregoing restatement, the cases of Ogba V. State and Ozuloke V. State supra are well established authorities on the ingredients of the offence of murder as well as that of attempted murder respectively.

The prosecution’s case in the appeal at hand rested heavily on the testimony of PW2, (an eye witness and a survivor of the attack), as well as the circumstantial evidence adduced through the other witnesses linking the appellants with the alleged crimes.

The law is trite and well settled that for circumstantial evidence to ground a conviction, it must lead only to one and only one conclusion, namely, the guilt of the accused person. However and where there appear to be other probabilities in the case that could give a possible likelihood that another person other than the accused, was likely to have committed the offence, i.e. to say suggesting that another person differ-

ent from the accused had the opportunity of committing the offence with which the accused was charged, the conviction of the accused for murder cannot be sustained.

In other words, in order for the prosecution to succeed in proof of an offence based on circumstantial evidence, it must be found to be positive, compelling and also with scientific precision, point to the guilt of the accused person. B

It is pertinent to state that there was no eye witness to the incident that happened on the 29/11/98. The evidence of PW2, (Ojo Falade the star witness), who was part of the search team on the order of the Oba Allaye of Oke Aiyedu on the report that Mayowa Adeleye was missing, is found vividly at pp. 47-48 of the records as follows:- C

“The search party were ordered to search the farm as well as the nearby school, I was in search party... we were also asked to search uncompleted and unoccupied buildings. We later found Sunday Jegede, near a new house. I then asked him if he had not heard what was happening in town. D

...I told him that we were looking for one Mayowa Adeleye, the deceased. He further asked if it was the Oba who asked me to come there. I then replied that the whole town authorized us to search for the victim. He told me that I had no power to enter into the new building. The Sunday Jegede then told me that I could not leave that premises. There and then he called the present 1st accused, Abokokuyanro Oluwatoyin. The 1st accused then came out. Then another one called Adagbon then appeared and one Ayan Olanrewaju. It was at that stage that the four of them surrounded me in the forest, surrounding the uncompleted building and they started beating me. It was at that stage that the 1st accused brought a sword. I snatched the sword from him and then ran to Oba in town. The Oba then called the police and some people to follow me to where I was attacked by these four people. The police then apprehended the four of them and took them to the Oba.” F G

From the evidence of the PW2 before the trial Court, the appellant (1st accused) was one of the group of four people encountered by PW2 in the bush: he (the appellant) was the one who brought out the sword which the PW2 snatched and ran away. On the proof as to whether the appellant was one of those who murdered Mayowa H

Adeleye, the circumstances surrounding the entire scenario have to be taken into consideration and given a careful analysis. It is on record for instance that the scene where the PW2 was attacked and where the deceased's body was found covered with the window blind belonging to the said Sunday Jegede, were close. It was the testimony of PW2 that during the encounter with the appellant and his cohorts, they did not only prevent him from searching the building where they were found but the appellant brought out a sword to slay him (PW2) but in the ensuing struggle, he managed to escape after snatching the sword from the appellant. An intriguing situation that calls to question is, why was the appellant and his three colleagues unable to offer an explanation and reason for their presence in the bush at the place and time where they were found? The body of the deceased, when found in the bush had the head severed; and such severance could only and normally be caused by a sharp object like a sword. The situation in which the victim's head was severed must obviously have caused the death of the deceased, Mayowa Adeleye. As rightly held by the lower Court, a medical report is not required in this situation to ascertain the cause of death because it is a matter of common sense that a headless body with the head having been severed cannot be expected to remain alive. The lower Court was properly in order therefore when it endorsed the view held by the trial Court that the appellant in the circumstance of this case was responsible as one of the killers of the deceased, Mayowa Adeleye.

Of further relevance is also the evidence of the appellant himself as DW1 under cross examination at pages 80-81 of the records wherein he said thus:-

'It was Sunday Jegede who told me that he wanted to make human head

... I thought that Sunday Jegede was merely telling me how to make human skull because he wanted to extract money from me...

Sunday Jegede told me that he was going to make human skull after I had packed my rice. I heard it from him before the victim was murdered. I did not probe further about how he was going to build the head because he might think I wanted to block his way of getting rich."

Also on an earlier date being 18th July, 2006, the appellant made an extra-judicial statement Exhibits 'A-A1' to the police and

said as follows:-

“On 29/11/98 at about 5.30pm when I was working on my rice, one Sunday Jegede came to meet me and secretly explained to me that he has something to tell me. I asked from him what is it? Sunday Jegede later told me that he is now building a human head that himself and one Tokyo are in that business. Sunday Jegede further explained that if they finished building the head and he opened it to somebody after a week or two that it will be as if the head has just been cut. On 30/11/98 when I later heard that Mayowa had been found and his head was beheaded, my mind went to what Jegede told me on 29/11/98. This made me to have the believe that it was Sunday Jegede that beheaded Mayowa and this made him to be talking proverbially to me.”

From the communal summary of the above, it goes to show that the appellant knew about the building of the human head before Mayowa went missing: the appellant was in company of the late Sunday Jegede armed with a sword the night of the incident when PW2 encountered them in the bush; the appellant was actively engaged in discussion with Sunday Jegede on building of human head but he did not deem it imperative and a reason to report such heinous intention by Sunday Jegede to the police: the same Sunday Jegede’s window blind was of the same design as the material covering the headless body of Mayowa Adeleye in the bush close to where the appellant and the other three accused persons were hiding, close to the house of Sunday Jegede; all these factors are pointing irresistibly to nothing else than the confirmation that the appellant murdered or was one of those that murdered the deceased Mayowa Adeleye. The appellant’s presence was fixed at the scene of crime and he was one of those called out from their hiding by Sunday Jegede that night on sighting the PW2. In my opinion, the lower Court concluded rightly in endorsing the view held by the trial Court. I also agree with the decision arrived at, that the appellant and his companions in crime failed to explain the activities they engaged in and why they were at the scene that time of the night. The only explanation is, from all indication, that they were at the scene for an evil and wicked purpose and not for anything profitable.

In re-iteration, I seek to say that the law is trite on the principle of circumstantial evidence, once it is found to be positive, compelling and pointing with exactitude to the guilt of the accused. The prosecution in this case will succeed in proof of its case. In other words, the entire surrounding circumstances must be examined and taken together. It is the sum total of the logical inference that will give irresistible outcome that the accused, and non other, must have committed the offence.

The recent decision of this Court in a sister appeal to the one under consideration is a reference point. The appeal is SC.192/2011, Olanrewaju Ayan v. State (2013) 15 NWLR (Pt. 1376) 34, (filed by Olanrewaju Ayan the 3rd accused at the trial Court) It was unanimously dismissed by this Court in its judgment delivered on 12th July, 2013. The learned jurist, I. T. Mohammad, JSC in the leading judgment held and said at pages 54-55:

"It appears from the record that the Court below is satisfied with the exercise carried out by the trial Court. That was why it affirmed the trial Court's decision. The trial Court went ahead to find the three accused persons, including the appellant guilty of the offences charged, convicted and sentenced each of them to the various sentences they are to serve. Can anyone do better than did the trial Court? Is it not the trial Court that saw, heard and assessed the demeanor of the witnesses? That of course is the primary role of any trial Court..."

It will not serve any useful purpose for this Court to review the evidence placed as learned counsel for the appellant would want this Court to do. The Court below did the same and it arrived at same conclusion with the trial Court, I am not convinced that there is any of the factors such as perversity of the trial Court decision or that a miscarriage has been caused tot he appellant which can make this Court revisit the evidence placed before the trial Court..."

From all intents and purposes, this Court has spoken in the sister appeal supra, as the final Court. The appellant in the appeal under consideration has not shown any reason distinguishing why his appeal should be rated differently and out of this interpretation given the sister appeal. This is more so where the evidence in the case has been the subject of concurrent findings of the trial Court and the Court of Appeal and affirmed also by the judgment of this Court in

the recent decision cited in the sister appeal supra.

On the issue of circumstantial evidence to convict for murder, the decision of this Court in the case of Adepetu V. State supra is in point wherein his Lordship Onu, JSC at page 217 of the report said:-

“The charge of murder is proved by circumstantial evidence not withstanding that neither the body of the deceased has been found, not even when the accused made no confession, he could albeit be convicted as render the commission of the crime with certainty and yet leave no ground for reasonable doubt.”

In further confirmation, the law firmly established also that even in the absence of finding the deceased’s body or where the accused failed to confess to the commission of the crime, the prosecution could still secure conviction of the accused for murder based on the inference of circumstantial evidence. See the case of Udediba V. State (1976) 11 SC 173 at 138-139.

It follows therefore that the submission by the appellant’s counsel against conviction of his client, in the absence of recovering the head of the beheaded body of Mayowa Adeleye, does not hold water but a complete misconception: rather, it is my view that the learned trial judge properly convicted the appellant for the unfortunate and wicked murder of Mayowa Adeleye, same having been proved by overwhelming circumstantial evidence. I have no reason to depart from, but also endorse the approval of the conviction and sentence sanctioned by the lower Court which affirmed the judgment of the trial Court. ***The evidence of PW2, had convincingly fixed the appellant at the scene of crime on the night of 29/11/98. The law is trite on evidence of single witness when found credible is sufficient without more to secure conviction of the accused.*** See Okoro V. State (1998) 14 NWLR (Part 584) 181 at 216 where this Court per Wali, JSC said:-

“No law says that an accused person cannot be convicted on the clear and unimpeachable evidence of a single witness. Such evidence does not require any collaboration.”

See also the cases of Onyegbu V. State (1998) 1 ACLR p. 386 and Afolalu V. State (2010) 16 NWLR (Pt 1220) P. 584 at 613.”

In the appeal under construction, there is nothing to create doubt in the evidence or conduct of the PW2 to warrant discountenancing his evidence as uncorroborated or

doubtful.

It is on record for instance that the appellant, with the other accused persons beat up the PW2 in the bush and it was the appellant who brought out the sword and would have used same on PW2 had he not snatched it and ran away. The interruption by snatching the sword prevented the commission of the full offence. See *Ozoloke V. State* (1965) NWLR 125 at 125-126.

It is the submission by the appellant's counsel further that the prosecution's failure to tender the sword recovered by the PW2 from the appellant rendered the witness's testimony as unreliable and therefore fatal to the prosecution's case.

In response, the respondent's counsel submits that tendering of a weapon allegedly used in perpetrating a crime is not a sine qua non to proving the guilt of the accused, where credible evidence abound and linking him with the crime in issue.

It is borne out on record that PW2 in his testimony on oath was unshaken that the appellant was part of a group of four that attacked him on 29th November, 1998 and that the appellant had a sword which he snatched. I hastened to add quickly that the witness was not cross-examined on this point: the lower Court could not be faulted for endorsing the trial Court judge rightly evaluated the piece of evidence and believed it.

The law is well settled that the appellate Court will not generally interfere with the concurrent finding of the lower Courts unless it is perverse, not supported by evidence and has led to miscarriage of justice or where any principle of law or procedure have not been followed or complied with. See the cases of *Enong V. Adu* (1981) 11-12 SC 17 at 25; *Igwe V. State* (1982) 9 SC 174; *Osayemi V. State* (1966) NMLR 388 and *Jimoh Micheal V. State* NCC 3, Page 666; (2008) 5 - 6 SC (Part 11) Page 203. In the absence of any reason warranting such interference therefore, the said issue is resolved against the appellant.

THE 2ND ISSUE QUESTIONS:-

Whether the contradiction in the evidence of the prosecution as to the date of the arrest of the appellant is not fatal to the prosecution's case and whether the Court of Appeal was not wrong to have held otherwise?

It is the submission by the appellant's counsel that the contra-

diction in the evidence of the prosecution on the date of arrest of the appellant is sufficiently material and fatal to their case, as some was not explained and creates significant and serious doubt on the possible participation of the appellant in the crime as charged: that there was compelling circumstantial evidence of the involvement of late Sunday Jegede in the crime while there was no evidence that pointed to the appellant: that the prosecution failed completely to prove the offence of attempted murder against the appellant in the face of the evidence adduced by PW3,² that the only people arrested in the forest on the night of 29th of November, 1998 were PW2 and the late Sunday Jegede: that none of the other witnesses mentioned anything about the appellant being found in the forest on the night of 29th of November, 1998. B C

It is the submission of counsel also that the evidence of PW3 and PW4 revealed that the appellant was arrested on the 30th of November, 1998: however that the clear inference that can be drawn from the evidence of the prosecution witnesses including PW2 is that he dastardly act had been committed prior to 30th of November, 1998: that in the circumstance, the appellant could have been the killer or part of the killers of the victim, with there being no evidence that he was in the bush: that the contradiction in the evidence of the date of the arrest of the appellant is therefore sufficient material and fatal tot he prosecution's case. D E

Counsel urged this Court to find and hold that both the trial Court and also the lower Court were wrong in failing to hold that the contradiction and failure of the prosecution to explain same were fatal to their case: that the failure by the prosecution to prove by credible evidence, the date of arrest of the appellant in this case is also fatal to the charges of murder, attempted murder and conspiracy. Learned counsel urged therefore that the issue should be resolved in favour of the appellant, whose conviction and sentence are to be set aside, while in its place, the Court should enter a verdict of his acquittal and discharge forthwith. F G

In response to the following arguments, the respondent's counsel submits and restates the fact which is not in issue wherein the appellant was arrested in connection with the attack he made on the PW2 during the search party organized in respect of the deceased Mayowa Adeleye, counsel restates also that the question as to the H

date the appellant was apprehended is immaterial to the facts arising in this case: that it is not every inconsistency or contradiction in the case of the prosecution that would warrant a reversal of the decision of a Court; counsel made reference copiously to the view held by the lower Court at page 261 of the record on the question of the alleged contradiction in the evidence of PW2 and PW3. The counsel urged the Court to refrain from interfering with the sound reasoning arrived at by the lower Court.

In resolving whether or not there was contradiction in the evidence of the prosecution witnesses, particularly by PW2, PW3 and PW4 concerning the date the appellant was arrested, I seek to state that the PW2 in his evidence testified that the appellant was arrested on the night of 29th November, 1998 while the PW3 and PW4 gave evidence that the appellant was arrested on 30th November, 1998. The law is trite that where two or more pieces of evidence seem to contradict each other or vary, and the discrepancy is minor, the difference cannot destroy the credibility of the witnesses. See the case of Ayo Gabriel V. The State (1989) 5 NWLR 457 and Uwagbae V. State NCC 3 Page 636.

The law is also well settled and is rightly submitted by the counsel for the respondent that, it is not every inconsistency or contradiction in the case of the prosecution that would warrant a reversal of the decision of a Court; such inconsistency must be material to the extent of casting serious doubt on the case presented by the prosecution against the accused before it can be countenanced. See the case of Dominic Princet V. State (2002) 18 NWLR (Pt 798) P.49 also Isibor V. State (2002) 3 NWLR (Pt 754) P. 250.

In the present case, the incident took place on 29th November, 1998. The alarm raised of the missing victim and his search began when PW1 confirmed he had not returned: the search stretched into the night, and there was an attempt on the life of the PW2 while searching for the deceased. It is only obvious that the arrest which were made must have been the night of 29/11/1998 or early next morning being 30/11/98.

Earlier in the course of this judgment, it was restated clearly that the appellant had been fixed at the scene of the

attempted murder and close to the spot where the deceased Mayowa Adeleye's body was found. It is immaterial therefore whether the appellant was arrested the night of the incident being 29/11/98 or the next morning which was 30/11/98. Consequently, I hold the view that the perceived seeming discrepancy or contradiction alleged if any, is indeed immaterial. In other words it is evident per PW2 that the presence of the appellant was fixed at the scene of crime on the night of 29/11/98. It is immaterial therefore whether he was arrested on 29/11/98 or on 30/11/98.

The case at hand has shown that the appellant was amongst the four persons arrested in connection with the incident, close to the scene of crime, having been one of the three persons called out by late Sunday Jegede from hiding, in the bush when PW2 encountered the appellant and the others: the appellant was armed with a sword: the similarity of the cloth that covered the headless body and those in the house of Sunday Jegede, all are a chain of events or situations that point squarely to the inference that the appellant is guilty, beyond reasonable doubt, of the offences for which he was convicted and sentenced by the trial Court and also affirmed subsequently by the lower Court.

For all intents and purposes, I deem it pertinent to reduce the view held by the lower Court at pp. 261 to 262 of the record thus:-

“Curiously, the learned counsel (for the appellant) admitted Sunday Jegede's involvement but excluded the appellant who was said to have been with Sunday Jegede, near his house in the night, on 29/11/98.

Learned counsel also agreed that the incident took place in the night of 29/11/98 or the morning of 30/11/98. Would it have made a difference then when the appellant was arrested in the night of 29/11/98 or the morning of 30/11/98? Does it encounter having been fixed at the scene the night of the incident and PW2's encounter with him and others in the bush that fateful night?

Does it exclude his participation as charged? It does not.”

The foregoing reasoning arrived at by the lower Court is, in my view, unassailable and very sound: the appellant has not produced or shown any contrary reason why I should depart from the lower Court. The issue is also resolved against the appellant.

In summary, the prosecution, as rightly concluded by the lower Court, has proved its case beyond reasonable doubt by circumstantial evidence which in this case points irresistibly to appellant as having attempted to murder PW2 on the night of 29/11/98 and also being one of the persons that murdered the deceased Mayowa B Adeleye.

Plethora of authorities have interpreted the phrase “beyond reasonable doubt”, as not being all shadow of doubt or beyond any iota of doubt. See the case of *Bazil Akalezi V. State* (1993) 2 NWLR (Part 273) Page 1.

With the two issues resolved against the appellant, the appeal in the circumstance is without any merit and is hereby dismissed. The judgment of the Court of Appeal, Ekiti Division in appeal No. CA/AE/C/33/2010 delivered on the 25th March 2011 and affirming the decision of the trial High Court, Ekiti State also delivered on 25th October, 2006 in Suit No. HCI/IC/2001 which convicted and sentenced the appellant to death for murder and life imprisonment for attempted murder is also hereby affirmed by me. The appeal is dismissed and the conviction and sentence of the appellant by the two lower Courts is further affirmed by this Court.

ONNOGHEN JSC

I have had the benefit of reading in draft, the leading Judgment of my learned brother, OGUNBIYI JSC just delivered.

I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed.

I accordingly dismissed same. Appeal dismissed.

AKA’AHS JSC

I had a preview of the judgment of my learned brother, Clara Ogunbiyi JSC that this appeal lacks merit and should be dismissed. I entirely agree. It ought to suffer the same fate as the two sister appeal namely:

1. *Olanrewaju Ayan v. The State* SC. 192/2011 delivered on 12/7/2013; and
2. *Sunday Udor v. The State* SC. 158/2012 delivered on 13/6/

2014. The judgments in the said appeals are reported in (2013) 15 NWLR {pt. 1376} 34 and (2014) 12 NWLR (Pt. 1422) 548 respectively.

This appeal like the two previous appeals against the judgment of the Court of Appeal, Ekiti Division on 25/3/2011 affirming the conviction and sentences passed on the appellant and the other convicts who were co-accused persons for the offences of conspiracy and murder of one Mayowa Adeleye and also the attempted murder of one Falade Ojo by the High Court of Justice of Ekiti State sitting at Ikole.

The evidence which led to the conviction of the appellant and the co-accused is circumstantial since no one saw how Mayowa Adeleye was murdered. It was the headless corpse of the deceased that was discovered by the search party following his disappearance on 29/11/1998.

At the hearing of this appeal learned counsel for the appellant abandoned issue No. 1 as being incompetent and it was accordingly struck out. Had learned counsel properly couched the issue so as to attack the judgment of the lower Court which held that the identity of the deceased was a new issue for which leave was needed in order to raise it (which to my mind is patently wrong), there would have been favourable consideration of the appeal. As Mahmud JSC (as he then was) held in *Udor v. State* (2014) 12 NWLR (pt. 1422) 548 at pages 559-560:-

“By virtue of the provision of Section 233 of the 1999 Constitution, the Supreme Court’s jurisdiction is to hear appeals from the decisions of the Court of Appeal. In this case issue 1 raised by the appellant raised a complaint against the decision of the trial Court over which the Supreme Court had no jurisdiction. It was incompetent”.

For this and the more detailed reasons advanced in the leading judgment of Ogunbiyi JSC I find that the appeal lacks merit and it is accordingly dismissed.

H

KEKERE-EKUN JSC

I have had the benefit of reading in draft the judgment of my learned brother, OGUNBIYI, JSC. I agree entirely with the reasoning

and conclusion that the appeal lacks merit and ought to be dismissed. I shall make a few comments in support.

The appellant herein along with three others was charged before the High Court of Ekiti State sitting at Ikole on a three-count charge of conspiracy to murder one Mayowa Adeleye, murder of the said Mayowa Adeleye and the attempted murder of one Falade Ojo (PW2). The offences were allegedly committed on 29th November, 1998. The accused persons pleaded not guilty to each of the counts. Before trial could commence, the 1st accused, Sunday Jegede died. The appellant became the 1st accused.

At the conclusion of the trial all the accused persons were found guilty as charged and sentenced to death on counts 1 and 2 and to life imprisonment on count 3.

The appellant's appeal to the Court of Appeal, Ekiti Division was dismissed on 25/3/2011, hence the instant appeal.

The appellant formulated 3 issues for the determination of the appeal, which the respondent adopted. At the hearing of the appeal on 21/1/2016, learned counsel for the appellant withdrew

Issue 1.

The remaining issues are:

1. Whether the learned trial Judge was right in holding that the prosecution proved a case of murder and attempted murder against the appellant beyond reasonable doubt and whether the Court of Appeal was right in upholding that decision.

2. Whether the contradiction in the evidence of the prosecution as to the date of the arrest of the appellant is not fatal to the prosecution's case and whether the Court of Appeal was not wrong to have held otherwise.

In criminal proceedings, the burden is on the prosecution to prove its case against an accused person beyond reasonable doubt. The burden remains on the prosecution throughout the proceedings. However, where the prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on to the accused person. See: Section 135 (3) of the Evidence Act, 2011. Also: *Esangbedo Vs The State* (1989) 4 NWLR (pt.113) 57 @ 69 - 70 H - A; *Woolmington vs D.C.C.* (1935) A - C 462, *Udo Vs The State* (2006) 15 NWLR (Pt.1001) 361.

The evidence in this case consisted of both eye witness and

circumstantial evidence. The eye witness evidence is the evidence of PW2, the victim of the attempted murder in count 3 of the charge.

It is settled law that a conviction for murder may be founded on circumstantial evidence. The circumstantial evidence to ground a conviction must be cogent, complete, unequivocal, compelling and must lead to the irresistible conclusion that the accused and no one else is the murderer, See: Archibong Vs The State (supra) @ 374 - 375 G - A; Ugwu Vs The State (1972) 1 SC 128; Ayinde Vs The State (1972) 3 SC 147. This Court in Nweke Vs The State (2001) 4 NWLR (pt.704) 588 @ 600 A - C per Ogundare, JSC held:

“The law is as stated by Hewart Lord Chief Justice of England in R v. Taylor & Ors (1928) 21 CAR 20 at P21:

‘It has been said that the evidence against the applicants is circumstantial: So it is, but circumstantial evidence is very often the best. It is evidence of surrounding circumstances, which, by under- signed coincidence, is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial.’

This statement of the law was approved by this Court in Fatoyinbo Vs A-G Western Nigeria (1966) WNLR 4; See also Adie Vs The State (1980) 1 - 2 SC 116; Ukorah Vs The State (1977) 4 SC 167; Aigbadion Vs The State (2000) 7 NWLR (pt.666) 686.”

In Archibong Vs The State (supra) at 370 B - E it was held that the circumstantial evidence required to ground a conviction apart from being reliable and credible must be consistent with no other rational hypothesis except the guilt of the accused. It must be clear that no other co-existing circumstances arise which would weaken the inference. See also: Ikomi Vs The State (1986) 5 SC 313 @ 359: Abieke Vs The State {1975} 9 - 11 SC 97 @ 104.

On the charge of attempted murder, the evidence of PW2, the victim of the offence, to the effect that the appellant was part of a group of four people who attacked him in the bush on 29/11/1998 while he and others were searching for the deceased and that the appellant while accosting him, brought out a sword, which he (PW2) snatched from him, was direct, positive and unshaken under cross-examination.

After a careful consideration of all the evidence led, the trial Court at pages 136 - 140 of the record held inter alia as follows:

“The indisputable fact of their unlawful presence or assembly in the bush in that night has given them up as the persons who formed an alliance or conspired to commit a felonious act on 29th November, 1998 to wit to make a human head or skull that day by killing the deceased. I am fortified in my belief by the question that agitates
 B my mind, that is, what were the accused persons doing with Sunday Jegede, whose window blind cloth was used to cover the headless body of the deceased?

Another question is, if they had no agreement to kill the deceased or the PW2, then why did Sunday Jegede have to call them
 C out of the bush that night? All these facts point to only one unassailable direction that they established that unlawful assembly in the bush to indulge in some criminal pastimes or tendencies. They were no doubt partners in the crime of ritual killing.

D The accused persons by drawing the sword while fighting the PW2 showed that if PW2 had not escaped them by the skin of his teeth he would also have been murdered. Throughout the 1st accused or none of the accused persons denied attacking PW2 with a sword, which he said he snatched from the 1st accused.

E I have already held that the evidence relied upon by the prosecution in this case is circumstantial, particularly in the case of the deceased murdered by his assailants who removed away his head. But in the case of the 3rd count or attempted murder of PW2, the story is different because he, the PW2 was in the middle of the storm
 F being the person the accused persons tried to murder that night of 29th November, 1998. Here I must say that the totality of the evidence before me both from the prosecution and DW1 and particularly what happened on the night of 29/11/1998, the attack launched
 G on the PW2 in their attempt to murder him, all pointed this Court to one direction that it was these same accused persons who attacked PW2 and murdered Mayowa Adeleye earlier in the day that day.

This is one of the inferences this Court can reasonably draw from the conduct of the accused persons undertaking ritual killings
 H and from the totality of evidence given in this Court.

They killed Mayowa Adeleye, beheaded him and passed the head probably to one Tokyo who supplied it to a journalist.

All in all, I have made the following findings:

(a) *That the accused persons are guilty of the offence of con-*

spiracy] as charged.

(b) *That the circumstantial evidence adduced by the prosecution points to only one irresistible direction and that is, that the accused persons found and arrested in the bush on 29th November, 1998 and who attempted to murder PW2 were the same persons who by their acts murdered the deceased.* B

(c) *That by attacking the PW2 on 29th November, 1998, all the accused persons together are guilty of the offence of attempted murder as charged.*

(d) *That the defence of alibi put forward by the 3rd accused person is unsustainable.* C

After a painstaking consideration of the evidence and the findings of the trial Court, the Court below found as follows:

“In conclusion, having shown that the appellant was amongst the four accused persons arrested the same day of the incident close to the scene of crime, having been one of the three persons called out by late Sunday Jegede from hiding in the bush when PW2 encountered the appellant and the others, the appellant armed with the sword, the headless body found close by where the appellant and the other accused persons were hiding, the similarity of the cloth that covered the body and those in the house of Sunday Jegede, all are a chain of events or situations that point to the inference that the appellant is guilty beyond reasonable doubt of the offences for which he was convicted and sentenced by the trial Court. I see no reason to disturb same, See the decision of this Court and division in the sister case in Appeal No. CA/IL/C. 5B/2009 OLANREWAJU AYAN V. THE STATE, delivered on 19th January, 2011 (supra).” F

The above findings in my view cannot be faulted.

On the second issue wherein the appellant contends that the contradictions in the evidence of the prosecution witnesses as to the date of the appellant’s arrest, were fatal to its case, I agree entirely with my learned brother, OGUNBIYI, JSC, that the alleged contradictions are not material enough to warrant the setting aside of the conviction. In order for contradictions and inconsistencies in the evidence of prosecution witness to be fatal, they must relate to fundamental and core issues. See: Archibong vs The State (supra) @ 376 F - H; Ankwa Vs The State (1969) 1 ALL NLR 133; Queen Vs Iyanda (1960) 5 FSC 2630; Omisade vs Queen (1964) 1 ALL NLR 233; G H

Kalu Vs The State (1987) 4 NWLR (Pt.90) 503.

In my view, whether the appellant was arrested on 29/11/1994 or in the early hours of 30/11/1998 does not detract from the established fact that he was arrested in connection with his attack on PW2 during the search for the deceased and other circumstantial evidence B that pointed irresistibly to the conclusion that he was one of those who murdered the deceased.

It is not the practice of this Court to interfere with concurrent finding of fact by two lower Courts unless the findings are perverse, C not supported by the evidence on record or where there is an error of law or fact on the face of the record, which has occasioned a miscarriage of justice. See: Archibong Vs The State (2006) 14 NWLR (Pt.1000) 349 @ 380 - 381 F - D; Ogundiyen Vs The State (1991) 3 NWLR (Pt. 181) 40519 @ 528-529 H-A; Ogoala Vs The State (1991) D 2 NWLR (Pt.175) 509 @ 528 C - D; Olokotintin Vs Sarumi (2002) 13 NWLR (Pt.784) 307.

Indeed the concurrent findings of the two lower Courts are in accord with the decisions of this Court dismissing the sister appeals in: Olanrewaju Ayan vs The State (2013) 15 NWLR (Pt.1375) 34 and E Sunday Udor Vs The State (2014) 12 NWLR (Pt.1422) 548.

The appellant has not advanced any reasons for this Court to depart from those decisions in this case.

It is for the reasons stated herein and the fuller reasons well adumbrated in the leading judgment that I find this appeal to be F devoid of merit. It is accordingly dismissed. The judgment of the Court below, which affirmed the conviction and sentence of the appellant, is hereby affirmed.

G

NWEZE JSC

I had the advantage of reading the draft of the leading judgment which my Lord, Ogunbiyi, JSC, just delivered now. I, entirely, agree with His Lordship that this appeal is unmeritorious and should H be dismissed.

As my Lord has shown in the leading judgment, for circumstantial evidence to ground a conviction, it must lead only to one, and only one, conclusion, namely, the guilt of the accused person.

In *Iliyasu v. State* [2015] 2 SCM 114, 136 -137, this Court (per Nweze, JSC) devoted considerable efforts to the exposition of the character of this evidential genre.

Listen to this:

Now, the category of evidence known as circumstantial evidence, which is, more often than not, the best evidence, *Obasi v. State* (1965) NWLR 119; *Ukarah v. State* (1977) 4 SC 167; *Lori v. State* (1980) NSCC 269; *Onah v. State* (1985) 3 NWLR (pt 12) 236; *Ebenehi v. State* (2009) ALL FWLR (pt 486) 1825, 1832- 1833; *Ijiofor v. State* (2001) 9 NWLR (pt 718) 371, 385, is the evidence of surrounding circumstances which, by undersigned coincidence, is capable of proving a proposition with the accuracy of mathematics. *Ijiofor v. State* (supra) 385. This is so for, in their aggregate content, such circumstances lead cogently, strongly and unequivocally to the conclusion that the act, conduct or omission of the accused person caused the death of the deceased person, *Idiok v. State* (2008) ALL FWLR (pt 421) 797, 818.

Simply put, it means that there are circumstances which are accepted so as to make a complete and unbroken chain of evidence, *Omotola and Ors v. State* (2009) 7 NWLR (pt 1139) 148, 178; (2009) LPELR- 2663 (SC) 42-43.

Where such circumstances are established to the satisfaction of the Court, they may be properly acted upon, *Wills on Circumstantial Evidence in Nigerian Law* (Port Harcourt: Law-house Books, 2000) 1 ; *Omotola v. State* (supra)

Thus, where there is no eye witness account or direct evidence of the commission of an offence, a conviction may be based on circumstantial evidence, *Igbale v. State* (2004) 15 NWLR (pt 896) 314. However, such circumstantial evidence must point to only one conclusion, namely, that the offence had been committed and that it was the accused person who committed it, *Dick v. C. O. P.* [2009] 9 NWLR (pt 1147) 530, 551. For the purpose of drawing an inference of an accused person's guilt from circumstantial evidence, there must not be other co-existing circumstances which would weaken or destroy the inference, *Igho v. State* (1978) 3 SC 87: *State v Edobor* (1975) 9-11 SC 69. Thus, all other factors and surrounding circumstances must be carefully considered for they may be enough to adversely affect the inference of guilt, *Lori v. State* [1980] 8-11 SC 81 *Udedibia*

v. State [1976] 11 SC 133; Aigbadion v. State [2000] 7 NWLR (pt 666) 686.

The explanation for this need for circumspection is simple: evidence that falls within this category may be fabricated to cast aspersions on other people, per Lord Normand in *R v. Tepper* (1952) 480, 489 approvingly adopted in *State v. Edobor* (1975) 9-11 SC 69, 77. That is why a Court must, properly, appraise the circumstantial evidence adduced by the Prosecution before convicting an accused person thereon, *Adepelu v. State* (1998) 9 NWLR (pt 565) 185; *Iko v. State* (2001) FWLR (pt 68) 1161; (2001) 14 NWLR (pt 732) 221; *Orji v. State* (2009) ALL FWLR (pt 422) 1093, 1107.

It must be noted that there is no yardstick by which any circumstantial evidence can be measured before a conviction can be entered against an accused person. Thus, each case depends on its own facts.

However, one test which such evidence must satisfy is that it should lead to the guilt of the accused person and leave no degree of possibility or chance that other persons could have been responsible for the commission of the offence, *Ijiofor v. State* (Supra) 385; *Ebenehi v. State* (supra) 1832.

In the instant case, the trial Court accepted the evidence of PW2, Ojo Falade. It found, from his said evidence, such circumstances which constituted a complete and unbroken chain of events: events which led cogently, strongly and unequivocally to the conclusion that the act, conduct or omission of the accused person caused the death of the deceased person, *Idiok v. State* (2008) All FWLR (pt 421) 797, 818.

The lower Court affirmed those findings. Incidentally, this Court, for the same reasons, dismissed the sister appeal (SC. 192/2011, *Olanrewaju Ayan v. State*, delivered on July 12, 2013). I have no reason for arriving at a divergent conclusion in this appeal and, hence, like the leading judgment, I too will dismiss this appeal. I abide by the consequential orders in the said leading judgment.

H