

SUPREME COURT OF NIGERIA
FRIDAY 20TH MAY, 2016. SC. 64 & 65/2013
CORAM:- S. GALADIMA, O. RHODES-VIVOUR,
N. S. NGWUTA, M. U. PETER-ODILI,
M. D. MUHAMMAD, JJSC

RAPHAEL UDE APPELLANT
V.	
STATE RESPONDENT
AND	
ELVIS CHUKWUMA ILOMUANYA APPELLANT
V.	
STATE RESPONDENT

EVIDENCE - Admissibility - Testimony of blood relation - The fact that PW2 & 4 are blood relations of deceased - Neither disqualifies them from being witnesses - Nor makes their evidence incredible (H1)

MURDER - Proof - Although appellant's name was not mentioned as one of the murderers of deceased - Yet evidence abounds that places him not only at crime scene - But also shows his participation (H2)

FAIR HEARING - Doctrine of - Crime - The principle does not suggest that appellant's case must be determined in his favour - But requires that opportunity be given to him to present his case (H3)

FACTS

At the High Court of Abia State Umuahia, appellant in SC.64/2013, on all fours with 65/2013, and nine others were tried on a three count charge of murder of some persons contrary to section 319(1) of the Criminal Code Cap. 30 Vol. II Laws of Eastern Nigeria (applicable to Abia State). They pleaded not guilty to the charge. Prosecution's/Respondent's case is that appellant and the others as well as the persons murdered by them all hail from Lokpanta in Umunneochi Local Government Area of Abia State. Appellant and his co-accused belonged to the Youth Movement in the community,

while the deceased persons were members of the Lokpanta Development Union. A leadership dispute arose in the community.

The dispute later degenerated into a riot wherein the deceased persons were severely tortured. The deceased persons along with PW4 were later rounded up, taken to the market square where they were flogged and thereafter transported on motorcycles to a bush on a hill. At the hill, the deceased were brutally murdered and their dismembered bodies burnt. PW4 managed to escape by jumping into a pit and fleeing to safety. To establish its case, respondent called six witnesses. Appellant and the others testified on their own behalf and called no other witnesses in defence. At the end of trial, appellant and two others were convicted while 4th to 10th accused persons were discharged and acquitted. Appellant's appeal to the Court of Appeal was dismissed. Hence, appellant has approached the Supreme Court on appeal.

ISSUES FOR DETERMINATION

"1. Whether the quality of eye-witness evidence relied upon by the court below in affirming the conviction of the Appellant by the trial court is not questionable and doubtful and therefore insufficient to sustain the affirmation of conviction of the Appellant by the court below.

2. Whether the court below was not wrong in holding that the prosecution demolished the Appellant's alibi when indeed the alibi given to the police at the earliest opportunity was not found to be false.

3. Whether the court below was not wrong in affirming the trial court's decision that the Appellant counseled and procured other accused persons to kill the deceased in the absence of specific intention and positive acts of encouragement.

4. Whether the court below was not wrong in affirming the trial court's conviction of the Appellant wherein Appellant's evidence at the trial court was given scant regard thus violating Appellant's right to fair hearing.

HELD (Unanimously dismissing the appeals per
MUHAMMAD JSC)

EVIDENCE - Admissibility - Testimony of blood relation

1. Learned appellant's counsel, it must be stated, has not been fully forth coming in either stating the principles or in applying them to the facts of the instant case. At paragraph 4.40 of the appellant's brief, learned counsel's concession that the evidence of a relation, which PW2 and PW4 are, can be accepted if same is found cogent enough to rule out deliberate falsehood. That is indeed the true position of the law. The fact that these witnesses, PW2 and PW4 are blood relations of the deceased, without more, neither disqualifies them from being witnesses for the prosecution, nor makes their evidence incredible. (p. 2714 H)

MURDER - Proof

2. PW4 maintained his grounds under cross examination. It is true that PW2 and PW3 did not mention the appellant by his name in their statements to the police as being one of those who murdered the deceased persons. However, PW2 told the court that he did not know all the accused persons by their names. PW3, on the other hand, stated that it was the police, while recording his statement, that told him not to bother about the names of all the culprits. Certainly if PW2 did not previously know the appellant by name he would not be expected to give his name to the police. PW3's explanation as to why he did not mention appellant's name, too, should suffice. In any event sufficient evidence exists even after PW3's evidence is discounted to sustain the guilt of the appellant.

Evidence certainly abound that places the appellant not only at the scene of crime but also establishes the fact of his participation in the murder of the deceased. It therefore, no longer lies in his mouth to insist that he was never at the scene of the crime let alone to have been a party to same.

(pp. 2717 B/2718 H)

FAIR HEARING - Doctrine of - Objective

3. Finally, and this relates to appellant's fourth issue, learned respondent's counsel is right that the doctrine of fair hearing as provided for under Section 36 of the 1999 Constitution does not in the least suggest that appellant's case must willy-

nilly be determined in his favour. All that the doctrine requires is for the appellant to be given the opportunity to present his case before a decision one way or another is taken by the court.

Both courts below have not only granted appellant that opportunity but have also considered the case he presented in arriving at their concurrent findings on his guilt. Appellant's 4th issue is thus resolved against him. (p. 2719 A)

REPRESENTATION

NGOZI OLEHI ESQ. for the Appellant and with him is Obinna Nwachukwu ESQ
UMEH KALU, Attorney-General, Abia State for the Respondent and with him N. N. Akinola (Mrs.) (DDCL Abia State MOJ) and Chux Okeedu DDPP Kogi State

CASES REFERRED TO

Onuoha v. State (1989) 2 SC (pt. II) 115
Agbo v. State (2006) All FWLR (pt. 309) 1380
Ariji v. State (1976) 2 SC 79
Ibe v. State (1997) 1 SCNJ 256
Nwankwoala v. State (2006) All FWLR (pt. 339) 801
Adebayo v. The Republic (1967) NMLR
Akpabio v. State (1994) 7 NWLR
Madu v. State (2012) 15 NWLR (pt. 1324) 405
Osuagwu v. State (2013) 5 NWLR (pt. 1347) 360
Igabele v. State (2006) 6 NWLR (pt. 975) 100
Adeyemi v. State (1991) 1 NWLR (pt. 170) 679

STATUTES REFERRED TO

Criminal Code Cap 30 Vol. II Laws of the Eastern Nigeria, s. 319(1)
Constitution of the Federal Republic of Nigeria 1999, s. 36

LEAD JUDGMENT BY MUHAMMAD JSC

This judgment is in respect of Appeals No. SC. 64/2013 and No. SC. 65/2013.

Appeal No. SC.64/2013

This is an appeal against the judgment of the Owerri Division

of the Court of Appeal, the lower court, delivered on the 27th day of April 2012, affirming the conviction and death sentence of the appellant and two others by the Abia State High Court, the trial court, Coram S. N. Imo, (Chief Judge as he then was). The latter's judgment was delivered on the 1st day of July 2010.

The appellant, Raphael Ude, and nine others were tried on a three count information at the Umuahia High Court for the murder of Sunday Ude, Chief Cornelius Orjiogo and Johnson Onwuegbuchulam contrary to Section 319(1) of the Criminal Code CAP 30 Vol. II laws of the Eastern Nigeria as applicable to Abia State. The offences were committed between the 4th and 5th of January 2007 at Lokpanta, a community within the Umunneochi Judicial Division of the Abia State High Court.

To establish its case, the respondent called six witnesses. The appellant and the other accused persons testified on their own behalf and called no other witnesses in their defence. At the end of trial, the appellant and two others, namely, Chukwuma Ilomuanya and David Amaefula, were convicted while the 4th to the 10th accused persons were discharged and acquitted. I shall elaborate on the facts that brought about the appeal at once.

The appellant, others convicted along with him as well as the persons murdered by them all hail from Lokpanta in Umunneochi Local Government Area of Abia State. Lokpanta Youth Movement and the Lokpanta Development Union came into existence, the latter being the first in time, with the objective of enhancing the development of the Lokpanta Community. The former's rivalry with the latter took an unwholesome trend. Its members serially threatened persons in the community and constituted themselves into a court adjudicating in all manner of cases. The appellant and his co-accused belonged to the youth movement. Their victims were members of the Lokpanta Development Union. Following the youth movement's resolve to wrestle power from the Lokpanta development Union, its women members staged a demonstration in support of their organisation on the 3rd January 2007. The appellant who had been billed to become the youth movement president is said to have sponsored the demonstration. In the course of the demonstration, which eventually degenerated into a riot, the deceased were visited and subjected to abuse and torture in their respective houses by the ap-

pellant and other members of the youth movement.

By the 4th of January 2007, the deceased persons along with PW4 were rounded up, taken to the market square where they were flogged and thereafter transported on motorcycles to a bush on a hill by the Lokpanta and Agwu border. At the hill, the deceased were brutally murdered and their dismembered bodies burnt. PW4, who was also forcefully transported by their abductors, escaped the clutch of the assassins by jumping into a pit and fleeing to safety.

The appellant denied taking part in the murder of the deceased and insists that he is implicated by his detractors. At the end of trial, the court preferred the case of the respondent and convicted the appellant and the 2 other accused persons as charged. Appellant's appeal to the court below was dismissed thus the instant appeal on a Notice containing four grounds filed on 2nd July 2012.

At the hearing of the appeal, parties having identified their briefs adopted same as their arguments for and against the appeal. The four issues distilled by the appellant as having arisen for the determination of the appeal read:-

"1. Whether the quality of eye-witness evidence relied upon by the court below in affirming the conviction of the Appellant by the trial court is not questionable and doubtful and therefore insufficient to sustain the affirmation of conviction of the Appellant by the court below. Ground 1

2. Whether the court below was not wrong in holding that the prosecution demolished the Appellant's alibi when indeed the alibi given to the police at the earliest opportunity was not found to be false. Ground 2

3. Whether the court below was not wrong in affirming the trial court's decision that the Appellant counseled and procured other accused persons to kill the deceased in the absence of specific intention and positive acts of encouragement. Ground 3

4. Whether the court below was not wrong in affirming the trial court's conviction of the Appellant wherein Appellant's evidence at the trial court was given scant regard thus violating Appellant's right to fair hearing. Grnd 4" (Underlining provided for emphasis).

The issues identified by the respondent as relevant in determining the appeal are:-

"1. Whether the testimonies of PW1, PW2, PW3 and PW4

disclosed sufficient evidence upon which the Court of Appeal could have affirmed the decision of the trial court.

ii. *Whether the alibi relied upon by the appellant at the trial court was not demolished by the prosecution witnesses.*

iii. *Whether the court below was not right in affirming the trial court's decision that the appellant counseled and procured the other accused persons to kill the deceased persons.* ^B

iv. *Whether the court below was not right in affirming the decision of the trial court when it is apparent the appellant was given a fair trial.* ”(Underlining provided for emphasis). ^C

On appellant's first issue, his counsel submits that the lower court's finding at lines 8 to 11 of page 482 of the record of appeal that four witnesses, PW1, PW2, PW3 and PW4, out of the six who testified for the respondent, were eye witnesses is manifestly wrong. No where in PW1's extra judicial statements, Exhibits B to B3, it is contended, has PW1 stated he was eye witness to the facts which constitute the offences of murder the appellant is convicted for. Again, it is neither PW1's evidence in chief nor under cross examination that he witnessed the actual murder of the deceased by, among others, the appellant. Indeed, submits learned appellant counsel, PW1's evidence under cross examination at page 157 of the record ends dramatically with the testimony that he never witnessed the commission by the appellant of the offences he stands convicted for. ^E

PW2 too, learned counsel continues, never mentioned in Exhibit C, his 1st extra judicial statement made three days after the murder of the deceased, the name of the appellant as a participant in the commission of the offences. It is only in his subsequent statements to the police, Exhibits D and E and his evidence in chief during trial that PW2 mentioned the appellant's name. It does not stand to reason that if indeed PW2 was an eye witness not to mention the names of those who murdered his full blood brother timeously. PW2's subsequent extra judicial statement and evidence before the court that implicated the appellant, learned counsel submits, constitute an afterthought which a court should not rely on to convict. Learned counsel relies on *Onuoha V. The State* (1989) 2 SC (Part II) 115. ^F

The evidence of PW3 and PW4 too, it is further contended, remain incredible. Even in Exhibits F and FI, PW3's extra judicial statement to the police, it is urged, the appellant's name was never ^H

mentioned. It is only in “Exhibit F2, given about five days after the incident and further to his earlier two statements, that PW3 linked the appellant. PW3’s evidence in chief, learned counsel further submits, should equally be classified as an afterthought.

B PW4’s extra judicial statement, learned appellant’s counsel contends, was recorded three days after the incident for which appellant was convicted. It is incredible that PW4 who had seen his father killed could wait for that long before reporting the episode to the police. And the content of Exhibit G, it is asserted, violently vary from PW4’s C evidence at trial. The lower court’s affirmation of the trial court’s judgment on the basis of the worthless evidence of the principal witnesses of the prosecution, urges learned appellant’s counsel, should be interfered with. PW2 and PW4, learned appellant’s counsel further contends, are blood relations of the deceased. Their evidence should D be considered against the background of all the surrounding circumstances including their being so related.

The lower court’s failure to do so remains fatal. The contradictions in the evidence of these witnesses, learned counsel submits, cannot also be glossed over. Relying inter-alia on the decisions in E Agbo V. The State {2006} ALL FWLR {Pt 309} 1380; Ariji V. The State {1976} 2 SC 79 and Ibe V. State {1997} 1 SCNJ 256, learned appellant counsel concludes that the totality of the evidence adduced by the respondent remain incapable of being believed by any reasonable tribunal in convicting the appellant. The lower court’s reliance on same in affirming the trial court’s conviction of the appellant F is, therefore, perverse. Learned counsel urges that the issue be resolved in appellant’s favour and his appeal allowed.

On appellant’s 2nd issue, he argues that the logical inference G the two lower courts should have drawn from the quality of the evidence led by the respondent, but failed to, is that appellant’s alibi had persisted and his conviction could not stand. Appellant had at his earliest opportunity in his statement to the police, Exhibit H, vehemently denied ever being at the scene of crime at the times relevant H to the occurrence of the offences. Failure of the prosecution to disprove appellant’s alibi meant that he never was a party to the commission of the offences. Learned counsel relies on Okosi V. The State (1998) 1 ACLR 281 at 304 and urges that this Court so holds.

In further argument under the 2nd issue, learned appellant’s counsel

submits that by a letter in the investigators file which this Court, given the decision in *John Agbo V. The State* (2006) All FWLR (Pt 309) 1380 at 1399, is entitled to refer to, notwithstanding that same is not in evidence, the investigators had advised that appellant be released as nothing had been found against him. The content of the letter and the evidence of PWS that further investigation had not been conducted, submits learned counsel, strengthened appellant's alibi that he never was at the scene. It remains the duty of the prosecution to fix the appellant at the scene of crime and failure to do same leaves a lingering doubt in the respondent's case that should have benefited the appellant. The lower court's judgment against the appellant in spite of the doubt, it is argued is perverse and should be set - aside. Learned counsel refers the court to *Stephen V. State* (1986) 5 NWLR (Pt 46) 978, *Onubogu V. State* (1974) 9 SC 7 and *Patrick Njovens & ors V. The State* (1973) 5 SC.

Under the 3rd issue, learned appellant's counsel submits that appellant's conviction as affirmed by the lower court is based on the wrong inference that the appellant who had not been situated at the scene of crime had in furtherance of a common intention murdered the deceased. The evidence before the two courts, on the common intention of the convicts to kill, learned counsel contends, is incapable of been believed given surrounding circumstances.

Further relying on *Nwankwoala V. State* {2006} ALL FWLR {Pt 339} 801, *Adebayo V. The Republic* {1967} NMLR, *Akpabio V. The State* {1994} 7 NWLR learned counsel insists that the lower court's affirmation of the trial court's decision that failed to thoroughly consider appellant's defence has compromised appellant's right to fair hearing. The decisions of the two courts should, even on that account alone, learned counsel concludes, be set aside and the appeal being allowed.

In responding to appellant's foregoing arguments under its respective issues, learned respondent counsel concedes that of the six witnesses the respondent relied to prove its case, two, PWS and PW6, being police investigators, were not eye witnesses. Only the other four, PW1, PW2, PW3, PW4, it is submitted, who personally saw the appellant commit the offences and whose observations the two courts justifiably relied upon in convicting the offenders, were. The conviction of the appellant, submits learned counsel, is sustain-

able on the evidence of these two eye witnesses. By their account, the respondent, it is argued, has established sequence of events commencing with the women demonstration that turned into a riot, the subsequent arrests of the deceased and their humiliation at the market square and finally the gruesome murder and burning of their
 B dismembered bodies at the flat hill between Lokpanta in Abia State and Awgu in Enugu State, by the culprits including the appellant. The trial judge, learned counsel submits, found the account as testified to by the four witnesses credible and accepted same in convicting the appellant. The lower court also disbelieved appellant's case in
 C affirming the trial court's conviction and sentence of the appellant. The fact that PW3 and PW4 are related to the deceased, submits learned appellant counsel, does not render their evidence irrelevant, inadmissible or incredible. Relying on *Clement Ogunze V. The State*
 D {1998} 58 LRCN 3512, *Ishola V State* {1976} 9 and 10 SC 81 and *Arehia & anor V. The State* {1982} 4 SC, learned respondent's counsel urges that this Court discountenances appellant's wrong arguments.

The two courts, it is further contended, are right in their resort to the evidence of the four witnesses whose testimonies are not in
 E violent conflict. The trial court that saw the witnesses testify found their evidence credible and acted on it. The lower court, contends learned respondent's counsel, not being in the same vantage position as the trial court, is not entitled in law to substitute its own view of the evidence of the witnesses with that of the trial court. Both courts
 F having acted lawfully, learned counsel submits, this Court lacks the jurisdiction to interfere with the judgment appealed against. The case of *Onubogu V. The State* (supra) which the appellant relies on, submits learned counsel, does not apply to the instant case. Instead, this
 G Court should be guided by the decisions in *Theophilus V. The State* (1996) 1 SCNJ 75 at 91 and *Christopher Arehia V. The State* (1982) 4 SC 76 which allow courts to ignore minor discrepancies in testimonies of witnesses.

Under the 2nd issue, learned respondent's counsel submits
 H that the alibi the appellant raises is vague and inchoate. Having failed to furnish the prosecution with particulars of the alibi, the appellant cannot turn around and blame the former from investigating the truth or otherwise of his claim. Most importantly, submits learned counsel, the evidence of PW1, PW2, PW3 and PW4 has fixed the

appellant at the market square as well as at the hill top where they eventually murdered their victims thereby making appellant's alibi on the authority of *Gachi V. The State* (1965) NMLR 333 and *Dogo V. The State*. (supra) untenable.

On the 3rd issue, learned respondent's counsel asserts that the lower court is right to have affirmed the trial court's judgment for the very same reason that disentitles the appellant to his alibi claim. The appellant, it is argued, by the testimonies of particularly PW2 and PW4, has been shown to be the brain not only behind the demonstration and riot that preceeded but also the murder of the deceased as well. Not only did the appellant agree with others to kill the deceased persons evidence also revealed him congratulating the others after the act. Referring on *Ahmed V. State* (1998) 61 LRCN 4410, *Ogu Ofor & anor V. The Queen* (1955) 5 WACA 14, *State V. Oladimeji* (2003) 109 LRCN and *Akinkumi & ors V. State* {1987} 1 NSCC D 305 at 314 learned respondent's counsel submits that the conviction and sentence of the appellant based on their common intention as affirmed by the lower court cannot be faulted. He urges that appellant's third issue be resolved against him.

On the 4th issue, learned respondent's counsel refers to the decision in *Deduwa V. Okorodudu* 1976 NMR 236 at 246 and contends that neither the trial court nor the lower court contravened the principles of natural justice in the course of hearing appellant's case. In both courts, it is argued, the appellant was allowed to present his case and same was considered. It remains the primary duty of the trial court, argues learned counsel, to ascribe probative value to the evidence of witnesses and it is not the practice of the appellate court to lightly interfere. In the case at hand where there is the concurrent findings of the two courts below, the task the law assigns the appellant, which has remained unperformed, is to show that the findings of both courts are perverse. Once the appellant is shown to have had the opportunity of presenting his case and he has done so, it is not for the two courts to handle the matter only in the manner acceptable to the appellant. Further relying on *Arowolo V. Olowokere & 2 Ors* (2012) 203 LRCN 58, *Ogbechie V. Onochie* (1998) NWLR (Pt 470) 370 and *Edwin Ezeigbo V. The State* (2012) 212 LRCN 54 at 65, learned counsel submits that the issue be resolved against the appellant and the appeal dismissed in its entirety.

It appears to me that appellant's 3rd issue for the determination of the appeal subsumes his 1st and 2nd issues. The lower court would indeed only be right in its affirmation of the trial court's judgment if the judgment is based on credible and sufficient evidence that established appellant's guilt beyond reasonable doubt. And there cannot be such proof of appellant's guilt if the alibi he raises persists. Again, be it outrightly stressed that appellant's case is not that the three deceased men, Sunday Felix Ude, Chief Cornelius Orjiogo and Johnson Onwuegbuchulam had not been murdered. His case, even in this Court, is that he was not at the scene of their murder and did not participate in the unlawful acts for which both courts below convicted and sentenced him. This Court, in determining the appeal within the purview of appellant's 3rd issue, therefore, has to answer the all important question whether, from available evidence, both courts are right in their findings that appellant was not only at the scene of the offences but that he participated in the commission of the offences.

I disagree with learned appellant's counsel that credible evidence had not been led by the respondent that situates the appellant at the scene of the offences and establishes the fact of his being one of the culprits. Now, counsel on both sides have alluded to some legal principles in the course of their submissions. It is tidy, at this point, to state them correctly and see if the principles are applicable to the case at hand and, if they are, whether they have correctly been applied to the facts herein.

Firstly, learned appellant's counsel has contended that the law has imposed a duty on both courts below to reject the evidence of PW2 and PW4 because of their relationship with the deceased in respect of whose murder the appellant is convicted. It is further alleged that since the two had not, at their earliest opportunity mentioned the appellant in their extra judicial statements as being among those responsible for the murder of the deceased, their evidence remains suspect and unreliable. Learned appellant's counsel lastly contends that with the rejection of the evidence of these two who were the only eye witnesses to the commission of the offences, appellant's alibi persists and cannot, not having been fixed at the scene of the crime, be convicted for the murder of the deceased.

Learned appellant's counsel, it must be stated, has not

been fully forth coming in either stating the principles or in applying them to the facts of the instant case. At paragraph 4.40 of the appellant's brief, learned counsel's concession that the evidence of a relation, which PW2 and PW4 are, can be accepted if same is found cogent enough to rule out deliberate falsehood. That is indeed the true position of the law. The fact that these witnesses, PW2 and PW4 are blood relations of the deceased, without more, neither disqualifies them from being witnesses for the prosecution, nor makes their evidence incredible. See *Ishola V. The State* (1976) 9 & 10 SC 81 and *Arehia & anor V. The State* (1982) 4 SC 21.

Secondly, the record of the instant appeal does not support the assertion of the appellant that even PW4 did not mention appellant's name at the earliest opportunity, in his extra judicial statement to the police, as being among those who murdered the deceased. In his first extra judicial statement recorded on 8th January 2007 at page 27 of the record PW4 particularly states thus:-

"On the 5/01/2007 around 5 a.m in the morning. The following persons came to our house at Umudi Lokpanta; their names are {JJ. Raphael Ude 'm' popularly known as young (2) Ugochukwu Ude 'm' (3) Chukwudi Ude 'm', (4) Ignatius Emekwe 'm' (5) Godwin Egwem 'm' (6) Monday Oti 'm' (7) Vicent Iro, (8) Monday (9) Victor Njoku (10) Ifeanyichukwu Nwafor alias Escape (11) Amandi Njoku (12) Amandi Okereke (13) David Amaedula (14) Ejike Umeham (15) John Iro (16) Kenneth Ude alias Ekpo-kpo (19) Okechukwu Akwa and others I cannot remembered they break the doors of our house, and dragged my father out. They took him to one Nkwo Market Square, the name of my father is Orji Cornelius. I later went there by then they have started beating him. Then Raphael Ude ordered them to hold me and also they started beating me also. This people were with guns and matchet on their hands. When they came to our house. After several beating, Raphael Ude ordered them to moved myself, my father and two other young men to where they will kill us. When reached the boundary between Abia State and Enugu State, then Raphael Ude ordered to stop then the same Raphael Ude used his matchet and cut off my father's right hand. Ugochukwu Ude shot Sunday Ude, this Ugochukwu Ude and Sunday Ude are not from the same family, but their names are alike.

Godwin Egwin naked himself and after doing this, he matchet Sunday Onwuegbuchulam at the neck. Later Raphael Ude his men to start matcheting everybody. and they went and started bringing motor tyres and fuel they will use in burning them. I then started running for my their (sic) life while I was running, Raphael himself fired
 B three gun shots, but his bullet did not get me. They later went back to our house and set the house ablaze. After all this my mother by name Augustine Orji went to Umunneochi police station and reported the matter.” (Underlining supplied for emphasis).

C PW4’s evidence at trial spans pages 181 - 187 of the record of appeal. Therein, he repeated virtually all he said in the foregoing extra judicial statement. Please read:-

“I know 1st accused. I also know 2nd accused; also 3rd accused; also 4th accused; also 5th accused; also 6th accused; also 7th
 D accused; also 8th accused; also 9th accused; also 10th accused. I remember 4th & 5th Jan. 2007. In the morning of the 5th Jan. 2007 I saw the accused and others I do not know breaking my father’s door. They dragged my father out. All the accused carrying machetes and guns. My father was lying in room when they pulled him out
 E from his bed. My father was shouting asking them what was wrong: I too was so asking them. They asked him to climb a motorcycle; he tried to struggle with them but when he saw he could not resist them he climbed the motorcycle and they drove him away. I then took my father’s motorcycle and ran after them. I got to a market square and
 F saw where he was kept with two others who were tied by the legs. There is a school close to the market. My father is Cornelius Oji. The other two men were Felix Udeh and Sunday Onwuegbuchulam. When I got there they were beating my father and the other two men.
 G When I got to the scene, the 1st accused asked those beating them to hold me. They held me and kept me with the three men and were beating me as well. All the accused and others not here were among those beating us. They tore our clothes leaving us with pants only. They were beating us with knives and sticks. They later put us on
 H motorcycles and took us away..... 1st accused then asked the people to cut the three men into pieces so that they would easily be burnt. They then descended on them, giving them matchet cuts. This time one Godwin then moved towards me with a matchet. I was afraid. He stabbed me with a knife and gave me a wound I jumped

away into a pit. I was hearing them shoot at me. They did not get me, and I ran away by a track road. From the bush I escaped to our compound to tell my people what happened. At the time I got to our compound I found that our house had been burnt. I now started looking for my people. I later saw my sister, they told me my mother had gone to the police station to report. I and my sisters now went to meet our mother at the police station. There I told the police what happened. I made statement to the police.” (Underlining supplied for emphasis).

PW4 maintained his grounds under cross examination. It is true that PW2 and PW3 did not mention the appellant by his name in their statements to the police as being one of those who murdered the deceased persons. However, PW2 told the court that he did not know all the accused persons by their names. PW3, on the other hand, stated that it was the police, while recording his statement, that told him not to bother about the names of all the culprits. Certainly if PW2 did not previously know the appellant by name he would not be expected to give his name to the police. PW3’s explanation as to why he did not mention appellant’s name, too, should suffice. In any event sufficient evidence exists even after PW3’s evidence is discounted to sustain the guilt of the appellant. See Adeoye v. C.O.P (1959) WNLR 100 at 102 and Onuaha V. State.

The trial court after reviewing the evidence proffered by these witnesses, inter-alia, inferred at pages 307 - 308 of the record thus:-

“Thus there is evidence before the court which was not controverted that the deceased persons were removed by the Youths from their homes and were killed. At least, there is no evidence that the deceased ever returned alive to their homes. The P.W.2 in his evidence to the police mentioned names of those he saw at the scene which do not include any of the accused. By section 8 of the Criminal Code, when two or more persons form a common intention to prosecute an unlawful purpose, in conjunction with one another; and in the prosecution of such purpose, an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence. Common intention may be inferred from circumstances disclosed in the evidence and need not be express agreement. The

evidence in the instant case shows such a common intention...

In *R. V. Okoni and others* (1938) 4 W.A. C.A. 19 a Chief who ordered two of his messengers to set fire to a dwelling house and one of the inmates was killed, the chief as well as the messengers, was convicted of manslaughter. Evidence shows that 1st 2nd and 3rd accused persons hold leadership position in the Lokpanta Youths movement. P.W.2 in his testimony in court stated that they were present at the scene where the deceased persons were killed and after the killing congratulated the Youths for a job well done."

The lower court at page 476 of the record in affirming the foregoing held thus:-

"As it appears, the testimony of the Appellant is a complete denial of the knowledge of the existence of the Lokpanta Youths Movement. However, evidence abound from the records of appeal that the women group came to the house of the Appellant to find out whether the constitution was signed and of their mission before they embarked on their demonstration which the Youths joined and which turned into riot that culminated into the burning of houses and the killing of the three deceased persons. The Learned trial Judge based on the evidence adduced before him found that there is evidence of a common intention between the perpetrators of the offence and the leadership of the Lokpanta Youths Movement who were clearly identified and mentioned in evidence. The testimonies of PW1, PW2, PW3 and PW4 clearly stated out on the role played by the appellant. The Learned trial judge was right in the circumstances to invoke the provisions of Sections 8 and 9 of the Criminal Code to deem the Appellant as having killed the deceased persons."

Appellant's duty is to show that the foregoing concurrent findings of the two courts are perverse in the sense that they either did not draw from the evidence on record or that they are consequent upon wrong application of some principles of law and because of either lapse the findings have occasioned miscarriage of justice. See Mohammed V. Hussain (1998) 1 NWLR (Pt 534) 365. He woefully failed to.

Evidence certainly abound that places the appellant not only at the scene of crime but also establishes the fact of his participation in the murder of the deceased. It therefore, no longer lies in his mouth to insist that he was never at the scene

of the crime let alone to have been a party to same. See Onuchukwu V. State (1998) 4 NWLR (Pt 547) 576 and Odu V. State (2001) 5 NWLR (Pt 722) 668.

Finally, and this relates to appellant's fourth issue, learned respondent's counsel is right that the doctrine of fair hearing as provided for under Section 36 of the 1999 Constitution does not in the least suggest that appellant's case must willy-nilly be determined in his favour. All that the doctrine requires is for the appellant to be given the opportunity to present his case before a decision one way or another is taken by the court.

Both courts below have not only granted appellant that opportunity but have also considered the case he presented in arriving at their concurrent findings on his guilt. Appellant's 4th issue is thus resolved against him.

Having resolved all the issues the appeal raises against the appellant his unmeritorious appeal is hereby accordingly dismissed. The judgment of the lower court affirming the conviction and sentence of the appellant for murder contrary to Section 319(1) of the Criminal Code CAP 30 Vol. II Laws of the Eastern Nigeria as applicable to Abia State by the trial court is hereby affirmed.

Appeal No. SC. 65/2013

The appellant herein was tried and convicted along with the appellant in Appeal No. SC. 64/2013 for the same offences.

The trial court relied on the same evidence in convicting the two. The appellant has appealed against the judgment of the lower court affirming his conviction on the very grounds the appellant in Appeal No. SC. 64/2013 did. He also distilled the same issues for the determination of his appeal as did the appellant in No. SC. 64/2013 and proffered the same arguments thereon.

For the very reasons advanced while dismissing appeal No. SC. 64/2013, I also find no merit in Appeal No. SC. 65/2013. I equally dismiss the appeal and affirm the lower court's judgment.

GALADIMA JSC

I have had the opportunity of reading in draft the two judgments in Appeals SC.64/2013 and SC. 65/2013 of my learned brother

M. D MUHAMMAD, JSC just delivered. I agree entirely with the reasons leading to his conclusion that the two appeals are lacking in merit and ought to be dismissed. The background facts leading to these appeals have been set out in great details in the lead judgments. It is unnecessary for me to repeat those facts. The two Appellants arid eight others were tried on three count information at the Umuahia High Court for the murder of three persons, namely Sunday Ude; Chief Cornelius Orjiogo and Johnson Onwuegbuchulam contrary to Section 319 (1) of the Criminal Code Cap. 30 Vol. II, Laws of the Eastern Nigeria, as applicable to Abia State. The trial court convicted and sentenced the two Appellants herein and one other accused person as charged. Each filed a separate appeal to the Court of Appeal. In a separate judgment, the court below dismissed their appeal resulting in further appeals equally filed separately to this D court by the Appellants.

In his lead judgment, my brother has painstakingly considered all the issues raised by the parties in this Appeal NO. SC.64/2013 and has resolved them against the Appellant therein. As I have earlier stated I agree with him that there is no merit in the Appeal, I also E dismiss it. The judgment of the court below affirming the conviction and sentence of the Appellant for murder is hereby affirmed.

As I have earlier on observed, the Appellant in Appeal No. SC. 65/2013 was tried along with the Appellant in Appeal No. SC.64/2013 for the same offences. The trial High Court relied on the same F evidence of the prosecuting witnesses in convicting the two Appellants. The Appellant in the latter case has appealed against the judgment of the court below affirming his conviction and sentence on the same grounds as those of the Appellant in SC. 64/2013.

G Appeals are the same. The counsel representing the two Appellants and the two Respondents in the two Appeals are the same. They proffered same arguments. In view of the forgoing, all the reason advanced by my learned brother in Appeal NO. SC.64/2013 dismissing the appeal is also applicable to Appeal NO. SC 65/2013. The H Appeal is equally dismissed. Therefore, the judgment of the court below affirming the conviction and sentence of this Appellant for murder is equally affirmed.

RHODES-VIVOUR JSC

The facts as presented by my learned brother, Muhammad, JSC reveals an unprecedented settling of scores. The youth movement to which the appellants belonged craved for power while the Lokpanta Development Union to which the deceased's belonged controlled power. A riot ensued following a demonstration by supporters of each group. On 4th January 2007 the appellants and others at large took the deceased persons and PW4 to the market square, flogged them ruthlessly, took them to a bush on a hill, dismembered them and burnt their remains. PW4 escaped to tell how the deceased persons were killed. One of those killed and burnt to death was PW4's father. The appellants acted together. Put in another way there was a common intention between them to kill, and they killed members of the Lokpanta Development Union. B C

The Court of Appeal found no difficulty in affirming the facts as to how the deceased met their death. All that the Appellants had to say was that they were not at the scene of the murder, they raised defence of Alibi. D

Findings of fact made by the trial court and affirmed by the court of Appeal are very rarely upset by this court, but this court would interfere and state the correct position if satisfied that the findings are perverse, or cannot be supported by evidence, or the court overlooked some principles of law or procedure. See *Mil. Gov. of Lagos State & 4 ors v Adeyiga & 6 ors* (2012) 2 SC (Pt.I) p.68 *Ugwanyi v FRN* (2012) 3 SC (Pt.II) p.95 E F

Learned counsel for the appellant has been unable to satisfy this court that the facts found by both courts below are perverse, or that the trial court overlooked some principle of law or procedure. In the circumstances the facts relied on by the trial court to convict the appellant and affirmed by the Court of Appeal are correct. G

Finally the appellants claim to have been somewhere else when the murders were committed, and so they could not have committed murder. The plea of alibi becomes worthless when the prosecution adduces sufficient and accepted evidence to fix the accused persons at the scene of the crime at the material time. See *Osuagwu v State* (2013) 5 NWLR (Pt.1347) p.360 *Ozaki v State* (1990) 1 NWLR (Pt.124) p.92 *Okpanefe v State* (1969) 2 SCNLR p.346 *Njovens v State* (1973) 5 SC p.17 H

PW2 and PW4 are eyewitness to the grisly murder of the deceased persons. Their testimony on oath was direct and positive that the deceased persons were killed by persons which included the appellants. In view of such overwhelming evidence the defence of alibi crumbles, and this is so once compelling evidence is clear that the appellants indeed participated in the murder. The defence of alibi becomes worthless.

For this and the more detailed reasoning in the leading judgment, the appeal is dismissed.

C _____

NGWUTA JSC

My learned brother, M. D. Muhammad, JSC, graciously obliged me a draft of his lead judgment which has just been delivered. Having read it I am in complete agreement with the reasoning and conclusion therein that the appeals are devoid of merit.

The avoidable tragic incidents which occurred between the 4th and the 5th of January, 2007 at Lokpanta Community in the Umunneochi Judicial Division of the High Court of Abia State gave rise to the two appeals. Appellants in the two appeals were tried and convicted on the same set of facts.

I will put in a word or two on the issues on alibi and eyewitness account of what transpired. A plea of alibi should be raised at the earliest opportunity, in the accused person's statement to the Police investigating the case. It is the duty of the accused to state particulars relating to where he was at the material time as well as the person or persons with him at the time and place of the alleged crime. See Yanor v. State (1965) 1 All NLR 193 SC, Okpanefe v. The State (1969) 6 NSCC 382.

In the copious statement to the Police appellant, Raphael Ude, said he woke up to women demonstration and went into hiding for the safety of his life. He did not state the date or time or place of his hiding nor did he state the name of anyone who can vouch for his story.

Alibi is not a magic wand available to all accused of crime. It must be raised timeously and particulars supplied to enable the veracity vel non of same be proved. On the facts of this case, a plea of alibi is of no avail to the appellant.

Learned Counsel for the appellant made heavy weather of lack of quality of eye witness account of the crime. Can there be a higher quality of eye-witness evidence than that given by the PW4. He swore that he saw the accused persons and others that were not arrested break open the door to his father's room, dragged him out and took him away on a motorcycle. B

He took his father's motorcycle and pursued the marauders to the market where his father and two other captives were detained with their legs tied. He was taken by the appellant and his gang, with his father and others to the hill of death where they cut him with a machete; killed his father and others in a drunken spree and in a hazy marijuana smoke. He managed to escape down the valley to safety. C

He walked through the hill of death and came to a valley of life. There can be no eye witness account more credible in the circumstances than the lucid account given by the PW1 who watched the gang kill his father and other men on the hill. It is pathetic. D

For the above and the fuller reasons in the lead judgment I also dismiss the appeal for want of merit. Appeal dismissed. E

SC.65/2013

As I said earlier the facts and issues in the two appeals are the same. I adopt my contribution in SC.64/2013 and apply same to SC.65/2013. Appeal Dismissed. F

PETER-ODILI JSC

I agree with the judgment just delivered by my learned brother, Musa Dattijo Muhammad, JSC and I shall make some remarks in support of the reasoning in SC.64/2013. G

By a three count proof of evidence dated 21st November, 2007, the Respondent arraigned the Appellant and Nine others at the High Court of Abia State for the murder of three men, namely: Sunday Felix Ude; Chief Cornelus Orjiogo and Johnson Onwuegbuchulam. The alleged murder was said to have taken place between the 4th and 5th days of January, 2007, at Lokpanta in Umunneochi Judicial Division of Abia State. H

At the conclusion of trial, the Appellant and two others were convicted and accordingly sentenced to death on the 1st day of July,

2010 by the trial Chief Judge of Abia State Hon. Justice S. N. Imo. The Appellant appealed to the Owerri Division of the Court of Appeal which affirmed the decision of the trial High Court hence the current appeal to the Supreme Court.

On the 25/2/2016 date of hearing, learned counsel for the Appellant, Ngozi Olehi Esq. adopted his Brief of Argument filed on the 14/3/2013 and deemed filed on the 18/6/2014. Also adopted is Appellant's Reply Brief filed on the 12/11/2013 and deemed filed on the 18/6/2014. The Appellant in the Brief of Argument formulated four issues for determination which are as follows:-

1. Whether the quality of eye-witness evidence relied upon by the court below in affirming the conviction of the Appellant by the trial court is not questionable and doubtful and therefore insufficient to sustain the affirmation of conviction of the Appellant by the court below. Ground 1

2. Whether the court below was not wrong in holding that the prosecution demolished the Appellant's alibi when indeed the alibi given to the police at the earliest opportunity was not found to be false. Ground 2

3. Whether the court below was not wrong in affirming the trial court's decision that the Appellant counseled and procured other accused persons to kill the deceased in the absence of specific intention and positive acts of encouragement. Ground 3

4. Whether the court below was not wrong in affirming the trial court's conviction of the Appellant wherein Appellant's evidence at the trial court was given scant regard thus violating Appellant's right to fair hearing. Ground 4.

Chief Umeh Kalu, the learned Attorney-General of Abia State for the Respondent adopted the Brief of the Respondent filed on the 14/10/2013 and deemed filed on the 18/6/2014. He crafted four issues for determination which are thus:-

1. Whether the testimonies of PW1, PW2, PW3 and PW4 disclosed sufficient evidence upon which the Court of Appeal could have affirmed the decision of the trial court.

ii. Whether the alibi relied upon by the appellant at the trial court was not demolished by the prosecution witnesses.

iii. Whether the court below was not right in affirming the trial court's decision that the appellant counseled and procured the other

accused persons to kill the deceased persons.

iv. Whether the court below was not right in affirming the decision of the trial court when it is apparent the appellant was given a fair trial?

For convenience, I shall make use of the issues as identified by the Appellant. B

ISSUES 1 & 2:

These two issues raise questions of the quality of eyewitness evidence relied upon by the Court of trial and affirmed by the Court below in reaching the decision against the Appellant. Also, if there was cogent evidence that Appellant counseled and procured other accused to kill the deceased in the absence of specific intention and positive acts of encouragement. C

Learned counsel for the Appellant submitted that the conviction of the Appellant came from a grave miscarriage of justice as the evidence is short of the required standard. That there was no basis for acceptance of the evidence as surrounding circumstances contradicted the prosecution's case; that the concurrent findings were not supported by the records. He cited *Onuoha v The State* (1989) 2 SC (Pt.II) 115; *Bezom v The. State* (1985) 2 NWLR (Pt. 8) 465; *Okonji v The State* (1987) 1 NWLR (Pt. 52) 659; *Akibu v Opaleye* (1974) 11 SC 189 at 203. That there was equivocation in the language of the trial Court which made it uncertain as to whether the Appellant was convicted for counseling and procuring the commission of the crime subject matter of this appeal or for actual participation in the commission of the crime which raises a critical doubt that should be resolved in favour of the Appellant. D E F

The learned Attorney General for the Respondent contended that the testimonies of PW1 - PW4 disclosed sufficient evidence upon which the two Courts made the concurrent findings against the Appellant. That each of those witnesses testified from the angle they saw and there were no contradictions in the evidence of the witnesses. G

That the appellant was rightly convicted for procuring and counseling other accused persons to murder the deceased persons as there was evidence of the meeting summoned by the Appellant on the 26/12/06, the visit of the women to his house on the 3/1/07 shortly after which the demonstration turned riotous and Appellant being seen at the places where the deceased persons were tortured and killed were H

all marks of procuring and counsel. Also, that there was the common intention with the others to prosecute an unlawful purpose to wit: murder of the deceased persons. He referred to *Ayo Gabriel v The State* (1989) 5 NWLR (Pt. 457); *Ogunlana & Ors v The State* (1995) 5 SCNJ 189 etc; *Edet Obosi v The State* (1965) NMLR 119; *R v Idika* (1959) 4 FSC 106.

It is now settled that the proof required in the establishment of the guilt of an accused person by the prosecution can be done through any of the three following way which are thus:

- C a. Direct eye-witness account
- b. Circumstantial evidence
- c. Confessional evidence of the accused person.

In this regard I rely on the case of *Sampson Emeka v. The State* (2001) 14 NWLR (Pt. 734) 668; *Igabelle v. The State* (2006) D 139 LRCN 1831.

The scenario that presented in the case at hand is that of the prosecution making use of four eye witnesses and two official witnesses being the Police officers who testified.

The Appellant challenges Prosecution witnesses 1, 2, 3 and 4 as eye witnesses as they could not be said to have witnessed the murder. The angle the Respondent disagrees with in that what took place was a culmination of a sequence of events and any of which part a person witnessed placed the particular witness in the position of an eye witness. Indeed I am agreeable to the stance of Learned Counsel to the Respondent in that a person who can testify as to what he has seen from personal observation is defined and properly so as an eye witness and in this case at hand where the unlawful killings of the three deceased persons were not a fixated, one off action but a series of activities which climaxed into their deaths, Firstly was the sequence of events starting with the demonstrations by the women which transformed into a riot after their visit to the Appellant on the 3rd of January 2007, the arrest of the deceased persons with thugs, the humiliation at the market square and the gruesome killing and burning of the said deceased on a flat hill between Lokpanta in Abia State and Agwu in Enugu State. In short, a chain of events or activities that culminated to the murder. Therefore, the learned justices of the Court below were right in referring to the four prosecution witnesses 1, 2, 3 and 4 as eye witnesses as each stated the aspect

he saw from his personal observation.

They cannot be rejected as eye witnesses since they all could not say specifically as one, the exact murderous act.

Again, Appellant questions the disinterested nature of the evidence of the PW2 and PW4 being close relations of some of the deceased persons and thereby brought about doubts as to the veracity of the versions proffered in evidence; that their testimonies were biased. In this, it has to be said that the sanguine relationship between a victim and a witnesses without more cannot just make or turn him into a tainted or biased witness. To impugn such testimony, the Appellant as in this case has to show that the witness is an accomplice in the commission of the offence or has an interest or purpose of his own to serve or protect. Therefore, a blood relationship simpliciter cannot translate to a disqualification from being a prosecution witness or a witness whose testimony would be viewed with suspicion. This is so because in some cases, a blood relation could be the sole witness and can it be justified that such a witness would be cast aside merely because of the closely related bond with a deceased? I think not. See *Clement Oguonzee v State* (1998) 58 LRCN 3512 (SC); *Ishola v State* (1976) 9 & 10 SC 81; *Arehia & Anor v The State* (1982) 4 SC.

The Appellant had eluded to discrepancies or contradictions in the evidence of the prosecution witnesses especially the eye witnesses for which their testimonies should be jettisoned. In this regard, it should be noted that as I said earlier, the witnesses referred to parts of the chain of events he witnessed or observed and so, there cannot be uniformity in the narration nor can their testimonies be expected to tally verbatim or word for word. Also, even if there are contradictions, one version from the other in the observation of a given event, such has to be of a material nature not just any flimsy discrepancy which does not change the substance of what is being said. That is to say that a piece of evidence is said to contradict another when it affirms what the other evidence has stated but not when it is merely a minor discrepancy which exists between them and does not go to the essentiality of something being or not being at the same time. See *Ayo Gabriel v State* (1989) 5 NWLR (Pt. 457); *Ogoala v State* (1991) 2 LRCN 660; *Ogulana & Ors v State* (1995) 5 SCNJ 189; *Esangbedo v The State* (1998); *Esangbedo v The State* (1998) 1 ACLR 109.

It is therefore to be stated that the case of Onubogu v The State (1982) 4 SC 78 which the Appellant's counsel relied on to anchor the alluded to contradictions cannot avail him as the circumstances so envisaged in Onubogu (supra) as to the substantiality of the discrepancies or contradiction in the evidence of the prosecution witnesses do not exist in this instance where what applies are very minor discrepancies expected from human beings in making presentations of observations. See Theophilus v The State (1996) 1 SCNJ 75 at 91.

With regard to whether or not the Appellant counseled and procured other accused persons to kill the deceased persons which the two Courts below found against the Appellant, the background to the situation is that the Appellant convened a meeting in his house on the 26/12/2007 where he directed that everyone who wrote a petition against them to the police should be eliminated. A fact which is alleged to have emboldened the women in the community who got further encouragement by the Appellant repeating the threat to the victims and their families. Then, on the morning of the 3/1/2007 according to the Appellant, the women came to find out if the youths movements constitution had been signed and he advised them and later the demonstration turned violent.

From the account of PW2, PW3 and PW4 Appellant was in the field, where the deceased were tortured with him endorsing and approving it on the night of 4/1/2007 and on the 5/1/2007 when the deceased were eventually killed, PW2 and PW4 saw Appellant not only participating but congratulating the youths for a job well done. Appellant dismissed those accounts as beyond belief and fictitious. From the circumstances and the evidence proffered, the two Courts below were correct to find and conclude that there was common intention between the appellant and others who joined in the killings and the conditions for the operation of Section 7 (d) of the Criminal Code net. Indeed, the facts of this case are akin to those that existed in R v Idika (1959) 4 FSC 106 wherein the Federal Supreme Court affirmed a passage in the decision of Ainley J. thus:-

"I fully recognize that the "counseling" or "procuring" must involve some positive act, there must be some active encouragement to those who do the deal. But if members of a society meet and being faced with orders to kill a particular man, they decided unani-

mously to obey the order, each man present at the meeting encourages each other to kill A on Saturday and the plan fails and five of the ten kill A on Sunday in pursuance of the original agreement to kill, it seems to me that the five (5) who took no active part in the killing are yet responsible for the killing. They were among those who lit the fuse. Having lit it, they let it burn with the result they desired”. B

It needs be said as a long line of cases bear out that common intention which is key to the implementation of section 7 (a) of the Criminal Code does not have to be based on direct evidence of an express agreement between perpetrators of the offence but can also C be inferred from the circumstances of the case though caution is the watchword so as not to act too hastily in doing the inference. See *Ofor v The Queen* (1955) 4 WACA 14. Therefore, to utilize the common intention theory, the Court must ask itself if certain conditions exist which are:- D

1. There must be two or more persons,
2. They must form a common intention,
3. The common intention must be towards prosecuting an unlawful purpose in conjunction with one another.
4. An offence must be committed in the process, and E
5. The offence must be such a nature that its commission was a probable consequence of such purpose.

Bearing the above pre-conditions in mind and juxtaposing them with the evidence so well rendered by the prosecution in this F case which the defence did little to debunk, it is clear not only that the conditions were indeed available but also that the concurrent findings of the two Courts below cannot be upset as nothing would support such a disturbance. See *Alarape & Ors v The State* (2001) 84 LRCN 600; *Akinkunmi & Ors v The State* (1987) 1 NSCC 305 at G 310; *State v Oladimeii* (2003) 109 LRCN 1098 at 1313 - 1314.

Clearly in answer to the two issues, I do so against the Appellant.

ISSUES 2 & 4:

In these issues crop up the questions whether the alibi of the Appellant was demolished and if appellant was afforded fair hearing. H

Canvassing the position of the Appellant, Ngozi Olehi Esq. of counsel stated that there was a flagrant breach of the Appellant's right to fair hearing as no reference was made by the trial Court to

the evidence of the Appellant and his four statements to the police which were admitted as Exhibits H, H1 to H3. Also, that the prosecution failed in its duty to disprove the defence of alibi raised by the Appellant in spite of his having furnished the details for the prosecution to work on. He cited *Nwankwoala v The State* (2006) All FWLR B (Pt. 339) 801; *Adebayo v The Republic* (1967) NMLR 391. Chief Umeh Kalu for the Respondent said the materials supplied by the Appellant in support of his alibi were vague. That the Appellant was given a fair hearing at the trial and he was defended by counsel.

C The Appellant relied on alibi tantamount to the fact that he could not have committed the offences he was charged with.

The Oxford English Dictionary, Tenth Edition page 20 defines ‘Alibi’ to be, *“a piece of evidence that someone was elsewhere when a crime was committed”*.

D The alibi set up by the Appellant was that he knew nothing about the murder of the deceased persons having returned home from Lagos for the burial of the cousin same having been confirmed by PW5 that such a burial took place on the 4th January 2007 in the dead man’s village in Abeokuta. To consider if the alibi stood the E necessary test, in considering the details put forward by the Appellant, it is seen that the details were vague as the particulars were inchoate in terms of the time he was in Abeokuta and when he left. The need for the particularity of the details to establish the alibi is because as PW5 stated that he found out that the Appellant did not F stay long at the burial of his cousin and juxtaposing that with the matter of the offence basis of this appeal is the fact that the murder came about after chains of events leading thereto commencing from the women’s demonstration leading to the riot, to the arrest, harassment, mal-treatment, flogging at the market square to the eventual G brutal killing of the three prominent men at the hill on the border between Lokpanta in Abia State and Awgu in Enugu State. Of note is that the events did not happen on the same day but rather started on the 3rd and ending on the 5th January 2007 and so the burial of 4th H January 2007 in Abeokuta, Ogun State would not affect a connection with the killings since the Appellant did not need to be actively involved in every inch of the way to be guilty of the full offence of murder so charged so long as the pre-conditions under Section 7 (a) of the Criminal Code were met as happened in the instant case. There-

fore, since the circumstances brought out to the fore by the prosecution witnesses Nos. 2 and 4 and even that of the Appellant effectively fixed him at the scene by crime. Therefore, the plea of alibi which postulates impossibility of the presence of the Appellant at the scene but somewhere else cannot avail the Appellant since he has been pinned to the scene of crime at the material times and so the alibi is demolished, collapsed and of no use to him. See *Ochemaje v The State* (2008) 15 NWLR (Pt.1109) 57 at 89, *Dogo v The State* (2001) 3 NWLR (Pt. 699) 192; *Njovens v The State* (1973) NMLR 331; *Archibong v The State* (2007) 143 LRCN 228 at 266.

On the matter which the Appellant asserted of being denied fair hearing by the learned trial Chief Judge on the ground that his defences were not given the appropriate value. From the record this assertion is not justified in that the trial Court considered the defences put forward and dismissed same, rightly to as watery and nothing was changed because the learned trial judge did so in six and half pages. Every judge has his style of writing a judgment since each judge is a unique individual and so is not tied to a particular way of producing a judgment or format so long as a consideration of the facts or materials before him are made and of course the balance of justice met. I relied on *Ariori v Elemo* (1983) 1 SC 13; *Ndukwe v The State* (2009) 2 - 3 SC (Pt. II) 34 at 78; *Adamu v State* (1991) 6 SC 17; *Onuoha v The State* (1988) 3 NWLR (Pt. 83) 460.

Clearly the issues 2 and 4 are for the reasons above resolved against the Appellant.

All the issues not favourably resolved for the Appellant and alongside the fuller and better reasoning in the lead judgment, I too dismiss this appeal as I abide by the consequential orders made.

SC. 65/2013

This appeal came from the same appeal as SC 64/2013 and the facts and circumstances the same and so there is no need for a repeat herein. As in the earlier considered case, the Appellant prays for the appeal to be allowed and the decision conviction and sentence of the Court below set aside.

I am in agreement with the lead judgment delivered by my learned brother, Musa Dattijo Muhammad JSC and in support of the reasoning he exposed from which he reached his conclusion, I would make very brief remarks.

Indeed this Court has not seen any reason shown by the Appellant why there would be an interference with the concurrent findings by the two Lower Courts which were not perverse, did not occasion miscarriage of justice or violate any principle of law or procedure. At the trial Court, the learned Chief Judge received evidence, evaluated the evidence contextually in the circumstances prevailing and came to the conclusion, basis of the following appeals up to the Supreme Court. It needs be stated that the appellate Courts being the Court of Appeal and this Apex Court had no advantage of perception and evaluation of evidence and so the findings of the Court of first instance which only had the singular opportunity of leaving first hand and seeing the witnesses cannot be treated lightly without anything with capacity to impeach the evidence as thereby given. Again, to be mentioned is the fact that the inconsistencies or contradictions alluded to by the Appellant in the evidence of the prosecution witnesses from the records are far from material. Of note also is the fact that the defence of alibi raised by the Appellant cannot avail him as again from the record, it can be seen that his account thereof was sketchy and unreliable and when situated alongside the damning evidence, produced the fixture of the appellant at the scene of crime and from the eye rampaging youths and one of those who counseled and procured the murder of the deceased persons. The affirmation of the Court below of the trial Court's findings and decision was clearly in order and nothing excuses this Court to make a contrary finding. I place reliance on the cases of *Madu v State* (2012) 15 NWLR (Pt.1324) 405; *Osuagwu v State* (2013) 5 NWLR (Pt. 1347) 360 at 386; *Igbele v State* (2006) 6 NWLR (Pt.975) 100; *Adeyemi v State* (1991) 1 NWLR (Pt. 170) 679; *Onuoha v State* (1989) 2 SC (Pt. II) 115; *Esangbedo v State* (1989) 4 NWLR (Pt. 113) 57 at 68; *Akindipe v State* (2012) 6 SC (Pt. II) 120 at 140.

In conclusion thereof, I am at one with my learned brother, M. D. Muhammad JSC and from his more detailed reasoning, I too dismiss this appeal as unmeritorious. I abide by the consequential orders made.