**CHIJIOKE UGWU**

**v.**

**THE STATE**

IN THE SUPREME COURT OF NIGERIA

ON FRIDAY, THE 24TH DAY OF JANUARY, 2020

SC. 196/2015

**LEX (2021) – SC. 196/2015**

**OTHER CITATIONS**

3PLR/2020/7 (SC)

(2020) LPELR-49375(SC)

**BEFORE THEIR LORDSHIPS**

OLUKAYODE ARIWOOLA, JSC

KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN, JSC

AMINA ADAMU AUGIE, JSC

PAUL ADAMU GALUMJE, JSC

UWANI MUSA ABBA AJI, JSC

**BETWEEN**

CHIJIOKE UGWU - Appellant(s)

AND

THE STATE - Respondent(s)

**ORIGINATING COURT**

1. COURT OF APPEAL [Enugu Division]

2. ENUGU STATE HIGH COURT [Holden at Nsukka Judicial Division]

**REPRESENTATION**

I.A. Akaraiwe Esq., with him Dr. O. B. Ajinola, B. E. Uwaokhonye, Esq., T. E. Iyoha-Osagie, Esq. - For Appellant

AND

Chief M. A. Eze (Hon. A.G. of Enugu State) with him, T. A. Ngene, Esq. (DD), U. D. Neboh, Esq. PLO and K.K. Odugu, Esq. (L.O). - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

CRIMINAL LAW AND PROCEDURE - BAIL: Duty of a judge when considering an application for bail - Factors or criteria that must be taken into consideration by the Judge - Disregard of – Attitude of Supreme Court thereto

CRIMINAL LAW AND PROCEDURE – PROOF OF CRIME - DEFENCE/PLEA OF ALIBI: Bounden duty of the prosecution to investigate the plea of alibi raised by an accused person – Whether co-exist with a duty on the part of accused person to give or supply the lead and particulars of his whereabout at the earliest opportunity and clearly, which will lead the prosecution in their investigation of the alibi

CRIMINAL LAW AND PROCEDURE – PROOF OF CRIME - IDENTIFICATION PARADE:- Purpose of - Principle that whether or not it is necessary to conduct an identification parade depends on the facts and circumstances of each case – Proper treatment of – Whether an identification parade is only necessary when there is doubt as to the ability of a victim to recognize the suspect who carried out or participated in the commission of the crime, or where the identity of the suspect is in dispute

CRIMINAL LAW AND PROCEDURE – PROOF OF CRIME - IDENTIFICATION PARADE: Principle that Identification parade is not the only way of establishing the identification of an accused person in relation to the offence charged – What prosecution needs to prove to secure conviction

CRIMINAL LAW AND PROCEDURE - DEFENCE/PLEA OF ALIBI:- Meaning and nature of the defence of - Judicially recognized ways of debunking a plea of alibi - Where the prosecution has led strong and credible evidence showing the presence of the accused at the scene of the crime – Attitude of Court thereto

ETHICS – JUDGES:- Duty of Judge to to exercise his discretion on the bail application, both judicially and judiciously - . A vacation judge granting bail to a person accused of murder and serial rape in disregard of applicable guidelines – Attitude of Supreme Court thereto

**PRACTICE AND PROCEDURE ISSUES**

APPEAL - GROUND(S) OF APPEAL:- Ground of appeal before the Supreme Court – Where based on a decision/ratio of the High Court which was not appealed against at the Court of Appeal – Competency of – Implication for validity of issues distilled from such grounds of appeal

APPEAL - GROUND(S) OF APPEAL:- Where no issue is distilled from a ground of appeal or where issue purportedly linked to it does not relate materially to it – Proper treatment of by Court – Whether is deemed abandoned and liable to being struck out

**CASE SUMMARY**

FACTS IN BRIEF

This is an appeal against the judgment of the Court of Appeal, Enugu division given on Friday 20th December, 2013. They were charged at the trial High Court with conspiracy to murder, and murder of the Chief Security Officer of University of Nigeria, Nsukka. They were arraigned, charge read to them and plea taken. However, upon an application for bail pending trial brought before a vacation Judge of the High Court, in Enugu, the other accused was granted bail which he jumped and has remained at large. leaving the appellant alone to stand the trial. During the trial, the prosecution called eight (8) witnesses who testified how appellant with others invaded the official residence of the Chief Security Officer, CSO; held his and her children hostage; seized some of their properties including money; entertained themselves with drinks from the house; raped two daughters of the CSO; killed the CSO when he returned and later escaped from the house.

At the conclusion of the trial and after written addresses of both counsel, the trial Court found the appellant guilty as charged. He was convicted and sentenced to death by hanging.

**DECISION APPEALED AGAINST**

The Lower Court, (Court of Appeal, Enugu division) upheld the decision of the trial Court which convicted the appellant of murder.

ISSUE(S) FOR DETERMINATION

BY APPELLANT

The following sole issue was distilled from the two grounds of appeal filed by the appellant:

“Whether the Justices of the Court of Appeal were not in error when in upholding the decision of the trial Court, held that identification parade was unnecessary rather the question that arises therein is whether there was reasonable opportunity for PW1 to have correctly recognized the person he saw pointing gun at him in their sitting room that night as the Appellant."

BY RESPONDENT

1. The respondent raised a preliminary objection to Ground one of the appellants Notice of Appeal and the issue distilled therefrom on the ground that both are incompetent not being based on or derived from the decision/ratio of the Court of Appeal appealed against and thus liable to be struck out.

2. Respondent, in the unlikely event that the objection is not sustained, also formulated a sole issue for the determination of the appeal viz: “Whether on the facts and circumstances of this case, the Court of Appeal was right in holding that an identification parade was not necessary”.

BY COURT

Court adopted and resolved the issue in the Preliminary Objection of Respondent and also treated the lone issue distilled by the Appellant on the merit of the case.

DECISION OF SUPREME COURT

1. The ground one of the Notice of Appeal filed to the Supreme Court, not having arisen from the decision/ratio of the Court of Appeal decision, is incompetent and the issue distilled therefrom thereby incompetent and liable to being struck out. Thus, upholding the Preliminary Objection.

2. Additionally, the Court also found, on the merit, that neither the defence of alibi or of necessity of identity parade availed the appellant. Conviction and sentence handed down by the trial court were therefore affirmed.

**MAIN JUDGMENT**

OLUKAYODE ARIWOOLA, J.S.C. (Delivering the Leading Judgment):

This is an appeal against the judgment of the Court of Appeal, Enugu division given on Friday 20th December, 2013. The appellant and one other had earlier been arraigned before the Enugu State High Court, sitting at the Nsukka Judicial division, on 21/07/2003.

They were charged with conspiracy to murder, and murder of Christopher Ogbonna, the Chief Security Officer of University of Nigeria, Nsukka.

The information filed by the then Attorney General of Enugu State on the said two counts charge reads thus:

Count 1-

Conspiracy - contrary to Section 494 of the Criminal Code, Cap.36, Vol.1 Laws of Anambra State of Nigeria 1986, as applicable to Enugu State of Nigeria.

Particulars:

Clement Ezeazu alias Fimmbbar and Chijioke Ugwu, alias Police on or about the 26th day of May, 2002, at No. 449, Elias Avenue, University of Nigeria, Nsukka Campus, in the Nsukka Judicial Division conspired to commit a felony - Murder.

Count 2 -

Murder - contrary to Section 274 (1) of the Criminal Code, Cap.36, Vol.1, Laws of Anambra State of Nigeria, 1986, as applicable to Enugu State ofÂ Nigeria.

Particulars:

Clement Ezeazu alias Fimmbbar and Chijioke Ugwu alias Police on or about the 26th day of May, 2002 at No. 449 Elias Avenue University of Nigeria, Nsukka Campus, in the Nsukka Judicial Division unlawfully killed Christopher Ogbonna.

Upon their arraignment and the charge read to them, their plea was taken. However, upon an application for bail pending trial brought before a vacation Judge of the High Court, in Enugu, Clement Ezeazu, the first accused was granted bail. He later jumped bail and has remained at large. Efforts to re-arrest and bring him to Court to stand trial proved abortive. Subsequently, the State with leave of the Court amended the information to drop the name of the first accused - Clement Ezeazu, leaving the appellant alone to stand the trial.

During the trial, the prosecution called eight (8) witnesses and the appellant testified in defence but called no other witness. The gist of the case goes as follows:- About 9pm of the 26th day of May, 2002, some men with guns invaded the official residence of Mr. Christopher Ogbonna the Chief Security Officer of the University of Nigeria, Nsukka at Nsukka Elias Avenue, University of Nigeria, Nsukka campus. The said men held Mrs Ogbonna wife of the deceased, and her children hostage. They seized some of their properties including money. They raped two daughters of the deceased and killed Mr. Ogbonna and later escaped from the house.

PW1 Chukwuka Ogbonna is the first son of the deceased. He was not in the house when the gunmen arrived. After over powering all the occupants of the flat, the assailants took positions, switched off the light and began to intimidate and harass the family of the deceased. The gunmen brought out assorted drinks kept in the house by the deceased and began to entertain themselves. They made it clear to the family that their mission was to kill the Chief Security Officer when he returned, failing which his first son would be killed.

PW1, being a student had gone out to study inside the campus hence was not in the house when the gunmen came. On arrival, he noticed that the security guard was not downstairs where he was supposed to be. He got upstairs to their flat to discover that the light had been switched off, even though the door was left opened. He entered their flat and switched on the light only to see a gunman standing between the refrigerator and the wall, pointing a gun at him. The gunman began to command PW1. He recognized the gunman as the appellant. Other gunmen then came out from the kitchen and bed rooms and he readily recognized also one Clement Ezeazu. The deceased, who had been out of the house then came in. He was immediately disarmed and shot several times. He was later confirmed dead at the University Medical Centre. PW3 - a medical doctor carried out an autopsy on the body of the deceased. He testified that the deceased died as a result of multiple bullet wounds, one of which shattered his heart.

In the course of investigation, the police arrested, among others, the appellant and Clement Ezeazu - the 1st accused in the original information. Upon the execution of search warrant in the house of the suspects, several incriminating items were found in the house of Clement Ezeazu, including some of the bottles of the drinks suspected to have been removed from the house of the deceased. They were all tendered and admitted as Exhibits.

PW4 and PW5 are the grown up daughters of the deceased who narrated in their testimonies the sordid acts of rape on them by the assailants.

The defence put up by the appellant in his testimony was entirely a total denial of involvement. Indeed, he claimed an alibi. He claimed to have been off duty on that day and had gone to receive treatment from one Mrs Igboji a nurse working with bishop Shanahan Hospital, Nsukka. He further testified that after receiving treatment, he had returned to his house and was with his mother till the following day. He wondered why PW1 claimed to have seen him at the scene when both of them attended a meeting the following day, for the burial of the deceased.

At the conclusion of the trial and after written addresses of both counsel, in its considered judgment, the trial Court found the appellant guilty as charged. He was convicted and sentenced to death by hanging.

Aggrieved by the judgment of the trial Court led to an appeal to the Court below.

At the Court below, the appeal was found lacking in merit and was accordingly dismissed. The conviction and sentence of the appellant were consequently affirmed. Further aggrieved led to the instant appeal to this Court on two grounds of appeal.

When the matter came up for hearing on 31/10/2019, Mr. A. Akaraiwe of counsel who led other counsel for the appellant identified the brief of argument filed on 13/5/2015 for the appellant. He adopted and relied on same to urge the Court to allow the appeal.

The following sole issue was distilled from the two grounds of appeal filed by the appellant:

“Whether the Justices of the Court of Appeal were not in error when in upholding the decision of the trial Court, held that identification parade was unnecessary rather the question that arises therein is whether there was reasonable opportunity for PW1 to have correctly recognized the person he saw pointing gun at him in their sitting room that night as the Appellant."

Learned appellants counsel contended that it is settled that identification parade is not usually conducted for cosmetic reasons. He relied on Chukwu Vs. The State (1992) 7 NWLR (Pt.253) 325 at 335 and Afolabi Vs. State (2010) 16 NWLR (Pt.1220) 584. He gave the circumstances when the conduct of identification parade is usually required. He submitted that the instant case is an ideal situation requiring the conduct of identification parade. He referred to the testimony of PW1 on his contact with the appellant on the night of the incident. Learned counsel contended that from the testimony of PW1, the incident took place at night, the encounter with the alleged gunman was brief and that PW1 had mistaken the assailant to be his younger brother even though he came face to face with him. The PW1 even thought he was dreaming. Learned counsel submitted that the brevity of the circumstances of the encounter did not afford the PW1 full opportunity of clearly observing the features of the assailant and therefore he could not correctly identify who the assailant was. He submitted further that there are hundreds of people out there who look like PW1s younger brother and to ensure that an innocent person does not suffer unjustly, an identification parade would have been conducted by the Police to enable PW1 identify the assailant.

Learned counsel contended further that the need for an identification parade became more compelling as:

(a) The appellant was not arrested at the scene of the crime and PW1 did not know the name of the appellant but got to know it later at the Police Station.

(b) Even the Security Officer (PW6) attached to the deceased house that has worked in the same department with the appellant and the deceased for nine whole years testified that he did not see appellant or any other members of the security department among the assailants that night, even though they had ample opportunity of seeing the assailants as they were at home and their light was on when the assailants came in and the gunmen were not masked.

Learned counsel submitted that where an eye witness fails, at earliest opportunity, to mention the name of the person known to him who he claims to have committed the offence, such evidence of identification at a later stage ought to be approached with caution. He relied on Bozin Vs. The State (1985) 7 SC 450 at 469; Morka Vs. The State (1998)2 NWLR (Pt.557) 294 at 302.

Learned counsel contended that it is note worthy that it was only PW1 who testified of seeing the appellant, whereas his two sisters, i.e. PW4 and PW5 who were also familiar with their father’s office and workers did not mention seeing the appellant among the assailants that killed their father on that fateful night. He relied on Abudu Vs. The State (1991) 1 NWLR (Pt. 168) 490 at 506. He submitted that where there is defence of alibi, a trial Court should be cautious in relying on the evidence of a single witness. Learned counsel contended that, the appellant timeously raised the defence of alibi which the police never investigated, yet he was convicted upon the evidence of PW1 who claimed he saw the appellant on that fateful night. He relied on Ibane Vs. The State (2012) LPELR - 9326 (CA).

He submitted that the circumstance of identification that linked the appellant with the offence is not cogent enough to ground a conviction of the appellant. He urged the Court to so hold. Learned counsel further submitted that the evidence of the prosecution witness that he recognizes the appellant under the circumstances given in this case is suspicious. He contended that the investigation and the alleged identification of the appellant by PW1 is not sufficient to exclude identification parade. He relied on Eyisi Vs. The State (2001) FWLR (Pt.35) 750.

He urged the Court to allow the appeal and set aside the concurrent judgments ofÂ the two Courts below.

Chief M. E. Eze - the Hon. Attorney General of Enugu State for the respondent, leading Messrs T. A. Ngene; U. D. Neboh and K.K. Odugu, identified the brief of argument filed on 19/10/15 for the respondent. He referred to the Preliminary objection and in its entirety, urged the Court to dismiss the appeal.

It is note worthy that the appellant did not file any reply to the respondents brief of argument.

The respondent had raised a preliminary objection to Ground one of the appellants Notice of Appeal and the issue distilled therefrom on the ground that both are incompetent not being based on or derived from the decision of the Court below appealed against. Learned counsel submitted that the said ground of appeal and the issue formulated therefrom are both liable to be struck out, the same not being based on or derived from the ratio decidendi of the decision of the Court below, subject matter of the instant appeal. He referred to the judgment of the Court below on pages 235 lines 9-14 and 236 of the record of appeal. He contended that the decision of the Court below was clearly not based on the alleged decision by the trial Court that an identification parade was unnecessary, the same not being a ground of the appeal in the Court below. He contended that an appeal must be based on the decision or ratio decidendi of the lower Court and from which issues must directly flow and be formulated. Where it is otherwise or the converse is the case, the Court is enjoined to discountenance both the ground of appeal and the issue formulated thereon as inconsequential and liable to be struck out. He relied on Chief Walter O. Mere & Anor Vs. Eze Emmanuel Njemanze (2008) All FWLR (Pt.426) 1956; Mercantile Bank of Nigeria Plc Vs. Linus Nwobodo (2005) 7 SC (Pt.1) 1.

Learned counsel contended that the appellant herein misconceived the issue and set up for himself a case that did not exist. He stated that the Court below did not decide or uphold the decision of the trial Court that an identification parade was unnecessary since the appellant did not complain of that part of the decision of the trial Court in any of the grounds of appeal to the Court below. He submitted that Ground one of the appellants Notice of Appeal to this Court is incompetent, the same not having arisen from the ratio of the decision of the Court below. He relied on Sanni Abdullahi Vs. The State (2013) All FWLR (Pt.699) 118 at 1129. He urged the Court to strike out the incompetent ground and the lone issue said to have been formulated therefrom.

Learned counsel referred to Ground two of the Notice of Appeal and contended that no issue was formulated therefrom and is therefore deemed abandoned. He submitted that the appeal ought to be dismissed in its entirety and urged the Court to do so.

Learned counsel contended that in the unlikely event that the objection is not sustained, he formulated a sole issue for the determination of the appeal as follows:-

Whether on the facts and circumstances of this case, the Court of Appeal was right in holding that an identification parade was not necessary.

Learned counsel contended that assuming, without conceding, that the grounds of appeal and the issue formulated therefrom are competent, then he would answer the sole issue as formulated by him in the affirmative. He referred to the evidence proffered by the prosecution which the trial Court, and the Court below accepted on the PW1s recognition of the appellant as the person he actually saw on that fateful night in their sitting room who was standing between the refrigerator and the wall and who pointed a gun at him and ordered him to switch off the light and to lie down.

He contended that the appellant did not dispute the fact that PW1 had known him and met him from time to time at several places before the incident. Under cross examination from the appellants counsel, PW1 had provided further and better particulars of the circumstances of his knowledge of the appellant. He contended further that PW1, in his testimony had told the Court that he knew the appellant as a close personal friend of Ezeazu, the 1st accused in the original charge who was at large. Indeed, that he had known the appellant long before the incident in issue and gave details of how he had known him. Learned counsel contended that the appellant did not challenge or controvert these pieces of evidence. He referred to page 232 of the Record, on the finding of fact by the trial Court which was accepted by the Court below thereby making it a concurrent finding of fact by the two Courts. Learned counsel contended that it is not in the habit of this Court to lightly interfere with such concurrent findings of fact by the two Courts below except where same is shown to be perverse or to have occasioned a miscarriage of justice to the appellant. He relied on Umar Vs. The State (2014) 13 NWLR (Pt.1425) 497; Anekwe Vs. The State (2014) 10 NWLR (Pt.1415) 353; among others. He submitted that that is not the case of the appellant in the instant appeal. Learned counsel contended that for the concurrent findings of fact of the two Courts below in this case to be said to be perverse, the appellant must show that the same is not based on the evidence adduced before the trial Court or that it is the result of a violation of some principles of law or procedure of the Court. He relied on Emmanuel Egwumi Vs. The State (2013) All FWLR (Pt.678) 824. He submitted that it is not the case in the instant matter. He referred again to the testimony of PW1 which the appellant did not dispute or controvert and which the two Courts below accepted. He submitted that the concurrent findings of fact by the two Courts below was amply warranted by the evidence, and that the said finding cannot be said to have occasioned a miscarriage of justice. He relied on Oguntayo Vs. Adelaja (2007) All FWLR (Pt.495) 1626 at 1661; Afolabi & Ors Vs. Western Steel Works Ltd & Ors LPELRÂ (2012)Â - 9340Â SC. 29/2004.

Learned counsel referred to the Notice and Grounds of Appeal on pages 252 to 254 of the record and submitted that there is no ground of appeal complaining against the specific finding and inference of facts made by the trial Court and accepted by the Court below. He submitted further that the legal consequence of the absence of an appeal against the said concurrent finding and inference of facts of the two Courts below is that both parties have accepted the decision as correct, valid and binding and that neither the appellant nor the respondent can be heard to complain against such holding or finding. He relied onÂ Dabup Vs. Kolo (1993) 12 SCNJ 1.

In the light of the above, learned counsel submitted that PW1 having known and met the appellant from time to time on several occasions and at several places before the incident and having recognized him on the night of the murder as the person he had known and met previously, an identification parade in the circumstance would be a mere charade. He submitted that an identification parade is only necessary where the witness did not know the accused person or where he met him for the first time on the day of the incident. He relied onÂ Kabir Almu Vs. The State (2003) 7 SC 129; Maikudi Aliyu Vs. The State (2007) All FWLR (Pt.388) 1123 at 1147.

Learned counsel contended that none of the circumstances necessitating the conduct of an identification parade as laid down by this Court in Kabir Almus case supra is present in the instant case, rather the converse is the case. He submitted that the issue in this case is no longer that of identification but that of recognition of the appellant by PW1 who had known and interacted with him severally prior to the incident hence did not call for an identification parade.

Learned counsel finally urged the Court to discountenance the argument of the appellant and dismiss the appeal for lacking in merit.

The respondents preliminary objection bothers on Ground one of the Notice and Grounds of Appeal to this Court by the appellant. The respondent had contended that Ground one and the issue distilled therefrom are incompetent, not having arisen from the ratio decidendi of the judgment of the Court below. The two grounds of appeal without particulars read thus:

Ground One:

Error in law -

The appellate Court erred in law when it upheld the decision of the trial Court that there was no need for an identification parade in the instant case but that the question that arises therein is whether there was reasonable opportunity for the PW1 to have correctly recognized the person he saw pointing a gun at him in their sitting room that night as the appellant.

Ground Two: Misdirection

The appellate Court misdirected itself when it held that clearly the trial Courts decision that the appellant did not state what transpired between him and his mother or what he was doing at the material time is in accordance with the law on what constitutes sufficient particulars of an alibi and that evidence of the prosecution which fixed the appellant at the scene of the crime is stronger than the alibi.

The sole issue said to have been distilled from the above two grounds by the appellant goes thus:

Whether the Justices of the Court of Appeal were not in error when in upholding the decision of the trial Court, held that identification parade was unnecessary rather the question that arises therein is whether there was reasonable opportunity for PW1 to have correctly recognized the person he saw pointing gun at him in their sitting room that night as the appellant.

In the judgment of the Court below, the Court found that it was the defence, that is, the instant appellant that introduced the evidence of prior contact with PW1 through his cross examination of PW1 which the Court below quoted extensively. From the said evidence of PW1 which the Court below found to have remained unchallenged and uncontroverted, it was further found that the appellant did not in any way dispute the facts alleged therein that PW1 had known the appellant and met him several times at several places before the incident and even knew that he was a close friend of Clement Ezeazu, the co-accused that is at large. The Court below came to the conclusion that it was established by the evidence that the appellant was a person known very well by PW1 before theÂ incident.

The Court below further on page 233 of the record found as follows:-

The relevant circumstance here is that PW1 put on the light in the sitting room. PW1 saw the person standing between the fridge and the wall in the sitting room. PW1 who was surprised, thought that the person was his younger brother until he noticed that the person had a gun. The person then pointed the gun in his direction. He recognized the person as the appellant who now asked him to put off the light and PW1 did. It is beyond argument that the person was pointing the gun at PW1 under the brightness of electricity light. It is also obvious that being in the sitting room of a house both met at a close range. The trial Court had held that the fact that both the accused and PW1 were inside the living room indicates that PW1s observation was at a close range.

In the said judgment of the Court below, the Court had come to the conclusion that there was no appeal against the above inference of the trial Court that PW1 had every opportunity to recognize the appellant as a person he had known before the incident in their house. Therefore, if there was no appeal before the Court below on the inference by the trial Court on the sufficient evidence in support of the recognition of the appellant by PW1 then the issue did not arise for determination by the Court below and cannot form part of the decision to be subject of an appeal to this Court.

On page 248 of the record, the Court below had found as follows:

The trial Court had held that the piece of evidence that the accused person was seen and recognized by the PW1 at the scene of the murder of the Chief Security Officer in his house is strong, reliable and credible. There is no ground of appeal against this holding. The legal consequence of the absence of an appeal against this decision is that both parties have accepted it as correct. It is therefore valid, subsisting and binding on them.

There is therefore no doubt that, the ground one of the Notice of Appeal filed to this Court not having arisen from the ratio of the Courts decision is incompetent and the issue distilled therefrom also became incompetent and liable to being struck out.

Generally, the ratio decidendi of a case is the principle of law upon which a particular case is decided. Chief Abubakar Z. Odugbo Vs. Chief Ali Abu & Ors (2001) LPELR - 2238 (SC).

Since there was no appeal to the Court below on the inferences on the recognition of the appellant by the trial Court, an appeal cannot lie on such inference or reference of the Court below.

There is no gainsaying that the second ground of appeal bothers on or concerns the issue of alibi raised by the appellant but there was no issue distilled from the said ground two. Even though it was linked to the sole issue distilled but it is not related at all. It is settled law that a ground of appeal from which no issue is formulated for determination by the Court is deemed abandoned and liable to being struck out. See; Dalek Nig. Ltd Vs. Oil Mineral Producing Area Dev. Commission (OMPADEC) (2007) LPELR 916 (SC).

Therefore, the two grounds of appeal in this appeal and the sole issue said to have been distilled therefrom are incompetent, liable to being struck out and are accordingly struck out. It is settled law that issues are formulated from grounds of appeal which in turn are founded on the ratio decidendi or reason for decision of the Court in the judgment appealed against. Therefore, if the grounds of appeal and the issue distilled therefrom did not arise from the ratio of the judgment of the Court below, then the said grounds and sole issue are incompetent and are liable to being struck out. That will automatically render the appeal unmeritorious and deserving a dismissal order.

However, assuming without conceding that the grounds of appeal and the sole issue distilled therefrom arose from the judgment of the Court below, I desire to consider the appeal on its merit on the following issue:-

Whether in the circumstance of this case, an identification parade was necessary. And whether the defence of alibi was sustainable for the appellant.

First and foremost, it is clear that the appellants defence was an ALIBI. This means when a person charged with an offence says that he was not at the scene of crime at the time the alleged offence was committed. That indeed he was somewhere else and therefore he was not the person who committed the offence. See; Okosi Vs. The State (1989) 1 CLRN 29; Akeem Agboola Vs. The State (2013) 8 SCM 157; (2013) 11 NWLR (Pt. 1366) 619.

It is trite law, that if an accused person raises unequivocally the issue of alibi, that he was somewhere else other than the locus delicit at the time of the commission of the offence with which he is charged and he gives some facts and circumstances of his whereabout, the prosecution is duty bound to investigate the alibi set up, to verify its truthfulness or otherwise. See; Tirimisiyu Adebayo Vs. The State (2014) 12 NWLR (Pt.1422) 618; (2014) 8 SCM 34; (2014) 5-6 SC (Pt.2) 68; (2015) EJSC (Vo44) 60.

Ordinarily, there is no burden placed on an accused to prove his defence of alibi, but he is certainly not expected to merely state that he was not at the scene of the crime without more. He owes a duty to give or supply the lead and particulars of his whereabout at the earliest opportunity and clearly, which will lead the prosecution in their investigation of the alibi. See; Yanor Vs. State (1965) 1 All NLR 193; Ozulonye Vs. State (1981) NCR 38 at 50.

As I stated earlier, the appellants case in defence was that he was not at the scene of the incident with which he was charged. He claimed to be ill and was off duty on that day.

He had to go for treatment with one Mrs. Igboyi a Nurse, who was working with Bishop Shanahan Hospital Nsukka on the evening of the 26th May, 2002. That after the treatment, he returned to his house and was with his mother until the following morning.

It is however in the testimony of the prosecution that all efforts to investigate the appellants claim failed. The said nurse Mrs. Igboyi who the appellant claimed that he received treatment from did not make herself available. In the same vein, appellants mother failed to show up and did not respond to the invitations left for her in the house, to enable the police confirm the truthfulness or otherwise of the appellants claim to have fallen ill and be in the house on the night of the incident after receiving treatment for his pneumonia. Therefore, if the appellant had said that between the hours of 9pm and 11pm when the incident took place, he was in his house with his mother and the mother failed to respond to the Police invitation for interrogation but the Police already had that the appellant was recognized by an eye witness, as one of the gunmen who had invaded their house and killed their father, the defence of alibi would have been debunked. It is note worthy that the trial Court, on the defence of alibi by the appellant had found that where the prosecution has led strong and credible evidence showing the presence of the accused at the scene of the crime, the identification or recognition of the accused and his participation in the crime will be unimpeachable. See; Madagwa Vs. The State (1988) 5 NWLR (Pt.92) 60 at 62.

In the circumstance, the defence of alibi cannot be sustained in the face of the available evidence of recognition proffered by the prosecution. It shall be discountenanced, and it is hereby discountenanced.

On the issue of an identification parade, the learned counsel for the appellant had contended that the instant case was an ideal situation when the police ought to have conducted an identification parade.

What then is an identification parade? It is an identification procedure of the police, in which a criminal suspect and other physically similar persons are shown to the victim or witness to determine whether the suspect can be identified as the perpetrator or one of the perpetrators of the crime. It is otherwise called and referred to as line up.

It is trite law that an identification parade is not a sine qua non for identification in all cases where there have been a fleeting encounter with the victim of a crime, if there is yet other pieces of evidence leading conclusively to the identity of the perpetrator of the offence.

Therefore, an identification parade will only become necessary where the victim of the crime did not know the accused before his acquaintance with him during the commission of the offence.

The law is also settled that an identification parade is very essential and useful whenever there is doubt as to the ability of a victim to recognize the suspect who participated in carrying out the crime or where the identity of the said suspect or accused person is in dispute. But where there is certainty or no dispute as to the identity of the perpetrator of a crime, there will be no need for an identification parade. See; R vs TurnbulÂ (1976) 3 All ER 549; (1977) QB 224 at 228, 234; Ikemson Vs. State (1989) 1 CLRN 1; Adebayo Vs. The State (supra).

Furthermore, it has been held that an identification parade will be necessary only in the following circumstances:

(a) Where the victim or witness did not know the accused before and the first acquaintance with him is during the commission of the offence;

(b) Where the victim or witness was confronted by the suspect for a very short time; and

(c) Where the victim or witness, due to time and circumstance might not have had the opportunity of observing the features of the accused.

See; Kabir Almu Vs. The State (2003) 7 SC 129.

On the record and from the evidence available, PW1 testified that he had known the appellant a long time ago and had met him from time to time on several occasions and at several places before the incident in their house. Also, the evidence showed that the confrontation with the appellant by PW1 was prolonged and they were face to face, in the full glare of electricity light before PW1 was ordered to put the light off. The trial Court was therefore right to have come to the conclusion that the appellant was correctly recognized by PW1, hence there was no need for an identification parade to further identify him.

As earlier stated, it is clear from the record that the appellant did not appeal to the Court below on the findings and inferences of his detailed recognition by PW1, hence there was nothing on that issue in the judgment of the Court below to appeal against.

However, before I conclude this judgment, I feel compelled to comment on the incident at the commencement of the proceedings before the trial Court of Enugu State. It is on record that the appellant and one other as the 1st accused had been arraigned for trial, charged with conspiracy and murder. After their pleas were taken and each pleaded not guilty, the matter was adjourned for hearing. The then 1st accused later took an application to a vacation Judge in Enugu for his bail pending trial. The vacation Judge granted him bail on N250,000.00. He was reported to have jumped the bail and the surety readily paid the sum of N250,000.00, the bail money in lieu and he was never available to stand the trial. He is reported to remain at large.

There is no doubt that granting or refusal of bail application is at the discretion of the Judge who is considering the application. Yet, there are a number of factors or criteria that must be taken into consideration by the Judge in granting or refusing bail pending trial. These include: (1) The nature of the offence and the punishment attached to it, if proved (2) the evidence available against the accused; (3) availability of the accused to stand trial (4) the likelihood of the accused committing another offence while on bail; (5) the likelihood of the accused interfering with the cause of justice; (6) the criminal antecedents of the accused person; (7) the likelihood of further charge being brought against the accused; (8) the probability of guilt; (9) detention for the protection of the accused; (10) the necessity to procure medical or social report pending final disposal of the case. Certainly these are some of the factors that may be taken into consideration and by no means exhaustive. See; Bamaiyi Vs. The State & Ors (2001) LPELR - 731 (8). I have no doubt in my mind that the said vacation Judge disregarded all the above factors to be considered.

In this case, the offence charged included murder punishable with death sentence. The proof of evidence showed incriminating materials, recovered from the accused persons house upon execution of search warrant on the house. With the available evidence, it baffles one to hear that the vacation Judge, not the Judge whose Court was to try the case, considered the bail and readily granted same. I believe that when the accused later jumped bail and he refused to make himself available for his trial, the Judge should have realized that he has to cover his face in shame for his failure to exercise his discretion on the bail application, both judicially and judiciously. Ordinarily, Judges should be above board as far as integrity and competence are concerned.

It is rather unfortunate, to say the least, that a man who was alleged to be involved in the gruesome murder of the Chief Security Officer of the University and serial raping of the two grown up daughters of the deceased can be carelessly allowed to escape from justice. I shall say nothing more on this and let the conscience of the said Judge continue to deal with him either in his retirement or still in service. He is however not on trial.

In the final analysis, this appeal is lacking in merit and substance. It is liable to being dismissed. Accordingly, it is hereby dismissed. The conviction and sentence of the appellant by the trial Court on 31st March, 2008 which was affirmed by the Court below on 20th December, 2018 is affirmed.

Appeal dismissed.

**KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN, J.S.C.:**

I have read in draft the judgment of my learned brother, Olukayode Ariwoola, JSC, just delivered. I agree entirely with the reasoning and conclusion that the appeal lacks merit and should be dismissed.

The pathetic facts that led to the callous and gruesome murder of the deceased have been adequately summarized in the lead judgment. It is not necessary to repeat them. My brief comments are in respect of the appellant's contention that having regard to the facts of this case, an identification parade ought to have been conducted by the Police to ascertain that the appellant was the person who committed the offence.

It has been held severally by this Court that whether or not it is necessary to conduct an identification parade depends on the facts and circumstances of the case. An identification parade is only necessary when there is doubt as to the ability of a victim to recognize the suspect who carried out or participated in the commission of the crime, or where the identity of the suspect is in dispute. See: Alufohai Vs The State (2015) 3 NWLR (pt. 1445) 172; Ogoala Vs The State (1991) LPELR - 2307 (SC) @ 13 A - B. Even when there has only been a fleeting encounter with the suspect, it is not in every case that an identification parade would be necessary, particularly where there are other pieces of evidence that lead conclusively to the suspect as the perpetrator of the offence. See: Adebayo Vs The State (2014) LPELR - 22988 (SC) @ 36- 37 E-C.

PW1, in his testimony before the Court gave a detailed account of all that transpired the day his father was murdered and his encounter with the appellant. It is significant to note that PW1's father was the head of security at the University of Nigeria, Nsukka and PW1 testified that he knew the appellant as one of the security guards who worked under him. The incident occurred in May 2002. Under cross examination, PW1 stated that he got to know the appellant during a security exercise at the university in 2001. He also stated that he had seen the appellant several times within the university campus, along the road and in the market. He was familiar with him although he did not know his name. He testified that he gave a description to the police and got to know his name later, after he had made his statement to the Police. As rightly observed by the learned Justices of the lower Court, PW1's evidence was unchallenged and uncontradicted.

It was therefore clear, as held by the Court below, that the need to conduct an identification parade did not arise, having regard to the facts and circumstances of the case.

For these and the more detailed reasoning in the lead judgment, I find no merit in the appeal. It is hereby dismissed. The judgment of the lower Court is affirmed.

**AMINA ADAMU AUGIE, J.S.C.:**

I had a preview of the lead Judgment delivered by my learned brother, Ariwoola, JSC, and I agree with him that this Appeal lacks merit and must be dismissed.

It is settled that an identification parade is not necessary where there is other evidence leading conclusively to the identity of the perpetrators of the offence - SeeÂ Ikemson V. State(1989) 3 NWLR (Pt. 110) 455 SC, wherein this Court held that an identification parade is only essential in the followingÂ situations:

- Where the victim of the crime did not know the Accused before;

- Where the victim was confronted by the offender for a very short time; and

- Where the victim, due to time and circumstances, might not have had the opportunity of observing the features of the Accused Person.

The essence of an identification parade is, therefore, to enable an eye witness, who never knew the person accused of the crime before, to pick him out from amongst other people - See Adebayo V. State (2014) LPELR- 22988 (SC).

See also the case of Alufohai V. The State (2014) LPELR- 24215 (SC), wherein my learned brother, Ariwoola, JSC, explained the rationale as follows -

It is trite law that identification parade is only necessary whenever there is doubt as to the ability of a victim to recognize the suspect, who carried out or participated in carrying out the crime alleged or where the identity of the said suspect or an Accused Person is in dispute. But where there is certainty or no dispute as to the identity of the perpetrator of a crime, there will be no need for an identification parade to further identify the offender.

So, anÂ identification parade becomes necessary when there is a need to establish the identity of a suspect. But there are many cases where an identification parade is of no use; such as when the suspect is arrested at the scene of the crime; when the suspect is well-known to the victim or witness; and when evidence adduced is sufficient to establish that the suspect is the person that committed the crime - See Moses Jua V. State (2010) 4 NWLR (Pt. 1154) 217 SC, Bassey Akpan Archibong V. State (2006) 14 NWLR (Pt. 1000) 349 SC and Theophilus Eyisi (Alias Sunday Eyisi) & 2 Ors V. State (2000) 15 NWLR (Pt.691) 555 SC.

In this case, the trial Court believed and accepted the evidence of PW1 that he recognized the Appellant, whom he knew before, as the person, who pointed the gun at him when he walked into the sitting room that night and put on the light, and there was, therefore, no need to conduct an identification parade in this case.

It is for this and the other reasons in the lead Judgment that I also dismiss this Appeal for lacking in merit and affirm the decision of the Court of Appeal.

**PAUL ADAMU GALUMJE, J.S.C.:**

I have had the privilege of reading in draft the judgment of my learned brother, OLUKAYODE ARIWOOLA, JSC just delivered. I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed. Accordingly I join my brother in dismissing it. The judgment of the lower Court is hereby affirmed.

**UWANI MUSA ABBA AJI, J.S.C.:**

I have had a preview of the reasons for judgment given by my learned brother, Ariwoola, JSC, in the lead judgment. I agree entirely with the reasoning and conclusions reached therein that the appeal be dismissed.

Heavy weather has been made of the fact that the prosecution did not conduct an identification parade to ascertain the true identity of the Appellant to the murder of the deceased.

Identification parade is not the only way of establishing the identification of an accused person in relation to the offence charged. Where the witness has ample opportunity to identify the accused, a parade is not necessary. See Per BAGE, JSC inÂ KEKONG V. STATE (2017) LPELR- 42343 (SC). Identification parade is not therefore a sine qua non to a conviction. It has to be established or proved that the accused is guilty of the offence he is being charged with, beyond reasonable doubt. In the present appeal, the evidence of PW1 sufficed to link the Appellant to the murder of the deceased and to establish his culpability. Also, PW1 has satisfied that he very well knew the Appellant before the gruesome murder.

I have nothing more to add than to say may God lead the Appellant to repentance and have mercy on him for the murder and rapes he committed.