**SURAJU OLANREWAJU**

**V.**

**THE STATE**

IN THE SUPREME COURT OF NIGERIA

ON FRIDAY, THE 13TH DAY OF MARCH, 2020

SC.335/2016

**LEX (2020) - SC.335/2016**

**OTHER CITATIONS**

3PLR/2020/42 (SC)

(2020) LPELR-49569 (SC)

**BEFORE THEIR LORDSHIPS**

OLABODE RHODES-VIVOUR, JSC

CHIMA CENTUS NWEZE, JSC

AMINA ADAMU AUGIE, JSC

EJEMBI EKO, JSC

PAUL ADAMU GALUMJE, JSC

**BETWEEN:**

SURAJU OLANREWAJU - Appellant(s)

AND

THE STATE - Respondent(s)

**ORIGINATING COURTS**

1. COURT OF APPEAL, AKURE DIVISION

2. HIGH COURT OF OSUN STATE OF NIGERIA

**REPRESENTATION**

Prince Abioye A. Oloyode-Asanike . - For Appellant

AND

Dapo Adeniji, Esq. Attorney-General, Osun State, with him, K. Adekilekun Tijani, Esq. - For Respondent

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

CRIMINAL LAW AND PROCEDURE – MURDER:- Proof of – Death occasioned by blocking the mouth of a girl with bread while accused forcefully had sex with her to prevent her from shouting – How treated

CRIMINAL LAW AND PROCEDURE - PROVISION OF AN INTERPRETER:- Illiterate accused person - Failure to record the presence of an interpreter on subsequent trial dates after charge date - Whether would be sufficient to vitiate conviction

CRIMINAL LAW AND PROCEDURE - PROVISION OF AN INTERPRETER:- Basis of right for an illiterate accused person – When a presumption that the right had been waived by accused person would be deemed to have arisen - Where an accused person was represented by counsel at the trial – When the court would deem the case of the accused person not to have been prejudiced by the lack of an interpreter - Section 168-169 of the Evidence Act, 2004 – Whether the burden is on accused person to establish in what respect he suffered prejudice or miscarriage of justice by the fact that he was not afforded the services of an interpreter

CRIMINAL LAW AND PROCEDURE - ARRAIGNMENT/TAKING OF PLEA: Essence of - Requirements for a valid arraignment - Section 215 of the Criminal Procedure Law of Osun State – Duty of prosecution to secure a technically valid arraignment

CHILDREN AND WOMEN LAW- HOUSING, RAPE, MURDER AND JUSTICE ADMINISTRATION:- Girl sharing one room with boyfriend and two others – Violent rape and death of girl through suffocation with bread by two room mates of girl’s boyfriend while the latter slpet – Implications for justice administration

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE – PRESUMPTION OF REGULARITY:- Where an interpreter is provided at the arraignment of an accused person but the record does not show that interpreter was provided at subsequent proceedings – Rule that there is presumption of regularity that an interpreter was provided during those subsequent proceedings – How rebutted – Burden of proof – On whom lies

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Appellant and one Lekan Olatayo were arraigned before the trial court on a two count charge of conspiracy to commit murder and murder contrary to Sections 324 and 319(1) of the Criminal Code, Cap 34 volume 11, Laws of Osun State 2003. The two accused together with one Fatai Ademola were living and sharing one-bedroom apartment. A girl, by name Bilkisu Adeyemi, who was said to be a girl friend to Fatai Ademola later joined them in sharing the same room. On the 31st May, 2005, at about 1:00a.m after Fatai Ademola had had sexual intercourse with Bilkisu and slept off, the Appellant and Lekan Olatayo forcefully had sexual intercourse with Bilkisu. In order to prevent her from shouting they blocked her mouth with bread which blockage led to suffocation and death.

When the charge was read and explained to the accused, they pleaded not guilty. At the end of the trial, the two accused persons were found guilty as charged. For the first count, they were cautioned and discharged. For the 2nd count they were each sentenced to death by hanging by the neck. The Appellant herein unsuccessfully appealed to the Court of Appeal, Akure Division.

DECISION(S) APPEALED AGAINST

The Appeal is not against the facts of the case as disclosed before the trial Court nor the evidence led before the trial Court. Rather, the complaint is that the Appellant was not properly arraigned before the trial Court, as such the trial that led to his conviction was a nullity, and therefore the Court of Appeal acted in error when it affirmed the decision of the trial Court. Specifically, the Appellant submitted that even though the learned trial Judge disclosed in his record that the charge was read and explained to the Appellant in the language he understands, the name of the interpreter was not so stated. On this basis, learned Counsel contended that the provision of Section 215 of the Criminal Procedure law of Osun State was not complied with. Additionally, it was contended that apart from the date of arraignment, the trial Judge in subsequent proceedings did not disclose in the record that an interpreter was provided, thereby, vitiating the trial that was conducted at the trial Court.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

“Whether the trial and conviction of the Appellant at the lower Court and affirmed by the Court below was not a nullity.”

*BY RESPONDENTS*

“Whether the trial Court and the lower Court observed all the requirement of the law before convicting the Appellant.”

*AS ADOPTED BY COURT*

*[Court resolved issues as framed by both parties as they were substantially the same]*

DECISION OF [CURRENT] COURT

Issue as framed resolved against the Appellant. Appeal dismissed. Sentence affirmed.

**MAIN JUDGMENT**

PAUL ADAMU GALUMJE, J.S.C. (Delivering the Leading Judgment):

The Appellant herein along with one Lekan Olatayo were arraigned before the High Court of Osun State of Nigeria on a two count charge of conspiracy to commit murder and murder of Bilikisu Adeyemi contrary to Sections 324 and 319(1) of the Criminal Code, Cap 34 volume 11, Laws of Osun State 2003. When the charge was read and explained to them, they pleaded not guilty. In order to establish its case, the prosecution called three witnesses and tendered in evidence the statements of the accused persons which were confessional in nature. The two accused persons through their counsel objected to the admissibility of the statements on the ground that they were not voluntarily obtained. A trial within trial was conducted after which the learned trial Judge admitted the statements in evidence and marked them exhibits P1 and P2.

At the end of the trial and in a reserved and considered judgment delivered on the 13th January, 2014 the two accused persons were found guilty as charged. For the first count, they were cautioned and discharged. For the 2nd count they were each sentenced to death by hanging by the neck.

The Appellant herein unsuccessfully appealed to the Court of Appeal, Akure Division. His notice of Appeal before this Court, dated 26th February, 2016 and filed on the 1st of March 2016 contains two grounds of appeal.

Parties filed and exchanged briefs of argument. Prince Abioye A. Olayede Asanike, Learned Counsel for the Appellant formulated one issue for determination of this appeal. The sole issue reads thus:-

“Whether the trial and conviction of the Appellant at the lower Court and affirmed by the Court below was not a nullity.”

Mr. Dapo Adeniji, learned Director of Public Prosecution, Ministry of Justice, Osun State also formulated one issue for determination of this appeal in the following terms:

“Whether the trial Court and the lower Court observed all the requirement of the law before convicting the Appellant.”

The Appellant and one Lekan Olatayo together with one Fatai Ademola were living and sharing one-bedroom apartment at Oke Abesu, Osogbo sometimes in June, 2006. A girl, by name Bilkisu Adeyemi, who was said to be a girl friend to Fatai Ademola joined them and was sharing the same room with the three persons. On the 31st May, 2005, at about 1:00a.m after Fatai Ademola had had sexual intercourse with Bilkisu and slept off, the Appellant and Lekan Olatayo forcefully had sexual intercourse with Bilkisu. In order to prevent her from shouting they decided to block her mouth with bread. The blockage of her mouth lead to suffocation and subsequently her death.

The Appellant in this appeal is neither questioning the facts of the case as disclosed before the trial Court nor is he questioning the evidence led before the trial Court. His complaint is that the Appellant was not properly arraigned before the trial Court, as such the trial that led to his conviction was a nullity, and that the lower Court acted in error when it affirmed the decision of the trial Court. Learned Counsel for the Appellant, in his argument, submitted that even though the learned trial Judge disclosed in his record that the charge was read and explained to the Appellant in the language he understands, the name of the interpreter was not so stated. On this basis, learned Counsel contended that the provision of Section 215 of the Criminal Procedure law of Osun State as not been complied with. In aid, learned Counsel cited Mosuru Solola v. The State 22 NSC of R 254 @ 289; Sunday Kajubo v. The State (1988) 1 NWLR (pt. 73) 721; Eyorokoromo v. The State (1979) 6-9 SC 3. In a further argument, learned Counsel submitted that, apart from the date of arraignment, the trial Judge in subsequent proceedings did not disclose in the record that an interpreter was provided. According to the learned Counsel, this clearly shows that no interpreter was provided right from the beginning to the end of the trial. Finally, learned Counsel urged this Court to hold that the trial that was conducted at the trial Court is vitiated by the Court's failure to provide an interpreter. In aid, learned Counsel cited Akpiri Ewe v. The State (1992) 7 SCNJ 15 @ 19; Section 36(6) (a & e) of the Constitution of the Federal Republic of Nigeria 1999.

As I have said elsewhere in this judgment, this appeal is questioning the validity of the arraignment of the Appellant at the trial Court. Arraignment is not a matter of mere technicality. It is a very important initial step in the trial of a person on a criminal charge. Where there is no proper arraignment, any subsequent trial is a nullity, no matter the strength or cogency of the evidence adduced by the prosecution. See Kajubo v. State (supra), Eyorokoromo v. State (supra) Erekanure v. State (1993) 5 NWLR (pt. 294) 385; Effiom v. State (1995) 1 NWLR (pt. 373) 507; Kalu v. State (1998) 13 NWLR (pt. 583) 531. Section 215 of the Criminal Procedure Law of Osun State discloses that for a proper arraignment of an accused person before a trial Court, three essential elements must be satisfied in the following order:-

1. The accused person shall be placed before the Court unfettered unless the Court shall see cause to otherwise order.

2. The charge or information shall be read and explained to him in the language he understands to the satisfaction of the Court by the registrar or other officer of the court; and

3. The accused person shall then be called upon to plead instantly thereto unless objection in respect of writ of service of a copy of the information is successfully taken.

See Kajubo v. State (supra), Eyorokoromo v. State (supra); Okeke v. State (2003) 15 NWLR (pt. 842) 25.

The supplementary record of the trial Court clearly shows that the Appellant was in Court and was fully represented by Mr. Ukaegbu, his learned Counsel on 13th November, 2007. The trial Court's record also shows that the charge was read and explained to the Appellant in English Language and was interpreted into Yoruba language, and the Appellant was asked to plead thereto. The fact that the name of the interpreter was not recorded does not render the proceeding a nullity. This is the position this Court took in Olabode vs. State (2009) 11 NWLR (PT. 1157) 279, where it was held:-

“Although reflection in the trial Court's record of who read and explained the charge to the accused person form part of the steps of the procedure a trial Court should adhere to while accused is arraigned, failure or omission by the trial Court to reflect them is not fatal to the proceeding once the arraignment was carried out in a manner which is substantially regular.”

Where an interpreter is provided at the arraignment of the accused, and the record does not show that interpreter was provided at the subsequent proceedings, there is presumption of regularity that interpreter was provided during subsequent daily proceedings, unless the accused is able to prove otherwise. In Federal Republic of Nigeria v. Mohammed (2014) 3 SCN 53 at 86, this Court, per KEKERE-EKUN, JSC said:-

“In my respectful view, where an interpreter is provided at the commencement of trial and a record of it is made, it is desirable and indeed a constitutional duty of the trial judge to record this fact also is subsequent days of the trial when use is made of the interpreter. Where however, the judge fails to make a record of the use of interpreter in subsequent days, the trial is not perse thereby vitiated.”

In Anyanwu v. State (2002) LPELR - 517 (SC) this Court stated the law so clearly, where it was held:-

In the first situation, there is the presumption of regularity that the interpreter was present on subsequent day or days even though not so recorded unless proved otherwise. In this case, failure to record the presence of the interpreter is not fatal to the proceedings. See Edun v Inspector General of Police (1966) 1 All NLR 17, Udeh v. The State (1999) 7 NWLR (pt. 609) 1; Locknan v. The State (1972) All NLR 498.

In the instant case, the accused did not displace the presumption of regularity of the proceedings, as such, I am of the view that the trial Court did provide interpreter at the subsequent proceedings after the arraignment of the Appellant. Learned Counsel for the Appellant has failed to make out a case that will warrant my interference with the concurrent findings of facts by the trial Court and the Court of Appeal. The sole issue formulated by the Appellant is resolved against him. Having so resolved the only issue against the Appellant, this appeal shall be and it is hereby dismissed. The conviction and sentence passed on the Appellant, which was affirmed by the lower Court, is further affirmed by me.

**OLABODE RHODES-VIVOUR, J.S.C.:**

I read a draft copy of the leading Judgment prepared by my learned brother GALUMJE, JSC, and I am satisfied that there is no merit in the Appeal. The conviction and sentence passed on the Appellant, affirmed by the Court of Appeal is also affirmed by me.

**CHIMA CENTUS NWEZE, J.S.C.:**

My Lord, GALUMJE, JSC, obliged me with the draft of the leading judgement just delivered now. I endorse the conclusion that, as this appeal is unmeritorious, it ought to be dismissed.

The question here revolves around the issue of proper arraignment which this Court has dealt with ad nauseam, Josiah v. State [1985] 1 NWLR (pt. 1) 125; [1985] 1 SC 406; Kajubo v. State [1988] 1 NWLR (pt. 73) 721, 731; [1988] 3 SCNJ (pt. 1) 1179; Ebem v. State [1990] 7 NWLR (pt. 160) 113; Idemudia v. State [1999] 5 SCNJ 47; Onuoha Kalu v. The State [1998] 13 NWLR (pt. 583) 531; Erekanure v. The State [1993] 5 NWLR (pt. 294) 385; Omokuwajo v FRN (2013) LPELR -20184 (SC); Sharfal v. The State (1992) LPELR -3038 (SC) 11.

Others include: Ogunye v The State [1999] 5 NWLR (pt 604) 548, 567; Ewe v The State (1992) LPELR -1179 (SC); Dibie v The State [2007] 9 NWLR (pt 1038); Lufadeju and Anor v Johnson (2007) LPELR -1795 (SC); Olabode v The State (2009) LPELR -2542 (SC); Amako v The State (1995) LPELR-451 (SC); Olabode v. The State (2009) LPELR -2542 (SC); Amako v The State (1995) LPELR -451 (SC); Josiah v The State [1985] 1 SC 400, 416; Eyorokoromo v The State [1979] 8-9 SC 3; Dibie v The State [2007] 9 NWLR (pt 1038) 30, 61-62; Edibo v The State (2007) LPELR -1012 (SC); Adeniji v The State (2001) LPELR -126 (SC); Madu v The State (2012) LPELR -7867 (SC); Ogunye v. The State [1999] 5 NWLR (pt 604) 548, 555; Rufai v. The State (2001) LPELR -2963 (SC); Effiom v The State [1995] 1 NWLR (pt 373) 507; Adeniji v The State [2001] FWLR (pt 57) 809; Omokuwajo v FRN (2013) LPELR -20184 (SC); Ogunye v. The State [1999] 5 NWLR (pt 604) 548, 567.

From my perusal of the record of the trial Court, I am satisfied that the lower Court rightly, affirmed the trial Court's approach to the arraignment of the appellant.

It is for these, and the more detailed, reasons in the leading judgement that I, too, shall dismiss this appeal as lacking in merit. Appeal dismissed.

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

I had a preview of the lead Judgment just delivered by my learned brother, GALUMJE, JSC, and I agree with him that this Appeal totally lacks merit. The established fact, which he cannot run away from, is that the Appellant and his Co-Accused caused the death of the said Bilkisu (the deceased), when they used a loaf of bread to block her mouth in order to muffle her cries, while they were raping her. It will be absurd, in my view, to disturb the concurrent findings of the two lower Courts based on his contention, which is groundless. Thus, I also dismiss this Appeal in its entirety. Appeal dismissed.

**EJEMBI EKO, J.S.C.:**

I read in draft the judgment just delivered in this appeal by my learned brother, PAUL ADAMU GALUMJE, JSC. It represents my views in the appeal.

The record ex facie shows that the Appellant, from his arraignment to the conclusion of the trial, was represented by a Counsel. The Appellant, as the 2nd Accused, testified as DW.2. He testified in Yoruba Language. There was no formal minute, apart from the endorsement that the charge was read and explained to all the accused persons through an interpreter before they pleaded not guilty to the allegation, that subsequently services of an interpreter were made available. The defence Counsel, on the issue of interpretation, throughout remained mute. He like his clients, did not complain that they could not understand or follow the proceedings.

The Appellant, agreed, is entitled to free interpretation under the Constitution. He also has a right to dispense with the services of an interpreter.

In my considered opinion, the fact that throughout the proceedings the defence, including the Counsel and the Appellant, did not raise objection to, or any complaint of, there being an interpreter and that as a result the Appellant could not sufficiently follow the proceedings at the trial raises the presumption that they waived the services of an interpreter. By that presumption, the defence thereby was not prejudiced by the lack of an interpreter, if at all. The presence of the defence Counsel throughout bolsters that presumption which thus raises estoppel by conduct under Section 169 of the Evidence Act, 2004.

It is also significant that this issue is being raised for the first time in this Court. The fact also reinforces the presumption of regularity under Section 168(1) of the Evidence Act. The combination of Sections 168(1) and 169 of the Evidence Act strengthens my rejection of the argument that Appellant had suffered any prejudice by the absence ex facie the record that no interpreter was engaged for the Appellant at the trial.

It is not always fatal when the trial Court failed to reflect on the record the name of the interpreter: OLABODE v. THE STATE (2009) 11 NWLR (pt. 1152) 279. It is also not always fatal when the record shows that at the inception an interpreter was provided, but the record does not show that subsequently such services were made available to the accused person. The proceedings, pronto, will not be vitiated thereby: FRN v. MOHAMMAD (2014) 3 SCM 86. Each case is decided on its peculiar circumstance. The burden remains however on the accused person, as Appellant, to establish in what respect he suffered prejudice or miscarriage of justice by the fact that the record does not show that he was afforded the services of an interpreter, the rule being that not every omission or error complained of results in the decision appealed being set aside. The Appellant bears the burden of showing how and/or in what respect he suffered miscarriage of justice by the error complained of.

I find no merit in this appeal. I hereby dismiss it in its entirety.

Appeal dismissed.