**AKINLOLU**

**V.**

**THE STATE**

SUPREME COURT OF NIGERIA

FRIDAY, 30 JUNE 2017

SC.587/2014

**LEX (2017) - SC. 587/2014**

OTHER CITATIONS

2PLR/2017/35 (SC)

**BEFORE THEIR LORDSHIPS:**

IBRAHIM TANKO MUHAMMAD, JSC (Presided)

MARY UKAEGO PETER-ODILI, JSC

OLUKAYODE ARIWOOLA, JSC (Read the Lead Judgment)

KUMAI BAYANG AKA’AHS, JSC

AMINA ADAMU AUGIE, JSC

**BETWEEN**

OMOJOLA AKINLOLU

AND

THE STATE

**ORIGINATING COURT**

1. COURT OF APPEAL, AKURE JUDICIAL DIVISION (Judgment of the Court delivered on 7 August 2014, coram: Mojeed A. Owoade JCA, Mohmmed A. Danjuma JCA, James S. Abiriyi JCA).

2. HIGH COURT OF ONDO STATE (F. O. Aguda-Taiwo J., Presiding)

**REPRESENTATION/LAWYERS**

ADEKUNLE OJO Esq. (with him, M.T. AYEGBUSI Esq. and T. J, AYODELE Esq.) - For the Appellant.

TUNDE BABALOLA Esq. (with him, DOLAPO KEHINDE And OLAMIDE AGBAJE, Esq.) - For the Respondent.

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

CRIMINAL LAW AND PROCEDURE – MURDER:- Conviction for - Ingredients prosecution must establish to ground same– Section 316 of the Criminal Code in review – Cause of death - Effect of prosecution’s failure to establish.

CRIMINAL LAW AND PROCEDURE – RAPE AND CONSPIRACY TO MURDER – PROOF OF:- Proof of forcefully having carnal knowledge of a woman by several persons known to the victim in an isolated place – Where the deceased and all her rapists live in the same community – Death resulting from violence inflicted thereat - Whether reasonable to expect that the assailants intended to leave the victim alive after the violent rape to return to their common neighbourhood

CRIMINAL LAW AND PROCEDURE - CONFESSIONAL STATEMENT - Where retracted - Propriety of court basing conviction thereon.

CRIMINAL LAW AND PROCEDURE - CONSPIRACY - Offence of - How proved - Charge of - Elements prosecution must establish in proof of – Conviction for - Circumstantial evidence as basis therefor – Whether would be deemed sufficient.

CRIMINAL LAW AND PROCEDURE – ARRAIGNMENT:- Essential requirements for a valid arraignment - Duty on court to record facts of - Limitation thereto - Section 215 of the Criminal Procedure Law in review

CRIMINAL LAW AND PROCEDURE - ARRAIGNMENT - – Whether an accused was properly arraigned - How determined - Vital prerequisites for – Whether compliance with constitutional and procedural provisions necessary - Absence of – Effect.

CRIMINAL LAW AND PROCEDURE - ARRAIGNMENT - Impropriety of raising issue of arraignment for the first time on appeal - When so raised – Whether constitutes breach of appellant’s right to fair hearing.

CRIMINAL LAW AND PROCEDURE - ARRAIGNMENT - Constitutional and Procedural requirement of recording the fact of reading and explaining a charge to an accused person - Court’s failure to comply with - Consequence of.

CRIMINAL LAW AND PROCEDURE - COMMON INTENTION TO ENGAGE IN UNLAWFUL ACT - Criminal liability of.

CRIMINAL LAW AND PROCEDURE - ABBETTOR OF AN OFFENCE - Culpability of in commission of the offence.

CRIMINAL LAW AND PROCEDURE - GUILT OF AN ACCUSED – How proved.

CRIMINAL LAW AND PROCEDURE - JOINT COMMISSION OF CRIME - Allegation of - How court determines culpability of offenders charged with.

CRIMINAL LAW AND PROCEDURE - LANGUAGE OF THE COURT - Whether an accused person understands - Duty on court thereon in criminal trial.

CHILDREN AND WOMEN LAW:- Women and business/Justice administration – Bid to buy kolanut from a farm from men whose real intention was to have her gang-raped – Rape and violent death resulting therefrom – How treated by prosecution and court

CONSTITUTIONAL LAW AND HUMAN RIGHTS - FAIR HEARING - ARRAIGNMENT - Issue of - Impropriety of an appellant raising the issue of arraignment for the first time on appeal - Whether constitutes breach of appellant’s right to fair hearing.

**PRACTICE AND PROCEDURE ISSUES**

APPEAL – ISSUE FOR DETERMINATIN:- Propriety of an appellant raising issue the of arraignment for the first time on appeal – Issue so raised - Whether constitutes breach of appellant’s right to fair hearing.

EVIDENCE - Confessional statement – Where retracted - Propriety of court basing conviction thereon.

INTERPRETATION OF STATUTE - CRIMINAL CODE, SECTION 316:- Murder – Conviction for - Ingredients prosecution must establish to ground same

INTERPRETATION OF STATUTE - CRIMINAL PROCEDURE ACT, SECTION 215 – Proper construction of

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

Sometime on 26 February 2007, the appellant and two others - Segun Akinsuwa and Ayo Omoduyilemi - were arraigned before the Ondo State High Court, at the Ore Judicial Division on two count charge of conspiracy to commit murder punishable under section 516 and for murder contrary to section 316 and punishable under section 319(i) both of the Criminal Code, Cap. 30, volume II, Laws of Ondo State of Nigeria, 1978; now Volume I, Cap. 37, Laws of Ondo State, 2006.

The case for the prosecution was that on or about 3 June 2003, the appellant had conspired with the two other accused, lured to the farm, raped and killed one Mrs Silifatu Rahman, otherwise known as Mama Lekan. The defence by the appellant was a total denial in his oral testimony in court. He had maintained that he knew nothing about the killing of the deceased, let alone participating in the murder. However, in his extra judicial statement earlier made to the police, the appellant had admitted that he actively participated in the raping of the deceased. The said extra-judicial statement was tendered and admitted without objection.

The appellant was found guilty as charged, convicted and sentenced to death.

**DECISION(S) APPEALED AGAINST**

The Court of appeal entered judgment affirming the decision of the Ondo State High Court, convicting and sentencing the appellant to death by hanging and dismissing the appeal filed by the appellant to that Court in the following particulars:

“Exhibits 5, 6 and 7 which are the voluntary confessional statements of accused persons and which corroborate each other, clearly show that the deceased late Mrs. Silifatu Rahaman was on 5 June 2003, lured by the appellant and the other two accused person to the farm of the father of the 3rd accused ostensibly to sell kolanut to her. It is also disclosed in exhibit 6 of the 2nd accused (appellant herein) that the 1st accused met the 2nd accused and 3rd accused persons to inform them of and where to carry out the horrific act. It is also on record that the 2nd and 3rd accused persons were the ones that led the deceased to the farm where she was eventually killed. It is evident from the evidence before the court that the appellant was not only present throughout the events that led to the death of the deceased but also conspired and actively partook in the dastardly act. The appellant had the ample opportunity to retract or change his mind having seen the 1st accused remove a deadly weapon (described by the appellant in his evidence as a sharp knife) capable of causing death if used.”

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

1. Whether the Court of Appeal erred in law to have affirmed the conviction of the appellant of murder when the evidence adduced by the prosecution did not lead to the irresistible conclusion that the appellant in collaboration with others killed Mrs. Silifatu Rahman.

2. Whether or not the learned justices of the Court of Appeal erred in fact and in law in affirming the decision of the High Court that the prosecution proved the offence of conspiracy to commit murder beyond reasonable doubt against the appellant.

3. Whether in view of the learned trial judge’s failure to comply with section 215 of the Criminal Procedure Laws of Ondo State and section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the arraignment and subsequent proceedings including the conviction of the appellant are nullities.

*BY RESPONDENTS*

1. Whether the learned Justices of the Court of Appeal were right in holding that the prosecution proved its case beyond reasonable doubt at the trial court.

2. Whether the learned Justices of the Court of Appeal misapplied the provisions of sections 7 (b) and 8 of the Criminal Code, Cap. 37 Vol. I, Laws of Ondo State, 2006, thereby occasioning a miscarriage of justice.

3. Whether the appellant was not properly arraigned at the trial court, thereby resulting in lack of fair hearing.

BY COURT

[Appeal decided on the issues formulated by both parties because, according to the Court, “a close look at the respective three issues formulated by both appellant and respondent from the eight grounds of appeal contained in the amended notice of appeal filed by the appellant, shows that they are saying the same thing though differently couched”.]

DECISION OF THE SUPREME COURT

1. In a prosecution on a charge for murder, the prosecution is required to prove beyond doubt: (i) That the deceased had died;(ii) That the death of the deceased resulted from the act of the appellant; (iii) That the act of the appellant was intentional with the knowledge that death or grievous bodily harm was its probable consequence. Those three conditions must co-exist and none must be missing or absent. But where one is absent or tainted with doubt, then the charge is said not to be proved by the prosecution against the accused standing trial.

3. In order to secure conviction on a count of conspiracy, the prosecution must establish the element of agreement to do something which is unlawful or to do something which is lawful but by unlawful means.

4. The guilt of an accused person charged with the commission of a crime, can be proved by: (a) The confessional statement of the accused person; (b) Circumstantial evidence; or (c) Evidence of eye witness of the crime.

5. In his extra judicial statement which corroborated the other evidence adduced by the prosecution, the 1st accused stated categorically that he stabbed the deceased in order to prevent her from going back home to narrate the act of their raping her. And that it was after stabbing her on the neck, jaw and throat that the appellant and 3rd accused had sexual intercourse with the deceased. From the bundle of evidence adduced by the prosecution, with the confessional statement of the appellant and the other documentary evidence such as exhibits, the prosecution proved that the appellant and other co-accused had conspired either directly or indirectly to commit the murder of the deceased.

6. On criminal liability, when commission of a crime is imputed, this court has held that 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.

7. Conspiracy is ordinarily not defined under either the Criminal or Penal Code. But a successful conviction for conspiracy is one of those offences predicated on circumstantial evidence which is evidence not of the fact in issue, but rather of other facts from which the fact in issue can be inferred.

8. Where more than one person are accused of joint commission of a crime, it is enough to prove that they all participated in the crime. What each did in furtherance of the commission of the crime is immaterial. The mere fact of the common intention manifesting in the execution of the common object is enough to render each of the accused person in the group guilty of the offence. And where common intention is established, a fatal blow or gun shot though given by one of the party, is deemed in the eyes of the law to have been given, by all those present and participating.

9. Since there is uncontroverted evidence that the appellant and the other co-accused had the common intention to rape the deceased and in the process, one of them inflicted fatal injuries on the deceased with a view to concealing the rape committed by the gang members including the appellant, the injury inflicted by one of the accused is deemed, in the eye of the law to have been inflicted by all those present and aiding.

10. “It is perfectly useful and necessary for the court to record the fact of arraignment and that the charge was read to the accused in the language he understands, where this is different from the language of the court, which is English language. Where the accused person understands the language with which the charge was read, it becomes unnecessary to record that fact specifically. However, the provision of section 215 of the Criminal Procedure Law should not be stretched to a point of absurdity, by reading into it that the judge must record that the charge was explained to the accused to his satisfaction before taking his plea. It will be impeaching the integrity of the judge to do that, as no judge will take the plea of an accused if he is not satisfied that the charge was read and explained to his satisfaction.

11. On whether or not the accused understands the language in which the trial is being conducted, it is not to be the duty of the court to seek to know. In the realm of criminal justice, it is the cardinal principle of our criminal jurisprudence that it is the duty of the accused or his counsel acting on his behalf to bring to the notice of the court, the fact that he does not understand the language in which the trial is conducted, otherwise it will be assumed that he has no cause of complaint.

12. On what is the proper and valid way of an arraignment of an accused; the question is said to be “was there a proper or valid arraignment on which the trial was based?” The answer is said to lie in the entire circumstance of the case. Each case must be dealt with on its own peculiarity. The accused must be placed before the court unfettered, the charge must be read to him in the language the accused person understands, and if he is represented by counsel, there is no objection to the charge and a plea is taken from the accused person. The charge must be read and explained to the accused, and if there is no objection by counsel or the accused person, then there is clear presumption of regularity that all that must be done to let the accused know the charge against him has been done. In that situation, the accused is presumed to have understood the charge which has been read and explained to him and the court was equally satisfied that the charge was understood by the accused.

**MAIN JUDGMENT**

**ARIWOOLA JSC** (DELIVERING THE LEAD JUDGMENT):

This is an appeal against the judgment of the Court of Appeal, Akure Division - coram: Mojeed A. Owoade JCA, Mohmmed A. Danjuma JCA, James S. Abiriyi JCA delivered on 7 August 2014, which dismissed the appellant’s appeal against the judgment of the Ondo State High Court, delivered on 5 August 2005, coram: F. O. Aguda-Taiwo J. which convicted and sentenced the appellant to death by hanging.

The facts of this case are as follows:- Sometime on 26 February 2007, the appellant and two others; Segun Akinsuwa and Ayo Omoduyilemi had been arraigned before the Ondo State High Court, at the Ore Judicial Division on two count charge of conspiracy to commit murder punishable under section 516 and for murder contrary to section 316 and punishable under section 319(i) both of the Criminal Code, Cap. 30, volume II, Laws of Ondo State of Nigeria, 1978; now Volume I, Cap. 37, Laws of Ondo State, 2006.

The appellant and the other two accused persons had pleaded not guilty to the charge. The prosecution called four (4) witnesses and tendered exhibits 1-10A and ID 1-9. The appellant as the 2nd accused testified for himself but called no other witness in defence.

The case for the prosecution was that on or about 3 June 2003, the appellant had conspired with the two other accused, lured to the farm, raped and killed one Mrs Silifatu Rahman, otherwise known as Mama Lekan. The defence by the appellant was a total denial in his oral testimony in court. He had maintained that he knew nothing about the killing of the deceased, let alone participating in the murder. However, in his extra judicial statement earlier made to the police, the appellant had admitted that he actively participated in the raping of the deceased. It is interesting to note that the said extra-judicial statement when tendered without objection was admitted and marked exhibit 6.

It is noteworthy that before the 3rd accused opened his defence, the prosecution informed the court that the 3rd accused had been released from custody on the ground of ill-health by the State Committee on Administration of Criminal Justice headed by the State Chief Judge, and upon the application of the prosecuting counsel, the name of the 3rd accused person was accordingly struck out. In the considered judgment, the trial court expressed the court’s displeasure over the development and recommended the re-arrest and prosecution of the 3rd accused. The appellant was found guilty as charged, convicted and sentenced to death. Being dissatisfied, the appellant, by an amended notice of appeal filed on 13 September 2012, appealed to the court below. In its unanimous decision, the court below on 7 August 2014 dismissed the appellant’s appeal and affirmed his conviction and sentence. That has led to the instant further appeal to this court via his notice of appeal filed on 22 September 2014, which was later amended on 28 October 2014.

Parties subsequently filed and exchanged their respective brief of argument. In the appellant’s brief of argument settled by Adekunle Ojo Esq., the following three issues were distilled for the determination of the appeal.

Issues for determination:

1. Whether the Court of Appeal erred in law to have affirmed the conviction of the appellant of murder when the evidence adduced by the prosecution did not lead to the irresistible conclusion that the appellant in collaboration with others killed Mrs. Silifatu Rahman. (Grounds 2,3,4,6 and 7).

2. Whether or not the learned justices of the Court of Appeal erred in fact and in law in affirming the decision of the High Court that the prosecution proved the offence of conspiracy to commit murder beyond reasonable doubt against the appellant. (Grounds 1 and 5).

3. Whether in view of the learned trial judge’s failure to comply with section 215 of the Criminal Procedure Laws of Ondo State and section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the arraignment and subsequent proceedings including the conviction of the appellant are nullities. (Ground 8).

In the respondent’s brief of argument settled by Tunde Babalola, Esq. which was deemed filed on 13 April 2017, the following three issues were formulated from the eight (8) grounds of appeal contained in the appellant’s amended notice of appeal.

1. Whether the learned Justices of the Court of Appeal were right in holding that the prosecution proved its case beyond reasonable doubt at the trial court. (Grounds 2,3,4 and 5).

2. Whether the learned Justices of the Court of Appeal misapplied the provisions of sections 7 (b) and 8 of the Criminal Code, Cap. 37 Vol. I, Laws of Ondo State, 2006, thereby occasioning a miscarriage of justice. (Grounds 1,6 and 7).

3. Whether the appellant was not properly arraigned at the trial court, thereby resulting in lack of fair hearing. (Ground 8).

There is no doubt, a close look at the respective three issues formulated by both appellant and respondent from the eight grounds of appeal contained in the amended notice of appeal filed by the appellant, shows that they are saying the same thing though differently couched.

In arguing issue No.1, learned appellant’s counsel submitted that the decision of the court below which upheld the conclusions of the trial judge that the appellant had common intention with the 1st accused to murder the victim is perverse, and occasioned a miscarriage of justice to the appellant. Learned counsel contended that from the confessional statements admitted by the trial court and the findings of the court below and the trial court, the following assertions can be successfully made:

(a) That the appellant, the 1st accused and the 3rd accused persons had carnal knowledge of one Silifatu Rahman.

(b) That the 1st accused person killed the said Silifatu Rahman.

(c) That in view of the confessional statements, the appellant and the 3rd accused person were forced by 1st accused person to have carnal knowledge of the deceased.

(d) That the death of the deceased did not result from the act of the appellant.

(e) From the medical evidence, the deceased did not die due to any proved act of the appellant. Learned counsel contended that since the appellant did not act in any manner with the knowledge that the deceased was going to die, he cannot be found culpable of murder under section 316 of the Criminal Code, Cap. 30 Vol. II, Laws of Ondo State. He submitted that the prosecution did not prove beyond reasonable doubt that:

(a) The death of the deceased resulted from the act of the appellant; and

(b) The act of the appellant was intentional, with knowledge that death was probable consequence of his act or acts.

Learned counsel referred to the findings of the trial judge in his judgment on the cause of death and who was responsible.

He referred to exhibits 5, 6 and 7 and the trial court’s conclusion that the death of the deceased was caused by the 1st accused who stabbed the deceased with a knife on her throat, neck and jaw.

Learned counsel contended that the said findings by the trial court were never challenged by the prosecution at the court below and the court below did not find anything to the contrary. He submitted that the killing of the deceased was actually caused by the 1st accused but not the appellant.

Learned counsel contended that on the facts of this case, there was no sufficient evidence of culpability which the law requires before an accused can be convicted of murder. He contended further that since the deceased died from cause which was not an act of the appellant, he submitted that the prosecution did not establish a case of murder or conspiracy to murder against the appellant. He relied on Udosen v. State (2007) All FWLR (Pt.356) 669, (2007) 4 NWLR (Pt. 1023) 125; R v. Nwokocha (1949) 12 WACA 453; R. v. Owe (1961) 2 SCNLR 354, (1961) All NLR 680; R. v. Samuel Abengowe (1936) 3 WACA 85; Joseph Lori v.State (1980) 8 -11 SC 81, (1980) 1 All NLR 81, (1980) 12 NSCC 269.

Learned counsel contended that it has been shown by the concurrent findings of the court below that the deceased died as a result of the act of the 1staccused but not that of the appellant.

He however submitted that the concurrence of the two courts below that there was common intention to kill the deceased and thereby invoked the provisions of sections 7 and 8 of the Criminal Code of Ondo State to convict and uphold the conviction of the appellant. He submitted that the said concurrence is perverse and unsupportable by the evidence on record.

Learned counsel referred to the findings of the court below and submitted that they are unfounded in law and not supported by the evidence on record. He concluded that the appellant was not a party to the crime of murder of the deceased.

Learned counsel contended that from the decisions of both courts below, the conviction of the appellant was premised on the fact that though they lured the deceased to the farm so that they could rape her but that the appellant was present and did not stop the 1st accused from killing the deceased. He submitted that the position taken by the two courts below was perverse and not in consonance with the successive interpretation of sections 7 and 8 of the Criminal Code by the apex court and the facts on record.

He relied on Lori v. State (supra); Akinkunmi v. The State (1987) 1 NWLR (Pt. 52) 608, (1987) 3 SCNJ 30/34, (1987) 3 SC 152.

Learned counsel referred to exhibit 6; the alleged confessional statement of the appellant and exhibits 5 and 7 being the statements allegedly obtained from the 1st and 3rd accused persons. He contended that the facts on record did not point irresistibly to the fact that the appellant had a common object with the 1st accused to kill the deceased.

Learned counsel conceded that the appellant with the 1st and 3rd accused may be guilty of rape, but definitely, the appellant should not have been convicted for the offence of conspiracy to commit murder and the murder of Silifatu Rahman.

He submitted that the appellant could not be said to be caught by the provisions of sections 7 and 8 of the Criminal Code as prosecuting a common object with the 1st accused person to kill the deceased. He contended that there was nothing done by the appellant for the courts below to have concluded that he aided and abetted the killing of the deceased. He relied on Mohammed v. State (1980) 1 NCR 140, (1980) 3 - 4 SC 84.

Learned counsel contended further that the appellant cannot, in law be found culpable of the offence of murder just because he did not rescue the deceased, when the 1st accused attacked her.

He argued that whereas, the appellant and the 3rd accused may be validly tried for aiding and abetting, the commission of the offence of rape but not for the offence of murder, which was beyond the common object of the trio. He submitted that where the crime committed eventually is different from the one which the appellant abetted, the appellant cannot be validly convicted of the crime which was eventually committed. He relied on R v. Bainbridge (1960) 1QB 129. He submitted further that there was no evidence led by the prosecution to show that the appellant wanted the deceased dead.

Learned counsel referred to the testimony of PW4; the medical doctor and contended that his testimony that the deceased was raped before she died is in consonance with the alleged confessional statements of all the accused persons including the appellant. He contended further that the unlawful purpose that can ever be ascribed to the accused persons as their common object and intention was rape; but not to kill. He submitted that the appellant is not guilty of murder by virtue of section 8 of the Criminal Code. He relied on the analysis of section 8 by this court, per Eso JSC in Akinkunmi & 3 Ors. v. State (1987) 1 NWLR (Pt. 52) 608, (1987) 3 SCNJ 30/34, (1987) 3 SC 152 at page 107.

Learned counsel contended that the intention to kill the deceased was not proved against the appellant. He argued that neither the general nor specific intention was ever traced to the appellant. He contended further that where two or more persons are charged with the offence of murder, in order to secure the conviction of all the accused persons, the prosecution must prove common intention between the accused persons by leading convincing and credible evidence to that effect. He relied on Mbang v. State (2007) All FWLR (Pt. 372) 1862, (2010) 7 NWLR (Pt. 1194) 431. He submitted that the prosecution did not lead any tangible evidence against the appellant from which the court may infer that he collaborated with any other person to kill or for which he could be said to have common intention, in order for him to be liable for murder.

Learned counsel submitted that the appellant was coerced and intimidated by the 1st accused person after he stabbed the victim. He referred to the alleged confessional statement of the 3rd accused, exhibit 7 where he stated that the 1st accused; Segun threatened to kill him and the appellant if they refused to have sex with the deceased. He argued that these facts were not controverted by the prosecution at the trial. He submitted that where an accused person leads an uncontradicted evidence that he was intimidated and or coerced to witness the commission of a crime he cannot be guilty of aiding the commission of such crime. In such a circumstance, common intention was not disclosed in evidence and could not be inferred from the circumstances of this case. He urged the court to hold that there was neither a common object nor a common intention between the appellant and the 1st accused, who is alleged to have stabbed the deceased, as to hold the appellant guilty of murder either as a joint principal or as an abettor.

Learned counsel submitted that the use of the knife by the 1st accused on the deceased which resulted in her death, was outside the common intention of the parties and the mere presence of the appellant at the scene when the injury was inflicted on the deceased cannot amount to his aiding and abetting the killing of the deceased. He urged the court to resolve the issue in favour of the appellant.

In arguing this issue one, learned counsel for the respondent submitted that the learned Justices of the Court of Appeal (herein referred to as the court below), were right in holding that the prosecution proved its case beyond reasonable doubt before the trial court, in view of the fact that the ingredients of the offences of conspiracy and murder were established against the appellant through compelling circumstantial evidence and the appellant’s confessional statement which was admitted without objection at the trial and had been proved to be true and sufficiently corroborated by the evidence of prosecution witnesses.

He gave the ingredients which the prosecution is required to establish, either directly or circumstantially, to prove conspiracy. He relied on Omotola & Ors. v. The State (2009) 7 NWLR (Pt. 1139) 148, (2009) All FWLR (Pt. 464) 1490, (2009) 2 - 3 SC 7, (2009) 3 SCM 127, (2009) 37 NSCQR (Pt. 2) 963, (2009) 8 ACLR 29; Gbadamosi v. State (1991) 6 NWLR (Pt. 196) 182.

He referred to the confessional statement of the appellant; exhibit 6 which was admitted in evidence without objection and contended that the said statement become part of the prosecution’s evidence. He relied on Princewill v. The State (1994) 6 NWLR (Pt. 353) 703, (1994) 7 - 8 SCNJ (Pt. II) 226 at page 240.

Learned counsel quoted from the extra-judicial statement of the appellant at page 17 of the record and submitted that the thrust of the said statement is an agreement between the appellant and the other two accused persons to commit an unlawful act of rape.

Learned counsel also referred to pages 121 and 318 of the record of proceedings for the findings of both courts below and contended that the appellant and his cohorts conspired to rape the deceased and in the process, death ensued. He contended that it did not matter which of them committed the particular act which caused the deceased’s death. Learned counsel contended that since the appellant and the other accused acted in concert, he submitted that they all committed conspiracy and murder. He urged the court to so hold that the prosecution proved beyond reasonable doubt that the appellant committed the offence of conspiracy as charged.

He relied on State v. Olatunji (2003) FWLR (Pt. 155) 695, (2003) 13 NWLR (Pt. 839) 57, (2003) 20 WRN 75, (2003) 2-3 SC 85.

Learned counsel referred to the ingredients of murder and relied on Ndukwe v. State (2009) All FWLR (Pt. 464) 1447, (2009) 7 NWLR (Pt. 1139) 43, (2009) 2 SCNJ 223, (2009) 2 SCM 147, (2009) 2 MJSC (Pt.1) 141; Okeke v. State (1999) 2 NWLR (Pt. 590) 246 at page 273, (2001) FWLR (Pt. 70) 1652.

He referred to the bundle of evidence adduced by the prosecution through PW2, PW3 and PW4. He contended that it is not in dispute that one Mrs. Silifatu B. Rahman died and that she did not commit suicide. He submitted that with exhibit 9 which was the medical report tendered through PW4; the Pathologist, the death of the deceased was established and he urged the court to so hold.

Learned counsel referred to the extrajudicial statements made by the accused persons and contended that they corroborated each other to the effect that the deceased died while the appellant and his cohorts were taking turns in raping her. He relied on section 7(b) of the Criminal Code, Cap. 37, Vol. I, Laws of Ondo State, 2006, which requires that every person who does or omits to act for the purpose of aiding another person to commit the offences is deemed to have taken part in committing the offence and to be guilty of the offence and may be charged with actually committing the offence.

He referred to the confessional statements of the appellant and the cohorts and submitted that it will be contrary to reason for the appellant to maintain that he raped the deceased in obedience to the 1st accused instruction, after he had admitted that he had earlier been informed by the 1st accused that their main reason for going to the farm with the deceased on the fateful day was to rape her.

Learned counsel referred to the testimony of the Pathologist, PW4 on the cause of death of the deceased. He submitted that from the testimony of PW4, it could rightly be deduced that the deceased died as a result of the combined effects of the physiological trauma of the injuries inflicted on her by the 1st accused, which the appellant tacitly approved and the psychological effect of being raped in her critical condition, in which the appellant actively participated. He submitted further that it is not in all cases of prosecution of murder that medical evidence solely determines the cause of death. He relied on Onwumere v. State (2009) 8 ACLR 411 at page 442; Ononuju v. State (1976) 5 SC 1.

Learned counsel contended that from exhibit 6; the confessional statement of the appellant which was properly admitted and to which probative value was ascribed, the appellant, he submitted, did not only implicitly consented to the infliction of a fatal injury on the deceased’s neck, not her leg, by not fleeing from the repulsive scene, but also approved of the same by raping the victim in this helpless and miserable situation. He submitted further that it can thus be rightly inferred, that the act of the appellant and others was intentional with the knowledge that death or grievous bodily harm was its probable consequence. He cited Ehot v. The State (1993) 4 NWLR (Pt. 290) 644 at page 663, (1993) 5 SCNJ 65; The State v. Usman (2004) All FWLR (Pt. 226) 231, (2005) 1 NWLR (Pt. 906) 80, (2007) 5 ACLR 34.

He urged the court to resolve issue one against the appellant.

There is no doubt that the first issue of the appellant which was said to have been distilled from five grounds: 2,3,4 6 and 7 of the grounds of appeal seems to be all encompassing and as argued by both learned counsel, may have been sufficient enough to dispose of the appeal.

However, after dealing with the issue, if need be, the other issues may also be addressed. In my view, the issue is mainly whether the Court of Appeal was correct in affirming the conviction and sentence of the appellant for the offences of conspiracy to murder and murder with the bundle of evidence adduced by the prosecution, as to who and how the deceased was killed.

As earlier stated, the appellant and two others were charged with the offences of conspiracy to murder and murder of one Silifatu Rahman on 3 June 2003, after luring her away to the farm to rape her.But the appellant’s defence was a total denial in his oral testimony in court.

Generally, and this is already established by decided cases that in a prosecution on a charge for murder under our Criminal Code as in this instant case, the prosecution is required to prove beyond doubt, the following:

(i) That the deceased had died;

(ii) That the death of the deceased resulted from the act of the appellant;

(iii) That the act of the appellant was intentional with the knowledge that death or grievous bodily harm was its probable consequence. See; Richard Igago v. The State (1999) 14 NWLR (Pt. 637) 1, (1999) 10 SC 84.

However, these three conditions must co-exist and none must be missing or absent. But where one is absent or tainted with doubt, then the charge is said not to be proved by the prosecution against the accused standing trial. See; Godwin Igabele v. The State (2006) All FWLR (Pt. 311) 1797, (2006) 6 NWLR (Pt. 975) 100, (2006) 3 SCM 143, (2006) 2 SC (Pt.11) 61; Ogba v. The State (1992) 2 NWLR (Pt. 222) 164 at page 198; Abainta O Ubani & Ors. v. The State (2003) 18 NWLR (Pt. 851) 224, (2003) 12 SCNJ 111, (2003) 12 SCM 310, (2004) All FWLR (Pt. 191) 1533; Silas Sule v. The State (2009) All FWLR (Pt. 481) 809, (2009) 17 NWLR (Pt. 1169) 33, (2009) 6 SCNJ 65, (2009) LPELR-3125 (SC) 28, (2009) 8 SCM 177.

In Joseph Idowu v. State (2000) FWLR (Pt. 16) 2672, (2000) 12 NWLR (Pt. 680) 48, (2000) 7 SC (Pt. 2) 50, (2000) 10 WRN 1, this court, per Ogundare JSC held that, to secure a conviction for murder pursuant to section 316 of the Criminal Code, the prosecution must prove that the death of the deceased was caused by means of an act done in the prosecution of an unlawful purpose and that the act is of such a nature, as to be likely to endanger human life.

However, it has been held that in order to secure conviction on a count of conspiracy, the prosecution must establish the element of agreement to do something which is unlawful or to do something which is lawful but by unlawful means. See Adesina Kayode v. The State (2016) All FWLR (Pt. 835) 203, (2016) 7 NWLR (Pt. 1511) 119; Omotola & Ors. v. The State (2009) All FWLR (Pt. 464) 1490, (2009) 7 NWLR (Pt. 1139) 148, (2009) 2 - 3 SC (Pt. II) 196, (2009) LPELR - 2663, (2009) 8 ACLR 29, (2009) 3 SCM 127.

It is clear on the record of proceedings, that at the trial of the appellant and other co-accused, the prosecution called four (4) witnesses and tendered couple of exhibits. There is no doubt, that there was no direct eye witness. It is noteworthy, that the prosecution relied on the extra-judicial statements of the appellant which was alleged to be confessional and was admitted without objection. And was said to be corroborated by the testimony of other witnesses.

The extra-judicial statement of the appellant was admitted by the trial court without objection and was marked exhibit 6. The following was from the appellant’s statement as stated on pages 14 -17 of the record:

“On 5 June 2003 at about 4.30 p.m., Segun Akinsuwa ‘M’ (1st accused) came to inform me and Ayo Duyilemi “M” (3rd accused) to meet him in Ayo’s father’s farm, that there is a woman call (sic) Iya Lekan by name Silifatu Rahman F, that we want to have sexual intercourse with. He later went and call (sic) the woman, having deceiving (sic) the woman that he has kolanut to sell for the woman and that the woman should follow us to meet him in the farm. That was how myself (the appellant), Ayo (3rd accused) and the woman went to the farm.

On getting to Ayo’s father’s farm we met Segun who is (sic) already waiting for us, the woman then asked for the kolanut but Segun replied that we only deceived her, that we tricked her to his farm to have sexual intercourse with (sic)” (Brackets supplied)

Generally, and this is already settled, that the guilt of an accused person charged with the commission of a crime, can be proved by:

(a) The confessional statement of the accused person;

(b) Circumstantial evidence; or,

(c) Evidence of eye witness of the crime.

See Emeka v. The State (2001) FWLR (Pt. 66) 682, (2001) 14 NWLR (Pt. 734) 666 at page 683, (2001) 9 SCM 34, (2001) 32 WRN 37, (2001) 6 SCNJ 259, (2001) 88 LRCN 2343.

As earlier stated, the prosecution in this case before the trial court, relied mainly on both the confessional statement of the appellant; exhibit 6 and evidence of the circumstances surrounding the commission of the crime.

On the record, the trial court had found, on the evidence adduced as follows:

‘There was evidence in exhibits 5,6 and 7, the confessional statements of three accused persons respectively describing a situation where a knife was used by the 1st accused person in her neck region showing that the death of the deceased was caused by the 1st accused person. Exhibit 9 in addition states that there was evidence of manual strangulation on the neck of the deceased. The cause of death of the victim in exhibit 9 was not challenged by the defence. I therefore find that the death of the deceased was a direct result of the vicious attack on her by the 1st accused person. I also find that the act of the 1st accused person was intentional, knowing that death or physical bodily harm was its probable consequence.”

See page 126 of the record of appeal.

There is no doubt and it is trite law that in a charge of murder, the cause of death must be established by the prosecution, failure of which must lead to the discharge of an accused. See; Joseph Lori v. State (1980) 8 -11 SC 81, (1980) 1 All NLR 81, (1980) 12 NSCC 269.

In this case, the trial court found that the appellant, along with his co-accused, conspired to rape the deceased during which the 1st accused brought out a knife and attacked their victim, from which attack, death resulted. This had led to the appellant’s conviction and sentence by the trial court.

As rightly alluded to by the appellant’s counsel, in affirming the conviction and sentence of the appellant for murder, the court below, relying on sections 7 and 8 of the Criminal Code, opined inter alia, as follows:

“... having gone through the records and the arguments and submissions of counsel on both sides, I agree and hold that exhibits 6, 7 and 5 which are confessional statements of the appellant and the co-accused persons are consistent and unambiguous. Section 7 of the Criminal Code Cap. 37, Vol. I, Laws of Ondo State, 2006 provides that:

‘When an offence is committed each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and they may be charged with actually committing it’.”

Section 7 (b) of the above provision states thus:

“Every person who does or omits to aiding any act for the purpose of enabling or adding another person to commit the offence. Relying on the above provisions of the law, therefore the appellant herein having admitted in his confessional statement that he took part in luring and raping the deceased who was killed in his presence, is deemed to have taken part in committing the offence and to be guilty of the offence charged which is conspiracy and murder pursuant to sections 516 and 316 of the Criminal Code, Cap. 30 Vol. 21, Laws of Ondo State, 1978.”

It is interesting to note that in arguing that the appellant was not involved in the murder of the deceased but only in the act of rape, learned appellant’s counsel in his brief of argument contended that the following facts can be deduced from the evidence available:

1. The appellant, with the 1st and 3rd accused persons planned to rape the deceased, sole reason for which the deceased was lured to the farm;

2. The appellant with the 3rd accused did not know that the 1st accused was with any sharp object until the 1st accused brought same out at the scene of the crime.

3. The 1st accused had already carried out the act of raping the deceased before he brought out the sharp object which he used to injure the deceased as a result of which the deceased died.

4. Although there was agreement among the trio that they will rape the deceased, the appellant and the 3rd accused were reluctant to have sex with the woman, apparently because of the injury inflicted on the deceased by the 1st accused person after the intercourse with the 1st accused.

5. It is a result of their reluctance that the 1st accused threatened the appellant and the 3rd accused with the same knife which made them to reluctantly have sex with the woman.

6. The appellant with the 1st and 3rd accused persons may be guilty of rape but definitely the appellant should not have been convicted for the offence of conspiracy to commit murder and the murder of Silifatu Rahman.

See paragraph 4.23 on page 10 of the appellant’s brief of argument.

There is no doubt, and it is clear from the above summation of learned appellant’s counsel that the appellant conceded to the following facts:

1. That he was involved in the persons that lured the deceased to the farm for the sole purpose of raping her.

2. That he (the appellant) was present and watching the 1st accused when he stabbed the deceased with a knife he brought out from his pocket.

3. That the appellant had carnal knowledge of the deceased after she had been stabbed on her throat, neck and jaw;

4. That the deceased later had her last breath after the appellant and 3rd accused had had sexual intercourse with her.

It is also very clear from the record that in his extra judicial statement; exhibit 5, which corroborated the other evidence adduced by the prosecution, the 1st accused stated categorically that he stabbed the deceased in order to prevent her from going back home to narrate the act of their raping her. And that it was after stabbing her on the neck, jaw and throat that the appellant and 3rd accused had sexual intercourse with the deceased.

It is however amazing to hear the learned appellant’s counsel argued that the appellant neither “aided nor abetted the killing of Mrs. Silifatu.” One wonders what more the learned counsel expected, to appreciate the involvement of the appellant in the act that led to the death of the deceased. It was certainly much more than mere physical presence that involved the appellant. It was after the deceased was stabbed by the 1st accused on her throat, neck and jaw that the appellant had sexual intercourse with her.

And it was after this act and the deceased died that her corpse was disposed off to the nearby river by the trio.

There is no doubt, that the deceased was killed to conceal the act of raping her, which was planned and jointly carried out by the three accused persons including the appellant.

From the bundle of evidence adduced by the prosecution, with the confessional statement of the appellant and the other documentary evidence such as exhibits, the prosecution proved that the appellant and other co-accused had conspired either directly or indirectly to commit the murder of the deceased. In other words, the prosecution proved that the deceased died, that the death resulted from the act of the appellant and that the act was intentional with the knowledge that death or grievous bodily harm was its probable consequence.

The court below was therefore correct in affirming the conviction of the appellant for murder of the deceased Silifatu Rahman, in that the appellant in collaboration with others killed her. Accordingly, this issue one is resolved against the appellant.

The second issue is whether the Court of Appeal erred in law and fact in affirming the decision of the trial court to wit: that the prosecution proved beyond reasonable doubt that the appellant is guilty of the offence of conspiracy to commit murder.

In arguing this issue learned appellant’s counsel referred to what is meant by conspiracy as an agreement by two or more persons to do or cause to be done an illegal act or a legal act by illegal means. He relied on Ikemson v. State (1989) 3 NWLR (Pt. 110) 455 at page 462, (1989) 1 CLRN 1, (1989) 20 NSCC (Pt.11) 471, (1989) 6 SC (Pt. 1) 114, (1989) 6 SCNJ 54.

Learned counsel contended that in order to succeed on a count of conspiracy, the prosecution must prove the conspiracy as described in the charge, and that the accused were engaged in it or prove the circumstances from which the Judge may presume or infer same. He relied on Shodiya v. State (1992) 3 NWLR (Pt. 230) 457 at page 460.

Learned counsel submitted that there was nothing in evidence on record to support the conviction of the appellant of conspiracy to commit murder and the affirmation of the said conviction by the court below.

Learned counsel contended that from the evidence on record, it may be imputed that the appellant with the 1st and 3rd accused persons were ad idem to rape the deceased, but there was nothing on record to show that they agreed to cause grievous bodily harm to her.

Learned counsel referred to the alleged confessional statement of the 3rd accused; exhibit 7 on how the 1st accused stabbed the deceased on her neck and throat after he had forcefully had sexual intercourse with her and later forced both the appellant and himself to do the same with a threat that if they refused to do so, he was going to kill both of them.

Learned counsel contended that from exhibit 6, the alleged confessional statement of the appellant, it is clear that the appellant might have conspired with the 1st and 3rd accused persons to rape the deceased, and that was the only purpose for which they lured the deceased to the farm. He contended further that the appellant never agreed with the 1st and 3rdaccused persons to cause the deceased any grievous bodily harm that could have resulted in death. He stated that it was not proved that the deceased died as a result of the rape. He submitted that the trial court wrongly convicted the appellant of the offence of conspiracy to commit murder. That the only offence which the appellant could be implied to have agreed with the 1st and 3rd accused persons to commit was rape and nothing more, but that the appellant was not convicted of conspiracy to commit rape, rather to commit murder.

He submitted that the prosecution failed to prove the charge. Urged the court to resolve the issue in favour of the appellant.

On this issue, learned counsel for the respondent referred to the provisions of sections 7 and 8 of the Criminal Code, Cap. 37, Vol. I, Laws of Ondo State, 2006, he contended that the required common intention in the provision of section 8 of the Code can be inferred from circumstances disclosed in the pieces of evidence adduced by the prosecution. He referred to the testimony of PW2 on page 48 of the record of appeal, that he had seen the deceased earlier on the day of the incident when the deceased told him that she was going with the appellant to the farm of the 3rd accused to buy kolanuts. He referred to the confessional statements of the appellant, 1st and 3rd accused; exhibits 6, 5 and 7 respectively as being consistent in this regard as they confessed that they had agreed to lure and they indeed lured the deceased to the farm under the guise of selling kolanuts to her but with a common intention to rape her on the farm. He submitted that this evidence was not controverted by the defence, hence the appellant was correctly convicted and sentenced for the offence of conspiracy to murder the deceased. He submitted further that the court below was right in affirming the conviction and sentence.

He urged the court to resolve issue two against the appellant.

Generally, conspiracy is said to be an agreement between two or more persons to do or carry out an unlawful act. It is a matter of inference deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them and which hardly are ever confined to one place. However, being in itself a separate and distinct offence which is independent of the actual offence conspired to commit, failure to prove a substantive offence does not make conviction for conspiracy inappropriate. See Balogun v. Attorney-General Ogun State (2002) FWLR (Pt. 100) 1287, (2002) 6 NWLR (Pt. 763) 512, (2002) 94 LRCN 260, (2002) 2 SCNJ 196, (2002) 4 SCM 23, (2002) 2 SC (Pt. II) 89; Folorunsho Alufohai v. State (2014) 12 SCM (Pt. 2) 122, (2015) All FWLR (Pt. 765) 198, (2015) 3 NWLR (Pt. 1445) 172.

On criminal liability, when commission of a crime is imputed, this court has held that 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. See; The State v. Moshood Oladimeji (2003) FWLR (Pt. 175) 395, (2003) 14 NWLR (Pt. 839) 57, (2003) LPELR (3225) 1, (2003) Vol. 109 LRCN 1298, (2003) 7 SC 108.

Conspiracy is ordinarily not defined under either the Criminal or Penal Code. But a successful conviction for conspiracy is one of those offences predicated on circumstantial evidence which is evidence not of the fact in issue, but rather of other facts from which the fact in issue can be inferred. See Dr. Segun Oduneye v. The State (2001) FWLR (Pt. 38) 1203, (2001) 1 SC 1, (2001) 2 NWLR (Pt. 697) 311, (2001) 2 SCM 81.

In the instant case, from the available bundle of evidence adduced by the prosecution, there was indeed an agreement between the appellant and the 1st and 3rd accused persons to lure the deceased to the farm for the purpose of raping her. The learned appellant’s counsel has however argued that, if at all, the offence that the appellant could be connected with was rape but not murder.

One wonders, whether forcefully having carnal knowledge of a woman by several persons known to the victim is a mere tea party or play of game of ludo or draft. It should be borne in mind that both the deceased and all her rapists live in the same community.

It cannot be imagined that after the gang rape by the trio, including the appellant, the deceased would be left to return home clean.

Therefore, the act of the 1st accused in stabbing the deceased on the neck, jaw and throat before the others took their turn in having carnal knowledge of the deceased, in order to prevent her from returning home to narrate the story, was the act of only the 1st accused. It is a necessary foreseeable act of the three accused, as none would have expected to allow her safely return home without telling the story of her ordeal.

In DSP Godspower Nwankwoala & Anor. v. The State (2006) All FWLR (Pt. 339) 801, (2006) 14 NWLR (Pt. 1000) 663, (2006) 12 SCM (Pt. 2) 267, (2006) 7 SCNJ 566, (2007) 2 NCC 107, this court opined as follows:

“Where more than one person are accused of joint commission of a crime, it is enough to prove that they all participated in the crime. What each did in furtherance of the commission of the crime is immaterial. The mere fact of the common intention manifesting in the execution of the common object is enough to render each of the accused person in the group guilty of the offence. See; Patrick Ikemson & Ors. v. The State (1989) 3 NWLR (Pt. 110) 455 at page 466, (1989) 1 CLRN 1, (1989) 20 NSCC (Pt.11) 471, (1989) 6 SC (Pt. 1) 114, (1989) 6 SCNJ 54.

Where common intention is established, a fatal blow or gun shot though given by one of the party, is deemed in the eyes of the law to have been given, by all those present and participating.”

Section 7 (a) and (b) of the Criminal Code provides as follows:

S.7 “When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence and may be charged with actually committing it ...

(a) every person who actually does the act or makes the omission which constitutes the offence;

(b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence”

With the above provisions of the law, I agree entirely with learned counsel for the respondent in his submission that since there is uncontroverted evidence that the appellant and the other co-accused had the common intention to rape the deceased and in the process, one of them inflicted fatal injuries on the deceased with a view to concealing the rape committed by the gang members including the appellant, the injury inflicted by one of the accused is deemed, in the eye of the law to have been inflicted by all those present and aiding. As I stated earlier, bearing in mind, as shown on records that the appellant and the 3rd accused only took their turns in forcefully having carnal knowledge of the deceased after the 1st accused had stabbed her on the throat, jaw and neck when she should be struggling for her life, there is no doubt that the appellant is covered by the law of conspiracy. Accordingly, issue two is resolved against the appellant.

Issue No.3 is whether in view of the learned trial judge’s failure to comply with section 215 of the Criminal Procedure Law of Ondo State and section 36 of the 1999 Constitution of the Federal Republic of Nigeria, 1999 (as amended), the arraignment and subsequent proceedings including the conviction of the appellant are nullities.

Learned counsel for the appellant submitted that the conviction of the appellant is a nullity in view of the fact that his arraignment was unconstitutional.

He referred to section 215 of the Criminal Procedure Law and contended that for a valid and proper arraignment of an accused person, the following conditions must be satisfied:

(a) The accused shall be placed before the court unfettered unless the court shall see cause to otherwise order;

(b) The charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court; and

(c) He shall then be called upon to plead instantly thereto (unless there are valid reasons to do otherwise as provided in section 100 of the Criminal Procedure Law).

He submitted that the failure to comply with any of the above conditions renders the whole trial a nullity. He relied on Samuel Erekanure v. The State (1993) 5 NWLR (Pt. 294) 385.

He referred to section 36 (6) (a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and contended that the issue of proper arraignment of an accused person is a constitutional issue, which cannot be brushed aside. He submitted that the arraignment of the appellant was not properly done, hence the whole trial is a nullity and should be set aside.

Learned counsel referred to the record of the proceedings of the trial court on 26 February 2007, when the appellant and others were arraigned and their plea taken. He contended that the proceedings of the arraignment fell short of the requirements of section 215 of the Criminal Procedure Law; hence he submitted that it deserves to be set aside.

Learned counsel contended that there was nowhere in the record where the charge was read and explained to the appellant before his plea was taken. He submitted that in view of the way his arraignment was made which did not comply with the provisions of the law, and the constitution, the appellant cannot be said to have had a fair trial. He urged the court to resolve this issue in favour of the appellant. He further urged the court to allow the appeal, quash the conviction of the appellant for the offences of conspiracy to murder and murder.

In responding to issue No.3, learned respondent’s counsel referred to the provisions of section 215 of the Criminal Procedure Law and page 45 of the record of appeal. He contended that it shows that on 26 February 2007, the appellant and the other two accused persons were brought before the court unfettered.

The record also shows that the appellant was represented by counsel, one Kunle Adetowubo Esq. along with his junior colleague, A. M. Ibitoye Esq.

Learned counsel contended that there was no indication of any irregularity and no objection whatsoever. He referred to section 168 (1) of the Evidence Act, Cap. E14, 2011, and submitted that since it is not in dispute that the appellant who was brought to court unfettered on the day he was arraigned pleaded not guilty to the offences against him in the presence of his counsel, without any objection, it raises a presumption that the appellant understood the charges read over to him to the satisfaction of the court. He submitted that the appellant’s arraignment substantially complied with the provisions of section 215 of the Criminal Procedure Law. He submitted further that if there was any omission at all, it did not occasion a miscarriage of justice. He relied on Michael Peter v. State (2007) 5 ACLR 192 at pages 352-353; Madu v. State (1997) 1 NWLR (Pt. 73) 721.

Learned counsel urged the court to hold that there was substantial compliance with the statutory provisions in respect of the appellant’s arraignment, as section 215 of the Criminal Procedure Law must not be stretched to such a ridiculous degree as to rob the trial court of its dignity and defeat the course of justice. He relied on Olabode v. State (2009) All FWLR (Pt. 500) 607, (2009) 11 NWLR (Pt. 1152) 254, (2009) 5 NMLR 315, (2009) 7 SCM 96 at page 116.

Learned counsel contended that the appellant’s arraignment was never objected to at the trial court nor was it made an issue before the court below on appeal. He urged the court to discountenance the appellant’s contention in this regard.

Learned counsel contended that, fair hearing means fair trial conducted according to all legal rules formulated to ensure that justice is done to the parties to the cause. He referred to Ariori v. Elemo (1983) 1 All NLR 1, (1983) 1 SCNLR 1, (1983) 1 SC 13, (1983) LPELR-552, (1983) 14 NSCC 1; Oyewole v. Akande & Anor. (2009) All FWLR (Pt. 491) 813, (2009) 15 NWLR (Pt. 1163) 119, (2009) 38 WRN 1, (2009) 10 SCNM 1256. He submitted that the instant case of the appellant was conducted according to all legal rules.

Learned counsel referred to the proceedings of 24 June 2008, when the appellant opened his defence and closed same.

He was duly cross examined and the case was adjourned at the instance of his counsel.

He urges the court to hold that the appellant’s arraignment was proper and that he was accorded sufficient opportunity of fair hearing by the trial court. He further urged the court to resolve the third issue against the appellant, as it is settled that the court will not disturb the concurrent findings of facts by the two courts below where there is sufficient evidence, and there was no miscarriage or perversion of justice. He relied on Aliyu v. State (2013) 12 NWLR (Pt. 1368) 403, (2013) 6 -7 SC (Pt. IV) 1, (2014) All FWLR (Pt. 711) 1492, (2014) 10 ACLR 208 at page 237; Kalango v. Governor, Bayelsa State & Ors. (2009) All FWLR (Pt. 476) 1839, (2009) 1 - 2 SC. (Pt. II), (2009) 2 SCM 100; Alimi v. The State (2009) 10 NWLR (Pt. 1148) 31, (2009) 4 SCM 40.

He finally urged the court to affirm the concurrent findings of the two courts below and dismiss the appeal for lacking in merit.

The third issue concerns the arraignment of the appellant before the trial court. On this, section 215 of the Criminal Procedure Law, Cap.38, Vol.2, Laws of Ondo State, 2006 provides as follows:

S.215 “The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order, and the charge or information shall be read over and explain to him to the satisfaction of the court by the registrar or other officer of the court and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has not been duly served therewith.”

In compliance with the above section 215 of the Criminal Procedure Law, for the arraignment of an accused person to be valid, the following three essential requirements must be met:

(a) The accused must be placed before the court unfettered unless the court shall see cause otherwise to order;

(b) The charge or information shall be read over and explained to the accused to the satisfaction of the court; and

(c) The accused shall then be called upon to plead thereto unless of course, there exists any valid reason to do otherwise such as objection to want of service where the accused is entitled by law to service of a copy of the information and the court is satisfied that he has in fact, not been duly served therewith. See Ogunye v. The State (1999) 5 NWLR (Pt. 604) 548 at page 555, (1999) 4 SC 30; Idemudia v. The State (1999) 5 SC (Pt. II) 110, (1999) 7 NWLR (Pt. 610) 202 at page 203, (1999) 69 LRCN 1043, (2001) FWLR (Pt. 55) 549; Sabina C. Madu v. The State (2012) All FWLR (Pt. 641) 1416, (2012) 15 NWLR (Pt. 1324) 405, (2012) 50 NSQR 67, (2012) 6 SC (Pt. I) 80, (2012) 6 SCNJ 129, (2012) LPELR 7867 (SC).

There is no doubt that the fundamental issue in the matter of arraignment of an accused is that the charge or information shall be read over and explained to the accused person in the language he understands before the plea is taken. Where there is clearly no valid arraignment of an accused, the proceedings are a nullity and the question of a subsequent defence does not arise. In Oyediran v. Republic (1967) NMLR 122; it was held that an arraignment consists of charging the accused or reading over the charge to him and taking his plea thereon. Therefore, a valid arraignment presupposes compliance with the enabling constitutional and procedural provisions. See section 36 (6) (a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

In Andrew Idemudia v. The State (supra), in situation where the trial court failed to comply with the requirement of recording the reading and explaining of the charge to an accused, this court had opined as follows:

“It is not disputed that it is perfectly useful and necessary for the court to record the fact of arraignment and that the charge was read to the accused in the language he understands, where this is different from the language of the court, which is English language. Where the accused person understands the language with which the charge was read, it becomes unnecessary to record that fact specifically. It seems to me not possible for the court to know whether the accused understood the charge read and explained to him. Even though he may appear to do so. It is good practice to ask the accused the question whether he understood the charge as read and explained, and to record his answer. It does not seem to me that the omission to do so by itself merely could constitute a non-compliance with the constitutional and procedural requirements, unless it is the lack of understanding of what was read that is apparent from the record of the trial. Finally, the satisfaction of the court on the compliance with the procedure on arraignment is not to me a requirement which need be express on the record. It is a requirement for the guidance of the trial court, which should feel satisfied that the procedure has been complied with.”

In Okoro v. State (1998) 14 NWLR (Pt. 584) 181, this court went further on the court’s recording of the facts of arraignment of an accused to state that the provision of section 215 of the Criminal Procedure Law should not be stretched to a point of absurdity, by reading into it that the judge must record that the charge was explained to the accused to his satisfaction before taking his plea. It will be impeaching the integrity of the judge to do that, as no judge will take the plea of an accused if he is not satisfied that the charge was read and explained to his satisfaction.

On whether or not the accused understands the language in which the trial is being conducted, it has been held not to be the duty of the court to seek to know. In Durwode v. The State (2000) 4 NSCQR 33, (2000) 12 SC (Pt. 1) 1, (2000) 82 LRCM 3038 at page 3065, (2001) FWLR (Pt. 36) 950 at pages 971 - 972, (2001) 2 ACCR 524, this court inter alia opined as follows:

“In the realm of criminal justice, it is the cardinal principle of our criminal jurisprudence that it is the duty of the accused or his counsel acting on his behalf to bring to the notice of the court, the fact that he does not understand the language in which the trial is conducted, otherwise it will be assumed that he has no cause of complaint.”

See also Adeniji v. State (2001) FWLR (Pt. 57) 809 at page 817, (2001) 13 NWLR (Pt. 703) 375, (2001) 5 SC (Pt. II) 100.

Earlier, this court, per Adio JSC in Mallam Madu v. The State (1997) 1 NWLR (Pt. 482) 386 at page 402, had stated thus:

“The fact that the accused does not understand the language which the trial court is being conducted is a fact well known to the accused and it is for him or his counsel to take the initiative of bringing it to the notice of the court at the earliest opportunity or as soon as the situation has arisen. If he does not claim the right at the proper time he may not be able to have valid complaint afterwards, for example on appeal.”

In this case, the appellant had argued that there was nowhere on the record where the charge was read and explained to the appellant before his plea was taken, meaning that he pleaded to a charge that was never read and explained to him. This, to say the least, is a misconception.

There is indication on the record of appeal that the arraignment of the appellant and the other two accused took place on Monday 26 February 2007. Page 45 reflects the proceedings of that day, before the Honourable Justice F. O. Aguda - Taiwo.

There is indication that when the matter was first called, counsel for the state, was in court but the accused were not represented.

Their counsel was said to be in another court and the case was stood down for him. By 10.55a.m. when the court resumed sitting, one Kunle Adetowubo appeared with A. B. Ibitoye for the accused persons. The record shows that the appellant pleaded “not guilty” to each of the two counts. There is nothing on record to show that there was any objection by either the appellant or his learned counsel, to his arraignment.

On what is the proper and valid way of an arraignment of an accused; the question is said to be “was there a proper or valid arraignment on which the trial was based?” The answer is said to lie in the entire circumstance of the case. Each case must be dealt with on its own peculiarity. The accused must be placed before the court unfettered, the charge must be read to him in the language the accused person understands, and if he is represented by counsel, there is no objection to the charge and a plea is taken from the accused person. The charge must be read and explained to the accused, and if there is no objection by counsel or the accused person, then there is clear presumption of regularity that all that must be done to let the accused know the charge against him has been done. In that situation, the accused is presumed to have understood the charge which has been read and explained to him and the court was equally satisfied that the charge was understood by the accused. See Gozie Okeke v. The State (2003) FWLR (Pt. 159) 1381, (2003) 13 NSCQR 754, (2003) 15 NWLR (Pt. 842) 25, (2003) 2 SCNJ 199, (2003) 5 SCM 131, (2003) LPELR 2436 (SC).

In Okeke v. State (supra), this court, per Ogundare JSC observed as follows:

“There appears to be fairly rigid and flexible approach to the question of non-compliance with the enabling provisions for arraignment. It is conceded that the conditions have been designed and formulated for the protection of the accused and preservation of the constitutional rights of citizen. Equally, the court should not ignore the nature of the rights protected and the preservation of the courts in the discharge of their sacred and solemn duty to do justice. There is clearly observable, the distinction between a matter of procedure that affects substantial justice in the trial of a case and a matter of procedure which in no way affect the justice of the trial, in the latter case, it will not affect the trial. It would seem to me that the mandatory provision of section 215 of the Criminal Procedure Law which requires that the charge be read and explained to the accused is complied with, if there is evidence on record to show that the accused understood the charge and was in no way misled by the absence of explanation ex facie. It is conceded that subsequent validity of the procedure rests on the validity of the plea on arraignment. However, where there is counsel in the case defending the accused person, the taking of the plea by the court, it ought to be presumed in favour of regularity, namely, that even if it was not stated on the record, the charge had been read and explained to the accused on arraignment before the plea was taken.”

In the instant case, there is no doubt that it was not recorded by the trial judge that the charge was read and explained to the appellant. But it is also not being suggested that an objection was raised at the trial by either the appellant or his counsel who was made sure he was in court when the appellant’s plea was taken. I am of the firm view that the presumption of regularity should avail the respondent in this case. In other words, it is to be safely presumed that the appellant was fairly treated in his arraignment and subsequent trial. In the circumstance and without any further ado on this point, issue 3 is resolve against the appellant.

The totality of all that has been said is that this appeal is devoid of merit. It deserves to be dismissed and is hereby accordingly dismissed, all the three issues raised by the appellant having been resolved against him.

In the final analysis, the decision of the court below is affirmed which had earlier affirmed the appellant’s conviction and sentence by the trial court.

Appeal dismissed.

**MUHAMMAD JSC:**

My learned brother, Ariwoola JSC, graciously, permitted me to read in draft, the judgment just delivered. I am in agreement with him that the appeal lacks merit and it should be dismissed. I dismiss the appeal. I abide by orders made in the lead judgment.

**PETER-ODILI JSC:**

I am in total agreement with the judgment just delivered by my learned brother, Olukayode Ariwoola JSC, and to record my support of the reasonings, I shall make some comments.

This is an appeal against the judgment of the Court of Appeal, Akure Division which dismissed the appellant’s appeal against the judgment of the Ondo State High Court delivered on 5 August 2005 Coram: F. 0. Aguda - Taiwo J (as she then was) upholding the conviction and sentence of the appellant to death by hanging.

Facts briefly stated:

The appellant, the 1st accused person and the 3rd accused person (Ayo Omoduyilemi who was released shortly before final address of counsel, by the Committee on Criminal Administration of Justice of Ondo State) were alleged by the prosecution to have lured Mrs. Silifatu Rahaman to the 3rd accused’s father’s farm and raped her on or about 5 June 2003. The court, having found that the 1st accused person was the one who physically inflicted the deadly premeditated and unprovoked assault on the deceased, sentenced the appellant to death because he was adjudged to have stood by and watched and did nothing to prevent the assault.

The 3rd accused person’s account, which was not controverted by the prosecution, is that the 1st accused person was alleged to have grabbed the deceased, covered her mouth and then raped the deceased. On raping the deceased, the 1st accused person then brought out a knife and used it to inflict injury on the deceased resulting to her death. The 1st accused person then threatened the appellant and the 3rd accused person with the same knife, which made the appellant and the 3rd accused person go ahead and rape the deceased despite the injury inflicted on her by the 1st accused. More so, as the appellant and the 3rd accused never knew that the 1st accused person was with any sharp object as there was no need for it nor agreed with the 1st accused to kill the deceased because there was no need for it.

The appellant however denied knowing anything about the death of Silifatu Rahaman and that he was tortured before he applied his thumb print on the confessional statement (Exhibit 6) which was used against him.

On 13 April 2017, learned counsel for the appellant, Adekunle Ojo Esq., adopted the brief of argument filed on 28 October 2014 and deemed filed on 9 July 2015 and in it distilled four issues for determination which are, viz:

1. Whether the Court of Appeal erred in law to have affirmed the conviction of the appellant of murder when the evidence adduced by the prosecution did not lead to the irresistible conclusion that the appellant in collaboration with others killed Mrs. Silifatu Rahaman? (Grounds 2, 3, 4, 6 and 7).

2. Whether or not the learned justices of the Court of Appeal erred in fact and in law in affirming the decision of the High Court that the prosecution proved the offence of conspiracy to commit murder beyond reasonable doubt against the appellant. (Grounds 1 and 5).

3. Whether in view of the learned trial judge’s failure to comply with section 215 of the Criminal Procedure Laws of Ondo State and section 36 of the Constitution of the Federal Republic of Nigeria, the arraignment and subsequent proceedings including the Conviction of the appellant are nullities? (Ground 8).

Taiye Oniyide Esq. of counsel for the respondent adopted the amended respondent’s brief of argument filed on 14 March 2017 and deemed filed on 13 April 2017. The brief was however settled by Tunde Babalola Esq., who formulated three issues for determination which are thus:

(i) Whether the learned Justices of the Court of Appeal were right in holding

(ii) that the prosecution proved its case beyond reasonable doubt at the trial court (Grounds 2, 3, 4 and 5).

(iii) Whether the learned Justices of the Court of Appeal misapplied the provisions of sections 7(b) and 8 of the Criminal Code, Cap 37, Vol. 1, Laws of Ondo State, 2006, thereby occasioning a miscarriage of justice (Grounds 1, 6 and 7).

(iv) Whether the appellant was not properly arraigned at the trial court, thereby resulting in lack of fair hearing (Grounds 8).

The issues as crafted by the respondent are simple but are apt in the determination of this appeal and so I shall make use of them.

Issue Numbers 1 and 2:

These raise the question whether the prosecution proved the case against the accused/appellant beyond reasonable doubt and the learned justices of the Court of Appeal misapplied the provisions of sections 7(b) and 8 of the Criminal Code and thereby occasioned a miscarriage of justice.

Learned counsel for the appellant contended that the decision of the court below, which upheld the conclusions of the trial judge, that appellant had common intention with the 1st accused to murder the victim is perverse and occasioned a miscarriage of justice to the appellant. That since the appellant did not act in any manner with the knowledge that the deceased was going to die, he cannot be found culpable of murder under section 316 and punishable by section 319 (1) of the Criminal Code, Cap 30, Vol. II, Laws of Ondo State.

He stated that since the deceased died from a cause or causes which were not an act of the appellant, the prosecution did not establish a case of murder or conspiracy to murder against the appellant. He cited Udosen v. State (2007) All FWLR (Pt. 356) 669, (2007) 4 NWLR (Pt. 1023) 125; R v. Nwokocha (1949) 12 WACA 453; R v. Owe (1981) ANLR 680, (1961) 2 SC NLR 354; R. v. Abengowe (1936) 3 WACA 85; R. v. Oledima (1940) 6 WACA 202; Audu v. State (2003) FWLR (Pt. 153) 325, (2003) 7 NWLR (Pt. 820) 516; Joseph Lori v. State (1980) 8 -11 SC 81, (1980) 1 All NLR 81, (1980) 12 NSCC 269.

Learned counsel for the appellant referred the court to the alleged confessional statement of the appellant, which he said did not support the conclusions of the two courts below. That the facts did not support the assertion that appellant abetted or aided the 1st accused in the act which caused the life of the deceased and so sections 7 and 8 of the Criminal Code did not apply. He relied on Mohammed v. State (1980) 1 NCR 140, (1980) 3 – 4 SC 84.

That where as in this case the crime committed is different from the one which the appellant abetted, the appellant cannot be validly convicted of the crime which was eventually committed. He cited R v. Bainbridge (1960) 1QB 129.

That while conceding that appellant participated in the rape, he should not be held responsible for the unilateral act of the other accused who went beyond their original common intention of rape to kill the deceased. He referred to State v. Azeez & Ors. (2008) All FWLR (Pt. 424) 1423, (2008) 14 NWLR (Pt. 1108) 439, (2008) 4 SC 188 at pages 225 - 226; Onuegbe v. Queen (1957) 2 FSC 10; Asuguo Eyo Okon & Ors. v. State (1988) 1 NWLR (Pt. 69) 172, (1988) 12 SC 191, (1988) 12 SCNJ 191, (1988) 2 SC 140; Akinkunmi v. The State (1987) 1 NWLR (Pt. 52) 608, (1987) 3 SCNJ 30/34, (1987) 3 SC 152.

For the appellant it was further submitted that if the agreement to kill and or specific intention to kill are not established beyond reasonable doubt by the prosecution, then the court has to acquit the accused of the offences of conspiracy to murder and murder. The cases of Amayo v. State (2001) 12 SC (Pt. 1) 1, (2002) FWLR (Pt. 91) 1571, (2001) NWLR (Pt. 745) 251; Kwaku Mensah v. R. (1946) AC 83; Sharmpal Singh v R.(1962) AC 18 were cited.

Learned counsel stated that in murder cases, it is settled that presumption of common intention cannot be readily inferred. He referred to R. v. Offor (1955) 15 WACA 4; R. v. Bada (1944) 10 WACA 249; Mbang v. State (2007) All FWLR (Pt. 372) 1862, (2010) 7 NWLR (Pt. 1194) 431.

Learned counsel for the appellant submitted further that in the charge of conspiracy, the prosecution must prove the conspiracy as described in the charge and that the accused were engaged in it or prove the circumstances from which the judge may presume or inter same, which situation was not present in the case at hand. He relied on Shodiya v. State (1992) 3 NWLR (Pt. 230) 457 at page 1600; Clark v. State (1986) 4 NWLR (Pt. 35) 381 at page 384.

Responding, learned counsel for the respondent contended that the offence of conspiracy was well established beyond reasonable doubt. He cited Princewill v. The State (1994) 6 NWLR (Pt. 353) 703, (1994) 7 - 8 SCNJ (Pt. II) 226 at page 240; Njovens v. The State (1998) 1 ACLR 225 at pages 263 - 264; Ikemson v. The State (1989) 3 NWLR (Pt. 110) 455, (1989) 1 CLRN 1, (1989) 20 NSCC (Pt.11) 471, (1989) 6 SC (Pt. 1) 114, (1989) 6 SCNJ 54.

That the appellant and his cohorts conspired to rape the deceased and in the process death ensued and it did not matter which of them committed the particular act that caused the deceased’s death. He relied on State v. Oladimeji (2003) FWLR (Pt. 175) 395, (2003) 14 NWLR (Pt. 839) 57, (2003) LPELR (3225) 1, (2003) Vol. 109 LRCN 1298, (2003) 7 SC 108; Ndukwe v. The State (2009) All FWLR (Pt. 464) 1447, (2009) 7 NWLR (Pt. 1139) 43, (2009) 2 SCNJ 223, (2009) 2 SCM 147, (2009) 2 MJSC (Pt.1) 141; Okeke v. The State (1999) 2 NWLR (Pt. 590) 246 at page 273, (2001) FWLR (Pt. 70) 1652.

Learned counsel for the respondent contended that the appellant’s statement, exhibit 6 and those of the 1st and 3rd accused persons, exhibits 5 and 7 corroborated one another to the effect that the deceased died while appellant and his cohorts were taking turns in raping her. That the statement of the appellant was voluntary and admitted without objection during the trial and since it was also direct, positive and unequivocal, the court could convict solely upon that confessional statement. He relied on Ikemson v. State (1989) 3 NWLR (Pt. 110) 455 at page 476, (1989) 1 CLRN 1, (1989) 20 NSCC (Pt.11) 471, (1989) 6 SC (Pt. 1) 114, (1989) 6 SCNJ 54; Ubierho v. State (2005) All FWLR (Pt. 254) 804, (2005) 5 NWLR (Pt. 919) 644 at page 656, (2005) 7 MJSC 168; Nwaebonyi v. State (1994) 5 SCNJ 86, (1994) 5 NWLR (Pt. 343) 138 at page 150, (1994) LPELR -2090 (SC) 25-27.

Learned counsel for the respondent submitted that common intention which is a condition precedent to conviction under section 8 of the Criminal Code, was inferred properly from the circumstances disclosed in the pieces of evidence adduced by the prosecution. He cited Oforlette v. The State (2009) 8 ACLR 309 at page 404.

The offence of conspiracy by its unique nature being a meeting of the minds in secret provides a challenge to prove by a third party who could not have been at any point in the interaction of the minds that would produce conspiracy as a crime. Therefore over time it has been accepted as guide that to prove conspiracy the following ingredients must be established, viz:

1. An agreement between two or more persons to do an unlawful act or an act which is legal by unlawful means.

2. An act in furtherance of this agreement in which each of the accused is directly involved. I rely on Omotola & Ors. v. The State (2009) 7 NWLR (Pt. 1139) 148, (2009) All FWLR (Pt. 464) 1490, (2009) 2 - 3 SC 7, (2009) 3 SCM 127, (2009) 37 NSCQR (Pt. 2) 963, (2009) 8 ACLR 29; Gbadamosi v. State (1991) 6 NWLR (Pt. 196) 182; Ikemson v. State (1989) 3 NWLR (Pt. 110) 455 at page 462, (1989) 1 CLRN 1, (1989) 20 NSCC (Pt.11) 471, (1989) 6 SC (Pt. 1) 114, (1989) 6 SCNJ 54.

The extract from the confessional statement of the appellant, exhibit 6, showed elements of the agreement among the accused persons to carry out the rape which was an unlawful act. In that extra-judicial statement the appellant set out the role each of them played and the mindset with which they operated. For effect, I shall quote excerpts from the said exhibit 6 thus:

“On 5 June 2003 at about 4.30p.m., Segun Akinsuwa ‘M’ came to inform me and Ayo Duyilemi ‘M’ to meet him in Ayo’s father’s farm, that there is a woman call (sic) Iyalekan by name Silifatu Raman ‘F’, that we want to have sexual intercourse with. He later went and call (sic) the woman having deceiving (sic) the woman that he has kolanut to sell for the woman and that the woman should follow us to meet him in the farm, that was how self (sic) Ayo and the woman went to the farm.

On getting to Ayo’s farm, we met Segun who is already waiting for us, the woman then ask for the kolanut but Segun replied that we only deceived her, that we tricked her to his farm to have sexual intercourse with (sic)”.

The trial court doing which is required to ascertain whether the conspiracy had been established utilized the inference method with which that court was able to deduce the appellant’s involvement drawn from the surrounding circumstances of the statement, exhibit 6. The court of first instance stated thus:

“I will now examine the evidence of the prosecution to see if he had put before the court, evidence to sustain a conviction of conspiracy to murder against the 1st and 2nd accused persons.

From the statements of the accused person contained in exhibits 5, 6 and 7, there was evidence coming from DW1, DW2 and 3rd accused person that an arrangement was reached by the three accused persons to commit a felony. The confessional statements of the three accused persons point to the fact that the DW1 was the initiator and the master-mind and planner of the offence of conspiracy. He orchestrated a senseless plan to rape the deceased”.

The Court of Appeal accepted what the trial court did in its utilisation of the inference in reaching its conclusion had this to say as follows:

“Exhibits 5, 6 and 7 which are the voluntary confessional statements of accused persons and which corroborate each other, clearly show that the deceased late Mrs. Silifatu Rahaman was on 5 June 2003, lured by the appellant and the other two accused person to the farm of the father of the 3rd accused ostensibly to sell kolanut to her. It is also disclosed in exhibit 6 of the 2nd accused (appellant herein) that the 1st accused met the 2nd accused and 3rd accused persons to inform them of and where to carry out the horrific act. It is also on record that the 2nd and 3rd accused persons were the ones that led the deceased to the farm where she was eventually killed. It is evident from the evidence before the court that the appellant was not only present throughout the events that led to the death of the deceased but also conspired and actively partook in the dastardly act. The appellant had the ample opportunity to retract or change his mind having seen the 1st accused remove a deadly weapon (described by the appellant in his evidence as a sharp knife) capable of causing death if used.”

The appellant however aggrieved by the conclusion of the court below on the basis that it was not the rape in which the appellant participated that was the cause of death, but it was the act of the co-accused precisely the 1st accused, who brought out a knife with which he made the fatal stab. The stand of the appellant did not impress the two courts as the appellant had opportunity to take a contrary stance at that point by either withdrawing or stopping the use of the knife, or put up a resistance from which it can be said he drew the line of the limits beyond which he would not go. He did none of those possible extenuating actions rather he stood by till the end, thereby endorsing that the stabbing with the knife was a continuation of the original plan of luring the deceased to the scene of crime, raping her and the total outcome were part of the full picture and so none of them can wangle out of the eventual outcome of the killing and death of the deceased.

The situation above is supported by applying the provisions of section 7 of the Criminal Code Cap. 37 Vol. I, Laws of Ondo State 2006, which provides thus:

“When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilt of the offence, and may be charged with actually committing it.

Section 7 (b) of the above provision is stated thus:

“Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence”.

Relying on the above provisions of the law, therefore the appellant herein having admitted in his confessional statement that he took part in luring and in raping the deceased who was killed in his presence, is deemed to have taken part in committing the offence and to be guilty of the offence charged which is conspiracy and murder pursuant to sections 516 and 316 of the Criminal Code, Cap. 30 Vol.21, Laws of Ondo State, 1978.

The court below stated as follows:

“It is trite law that once an abettor is found to be present at the commission of the offence he abetted, he automatically becomes a principal offender and it is mandatory on the trial court to convict him of the main offence and not itsabetment.

Indeed and I so hold, the acts of the 2nd accused (appellant) and his cohort by deceiving the deceased into buying kolanut in the bush and leading her to the said farm brought to the fore the mens rea of their conspiracy to commit a crime”.

The trial court had stated its findings in that regard in a beautiful way as follows:

“Even though there was no clear-cut evidence that the 2nd accused person pulled the body of the deceased away from the murder site to a nearby swampy area, where she was buried in shallow grave and covered with shrubs and wood, there was evidence that he was around at all times and that all the accused person left the murder scene together at the same time.

None of them reported the matter to the police. There can be no doubt that the 1st and 2nd accused persons, on the evidence before me were jointly concerned and therefore criminis participes in the murder of the victim. It is the law that where these accused persons embarked on a joint enterprise each is criminally liable for the act done in pursuance of the joint enterprise, and even including the unusual consequence arising from the execution of the joint enterprise. I refer to the cases of R. v. Anderson and Morris (1996) 2 AER 644; Ayam v. The State (1964) 1 ANLR 361 and Buje v. The State (1991) 4 NWLR (Pt. 185) 287 at pages 298 - 304...”.

Indeed, it is difficult to disagree with what the two courts below found in reaching their conclusion. This is so because the appellant and his cohorts had the common intention to rape the deceased and in the process, one of them inflicted the fatal injuries on the deceased with a view to concealing the rape committed by all of them including the appellant, that injury inflicted by one of the accused is deemed in the eye of the law to have been inflicted by all the accused present and aiding. I rely on Offor v. The Queen (2007) ACLR 573 at page 577; Buje v. State (1991) 4 NWLR (Pt. 185) 287 at page 302; Peter & Anor. v. The State (1977) NMLR 81.

For effect, the application of the Court of Appeal on section 8 of the Criminal Code, Cap 37. Vol. I, Laws of Ondo State, 2006, was correctly made.

On the matter of the murder proper, it is an established fact that the ingredients thereof are thus:

i. the death of the deceased;

ii. the act or omission of the accused which caused the death; and,

iii. that the act or omission of the accused was intentional with knowledge that death or grievous bodily harm was its probable consequence. See Ndukwe v. The State (2009) All FWLR (Pt. 464) 1447, (2009) 7 NWLR (Pt. 1139) 43, (2009) 2 SCNJ 223, (2009) 2 SCM 147, (2009) 2 MJSC (Pt.1) 141; Okeke v. State (1999) 2 NWLR (Pt. 590) 246 at page 273, (2001) FWLR (Pt. 70) 1652.

The trial court and as supported by the court below found that the appellant’s statement was voluntary and admitted without objection, the late retraction notwithstanding. That statement, exhibit B, having been found voluntary, direct, positive and unequivocal was sufficient upon which proof beyond reasonable doubt of the offence of murder could be and was anchored. Also, there was outside of that statement, pieces of evidence from which corroboration was made including the evidence of PW4, the medical doctor who confirmed the rape, strangulation and the bruises and other injuries. See Ubierho v. State (2005) All FWLR (Pt. 254) 804, (2005) 5 NWLR (Pt. 919) 644, (2005) 7 MJSC 168; Nwaebonyi v. State (1994) 5 SCNJ 86, (1994) 5 NWLR (Pt. 343) 138 at page 150, (1994) LPELR -2090 (SC) 25-27; Nasamu v. State (1976) 6 - 9 SC 153; Adekoya v. State (2012) 9 NWLR (Pt. 1306) 539, (2012) 3 SC (Pt. III) 36, (2012) 33 WRN 1, (2012) LPELR-7815(SC), (2012) MRSCJ (Vol. II) 20, (2012) All FWLR (Pt. 662) 1632.

For a fact indeed, there is a surfeit of evidence from which it is easily deduced that the deceased died as a result of the combined activities of the accused persons, appellant included, be it the injuries inflicted by the 1st accused to which the appellant was not averse, the rape which all three participated and the strangulation which the doctor found in the course of the autopsy that the prosecution proved the offence of murder beyond reasonable doubt.

These issues are resolved against the appellant.

Issue No. 3:

This raises the issue of whether or not the appellant was properly arraigned at the trial court.

Learned counsel for the appellant submitted that the conviction of the appellant is a nullity in view of the unconstitutionality of his arraignment. That there was noncompliance with section 215 of the Criminal Procedure Law of Ondo State. He cited Eyorokoromo v. The State (1979) 6 - 9 SC 3; Samuel Erekanure v. The State (1993) 5 NWLR (Pt. 294) 385; Section 36 (6) of the Constitution of the Federal Republic of Nigeria, 1999, (as amended); Kajubo v. State (1988) 1 NWLR (Pt. 73) 721 at page 724, (1988) 1 NSCC 475.

For the respondent, learned counsel contended that the appellant in the presence of his counsel understood the charges read over to him to the satisfaction of the court and no miscarriage of justice was occasioned. He cited Michael Peter v. The State (2007) 5 ACLR 192 at pages 352 - 353; Madu v. The State (1997) 1 NWLR (Pt. 73) 721; Olabode v. The State (2009) All FWLR (Pt. 500) 607, (2009) 11 NWLR (Pt. 1152) 254, (2009) 5 NMLR 315, (2009) 7 SCM 96 at page 116.

That fair hearing in the arraignment was adhered to. He cited Ariori v. Elemo (1983) 1 All NLR 1, (1983) 1 SCNLR 1, (1983) 1 SC 13, (1983) LPELR-552, (1983) 14 NSCC 1; Oyewole v. Akande & Anor. (2009) All FWLR (Pt. 491) 813, (2009) 15 NWLR (Pt. 1163) 119, (2009) 38 WRN 1, (2009) 10 SCNM 1256; Aliyu v. The State (2013) 12 NWLR (Pt. 1368) 403, (2013) 6 -7 SC (Pt. IV) 1, (2014) All FWLR (Pt. 711) 1492, (2014) 10 ACLR 208 at page 237; Kalango v. Governor, Bayelsa State & Ors. (2009) All FWLR (Pt. 476) 1839, (2009) 1 - 2 SC. (Pt. II), (2009) 2 SCM 100 and Alimi v. The State (2009) 10 NWLR (Pt. 1148) 31, (2009) 4 SCM 40.

The grouse of the appellant is that the arraignment was done in breach of section 215 of the Criminal Procedure Law of Ondo State and section 36 (6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

The said section 215 of the Criminal Procedure Law is quoted hereunder, viz:

“The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officers of the court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information, he objects to the want of such service and the court finds that he has not been duly served therewith.”

The interpretation of section 215 of the Criminal Procedure Law would be shown below by going into the decided cases of this court.

This court in interpreting the above provision of the law held in Kajubo v. State (1988) 1 NWLR (Pt. 73) 721 at page 724, (1988) 1 NSCC 475 that for a valid and proper arraignment of an accused person, the following conditions must be satisfied:

(a) The accused shall be placed before the court unfettered unless the court shall see cause to otherwise order;

(b) The charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court; and

(c) He shall then be called upon to plead instantly thereto (unless there are valid reasons to do otherwise as provided in section 100 of the Criminal Procedure Law).

Eyorokoromo v. The State (1979) 6 - 9 SC 3 and Samuel Erekanure v. The State (1993) 5 NWLR (Pt. 294) 385.

In the case of Samuel Erekanure v State (supra), this court, per Olatawura JSC at page 393 of the report held:

“In the case on appeal, and according to the printed record, there is nothing to show that the court fully complied with these requirements. The five requirements must be satisfied. They are mandatory.

The best that could be seen to have been done was that the charge was read to the accused, but in what language? If as it has been shown that it was read, was it explained to him? No. There is nothing on record to show also that it was even read by the registrar or an officer of the court. Where for instance, no officer of the court is capable of interpreting the charge in the language the accused person understands, a sworn interpreter is produced to explain the charge to the accused. As shown at page 26 of the printed record, the appellant spoke Urhobo language. The failure to comply fully or wholly with these requirements renders the trial a nullity”.

Noteworthy also, is the fact that the above provision was made pursuant to section 36 (6) (a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which provides that:

“Every person who is charged with a criminal offence shall be entitled:

a. to be informed promptly in the language that he understands and in details of the nature of the offence”.

The appellant contended that what transpired at the arraignment fell short of the statutory requirement producing a vitiation of the charge and proceedings.

The learned trial judge had recorded thus:

“All the accused persons are in court.

Steve Adebowale appears for the state

The accused persons are not represented in court, he is in other court.

Case is stood down temporarily.

Court resumed sitting at 10.55 am. Kunle Adetowubo appears with A.B. Ibitoye for the accused persons.

Segun Akinsuwa 1st accused person pleaded not guilty to count 1

Not guilty to count 2.

Omojola Akinlolu 2nd accused:

Not guilty to count 1

Not guilty to count 2".

Oputa JSC in Kajubo v State (supra) at page 737 stated as follows:

“The mandatory provisions of section 215 of the Criminal Procedure Act, that the information or charge should be firstly read over to the accused, then secondly, explained to him to the satisfaction of the court are not merely cosmetic; they are not mere semantics - No. They are provisions considered necessary to ensure that the accused person understands and appreciates that is being (sic) alleged against him, to which he is required to make a plea.

Section 215, Criminal Procedure Act sets out the mandatory rules required by law for a proper arraignment. New arraignment is ad rationem powere; it is calling an accused person to reckoning if he does not know or does not fully understand the allegations being made against him?

It is notorious fact that English, the language of the court, the language in which charges and information are drafted, is not the mother tongue of Nigerians. It is also correct that most Nigerians are illiterate in English and that even those of them who are literate may not easily follow and comprehend the language of the court for these reasons, our criminal jurisprudence and our 1979 Constitution considered necessary that for there to be a proper arraignment...”

These picking of faults by the appellant’s counsel at this stage is negated by the fact that it is not in dispute as borne out by the record that at that said arraignment the appellant was legally represented by Kunle Adetowubo Esq. with a junior colleague, A. M. Ibitoye Esq. Therefore, if there was any irregularity, the appellant was well equipped by counsel to raise an objection and so such a concern, not having been raised at the point, showed there was substantial regularity in what transpired and the presumption under section 168(1) of the Evidence Act, Cap. E14, 2011, would operate. It provides thus:

168 (1) - When any judicial or official act is shown to have been done in a matter substantially regular, it is presumed that formal requisites for its validity were complied with”.

The learned trial judge would not have what he did thrown out merely because he failed to record in full details, how the charge was read out, to the understanding of the accused/appellant, who understood and went ahead to plead “not guilty” to the charge.

Going along with the position of the appellant would be taking technicality too far in the circumstances of this case, since clearly there was no miscarriage of justice and substantial compliance with the requirements met as can be attested by the record. The case of Sunday Kajubo v. The State (supra), has to be applied in context. See Michael Peter v. State (2007) 5 ACLR 192 at pages 352 - 353; Madu v. The State (1997) 1 NWLR (Pt. 73) 721; Olabode v. The State (2009) All FWLR (Pt. 500) 607, (2009) 11 NWLR (Pt. 1152) 254, (2009) 5 NMLR 315, (2009) 7 SCM 96 at page 116.

Also needing to be said is that fair hearing was shown to have occurred, as every opportunity necessary was given to the appellant to know what was going on and put across whatever defence he had. His failure to utilise the opportunity given him leading to one failure or the other to put forward anything to enhance his defence was a fault he would not be allowed to dump at the feet of another person. He should take that lapse as his own making. See Ariori v. Elemo (1983) 1 All NLR 1, (1983) 1 SCNLR 1, (1983) 1 SC 13, (1983) LPELR-552, (1983) 14 NSCC 1; Oyewole v. Akande & Anor. (2009) All FWLR (Pt. 491) 813, (2009) 15 NWLR (Pt. 1163) 119, (2009) 38 WRN 1, (2009) 10 SCNM 1256; Okunrinboye Export Co. Ltd & Ors. v. Skye Bank Plc (2009) 2 - 3 MJSC 42, (2009) 4 SCM 151; Ogunsanya v. The State (2011) All FWLR (Pt. 590) 1203, (2011) 12 NWLR (Pt. 1261) 401, (2011) 9 SCM 5 at pages 31 - 32.

In conclusion, there is no basis to upset the concurrent findings of the two courts below and this issue three is resolved against the appellant.

From the above and the well articulated lead judgment, I too dismiss this appeal and abide by the consequential orders made.

**AKAAHS JSC**:

My learned brother, Ariwoola JSC, made available to me before now, the leading judgement, which has just been delivered, dismissing the appeal. I am in complete agreement that the appeal totally lacks merit and should be dismissed.

Learned counsel has argued that the initial plan by the accused persons was to lure the deceased to the farm and rape her but the appellant had no intention to stab her and the stabbing was carried out by the 1st accused, acting alone. The appellant further claimed that he was coerced and intimidated into raping the deceased after the 1st accused had carried out the stabbing.

None of the defences is contained in exhibit 6, which was tendered without objection at the trial and in his oral evidence in court, the appellant denied knowledge of anything concerning the case.

In the judgement, the learned trial judge at page 202 of the record found that “the 1st accused person applied force on the deceased with the 2nd accused person standing and acquiesced to this act”. In spite of the fact that the victim had been stabbed and was at the point of death and according to the evidence of the 2nd accused person while she was still shaking went ahead to have sexual intercourse with her”.

In the judgment of Danjuma JCA in the court below where he considered exhibit 6, he held at page 325 thus:

“I am satisfied that exhibit 6 which is the appellant’s confessional statement discloses enough evidence to ground a conviction and there are fresh facts outside the exhibit which are corroborative of it and thus pointing to the guilt of the appellant. It is also worthy of note that exhibit 6 holds enough disclosure of the fact that the deceased died and that her death resulted due to the dastardly act of the appellant and his cohort”.

The appellant never raised the issue of his being forced to participate in the raping of the deceased especially after she had been stabbed by the 1st accused. The effort to raise it at this stage is belated. The initial agreement with 1st accused to lure the deceased to the farm to rape her was unbroken and he was bent on achieving his aim even when he knew that she had been stabbed on the neck. Nothing could be more bestial. He allowed his base instincts to have the better part of him. He must suffer the consequences of her death.

Nothing has been urged on us by learned counsel for the appellant to warrant tampering with the decision of the trial court which was affirmed on appeal. The appeal is lacking in merit and it is accordingly dismissed.

**AUGIE JSC:**

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.

There is no redeeming feature in this appeal to hold otherwise. The appellant was convicted for the offence of conspiracy to murder and murder. It is his contention that since it was the first accused that killed the deceased after they raped her, he is not guilty of conspiracy to murder but conspiracy to rape, which is absurd, since conspiracy is “an agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement’s objective” - see Black’s Law Dictionary, 9th Edition. So, it is the meeting of two or more minds to carry out an unlawful purpose or carry out a lawful purpose in an unlawful way that constitutes the offence of conspiracy; and it is a separate offence from the crime that is the object of the conspiracy.

In other words, the bedrock of the offence is the agreement to do something unlawful, which means that there can be no conspiracy, unless at least two persons conspire - see Ikemson v. The State (1989) 3 NWLR (Pt. 110) 455, (1989) 1 CLRN 1, (1989) 20 NSCC (Pt.11) 471, (1989) 6 SC (Pt. 1) 114, (1989) 6 SCNJ 54, Patrick Njovens v. The State (1973) 1 NMLR 331, (1973) 5 SC 17, (1973) 1 ACLR 224, (1973) 8 NSCC 257, (1973) NNLR 76; Erim v. The State (1994) 5 NWLR (Pt. 346) 522. What is more, the best evidence of conspiracy is usually obtained from one of the conspirators or from inferences - see Abacha v. The State (2002) FWLR (Pt. 118) 1224, (2002) 11 NWLR (Pt. 779) 437, (2003) 3 ACLR 333 and Njovens v. The State (supra), wherein this court, per Coker JSC, amplified thereon as follows:

“The overt act or omission, which evidences conspiracy, is the actus reus and the actus reus of each and every conspirator must be referable and very often is the only proof of the criminal agreement called conspiracy. It is not necessary to prove that the conspirators, like those who murdered Julius Caesar, were seen together coming out of the same place at the same time and indeed conspirators need not know each other. They need not all have started the conspiracy at the same time for a conspiracy started by some person may be joined at a later stage or later stages by others. The gist of the offence of conspiracy is the meeting of the mind of the conspirators. This is hardly capable of direct proof, for the offence of conspiracy is complete by the agreement to do the act or make the omission complained about. Hence, conspiracy is a matter of inference from certain criminal acts of the parties concerned done in furtherance of an apparent criminal purpose in common between them and in proof of conspiracy, the acts or omissions of any of the conspirators in furtherance of the common design may be and very often are given in evidence against any other or others of the conspirators. It is, therefore, the duty of the court in every case of conspiracy to ascertain as best as it could the evidence of the complicity of any of those charged with that offence.”

In this case, the prosecution called four witnesses and the appellant’s statement to the police (exhibit 6) was admitted in evidence through PW3, Sergeant Nurudeen Oyewale, one of the investigating officers. The appellant, who was the second accused, testified in his defence.

As DW2, he denied all the allegations in his evidence-inchief.

However, he stated as follows in exhibit 6 (statement to the police):

“On 5 June 2003, at about 4.30pm, Segun Akinsuwa (First Accused) came to inform me and Ayo Duyilemi (Third Accused) to meet him at Ayo ‘s father’s farm, that there is a woman called Iya Lekan by name Silifat Raman that we want to have sexual intercourse with her. He later went to call the woman, having deceived the woman that he had kolanut to sell and that the woman should follow us to meet him in the farm. That was how self, Ayo and the woman met in the farm. On our way going, we met a man popularly called “oko iya aladalu”; Joseph Ogunnusi (PW2). The woman told him that Segun asked her to come and buy kolanut from Ayo’s father’s farm. On getting to Ayo’s father’s farm, we met Segun, who is already waiting for us. The woman then asked for the kolanut. Segun replied that we only deceived her and tricked her to the farm to have sexual intercourse with her. Segun then pushed the woman down, forced her to have sexual intercourse after receiving a sum of N3,000.00 (three thousand naira) from her. He used cloth to cover her mouth and later brought one sharp knife, which he used to stab the woman at her jaw. He later asked me to sex the woman, which I did after Segun removed the black pant the woman put on. Ayo Duyilemi also sexed the woman after me. After the woman died, Segun drawn (sic) the dead body to nearby small stream.”

In convicting them for conspiracy, the trial court held as follows:

“From the confessional statements of the accused persons contained in exhibits 5, 6 and 7, there was evidence coming from DW1, DW2 and the 3rd accused that an agreement was reached by the three accused persons to commit a felony. The confessional statements of the three accused persons point to the fact that DWI was the initiator and the master-mind and planner of the offence of conspiracy. He orchestrated a senseless plan with the other accused persons to rape the deceased, DW1 stated under exhibit 5. This confessional Statement suggests that DW1 had already informed the 2nd and 3rd accused persons of a plan to rape the deceased before inviting the deceased to the farm of the father of the 3rd accused to buy kolanut. This evidence is supported by exhibit 6. DW2 (appellant), on his part in his confessional statement contained in exhibit 6 stated;

3rd accused in his statement contained in exhibit 7 stated. This evidence also suggests a plan of the 1st accused with the other accused persons to rape the deceased and that in the furtherance of this plan, DW1 went ahead to tell lies to the deceased, inviting her to the farm to buy kolanut. There was evidence that the 2nd and 3rd accused persons knew that the 1st accused had no kolanut to sell, yet they agreed to a plan to lure her into a farm.”

The trial court applied the facts to the law and concluded as follows:

“There was evidence that the three accused persons knew each other and had dealings with each other previously. The three accused persons acting in concert set out on 5 June 2003, to actualize their preconceived, carefully planned and re-arranged unlawful act. The 1st accused went ahead of the 2nd and 3rd accused persons after deceiving the innocent 42 years old woman, who they all knew as Mama Lekan (a kolanut buyer) into believing that 1st accused had kolanut to sell on the farm of the father of the 3rd accused that he wanted to sell. The 2nd and 3rd accused persons knowing that the 1st accused had no kolanut to sell agreed with this plan to lure the victim into having sex orgies with her. I am satisfied and find that the offence of conspiracy to commit a felony had been proved by the prosecution against each of the accused.”

On the question of whether they could be found guilty of conspiracy to commit murder or conspiracy to rape, the trial court held that:

“There was evidence before the court that during the process of raping the victim, which was the original plan of the three accused persons, murder was committed. After the victim was subdued and attacked by the 1st accused, using a knife on her jaw, throat and neck area, she died in the process. Since murder was committed in the process of raping the victim, there was evidence that the 2nd accused person (appellant) acquiesced to the murder, because at the moment when the 1st accused brought out a knife to stab the deceased and during the entire period of time when he inflicted the injuries on the deceased, there was no evidence or indication by the 2nd accused showing a total repudiation of the plan of the 1st accused to kill the victim as opposed to their previously agreed plan to only rape her. If the 2nd accused person had no intention to cause the death of the deceased as soon as he saw the 1st accused bring out the knife to stab the deceased, thereby using more force than is ordinarily required to rape her, he must show concrete evidence that he did not agree with 1st accused that stab wounds would be inflicted on her, which could lead to her death. The 2nd accused needed to demonstrate immediately that he had no intention of causing death or that he did not acquiesce to the use of any weapon that could cause her death.

Consequently, I find that the 2nd accused acquiesced to the plan or conspired with the 1st accused to kill the deceased. Both accused persons are, therefore, liable for the offence of conspiracy to murder the deceased contrary to section 516 of the Criminal Code. At any rate, both offences of conspiracy to murder and conspiracy to rape are offences to commit felony under section 516 of the Criminal Code, where liability upon a finding of guilt is 7 years imprisonment.

In those circumstances, the trial court found the 1st accused person and appellant guilty of the offence of conspiracy to commit a felony “that is to murder Silifat Raman as charged”. It is not surprising that the Court of Appeal affirmed the decision of the trial court because, as it also observed, “there was joint intention to commit crime, which all the accused persons participated actually, and which is enough to convict the appellant for conspiracy”; and that is the law as it stands.

Where more than one person are accused of joint commission of a crime, it is enough to prove that they all participated in the crime - see Ikemson v. State (1989) 3 NWLR (Pt. 110) 455, (1989) 1 CLRN 1, (1989) 20 NSCC (Pt. 11) 471, (1989) 6 SC (Pt. 1) 114, (1989) 6 SCNJ 54, wherein this court, per Belgore JSC (as he then was), observed as follows:

“The question is whether there was a robbery. If there was one, the next question is whether any of the appellants participated in the robbery. If they participated, that is enough, for it does not matter what each one did in the furtherance of the commission of the crime. The mere fact of common object to commit armed robbery and manifesting at the scene of the crime to execute that object in law rendered all the accused persons guilty of the offence of armed robbery.”

In this case, the appellant cannot extricate himself from conspiracy to murder; not only did he take the deceased to the farm where the first accused was waiting in furtherance of their plan to rape her, he also took his turn in raping the deceased after first accused stabbed her.

PW4, Dr Olu Ajewole, a Specialist Forensic Pathologist, tendered his post-mortem report, exhibit 9, which reads as follows:

“The body was that of a Nigerian woman. It had 15 bruises. The head had 7 bruises, the neck 3, the right forearm 3 and the abdomen 2. There was a severe black eye and bleeding from both ear orifices. There was a severe stab wound in the left cheek. The weapon transfixed the tongue and the floor of the mouth. There was also deep laceration over the chin measuring 4cm while the lower jaw bone was exposed through it. There was severe congestion of the glottis and the Adam’s apple was fractured.

There was consequent bleeding into the windpipe. The neck was fixed on the right side and the neck was stretched almost to a breaking point. There was vulva swelling and congestion of the vaginal canal. Dead sperm cells were demonstrated microscopically in the vaginal fluid.”

The deceased, Silifat Raman, died a horrible and horrifying death and yet as the first accused sadistically inflicted all those injuries on her, the appellant said nothing and did nothing; instead he admitted that the first accused later asked him to “sex the woman” which he did, not minding the injuries on her, the blood and her intense suffering.

I need say no more; but there is no question whatsoever that the trial court and the Court of Appeal were right; the appellant is guilty and was rightly convicted for the offence of conspiracy to murder.

I concentrated on conspiracy, but I also adopt the reasoning and conclusions of my learned brother, Ariwoola JSC, on other issues, which he addressed in the lead judgment. I also dismiss this appeal and hereby affirm the decision of the Court of Appeal in its entirety.

Appeal dismissed