**FRANCIS EZEDIUFU**

**V.**

**THE STATE**

COURT OF APPEAL, (ENUGU DIVISION)

26TH APRIL. 2001

CA/E/215/98

**LEX (2001) - CA/E/215/98**

**OTHER CITATIONS**

3PLR/2001/129 (CA)

(2001) 17 NWLR (Pt. 741) 82

**BEFORE THEIR LORDSHIPS**

JUSTIN THOMPSON AKPABIO, JCA

JOHN AFOLABI FABIYI, JCA

MUSA DATTIJO MUHAMMAD, JCA

**ORIGINATING COURT(S)**

HIGH COURT OF ANAMBRA STATE OF NIGERIA, HOLDEN AT ONITSHA

**REPRESENTATION**

[UNNAMED IN REPORT?] - FOR APPELLANT

MRS. FRANCA OFOR, DEPUTY DIRECTOR OF PUBLIC PROSECUTION, ANAMBRA STATE MINISTRY OF JUSTICE – FOR RESPONDENT

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

CRIMINAL LAW AND PROCEDURE:- Murder - Proof of - Circumstantial evidence - Nature of circumstantial evidence that will lead to conviction

CRIMINAL LAW AND PROCEDURE:- Arraignment - Section 215 of the Criminal Procedure Act - Whether provides that charge must be read to accused in his native language or other language he understands – Minimum requirement for valid arraignment

CRIMINAL LAW AND PROCEDURE:- Defences - Insanity - Burden of establishing same - On whom lies

CONSTITUTIONAL LAW:- Criminal proceedings and fair hearing - Arraignment of an accused person – Need for same to comply Section 33 (6)(a) of the 1979 Constitution (now section 36(6) of the 1999 Constitution of the Federation)

CHILDREN AND WOMEN LAW:- *Women and Human* Right - Murder – Mother-killing - Accused found guilty of the brutal murder of his mother – How treated ETHICS – LEGAL PRACTITIONER:- Use of hyperbolic statement in attacking judgment of a court appealed against – Allegation that a Judge "convicted" an accused person ever before considering his defence” – Attitude of appellate court thereto

ETHICS – LEGAL PRACTITIONER:- Failure of counsel to proffer appropriate defences for accused person at trial – Attack on trial court judgment for not considering any of the defences which was not adduced – Attitude of appellate court thereto

EDUCATION AND LAW:- Criminal proceedings and requirement for compliance with Constitutional compliance as to arraignment – Evidence that accused person "went to school and read up to elementary IV" – Whether can sustain the presumption s/he understands the language of the court – How treated

**MAIN JUDGMENT**

**AKPABIO, J.C.A. (Delivering the Leading Judgment):**

This is an appeal against the judgment of F.O.Nwokedi, J, of the High Court of Anambra State of Nigeria, holden at Onitsha in Charge No. 0/27c/77 delivered on 2nd day of September 1980, wherein he convicted the accused/appellant of the offence of MURDER contrary to S. 319 of the Criminal Code and sentenced him to death by hanging in accordance with section 370 of the Criminal Code.

The appeal records forwarded to this court did not contain a copy of the information which should have incorporated the "statement of offence" and "particulars of offence". However, from the introductory paragraph of the judgment of the learned trial Judge, which appeared at page 10 of the records, it could be said that the accused was charged with the unlawful killing of his mother, Nwabude Odieli Omesi, on the 14th day of January, 1977 at Ikem Nnando contrary to section 319 of the Criminal Code. On commencement of the trial, on 11th day of June, 1979, the charge was 'read and explained to the accused and he pleaded not guilty."

The case was then assigned to Barrister Ifeanyi Ojiba to defend.

The fact of the case were ably summarised by the learned trial Judge in his judgment at pages 10 -12 of the records as follows:-

"The facts of the case may be briefly stated. On the day of the incident Alaoma Ilodiwe called as PW 4 said that soon after having a chat with the deceased and after the deceased had gone to her house, she heard a wailing cry from the deceased's house. The distracting voice of the deceased was saying that Ezediufu has killed me."

PW 4 then rushed to the house of the deceased who was the mother of the accused, and there saw the accused standing in front of his mother's room with the door locked. PW4 then asked the accused about his mother and he told her that his mother had gone to Eme Egwene a neighbouring village in Nnando. PW 4 then went back to her house. But in the next morning, having observed no trace of the deceased, she went back to the deceased's house. She then demanded from the accused the key of the door of his mother's room, but the accused refused to give it to her. PW4 again tackled the accused about the whereabouts of his mother, and the accused told her that his mother travelled to Onitsha. PW4 claimed that she later saw the accused washing his mother's bed. She queried the accused for his action, and the accused told her that his mother's bed was infested with bed bugs. Later PW4 reported the unsatisfactory behaviour of the accused to Orakwe Obioha earlier called as PW1. In addition, PW4 also despatched her daughter, Nwamaka, to the deceased's daughter living at Onitsha to confirm if the deceased was at Onitsha and the daughter and her husband accompanied Nwamaka back to the village. The deceased's daughter denied that her mother visited Onitsha at that time.

Subsequently, the matter was reported to the Otuocha Police who on arrival at the scene of the crime forced open the door of the room of the deceased. PW 4 claimed that she observed blood spots on the walls of the deceased's room and also on certain articles which were later collected by the police. PW 4 maintained that she has lived in the neighbourhood with the accused since his birth and from her knowledge, accused had always enjoyed good health mentally and physically.

She however said that the accused was a notorious thief in the community and regularly prone to beating up his mother.

The evidence of PW1 Orakwe Obioha was much the same as that of the PW4. The evidence of PW1 confirms the essential particulars the evidence of PW 4.

Police Sgt. Anthony Udeh called as PW2 stated how he and another police officer searched the room of the deceased where they observed scattered blood spots on the walls and on certain items. PW2 claimed that they later recovered in the room two blood stained matchets, one head tie, and one bed sheet under a bed in the room.

Both the head tie and sheet were also smeared with blood. There was also a blood stained pair of knickers found in the room. All the articles recovered from the room were later sent to the forensic laboratory Oshodi for examination. PW2 claimed that in the search of the premises, he saw a grave and on opening it later in the presence of the doctor, Dr. Obiorah PW3 and the accused himself and others, he found the remains of a woman who was subsequently identified by PWI as that of the deceased.

The accused said nothing when he was asked if the body was that of his missing mother.

The accused was later arrested and charged under caution with the murder of the deceased and he made a statement which was subsequently admitted in evidence in Exh. 3. Later he on his own volition offered another statement under caution and that statement was also admitted in evidence as Exh.4. Later, all the blood stained articles recovered from the deceased's room forwarded to the forensic laboratory Oshodi were returned in sealed boxes. They were all subsequently admitted in evidence as follows:

Head tie Exh. 5, two blood-stained matchets Exh. 6 and 6A and blood-stained bedsheet Exh. 7, and bloodstained white short knicker Exh. 8.

Report from the forensic laboratory Oshodi Exh. 9, confirmed that the blood found on all the articles was human blood. Earlier Dr. Sylvester Okey Obiorah PW3 after the exhumation of the body of the deceased, performed a post mortem examination on the body identified to him by the PW 1 as that of Madam Nwabude Odiele Omesi. The doctor found on examination as follows:-

(i) Deep laceration on the right side of the neck cutting through the cervical vertebrae.

(ii) The head was held by the skin on the left side.

(iii) Laceration of the right arm. Internal organs were intact.

PW 3 certified that the cause of death was due to bleeding and shock. He also opined that the injuries were consistent with hitting of a hard and sharp object on areas injured on the body. He excluded possibility of the injuries being self-imposed.

The defence of the accused was total denial of any complicity in the brutal killing of the deceased. He denied killing his mother and insisted that his mother travelled to Onitsha and failed to return home. He denied ever washing his mother's bed in her absence and maintained that evidence of PW 4 against him was induced by her bitter hatred for him. He said that PW4 has always seen him as a bad boy in the community.

He claimed that it was the police who smeared his white short knicker with blood before taking it away with other items they collected from his house. He denied ever seeing the dead body of his mother.

At the end of the judgment, the learned trial Judge F. O. Nwokedi, J found the accused guilty as charged, convicted him accordingly, and sentenced him to death by hanging. Being dissatisfied with the said conviction and sentence, the accused has now appealed to this court on seven grounds, from which five issues for determination were later formulated as follows:-

"It is respectfully submitted on behalf of the appellant that the following are issues which will call for determination by this Honourable Court

1. Did the prosecution prove its case beyond reasonable doubt.

2. Whether the learned trial Judge has fulfilled his duty to adequately consider all defences open to the accused person.

3. Whether from the printed record it could be said that the appellant was properly arraigned in strict compliance with section 215 of the CPA.

4. Whether from the printed record, the accused person was conversant with the official language of the court, if there was no interpreter provided for him by the court?

5. Whether the burden of proof in criminal matter shifts to the accused person."

From henceforth the accused will hereinafter be referred to in this judgment as the "appellant".

In response to the above, the Deputy Director of Public Prosecution, Anambra State Ministry of Justice Awka, also filed a brief of arguments in which four issues for determination were formulated as follows:

"The issues for determination in this appeal are:

1. Whether or not from the record, arraignment and proceedings were improper to amount to a miscarriage of justice.

2. Whether or not the learned trial Judge fully considered the defence open to the accused before giving his judgment.

3. Whether from the totality of evidence adduced the prosecution proved its case against the accused beyond reasonable doubt.

4. Whether from the record the learned trial Judge placed the burden on accused to prove his innocence."

From henceforth, the state will hereinafter in this judgment be referred to as the respondent.

After careful consideration of the two sets of issues formulated above for both parties I find that they are "in pari materia" except that the appellant has placed first his omnibus issue which should be last. Also that issues 3 and 4 in appellant's brief were combined and treated as issue No.1 in respondent's brief.

That not withstanding I am of the considered view that all the disputed questions in this appeal can be conveniently and adequately disposed of under three main issues as follows:-

(a) whether there was proper arraignment of the appellant as required under S. 215 of the Criminal Procedure Act.

(b) Whether the burden of proof was ever shifted on appellant to prove his innocence.

(c) Whether on the totality of the evidence adduced the prosecution proved its case beyond reasonable doubt.

Re Issue No.1

Whether from the printed record there was proper arraignment of the appellant before the trial court as required under S. 215 of the Criminal Procedure Act.

I have made this issue No.1 because if it succeeds, it would mean that the trial at the lower court was a nullity; and that should be the end of this appeal.

Under this issue it was submitted on behalf of the appellant by his learned defence counsel that the arraignment of the appellant did not comply strictly with the provisions of section 215 of the Criminal Procedure Act and Section 33 (6)(a) of the 1979 Constitution now section 36(6) of the 1999 Constitution of the Federation.

According to the said Constitutional Provision, "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 detail of the nature of the offence."

Surprisingly appellant's counsel did not reproduce in his brief the exact wording of section 215 of the Criminal Procedure Act which was actually the real statutory provision that governed arraignment of accused persons in court. He however cited in support, the case of Erekanure v. State (1993) 5 NWLR (Pt.294) 385 in which the Supreme Court set out what it considered to be the requirements of a valid arraignment. The cases of Sani v. State (2000) 1 NWLR (Pt.642) 520; and Banno v. State (2000) 1 NWLR (Pt.641) 424, were also cited in support.

It was then pointed out that in the instant case there was no indication in the printed record as to the language in which appellant's plea was taken, nor any indication to show that there was an official interpreter to interpret proceedings to the appellant, even though PW1 and PW4 as well as the appellant were shown in the record of proceedings to have testified in the Ibo language. It was finally submitted that the constitutional requirement cannot be waived either by the accused, the counselor the court. Failure to comply with this mandatory requirement of the Constitution would render the whole trial incurably defective and null and void.

In response to the above, Mrs. Franca Ofor, the learned Deputy Director of Public Prosecution in the Anambra State Ministry of Justice, drew the court's attention to p. 2 of the records where it was shown that on 11th June, 1979, the appellant was arraigned when the charge was read and explained to him and he pleaded not guilty.

She then cited the case of Faro v. Inspector-General of Police (1964) 1 All NLR 6, where it was held that the main purpose of a charge was to inform the accused of the nature of the offence. It was further submitted that the charge having been read and explained to the accused, he was deemed to have understood it. R. v. Anya Ugwuogo and Anor: (1943) 9 W ACA 73. The learned Deputy Director of Public Prosecution also referred to the Supreme Court case of Erakanure v.The State (1993) 5 NWLR (Pt.294) 385 earlier cited by learned counsel for appellant in which the Supreme Court stated the requirements for a valid arraignment to be as follows:-

1. Accused must be present in court.

2. Charge must be read to accused in language he understands.

3. Charge should be explained.

4. Accused called upon to plead.

It was then submitted that based on the above parameters the arraignment of the appellant was properly done.

Finally it was conceded that there was no indication in the records that there was an interpreter, yet the fact was that appellant never complained that he did not understand or follow the proceedings. On the contrary, appellant testified in his defence, and his testimony addressed all issues raised by prosecution witnesses at pages 8 - 9 of records. It was then submitted that the above facts gave rise to a presumption that the proceedings were duly understood and followed by the accused. The court was then urged to hold that there was no miscarriage of justice occasioned.

I have carefully considered the two arguments canvassed above by learned counsel on both sides, and find that section 215 of the Criminal Procedure Act, heavily relied upon by the learned counsel for appellant reads as follows:-

"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 explained 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 that court finds that he has not been duly served therewith."

The first thing to notice in the above extract is that there is no provision for the charge to be read to accused either in his mother tongue or in any other language he can understand. All that the section says is that 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..."

What I understand by the above is that regardless of the language in which the charge or information is read and explained to the accused, ( the learned trial Judge has a statutory duty to satisfy himself that the accused actually understood what was read to him. I have no doubt in my mind that the learned trial Judge in this case was actually satisfied that the appellant actually understood the charge before he proceeded with the trial. It is on record, as could be gathered from the notes at p.1 of the records in this case, that it was the learned trial Judge, F. O. Nwokedi, J. who on 11/6/79 "assigned the case to Barrister Ifeanyi Ojiba to defend." The case was then adjourned to 17/7/79 for hearing. However, when the case again came to court on 17/9/79 (whether due to an error in date or not), Barrister Ojiba to whom the case was assigned to defend did not appear in court.

The court waited for him till 12 noon without a word from him. At the end of the day, the court was forced to adjourn the case to 9th September, 1979, for hearing, with a note that Mr. Ojiba should be notified of this date. I have reproduced this part of the record to show that the learned trial Judge, F. O. Nwokedi, J. was not only a meticulous Judge, but also a stickler for accuracy and high sense of fairness. He would have been the last person to embark on the trial of the appellant, if he was not satisfied that appellant understood what the trial was all about.

I have read through not only the case of Samuel Erekanure v. The State (1993) 5 NWLR (Pt.294) 385 cited by learned counsel on both sides, but also the earlier case of Kajubo v. The State (1988) 1 NWLR (Pt.73) 721 at 723 on which it was predicated, and find that each of those cases turned on their own peculiar facts, and none of them could be said to have been on all fours with the instant case.

The most important difference perhaps as far as arraignment was concerned was that in Erekanure's case (supra) the court's notes before the Ughelli High Court on 2nd December, 1982 were as follows:-

" M. I. Edokpayi S.C. for state J. E. Shakarho for the accused. Charge read to accused. He pleads not guilty to the law court.

Prosecution opens its case"

At the Supreme Court the question for determination was inter alia "Whether the trial, conviction and sentence passed on the appellant are a nullity in view of the failure of the trial court to comply strictly with the provisions of section 215 of the Criminal Procedure Law Cap. 49, of Bendel State as well as section 33(6)(a) of the 1979 Constitution."

At the end of the day, the Supreme Court laid down the five requirements of a valid arraignment to be as follows:-

"(a) the accused must be present in court unfettered unless there is a compelling reason to the contrary;

(b) the charge must be read over to the accused in the language he understands;

(c) the charge should be explained to the accused to the satisfaction of the court;

(d) in the course of the explanation technical language must be avoided;

(e) after requirements (a) to (d) above have been satisfied the accused will then be called upon to plead instantly to the charge."

However, it appeared at the end of the day that the most important requirement was whether the charge was explained to the accused or not; and not so much as on the language in which it was explained or read. Olatawura, JSC, emphasised this point in his lead judgment when he asked the following question.

" If as it has been shown that it was read, was it explained to him? No."

Belgore, JSC. in his contribution also zeroed in on the question of explanation as follows:-

'S. 215 of Criminal Procedure Law of Bendel mandatorily requires the charge to be read and explained to the accused person so that he will understand the accusation against him. It appears that in the instant case trial court never adhered to these requirement and as we held in Sunday Kajubo v. The State (1988) 1 NWLR (Pt.73) 721-731,737, the trial was a nullity."

The above dictum made me to refer to the case of Sunday Kajubo v. The State (1988) 1 NWLR (Pt.73) 721-731. There I found that the accused was charged with the offence of armed robbery for a start; and that the method of arraignment was even worse. The relevant court notes read as follows:-

"Court: Registrar please take the plea of the accused.

Plea:- Not guilty.

Court:- Case fixed for hearing on 23/9/81, accused person to be remanded at Maximum Security Prison, Kirikiri until next adjourned date."

And when a second count was subsequently added, and the charge amended, a fresh plea was taken as follow:-

"Accused: 1st Count:- Pleads not guilty

2nd Count:- Pleads not guilty."

At the end of the day, the Supreme Court per WALl, JSC in the lead judgment held as follows:-

"1. For a valid and proper arraignment of an accused person, the following conditions, as contained in section 215 of the Criminal Procedure Law of Lagos State, 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 officers of the court;

(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)

(2) Failure to comply with any of the conditions stated in paragraph (1) above all render the whole trial a nullity: (Eyoro Kokoro v. The State (1979) 6 - 9 S.C. 3 applied)

(3) Thus an arraignment consists of charging the accused and reading over and explaining the charge to him to the satisfaction of the court, followed by taking his plea; Oyediran v. The Republic (1967) NMLR 122)"

It will be seen from the above that the question as to the language in which the charge was read over to accused was not made an issue or requirement. The important thing is whether the charge has been read and explained to the accused 'to the satisfaction of the court".

Since in our instant case it clearly appears at p. 1 of the records on 11/6/79 that "charge read and explained to the accused and he pleads not guilty."

I am of the firm view that the appellant was validly arraigned before the court in accordance with the mandatory provisions of S. 215 of the Criminal Procedure Act.

Issue No.1 is therefore hereby resolved in favour of respondent.

Re: Issue No.2

"Whether from the record, the learned trial Judge placed the burden of proof on accused to prove his innocence."

The appellant in his brief had combined this issue which was issue No.5 with his issue No.1 about whether the prosecution proved its case beyond reasonable doubt and argued them together. However, I have decided to split them and take them separately because the issue of burden of proof is a matter of law while the omnibus issue is generally a matter of fact, after considering the evidence in the case as a whole. Learned counsel for appellant indicated, that his issues 1 and 5 were tied to grounds 2, 3, 5, 6 and 7 of his grounds of appeal. However, after looking at his grounds of appeal I find that only ground 5 can be said to have any relevance or bearing with the question of "burden of proof."

In the appellant's brief itself, the matter was disposed of in a few lines as follows;-

"It is trite in criminal law that the burden of proving its case has always been on the prosecution and this burden never shifts to the accused person to prove his innocence. Under the Constitution of the Federal Republic of Nigeria such an accused person is deemed innocent until the contrary is proved.

I respectfully urge on your Lordships section 33(5) of the 1979 Constitution now section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria; section 138 of the Evidence Act and also The State v. Danjuma (1997) 5 SCNJ page 126 at 136; (1997) 5 NWLR (Pt.506) 512; lbeh v. State (1997) 1 NWLR (Pt. 484) page 632 at 636."

In response to the above, it was submitted under issue No.4 of respondent's brief as follows:-

"There is nothing on the record to suggest that the learned trial Judge at any point during the trial placed on the accused/appellant the burden of proving his innocence. The judgment of the trial court is on pages 10 - 15 of the record of proceeding.

At page 14 lines 25 - 29, the learned trial Judge in considering the attempt by the defence counsel to raise the defence of insanity rightly pointed out the fundamentals of the defence of insanity.

We submit on the authority of Mohammed v. The State (supra) that the learned trial Judge holding that the onus of establishing circumstances of insanity lies on the accused is in order and does not amount to placing upon the accused the burden of proving his innocence. We therefore urge your Lordships to so hold and dismiss the appellant's contention in this regard as baseless."

I have carefully considered the two arguments canvassed above and find that truly and indeed, it is our law that the burden of proving a defence of insanity rests on the accused. See sections 27 and 28 of our Criminal Code Act, (Cap.77) Laws of the Federation which read, follows:- .

"27. Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

28. A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing, or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission."

See also section 33(5) of the 1979 Constitution and its provision now S. 36 (5) of the 1999 Constitution which read as follows;

"(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty:

Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts."

In view of the above, I find that only in respect of the defence of insanity raised by the appellant, was the onus ever shifted to the appellant to prove his insanity and he failed to do that, See P. 14 of the records where the learned trial Judge in his judgment held as follows:-

"Although the accused's apparent defence is a total denial of complicity in the murder of the deceased, yet by implication there was a subtle attempt by the learned defence counsel to introduce the issue of insanity. There was however no attempt by the defence to adduce evidence from which I could infer that the accused was insane at the time when he attacked his mother with a sharp object; inflicting multiple injuries on her. It is not sufficient merely to mention insanity as a defence.

Insanity must be proved by evidence for it to be available to a person accused of murder. The burden of proof of insanity rests on the person charged for there is a presumption of sanity in every person charged under our law."

On the totality of the foregoing, I hold that issue No.2 must also be resolved in favour of respondent. Only in respect of the defence of insanity was the onus of proof ever shifted to the appellant, and he failed to discharge it. In respect of all other matters in the case, the onus was placed squarely on the prosecution, and they discharged that burden to the best of their ability.

Re Issue No.3

Whether on the totality of the evidence adduced at the trial, the prosecution proved its case against the appellant beyond reasonable doubt.

Under this issue it was submitted on behalf of the appellant that the case of the prosecution was based mainly on circumstantial evidence which were not strong enough to ground conviction of the appellant. It was then argued that for the prosecution to prove its case beyond all reasonable doubt in a murder charge it must prove the following:-

1. The death of the deceased.

2. That the death of the deceased was as a result of the acts of the appellant, and

3. That the act of the appellant was intentional with the knowledge that death or grievous bodily harm was its probable consequence.

For this proposition the case of Akpan v. State (1994) 12 SCNJ p. 140 at 142 was cited in support. It was also submitted that there has been no nexus to link the death of the deceased with the act or acts of the appellant. He then pointed to certain contradictions that occurred between the evidence of PW1 and PW2 as to the items recovered from the deceased's room. He also pointed to other minor contradiction between the evidence of PW1 (a brother of deceased) and that of PW4 (Ilefuna Ilodiwe) a neighbour who said she heard the alarm raised by the deceased saying "Ezediufu has killed me."

She said on hearing the alarm, she went to the house of the deceased where she saw the appellant who refused to open her mother's room, and said she went to a nearby village of Ame Ezemene in Nnando.

But on coming back the following morning the appellant said the deceased went to Onitsha. Not believing appellant's story. PW4 said she sent her daughter by name Nwamaka to Onitsha to inform deceased's daughter living there, and that one came in company of her husband.

Learned counsel for appellant now pointed to the fact that PW 1 in his evidence had also said that it was he who sent his daughter to Onitsha to call the daughter of the deceased. I hardly will call that a contradiction, as it was quite possible for the two witnesses to have sent their respective daughters to call the daughter of the deceased and her husband. No enquiry was conducted from the daughter of the deceased to find out whose daughter actually came to call her from Onitsha. Learned counsel for appellant pointed to contradictions between the evidence of PW 1, 2 and 4 on the one hand and that of PW3 (the medical doctor) on the other as to the date on which exhumation of the corpse and post-mortem examination were conducted.

It was also submitted that for the prosecution to successfully discharge the burden on it, it would have to show that

1. The pair of shorts smeared with blood belonged to the appellant and that the blood found on the shorts was that of a human being.

2. That the grave where the corpse of the deceased was exhumed was dug by the appellant.

3. That the matchet cuts found on the corpse was inflicted by the appellant.

In conclusion it was pointed out that the evidence of the witnesses for the prosecution in this case were all circumstantial as none of them was an eye witness of the incidence of the alleged killing of the deceased. The evidence was not capable of proving with any degree of certainty that the appellant killed the deceased. The case of Emiowe v. State (2000) 1 NWLR (Pt.641) 408 at 411 was cited in support. The court was then urged to hold that the prosecution has not proved its case beyond reasonable doubt; and so whatever doubt that exists should be resolved in favour of the appellant.

Finally this court was urged to set aside the judgment, conviction and sentence of the appellant, and to discharge and acquit him.

In reply to the above, the learned Deputy Director of Public Prosecutor first conceded that the evidence in support of prosecution's case was mainly circumstantial, but it was further submitted that "Circumstantial evidence" was sometime the best evidence.

It was then pointed out that at all material times the deceased lived with the appellant who was her grown up son. Learned Deputy Director of Public Prosecutions in her brief gave a brief resume of the prosecution evidence against the appellant. In particular she referred to the evidence of PW4, who lived opposite the deceased who told the court how she heard deceased scream that "Ezediufu (i.e. The appellant) has killed me" She later rushed to the deceased house to find out what happened. She narrated how she found the appellant, and what the appellant told her. She also told the court that she later saw the appellant washing the deceased's bed, and observed blood stains on the bed. It was submitted that the evidence of PW 1 and PW 4 who said they saw appellant washing not only his mother's bed, but also her room, to remove blood stains, as well as the evidence of the Police, PW2 who searched the room of the deceased, and later discovered the shallow grave behind the house of deceased, from where her dead body was exhumed, all pointed unequivocally to the appellant as the killer of the deceased. The cases of Kalu v. The State (1993) 6 NWLR (Pt.300) 385,' Onokpoya v. The Queen (1959) SCNLR 384; Peter v. The State (1997) 3 NWLR (Pt.496) 625, and Nwaeze v. The State (1996) 2 NWLR (Pt.428) 1.., were cited in support of the above.

On the alleged contradiction in the evidence of the prosecution witnesses it was submitted that there were no contradictions in the testimonies of the prosecution witnesses. She referred to minor variations in the testimonies of PW2 and PW 4 about the re-action of the appellant when the corpse of his mother was discovered in the shallow grave in their back-yard, and submitted that "for witnesses contradiction to be fatal to prosecutions case, such contradiction must be substantial and fundamental to the main issue."

The case of Peter v. The State (1997) 3 NWLR (Pt.496) p. 625 and .. Wankey v. The State (1993) 5 NWLR (pt.295) 524 were cited in support. The Court was therefore finally urged to hold that the, prosecution proved its case against the appellant beyond reasonable: doubt. Before resolving this issue, which should have the effect of concluding this judgment, I feel that I should briefly deal with the complaint of appellant's counsel in his issue No.2 which read as follows:-

"Whether the learned trial Judge has fulfilled his duty to adequately consider all the defence open to the accused person."

At first I thought this issue could be disposed of under any of the other main issue. But when I saw the ferocious attack launched on the learned trial Judge under this issue, I decided that the said issue should be given a full-scale consideration which I now proceed to do.

Under that issue one expected the learned counsel for appellant to set out a catalogue of statutory or other defence which the appellant raised in his defence at the trial court, which the learned trial Judge failed or pronounce upon, and then invite this court to do so. But surprisingly, there was no such catalogue of unconsidered defence.

Rather what we had was a heap of abuses or at best unsubstantiated allegations of bias against the learned trial Judge in his evaluation of the evidence. For instance, under that issue (at p. 9 of appellant's brief) it was stated as follows:-

"It is respectfully submitted that the learned trial Judge had already convicted the accused person even before he was tried..."

Reference was made at page 14 lines 9-10; 11-13 of the records, even though the learned trial Judge had already considered the defences of the appellant at pages 12-13 of the records, and was only making his final conclusions at page 14 of the records.

The learned counsel for appellant continued his unprovoked attack on the learned trial Judge when he again stated as follows:-

"The learned trial Judge, we submit failed to overt his mind to the laid down principle relating to circumstantial evidence as stated by the Supreme Court..."

Again there was allegation at p. 10 of appellant's brief that:-

"The learned trial Judge did not avert his mind to the well settled law in relation to the value of circumstantial evidence."

Finally at p.11 of appellant's brief the following submission was made against the learned trial Judge:-

"We humbly submit that the trial Judge ought to have considered the defence available to the accused person whether same was raised by him or not before arriving at a decision. But in this case the learned trial Judge has already convicted the accused before considering his defence."

In response to the above the learned counsel for respondent first drew court's attention to pages 8 - 9 of the records where the appellant testified in his defence and was cross-examined. He denied either killing the mother or knowing she was in fact killed. He admitted ownership of Exh. 8 (the blood-stained knicker) but stated that the blood stains were smeared by the police. At pages 12-13 of the records, the learned trial Judge fully considered the defence proffered by the accused in his evidence and disbelieved him. He subsequently found at page 14 lines 4-18 that the circumstantial evidence adduced by the prosecution were cogent and pointed irresistibly to the accused as author of the crime. It was then pointed out that the counsel to the accused in his address at p. 9 of the records attempted to raise the issue of mental instability. It was then submitted that where an accused relied on defence of insanity, the burden was on him to establish circumstance of insanity. It was not sufficient to merely mention mental instability in his address without more. The case of Phillip Dim v. R (1952) 14 WACA 154; Emery v. The State (1973) 3 SC 215; and Mohammed v. The State (1997) 9 NWLR (Pt.520) p. 69 were cited in support.

In conclusion it was submitted on behalf of the respondent that the learned trial Judge adequately considered the entire defence open to the appellant and found him guilty as charged at p. 15 of the records. There was therefore no merit in the assertion that the learned trial Judge failed to consider the defence open to the accused.

I have carefully considered all the arguments canvassed above by learned counsel on both sides and have no difficulty in holding that that issue was a hopeless waste of judicial time, and should not have been considered but for the unprovoked allegation of bias made against the learned trial Judge. How possible was it for a Judge to have "convicted" an accused person ever before considering his defence.

After carefully going through the relevant portions of the record again, I find that the accused in his oral testimony in court, made no defence properly so-called, apart from bare denial of allegations made against him. It was only his counsel in the course of the address that raised the question of insanity or mental instability, and that without any evidence to back it. As every one knows, to raise the question of insanity or mental instability in a court the accused should have been sent to a psychiatric Hospital for observation and report. But in the instant case, the appellant was neither sent to any Hospital nor a report sent to the court. The alleged defence of insanity was therefore rightly rejected- by the learned trial Judge. I should also mention that apart from the defence of insanity, the learned trial Judge also gratuitously raised the statutory defence of "Provocation" and "Self-Defence' for the appellant, considered them himself, and finally rejected them as there was no evidence to support them.

At p. 15 of the records he opined as follows:-

"Equally so, there is no evidence from which a defence of provocation could be considered. It was a clear case of a defenceless old woman being almost savagely decapitated by an apparently unprovoked assailant.

There being no basis for considering the defence of provocation, there can also be no basis for considering defence of self-defence."

It was not uncharitable therefore for the learned counsel for appellant to have accused the learned trial Judge of not considering any of the defences for appellant, when he himself did not proffer any at the trial court. This issue is therefore hereby resolved in favour of the respondent.

I shall now proceed to resolve the omnibus issue as to whether it was right for the learned trial Judge to have convicted the appellant of murder on mere circumstantial evidence alone. Arguments of learned counsel on both sides in respect of this issue have already been surnrnarised above under issue No.3. I now proceed to resolve the issue.

The facts of this case are fairly straight forward and undisputed e.g. it is not disputed that the deceased was the mother of the appellant and that they lived in the same house. At least there was no evidence that any other person lived there with them. It was also not disputed that on the date of the incident the appellant and deceased went to farm together and came back together in the evening, after which the deceased went to the house of P. W. 4 to take fire to cook in her own house. In this court nothing factual was disputed except law.

First there was the dispute (in issue No.1) whether the arraignment of the appellant at the trial court was valid or not, as there was no indication on the records as to the language in which the charge or information was read and explained to the appellant. I have already disposed of the issue by holding (with reference to leading decided cases) that the language in which a charge or information was read was immaterial. The important thing was whether the accused understood what was read and explained to him "to the satisfaction of the Judge." That issue was resolved against the appellant as there was nothing on the records to show that appellant did not understand what was read and explained to him. Furthermore, the appellant in his defence at p. 8 of the records clearly stated that "I went to school and read up to elementary IV".

What now remains to be resolved is the legal question whether on the totality of all the "Circumstantial evidence" adduced in this case, the prosecution proved its case against the appellant beyond reasonable doubt, as set out in issue No.3 above. In order to resolve this issue, I have had to go through a lot of cases founded on circumstantial evidence in order to see those that the Supreme Court and the Court of Appeal held were enough to secure conviction, and those that were held not to be. There are so many of them that if I began to reproduce them here, this judgment would become a text book or dissertation on "Circumstantial Evidence" rather than a judgment. What I have done therefore is to isolate only one of each class for consideration herein.

The first of such cases was the case of Goodluck Okorogba v. The State (1992) 2 NWLR (Pt.222) 244 in which the Court of Appeal (coram Ogundare, Onu, and Jacks, JJCA as they then were) held that the circumstantial evidence used by the Rivers State High Court to convict the accused of the offence of murder were not sufficiently cogent, positive, unequivocal or compelling as to lead to the conclusion that only the accused and the accused only could have committed the crime. In that case the case of the prosecution was simply that on the date of the incident the appellant and the deceased went on a hunting expedition in the "Odimerenyi sacred bush" but that the appellant returned without the deceased and without a credible explanation for the disappearance of the deceased. It was eight months after the incident that a skeleton was found in the said Odimerenyi bush which was identified as the remains of the deceased.

The prosecution thus principally relied on circumstantial evidence to establish the guilt of the appellant.

The defence of the appellant was a complete denial. He did not deny that he went to the deceased's house in the morning of the day in question, but said he only did so for the purpose of buying garri from the deceased's wife. He further admitted that the deceased was his good friend and that there was no quarrel between them. At the end of the trial, the learned trial Judge preferred the case for the prosecution, convicted the appellant, and accordingly sentence him to death. Dissatisfied with the said conviction and sentence, the appellant appealed to the Court of Appeal, Port Harcourt Division.

In the lead judgment written by ONU, (JCA as he then was) the court made the following far reaching pronouncement on the validity and nature or circumstantial evidence particularly in the case of murder:-

"8. On validity of circumstantial evidence to prove commission of crime.

Circumstantial evidence is very often the best. It is evidence of surrounding circumstances which by undesigned coincidence is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial.

The evidence of circumstances adduced in the instant case is neither cogent, complete nor unequivocal nor further still compelling. Again it is neither positive nor irresistible. (Obosi v. State (1965) NMLR 129; Ukorah v. State (1977) 4 SC 167; Lori v. State (1980) 8-11 S.C. 81; Esai v. State (1976) 11 SC 39; Udedibia v. State (1976) 11 SC 133 at 138-139 referred to and applied.]"

9. On Nature of circumstantial evidence required to convict of murder-

"Before an accused person can be convicted of murder based on circumstantial evidence, such evidence must be so cogent and compelling as to convince a jury that on no rational hypothesis other than murder can the facts be accounted. In this case except for the evidence of , the prosecution that appellant was seen on 21st January, 1978 in the deceased's company which evidence was denied, no other iota of evidence has connected both men to enable the court infer evidence of circumstances linking the death of the deceased to the appellant. [Ukorah v. State (1977) 4 SC 167 referred to] (P.254, paras. D - E)

10. "On Evaluation of circumstantial evidence - Circumstantial evidence may sometimes be conclusive but it must always be narrowly examined, if only because evidence of this kind may be fabricated to cast suspicion on another. It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference. (Mariagbe v. State (1977) 3 SC 47 referred to). (Pp 254, paras. H-AI)

At the end of the day appellant's appeal was unanimously allowed, and he was discharged and acquitted.

On the other hand, a case which went the other way was Supreme Court case of Francis Idika Kalu v. The State (1993) 6 NWLR (Pt.300) 385 in which the appeal was unanimously dismissed.

In that case the appellant was arraigned before the High Court of Imo State holden at Ohafia on a charge of the murder of one Uburu Abam by matcheting him to death on his neck contrary to S. 318(1) Criminal Code Cap. 30Vol.11 Laws of Eastern Nigeria, 1963.

Appellant pleaded not guilty to the charge and trial proceeded.

There was no eye witness to the killing, but evidence adduced at the trial made a compelling case of circumstantial evidence heavily stacked against the appellant. It was found "inter alia" that the appellant and the deceased were the only two occupants of their room; that immediately after the killing the appellant was found in the room standing over the deceased with a matchet in his hand dripping blood; the medical evidence was that the wound could not have been self-inflicted. The appellant's defence was a complete denial. At the end of the trial, the trial court convicted the appellant of murder and sentenced him to death by hanging.

The accused was dissatisfied with the High Court judgment, and so appealed to the Court of Appeal, which dismissed the appeal and affirmed his conviction and sentenced by the High Court.

On further appeal to the Supreme Court, the appeal was unanimously dismissed. The Supreme Court per WALl, J.S.C., who read the lead judgment made the following pronouncements on circumstantial evidence:-

"1. Where the circumstantial evidence adduced by the prosecution cogently, irresistibly, positively, unequivocally, unmistakenly and conclusively points to the accused as the perpetrator of the offence alleged to have been committed to the exclusion of any other, a court of law would be entitled to infer from such evidence and surrounding circumstances that the accused committed the offence and convict on such evidence.

In the instant case, from the evidence adduced it was the appellant that was last seen with the decease and the only one found with the deceased immediately an alarm was raised. The appellant was the one who opened the door when PW3 and other witnesses went to the scene. Thus, there were no other co-existing circumstances which would weaken or destroy the inference that it was the appellant that murdered the deceased. (Esai v. State (1976) 11 SC 39, Ukorah v. State (1977) 4 SC 167; Ntibunka v. State (1972) 1 SC, 71; Shazaliv. State (1988) 5 NWLR (Pt.93) 163; Kim v. State (1991) 2 NWLR (Pt.175) 622; State v. Edobor (1975) 9-11 SC 69; Omogodo v. State (1981) 5 SC. 5; Ibina v. State (1989) 5 NWLR (Pt.120) 238 referred to.) (Pp. 396, paras. E - F; 397, paras, D - F; 398 paras. A-B)

2. On onus on accused to rebut guilt, based on circumstantial evidence-

When the evidence adduced by the prosecution conclusively points to the accused as the perpetrator of the crime alleged to have been committed and the evidence is tested, scrutinized and accepted by the court, the onus is on the accused to rebut the presumption of guilt or to cast a reasonable doubt in the prosecution's case by preponderance of probabilities. (Ikebudu v. Bornu N.A. (1966) NNLR 44; Onakpoya v. Queen (1959) SCNLR 384 referred to P.396, paras. D -E)."

With the facts and decisions in the two cases set out above, the next question for determination is this:- to which of the above two cases does the instant case approximate? In other words, which of the two cases can be said to be on all fours with the instant case? It is my respectful view that the instant case is more on all fours with the Supreme Court case of Kalu v. The State (Supra) and not with the case of Okorogba v. The State (Supra). Both in the Kalu case, and in the instant case, the evidence was that the appellant and the deceased were the only two occupants of the room or house they occupied. In the instant case, only the appellant and the deceased lived in their house. There was no evidence that any other person occupied the house with them. The evidence was also to the effect that appellant was the last person to be seen with the deceased alive. They went to the farm together, and came back together in the evening, when deceased began to cook their food. The further evidence was also to the effect that when there was an alarm raised, only the name of appellant was mentioned by the deceased, saying "Ezediufu has killed me." One might even say that the mention of appellant's name by the deceased could even have the effect of removing this case from the realms of circumstantial evidence into that of "direct evidence." Perhaps the main difference between the instant case and that of Kalu's case is that in Kalu's case, those who rushed to the scene after hearing the alarm met the appellant in the deceased room standing over the deceased with a matchet in his hand, whereas in the instant case, by the time PW4 came from her house to the house of the deceased, the appellant had already removed his blood-stained knicker and put on something else; locked up the room, presumably with the corpse of the deceased still in it, and then came out to sit outside the room, eating or pretending to eat his "pot of yam." It stands to reason to say that it was after PW4 had returned to her house that night that the appellant swung into action once more, and quickly dug the shallow grave into which he buried his mother that night, and later embarked on washing the mother's bed and room the following morning. One must commend the police officers who did not confine their search or investigation to the room of the deceased alone, but extended their investigation to the backyard of the compound where the shallow grave of the deceased was discovered. Appellant must have been in such a hurry that night that he made such a shoddy work of burying his mother. Apparently there was no attempt at camouflaging the grave, hence it was easily located by the police the following day or day after. There was also no doubt about the identity of the deceased, going by the evidence of PW1 (her brother) and PW4, a long term family associate.

According to the appellant, his mother had travelled to Onitsha, and left him alone the mother had still not come back.

Regarding the directive in the case of Okorogba v. State (supra) and so many other cases to the effect that:

"Circumstantial evidence may sometime be conclusive but it must always be narrowly examined, if only because evidence of this kind may be fabricated to cast suspicion on another. It is also necessary before drawing the inference of the accused's guilt from circumstances which would weaken or destroy the inference (Mariagbe v. State (1977) 3 SC 47 referred to)."

I should also refer to the very recent case of Ijioffor v. State (2001) 3 NWLR (Pt.699) 55, where the appellant, the father of an unwanted baby because he was not yet married to the mother of the baby, on the date of incident succeeded in tricking the mother of the baby and other children out of the room, and then fed the baby with some corrosive liquid suspected to be acid. The baby screamed whereupon the mother and other children rushed in, and saw the appellant alone with the baby, and the baby later died. Appellant was later tried and convicted of murder and sentenced to death by Edo State High Court on circumstantial evidence. On appeal to the Court of Appeal, Benin Division, the appeal was unanimously dismissed.

**ROWLAND, JCA.**

In his short contribution had the following to say:

"In the instant case, there are no other co-existing circumstances which should weaken or destroy the case of the prosecution based on circumstantial evidence."

I have carefully considered, which other person could have had the opportunity of coming in to kill the deceased, when appellant was still in the house, and can find none. Appellant himself did not suggest that any other person had come into their house to do anything at the time the deceased shouted that "Ezediufu has killed me." It will therefore be perverse and absurd for this court or any other court to hold that there was possibility that a total stranger could have come in to kill the deceased and later bury her in that compound that night when appellant was still in the house, without any evidence to back up such a contention.

On the totality of the foregoing, I hold that the circumstantial evidence in this case were so strong, cogent and compelling, and pointed unequivocally to the appellant, and appellant alone, as the person who killed the deceased. The learned trial Judge therefore rightly convicted the appellant of the offence of murder, and sentenced him to death by hanging. This appeal therefore fails and is hereby dismissed. The conviction and death sentence passed on the appellant are hereby affirmed.

**FABIYI, J.C.A.:**

I had a preview of the judgment of my learned brother, Akpabio, JCA and I agree with him. The facts of the matter have been carefully assembled. I need not repeat same. It is uncommon for a person who is criminally minded to carry out his negative desires in public glare. If a mundane dastardly act is perpetrated during the dark recess of the night when there is no other mortal around, a court will have no option but to consider circumstantial evidence which is often referred to as the best form of evidence. Circumstantial evidence must be strong and compelling.

It must give rise to the drawing of a presumption or inference that is irresistibly warranted. It must be cogent enough as to convince a jury that on no rational hypothesis other than the inference can the fact be accounted for. Refer to Uwe Idigi Esai and Ors v. The State (1976) 11 SC 39; Peter Nwachukwu Eze v. The State (1976) 1 SC 125.

Circumstantial evidence must be examined narrowly and with care. To be sufficient for a conviction, it has to point to only one conclusion, namely that the offence has been committed and that it was the accused who had committed it. Refer to State v. Nafiu Rabiu (1980) 1 NCR 47 at page 50; Nasiru v. State (1999) 2 NWLR (Pt.589) 87 at page 98; The Queen v. Ororosokode (1960) SCNLR 501 at 504; (1960) 5 FSC 208 at p. 210.

As clearly set out in the lead judgment, the totality of the evidence led was cogent, compelling and unequivocal. They point only at the direction of the appellant and no other person. Only the name of the appellant was mentioned by his deceased mother saying .- "Ezediufu has killed me." The totality of the evidence leads conclusively and indisputably to his guilt. All accusing fingers point at him. Refer to Peba v. State (1980) 8-11 SC 76; Omogode v. State (1981) 5 SC 5. The trial Judge rightly drew the inference that it was the appellant who brutally caused the death of the deceased his mother. I have not been able to find any co-existing circumstances that weaken the inference made.

Appellant's counsel attempted to impress it upon us that the prosecution did not prove the case beyond reasonable doubt. I feel that from the whole gamut of the evidence adduced and the entire circumstance of the matter, the trial Judge rightly found that the prosecution proved the case against the accused beyond reasonable doubt. See Woolmington v. D.P.P (1935) AC 462; 481; Yongo and Anor: v. C.O.P. (1992) 9 SCNJ 113 at page 123; (1992) 8 NWLR (Pt.275) 36; Onubogu v. State (1974) 9 SC 10.

Proof beyond reasonable doubt has been codified by the provision of section 138 (1) Evidence Act, Cap. 112, Laws of the Federation of Nigeria, 1990. In Woolmingtons case (supra) Lord Viscount Sankey L.C. referred to proof beyond reasonable doubt as the 'golden thread' in English Criminal Law. To use the words of His Lordship Uwais, C. J.N., in Nasiru v. State (1999) 2 NWLR (Pt.589) 87 at p. 98, proof beyond reasonable doubt is not proof beyond "any shadow of doubt". It is not proof beyond all iota or shred of doubt. I feel the rule was postulated within the realm of reason and should not be stretched beyond the required reasonable limit. Otherwise, it will cleave. I strongly feel that the rule should only be employed in deserving cases. And this is certainly not one of the cases where it can be rightly employed.

My learned brother has ably covered all the issues canvassed in this appeal. I also feel that the appeal lacks merit and should be dismissed. I order accordingly. The conviction and death sentence passed on the appellant by the trial Judge are hereby affirmed.

**M. D. MUHAMMAD, J.C.A.:**

My learned brother Akpabio, JCA in his characteristically meticulous manner has dealt with all the issues raised by this appeal in the lead judgment he has just delivered a preview of which I had before now.

Undoubtedly, the evidence relied upon by the lower court in convicting the appellant is circumstantial. This evidence has passed the test and has the requisite quality which such evidence must possess to sustain a conviction. The evidence adduced before the court was cogent and points irresistibly to the convict. It is safe to convict on this body of evidence.

The appellant cannot be heard also to say that the evidence does not exist or that the trial court had not evaluated same. The evidence given by the prosecution witnesses remains uncontroverted and unshaken. The lower court was right to have relied on the evidence after a careful evaluation.

Lastly, it is very evidence from the record that not only was the appellant aware of the charge against him but that he followed and understood each turn of the trial. No injustice can be said to have been caused the appellant.

I also adopt the fuller reasons in the lead judgment to dismiss this appeal.

*Appeal dismissed.*

CASES REFERRED TO IN THE JUDGMENT:

Akpan v. State (1994) 9 NWLR (Pt.368) 347

Dim v. R (1952) 14 WACA

Emery v. State (1973) 3 SC 215

Emiowe v. State (2000) 1 NWLR (Pt.641) 408

Erekanure v. State (1993) 5 NWLR (Pt.294) 385

Esai v. State (1976) 11 SC 39

Eze v. State (1976) 1 SC 125

Faro v. I.G.P (1964) 1 ALLNLR 6

Kajubo v. State (1988) 1 NWLR (Pt.73) 721

Kalu v. State (1993) 6 NWLR (Pt.300) 385

lkebulu v. State (2001) 3 NWLR (Pt.699) 55

Mariagbe v. State (1977) 3 SC 47

Mohammed v. State (1997) 9 NWLR (Pt.520) 169

Nasiru v. State (1999) 2 NWLR (Pt.589) 87

Nwaeze v. State (1996) 2 NWLR (Pt.428) 1

Okorogba v. State (1992) 2 NWLR (Pt.222) 244

Omogodo v. State (1981) 5 SC 5

Onubogu v. State (1974) 9 SC 1

Peba v. State (1980) 8-11 SC 76

Peter v. State (1997) 3 NWLR (Pt.496) 265

Queen v. Ororosokode (1960) SCNLR 501

Rabiu v. State (1980) 2 NCLR 117 I

Rarmo v. State (2000) 1 NWLR (Pt.641) 424

Sani v. State (2000) 1 NWLR (Pt. 642) 520

Woolmington v. D.P.P (1935) AC 462

Yongo v. C.O.P. (1992) 8 NWLR (Pt.257) 36

STATUTES REFERRED TO IN THE JUDGMENT:

Constitution of the Federal Republic of Nigeria, 1979, S. 33 (5) and (6)(a)

Constitution of the Federal Republic of Nigeria, 1999, S.36 (5) and (6)

Criminal Code Act, Cap. 30, Laws of Eastem Nigeria, 1963, S. 318(1)

Criminal Code Act, Cap. 77, Laws of the Federation of Nigeria,

1990, Ss. 27, 28, 319 and 370

Criminal Procedure Act, Cap. 80, Laws of the Federation of Nigeria, 1990 S.215

Evidence Act, Cap. 112, Laws of the Federation of Nigeria, 1990, S.138(1)