**NAFIU RABIU**

**V.**

**KANO STATE**

IN THE SUPREME COURT OF NIGERIA

ON FRIDAY, THE 21ST DAY OF NOVEMBER, 1980

SC.49/1980

**LEX (1980) - SC. 49/1980**

**OTHER CITATIONS**

**2**PLR/1980/26 (SC)

*(1980) 8-11 S.C. (REPRINT) 85*

**BEFORE THEIR LORDSHIPS**

UDO UDOMA, JSC

AYO GABRIEL IRIKEFE, JSC

CHUKWUNWEIKE IDIGBE, JSC

ANDREWS OTUTU OBASEKI, JSC

KAYODE ESO, JSC

AUGUSTINE NNAMANI, JSC

MUHAMMADU LAWAL UWAIS, JSC

**BETWEEN**

NAFIU RABIU Appellant(s)

**AND**

KANO STATE Respondent(s)

**ORIGINATING COURT(S)**

1. FEDERAL COURT OF APPEAL, HOLDEN AT KADUNA (Coram: Nasir P., Kazeem and Nnaemeka-Agu, JJCA.,)

2. HIGH COURT OF KANO STATE (Jones, CJ.,)

**REPRESENTATION**

F. R. A. WILLIAMS, SAN., (with him, B. KEHINDE, J. A. KESTER, and O. J. IDIGBE) - For Appellant

AND

KEHINDE SOFOLA, SAN., (with him, Miss O. SOFOLA and Miss O. OGUNDIPE) - For Respondent

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

CRIMINAL LAW AND PROCEDURE:- Murder - Proof of - Double Jeopardy - Whether the rule against double jeopardy applies to criminal proceedings in Nigeria

CONSTITUTIONAL LAW AND JURISPRUDENCE:- Constitution – Nature thereof in contradistinction to an Act of the Legislature – Duty and responsibility of the Supreme Court thereto

CONSTITUTIONAL LAW:- Interpretation – Where the question is whether the Constitution has used an expression in the wider or in the narrower sense – Need for the court to focus on where the justice of the case leans – Whether the court is to prefer broader interpretation unless there is something in the context or in the rest of the Constitution to indicate that the narrower interpretation will best carry out its object and purpose

CONSTITUTIONAL LAW:- Prosecution powers of the Attorney General – Constitutional basis - Right of appeal arising therefrom– Section 220 and 222 of the 1979 Constitution – Who may exercise power as a person of authority – Effect of Statute made pursuant thereto

CONSTITUTIONAL LAW:-  Section 277 (1) of the 1979 Constitution - Meaning of 'decision' - Whether prosecutor has right of appeal against a decision acquitting a defendant

HEALTHCARE AND LAW:- Drug poisoning and autopsy– Medical reports and justice administration – Elimination of the possibility of drug poisoning – Whether not contradicted by presence of high level of alcohol in body of deceased persons – Effect on proof of murder

HEALTHCARE AND LAW:- Murder – Proof of – Evidence of medical experts – “Asphyxia resulting from strangulation” and “cardiac arrest” – Duty of court not confuse different medical conditions – Implication for justice administration

CHILDREN AND WOMEN LAW:- Homicide by throttling the neck– Seizing a person usually a woman by the throat, to quieten or prevent her cries, but without intention to kill or cause grievous bodily harm - Circumstances in which same will amount to manslaughter rather than murder – How treated

CHILDREN AND WOMEN LAW: *Women and Security/Murder* - Wife-killing - “Reckless throttling and strangling of woman” in the heat of anger and drunkenness – Women and Justice Administration - Role of competent pathologist, diligent prosecutors and judges in justice administration – *Children and Security* - Father who exposed children to the corpse of their mother propped up as alive in her room just to orchestrate his alibi - How treated

ETHICS – COURT - PROSECUTION: Need for trial COURT to evaluate and interpret evidence properly – when        prosecution needs to press home point as to inadequate sentencing – attitude of appellate courts to failure theret

**PRACTICE AND PROCEDURE ISSUES**

APPEAL:- Where the most appropriate order of an appeal court is to send  the case back to the trial judge with a direction that the appellant be convicted of the offence proved against him - Trial Judge retired from the service and left immediately on the conclusion of case – Where cross-appeal had been withdrawn – Need for appellate court to make the most prudent order

COURT - SUPREME COURT:- Duty and ultimate responsibility of declaring and interpreting provisions of the Constitution – Need to always to bear in mind that the Constitution itself is, a mechanism under which laws are to be made by the Legislature and not merely an Act which declares what the law is

COURT:- Maxims:- “expressium facit cessare tacitum (i.e. what is expressed makes what is implied to cease)” – “expressio unius est exclusio alterius (i.e. the express mention of the one thing implies the exclusion of the other)” - "bis vexari pro una et eadem causa" (i.e. twice tried for one and the same offence or cause)” – Meaning and implication for statutory interpretation

COURT:- Question of fact as distinct from question of law – How determined – Need to distinguish between primary facts and conclusions from those facts – when conclusions of facts become question of law – Relevant considerations

COURT:- Principle that that no court is bound to speculate on what possible defences can be open to an accused person before it - Where in a trial for  homicide, the evidence suggests a line of defence – whether it is the duty of the trial court to consider and deal with that defence whether or not the accused or his counsel expressly raised the defence by the legal terminology ascribed to it by lawyers"

COURT:- Maxims and pleadings - Special pleas of "autrefois acquit", and "autrefois convict" – Effect

COURT - DUTY OF COURT:Criminal cases and defences - Whether a court has a duty to consider a line of defence which is not raised by the accused in a case of homicide

EVIDENCE:- Medical evidence – Proof of death – Death due to asphyxia – Need for court not to confuse same with cardiac arrest – Effect of failure thereto

JUDGMENT:- Appeal based on a complaint than an inference drawn by the trial court is absolutely unsupported by the evidence or that the decision is so manifestly unreasonable, that no reasonable tribunal could have come to that conclusion on the evidence – whether appeal raises an issue of law or fact

INTERPRETATION OF STATUTES:- 'include' - Whether used in order to enlarge the meaning of words or phrases occurring in the body of a statute – Duty of court to construe same in a non-restrictive manner – “Means” – Where used by statute – Whether the definition is meant to be explanatory and prima facie restrictive

INTERPRETATION OF STATUTE - DEFINITION OF WORD IN STATUTE: where a statute defines a word – Whether meaning restricted to the given interpretation

INTERPRETATION OF STATUTE - SECTION 220(1) OF THE 1979 CONSTITUTION: interpretation of section 220(1) of the 1979 Constitution

INTERPRETATION OF STATUTE: - "DECISION" - Meaning per 227(1) OF THE 1979 Constitution

WORDS AND PHRASES - "Include", "Decision"- Meaning thereof

NOTABLE PRONOUNCEMENT:-

*“On the basis of the testimony of the four doctors, the learned trial Chief Judge appeared to have misunderstood completely the effect of the medical evidence in relation to the time and the cause of the death of the deceased. He appeared to have been swept off his balance by Dr. William O. Odesanmi, the research scholar, on alcoholic poisoning. If it was ever the intention of the defence, which I feel sure it was not, to confuse issues by calling so many medical doctors, who themselves never saw the body of the deceased, and also disagreed among themselves as witnesses, it is very clear that the doctors succeeded exceedingly well in confusing the learned trial Chief Judge”*

**MAIN JUDGMENT**

**C. IDIGBE, J.S.C. (Delivering the Leading Judgment):**

In these proceedings the appellant is one Nafiu Rabiu of Dawaki Road, Nasarawa, Kano and the respondent is the State of kano. We have before us an appeal from a judgment of the Federal Court of Appeal holden at Kaduna (Nasir P., Kazeem and Nnaemeka-Agu, JJCA.,) which allowed the appeal of the State of Kano from the judgment of the High Court of Kano State (Jones, CJ.,) whereby the appellant was discharged and acquitted at the end of his trial, in the State High court, on a criminal charge of culpable homicide (punishable with death) of his wife, Hajiya Fati Mohammadu Nafiu, on the 10th day of May, 1979. The appellant contends that the Federal Court of Appeal (hereinafter, called the Court of Appeal) has no jurisdiction to entertain the appeal which came before it, and consequently erred in law when by its judgment delivered on the 5th day of May, 1980, it reversed the decision of the High Court of Kano State and convicted the appellant of an offence of culpable homicide (not punishable with death).  
  
  
I will set out the facts so far as they are material to the issues raised in this appeal. On the 9th May, 1979, the appellant and his wife (Hajiya Fati Mohammadu Nafiu, hereafter referred to simply as "the deceased"), and three of their friends had dinner in the garden of their residence at 13 Dawaki Road Nasarawa, Kano. The District Head of Jahun (P.W.4) one of their guests was the last to leave the residence, and this was between the hours of 10p.m. and 11p.m. P.W.4 in his evidence said that when he left the deceased and the appellant, the former "was quite alright." This evidence was also confirmed by two employees of the appellant, P. w. 3 (the driver) and P.W.2 (the cook) who said in his evidence, "I left Hajiya Fati in good health, joking..." There is evidence that when the last of the invitees left 13 Dawaki Road, all other employees of the appellant had retired to their various homes; that is, after P. W.4 (the District Head of jahun) had gone, the appellant and the deceased were the only persons left in the garden. It is pertinent to mention that there is evidence that, at the request of the appellant, P.W.3 who usually kept the key of the only entrance to the premises (i.e. the gate) handed that key to the appellant who offered to lock the gate when the last of the invitees should leave the party. It is in evidence that the only employee of the appellant who lived within the premises (13 Dawaki Road) in the "Boys quarters" is the driver (P.W.3). He had no key to any of the doors leading into the main or principal house (occupied by the deceased and the appellant). P.W. 2 (the cook) had a key that could only let him in from the premises into the kitchen; he had no key that could let him into any other part of the principal or main house.

In the morning of 10th May, 1979, P. W. 2 (the cook) came to the premises at the hour he usually reported for duty, he could not enter as the gate was still locked. He saw P.W.3 (the driver), who normally kept the key to this gate, standing outside the main house but within the premises; he did not have the key to the gate. After waiting for about two hours, the appellant gave to P.W.3 the relevant key; this was about 10 a.m. The appellant was still inside the main house but threw the key to P.W.3 from one of the windows. A little later the appellant called on P.W.2 (who was now within the premises) to open the kitchen door adding that he had misplaced the key to the "front door", this is, the main entrance into the principal house. Later, appellant came out of the house carrying a brief case and some quantity of "soiled blankets and clothes" which P.W.3, (at his appellant's request) later placed into the boot of one of his cars (a Peugeot 504). The driver (P.W.3) later, on the instructions of the appellant, drove his other car ( a Mercedes-Benz saloon) to the Kano Airport to make the same (i.e. the car) available to the appellant's mother-in-law who was, as the appellant claimed, due to arrive in kano from Niamey, by air, that morning. The appellant later drove away in the Peugeot 504 car; however, he told P.W.2 (the cook), before driving away in the Peugeot car, to give to the deceased, who in the meantime was - according to the appellant - still asleep, whatever she required, whenever she woke up. Before he drove away in the  Peugeot car, the appellant also gave to P.W.2  the key of the door leading from the kitchen into the lounge and other parts of the main house; it was the first occasion, since the employment of P.W.2 that he had possession of this key. On his return from the Kano Airport P.W.3 reported to the appellant at his office which is located in some other part of kano city; the appellant asked him to take the Peugeot car to a mechanic as it needed some repair. Before taking the Peugeot car to the mechanic the driver P.W.3 examined the boot in order to remove "the soiled blankets and clothes" he had earlier placed there that morning before the car was driven away by the appellant; the soiled blankets and clothes, however, were no longer there.

About 2 p.m. of the same day P.W.8 (another driver in the employment of the appellant) on the instructions of the appellant brought his (appellant's) children from another part of Kano to the house  to call on their mother (the deceased). The children having been let into the house by P.W.2 went into their mother's room, on the first floor to call on her. Later the children called out on P.W.2 saying that they tried to wake up their mother but she failed to respond to their call. P.W.2 advised that they should all wait for the return of the appellant, who arrived in his Mercedes saloon car shortly after P.W. 2 had given this advice. They all went into the room and discovered that Hajiya Fati Mohammadu Nafiu was dead.

In his judgment the learned trial Judge Jones, CJ., was of the view that the medical evidence on the cause of death was unsatisfactory and did not establish the cause of  death. He was unable therefore to find it proved beyond reasonable doubt that the appellant had, as stated in the information, preferred against him, killed his wife by "strangulation". Accordingly, the appellant was "acquitted and discharged." As this appeal will, in the end, turn on the reasonable view which can be taken of the medical evidence before the trial court I will deal later in this judgment with that evidence. Dissatisfied with this decision, the prosecutor (the State of Kano) appealed to the Court of Appeal. The main contentions of the  appellant in opposition to the respondent's appeal in that court, as it appears to me from the record, are as follows:-

(1)     the prosecutor in Kano State has a right to appeal only on a point of law; he does not have a right of appeal on grounds of facts, or mixed law and facts. The former right is available to him by virtue of sub-section (2) of Section 284 of the Criminal Procedure Code of the Northern States (hereafter referred to simply as "the C.P.C.") applicable in Kano State and (i.e. together with) sub-section (1) (b) of Section 220 of the 1979 Constitution of the Federal (hereafter referred to simply as "1979 Constitution"). He disagreed with the submission of the respondent (then, the appellant) that a right of appeal on a point of law alone is available to the prosecutor under subsections (1) (a) and (1) (b) of Section 220 of the 1979 Constitution; a right of appeal on grounds of law under sub-section (1) (b) of the Constitution, he submitted, is available only in a non-final decision. According to the appellant, a right of appeal on grounds of facts or mixed law and facts is not available to the prosecutor unless he could bring himself within the provisions of sub-section (a) of Section 222 of the 1979 Constitution. He contended that:

(i)     Under the 1979 Constitution there is a general right of appeal (i.e a right of appeal not only on grounds of law but also on grounds of facts and/or mixed law and facts) from a final decision of the High Court, sitting at first instance, only by virtue of the provisions of sub-section (1) (a) of the 1979 Constitution. In Criminal proceedings, such a general right of appeal is available generally to an accused person. it can, he submitted also, be exercised by the Attorney-general of the federation or of a  State only by virtue of the provisions of sub-section (a) of Section 222 of the Constitution; and by virtue of the said provisions such a general right of appeal is also available to "any other person or authority" if and when it is specifically assigned to such "other person or authority", or whenever it can be shown that the exercise of such a general right of appeal by such "other person or authority" has been "prescribed" in any other legislation not inconsistent with the provisions of the 1979 Constitution: and he contended that the provisions of sub-section (2) of Section 284 of the C.P.C. do not in any way qualify as a "prescription" under sub-section (a) of Section 222 aforesaid.

(2) Since none of the grounds on which the State of Kano appealed to the Court of Appeal is one of law, and since, further, the appeal before that court is not one brought "by the Attorney-General" under the provisions of sub-section (a) of Section 222 of the Constitution, the  appellant submitted that the appeal is incompetent. In the circumstances, since the Court of Appeal had not the necessary jurisdiction to entertain the appeal, it ought to have been dismissed.

In fairness to their Lordships of the Court of Appeal, I think it is proper to point out, at this stage, that the issue relating to the prosecutor's right of appeal from a judgment or order of acquittal by the High Court sitting at first instance, was raised incidentally in the course of a challenge made generally on the jurisdiction of the Court of Appeal to entertain the appeal; which challenge in any event, was made rather belatedly. Indeed, both the learned counsel for the appellant and the respondent had on each side argued extensively on matters relating not only to law but also to facts as well as mixed law and facts before learned counsel for the respondent in that court (Chief Williams) took the points which I have set out above. Not having been taken up in limine, Mr. Kehinde Sofola, learned counsel for the appellant (respondent herein) did not give detailed or effective reply to the submissions thereon by Chief Williams. Their Lordships of the Court of Appeal, therefore, did not have (as we have had in this court) the benefit of a full argument on the issue. In the circumstances, their Lordships of the Court of Appeal were also obliged to deal, in their several judgments, with the arguments on fact as well as mixed law and facts placed before them. Chief Williams has repeated the above contentions in this court; he, however, added more and I will set out and consider them later in this judgment.

However, their Lordships of the Court of Appeal having given due consideration to the above contentions, took the view that the prosecutor in Kano State, and in all states to which the provisions of Section 284 of the C.P.C. are applicable, has a right of appeal from an order of acquittal made by a State High Court sitting at first instance in criminal proceedings. In their Lordships' view that right of appeal is exercisable by the prosecutor only in respect of a point of law arising from such an order; and the right stems from the provisions of sub-section (2) of Section 284 of the C.P.C. and sub-section (1) (b) of Section 220 of the 1979 Constitution, the earlier sub-section not being inconsistent with the latter. It was their view also that the right of appeal given to the prosecutor under sub-section (2) of Section 284 of the C.P.C. is preserved under the 1979 Constitution by virtue of sub-section (a) of Section 222 of the said Constitution. The view can be gathered from a passage in the leading judgment of the learned President (Nasir P.) with which their Lordships (Kazeem and Nnaemeka-Agu, JJCA.,) concurred; and it reads:

"...It seems quite clear from the provisions of Section 284 (2) of the C. P. C. that a prosecutor in Kano State may appeal to this court as of right against acquittals on any question of law from a decision of the High Court sitting at first instance. In my view that power was given to the prosecutor by virtue of the last portion of Section 222 (a) of the Constitution which enables the person or authority at whose instance an appeal in criminal proceedings can be lodged subject of course to the powers of the Attorney-General of Kano State under Section 191 of the Constitution to take over and or discontinue such proceedings. This power exercisable by the prosecutor under Section 284 (2) C.P. C. is in pari materia with the powers contained in Section 220 (1) (b) of the Constitution. Hence in my view there is no conflict between the powers contained in the two sections. Consequently, I am of the opinion that a prosecutor may appeal as of right to this court both under the Criminal Procedure Code of Kano State  where the grounds of appeal involve questions of law alone against decisions in any criminal proceedings. The term 'decision' has been interpreted in Section 277 of the Constitution to mean 'in relation to a court, any determination of that court and includes judgment, decree, order, conviction, sentence or recommendation.' In view of this definition, the contention of Chief Williams [learned counsel for the respondent in the Court of Appeal] that Section 220 (1) (b) of the Constitution only permits of an appeal in non-final decisions is untenable..." (square brackets and underlining supplied by me.)

Thus satisfied that they have the necessary jurisdiction to entertain the appeal, their Lordships heard and considered arguments on the merits of the appeal which in the end they allowed.

The appellants (respondent in the Court of Appeal) being dissatisfied with the said decision now appeals to this court. Several grounds of appeal were filed by the appellant but it is, in my view, only necessary to set out those grounds of appeal in respect of which there was exchange of arguments in this court; and these are:

"(1)   The Federal Court of Appeal erred in law in failing to uphold the objection of the accused person to their jurisdiction to entertain the appeal when –

(a)     there was no right to appeal as of right from the decision of the High court acquitting the accused person; and

(b)     if (which is not conceded) such a right exists it is exercisable only at the instance of the Attorney-General of the State...

(2)     The Federal Court of Appeal erred in law  in altering the decision of the Kano High Court and making their own findings of fact when the prosecution has no right of appeal as of right on questions of fact.

(3)     The Federal Court of Appeal erred in law in convicting the accused person of a charge on which on the findings of fact made by the Kano High Court, he could not have been convicted.

(4)     The Federal Court of Appeal erred in law in not dismissing the appeal of the State in limine when the prosecution failed to establish beyond reasonable doubt that the deceased died as a result of strangulation.

(5)     The Federal Court of Appeal erred in law and on the facts in finding that the deceased died in the course of a fight between her and the appellant when no such case was made in the Kano High Court or to the Federal Court of Appeal and such a case was inconsistent with the case for the prosecution.

(6) ...

(7) ...

(8)     The conviction of the appellant ought to be quashed because the findings of the Federal Court of Appeal on the probable cause of death are contrary to the medical/scientific evidence which the learned Chief Judge found credible and acceptable. The appeal court made their own findings by wrongly assuming the role of experts and making assumptions which are unsound and unsupportable.

(9)     Both the Federal Court of Appeal and the Kano High Court were wrong on the facts in finding that if the deceased was killed by manual strangulation, no one but the appellant could have done it."

In respect of grounds (1) (a) and (b) the argument and contentions of Chief Williams, learned counsel for the appellant, goes beyond his submissions in the Court of Appeal. The sum of his contention is:

(1)     That there is no right of appeal by the prosecution from an order of acquittal made by the High Court, sitting at first instance, in criminal proceedings. If there was any such right at all under the provisions of any other law such provisions must now be regarded as inconsistent with the 1979 Constitution.

(2)     If (which is not conceded) the prosecutor has a right of appeal from an order of acquittal by the High Court sitting at first instance, the prosecutor can exercise the entire right of appeal reserved under sub-section (1) (a) of Section 220 of the Constitution only if he can bring himself within the provisions of sub-section (a) of Section 222 of the Constitution.

(2)(a)  If (which is not conceded) such a right is available to the prosecutor in the Northern States to which the C.P.C. is applicable then as it can only exist by virtue of the provisions of sub-section (2) of Section 284 of the C.P.C., it can only be exercised in respect of a point of law arising from the said judgment of the High Court.

(3)     There is no right of appeal by the prosecutor on grounds of fact or mixed law and facts from an order of acquittal by the High Court sitting at first instance in criminal proceedings. Such a right was available to the prosecutor under the 1960 and 1963 Constitutions by virtue of the provisions of sub-section (3) of Section 284 of the C. P. C. which are now inconsistent with the provisions of Section 221 of the 1979 Constitution. Accordingly he submits that sub-section (3) of Section 284 of the C. P. C. must now be regarded as invalid.

In support of the above contentions learned counsel for the appellant referred this court to Sections 220(1) (a), 220 (1) (b), 220(1) (g) (v), 221 (1) 222(a), and the definition of the term "decision" as contained in Section 277 (1) of the 1979 Constitution, and Section 284 of the C. P. C. In respect of the definition of the term "decision", Chief Williams drew the court's attention to the phrase "without prejudice to the generality of the foregoing" which although present in the definition of the term in the 1960 and 1963 Constitutions is remarkably absent in the 1979 Constitution. I consider it desirable to set out  these relevant sections at this stage; they read:

"220 (1):An appeal shall lie from the decisions of a High Court to the Federal Court of Appeal as of right in the following cases –

(a) final decisions in any civil or criminal proceedings before the High Court sitting at first instance.

(b) Where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings.

(c) ....

(d) ....

(e) ....

(f) ....

(g) decisions made or given by the High Court

(i)...

(ii)...

(iii)...

(iv)...

(v) in such other cases as may be prescribed by any law in force in Nigeria.

222(1): Subject to the provisions of Section 220 of this Constitution an appeal shall lie from decisions of a High Court to the Federal Court of Appeal with leave of that High Court or the Federal Court of Appeal.

222: Any right of appeal to the Federal Court of Appeal from the decisions of a High Court conferred by this Constitution –

(a) shall be exercisable in the case of civil proceedings at the instance of a party thereto, or with leave of the High Court  or the Federal Court of Appeal at the instance of any other person having an interest in the matter, and in the case of criminal proceedings at the instance of an accused person or, subject to the provisions of this Constitution and any powers conferred upon the Attorney-General of the Federation or the Attorney -General of a State to take over and continue or to discontinue such proceedings, at the instance of such other authorities or persons as may be prescribed;

277(1): "decision" means, in relation to a court any determination of that court and includes judgment, decree, order, conviction, sentence or recommendation;

The 1960 and 1963 Constitutions define the term "decision" in Sections 110(7) and 117(7) respectively thus: "means in relation to the High Court of a territory any determination of that High Court and includes (without prejudice to the generality of the foregoing - See 1960 Constitution: without prejudice to the generality of the foregoing provisions of this sub-section - See 1963 Constitution), a judgment, decree, order, conviction, sentence....or recommendation." (Brackets and  capitals supplied.)

Section 284 of the C.P.C. reads:

"(1) Appeals from the High Court in criminal matters shall be in accordance with the provisions of the Constitution of the Federation.

(2) The prosecutor may appeal as of right to the Federal Court of Appeal on any question of law from a decision of the High Court sitting at first instance.

(3) The prosecutor may appeal with leave of the Federal Court of appeal or of the High Court to the Federal Court of Appeal;

(a) on any question of fact or of mixed law and fact from a decision of the High Court sitting at first instance; or

(b) ....."

Having referred the court to the sections of the Constitutions (1979, 1960 and 1963) and of the C. P. C. which I have just set out, learned counsel for the appellant then adduced argument in support of his contentions. On the issue of right of appeal by the  prosecutor, learned counsel submits that since the definition of the term 'decision' in Section 277 (1) of the 1979 Constitution does not specifically include an order of acquittal in criminal proceedings, the expression 'decision' should not be given a meaning which was never intended by the Legislature. We were then referred to a  number of English, Irish and American court decisions in support of this contention. Learned counsel for the appellant, further makes the following submissions: The courts in England, Ireland and America, he says, have always insisted that rights of appeal in criminal cases are prima facie referable only to accused persons complaining against their conviction. If a right of appeal is intended for the prosecution, thereby putting an accused person in peril for the same cause after a previous acquittal, the legislature should say so in "clear words without ambiguity."

It is the submission of learned counsel for the appellant that any other contrary view will conflict with the common law rule embodied in the maxim nemo debet bis vexari pro una et eadem causa which he says is the foundation of the defences of autrefois convict and autrefois acquit. this principle or rule of common law, he maintains, is reflected in Section 33 (9) of the 1979  Constitution which reads:

"no person who shows that he has been tried by any court of competent jurisdiction for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence save upon the order of a superior court."

Chief Williams, learned counsel for the appellant seeks to ascribe to the above provisions of Section 33(9) of the Constitution the same meaning and effect as can be derived from the ratio decidendi in some American court decisions - such as *Kepner v. United States 195 U. S. 100, and Green v. U.S. (1961) 365 U. S. 301, United states v. Sanges 144 U.S. 310*, which are based on the Fifth Amendment to the Constitution of the United states of America the relevant portion of which enacts as follows:-

"...nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb." (Underlining by me.)

Finally, on this issue, Chief Williams submits that the effect of the provisions of sub-section (9) of Section 33 aforesaid is that apart from cases where a superior court directs a retrial, an accused person shall only be tried once; and it is his further submission that proceedings on appeal being a "trial" of the accused person within the meaning of Section 33 aforesaid constitute a "second trial".

My Lords, the above contentions made on behalf of the appellant raise exceptionally important points of principles in relation to the right of appeal by the prosecutor under the present Constitution of the Federation (i.e. the 1979 Constitution). It is the duty of this court which has the ultimate responsibility of declaring and interpreting provisions of the Constitution always to bear in mind that the Constitution itself is, a mechanism under which laws are to be made by the Legislature and not merely an Act which declares what the law is. Accordingly, where the question is whether the Constitution has used an expression in the wider or in the narrower sense the court should always lean where the justice of the case so demands to the broader interpretation unless there is something in the context or in the rest of the Constitution to indicate that the narrower interpretation will best carry out its object and purpose.

My Lords, I am unable to accept the contention of Chief Williams, learned counsel for the appellant that the term 'decision' in Section 277 (1) of the 1979 Constitution should receive the extremely narrow meaning which he seeks to place on it; nor am I persuaded to the view which he takes of the application of the common law rule embodied in the maxim nemo debet bis vexari pro una et eadem causa to the provisions of sub-section (9) of Section 33 of the Constitution, all in his effort to convince this court that an order of acquittal made by the High Court in criminal proceedings, does not come within the term 'decision' in Section 277 (1) aforesaid.  
  
  
It has, in my respectful view, quite rightly been said that sometimes, however, the word 'include' is used in order to enlarge the meaning of words or phrases occurring in the body of a statute; and when it is so used those words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include [See Lord Watson in Dilworth v Commissioner of Stamps (1899) AC. 99 at 105 and 106]. It is well known that where a statute defines a word simply as "means so and so", the definition is meant to be explanatory and prima facie restrictive but where the word is so defined to  "include' so and so" then the definition is clearly intended to be extensive; and as stated in Nutter v. Accrington Local Board of Health (1879) 4 QBD 375 at 385-6, "the interpretation clause is not restrictive. It does not say that the 'street' shall be confined to any highway 'not being a turnpike-road', but that it shall 'apply to and include' any highway not being a turnpike-road, etc. That is enlarging not restricting the meaning of 'street' ..." [Underlining supplied.]

I now turn to examine the definition of the term 'decision' in Section 277 (1) of the 1979 Constitution; and it seems clear to me that the definition having made use of the expression "any determination" - emphasis being laid by me on the word "any", and it being remembered that the dictionary meaning of the word "determination" is also "a judicial decision" see Webster New 20th Century Dictionary, unabridged 2nd Edition - there is no justification for excluding 'an order of acquittal by a court' from the term 'decision' in Section 277 (1) aforesaid. Learned counsel for the appellant further submits that the  specific mention of the word 'conviction' without any mention of the word 'acquittal' does signify, by the application of the maxim expressium facit cessare tacitum (i.e. what is expressed makes what is implied to cease), an intention on the part of the legislature to exclude 'an acquittal' from the ambit of the definition given in the section aforesaid. That maxim sometimes also stated as expressio unius est exclusio alterius (i.e. the express mention of the one thing implies the exclusion of the other) after all is only an aid to construction of written documents but it generally has very little weight where, as here, it is possible to show that there is no intention to effect an 'exclusio alterius' by the use of any "expressio unius"; and I have, sufficiently shown this to be the position when I drew attention to the deliberate use by the Legislature of the expression "any determination" in the 'definition' with which we are concerned. Again, it seems to me that as we endeavour to interprete the word 'decision' in Section 277 (1) aforesaid we ought to bear in mind also that sometimes it never occurs to the draftsman that the particular word which is the subject of contention needed to be specifically mentioned especially if, as here, on reading the entire section of the statute concerned, the inference can be gathered that there was, indeed, no need to make any specific mention of that particular word. There again, one may refer to the observations of Willis, J., in Cologhoun v. Brooks, where he said:-

"I may observe that the method of construction summarised in the maxim 'expressio unius exclusio alterius' is one that certainly requires to be watched. Perhaps few so-called rules of interpretation have been more frequently misapplied and stretched beyond their due limits. The failure to make the 'expresssio' complete very often arises from accident, very often the fact that it never struck the draftsman that the thing supposed to be excluded needed specific mention of any kind; and the application of this and every other technical rule of construction varies so much under differing circumstances... that it is rarely that such rules help one to arrive at what is meant..." [(1887) 19 QBD 400 at 406]

Here, it is, in my view, safe to assume that having used the expression "any determination" in the definition under consideration, the draftsman hardly considered the word 'acquittal' to be worthy of specific mention after using such additional words as judgment, order, conviction, decree (which really is the word generally used for judgments in the courts of Chancery).

With regard to the situation in England, America or Ireland on (1) the issue of right of appeal and (2) the principle of, or rule against, double jeopardy, I think in the end, it is to our own laws, that is, the Constitution and laws of this country that we must turn in order to reach the conclusion whether the rule against double jeopardy applies here and, if so, to what extent. It is, to me, beyond any argument, that the common law rule embodied in the maxim nemo debet bis vexari pro una et eadem causa applies to criminal proceedings in this country; in so far, however, as concerns the question under consideration, that is, whether a right of appeal from an order of acquittal in a criminal proceedings is available to the prosecutor, it is my respectful view that (1) not only does learned counsel for the appellant seek to place a wrong meaning on the word 'tried' in the expression "bis vexari pro una et eadem causa" (i.e. twice tried for one and the same offence or cause), but (2) in applying the maxim - which our legal system accepts - one has to bear in mind the limitations placed on the scope of the maxim by our own Constitution and other laws. Prior to 1960, the right of appeal from a verdict of a Criminal Court was (as is the case at common law in England) available only to the accused person. However, with the coming into force of the 1960 Constitution, the Legislature of the Regions of this country were for the first time in the legal history of this country severally specifically empowered, to make provisions for a right of appeal by the prosecutor and they each took advantage of this specific provision; and Section 284 of the Criminal Procedure Code of the Northern States is one example of this exercise. It is clear that, as far back as 1960, the laws of this country recognise that a prosecutor should in certain circumstances have a right of appeal, albeit limited, from an order of acquittal by the High Court; and as I said earlier, it is necessary that we should always bear in mind, when interpreting certain words and provisions in our Constitution, the exact nature and scope of the said Constitution. Secondly, it is my view that sub-section (9) of Section 33 of the 1979 Constitution clearly anticipates that in the course of a "trial" of an accused person from courts to courts for one and the same criminal offence, a court higher than the last of the intermediate courts may order a retrial notwithstanding that in the process of "trial" from one court to the other one of the intermediate courts may have made an order of acquittal in respect of the accused person; in those circumstances there is, in my view, still but one and the same trial and not -as learned counsel for the appellant contends - another or second trial. I am, indeed, fortified in this view by a passage in the judgment of a very eminent judge, Holmes, J., in the case Kepner v. United States (1903) 195 U.S. 100 at 130; also 24 Supreme Court Reporter 797 at 806-807, which repays quotation. Dissenting from the majority judgment in that case, Holmes, J., observed:-

"It is more pertinent to observe that it seems to me that logically and rationally a man cannot be said to be more than once in jeopardy in the same case, however often he may be tried. The jeopardy is one continuing jeopardy. Everybody agrees that the principle in its origin was a rule forbidding a trial in a new and independent case where a man has already been tried once. But there is no rule that a man may not be tried twice in the same case ... If a statute should give the right to take exceptions (exceptions for error in trial i.e. a right of appeal) to the government, I believe it will be impossible to maintain that the prisoner would be protected by the Constitution from being tried again...For the reasons which I have stated a second trial in the same case must be regarded as only a continuation of the jeopardy which began with the trial below" [Underlining, brackets and contents therein, supplied by me. Two other justices, White and McKenna, JJ., concurred in the dissenting opinion of Holmes, J.].

In the result, although Chief Williams, learned counsel for the appellant has, indeed valiantly put up a sustained and in many ways persuasive argument, I am, with considerable respect to him of the firm view that, on these issues (i.e. the limitation he seeks to place on the term 'decision' in Section 277 (1) aforesaid and the apparently unrestricted application of the common law rule of double jeopardy) he cannot be right, and that the term 'decision' in Section 277 aforesaid includes an order of acquittal made by a court in criminal proceedings.

I will not turn to the arguments and contentions of learned counsel for the appellant in regard to Sections 220 (1) (a), 220 (1) (b), 221, 222 (a) of the 1979 Constitution, Section 284 of the C. P. C., and also to his main submission that if the prosecution has a right of appeal from an order of acquittal in criminal cases, such a right can be exercised only on a point of law and not in respect of facts or mixed law and facts. The 1979 Constitution gave a general right of appeal, that is, a right of appeal as of right on law and facts (and this includes mixed law and facts) from decisions in criminal cases given by the High Court sitting at first instance. This right is contained in sub-section (1)(a)of Section 220; and it is the first time in the legal history of this country that such a right of appeal has been given to a party in criminal proceedings. In the former Constitutions  (1960 and 1963) such a general right was confined to decisions in civil proceedings and was not available to a party in criminal proceedings. A right of appeal as of right enured for the benefit of a party in criminal proceedings on questions of law alone from a decision of the High Court sitting at first instance [see Sections 110 (2) (b) of the 1960 Constitution and - prior to the Constitution Amendment Act (No. (2)) No. 42 of 1976 - Section 117 (2) (b) of the 1963 Constitution]; the latter right was removed by Act No. 42 of 1976. A right of appeal by leave (and not as of  right) on facts or mixed law and facts enured for the benefit of such a party by virtue of sub-section (4) (b) of Section 110 of the 1960 Constitution and - prior to Act 42 of 1976 - by sub-section (4) (a) of Section 117 of the 1963 Constitution. However, in the 1979 Constitution, this general right of appeal is confined only to final decisions of the High Court sitting at first instance. With very great respect to their Lordships of the Court of Appeal, I do not share their view (as expressed in the leading judgment of Nasir, P.) that the contention of Chief Williams that sub-section (1) (b) of Section 220 of the 1979 Constitution "only permits an appeal from non-final decisions is untenable." In my view, the submission of Chief Williams is, indeed, tenable. Here, again, a close examination of the provisions of the 1960 and 1963 Constitutions will show that for the first time in the legal history of this country (i.e by the 1979 Constitution) a right of appeal - as of right and not by leave of court - has by subsection (1) (b) of Section 220 aforesaid, been given to parties or litigants on questions of law alone but, as it appears to me, only in (1) non-final (i.e. interlocutory) decisions and (2) in decisions given by the High Court - whether in civil or criminal proceedings - when not sitting at first instance (i.e. in a case of 'double appeals' which really are appeals coming before the High Court from lower courts). Prior to the 1979 Constitution a party appealing from a decision which falls into the second category, that is, in the case of 'double appeals' in civil or criminal proceedings, whether on point of law, facts or mixed facts and law, could only do so by leave of the court.

Mr Kehinde Sofola, learned counsel for the respondent submitted to us that Section 284 (1) of the C.P.C. is invalid and that the prosecutor's right of appeal exists by virtue of sub-section (1) (a) of Section 220 of the Constitution. According to Mr. Sofola sub-section (2) of Section 284 of the C.P.C. cannot override the Constitution, that is the provisions of subsection (1) (a) of Section 220 thereof by purporting to confine the prosecutor's right of appeal to questions of law alone when the Constitution has provided a general right of appeal (i.e. on law, facts and also mixed law and facts). It is, therefore, the submission of Mr. Sofola that  the prosecutor by virtue of Section 284 (2) of the C.P.C. can exercise the right of appeal given under Section 220 (1) (a) of the Constitution. To the extent, therefore, that Section 284(2) conflicts with the Constitution the former is, in the view of Mr. Sofola, invalid. Chief Williams, learned counsel for the appellant, in reply to this part of Mr. Sofola's sub-mission contends that the right of appeal given under sub-section (1) (a) is exercisable only by a person or authority who can bring himself or itself within the provisions of sub-section (a) of Section 222 of the Constitution; and in his view a prosecutor under Section 284 of the C.P.C. cannot, without more, qualify under Section 222 (a) aforesaid unless he is by special legislation "prescribed" to exercise that right. Further, Chief Williams contends that the validity of Sections 284 (2) and 284 (3) survived under the 1960 and 1963 Constitutions by virtue of (a), Sections 110 (2) (c) and 110 (4) (d) in respect of the 1960 Constitution; and (b), Sections 117 (2)(f) and 117 (4) (d) in respect of the 1963 Constitution respectively. The validity of sub-section (2) of Section 284 of the C. P. C. is preserved in the 1979 Constitution by sub-section (1) (g) (v) of Section 220 thereof. There is, he submits, no provision in the 1979 Constitution similar to Section 110 (4) (d) and 117 (4) (d) of the 1960 and 1963 Constitutions which sustained the provisions of sub-section (3) of Section 284  of the C.P.C.; on the contrary the provisions of Section 221 of the 1979 Constitution are, in the view of Chief Williams, clearly against these provisions (i.e. Section 284 (3) ). Accordingly, Section 284 (3) of the C. P. C. is, in the view of Chief Williams, invalid, and he, therefore, submits that the contentions of Mr. Sofola that the prosecutor can rely on that sub-section to maintain an appeal on facts or mixed law and facts from an order of acquittal is untenable.

However, there is no doubt in my mind that under the 1979 Constitution the right of appeal under sub-section (1) (a) of Section 220 can be exercised only by persons who come under the provisions of Section 222 (a) of the said Constitution. A prosecutor, unless he can bring himself within the provisions of Section 222 (a) aforesaid cannot exercise that right. While I agree with chief Williams, learned counsel for the appellant, that for a "person or authority" to qualify for the exercise of the general right of appeal in respect of criminal proceedings, it is necessary, unless such a person or authority acts under or by authority of the Attorney-General, that he be "prescribed" by special legislation under Section 222 (a) aforesaid to exercise this right, I do not agree with him that prescription by special legislation under Section 222 is a sine qua non to the exercise of the right of appeal under Section 220 (1) (a) aforesaid by such person or authority. It seems to me that if it can be shown that  by implication or express provision under an existing law as defined in Section 274 of the 1979 Constitution, any person therein mentioned has qualified for the exercise of the right of appeal conferred by Section 220 (1) (a), then such a person comes within the provisions of Section 222 (a) aforesaid. This must be so in view of the definition of the term 'prescribed' in the Section 277 (1) of the 1979 Constitution. I have carefully examined sub-section (2) of Section 284 of the C.P.C and after due consideration of the same, I am of the firm view that the 'prosecutor' therein mentioned is not a 'person' prescribed under sub-section (a) of Section 222 aforesaid. The exercise by the Legislature in Section 284 (2) demonstrates a case where a State Legislature bearing in mind the existing rights under the Constitution decides to create a new right of appeal not ordinarily or directly available to the Prosecutor; and  also bearing in mind, as is evident from the provisions of sub-section (1) of Section 284 of the C. P. C., that whatever right it creates must not be inconsistent with the Constitution existing at the time of its enactment, proceeds to create the new right of appeal. Since it expressly provides a right of appeal from decisions of the High Court sitting at first instance [as opposed to decisions of that court on a 'double appeal' in Section 284 (2)], that section cannot be read with Section  220 (1) (b) of the 1979 Constitution (which as I have stated earlier on deals with 'double appeals' and interlocutory matters); but must be read together with Section 220 (1) (a) which deals with decisions of the High Court given at first instance, that is, sitting at first instance. What the Legislature of the State has done is that it has deliberately given an additional but deliberately limited new right of appeal (i.e. a right of appeal, from decisions of the High Court at first instance, only on a point of law). It, however, has not given an inconsistent right. Had the State Legislature, for example, proceeded to create a new right of appeal on a point of law by leave of court (instead of, as it has  done, as of right) then such a provision will now clearly offend the clear provisions of Section 220 (1) of the 1979 Constitution and will, without any shadow of doubt, be inconsistent with it and, consequently, invalid.  
  
  
It is, however, my view that the validity of Section 284 (2) of the C. P. C. is preserved under the new Constitution by virtue of sub-section (1) (g) (v) of Section 220 thereof. [Yekini Onigbeden v. Ishola Balogun (1975) 1 all NLR 233 at 241; National Employers Mutual General Insurance Association v. Uchav (1973) 1 NMLR 170 at 172-3; Kiren v. Paschal and Ludwig Incorporate (1978) 11 and 12 S. C. 77] My Lords, the conclusion which I have reached, therefore, is that the prosecutor in the Northern States has a right of appeal from an order of acquittal, made by a High Court sitting at first instance, in criminal proceedings but only on points of law.  
  
  
My Lords, having now dealt with the preliminary issues on points of law and particularly on the right of appeal by the prosecutor from an order of acquittal, I now propose to deal with the substance of this appeal. Except for the medical evidence, the facts in this case have earlier on been fully set out. Briefly stated, the medical evidence given by Dr. Bansi Badan Tribedi, a senior Consultant Pathologist on the Kano Health services Management Board who carried out the post-mortem examination on the body of the deceased is as follows:-

"The body was that of a thinly built, fair adult female; the face was cyanosed (i.e. blue), there was froth and foam at the mouth and nostrils, the eyes were injected and the pupils dilated, the finger nails and toe nails were intense blue, rigor mortis was present in the lower limbs, faeces were present between nates."

His findings included among others "external injuries of two linear oblique abrasions on the right side of the face," also "transverse contusions and abrasions on the right neck." There were several wounds on the forearm, back of the left shoulder and at the back, and also lacerations on the "middle of front of left knee" There were scratches on the front and inner sides of both thighs. Dr. Tribedi sent several 'samples' from the deceased's body to the Government Chemist for analysis and report. The samples include (a) Urine from the bladder for pregnancy test; one of the kidneys; portion of the liver; stomach and contents; some blood of the deceased. In his opinion the deceased died early on the 10th of May, 1979 and the cause of death was "due to asphyxia resulting from strangulation; choking by hands."

Under cross-examination, Dr. Tribedi (P.W.1) said that prior to sending the "samples" from the body of the deceased (hereafter referred to as "the deceased-samples") to and receiving a report  thereon from, the Government Chemist he was of the opinion that death was due to "asphyxia and cardiac arrest" ; however, after the receipt of the report from the chemist he was of the firm view that cause of death was "asphyxia resulting from strangulation". In his opinion all the wounds he saw on the body were ante-mortem; and the contusions he saw on the neck was "one of his grounds" for the opinion that death was "due to strangulation". He observed from chemist's report that alcohol was "found in certain of the organs", but it was not enough or sufficient to kill. Further, P.W. (1) said as follows:

"Yes in my final report I said it was established that death was due to strangulation. This was because Exhibit 5 (i.e. the Chemist's Report) shows there was no evidence of poisoning...from any drug or chemicals which can produce cyanosis such as barbiturates, antihystamines. I wanted to exclude them as a cause of cyanosis before giving final opinion, before I was definite that it was (a case of) strangulation. The absence of poison was a main factor I wanted to ascertain. Before the Chemist Report I was not sure if death was due to strangulation and poisoning or strangulation alone..." [Brackets and contents as well as  underlining supplied by me.]

Dr. Tribedi said that although he found some salicylate - a constituent of aspirin - in the stomach he, however, found no sign of salicylate poisoning, such as (presence of) blood in the stomach. There is nothing in Exhibit 5 (the Chemist's Report) to show presence of blood in the stomach. It merely confirmed Dr. Tribedi's evidence that there "was salicylate in the stomach contents."

The defence called three witnesses, viz- D. W. 1 (Dr. Oladele Darocha Afodu) a Chief Consultant Pathologist in the Federal Ministry of Health, Lagos; D. W. 2 Dr. Nasirudeen Olashemi Akinade) a clinical and Forensic Pathologist; and D.W.3 (Dr. William Olutele Odesami) a Consultant Pathologist at the University of Ife. The appellant himself did not give evidence. Dr. Afodu D.W.1 was of the opinion that cardiac arrest can occur during asphyxia. This witness in his evidence stated thus: "To the extent that Exhibit 6 (read Exhibit 5, the Chemist's Report) excludes any other poisoning except alcohol, I can understand how it led to the Kano Pathologist's opinion - death due to strangulation." Further, he said, "from the medical and chemist reports I have no doubt this was asphyxia death. Strangulation is a possibility. Other possibilities in this case are strangulation by ligative. I would not like to say any others in this case." In other words, Dr. Afodu had no doubt that this was a case of death due to asphyxia of which strangulation was a possibility; and he would not like to hazard a view as to possibilities other than strangulation in this case. Exhibit 5 the chemist's Report disclosed that there was a level of 306 mg of alcohol per 100 ml in the blood of the deceased and also a level of 455.7 mg of alcohol per 100ml in the urine of the deceased. Dr. Akinade (D.W.2) and Dr. Odesami (D.W. 3) were each of the opinion that deceased died from alcoholic poisoning. According to Dr. Akinade this was because he considered the level of the alcohol content in the blood and urine of the deceased high enough to give rise to coma. This witness (D.W.2) put in a book in Forensic Medicine in support of his computation of the level of blood content that could lead to coma and also to death in the average human being and as the learned trial Judge found that the evidence of the witness was not supported by the book on Forensic Medicine produced by him, he (the learned judge) rejected this aspect of his evidence. However, before leaving this  witness it is desirable in my view, to draw attention to certain essential aspects of his (D.W.2's) evidence which read:-

“(1) A report of death due to asphyxia lacks being specific. Asphyxia by strangulation is more specific.

(2) Taking into consideration the temperature in Kano the time of death (of the deceased) was between 12 midnight and 6.am on 10th May, 1979.

(3) That normal symptoms of death from manual strangulation include external appearance, in white (i.e fair) persons, of (a) cyanosis (b) protusion of tongue and (c) frothy exadent from nostrils. (d) In some cases but not in all, fracture of the hyoid bone (i.e bone at the base of the tongue in the neck.) It is worthy of note that external appearances (a) -(c) were present in the case of the deceased.

(4) The end result of strangulation...cardiac arrest will cause lack of oxygen to the tissue and asphyxia to the brain.”

Dr Odesamni (D.W.3) was unable to agree that death was due to asphyxia by strangulation because of the "high level of alcohol and some salicylate in the stomach"; and he added "I wonder what was the level (meaning of salicylate) in the blood; there must have been some." According to D.W.3, "Cause of death cannot be both asphyxia and cardiac arrest." Such a finding, he said, "is confusing." I should point out straightway that one need not be a doctor or pathologist to see the patent conflict in this last piece of evidence with that of both D.W.1 and D.W.2. There was of course no evidence whatsoever of presence of salicylate in the blood. I think I should point out at this stage that Dr. Odesanmi himself did not carry out the autoposy on the deceased, he did not even see the body. Although D.W.2 was of the opinion that this was a case of death from asphyxia possibly resulting from strangulation Dr. Odesanmi "disagreed that death was due from strangulation" and he added: "there was nothing to substantiate strangulation." Further in his evidence Dr. Odesanmi said that he disbelieved that there were contusions on the right side of the neck, and thought they were livid stains. In his final analysis, the learned judge was of the view that Dr. Odesanmi  was wrong in believing that the contusions were livid stains. Dr. Odesanmi also testified - contrary to D.W.2 - that" the symptoms of froth are not consistent with strangulation." Finally, this witness said:

"I have made special study of sudden and unexpected death from ethanol (alcohol) poisoning. In six cases I studied the level ranged from 331 mg to 767 mg per 100ml...304 mg. (of alcohol) is at the lower limit of range of fatal alcohol level.”

I have taken so much time in setting out essential details and aspects of the medical evidence before the learned trial Judge because, as I intend to show anon, I am of the very firm view that not only did he not make very good use of his having seen the witnesses, he failed to advert to very essential aspects of the evidence before him and consequently failed to draw the proper inferences from the medical evidence in the case. However, I would like to point out some of the earlier findings of the trial Chief Judge which make it clear that the main question in this appeal is whether or not it has been clearly established that the deceased died by strangulation or whether there is any lingering doubt that she may have died from alcoholic poisoning?

The learned Chief Judge found that if the deceased was strangled she was strangled by the appellant. The learned Judge came to this conclusion in this way:

"The case for the defence is that it has not been sufficiently proved that during this period (i.e 11p.m. on the night of 9th May, 1979) and the time the children saw (the deceased) at about 2.p.m the following day only the accused was with the deceased, especially from the time the accused left the house on the morning of the 10th of May, at about 10 a.m. until the children visited the house at about 2 p.m. Secondly, that in any case the deceased did not die from strangulation, but from alcohol poisoning. The defence of course does not have to prove alcohol poisoning. It has only to show a possibility of alcohol poisoning such as to raise a reasonable doubt of the Government Pathologist's (i.e. D.W.1, Dr. Tribedi's) opinion that death was due to strangulation ..."[Brackets and contents supplied by me.]

Having set out the above premises, the learned trial Chief Judge continued:-

"As to the possibility of a third person being criminally implicated in the death of the deceased, I have been unable to find evidence to raise a reasonable doubt that throughout the relevant time nobody but the accused was with the deceased...The idea that at anytime relevant to the death of the deceased a third person entered the house or was in the house and had the opportunity to attack the deceased is in my view far too tenuous to be considered as a possibility even when a man's life may rest upon that view...I cannot find and I do not believe that any judge or jury could find in the evidence before this court a reasonable doubt that if the deceased was strangled she was strangled by the accused."

I will now proceed to other passages in the judgment of the learned Chief Judge which in my view not only amounted to non-advertence to the evidence before him but, indeed, to considerable and serious misdirection on the evidence before him. Said, the learned Chief Judge:

"...He (i.e. Dr. Tribedi) admitted that he had not been careful in differentiating between the terms cardiac arrest and cardiac failure."

I would like to say straightaway that I have most carefully examined the recorded evidence of Dr. Tribedi on this point and I find no such admission express or implied. The learned Chief Judge continuing stated:

"...He (i.e. Dr. Tribedi) admitted, and this was a point stressed by the defence, that until he received the Government Chemist's Report ruling out possibility of death by poisoning he was not prepared to state categorically that death was due to strangulation. Only after poisoning had in his opinion been ruled out did he add to his original finding death due to asphyxia cardiac arrest and said I quote from Exhibit 5. 'In view of the above report from the chief Scientific Officer Kaduna  the cause of death in my opinion is now established as follows: Asphyxia resulting from strangulation'." [Brackets and contents as well as underlining supplied by me.]

In my view, the above passage is on the whole, indeed, most unfair to Dr. Tribedi, in addition it exhibits a gross misconception of both the "point stressed by the defence" as well as the entire evidence of Dr. Tribedi: that is, on his original or tentative opinoin as to the cause of death and the more definite or final opinion he formed on the cause of death, after receipt of the Chemist's Report (Exhibit 5).

At the risk of being considered unduly repetitive, I will again draw attention to the following facts:-

(a) The point stressed by the defence was not that death was due to any poisoning other than alcohol.

No question of death by alcohol poisoning at any time weighed in Dr. Tribedi's mind. Dr. Tribedi's evidence is clear on this issue: Said he,

"The Chemist's Report...means that alcohol was found in certain organs of the deceased. It also refers to level of alcohol in the blood. To me that meant only that there was some alcohol in the blood. I inferred that the amount was not sufficient to kill the deceased...In my final report I said it was established that death was due to strangulation. This was because Exhibit 5 shows there was no evidence of poisoning, that is from any drug or chemicals which can produce cyanosis, such as barbiturates, antihystamines. These poisons have nothing to do with asphyxia. I wanted them excluded as a cause of cyanosis (NOTE: the evidence in this case suggests that cyanosis - which is a symptom of death by manual strangulation (see D.W.2.) is also symtomatic of death from other poisons) before giving final opinion, before I was definite that it was strangulation. The absence of poison was main factor I wanted to ascertain. Before the Chemist's Report I was not sure if death was due to strangulation and poisoning or, strangulation alone"

(NOTE: he was however sure that at least strangulation of which asphyxia is a follow-up was, indeed, at least a contributory) [Brackets and contents as well as underlining supplied by me].

I should mention here once again that Dr. Tribedi's opinion prior to the receipt of Exhibit 5 (the Chemist's Report), which, indeed, from his evidence was meant to be tentative, was that death was due to asphyxia/cardiac arrest, an expresssion which he explained later in evidence to mean: Asphyxia 'and' (not, 'or', as was suggested to him in cross-examination) cardiac arrest - a sudden cessation of complete functioning of the heart.

Having so far misapplied the evidence before him and having failed to advert to certain aspects of it, the learned trial Chief Judge continued:

"...I am influenced by the admitted fact that the government Pathologist Dr. Tribedi, P.W.1 did not feel able to give a specific cause of death (asphyxia cardiac arrest) until he had ascertained from the report of the Government Chemist that death had not been caused by poisoning. [Note: My earlier comments on the immediately foregoing paragraph show this conclusion to have derived from wrong assessment of, and non-advertence to some of the very important trial Chief Judge.] His final finding of asphyxia caused by strangulation depended then much on his view of the Chemist's Report on deceased's alcohol content. [NOTE: If anything, the evidence of Dr. Tribedi shows quite clearly that he made no use of this report in so far as it relates to the alcohol content on the organs of the deceased.] Had the marks been a clear indication of strangulation he would not have found it necessary to wait for the Chemist's report. I must then conclude that the neck injuries are not unequivocal.

[NOTE: Here, again, this analysis by the learned trial chief Judge, indeed, overlooks the distinct evidence of Dr. Tribedi's earlier on set out by me that the contusions on the right side of the neck was a case of death by strangulation.]

On the above analysis, which in my view has not taken into proper perspective a good deal of the essential evidence before the trial court, that court came to the conclusion that it cannot find it proved beyond reasonable doubt that death was due to strangulation. Accordingly, it did not find the charge against the appellant proved, whereupon the appellant was acquitted and discharged of the charge of culpable homicide, punishable with death, of his wife (the deceased). On appeal by the prosecution from this judgment the Court of Appeal reversed this verdict and substituted one of guilty of culpable homicide not punishable with death and sentenced the appellant to a term of 4 years imprisonment. There was a cross-appeal by the prosecution in which it contended that the Court of Appeal ought to have found it proved that the appellant was guilty of culpable homicide punishable with death. This cross-appeal was, in the course of argument of the main appeal before us, withdrawn by the prosecution; and it was accordingly struck out.

The principal contention of the appellant before us is that most of the grounds argued by the prosecution in the Court of Appeal dealt with facts and some, at best, dealt with mixed law and facts; and it was submitted to us that it was not open to the prosecution to argue such grounds of appeal under sub-section 2 of Section 284 of the C.P.C. Although, as I pointed out earlier on, this point was not taken in limine before the Court of Appeal, and indeed it was taken only after both sides had argued in extenso on facts as well as mixed law and facts it must, however, be conceded that since it is a point of law it can be taken at any stage of the appeal; what is more, it can be, and has been, taken up before us. I am of the settled view that in this case the prosecution can only appeal on a point of law (Section 284 (2) of the C.P.C. refers). Be that as it may, one of the grounds taken up and argued before their Lordships of the Court of Appeal reads:

"Having failed to assess and evaluate the evidence relating to the cause of death, the learned Chief Judge misdirected himself in his assessment of the facts and thereby erroneously concluded as follows:-

'I am influenced in my decision by the admitted fact that the Government Pathologist Dr. Tribedi... did not feel able to give a specific cause of death (asphyxia/cardiac arrest) until he had ascertained from the report of the Government Chemist that death had not been caused by poisoning. His findings of asphyxia caused by strangulation depended then ..."

I have already stated that this passage in the judgment of the trial court failed to take into account essential aspects of the evidence before it and consequently resulted in erroneous conclusion. However, learned counsel for the appellant contends that this ground of appeal is, indeed, one of fact or, at best, of mixed law and fact and it was not one which could be considered by the Court of Appeal. My Lords, it seems to me, however, that the question we have to answer is this: On the primary facts proved or given in evidence, is the conclusion of the learned Chief Judge that death was not due to strangulation (which is one of secondary fact) one which a reasonable jury or a judge sitting as a jury can reach? Surely, it is settled that if a jury (or a judge sitting also as jury) came to a decision which no reasonable jury applying their minds to proper considerations and giving themselves proper directions, (against non-directions, as is also the case here) can come, then an appeal court having jurisdiction to entertain an appeal from such a decision only on a point of law, will reverse such a decision because the position then is exactly the same as if the jury (or the judge sitting as a jury)  have come to a decision of fact which no evidence whatsoever supports and such a decision must be considered erroneous in law, and also perverse. [See: the Divisional Court in Bracegirdle v. Oxley (1947) 1 All ER 126 (a decision of a court of five).] In Bracegirdle (Supra) Lord Goddard CJ., observed:

"It is, of course, said that we are bound by the findings of facts set out in the case by the justices, and it is perfectly true that this court does not sit as a general Court of Appeal against justices' decisions in the same way as quarter sessions, for instance, sit as a Court of Appeal against the decisions of courts of summary jurisdiction. In this court we only sit to review the justices' decisions on points of law, being bound by the fact which they find, provided always that there is evidence on which the justices can come to the conclusions of fact at which they arrive."

In this connection I consider it necessary to draw attention to the observations of Denning, J., (as he then was); said the learned judge:

"The question whether a determination by a tribunal is a determination in point of fact or in point of law frequently occurs. On such a question there is one distinction that must always be kept in mind, namely, the distinction between primary facts and conclusions from those facts. Primary facts are facts which are observed by the witnesses and proved by testimony; conclusions from those facts are inferences deduced by a process of reasoning from them. The determination of primary facts is always a question of fact. It is essentially a matter for the tribunal who sees the witnesses to assess their credibility and to decide the primary facts which depend on them. The conclusions from those facts are sometimes conclusions of fact and sometimes conclusions of law...The court will only interfere if the conclusion cannot reasonably be drawn from the primary facts, and that is the case here. The conclusion drawn by these justices from the primary facts was not one that could reasonably be drawn from them." (Underlining by me.) See (1947) 1 All ER A 130 D-F.) [See also *Kingman v. Seager (1938) 1 KB 397; Durnell v. Scott (1939) 1 All ER 183.*]

In the cases of *Kingman v. Seager (Supra) Durnell v. Scott (Supra) and Bracegirdle v Oxley (Supra)* the cases were returned by the Divisional Court to the Justices not for retrial but in each instance with a direction to convict as the offences have in each instance been proved. I am of the considered view that no reasonable jury (or judge sitting as a jury) applying their minds to proper consideration of the primary facts proved in this case and giving themselves proper directions at the same time not failing to advert to some of the proved primary facts, as the learned trial chief Judge failed to do in this case, could have failed to reach the conclusion that the cause of the deceased's death was asphyxia resulting from strangulation. That being so, it is my view that the conclusion reached by the trial court in this case is indeed, perverse and ought to be reversed as indeed the Court of Appeal quite rightly, in my view, has done.

My Lords, the next question which has to be dealt with is whether the Court of Appeal was right in the conclusion which it reached that the appellant was guilty of culpable homicide not punishable with death. This relates to one of the grounds of appeal filed and argued in his written brief by the appellant; and it reads:-

"The federal Court of Appeal erred in law and on the facts in finding that the deceased died in the course of a fight between her and the appellant when no such case was made to the Kano High Court or to the Federal Court of Appeal, and such a case was inconsistent with the case for the prosecution."

The complaint of the appellant in this ground of appeal relates to certain passages in the judgment of the Court of Appeal as expressed by the learned President. Said the learned President:

"The next question is whether the offence proved was culpable homicide punishable with death or not. There was the undisputed circumstantial evidence upon which it could be logically inferred that the couple had a fight in the night. There was no evidence of any weapon used. There was also evidence that a drunken person could be strangled with little pressure. In Poulson & Gee on Forensic Medicine 3rd Edition at p. 427, the learned authors had this to say:

'Homicide by throttling in circumstances of manslaughter rather than murder may occur during an altercation when in a temper (when) one of the parties seizes a person usually a woman by the throat, to quieten or prevent her cries, but without intention to kill or cause grievious bodily harm.'

I think that was probably what happened in this case. Hence, I am of the opinion that in the circumstances of this case, the accused did not know that what he did to the deceased was probable to cause death. But does this in law completely exculpate the accused? It does not. It merely makes it culpable homicide not punishable with... I am satisfied ... that the learned Chief Judge had not adequately dealt with the possibility of the defence of a sudden fight which was clear from the circumstantial evidence as it would have been possible in the light of all the evidence available...I will, as was done by the Supreme Court in *Karuwa Takida v. The State (1969) 1 all NLR 270* substitute a conviction of the lesser offence of culpable homicide not punishable with death..." [Underlining by me.]

Now, the case of Karuwa Takida (Supra) re-stated the general principle of law that no court is bound to speculate on what possible defences can be open to an accused person before it, but where in a trial for  homicide, the evidence suggests a line of defence it is the duty of the trial court to consider and deal with that defence "whether or not the accused or his counsel expressly raised the defence by the legal terminology ascribed to it by lawyers." In this case although neither the appellant - who himself did not give evidence - nor his counsel raised the defence of homicide in the course of a sudden fight, the learned trial Chief Judge duly considered this line of defence and quite rightly, in my view, came to the conclusion that it was not available to the appellant. Said the learned Chief judge:

"With regard to the blood stains there is no evidence as to their age. It is implied in the prosecution case that they were all caused that night but no expert has said so...

Similarly in respect of the scattered furniture (in the bedroom on the previous afternoon. I cannot assume that all the disarray of the furniture (exactly what was scattered and how was not specified) was effected on the fatal night. It is not for the defence to disprove what has not been proved. I am surprised that no attempt has been made by the prosecution to put the necessary date and time of these pieces of evidence. I cannot assume that evidence of the earlier condition of the room was available, but even if it was not available, I cannot for that much of the onus of proof which rests upon it." [Underlining by me.]

It is my view that (1) the evidence in this case does not suggest a line of defence as was the case in *Karuwa Takida* (Supra); (2) not only was the view taken of the situation by the learned Chief Judge right but, also, (3) their Lordships of the Court of Appeal - with very great respect to them - erred in their reasoning which led them to the conclusion that a verdict of culpable homicide not punishable by death was open on the facts in this case.

My Lords, the question which then arises is what is the proper verdict in this case? I have already stated that the learned trial Chief Judge, quite rightly, took the view that: (1) the appellant was the only person who with the deceased throughout the relevant period, that is, 11.p.m. of 9th May, 1979 to 10.am. of 10th May, 1979, when the appellant left 13 Darawaki road at Nasarawa Kano (their residence); (2) if the deceased was strangled to death, the appellant was the only person who could have strangled her. It has also been shown that the learned Chief Judge erred in holding that it has not been proved that the cause of death was asphyxia resulting from strangulation; indeed, the evidence before the court leads without any shadow of doubt to that conclusion, that is, that the cause of death was asphyxia resulting from strangulation. This, also, is the view of their Lordships of the Court of Appeal who duly reversed the verdict of the trial court. Learned counsel for the appellant, however, contends in his written brief as follows:-

"It is respectfully submitted that Section 20 (4) of the Decree enables the court to substitute a verdict of conviction in lieu of a verdict of acquittal of the offence charged. It does not enable the court to substitute a verdict of conviction for another offence. Compare Section 24 of the Decree which deals with appeals from the High Court sitting in exercise of its appellate jurisdiction. As far as the Decree is concerned it is submitted that where the Federal Court of Appeal quashes the verdict of acquittal and does not choose to order a new trial it can only substitute a verdict of guilty of another offence in the exercise of its power to determine the case itself." [Underlining by me.]

I pause to observe that "Decree" referred to in the above submission of Chief Williams is the Federal Court of Appeal Decree No. 43 of 1976. I would also observe that by virtue of the Adaptation of Laws (Re-Designation of Decrees etc.) Order 1980 the word "Decree" should now read "Act". In this appeal we are, indeed, concerned only with the first part of the submission of learned counsel for the appellant; and I entirely agree with that part of his submission. In other words, the proper verdict which was open to the Court of Appeal to substitute when it reversed the verdict of Jones, CJ., was, indeed, one of culpable homicide punishable WITH DEATH (not, culpable homicide NOT punishable with death). When the court drew attention of counsel on both sides to this point, Mr. Sofola, learned counsel for the respondent said that the prosecution no longer wished to pursue its cross-appeal. Learned counsel for the appellant, Chief Williams, realising the likely result which further insistence by him on this ground of appeal would bring, said that he had filed that particular ground of appeal because the prosecution had filed a cross-appeal; since the prosecution  was no longer pursuing its cross-appeal, he no longer was pursuing that ground of appeal. I pause again to observe that the point concerned is one of law which this court can ex proprio motu, take. However, this being a criminal appeal and, the prosecution having withdrawn their cross-appeal, although aware of this specific point, I would be content myself with a dismissal, without more, of this appeal.

In the event, My Lords, I would dismiss this appeal for the grounds stated in this judgment and will not disturb the verdict of the Court of appeal. There being no appeal or cross-appeal against sentence, this court ought not to interfere with the sentence passed by the Court of Appeal. My Lords, I would, therefore, like to make it clear that it is with considerable regret that I am unable to disturb the sentence of 4 years imprisonment for this offence which appears to me to call for a much more severe punishment.

This appeal is hereby dismissed and the judgment and sentence of the Court of Appeal are hereby affirmed.

**SIR U. UDOMA, J.S.C.:**

The appellant was charged with and tried of the offence of culpable homicide, punishable with death under Section 221(b) of the Penal Code in the High court, Kano, Jones, CJ., as he then was, sitting alone.

At the trial, the primary facts as to the events leading to, and the circumstances surrounding the death of Hadjia Fati Mohammadu Nafiu, who, up to the time of her death, was the wife of the appellant as testified to by witnesses for the prosecution who, on these aspects of the evidence, were not even cross-examined, were not in dispute save and except as to –

(1)  the accessibility of the room in which the deceased was found lying dead in bed to other criminal intruders or trespassers; and

(2)     the cause of death based on expert medical evidence.

At the close of the case for the prosecution, according to the Record of Proceedings, the learned trial Chief Judge ruled that a prima facie case had been made out against the appellant to answer.

In the exercise of his undoubted fundamental right, the appellant did not give evidence. (See Section 33(11) of the Constitution.) He, however, called expert medical evidence to challenge the evidence of the witnesses for the prosecution only as to the cause of death.

In a reserved judgment at the conclusion of the trial, the learned Chief Judge considered the case of the prosecution laying particular emphasis on the fact that the charge against the appellant had specified that death was caused by strangulation. He properly directed himself as to the  case of the prosecution and stated that it was based upon circumstantial evidence, which according to him, was "perfectly good evidence upon which to base conviction if it supports unequivocably the inference that the crime was  committed by the accused" (appellant). He then proceeded to set out "the proved circumstantial evidence", the details whereof are unnecessary to repeat in this judgment, and thereby accepting, without reservation, the primary facts established by the oral testimony of the witnesses for the prosecution, the only exception to this being the medical evidence as to the cause of death upon the examination of which he thereafter embarked.

In dealing with the defence, he observed briefly that the appellant did not give evidence. He held, quite rightly, in my view, that on the authority of the Queen v. Enebiene Ijoma (1962) 1 All NLR 402, he was perfectly entitled to draw the inference that the "evidence of prosecution witnesses, which the court has no other reason to doubt, for lack of rebutting evidence is true". The learned Chief Judge dismissed the possibility of the homicide of Hadjia Fati Mohammadu Nafiu having been perpetrated by an outside intruder as was suggested by the defence, after having given careful consideration to the matter when he said:

"As to the possibility of a third person being criminally implicated in the death of the deceased, I have been unable to find evidence to raise a reasonable doubt that throughout the relevant time nobody but the accused was with the deceased...There was no break -in. The idea that at any time relevant to the death of the deceased a third person entered the house or was in the house and had the opportunity to attack the deceased is in my view far too tenuous to be considered as  possibility even when a man's life may rest upon that view."

The learned Chief Judge then turned to consider the evidence as to the cause of death. For this he relied heavily on the expert evidence called by the defence. On the strength of that evidence, he stated that he could not find it proved beyond reasonable doubt that death was due to strangulation. He, therefore, decided that the appellant was not guilty. He acquitted and discharged him.

Thereupon, the prosecution appealed against the said decision to the Federal Court of Appeal, which, after due hearing, allowed the appeal, set aside the order of acquittal and convicted the appellant of the offence of culpable homicide not punishable with death contrary to Section 222(4) and punishable under Section 224 of the Penal Code, and sentenced him to 4 years imprisonment.  
  
  
This appeal is against that decision. The appellant, being dissatisfied with the decision of the Federal Court of Appeal and the order of conviction entered against him, now appeals to this court on the substantial question of law, which summarily stated, is that under the provisions of Sections 220 and 222 of the Constitution of the Federal Republic of Nigeria, 1979, hereinafter to be referred to as the Constitution, the Federal Court of Appeal had no jurisdiction to have entertained the appeal against the order of acquittal entered in his favour by the High Court, Kano, having regard to the meaning of the term "decision" as defined in Section 277 of the Constitution. He contended that the Federal Court of Appeal was wrong in law, to have entertained the appeal at all whereas it should have dismissed it.

As stated in his brief filed in this appeal, chief Williams, learned counsel for the appellant, summarised the issues for determination in the appeal in the form of questions to be answered in this way:

"A.   Jurisdiction of the Federal Court of Appeal:

(1)     Has the Federal Court of Appeal jurisdiction to entertain an appeal at the instance of the prosecution from a verdict of acquittal in the High Court?

(2)     If the answer to question (1) is in the affirmative, does such an appeal lie on questions of law only or on questions of fact as well?

(3)     If such an appeal lies on questions of law only, can it rightly be said that the appeal to the Federal Court of Appeal in this case was argued and decided on questions of law only?"

Learned counsel then concluded his questionnaires by giving the following notice of objection as the gravamen in the appeal, namely:-

"The appellant intends to object in limine to the jurisdiction of the Federal Court of Appeal and regards this objection as a major constitutional issue arising in the appeal. At the same time the Appellant will contest the decision of the Federal Court of Appeal on the merits if it is held that there was a valid appeal to that court from the Kano High Court."

These issues as formulated in the brief arose out of, and are elaborations of the grounds of appeal, which had preceded them, filed in this court, to the most important and pertinent of which in terms of the constitutional question for  determination by this court, references will be made in the course of, and they will be reflected in these proceedings. For that reason and because this has already been done in the judgment to be delivered by my brother, Idigbe, JSC., the draft of which i have had the advantage of reading, it is unnecessary to set down the grounds of appeal herein seriatim.

The principal contention of the learned counsel for the appellant, which he describes as "a major constitutional issue arising in the appeal" is that "the Federal Court of Appeal erred in law in failing to uphold the objection of the appellant to its jurisdiction to entertain the appeal when –

(a)  There was no right to appeal as of right from the decision of the High Court acquitting the appellant; and

(b)     if such a right exists (which is not conceded), it is exercisable only at the instance of the Attorney-General of the State who must sign the notice of appeal under his own hand or at the instance of the government of the State whose Principal Officer must sign the notice of appeal under his own hand.

In support of these  grounds, learned counsel for the appellant relied heavily on the provisions of Sections 220 and 222 of the Constitution of the Federal Republic of Nigeria, 1979, which prescribe the right of appeal, and the provisions of Section 274 thereof relating to existing law and of Section 277 thereof- the Interpretation Clause - which deals with the definition of the terms "decision" in relation to a court.   
  
  
Before dealing with the submissions of the appellant in this court in the elaborate manner they  have been presented, I think, it is but right, to observe that similar submissions were made by the appellant in the course of the proceedings of the appeal in the Federal Court of Appeal when the State appealed against the decision of the learned Chief Judge in having found the appellant not guilty, and thereafter discharging and acquitting him. Having said that, I think it is also fair to the Federal Court of Appeal to remark that the objection to the jurisdiction of that court, the subject-matter of the present appeal, was not raised in limine. Indeed, the two objections, which were raised in limine in the course of the hearing of the appeal in the Federal Court of Appeal of which due notice was given, concerned non-compliance with the Rules of Court applicable to the Federal Court of Appeal; and the other was about the non-production of statements made by witnesses to the police. Both these objections were later abandoned.

The point which now comes before this court, which relates to the jurisdiction of the Federal Court of Appeal to entertain an appeal against an order of acquittal, and concerns the right of appeal secured by virtue of the provisions of the 1979 Constitution, was raised, incidentally by learned counsel for the appellant (then respondent), in the Federal Court of Appeal in the third day of arguments, in the course of his reply to the submissions of the learned counsel for the appellant (now respondent). In the course of his reply, references were certainly made to Sections 220(1)(a), 222(a) and, of course, Section 277 being the Interpretation clause of the Constitution.

From the Record of Proceedings, no previous notice was given to the Federal Court of Appeal that this vital constitutional point was going to be raised. The submissions were, as it were, sprung on the court. It is a matter for surprise that neither the court nor Mr. Kehinde Sofola, learned counsel for the appellant then, had asked either for prior notice of the point to be raised and argued, or for adjournment to consider  the matter, particularly as before then the appeal had been argued by both sides generally in extenso or at large as if the appeal was based on grounds of law, and of mixed law and fact.

However that may be, it is gratifying to note that in his brilliant judgment, with which their Lordships, Kazeem and Nnaemeka-Agu, JJCA., concurred, the learned President, (Nasir P.) dealt with the question relating to the right of appeal against an order of acquittal by the prosecutor. In his judgment, the learned President said:

"It seems quite clear from the provisions of Section 284(2) of the C. P. C. that a prosecutor in Kano State may appeal to this court as of right against acquittal on any question of law from a decision of High Court sitting at first instance. In my view, that power was given to the prosecutor by virtue of the last portion of Section 222(a) of the Constitution which enables the person or authority at whose instance an appeal in criminal proceedings can be lodged subject of course to the powers of the Attorney-General of Kano State under Section 191 of the Constitution to take over and or continue or discontinue such proceedings. This power exercisable by the prosecutor under Section 284(2) C. P. C. is in pari materia with the powers contained in Section 220 (1) (b) of the Constitution. Hence in my view, there is no conflict between the powers contained in the two sections. Consequently, I am of the opinion that a prosecutor may appeal as of right to this court both under the Constitution of this country as well as under the Criminal Procedure Code of Kano State 'where the grounds of appeal involve questions of law alone against the decisions in any criminal proceedings.' The term 'decision' has been interpreted in Section 277 of the Constitution to mean 'in relation to a court, any determination of that court and includes judgment, decree, order, conviction, sentence or recommendation. In view of this definition, contention of Chief Williams that Section 220(1) (b) of the Constitution only permits of an appeal in non-final decisions is untenable."

The learned President was of the view that in the circumstances, he was satisfied that all the grounds filed by the appellant were grounds of law and as such the appellant in the case not only had a right of appeal but that the appeal was properly before that court.

Now before this court, the decision of the Federal Court of Appeal has been seriously attacked and challenged. The principal ground for the appellant's complaint of which this court has prior and due and adequate notice, is that the Federal Court of Appeal had no jurisdiction to have entertained the appeal against the order of acquittal by the High Court, Kano State; and that the Federal Court of Appeal erred in law in having failed to uphold  the objection to its jurisdiction to entertain the appeal, which was properly raised by the appellant.

Two important reasons have been advanced in support of these contentions. These are:-

(1) that there was no right to appeal as of right from the decision of the High Court, Kano, acquitting the appellant; and

(2)     that if (which is not conceded) such a right exists, it is exercisable only at the instance of the Attorney-General of the State who must sign the notice of appeal under his own hand, or, at the instance of the government of the State whose Principal Officer must sign the notice of appeal under his own hand."

(The implication here being that the prosecutor, who was the appellant before the Federal Court of Appeal, was neither the Attorney-General of Kano State, nor the State government's representative. It is, however, difficult to appreciate or justify the insistence by the appellant- in terms of which the provisions of the Constitution does not appear to insist as a condition precedent to the validity of such notice- that it must be signed by the Attorney-General under his own hand, having regard   
to the power of delegation granted to the Attorney-General of a State under section 191(2) of the Constitution, which was alluded to by the learned President of the Federal Court of Appeal in his judgment.)

The  case put forward by the appellant in this court taken together with, and considered in the light of the grounds of appeal, and  the contentions contained in the brief filed in this court, may be summarised as best as possible in an appeal of this magnitude as follows:

(1) The Federal Court of Appeal had no jurisdiction to have entertained the appeal of the prosecutor against the order of acquittal made in favour of the appellant by the High Court, Kano, sitting as a court of first instance in criminal proceedings because a prosecutor has no such right of appeal under the present 1979 Constitution by reason of the provisions of Sections 220 and 222, and having regard to the meaning of the term "decision" as defined by the provisions of section 277 - all of the Constitution;

(2)     That the jurisdiction of the Federal Court of Appeal to entertain appeals as of right from the decisions of the High Court in criminal proceedings is as contained in Section 220 of the Constitution; and the only cases in which appeals lie as of right in criminal proceedings from the High Court to the Federal Court of Appeal are as set out in sections 220 (1)(a) 220(1)(b); and 220(1)(g)(v) in addition to the special cases therein enumerated; and that for the prosecutor to be entitled to appeal, he must come within the provisions of section 220(1)(g)(v) in which event the whole gamut of the right of appeal available to any other appellant under Section 220 (1)(a) of the Constitution would equally be available to him provided he could bring himself within the ambit of the provisions of section 222(a) of the Constitution to be able to fit in with the description of the terms "prescribed authority". Even so, in the construction of the provisions of Section 220 it must always be borne in mind that –

(a)     words conferring a general right of appeal should not be readily construed as conferring a right of appeal against an order of acquittal; and

(b)     Section 33(9) of the Constitution guarantees protection against "double jeopardy".

(3)     That by virtue of Section 220(1)(b) there is a right of appeal on the grounds of law alone in respect of non-final decisions of the High Court.

(4)     Under the present Constitution, a prosecutor has no right of appeal against an order of acquittal by the High Court sitting at first instance, except on grounds of law alone arising from the said judgment by reason of the provisions of Section 284(2) of the Criminal Procedure Code, Kano State. Therefore, a prosecutor has no right of appeal against an order of acquittal made by the High Court on the grounds of law and of mixed law and fact which grounds used to be available to the prosecutor under the provisions of the old Constitution of 1960 and 1963, and had derived its existence from the provisions of Section 284(3) of the Criminal Procedure Code, kano, which are now inconsistent with the provisions of Section 221 of the Constitution. Section 284(3) of the Criminal Procedure Code must now be considered invalid as there is no provision in the present Constitution to sustain it.

(5)     That since the appeal by the prosecutor to the Federal Court of Appeal in the case in hand was based on Section 284 (2) of the Criminal Procedure Code, the prosecutor could not properly be described as a  person or authority prescribed under Section 222(a) of the Constitution; and since none of the grounds of appeal argued before the Federal Court of appeal could be said to be grounds of law, but rather grounds of mixed law and fact, the Federal Court of Appeal had no jurisdiction to have entertained the appeal and should have dismissed it.

My Lords, it is apparent from the submissions set out above, that for  the sustenance of those propositions, considerable reliance has been placed on the provisions of Section 220, 221, 222, 277 and 33(9) of the Constitution and Section 284 of the Criminal Procedure Code, Kano State. References were also made to certain legal authorities, some of which may be examined in the course of this judgment. The old Constitution of 1960 and 1963 were compared and contrasted with the present Constitution in regard to the regulation of appeals. It is necessary, therefore, that for the better understanding of the changes which have been emphasised during the submissions of learned counsel and the subject of this controversy, that the relevant provisions of the Constitution be examined.

The cases in which appeals shall lie from the High Court to the Federal Court of Appeal are enumerated and regulated and set out in Sections 220; 221; and 222 of the Constitution, and the matter under consideration must turn  on the correct construction of these sections. Section 220 sets out the cases, with certain exceptions, in which appeals shall lie from the decisions of a High Court to the Federal Court of Appeal as of right. Section 221 of the Constitution deals with cases in which appeals shall lie with leave. Then Section 222 prescribes the person by whom a right of appeal shall be exercisable. In the Constitution of 1963 all these and more were embodied in Section 117 of the Constitution. They were not spread out in different sections of the Constitution. Section 274 of the 1979 Constitution concerns existing law whilst Section 277 is the Interpretation Clause of the Constitution in which the term "decision" is defined and Section 33(9) deals with fundamental right. Then there is Section 284 of the Criminal Procedure Code of Kano State.

The relevant portions of the sections of the Constitution under consideration and the provisions of Section 284 of the Criminal Procedure Code are as set out hereunder:-

"Section 220 (1): An appeal shall lie from decisions of a High Court to the Federal Court of Appeal as of right in the following cases –

(a) final decisions in any civil or criminal proceedings before the High Court sitting at first instance;

(b) where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings;

(c) ....

(d) ....

(e) .......

(f) .....

(g) decisions made or given by the High Court –

(i).....

(ii).......

(iii)......

(iv)......

(v) in such other cases as may be prescribed by any law in force in Nigeria.

Section 221(1):  Subject to the provisions of Section 220 of this Constitution, an appeal shall lie from decisions of a High Court to the Federal Court of Appeal with the leave of that High Court or the Federal Court of Appeal.

(2) :.....

Section 222: Any right of appeal to the Federal Court of Appeal from the decisions of a High Court conferred by this Constitution –

(a) shall be exercisable in the case of civil proceedings at the instance of a party thereto, or with the leave of the High Court or the Federal Court of Appeal at the instance of any other person having an interest in the matter, and in the case of criminal proceedings at the instance of an accused person, or subject to the provisions of this Constitution and any powers conferred upon the Attorney-General of the Federation or the Attorney-General of a State to take over and continue or to discontinue such proceedings, at the instance of such other authorities or persons as may be prescribed.

(b)...

Section 274(1)  Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be –

(a)...

(b) a law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws.

Section 274 (2)...

Section 274 (3)...

Section 277(1).

"decision" means, in relation to a court, any determination of that court and includes judgment, decree, recommendation."

Section 33(9): No person who shows that he has been tried by any court of competent jurisdiction for a criminal offence and either convicted or acquitted shall again be tried for the offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.

Section 284 of the Criminal Procedure Code –

(1) Appeals from the High Court in criminal matters shall be in a ccordance with the provisions of the Constitution of the Federation.

(2) The prosecutor may appeal as of right to the Supreme Court on any question of law from a decision of the High Court sitting at first instance.

(3) The prosecutor may appeal with leave of Supreme Court or of the High Court to the Supreme Court –

(a) on any question of fact or of mixed law and fact from a decision of the High court sitting at first instance; or

(b) on any question of law or of fact or of mixed law and fact from a decision of the High Court in a criminal appeal from a magistrate's court or a native court."

My Lords, I think it is only right to point out that unlike the provisions of section 117(1) of the Constitution of 1963, Section 220 of the present Constitution does not confer jurisdiction on the Federal Court of Appeal. It merely sets out the cases in which appeals from decisions of a High Court shall lie as of right to the Federal Court of Appeal. The question then is where does the Federal Court of Appeal derive its jurisdiction to entertain appeals? The answer is simple. Since it is a fundamental rule of law, that any appellate jurisdiction i.e the jurisdiction to hear and determine appeals, exercisable by one court over another must be statutorily conferred, the Federal Court of Appeal shall have jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the High Court from Section 219 of the Constitution, which is even more important and durable than any statute. The provisions of Section 219 of the Constitution are in the following terms:

Section 219 - "Subject to the provisions of this Constitution, the Federal Court of Appeal shall have jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determine appeal from the Federal High Court, High Court of a State, Sharia Court of Appeal of a State and Customary Court of Appeal of a State."

In the furtherance of his submissions, learned counsel for the appellant drew the attention of this court to the decision in *A. T. Kiren v. Pascal Ludwig Inc. (1978) 11 & 12 S.C. 77 and Yekini Onigbede & Anor. v. Ishola Balogun & Anor. (1975) 1 all NLR 233 Part I.* In addition, the attention of this court was also drawn to some English, Australian, Irish and American decisions. The one word which appeared to have been over-emphasised in the submissions of learned counsel is the word "decision", and might be considered the strongest link in the contention by learned counsel.

The points of law particularly as they concern the issue of not only the right of appeal under the Constitution, but also the question of jurisdiction of the Federal Court of Appeal raised and argued in his appeal, are of considerable importance depending as they are on the construction of the Constitution, and therefore, must be considered with great care.

This court, having been empanelled as a constitutional court and the points in controversy in the appeal in the words of learned counsel for the appellant being "a major constitutional issue," it is only right and proper that  this court should indicate unequivocally the principles of constitutional construction which inform it and which it considers most appropriate and reasonable to adopt on this occasion.

My Lords, in my opinion, it is the duty of this court to bear constantly in mind the fact that the present Constitution has been proclaimed the Supreme Law of the Land; that it is a written, organic instrument meant to serve not only the present generation, but also several generations yet unborn; that it was made, enacted and given to themselves by the People of the Federal Republic of Nigeria in constituent Assembly assembled - for which reason and because it is autochthonous, it, of necessity, claims superiority to and over and above any other Constitution ever devised for the governance of this country - the unwarranted intermeddlesomeness  of the military authority with some of its provisions notwithstanding; that the function of the Constitution is to establish a framework and principles of government, broad and general in terms intended to apply to varying conditions which the development of our several communities must involve, ours being a plural, dynamic society, and therefore, mere technical rules of interpretation of statutes are to some extent inadmissible in a way so as to defeat the principles of government enshrined in the Constitution. And where the question is whether the Constitution has used an expression in the wider or in the narrower sense, in my view, this court should whenever possible, and in response to the demands of justice, lean to the broader interpretation, unless there is something in the text or in the rest of the Constitution to  indicate that the narrower interpretation will best carry out the objects and purposes of the Constitution.

My lords, it is my view that the approach of this court to the  construction of the Constitution should be, and so it has been one of liberalism, probably a variation on the theme of the general maxim ut res magis valeat quam pereat. I do not conceive it to be the duty of this court so to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another construction equally in accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends.

As was said by the Privy Council in *Attorney-General for the Province of Ontaria & Ors. v. Attorney-General for the dominion of Canada (1912) AC 571 at pages 583-584* which  words I would adopt:

"In the interpretation of a completely self-governing Constitution founded upon a written organic instrument, such as the British North America Act, if the text is explicit the text is conclusive, alike in what it directs and what it forbids. When the text is ambiguous, as, for example, when the words establishing two mutually exclusive jurisdictions are wide enough to bring a particular power within either, recourse must be had to the context and scheme of the Act. Again, if the text says nothing expressly, then it is not to be presumed that the Constitution withholds the power altogether. On the contrary, it is to be taken for granted that the power is bestowed in some quarter unless it be extraneous to the statute itself....or otherwise is clearly repugnant to its sense."

In a passage of his judgment in *Attorney-General for New South Wales v. Brewery Employees Union of New South Wales (1908) 6 CLR 469 at Pages 611-612* quoted with approval by Dixon, J., of the High Court of Australia in *the Bank of New South Wales v. The Commonwealth (1947-1948) 76 NLR 1 at page 332*, Higgins, J., in dealing with similar efforts in the formulation of principles of interpretation had expressed himself in a lightly different way in words which are still as fascinating as when they were first uttered, when he said:-

"...although we are to interprete the words of the Constitution on the same principles of interpretation as we apply to any ordinary law, these very principles of interpretation compel us to take into account the nature and scope of the Act that we are interpreting - to remember that it is a Constitution, a mechanism under which laws are to be made," (by the law-makers) "and not a mere Act which declares what the law is to be."

And quoting from Story, Commentaries 2nd Edition. Section 455, higgins, J., continued:-

"While, then, we may well resort to the meaning of single words to assist our inquiries, we should never forget, that it is an instrument of government that we are to construe."

I might add that in my opinion, it is not a correct approach to the proper interpretation of our present Constitution to begin by looking to the meaning or interpretation of a statutory provision or Constitution of other countries with different wordings. But of course, foreign Constitutions or statutes with identical provisions accepted as in pari materia with the relevant provisions of our Constitution will naturally carry some weight in their persuasive influence, bearing in mind always, that even in such cases, circumstances may be at variance. (See *Olaleke Obadara & Ors. v. President, Ibadan West District council Grade 'B' Customary Court, Iddo (1965) NMLR 39*.)

Having given consideration to the principles enunciated above, I now turn to examine the important issues raised and argued before this court. And the first point to consider, in my view, is the general submission that the Federal Court of Appeal had no jurisdiction to have entertained the appeal against an order of acquittal by the prosecutor, by virtue of the provisions of Section 220(1)(a) and Section 222(a) of the Constitution. I shall consider the submission relating to the definition of "decision" in Section 277 of the Constitution later.

It is my considered view that as presented in the brief and put before the court, the submission that the Federal Court of Appeal had no jurisdiction to have entertained the appeal is based on a complete misconception of the issue involved in the appeal. It seems to me that the issue is not a matter involving or challenging the jurisdiction of the Federal Court of Appeal. The complaint really was directed against the locus standi or the competence of the prosecutor to have initiated the appeal, and the matter should have been so treated.

The Federal Court of Appeal is endowed by the Constitution with the fullest possible jurisdiction to entertain any appeal by anyone competent to do so within the limits prescribed by the Constitution. That is the sole purpose of the provisions of Section 219 of the Constitution, which confer the widest possible jurisdiction on the Federal Court of Appeal.

In The  People (At the suit of the Attorney-General) v. Richard Kennedy (1946) IR 517 to which this court was referred by the appellant in support of the contention that in the circumstances of that case, the Attorney-General of Ireland was held to have had no right of appeal by the Supreme Court of Ireland (Murnaghan, Geoghegan, O'Byrne and  Black, JJ.; with Martin, Maguire, J., dissenting) against an order of acquittal, it was not that the Supreme Court had no jurisdiction to have entertained the appeal but that the appeal by the Attorney-General against the verdict of the court of Criminal Appeal as a court  of competent jurisdiction acquitting the accused person therein was incompetent and therefore did not lie. The court thereupon refused to entertain it. The decision was based on the construction of Section 29 of the courts of Justice act, 1924, which reads as follows:-

"And no appeal shall lie from that court" (the court of Criminal Appeal) "to  the Supreme Court unless that court or the Attorney-General shall certify that the decision involves a point of law of exceptional public interest that an appeal should be taken to the Supreme court, in which case an appeal may be brought to the Supreme Court, the decision of which shall be final and conclusive."

The accused in the case was convicted upon indictment before the Special Criminal court on a number of charges alleging offences under the Emergency Powers Act, 1939. The accused then appealed by leave to the court of Criminal Appeal, which allowed the appeal and acquitted and discharged him. An application to the court of Criminal Appeal on behalf of the Attorney-Generally for a certificate for leave to appeal to the Supreme  Court having been refused, the Attorney-General himself issued to himself a certificate under Section 29 of the courts of Justice Act, 1924, certifying that the decision of the court of Criminal Appeal acquitting the accused person involved points of law of exceptional public importance, and that it was desirable in the public interest that an appeal be taken to the Supreme Court.

Again, in *Yekini Onigbede & Anor. v. Ishola Balogun & Anor. (1975) 1 All NLR (Part I) page 233,* plaintiffs/respondent had sued defendants/appellants in Ikeja Divisional Grade 'A' Customary Court for damages for trespass to land. The Customary Court found for the plaintiffs/respondents. The defendants/appellants appealed to the High Court, Lagos, which dismissed the appeal. On a further appeal, from the High Court, Lagos, to the Supreme Court, the plaintiffs/respondents raised an objection in limine to the appeal on the ground that the defendant/appellants had no right of appeal to the Supreme court since no leave had been obtained either from the High Court, Lagos, or from the Supreme Court as prescribed under Section 117(4) (c) of the Constitution of 1963. The defendants/appellants contended that no leave was necessary since Section 49(1) of the Customary Court Law of Western Nigeria prescribed an absolute right of appeal in terms of Section 117(2)(f) of the Constitution. It was held by this court that the appeal of the defendants/appellants was incompetent since defendants/appellants did not obtain leave to appeal as prescribed under Section 117(4)(c) of the Constitution of 1963, it being a second appeal which had originated from a Customary Court. The decision, it must be emphasised here, was not that the Supreme Court had no jurisdiction to entertain the appeal.

Rather, it was that the appeal was incompetent.

From the foregoing, it follows that the real question for determination in this appeal is as to whether or not the prosecutor had a right of appeal at the time of instituting the appeal against an order of acquittal under the present Constitution. The issue of the jurisdiction of the Federal Court of Appeal, in my view, does not in any way fall to be decided in this appeal.

The principal contention of learned counsel for the appellant on the issue as to whether or not the prosecutor has a right of appeal against an order of acquittal by the High Court sitting at first instance has been deduced in part from the provisions of the Constitution of 1963.

Under the 1963 Constitution it was only possible to appeal as of right from the final decision in any civil proceedings before the High Court sitting at first instance. In criminal proceedings it was only possible to appeal as of right where the grounds of appeal involved questions of law alone; and , apparently, in non-final decisions before the High Court sitting at first instance. But where the grounds of appeal involved questions of fact, mixed law and fact or even quantum of sentence, it was necessary to obtain leave either from the High Court or from the Supreme Court . (See Section 117 (2); and Section117 (4) of the 1963 Constitution.)

On the other hand, under the provisions of Section 220(1)(a) and (b), there is respectively a general right of appeal as of right from the decision of the High Court to the Federal Court of Appeal in all final decisions both in civil and criminal proceedings before the High Court sitting at first instance; and where the grounds of appeal involve questions of law alone in non-final  decisions in both civil and criminal proceedings. It follows therefore, that a clear distinction must be drawn between the provisions of Section 220 (1) (a) and 220 (1) (b) of the present Constitution. Section 220 (1) (a) deals with final decisions whereas Section 220(1) (b) is concerned with non-final or interlocutory decisions. I am of the opinion, therefore, that chief Williams, learned counsel for the appellant was right in drawing that distinction. In effect, that means that, with the greatest respect to their Lordships of the  Federal Court of Appeal, the court was wrong not to have upheld the submission by learned counsel that Section 220(1)(b) of the Constitution could only apply to non-final or interlocutory decisions whether the proceedings are in criminal or civil cases. The Federal Court of Appeal, with respect, was wrong in law to have taken the view that the submission of learned counsel on the point was untenable. The submission on the point as regards the provisions of Section 220(1)(b) by learned counsel was undoubtedly correct, that the provisions only permit appeals on the grounds of law alone in respect to non-final decisions or interlocutory decisions.

It now remains to consider the contention of learned counsel that the prosecutor, not being the Attorney-General of the State, or a representative of the State Government, and not being such other authority or person as had been prescribed in terms of Section 222(a) of the Constitution, had no right of appeal under Section 220(1)(a) as of right from the decision of the Chief Judge of the High Court sitting at first instance to the Federal Court of Appeal from an order of acquittal in favour of the appellant. In other words, in effect that submission means that the appeal was not properly before the court or that it was incompetent as the prosecutor had no locus standi to have brought the appeal.

It should be remembered that in his submission earlier on, learned counsel had conceded that Section 284(2) of the criminal Procedure Code of Kano State was still sustainable by virtue of Section 220(1)(g)(v), but only in respect of questions of law, and not in regard to questions of fact or of mixed law and fact in terms of the provisions of Section 220(1) (a) of the Constitution.

While it is correct that the prosecutor could not be said to have successfully brought himself within the ambit of the provisions of Section 222 (a) of the Constitution, it must also be realised that it was from Section 284 (2) of the Criminal Procedure Code, Kano, that the prosecutor derived his power to institute the appeal against the judgment of the High Court on the grounds of law; and that the appeal to the Federal Court of Appeal was purely on the grounds of law, according to learned counsel for the respondent, Mr. Kehinde Sofola, having regard to the perverse verdict given in the case by the learned trial Chief Judge.

Mr. Kehinde Sofola then contended that the right of appeal now available to all appellants in criminal proceedings being the same as in civil proceedings under Sections 220(1)(a) and 220(1)(b) of the Constitution in respect of final decisions and decisions in non-final proceedings respectively, a prosecutor as an appellant, was entitled to appeal as of right, not only on the question of law, but also on questions of mixed law and fact; and that it was unnecessary for prosecutor to be prescribed in terms of the requirements of Section 222(a) of the Constitution as had been urged upon the court by the learned counsel for the appellant.

Although it is not possible to go with Mr. Kehinde Sofola all the way in his submission, it seems clear, however, that the provisions of Section 284(2) of the Criminal Procedure Code is an existing law within the terms of the provisions of Section 274 of the Constitution. The provisions of Section 284(2) of the Criminal Procedure Code had come into existence under the old Constitution of 1960/1963 and still survives as an existing law by virtue of Section 220 (1) (g) (v) of the Constitution. Under Section 284 (2) of the Criminal Procedure Code, the prosecutor had already been prescribed not in terms of Section 222(a), but in terms of Section 220(1)(g)(v). Therefore, the prosecutor, having brought his appeal under an existing law, which is not in any way inconsistent with the provisions of Section 220(1)(a) of the Constitution, was quite competent to prosecute his appeal limiting himself therefore to dealing with only questions of law arising in the judgment. Consequently, the appeal was properly before the court. It was competent since it was brought before the Federal Court of Appeal on questions of law only in terms of the provisions of Section 284(2) of the Criminal procedure Code. The Federal Court of Appeal was therefore entitled to have, and properly entertained the appeal and dealt with it according to law. The submission of learned counsel for the appellant on this issue cannot therefore  be sustained.

It might be appropriate at this juncture to observe that throughout the submissions addressed to this court, no reference was made to the provisions of Section 20(1) of the Federal Court of Appeal Decree (now Act) No. 43 of 1976, the provisions of which are in the following terms:

"20(1) The Court of Appeal on any appeal under this Part against conviction or against an order of acquittal, discharge or dismissal, shall allow the appeal if it thinks that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or   that the judgment of the court below should be set aside on the ground of a wrong decision on any question of law or that on any ground there was a miscarriage of justice and in any other case, the court shall, subject to the provisions of subsection (3) of this section and Section 21, dismiss the appeal:   
  
Provided that the court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred."

The provisions, set out above, appear to me quite relevant to the issues which were being canvassed before this court, particularly in respect of the right of appeal against an order of acquittal. Section 20(1) is an existing law and indeed, the law  under which the Federal Court of Appeal was set up. It is still effective and operative. Why learned counsel on both sides of the appeal in hand appeared to have completely ignored it, or side-tracked it, is one of the minor mysteries in this case. It seems clear that by implication at any rate, if not expressly, the provisions of Section 20(1) create the presumption that the  Federal Court of Appeal is expected, in the normal course of its duty, to deal with appeals against orders of acquittal, discharge or dismissal; and the purpose of the section is to direct the Federal Court of Appeal on how to handle such appeals and what consequential orders should follow its decisions in that regard.

It has already been indicated that the real link from which the appellant appears to have drawn his strength and inspiration in emphasising that there was no right of appeal available to the prosecutor against an acquittal is the association of the term "decision" as defined in section 277 of the Constitution with the provisions of Sections 220 and 222 of the Constitution, which regulate the appeal processes. Learned counsel for the appellant has submitted that the definition of the term "decision" does not include an order of acquittal, particularly, as the term "conviction" is specifically mentioned among the words or concepts enumerated in the section. He submitted further, that the omission of the term "acquittal" was deliberate and that it could not have been done without a purpose, meaning thereby that legislators, like nature,  do nothing in vain.

In any case, learned counsel maintained that it is the duty of –

"a person seeking to exercise a right of appeal from an acquittal in a criminal matter" to "show that such right is given by" (an) "Act of Parliament by words which are clear, express and free from ambiguity."

(See *R. (Kane v. Chairman & Justices of Co. Tyrone (1905) XL Irish Law Times Report 181*.)

Learned counsel then compared and contrasted the definition of the term "decision" as contained in Section 277 of the Constitution with the definition of the term as contained in Section 117 (7) of the 1963 Constitution, remarking in the process, that whereas in the latter definition there is to be found the phrase "without prejudice to the generality of the foregoing provisions of this subsection," which phrase, he observed, was missing in the present definition to be found in Section 277 of the Constitution. It seems to me, that the omission of the phrase does not make the slightest difference to the meaning attached to the term "decision" as used in both definitions.

In my opinion, the phrase in the definition to which the greatest importance ought to be attached is the expression which reads:-

"means any determination of that court and includes"

The purpose of the use of such expression in my view, is to widen the scope of the concepts covered by the term "decision". It is certainly not to narrow its meaning as has been urged by learned counsel. Used in that wide sense, the term "decision" in my view, would cover all forms of conclusion involving decision making.

In Wharton's Law Lexicon 14 Edition by A. S. Oppe: "decision" is defined as meaning a "judgment"; and "judgment" as meaning "a judicial determination" or "decision of a court". Put in another way, the terms "judicial determination" would mean in the context of the case in hand, any determination by a judge. Under the former practice of the Superior Courts, the term "judgment" was usually applied only to the decision of the common law courts, while the word "decree' was in general used in the Court of Chancery. But since the fusion of equity and law resulting in the Judicature Acts of 1873 and 1875, with particular reference to Section 100 thereof now replaced by the  Judicature Act, 1925, Section 225, the term "judgment" now includes "decree" except in matrimonial causes. It would seem to me, therefore, that the term "decree" appearing specifically in the definition of "decision" in Section 277 of the Constitution might be referrable only to decree in matrimonial causes.

In Words and Phrases Legally Defined 2nd Edition by John b. Saunders, vol. I, it is stated that "acquittal" is - "verbum equivocum" - and  may, in ordinary language, be used to express either the verdict of the jury or the formal judgment of the court. In *Burgess v. Boetefeur (1844) 13 LJMC 122,* referred to by learned counsel for the appellant, Tindal, CJ., speaking on "acquittal", had said:

"There can be no doubt, if we bring the word" (acquittal) "to a  strict legal test, that nothing would suffice to support a plea of autrefois acquit or autrefois convict, but the production of the judgment of a court of competent jurisdiction."

Thus, the word "acquittal" would always be associated with the judgment of a court of competent jurisdiction. In the circumstances, I am of opinion that the expression  "any determination of the court and includes judgment" is wide enough to include the term "acquittal". It was therefore not necessary to mention it specifically in the list enumerated in the definition of "decision". In my view, the maxim " Expressio unius est exclusio alterius" does not apply to restrict the meaning of "decision" as defined in Section 277 of the Constitutions. Similarly, I am of opinion that the doctrine of 'double jeopardy" referred to by learned counsel for the appellant, is completely irrelevant to the issue in controversy in this appeal. So, too, is the reference to Sections 33(9) of the Constitution, which concerns fundamental right based on the old criminal law fundamental rules exemplified by the maxim "Nemo debet bis vexari pro una et eadem causa" which forbids that a man should be put in jeopardy twice for one and the same offence.

The maxim is well recognised as the foundation of the special pleas of "autrefois acquit", and "autrefois convict". When once a  criminal charge has been adjudicated upon by a court of competent jurisdiction, that adjudication is accepted as final whether it takes the form of an acquittal or a conviction; and may be pleaded in bar of a subsequent prosecution for the same offence, whether charged with or without matter of mere aggravation and whether such  matter relates to the intent with which the offence was committed, to the consequence of the offence. (See *R. v. Miles 24 QBD 423 page 431.*)

It is therefore difficult to see the relationship of an appeal against an order of acquittal and being made to suffer twice for the same offence. Surely, it is not being suggested that in this country where a retrial can be ordered by a superior court as a result of an appeal that such a retrial by a court of competent jurisdiction would infringe the provisions of Section 33(9) of the Constitution. That would be a strange suggestion indeed.

I am also of opinion that it is unnecessary to consider the American doctrine of "double jeopardy" based on the Fifth Amendment to the American Constitution. Indeed, to do so might be regarded as an attempted importation of a foreign doctrine into this country, which doctrine, unless carefully and critically examined, might turn out to be a  gloss on, and a pollution of the pure and sparkling stream of our new Constitution.

It is now necessary to examine briefly the case on the merits. The story is simple;on the night of 9th May, 1979, the appellant and his wife, the deceased, Hadjia Fati Mohammadu Nafiu, had a dinner party at which they entertained three others as guests. The deceased was hail and hearty and enjoyed jokes. The last guest left the house at about between 10 and 11p.m. The deceased and the appellant were then alone in their home. The appellant was next seen at about 10.a.m on 10th May, 1979. He then went out.

Then at about 2p.m. on the instructions of the appellant, his children were driven home from school to greet the deceased. The children, having entered the room, returned to complain that they could not wake up the deceased, who was found still in bed. They were told to wait  for the appellant, who, soon thereafter, returned to the house and enquired of his cook, Mohammed Inuwa (P.W.2), whether the deceased was awake. He himself went upstairs and found the deceased lying in bed. He placed his hand on her chest calling and shaking her, having by then been joined by Mohammed Inuwa (P.W.2). There was no response. Hadjia Fati Mohammadu Nafiu was dead.

The deceased, when finally removed from bed, was found to have froth in the mouth and nostrils, and some wounds including one on her back. She was removed to the hospital where at the Pathology Department of Murtala Mohammed Hospital, Kano, Dr. Bansi Badan Tribedi (P.W.1) performed post mortem examination on the body of the deceased on 11th May, 1979. He prepared a report thereafter of his findings. He also sent some specimens for examination and analysis by the Chemist at Kaduna. these results were returned to him and he received them on 21st May, 1979.

I started this judgment with the clear indication as to the findings of the learned trial Chief Judge. I pointed out that the facts leading to, and the circumstances concerning the death of the deceased were largely not in dispute, except as to two issues, namely, (1) accessibility of the room where the deceased was found lying dead in bed to criminal trespassers, who might have committed the crime of homicide; and (2) the cause of death, based on medical evidence.

The learned trial Chief Judge dealt with both these issues in his judgment. As regards the issue of accessibility, which was put forward by the defence, the learned trial Chief Judge clamped down heavily on the appellant. Indeed, he shut the door firmly against him. He went further. He found as a fact and drew the irresistible inference from the circumstances of the case that if indeed, the deceased died as a result of strangulation, he had no doubt, that only the appellant could have done it. He alone had the opportunity and  the access.

It was only in respect of the cause of death that the learned trial Chief Judge took the view that on the medical evidence before the court, he was unable to hold that death by strangulation had been successfully established. On appeal, the Federal Court of Appeal, as already stated, having given consideration to the processes whereby the learned trial chief Judge  had arrived at his decision as to the cause of death, took the view that the decisions of the learned trial Chief judge in the circumstances of the case, was perverse.

The complaint of the appellant is that the Federal Court of Appeal  erred in law and on the facts in not dismissing the appeal of the State in limine when the prosecution had failed to establish beyond reasonable doubt, that the  deceased had died as a result of strangulation; and that the Federal Court of appeal erred in law in convicting the appellant of a charge which, on the findings of fact made by the Kano High Court he could not have been convicted.

The decision of the learned trial Chief Judge was based on the testimony of four doctors, only one of whom testified for the prosecution. He was Dr. Bansi Badan Tribedi (P.W.1), senior Consultant Pathologist, Health Management Board, Kano, M. B. B. S. (Calcutta), D. T. M. (Bengal), Ph.D. (Edinburgh), F. R. C. Path. (London). He testified that he had been working as a Pathologist since 1948 in Calcutta, United Kingdom and Ghana (14years), and in Nigeria for 7 years. He had performed the post-mortem examination on the body of the deceased.

The other doctors, all of whom testified for the defence were:

(1) Dr. Oladele Da'Rocha Afodu, M.B.Ch. B. Post-graduate Diploma in Bacteriology, Chief Consultant Pathologist, Federal Ministry of health, Lagos. He has had 19 years experience in Pathology;

(2)     Dr. N. O. Akindele, Specialist Clinical Pathologist,     M. B. Ch. B., D. C. P. F. W. A. C. P. He has been in practice since 1963; and

(3)     Dr. William O. Odesanmi, M. B. B. S., consultant Pathologist, University of Ife, Research Associate, Forensic Med. Queen's University, Belfast - 5 years as Coroner's Pathologist in Belfast, Northern Ireland. He gave evidence relating to his research cases prepared for publication- not particularly relevant to the case in hand.

On the basis of the testimony of the four doctors, the learned trial Chief Judge appeared to have misunderstood completely the effect of the medical evidence in relation to the time and the cause of the death of the deceased. He appeared to have been swept off his balance by Dr. William O. Odesanmi, the research scholar, on alcoholic poisoning. If it was ever the intention of the defence, which I feel sure it was not, to confuse issues by calling so many medical doctors, who themselves never saw the body of the deceased, and also disagreed among themselves as witnesses, it is very clear that the doctors succeeded exceedingly well in confusing the learned trial Chief Judge.

In his judgment, although even Dr. Akinlade (D.W.2) whose evidence he held to have strengthened the case of the prosecution on the issue as to the time of death, which witness had put at between midnight of the 9th May and 6 a.m of 10th May, 1979, he thought that the case of the prosecution was that the deceased had died between 11p.m. when the last guest left the house on 9th May and 2 p.m., when the dead body was found in bed on 10th May, 1979. There was clear evidence from the prosecution that the deceased had died long before the appellant left the house in the morning and handed over the room key to his cook at 10 am. i.e long before 2 p.m on 10th May, 1979, when the children were sent into the room to see the deceased.

Furthermore, the learned Chief Judge seriously misdirected himself when he held that Dr. Tribedi (P.W.1) admitted that until the latter received the government chemist's report ruling out the possibility of death by poisoning, he was not prepared to state categorically that death was due to stragulation. The learned trial Chief Judge then went on:

"Only after poisoning had in his opinion been ruled out did he add to his original death due to asphyxia/cardiac arrest and said, 'I quote from Exhibit 5. In view of the above report from Chief Scientific Officer, Kaduna the cause of death and in my opinion is now established as follows 'asphyxia resulting from strangulation."

The above quoted passage represents a complete misdirection in law and misunderstanding of the evidence of Dr. Tribedi and therefore, of the prosecution's case. Dr. Tribedi did not add anything to his original opinion of 'death due to asphyxia/cardiac arrest'. Rather, he eliminated the possibility of poisoning by drugs and not by alcohol. And whereas the defence witnesses had talked about alcoholic poisoning, which is quite different from drug poisoning, Dr. Tribedi was concerned, as a man of prudence, to eliminate drug poisoning which he said could produce Cyanosis.

Furthermore, the learned trial Chief Judge failed completely to direct his mind to the evidence of Dr. Afodu, who as a witness for the defence, had corroborated the evidence of Dr. Tribedi in every particular as to the cause of death. He was the first witness to testify for the defence. He swore that from the medical and chemical reports, he had no doubt, this was asphyxia death, and that strangulation was a possibility. He said further, that another possibility was strangulation by ligature. Dr. Afodu is a man of considerable experience, having had 19 years of experience as a Federal Government Pathologist.

Etim Edet v. Board of Customs & Excise (1965) 1 All NLR 80, was a case in which Etim Edet was prosecuted under the Foreign Exchange Ordinance. He was acquitted by the Magistrate. On appeal by the prosecution against the order of acquittal, the High Court set aside the order of acquittal and convicted him of the offence charged and more. On a further appeal to this court, the conviction was set aside purely on technical grounds. In the course of its judgment, this court expressed the view, although obiter, that "when a magistrate gives a decision to which no reasonable bench could come - as the Chief Magistrate did in that case - the decision is perverse;" and the prosecutor should be entitled to appeal from such a perverse acquittal.

It is an accepted principle of law that when an appellant complains that an inference drawn by the court below is absolutely unsupported by the evidence; or that the decision is so manifestly unreasonable, that no reasonable tribunal could have come to that conclusion on the evidence, then the appeal raises an issue of law, as such a decision would be regarded as perverse. That was the situation in the case on appeal in hand. (See also In Regina v. Governor of Brixton Prison Parte Armah (1968) AC 192, particularly statement of the law by Lord Reid in his speech in the House of Lords at pages 233-234.)

It is clear from the foregoing, that the decision of the learned trial Chief Judge was rather startling and contrary to the evidence before him. I am therefore, of the opinion, that the Federal Court of Appeal was right in law to have reversed his decision.

The final question for consideration which has been raised by the appellant is whether the Federal Court of Appeal was right to have found the appellant guilty of culpable homicide not punishable with death.

My Lords, it is not easy to answer this question, because in normal circumstances, in keeping with ancient practice, in a case of the kind under consideration, the most appropriate order which the Federal Court of Appeal should have made should have been to send  the case back to the trial judge with a direction that the appellant be convicted of the offence proved against him. But unfortunately, in the instant case, I understand that the learned trial Chief Judge retired from the service and left the country immediately on the conclusion of this case. The Federal Court of Appeal apparently found itself in a quandary and so had to do the best it could in the matter. And in this court, the cross-appeal which had been filed by the respondent had been withdrawn, but not without promptings by the court. In the circumstances and since learned counsel for the appellant did not appear to wish to press his points home, the most prudent thing to do is to dismiss this appeal as lacking in substance. Appeal is accordingly dismissed.

**A. G. IRIKEFE, J.S.C.:**

Having been privileged to read an advance copy of the judgment to be hereafter read by my lord, Idigbe, (JSC)., I agree with the reasoning therein contained and also that this appeal should fail and be dismissed. It is pertinent to observe that the learned Chief Judge who tried this case had himself narrowed the field of enquiry and tied his hands when he stated in his findings as follows:-

(a)     If the deceased was strangled, she was strangled by the accused.

(b)     No one other than the accused was implicated in the death of the deceased.

(c)     No evidence of any third person breaking into the house or of an opportunity to do so.

The above findings and the unequivocal conclusions in the evidence of Dr. Tribedi which in turn was supported by the evidence of Dr. Darocha Afodu ( a defence witness) which significantly drew no comment from the learned Chief Judge, would render perverse the verdict of acquittal ultimately recorded by him in favour of this appellant.

One of the most powerful points made by chief Williams, learned counsel for the appellant, is that the framers of our 1979 Constitution did not intend that a prosecutor shall, under any circumstance, have a right of appeal against an acquittal. This point was exhaustively dealt with in the judgment of my Lord, Idigbe, (JSC). I have this further comment to make. The right of a prosecutor to appeal against an acquittal is matter of recent history. Provision for this became apparent in the laws of the various Regions or States after the Constitution of 1960 by virtue of an enabling provision in the said Constitution. This was a conscious and deliberate development designed, no doubt, to deal with the transition from British Colonial rule to self-rule. This enabling provision has been retained both in the Constitution of 1963 and that of 1979. This, also, in my view, was deliberate.

I find nothing in the definition of the word "decision" in the Constitution of 1979 which by any stretch of the imagination could exclude an "acquittal" from the purport of the said definition. Given the peculiar circumstances of the history of this nation and the short-lived nature of our involvement with democratic institutions from the end of colonial rule, I would shudder to think that the framers of our present Constitution would have intended, by one fell-swoop, to deny a prosecutor the right to appeal against an acquittal on any ground. To my mind, a greater invitation to chaos and or instability there cannot be. It seems to me that, if this were the intention of our law makers, it would be impossible to stem or dam the tide of mischief that would thereby arise. In short, all that a misguided or mischievous bench of first instance need do, is to go to sleep while evidence is being given in a criminal case and, at the end thereof, to pronounce the magical words - "I acquit..." and there the matter would rest. This could also be an invitation to corruption at its worst. Indeed, a surer way to discredit the entire judicial process may be difficult to find; and when this happens, the alternative is a total and complete break-down of law and order. The possibility that a decision by an inferior court may be scrutinised on appeal by a higher court, at the instance of an aggrieved party, be he an accused person or a prosecutor, is by itself a safe-guard against injustice , by acting as it were, as a curb against capriciousness or arbitrariness.

In short, no judicial officer would consciously wish to expose himself to ridicule, and the possibility for this would not be there, if his decision ending in an acquittal in a criminal case can never be tested on appeal. Such a situation would have been apposite in the case in hand, where, given the perverse findings of the learned Chief Judge, the appellant would be in the position to say - " I cannot be touched, i have been acquitted. The Constitution says so."

I would certainly need greater persuasion than Chief Williams, learned counsel for the appellant did in this case, to be converted to the view that the framers of our 1979 Constitution could have intended such a monstrous situation. On the contrary, and but for the embargo placed on a  further appeal beyond the Supreme Court, I am sure there would be many of us, who, if privileged to do so, might be tempted to go on appeal to God himself.

Justice as I see it would cease to be just, if viewed only from the end of the accused. There must also be justice from the end of the wronged - and this court said so in Okegbu v. The State -1979 (11) S. C. p.56 at p.68) where Anaigolu, JSC., aptly remarked:

"It so often happens that in murder cases the defence usually talks of justice only in relation to the accused person. Very often justice as it affects the victim of the murder charge is either forgotten or ignored by the defence. But just as it is essential that justice be done to the prisoner, so must it also be done to the deceased who, even in the lonely depths of his grave, cries out loudly for the circumstances of his death to be justly examined and justice meted to him."

In the events that have happened the appellant herein should consider himself extremely fortunate to have got away as lightly as he did by escaping the hangman's noose, this time. Civilised society, should not condone the reckless throttling and strangling of women.

I agree that the decision and orders of the Court of Appeal in this matter dated 5th May, 1980, be affirmed.

**A. O. OBASEKI, J.S.C.:**

My Lords, I have had the advantage of reading, in draft, the judgment delivered a short while ago  by my learned brother Idigbe, JSC.  I  agree with him that for the reasons given in the said judgment, this appeal should be dismissed. The words that have fallen from the mouth of my learned brother, sir Udo Udoma, JSC., while delivering his judgment are also in consonance with my thinking in respect of this matter. I agree with them and go to strengthen my conviction in the justice that has flowed from the judgment delivered by Idigbe, JSC.

My Lords, there was at no time any doubt in my mind that the two major questions raised in this appeal by the appellant's counsel must be answered in the affirmative.

The first major question is whether the Federal Court of Appeal had jurisdiction to entertain the appeal by "the State" now respondent the appeal to the Federal Court of Appeal being an appeal against a verdict of NOT guilty and an order of acquittal.

The 2nd major question is whether the totality of the evidence adduced before the High Court, Kano (Jones, CJ.,) established the guilt of the appellant for the offence of culpable homicide beyond reasonable doubt.

Subordinate to the 1st major question is the substantial question whether the definition of the term decision given in Section 277 of the Constitution of the Federal Republic of Nigeria, 1979 includes an order of acquittal.

This question must also be answered in the affirmative. I do not say that there are no rules of law which should apply to the interpretation of a Constitution. A Constitution is a  legal instrument giving rise among other things to individual right capable of enforcement in a court of law. Respect must be paid to the language which has been used and to our laws, traditions and usages which have given meaning to that language. The history of our recent past and the constitutional development that has taken place in this country over the past 30 years will not admit of any other interpretation. I agree with the views of Lord Wilberforce in Minister of Home Affairs v. Fisher (1980) AC 319 at 328 that respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language.

To these three questions, my Lords, my answer is in the affirmative, and the reasons, which I need not repeat here in my own judgment, have been dealt with adequately in the judgments of my learned brothers Idigbe, JSC., and Sir Udo Udoma, JSC., delivered this morning.

The Constitution of the Federal Republic 1979 has not by omission, as is thought in some quarters and as has been urged on us, removed  the right of appeal against a verdict of acquittal from our statute book.

The need for moral rectitude and discipline  has not been lost sight of by the makers of our Constitution, and they have taken no step to encourage perverse acquittals in the courts of our land, but, on the contrary, have enlarged the ambit of appealable decisions and accorded access to all and even the Highest Court in our country, Nigeria for aggrieved parties to have their wrongs righted all in keeping with the high ethical standard set for the Nigerian society under our Constitution.

My Lords, it is my firm conviction that the law courts of this land have a duty in keeping with the Rule of Law, which this country loudly proclaims as its guiding principle and light, to convict when the justice of the case demands and to acquit also  when that is also demanded by the justice of the case. The evidence accepted by the learned trial Judge (Jones, CJ.), in this case is more consistent with a verdict of guilty and conviction than with a verdict of acquittal. Indeed, it is inconsistent with a verdict of acquittal.

The Federal Court of Appeal (Nasir, P.; Kazeem and Nnaemeka-Agu, JJCA.), was justified in allowing the appeal against acquittal and entering a conviction for culpable homicide.

This appeal must be dismissed and I hereby dismiss it. The cross-appeal filed by the respondent having been withdrawn, the conviction entered and the sentence passed by the Federal Court of Appeal against the appellant are hereby affirmed.

**K. ESO, J.S.C.:**

My Lords, I have had the advantage of reading in draft the judgment of my learned brother, my lord Idigbe, JSC., just delivered. I agree with the reasons and order contained in the judgment. I have nothing useful to add. The appeal is dismissed.

**A. NNAMANI, J.S.C.:**

My Lords, I have had the  advantage of reading in draft the judgment just delivered by my learned brother, my LORD IDIGBE, JSC., and I am in complete agreement with the reasoning and the conclusions reached. For the reasons so lucidly set out in that judgment, I also agree that the appeal be dismissed. I am also unable to accept the interpretation of the word decision urged on us by the learned counsel for the appellant Chief Williams. I am of the firm view that to accept his submission and exclude acquittal from the definition of that word (decision) in Section 277 of the Constitution will be to give it a most restrictive interpretation.

It remains for me to make one observation following on our view on the proper interpretation of the word decision. It is my view, though this is not the reason for the interpretation which I agree should be placed on the word decision, that to exclude acquittal from the definition of decision in Section 277 of the Constitution could be perilous and could, in our peculiar circumstances, have dire consequences for the administration of justice in this country. Put simply, a High Court could exclude appeal in criminal proceedings merely by acquitting in every case. That might be putting it too high but were that to happen it would certainly be chaotic.

Finally, I am of the same view that in the instant case the appeal of the prosecutor from the Kano High Court to the Federal Court of Appeal under Section 284(2) of the Criminal Procedure Code was competent. There were points of law arising from the judgment of the trial Chief Judge which were appellable to the Federal Court of Appeal under Section 284(2) of the Code. It follows in my view that the Federal Court of Appeal had jurisdiction to entertain the appeal. This is not only pursuant to the view I have formed of the issues which arise from the  judgment of the learned trial Chief Judge (for purposes of determining whether the appeal is on points of law alone) but also by virtue of Section 20 sub-section 1 of the Federal Court of Appeal Decree No. 43 of 1976. The appeal therefore fails and it is dismissed. The judgment and sentence of the Federal Court of Appeal are hereby affirmed.

**M. L. UWAIS, J.S.C.:**

I have had the privilege of reading in draft the judgment just read by my learned brother Idigbe, JSC. I entirely agree that the appeal should be dismissed for the reasons given. I have nothing more to add and will accordingly dismiss the appeal and affirm the conviction and sentence imposed by the Federal Court of Appeal.