**OGWA NWEKE ONAH**

**V.**

**THE STATE**

IN THE **SUPREME COURT OF NIGERIA**

**6TH DECEMBER, 1985.**

**SUIT NO. SC 164/1984**

**LEX (1985) - SC 164/1984**

**OTHER CITATIONS**

3PLR/1985/61 (SC)

(1985) NWLR (Pt.12) 236

**BEFORE THEIR LORDSHIPS:**

**ANDREWS OTUTU OBASEKI, J.S.C.**

**ANTHONY NNNAEMEZIE ANIAGOLU, J.S.C.**

**MUHAMMADU LAWAL UWAIS, J.S.C.**

**BOONYAMIN OLADIRAN KAZEEM, J.S.C.**

**CHUKWUDIFU AKUNNE OPUTA, J.S.C.**

**ORIGINATING COURT**

**COURT OF APPEAL**

(OLD) ANAMBRA STATE HIGH COURT, HOLDEN AT ABAKALIKI (Offish, J., Presiding)

**REPRESENTATION**

Mr. A. O. MOGBOH - for the Appellant

C. N. UZOEWULU (Mrs), Principal State Counsel, Anambra State - for the Respondent

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

**CRIMINAL L**A**W AND PROCEDURE:- Murder – Proof of - Circumstanti**a**l evidence –Need to link accused with murder through** evidence of some positive act or negative omission of the appellant which caused injury to the deceased, and that the death of the deceased was the direct result of that injury or those Injuries – Effect of failure thereto

**CRIMINAL L**A**W AND PROCEDURE:- Murder - Defence of ins**a**ne delusion – Whether the defence is only necessary after accused is held responsible for the killing of deceased person**

**CRIMINAL L**A**W AND PROCEDURE:- Proof of Murder – Duty of prosecution where blood is found on accused person – Circumstantial evidence -** Whether there is nothing derogatory about circumstantial evidence and it has in many cases been described as faultless where its cumulative value leaves one in no doubt as to the guilt of the accused

**CRIMINAL L**A**W AND PROCEDURE:- Proof of crime -** Suspicion, no matter how strong – Whether can never found a conviction - Statement of accused person to the police – when it cannot be described as positive confession even if it might evoke suspicion

**CRIMINAL L**A**W AND PROCEDURE:- Proof of crime – Evidence – Hear-say Evidence – Admissibility thereof – Failure to call vital witness – Effect on case based on circumstantial Evidence**

CHILDREN AND WOMEN LAW: *Women and Justice Administration –* Woman accused of the brutal killing of another woman – How treated – *Women and Access to Healthcare –* Allegation of symptoms tending towards insanity – Where untreated - Implication for justice administration

HEALTHCARE AND LAW:- Access to mental health – Lack of – Implication for justice administration

HEALTHCARE AND LAW:- Murder proceedings – Treatment of blood found on accused person – Need for forensic examination and blood analysis – Failure thereto – Implication for justice administration

JURISPRUDENCE AND PUBLIC LAW:- Criminal proceedings and law enforcement - Duty of Police to investigate to investigate crime properly, particularly those attracting capital punishment – Duty of prosecuting counsel from the Ministry of Justice to see to it that proper medical investigation is carried out on accused where Insanity is alleged before the trial of the case proceeds – Effect of failure thereto on justice administration

**MAIN JUDGEMENT**

**UWAIS, J.S.C.** **(Delivering the Lead Judgment):**

This appeal was allowed on the 17th September, 1985. The conviction of murder and the sentence of death passed on the appellant were quashed and in their place we substituted a verdict of acquittal and discharge. Our reasons for doing so were reserved. I now give mine.

The appellant was tried and convicted of murder by the Anambra State High Court, sitting at Abakaliki. Only the prosecution adduced evidence at the trial. The learned trial judge believed the testimony of the prosecution witnesses. The gist of their evidence may be summarised as follows. On the 15th January, 1979, Ona Nweje, P.W.1, who is the husband of the accused, was in the compound of one Idoke when his sister-in-law, called Eke Agbo, came to tell him something; as a result of what she told him, P.W.1 returned to his house. From the house Eke Agbo took him to his farm which was only 5 yards away. Eke Agbo showed him a dead body. P.W. 1 recognised the corpse as that of Edeugwu Ogwa, who was his relation and with whom he lived before he got married to the accused. He observed matchet cuts on the corpse. The cuts were on the neck, shoulder and left hand - the thumb of which had been severed. P.W.1 raised alarm but there was no response from any quarters. He therefore left for the house of the deceased’s husband, P.W.2, He brought the latter with him to the spot where the corpse of the deceased was lying. After P.W.2 saw the corpse both P.W.1 and P.W.2 left together for Ezzamgbo police station, where they lodged complaint with the police.

In her evidence-in-chief before the learned trial judge, P.W.3 said that on 14th January, 1979, the accused accompanied by her (accused’s) child and Eke Agbo came to her house at night. The accused asked P.W.3 replied that she did not know his whereabout. Accused therefore informed P.W.3 that they would spend the night with her. While all of them were sleeping, P.W.3 heard alarm being raised. P.W.3 asked the accused about the alarm and the latter replied that she did not know why it was being raised. On the following day, that is the 15th January, 1979, another alarm was raised in the morning, P.W.3 asked a question about the alarm and Eke Agbo said, in the presence and to the hearing of the accused, that Edeugwu was killed by the accused. The accused said nothing. P.W.3 asked the accused why she killed the deceased. It was then that the accused denied doing so. P.W.3 therefore passed the information to Uro Unna, her (P.W.3’s) husband, who in turn made a report to Chief Chibeze. The accused was taken to the police by Chief Chibeze.

The complaint made against the accused was investigated by police sergeant Franklin Irozuru, P.W.4. Accompanied by two other policemen, P.W.4 went to Umuagara where he observed what he described as blood stain around the compound of P.W.I. He saw the deceased lying dead with her neck almost severed and other wounds on her left palm and leg. While searching, P.W.4 discovered a matchet smeared with blood in the room of P.W.1. He collected the matchet and tendered it in evidence at the trial as exhibit A. The corpse of the deceased was removed by P.W.4 to the public mortuary at Abakalikl, where a post-mortem examination was performed by a doctor, P.W.5, While in police custody, the accused made a statement (Exhibit B) under caution. The statement was taken down by P.W.4. This is what the accused said in the statement -

‘When I was well I knew Edeugwu Ogwa. I do not know whether Edeugwu came to greet me in Ona house. I do not know whether I am the one who killed Edeugwu. If I am the one that killed her, I did not know what happened then.”

P.W.4 testified further that while the accused was making Exhibit B he observed that the wrapper which she wore was blood stained in many places. The wrapper was put in evidence as Exhibit C. Under cross-examination, P.W.4 admitted that neither the matchet (Exhibit A) nor the wrapper (Exhibit B) were sent to Forensic Laboratory, Lagos for examination. He also said that the accused did not talk coherently while making exhibit B.

At this stage it is pertinent to observe that when he was being cross-examined, P.W. 1 stated that the accused used to complain that the whole of her body was hot and atimes she would observe “something like a thick foam of darkness on her eyes.” She would then become unconscious, P.W.1 said he saw the accused in that condition of health on about four separate occasions.

The last witness called by the prosecution was P.W.5, the medical officer, that performed the postmortem examination on the deceased.

The relevant portion of his evidence reads:

‘The deceased was 35 years old. The deceased had two deep severe knife cuts on both sides of the neck that nearly severed the head, a deep cut on the left palm elbow (sic) of the left hand and the shin of the left leg. The deceased in my opinion died of bleeding from multiple knife injuries and in particular from the cut in the neck. The cuts could have been caused with a matchet.”

This in effect is the totality of the evidence adduced by the prosecution at the trial. The accused exercised her option not to give evidence. However in the course of making his final address, her counsel submitted that the nature of the prosecution’s case was circumstantial and the evidence adduced was not sufficient for the trial court to find the accused guilty as charged. He submitted further, but at the tail-end of his address, that the “accused was suffering from some delusions.”

In a well considered judgment, the learned trial judge (Offish, J.) found that there was a nexus between the accused and the offence charged. He gave his reasons for so finding to be as follows:

“(a) that the accused and the husband P.W.1 live in a 1 room apartment;

(b) blood stains were seen around and within their compound by P.W.4 sergeant Irozuru;

(c) body of the deceased was seen in a cassava farm 5 yards behind P.W.1’s compound;

(d) a blood stained matchet was seen In the 1 room apartment; (and)

(e) accused had blood stains on her wrapper when she was brought to the police station:”

The learned trial judge also considered the issues of insane delusions and held that the defence was not established. He finally convicted the accused as charged. The accused being aggrieved by the conviction appealed to the Court of Appeal. Only two grounds were argued before the court. The first related to the general findings made by the learned trial judge which, it was said, could not be supported having regard to the evidence. The second complained against the failure of the learned trial judge to uphold the defence of insane delusions. The arguments advanced in support of both grounds were fully considered, by the Court of Appeal, and rejected. The decision of the trial court was upheld and the appeal dismissed.

Still not satisfied, the accused appealed further to this court. The same grounds of appeal, as were argued in the Court of Appeal, were raised before us. Apart from relying on his brief, Mr. Mogboh learned counsel for the appellant, argued that neither motive nor intention to kill on the part of the appellant was proved by the prosecution. That the appellant denied committing the offence and exhibits A and C, which the prosecution alleged to have contained human blood, were not sent to the forensic laboratory for examination, he submitted, there could be no conclusive proof that the stains were of human blood. Learned counsel then drew our attention to a sentence in the penultimate paragraph of the lead judgment of the Court of Appeal which reads:

“It is a matter of concern that a case of this nature where life was involved, was not properly investigated.”

In her reply, learned principal State Counsel conceded that there was no evidence which connected the appellant with the killing of the deceased. Her reasons for so conceding are that -

(1) there was no evidence of finger print on exhibit A and that the appellant and P.W.1 both lived in the room where it was found;

(2) there was no direct evidence as to who killed the deceased;

(3) Exhibits A & C should have been sent to the forensic laboratory for examination and

(4) the failure to call Eke Agbo as a witness raised a strong presumption that when called she would not confirm that the appellant killed the deceased.

There is no doubt that his appeal is well-grounded on the argument that the circumstantial evidence adduced by the prosecution is not so irresistible that the appellant could have been found guilty of murder by the trial court. It is not in dispute that there was no eye-witness to the killing of the deceased. The evidence which positively indicated that the appellant was responsible for the murder of the deceased, was the evidence of P.W.4 whose testimony was based on the ipse dixit of Eke Agbo. Eke Agbo was not called as a witness by the prosecution. She is a vital witness in the case, as the inference to be drawn from the an eye-witness to the appellant committing the offence or that the appellant confessed to her that she (the appellant) killed the deceased. In the absence of her evidence the important question as to whether the appellant was guilty of the offence charged could not have been properly resolved by the learned trial judge. This is the more so since the evidence of P.W.3 that Eke Agbo told her that the appellant killed the deceased had been shown, under cross examination of the witness, to be inadmissible, as hearsay, because P.W.3 admitted that at the time Eke Agbo told her the story, the appellant was not present. It was outside the house of P.W.3 that Eke Agbo narrated the story. Therefore the failure of the prosecution to call Eke Agbo as a witness was fatal to their case - see Opayemi v The State. (1985) 2 N.W.L.R. 101 at p.108 and Abdulkadir Gusau v. Commissioner of Police, (1968) N.M.LR. 329.

Next the evidence of the stain on the matchet and the wrapper (Exhibits A and C respectively) being blood stain is neither here nor there. As conceded by learned principal State Counsel, there is no proof that the stains were human blood. Even if there was such proof, there was no evidence to show that the blood stains belong to the same blood group as that of the deceased. All these go to show how weak and inconclusive the prosecution’s case had been. In my opinion, therefore, both the trial court and the Court of Appeal were in serious error in holding that there was sufficient circumstantial evidence on which the appellant could have been properly found guilty as charged. On this ground alone the appeal succeeds.

It has to be mentioned in passing, however, that there is the second limb of the appellant’s appeal which raises the question whether the defence of insane delusion had been available to her. In my opinion, this point does not call for full consideration by us, as it has already been shown that the prosecution failed to establish any connection between the appellant and the murder of the deceased. It is when the appellant is held to be responsible for the killing of the deceased that is would become necessary to examine if the defence of Insanity, as defined under section 28 subsection (2) of the Criminal Code of Eastern Nigeria, would be available to the accused. But that is now not the case in this appeal.

It was for these reasons that I agreed on the 6th of September, 1985 that this appeal succeeded and that is should be allowed.

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

This appeal came up for hearing on the 17th day of September 1985 and after hearing the submissions of counsel on the grounds of appeal filed, we allowed the appeal against the decision of the Court of Appeal which dismissed the appeal from the High Court, quashed the conviction of murder and sentence of death passed on the appellant by the High Court and entered, instead, a verdict of acquittal and discharge, We thereafter reserved our reasons for the judgment till today. I now proceed to give them.

I agree with the reasons for judgment just delivered by my learned brother, Uwais, J.S.C. Therein he has given detailed consideration to the facts and the questions for determination raised in the grounds of appeal, The highlight of this appeal is the absence of any nexus between the actus reus and the appellant. There was a total absence of evidence to connect her with the killing of the deceased. No one gave evidence that he or she saw her in company of the deceased. No one gave evidence that he or she saw her armed at the material time with a matchet and no one gave evidence that he or she saw her attack the deceased. She made no confessional statement and no blood-stained matchet was recovered from her. The blood-stained matchet recovered was not recovered from her but recovered from the room jointly occupied by her husband and herself. It is true that the deceased was a relation of her husband and very friendly with the appellant. It is true that the appellant abandoned her matrimonial home and was wandering about and giving the appearance of one who has lost her memory and senses. The evidence may raise in the mind of some people suspicion about the appellant’s involvement.

Suspicion, no matter how strong, can never found a conviction: Anekwe v. The State (1976) 9-10 SC. 255 at 264. The appellant’s statement to the police cannot be described as positive confession. It cannot even be described as confession; At best, it might evoke suspicion which does not take the place of legal proof. Boy Muka & Ors. v. The State (1976) 9-10 S.C. 305; Also v. Police (1959) WNLR. 39; Akpan Ikong v. The State (1973) 5 S.C. 231; Okafor v. Commissioner of Police (1965) NMLR. 89.

In my view, the investigation carried out by the police left much to be desired. The blood-stained matchet, the blood-stained wrapper the appellant wore when arrested were never sent to the forensic laboratory for analysis. A vital witness, Eke Agbo who was with the appellant and so spread the rumour about the appellant’s involvement in the crime, was never called.

The prosecution in this case has rested its case totally on circumstantial evidence. There is nothing derogatory about circumstantial evidence and it has in many cases been described as faultless where its cumulative value leaves one in no doubt as to the guilt of the accused. Where circumstantial evidence is deficient, circumstantial evidence helps appellant to acquittal. See Joseph Lori v. The State (1980) 8-11 S.C.81, Igboji Abieke & Anor. v. The State (1975) 9-11 S.C. 97 at 104.

In Igboji Abieke and Anor. v. The State, Sir Darnley Alexander, C.J.N. delivering the judgment of the Supreme Court commented:

“It is, however, an elementary proposition that mere circumstances of suspicion are not sufficient to justify a conviction or put in another way, suspicion however strong, cannot take the place of legal proof. Before a defendant can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime certain and leave no ground for reasonable doubt. Circumstantial evidence should be so cogent and compelling as to convince a jury that on no rational basis other than murder can the facts be accounted for. See R v. Onufreiczyk 30 Cr App R 1”.

In Abieke & Anor. v. The State (supra) the prosecution as in this instant appeal failed to prove (a) death as a result of the voluntary act of the appellants and (b) any intention or motive of the appellants or either of them to kill Echem, the deceased. The Supreme Court had no hesitation in allowing the appeal as in this case.

Where circumstantial evidence is overwhelming and leads to no other conclusion than the guilt of the accused, it leaves no room for acquittal. See Edet Obosi v. The State (1965) NMLR.129 R. v. Tapper (1952) AC 480 at 489, R. v. Taylor Weaver and Donovan 21 Cr App R 20 at 21, where the Lord Chief Justice of England said:

“It has been said that the evidence against the applicants is circumstantial, so it is, but circumstantial evidence is often the best. It is evidence of surrounding circumstances which by undesigned coincidence is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial.”

The High Court and all courts of law are in duty bound to give critical examination to evidence adduced before them and ensure that the innocent are not punished or the guilty set free. They should act on evidence and not on hunches, rumour or suspicion so as to ensure that justice in its purest form is administered in the courts to all and sundry.

It was for the above reasons and the reasons so ably set out in the reasons for judgment delivered by my learned brother, Uwais J.S.C. that I allowed the appeal.

**ANIAGOLU, J.S.C**.:

I have had a preview in draft of the ’Reasons for Judgment’ just delivered by my learned brother, Uwais, J.S.C. I am in full agreement with those reasons and hereby adopt them as mine.

It was a case of circumstantial evidence and the rightful inference to be drawn therefrom. Humphrey, J. In Rex v. Chung V. Miao cited in Wills on Circumstantial Evidence seventh edition (1936) at page 324 is quoted as having stated that:

“Circumstantial evidence is as good as, sometimes better than, any other sort of evidence, and what is meant by it is that there is a number of circumstances which are accepted so as to make a complete and unbroken chain of evidence. If that is established to the satisfaction of the jury they may well and properly act upon such circumstantial evidence”.

(See: Stephen Ukorah v. The State (1977) 4 S.C. 167 at 174).

As Justice Bairamian often said, no amount of suspicion would ever mature into proof of a case. Suspicions may be many and sometimes grave, yet they will amount each to a suspicion and no further. Combining them do not elevate them beyond the realms of suspicion. They still remain suspicions. (Ben Okafor v. Police (1965) N.M.L.R. 89). The woman was not seen by anybody to have inflicted injury on the deceased; the blood stains on her cloth were not shown to be human blood; a vital witness, Eke Agbo, was not called to give evidence. (See: R. v. George Kuree 7 W.A.C.A. 175; Attorney- General for Palestine v. El Dabbah (1944) AC 157; Onubogu v. the State (1974) 9 S. C.1 at page 20). Clearly, the case against the appellant remained on the level of suspicion.

The appellant, not having been proved to have killed the deceased, has not arrived at the stage at which the issues of provocation, self-defence and insanity should be considered.

It was for the above reasons and the wider reasons given by my learned brother, Uwais, J.S.C., that I acquitted and discharged the appellant on 17th September 1985.

**KAZEEM, J.S.C.:**

I have had the privilege of reading the draft of the reasons for judgment just read by my learned brother Uwais, J.S.C. and I agree entirely with him that the prosecution failed to adduce sufficient evidence to connect the appellant with the offence of murdering Edeugwu Ogwa, and that consequently the appeal ought to be allowed. However, I wish to make some observations on the mode of investigation of this case, and some of the other capital cases that have come before this court recently.

It may well be that the appellant in this case in fact killed the deceased; however, the circumstantial evidence relied upon by the prosecution did not lead to the only conclusion that she was the one responsible for the murder of the de ceased. The law also requires that the appellant’s involvement with the offence must be proved beyond reasonable doubt. The question then is whether that was properly done in this case. All that the prosecution succeeded in proving, were that certain blood stains which were thought to be human blood by prosecution witnesses, were found on the corpse of the deceased behind the house where the appellant lived with her husband, (P.W.1), that those stains were also found on a matchet - Exh. A which was found in the same house; and on the wrapper worn by the appellant (Exh. C) on that day. No attempt was made to send samples of those blood stains for laboratory analysis in order to determine whether or not the stains were human blood. There was even no comparison made between the deceased’s blood and the blood stains on which the prosecution relied. And there was ample time for doing these things because the offence was committed in January, 1979 whereas the trial did not commence till June 1982. Indeed when the police witness (P.W.4) who investigated the case was being cross-examined he said:

“Q: You collected Exhs. A & C. You cannot say whether it was human blood?

A: I cannot say.

Q: You did not send these exhibits to the forensic laboratory in Lagos?

A: I did not.”

It is therefore clear from those answers that this vital witness for the prosecution was not sure that the blood stain was human blood. Wherein then lies the nexus between the deceased and the appellant as the only person who could have killed the deceased?

There was also in my view another lacuna in the case. It was one Eke Agbo who was said to have told P.W.1 and others that it was the appellant that killed the deceased. Why then was she not called as a witness to testify at the trial to the same effect? It was not unlikely that she was more involved in the murder than the appellant. Hence the presumption for not calling her must be held against the prosecution: see section 148(d) of the Evidence Law. Moreover, it is noteworthy that the appellant did not testify at the trial (which unfortunately was the fault of her counsel at the trial): and according to the police investigation, and in her statement to the police - Exh. B1, she denied killing the deceased.

The need to investigate criminal cases properly, particularly those attracting capital punishment, cannot be over emphasised. Occasions might even arise to indicate that the accused might have been insane at the time of the commission of the offence, and that, that aspect of the matter was not properly investigated by the police. In such a case, I think it is incumbent on the prosecuting counsel from the Ministry of Justice to see to it that proper medical investigation is carried out on the accused before the trial of the case proceeds. If that is done, there is no doubt that it would be quite helpful to both the trial and the appellate courts to see that justice is done in the case.

It was for these and other reasons contained in the lead reasons for judgment that I agreed on 17th September, 1985 that the appeal be allowed; and it was therefore allowed and the appellant was acquitted and discharged.

**OPUTA, J.S.C.:**

I have the advantage of reading in draft the reasons for judgment just delivered by my learned brother, Uwais, J.S.C. I am in complete agreement with him that no prima facie case was made out against the appellant, not to talk of proof beyond reasonable doubt.

To succeed in a charge of murder, the prosecution must prove:

1. That the appellant killed the deceased. This is the actus reus. 2. That the killing was unlawful.

3. That the appellant unlawfully killed the deceased under one or the other of the six circumstances enumerated in s.316 of the Criminal Code Cap 30 Laws of Eastern Nigeria applicable to Anambra State of Nigeria. This is our equivalent of mens rea.

To establish that the appellant killed the deceased, the prosecution should adduce evidence linking the appellant with the death of the deceased. This means that there should be evidence of some positive act or negative omission of the appellant which caused injury to the deceased, and that the death of the deceased was the direct result of that injury or those Injuries.

In the case now on appeal, there was no eye witness account of how the deceased was killed or by whom she was killed. There was therefore no direct evidence establishing a nexus between the act or omission of the appellant and the death of the deceased. There was, however, evidence that:

1. The body of the deceased was found in a cassava farm five yards behind a one room dwelling house occupied by the appellant and her husband, Onah Nweke, called as 1st P.W.

2. That blood stains were seen around and within the compound occupied by the appellant and her husband the 1st P.W.

3. That a blood stained matchet was found in that one room apartment occupied by the appellant and the 1st P.W.

If one stops thus far and if one can draw any conclusions of guilt from the drift of all these circumstantial evidence, such conclusions will apply equally and with equal potency to the appellant as well as to her husband, the 1st P.W. But even at this stage, the most apparently incriminating pieces of evidence are blood stained matchet found in the room. To link these blood stains found in the compound, and the blood stains found on the matchet with the blood of the deceased, and then ultimately, with her murderer, there ought to be evidence to show that those stains (around the compound and on the matchet) were human blood stains of the same blood type and grouping as that of the deceased. But the police Sergeant Franklin Irozuru called as 4th P.W. who testified to these blood stains admitted in cross- examination that he could not say whether the stains he saw were human blood stains. He did not collect specimens of the stains around the compound, He did not send the matchet and specimen stains to the forensic laboratory for necessary analysis and comparison.

Talking about blood stains, there was evidence that some stains presumably blood stains were found on a wrapper worn by the appellant. That wrapper was not sent for analysis and there was therefore no nexus between the blood stains found on the wrapper of the appellant and human blood let alone the blood of the deceased. This ought to have been established by positive evidence. There is no evidence to show that the “blood” stains found on the wrapper worn by the appellant was not only human blood but also human blood of the deceased, that is blood of the same type and grouping as that of the deceased.

Again, the matchet was not examined for finger prints and so here too there was no nexus between the appellant and the matchet. The judgment at p.11 line 1 set out two issues:

1. Who inflicted the wound on the deceased?

2. What was her defence?

I agree that these are the vital issues in this case. It has to be proved first that the appellant killed the deceased before one can call on her for her defence. The appellant when confronted with the murder stoutly denied killing the deceased. Her statement, Ex. B, was, if not a denial, quite equivocal. It was not a univocal and an unequivocal admission or confession. There was therefore nothing linking the appellant with the death of the deceased except some hearsay evidence -things alleged to have been said by one Eke Agbo. She was a most vital witness whose evidence would have established the necessary link between the death of the deceased and whoever it was who killed her. For some inexplicable reason Eke Agbo was not called. The only conclusion the Evidence Law allows one to draw is that her evidence would be against the prosecution’s case.

From the records, it is clear and learned counsel for the respondent, Mrs. Uzoewulu, finally conceded that the prosecution failed to establish any nexus between the death of the deceased and any act or omission of the appellant. In other words, no prima facie case was made out against the appellant. The conviction by the trial court was therefore wrong. The court below was also wrong in upholding a conviction obtained in the surrounding circumstances of this case where, not even a prima facie case was made out. Such a conviction cannot be allowed to stand.

The above were the reasons why I, on the 17th September, 1985, allowed the appeal and reversed and quashed the conviction and sentence of the trial court as well as the appeal judgment of the Court of Appeal.

Appeal allowed.