**CHIEF OBADE OJE**

**V.**

**THE STATE**  
  
SUPREME COURT OF NIGERIA

17TH NOVEMBER, 1972.

SUIT NO. SC 23/1972

**LEX (1972) - SC 23/1972**

**OTHER CITATIONS**

3PLR/1972/124 (SC)

(1972) All N.L.R 830

(1972) 11 S.C. 16

**BEFORE THEIR LORDSHIPS:**

TASLIM OLAWALE ELIAS, C.J.N.

ATANDA FATAI-WILLIAMS, J.S.C.

AYO GABRIEL IRIKEFE, Ag. J.S.C.

**REPRESENTATION**

Mr. A.O. KOKU (with him Mr. C.O. IHENSEKHIEN) for the Appellant.

Mr. F.H. EDUVIE, Senior State Counsel for Mid- Western State for the Respondent.

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

**CRIMINAL LA:–** Murder – Proof of - Identification of accused person – When doctrine of *Participes criminis* applies

**CHILDREN AND WOMEN LAW**: Women and Security/Murder – Murder of Newborn mother – Women and Justice Administration – Acquittal of accused murderer because of poor investigative practices

**HEALTHCARE AND LAW**:- Emergency services for wounded persons – Need to make it a priority consideration for citizens who witness life-threatening incidents

**MAIN JUDGMENT**

**ELIAS, C.J.N.** (Delivering the Judgment of the Court):

At the High Court of the Ubiaja Judicial Division in the Mid-West State, the accused was convicted on December 24, 1971 of the murder of one Theresa Godwin and sentenced to death, contrary to section 257(1) of the Criminal Code, Cap. 28, Vol. 1 of the Western State 1959, applicable in the Mid-Western State. We heard and allowed the appeal on October 19, 1972, and now give our reasons therefor.

The facts of the case may be summarised as follows. The evidence of Raphael Egbeade (P. W.5), the only witness called by the prosecution as to the identity of the accused, was that, at about 5 a.m. on December 31, 1969, as he lay in bed in his house, he heard the voice of someone crying outside and saying “Onogie has killed me, Obade has killed me”. As the noise was coming nearer and nearer, he went to open his door and saw the accused (the Onogie) carrying somebody on his shoulder; the accused quickly dumped the person by the side of his house and started to run away. P.W.5 said that he gave chase shouting “Obade has killed somebody and dumped the person by my house”, until the accused ran into his own compound and P.W.5 “ran past the lane leading to the accused’s house and went onto the Military road-block” where he met one soldier, Igbakula Orohilega (P.W.2), to whom he reported the incident. P.W.2 “pointed his torch-light at the person and they saw it was a woman. It was then that he (Raphael) recognised the person as Theresa, the daughter of Isibor, the 4th Prosecution Witness”. P.W.5 later reported the matter to the police at Uromi whence he was redirected to Ewo­himi police station where he made a report. On his return home he found that the accused had already been arrested and taken away by the soldiers. Under cross-examination P.W.5 said that, although the body of the deceased was carried on the shoulder, yet the face of the accused was not shielded by the body and that he saw the face of the accused. He also admitted that he was not friendly with the accused who had once beaten him up for taking sides with a tenant of P.W.5 who was challenged on the ground of showing disrespect to the accused, and who had also imposed on P.W.5 a fine for adultery with the wife of one Sampson Ineg­benede (a councillor). He further deposed that the Onogie of Iromi had later set­tled the matter between them.

Mathias Unuareokpa (P.W.7), the investigating police officer described how the accused was brought to the Ubiaja Police State on December 31, 1969, by one Godwin (a soldier) and some other soldiers and “persons in mufty. The next day, the accused volunteered a statement (exhibit B).

The accused also gave evidence in his own defence. He said that he was a natural ruler and the Onogie of Ugbegun, that on the night of December 30, 1969, he was in his palace with his family, that he slept that night with his wife, Onuwag­hagbe, in her apartment till day-break. She testified to this effect The accused said that on the following morning, as he was supervising his boys who were moulding blocks for him some 200 yards from his palace, about seven soldiers, including Godwin, set upon him, beat him up, stripped him naked and dragged him to a spot where they put him in a taxi-cab next to “a certain woman who had injuries on her body’. His hands were tied for about three hours and his fingers were stiff, so that he could not write his statement (Exhibit B) that he was “in no way connected with the wounding of this woman in question”. It is pertinent to say here that P.W. 7 had under cross-examination admitted that throughout the course of his investigation it did not occur to him that somebody else might have committed the offence, that his enquiry concerning the background of the deceased revealed that she had just then had a baby and that on her return from her mother-in- law in Warri she had spent two days with her husband (Godwin) in Ugbegun before she went over to her father’s place in the same Ugbegun. Isibor Eichie (P.W.4), the father of the deceased, said that the deceased came to him to complain about her mother-in- law, that as he was afraid to harbour her because the husband and the family might make trouble If he did since he (P.W.4) had been paid the full dowry on her, he had sent her to report the matter to the Onogie, and that it was on the next day that he learnt that she had been killed. He said under cross-examination that he did not accompany her and that he did not know whether she went to her husband’s house that day or not. On this point the learned trial Judge himself ob­served:

“Of course, although it may be assumed that Theresa went to the Accused in obedience to her father, it cannot be presumed - for that will be against com­mon sense - that she went at all or even reached the palace of the Accused. So, Isibor Eichie’s evidence, standing on its own does not implicate the Ac­cused at all.”

The learned trial Judge went on to pose the question:

“Having reviewed the evidence on either side, I find that the crucial question to answer is: Who was that man that Raphael Egbeade saw carrying someone on his shoulder, that man depositing the person by Raphael’s house the man run­ning back towards the Ugbegun/Opoji road and followed for quite a while by Raphael, that man branching off at the lane leading to the Palace of the Ac­cused?

After examining the possibility that P.W.5’s evidence against the accused might be one of mistaken identity, the learned trial Judge concluded that he believed that it was the accused that P.W.5 saw on the day in question. He accordingly pro­ceeded to find the accused guilty of the murder of the deceased.

From that decision the appellant has appealed to this court on the following grounds:

“(1) The learned trial Judge erred in law by attaching undue weight to the evi­dence of the 5th Prosecution Witness despite previous inconsistent state­ments made by him in respect of the same case in Exhibit ‘D’ touching upon the identity of the accused.

(2) The learned trial Judge erred in law in failing to consider the defence of alibi set up by the appellant.

(3) That learned trial Judge having held that’ it is not certain, however, whether it was the accused who personally inflicted the injuries on Theresa Godwin’ erred in law in finding the accused guilty on the ground that ‘since the accused was seen to be carrying the injured woman, not with any aim of help­ing her, the only inferences to draw are that either he inflicted the injuries on her or he was a participes criminis and know something of how those seri­ous injuries described by the Doctor came about’.

(4) The decision is altogether unwarranted, unreasonable and cannot be sup­ported having regard to the weight of evidence.”

Mr. Koku, learned counsel for the appellant, began by arguing ground 3 first. He said that the accused must be proved by the prosecution to have killed the de­ceased or to have taken an active part in the killing. The prosecution has failed to establish that the accused killed the deceased. He further argued that the doctrine relating to the responsibility of participes criminis under sections 7 and 8 of the Criminal Code of Western Nigeria does not apply and should not have been ap­plied in the present case, because the charge as well as the evidence led throughout the proceedings was simply that the accused killed the deceased, not that he acted along with anyone else. Finally, learned counsel submitted that an appellate court, in a case involving homicide, must disregard the verdict of a trial court if the requisite degree of certainty as to the murderer is wanting: see The Queen v. Abdulahi Isa (1961) 1 All N.L.R. 668; Daniel Itodo v. The State (1968) N.M.L.R. 1; and The Queen v. Obiasa (1962) All N.L.R. 651, at p.658. We agree with this submission of learned counsel in view of the learned trial Judge’s own finding as follows:

“It is not certain, however, whether it was the Accused who personally inflicted the injuries on Theresa Godwin.”

In regarding ground 1 next, Mr. Koku pointed out that there was a discrepancy between the deposition made by P.W.5 at the preliminary investigation when he said the person being carried covered the face of the carrier, and the evidence given by him at the trial when he said that he in fact saw the face of the carrier (the accused). We think there is substance in this submission of learned counsel when one considers Exhibit D, the deposition of P.W.5 at the preliminary investigation. Exhibit D reads:

“I now say that I saw someone dumping a body. I knew it was the Accused. The deceased was carried on the shoulder. The body of the deceased covered the face of whoever carried her as soon as I shouted the person took to his heals.”

Learned counsel also drew attention to the fact that, whereas P.W.5 said he could and did recognise the accused at 4 a.m., P.W.5 and P.W.2 stated that they could recognise the deceased at 5 a.m. only with the aid of a torch-light. The learned trial Judge, he finally submitted, should have rejected the evidence of P.W.5, who was shown to have had a grudge against the accused, as it was un­safe to found on such improbable pieces of evidence: Gabriel Sofolahan Joshua v. The Queen (1964) 1 All N.L.R. 1; R. v. Golder (1960) 1 W.L.R. 1169; 45 Cr. Appr. R.123. Learned counsel chose, quite rightly in our view, to abandon ground 2 and not to argue ground 4 which he admitted was defective in that the words “weight of” had been wrongly inserted therein.

We agree with all the points put forward by the learned counsel for the appel­lant, and we think that they should have raised serious doubts in the mind of the learned trial Judge both as to the identity of the person who was seen carrying the deceased on the night in question and also as to who inflicted on the deceased the injuries that caused her death.

For these reasons we allowed the appeal on October 19, 1972, set aside the conviction and sentence, and acquitted and discharged the appellant.

Appeal allowed.