**SHABE ALH. GALADIMA**

**V**

**THE STATE**

SUPREME COURT OF NIGERIA

10TH DAY OF MARCH, 2017

SC. 71/2013

**LEX (2017) - SC. 71/2013**

OTHER CITATIONS

2PLR/2017/136 (SC)

**BEFORE THEIR LORDSHIP**

OLABODE RHODES-VIVOUR, JSC (Presided)

MUSA DATTIJO MUHAMMAD, JSC

CLARA BATA OGUNBIYI, JSC

CHIMA CENTUS NWEZE, JSC

AMIRU SANUSI, JSC (Read the Lead Judgment)

**BETWEEN**

SHABE ALH. GALADIMA – Appellant

AND

THE STATE – Respondent

**ORIGINATING COURT**

1. COURT OF APPEAL, KADUNA DIVISION

2. JIGAWA STATE HIGH COURT

**REPRESENTATION/LAWYERS**

N.A. DANGIRI and A. L. LIKKO - for the Appellant.

SANI HUSSAINI GARUN GABBAS (Hon. Attorney-General, Jigawa State) with ADAMU MUKHTAR, DDCL, HUSSAINI ABUDLLAHI, DDLD, MUSTAPHA B. ADAMU ACSC, YAHAYA ABDULLAHI, ACSC, ZAKIYYU MUHAMMAD, PSC and MUHAMMAD EL-USMAN, SSC) - for the Respondent.

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

CRIMINAL LAW AND PROCEDURE - CULPABLE HOMICIDE PUNISHABLE WITH DEATH:- Charge of - Ingredients prosecution must establish to ground conviction - Section 221 of the Penal Code Construed.

CRIMINAL LAW AND PROCEDURE - GUILT OF ACCUSED:- Prosecution - onus on to prove beyond reasonable doubt

CRIMINAL LAW AND PROCEDURE - MEDICAL REPORT IN HOMICIDE CASES:- Essence and purport of - When court will dispense with

CRIMINAL LAW AND PROCEDURE - PROVOCATION – Defence of:- When will avail an accused person - Test determining

CRIMINAL LAW AND PROCEDURE - CONTRADICTIONS IN EVIDENCE OF PROSECUTION - Where material- Legal effect.

**PRACTICE AND PROCEDURE ISSUES**

ACTION - PRELIMINARY OBJECTION:- Essence and purport of – Duty of court to determine first before delving into other issues

APPEAL:- Preliminary objection to decision of trial court – Impropriety of raising at Supreme Court.

COURT - SUPREME COURT:- Preliminary objection to decision of trial court – Whether can be properly raised thereat

EVIDENCE - CONTRADICTIONS IN EVIDENCE OF PROSECUTION – Where material- Effect.

EVIDENCE - GUILT OF ACCUSED - Prosecution - Onus on to prove beyond reasonable doubt.

EVIDENCE - MEDICAL REPORT IN HOMICIDE CASES - When court will dispense with.

INTERPRETATION OF STATUTE - PENAL CODE, SECTION 221:- Interpretation of

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant and two others were alleged to have caused the death of one Safiya Nomau, their cousin over a dispute that arose when writs of possession of land was issued in appellant’s father’s favour. The accused persons were alleged to have beaten the deceased to death with sticks and hoe when she refused to leave the land. They were charged before the Jigawa State High Court for the offence of culpable homicide punishable with death, contrary to section 221 of the Penal Code. The trial court at the close of trial and final addresses of counsel, found the accused persons guilty. They were convicted and sentenced to death. Aggrieved, the appellant appealed to the Court of Appeal. The Court of Appeal in its judgment, upheld the trial court’s findings.

Aggrieved still, the appellant appealed to the Supreme Court.

**DECISION(S) APPEALED AGAINST**

The Court of Appeal entered judgment, affirming the decision of the trial court which convicted and sentenced the Appellant and two other co-accused to death for the offence of culpable homicide punishable with death for causing the death of their cousin Safiya, contrary to section 221 of the Penal Code read with section 79 of the Penal Code. Dissatisfied, the Appellant appealed to the Supreme Court.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT:*

1. Whether from the facts and circumstances of this case the learned trial judge and the learned justices of the lower court thoroughly and properly considered the defence of provocation or all the defences available to the appellant before convicting and sentencing the appellant to death instead of terms of imprisonment. (Grounds one, three and five)

2. Whether the learned trial judge and learned justices of the lower court were right in confining themselves to part of evidence of the prosecution and defence witnesses and totally ignoring exhibits 1 and 1(A) in convicting and sentencing the appellant to death. (Ground six)

3. Whether there are lapses in the investigation of the episode that led to the death of the deceased as well as in the evidence presented to prove the charge under section 221 of the Penal Code against the appellant. (Grounds two and four).

*BY RESPONDENT:*

A. Whether the justices of the lower court were right in affirming the conviction and sentencing (sic) of the appellant by the trial court.

B. Whether the defence of provocation or any other defence was available to the appellant having regard to the circumstance and evidence adduced in the case.

C. Whether from the totality of evidence adduced and the circumstances of the case, exhibits 1 and 1(a) (sic) when properly evaluated will affect the case of the prosecution and can therefore make this honourable court vary the conviction and sentencing (sic) of the appellant.”

**MAIN JUDGMENT**

SANUSI JSC (DELIVERING THE LEAD JUDGMENT):

The appellant herein and two other co-accused are members of the same family. The deceased person called Safiya Nomau was their cousin, as her father and the father of the appellant and the two other co-accused persons were brothers. All of them are therefore members of the same family. The appellant and his two brothers/co-accused were jointly arraigned before the Jigawa State High Court (the trial court), on charge No. JDV/21C/96 and tried on the offence of culpable homicide punishable with death for causing the death of their cousin Safiya, contrary to section 221 of the Penal Code read with section 79 of the Penal Code. In a considered judgment delivered by the trial court on 10 October 2000, the appellant and the other two co-accused person were found guilty as charged, convicted and sentenced to death.

Dissatisfied with his conviction and sentence, the appellant and the two other convicts jointly appealed to the Court of Appeal, Kaduna Division (the court below) which dismissed their appeals for want of merit in a single judgment delivered on 8 February 2013 and affirmed the conviction and sentence passed on them by the trial court. The appellant further appealed to this court. This judgment relates only to the present appellant Shabe Alh Galadima.

Brief facts of the case

The brief facts giving rise to this appeal as could be deduced from the testimonies of the witnesses in the record, are simply summarised as below.

The appellant herein along with his two other co-accused persons jointly tried at the trial court were alleged to have caused the death of their cousin (sister) Safiya Nomau by attacking the latter and beating her with sticks and hoe. They were alleged to have mercilessly beaten her on her head and all over her body which resulted in her instant death. At the trial, the prosecution, now respondent, called five witnesses to prove its case. It tendered the hoe used by the appellant and other co-accused and marked as exhibit 2. Also tendered in evidence, were two writs of possession of land issued in favour of the appellant’s father by Ringim Upper Area Court which were marked as exhibits 1 and 1(A). The land, for which the writs of possession of land were issued was the remote cause of the dispute between the deceased and her cousins (brothers) i.e. the appellant and other co-accused persons. After the prosecution closed its case, the defence or appellant called two other witnesses to testify.

As I said supra, the trial court convicted and sentenced the appellant who unsuccessfully appealed to the court below, as the latter court dismissed his appeal and affirmed the conviction and sentence passed on him by the trial court. Sequel to that, the appellant herein, further appealed to this court.

Due to his dissatisfaction with the judgment of the court below, the appellant appealed to this court vide a notice of appeal dated 20 February 2013 but filed on 21 February 2013, containing six grounds of appeal. In keeping with rules and practice applicable in this court, learned counsel to the parties filed and exchanged briefs of argument. The appellant, on 24 April 2013 filed appellant’s brief of argument, settled by one Nasir Abdu Dagiri Esq. Wherein he distilled three issues for the determination of the appeal out of the six grounds of appeal contained in the notice of appeal.

The three issues for determination are reproduced hereunder:-

1. Whether from the facts and circumstances of this case the learned trial judge and the learned justices of the lower court thoroughly and properly considered the defence of provocation or all the defences available to the appellant before convicting and sentencing the appellant to death instead of terms of imprisonment. (Grounds one, three and five)

2. Whether the learned trial judge and learned justices of the lower court were right in confining themselves to part of evidence of the prosecution and defence witnesses and totally ignoring exhibits 1 and 1(A) in convicting and sentencing the appellant to death. (Ground six)

3. Whether there are lapses in the investigation of the episode that led to the death of the deceased as well as in the evidence presented to prove the charge under section 221 of the Penal Code against the appellant. (Grounds two and four).

The appellant also filed appellant’s reply Brief on 27 January 2016. Upon being served with the appellant’s brief of argument, the respondent also filed, amended respondent’s brief of argument on 18 November 2015 which was deemed filed on 13 January 2015. The said amended respondent’s brief was settled by Sani Hussaini Garun Gabas Esq., the Hon, Attorney General of Jigawa State. In the said amended brief of argument, the learned Attorney-General also proposed three issues for the determination of this appeal as reproduced below:-

A. Whether the justices of the lower court were right in affirming the conviction and sentencing (sic) of the appellant by the trial court.

B. Whether the defence of provocation or any other defence was available to the appellant having regard to the circumstance and evidence adduced in the case.

C. Whether from the totality of evidence adduced and the circumstances of the case, exhibits 1 and 1(a) (sic) when properly evaluated will affect the case of the prosecution and can therefore make this honourable court vary the conviction and sentencing (sic) of the appellant.”

It is worthy of note, that the respondent raised preliminary objection in his amended respondent’s brief of argument challenging the competence of this appeal and seeking the striking out of same by this court. As has been the practice in this court, preliminary objection once raised by a respondent either in its brief of argument or in a motion on notice or in a notice of preliminary objection, such objection must be disposed of first, before considering the main appeal. I shall therefore first of all consider the preliminary objection for whatever it is worth, before determining the appeal. The respondent’s preliminary objection was hinged or predicted on two grounds, as follows:-

(i) That all the three issues relied in (sic) by the appellant in challenging the decision of the Court of Appeal under his issues were not canvassed and argued before the two lower courts.

(ii) No leave of this court was sought and obtained before arguing the said issues in this brief.

In his response, the learned appellant’s counsel in his appellant’s reply brief, submitted that all the grounds of appeal from which he encapsulated or raised his three issues for determination, arose from the decision of the court below and he tied each of the three issues to the relevant ground or grounds of appeal. He went further to identify each of the issues to the ground or grounds of appeal and the portions of the judgment of the court below he lifted those issues from. Without much ado, I do not think the determination of the objection requires any waste of time or energy. It appears to me that the learned Attorney -General for the respondent missed the point.

This court is always concerned solely with the decision of the court below and not that of the trial court, because there is no right of appeal to this court direct from the decision of the trial court. All that this court is concerned with in hearing the appellant’s appeal is to consider the judgment of the court below and decide whether it is wrong in law or if it is perverse. The respondent had even conceded that the issues raised were derived from the decision of the court below. I have closely considered all the three issues and noticed that all of them were posing challenges against the decision of the court below and not the judgment of the trial court. Whatever anomaly the respondent observed in the decision of the trial court should or ought to have been raised at the court below and not in this court, since there is no right of appeal direct to this court from the decision of the trial court. Similarly, I do not think that any prior leave was required by the appellant to raise any of or all the grounds of appeal from which the three issues for determination were formulated or encapsulated in the appellant’s brief. I therefore regard the preliminary objection to be lacking in substance and was merely raised in an effort to waste this court’s precious time. The preliminary objection is not well-taken and is therefore overruled for want of merit. It is accordingly dismissed.

On the appeal proper, the learned counsel for the appellant conceded that the deceased died as a result of injury she sustained as a result of the attack on her by the three accused persons including the appellant herein. He submitted that the two lower courts did not thoroughly consider the evidence presented in this case. The incident that led to the death of the deceased had to do with a land dispute. He argued that a fight broke out between the deceased and the appellant and the three co-accused and the fight took place in the farm land that was found by the Ringim Upper Area Court to belong to the appellant’s father and two writs of possession (exhibits 1 and 1A) were issued to that effect. He referred to evidence of PW2, PW3, PW4 and DW1, DW2 and DW3 at pages 13 - 28 of the record. Learned counsel for the appellant further argued that in spite of and notwithstanding the two writs of possession admitted in evidence as exhibits 1 and 1(A), the two lower courts did not utilise the said evidence in considering the defence available to the appellant. He contends that there is no proper investigation on what led to the death of the deceased, as the evidence of the prosecution witnesses in relation to the ownership of the land which they said belonged to the deceased had contradicted the evidence of the three appellants which was supported by exhibits 1 and 1(A) at (pages 48 - 49) of the record. He also referred to other contradictions in the evidence of PW2 at pages 13 and 14 of the record. He submitted that the lower court did not properly consider and evaluate the above pieces of evidence and that had occasioned a gross miscarriage of justice against the appellant. He contended that the deceased was an aggressor and trespasser as adjudged by the Upper Area Court, Ringim and the fact that the prosecution witnesses encouraged the deceased to enter the land in dispute and erect a hut constitutes enough reason for the trial court to consider that piece of evidence. He submitted that the pieces of evidence given by the prosecution witnesses contain the good, the bad and the ugly as the learned counsel put it, and that contradicts the decisions of the two lower courts. He referred to pages 48 - 49 of the record. He also argued that the trial court completely ignored part of evidence of prosecution witnesses that there was a fight. He submitted that, had the two lower courts given consideration to those pieces of evidence, they could not have escaped coming to the conclusion that the defence of provocation was properly raised. He remarked that there was no evidence that the police had investigated the allegation of the appellant that the deceased trespassed on their land and even erected a hut which was confirmed by PW2, PW3, PW4 and PW5. He referred to the case of Aremu v. The State (1984) All NLR 314 at 316 where this court per Obaseki JSC (Rtd.), said:-

“I would in the circumstances acquit the appellant of the offence of murder but convict him for manslaughter. There was no evidence of investigation of the allegation of the appellant ...”

He submitted that had the two lower courts properly considered the issue of provocation, they would not have imposed a higher sentence on the appellant. He urged this court to substitute the death sentence with a term of imprisonment.

In his response, the learned respondent’s counsel submitted on the defence of provocation raised by the appellant that for the defence of provocation to avail an accused person under section 222(1) of the Penal Code, it must be grave and sudden as would deprive the accused of the power of control. He argued that the appellant is in the best position to say whether there was any act done by the deceased to the appellant that was grave and sudden and capable of making him lose his self control to justify killing the deceased, by furnishing particulars of defence of provocation raised by him. He referred to the case of Yaro v. State (2007)18 NWLR (Pt. 1066) 215 at 234, (2008) All FWLR (Pt. 397) 1 where the Supreme Court held thus:-

“The defence of provocation like other defences cannot hang in the air without supporting evidence.

Nor can it be built on scanty foundations in order to establish it, it is the duty of the accused person to adduce credible or positive evidence to support the alleged provocation. Where the accused person failed to adduce evidence in support of his defence, as in the present case, the trial court has to rely on the evidence before it adduced by the prosecution ...”

Based on the above, he submitted that the appellant has failed woefully in discharging the burden of furnishing the trial court with particulars of the defence of provocation that he raised. He referred to the evidence of DW3 at page 28 of the record as follows:-

“When the deceased came and met her senior sister with us, she started abusing us but I told them not to mind her.”

He admitted that although the word “abuse” was held to be capable of provoking a person, but he argued that the appellant had ruled out the possibility of being provoked when he said -

“Do not mind her” (meaning the deceased person) (page 28) of the record.

He stated that evidence of possible provocation might be drawn from the appellant when the appellant stated thus:-

“from there she took a hoe and started beating the 1st accused person two times but he was dodging” (See page 28.)

The learned respondent’s counsel argued that from the above, the deceased only beat the co-accused persons and not the appellant and therefore the defence of provocation cannot avail a person where it was a third party that was provoked and not the accused now appellant. He also stated that the third possibility of provocation could be that the deceased entered the farm land in dispute. He stated that the appellant had never shown that her entering into the land made him lose control. He urged the court to resolve this first issue against the appellant.

On the 2nd issue which relates to the alleged exclusion of exhibits 1 and 1(A), he argued that failure of the trial court to make reference to the said exhibits had not occasioned any miscarriage of justice. He referred to section 227(2) Evidence Act, 2004 which provides thus:-

“The wrongful exclusion of evidence shall not of itself be a ground for reversal of any decision in any case if it appears to the court that had the evidence excluded been admitted it may reasonable hold that the decision would have been the same.”

He further argued that the issue canvassed by the appellant on the alleged failure of the trial court or the court below to evaluate evidence of PW2, PW3 and PW4 on the said documentary evidence i.e. exhibits 1 and 1(A), were not supported by evidence.. He cited the case of Okwejiminor v. Gbakeji (2008) All FWLR (Pt. 409) 405, (2008) 5 NWLR (Pt. 1079) 172 at 181 with regard to the attitude of Supreme Court on concurrent findings of two lower courts as pertinent because it is an area of non-interference by the apex court unless a miscarriage of justice is occasioned by the findings or the findings are perverse. He argued further, that it is not in every occasion, that the Supreme Court will vary the decision of lower court for its failure to properly evaluate the evidence adduced in the case.

On the issue of contradictions in the evidence led by the prosecution vis-a-vis exhibits 1 and 1(A), he argued that the said contradiction with regard to the ownership of the land cannot to be fatal to the case of the prosecution. He argued that the crucial issue is whether it was the act of the appellant that caused the death of the deceased which was done with intent to kill her or to cause grievous bodily harm on her. He referred to page 8 paragraph 5.03 of the appellant brief of argument. He also referred to the case of Akpanu v. State (2008)14 NWLR (Pt. 1106) 72 at 90, where the Supreme Court had provided the ingredients of the offence of culpable homicide punishable with death which must be established by the prosecution in a charge under section 221(b) of the Penal Code as listed below:-

(i) That the death of a human being has taken place.

(ii) That such death was caused by the accused.

(iii) That the act was done with intention of causing death.

(iv) That the accused knew or had reason to know that death would be probable consequence of his act.

Learned counsel for the respondent referred to the evidence of PW2, PW3 and PW4 at page 14 of the record, and submitted that with the evidence of PW2, PW3 and PW4, the prosecution has discharged the burden of proof on the first ingredient. On the proof the second ingredient, he referred the evidence of PW2 at page 13 where the role played by the appellant was described. On the third ingredient, the evidence of PW2, PW3, PW4 and PW5 were apt in proving the ingredient, whether death is the probable consequence. He argued that the above pieces of evidence were neither shaken nor contradicted since they were not cross-examined on it. He then urged this court to also resolve this issue in favour of the respondent and dismiss his appeal.

It is well-settled law, that the prosecution, in order to obtain conviction in a charge of culpable homicide punishable with death, contrary to section 221 of the Penal Code, has the heavy burden of proving the under listed ingredients of the offence, beyond reasonable doubt namely:-

(1) That death of a human being was caused.

(2) That the accused was the cause of the deceased person’s death.

(3) That the act of the accused leading to the death of the deceased was done intentionally or with knowledge that death or grievous harm was the probable and not only likely consequence of the act.

See Ogba v. State (1992) 2 NWLR (Pt. 222)164.

In culpable homicide cases like in all criminal offences, the onus is always on the prosecution to prove the guilt of an accused person beyond reasonable doubt. Failure to do so, will automatically lead to the discharge of the accused person. See Onuwogu v. The State (1974) 9 SC ...

Where there is/are material contradiction(s) in the evidence led or adduced by the prosecution, then obviously doubt will be created in the mind of the trial court, hence such doubt will be beneficial to the accused in which case, the court should discharge the accused person. See Almu v. The State (2009) 4 SCNJ 159/160. In this instant case, PW2 and PW4 were eye witnesses to the commission of the offence. Part of these two eye witnesses’ testimonies (who are key witnesses for the prosecution) as borne out by the record, read as follows:- For instance; PW2 had this to say at page 13 of the record.

“PW2: On Friday night the deceased that is when she was alive, reported to the ward head that since she was not given the land she would go to her father’s land and erect a hut, she also notified the village head of her intention. The Galadima family members also planned that if they see the deceased in the land they would kill her”

And at page 17 of the record, PW4 said thus:

And PW4 had this to say:-

PW4: Before I reached the farm I saw all the accused going towards the place where the deceased woman wanted to erect a hut, I then heard them spying kill her, kill her, meaning the deceased woman. I retreated backwards and waited when they started beating her I hide myself ...”

From the above pieces of evidence, there is no clown of doubt that the appellant had a pre-determined plan to kill the deceased woman. These pieces of evidence were not contradicted in any respect. Even DW3 in his testimony while testifying for his defence corroborated the evidence of PW2 and PW4. Also credible evidence abound, that the appellant and his co-conspirators attacked the deceased by beating her mercilessly with sticks and hoe which led to her instant death. Although there was no medical report on the cause of the death of the deceased woman, I feel the tendering of medical report to confirm the death of a deceased victim is not material in a situation where death was instantly caused by the act of or attack by the accused person as in this instant case. Almost all the witnesses called by the respondent confirmed that they saw the dead body of the deceased covered with grass mat at the scene of the incident. A court can always dispense with medical report or is not bound by it, in situation where death can easily be inferred or where there had been direct account of the act that led to the death of the victim as in this instant case. See Onyia v. State (2006) 11 NWLR (Pt. 991) 267 at 292. In the present case, there were eye witnesses’ account on the attack on the deceased by the appellant and his co-accused, and also on the use of sticks and hoe on the helpless lethargic woman by the appellant and other co-accused and also on various parts of her body on which she was beaten i.e. head and all other parts of her body as well as on the fact that the attack on her was not done to repel or to retaliate any serious attack on them by the deceased woman.

There is no doubt from the evidence led by the respondent, that the appellant intended to kill and did kill the deceased woman.

Considering the totality of the evidence adduced in this case, I entirely agree with and endorse the findings of the court below, that the respondent had proved all the ingredients of the offence as found by the learned trial judge. It is noted by me, that the appellant raised the issue o contradiction in the evidence adduced by the respondent. To my mind, even if there had been any contradiction in the testimonies of prosecution/respondent’s witnesses, such contradictions (even if available), were not material contradictions as could cast or raise doubts in the mind of the trial court. At best such contradictions are mere and usual contradictions which are usually and naturally noticed or found in testimonies of witnesses due to human error or due to long period between the date the event happened and the date the witnesses testify which usually result in the witnesses forgetting some of the events. In fact, the alleged contradictions cited by the appellant are in my view, not on material points which could be fatal to the case of the prosecution/respondent and they were also not on material or crucial points.

This brings me to the defence of provocation raised and relied on by the appellant. In presenting his defence while testifying, the appellant raised the defence of provocation. With due deference to the learned counsel for the appellant, the defence of provocation avails an accused person who killed his victim in heat of passion before the time to cool down. For the defence of provocation to benefit an accused person and also for same to be upheld, the accused must clearly show or establish the under mentioned conditions:-

(a) That the act he relied on is actually provocative.

(b) That the provocative act deprived him of self-control.

(c) The provocative act came from the deceased.

(d) The sudden fight between the accused and the deceased was instantaneous and continuous with no time to cool down; and

(e) The force used by the accused in repelling the provocation is not disproportional in the circumstance.

See Nwede v. State (1985) 3 NWLR (Pt. 13) 444; Akalezi v. State (1993) 3 NWLR (Pt. 273) 1; Okonji v. State (1987) 1 NWLR (Pt. 52) 659; Ekpenyong v. State (1993) 5 NWLR (Pt. 295) 513. Frank Uwagbae v. The State (2008) 12 NWLR (Pt. 1102) 621.

In the present case, from the testimonies of PW2 and PW4 as highlight supra, there had been a pre-meditated plan by the appellant and his co-conspirators to kill the deceased if she dared go to the land to erect a hut thereon. When they envisaged rightly or wrongly that the deceased was going to actualise her plan, they followed her to the farm land and started attacking her with some of them shouting kill her! kill her! kill her! They then armed themselves with sticks and hoe which they used to dastardly attack her and kill the defenseless and unarmed woman. There was no evidence that she had even attacked any of them and even if she started it, the appellant and other two or three co-accused would not be justified to have pounced on a defenceless and armed less woman. There was also no apprehension of death or grievous harm on any or all of them. The attack by the appellant was certainly disproportional. There was also no instant or sudden fight to warrant their attack on the deceased. For these reasons I also agree with the finding of the court below that the defence of provocation did not avail the appellant.

It is trite law, that the first test to be applied in determining whether the defence of provocation could avail an accused person is the effect of alleged provocation would have had on a reasonable man. The act of provocation must be one which could incite a reasonable man of the appellant’s/accused standing in life and education, to lose his self control. Adebiye v. State (2013) 7 NWLR (Pt. 1354) 597; Musa v. State (2009) 15 NWLR (Pt. 1165) 467.

Therefore, considering the surrounding circumstance of this case, I am at one with the finding of the court below that the defence of provocation cannot be beneficial to the present appellant. Such defence was therefore rightly rejected by the two lower courts.

The resultant effect of all that I have stated above is, that the prosecution/respondent had proved all the ingredients of the offence of culpable homicide punishable with death against the appellant as found by the two lower courts. The court below therefore is right in rejecting the defence of provocation raised by the appellant at the trial court. I finally resolve all the three issues raised by the appellant against him and in favour of the respondent herein.

Having resolved the issues against the appellant, I have no reason to disturb or interfere with the concurrent findings of the two lower courts which, in my view, are neither perverse nor based on misconception of the law. On the whole, I adjudge this appeal to be devoid of any merit. I accordingly dismiss the appeal and affirm the judgment of the court below which had earlier affirmed the decision of the trial court. Appeal dismissed.

**RHODES-VIVOUR JSC:** I have had the advantage of reading before now, the lead judgment just delivered by my learned brother, Sanusi JSC. From the reasons given in the said lead judgment I have no reason to depart from them. Furthermore I am satisfied that concurrent findings of the two courts below are correct. I therefore also dismiss the appeal.

**MUHAMMAD JSC:**

I adopt as mine the lead judgment of my learned brother, Amiru Sanusi JSC in dismissing this unmeritorious appeal. I abide by the consequential orders made in the lead judgment.

**OGUNBIYI JSC:**

I read in draft, the lead judgment of my learned brother, Sanusi JSC. I agree that the appeal herein is devoid of any merit and should be dismissed.

I seek to say further that the judgment appealed against is a concurrent decision of the two lower courts. The appellant in the circumstance has not shown that there is any anomaly or a miscarriage of justice why it should be disturbed.

It is however unfortunate that the case involves members of the same family. This is to show that justice is neutral and is applied evenly across board, no matter the parties involved. As a concept, justice does not discriminate so as not to maintain its purport and application.

It is obvious from the evidence by PW2 and PW4 that there was a pre-meditated plan by the appellant and his co-conspirators to kill the deceased. Thus the attack on the deceased to death by the mob. I wish to state emphatically that none of the defences raised by the appellant could avail in his favour.

The appellant in this case should not be allowed to escape the justice of the law at the expense of the victim’s life. There was no reason why the victim should not have been allowed to live. Her life was cut short prematurely by the appellant and his cohorts. Justice should be evenly distributed and must be seen to apply to the appellant for the purpose of avenging the victim’s death and also for the protection of the larger society.

My learned brother, Sanusi JSC has dealt conclusively with the appeal. I adopt his judgment as mine and also affirm the concurrent conviction and sentence of the appellant by the two lower courts.

Appeal dismissed.

**NWEZE JSC:**

My lord, Sanusi JSC, obliged me with the draft of the lead judgment just delivered now. I, entirely, agree with his lordship that this appeal is, wholly, devoid of merit and ought to be dismissed. This short contribution is only intended to expatiate on the necessity level non of tendering medical evidence as hinted in the lead judgment. In my view, the prosecution’s case was watertight.

Both PW2 and PW4, eye witnesses to the dastardly acts of the appellant and his co-conspirators, gave unchallenged testimonies of their perpetration of the offence he (the appellant) was charged with.

Indeed, even the testimony of the DW3 bolstered the grim narrative of how the appellant and his cohorts, mercilessly, pummelled the deceased person with their cudgels and hoes: unlawful acts from which the instant death of the deceased person eventuated. The circumstances, therefore, obviated any need for tendering any medical evidence.

It could not have been otherwise for it has long been settled that in cases, such as the instant one, where a person was attacked with lethal weapons and he or she died on the spot, the cause of death could be, properly, inferred from the fact that the wound inflicted caused the deceased person’s death.

Simply put, therefore, where the cause of death is obvious, medical evidence ceases to be of any practical or legal necessity in homicide cases. Such a situation arises where death was instantaneous or nearly so, Ben v. The State (2006) LPELR 770 (SC) 12 - 13; Bakuri v. The State (1965) NMLR 163, 164; Uyo v. Attorney-General, Bendel State (1986) 1 NWLR (Pt. 17) 418; Onwumere v. The State (1991) 4 NWLR (Pt. 186) 428; Nwachukwu v. The State (2002) FWLR (Pt. 123) 312, (2002) 12 NWLR (Pt. 782) 543; Oforlete v. The State (2000) FWLR (Pt. 12) 2081, (2000) LPELR 2270 (SC); Ogbu v. The State (1992) LPELR 2291 (SC) 18, paragraphs B - C.

It is for these, and the more detailed, reasons in the lead judgment that I, too, shall dismiss this appeal for lacking in merit. As, already shown above, medical evidence is not, always, essential where, as in this case, the victim died on the spot or in circumstances in which there is abundant evidence of the manner of death (as narrated by the PW2; PW4 and DW3), Ogbu v. The State; Salako v. Attorney-General, Western Nigeria (1965) NMLR 107; R. v. Omoni 12 WACA 511.

Appeal dismissed. I abide by the consequential orders in the lead judgment.