**PROFESSOR FESTUS DAVID KOLO**

**V**

**COMMISSIONER OF POLICE**

SUPREME COURT OF NIGERIA

17TH DAY OF FEBRUARY 2017

SC. 10/2015

**LEX (2017) - SC.10/2015**

OTHER CITATIONS

W2PLR/2017/189 (SC)

**BEFORE THEIR LORDSHIP**

OLABODE RHODES-VIVOUR, JSC (Presided)

MUSA DATTIJO MUHAMMAD, JSC

CLARA BATA OGUNBIYI, JSC (Read the Lead Judgment)

CHIMA CENTUS NWEZE, JSC

AMIRU SANUSI, JSC

**BETWEEN**

PROFESSOR FESTUS DAVID KOLO – Appellant

AND

COMMISSIONER OF POLICE – Respondent

**ORIGINATING COURT**

1. COURT OF APPEAL

2. JIGAWA STATE HIGH COURT (Sitting as an appellate court)

3. MAGISTRATE COURT KIYAWA, JIGAWA STATE

**REPRESENTATION/LAWYERS**

IBRAHIM IDRIS Esq., with J. E. UDOR Esq, and S. O. OGBONNA Esq.) - for the Appellant.

SANI HUSSAINI GARUN GABBAS, Attorney-General of Jigawa State with MUSA M. IMAM, DPP, HUSSAINI ABDULLAHI, Assistant Chief S.C., ZAKIYAU MOHAMMED, PSC and MUHAMMAD USMAN, Esq SSC) - for the Respondent.

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

CRIMINAL LAW AND PROCEDURE - CONFESSIONAL STATEMENT:- Nature of as best evidence – Proper treatment of

CRIMINAL LAW AND PROCEDURE - CONVICTION OF ACCUSED:- Conditions precedent thereto - Sections 156 and 157 of the Criminal Procedure Code, Cap. 19, Laws of Jigawa State, 2012 considered.

CRIMINAL LAW AND PROCEDURE - ENTICING A MARRIED WOMAN:- Offence of - Ingredients of - Section 389, Penal Code considered.

CRIMINAL LAW AND PROCEDURE – PENAL CODE, CAP. 19, LAWS OF JIGAWA STATE, 2012, SECTIONS 156 AND 157- Conviction of accused - Conditions precedent thereto.

CRIMINAL LAW AND PROCEDURE - FIRST INFORMATION REPORT:- Nature of - Appellant who alleges defect in - Onus on to prove such defect.

CRIMINAL LAW AND PROCEDURE – INTENTION:- How proved - Propriety of inferring same from a person’s conduct.

**PRACTICE AND PROCEDURE ISSUES**

APPEAL - FINDINGS BY LOWER COURTS:- Where concurrent - Attitude of Supreme Court to invitation to interfere therewith

EVIDENCE - CONFESSIONAL STATEMENT:- Nature of as best evidence.

WORDS AND PHRASES – “INTENTION” - Meaning of.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant, a professor and lecturer at Ahmadu Bello University, Zaria was alleged to have enticed his student, a married woman by sending her text messages, despite several warnings from her husband. The appellant was eventually found in a hotel room with the woman. He was subsequently arraigned in the magistrates’ court in Jigawa State on a First Information Report (FIR) on a count of enticing a married woman contrary to section 389 of the Penal Code.

The First Information Report disclosed on the face of it that the appellant confessed to the crime during investigation by the police. The trial court found the appellant guilty and sentenced him to two months imprisonment without an option of fine.

Dissatisfied, the appellant appealed to the High Court in its appellate jurisdiction where his appeal was dismissed.

Dissatisfied still, the appellant appealed to the Court of Appeal. The Court of Appeal dismissed his appeal. The appellant further appealed to the Supreme Court, contending that the High Court and the Court of Appeal erred in affirming his conviction, which was based on a First Information Report without the essential ingredients of the offence stated therein.

**DECISION(S) APPEALED AGAINST**

The Court of Appeal entered judgment, affirming the decision of the High court (sitting as an appellate court). The High Court had affirmed the decision of the trial Magistrate Court that found the Appellant guilty and summarily sentenced him to two months imprisonment on a count of enticing a married woman contrary to section 389 of the Penal Code. Dissatisfied, the Appellant appealed to the Supreme Court.

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

*BY APPELLANT:*

1. Whether the lower court (Appeal Court) was right in dismissing the appellant’s appeal when it affirmed the decisions of the courts below (High Court and trial Magistrates’ Court) by holding that the intention of the appellant could be inferred from his conducts whereas the First Information Report (FIR) with which the appellant was convicted did not state or contain the essential ingredient of the offence of enticing a married woman to the appellant under section 389 of the Penal Code, Laws of Jigawa State, to wit: “With intent that she may have illicit intercourse with any person or conceals or detains with that intent any such woman” such as to justify the conviction of the appellant on summary trial procedure?

2. Whether from a dispassionate appraisal or evaluation of the totality of the evidence i.e. First Information Report, before the trial Magistrates’ Court, the learned justices of the lower court (Court of Appeal) were right in dismissing the appellant’ s appeal when the decision of the trial Magistrates’ Court is unreasonable, unwarranted and unsupportable to warrant the conviction of the appellant?

*BY RESPONDENT:*

“Whether the justices of the Court of Appeal (the lower court) were right when they affirmed the decision of the Jigawa State High Court.”

*AS ADOPTED BY COURT:*

[The Court adopted the issues formulated by the Appellant].

**MAIN JUDGMENT**

OGUNBIYI JSC: (DELIVERING THE LEAD JUDGMENT):

This is an appeal against the decision of the appellate session of Jigawa State High Court delivered on 17 September 2013 in appeal No. JDU/14/CA/2013 which affirmed the judgment of the lower trial magistrate court Kiyawa, Jigawa State wherein the appellant was convicted summarily for the offence of enticing a married woman contrary to section 389 of the Penal Code and sentenced to two months term of imprisonment without an option of fine.

Upon his conviction and sentence by the trial magistrate, the appellant was dissatisfied and lodged an appeal before the appellate division of the Jigawa State High Court and raised a sole issue to wit:

“Whether or not the lower trial magistrate, “senior magistrate” has jurisdiction to try and determine the offence under section 389 of the Penal Code, Laws of Jigawa State.”

After hearing argument from both sides, the High Court in its reserved judgment delivered on 17 September 2013, dismissed the appeal and held inter alia: “We have perused the certified printed record of proceedings and found that there is substantial compliance with section 157 of the Criminal Procedure Code. We therefore have no reasons to temper with same.”

Unsuccessful at the High Court, the appellant appealed further to the Court of Appeal (the court below) which in its decision affirmed the judgment of the Jigawa State High Court. Again and being unhappy with the decision of the lower court, the appellant is now before us vide his notice of appeal filed on 22 December 2014.

Briefly the statement of facts leading to this appeal are as follows:

The appellant is a Professor and a Lecturer at the Ahmadu Bello University, Zaria, Kaduna State, while the victim (married woman) was his student at the University. He was arraigned before a Chief Magistrate Court, Kiyawa, some twenty five kilometers from Dutse, for enticing a married woma contrary to section 389 of the Penal Code.

The appellant was arraigned while in company of his counsel, one Mr. Gausu Esq, and having pleaded guilty to the contents of the First Information Report (FIR). It was disclosed on the face of the First Information Report (FIR) that the appellant had confessed to the commission of the offence during police investigation.

It was stated clearly on the face of the First Information Report (FIR) that the appellant had been sending love messages via his phone number to the married woman through her phone number as contained on the First Information Report. It was stated further on the said report that the appellant had been warned severally by the husband of the woman both face to face and on phone to stay away from her but he refused until when he was caught red handed with the woman in a hotel room; that the appellant had left his place and travelled for up to four hundred kilometers from Zaria, Kaduna State to Dutse, Jigawa State and took the woman to a hotel as contained on the First Information Report.

It was alleged further that the appellant was arrested by the police in the hotel room and later charged to court for enticing a married woman contrary to section 389 of the Penal Code; that when the charge was read over to the appellant in the presence of his counsel, he pleaded guilty thereto presumably on the advice of his counsel. The trial magistrate convicted and sentence the appellant to two months imprisonment. On successive appeals to the High Court and Court of Appeal, both were dismissed and hence the appeal now before us.

In accordance with the rules of court, briefs were settled and exchanged between the parties. While the appellant’s brief was settled by one Ibrahim Idris Esq, and filed on 20 April 2015, that of the respondent was by one Sani Hussaini Garun Gabbas, the Attorney-General of Jigawa State and filed on 18 November 2015.

On 24 November 2016, when the appeal was heard, both counsel were in court and they adopted, also relied on their respective briefs of arguments. The learned counsel for the appellant adumbrated on his brief and urged that the appeal be allowed while the judgments of the lower courts are to be set aside and the appellant should be acquitted and discharged accordingly. The learned Attorney-General for the respondent however, submitted in favour of dismissing the appeal and urged that the conviction and sentence are to be affirmed.

The two issues formulated for determination by the appellant’s counsel are reproduced here under as follows:

1. Whether the lower court (Appeal Court) was right in dismissing the appellant’s appeal when it affirmed the decisions of the courts below (High Court and trial Magistrates’ Court) by holding that the intention of the appellant could be inferred from his conducts whereas the First Information Report (FIR) with which the appellant was convicted did not state or contain the essential ingredient of the offence of enticing a married woman to the appellant under section 389 of the Penal Code, Laws of Jigawa State, to wit: “With intent that she may have illicit intercourse with any person or conceals or detains with that intent any such woman” such as to justify the conviction of the appellant on summary trial procedure? (Issue distilled from grounds 1-4).

2. Whether from a dispassionate appraisal or evaluation of the totality of the evidence i.e. First Information Report, before the trial Magistrates’ Court, the learned justices of the lower court (Court of Appeal) were right in dismissing the appellant’ s appeal when the decision of the trial Magistrates’ Court is unreasonable, unwarranted and unsupportable to warrant the conviction of the appellant? (issue formulated from ground 5).

On behalf of the respondent, a lone issue was formulated as follows:

“Whether the justices of the Court of Appeal (the lower court) were right when they affirmed the decision of the Jigawa State High Court.”

It is pertinent to restate at this point that the said issue formulated by the respondent’s counsel is all encompassing of the two issues formulated by the appellant’s counsel. Be that as it may for the determination of this appeal, I will deem it appropriate to take together the two issues distilled by the appellant’s counsel.

1st issue:

Reproduced earlier and needs no repetition:

On this issue, it is the submission of the learned counsel for the appellant that the justices of the Court of Appeal, Kaduna Judicial Division ought to have allowed the appellant’s appeal when it was clear on the face of the First Information Report (FIR) that the essential particular/ingredient of the offence of enticing a married woman, to wit: “With intent that she may have illicit intercourse with any person or conceals or detains with that intent any such woman” contrary to section 389 of the Penal Code Law of Jigawa State, was not disclosed or stated on the face of the First Information Report (FIR), to which the appellant pleaded guilty. The learned counsel considers it appropriate and reproduced section 389 of the Penal Code Law of Jigawa State under which the appellant was convicted and sentenced by the learned trial magistrate under the summary trial procedure; that while ingredients 1-3 itemized from the section are contained in the First Information Report (FIR) read to the appellant, the 4th and last ingredient was absent. Hence that the appellant could not have pleaded guilty to the offence created under the said section 389 of the Penal Code to warrant his conviction by the magistrates’ court.

It is the submission of counsel further that the said particular (iv) was concealed from the accused and has occasioned a serious miscarriage of justice in a summary trial procedure.

This, counsel submits because the accused was not given the opportunity to know what constitutes its ingredients; that the plea or admission of the accused cannot be regarded as such in law. Counsel cites in support the case of Abdullatif Ahmed v. Commissioner of Police (1971) NMLR 409 wherein a court is enjoined to explain all the ingredients of a charge to the accused person and record his replies as clearly as possible in the words used by him before he could be convicted on a plea of guilty under section 161 CPC. Other supportive authorities are: Abele & Ors. v. Tiv Native Authority (1965) NMLR 425 and Usman Sukale v. C.O.P. (1969) SCOPE 30; that section 156 of the CPC imposes on the magistrate upon arraignment of an accused person to disclose the particulars of the offence on the First Information Report (FIR); that in the absence of such proper disclosure, and explanation to the satisfaction of the accused as to why he was charged of the wrong doing, the appellate court ought to set aside such conviction for want of proper procedure. Cited in support of the submission also is the case of Garba v. Commissioner of Police (2007) All FWLR (Pt. 384) 260, (2007) 16 NWLR (Pt. 1060) 378 at 402; that the conduct of the appellant by calling and sending love messages to the woman, travelling from Zaria, Kaduna State to Dutse, Jigawa State to see the woman and the eventual staying together in a hotel room, were not sufficient enough to infer evil intention of enticement.

In continuation further, the learned counsel informs that the conduct of the appellant though condemnable, cannot however replace a statutory provision as to the procedure to adopt in this particular circumstance of summary trial. The learned counsel re-iterates that the First Information Report (FIR) did not disclose that the ultimate intention of the appellant was to entice the woman with the intent that she may have illicit intercourse with any person; that the omission to state the said essential ingredient in the First Information Report (FIR) and which was not brought to the attention of the accused to either admit or deny positively is fatal to the case of the prosecution.

Consequently, the learned counsel submits that, the lower court ought to have held so by setting aside the judgment of the High Court and that of the trial Magistrates’ Court.

The counsel therefore urges in favour of allowing the appeal as being unmeritorious on this ground.

2nd issue:

Submitting also in support of the said issue, the appellant’s counsel re-echoes that a thorough evaluation of the content of the First Information Report (FIR) would reveal clearly that an offence known to law is not shown to have been committed by the appellant. It is also intriguing to state that which the learned counsel concedes the facts by the appellant as condemnable also detestable and frowns at by the society, he however berates the acts as mere allegation in the First Information Report (FIR) and no more; that in the absence of a full trial to test those facts through the process of cross examination, the alleged singular acts are not sufficient to constitute an offence known to our criminal justice system. Suffice it to say therefore counsel informs, that the facts were mere allegations and of speculation/suspicion, which the courts have been warned cannot ground a conviction. Cited in support are the cases of Onah v. State (1985) 3 NWLR (Pt. 12) 236, (1985) 12 SC 59; Bello v. State (2012) 8 NWLR (Pt. 207) 235, (2013) All FWLR (Pt. 695) 395; also the case of Anyanwu v. State (2012) 16 NWLR (Pt. 1326) 221 at 270-271; that the use of the phrase “caught red handed” as contained in the First Information Report (FIR) is very speculative as it gives room for different interpretations. The phrase, counsel argues raises a question to wit: Caught red handed doing what?

That the question can be appreciated and answered in a full trial and not summary trial. See the case of Okeke v. State (1995) 4 NWLR (Pt. 392) 676 at 712, where it was held that when evidence is capable of two interpretations in a criminal case, the one favourable to the accused person must be adopted; that from the judgments of the courts below and an evaluation of the contents of the First Information Report (FIR), there was a miscarriage of justice in the entire procedure adopted in convicting the appellant by the trial magistrates’ court. In support of his argument, the learned counsel cites the case of Ochiba v. State (2011) 17 NWLR (Pt. 127) 663 at 694, (2012) All FWLR (Pt. 608) 849.

In further contention, the learned counsel submits affirmatively that the totality of the evidence, including the content of the First Information Report (FIR), was not sufficient enough to ground the conviction of the appellant and that the lower court ought to have set aside the judgment of the High Court and also the trial magistrates’ court. Counsel urges that the issue should be resolved also in favour of the appellant.

On the totality of the issues raised, the learned counsel urges this court to allow the appeal by setting aside the judgment of the lower court and also the conviction and sentence of the appellant by the trial High Court as well as the magistrates’ court; that the appellant should consequently be acquitted and discharged accordingly.

The two issues formulated on behalf of the appellant were taken together as a lone issue in the respondent’s brief of argument wherein the counsel raised the following issue: “Whether the justices of the Court of Appeal (the lower court) were right when they affirmed the decision of the Jigawa State High Court.”

The learned counsel for the respondent concedes to the appellant’s counsel that the conviction and sentence of the appellant was per the Court of Appeal decision held in the case of Garba v. Commissioner of Police (2007) All FWLR (Pt. 384) 260, (2007) 16 NWLR (Pt. 1060) 378. Counsel submits that the appellant did not dispute the fact that the First Information Report (FIR) contains particulars 1-3 of the offence of enticing a married woman; that the confirmation of this was contained at page 7 paragraph 3.1.3 of the appellant’s brief of argument. The learned counsel for the respondent therefore centers his submission on the absence or otherwise of the last particular (iv) of the offence on the First Information Report (FIR). The learned counsel in reproducing the contents of the First Information Report (FIR) argues vehemently that the 4th particular of the offence was reflected on the face of the First Information Report (FIR): that it is not in dispute that the appellant had understood the contents of the FIR clearly as evidenced per the pronouncement made by the lower court at page 121 of the record of appeal.

It is the submission of counsel further that if the appellant had problem with the words used in the First Information Report, particularly the phrase “love messages”, he would certainly have asked for clarification or explanation about its meaning: that the appellant by pleading guilty to the contents of the First Information Report did clearly understood what he was facing at the trial court. It is the submission of counsel further that, if the contents and intendment of the section was not understood by the appellant’s counsel, he would not have advised his client, (the appellant) to plead guilty to the contents as he did; that the conduct of the appellant as contained in the First Information Report (FIR) must be compared viz-a-viz with the definition of the word intention to determine whether the lower court was right to have made the reference as it did; that from the decision of the lower court, the only thing to be inferred from the conduct of the appellant based on the content of the First Information Report (FIR) was that he intended to have illicit relation with the woman. This, learned counsel submits was rightly put by the lower court, in its judgment at page 126 of the record of appeal before us.

In further submission, the learned counsel drew similarities in the case of Arebamen v. State (1972) 7 NSCC 194 and the case at hand now before us wherein the intention of the appellant was to have illicit intercourse with the woman; that the contents of the First Information Report (FIR) was explicit, clear and did inform the appellant adequately of the case that he was to face before the trial court. Pages 27-28 of the printed record were cited in reference.

Learned counsel also alluded to a hypothetical situation that even if the FIR was defective with regards to the last particular as alleged by the appellant’s counsel, that the defect, if any, is curable by section 206 of the Criminal Procedure Code. The counsel urges this court to resolve the sole issue in the positive as the appellant had woefully failed to tender any reason why the decisions of the courts (Magistrate, High Court and Court of Appeal) should be disturbed. That the decisions are all concurrent and should be allowed to stay. Counsel urges in favour of dismissing the appeal as lacking merit. Resolution of the two issues taken together:

The appellant herein was tried, convicted and sentence in accordance with the summary trial procedure under section 157 of the Criminal Procedure Code, Cap. 19, Laws of Jigawa State, 2012. The conviction and sentence was under section 389 of the Penal Code and the reproduction of the provision reads as follows:

“Whoever takes or entices away any woman, who is and whom he knows or has reason to believe to be the wife of any other man, from that man or from any person having the care of her on behalf of that man with intent that she may have illicit intercourse with any person or conceals or detains with that intent any such woman, shall be punished with imprisonment for a term which may extent to two years or with fine or both.”

As rightly enumerated by the lower court in its judgment at page 123 of the record of proceedings, there are four ingredients contained in the offence for which the appellant was convicted as follows:

1. That the person enticed or taken away is a married woman;

2. That the accused knew or had reason to believe that the woman was the wife of another, under the care of her husband or of any other person;

3. That the married woman is enticed or taken away from her husband or any person while in the care of her husband or any other person;

4. That it is with the intent that she may have illicit intercourse with any person or

(a) be concealed.

(b) detained with the same intent.

From the dispassionate submission by both counsel, it is an established fact that the First Information Report has contained particulars 1-3 of the offence of enticing a married woman; paragraph 3.1.3. of the appellant’s brief of argument at page 7 is evidence on this. The position of the appellant was recognized by the lower court in its judgment at page 125 of the record which it held and said:

“With respect to 1st, 2nd and 3rd particulars of the offence, the learned silk concedes that the said particulars are disclosed on the First Information Report, what is vehemently denied is the existence or presence of 4th particular on the fact of the First Information Report.”

Following from the foregoing, the ball of contention is centered on the absence or otherwise of the last particular of the offence on the First Information Report (FIR). While the counsel for the appellant submits the absence of the particular on the face of the FIR, the respondent’s counsel submits the contrary.

The kernel contention of the appellant’s argument therefore is the absence of the following ingredients:

“That it is with the intent that she may have illicit intercourse with any person or

(a) be concealed.

(b) detained with the same intent.”

For a better understanding of the issue in contention between the parties, it is necessary to reproduce the content of the First Information Report for ease of reference as follows: Enticing of marriage (sic) woman:

“That on 21 May 2013 at about 1900 hours one Mohammed Ghali “M” of Yakur site quarters Dutse came to the police station and reported that you Professor Festus David Kolo “M” Lecturer of Ahmadu Bello University, Zaria, Kaduna State knowing fully that Mrs. Bashira Ghali Mohammed ‘F’ of the same address is his wife, you (were) having been making advances towards her, enticing her, calling her oftenly, sending her love text messages using your GSM line number 08039681194 to her GSM line 08032843927 after being warned severally by the said husband Mohammed Ghali to stay away from his wife both face to face and on phone until when you were caught red handed with his wife at Dan Musa Guest Inn of Rafin Sanyi Quarters Dutse in Room 109 on 21 May 2013 at about 1900 hours.

During police investigation you confessed to have committed the above offence and you thereby committed an offence punishable under section 389 of the Penal Code Law.”

At page 121 of the record of appeal, the lower court held the view and was not in any doubt that the appellant had fully understood the contents of the First Information Report when it said thus:

“Reading the proceedings of the court as to what transpired at the trial court on 30 May 2013 as shown at pages 19 and 20 together, it is obvious that the First Information Report was read and explained by the magistrate who thereafter asked the appellant if he understood the contents of the First Information Report read to him. The accused answered “yes I do”. The court went further to ask “is the information contained therein true or not” the accused answered “the information is true”.

In further consideration, the lower court also said:

“As to whether the particulars were explained to the appellant, the printed record of the trial court at page 20 shows that the First Information Report was read and explained to the satisfactory understanding of the appellant. The appellant said he understood. This fact has not been challenged, indeed it is also worthy to state, that the appellant who is a highly educated person, a Professor and a Lecturer of the Ahmadu Bello University, Zaria, should not have difficulty in understanding what was read to him as contained in the First Information Report.

It is also worthy to mention that the appellant was represented by counsel at the trial court who found no fault with either the contents of the First Information Report or the conduct of the trial.”

As re-iterated rightly by the lower court, the appellant is a highly educated person being a professor and a lecturer of the Ahmadu Bello University, Zaria, and therefore should not have had any difficulty whatsoever in understanding the contents of the First Information Report which was read to him. It is on record also that the appellant was represented adequately by a counsel at the trial court. In my view and by any stretch of imagination, the appellant, I restate cannot be taken seriously that he did not comprehend the contents of the First Information Report. Therefore, the lower court was right when it affirmed that point as it did.

The learned counsel for the appellant submits in great detail that the First Information Report did not disclose that the ultimate intention of the appellant was to entice the woman for the purpose of having illicit intercourse with any person; that making inference from such obvious omission, would be speculative thereby casting heavy doubt in the mind of every reasonable person as to what was the intention of the appellant.

The 4th ingredient, counsel submits was not stated in clear terms to the appellant. It is the submission of counsel in the circumstance therefore that the facts of the case of Arebamen v. State (supra) which was relied upon by the respondent is distinguishable from the case at hand.

It is pertinent to say at this point that the word intention is subjective and is within the mind of the very individual possessing it. It is often said that even the devil does not know the state of a person’s mind as it is the state of his heart completely within his own knowledge to the exclusion of all else. The Collins Learner’s Dictionary, Concise Edition has defined intention thus:

“An intention that you have is an idea or plan of what you are going to do.”

The word intention being subjective in nature therefor can be inferred from the conduct of a person by manifesting through his action. In other word, the conduct of the appellant as contained in the First Information Report (FIR) when considered against the definition of the word intention, would give an assessment as to whether the lower court was right to have inferred the intention of the appellant from his conduct. This is, especially where the last particular (iv) of the offence was not written in black and white on the fact of the First Information Report as alleged by the appellant.

In other words the absence of the phrase: “With intent that she may have illicit intercourse with any person or conceals or detains with that intent...”

It is on record that the appellant, despite the full knowledge of the state of Mrs. Bushira Ghali Muhammed as being the wife of Muhammed Ghali, he still continued to make advances towards her, enticing her, calling her often, sending love messages to her through his GSM line to her GSM line; the numbers were stated in the First Information Report. There were several warnings by the woman’s husband made to the appellant both in person and through phone calls. The appellant refused to heed until he was caught on 21 May 2013 with the woman” red handed” at Dan Musa Guest Inn of Rafin Sanyi Quarter, Dutse in Room 109. Also contained on the First Information Report, the appellant on his own volition further confessed to the police during investigation to have committed the offence.

In the fact of all the facts stated supra, the question to pose is, what could be the intention of the appellant towards the married woman? Even in the absence of the phrase “with intention that she may have illicit intercourse with any person”, there are abundant material reasons from the appellant’s behaviour which when the totality are taken together will depict with certainty the intention of the appellant. What is more, it is intriguing and most disturbing that the appellant’s counsel even in the face of his client having conceded that he was caught red handed in a hotel room with the woman, his learned counsel still argues the absence of mens rea which he submits must co-exist with the actus rea.

It will be fool hardy to insist and argue that the totality of all those facts on the First Information Report (which were admitted) do not herein convey the mens rea of the offence or the criminal intention of the appellant.

The lower court on the question of mens rea had this to say at page 127 of the record among others: “It is immaterial that the phraseology used in the Penal Code, section 389, has not been used in the First Information Report. What is important is that the facts supplied on the First Information Report depict the essential particulars or ingredients of the offence and same are understood clearly by the accused person before admitting to the offence. It is not the law that the First Information Report must use the words or phraseology used in the provision of the law for the particular of the offence to be therein, disclosed. It is sufficient if the facts so supplied provide and depict the needed particulars of the offence.”

With all intents and purposes, I cannot agree more with the lower court. In other words, from the cumulative effect of the aggregate of the facts stated on the First Information Report, same have revealed the necessary intention on the part of the appellant. Therefore, I hold the view that contrary to the contention put forward by the appellant’s counsel, I do not subscribe to his argument that the First Information Report does not disclose or contain the mens rea of the offence.

The law is trite and well settled that intention of an accused person can in certain cases be inferred from the conduct of the person and the surrounding circumstances within which he acts and operates. Proof of intention is usually difficult except by confession or by inference flowing from the manifestation of the persons action. See the case of Arebamen v. State (supra) at page 200 wherein this court said:

“Intention is of course difficult to prove affirmatively without a confession from the accused and can frequently only be determined by looking at all the surrounding circumstances and deciding there from whether the natural interference is that such must have been the intention. A material factor must be the action or conduct of the accused.”

The lower court while applying the authority (supra), rightly held at page 128 of the record of appeal and said:

“Furthermore, where intention is required to be proved by evidence, (where evidence is taken) same may be inferred from the conduct of the person. It has since been settled through a line of cases that intention of an accused person can in certain cases be inferred from the conduct of the person and the surrounding circumstances within which he acts. Intention is usually difficult to prove except by confession or by inference flowing from the manifestation of the person’s action.”

The court went further to conclude its inference made on the intention of the appellant and said: “In the same vein, I humbly hold that intention can be inferred where from the facts disclosed on the First Information Report and the surrounding circumstances as in the instant appeal, the material inference is that such must have been intended.”

As rightly submitted by the learned counsel for the respondent and contrary to the contention put forward by the appellant’s counsel, the case of Arebamen v. State (supra) shares similarities with the case at hand. In that case, this court did consider the conduct of the appellant who set fire to a nearby building which led to the burning of the building in issue hence, it inferred that he (the accused) did intend to burn the building in question; in the present case also, the lower court did consider the conduct of the appellant, who had been sending love text messages and oftenly calling a married woman, (as disclosed on the First Information Report), engaged in a journey of many kilometers from Zaria, Kaduna State to Dutse, Jigawa State and eventually took her to a room in a hotel. The intention of the appellant cannot be other than to have illicit intercourse with the woman, as rightly submitted by the respondent’s counsel. The contents of the First Information Report are very clear and to the point.

It is not surprising therefore that the lower court did not waste any time when at page 126 of the record it said thus:

“Of all places the appellant was seen with the woman in hotel room. This woman he knew not only is someone’s wife, but also whom he had been warned to stay clear. They were caught to use the words used in the First Information Report “red handed”.

That was not all, during police investigation, he confessed to the commission of the offence. The section of the offence was cited in the First Information Report as section 389 of the Penal Code.”

This court had in a plethora of cases held that confession is the best form of evidence and an accused person can be convicted on his confessional statement alone. In the case of Nwachukwu v. State (2007) All FWLR (Pt. 390) 1380, (2007) 17 NWLR (Pt. 1062) 31 at 70 for instance, it was held that:

“A confessional statement is the best evidence in criminal procedure. It is a statement of admission of guilt by the accused person and the trial court must admit it in evidence unless it is contested at the trial.”

It is pertinent to restate further that at the appellant’s arraignment, the First Information Report which was read to him in the presence of his counsel contained the fact of the oral confession he made to the police during investigation, the facts which he did not deny nor was it contested by his counsel. He was thereupon convicted and sentenced accordingly in strict compliance with summary trial procedure.

As rightly submitted by the counsel for the respondent, the purpose of any charge, be it First Information Report (FIR) or information as the case may be is to precisely inform the accused person of the case he is going to face at the trial. See the case of Ndukwe v. L.P.D.C. (2007) All FWLR (Pt. 359) 1211, (2007) 5 NWLR (Pt. 1026) 46. In the case at hand, the contents of the First Information Report was explicitly clear and it precisely and adequately informed the appellant of the case that he was to face before the trial court.

For purpose of re-stating the decision arrived at by the lower court, I seek to draw attention to the provision of section 206 of the Criminal Procedure Code which has been put in place to cure a defect if any on a First Information Report. The section states as follows: “No error in stating either the offence or the particulars required to be stated in charge and no omission shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission and it has occasioned a failure of justice.”

By arraigning the appellant on First Information Report is nothing more than a charge as it was held in the case of Suleiman v. Commissioner of Police Plateau State (2008) All FWLR (Pt. 425) 1627, (2008) 8 NWLR (Pt. 1089) 298 at 329. The law is also well settled that for the court to consider any defect (if any) in a First Information Report, the appellant must prove that such error or omission has occasioned a failure or a miscarriage of justice to him. See the case of Buraima Ajayi & Anor. v. Zaria N. A. (1964) NNLR 61 at 65.

As rightly submitted by the learned counsel for the respondent, in the case at hand, the appellant had failed to show that the alleged error or omission in the First Information Report has occasioned a failure of justice. Also, judicial authorities are firmly established that where the appellant failed to show that a failure of justice has been occasioned as a result of the defective charge, the judgment of the lower court will not be disturbed on appeal. See the case of Mangai v. State (1993) 3 NWLR (Pt. 279) 108 at 117 and Emenegor v. State (2010) All FLWR (Pt. 511) 884 at 936.

Again and as rightly held by the lower court, although the phrase suggesting the intent or mens rea connotation is not stated in black and white on the First Information Report, I re-iterate affirmatively that the question of intention is subjective and could be interpreted from the intervening events, circumstances, actions/inactions surrounding the case. The monopoly and secret to a man’s heart are known to God and him only. The omnipotent, omnipresent and omniscient God is the searcher of all hidden intentions of a man’s heart.

On the community consideration of the appellant’s conduct, coupled with the entire circumstances of the case as well as the events leading to same, the making of the inference from such obvious behaviours by the appellant cannot be speculative so as to cast any doubt on his intention. Contrary to the submission by the appellant’s counsel therefore, no reasonable man could have reasoned otherwise. In other words the appellant’s intention was in clear tandem with particular (4) with such intent that the woman may have illicit intercourse with any person or conceals or detains with that intent.”

Neither the appellant nor his counsel, who was in court, objected to the contents of the First Information Report when it was read and explained to the appellant at the time his plea was taken at the trial court. It is now far too late in the day for the appellant to raise the issue. See State v. Gwonto & Ors. (1983) 14 NSCC 104, (1983) 3 SC 62 wherein this court said:

“I think with all respect, that the point which was missed here is that the importance of this issue of representation had in the fact that either accused person is represented lies in fact that if an accused person is represented by counsel such counsel ought to demand his client’s right to interpretation if neither he nor the accused objects, the right is lost for all time and certainly cannot be invoked.”

See also the case of Essien v. Commissioner of Police (1996) 5 NWLR (Pt. 449) 489 and Otti v. State (1991) 8 NWLR (Pt. 207) 103 at 119 where any error in the First Information Report can be cured by the provision of section 206 of the Criminal Procedure Code (supra).

The learned counsel for the appellant did argue vigorously in his submission that the facts contained in the First Information Report (which were admitted) were mere allegation, speculation and/or suspicion.

However and that notwithstanding, the said counsel appeared to have missed his bearing when he again described the act of the appellant as condemnable and detestable. The confirmation is at page 16 of the appellant’s brief of argument at paragraph 3.2.2. as follows: “The acts of making advances to a married woman or inciting her, calling or sending her love text messages, travelling from Kaduna to Jigawa and finally being caught “red handed” in a hotel, no doubt (sic) condemnable and detestable acts which our society frown at.”

It is ironical and intriguing that the learned counsel for the appellant, who described the act of his client as condemnable and detestable could, in another tone, dismiss the same act simply, “as mere allegation and speculation/suspicion.”

For purpose of recapitulation, a critical analyses of the behavioural pattern exhibited by the appellant will give a reasonable assessment of his character and intentions. This is well depicted in his persistent refusal to stay away from another man’s wife despite several warnings by her husband.

In addition to the foregoing, the open confession made by the appellant to the commission of the offence during police investigation is a further reason to discountenance the submission put forward by the learned counsel for the appellant.

I have stated the position of this court earlier in the course of this judgment wherein it holds that confession is the best form of evidence and an accused person can be convicted on his confessional statement alone. Again, see the case of Nwachukwu v. State (supra).

Consequently, the lower court could not be faulted when it went ahead to affirm the conviction and sentence of the appellant according to strict compliance with summary trial procedure by the successive lower courts.

The judgment on appeal now before us is concurrent at the levels of the Magistrate, High Court and Court of Appeal.

The law is well settled that concurrent decision of the court below is not ordinarily disturbed unless there is a miscarriage of justice. See the cases of Michael v. State (2008) All FWLR (Pt. 431) 875, (2008) 3 NWLR (Pt. 1104) 361 at 384; Posu v. State (2011) All FWLR (Pt. 565) 23 at 249, (2011) 2 NWLR (Pt.1234) 393 and Onyejekwe v. State (1992) 3 NWLR (Pt. 230) 444, (1992) 4 SCNJ 1.

On the totality of the determination of the two issues raised on behalf of the appellant, I am of the firm view that the justices of the Court of Appeal were right when they affirmed the decisions arrived at by the successive lower courts in dismissing the appellant’s appeal. The lower court in other words could not be faulted when it affirmed the judgment of the trial court, which in turn also endorsed the trial magistrates’ court. The appeal at hand is devoid of any merit and same is hereby dismissed. The concurrent judgments of the lower courts are endorsed while the conviction and sentence of the appellant by the lower court is also affirmed by me.

Appeal is dismissed and the judgment of the lower court is affirmed.

**RHODES-VIVOUR JSC:**

I have had the benefit of reading in draft, the leading judgment of my learned brother, Ogunbiyi JSC and I agree that there is no merit in this appeal.

The appellant was charged under section 389 of the Penal Code. It reads:

“389. Whoever takes or entices away any woman, who is and whom he knows or has reason to believe to be the wife of any other man, from that man or from any person having the care of her on behalf of that man with intent that she may have illicit intercourse with any person or conceals or detains with that intent any such woman, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.”

To succeed, the prosecution must prove beyond reasonable doubt that:

(a) The woman was married;

(b) The accused knew or had reason to believe that she was the wife of another man; and,

(c) She was at the time of the offence living under the care of her husband or someone else on his behalf.

The appellant is a Professor and Lecturer at the Ahmadu Bello University Zaria, while the married woman he is charged with enticing is a student at the University. He knew that she was married, since he was warned on more than one occasion by the lady’s husband to keep away from his wife. He remained defiant and took the lady to a hotel (not being aware of an apparent set up) where he was arrested in one of the rooms in the hotel with the lady being present. At the trial the appellant pleaded guilty. The simple question is what is the effect of a plea of guilty to a criminal charge?

When an accused person represented by counsel is arraigned and the charge read and explained to him in the language he understands, and he pleads guilty, the court shall convict him unless there appears to the court sufficient cause why he should not be convicted.

A plea is valid only when the accused pleads himself. A trial would be declared a nullity if a plea is made by counsel. It is the duty of defence counsel to guide the accused person on how to plead and the consequences of pleading one way or the other. Once the trial court is satisfied with the plea of guilty, the next step is conviction and sentence.

This appeal has its origins in a magistrates’ court and has passed through all layers of the appeal system culminating in the top court. The appellant is a professor, a highly intelligent person. He was very much aware that the lady was married, since he met her husband on more than one occasion. He pleaded guilty in the magistrates’ court. There is an irrebuttable presumption that he fully understood the charge and the consequences of a plea of guilty. This is so since he never complained at the trial court or on appeal that he did not understand the charge or the consequences of entering a plea of guilty. Furthermore, he was represented by counsel who was clearly satisfied that his client (the appellant) entered a plea of guilty. The trial Magistrates’ proceeded to sentence the appellant to two months imprisonment, a conviction and sentence affirmed by the High Court and Court of Appeal. I am satisfied that this appeal is devoid of merit. For these brief reasons as well as those more fully given by my learned brother, Ogunbiyi JSC, I also would dismiss this appeal. Appeal dismissed.

**MUHAMMAD, JSC:**

I read in draft, the lead judgment of my learned brother, Ogunbiyi JSC just delivered. I agree entirely with the reasoning and conclusion arrived at therein that the appeal is bereft of merit. In making this contribution purely for the sake of emphasis, reliance is placed on the summary of the facts of the case that brought about the appeal supplied in the lead judgment.

The lone issue distilled by the respondent subsumes appellant’s two issues and appears more availing for the determination of the appeal. It reads:

“Whether the justices of the Court of Appeal (the lower court) were right when they affirmed the decision of the Jigawa State High Court.”

In arguing the appeal, learned counsel for the appellant contends that the First Information Report (FIR) on which the appellant was convicted does not contain all the ingredients of the offence of enticing a married woman he stood trial for. Section 389 of the Penal Code of Jigawa State which provides for the offence requires the information to necessarily specify the ingredients of the offence which must be brought to the attention of the accused who would be asked to plead thereto. The First Information Report read to the appellant and in respect of which the trial court took his plea did not specify that the appellant’s intention for concealing or detaining the woman, someone else’s wife, was to have illicit intercourse with her. Relying inter alia on Sukale v. C.O.P. (1969) SCOPE 30 and Garba v. Commissioner of Police (2007) All FWLR (Pt. 384) 260, (2007) 16 NWLR (Pt. 1060) 378 at 402, learned appellant’s counsel submits that the trial court’s non disclosure of the full ingredients of the offence under section 389 is a fundamental breach of section 156 of the Criminal Procedure Code and the lower court’s decision discountenancing the breach renders it perverse.

In any event, it is further argued, the paucity of evidence had rendered appellant’s conviction unsustainable. Lower court’s affirmation of the conviction that is not grounded in any evidence being addedly perverse, it is submitted, by the authority of Ochiba v. State (2011) 17 NWLR (Pt. 127) 663, (2012) All FWLR (Pt. 608) 849 should be set aside.

Learned respondent’s counsel vehemently disagrees. He submits that the First Information Report (FIR) clearly reflects all the ingredients of the offence the appellant is convicted for and from the printed record of the appeal, it is glaring that the appellant clearly understood the charge read to him and pleaded thereto. By the clear content of the First Information Report (FIR), appellant’s conduct alleged to constitute the offence under section 389 of the Penal Code is his act of taking along someone’s wife with the intention of having illicit sexual intercourse with her. Relying on Arebamen v. State (1972) 7 NSCC 194, learned respondent’s counsel urges that the concurrent findings of the lower court as to appellant’s guilt be sustained. The appeal, on the whole, he submits, should be dismissed. This appeal raises a fundamental constitutional issue that is provided for under section 36(6)(a) of the 1999 constitution as amended. The subsection reads:

(6) Every person who is charged with a criminal offence shall be entitled to: (a) Be informed promptly in the language that he understands and in detail of the nature of the offence. (Italicizing mine for emphasis).

The appellant’s contention is that the First Information Report which constitute the charge for which he is convicted and affirmed by the lower court does not contain the required details of the offence punishable under section 389 of the Penal Code. If the appellant makes out his complaint, he would be establishing a breach by the trial court of section 36(6)(a) of the Constitution reproduced supra, a decision the two other courts affirmed. Notwithstanding that the three courts are concurrent in their findings that the appellant is guilty, because the decisions how ensued inspite of the breach of the constitutional requirement would not persist. The lapse is fundamental and has been adjudged, by its occurrence alone, to occasion a miscarriage of justice. See Okeke v. State (2003) FWLR (Pt. 159) 1381, (2003) 15 NWLR (Pt. 842) 25 at pages 72-74 and Kajubo v. State (1988) 1 NWLR (Pt. 73) 721, (1988) 1 NSCC 475.

It is instructive to observe that the combined effect of sections 156 and 157 of the Jigawa State Criminal Procedure Code, the trial court’s adjectival law, is to the effect that conviction of an accused proceeds only where the court has read to him, in a language that he understands, details of the offence he stands trial for and, on being satisfied that the accused understands the allegation against him. The appellant insists that these adjectival provision and indeed section 36(6)(a) of the 1999 Constitution have been breached by the trial court and the others that affirmed the former’s illegal decision.

The First Information Report, the charge at the trial court reads:

“That on 21 May 2013 at about 1900 hours, one Mohammed Ghali “M” of Yakur Site Quarters, Dutse came to the police station and reported that you Professor Festus David Kolo “M” Lecturer of Ahmadu Bello University, Zaria, Kaduna State knowing fully that Mrs. Bashira Ghali Mohammed ‘F’ of the same address is his wife, you (were) having been making advances towards her, enticing her, calling her oftenly, sending her love text messages using your GSM line number 08039681194 to her GSM line 08032843927 after being warned severally by the said husband, Mohammed Ghali to stay away from his wife both face to face and on phone until when you were caught red handed with his wife at Dan Musa Guest Inn of Rafin Sanyi Quarters, Dutse in Room 109 on 21 May 2013 at about 1900 hours.

During police investigation, you confessed to have committed the above offence and you thereby committed an offence punishable under section 389 of the Penal Code Law.”

The trial court read the foregoing information to the appellant and on the basis of his confession to the facts therein, which facts constitute the offence under section 389 of the Penal Code, the appellant was asked if he understood the allegation and how he would respond. Appellant, a professor at the Ahmadu Bello University, Zaria, and who was represented by counsel told the court he understood the allegation read to him and that he committed the offence. On satisfying itself that the appellant had understood and admitted having committed the offence in the manner outlined in the First Information Report, the trial court invoked its powers under section 157 of the Criminal Procedure Code to summarily convict and sentence the appellant.

Appellant’s argument before us is that his conviction and sentence by the trial court had proceeded on the basis of the incomplete particulars in the First Information Report read and explained to him which insufficient facts are incapable of sustaining his conviction under section 389 of the Penal Code. In further affirming the trial court’s decision dismissing appellant’s appeal on grounds similar to those in the instant appeal, the lower court at pages 21-22 of the record held:

“... The printed record of the trial court at page 20 shows that the First Information Report was read and explained to the satisfactory understanding of the appellant. The appellant said he understood. This fact has not been challenged, indeed it is also worthy to state that the appellant who is highly educated person as a professor and a lecturer of (sic) the Ahmadu Bello University, Zaria, should not have difficulty in understanding what was read to him as contained in the First Information Report. It is also worthy of mention that the appellant was represented by counsel at the trial court who found no fault with either the contents of the First Information Report or the conduct of the trial.”

My lords, my perusal of the record of appeal, particularly the First Information Report, which for ease of reference has been reproduced earlier in this judgment, and the proceedings of the trial court convinces me that the lower court’s affirmation of the trial court’s conviction and sentence on the basis of its foregoing findings is unassailable. It is obvious from these findings that in admitting his guilt after the First Information Report had been read to him, the appellant knew why he was on trial and that what he did with someone else’s wife indeed constituted the offence for which he had been convicted and sentenced by the trial court, which decision on a further appeal, the lower court affirmed. The lower court’s decision the appellant appeals against that is borne out of the evidence on record and not in breach of section 36(6)(a) of the Constitution must persist. I so hold.

It is for the foregoing and moreso, the fuller reasons adumbrated in the lead judgment that I also dismiss the appeal.

I abide by the consequential orders reflected in the lead judgment.

**NWEZE JSC:**

I had the advantage of reading the draft of the leading judgment which my lord, Ogunbiyi JSC just delivered now. I entirely agree with the reasoning and conclusion.

In my humble view, the appellant, a university Professor cannot be heard to complain that he did not understand why he was arraigned on the First Information Report at the court of trial. Thus, his invocation of section 36(6)(a) of the 1999 Constitution of the Federation (as amended) is unavailing.

This is a classical example of the sort of situation which this court decided in Adebayo v. Attorney-General, Ogun State (2008) All FWLR (Pt. 412) 1195, (2008) 7 NWLR (Pt. 1085) 201, (2008) LPELR-80 (SC) 23-24. Listen to this: “I have seen in recent times that parties who have bad cases embrace and make use of the constitutional provision of fair hearing to bamboozle the adverse party and the court, with a view to moving the court away from the live issues in the litigation. They make so much weather and sing the familiar song that the constitutional provision is violated or contravened.

They do not stop there. They rake the defence in most inappropriate cases because they have nothing to canvass in their favour in the case. The fair hearing provision in the Constitution is the machinery or locomotive of justice; not a spare part to propel or invigorate the case of the user. It is not a casual principle of law available to a party to be picked up at will in a case and force the court to apply it to his advantage. On the contrary, it is a formidable and fundamental constitutional provision available to a party who is a denied fair hearing because he was not heard or that he was not properly heard in the case. Let litigants who have nothing useful to advocate in favour of their cases, leave the fair hearing constitutional provision alone because it is not available to them just for the asking.

(Italics supplied for emphasis) True, indeed, my advice to the appellant in this appeal is to “leave the fair hearing constitutional provision alone because it is not available to him.” It is for these, and the more elaborate, reasons in the leading judgment that I too shall dismiss this appeal. I abide by the consequential orders in the leading judgment.

**SANUSI, JSC:**

I read in advance, a draft of the judgment delivered by my learned brother, Clara Ogunbiyi JSC, I am in entire agreement with her reasoning and the conclusion arrived at that this appeal lacks merit and must be dismiss. However for purpose of amplification I wish to offer few comments of mine.

The appellant herein as accused person, was arraigned before a Chief Magistrate Court in Jigawa State on a First Information Report (FIR) on allegation of enticing a married woman, contrary to section 389 of the Penal Code. It was alleged that the appellant had been warned several times by the husband of the woman who happened to be a student, to desist from enticing her. Despite the warnings, the appellant continued to be sending love messages to her on phone and face to face until when he was arrested in a hotel room with the said woman. On his arraignment, the trial Chief Magistrate read and explained the First Information Report (FIR) to the accused/appellant and the accused, now appellant pleaded guilty, hence he was summarily tried, convicted and sentenced to two months imprisonment.

Dissatisfied with the conviction and sentence by the trial Chief Magistrate, the appellant appealed to the High Court of Jigawa State sitting in its appellate jurisdiction (the intermediate court) which affirmed the decision of the trial Chief Magistrates’ Court. The appellant still dissatisfied, appealed to the Court of Appeal, Kaduna Division (the court below) which also dismissed his appeal and affirmed the decisions of the two lower courts.

Piqued by this development, the appellant further appealed to this court.

The learned appellant’s counsel in his brief of argument raised two issues for determination. As verbose as they are, the issues read thus: Whether the lower court (Appeal Court) was right in dismissing the appellant’s appeal when it affirmed the decisions of the courts below (High Court and trial Magistrates’ Court) by holding that the intention of the appellant could be inferred from his conducts whereas the First Information Report (FIR) with which the appellant was convicted did not state or contain the essential ingredient of the offence of enticing a married woman to the appellant under section 389 of the Penal Code, Laws of Jigawa State, to wit: “With intent that she may have illicit intercourse with any person or conceals or detains with that intent any such woman” such as to justify the conviction of the appellant on summary trial procedure? (Issue distilled from grounds 1-4).

2. Whether from a dispassionate appraisal or evaluation of the totality of the evidence i.e. First Information Report, before the trial Magistrates’ Court, the learned justices of the lower court (Court of Appeal) were right in dismissing the appellant’ s appeal when the decision of the trial Magistrates’ Court is unreasonable, unwarranted and unsupportable to warrant the conviction of the appellant? (issue formulated from ground 5).

On its part, the respondent, proposed a lone issue for determination as follows: “Whether the justices of the Court of Appeal (the lower court) were right when they affirmed the decision of the Jigawa State High Court.” To my mind, the lone issue raised by the respondent is apposite to the determination of this appeal, hence it will be useful to be guided by it in treating that appeal.

Submission by counsel:

The learned counsel for the appellant submitted that the lower court ought to have allowed the appellant’s appeal when the essential particulars or ingredients were not disclosed on the face of the First Information Report (FIR) to which the appellant pleaded guilty. He contended that the First Information Report (FIR) read to the accused only contained other essential ingredients of items I to II (page 2 of the appellant’s brief). The fourth i.e. “intent to have illicit intercourse with any person” was omitted from the First Information Report (FIR). He therefore submitted that the absence of the fourth particular or ingredient cannot sustain the plea of guilt under section 389 of the Penal Code to warrant his conviction by the magistrate court. He cited the case of Abdullatif Ahmed v. Commissioner of Police (1971) NMLR 409 where it was held thus:

“Before convicting on the plea of guilt under section 161 of the Criminal Procedure Code, a court must explain all the ingredients of the charge to the accused person and record his replies...”

He argued that the procedure prescribed in section 156 of Criminal Procedure Code, was not followed by the trial court and that the court below ought to have allowed his appeal. He argued further, that the issue of intention is germane in criminal trial i.e. (mens rea) and cannot therefore be washed away. He faulted the inference of the trial court as to the calling and sending of love messages to constitute an intent of enticing the woman.

He argued that even though these conducts are condemnable, it cannot replace a statutory provision as to the procedure adopted in this particular circumstance of summary trial. He submitted that this omission is fatal and made such inference as speculative and has cast doubt as to what the intention of the appellant was.

He then urged this court to resolve this issue in favour of the appellant.

Issue 2 queries whether from appraisal of the totality of the evidence, the lower court was right in dismissing the appeal.

The learned counsel submitted that a thorough evaluation of the contents of the First Information Report (FIR) reveals that an offence known to law has not been shown to have been committed by the appellant. He argued that it was speculative to infer intention from the alleged acts of the appellant in summary trial ,especially when the prosecution omitted to state the essential particulars/ingredients in the First Information Report (FIR). He submitted that a miscarriage of justice had been occasioned by reason of that speculation. He cited the case of Ochiba v. State (2011) 17 NWLR (Pt. 127) 663 at 694, (2012) All FWLR (Pt. 608) 849 where it was held that a trial court cannot come to the conclusion that an offence had been committed if the ingredients of such offence cannot be ascertained by the court. He submitted finally, that the evidence, including the contents of First Information Report (FIR) were not sufficient enough to ground the conviction of the appellant by the trial magistrates’ court.

In his reaction, learned counsel for the respondent argued that the last and the fourth particulars of the offence were reflected in the face of the First Information Report (FIR). He argued further that the word love is reflected on the First Information Report (FIR) and defined by Dictionary to mean “sexual intercourse or copulation” and the word “copulation” was defined to mean “coming together of male and female in an act. He contended that the appellant should have asked for clarification if he had problem with the words used in the First Information Report (FIR) particularly “love messages” before he pleaded guilty to the contents of the First Information Report (FIR). He argued further that even if the last particular of the offence was not in the First Information Report (FIR) as alleged, he submitted that the intention of the appellant can be inferred from his conduct as the word “Intention” has been defined by the Oxford Advanced Learner’s Dictionary, 7th Edition at page 777 to mean “what you intend or plan to do”. He referred to the judgment of the lower court at pages 126-127 of the record where it stated thus:

“What is the face of all these could be the intention of the appellant towards a married woman? Although the phrase “with intent that she may have illicit intercourse with any person” are not specifically so stated in the First Information Report, the abundant material facts therein supplied read together deputes on its face the intention of the appellant... culminating in the appellant being caught red handed to which facts he confessed, it would be in my humble view be flying on the face of these facts to argue that the aggregation of all those facts on the First Information Report do not therein convey the measure of the offence or the intention of the appellant.”

He submitted that in line with the above, the only thing to be inferred from the conduct of the appellant based on the entire content of the First Information Report was that the appellant did intend to have illicit relationship with the woman, moreso when the husband of the woman had earlier warned him (appellant) to stay away from his wife. He cited the case of Arebamen v. State (1972) 7 NSCC 194 at 20 where the Supreme Court held thus:

“Intention is of course difficult to prove affirmatively without confession from the accused and can frequently be determined by looking at all surrounding circumstances and deciding therefrom whether the nature of inference is that such must have been the intention.”

He submitted that a material factor must be the action or conduct of the accused.

It was held further in that case that intention may be inferred from the conduct of a person. He added that the appellant’s attempt to distinguish Arebamen’s case with the instant case clearly shows that he could not comprehend the similarities of the principle and facts of the two cases. He submitted that the case of Arebamen shares the same similarities with the instant one as the Supreme Court considered the conduct of the appellant who set fire to the building which he intended to burn the building.

He referred to Nwachukwu v. State (2007) All FWLR (Pt. 390) 1380, (2007) 17 NWLR (Pt. 1062) 31 at 70 where it was held thus:

“A confessional statement is the best evidence in criminal procedure. It is a statement of admission of guilt by the accused person and the trial court must admit it in evidence unless it is contested at the trial.”

He contended that a confession made to or overheard by someone else may be accepted in evidence. He again referred to Nwachukwu’s case to buttress this point. He argued that section 206 of the Criminal Procedure Code has cured any defect in the First Information Report (FIR) if there is any confession, as it provides that no omission either in the offence or particular shall be regarded as material unless the accused has been misled by such error or omission which has occasioned a miscarriage of justice. He referred to the case of Emenegor v. State (2010) All FLWR (Pt. 511) 884 at 936, where it was held that the judgment of the lower court will not be disturbed on appeal if the appellant counsel could not establish that a miscarriage of justice has occurred as a result of defect in the charge. He stated that when the First Information Report (FIR) was read and explained to the appellant while he was in company of his counsel, one Gusau Esq., he therefore submitted that if the appellant or his counsel had any compliant about the particulars of the offence as contained in the First Information Report (FIR), his counsel ought to have objected. He urged the court to discountenance the argument of the appellant on the issue of error in the First Information Report (FIR) . On the contention of the appellant’s counsel that facts contained in the First Information Report (FIR) were mere allegation and speculation, he stated that the counsel had forgotten he himself described the fact of the appellant as condemnable and detestable (page 16, paragraph 3.2.2 of his brief). He asked “Where is the speculation when he used his phone to often call a married woman and when the husband had severally warned him to stay away from her and he admitted the fact as contained in the First Information Report (FIR)”. He then urged the court to resolve this issue in favour of the respondent and dismiss this appeal.

The grouse of the learned appellant’s counsel is that the First Information Report on which he was arraigned before the Chief Magistrates’ court (the trial court) was defective because according to him, the offence of enticing a married woman which according to him should specify the ingredients and same, must be explained to the accused before he was asked to plead. He opines that the intention of the accused must also be specified i.e. that the woman being a married woman was enticed with the intention of having sexual intercourse with the said married woman.

By the provisions of sections 156 and 157 of the Criminal Procedure Code there could only be a valid conviction under the use of summary trial procedure, if the under listed conditions are complied with by the magistrates’ court, namely:

(1) The particulars of the offence are stated to the accused;

(2) The accused is asked, if he has any cause to show why he should not be convicted;

(3) The accused admits that he has committed the offence

(4) He shows no cause why he should not be convicted See Halilu (Alhaji Maisalibu) v. Commissioner of Police (1970) 2 All NLR 178.

It must be emphasised here, that failure to state particulars of the offence as required by section 156 of the Criminal Procedure Code, amounts to breach of the provisions of section 156 of the Criminal Procedure Code and if the accused is convicted, the trial or conviction is a nullity. See Wambai & Anor v. Kano Native Authority (1965) NMLR 17.

Similarly, if the court omits to ask the accused/appellant to show cause and the absence of clear admission by the accused that he had committed the offence, such constitutes a failure to comply with the above conditions and such amounts to failure of justice. See Halilu (Alhaji Maisalibu) v. Commissioner of Police (supra).

Now, when the appellant was arraigned before the trial chief magistrate on 30 May 2013, the following was what had transpired as shown on page 20 of the printed record:

“Court - First Information Report (FIR) read and explained to the satisfactory interest of the accused person.

Court to Accused - Accused do you understand the contents of First Information Report (FIR) read to you?

Accused: Yes I do.

Court to Accused: Is the information contained therein true or not?

Accused: The information is true.

Mustapha Adamu Esq: The person has voluntarily admitted the contents of the First Information Report (FIR). In view of that we shall be applying for summary trial of the accused under section 157 of the Criminal Procedure Code.

Gausa Esq: We have no objection to the application made.

Court: Application for summary trial granted. Sgd Magistrate.

Court to Accused: Can you show any cause why you should not be convicted for the offence of enticing a married woman?

Accused: I have no cause to show Court: In view of the admission by the accused of the contents of the First Information Report (FIR) containing the charge of enticing a married woman complied with his failure to show cause why he should not be convicted, I hereby find him guilty as charge and convict him accordingly, pursuant, to section 389 of the Penal Code Laws of Jigawa State.”

It is important to note here, that throughout the proceedings before the magistrate court, the accused now appellant, was represented by a counsel, one Mr. Gausa and the appellant in no uncertain terms admitted committing the offence and that he stated that he had no cause to show. Also the contents of the First Information Report (FIR) were clearly read and explained to the appellant to his satisfaction as shown in the record of proceedings of the magistrates’ court. If the accused/appellant did not understand its contents, he or his counsel would have asked for the court to further explain same to him. To my mind, the First Information Report (FIR) contained all the necessary details or information on the particulars of the offence including the text messages, overtures or advances he made to the married woman which he never refuted. He also did not refute the fact that he was arrested with the married woman in a hotel room.

Above all, the appellant had voluntarily admitted committing the offence he was charged with. The offence of enticing a married woman under section 389 of the Penal Code can be established if the following ingredients are proved beyond reasonable doubt by the prosecution. The ingredients are:

(a) That the woman is a married woman;

(b) That the accused knew or had reason to believe that she was/is the wife of another man;

(c) That she was at the time of the offence living under the care of her husband or someone else on his behalf;

(d) That the accused

(i) took or

(ii) enticed her away from her husband or that other person

(iii) concealed or

(iv) detained her; and,

(e) That the intention in doing so was that she might have illicit intercourse with him or with someone.

The prosecution, in order to obtain conviction, must prove all the ingredients mentioned above.

In this instant case, all the above mentioned elements of the offence were revealed or disclosed in the First Information Report (FIR) which the appellant willingly and voluntarily admitted. For instance, the overtures or advances to her by the appellant, his enticing or taking her to a hotel where he was arrested. The purpose of the hotel visit must be with the intention to have illicit intercourse with her in the hotel and such intention could also be rightly inferred.

In addition, the appellant must also have been aware of her marital status or had reason to believe so, since he had been warned several times by her husband but yet he refused to heed to the warnings.

All these elements, have been held to have been established by the three lower courts in their concurrent findings. I therefore have no cause to disturb or interfere with such concurrent findings.

In the result, for these few comments and for the fuller and more detailed reasons contained in the lead judgment of my learned brother, Ogunbiyi JSC which I agree with and adopt as mine, I also see no merit in this appeal. I affirm the judgment of the court below which had also affirmed the decisions of the Jigawa State High Court sitting in its appellate jurisdiction and affirmed the decision of the trial chief magistrate in convicting the appellant as charged. Appeal lacks merit and is accordingly dismissed by me.

Appeal dismissed.