

SUMMARY OF JUDGMENT

INTRODUCTION:

This appeal borders on Criminal Law and Procedure.

FACTS:

This is an appeal against the judgment of the Court of Appeal

In the High Court of the Enugu State of Nigeria, Enugu Judicial Division, the appellant was charged with murder contrary to section 274(1) of the Criminal Code. Cap. 36 of the Laws of Anambra State, 1986. applicable in Enugu State. The allegation was that he, the appellant, murdered one Francis Madu (M) on the 9th day of January, 1989 at Udi and Enugu Judicial Division. The evidence led by the prosecution was that on the day of the incident, the deceased was a passenger in a mini-bus driven by the P.W.2. The deceased, a police constable, wore police uniform and was sitting with the P.W.2 in the front seat of the motor vehicle. When the aforesaid motor vehicle reached a check-point near Nkwo-Agu market at Udi a constable on duty with the appellant, who was a police officer of the rank of Assistant Superintendent of Police, demanded money from the P.W. 2 before the motor vehicle being driven by the P.W. 2 would be allowed to pass the check point. The deceased challenged the constable as to the propriety of demanding money. The said constable asked the deceased to accompany him to the appellant, his superior officer. The deceased complied but on getting to the place where the appellant was, the appellant shouted abuses on the deceased and followed the deceased back to his seat in the motor vehicle.

The appellant pulled out the pistol in his possession and threatened to "batter" the bus and the passengers if the motor vehicle moved an inch from the spot that it was. The appellant then moved to the side of the motor vehicle where the deceased was seated, opened the door, held the deceased by the collar of his dress and slapped the deceased. The appellant and the constable on duty with him (P.W.8) continued to beat the deceased until at one stage the appellant shot the deceased with the gun in his (appellant's) possession. The appellant and the P.W.8 put the deceased in a motor vehicle and drove to an unknown destination. The appellant, P.W.8 and the motor vehicle, with the deceased still in it, were later seen at the police station. The P.W.5 and the P.W.7 were also eye-witnesses of the incident. The deceased was being driven from the police station to the hospital when he died on the same way. The medical doctor who performed post mortem examination on the corpse of the deceased gave evidence that he extracted a bullet from the body of the deceased and that he died as a result of gun shot wounds.

At the end of the case for the prosecution, the learned counsel for the appellant made a no-case submission. The no case submission was overruled and the learned trial

Judge called the appellant for his defence. The learned counsel for the appellant rested the appellant's defence on the prosecution's case. In a reserved judgment delivered by the learned trial Judge, he found the appellant guilty as charged, with the offence of murder. The learned trial Judge convicted him accordingly and sentenced him to death. Dissatisfied with the judgment, the appellant lodged an appeal against it to the Court of Appeal. The Court of Appeal dismissed the appeal and affirmed the finding of the trial Court.

The Appellant further appealed to the Supreme Court.

ISSUES:

The appellant distilled four issues while the respondent distilled three. The Court determined the appeal on the appellant's issues as follows:

- (1) Whether, in the face of irreconcilable contradictions in the evidence for the prosecution, the learned Justices of the Court of Appeal were right in law in affirming that the appellant had a case to answer.
- (2) Whether the prosecution proved its case beyond reasonable doubt to warrant the confirmation of the conviction and sentence of the appellant by the Court of Appeal.
- (3) Whether the learned Justices of the Court of Appeal were right in law in extricating the evidence of P.W.2 and basing the conviction and sentence of the appellant on that evidence alone.
- (4) Whether in the circumstances of this case it was safe to base the conviction and sentence of the appellant on the evidence of the "solitary witness" in the person of P.W.2.

DECISION/HELD:

In the final analysis, the Court held that the appeal lacked merit and it was accordingly dismissed.