

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

ON FRIDAY, THE 17TH DAY OF JANUARY, 2025

BEFORE THEIR LORDSHIPS

UWANI MUSA ABBA AJI

JUSTICE, SUPREME COURT

ADAMU JAURO

JUSTICE, SUPREME COURT

CHIOMA EGONDU NWOSU-IHEME

JUSTICE, SUPREME COURT

OBANDE FESTUS OGBUINYA

JUSTICE, SUPREME COURT

HABEEB ADEWALE O. ABIRU

JUSTICE, SUPREME COURT

SC/CR/541/2020

BETWEEN:

SEGUN BABAJIDE

.....

APPELLANT

AND

THE STATE

.....

RESPONDENT

JUDGMENT

(DELIVERED BY UWANI MUSA ABBA AJI, JSC)

The facts in this appeal are that on 16/11/2011, at about 7:30pm, Azeez Olasupo (PW7) and the deceased went into the room of the 1st Defendant upstairs to watch film. While there, they met the Appellant and another person sleeping. After about an hour, they left the room for Itoku. While at Itoku, the Appellant, the 1st Defendant and four other friends came on three motorcycles. On getting to their house at Ago Oba, Abeokuta, the 1st Defendant, the Appellant and others asked them to kneel down and started to beat them for stealing the Appellant's handset. PW7, Gbemi and the deceased were beaten with planks, stick and bottle by the Appellant, 1st Defendant and others now at large. The deceased (Saburi) was rushed thereafter to the Clinic by the 1st Defendant and others, now at large, where

the deceased eventually died on 17/12/2011. This led to the arrest and arraignment of the Appellant and another person for the offences of Conspiracy to commit murder and murder before the trial High Court.

At the trial, the Respondent called 3 witnesses and tendered 9 Exhibits while the Appellant testified for himself and called no witness. At the conclusion of the trial, the trial court found the Appellant guilty as charged and consequently sentenced him to death. Being dissatisfied with the Judgment, the Appellant appealed to the Court of Appeal which upheld the judgment of the trial High Court and dismissed the appeal. Consequently, the Appellant vide a notice of appeal came before this court and in his brief of argument deemed filed on 6/7/2022, formulated two issues for determination by this Honourable Court as follow:

a) Whether having regard to the evidence adduced by the prosecution, the Justices of the Court of Appeal were right in affirming the conviction and sentence of the Appellant for the offence of murder.

b) Having regard to the evidence adduced by the prosecution, whether a case of conspiracy was made out and proved beyond reasonable doubt against the Appellant.

The Respondent on the contrary, in his brief of argument, filed on 6/7/2022, formulated this issue for determination:

Whether from the totality of the evidence adduced at the trial, the Respondent proved the charge of conspiracy to commit murder and murder against the Appellant beyond reasonable doubt in accordance with section 135 of the evidence Act, No. 18 of 2011?

ISSUE FOR DETERMINATION:

I shall utilize the issue for determination formulated by the Respondent for the determination of this appeal.

Whether from the totality of the evidence adduced at the trial, the Respondent proved the charge of conspiracy to commit murder and murder against the Appellant beyond reasonable doubt in accordance with section 135 of the evidence Act, No. 18 of 2011?

ARGUMENTS OF COUNSELS:

It was argued by Temilolu Adamolekun, learned Counsel to the Appellant, that in a murder charge, the prosecution must prove: - (a) that the deceased died (b) that the death of the deceased was caused by the act of the accused person and; (c) that the act or omission of the accused person causing the death was intentional with knowledge that death or grievous bodily harm was its probable consequence. He cited in support **OKEKE V. STATE (1999) 2NWLR (PT. 590) 246 AT 273**. Conceding that there was the death of Saburi Ishola, the evidence of PW1, PW5 and PW7 and Exhibits C and E did not prove that

the Appellant caused the death of the deceased. Hence, the failure to establish the cause of death leads to discharge, as decided in **AKINLOLU V STATE (2017) LPELR- 42670 (SC)**. On the 3rd ingredient, it was submitted that the lower court was wrong to rely on the witness/evidence of PW1 and PW7, who were considered tainted witnesses, to establish the intention of the Appellant to murder the deceased. Reliance was placed on **PIUS V. STATE (2015) LPELR - 24446 (SC)**. He therefore prayed for the resolution of the issue in favour of the Appellant and to discharge and acquit the Appellant.

On the other hand, the learned Counsel to the Respondent posited that the cause of the death of the deceased by the Appellant was proved via the eye witness account of PW7 and the Confessional statements of the Appellant, Exhibits 'C', 'E' and 'F'. Thus, the evidence of

PW7 is the best evidence as decided in **OJO V. GHARORO (1999) 1 NWLR (PT. 615) 374 AT 387, ADETA V. NIG. ARMY (2016) LPELR-40235**. Further, that the Appellant's confessional statements, Exhibits 'C' and 'E' are direct, positive and unequivocal as they admitted the commission of the offences charged and sufficient to ground a conviction. Reference was made to **DIBIE V. STATE [2007] ALL FWLR (PT. 363) 83 AT 114 PARAS. C-D, NWACHUKWU V. STATE [2007] ALL FWLR (PT. 390) 1380 AT 1406 AND 1409**. On the 3rd ingredient, he submitted that by the nature of injuries the Appellant and others inflicted on the deceased, it points irresistibly that the Appellant and others intended to kill the deceased as held by the Supreme Court in **SANNI V. STATE (2017) LPELR-43475 (SC)**. He therefore urged this court to resolve the issue against the Appellant and concluded that the

Court of Appeal was right in affirming the conviction and sentence of the Appellant.

RESOLUTION OF ISSUE:

The Appellant was principally charged with murder. In proving same, the prosecution can use any of these methods: (a) Through evidence of eye witness or witnesses (b) Through voluntary confessional statement of the accused or accused persons, and (c) Through circumstantial evidence. Any of the above-mentioned methods can be adopted by the prosecution to establish the ingredients of murder conjunctively, namely: - (1) The death of a human being (2) That the death was caused by the act or commission of the accused person; and (3) That the act of the accused was done intentionally or with knowledge that death or grievous bodily harm was the probable

consequence. See Per ABBA AJI, JSC, in **OKERE V. IGP (2021) LPELR-53079(SC) (PP. 16-17 PARAS. C-C)**.

It is not disputed and in fact conceded by the Appellant's learned Counsel that in the instant case, there was the death of Saburi Ishola. However, the remaining 2 conjunctive ingredients are contested, in order to exculpate and extricate the Appellant from his conviction and sentence for murder.

The Respondent in its argument, relying on **DIBIE V. STATE [2007] ALL FWLR (PT. 363) 83 AT 114 PARAS. C-D, NWACHUKWU V. STATE [2007] ALL FWLR (PT. 390) 1380 AT 1406 AND 1409**, stated that the Appellant's confessional statements, Exhibits 'C' and 'E' are direct, positive and unequivocal as they admitted the commission of the offence charged and sufficient to ground a conviction.

Unarguably, the Appellant volunteered Exhibits C and E, wherein he revealed saliently his involvement in the death of the deceased. Specifically, he confessed vide Exhibit E inter alia:

When I woke up, I could not find my Nokia hand set which I was charging inside the room. I reported to Nurudeen and Nurudeen said he left about five boys in the room watching film and we searched for all of them including Saburi Ishola now deceased.

Myself, Nurudeen, Wale Ojoba, Taiwo Orobiyi, picked a motor cycle to look for them and we were able to get four out of five including the deceased and we gathered them for interrogation during which I the beat deceased with a plank on his head. We also beat the rest of the (sic) boys with same plank and I used plank to beat Saburi Ishola now deceased on his head before Taiwo Orobiyi broke a bottle on deceased's head but I was present by then...When myself...heard about the deceased's death, we were already leaving toward Sango Otta (for escape of arrest) before we were arrested at Sango Otta by some boys and handed over to the police.

Although this confessional statement was contested as retracted by the Appellant, it nonetheless does not affect its admissibility. However, the court is expected for wariness and caution, to warn itself to be on the safer side and not to condemn an innocent person!

By the above confession of the Appellant, there is the possible corroboration and correlation that the Appellant knew the deceased before his death. In fact, they were neighbours living in the same house. PW7 corroborated the confession of the Appellant as an eye witness while PW1, the nurse, attended to the deceased in the hospital. By the revealed facts of the case, the Appellant actively had the opportunity of committing the murder. Connectedly, this court, Per OKORO, JSC, in **SAMAILA V. STATE (2023) LPELR-61132(SC) (PP. 13-14 PARAS. C)**, held:

The issue in the main in this appeal therefore is whether the trial Court was right in admitting the retracted confessional statement, and relying on same to convict the Appellant. The law has been well espoused on this issue and well settled that an accused person can safely be convicted on his retracted confessional statement if the Court finds the confessional statement to be satisfactorily proved...It is however desirable that before a conviction can properly be based on such retracted confessional statement, there should be some corroborative evidence outside the confession which would make it probable that the confessional statement is true.

I must be bold to say that by Exhibits C and E, the Appellant has dug his own grave for conviction and sentence for the murder of the deceased person.

The Respondent further went on an unguarded stride to prove the guilt of the Appellant outside his confession through the eye witness account or evidence of PW7. At page 68 lines 1-16 of the Record, PW7 recounted with precision and certainty, what transpired:

...The 1st accused peeped through the window and asked for a cutlass. One man called Sheriff brought a cutlass. The accused persons and their cohorts were all armed. Some held sticks, some held cutlass. They started hitting us on the head with the sticks and cutlass. The 2nd accused known as Otunba hit Sabiru on the head with a plank. We were thoroughly beaten so much so that we could not walk unaided. The 1st accused person too hit Saburi and Gbemi and myself on the head. We fell on the floor and could not walk. Sheriff did not do anything. He only brought a cutlass and left, when he saw that the accused persons and others wanted to use the cutlass on us. I have heard of Taye Orobiyi. I know him. He was the one that hit Saburi on the head with a bottle. When they were beating us, one of their friends came in. When he saw our condition, he cautioned them. He also advised them to find out from one of their friends that came to the house if he took the phone. After that, the accused person and others blindfolded us...”

Contrary to the argument of the Appellant, PW7 witnessed the dastard and callous act that led to the murder or death of the deceased in the account above. Besides, the blindfolding of PW7 is nothing but a

smokescreen! The evidence revealed is contrary and I must rely on it. Manifestly and in addition, PW7 during cross examination at page 70 lines 15-20 of the Record of Appeal confirmed that, *"...We were not blindfolded when we were been beaten. We were blindfolded when they wanted to go out to verify if their friend who came to the house took the phone. While I was been beaten, I knew what was going on around me. The two accused persons hit Saburi on the head with planks, while Taye hit him on the head with a bottle of beer. Saburi fell on the floor as a result of the beating."*

The best form of evidence is where the eye witness is direct and his evidence gives an on-the-spot narration of the event as it happened. Eyewitness evidence is always reliable evidence provided the witness is telling the truth. Such evidence is on what the witness saw. It is almost impossible to dislodge such evidence. See Per OGUNWUMIJU, J.S.C,

in **OSUJI V. STATE (2024) LPELR-62989(SC) (PP. 46 PARAS. C).**

What is more! PW1 gave further evidence at page 32 lines 23-25 of the Record, that, *“on 16/12/11 at about 7.20 - 7.30p.m, about seven men brought in a male patient by name Gbadebo Saburi. He was brought in unconscious...as a result of which he collapsed suddenly...”* Thus, the deceased was already unconscious at the time he was brought to the clinic by the Appellant and others. The deceased never regained consciousness before his death, which invariably linked the Appellant to his death!

On further confirmation of the death of the deceased, PW5 at page 42 lines 12-14, affirmed; *“The injury to the head caused a raised intra-cerium pressure, as a result of which blood flow to the brain is cut off, the result is death.”* It is

therefore clear from the evidence of PW5, the medical doctor, that the cause of death of Saburi Ishola was the injury to the head. It cannot be gainsaid therefore that the Respondent has ably proved that the Appellant caused the death of the deceased.

On the 3rd ingredient, that the act of the accused was done intentionally or with knowledge that death or grievous bodily harm was the probable consequence; Exhibits C and E, the direct eye witness of PW7 and testimonies of PW1 and PW5 are sharply, strongly and intricately demonstrating that the Appellant and his murderous team knew or ought to know that death or grievous bodily harm was the probable consequence of what they did to the deceased.

Repetitively, PW7 testified that the Appellant and others were armed with plank, broken bottle and cutlass,

which they used to inflict injury on the deceased and himself. He stated that they were beaten to the extent that they could not walk unaided. He testified further that the deceased was hit on the head. Exhibits 'C' and 'E' exposed that, when the Appellant confessed that, *“I beat the deceased with a plank on his head. We also beat the rest of the boys with same plank and I used plank to beat Saburi Ishola now deceased on his head because Taiwo Orobiyi broke bottle on deceased head”*. Also, the nature of injuries inflicted on the deceased by the Appellant and others points irresistibly that the Appellant and others intended to kill the deceased or at least intended to cause him grievous bodily harm. By extension, the part of the body injured, the head, also confirmed that the Appellant intended to kill the deceased. Concerning the foregoing, Per EKO, JSC, in **POSU V. STATE**

(2020) LPELR-52518(SC) (PP. 7-10 PARAS. A-A), held

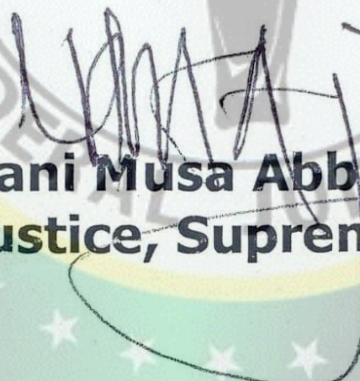
amongst others, that:

Both Pw.5 and his Exhibit D were consistent that the cause of death of the deceased, Abel, was injuries from stab wounds...The principle of causation dictates that an event is caused by the act proximate to it and in the absence of which the event would not have happened - so long as the cause of death is traceable to the injury inflicted by the accused, he would be held criminally responsible. Even without any medical evidence, the proximate connection between the act of the Appellant striking the deceased with a knife on the chest (as he admitted) and the deceased slumping and dying on the spot immediately, in the circumstance, erase any reasonable doubt that it was the act of the Appellant that caused the death of the deceased. Medical evidence, in the circumstance, is unnecessary.

The Court of Appeal pointedly and squarely held at pages 198 line 31 and 199 lines 1-3 of the Record, that, *“The Appellant hitting the head of the deceased with a plank is clear evidence that the intention of the Appellant and co-*

conspirator was to do him grievous harm which brutally resulted in his death".

In conclusion, the totality of the evidence of the Respondent presented points irresistibly to the act of the Appellant and others as the cause of death of the deceased. This issue therefore is resolved against the Appellant. In effect, the appeal fails and the conviction and sentence of the Appellant by the lower court is hereby affirmed. The appeal is dismissed.


Uwani Musa Abba Aji, CFR
Justice, Supreme Court

APPEARANCES:

TEMILOLU ADAMOLEKUN, ESQ. appear with Muhammad Usman, Esq. And Maryjane Eluemunor **for the Appellant.**

O. T. OLAOTAN, ESQ. S. G. Ogun State with A. M. Adebayo, Esq. DDPP, MOJ Ogun State appear **for the Respondent.**